

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (“Agreement”) is made by and between Plaintiffs Clara Bailon and Monica Alvarez (“Plaintiffs”) on the one hand, and Defendants Forge Pizza Danville, LLC, dba Forge Pizza, and LBT JLS, LLC (“Defendants”) on the other. Plaintiffs and Defendants collectively are referred to in this Agreement as the “Parties”. Subject to court preliminary and final approval, the Parties hereby agree to settle and conclude the entirety of the lawsuit titled, *Clara Bailon, et. al. v. Forge Pizza, et. al.*, Alameda County Superior Court Case No. RG16811165, and all claims between or among the Parties related thereto on the following terms:

I. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

- A. “Action” means the Complaint that was filed in California state court and any amendments thereto, which is currently captioned *Clara Bailon, et. al. v. Forge Pizza, et. al.*, Court Case No. RG16811165 pending in Superior Court of the State of California, County of Alameda.
- B. “Class” means all individuals who worked in Defendants’ Oakland, California location as non-exempt employees at any time during the period of April 11, 2012 through the date of preliminary approval (“Class Period”).
- C. “Class Counsel” means Arlo Garcia Uriarte and Un Kei Wu of Liberation Law Group, P.C.
- D. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts to be paid to Class Counsel as approved by the Court to compensate them for, respectively, their legal work in connection with this Action, including their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement work, all post-Settlement compliance procedures, and related litigation expenses billed in connection with this Action.
- E. “Class Data” means, for each Class Member, his or her name; last-known mailing address; his or her employee identification number; and the number of workweeks that he or she worked for Defendants during the Class Period as a Class Member.
- F. “Class Member” is a member of the Class.
- G. “Class Notice” means the Notice of Proposed Settlement of Class Action and Hearing Date for Final Court Approval.

- H. “Class Notice Packet” means the Class Notice to be provided to the Class Members by the Settlement Administrator.
- I. “Class Period” means the period of time from April 11, 2012 through the date of preliminary approval.
- J. “Class Representatives” means Clara Bailon and Monica Alvarez. “Class Representative Service Payment” means the service payment made to the Plaintiffs in their capacity as Class Representatives in order to compensate them for initiating the Action, performing work in support of the Action, undertaking the risk of liability for Defendant’s expenses in the event they were unsuccessful in the prosecution of the Action, and for the general release of all claims by the Plaintiffs. This payment shall be conditioned upon Court approval.
- K. “Court” means the Superior Court of California, County of Alameda.
- L. “Defendants’ Counsel” means Dennis J. Holahan, Marcus Lee, and Daniel XuLi of Lewis Brisbois Bisgaard & Smith, LLP.
- M. “Effective Date” means the date by which all of the following have occurred:
1. This Agreement is approved by the Court; and
 2. The Judgment becomes Final as defined in Section I(O) of this Agreement.
- N. “Election Not to Participate in Settlement” means the written request by a Class Member to exclude himself or herself from the Settlement submitted in accordance with the instructions in the Class Notice.
- O. “Final” means the last of the following dates, as applicable:
1. If no objection to the Settlement is made, the date the Judgment is entered.
 2. If an objection to the Settlement is made and Judgment is entered, but no appeal is filed, the last date on which a notice of appeal from the Judgment may be filed and none is filed.
 3. If Judgment is entered and a timely appeal from the Judgment is filed, the date the Judgment is affirmed and is no longer subject to appeal.
- P. “Final Approval Hearing” means the hearing to be conducted by the Court to determine whether to approve finally and implement the terms of this Agreement and enter the Judgment.

- Q. “Gross Settlement Amount” means One Hundred Eighty Thousand Dollars (\$180,000.00) to be paid by Defendants as provided by this Agreement. This Gross Settlement Amount is an all-in amount without any reversion to Defendants and shall be inclusive of all payments contemplated in this Agreement, excluding any employer payroll taxes, if any, due on the portion of the Settlement Shares allocated to wages which shall not be paid from the Gross Settlement and shall be the separate additional obligation of Defendants.
- R. “Judgment” means the Final Approval Order and Judgment entered by the Court.
- S. “Net Settlement Amount” means the Gross Settlement Amount less the Court-approved amounts for the Class Representative Service Payment, the Class Counsel Fees Payment, the Class Counsel Expenses Payment, the Labor and Workforce Development Agency (“LWDA”) Payment, and the Settlement Administrator’s fees and expenses.
- T. “Non-Participating Class Member” means a Class Member who submits a valid and timely Election Not to Participate in Settlement.
- U. “Participating Class Member” means a Class Member who does not submit a valid and timely Election Not to Participate in Settlement.
- V. “Preliminary Approval of the Settlement” means the Court’s Order Granting Preliminary Approval of the Settlement.
- W. “Released Parties” means Defendants, all entities affiliated with Defendants, all officers, directors, representatives, owners, partners, subsidiaries, parent companies, joint venturers, predecessors, managers, servants, successors-in-interest, assigns, and current and former employees of Defendants.
- X. “Settlement” means the disposition of the Action and all related claims effectuated by this Agreement.
- Y. “Settlement Administrator” means CPT Group, Inc., the administrator proposed by the Parties and subject to Court approval to administer the Settlement.
- Z. “Settlement Share” means each Participating Class Member’s share of the Net Settlement Amount as provided by this Agreement.

II. RECITALS

- A. On April 11, 2016, Plaintiffs filed a Class Action Complaint against Defendants in the Superior Court of the State of California, County of Alameda. Plaintiffs asserted the following claims against Defendants:

1. Failure to provide meal and rest breaks in violation of California Labor Code §§ 512 and 226.7, and related Industrial Welfare Commission Wage Orders;
 2. Failure to provide accurate, itemized wage statements in violation of California Labor Code § 226;
 3. Failure to provide wages when due in violation of California Labor Code §§ 201, 202, and 203;
 4. Violation California Business and Professions Code § 17200 *et seq.*
 5. Private Attorney General Act of California Labor Code §§ 2689 *et seq.* (“PAGA”)
- B. On June 15, 2016, Defendants filed a general denial along with thirty-five (35) affirmative defenses.
- C. Thereafter, the Parties engaged in written discovery, including production of documents and other information, allowing for the full and complete analysis of liabilities and defenses to the claims in this Action.
- D. On October 10, 2018, the Parties participated in an all-day mediation presided over by David Lowe, a notable labor and employment attorney and respected mediator of wage and hour class actions. During the mediation, each side, represented by their respective counsels, were unable to settle the Action.
- E. On May 8, 2019, the Parties agreed to settle, which is recorded in a Memorandum of Understanding drafted jointly by the Parties’ respective counsels. The Memorandum of Understanding was signed by the Plaintiffs on August 14, 2019 and signed by the Defendants on August 15, 2019. This Agreement replaces and supersedes the Memorandum of Understanding and any other agreements, understandings, or representations between the Parties.
- F. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendants that the claims in the Action of Plaintiffs or the Class have merit or that Defendants bear any liability to Plaintiffs or the Class on those claims or any other claims, or as an admission by Plaintiffs that Defendants’ defenses in the Action have merit. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the settlement does not become effective, Defendants reserve the right to contest certification of any class for any reason, and reserves all available defenses to the claims in the Action.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

III. SETTLEMENT TERMS AND CONDITIONS

- A. **Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Gross Settlement Amount that Defendants will pay under this Settlement is One Hundred Eighty Thousand Dollars (\$180,000.00) (“Gross Settlement Amount”). This is the maximum to be paid by Defendants in settlement and full release of the claims identified herein. Further, the Gross Settlement Amount is the maximum amount Defendants can be required to pay under this settlement, inclusive of: (1) payments to the class; (2) all legally required employment tax payments (except for employer payroll taxes, if any, due on the portion of the Settlement Shares allocated to wages); (3) Class Counsel’s fees; (4) Class Counsel’s costs; (5) settlement administrator expenses; and (6) the portion of the PAGA civil penalty payment to the State of California. This amount is all-inclusive of all payments contemplated in this resolution. All of the Gross Settlement Amount will be disbursed pursuant to the terms and conditions of this Agreement without the need to submit a claim form and none of the Gross Settlement Amount will revert to Defendants.
- B. **Payment Schedule.** Defendants shall pay One Hundred Eighty Thousand Dollars (\$180,000.00) in six (6) installments of Thirty Thousand Dollars (\$30,000.00) each, with the first payment due on August 15, 2019, and the second through sixth payments due by May 31, 2020. The Parties agree that Defendants have already satisfied the first of the six payments to be made. The employer payroll taxes, if any, due on the portion of the Settlement Shares allocated to wages shall be due by May 31, 2020.
- C. **Payments from the Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments out of the Gross Settlement Amount within ten (10) days of the receipt of the Gross Settlement Amount from Defendants:
1. **To Plaintiffs:** In addition to Plaintiffs’ Settlement Share, the Plaintiffs Clara Bailon and Monica Alvarez will apply to the Court for an award of not more than five thousand dollars (\$5,000.00) each as a Class Representative Service Payment. Defendants will not oppose a Class Representative Service Payment of no more than five thousand dollars (\$5,000.00) for Plaintiff Clara Bailon and no more than five thousand dollars (\$5,000.00) for Plaintiff Monica Alvarez. The Settlement Administrator will pay the Class Representative Service Payment approved by the Court out of the Gross Settlement Amount. If the Court

approves a Class Representative Service Payment of less than five thousand dollars (\$5,000.00) for Plaintiff Clara Bailon, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. If the Court approves a Class Representative Service Payment of less than five thousand dollars (\$5,000.00) for Plaintiff Monica Alvarez, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. Payroll tax withholding and deductions will not be taken from the Class Representative Service Payment and instead a Form 1099 will be issued to the Plaintiffs with respect to their payment. To receive this payment, the Plaintiffs agree to a 1542 waiver and a general release of all claims.

2. **To Class Counsel:** Class Counsel will apply to the Court for an award of not more than fifty-nine thousand nine hundred and ninety-four dollars (\$59,994.00) (33.33% of the Gross Settlement Amount) as their Class Counsel Fees Payment and an amount not more than \$12,000 for all expenses incurred as documented in Class Counsel's billing records as their Class Counsel Litigation Expenses. Defendants will not oppose their request for a Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment consistent with this Agreement and approved by the Court. The Settlement Administrator will pay the amounts approved by the Court (but not more than \$59,994.00 and \$12,000, respectively) out of the Gross Settlement Amount. If the Court approves a Class Counsel Fees Payment or a Class Counsel Litigation Expenses Payment of less than \$59,994.00 or \$12,000, respectively, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. Payroll tax withholding and deductions, if any, will not be taken from the Class Counsel Fees and Expenses Payment and instead one or more Forms 1099 will be issued to Class Counsel with respect to those payments. The payment of Class Counsel's fees and costs shall be made to Liberation Law Group, P.C. by the Settlement Administrator in accordance with this Agreement.
3. **To LWDA:** The Parties will seek approval from the Court for a PAGA payment of three thousand dollars (\$3,000.00) out of the Gross Settlement Amount. If the Court approves a PAGA Payment of less than three thousand dollars (\$3,000.00), the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members.
4. **To the Settlement Administrator:** The Settlement Administrator will pay out of the Gross Settlement Amount to itself its reasonable fees and expenses that are documented and approved by the Court in an amount not

to exceed \$15,000. To the extent the fees and expenses that are documented and approved by the Court are less than \$15,000, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members.

D. **Payments From the Net Settlement Amount.** The Net Settlement Amount shall include the following payments after the deductions have been made from the Gross Settlement Amount as described in this Agreement. The Net Settlement Amount shall include the following:

1. **Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay a Settlement Share from the Net Settlement Amount to each Participating Class Member. The submission of a claim form is not required to be paid.
2. **Calculation.** The individual payments shall be calculated based on each Participating Class Member's percentage of each group allocation. The amount that each Participating Class Member will be eligible to receive under the Settlement will be determined by converting the Net Settlement Amount into an appropriate measurable value based on the number of workweeks during the Class Period for each Participating Class Member. Each Participating Class Member shall be entitled to a Percentage Share of the Net Settlement Fund, calculated by the following formula:

$$\frac{\text{Number of qualifying workweeks worked by the Participating Class Member between April 11, 2012 through the date of Preliminary Approval}}{\text{Aggregate Number of qualifying workweeks worked by the Class between April 11, 2012 through the date of Preliminary Approval}} \times \text{Net Settlement Amount}$$

3. **Withholding.**
 - a. One-third of each Participating Class Member's Settlement Share is in settlement of wage claims (the "Wage Portion"). Accordingly the Wage Portion is subject to wage withholdings, and shall be reported on IRS Form W-2 and shall be paid for from the Gross Settlement Amount.
 - b. Two-thirds of each Participating Class Member's Settlement Share is in settlement of claims for interest and penalties allegedly due to employees (the "Non-Wage Portion"). Accordingly, the Non-Wage

Portion shall not be subject to wage withholdings, and shall be reported on IRS Form 1099.

4. **Effect of Non-Participating Class Members.** Non-Participating Class Members will receive no Settlement Share, and their Election Not to Participate in Settlement will reduce neither the Gross Settlement Amount nor the Net Settlement Amount. Their respective Settlement Shares will remain a part of the Net Settlement Amount for distribution to Participating Class Members on a *pro rata* basis relative to their Settlement Shares.

5. **Class Size Modification.** It is estimated that there are a total of four hundred sixty-five (465) Class Members who collectively worked at most twenty-five thousand (25,000) workweeks during the Class Period. Defendants will provide declarations under oath regarding (i) the approximate number of workweeks worked by Class Members, and (ii) the number of Class Members prior to the filing of the motion for preliminary approval. If the number of workweeks submitted by Defendants is more than twenty-five thousand (25,000) workweeks during the Class Period, Plaintiffs shall have discretion to rescind the Settlement.

E. **Appointment of Settlement Administrator.** After obtaining a not-to-exceed quote from mutually acceptable and qualified settlement administrators, the Parties will ask the Court to appoint CPT Group as the qualified administrator, to serve as the Settlement Administrator, which, as a condition of appointment, will agree to be bound by this Agreement with respect to the performance of its duties and its compensation. The Settlement Administrator's duties will include preparing, printing, and mailing the Class Notice Packet to all Class Members; conducting a National Change of Address search prior to mailing the Class Notice Packets; for any Class Notice Packet returned by the U.S. Postal Service as non-deliverable, the re-mailing the Class Notice Packet to the Class Member's new address; setting up a toll-free telephone number to receive calls from Class Members; receiving and reviewing for validly completed Elections Not to Participate in Settlement; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of completed Elections Not to Participate in Settlement; calculating Settlement Shares; issuing the checks to effectuate the payments due under the Settlement; issuing the tax reports required under this Settlement; and otherwise administering the Settlement pursuant to this Agreement. The Settlement Administrator will have the authority to resolve all disputes concerning the calculation of a Participating Class Member's Settlement Share, subject to the dollar limitations and calculations set forth in this Agreement. The Settlement Administrator's reasonable fees and expenses,

including the cost of printing and mailing the Class Notice Packet, will be paid out of the Gross Settlement Amount.

The Settlement Administrator shall have its own Employer Identification Number under Internal Revenue Service Form W-9 and shall use its own Employer Identification Number in calculating payroll withholdings for taxes and shall transmit the required employers' and employees' share of the withholdings to the appropriate state and federal tax authorities. The Settlement Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under U.S. Treasury Regulation section 468B-1.

F. Procedure for Approving Settlement.

1. Motion for Preliminary Approval of Settlement by the Court.

- a. After Execution of this Settlement Agreement, Plaintiffs will file a Preliminary Approval Motion with the Court for an order giving Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice (the "Motion for Preliminary Approval").
- b. At the hearing on the Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the motion, and submit an Order Granting Preliminary Approval of the Settlement.
- c. Should the Court decline to preliminarily approve material aspects of the Settlement (including but not limited to the scope of release to be granted by Participating Class Members or the binding effect of the Settlement on participating Class Members), the Parties shall work together in good faith to address an concerns raised by the Court and propose a revised Settlement for the Court's approval.

2. Notice to Class Members. After the Court enters its Order Granting Preliminary Approval of the Settlement, every Class Member will be sent the Class Notice Packet, which will include the Class Notice (which shall be made available in English and Spanish) completed to reflect the Order Granting Preliminary Approval of the Settlement and showing the Class Member's Settlement Share as follows:

- a. No later than fourteen (14) days after the Court enters its Order Granting Preliminary Approval of the Settlement, Defendants will provide the Settlement Administrator an electronic database containing each Class Member's Class Data. If any or all of the

Class Data is unavailable to Defendants, Defendants will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon the Class Data prior to when it must be submitted to the Settlement Administrator. This information will otherwise remain confidential and will not be disclosed to anyone except as required to applicable taxing authorities, in order to carry out the reasonable efforts described in section III.E.2.c., or pursuant to Defendants' express written authorization or by order of the Court. All Class Data will be used for settlement notification and settlement administration, and shall not be used for any other purpose by Class Counsel.

- b. Using best efforts to mail it as soon as possible, and in no event later than fourteen (14) days after receiving the Class Data, the Settlement Administrator will mail the Class Notice Packets to all Class Members via first-class regular U.S. Mail using the mailing address information provided by Defendants, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement.
- c. If a Class Notice Packet is returned because of an incorrect address, the Settlement Administrator will promptly, and not longer than ten (10) days from receipt of the returned packet, search for a more current address for the Class Member and re-mail the Class Notice Packet to the Class Member. The Settlement Administrator will use the Class Data and otherwise work with Defendants to find that more current address. The Settlement Administrator will be responsible for taking reasonable steps consistent with its agreed-upon job parameters, Court orders, and fee, as agreed to with Class Counsel and according to the following deadlines, to trace the mailing address of any Class Member for whom a Class Notice Packet is returned by the U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. If the Class Notice Packet is re-mailed, the Settlement administrator will note for its own records and notify Class Counsel and Defendants' Counsel of the date and address of each such re-mailing as part of a weekly status report provided to the Parties.

- d. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendants' Counsel of the number of Elections Not to Participate in Settlement It receives (including the numbers of valid and deficient), and number of objections received.
- e. Not later than ten (10) days before the date by which the Plaintiffs file the motion for final approval of the Settlement, the Settlement Administrator will provide the Parties for filing with the Court a declaration of due diligence setting forth its compliance with its obligations under this Agreement and detailing the Elections Not to Participate in Settlement it received (including the numbers of valid and deficient Elections) and objections received. Prior to the Final Approval hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

3. **Objection to Settlement; Disputes as to Workweeks Allocated to Class Members; Objections to Class Counsel Fees and Expenses Payment; Elections Not to Participate in Settlement.** Participating Class Members may submit objections to the Settlement and objections to Class Counsel's Fees and Expenses Payment. Class Members may also submit disputes as to workweeks allocated to them and Elections Not to Participate in Settlement pursuant to the following procedures:

- a. **Objections to Settlement and Disputes as to Workweeks.** The Class Notice will provide that only Participating Class Members who wish to object to the Settlement must submit to the Settlement Administrator with copies to the Parties' Counsel, not later than forty-five (45) days after the Settlement Administrator mails the Class Notice Packets, written objections to the Settlement setting forth the grounds for the objection. A Participating Class Member who does not submit a written objection in the manner and by the deadline specified above will be deemed to have waived any objection and will be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. Non-Participating Class Members shall have no ability to comment on or object to the Settlement.

Each Class Member shall also have forty-five (45) days from the date of mailing the Class Notice Packet in which to dispute the number of workweeks the Class Action allocates to them during

the Class Period. Any dispute as to this allocation shall be resolved by the Settlement Administrator. Any Notice of Dispute shall be directed to the Settlement Administrator.

- b. **Objections to Class Counsel Fees and Expense Payment.** Unless otherwise ordered by the Court, Class Counsel shall file their application for the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment no later than the date the motion for final approval is to be filed, and the application will be scheduled to be heard by the Court at the Final Approval Hearing. The Class Notice will provide that Participating Class Members who wish to object to the Class Counsel's Fees and Expense Payment must submit to the Settlement Administrator with copies to the Parties' Counsel not later than forty-five (45) days after the Settlement Administrator mails the Class Notice Packets, written objection to the fees and costs setting forth the grounds for the objection. A Participating Class Member who does not submit a written statement of objection in the manner and by the deadline specified above will be deemed to have waived any objections and will be foreclosed from making any objections (whether by appeal or otherwise) to the Class Counsel Fees and Expense Payment. Non-Participating Class Members shall have no ability to object to Class Counsel Fees and Expense Payment.
- c. **Election Not to Participate in Settlement.** The Class Notice also will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator not later than forty-five (45) days after the Settlement Administrator mails the Class Notice Packets, a signed Election Not to Participate in Settlement. To be valid, an Election Not to Participate must be timely and must comply with the instructions in the Class Notice.

If a question is raised about the authenticity of a signed Election Not to Participate in Settlement, the Settlement Administrator will have the right to demand additional proof of the Class Member's identity. A Non-Participating Class Member will not participate in or be bound by the Settlement and the Judgment. Defendants will remain free to contest any claim brought by the Class Member that would have been barred by this Agreement, and nothing in this Agreement will constitute or be construed as a waiver of any defense Defendants have or could have asserted against such a claim. A Class Member who does not complete and mail a timely

Election Not to Participate in Settlement in the manner and by the deadline specified above will automatically become a Participating Class Member and be bound by all terms and conditions of the Settlement, including the Released Class Claims by the Class, if the Settlement is approved by the Court, and by the Judgment, regardless of whether he or she has objected to the Settlement. Persons who submit an Election Not to Participate in Settlement shall not be permitted to file objections to the Settlement or appear at the Final Approval Hearing to voice any objections to the Settlement.

All Participating Class Members who do not submit a valid and timely Election Not to Participate in Settlement will receive a Settlement Share, without the need to file a claim form, and will be bound by all of the terms of the Settlement, including without limitation the release of the Released Class Claims by the Participating Class Members set forth in this Agreement.

- d. **Report.** Not later than ten (10) days after the deadline for submission of Elections Not to Participate in Settlement, the Settlement Administration will provide the Parties with a complete and accurate list of all Participating Class Members and all Non-Participating Class Members.

- 4. **Right of Defendants to Reject Settlement.** If ten percent (10%) or more of the Class Members who have not separately settled their Released Class Claims with Defendants timely submit valid Elections Not to Participate in Settlement, Defendants will have the right, but not the obligation, to avoid the Settlement and the Parties will have no further obligations under the Settlement, including any obligation by Defendants to pay the Gross Settlement Amount, or any amounts that otherwise would have been owed under this Agreement, except that Defendants will pay the Settlement Administrator's reasonable fees and expenses incurred as of the date that Defendants exercise their rights to void the Settlement. Defendants will notify Class Counsel and the Court whether they are exercising this right to void not later than seven (7) days after the Settlement Administrator notifies the Parties of the number of Valid Elections Not to Participate in Settlement it has received.
- 5. **No Solicitation.** The Parties and their counsel represent that neither the Parties nor their respective counsel have or will solicit or otherwise encourage directly or indirectly any Class Member to object to the

Settlement, appeal from the Judgment, or elect not to participate in the Settlement. If a Class Member submits an Election Not to Participate in Settlement, Class Counsel will not solicit, represent, or otherwise encourage that Non-Participating Class Member to participate in separate litigation against Defendants.

6. Additional Briefing and Final Approval.

- a. Class Counsel will file with the Court their application for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment no later than the date the Plaintiffs file their Motion for Final Approval, and the application will be scheduled to be heard by the Court as the Final Approval Hearing.
- b. Not later than sixteen (16) court days before the Final Approving Hearing, the Plaintiffs will file with the Court a motion for final approval of the Settlement, the PAGA Payment, and payment of the Settlement Administrator's reasonable fees and expenses.
- c. If the Court does not grant final approval of the Settlement or grants final approval conditioned on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), then the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court's approval. However, an award by the Court of a lesser amount than that sought by Plaintiffs and Class Counsel for the PAGA Payment, Class Representative Service Payment, the Class Counsel Fees Payment, or the Class Counsel Litigation Expenses Payment, will not constitute a material modification to the Settlement within the meaning of this paragraph.
- d. Upon final approval of the Settlement by the Court at or after the Final Approval Hearing, the Parties will present for the Court's approval and entry the Judgment. After entry of the Judgment, the Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable law.

7. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, Plaintiffs and Participating Class Members who did not timely submit an objection to the Settlement, Defendants, and their respective counsels hereby waive any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as, but not limited to, a motion to vacate judgment, a motion for new trial, an any extraordinary writ. The Judgment therefore will become nonappealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. If an appeal is taken from the Judgment, the time for consummation of the Settlement (including making payments under the Settlement) will be suspended until such time as the appeal is finally resolved and the Judgment becomes Final.
8. **Vacating, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other motion, petition, or application, the reviewing Court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), and that Court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher Court, then the Parties shall work together in good faith to address any concerns raised by the reviewing Court and proposed a revised Settlement for the approval of the Court not later than fourteen (14) days after the reviewing Court's decision vacating, reversing, or materially modifying the Judgment becomes Final. A vacation, reversal, or modification of the Court's award of the Class Representative Service Payment or the Class Counsel Fees Payment or Litigation Expenses Payment will not constitute a vacation, reversal, or material modification of the Judgment within the meaning of this paragraph, provided that Defendants' obligations to make payments under this Settlement will remain limited by the Gross Settlement Amount.
9. **Timing of Provision of Settlement Shares and Other Payments.** Defendants will fund the Gross Settlement Amount by depositing the money with the Settlement Administrator. Defendants shall fund the Gross Settlement Amount and the amount necessary to pay Defendants' share of payroll taxes per payment schedule stated in Section III(B) of this Agreement. Within ten (10) days after Defendants fund the Gross Settlement Amount, the Settlement Administrator will pay to Participating Class Members, their Settlement Shares; to Plaintiffs, their Class

Representative Service Payment; to Class Counsel, their Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment; to the LWDA, their LWDA Payment; and to the Settlement Administrator, its reasonable fees and expenses.

10. **Uncashed Settlement Share Checks.** A Participating Class Member must cash his or her Settlement Share check within one hundred and eighty (180) days after it is mailed to him or her. If a check is returned to the Settlement Administrator, the Settlement Administrator will make all reasonable efforts to re-mail it to the Participating Class Member at his or her correct address. If a Participating Class Member's Settlement Share check is not cashed within one hundred and twenty (120) days after its last mailing to the Participating Class Member, the Settlement Administrator will send the Participating Class Member a notice informing him or her that unless the check is cashed in the next sixty (60) days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed. If the check remains uncashed by the expiration of the sixty (60) day period after this notice, the funds from such uncashed checks will be paid to the La Raza Centro Legal in the name of the Participating Class Member and the Participating Class Member will remain bound by the Settlement.
11. **Final Report by Settlement Administrator to Court.** Within ten (10) days after disbursement of all funds from the Gross Settlement amount, the Settlement Administrator will serve on the Parties and file with the Court a declaration proving a final report on the disbursements of all funds from the Gross Settlement Amount.

G. Release of Claims

1. **Participating Class Members.** As of the date the Judgment becomes Final, Plaintiffs and the Participating Class Members shall release all Released Class Claims that occurred during the Class Period as to the Released Parties. Released Class Claims are defined as all claims pled in the action in the Complaint including claims for (1) failure to timely pay all earned wages; (2) failure to provide meal periods; (3) failure to provide rest periods; (4) failure to furnish accurate wage statements; (5) waiting time penalties; (6) violation of California Business and Professions Code § 17200 et seq.; and (7) civil penalties pursuant to the Private Attorneys General Act ("PAGA"), as well as any and all other wage and hour claims that were asserted or could have been asserted based on the factual allegations contained in the Complaint arising during the Class Period.

2. **Plaintiffs.** As of the date the Judgment becomes Final, Plaintiffs hereby fully and finally release Defendants and the other Released Parties from any and all claims, losses, debts, charges, damages, demands, obligations, causes of action, lawsuits, liabilities, breaches of duty, misfeasance, malfeasance, promises, controversies, contracts, judgments, awards, penalties, costs, and expenses of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any local, state, or federal statute, rule, regulation, ordinance or common law, including but not limited to those claims raised in the Action and/or that could have been raised in the Action, and those arising from or related to their work with Defendants (“Plaintiffs’ Released Claims”)

3. **Plaintiff’s Waiver of Rights Under California Civil Code Section 1542.** As partial consideration for the Class Representative Service Payment, the Plaintiffs’ released Claims shall include all such claims, whether known or unknown by the releasing party. Thus, even if Plaintiffs discover facts and/or claims in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Plaintiffs’ Released Claims, those claims will remain released and forever barred. Therefore, with respect to those Released Class Claims, Plaintiffs expressly waive and relinquish the provisions, rights and benefits of section 1542 of the California Civil Code, which reads:

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

4. **Class Counsel.** As of the date the Judgment becomes Final, and except as otherwise provided by this Agreement and the Judgment, Class Counsel and any counsel associated with Class Counsel waive any claim to costs and attorneys’ fees and expenses against Defendants arising from or related to the Action.

H. **No Effect on Other Benefits.** The Settlement Shares will not result in any additional benefit payments (e.g., 401(k) or bonus) beyond those provided by this Agreement to Plaintiffs or Participating Class Members, and Plaintiffs and Participating Class Members will be deemed to have waived all such claims, whether known or unknown by them, as part of their release of claims under this Agreement.

I. **Limitation on Public Statements About Settlement.** Plaintiffs and Class Counsel represent that they have not and will not issue any press, publications, or other media releases about the Settlement (including, but not necessarily limited to advertising or marketing materials or on social media) or have any communication with the press or media or anyone else regarding the Settlement. This provision shall not prohibit Class Counsel from communicating with Class Members after preliminary approval is granted for the sole purpose of administering the Settlement. This provision does not limit Class Counsel from complying with ethical obligations or from posting court-filed documents on their website for viewing by Class Members after preliminary approval.

J. **Miscellaneous Terms.**

1. **Confidentiality Prior to Preliminary Approval.** Plaintiffs warrant that prior to Preliminary Approval that Plaintiffs will not disclose, disseminate and/or publicize, cause or permit to be disclosed, disseminated or publicized, any of the terms of the Memorandum of Understanding or this Settlement Agreement directly or indirectly, specifically or generally, to any person, corporation, association, governmental agency, or other entity except: (1) to Plaintiffs' attorney, accountant, or spouse, all of whom will also be instructed to keep this agreement confidential; (2) to the extent necessary to report income to appropriate taxing authorities; (3) in response to an order of a court of competent jurisdiction or a subpoena issued under the authority thereof or (4) in response to an inquiry or subpoena issued by a state or federal governmental agency. It is understood and agreed that notice of receipt by Plaintiffs of any such judicial or agency order, inquiry or subpoena shall immediately be communicated by the recipient to counsel for Defendants telephonically, and then confirmed immediately thereafter in writing, so that Defendants will have an opportunity to intervene to assert what rights they may have to non-disclosure prior to responses to said order, inquiry, or subpoena. Plaintiffs specifically warrant that Plaintiffs will not directly or indirectly initiate any conversation or other communication with any person regarding this Agreement, or the matters giving rise to this Agreement. If asked about this Agreement, or the matters giving rise to this Agreement, Plaintiffs shall respond by stating only that "the matter was resolved" or words to that effect or direct the inquirer to publicly filed Court documents on Plaintiffs' counsel's website.

2. **No Admission of Liability or Class Certification for Other Purposes.**

- a. Defendants and the Released Parties deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, have any liability to anyone under the claims asserted in the Action, or that but for the Settlement a class should be certified in the Action. This Agreement is entered into solely for the purpose of compromising highly undisputed claims. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by Defendants or the Released Parties, or an admission by Plaintiffs that any of the claims were non-meritorious or any defense asserted by Defendants were meritorious. This Settlement and the fact that Plaintiffs and Defendants were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation other than solely in connection with effectuating the Settlement pursuant to this Agreement).
- b. Whether or not the Judgment becomes Final, neither the Settlement, this Agreement, any document, statement, proceeding or conduct related to the Settlement or the Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Plaintiffs or Defendants or any of the Released Parties, including, but not limited to, evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any of the Released Parties, in any further proceeding in the Action, or any other civil, criminal, or administrative action or proceeding except for purposes of effectuating the Settlement pursuant to this Agreement.
- c. This section and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may be admitted in evidence and otherwise used in any and all proceedings for the limited purpose of enforcing any or all terms of this Agreement or defending any claims released or barred by this Agreement.

- 5. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsels, this Agreement and its exhibits will constitute the entire agreement between the Parties relating to the Settlement and it will then be deemed that no oral representations, warranties, covenants, or inducements have

been made to any Party concerning this Agreement or its exhibits other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.

6. **Attorney Authorization.** Class Counsel and Defendants' Counsel warrant and represent that they are authorized by Plaintiffs and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement including any amendments to this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement.
7. **No Prior Assignments.** The Parties represent, covenant and warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.
8. **No Tax Advice.** Neither Class Counsel nor Defendants' Counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
9. **Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives.
10. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
11. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California.
12. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
13. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.

14. **Use and Return of Documents and Data.** All originals, copies, and summaries of documents and data provided to Class Counsel by Defendants in connection with the mediation or other settlement negotiations in this matter may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule. Within thirty (30) days after the Judgment becomes Final, Class Counsel will return or destroy and confirm in writing to Defendants the destruction of all such documents and data.
15. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
16. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third (3rd) business day after mailing by United States mail, addressed as follows:

To Plaintiffs and the Class:

Arlo Garcia Uriarte
Un Kei Wu
Liberation Law Group, P.C.
2760 Mission Street
San Francisco, CA 94110
Tel: (415) 695-1000

To Defendants:

Dennis E. Holahan
Marcus J. Lee
Daniel XuLi
333 Bush Street, Suite 1100
San Francisco, California 94104
Tel: (415) 362-2580

17. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts by facsimile, electronically or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

18. **Continuing Jurisdiction.** The Court shall retain continuing jurisdiction over this Action to ensure the continuing implementation of this Agreement.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsels hereby execute this Agreement.

10/29/19
Date: _____

Clara Bailon Ramirez
Plaintiff Clara Bailon

10/29/19
Date: _____

Monica alvarez
Plaintiff Monica Alvarez

Date: 10/29/19

Un Kei Wu
Un Kei Wu, Class Counsel
Liberation Law Group, P.C.

Date: _____

Defendants Forge Pizza, Forge Pizza
Danville LLC, and LBT JLS LLC
By: Michael Karp

Date: _____

Marcus Lee
Lewis Brisbois Bisgaard & Smith, LLP
Counsel for Defendants Forge Pizza, Forge
Pizza Danville, LLC, and LBT JLS LLC

18. **Continuing Jurisdiction.** The Court shall retain continuing jurisdiction over this Action to ensure the continuing implementation of this Agreement.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsels hereby execute this Agreement.

Date: _____

Plaintiff Clara Bailon

Date: _____

Plaintiff Monica Alvarez

Date: _____

Un Kei Wu, Class Counsel
Liberation Law Group, P.C.

Date: 10/25/2019



Defendants Forge Pizza, Forge Pizza
Danville LLC, and LBT JLS LLC
By: Michael Karp

Date: _____

Marcus Lee
Lewis Brisbois Bisgaard & Smith, LLP
Counsel for Defendants Forge Pizza, Forge
Pizza Danville, LLC, and LBT JLS LLC

18. **Continuing Jurisdiction.** The Court shall retain continuing jurisdiction over this Action to ensure the continuing implementation of this Agreement.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsels hereby execute this Agreement.

Date: _____

Plaintiff Clara Bailon

Date: _____

Plaintiff Monica Alvarez

Date: _____

Un Kei Wu, Class Counsel
Liberation Law Group, P.C.

Date: _____

Defendants Forge Pizza, Forge Pizza
Danville LLC, and LBT JLS LLC
By: Michael Karp

Date: 10/25/2019



Marcus Lee
Lewis Brisbois Bisgaard & Smith, LLP
Counsel for Defendants Forge Pizza, Forge
Pizza Danville, LLC, and LBT JLS LLC