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behalf of other persons similarly situated and aggrieved

[additional counsel on next page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SONOMA

ELIZABETH GARCIA, individually and on
behalf of other persons similarly situated and
aggrieved,

Plaintiff,

vs.

LOLA'S MARKET INC., a California
corporation; DAVID ORTEGA, an individual; and
DOES 1 through 50, inclusive,

Defendants.

Case No. SCV-271089

[Assigned for all purposes to the Honorable
Patrick Broderick, Courtroom 16]

**JOINT STIPULATION OF CLASS AND
PAGA REPRESENTATIVE ACTION
SETTLEMENT AND RELEASE OF
CLAIMS**

Action Filed: June 28, 2022
Trial Date: None Set

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1 This Joint Stipulation of Class Action Settlement Agreement and Release of Claims
2 (“Agreement”) is made and entered into between: (1) Plaintiff Elizabeth Garcia (“Garcia” or “Plaintiff”)
3 individually and on behalf of all current and former non-exempt, hourly employees working for
4 Defendants Lola’s Market Inc. (“Lola’s Market”) and David Ortega (“Ortega”) (collectively,
5 “Defendants”) at any time between June 24, 2018 to June 13, 2023 (the “Class”); and (2) Defendants,
6 subject to approval from the Court, as provided below.

7 This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and
8 settle the Action (as defined below) and the Released Claims (as defined below), upon and subject to the
9 terms and conditions hereof, as follows:

10 1. DEFINITIONS

11 As used herein, for the purposes of this Agreement only, the following terms shall be defined as
12 set forth below:

13 1.1. **“Action”** refers to the civil action entitled: *Elizabeth Garcia v. Lola’s Market*
14 *Inc., et al.*, Sonoma County Superior Court Case No. SCV-271089. The Action was filed as a class and
15 PAGA representative action.

16 1.2. **“Agreement”** refers to this Joint Stipulation of Class Action Settlement and
17 PAGA Representative Agreement and Release of Claims, which includes all of the Recitals and the
18 Exhibits attached hereto.

19 1.3. **“Class”** refers to all current and former non-exempt, hourly employees working
20 for Defendants in California at any time between June 24, 2018 to June 13, 2023.

21 1.4. **“Class Counsel”** refers to Matthew J. Matern, Joshua D. Boxer, and Clare E.
22 Moran of Matern Law Group, PC. For purposes of providing any notices required under this
23 Agreement, Class Counsel shall refer to Joshua D. Boxer (jboxer@maternlawgroup.com) and Clare E.
24 Moran (cmoran@maternlawgroup.com), 1230 Rosecrans Avenue, Suite 200, Manhattan Beach,
25 California 90266.

26 1.5. **“Class Member(s)”** refers to any individual that is a member of the Class.
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1 1.6. **“Class Period”** refers to the period of June 28, 2018 to June 13, 2023. The Class
2 Period is based on a four-year statute of limitations period for state law claims, beginning on the date the
3 Action was filed on June 28, 2022.

4 1.7. **“Class Representative”** refers to the named Plaintiff in the Action, Elizabeth
5 Garcia.

6 1.8. **“Class Representative Service Award”** refers to any payment, subject to Court
7 approval, to the Class Representative from the Gross Settlement Amount in recognition of the efforts
8 and work in prosecuting the Action on behalf of the Class Members.

9 1.9. **“Complaint”** refers to the Complaint filed on June 28, 2022 and amended on
10 August 4, 2022 in this Action.

11 1.10. **“Weeks Worked”** refers to any weeks when a Class Member worked for Lola’s
12 Market Inc. during the Class Period, as reflected in Lola’s Market Inc.’s’ records.

13 1.11. **“Defendants”** refers to Defendant Lola’s Market Inc. and Defendant David
14 Ortega.

15 1.12. **“Defendants’ Counsel”** refers to O’Hagan Meyer. For purposes of providing
16 any notices required under this Agreement, Defendants’ Counsel shall refer to Sumy Kim
17 (skim@ohaganmeyer.com), One Embarcadero Center, Suite 2100, San Francisco, California 94111.

18 1.13. **“Effective Date”** refers to the 15th day after the date by which the last of the
19 following has occurred: (a) all conditions of Settlement have been satisfied; (b) the Court has entered
20 and filed the Final Approval Order and Judgment; and (c) the time period for appeal of the Judgment has
21 been exhausted without any appeals having been filed, and/or all such appeals have been voluntarily or
22 involuntarily dismissed, and/or the appropriate appellate court or courts have entered a final judgment
23 affirming the Final Approval Order and Judgment of the Court and the final judgment of such appellate
24 court or courts is no longer subject to any further appellate challenge or procedure. The Parties agree
25 that only the Parties and/or Class Members who file a valid and timely Objection maintain the right to
26 appeal. If an appeal is filed, the Effective Date shall be the date the judgment is final and no longer
27 subject to appeal.
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1.14. **“Final Approval Order”** refers to the final order by the Court approving the Settlement following the Final Approval Hearing.

1.15. **“Final Approval Hearing”** refers to the hearing at which the Court will make a final determination whether the terms of the Agreement are fair, reasonable, and adequate for the Class and meet all applicable requirements for Final Approval.

1.16. **“Gross Settlement Amount”** refers to the maximum settlement payment Defendants may be obligated to make in connection with the Settlement or Agreement, which in this case is no more than \$685,000.00. This sum shall include all Individual Settlement Payments made to Class Members, all administration costs, the employees’ share of payroll taxes, the Class Representative Service Award, the LWDA Payment (as defined below), interest, and attorneys’ fees and costs as set forth below. The Gross Settlement Amount shall not include the employer’s share of payroll taxes, which Defendants will separately pay.

The Gross Settlement Amount is a material term of this Agreement. To the extent Plaintiff or the Court seeks to require Defendants to pay more than the Gross Settlement Amount as part of this Settlement or Agreement, Defendants shall retain the right, in the exercise of their sole discretion, to nullify the Settlement or Agreement.

1.17. **“Individual Settlement Payment”** refers to the pro-rata individual settlement payments made to the Participating Settlement Class Members from the Net Settlement Amount (as defined below), based on the number of verified workweeks worked during the Class Period as determined by personnel data in the possession of Defendants, including wages, penalties and interest, and shall be supplemented by any portion of the requested attorneys’ fees and litigation costs, Administrative Costs, and enhancement to Plaintiff which are not approved by the Court. The Individual Settlement Payment shall be paid from the Net Settlement Amount and shall include the employee’s share of payroll taxes and withholdings.

1.18. **“Judgment”** refers to the final judgment by the Court approving the Settlement.

1.19. **“LWDA Payment”** refers to a payment out of the Gross Settlement Amount of \$40,000.00 intended to resolve any and all claims of the California Labor & Workforce Development

Agency (“LWDA”) for civil penalties under California’s Labor Code Private Attorneys General Act (PAGA). This payment shall be allocated as \$30,000.00 to the LWDA as the LWDA’s share of the settlement of civil penalties paid under this Agreement pursuant to the PAGA, and as \$10,000.00 to the Net Settlement Amount (as defined below) for distribution to the Class Members.

1.20. **“Net Settlement Amount”** refers to the Gross Settlement Amount minus all administration costs, the Class Representative Service Award, the LWDA Payment, and attorneys’ fees and costs. The Net Settlement Amount shall include all Individual Settlement Payments due to Class Members, including the employees’ share of payroll taxes. The Net Settlement Amount is the maximum amount that shall be available for distribution to Class Members.

The Net Settlement Amount is a material term of this Agreement. To the extent Plaintiff or the Court seeks to require Defendants to pay more than the Net Settlement as part of this Settlement or Agreement, Defendants shall retain the right, in the exercise of their sole discretion, to nullify the Settlement or Agreement.

1.21. **“Notice of Class Action Settlement”** refers to the Notice of Class Action Settlement, substantially in the form attached as Exhibit A.

1.22. **“Objection”** refers to a timely, written, signed objection by a Class Member who elects to object to the Settlement, substantially in the form detailed in the Notice of Class Action Settlement.

1.23. **“Parties”** refer to (1) Plaintiff Elizabeth Garcia, individually and on behalf of all current and former non-exempt, hourly employees working for Defendants in California at any time between June 28, 2018 and June 13, 2023; and (2) Defendants Lola’s Market Inc. and David Ortega.

1.24. **“Plaintiff”** refers to Elizabeth Garcia.

1.25. **“Preliminary Approval Order”** refers to the order issued and entered by the Court following a Motion for Preliminary Approval of the Settlement and this Agreement.

1.26. **“Released Claims”** refers to those claims defined in Section 6 of this Agreement. The Released Claims shall apply to all Class Members who do not file a Request for Exclusion (as defined in this Agreement). The scope of the Released Claims is a material term of this Agreement. To

1 the extent Plaintiffs or the Court seeks to modify the scope of the Released Claims in order to make it
2 more narrow, Defendants shall retain the right, in the exercise of their sole discretion, to nullify the
3 Settlement or Agreement.

4 1.27. **“Released Parties”** refers to (i) Defendants Lola’s Market Inc. and David Ortega;
5 (ii) each of Defendants’ respective past and present parents, subsidiaries, and affiliates including,
6 without limitation, any corporation, limited liability company, partnership, affiliated medical entity,
7 trust, foundation, and non-profit entity which controls, is controlled by, or is under common control with
8 Defendants; (iii) the past and present shareholders, directors, officers, agents, employees, attorneys,
9 insurers, members, partners, managers, contractors, agents, consultants, representatives, administrators,
10 fiduciaries, benefit plans, transferees, predecessors, successors, and assigns of any of the foregoing; and
11 (iv) any individual or entity which could be jointly liable with any of the foregoing.

12 1.28. **“Request for Exclusion”** refers to a timely, written, signed opt-out request by
13 someone who otherwise would be a Class Member who elects to be excluded from the Class,
14 substantially in the form attached as Exhibit B to this Agreement.

15 1.29. **“Settlement”** refers to terms of this Agreement, which includes the Recitals and
16 the Exhibits attached hereto.

17 1.30. **“Settlement Administrator”** refers to Phoenix Settlement Administrators, who
18 has been mutually selected by the Parties, subject to Court approval, to perform the notice, claims
19 administration, and distribution of payment functions further described in this Agreement. The
20 Settlement Administrator shall establish its own employer identification number and file an Internal
21 Revenue Service Form W-9. The Settlement Administrator shall meet all of the requirements to
22 establish a Qualified Settlement Fund (“QSF”) pursuant to U.S. Treasury Regulation Section 468B-1.

23 1.31. **“Settlement Class”** refers to all Class Members who do not file a timely and
24 valid opt-out Request for Exclusion.

25 2. PROCEDURAL HISTORY AND RECITALS

26 2.1. **Causes of Action.** On June 28, 2022, Plaintiff filed the Complaint against Lola’s
27 Market on behalf of the Class. Plaintiff asserts 10 causes of action against Lola’s Market: “(1) Failure to
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1 Provide Required Meal Periods; (2) Failure to Provide Required Rest Periods; (3) Failure to Pay
2 Overtime Wages; (4) Failure to Pay Minimum Wages; (5) Failure to Pay All Wages Due to Discharged
3 and Quitting Employees; (6) Failure to Maintain Required Records; (7) Failure to Furnish Accurate
4 Itemized Wage Statements; (8) Failure to Indemnify Employees for Necessary Expenditures Incurred in
5 Discharge of Duties; (9) Unfair and Unlawful Business Practices; and (10) Penalties under the Labor
6 Code Private Attorneys General Act, as Representative Action.” The Complaint seeks unpaid wages,
7 actual damages, statutory damages, monetary damages, interest, statutory penalties, civil penalties,
8 liquidated damages, restitution, declaratory and injunctive relief, equitable relief, pre-judgment interest,
9 and attorneys’ fees and costs. On August 4, 2022, Plaintiff filed her First Amended Complaint to
10 include Ortega as an individual defendant.

11 **2.2. The Parties Have Engaged in Extensive Informal, Pre-Mediation Discovery.**

12 The Parties agreed to attend mediation before engaging in formal discovery, and therefore agreed
13 to engage in informal discovery to prepare. In advance of the mediation, Defendants provided payroll
14 and punch data for putative class members from June 28, 2018 through August 1, 2022, and relevant
15 policies and procedures. Plaintiff provided the payroll and punch data to an expert for analysis.

16 **2.3. Class Counsel’s Investigation.** Class Counsel investigated the claims against
17 Defendants in the Action and also analyzed all applicable defenses raised by Defendants. The
18 investigation included review of the above-mentioned documents produced before mediation,
19 interviewing Plaintiff and Class Members, several conferences between Class Counsel and Defendants’
20 Counsel, and Class Counsel’s analysis of Defendants’ time and pay records in consultation with their
21 retained experts. Class Counsel believes class certification would be appropriate in this Action after
22 formal discovery.

23 **2.4. Defendants’ Denials.** Defendants denied and continue to deny: (a) all of the
24 allegations made by the Class Representative or the Class in the Action; (b) that they violated any
25 applicable laws; (c) that they are liable or owe damages, penalties, or other compensation or remedies to
26 anyone with respect to the alleged facts or claims asserted in the Action; and, (d) that class certification
27 or representative treatment of the Action or any alleged claim is proper. Defendants emphasize that the
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1 Court has not made any findings of liability as to Defendants and the Court has not determined that class
2 certification is warranted in this Action.

3 Nonetheless, without admitting or conceding any liability or wrongdoing whatsoever and without
4 admitting or conceding that class certification or representative treatment is appropriate for any purpose
5 other than settlement purposes alone, Defendants have agreed to settle the Action on the terms and
6 conditions set forth in this Agreement, to avoid the burden, expense, and uncertainty of continuing the
7 Action. Any stipulations or statements by Defendants contained in this Agreement are made for
8 settlement purposes only.

9 2.5. **Class Counsel's Evaluation.** Based on Class Counsel's investigation discussed
10 above and further evaluation of this action, Class Counsel is of the opinion that the terms set forth in this
11 Agreement are fair, reasonable, adequate, and in the best interest of the Class Members. Class Counsel
12 diligently and effectively investigated Plaintiff's claims, drafted the Complaint and First Amended
13 Complaint, interviewed Class Members, prepared informal discovery, reviewed and analyzed documents
14 produced, and analyzed Defendants' time and pay records in consultation with their retained expert.
15 Class Counsel concluded that the Settlement reflected in this Agreement is in the best interests of the
16 Class, after reviewing the above-mentioned documents and data, completing interviews with Plaintiff
17 and Class Members, conferring with Defendants' Counsel, and evaluating the risk that further litigation
18 might result in Plaintiff and the Class not recovering anything at all was a very significant factor in
19 determining that this Agreement is fair, reasonable, and adequate.

20 2.6. **The Parties' Intent.** It is the desire of the Parties to fully, finally, and forever
21 settle, compromise, release, and discharge any and all claims, rights, demands, charges, complaints,
22 causes of action, obligations or liability of any and every kind that were or could have been asserted in
23 the Action, to the extent that such claims arise out of the alleged facts, circumstances, and occurrences
24 underlying the allegations as set forth in the claims in the Complaint in the Action.

25 2.7. **The Parties' Agreement to Cooperate.** The Parties agree to cooperate and to
26 take all steps necessary and appropriate to effectuate all aspects of this Agreement, to obtain a
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Preliminary Approval Order and Final Approval Order of this Settlement, and to dismiss the Action and claims of Class Members with prejudice upon final approval.

2.8. The Parties, Class Counsel and Defendants' Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

NOW THEREFORE, in consideration of the covenants and agreements set forth herein, and of the release and dismissal of all Released Claims, the Parties stipulate and agree to the terms and provisions of this Settlement and Agreement, subject to the approval of the Court.

3. NOTICE TO CLASS MEMBERS

3.1. **Settlement Administrator.** The Parties request that the Court appoint Phoenix Settlement Administrators as settlement administrator ("Settlement Administrator"). The Settlement Administrator will be paid an amount from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with its "not to exceed" bid submitted to the Court in connection with the Preliminary Approval of the Settlement. All disputes relating to the Settlement Administrator's performance of its duties, after good-faith efforts by the Parties to first resolve such disputes, will be referred to the Court, if necessary, which will have continuing jurisdiction over this Agreement until all payments and obligations contemplated by this Agreement have been fully completed.

3.2. **Class Data for Settlement Administrator.** Within 30 calendar days of the entry of a Preliminary Approval Order of this Agreement, Defendants shall provide to the Settlement Administrator with the following information: (1) name of each Class Member; (2) most current known address of each Class Member; (3) social security number of each Class Member; (4) number of Work Weeks worked in the Class Period; and (5) number of Pay Periods worked in the PAGA Period.

3.3. **Confidentiality of Class Member Contact Information and Data.** The contact information is being provided confidentially, and the Settlement Administrator shall treat the information as private and confidential and take all necessary precautions to maintain the confidentiality of contact information of the Class Member. This information is to be used only to carry out the Settlement Administrator's duties as specified in this Settlement Agreement. The Settlement

1 Administrator shall return the class data to Defendants' counsel or confirm its destruction upon
2 completion of the Settlement Administrator's duties in administering the Settlement.

3 **3.4. Mailing of Notice of Class Action Settlement and Request for Exclusion.** The
4 Settlement Administrator shall mail the Notice of Class Action Settlement, and Request for Exclusion,
5 to Class Members within 14 calendar days of receiving the Class Member data from Defendants. The
6 Settlement Administrator shall send the Notice of Class Action Settlement, and Request for Exclusion to
7 Class Members via First Class U.S. Mail, using the most current, known mailing address for each Class
8 Member based on information provided by Defendants. Upon receipt of this information from
9 Defendants, the Settlement Administrator shall perform a search based on the National Change of
10 Address Database maintained by the United States Postal Service to update and correct any known or
11 identifiable address changes.

12 **3.4.1 Re-mailing of Returned Notices.** Any mailing returned to the Settlement
13 Administrator as undeliverable shall be sent within 3 business days via First Class U.S. Mail to the
14 forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator
15 shall attempt to determine the correct address by again using the National Change of Address Database
16 maintained by the United States Postal Service to update and correct any known or identifiable address
17 changes. Following this procedure, the Settlement Administrator shall perform a single re-mailing via
18 First Class U.S. Mail within 3 business days.

19 **3.4.2 Content of the Notice of Class Action Settlement.** The Notice of Class
20 Action Settlement shall be substantially in the form attached as Exhibit A to this Agreement.

21 **3.4.3 Content of the Request for Exclusion.** The Request for Exclusion shall
22 be substantially in the form attached as Exhibit B to this Agreement.

23 **3.5. Proof of Mailing.** At least 5 calendar days prior to the Final Approval Hearing,
24 the Settlement Administrator shall provide a declaration of due diligence and proof of mailing with
25 regard to mailing of the Notice of Class Action Settlement to Class Counsel and Defendants' Counsel,
26 which they shall in turn provide to the Court.

1 **4. CLASS MEMBERS' OPTIONS TO RESPOND**

2 4.1. **Class Members' Consideration Period.** Class Members shall be provided 45
3 calendar days to exercise any rights with regard to the Settlement, following the postmark date of the
4 initial mailing of the Notice of Class Action Settlement and the Request for Exclusion. Except as
5 specifically provided herein, no Class Member responses of any kind that are postmarked more than 45
6 calendar days after the initial mailing of Class Notice shall be considered. Responses from Class
7 Members must be postmarked for mail with the U.S. Postal Service. Responses sent by facsimile, email,
8 or other forms of electronic transmission will not be considered.

9 4.2. **Request for Exclusion and Opt Out Rights.** Class Members shall be given the
10 opportunity to opt out of the Settlement.

11 4.2.1 **Opt Out Procedures.** Class Members may opt out of the Settlement by
12 mailing to the Settlement Administrator a Request for Exclusion, substantially in the form attached as
13 Exhibit B. Any such Request for Exclusion must be postmarked not more than 45 calendar days after
14 the postmark date of the initial mailing of the Notice of Class Action Settlement and the Request for
15 Exclusion. To be a valid Request for Exclusion, a Class Member must provide his or her name (and
16 former names, if any, which were used while employed by Defendants), current address, and current
17 telephone number. Any Request for Exclusion that does not include all of the required information or
18 that is not submitted in a timely manner will be deemed null, void, and ineffective. If there is a dispute
19 regarding the timeliness or validity of a Request for Exclusion, the Settlement Administrator shall make
20 the determination, after consultation with Class Counsel and Defense Counsel. Requests for Exclusion
21 from Class Members must be postmarked for mail with the U.S. Postal Service. Requests for Exclusion
22 sent by facsimile, email, or other forms of electronic transmission will not be considered.

23 4.2.2 **Effect of Opt Out.** Any Class Member who opts out of the Settlement
24 may not object to the Settlement, shall not receive any Individual Settlement Payment except for their
25 share of the PAGA portion of the Net Settlement Amount, and shall not be bound by the Released
26 Claims provisions in this Agreement. If a Class Member submits both a Request for Exclusion and an
27 Objection, the Class Member's Objection will be valid and be deemed to invalidate the Request for
28 Exclusion.

Each Class Member who does not opt out of the Settlement shall be bound by the applicable Released Claims provisions in this Agreement, including the Released Claims.

4.2.3 Defendants' Rights to Withdraw. Defendants have the right, at their sole option, to withdraw from this Settlement or Agreement if the number of Class Members opting out exceeds three percent (3%) of the total number of Class Members. These rights to withdraw are material terms of the Agreement and Defendants have the right, at their sole option, to withdraw from this Agreement if either of these material terms are not approved by the Court. If Defendants exercise this right to withdraw, they will be responsible for all Settlement Administration Costs incurred by the Administrator.

4.3. Objection Rights. Because the Settlement Class will be certified by the Court, only Class Members who do not opt out of the Settlement shall be entitled to object to the terms of the Settlement.

4.3.1 Objection Procedures. Class Members' objections to the Settlement or this Agreement must be made using the procedures set forth in the Notice of Class Action Settlement. Any Objection must be sent to the Settlement Administrator and postmarked no later than 45 days after the first postmark date of mailing the Notice of Class Action Settlement. An Objection shall be deemed to be submitted as of the postmarked date. The written Objection must contain: (1) the name and case number of this lawsuit, *Elizabeth Garcia v. Lola's Market Inc., et al.*, Sonoma County Superior Court Case No. SCV-271089; (2) the full name, last four digits of their Social Security Number, and current address of the Class Member making the Objection; (3) the specific reason(s) for the Objection; and (4) any and all evidence and supporting papers (including, without limitation, all briefs, written evidence, and declarations) for the Court to consider. Class Members who submit an Objection remain bound by this Agreement.

Objections from Class Members must be postmarked for mail with the U.S. Postal Service. Objections sent by facsimile, email, or other forms of electronic transmission will not be considered.

4.3.2 Individuals Who Submit an Objection May Appear by Giving Notice. Class Members who timely submit an Objection shall have the right to appear at the Final Approval

Hearing either in person or through counsel, but must state their intent to do so at the time they submit their written Objection. Class Members may withdraw their Objections at any time.

4.3.3 Waiver of Objection Rights. Class Members who fail to make Objections in the manner specified in the Notice of Class Action Settlement shall be deemed to have waived any Objections and shall be foreclosed from making any Objection, whether by appeal or otherwise, to this Agreement.

4.4. Proof of Class Members' Responses. By not later than 75 calendar days after the initial mailing of the Notice of Class Action Settlement and Request for Exclusion, the Settlement Administrator will prepare and submit a declaration attesting to (by number of relevant individuals) its mailing of the Notice of Class Action Settlement, its inability to deliver any mailing due to invalid addresses, and its receipt of valid Requests for Exclusion. Five calendar days prior to the Final Approval Hearing, the Settlement Administrator will prepare a supplemental declaration to submit to the Court, to indicate the number of valid timely claims, objections, and opt out Requests for Exclusion.

4.5. Binding Effect of Settlement. Although some Class Members might not receive or timely submit the Notice of Class Action Settlement or the Request for Exclusion, as provided under this Settlement and Agreement, due to inability to locate their current address following the procedures set forth in this Agreement, such individuals shall nonetheless be bound by all of the terms of this Settlement and Agreement and the Final Order and Dismissal with Prejudice.

5. DISTRIBUTION OF SETTLEMENT PROCEEDS

5.1. Gross Settlement Amount. Defendants agree to pay up to a maximum Gross Settlement Amount of \$685,000.00. The \$685,000.00 Gross Settlement Amount refers to the maximum settlement payment Defendants may be obligated to make in connection with the Settlement or Agreement, and shall include all Individual Settlement Payments made to Class Members, all administration costs, the employees' share of payroll taxes, the Class Representative Service Award, the LWDA Payment, and attorneys' fees and costs.

5.2. Attorneys' Fees and Costs. Class Counsel may request—and Defendants agree not to oppose—that the Court approve an attorneys' fees and costs award for (a) attorneys' fees in an

1 amount up to one third of the Gross Settlement Amount (or \$228,333.33) and (b) reasonable and
2 documented attorney costs. Except as provided in this Agreement, Defendants shall have no liability for
3 any other attorneys' fees or costs. Expenses by the Settlement Administrator incurred in connection with
4 the Parties' settlement as set forth in section 5.4 below, are part of, and deducted from, the Gross
5 Settlement Amount. Any portion of the Attorneys' Fees and Costs not awarded by the Court shall be
6 added to the Net Settlement Amount.

7 **5.2.1 Approval of Attorneys' Fees and Costs Award Not Material.** The
8 Court's approval of an attorneys' fees or costs award is not a material term of the Settlement or this
9 Agreement. If the Court does not approve or approves only a lesser amount than that requested by Class
10 Counsel for attorneys' fees or costs, the other terms of the Settlement and this Agreement shall still
11 apply. The Court's refusal to approve the attorneys' fees or costs award requested by Class Counsel
12 does not give the Class Representative, the Class Members, or Class Counsel any basis to abrogate the
13 Settlement or this Agreement. Any amount of an attorneys' fees and costs award requested by Class
14 Counsel but unapproved by the Court shall be allocated to the Net Settlement Amount.

15 **5.2.2 Timing of Payment of Attorneys' Fees and Costs.** The Settlement
16 Administrator shall pay to Class Counsel any approved attorneys' fees and costs award 14 calendar days
17 after the full funding of the Gross Settlement Amount as set forth in Section 5.1. Class Counsel agrees
18 that Class Counsel is responsible for allocating this payment among themselves and any other counsel
19 for Plaintiff settling claims through this Agreement. The Settlement Administrator shall issue an
20 Internal Revenue Service Form 1099 to Class Counsel for any attorneys' fees and costs award payment.
21 Class Counsel shall be solely and legally responsible for paying all applicable taxes on any attorneys'
22 fees and costs award payments and shall indemnify and hold harmless Defendants from any claim or
23 liability for taxes, penalties, or interest arising as a result of the payment.

24 **5.3. Class Representative Service Awards.** Class Counsel may request—and
25 Defendants agree not to oppose—that the Court approve a Class Representative Service Award of
26 \$7,500.00 for Plaintiff Elizabeth Garcia. The Class Representative Service Award is for Plaintiff's
27 additional participation in the Action, including lending her name to the Action, and participating in
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1 interviews and in the mediation itself. Such payment shall not be subject to payroll taxes or
2 withholdings. Any Class Representative Service Award is in addition to the Class Representative's
3 Individual Settlement Payment.

4 **5.3.1 Class Representative Service Award Not Material.** The Court's
5 approval of the Class Representative Service Awards is not a material term of the Settlement or this
6 Agreement. If the Court does not approve or approves only a lesser amount than that requested by Class
7 Counsel for each Class Representative Service Award, the other terms of the Settlement and this
8 Agreement shall apply. The Court's refusal to approve the Class Representative Service Awards
9 requested by Class Counsel does not give either of the Class Representative or Class Counsel any basis
10 to abrogate the Settlement or this Agreement. Any amount of a Class Representative Service Award
11 requested by Class Counsel but unapproved by the Court shall be allocated to the Net Settlement
12 Amount.

13 **5.3.2 Timing of Class Representative Service Award.** The Settlement
14 Administrator shall pay to the Class Representative any approved Class Representative Service Award
15 14 calendar days after the initial funding of the Gross Settlement Amount set forth in Section 5.1. The
16 Settlement Administrator shall issue an IRS Form 1099 to the Class Representative for any Class
17 Representative Service Award. The Class Representative shall be solely and legally responsible for
18 paying all applicable taxes on any Class Representative Service Award and shall indemnify and hold
19 harmless Defendants from any claim or liability for taxes, penalties, or interest arising as a result of the
20 payment.

21 **5.4. Settlement Administration Costs.** Class Counsel intends to request—and
22 Defendants agree not to oppose—that the Court approve reasonable Settlement Administration Costs in
23 accordance with the Settlement Administrator's "not to exceed" bid. Upon completion of administration
24 of the Settlement, the Settlement Administrator shall provide written certification of such completion to
25 Class Counsel and Defendants' Counsel. The Parties agree to cooperate in the settlement administration
26 process and to make all reasonable efforts to control and to minimize settlement administration costs.
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1 **5.5. LWDA Payment.** The Parties will seek approval for a Private Attorneys General
2 Act (“PAGA”) payment out of the Gross Settlement Amount of \$40,000.00, which shall be allocated as
3 \$30,000.00 to the LWDA as the LWDA’s share of the settlement of civil penalties paid under this
4 Agreement pursuant to the PAGA, and as \$10,000.00 to the Net Settlement Amount for distribution to
5 the Class Members.

6 **5.5.1 Modification of LWDA Payment Not Material.** The Court’s reduction
7 or increase of a LWDA Payment is not a material term of the Settlement or this Agreement. If the Court
8 approves only a lesser amount or a higher amount than that requested by Class Counsel for the LWDA
9 Payment, the other terms of the Settlement and this Agreement shall apply. The Court’s reduction or
10 increase of the LWDA Payment requested by Class Counsel does not give the Class Representative or
11 Class Counsel any basis to abrogate the Settlement or this Agreement.

12 However, the Court’s approval of a LWDA Payment is a material term of the Settlement or this
13 Agreement. If the Court does not approve the LWDA Payment set forth in this Agreement, then the
14 LWDA Payment shall be made in the amount required by the Court. If the Court requires the LWDA
15 Payment to be higher than as stated in this Agreement, the additional funds for the LWDA Payment
16 shall be taken from the Gross Settlement Amount. Thus, the Gross Settlement Amount shall not be
17 increased in the Court requires a larger LWDA Payment.

18 **5.6. Individual Settlement Payments from the Net Settlement Amount.** This
19 Settlement shall be a non-reversionary Settlement. Each Class Member who does not opt out of the
20 Settlement shall be entitled to an Individual Settlement Payment consisting of their share of the Net
21 Settlement Amount, in accordance with the formula set forth below. Class Members who opt out shall
22 nonetheless be entitled to receive their respective share of the PAGA payment.

23 **5.6.1 Individual Settlement Calculations and Payments.** Each Class Member
24 will be eligible to receive a portion of the Net Settlement Amount in accordance with the following
25 formula:

26 Each Class Member’s potential share of the Net Settlement Amount will
27 be calculated by dividing the number of Weeks Worked by the Class
28 Member by all Weeks Worked during the Class Period by all Class
Members, multiplied by the Net Settlement Amount [*i.e.*, (individual

Weeks Worked ÷ total Weeks Worked by Class Members) x Net Settlement Amount].

The PAGA portion of the Gross Settlement Amount shall be distributed to aggrieved employees based on the number of workweeks worked during the PAGA period, defined as one year and sixty-five days preceding the filing of the original Complaint. Class Members who opt out of the class portion of the Settlement and worked during the PAGA period will receive their respective share of the PAGA portion, even if they opt out.

5.6.2 Disputes Regarding Weeks Worked. The Notice of Class Action Settlement will list each Class Member's number of Weeks Worked, for purposes of determining the Individual Settlement Payment. If a Class Member disputes the number of Weeks Worked on the Notice of Class Action Settlement, the Class Member must produce, by no later than fourteen (14) calendar days from the date the Notice of Class Action Settlement is postmarked, evidence to the Settlement Administrator showing that such information is inaccurate. All disputes will be decided within seven (7) calendar days from the date the dispute is received by the Settlement Administrator. The Settlement Administrator shall have the authority to determine the outcome of any disputes, but may contact Class Counsel and/or Defendants' Counsel to seek their input.

5.7. Distribution of Individual Settlement Payments. Each Class Member's portion of the Net Settlement Amount shall be distributed as one check.

5.7.1 Settlement Checks. The settlement check shall be for the amount of each Class Member's Individual Settlement Payment. The check will include language indicating that endorsing and cashing the check will constitute a release of claims under the California Labor Code, California Unfair Competition Law, and PAGA, for any and all claims asserted or that could have been asserted based on the facts alleged in the Action. The language to be included will be substantially similar to the following:

My signature or cashing of this check constitutes a full and complete release of Lola's Market Inc. and David Ortega, and all of their current or former subsidiary or affiliated entities, and their current or former officers, directors, and employees, for any and all claims asserted or that could have been asserted based on the facts alleged in the operative First

1 Amended Complaint in the lawsuit entitled *Elizabeth Garcia v. Lola's*
2 *Market Inc., et al.*, pending in Sonoma County Superior Court, Case
3 No. SCV-271089, including the claims brought under the California Labor
4 Code, California Unfair Competition Law, or PAGA, arising during my
5 employment at any time between June 28, 2018 and June 13, 2023.

6 5.8. **Timing of Individual Settlement Payments.** The Settlement Administrator shall
7 issue the distribution of the Individual Settlement Payments no later than 14 calendar days after the
8 funding of the Gross Settlement Amount.

9 5.9. **Allocation of Individual Settlement Payments.** Each Class Member's
10 Individual Settlement Payment will be characterized as 80% Form 1099 income and 20% Form W-2
11 income, to reflect that 80% of the payment will account for penalties and interest, while 20% will
12 account for unpaid wages. In accordance with applicable tax laws, required tax withholdings and
13 payroll deductions will be taken from each Individual Settlement Payment for the portion allocated to
14 Form W-2 income and remitted to the appropriate taxing authorities. The Settlement Administrator
15 shall issue any necessary IRS Form 1099 and Form W-2 statements to Class Members for their
16 respective Individual Settlement Payments. Class Members shall be solely and legally responsible for
17 paying all other applicable taxes on their respective Individual Settlement Payments and shall indemnify
18 and hold harmless Defendants from any claim or liability for taxes, penalties, or interest arising as a
19 result of the payments. In allocating the Individual Settlement Payments, the Parties agree that, pursuant
20 to applicable law, all payments for wages shall be subject to payroll tax withholdings and a Form W-2,
21 while all payments for penalties shall not be subject to payroll tax withholdings and will be recorded on
22 a Form 1099.

23 5.9.1 **Allocation of Individual Settlement Payment Not Material.** The
24 Court's approval of the allocation of the Individual Settlement Payment for Form 1099 income and
25 Form W-2 income is not a material term of the Settlement or this Agreement. If the Court does not
26 approve or approves a different allocation of the Individual Settlement Payments, the other terms of the
27 Settlement and this Agreement shall apply. The Court's refusal to approve the allocation for the
28 Individual Settlement Payments requested by the Parties does not give the Parties any basis to abrogate
the Settlement or this Agreement.

1 **5.9.2 Undeliverable or Uncashed Checks.** Any settlement checks distributing
2 Individual Settlement Payments returned to the Settlement Administrator as undeliverable shall be sent
3 within 5 calendar days via First Class U.S. Mail to the forwarding address affixed thereto. If no
4 forwarding address is provided, the Settlement Administrator shall attempt to determine the correct
5 address using the National Change of Address Database maintained by the United States Postal Service,
6 and it shall then perform a re-mailing within 5 calendar days. Funds from uncashed or returned checks
7 will be distributed to a *cy pres*, Safe Place for Youth, an organization which Plaintiff's counsel attest
8 they do not serve on the board of, or in any leadership capacity.

9 **5.10. Tax Payment Considerations.** Class Counsel, Defendants' Counsel,
10 Defendants, and the Settlement Administrator are not giving any tax advice in connection with the
11 Settlement or any payments to be made pursuant to this Agreement.

12 **5.11. No Tax Advice or Liability.** Each Class Member agrees to indemnify, and to
13 hold harmless, Defendants from any liability for taxes, fees, costs, or assessments resulting from his or
14 her failure to timely pay taxes, interest, fees, or penalties owed.

15 **5.12. No Impact on Contributions to Employee Benefit Plans.** None of the
16 payments made pursuant to the Settlement and this Agreement shall be considered to alter the terms or
17 to grant any rights to additional payments under any employee benefit plans. None of the payments
18 made pursuant to the Settlement and this Agreement shall be considered for purposes of determining
19 eligibility for, vesting or participation in, or contributions to any benefit plan, including, without
20 limitation, all plans subject to the Employee Retirement and Income Security Act of 1974 ("ERISA").
21 Any distribution of payments to Plaintiff or Class Members shall not be considered as a payment of
22 wages or compensation under the terms of any applicable benefit plan and shall not affect participation
23 in, eligibility for, vesting in, the amount of any past or future contribution to, or level of benefits under
24 any applicable benefit plan.

25 Any amounts paid will not impact or modify any previously credited hours of service or
26 compensation taken into account under any bonus or incentive plan, benefit plan sponsored or
27 contributed to by Defendants or any jointly-trusted benefit plan, or for purposes of calculating the
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regular rate of pay. For purposes of this Agreement, “benefit plan” means each and every “employee benefit plan,” as defined in 29 U.S.C. Section 1002(3), and, even if not thereby included, any 401(k) plan, bonus, pension, stock option, stock purchase, stock appreciation, welfare, profit sharing, retirement, disability, vacation, severance, hospitalization, insurance, incentive, deferred compensation, or any other similar benefit plan, practice, program, or policy.

6. RELEASES

6.1. Release by Class Members. By operation of the entry of the Final Approval Order and judgment, each Class Member, and each of their respective executors, administrators, representatives, agents, heirs, successors, assigns, trustees, spouses, or guardians, will release Defendants and each of the Released Parties of and from any and all claims, rights, demands, charges, complaints, causes of action, obligations, or liability of any and every kind between June 28, 2018 and June 13, 2023, for any and all claims that were raised or could have been raised based on the factual allegations made in the Complaint through final approval of the Settlement. This includes but is not limited to: (1) failure to pay minimum wages; (2) failure to pay overtime wages at the regular rate of pay; (3) failure to provide required meal periods; (4) failure to provide required rest periods; (5) failure to indemnify employees for necessary expenditures incurred in discharge of duties; (6) failure to maintain required records; (7) failure to furnish accurate itemized wages statements; (8) failure to pay all wages due to discharged and quitting employees; (9) PAGA claims for civil penalties due to any Labor Code violations by Defendants arising out of or related to events alleged in the Complaint including, but not limited to, Labor Code sections 200, 201, 202, 203, 204, 210, 221, 225.5, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698-2699.5, and 2802; (10) claims brought under Business & Professions Code section 17200 *et seq.* including, but not limited to, all claims for unfair, unlawful and harmful conduct to class members, the general public and Defendants’ competitors and claims of unlawfully gaining an unfair advantage over other businesses; (11) any and all claims arising out of alleged violations of the California Labor Code, including sections 200, 201, 202, 203, 204, 210, 221, 225.5, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698-2699.5, and 2802, and California Industrial Welfare

Commission Wage Order No. 4-2001; (12) penalties of any nature, interest, or attorneys' fees and costs arising out of any claims that were raised or could have been raised based on the factual allegations made in the operative First Amended Complaint through final approval of the Settlement; and (13) any other claims that were raised or could have been raised based on the factual allegations made in the Complaint through final approval of the Settlement.

6.2. **Additional Release by Class Representative.** In addition to the above release applicable to the Class Members, the Class Representative also generally releases any and all claims against Defendants and each of the Released Parties. This general release includes any and all claims arising from the employment relationship with Defendants or any Released Party, including, without limitation, claims for wrongful termination, discrimination, harassment, or retaliation pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000 *et seq.*, the California Fair Employment and Housing Act, Cal. Gov't Code Section 12900 *et seq.*, or the California Labor Code. This general release by the Class Representative also includes a waiver of California Civil Code Section 1542. The Class Representative expressly waives all rights provided by California Civil Code Section 1542, or other similar statutes, that the Class Representative may have against Defendants and each of the Released Parties. California Civil Code Section 1542 states:

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.

6.3. **Class Representative Acknowledgements.** The Class Representative acknowledges that she has read this Agreement in its entirety, including the above language from the California Civil Code, and that she fully understands both this Agreement and the California Civil Code section. By executing this Agreement, the Class Representative expressly waives any benefits and rights granted pursuant to California Civil Code Section 1542 or any statute, rule, or principle of common law or equity, in any jurisdiction, that is similar, comparable, or equivalent, in whole or in part, to California Civil Code Section 1542. The Class Representative acknowledges and agrees that this knowing and

voluntary waiver is an essential and material term of this Agreement, and the Agreement would not have been entered into without such a waiver.

6.4. **Injunction from Pursuing Released Claims.** As part of the preliminary approval of the Settlement, Class Members shall be enjoined from filing, initiating, or continuing to prosecute any actions, claims, complaints, or proceedings in any court, or with the DLSE, or with the California Labor and Workforce Development Agency (“LWDA”), or the United States Department of Labor (“DOL”), or with any other entity regarding the Released Claims.

This Settlement is conditioned upon the release by the Settlement Class as described herein, and upon covenants by the Settlement Class that they will not prosecute any actions, lawsuits, proceedings, complaints, or charges brought individually by the DLSE, LWDA, DOL, or by any other agency, persons, or entity in any court or before any administrative body related to the Released Claims, nor will the Settlement Class contest or interfere with efforts by Defendants to oppose any attempt to bring such released claims against Defendants.

6.5. **Acknowledgement of Binding Terms of the Settlement, Despite Other Potential Claims.** Class Counsel, the Class Representative, and the Settlement Class acknowledge that they may hereafter discover facts or law different from, or in addition to, the facts or law they know or believe to exist with respect to the Released Claims. The Settlement Class nonetheless agrees that this Agreement and the Released Claims contained in it shall be and remain effective in all respects notwithstanding such different or additional facts or law regarding such Released Claims. These releases do not include any claims that cannot be waived as a matter of law, but the Settlement Class agrees that they will not accept any monetary recovery or benefit from any proceedings relating to any such claims.

6.6. **No Admission of Liability.** By entering into this Agreement, Defendants in no way admit any violation of law or any liability whatsoever to Class Members, individually or collectively, and expressly deny all such liability. Neither this Agreement, nor any other Settlement documents, shall be offered in any case or proceeding as evidence of any admission by Defendants of any liability on any claim for damages, penalties, restitution, or any other relief. Likewise, by entering

1 into this Agreement, Defendants in no way admit to the suitability of this case for class action, collective
2 action, or representative action litigation, other than for purposes of Settlement. Rather, Defendants
3 enter into this Agreement to avoid further protracted litigation and to resolve and to settle all disputes
4 with the Settlement Class.

5 The Parties understand and agree that this Agreement and all exhibits thereto are settlement
6 documents and shall be inadmissible for any purpose in any proceeding, except an action or proceeding
7 to approve, interpret, or enforce the terms of this Agreement. The Parties agree that, to the extent
8 permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as
9 the basis for an injunction against any action, suit, or other proceeding that may be instituted,
10 prosecuted, or attempted in breach of this Agreement.

11 **7. SETTLEMENT APPROVAL PROCEDURE**

12 **7.1. Preliminary Approval.** Plaintiff and Class counsel shall promptly submit to the
13 Court a Motion for Preliminary Approval of this class action and PAGA representative settlement
14 agreement including but is no limited to in compliance with Rule 3.669 California Rules of Court. The
15 required motion shall seek an order to preliminarily approve the proposed Settlement according to the
16 terms in this Agreement and provide for the Notice of Class Action and PAGA Representative
17 Settlement and the Request for Exclusion, to be sent to Class Members as specified in this Agreement.
18 This motion shall include the bases for the Gross Settlement Amount and why the amount is reasonable
19 in light of the facts and controlling authorities pertaining to the claims alleged in the Complaint. The
20 motion shall also be accompanied by signed declarations by Class Counsel, discussing the risks of
21 continued litigation and the decision that the best interests of Plaintiff and the Class Members are served
22 by the terms of this Agreement.

23 **7.2. Effect of Failure to Obtain Preliminary Approval.** If this Settlement or
24 Agreement or a substantially similar settlement mutually agreed to by the Parties is not preliminarily
25 approved, the Action shall proceed as if no settlement had been attempted and revert back to its prior
26 procedural posture. The Parties may, however, jointly agree to seek reconsideration of the ruling on the
27 Settlement or Court approval of a renegotiated settlement.
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1 7.3. **Final Approval.** Plaintiff shall submit to the Court a Motion for Final Approval
2 Order of this class action and PAGA representative settlement agreement. The motion shall request the
3 entry of a Final Approval Order, which shall include findings and orders: (a) approving the Settlement
4 and the Agreement; (b) adjudging the terms to be fair, reasonable, and adequate; (c) reciting the release
5 terms in full; (d) directing that the Settlement terms and provisions be carried out; and (e) retaining
6 jurisdiction to oversee administration and enforcement of the terms of this Agreement and the Court's
7 orders.

8 7.4. **Motion for Attorneys' Fees and Costs Award.** Concurrent with the filing of the
9 Motion for Final Approval, Class Counsel shall file a motion for Court approval of an attorneys' fees
10 and costs award in the amount of (a) up to one-third of the Gross Settlement Amount (or \$228,333.33)
11 and (b) verified reasonable costs. Defendants will not oppose the motion provided it is consistent with
12 this paragraph. Defendants will not be required to support such a motion.

13 7.5. **Entry of Judgment.** At the final approval hearing, the Parties shall request that
14 the Court, among other things: (a) enter final judgment in accordance with this Agreement and without
15 further fees or costs to any party except as expressly set forth in this Agreement; (b) approve this
16 Agreement and the allocation of the Settlement Payments as set forth in this agreement, as fair,
17 reasonable, adequate, and binding on all members of the Settlement Class; (c) enter an order as to Class
18 Counsel's request for an attorneys' fees and costs award; (d) enter an order as to the request for the
19 Class Representative Service Award; and, (e) enter an order permanently enjoining all members of the
20 Settlement Class from pursuing or seeking to reopen claims that have been released by this Agreement.

21 7.6. **Effect of Failure to Obtain Final Judgment.** In the event the Court fails to
22 enter final judgment in accordance with this Agreement, or such final judgment is vacated or reversed,
23 the Action shall proceed as if no settlement had been attempted and revert back to its prior procedural
24 posture. The Parties may, however, jointly agree to seek reconsideration or appellate review of the ruling
25 or Court approval of a renegotiated settlement.

26 7.7. **Waiver of Appeal Rights.** By accepting this Settlement, authorizing the
27 dismissal of the Action with prejudice, and upon final approval of the settlement being granted, the
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1 Class Representative and Class Counsel hereby waive any and all rights they may have to appeal any
2 judgment, ruling, or order made by the Court in this Action, including, without limitation, any order
3 granting final approval of this Settlement or dismissing the Action with prejudice. This includes all
4 rights to any post-judgment proceeding and appellate proceeding, such as, but not limited to, a motion to
5 vacate judgment, a motion for new trial, and any extraordinary writ. The Judgment therefore will
6 become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of
7 the right to oppose any appeal, appellate proceedings, or post-judgment proceedings. If an appeal is
8 taken from the Judgment, the time for consummation of the Settlement (including making payments
9 under the Settlement) will be suspended until such time as their appeal is finally resolved and the
10 Judgment becomes final.

11 **8. MISCELLANEOUS**

12 **8.1. Interim Stay of Proceedings.** The Parties agree to refrain from further litigation,
13 except such proceedings necessary to implement and to obtain a Preliminary Approval Order and Final
14 Approval Order of the terms of the Agreement. If the Settlement is not finally approved, the Parties
15 agree that they will revert to their positions in the lawsuit prior to the time the Settlement was reached,
16 and no agreements set forth in this Agreement or any documents generated or orders issued related to
17 the Settlement will be admissible in any future proceeding in this or any other action.

18 **8.2. Parties' Authority.** The signatories hereto represent that they are fully
19 authorized to enter into this Agreement and are fully authorized to bind the Parties to all terms stated
20 herein. It is agreed that Class Members are so numerous that it is impossible or impractical to have each
21 Class Member execute this Agreement. It is agreed that this Agreement may be executed on behalf of
22 Class Members by the Class Representative and Class Counsel.

23 **8.3. Entire Agreement.** This Agreement, which includes the Definitions, Recitals,
24 and all Exhibits attached hereto, constitutes the entire agreement between the Parties with regard to the
25 subject matter contained herein, and all prior and contemporaneous negotiations and understandings
26 between the Parties shall be deemed merged into this Agreement.

1 8.4. **Materiality of Terms.** The Parties have arrived at this Agreement as a result of
2 arm's-length negotiations. Where stated in this Agreement, certain terms are material and revision of
3 these material terms will allow Defendants the option to void this Agreement.

4 8.5. **Counterparts.** This Agreement may be executed in counterparts, and when each
5 party has signed and delivered at least one such counterpart, each counterpart shall be deemed an
6 original, and when taken together with other signed counterparts, shall constitute one signed Agreement,
7 which shall be binding upon and effective as to all Parties.

8 8.6. **Facsimile or Scanned Signatures for This Agreement.** Any party may sign and
9 deliver this Agreement by signing on the designated signature block and transmitting that signature page
10 via facsimile or as an attachment to an e-mail to counsel for the other party. Any signature made and
11 transmitted by facsimile or as an attachment to an e-mail for the purpose of executing this Agreement
12 shall be deemed an original signature for purposes of this Agreement and shall be binding upon the party
13 who transmits the signature page.

14 8.7. **Binding Effect.** This Agreement shall be binding upon the Parties and, with
15 respect to the Class Representative, Class Members, their spouses, children, representatives, heirs,
16 administrators, executors, beneficiaries, conservators, attorneys, and assigns.

17 8.8. **Waivers and Modifications to Be in Writing.** No waiver, modification, or
18 amendment of the terms of this Agreement, whether purportedly made before or after the Court's
19 approval of this Agreement, shall be valid or binding, unless in writing, signed by or on behalf of all
20 Parties and then only to the extent set forth in such written waiver, modification, or amendment, subject
21 to any required Court approval. Any failure by any Party to insist upon the strict performance by the
22 other Party of any of the provisions of this Agreement shall not be deemed a waiver of future
23 performance of the same provisions or of any of the other provisions of this Agreement, and such Party,
24 notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of
25 any and all of the provisions of this Agreement. The time periods and dates provided in this Agreement
26 with respect to giving of notices and hearings are subject to Court approval and modification by the
27 Court or by written stipulation of Class Counsel and Defendants' Counsel.

Any notice to be given pursuant to this Agreement shall be made by email and overnight delivery to Class Counsel or Defendants' Counsel. If Class Members have questions about this Agreement or their Individual Settlement Payments, they must contact Class Counsel, rather than Defendants. Defendants shall have no obligation to respond to communications by Class Members.

8.9. Construction. The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each party participated jointly in the drafting of this Agreement, and the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any party by virtue of draftsmanship.

8.9.1 Exhibits Incorporated by Reference. The terms of this Agreement include the terms set forth in any attached exhibit, which are incorporated by this reference as though fully set forth herein. Any exhibit to this Agreement is an integral part of the Settlement.

8.9.2 Captions. The captions or headings of the sections and paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.

8.9.3 Invalidity of Any Provision. Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to render all provisions of this Agreement valid and enforceable.

8.10. Further Acts and Cooperation between the Parties. The Parties shall cooperate fully with each other and shall use their best efforts to obtain the Court's approval of this Agreement and all of its terms. Each of the Parties, upon the request of another, agrees to perform such further acts and to execute and to deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement.

8.11. No Prior Assignments or Undisclosed Liens. The Class Representative and Class Counsel represent and warrant that they have not assigned, transferred, conveyed, or otherwise disposed of, or purported to assign, transfer, convey, or otherwise dispose of, any Released Claims or the attorneys' fees and costs award to be paid pursuant to this Agreement. The Class Representative and

1 Class Counsel further represent and warrant that there are not any liens or claims against any of the
2 amounts to be paid by Defendants pursuant to this Agreement. The Class Representative and Class
3 Counsel agree to defend, to indemnify, and to hold Defendants harmless from any liability, losses,
4 claims, damages, costs, or expenses, including reasonable attorneys' fees, resulting from a breach of
5 these representations or from any lien or assignment.

6 8.12. **Waiver of Right to Object by Class Representative.** The Class Representative
7 agrees to sign this Agreement, and by signing this Agreement, the Class Representative is thereby bound
8 by the terms of this Agreement. The Class Representative further agrees that she shall not object to any
9 of the terms of this Agreement.

10 8.13. **No Solicitation of Objections.** The Parties further represent and warrant that
11 they have not and will not solicit, encourage, or assist in any fashion any effort by any entity or person
12 to object to or to seek exclusion from the Settlement set forth in this Agreement.

13 8.14. **Discovery of Confidential Documents and Information.** Class Counsel agree
14 that they will destroy all confidential documents and information provided to them by Defendants within
15 60 calendar days after the completion of the administration of the Settlement. Class Counsel further
16 agrees that none of the documents and information provided to them by Defendants shall be used for any
17 purpose other than prosecution of this Action or the defense or prosecution of a malpractice action.

18 8.15. **No Tax Advice.** Neither Class Counsel, Defendants' Counsel, or Defendants
19 intend anything contained in this Settlement or Agreement to constitute advice regarding taxes or
20 taxability, nor shall anything in this Settlement or Agreement be relied upon as such within the meaning
21 of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended) or otherwise.

22 8.16. **No Media Announcements.** Neither side shall make any public statements to the
23 news, print, electronic, or Internet media concerning the Settlement, and both sides shall decline to
24 respond to media inquiries concerning the Settlement. Class Counsel shall not publicize the settlement
25 in their marketing materials, website, or other advertising media.

26 8.17. **Continuing Jurisdiction.** The Court shall retain jurisdiction over the
27 implementation of this Agreement as well as any and all matters arising out of, or related to, the
28

implementation of this Agreement and Settlement. The Court shall not have jurisdiction to modify the terms of the Agreement without the consent of all of the Parties.

8.18. **Disputes.** If the Parties have a dispute with regard to the language of this Agreement, they agree to first attempt to resolve the dispute informally through good-faith negotiations, but if those efforts are unsuccessful, they agree to mediate any such dispute. The Parties will split the costs of the mediator, and all parties will bear their own fees and costs.

8.19. **Governing Law.** This Settlement and Agreement was made and entered into in the State of California. All terms of this Agreement shall be governed by and interpreted according to the substantive laws of the State of California and the procedural laws of the United States of America.

SO AGREED AND STIPULATED:

DATED: July __, 2023
Aug 21, 2023

PLAINTIFF ELIZABETH GARCIA

By: 
Elizabeth Garcia (Aug 21, 2023 19:22 PDT)
Elizabeth Garcia

Jul 20, 2023
DATED: July __, 2023

DEFENDANTS LOLA'S MARKET INC. AND
DAVID ORTEGA

By: 
David Ortega (Jul 20, 2023 11:01 PDT)

Print Name: David Ortega
Title: President

DATED: August 21, 2023

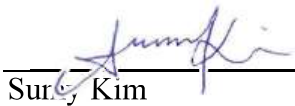
MATERN LAW GROUP

By: 
Matthew J. Matern
Joshua D. Boxer
Clare E. Moran

Attorneys for Plaintiff and the Class

1 DATED: July 21, 2023

O'HAGAN MEYER

2 By: 

3 Surey Kim

4 Attorneys for DEFENDANTS LOLA'S MARKET
5 INC. and DAVID ORTEGA
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