

Prescott W. Littlefield (State Bar No. 259049)
KEARNEY LITTLEFIELD LLP
3436 N. Verdugo Rd., Ste 230
Glendale, CA 91208
Tel: (213) 473-1900/ Fax: (213) 473-1919
E-mail: tak@kearneylittlefield.com
pwl@kearneylittlefield.com

Paul K. Schrieffer, State Bar No. 151358
P.K. SCHREIFFER LLP
100 North Barranca Ave., 11th Floor
West Covina, CA 91791
Tel: (626) 373-2444; Fax: (626) 974-8403
pks@pkslp.com
mjf@pkslp.com

Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL CIVIL WEST**

DIANA LOPEZ-HERNANDEZ, an individual,
on behalf of himself and all others similarly
situated

Plaintiff,

v.

MI PIACE III, LTD., a California Limited
Partnership;
and DOES 1 through 50, inclusive,

Defendants.

CASE NO. BC609465

*[Assigned for all purposes to the Hon. Elihu M.
Berle, Dep't 323]*

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

Complaint Filed February 4, 2016
Trial Date: None Set

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

This Joint Stipulation of Class Action Settlement and Release of Claims is entered into by and
between Plaintiff Diana Lopez-Hernandez ("Plaintiff") and Defendant Mi Piac Ltd., LP ("Defendant").

1. DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

1 **1.1. Action.** “Action” (or “Class Action” or “Lawsuit”) means the civil lawsuit originally
2 entitled *Diana Lopez-Hernandez, individually, and on behalf of herself and all others similarly situated,*
3 *Plaintiffs, vs. Mi Piacce III, Ltd., a California Limited Partnership, and Does 1-50, inclusive, Defendants,*
4 filed on or about February 4, 2016, in the Superior Court of the State of California, County of Los
5 Angeles, and designated as Case No. BC609465.

6 **1.2. Agreement.** “Agreement” means this Joint Stipulation of Class Action Settlement and
7 Release of Claims, which includes the Definitions, Recitals, and all Exhibits attached hereto. This
8 Agreement does not apply to Class members who have previously entered into individual Releases with
9 Defendant.

10 **1.3. Attorneys’ Fees and Costs Award.** “Attorneys’ Fees and Costs Award” means any
11 attorneys’ fees and cost payments, subject to Court approval, from the Gross Settlement Amount for
12 Class Counsel’s attorneys’ fees and costs associated with the litigation and resolution of the Action
13 (excluding third-party Settlement Administration Costs which are separately identified and defined
14 below).

15 **1.4. Class Counsel.** “Class Counsel” (or “Plaintiffs’ Counsel”) means Thomas A. Kearney
16 and Prescott W. Littlefield of Kearney Littlefield LLP, 3436 N. Verdugo Rd., Suite 230, Glendale,
17 California 91208, and Paul K. Schrieffer of P.K. Schrieffer LLP, 100 North Barranca Ave., 11th Floor,
18 West Covina, California 91791.

19 **1.5. Class Member.** “Class Member” means any person who has not otherwise executed a
20 release of claims against Defendant relating to the claims asserted in this Lawsuit and who is or was
21 employed by Defendant as a non-exempt employee at any time from February 4, 2015 through May 17,
22 2017, the date the Court certified the Class herein.

23 **1.6. Class Notice.** “Class Notice” means the Notice of Class Action Settlement, substantially
24 in the form attached as Exhibit A.

25 **1.7. Class Representative Incentive Payment.** “Class Representative Incentive Payment”
26 means any payment, subject to Court approval, to Plaintiff from the Gross Settlement Amount in
27 recognition of her efforts and work in prosecuting the Action on behalf of Class Members.
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1 **1.8. Court.** “Court” means the Los Angeles Superior Court, the Honorable Elihu M. Burle
2 presiding.

3 **1.9. Defendant.** “Defendant” means Mi Piacce Ltd., LP.

4 **1.10. Defendant’s Counsel.** “Defendant’s Counsel” means Sheppard, Mullin, Richter &
5 Hampton LLP and Cruser, Mitchell, Novitz, Sanchez, Gaston & Zimet, LLP. For purposes of providing
6 any notices required under this Agreement, “Defendant’s Counsel” shall refer to Daniel J. McQueen,
7 333 South Hope St. 43rd Floor, Los Angeles, California 90071-1448.

8 **1.11. Effective Date.** “Effective Date” means the date applicable based on the following: (a) if
9 no appeals of an order by the Court granting final approval of class action settlement or granting
10 judgment dismissing with prejudice the Action and all claims for Settlement Class Members are filed, 14
11 calendar days after the expiration date of the time for the filing or notice of any appeals from such an
12 order or judgment; or (b) if any appeals of an order by the Court granting final approval of class action
13 settlement or granting judgment dismissing with prejudice the Action and all claims for Settlement Class
14 Members are filed, 64 calendar days after any appeal affirming such an order or judgment is final and no
15 longer appealable.

16 **1.12. Individual Settlement Payment.** “Individual Settlement Payment” means each
17 Settlement Class Member’s potential payment from the Net Settlement Amount.

18 **1.13. Gross Settlement Amount.** “Gross Settlement Amount” means the maximum potential
19 settlement amount (inclusive of any Attorneys’ Fees and Costs Award, Class Representative Incentive
20 Payments, LWDA Payment, Settlement Administration Costs, Individual Settlement Payments, and
21 employer’s share of payroll taxes) that Defendant may be required to pay in connection with an order
22 granting final approval of class action settlement.

23 **1.14. LWDA Payment.** “LWDA Payment” means any payment, subject to Court approval, to
24 the State of California Labor and Workforce Development Agency.

25 **1.15. Net Settlement Amount.** “Net Settlement Amount” means the portion of the Gross
26 Settlement Amount available for allocation to Settlement Class Members for all payroll taxes (including
27 the employer’s share of payroll taxes) and Individual Settlement Payments, after deductions for any
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1 Attorneys' Fees and Costs Award, Class Representative Incentive Payments, LWDA Payment, and
2 Settlement Administration Costs.

3 **1.16. Parties.** "Parties" means Plaintiff and Defendant.

4 **1.17. Plaintiff.** "Plaintiff" means Diana Lopez-Hernandez.

5 **1.18. Released Party.** "Released Party" means any of Defendant or its current or former
6 subsidiaries, affiliates, parents, predecessors, insurers, agents, employees, successors, assigns, officers,
7 partnerships, limited liability companies, partners, limited partners, members, managing members,
8 officials, directors, employers, attorneys, personal representatives, executors, and shareholders,
9 including their respective pension, profit sharing, savings, health, and other employee benefit plans of
10 any nature, the successors of such plans, and those plans' respective current or former trustees and
11 administrators, agents, employees, and fiduciaries.

12 **1.19. Settlement Administrator.** "Settlement Administrator" means the independent third-
13 party settlement administrator Phoenix Class Action Administrators ("Phoenix"), subject to Court
14 approval.

15 **1.20. Settlement Administration Costs.** "Settlement Administration Costs" means any
16 payment, subject to Court approval, payable from the Gross Settlement Amount to the Settlement
17 Administrator for administering the settlement, including, but not limited to, printing, distributing, or
18 tracking Class Notices, processing any required tax payments or reporting, providing any required tax
19 forms, distributing the Individual Settlement Payments, Class Representative Incentive Payment,
20 Attorneys' Fees and Costs Award, and LWDA Payment, and providing necessary reports and
21 declarations, as requested by the Court or Class Counsel and Defendant's Counsel.

22 **1.21. Settlement Class Members.** "Settlement Class Members" means any and all Class
23 Members who do not exclude themselves from the settlement by complying with the procedures set
24 forth in the Class Notice to opt out of the settlement.

1 **2. RECITALS**

2 **2.1. Initiation of Action.** On or about February 4, 2016, Plaintiff filed the original complaint,
3 *Diana Lopez-Hernandez, individually, and on behalf of herself and all others similarly situated,*
4 *Plaintiffs, vs. Mi Piacce III, Ltd., a California Limited Partnership, and Does 1-50, inclusive, Defendants.*

5 **2.2. Plaintiff's Factual Allegations.** Plaintiff asserted her claims based on various
6 allegations, including but not limited to, claims that Defendant (i) failed to provide or allow meal
7 periods, (ii) failed to provide or allow rest breaks, (iii) failed to pay overtime, (iv) failed to furnish
8 accurate wage statements, (v) failed to pay final wages, (vi) unlawful and unfair business acts and
9 practices, and (vii) violations of Labor Code section 2699.

10 **The Court Certifies the Settlement Class.** On or about May 17, 2017, the Court certified for
11 Class treatment the Third Cause of Action brought under *Labor Code* section 226(a)(8), alleging that
12 Defendant's wage statements misidentified the legal name of Plaintiff's and the Class members'
13 employer as "Mi Piacce Restaurant." In its certification Order, the Court defined the Class as:

14 All hourly employees of Mi Piacce, Ltd., LP who received a pay stub identifying "Mi
15 Piacce Restaurant" as the employees' employer at any time from February 4, 2015 through
16 the date the class is certified. (The "Settlement Class").

17 **2.3. Class Counsel's Investigation.** Class Counsel continued investigating the claims of the
18 Settlement Class and also analyzed any and all applicable defenses raised by Defendant. The
19 investigation also included the exchange of information and documents pursuant to informal discovery
20 methods, several conferences between Class Counsel and Defendant's Counsel, and Class Counsel's
21 further interviews of Plaintiff. The Parties also engaged in formal discovery, including the production
22 by Defendant of over 8000 payroll and personnel documents, which furthered the consideration of the
23 liability and damage issues at the heart of the case. The Parties engaged in a full day Mediation at Jams
24 before Gary Davis, Esq. The parties could not reach a settlement.

25 **2.4. The Court Denies Both Plaintiff's and Defendant's Summary Judgment Motions.**
26 On October 25, 2017, the Court denied the Parties' reciprocal Motions for Summary Adjudication of the
27 Third Cause of Action, both of which were based on the Parties' Joint Stipulation of Facts. The Court
28 found that there was a triable issue of fact as to whether Defendant's principal harbored the requisite

1 *mens rea* so as to support a claim for violation of *Labor Code* section 226(a)(8), concerning the accuracy
2 of the name of the employer set forth on the relevant wage statements.

3 **2.5. Settlement of the Certified Class.** On or about January 30, 2018, the Parties reached an
4 agreement resolving the claim of the Settlement Class (the “Settlement”), which was negotiated in light
5 of all known facts and circumstances—including the potential difficulty of proving Plaintiff’s claims,
6 potential defenses asserted by Defendant, the uncertainty associated with litigation, the risks of
7 significant delay, and numerous potential appellate issues—and was reached after extensive arm’s-
8 length negotiations. The Gross Settlement Amount of the Settlement is \$90,000.

9 **2.6. Defendant’s Denials.** Defendant denied and continues to deny (i) all of the allegations
10 made by Plaintiff in the Action, (ii) that it violated any applicable laws, (iii) that it would be liable or
11 owes damages, penalties, or any other type of remedies to anyone with respect to the alleged facts or
12 claims asserted in the Action, and (iv) that class certification or representative treatment of the Action or
13 any alleged claims would be proper. Nonetheless, without admitting or conceding any liability or
14 wrongdoing whatsoever and without admitting or conceding that class certification or representative
15 treatment would be appropriate for any purpose other than settlement, Defendant has agreed to settle the
16 Action on the terms and conditions set forth in this Agreement to avoid the burden, expense, and
17 uncertainty of continuing the Action. Any stipulation or statement by Defendant contained herein is
18 made for settlement purposes only.

19 **2.7. Class Counsel’s Evaluation.** Based on Class Counsel’s ongoing investigation and
20 evaluation over the course of more than two years of investigation and litigation, Class Counsel is of the
21 opinion that the terms set forth in this Agreement are fair, reasonable, adequate, and in the best interests
22 of the class. Any stipulation or statement by Plaintiff contained herein is made for settlement purposes
23 only.

24 **2.8. Intention of Parties.** It is the desire of the Parties to fully, finally, and forever settle the
25 claims of the Settlement Class.

26 **2.9. Agreement to Cooperate.** The Parties agree to cooperate and take all steps necessary
27 and appropriate to effectuate all aspects of this Agreement, to obtain preliminary and final approval of
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1 class action settlement, and to dismiss the Action and claims of Class Members with prejudice upon
2 final approval.

3 **3. NOTICE TO CLASS MEMBERS**

4 **3.1. Settlement Administrator.** Plaintiff and Class Counsel shall request that the Court
5 appoint Phoenix as Settlement Administrator for purposes of sending notice of the settlement to Class
6 Members. The Parties agree that Settlement Administration Costs will not exceed \$7500 and Phoenix
7 has agreed to cap the Settlement Administration Costs to \$7500. All disputes relating to the Settlement
8 Administrator's performance of its duties, after good-faith efforts by the Parties to first resolve such
9 disputes, will be referred to the Court, if necessary, which will have continuing jurisdiction over this
10 Agreement until all payments and obligations contemplated by this Agreement have been fully
11 completed to Class Counsel and Defendant's Counsel's satisfaction.

12 **3.2. Class Notice of Settlement.** The Settlement Administrator shall send Class Notice to
13 Class Members to provide notice of settlement within 28 calendar days of the entry of an order granting
14 preliminary approval of class action settlement, pursuant to the procedures below. This shall be the sole
15 means of notice to Class Members.

16 **3.3. Class Data for Settlement Administrator.** Within 21 calendar days of the entry of an
17 order granting preliminary approval of class action settlement, Defendant shall provide to the Settlement
18 Administrator each Class Member's most current, known mailing address, as well as data sufficient for
19 the Settlement Administrator to determine each Class Member's number of workweeks during the
20 applicable Class Period.

21 **3.4. Confidentiality of Class Data.** Within 21 calendar days of the entry of an order granting
22 preliminary approval of class action settlement, the Settlement Administrator shall execute a
23 confidentiality agreement. The Settlement Administrator shall keep data provided by Defendant strictly
24 confidential, shall not share it with Class Counsel, shall use it only for the purposes described herein,
25 and shall return it to Defendant or confirm its destruction upon completion of the Settlement
26 Administrator's duties in administering the settlement.
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1 **3.5. Mailing of Notice.** The Settlement Administrator shall send Class Notice to each Class
2 Member via First Class U.S. Mail, using the most current, known mailing address for each Class
3 Member, based on class data provided by Defendant. Any Class Notice returned to the Settlement
4 Administrator as undeliverable shall be sent promptly via First Class U.S. Mail to the forwarding
5 address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall
6 promptly attempt to determine the correct address using a single skip-trace search and shall then
7 promptly send a single re-mailing.

8 **3.6. Proof of Mailing.** At least 14 calendar days prior to a hearing on a motion for final
9 approval for class action settlement, the Settlement Administrator shall provide Class Counsel and
10 Defendant's Counsel—and Class Counsel shall provide the Court—a declaration by the Settlement
11 Administrator of due diligence and proof of mailing with regard to mailing of Class Notice.

12 **4. CLASS MEMBERS' RESPONSE OPTIONS**

13 **4.1. Consideration Period.** Class Members shall be provided 70 calendar days after the
14 postmark date of the initial mailing of Class Notice to exercise any rights with regard to the settlement.
15 Except as specifically provided herein, no Class Member responses of any kind that are postmarked
16 more than 70 calendar days after the initial mailing of Class Notice shall be considered.

17 **4.2. Opt-Out Rights and Procedures.** Class Members shall be given the opportunity to opt
18 out of the settlement. Class Members must comply with the procedures set forth in the Class Notice to
19 opt out of the settlement. Class Members may opt out of the settlement by mailing to the Settlement
20 Administrator the Request for Exclusion form (attached to the Class Notice), which expresses their
21 desire to be excluded from the Settlement Class. Any Request for Exclusion must include a Class
22 Member's name (and former names, if any), current address, and current telephone number. Any such
23 Request for Exclusion must be postmarked not more than 70 calendar days after the postmark date of the
24 initial mailing of Class Notice. A Request for Exclusion shall be deemed to be submitted as of the
25 postmarked date. Any Request for Exclusion that does not include all required information or that is not
26 submitted on a timely basis shall be deemed null, void, and ineffective.

1 **4.3. Opt-Out Effect.** Class Members who opt out of the settlement pursuant to the terms of
2 this Agreement shall not be permitted to object to the settlement, shall not receive any Individual
3 Settlement Payments, and shall not be bound by the release provisions in this Agreement or the
4 applicable release provisions in any order granting final approval of class action settlement. If a Class
5 Member submits both a Request for Exclusion and an objection, the Class Member's objection shall be
6 valid and shall be deemed to invalidate the Request for Exclusion. Each Class Member who does not opt
7 out of the settlement shall remain qualified to receive an Individual Settlement Payment and shall be
8 subject to being bound by the applicable release provisions in this Agreement or the applicable release
9 provisions in any order granting final approval of class action settlement.

10 **4.4. Objection Rights and Procedures.** Settlement Class Members shall be given the
11 opportunity to object to the terms of the settlement. Class Members who fail to make objections in the
12 manner specified in the Class Notice shall be deemed to have waived any objections and shall be
13 foreclosed from making any objection, whether by appeal or otherwise, to the settlement. An objection
14 shall be deemed to be submitted as of the postmarked date.

15 **4.5. Objection Effect.** Class Members who submit an objection shall remain subject to be
16 bound by the release provisions in this Agreement or the applicable release provisions in any order
17 granting final approval of class action settlement. Class Members who submit an objection pursuant to
18 the procedures set forth in the Class Notice may appear at the hearing on a motion for final approval of
19 class action settlement, either in person or through counsel, but must state their intention to do so at the
20 time they submit their written objection. Class Members may withdraw their objections at any time.

21 **4.6. Proof of Class Members' Responses.** By not later than 28 calendar days after the initial
22 mailing of Class Notice, the Settlement Administrator will prepare and submit a declaration attesting to
23 (by number of relevant individuals) its mailing of Class Notice, its inability to deliver Class Notice due
24 to invalid addresses, and its receipt of valid Requests for Exclusion. Prior to the hearing on the motion
25 for final approval of the settlement, the Settlement Administrator shall prepare any supplemental
26 declarations regarding the administration of the settlement, as necessary or as jointly requested by the
27 Parties or the Court. Class Counsel shall file any valid objections with the Court.
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1 **4.7. Defendant's Right to Withdraw.** Defendant shall have the right, at its sole option, to
2 withdraw from this Agreement if more than 5% of Class Members opt out of the preliminarily approved
3 class action settlement.

4 **5. SETTLEMENT PROCEEDS**

5 **5.1. Gross Settlement Amount.** Defendant agrees to pay a maximum potential settlement
6 amount of \$90,000. The Gross Settlement Amount is inclusive of any Attorneys' Fees and Costs Award,
7 Class Representative Incentive Payments, LWDA Payment, Settlement Administration Costs, Individual
8 Settlement Payments to Class Members, and all payroll taxes (including the employer's share of payroll
9 taxes) that Defendant may be required to pay in connection with an order granting final approval of class
10 action settlement.

11 **5.2. Funding of Gross Settlement Amount.** Defendant shall make a one-time deposit of the
12 Gross Settlement Amount into a qualified settlement fund to be established by the Settlement
13 Administrator. Defendant will deposit the Gross Settlement Amount within 14 calendar days after entry
14 of an order granting Final Approval. The Settlement Administrator will not disburse any funds until at
15 least 14 calendar days after the Effective Date and thereafter shall return to Defendant any interest
16 accrued prior to the Effective Date. If the Effective Date does not or is not to occur, the Settlement
17 Administrator will return the Gross Settlement Amount, with interest, to Defendant.

18 **5.3. Attorneys' Fees and Costs.** Class Counsel intends to request that the Court approve an
19 Attorneys' Fees and Costs Award in the amount of (a) up to 33.3% of the Gross Settlement Amount (or
20 \$30,500) and (b) costs in the amount of up to \$15,000. Except as provided in this Agreement, Defendant
21 shall have no liability for any attorneys' fees or costs in connection with the Action.

22 **5.3.1. Award Not Material.** The Court's approval of an Attorneys' Fees and Costs
23 Award is not a material term of this Agreement. If the Court does not approve of an Attorneys' Fees and
24 Costs Award (or approves only a lesser amount than requested by Class Counsel), the other terms of this
25 Agreement shall apply. The Court's refusal to approve the Attorneys' Fees and Costs Award requested
26 by Class Counsel does not give Plaintiff or Class Counsel any basis to abrogate this Agreement. Any
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1 amount of an Attorneys' Fees and Costs Award requested by Class Counsel but unapproved by the
2 Court shall be allocated to the Net Settlement Amount.

3 **5.3.2. Timing of Payment.** The Settlement Administrator shall pay to Class Counsel
4 any approved Attorneys' Fees and Costs Award no later than 14 calendar days after the Effective Date.
5 Within 7 calendar days after the Effective Date, Class Counsel shall transmit instructions to the
6 Settlement Administrator as to how the Attorneys' Fees and Costs Award shall be paid. Class Counsel
7 agrees that Class Counsel is responsible for allocating this payment among themselves or any other
8 counsel for Class Members settling claims through the final approval of class action settlement. The
9 Settlement Administrator shall issue an Internal Revenue Service ("IRS") Form 1099 to Class Counsel
10 for any Attorneys' Fees and Costs Award payment. Class Counsel shall be solely and legally responsible
11 for paying all applicable taxes on any Attorneys' Fees and Costs Award payments and shall indemnify
12 and hold harmless Defendant from any claim or liability against Class Counsel for taxes, penalties, or
13 interest arising as a result of the payment.

14 **5.4. Class Representative Incentive Payment.** Class Counsel intends to request—and
15 Defendant agrees not to oppose—that the Court approve a Class Representative Incentive Payments of
16 up to \$7,500 to Plaintiff. Any Class Representative Incentive Payment is supplemental to Plaintiff's
17 Individual Settlement Payments.

18 **5.4.1. Award Not Material.** The Court's approval of Class Representative Incentive
19 Payments is not a material term of this Agreement. If the Court does not approve the Class
20 Representative Incentive Payment (or approves only a lesser amount than requested by Class Counsel),
21 the other terms of this Agreement shall apply. The Court's refusal to approve Class Representative
22 Incentive Payments requested by Class Counsel does not give Plaintiff or Class Counsel any basis to
23 abrogate this Agreement. Any amount of Class Representative Incentive Payments requested by Class
24 Counsel but unapproved by the Court shall be allocated to the Net Settlement Amount.

25 **5.4.2. Timing of Payment.** The Settlement Administrator shall pay to Plaintiff any
26 approved Class Representative Incentive Payment no later than 14 calendar days after the Effective
27 Date. The Settlement Administrator shall issue an IRS Form 1099 to Plaintiff for any Class
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1 Representative Incentive Payment distributed to Plaintiff. Plaintiff shall be solely and legally responsible
2 for paying all applicable taxes on any Class Representative Incentive Payment and shall indemnify and
3 hold harmless Defendant from any claim or liability against Plaintiff for taxes, penalties, or interest
4 arising as a result of the payment.

5 **5.5. Settlement Administration Costs.** Class Counsel intends to request that the Court
6 approve Settlement Administration Costs of up to \$7,500. Any amount of Settlement Administration
7 Costs requested by Class Counsel but unapproved by the Court shall be allocated to the Net Settlement
8 Amount. Upon completion of administration of the settlement, the Settlement Administrator shall
9 provide written certification of such completion to Class Counsel and Defendant's Counsel. The Parties
10 agree to cooperate in the settlement administration process and to make all reasonable efforts to control
11 and minimize Settlement Administration Costs.

12 **5.6. LWDA Payment.** Class Counsel intends to request that the Court approve allocation of
13 \$2,500 of the Gross Settlement Amount as penalty under the Private Attorneys General Act ("PAGA")
14 in which seventy-five percent (\$1,875) is an LWDA Payment to the State of California Labor and
15 Workforce Development Agency and the remaining twenty-five percent (\$625) is to be allocated to the
16 Class. Any amount of the LWDA Payment requested by Plaintiff but unapproved by the Court shall be
17 allocated to the Net Settlement Amount. The Settlement Administrator shall issue the LWDA Payment
18 no later than 14 calendar days after the Effective Date.

19 **5.7. Individual Settlement Payments.** Subject to any payroll taxes (including the employer's
20 share of payroll taxes), the Net Settlement Amount shall be distributed in separate checks to Settlement
21 Class Members, without the need to submit a specific claim form. The Settlement Administrator shall
22 calculate Individual Settlement Payments for Settlement Class Members. The amount of each Settlement
23 Class Member's Individual Settlement Payment shall be allocated to Settlement Class Members based
24 on a percentage that will be calculated by dividing the number of pay periods worked by each individual
25 Class Member during the Class Period by the total number of pay periods worked by all Class Members
26 during the Class Period.
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1 **5.7.1. Timing of Payment.** The Settlement Administrator shall issue Individual
2 Settlement Payments no later than 14 calendar days after the Effective Date. Each Settlement Class
3 Member's Individual Settlement Payment shall be characterized as 1099 income. In accordance with
4 applicable tax laws, required tax withholdings will be taken from each Individual Settlement Payment
5 for the portion allocated to W-2 income and remitted to the appropriate taxing authorities. The
6 Settlement Administrator shall issue any necessary IRS Form 1099 or W-2 to Settlement Class Members
7 for their respective Individual Settlement Payments. Settlement Class Members shall be solely and
8 legally responsible for paying all other applicable taxes on their respective Individual Settlement
9 Payments.

10 **5.7.2. Undeliverable or Uncashed Checks.** The principal for any Individual Settlement
11 Payments, plus any accrued interest that has not otherwise been distributed pursuant to Order of the
12 Court, that remain undeliverable or uncashed 180 calendar days after the postmarked date of their initial
13 mailing shall be transmitted pursuant to California Code of Civil Procedure section 384 as follows: (1)
14 twenty-five percent to the State Treasury for deposit in the Trial Court Improvement and Modernization
15 Fund; (2) twenty-five percent to the State Treasury for deposit into the Equal Access Fund of the
16 Judicial Branch; and (3) fifty percent to the Equal Rights Advocates nonprofit organization.

17 **5.8. Payment Considerations.** Defendant is not giving any tax advice in connection with the
18 settlement or any payments to be made pursuant to this Agreement.

19 **5.8.1. No Tax Advice or Liability.** Each Settlement Class Member agrees to indemnify
20 and hold harmless Defendant from any claim or liability against that Settlement Class Member for taxes,
21 fees, costs, or assessments resulting from his or her failure to timely pay taxes, interest, fees, or penalties
22 owed.

23 **5.8.2. No ERISA Impact.** None of the payments made pursuant to the settlement and
24 this Agreement shall be considered for purposes of determining eligibility for, vesting or participation
25 in, or contributions to any benefit plan, including, without limitation, all plans subject to the Employee
26 Retirement and Income Security Act of 1974 ("ERISA"). Any distribution of payments to Plaintiff or
27 Settlement Class Members shall not be considered as a payment of wages or compensation under the
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1 terms of any applicable benefit plan and shall not affect participation in, eligibility for, vesting in, the
2 amount of any past or future contribution to, or level of benefits under any applicable benefit plan. Any
3 amounts paid will not impact or modify any previously credited hours of service or compensation taken
4 into account under any benefit plan sponsored or contributed to by Defendant or any jointly-trusted
5 benefit plan. For purposes of this Agreement, “benefit plan” means each and every “employee benefit
6 plan” as defined in 29 U.S.C. § 1002(3), and, even if not thereby included, any bonus, pension, stock
7 option, stock purchase, stock appreciation, welfare, profit sharing, retirement, disability, vacation,
8 severance, hospitalization, insurance, incentive, deferred compensation, or any other similar benefit
9 plan, practice, program, or policy.

10 **6. RELEASES**

11 **6.1. Settlement Class Member Acknowledgment.** Settlement Class Members acknowledge
12 that they may hereafter discover facts or law different from, or in addition to, the facts or law they know
13 or believe to exist with respect to the Settlement Class claim. Settlement Class Members nonetheless
14 acknowledge that this Agreement and their releases shall be and shall remain effective in all respects
15 notwithstanding such different or additional facts or law regarding such released claims.

16 **6.2. Releases by Settlement Class Members.** By operation of the entry of the final judgment
17 and final approval, and except as to such rights or claims as may be created by this Agreement,
18 Settlement Class Members, and each of their respective executors, administrators, representatives,
19 agents, heirs, successors, assigns, trustees, or guardians, shall release each Released Party of and from
20 any and all claims, rights, demands, charges, complaints, causes of action, obligations, or liability of any
21 and every kind that were or could have been asserted from any and all violations of *Labor Code* section
22 226(a)(8), including any and all alleged failures to provide accurate itemized wage statements pertaining
23 to the Settlement Class. These releases do not include any claims that cannot be waived as a matter of
24 law, though Settlement Class Members acknowledge and agree that they will not accept any monetary
25 recovery from any proceedings relating to any such claims. Settlement Class Members further
26 acknowledge that this Agreement and these releases do not waive prospective rights but do include post-
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1 dispute waivers or releases of any and all rights to pursue or recover PAGA remedies arising from or
2 related to any of the underlying claims that were or could have been brought in the Action.

3 **6.3. Additional Releases by Plaintiff.** With regard to Plaintiff as a Settlement Class Member,
4 Plaintiff also generally releases all claims against each Released Party, including a waiver of California
5 Civil Code section 1542. Plaintiff expressly waives all rights provided by California Civil Code section
6 1542, or other similar statutes, that Plaintiff may have against each Released Party. California Civil
7 Code section 1542 states:

8 A general release does not extend to claims which the creditor does not know or suspect
9 to exist in his or her favor at the time of executing the release, which if known by him or
10 her must have materially affected his or her settlement with the debtor.

11 Plaintiff acknowledges that she has read all of this Agreement, including the above language from the
12 California Civil Code, and that she fully understand both this Agreement and the California Civil Code
13 section. By executing this Agreement, Plaintiff expressly waives any benefits and rights granted
14 pursuant to California Civil Code section 1542 or any statute, rule, or principle of common law or
15 equity, in any jurisdiction, that is similar, comparable, or equivalent, in whole or in part, to California
16 Civil Code section 1542. Plaintiff acknowledges and agrees that this knowing and voluntary waiver is an
17 essential and material term of this Agreement, and the Agreement would not have been entered into
18 without such a waiver. This provision applies only to Plaintiff and is not applicable to non-named Class
19 Members.

20 **6.4. Injunction from Pursuing Released Claims.** As part of the preliminary approval of the
21 settlement, Settlement Class Members shall be enjoined from filing, initiating, or continuing to
22 prosecute any actions, claims, complaints, or proceedings in court, with the California Division of Labor
23 Standards Enforcement (“DLSE”), with the California Labor and Workforce Development Agency
24 (“LWDA”), or with any other entity regarding the released claims. This settlement is conditioned upon
25 the releases by Settlement Class Members as described herein, and upon covenants by Settlement Class
26 Members that they will not participate in any actions, lawsuits, proceedings, complaints, or charges
27 brought individually, by the DLSE, the LWDA, or by any other agency, persons, or entity in any court
28 or before any administrative body related to the released claims, nor will Settlement Class Members

1 contest or interfere with efforts by Defendant or a Released Party to oppose any attempt to bring such
2 released claims against Defendant or a Released Party.

3 **6.5. Non-Admission of Liability.** By entering into this Agreement, Defendant in no way
4 admits any violation of law or any liability whatsoever to Plaintiff or Class Members, individually or
5 collectively, and expressly denies all such liability. Neither this Agreement nor any other settlement
6 document shall be offered in any case or proceeding as evidence of any admission by Defendant of any
7 liability on any claim for damages or relief. Likewise, by entering into this Agreement, Defendant in no
8 way admits to the suitability of this case for class action or representative litigation, other than for
9 purposes of settlement. Rather, Defendant enters into this Agreement to avoid further protracted
10 litigation and to resolve and settle all disputes with Plaintiff and Class Members. The Parties understand
11 and agree that this Agreement and all exhibits thereto are settlement documents and shall be
12 inadmissible for any purpose in any proceeding, except an action or proceeding to approve, interpret, or
13 enforce the terms of this Agreement. The Parties agree that, to the extent permitted by law, this
14 Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an
15 injunction against any action, suit, or other proceeding that may be instituted, prosecuted or attempted in
16 breach of this Agreement.

17 **7. COURT APPROVAL**

18 **7.1. Preliminary Approval.** Plaintiff shall submit to the Court a motion for an order granting
19 preliminary approval of class action settlement and shall request from the Court a hearing date for a
20 motion for preliminary approval, within 28 calendar days of execution of this Agreement.

21 **7.1.1. Order Granting Preliminary Approval.** The motion shall request the entry of
22 an order granting preliminary approval, which will, among other things: (i) preliminarily approve the
23 proposed settlement according to the terms in this Agreement; (ii) set a date for a final approval and
24 fairness hearing; and (iii) provide for Class Notice to be sent to Class Members as specified herein.

25 **7.1.2. Defendant's Right to Oppose.** Plaintiff's motion shall be unopposed by
26 Defendant, unless Plaintiff's motion for preliminary approval seeks relief not specified by this
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1 Agreement. In such event, Defendant reserves its rights to address any assertions that are not contained
2 in this Agreement.

3 **7.1.3. Effect of Failure to Obtain Preliminary Approval.** If this Agreement or a
4 mutually agreed settlement is not preliminarily approved, the Action shall proceed as if no settlement
5 has been attempted, unless the Parties jointly agree to seek reconsideration of the ruling or seek Court
6 approval of a renegotiated settlement. Defendant retains the right to contest whether any aspect of the
7 Action should be maintained as a class or representative action or to contest the merits of the claims
8 being asserted by Plaintiff in the Action.

9 **7.2. Final Approval.** Not later than 14 court days before the date set by the Court for a final
10 approval and fairness hearing, or such other time as the Court may require, Class Counsel shall submit
11 to the Court a motion for final approval of class action settlement. Class Counsel shall request the entry
12 of an order granting final approval, which shall include findings and orders: (i) approving the settlement,
13 (ii) adjudging the terms to be fair, reasonable, and adequate, (iii) reciting the release terms, (iv) directing
14 that the settlement's terms and provisions be carried out; and (v) retaining jurisdiction to oversee
15 administration and enforcement of the terms of this Agreement and the Court's orders.

16 **7.2.1. Entry of Judgment.** At the final approval and fairness hearing, the Parties shall
17 request that the Court, among other things: (i) enter final judgment in accordance with this Agreement
18 and without further fees or costs to any party except as expressly set forth in this Agreement;
19 (ii) approve this Agreement as fair, reasonable, adequate, and binding on all Class Members; (iii) enter
20 an order as to Class Counsel's request for an Attorneys' Fees and Costs Award; (iv) enter an order as to
21 the request for Class Representative Incentive Payments; (v) enter an order as to the request for the
22 LWDA Payment; and (vi) enter an order permanently enjoining all Class Members from pursuing or
23 seeking to reopen claims that have been released by this Agreement.

24 **7.2.2. Effect of Failure to Obtain Final Judgment.** In the event the Court fails to enter
25 final judgment in accordance with this Agreement, or such final judgment is reversed, the Action shall
26 proceed as if no settlement has been attempted, unless the Parties jointly agree to seek reconsideration or
27 appellate review of the ruling or seek Court approval of a renegotiated settlement. Defendant retains the
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1 right to contest whether any aspect of the Action should be maintained as a class or representative action
2 or to contest the merits of the claims being asserted by Plaintiff in the Action.

3 **7.3. Waiver of Appeal Rights.** By accepting this settlement and authorizing the dismissal of
4 the Action with prejudice, Plaintiff and Class Counsel hereby waive any and all rights they may have to
5 appeal any judgment, ruling, or order made by the Court in this Action, including, without limitation,
6 any order granting final approval of this settlement or dismissing the Action with prejudice.

7 **8. MISCELLANEOUS**

8 **8.1. Interim Stay of Proceedings.** The Parties agree to refrain from further litigation of this
9 matter, except such proceedings necessary to implement and obtain an order granting final approval of
10 the terms of the Agreement. If the settlement is not finally approved, the Parties agree that they will
11 revert to their positions in the lawsuit prior to the time the settlement was reached, and no agreements
12 set forth in this Agreement or any documents generated or orders issued related to the settlement will be
13 admissible in any future proceeding in this or any other action. If the settlement is not finally approved,
14 Defendant reserves its rights to make all arguments that class certification or representative treatment
15 would not be appropriate.

16 **8.2. Parties' Authority.** The signatories hereto represent that they are fully authorized to
17 enter into this Agreement and are fully authorized to bind the Parties to all terms stated herein. It is
18 agreed that Class Members are so numerous that it is impossible or impractical to have each Class
19 Member execute this Agreement. It is agreed that this Agreement may be executed on behalf of Class
20 Members by Plaintiff and Class Counsel, and shall have the same force and effect as if executed by each
21 Class Member.

22 **8.3. Entire Agreement.** This Agreement, which includes the Definitions, Recitals, and all
23 Exhibits attached hereto, constitute the entire agreement between the Parties with regard to the subject
24 matter contained herein, and all prior and contemporaneous negotiations and understandings between
25 the Parties shall be deemed merged into this Agreement.

26 **8.3.1. Materiality of Terms.** The Parties have arrived at this Agreement as a result of
27 arm's-length negotiations. Except as otherwise stated herein, all terms and conditions of this Agreement
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1 in the exact form set forth in this Agreement are material to this Agreement and have been relied upon
2 by the Parties in entering into this Agreement.

3 **8.3.2. Counterparts.** This Agreement may be executed in counterparts, and when all
4 signatories have signed and delivered at least one such counterpart, each counterpart shall be deemed an
5 original, and when taken together with other signed counterparts, shall constitute one signed Agreement,
6 which shall be binding upon and effective as to all Parties.

7 **8.3.3. Facsimile or Scanned Signatures.** Any party may sign and deliver this
8 Agreement by signing on the designated signature block and transmitting that signature page via
9 facsimile or as an attachment to an e-mail to counsel for the other party. Any signature made and
10 transmitted by facsimile or as an attachment to an e-mail for the purpose of executing this Agreement
11 shall be deemed an original signature for purposes of this Agreement and shall be binding upon the party
12 who transmits the signature page.

13 **8.3.4. Binding Effect.** This Agreement shall be binding upon the Parties and, with
14 respect to Plaintiff and Class Members, their spouses, children, representatives, heirs, administrators,
15 executors, beneficiaries, conservators, attorneys, and assigns.

16 **8.3.5. Waivers, Modifications, Etc. to Be in Writing.** No waiver, modification, or
17 amendment of the terms of this Agreement, whether purportedly made before or after the Court's
18 approval of this Agreement, shall be valid or binding unless in writing, signed by or on behalf of all
19 Parties and then only to the extent set forth in such written waiver, modification or amendment, subject
20 to any required Court approval. Any failure by any Party to insist upon the strict performance by the
21 other Party of any of the provisions of this Agreement shall not be deemed a waiver of future
22 performance of the same provisions or of any of the other provisions of this Agreement, and such Party,
23 notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of
24 any and all of the provisions of this Agreement. The time periods and dates provided in this Agreement
25 with respect to giving of notices and hearings are subject to Court approval and modification by the
26 Court or by written stipulation of Class Counsel and Defendant's Counsel.

1 **8.4. Construction.** The determination of the terms and conditions of this Agreement has been
2 by mutual agreement of the Parties. Each party participated jointly in the drafting of this Agreement, and
3 the terms and conditions of this Agreement are not intended to be, and shall not be, construed against
4 any party by virtue of draftsmanship.

5 **8.4.1. Exhibits Incorporated by Reference.** The terms of this Agreement include the
6 terms set forth in any attached Exhibit, which are incorporated by this reference as though fully set forth
7 herein. Any Exhibit to this Agreement is an integral part of the settlement.

8 **8.4.2. Captions.** The captions or headings of the sections and paragraphs of this
9 Agreement have been inserted for convenience of reference only and shall have no effect upon the
10 construction or interpretation of any part of this Agreement.

11 **8.4.3. Invalidity of Any Provision.** Before declaring any provision of this Agreement
12 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible
13 consistent with applicable precedents so as to render all provisions of this Agreement valid and
14 enforceable.

15 **8.5. Further Acts and Cooperation Between the Parties.** The Parties shall cooperate fully
16 with each other and shall use their best efforts to obtain the Court's approval of this Agreement and all
17 of its terms. Each of the Parties, upon the request of another, agrees to perform such further acts and to
18 execute and deliver such other documents as are reasonably necessary to carry out the provisions of this
19 Agreement. All papers to be filed with the Court by Defendant's or Plaintiff's Counsel in connection
20 with this Agreement shall be submitted to the other Party at least two days prior to filing.

21 **8.5.1. No Prior Assignments or Undisclosed Liens.** Plaintiff and Class Counsel
22 represent and warrant that they have not assigned, transferred, conveyed, or otherwise disposed of, or
23 purported to assign, transfer, convey, or otherwise dispose of any Released Claims or the Attorneys'
24 Fees and Costs Award to be paid pursuant to this Agreement. Plaintiff and Class Counsel further
25 represent and warrant that there are not any liens or claims against any of the amounts to be paid by
26 Defendant pursuant to this Agreement. Plaintiff and Class Counsel agree to defend, indemnify, and hold
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1 Defendant harmless from any liability, losses, claims, damages, costs, or expenses, including reasonable
2 attorneys' fees, resulting from a breach of these representations or from any lien or assignment.

3 **8.5.2. No Future Employment of Plaintiff.** Plaintiff hereby waives any rights to future
4 employment with Defendant, any related company, affiliate, entity, or business. Plaintiff agrees that
5 neither Defendant nor any related company, affiliate, entity, or business is obligated to offer
6 employment to her, regardless of the circumstances, at any time in the future. Plaintiff agrees that this is
7 a negotiated clause of this Settlement Agreement and not evidence of claimed retaliation.

8 **8.5.3. Agreement Not to Object.** Plaintiff agrees to sign this Agreement, and by
9 signing this Agreement, Plaintiff is thereby bound by the terms herein.

10 **8.5.4. No Solicitation of Objections.** The Parties further represent and warrant that they
11 have not and will not solicit, encourage, or assist in any fashion any effort by any entity or person to
12 object to the settlement set forth in this Agreement or to seek exclusion from the settlement.

13 **8.5.5. Discovery of Confidential Documents and Information.** Within 14 calendar
14 days after the completion of the administration of the settlement, Class Counsel shall either return to
15 Defendant any confidential documents and confidential data produced by Defendant in connection with
16 the Action or destroy such documents and data. Class Counsel shall certify in writing to Defendant their
17 good-faith efforts to comply with this provision.

18 **8.6. No Media.** Neither side shall make any public statements, to the media or otherwise,
19 concerning the settlement, and both sides shall decline to respond to media inquiries concerning the
20 settlement. Nothing in this provision shall prevent Class Counsel from communicating directly with
21 Class Members regarding the settlement, provided that such communication is limited to Class
22 Members. Nor shall anything in this provision prevent Defendant, as a publicly traded company, from
23 making any appropriate disclosures.

24 **8.7. Continuing Jurisdiction.** The Court shall retain jurisdiction over the implementation of
25 this Agreement as well as any and all matters arising out of, or related to, the implementation of this
26 Agreement and of the settlement contemplated thereby. The Court shall not have jurisdiction to modify
27 the terms of the Agreement.
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1 **8.8. Disputes.** If the Parties have a dispute with regard to the language of this Agreement,
2 they agree to engage a mediator to mediate any such dispute. The Parties will split the costs of the
3 mediator, and all parties will bear their own fees and costs.

4 **8.9. Governing Law.** All terms of this Agreement shall be governed by and interpreted
5 according to the laws of the State of California.
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7

8
9
10 Dated:

5/10/18

COUNSEL FOR PLAINTIFF AND CLASS

PLAINTIFF

11
12
13 Dated:

5/10/18

DEFENDANT

14
15
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17 Dated:

5/9/18

**A REPRESENTATIVE OF
MI PLACE LTD., LP**