

LAW OFFICE OF SCOTT ERNEST WHEELER

Scott Ernest Wheeler (SBN 187998)
Justin A. Wheeler (SBN 342226)
250 West First Street, Suite 216
Claremont, California 91711
Telephone: (909) 621-4988
Facsimile: (909) 621-4622
Email: sew@scottwheelerlawoffice.com
jaw@scottwheelerlawoffice.com

Attorneys for Plaintiff and the Putative Class

CALL & JENSEN A Professional Corporation

John T. Egley (SBN 232545)
Ellen Connelly Cohen (SBN 276458)
610 Newport Center Drive, Suite 700
Newport Beach, California 92660
Telephone: (949) 717-3000
jegley@calljensen.com
ecohen@calljensen.com

Attorneys for Defendant, La Pergola Trattoria LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO JUSTICE CENTER

JUAN S. GONZALEZ, individually, and
on behalf of all others similarly situated,

Plaintiff,

v.

LA PERGOLA TRATTORIA LLC, a
California limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

CASE NO.: CIVSB2220337

[Assigned for all purposes to Hon. Jessica
Morgan]

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT AND
RELEASE**

Action Filed: September 14, 2022
Trial Date: None Set

1 This Class Action and PAGA Settlement and Release (“Settlement Agreement”) is entered
2 into by and between Plaintiff Juan S. Gonzalez (“Plaintiff”), on behalf of himself and the Class, on
3 the one hand, and Defendant La Pergola Trattoria LLC (“Defendant”), on the other hand. Plaintiff and
4 Defendant are collectively referred to herein as “Parties” and individually referred to herein as
5 “Party.”

6 In consideration of the mutual covenants, promises, and agreements set forth herein, the Parties
7 agree that, pursuant to the terms and conditions set forth herein, which are subject to approval of the
8 Court, this Action and the Released Claims shall be settled and compromised as between Plaintiff and
9 the Class on the one hand and Defendant on the other hand.

10 **DEFINITIONS**

11 1. “Action” means *Gonzalez v. La Pergola Trattoria LLC*, Superior Court of the State of
12 California for the County of San Bernardino, Case No. CIVSB2220337.

13 2. “Class” means: All non-exempt employees who were employed by Defendant, in the
14 State of California, at any time from September 14, 2018, through December 31, 2023.

15 3. “Class Counsel” means the Law Office of Scott Ernest Wheeler.

16 4. “Class Counsel Award” means attorneys’ fees for Class Counsel’s litigation and
17 resolution of this Action and Class Counsel’s expenses and costs incurred in connection with this
18 Action.

19 5. “Class Information” means information regarding Class Members that Defendant will
20 in good faith compile from its records and provide to the Settlement Administrator. It shall be
21 formatted as a Microsoft Excel spreadsheet or Microsoft Word Document and shall include: each
22 Class Member’s full name; social security number; last known address; last known telephone number;
23 and number of Compensable Class Work Weeks and Compensable PAGA Pay Periods.

24 6. “Class Member” means each person who is a member of the Class defined above and
25 who is eligible to participate in this Settlement.

26 7. “Class Period” means the time period from September 14, 2018, through December
27 31, 2023.

1 “Class Representative Service Award” means the amount that the Court authorizes to be paid
2 individually to Plaintiff in recognition of, *inter alia*, Plaintiff’s efforts and risks in assisting with the
3 prosecution of the Action and in return for executing a general release with Defendant.

4 8. “Class Payment Ratio” means the respective Compensable Class Work Weeks for
5 each Settlement Class Member divided by the total Compensable Class Work Weeks for all
6 Settlement Class Members.

7 9. “Compensable Class Work Week” or “Compensable Class Work Weeks” means a
8 reasonable estimate of weeks worked by each Class Member as a non-exempt employee in
9 California for Defendant individually and collectively by all Class Members during the Class Period
10 based on Defendant’s records and used as a value to calculate Individual Class Settlement Payments.
11 The number of Compensable Class Work Weeks for each Class Member will be determined by
12 adding all the calendar days within the inclusive dates of employment for the employee and dividing
13 that number by seven. Any partial workweek will be expressed as a percentage of a full workweek.
14 If it can be readily determined, workweeks where someone was employed but did not record any
15 hours can be excluded from this calculation.

16 10. “Compensable PAGA Pay Period” or “Compensable PAGA Pay Periods” means a
17 reasonable estimate of the number of Pay Periods worked by each PAGA Member, as a nonexempt
18 employee in California for Defendant, individually and collectively by all PAGA Members, during
19 the period from June 3, 2021, through December 31, 2023, based on Defendant’s records and used
20 as a value to calculate Individual PAGA Settlement Payments. The number of Compensable PAGA
21 Pay Periods for each PAGA Member will be determined by adding all the calendar days within the
22 inclusive dates of employment for the employee and dividing that number by 14. Any partial Pay
23 Period will be expressed as a percentage of a full Pay Period. If it can be readily determined, Pay
24 Periods where someone was employed but did not record any hours can be excluded from this
25 calculation.

26 11. “Court” means the Superior Court for the County of San Bernardino, State of
27 California.

28 12. “Defendant” means La Pergola Trattoria LLC.

1 13. “Effective Date” means (a) if there is no Objection to the Settlement, or if there is an
2 Objection but it is withdrawn, then: sixty-five (65) calendar days after the Final Approval Order and
3 Judgment is filed by the Court; (b) if there is an Objection to the Settlement that is not withdrawn, but
4 no appeal is commenced thereafter, then: sixty-five (65) calendar days after the Final Approval Order
5 and Judgment is filed by the Court; (c) if an appeal, writ, or other appellate proceeding opposing the
6 Settlement is filed, then: when any such appeal, writ, or other appellate proceeding has been dismissed
7 finally and conclusively with no right to pursue further remedies or relief. It is the Parties’ intent that
8 this Settlement shall not become effective until the Final Approval Order and Judgment has become
9 completely final, and there is no timely recourse by any appellant, objector, or intervenor who seeks
10 to contest the Settlement.

11 14. “Final Approval Order and Judgment” means an order and judgment that the Court
12 will file which finally approves this Settlement and enters a judgment in favor of Plaintiff.

13 15. “Gross Settlement Amount” means the maximum amount which Defendant is
14 obligated to pay under this Settlement Agreement, which is Thirty-Three Thousand Dollars
15 (\$33,000.00), subject to increase under the circumstances as set forth in Paragraph 58. This is an “all
16 in” non-reversionary Settlement in which Defendant is required to pay the entire Gross Settlement
17 Amount. No portion of the Gross Settlement Amount will revert to Defendant under any
18 circumstances. Payments of any appropriate and lawfully-required employer’s share of the payroll
19 taxes on the taxable portion of the settlement payments shall be paid separately from the Gross
20 Settlement Amount by Defendant at the time the Gross Settlement Amount is funded.

21 16. “Individual Class Settlement Payment” means the amount payable from the Net
22 Settlement Amount to each Settlement Class Member.

23 17. “Individual PAGA Settlement Payment” means the amount payable from the PAGA
24 Payment to each PAGA Member.

25 18. “LWDA” means the California Labor and Workforce Development Agency.

26 19. “Net Settlement Amount” means the Gross Settlement Amount, less the Class Counsel
27 Award, Class Representative Service Award, payment to the LWDA and PAGA Members for PAGA
28 penalties, and Settlement Administration Costs.

20. “Notice of Class and PAGA Settlement” means the notice, substantially in the form attached hereto as **Exhibit 1**, which the Settlement Administrator will mail to each Class and PAGA Member, and which explains, *inter alia*, the terms of this Settlement Agreement, the settlement process, and each Class Member’s estimated Individual Class and PAGA Settlement Payments. Notice of Class and PAGA Settlement will be provided to the Class in English and Spanish.

21. “Operative Complaint” means the Class Action Complaint on file in this action.

22. “Objection” means a letter or other written communication submitted by a Class Member to the Settlement Administrator that contains a clear statement by the Class Member that he or she is objecting to any of the terms of the Settlement.

23. “PAGA Member” or “PAGA Members” means any Class Member who was employed or has been employed by Defendant at any time during the time period of June 3, 2021, through December 31, 2023.

24. “PAGA Payment Ratio” means the respective Compensable PAGA Pay Periods for each PAGA Member divided by the total Compensable PAGA Pay Periods for all PAGA Members.

25. “PAGA Period” means the time period from June 3, 2021, through December 31, 2023.

26. “Parties” means Plaintiff and Defendant, collectively, and “Party” means either Plaintiff or Defendant, individually.

27. “Plaintiff” refers to Juan S. Gonzalez.

28. “Preliminary Approval Date” means the date upon which the Court files an order substantially in the form attached hereto as **Exhibit 2**, and which grants preliminary approval of the Settlement.

29. “Request for Exclusion” means a letter or other written communication submitted by a Class Member to the Settlement Administrator that contains a clear statement by the Class Member that he or she is electing to be excluded from the Settlement.

30. “Released Claims by Plaintiff” is set forth in Paragraph 48 below. Plaintiff releases the “Released Claims by Plaintiff” as of the date Defendant fully funds this Settlement.

31. “Released Class Claims” or “Release of Class Claims” means: As of the date Defendant fully funds this Settlement, Settlement Class Members shall fully and finally release and discharge Released Parties, from September 14, 2018, through December 31, 2023, from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys’ fees, damages, or causes of action contingent or accrued for, that are pleaded, or that could have been pleaded, based on the facts and claims alleged in the Operative Complaint, including any claims for: (a) failure to provide required meal periods, California Labor Code §§ 226.7, 510, 512, and 558; (b) failure to provide required rest periods, California Labor Code §§ 226.7, 510, 512, and 558; (c) failure to pay overtime wages, California Labor Code §§ 510, 558, 1194, 1197, and 1198; (d) failure to pay minimum wages, California Labor Code §§ 1194, 1194.2, 1197, and 1197.1; (e) failure to timely pay wages during employment, California Labor Code §§ 204 and 210; (f) failure to timely pay all wages to discharged and quitting employees, California Labor Code §§ 201-203; (g) failure to maintain required records, California Labor Code §§ 226, 1174, and 1174.5, (h) failure to furnish accurate, itemized wage statements, California Labor Code §§ 226 and 226.3; (i) failure to indemnify employees for necessary expenditures in the discharge of duties, California Labor Code § 2802; and (j) unlawful business practices under California, Business and Professions Code §17200, et seq.; predicated on any of the violations of the California Labor Code and the applicable IWC Wage Order as alleged in the Operative Complaint including but not limited to, claims for restitution and other equitable relief, liquidated damages, or penalties; and any other benefit, wages, penalties, or other amounts claimed on account of the allegations or the primary rights asserted in the Operative Complaint. This release shall apply to any and all claims arising at any point during the Class Period. Upon funding of the total Gross Settlement Amount, all Participating Class Members will forever completely release and discharge the Released Parties from the Released Class Claims for the Class Period. Plaintiff and Defendant intend that the Settlement described in this Settlement Agreement will release and preclude any further claim, whether by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and all of the Settlement Class Members to obtain a recovery to any and all of the Released Class Claims. This release excludes the release of claims not otherwise permitted by law, i.e. Worker’s Compensation and unemployment insurance benefits.

1 32. “Released PAGA Claims” or “Release of PAGA Claims” means: any and all claims
2 for PAGA civil penalties that are pleaded, or that could have been pleaded, based on the facts and
3 claims alleged in the Operative Complaint, including PAGA civil penalties based on claims for: (a)
4 failure to provide required meal periods (California Labor Code §§ 226.7, 510, 512, and 558); (b)
5 failure to provide required rest periods (California Labor Code §§ 226.7, 510, 512, and 558); (c) failure
6 to pay overtime wages (California Labor Code §§ 510, 558, 1194, 1197, and 1198); (d) failure to pay
7 minimum wages (California Labor Code §§ 1194, 1194.2, 1197, and 1197.1); (e) failure to timely pay
8 wages during employment (California Labor Code §§ 204 and 210); (f) failure to timely pay all wages
9 to discharged and quitting employees (California Labor Code §§ 201-203); (g) failure to maintain
10 required records (California Labor Code §§ 226, 1174, and 1174.5); (h) failure to furnish accurate,
11 itemized wage statements (California Labor Code §§ 226 and 226.3); and (i) failure to indemnify
12 employees for necessary expenditures in the discharge of duties (California Labor Code § 2802). Upon
13 funding of the total Gross Settlement Amount, all PAGA Members will forever completely release
14 and discharge the Released Parties from the Released PAGA Claims for the PAGA Period. Plaintiff
15 and Defendant intend that the Settlement described in this Settlement Agreement will release and
16 preclude any further claim for PAGA civil penalties, whether by lawsuit, administrative claim or
17 action, arbitration, demand, or other action of any kind, by each and all of the PAGA Members to
18 obtain a recovery to any and all of the Released PAGA Claims.

19 33. “Released Parties” collectively mean: (i) Defendant; (ii) Defendant’s respective past,
20 present and future heirs, executors, administrators, parents, subsidiaries and affiliates, successors and
21 assigns; and (iii) the past, present and future shareholders, managers, officers, partners, members,
22 agents, employees, attorneys, insurers, predecessors, successors and assigns of any of the foregoing;
23 and (iv) any other individual or entity that could be jointly liable with Defendant for the claims
24 asserted in the Operative Complaint.

25 34. “Response Deadline” means forty-five (45) days after the postmark date of the Notice
26 of Class and PAGA Settlement that the Settlement Administrator shall mail to Class Members, and
27 the last date on which Class Members may: (a) submit a Request for Exclusion; (b) submit an
28 Objection to the Settlement; or (c) submit a Class Work Weeks or PAGA Pay Periods dispute.

39. Procedural History. On September 14, 2022, Plaintiff filed a complaint against Defendant in San Bernardino Superior Court, Case No. CIVSB2220337. Defendant has filed an answer to Plaintiff's complaint.

40. Investigation and Discovery. The Parties have conducted significant investigation of the facts and law during the prosecution of this Action and before this Settlement was reached. Such discovery and investigation included, *inter alia*, the exchange of information and extensive documents pertaining to Plaintiff and the Class, and numerous meetings and informal conferences wherein the Parties exchanged information, class data, and theories of the case. Plaintiff has also investigated the law as applied to the facts of Plaintiff's claims and Defendant's potential defenses thereto.

1 41. Settlement Negotiations. The Parties engaged in extensive arm's-length settlement
2 negotiations through their counsel, at the conclusion of which, the Parties were able to reach
3 agreement regarding the material terms for a proposed class action settlement that would fully resolve
4 this matter, as memorialized in this Agreement.

5 42. Benefits of Settlement to Class Members. Plaintiff and Class Counsel recognize the
6 expense and length of continued proceedings necessary to litigate Plaintiff's claims through trial and
7 any possible appeals. Plaintiff has also taken into account the uncertainty and risk of the outcome of
8 further litigation, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel
9 are also aware of the burdens of proof necessary to establish liability for the claims asserted in the
10 Action, both generally and in response to Defendant's defenses thereto, and the difficulties in
11 establishing damages for the Class. Plaintiff and Class Counsel have also taken into account
12 Defendant's agreement to enter into a settlement that confers substantial relief upon the members of
13 the Class. Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement
14 set forth in this Settlement Agreement is a fair, adequate, and a reasonable settlement, and is in the
15 best interests of the Class.

16 43. Defendant's Reasons for Settlement. Defendant has concluded that any further defense
17 of this litigation would be protracted and expensive for all Parties. Substantial amounts of Defendant's
18 time, energy, and resources have been and, unless this Settlement is completed, will continue to be
19 devoted to the defense of the claims asserted by Plaintiff. Defendant has also taken into account the
20 risks of further litigation in reaching its decision to enter into this Settlement. Even though Defendant
21 continues to contend that it is not liable for any of the claims alleged by Plaintiff in this Action,
22 Defendant has agreed, nonetheless, to settle in the manner and upon the terms set forth in this
23 Settlement Agreement to put to rest the claims in this Action.

24 44. No Effect on Other Litigation Matters. The Parties, Class Counsel, and Defense
25 Counsel represent that they are not aware of any other pending matter or action asserting claims that
26 will be extinguished or affected by this Settlement.

45. NOW THEREFORE, in consideration of the mutual covenants, promises, and agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

47. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section, the “acknowledging party” and each Party to this Agreement other than the acknowledging party, an “other party”) acknowledges and agrees that (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her, or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or advisor to any other party to avoid any tax penalty that may be imposed on the acknowledging party; and (3) no attorney or advisor to any other party has imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

48. Released Claims by Plaintiff. Plaintiff agrees not to Object to or Request Exclusion from this Settlement. As of the date Defendant fully funds the Settlement, Plaintiff agrees to the Release of Class Claims and Release of PAGA Claims, which are set forth in Paragraphs 31 and 32 above. In addition to Release of Class and PAGA Claims and as a material inducement to Defendant to enter into this Settlement Agreement, Plaintiff does hereby, for himself and for his spouse, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators,

1 guardians, personal representatives, and assign, forever and completely release and discharge the
2 Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises,
3 agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses,
4 debts, and expenses (including back wages, statutory penalties, civil penalties, liquidated damages,
5 exemplary damages, interest, attorneys' fees, and costs) of any nature whatsoever, from the beginning
6 of time through the execution of this Settlement Agreement, whether known or unknown, suspected
7 or unsuspected, including but not limited to all claims arising out of, based upon, or relating to
8 Plaintiff's employment with or work for Defendant or the remuneration for or termination of such
9 employment.

10 Without limiting the generality of the foregoing, Plaintiff expressly releases all claims arising
11 under the California Labor Code (including, but not limited to, sections 201, 201.3, 202, 203, 204,
12 210, 216, 218.6, 221, 224, 225, 225.5, 226, 226.3, 226.7, 227.3, 510, 511, 512, 558, 1174, 1174.5,
13 1194, 1197, 1197.1, 1197.2, 1198, 2802, and 2698 et seq.); the Wage Orders of the California
14 Industrial Welfare Commission; the California Private Attorneys General Act of 2004 ("PAGA");
15 California Business and Professions Code section 17200 et seq.; the California Civil Code, to include,
16 but not limited to, section 3336 and 3294; the California common law of contract; the Fair Labor
17 Standards Act, 29 U.S.C. § 201 et seq.; federal common law; and the Employee Retirement Income
18 Security Act, 29 U.S.C. § 1001, et seq. Plaintiff's Released Claims also include all claims for lost
19 wages and benefits, emotional distress, retaliation, punitive damages, and attorneys' fees and costs
20 arising under federal, state, or local laws for discrimination, harassment, and wrongful termination
21 such as by way of example only, (as amended) 42 U.S.C. section 1981, Title VII of the Civil Rights
22 Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, and
23 the California Fair Employment and Housing Act; and the law of contract and tort. This release
24 excludes the release of claims not permitted by law. As to the Plaintiff's Released Claims only,
25 Plaintiff expressly waives all rights and benefits under the terms of section 1542 of the California
26 Civil Code. Section 1542 reads as follows:

27 **A general release does not extend to claims that the creditor or releasing party does**
28 **not know or suspect to exist in his or her favor at the time of executing the release**

1 **and that, if known by him or her, would have materially affected his or her**
2 **settlement with the debtor or releasing party.**

3 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full
4 and complete release and discharge of all parties, Plaintiff and Class Counsel expressly acknowledge
5 that this Settlement Agreement is intended to include in its effect, without limitation, all claims that
6 Plaintiff knew of, as well as all claims that he does not know or suspect to exist in his favor against
7 the Released Parties, or any of them, for the time period from the beginning of time to the execution
8 of this Settlement Agreement, and that this Settlement Agreement contemplates the extinguishment
9 of any such claims. Plaintiff and Plaintiff's Counsel do not currently intend to pursue any claims
10 against Defendant, including, but not limited to, any and all claims relating to or arising from
11 Plaintiff's employment with Defendant, and that Plaintiff's Counsel is not currently aware of any
12 facts or legal theories upon which any claims or causes of action could be brought against
13 Defendant, excepting those facts or legal theories alleged in the Operative Complaint in this
14 Action. This release does not include claims which cannot be released such as unemployment or
15 Worker's Compensation benefits.

16 49. Class Certification. For settlement purposes only, Defendant will stipulate that the
17 Settlement Class Members described herein who do not request exclusion from the Settlement Class
18 may be conditionally certified as a settlement class. This stipulation to certification is in no way an
19 admission that class action certification is proper and shall not be admissible in this or in any other
20 action except for the sole purposes of enforcing this Agreement. Should the Court fail to issue Final
21 Approval for any reason, the Parties' stipulation to class certification as part of the Settlement
22 Agreement shall become null and void *ab initio* and shall have no bearing on but remains protected
23 by California Evidence Code Section 1152 and shall not be admissible in connection with, the issue
24 of whether or not certification would be appropriate in a non-settlement context. Defendant expressly
25 reserves its rights and declares that Defendant will continue to oppose class certification and contest
26 the substantive merits of the case should the Court fail to issue Final Approval. Plaintiff expressly
27 reserve his rights and declares that he will continue to pursue class certification and a trial should the
28 Court fail to grant Final Approval.

1 50. Approval of Settlement. Plaintiff will move the Court to grant preliminary and final
2 approval of this class action Settlement. The Parties agree to work diligently and cooperatively to
3 have this matter presented to the Court for preliminary and final approval.

4 51. Release of Class Claims by Settlement Class Members. Settlement Class Members
5 release the “Released Class Claims,” as defined, as of the date Defendant fully funds the Settlement.

6 52. Release of PAGA Claims. PAGA Members release the “Released PAGA Claims,”
7 as defined, as of the date Defendant fully funds the Settlement.

8 53. Settlement Administration. Within fourteen (14) calendar days after the Preliminary
9 Approval Date, Defendant shall provide the Settlement Administrator with the Class Information.

10 54. Notice to the Class. Upon receipt of the Class Information, the Settlement
11 Administrator will perform a search based on the National Change of Address Database to update and
12 correct any known or identifiable address changes. Within ten (10) calendar days after receiving the
13 Class Information, the Settlement Administrator shall mail copies of the Notice of Class and PAGA
14 Settlement to all Class Members via regular First Class U.S. Mail. The Settlement Administrator shall
15 exercise its best judgment to determine the current mailing address for each Class Member. The
16 address identified by the Settlement Administrator as the current mailing address shall be presumed
17 to be the best mailing address for each Class Member.

18 a. Undeliverable Notices. Any Notice of Class and PAGA Settlement returned to
19 the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed
20 to the forwarding address affixed thereto within ten (10) calendar days. For any undeliverable Notice
21 of Class and PAGA Settlement returned for which no forwarding address is affixed, the Settlement
22 Administrator will conduct its investigation for an updated address of the Class Member and re-mail
23 the Notice of Class and PAGA Settlement. If an updated address is found, the Settlement
24 Administrator shall have seven (7) days to re-mail the Notice of Class and PAGA Settlement from
25 receipt of the undelivered envelope. The Settlement Administrator will provide a cover letter notifying
26 the Class Member of the extended Response Deadline. Any Class Member who receives a re-mailed
27 Notice of Class and PAGA Settlement shall have forty-five (45) days after the postmark date of the
28

1 re-mailed Notice of Class Settlement to: (a) submit a Request for Exclusion; (b) submit an Objection
2 to the Settlement; or (c) submit a Class Work Weeks/PAGA Pay Periods dispute.

3 (1) Verification of Class Member Employment Status. If Notice of Class
4 and PAGA Settlement sent to a Class Member is determined to be
5 undeliverable, the Settlement Administrator shall verify the
6 employment status of the Class Member with Defendant within five
7 (5) days of receipt of the undeliverable Notice of Class and PAGA
8 Settlement. If the Class Member is a current employee of Defendant,
9 Defendant shall take all reasonable efforts to obtain the current
10 address from the Class Member and shall provide the same with seven
11 (7) days of notice from the Settlement Administrator.

12 b. Disputes Regarding Individual Settlement Payments. Class Members will have
13 the opportunity, should they disagree with Defendant's records regarding the number of Compensable
14 Class Work Weeks or Compensable PAGA Pay Periods stated in the Notice of Class and PAGA
15 Settlement, to provide documentation and/or an explanation to show contrary information by the
16 Response Deadline. The Class Member may submit notice of the dispute via email, fax, or mail. The
17 Settlement Administrator must encourage the Class Member to submit supporting documentation
18 demonstrating that the number of Compensable Class Work Weeks or Compensable PAGA Pay
19 Periods listed in the Notice of Class and PAGA Settlement is incorrect. In the absence of any contrary
20 documentation, the Settlement Administrator is entitled to presume that the information provided by
21 Defendant is correct. If there is a dispute, the Settlement Administrator will consult with the Parties
22 to determine whether an adjustment is warranted. The Settlement Administrator shall then determine
23 the eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this
24 Agreement. The Settlement Administrator's determination shall be final and not appealable or
25 otherwise susceptible to challenge.

26 c. Request for Exclusion. Class Members who wish to exclude themselves from
27 the Settlement must mail or e-mail to the Settlement Administrator a Request for Exclusion by the
28 Response Deadline. The Request for Exclusion must: (a) contain the full name, address, and

1 telephone number of the Class Member, and the last four digits of the Class Member's social
2 security number; (b) contain the case name and case number; (c) a clear statement by the Class
3 Member that he or she is electing to be excluded from the Settlement; (d) be signed by the Class
4 Member; and (e) be postmarked or e-mailed by the Response Deadline. The date of the postmark on
5 the return mailing envelope on the Request for Exclusion, or the date the e-mail is sent, shall be the
6 exclusive means used to determine whether it has been timely submitted. Any Class Member who
7 requests to be excluded from the Settlement Class shall not be entitled to any Individual Settlement
8 Payment, shall not release any of the Released Claims by Settlement Class Members, and shall not
9 have any right to object, appeal or comment thereon. Class Members who fail to submit a valid and
10 timely Request for Exclusion on or before the Response Deadline shall be bound by all terms of the
11 Settlement and any Final Approval Order and Judgment entered in this Action. Any Class Member
12 who submits a valid and timely Request for Exclusion will still receive their share of the PAGA
13 portion of this settlement if they are eligible as a PAGA Aggrieved Employee.

14 d. Objections. Class Members may appear at the Final Approval Hearing at his,
15 her or their expense, either in person, telephonically, or by using ZOOM through the Court's
16 website or through an attorney. Class Members who wish to object to the Settlement may do so
17 orally at the Final Approval Hearing without the need to submit a written Objection, or by emailing
18 or mailing by U.S. Mail to the Settlement Administrator a written Objection by the Response
19 Deadline. The written Objection should contain the following: (a) contain the full name, address,
20 and telephone number of the Class Member, and the last four digits of the Class Member's social
21 security number; (b) clearly identify the case name and number, (c) the dates of employment of the
22 Class Member; (d) be signed by the Class Member; (e) provide a concise statement of the reasons
23 for objecting; and (f) be postmarked or e-mailed by the Response Deadline. The date of the
24 postmark on the return mailing envelope on the written Objection, or the date the e-mail is sent,
25 shall be the exclusive means used to determine whether the written Objection has been timely
26 submitted. Class Members may withdraw their Objection at any time. Class Members who submit
27 a Request for Exclusion Form may not submit objections to the Settlement. Class Members who fail
28 to make an Objection in the manner specified above may be deemed to have waived any objection

1 and may be foreclosed from making any objections (whether by appeal or otherwise) to the
2 Settlement as determined by the Court within its discretion. The Settlement Administrator will
3 provide the Parties with any written Objection within seven (7) calendar days of its receipt of any
4 Objection. Plaintiff will file any and all written Objections with the Court in advance of the Final
5 Approval Hearing.

6 e. If more than five (5) percent of the Class Members opt out or object to this
7 Settlement Agreement, or if a number of Class Members whose share of the Net Settlement Amount
8 is 5% or more opt out or object to this Settlement Agreement, Defendant will have the right to rescind
9 and terminate the Settlement without prejudice to its pre-settlement positions and defenses in the
10 litigation. In such a case, the Parties and any funds to be awarded shall be returned to their respective
11 statuses as of the date and time immediately prior to the execution of this Agreement.

12 f. Except for those Settlement Class Members who exclude themselves in
13 compliance with the Request for Exclusion procedures set forth above, all Settlement Class Members
14 will: (i) be deemed to be Participating Class Members for all purposes under this Settlement
15 Agreement; (ii) will be bound by the terms and conditions of this Settlement Agreement, the
16 Judgment, and the releases set forth herein; and (iii) except as otherwise provided herein, will be
17 deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy
18 of the Settlement.

19 54. Funding Gross Settlement Amount. Within ten (10) days after the Effective Date,
20 Defendant shall wire transfer the full Gross Settlement Amount along with Defendant's share of the
21 payroll taxes to the Settlement Administrator.

22 55. Allocation of Settlement. Individual Class Settlement Payments will be paid from the
23 Net Settlement Amount and shall be paid pursuant to the settlement formula set forth herein.
24 Individual Class Settlement Payments may be combined with Individual PAGA Settlement Payments
25 in a single check and shall be mailed by regular First Class U.S. Mail to Settlement Class Members'
26 last known mailing address.

27 a. The Settlement Administrator shall calculate the total Compensable Class
28 Work Weeks and Compensable PAGA Pay Periods for all Settlement Class Members based on the

1 Class Information provided by Defendant. The respective Compensable Class Work Weeks for each
2 Settlement Class Member will be divided by the total Compensable Class Work Weeks for all
3 Settlement Class Members, resulting in the Class Payment Ratio for each Settlement Class Member;
4 a similar calculation will apply to determining the PAGA Payment Ratio for Compensable PAGA Pay
5 Periods. Each Settlement Class Member's Class Payment Ratio will then be multiplied by the Net
6 Settlement Amount to determine his or her Individual Class Settlement Payment.

7 b. Individual Class Settlement Payments due to each Settlement Class Member
8 shall be designated as follows:

9 1. Thirty-Three and One Third percent (33.33%) of the Individual Class
10 Settlement Payment shall represent payment for alleged unpaid wages. This payment shall be
11 subject to the withholding of all applicable local, state, and federal taxes. Applicable payroll taxes
12 and/or contributions will be deducted from the amount paid to Settlement Class Members. The
13 Settlement Administrator will issue a W-2 Form to each Settlement Class Member in relation to this
14 payment.

15 2. Thirty-Three and One Third percent (33.33%) of the Individual Class
16 Settlement Payment shall represent payment of all penalties. These payments will not be subject to
17 withholding of local, state, and federal taxes. The Settlement Administrator will issue an IRS Form
18 1099 to each Settlement Class Member in relation to these payments.

19 3. Thirty-Three and One Third percent (33.33%) of the Individual Class
20 Settlement Payment shall represent payment of all interest. These payments will not be subject to
21 withholding of local, state, and federal taxes. The Settlement Administrator will issue an IRS Form
22 1099 to each Settlement Class Member in relation to these payments.

23 (a). Class Members With Missing/Unverifiable Social Security
24 Numbers and Withholdings of Taxes and Applicable Penalties. In the event that an Individual Class
25 or PAGA Settlement Payment exceeds the threshold amount that must be reported to the Internal
26 Revenue Service by means of a Form 1099, Class Counsel, and the Settlement Administrator, will
27 take all necessary and reasonable steps to obtain W-9's from Class Members and to comply with
28 applicable IRS regulations on issuing 1099's without a social security number or tax entity

1 identification number, and shall take all reasonable and necessary steps to avoid imposition of IRS
2 penalties against the Gross Settlement Amount, including, but not limited to limiting payments below
3 the reportable threshold and/or withholding of taxes and any applicable penalties. The Settlement
4 Administrator will contact Class Members who are entitled to payments that exceed the taxable
5 income threshold twice, with at least 30 days between the two contacts.

6 c. Uncashed Settlement Checks. Individual Class and PAGA Settlement Payment
7 checks shall remain negotiable for one hundred and eighty (180) days from the postmark date of
8 issuance. If the Settlement Check is not cashed, deposited, or otherwise negotiated within the 180-day
9 deadline, the check will be voided, and the funds associated with any such voided checks shall be
10 distributed to the State of California Controller's Office, Unclaimed Property Division, in the name
11 of the affected Class Member. The Release of Class Claims will be binding upon all Participating
12 Class Members, and the Release of PAGA Claims will be binding on all PAGA Members, including
13 those who do not cash their checks within the 180-day period. The Parties agree that this disposition
14 results in no "unpaid cash residue," or "unclaimed or abandoned funds" as the entire Net Settlement
15 Amount will be paid out to the Participating Class Members, whether or not they all cash their
16 payment checks.

17 d. Certification By Settlement Administrator. The Parties have the right to
18 monitor and review administration of the Settlement. Any disputes not resolved by the Settlement
19 Administrator concerning the administration of the Settlement will be resolved by the Court, under
20 the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties
21 will confer in good faith to resolve the disputes without the necessity of involving the Court. Upon
22 completion of administration of the Settlement, the Settlement Administrator shall provide written
23 certification of such completion to counsel for the Parties, and which shall be filed with the Court as
24 necessary.

25 e. Settlement Awards Do Not Trigger Additional Benefits. All monies received
26 by Settlement Class Members shall be deemed to be income to such Settlement Class Members solely
27 in the year in which such awards actually are received by the Settlement Class Members. It is expressly
28 understood and agreed that the receipt of such Individual Class and PAGA Settlement Payments will

1 not entitle any Settlement Class Member to additional compensation or benefits under any company
2 compensation or benefit plan or agreement in place during the period covered by the Settlement, nor
3 will it entitle any Settlement Class Member to any increased pension and/or retirement, or other
4 deferred compensation benefits. It is the intent of this Settlement that any Individual Class and PAGA
5 Settlement Payments provided for in this Agreement are the sole payments to be made by Defendant
6 to the Settlement Class Members in connection with this Settlement, and that the Settlement Class
7 Members are not entitled to any new or additional compensation or benefits as a result of having
8 received the Individual Class or PAGA Settlement Payments (notwithstanding any contrary language
9 or agreement in any benefit or compensation plan document that might have been in effect during the
10 period covered by this Settlement).

11 f. Class Representative Service Award. Defendant agrees not to oppose or object
12 to a Class Representative Service Award to Plaintiff of up to Five Thousand Dollars (\$5,000.00),
13 subject to Court approval. The Settlement Administrator shall issue an IRS Form 1099 – MISC to
14 Plaintiff in connection with the Class Representative Service Award payment. Plaintiff shall be solely
15 and legally responsible to pay any and all applicable taxes on his Class Representative Service Award
16 and shall hold harmless Defendant and Class Counsel from any claim or liability for taxes, penalties,
17 or interest arising as a result of the Class Representative Service Award payment. The Class
18 Representative Service Award shall be in addition to Plaintiff's Individual Settlement Payment. This
19 Settlement is not contingent upon the Court awarding Plaintiff a Class Representative Service Award
20 in any amount, and any amount requested by Plaintiff for the Class Representative Service Award that
21 is not granted by the Court shall return to the Net Settlement Amount and be distributed to Settlement
22 Class Members as provided in this Agreement.

23 g. Class Counsel Award. Defendant agrees not to oppose or object to any
24 application or motion by Class Counsel for attorneys' fees not to exceed Five Thousand Dollars and
25 Zero Cents (\$5,000.00). Defendant further agrees not to oppose any application or motion by Class
26 Counsel for the reimbursement of any costs or expenses associated with Class Counsel's prosecution
27 of this matter from the Gross Settlement Amount not to exceed Three Thousand and Five Hundred
28 Dollars (\$3,500). Class Counsel shall be solely and legally responsible to pay all applicable taxes on

1 the payment made pursuant to this paragraph. The Settlement Administrator shall issue an IRS Form
2 1099 – MISC to Class Counsel for the payments made pursuant to this paragraph. This Settlement is
3 not contingent upon the Court awarding Class Counsel any particular amount in attorneys’ fees and
4 costs. Any amount requested by Class Counsel for the Class Counsel Award and costs that is not
5 granted by the Court shall return to the Net Settlement Amount and be distributed to Settlement Class
6 Members as provided in this Agreement.

7 h. Settlement Administration Costs. The Settlement Administrator shall be paid
8 for the costs of administration of the Settlement from the Gross Settlement Amount. The costs of
9 notice and administration for the disbursement of the Gross Settlement Amount shall not exceed Six
10 Thousand Dollars (\$6,000.00). Prior to the filing of a motion for final approval of this Settlement, the
11 Settlement Administrator shall provide the Parties with a statement detailing the costs of
12 administration. Any amount requested by the Settlement Administrator for administration costs that
13 is not granted by the Court shall return to the Net Settlement Amount and be distributed to Settlement
14 Class members as provided in this Amended Agreement. Defendant will pay any fees incurred by the
15 Settlement Administrator if the settlement is not approved.

16 i. PAGA Payment. Five Thousand dollars (\$5,000) from the Gross Settlement
17 Amount will be allocated to penalties under the Private Attorneys General Act of 2004. Seventy-five
18 percent (75%) of that amount, or \$3,750, will be paid to the LWDA and twenty-five (25%) of that
19 amount, or \$1,250, will be paid to the PAGA Members based upon Compensable PAGA Pay Periods
20 as determined by the PAGA Payment Ratio as set forth in Paragraph 24. This PAGA Payment is
21 made pursuant to California Labor Code § 2699(i). One hundred percent (100%) of each Individual
22 PAGA Settlement Payment will be allocated as penalties and be reported on an IRS form 1099.

23 56. Tax Liability: Class Counsel and Defendant make no representations as to the tax
24 treatment or legal effect of payments called for hereunder, and Plaintiff and the Settlement Class
25 Members are not relying on any statement or representation by Class Counsel or Defendant in this
26 regard. Plaintiff and Settlement Class Members understand and agree that they will be solely
27 responsible for the payment of any taxes and penalties assessed on their respective payments described
28 herein. The amount of federal income tax withholding will be based upon a flat withholding rate for

1 supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or
2 supplemented. Income tax withholding will also be made pursuant to applicable state and/or local
3 withholding codes or regulations. Forms W-2 and/or Forms 1099 will be distributed at times and in
4 the manner required by the Internal Revenue Code of 1986 (the “Code”) and consistent with this
5 Settlement Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax
6 law, is changed after the date of this Settlement Agreement, the processes set forth in this Section may
7 be modified in a manner to bring Defendant into compliance with any such changes.

8 57. Distribution of Settlement Payments. Individual Class and PAGA Settlement
9 Payments to Settlement Class Members and PAGA Members, the Class Representative Service
10 Award, the Class Counsel Award, Settlement Administration Costs, Defendant’s share of employer
11 payroll taxes and Payment to the LWDA, shall all be distributed by the Settlement Administrator
12 within ten (10) calendar days of receipt of the full Gross Settlement Amount from Defendant. Prior to
13 distribution of Individual Class and PAGA Settlement Payments to the Settlement Class Members
14 and PAGA Members, the Settlement Administrator shall update the Class and PAGA Members
15 addresses using the National Change of Address Database.

16 58. Work Week Differential. It is currently estimated that there were 120 Class Members
17 who collectively worked approximately 2,396 Compensable Class Work Weeks through December
18 31, 2023. In the event the actual number of Compensable Class Work Weeks exceeds 2,396 by more
19 than 10% (i.e., more than 2,636 Compensable Class Work Weeks actually worked during the Class
20 Period), then the Gross Settlement Amount will increase on a proportional basis for each percentage
21 in excess of 10% (i.e., an 11% increase shall require an additional 1% added to the Gross Settlement
22 Amount).

23 59. Final Settlement Approval Hearing and Entry of Final Judgment. Upon expiration of
24 the Response Deadline, a final approval hearing shall be conducted to determine, *inter alia*, final
25 approval of the Settlement and amounts properly payable for: (a) Individual Class and PAGA
26 Settlement Payments; (b) the Class Counsel Award; (c) the Class Representative Service Award; (d)
27 PAGA Payment to the LWDA; and (e) the Settlement Administration Costs.

1 60. Duty to Cooperate. If the Court does not grant Preliminary or Final Approval or
2 conditions Preliminary or Final Approval on any material change to the Settlement (including, but
3 not limited to, the scope of releases to be granted by Settlement Class Members and PAGA
4 Members), the Parties agree to expeditiously work together in good faith to address the Court's
5 concerns by revising the Agreement as necessary to obtain Preliminary or Final Approval.

6 61. No Effect on Employee Benefits. Amounts paid to Plaintiff or other Settlement Class
7 Members or PAGA Members pursuant to this Agreement shall be deemed not to be pensionable
8 earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee
9 benefits (e.g., vacations, holiday pay, retirement plans, etc.) of Plaintiff or Settlement Class Members
10 or PAGA Members.

11 62. No Admission by Defendant. Defendant denies any and all claims alleged in this
12 Action and denies all wrongdoing whatsoever. This Settlement Agreement is not a concession or
13 admission and shall not be used against Defendant as an admission or indication with respect to any
14 claim of any fault, concession, or omission by Defendant. Nonetheless, Defendant desires to settle
15 and compromise the matters at issue in the Action to avoid further substantial expense and the
16 inconvenience and distraction of protracted and burdensome litigation. Defendant also has taken into
17 account the uncertainty and risks inherent in litigation, and without conceding any infirmity in the
18 defenses that it has asserted or could assert against Plaintiff and/or any Settlement Class Member, has
19 determined that it is desirable and beneficial that the claims of Plaintiff and the Settlement Class be
20 settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

21 63. No Publicity. Plaintiff and Plaintiff's Counsel agree not to disclose or publicize the
22 settlement the fact of the Settlement, its terms or contents, and the negotiations underlying the
23 Settlement, in any manner or form, directly or indirectly, to any person or entity, except potential
24 Class Members and as shall be contractually required to effectuate the terms of the Settlement as
25 set forth herein. For the avoidance of doubt, this section means Plaintiff and Class Counsel will
26 not to issue press releases, communicate with, or respond to any media or publication entities,
27 publish information in any manner or form, whether printed or electronic, on any medium or
28 otherwise communicate, whether by print, video, recording or any other medium, with any person

1 or entity concerning the Settlement, including the fact of the Settlement, its terms or contents and
2 the negotiations underlying the Settlement, except as shall be contractually required to effectuate
3 the terms of the Settlement as set forth herein. However, for the limited purpose of allowing Class
4 Counsel to prove adequacy as class counsel in other actions, Class Counsel may disclose the name
5 of the Parties in this action and the venue/case number of this action (but not any other settlement
6 details) for such purposes.

7 64. Exhibits and Headings. The terms of this Settlement Agreement include the terms set
8 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein.
9 Any Exhibits to this Agreement are an integral part of the Settlement. The descriptive headings of any
10 paragraphs or sections of this Agreement are inserted for convenience of reference only and do not
11 constitute a part of this Agreement.

12 65. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
13 except such proceedings necessary to implement and complete the Settlement, holding the Action in
14 abeyance pending the final approval hearing to be conducted by the Court.

15 66. Dispute Resolution. Except as otherwise set forth herein, all disputes concerning the
16 interpretation, calculation or payment of Settlement claims, or other disputes regarding compliance
17 with this Agreement shall be resolved as follows:

18 a. If Plaintiff or Class Counsel, on behalf of Plaintiff or any Settlement Class
19 Member, or Defendant's Counsel, on behalf of Defendant, at any time believe that the other Party has
20 breached or acted contrary to the Agreement, that Party shall notify the other Party in writing of the
21 alleged violation.

22 b. Upon receiving notice of the alleged violation or dispute, the responding Party
23 shall have ten (10) calendar days to correct the alleged violation and/or respond to the initiating Party
24 with the reasons why the Party disputes all or part of the allegation.

25 c. If the response does not address the alleged violation to the initiating Party's
26 satisfaction, the Parties shall negotiate in good faith for up to ten (10) calendar days to resolve their
27 differences.

28 d. If Class Counsel and Defendant's Counsel are unable to resolve their

1 differences after twenty (20) calendar days, either Party shall contact the Court to try to resolve the
2 dispute. If that proves unsuccessful, the party may file an appropriate motion for enforcement with
3 the Court. The briefing of such motion should be in letter brief form and shall not exceed five (5)
4 single-spaced pages (excluding exhibits).

5 e. Reasonable attorneys' fees and costs for work done in resolving a dispute under
6 this Section may be recovered by any Party that prevails under the standards set forth within the
7 meaning of applicable law.

8 67. Notice. Unless otherwise specifically provided herein, all notices, demands or other
9 communications given hereunder shall be in writing and shall be deemed to have been duly given as
10 of the third business day after (i) emailing and (ii) mailing by United States registered or certified
11 mail, return receipt requested, addressed:

12 To the Settlement Class:

13 LAW OFFICE OF SCOTT ERNEST WHEELER
14 Scott Ernest Wheeler
15 Justin A. Wheeler
16 250 West First Street, Suite 216
17 Claremont, California 91711
18 Telephone: (909) 621-4988
19 Facsimile: (909) 621-4622
20 Email: sew@scottwheelerlawoffice.com
21 jaw@scottwheelerlawoffice.com

22 To Defendant:

23 CALL & JENSEN A Professional Corporation
24 John T. Egley
25 Ellen Connelly Cohen
26 Newport Center Drive, Suite 700
27 Newport Beach, California 92660
28 Telephone: (949) 717-3000
Email: jegley@calljensen.com
ecohen@calljensen.com

68. Amendment or Modification. This Agreement may be amended or modified only by
a written instrument signed by counsel for all Parties and approved by the Court.

69. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute
the entire Agreement among these Parties, and no oral or written representations, warranties, or
inducements have been made to any Party concerning this Agreement or its Exhibits other than the

1 representations, warranties, and covenants contained and memorialized in the Agreement and its
2 Exhibits.

3 70. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and
4 represent they are expressly authorized by the Parties whom they represent to negotiate this
5 Agreement and to take all appropriate actions required or permitted to be taken by such Parties
6 pursuant to this Agreement to effectuate its terms, and to execute any other documents required to
7 effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other
8 and use their best efforts to affect the implementation of the Settlement. In the event the Parties are
9 unable to reach agreement on the form or content of any document needed to implement the
10 Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of
11 this Settlement, the Parties may seek the assistance of the Court or the mediator to resolve such
12 disagreement. The persons signing this Agreement on behalf of Defendant represent and warrant that
13 they are authorized to sign this Agreement on behalf of Defendant. Plaintiff represents and warrants
14 that he is authorized to sign this Agreement and that he has not assigned any claim, or part of a claim,
15 covered by this Settlement to a third-party.

16 71. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure
17 to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

18 72. No Prior Assignments. The Parties hereto represent, covenant, and warrant that they
19 have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or
20 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action
21 or rights released and discharged by this Settlement Agreement.

22 73. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
23 Order and Judgment, nothing contained herein, nor the consummation of this Settlement Agreement,
24 is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the
25 part of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
26 Settlement Agreement with the intention of avoiding further disputes and litigation with the attendant
27 inconvenience and expenses. This Settlement Agreement is a settlement document, and it, along with
28 all related documents such as the notices, and motions for preliminary and final approval, shall,

1 pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be
2 inadmissible as evidence in any proceeding, except an action or proceeding to approve the Settlement,
3 and/or interpret or enforce this Settlement Agreement. The stipulation for class certification as part
4 of this Settlement Agreement is for settlement purposes only and if for any reason the Settlement is
5 not approved, the stipulation will be of no force or effect.

6 74. California Law Governs. All terms of this Settlement Agreement and the Exhibits
7 hereto shall be governed by and interpreted according to the laws of the State of California.

8 75. Counterparts. This Settlement Agreement may be executed in one or more
9 counterparts. All executed counterparts and each of them shall be deemed to be one and the same
10 instrument. Electronic signatures shall have the same force and effect as an original.

11 76. This Settlement is Fair, Adequate and Reasonable. The Parties believe this Settlement
12 is a fair, adequate, and reasonable settlement of this Action and have arrived at this Settlement after
13 extensive arms-length negotiations, taking into account all relevant factors, present and potential.

14 77. Jurisdiction of the Court. Pursuant to California Code of Civil Procedure section 664.6,
15 the Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement
16 of the terms of this Settlement Agreement and all orders and judgments entered in connection
17 therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes
18 of interpreting, implementing, and enforcing the settlement embodied in this Agreement and all orders
19 and judgments entered in connection therewith. All terms of this Settlement Agreement are subject to
20 approval by the Court.

21 78. Construction. The Parties hereto agree that the terms and conditions of this Settlement
22 Agreement are the result of lengthy, intensive arms'-length negotiations among the Parties and that
23 this Settlement Agreement shall not be construed in favor of or against any Party based on the extent
24 to which any Party or their counsel participated in the drafting of this Settlement Agreement. Plaintiff
25 and Defendant expressly waive the common-law and statutory rule of construction that ambiguities
26 should be construed against the drafter of an agreement and further agree, covenant, and represent that
27 the language in all parts of this Settlement Agreement shall be in all cases construed as a whole,
28 according to its fair meaning.

1 79. Captions and Interpretations. Paragraph titles or captions contained herein are inserted
2 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope
3 of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is
4 contractual and not merely a recital.

5 80. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
6 because the members of the Settlement Class are numerous, it is impossible or impractical to have
7 each Settlement Class Member execute this Settlement Agreement. The Notice will advise all
8 Settlement Class Members of the binding nature of the release provided herein and such Release
9 shall have the same force and effect as if this Settlement Agreement were executed by each
10 Settlement Class Member.

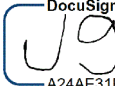
11 81. Voluntary Agreement. The Parties acknowledge that they have entered into this
12 Settlement Agreement voluntarily, on the basis of their own judgment and without coercion, duress,
13 or undue influence of any Party, and not in reliance on any promises, representations, or statements
14 made by the other Parties other than those contained in this Settlement Agreement. Each of the
15 Parties hereto expressly waves any right they might ever have to claim that this Settlement
16 Agreement was in any way induced by fraud.

17 82. Opportunity to Consult with Counsel. Prior to execution of this Settlement
18 Agreement, each Party has read this entire Settlement Agreement and has been given the
19 opportunity to consult with independent counsel of their choosing and to have such independent
20 counsel advise as to the meaning of this Settlement Agreement and its legal effect.

21 83. Invalidity of Any Provision. Before declaring any provision of this Settlement
22 Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent
23 possible consistent with applicable precedents so as to define all provisions of this Agreement valid
24 and enforceable.

25
26 Dated: 6/3/2024 _____

By: _____

DocuSigned by:

A24AE31ED800469...

Juan S. Gonzalez
Plaintiff

LA PERGOLA TRATTORIA LLC

Dated: _____

By: _____

Title: _____

APPROVED AS TO FORM:

DATED: June 20, 2024

LAW OFFICE OF SCOTT ERNEST WHEELER

By:  _____

Scott Ernest Wheeler

Justin A. Wheeler

Attorneys for Plaintiff and the Putative Class

DATED: _____

CALL & JENSEN A PROFESSIONAL
CORPORATION

By: _____

John T. Egley

Ellen Connelly Cohen

Attorneys for Defendant, La Pergola Trattoria LLC

LA PERGOLA TRATTORIA LLC

Dated: June 1, 2024

By: Pauren Hennicelli
Title: managing member

APPROVED AS TO FORM:

DATED: _____

LAW OFFICE OF SCOTT ERNEST WHEELER

By: _____
Scott Ernest Wheeler
Justin A. Wheeler

Attorneys for Plaintiff and the Putative Class

DATED: June 3, 2024

CALL & JENSEN A PROFESSIONAL
CORPORATION

By: 
John T. Egley
Ellen Connelly Cohen

Attorneys for Defendant, La Pergola Trattoria LLC

EXHIBIT 1

NOTICE OF CLASS ACTION AND PAGA SETTLEMENT***JUAN S. GONZALEZ V. LA PERGOLA TRATTORIA LLC*****SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SAN BERNARDINO
CASE NO. CIVSB2220337****PLEASE READ THIS NOTICE**

A class and representative action under the Private Attorneys General Act, California Labor Code sections 2699-2699.5. ("PAGA") against Defendant La Pergola Trattoria LLC ("Defendant") has been preliminarily approved for settlement. In the lawsuit, Plaintiff, Juan S. Gonzalez ("Plaintiff") alleged that Defendant failed to properly compensate Class Members for all hours worked, failed to provide Class Members with compliant meal and/or rest periods or compensation in lieu thereof, failed to pay overtime wages, failed to pay minimum wages, failed to timely pay all wages during employment, failed to pay all wages due to quitting and discharged employees at the time of separation, failed to maintain accurate payroll records, failed to provide accurate wage statements, and failed to indemnify employees for necessary expenditures in the discharge of duties. The lawsuit also seeks penalties predicated on the Labor Code violations pursuant to Labor Code sections 2699-2699.5 ("PAGA"). Defendant denies Plaintiff's allegations and contends that it complied with applicable law.

Class Member(s) are defined as: All non-exempt employees who were employed by Defendant in the State of California, at any time from September 14, 2018, through December 31, 2023. ("Class Period" and collectively, the Class Members are referred to as the "Class").

PAGA Member(s) are defined as: any Class Member who were employed by Defendant at any time during the time period of June 3, 2021, through December 31, 2023 (the "PAGA Period").

You have been identified by Defendant's records as a Class Member in the above-entitled action, and as such, you are subject to the terms of the Class Action and PAGA Settlement Agreement And Release ("Settlement"), preliminarily approved by the Court. Please read this notice carefully. It may affect your legal rights. Defendant will not retaliate against you for any actions you take with respect to the Settlement.

YOUR LEGAL RIGHTS AND OPTIONS WITH RESPECT TO THE SETTLEMENT	
Participate in the Settlement	If you want to remain in the Class, be bound by the Settlement and receive your Individual Class Settlement Payment, and if eligible, Individual PAGA Settlement Payment , then you need not do anything.
Exclude Yourself From the Settlement	If you do not want to be bound by the Settlement, you must follow the instructions in Section 6 to exclude yourself. If you exclude yourself, you will not receive your Individual Class Settlement Payment, and you will not release the Class Claims against Released Parties defined in Section 4 below. Note, however, that you cannot exclude yourself from the PAGA component of the Settlement. You will receive your Individual PAGA Settlement Payment and be bound by the Release of PAGA Claims even if you exclude yourself from the Class component of the Settlement.
Object to the Settlement	If you want to object to the Settlement, you must follow the instructions in Section 7. If you object, you will still be bound by the terms of the Settlement, if approved by the Court.

1. WHY DID I GET THIS NOTICE?

You have received this Notice because Defendant's records reflect that you are a Class Member as defined above. This Notice provides you with information about (1) the terms of the Settlement, including the claims that are being released, (2) the total monetary amount of the Settlement, (3) your estimated Individual Class Settlement Payment provided you remain a Settlement Class Member and your estimated Individual PAGA Settlement Payment, and (4) where to find additional information regarding the case and the Settlement.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you do nothing, then you will be automatically included in the Settlement and do not need to take any further action to receive a payment.

2. WHAT IS THIS CASE ABOUT?

The Class Action Complaint for Damages was filed on September 14, 2022, in the Superior Court of California, County of San Bernardino, commencing the lawsuit entitled *Juan S. Gonzalez v. La Pergola Trattoria LLC*, Case No. CIVSB2220337. Plaintiff alleges on behalf of himself and the Class the following claims against Defendant: (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to pay overtime wages; (4) failure to pay minimum wages; (5) failure to pay timely wages during employment; (6) failure to pay all wages due to discharged and quitting employees; (7) failure to furnish accurate, itemized wage statements; (8) failure to maintain records; (9) failure to indemnify employees for necessary expenditures in the discharge of duties; (10) unfair business competition; and (11) violation of PAGA, predicated on the violations of the California Labor Code and applicable IWC Wage Order as alleged in the Operative Complaint.

The resolution of the PAGA claim ("PAGA Settlement") includes any Class Members who are employed or have been employed by Defendant in the State of California during the time period from June 3, 2021, through December 31, 2023 ("PAGA Members").

Defendant denies any liability or wrongdoing of any kind. Defendant contends, among other things, that it complied at all times with the California Labor Code and the Business and Professions Code, and that employees were correctly and timely paid all wages, and that meal periods and rest breaks are provided as required by applicable law.

The Court has not ruled on the merits of Plaintiff's claims. By preliminarily approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case on the merits. Rather, the Court has determined only that there is sufficient evidence to determine on a preliminary basis that the proposed Settlement is fair, adequate, and reasonable and any final determination of those issues will be made at the final approval hearing.

3. THE SETTLEMENT TERMS AND CALCULATION OF INDIVIDUAL CLASS SETTLEMENT PAYMENTS AND INDIVIDUAL PAGA SETTLEMENT PAYMENTS.

Without admitting any wrongdoing, and to avoid the business disruptions caused by litigating these claims, Defendant has agreed to pay a Gross Settlement Amount of Thirty-Three Thousand Dollars (\$33,000.00) to settle the Action if approved by the Court.

The following amounts will be paid from the Gross Settlement Amount:

- Service Payment to Plaintiff for his service as Class Representative in the amount of up to Five Thousand Dollars and Zero Cents (\$5,000.00);
- Attorneys' Fees not to exceed Five Thousand Dollars and Zero Cents (\$5,000.00) to Class Counsel and up to Three Thousand Five Hundred Dollars and Zero Cents (\$3,500.00) for reimbursement of litigation costs and expenses ("Attorneys' Costs");
- The amount of Five Thousand Dollars and Zero Cents (\$5,000.00) allocated to the payment of civil penalties under PAGA (the "PAGA Allocation");
- The costs associated with administration of the Settlement, estimated to be Six Thousand Dollars and Zero Cents (\$6,000.00) ("Settlement Administration Costs").

Individual Class Settlement Payment: The amount remaining from the Gross Settlement Amount after the above deductions is called the "Net Settlement Amount". The Net Settlement Amount will be allocated to all Class Members who do not request to be excluded from the Settlement ("Settlement Class Members") on a *pro rata* basis, based on their number of Compensable Class Work Weeks. Each payment is called an "Individual Class Settlement Payment" and will be calculated as follows:

1. The Settlement Administrator will determine the number of work weeks worked by Class Members in California as a non-exempt employee during the Class Period ("Compensable Class Work Weeks");
2. The Settlement Administrator will divide the number of Compensable Class Work Weeks for each Settlement Class Member by the total number of Compensable Class Work Weeks for all Settlement Class Members, resulting in a Class Payment Ratio; and
3. Each Settlement Class Member shall receive a gross Individual Class Settlement Payment equal to his or her Compensable Class Payment Ratio multiplied by the Net Settlement Amount.

Based on your Compensable Class Work Weeks, your Individual Class Settlement Payment as a Settlement Class Member is estimated to be \$.

PAGA Payment: A total of Five Thousand Dollars and Zero Cents (\$5,000.00) of the Gross Settlement Amount has been allocated to PAGA Settlement. Of this amount, 75% or Three Thousand Seven Hundred Fifty Dollars (i.e., \$3,750.00) will be paid to California's

Labor & Workforce Development Agency, and 25% or One Thousand and Two Hundred and Fifty Dollars (i.e., \$1,250.00) (the “Net PAGA Distribution Amount”) will be paid on a *pro-rata* basis to PAGA Members.

1. The Settlement Administrator will determine the number of pay periods worked by PAGA Members as non-exempt employees in California during the period from June 3, 2021, through December 31, 2023 (“Compensable PAGA Pay Periods”);
2. The Settlement Administrator will divide the number of Compensable PAGA Pay Periods for each PAGA Member by the total number of Compensable PAGA Pay Periods for all PAGA Members, resulting in a PAGA Payment Ratio.
3. Each PAGA Member shall receive an Individual PAGA Settlement Payment equal to his or her PAGA Payment Ratio multiplied by the Net PAGA Distribution Amount.

Based on these PAGA Compensable Work Weeks, your Individual PAGA Settlement Payment is estimated to be \$ [REDACTED].

If you dispute the above information, you may submit a written dispute to the number of Compensable Class Work Weeks and/or Compensable PAGA Pay Periods allocated to you (“Dispute”) to the Settlement Administrator. Your Dispute must: (1) contain your name, address, and telephone number and the case name and number of this action, *Juan S. Gonzalez v. La Pergola Trattoria LLC*, Superior Court of the State of California for the County of San Bernardino, Case No. CIVSB2220337; (2) be signed by you; (3) be postmarked, emailed or fax stamped on or before **(INSERT DATE)** and returned to the Settlement Administrator at the address, email or fax number listed below. You should clearly state the number of Compensable Class Work Weeks and/or Compensable PAGA Pay Periods you believe are correct; and attach any documentary evidence you have to prove the number of contented Compensable Class Work Weeks and/or Compensable PAGA Pay Periods.

Phoenix Settlement Administrators
Re: *Juan S. Gonzalez v. La Pergola Trattoria LLC*
INSERT ADDRESS
Phone: (800) [REDACTED]
Facsimile: (714) [REDACTED]
Email: INSERT EMAIL ADDRESS

Thirty-three and one-third (33.33%) of each Individual Class Settlement Payment will be allocated to wages and subject to all applicable employee state and federal tax withholdings; thirty-three percent and one-third (33.33%) of each Individual Class Settlement Payment will be considered penalties and any other non-wage related amount; and thirty-three and one-third (33.33%) of each Individual Class Settlement Payment will be considered interest. The amount allocated as wages will be reported on an IRS form W-2, and the remaining amount allocated as penalties, liquidated damages, interest and other non-wage payments will be reported on an IRS form 1099. One hundred percent (100%) of each Individual PAGA Settlement Payment will be allocated as penalties and be reported on an IRS form 1099.

In addition to the Gross Settlement Amount, Defendants will pay all employer-payroll taxes and contributions in connection with the portion of the Settlement allocated towards wages at the time the Gross Settlement Amount is funded.

Class Members are responsible for paying taxes on any amounts received. This Notice is not tax advice and you should consult your tax advisor. Checks will be valid and negotiable for one-hundred and eighty (180) days; after that checks will become void and a stop payment will be placed on the uncashed checks. Settlement checks that are not cashed within one-hundred and eighty (180) days of mailing, or are returned to the Settlement Administrator, will be cancelled and the Settlement Administrator shall send the funds associated with uncashed checks to the State of California Controller’s Office, Unclaimed Property Division, in the name of the affected Class Member. **Class Members will be bound by the Settlement even if they do not cash their settlement checks.**

4. WHAT AM I RELEASING AS A CLASS MEMBER UNDER THE SETTLEMENT?

If you do nothing, you will receive your Individual Class and PAGA Settlement Payments.

If and when the Court grants final approval of the Settlement, as of the date Defendant fully funds the Settlement, all Class Members who do not opt out of the Settlement (“Settlement Class Members”) hereby do and shall fully and finally release and discharge Released Parties, from September 14, 2018, through December 31, 2023, from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys’ fees, damages, or causes of action contingent or accrued for, that are pleaded, or that could have been pleaded, based on the facts and claims alleged in the Operative Complaint, including any claims for: (a) failure to provide required meal periods, California Labor Code §§ 226.7, 510, 512, and 558; (b) failure to provide required rest periods, California Labor Code §§ 226.7, 510, 512, and 558; (c) failure to pay overtime wages, California Labor Code §§ 510, 558, 1194, 1197, and 1198; (d) failure to pay minimum wages, California Labor Code §§ 1194, 1194.2, 1197, and 1197.1; (e) failure to timely pay wages during employment, California Labor Code §§ 204 and 210; (f) failure to timely pay all wages to discharged and quitting employees, California Labor Code

§§ 201-203; (g) failure to furnish accurate, itemized wage statements, California Labor Code §§ 226 and 226.3; (h) failure to maintain required records, California Labor Code §§ 226, 1174, and 1174.5; (i) failure to indemnify employees for necessary expenditures in the discharge of duties, California Labor Code § 2802; and (j) unlawful business practices under California, Business and Professions Code § 17200, et seq.; predicated on any of the violations of the California Labor Code and the applicable IWC Wage Order as alleged in the Operative Complaint including but not limited to, claims for restitution and other equitable relief, liquidated damages, or penalties; and any other benefit, wages, penalties, or other amounts claimed on account of the allegations or the primary rights asserted in the Operative Complaint. This release shall apply to any and all claims arising at any point during the Class Period. Upon entry of the Final Approval Order and funding of the total Gross Settlement Amount, all Class Members will forever completely release and discharge the Released Parties from the Released Class Claims for the Class Period.

“Released Parties” collectively mean: (i) Defendant; (ii) Defendant’s respective past, present and future heirs, executors, administrators, parents, subsidiaries and affiliates, successors and assigns; and (iii) the past, present and future shareholders, managers, officers, partners, members, agents, employees, attorneys, insurers, predecessors, successors and assigns of any of the foregoing; and (iv) any other individual or entity that could be jointly liable with Defendant for the claims asserted in the Operative Complaint.

5. WHAT AM I RELEASING AS A PAGA MEMBER UNDER THE SETTLEMENT?

As of the date Defendant fully funds the Settlement, all PAGA Members, hereby do and shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged any and all of the Released Parties of and from any and all Released PAGA Claims.

“Released PAGA Claims” means civil penalties under PAGA only, and not for underlying wage and hour claims which the claims for civil PAGA penalties are based upon, as alleged in the Operative Complaint and the PAGA Notice filed by Plaintiff, and as described in section 4, above.

Released Parties is defined in section 4 of this Notice above.

PAGA MEMBERS CANNOT OPT-OUT OR EXCLUDE THEMSELVES FROM THE PAGA SETTLEMENT OR RELEASE OF PAGA CLAIMS AND WILL RECEIVE AN INDIVIDUAL PAGA SETTLEMENT PAYMENT EVEN IF THEY OPT-OUT OF THE CLASS SETTLEMENT.

6. WHAT IF I DON’T WANT TO PARTICIPATE IN THE CLASS SETTLEMENT?

You have the right to request exclusion from the Class component of the Settlement as a Class Member and with regards to the Release of Class Claims, but you are not able to exclude yourself as a PAGA Member. To exclude yourself as a Settlement Class Member, you must submit a written Request for Exclusion to the Settlement Administrator (“Opt-Out Request”) at the address, email or fax number listed in section 3 of this Notice above.

A valid and complete Opt-Out Request must (1) contain the name, address, and telephone number of the Class Member requesting exclusion and the case name and number of the *Gonzalez* Action (i.e., *Juan S. Gonzalez v. La Pergola Trattoria LLC* Superior Court of the State of California for the County of San Bernardino, Case No. CIVSB2220337); (2) be signed by the Class Member; (3) be postmarked, emailed, or fax stamped on or before [INSERT DATE] and returned to the Settlement Administrator at the specified address, email address or fax number listed in section 3 of this Notice above. An Opt-Out Request should contain a statement substantially similar to:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT OF CLASS CLAIMS IN THE JUAN S. GONZALEZ V. LA PERGOLA TRATTORIA LLC LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE AN INDIVIDUAL CLASS SETTLEMENT PAYMENT FROM THE SETTLEMENT OF THE LAWSUIT. I UNDERSTAND THAT THE PAGA CLAIM WILL STILL BE RELEASED AND SETTLED.”

It is your responsibility to ensure that the Settlement Administrator timely receives your request to be excluded from the Settlement. Unless you timely request to be excluded from the Settlement, you will be bound by the judgment upon final approval of the Settlement.

Class Members who request to be excluded from the Settlement will NOT receive their Individual Class Settlement Payment and will not release any of the Released Class Claims. However, Class Members who are also PAGA Members will receive their Individual PAGA Settlement Payment and release the Released PAGA Claims regardless of whether they submit an Opt-Out Request.

7. WHAT IF I WANT TO OBJECT TO THIS SETTLEMENT?

Any Settlement Class Member may object to the Settlement or to any settlement term. If the Court denies approval, no payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

If you wish to object, you must submit the written objection to the Settlement Administrator (“Objection”) to the following address or fax number listed in section 3 of this Notice above. A valid and timely Objection must (1) contain the name, address, and telephone number of the Settlement Class Member objecting and the case name and number of the *Gonzalez* Action (i.e., *Juan S. Gonzalez v. La Pergola Trattoria LLC* Superior Court of the State of California for the County of San Bernardino, Case No. CIVSB2220337; (2) be signed by the Settlement Class Member; (3) give the legal and factual basis for their objection; and (4) be postmarked, emailed or fax stamped on or before [INSERT DATE] and returned to the Settlement Administrator at the specified address, email address or fax number in section 3 of the Notice above. Any written objection will not be presumptively invalidated if the objections do not comply with requirements (1), (2) and (3) as long as the written objection is timely received pursuant to requirement

The submission of an objection will **not** exclude you from the Settlement. If the Court grants final approval of the Settlement, you will still receive an Individual Class Settlement Payment and will be barred from pursuing the Settled Claims. **Do not file both an Objection and Opt-Out Request.** If you file both an Objection and an Opt-Out Request, you will be excluded from the Settlement and the Objection will not be considered.

8. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

The Final Approval Hearing is scheduled to take place on [INSERT DATE AND TIME] in Department S-26 of the Superior Court of the State of California, San Bernardino Superior Court – Civil Justice Center, located at 247 West 3rd Street, San Bernardino, California 92415. The final approval hearing may be continued without further notice to Class Members. You are not required to attend the Final Approval Hearing in order to receive payment under the Settlement.

9. WHO ARE THE ATTORNEYS?

Attorneys for Plaintiff and the Class are:

LAW OFFICE OF SCOTT ERNEST WHEELER
Scott Ernest Wheeler (SBN 187998)
Justin A. Wheeler (SBN 342226)
250 West First Street, Suite 216
Claremont, California 91711
Telephone: (909) 621-4988
Facsimile: (909) 621-4622

Attorneys for Defendant are:

CALL & JENSEN A Professional
Corporation
John T. Egley
Ellen Connelly Cohen
Newport Center Drive, Suite 700
Newport Beach, California 92660
Telephone: (949) 717-3000
Email: jegley@calljensen.com
ecohen@calljensen.com

The Court has decided that the Attorneys for Plaintiff and the Class are qualified to represent the Settlement Class Members. Other than the Attorneys’ Fees and Attorneys’ Costs approved by the Court, which will be paid out of the Gross Settlement Amount, you will not be charged for their services.

10. SHOULD I GET MY OWN LAWYER?

You do not need to get your own lawyer. If you want your own lawyer to speak for you or appear in Court, you have the right to hire one, but you will have to pay for that lawyer yourself.

11. FURTHER INFORMATION.

This Notice summarizes the Action and the basic terms of the Settlement. For more complete information, the pleadings and other records in this litigation may be examined during regular court hours at the Superior Court of the State of California, San Bernardino Superior Court – Civil Justice Center, located at 247 West 3rd Street, San Bernardino, California 92415 or at the Court’s website at: <https://www.SB-court.org>. Documents regarding this Settlement may also be found on the Internet at: [https:// https://www.sb-court.org/divisions/civil-general-information/court-case-information-and-document-sales](https://https://www.sb-court.org/divisions/civil-general-information/court-case-information-and-document-sales).

12. SAN BERNARDINO COUNTY SUPERIOR COURT SOCIAL DISTANCING PROCEDURES

Please go to www.sb-Court.org for all updates regarding the Court's current social distancing procedures for attendance at hearings and review of court files.

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE
ABOUT THIS SETTLEMENT.**

EXHIBIT 2

LAW OFFICE OF SCOTT ERNEST WHEELER

Scott Ernest Wheeler (SBN 187998)
Justin A. Wheeler (SBN 342226)
250 West First Street, Suite 216
Claremont, California 91711
Telephone: (909) 621-4988
Facsimile: (909) 621-4622
Email: sew@scottwheelerlawoffice.com
jaw@scottwheelerlawoffice.com

Attorneys for Plaintiff and the Putative Class

CALL & JENSEN A Professional Corporation

John T. Egley, Bar No. 232545
Ellen Connelly Cohen, Bar No. 276458 610
610 Newport Center Drive, Suite 700
Newport Beach, California 92660
Telephone: (949) 717-3000
jegley@calljensen.com
ecohen@calljensen.com

Attorneys for Defendant, La Pergola Trattoria LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO JUSTICE CENTER

JUAN S. GONZALEZ, individually, and
on behalf of all others similarly situated,

Plaintiff,

v.

LA PERGOLA TRATTORIA LLC, a
California limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

CASE NO.: CIVSB2220337

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

1 **[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL**

2 The Court now has before it, Plaintiff's unopposed Motion for Preliminary Approval of Class
3 Action Settlement ("Motion"). After reviewing the Motion, the Class Action and PAGA Settlement
4 Agreement and Release ("Settlement Agreement") and exhibits attached thereto, and good cause
5 appearing therefore, the Court hereby finds and orders as follows:

6 1. The Court finds on a preliminary basis that the settlement memorialized in the
7 Settlement Agreement appears to be fair and adequate, and falls within the range of reasonableness,
8 and therefore meets the requirement for preliminary approval.

9 2. The Court conditionally certifies for settlement purposes the following class (the
10 "Class" or "Settlement Class"):

11 All non-exempt employees who were employed by La Pergola Trattoria LLC, in the
12 State of California, at any time from September 14, 2018, through December 31, 2023.

13 The Class Period is from September 14, 2018, through December 31, 2023.

14 3. The Court conditionally approves for settlement purposes the PAGA allocation of this
15 settlement to the California Labor and Workforce Development Agency ("LWDA") and PAGA
16 Members.

17 The PAGA Period is from June 3, 2021, through December 31, 2023.

18 4. The Court finds, for settlement purposes, that the Class meets the requirements for
19 certification under California Code of Civil Procedure § 382 in that: (1) the Class is so numerous that
20 joinder is impractical; (2) there are questions of law and fact that are common, or of general interest,
21 to the Class, which predominate over any individual issues; (3) Plaintiff's claims are typical of the
22 claims of the Class; (4) Plaintiff and Plaintiff's counsel will fairly and adequately protect the interests
23 of the Class; and (5) a class action is superior to other available methods for the fair and efficient
24 adjudication of the controversy.

25 5. The Court appoints, for settlement purposes, Plaintiff Juan S. Gonzalez as
26 Representative for the Class.

27 6. The Court appoints, for settlement purposes, the Law Office of Scott E. Wheeler as
28 Counsel for the Class.

7. The Parties are ordered to carry out the Settlement according to the terms of the Settlement Agreement.

8. The Court appoints Phoenix Settlement Administrators (“Phoenix”) as the Settlement Administrator and is ordered to carry out the administration of the settlement according to the terms of the Settlement Agreement.

9. The Court approves as to form and content of the Class Action and PAGA Settlement Notice. The Court finds that the dates selected for the mailing and distribution of the Notice Packet meet the requirements of due process, provide the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

10. If any Class Member objects to the Settlement Agreement, the objecting party is not required, either personally or through counsel: 1) to appear at the hearing on the motion for final approval for that party’s objection to be considered; or 2) to file or serve, or to state in the objection, a notice of intention to appear at the hearing on the motion for Final Approval of the Class Settlement.

11. Phoenix, the Settlement Administrator, shall provide notice to any objecting party of any continuance of the hearing of Plaintiff’s Motion for Final Approval.

12. The Parties are ordered to carry out the Settlement according to the following implementation schedule:

Event	Date
Last day for Defendant to provide the Settlement Administrator with the Class Information	Within 14 calendar days after Preliminary Approval (Settlement Agreement ¶ 53)
Last day for Settlement Administrator, Phoenix to mail Class Notice	Within 10 calendar days after receiving Class Information (Settlement Agreement ¶ 54)
Last day for Class Members to submit a dispute regarding Workweeks, Request for Exclusion, or written Objection	45 calendar days after mailing of Class Notice (Settlement Agreement ¶ 34)
Last Day for Plaintiff to file Motion for Final Approval of the Class Settlement, Attorneys’ Fees and Costs and Class Representative Service Award	Per Code.
Final Approval Hearing	

1 13. The Court finds that the method of giving notice to the Class constitutes the best means
2 practicable of providing notice under the circumstances. The Court further finds that the Notice Packet
3 and the method of giving notice to the Class meet the requirements of California Code of Civil
4 Procedure § 382, California Rules of Court, Rules 3.766 and 3.769, and due process under the
5 California and United States Constitutions, and other applicable law.

6 14. At the Final Approval Hearing, the Court will consider whether the Settlement should
7 be finally approved as fair, reasonable and adequate, whether a final judgment should be entered, and
8 whether the payments provided for under the Settlement, including attorneys' fees and costs and class
9 representative service award, should be finally approved and granted.

10 15. Pending the Final Approval Hearing, all proceedings in this Action, other than
11 proceedings necessary to implement the Settlement and this Order, are stayed.

12 **IT IS SO ORDERED.**

13
14 DATED: _____

HONORABLE JESSICA MORGAN
JUDGE OF THE SUPERIOR COURT