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Attorneys for Plaintiff Romello Sheppard

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

ROMELLO SHEPPARD, individually and on
behalf of other members of the general public
similarly situated and on behalf of other
aggrieved employees pursuant to the
California Private Attorneys General Act;

Plaintiff,

vs.

GHIRARDELLI CHOCOLATE COMPANY,
a California corporation; and DOES 1 through
100,

Defendants.

Case No.: 22CV020713

Hon. Somnath Raj Chatterjee, Dept. 21

Reservation ID No: 863551011994

**DECLARATION OF AARON C.
GUNDZIK IN SUPPORT OF
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION
AND PAGA SETTLEMENT**

Date: March 25, 2025

Dept.: 21

Time: 1:30 p.m.

Complaint Filed: October 27, 2022

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1 (d) Class Counsel’s actual litigation costs and expenses in the amount of
2 \$12,908.83; and
3 (e) An allocation of \$350,000 to Plaintiffs’ PAGA claims (the “PAGA
4 Amount”), seventy-five percent (75%) (\$262,500) of which will be paid
5 to the California Labor and Workforce Development Agency (the
6 “LWDA Payment”), and the remaining twenty-five percent (25%)
7 (\$87,500) of which will be distributed to the Aggrieved Employees.
8 The remaining Net Settlement Amount of \$1,655,841.17 will be distributed to the settlement
9 Class Members according to the formula in the Settlement Agreement, not including the
10 amounts owed to them as Aggrieved Employees. See Ex. 1, ¶ 57.

11 6. Paragraph 21 of the Settlement Agreement includes a Modification Provision
12 with an escalator clause (“Escalator Clause”) which was to be triggered if Eligible
13 Workweeks exceeded 145,572. Upon receipt of the Class Data, the administrator advised us
14 that the data did not trigger the Escalation Clause.

15 **Preliminary Approval of Settlement**

16 7. On August 21, 2024, Plaintiff filed his Motion for Preliminary Approval of
17 Class Action Settlement with supporting declarations.

18 8. On October 4, 2024, the Court issued a tentative ruling requesting additional
19 information and revisions to the proposed settlement agreement.

20 9. On October 24, 2024, Plaintiff filed the Supplemental Declaration of Aaron
21 Gundzik which included the First Amended Class and Representative Action Settlement
22 Agreement (“Settlement Agreement” or “Agreement”).

23 10. On November 8, 2024, the Court granted preliminary approval of the
24 settlement and approved the notice of settlement prepared by the parties. A copy of the
25 Court’s preliminary approval order is attached hereto as **Exhibit B**.

26 **Settlement Administration**

27 11. The settlement is being administered by Phoenix Settlement Administrators
28 (“Phoenix” or “Settlement Administrator”). Until distribution, the Gross Settlement Amount

1 will be held in a Qualified Settlement Fund established by the Settlement Administrator.
2 Phoenix's fee for the costs of administration of the settlement is \$18,750.

3 12. The notification process was fairly administered. As set forth in the
4 Declaration of Jarrod Salinas, Phoenix Case Manager, on December 6, 2024, Phoenix sent
5 the Notice of Settlement to the Class Members' last-known address as specified in the
6 Court's Order granting preliminary approval of class action settlement. Of those, eighteen
7 were re-mailed and eight were or determined to be undeliverable.

8 13. As set forth in the TPA's declaration, as of the date of this Declaration,
9 Phoenix has received one opt-out and no objections. Class Counsel have not received any
10 objections or opt out notices from any Class Members. Because this is an opt-out Class,
11 2,634 of 2,635 Class Members will receive a settlement payment, which is a 99.9 %
12 participation rate. That participation rate, together with the absence of any objectors,
13 provides a strong indication that the settlement is fair and adequate, and that Class Members
14 believe it to be so.

15 **Request for Attorneys' Fees and Costs**

16 14. The preliminarily approved settlement provides for the payment of up to
17 thirty-five percent of the gross settlement amount (\$1,102,500) to Class Counsel for
18 attorneys' fees and up to \$25,000 for Class Counsel's reasonable costs and expenses. Class
19 Counsel has expended \$12,908.83 in connection with this lawsuit. This request is fair,
20 reasonable and adequate to compensate Class Counsel for the substantial work we have put
21 into this case and the risk we assumed by taking it. The attorneys' fees award is intended to
22 reimburse Class Counsel for all the uncompensated work that we have already done and for
23 all the work we will continue to do in carrying out and overseeing the administration of the
24 settlement. We are requesting that the Court compensate Class Counsel on a contingency
25 basis in light of the benefit provided to the Class and because a lodestar analysis confirms
26 the reasonableness of the contingency fee.

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Summary of Class Counsel's Experience

15. I graduated from the University of Southern California Law School in 1987 and have been a member of the California bar since 1987. For my first 14 years of practice, I worked in the Los Angeles office of a large international law firm, then known as LeBoeuf, Lamb, Greene & MacRae, first as an associate and then as an equity partner. I left that firm in 2001 and formed Cotton & Gundzik LLP. In 2012, I joined Gartenberg Gelfand Hayton LLP, and in January of 2020, I formed Gundzik Gundzik Heeger LLP ("GGH"). Throughout my career, I have been involved in the litigation of complex cases, including securities, consumer and wage and hour class actions. Presently, I and my partner, Rebecca Gundzik, are Plaintiff's counsel in approximately ten class actions in various stages of litigation. I have served as class counsel in numerous wage and hour class actions that have already settled and successfully represented a class of service technicians at trial and through appeal in *Gonzalez v. Downtown LA Motors, LP*, 215 Cal. App. 4th 36 (2013). The *Gonzalez* case helped develop the law regarding an employee's right to be separately paid for their nonproductive time and is one of the bases for California Labor Code section 226.2.

16. Rebecca Gundzik, who is also a partner at my law firm, has worked with me extensively on this case. Ms. Gundzik graduated from the University of Southern California Law School in 1988 and has been a member of the California bar since 1988. In her 35-year legal career, Ms. Gundzik worked at Loeb & Loeb and worked at Allen Matkins Leck Gamble Mallory & Natsis LLP for fifteen years. Ms. Gundzik has also had significant experience with complex cases, including real estate, business, and consumer and wage and hour class actions. Ms. Gundzik works with me on all of my class action matters and was my co-counsel at the trial of *Gonzalez v. Downtown LA Motors, LP*, 215 Cal. App. 4th 36 (2013).

17. I and/or Rebecca Gundzik and I have been appointed as class counsel in the following wage and hour class actions:

a. *Gonzalez v. Downtown LA Motors*, 215 Cal. App. 4th 35 (2013)

- b. *Aboyte v. Sunrise Ford, Inc.*, Los Angeles County Superior Court Case No. BC521274
- c. *Alshamri v. Ford of Santa Monica, Inc.*, Los Angeles County Superior Court Case No. BC529007
- d. *Altschuler v. Sedgwick Claims Management Services, Inc.*, Los Angeles Superior Court Case No. 21STCV06933
- e. *Bromberg v. Fidelity National Information Services*, C.D. Cal. No. 2:15-CV-7930
- f. *Burciaga v. Superior Thread Rolling Company*, Los Angeles County Superior Court Case No. BC585143
- g. *Centino v. Arrowhead Products Corporation*, Orange County Superior Court Case No. 30-2018-00988493
- h. *Caesar-Roden v Yoga Works, Inc.*, Los Angeles County Superior Court Case No. BC711991
- i. *Claim Jumper Restaurants Wage and Hour Cases*, JCCP No. 4916
- j. *ClubCorp Wage and Hour Cases*, Orange County Superior Court Case No. 30-2-2—01137085 (JCCP No. 5138)
- k. *Cypress Security Wage and Hour Cases*, Los Angeles County Superior Court Case No. BC672405 (JCCP No. 4963)
- l. *Dittmar v. Costco*, S.D. Cal. No. 3-14-CV-1156
- m. *Franco v. Gentry Brothers, Inc.*, Los Angeles County Superior Court Case No. BC586571
- n. *Gallegos v. EC Holdings Inc.*, Los Angeles County Superior Court Case No. BC616867
- o. *Gonzales v. Manrika, Inc.*, Los Angeles County Superior Court Case No. BC570534
- p. *Grieg v. Food on Time, Inc.*, at al., Los Angeles County Superior Court Case No. BC684566

- 1 q. *Guillen v. Grasshopper House, LLC*, Los Angeles County Superior Court
2 Case No. BC685116
- 3 r. *Hall v. Culpepper & Associates Security Services, Inc.*, Los Angeles County
4 Superior Court Case No. 20STCV15317
- 5 s. *Haskins v. Walmart, et al.*, San Diego County Superior Court Case No. 37-
6 2019-00020149-CU-OE-NC
- 7 t. *Hamilton v. BlueMercury, Inc.*, Los Angeles County Superior Court Case No.
8 BC625829
- 9 u. *Henriquez v. NGU Transport LLC*, Los Angeles County Superior Court No.
10 BC714165
- 11 v. *Hernandez v. The Bicycle Casino LP*, Los Angeles County Superior Court
12 Case No. BC628414
- 13 w. *Hughes v. JeffreyLee Galitz, MD, et al.*, Los Angeles County Superior Court
14 Case No. 21STCV30732
- 15 x. *Honeine v. PMB Motorcars, LLC*, Los Angeles County Superior Court Case
16 No. BC530827
- 17 y. *Jimenez v. El Proyecto Del Barrio, Inc.*, Los Angeles County Superior Court
18 No. 19STCV18696
- 19 z. *Jimenez v. PPG Industries, Inc.*, Los Angeles County Superior Court Case
20 No. BC613324
- 21 aa. *Kaelberer v. Long Beach Eurocars LLC*, Los Angeles County Superior Court
22 Case No. BC521275
- 23 bb. *Kuenstle v. Childrens Hospital Los Angeles Medical Group, Inc.*, Los
24 Angeles County Superior Court Case No. BC653858
- 25 cc. *Kussner v. MV Public Transportation, Inc., et al.*, Los Angeles Superior
26 Court Case No. 21STCV12259
- 27 dd. *Maravilla v. Motion Picture Television Fund*, Los Angeles County Superior
28 Court Case No. BC690494

1 ee. *Medina v. Kaweah Pump, Inc.*, Tulare County Superior Court No. 265579
2 ff. *Mendez v. WTMG, Inc.*, San Joaquin Superior Court Case No. STK-CV-
3 UOE-2021-0009144
4 gg. *Mendoza v. Quanta Computer, USA, Inc.*, Alameda County Superior Court
5 No. RG11589781
6 hh. *Mitchiner v. Cox Target Media, Inc.*, Los Angeles County Superior Court
7 Case No. 19STCV00319
8 ii. *Munoz v. Dependable Highway Express, Inc.*, Los Angeles County Superior
9 Court Case No. BC535931
10 jj. *Nava v. Pacific Coast Sightseeing Tours and Charters, Inc.*, Los Angeles
11 County Superior Court Case No. BC685681
12 kk. *Ortiz v. Roberts Tool Co., Inc.*, Los Angeles County Superior Court Case No.
13 BC626244
14 ll. *Otis v. Ray Stone Incorporated*, Sacramento County Superior Court Case No.
15 34-2019-00269952
16 mm. *Parrilla v. Monster Energy Company*, Los Angeles County Superior Court
17 Case No. 21STCV25855
18 nn. *Perez v. The Parsons Group, Inc.*, Santa Barbara County Superior Court
19 Case No. 19CV01203
20 oo. *Poland v. Glen Ivy Hot Springs, Inc.*, Riverside County Superior Court No.
21 RIC1312130
22 pp. *Saavedra v. Cliff View Terrace, Inc.*, Santa Barbara County Superior Court
23 Case No. 17CV02531
24 qq. *Santiago v. Univar Solutions Inc., et. al*, Los Angeles County Superior Court
25 Case No. 21STCV25600
26 rr. *Schneider v. Inner City Education Foundation*, Los Angeles County Superior
27 Court Case No. BC617827
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1 ss. *Stadnik v. Leon's Transmission Service, Inc.*, Los Angeles County Superior
2 Court Case No. 19STCV44253

3 tt. *Surveillance Security Wage and Hour Cases*, JCCP 4969

4 uu. *T.J. Maxx Wage & Hour Cases*, JCCP No. 5097

5 vv. *Vatrалеva v. Sears, Roebuck and Co.*, Los Angeles County Superior Court
6 Case No. BC515650

7 ww. *Villalobos v. Pedego, Inc.*, Orange County Superior Court Case No. 30-
8 2019-01102461

9 xx. *Watson v. Aegis Security & Investigations Inc.*, Los Angeles County
10 Superior Court Case No. BC695411

11 yy. *Wysocki v. Color Spot Nurseries, Inc.*, San Luis Obispo County Superior
12 Court No. 14CVPO138

13 zz. *Yoo v NGL Transportation LLC*, Los Angeles County Superior Court Case
14 No. BC682160

15 aaa. *Yoo v. South Coast Transportation & Distribution, Inc.*, Los Angeles County
16 Superior Court Case No. BC682120

17 **Summary of Work Performed**

18 18. Rebecca Gundzik and I have spent a total of 105 **hours** performing tasks and
19 obtaining recovery in this matter. Attached hereto as “**EXHIBIT C**” is an Attorney Task
20 and Time Chart that sets forth in detail the nature of the legal services we conducted.

21 19. After the parties reached the terms of a settlement in principle, we negotiated
22 the provisions of a lengthy settlement stipulation and participated in numerous conversations
23 and other communications about those documents with opposing counsel and our Co-
24 Counsel.

25 20. After the parties reached agreement on the details of the settlement
26 stipulation, we prepared the motion for preliminary approval and the supporting declarations
27 and proposed order. We then prepared the amended Settlement Agreement and the
28 supplemental papers required by the Court. After the Court preliminarily-approved the

1 settlement, we worked with the settlement administrator to effectuate the notice to Class
2 Members. We then oversaw the process of mailing settlement notices. Finally, we worked
3 on this Motion and the supporting declarations and other documents.

4 21. Our work on the case will not end with the filing of this motion. We will need
5 to address any belated objections, appear for the hearing and then, if the motion is granted,
6 oversee the receipt and disbursement of settlement funds. As part of that process, we will
7 likely receive and respond to communications from Class Members about the settlement.

8 22. **“EXHIBIT C”** does not include approximately 20 additional hours to
9 finalize this Motion, prepare for and attend the hearing on this Motion, and time that I or
10 Ms. Gundzik will spend working with Phoenix and Defendant to implement the settlement
11 and communicate with Class Members regarding the disbursement of the settlement funds.
12 At our hourly rate of \$750, this additional time adds \$15,000 to our lodestar. Our total
13 loadstar will therefore be \$93,750 for 125 hours of attorney time.

14 23. My firm also incurred costs in this case that we have paid which include but
15 are not limited to fees and expenses for filing and delivery. My firm incurred costs and
16 expenses of \$478.00, as reflected in **“EXHIBIT D”** attached hereto. We will incur
17 additional filing fees in connection with this Motion and filing the distribution report in the
18 approximate amount of \$187, for total expenses in the amount of \$665.00.

19 24. Defendant does not oppose the fees and costs being requested in this case.
20 Moreover, the Notice of Settlement mailed to Class Members stated the amount of fees
21 being requested by Class counsel. Not a single Class Member has objected to the requested
22 fee award.

23 25. I am familiar with the hourly rates charged by attorneys with similar
24 experience and expertise. My and Ms. Gundzik’s hourly rates of \$750 are well within the
25 range of rates charged by attorneys with similar expertise and experience. These rates are
26 comparable to those judicially-approved for other plaintiffs’ firms in California. *See, e.g., In*
27 *re Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prods. Liab. Litig.*, MDL No.
28 2672, 2017 WL 1047834, at *5 (N.D. Cal. Mar. 17, 2017) (finding a lodestar cross-check

supports the reasonableness of Class Counsel's requested fees and approving partner billing rates ranging from \$275 to \$1,600); *Dickey v. Advanced Micro Devices, Inc.*, No. 15-cv-04922-HSG, 2020 WL 870928, at *8 (N.D. Cal. Feb. 21, 2020) (finding rates between \$275 and \$1,000 for attorneys reasonable); *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-MD-02752-LHK, 2020 WL 4212811, at *26 (N.D. Cal. July 22, 2020) (approving rates of \$450 to \$900 for partners, \$160 to \$850 for non-partner attorneys, and \$50 to \$380 for staff members); *Luquetta v. Regents of Cal.*, CGC-05-443007 (San Francisco Super. Ct.) (approving partner rates between \$550 and \$850 per hour); and *Holloway v. Best Buy Co.*, C-05-5056-PJH (MEJ) (N.D. Cal.) (approving 2011 partner rates of \$700 to \$825 an hour).

26. The 2020 Class Action Hourly Rate Survey, conducted by the National Association of Legal Fee Analysis (NALFA), asked class action litigators from the nation's 16 largest legal markets if their current regular hourly rate falls within a given range. The NALFA survey shows that the average hourly rate for partners like me and Ms. Gundzik, who have more than 20 years of experience, ranges between \$801-\$900. See **EXHIBIT E**.

27. Defense-side hourly rates are also relevant. In a survey of more than 250 U.S. law firms conducted by the international accounting and consulting firm PricewaterhouseCoopers ("PwC"), the median average 2020 billing rate for litigation equity partners at AmLaw 25 firms was \$1,327/hour and for AmLaw 50 firms was \$1,206/hour.

28. Likewise, the following is a table of hourly rates which was prepared by a Federal Court in *Xu v. Yamanaka*, No. 13-CV-3240 YGR, 2014 WL 3840105, at *4 (N.D. Cal. Aug. 1, 2014):

Firm	Partner Range	Partner Average	Associate Range	Associate Avg.
Weil Gotshall		\$927	\$450–790	\$581
Latham & Watkins	\$895–1110	\$990	\$465–725	\$605
Paul Weiss	\$760–1120	\$1040	\$250–760	\$600
Skadden Arps	\$845–1150	\$1035	\$340–845	\$620
Willkie Farr	\$790–1090	\$950	\$350–790	\$580

These rates for partners include many who have less years of legal experience than Class Counsel, as partnership positions usually begin after eight or nine years of work. I became a

1 partner at the national firm formerly known as LeBoeuf Lamb Greene & MacRae in 1995
2 but have been working in the legal field for twenty-seven years since that time and have
3 been working as an attorney for thirty-five years. Most of my former partners charge hourly
4 rates in excess of the hourly rate I am seeking. It is therefore reasonable to assume that these
5 average rates certainly apply to partners at these firms with thirty plus years of experience,
6 like Rebecca Gundzik and me. Our hourly rates have been approved by numerous courts
7 throughout the State of California.

8 29. Like my co-counsel, I submit that the Settlement Agreement is fair,
9 reasonable, and adequate, and is in the best interests of Plaintiff, Class Members, PAGA
10 Members, and the State of California.

11 30. On February 27, 2025, I submit copies of Plaintiff's Motion for Final
12 Approval and supporting papers to the California Labor and Workforce Development
13 Agency ("LWDA") through the LWDA's website. A copy of the confirmation email that I
14 received from the LWDA is attached hereto as **EXHIBIT F**.

15 I declare under penalty of perjury under the laws of the state of California that the
16 foregoing is true and correct.

17 DATED: February 27, 2025



Aaron C. Gundzik

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Exhibit A
(First Amended Settlement Agreement)

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION SETTLEMENT AGREEMENT AND RELEASE

This First Amended Class and Representative Action Settlement Agreement and Release (“Agreement”) encompasses the Action, *Romello Sheppard, individually and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act v. Ghirardelli Chocolate Company, a California Corporation*, originally commenced in the Superior Court of the State of California in and for the County of Alameda, Case No. 22CV020713. This case was later removed to the Northern District of California, Case No. 4:22-cv-08912. Pursuant to this Agreement, this matter was remanded to Alameda County Superior Court, and Plaintiff filed a First Amended Complaint on July 15, 2024, Case No. 22CV020713.

Mr. Romello Sheppard is referred to herein as the Plaintiff. The Ghirardelli Chocolate Company is referred to herein as the Defendant. The Plaintiff and Defendant are referred to herein as the Parties.

This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the “Released Class Claims” and “Released PAGA Claims” (as defined below) on a class and representative Action basis pertaining to the “Released Parties” (as defined below) upon and subject to the terms and conditions contained herein. This Agreement, which is contingent upon final Court approval, contains the essential terms of the Parties’ agreement. Plaintiff and Class Counsel believe, and the Parties have agreed, that the settlement set forth in this Agreement confers substantial benefits upon the Class, PAGA Members, and the State of California. This Agreement supersedes and fully replaces the Class and Representative Action Settlement Agreement and Release that was fully executed by the parties on or about August 8, 2024.

DEFINITIONS

1. Action

“Action” means the First Amended Complaint filed by Plaintiff entitled *Romello Sheppard, individually and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act v. Ghirardelli Chocolate Company, a*

California Corporation, Superior Court of the State of California in and for the County of Alameda, Case No. 22CV020713 (the “Complaint”).

The Parties agree that the Action includes all claims and causes of Action alleged in the Complaint referenced above and in the amended PAGA letter dated September 5, 2023 (the “PAGA Notice Letter”).

2. Class Counsel

“Class Counsel” means (a) Arby Aiwarzian and Joanna Ghosh of LAWYERS for JUSTICE, PC, 410 West Arden Avenue, Suite 203, Glendale, California 91203, (818) 265-1020; and (b) Aaron C. Gundzik and Rebecca G. Gundzik of Gundzik Heeger LLP, 14011 Ventura Blvd., Suite 206E, Sherman Oaks, CA 91423, (818) 290-7461.

3. Class Counsel Award

“Class Counsel Award” means attorneys’ fees for Class Counsel’s litigation and resolution of the Action, and Class Counsel’s actual expenses and costs incurred and to be incurred in connection with the Action.

4. Class Information

“Class Information” or “Class Data” means accurate information regarding Class Members compiled from Defendant’s records and provided to the Settlement Administrator in a Microsoft Excel spreadsheet, including each Class Member’s full name; last known address; social security number; Defendant’s timekeeping data showing the number of workweeks and pay periods worked by each Class Member in the Class Period and each PAGA Member in the PAGA Period; and additional information sufficient for the Settlement Administrator to determine the Eligible Workweeks and Eligible Pay Periods for each Class Member and each PAGA Member.

5. Class Members

“Class” or “Class Members” means persons who are members of the class defined as all current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time during the Class Period.

6. Class Period

The “Class Period” is from October 27, 2018, through April 19, 2024.

7. Class Settlement

“Class Settlement” means the settlement and resolution of the Released Class Claims.

8. Class Representative

The “Class Representative” is Romello Sheppard.

9. Class Representative’s Enhancement Award

“Class Representative’s Enhancement Award” means the amount that the Court authorizes to be paid to Plaintiff, in addition to Plaintiff’s Individual Settlement Payments and/or Individual PAGA Payments, in recognition of Plaintiff’s efforts and risks in assisting with the prosecution of the Action and in return for executing a general release of claims with Defendant.

8. Class Representative’s Released Claims

“Class Representative’s Released Claims” means all known and unknown claims against the Released Parties, including any Released Claims as well as other wage and hour claims, claims under California Business & Professions Code section 17200, claims under the California Labor Code, including, but not limited to, claims under the Private Attorneys General Act (“PAGA”), claims under the Fair Labor Standards Act (“FLSA”), and all claims for indemnity or reimbursement of business expenses, overtime compensation, minimum wages, penalties, liquidated damages, and interest, and all other claims under state, federal, and local laws, including, without limitation, Title VII of the Civil Rights Act of 1964, the Family and Medical Leave Act, the Americans with Disabilities Act, the Fair Credit Reporting Act, the Employee Retirement Income Security Act of 1974, and all of their implementing regulations and interpretive guidelines, as well as the common law, including laws related to discrimination, harassment, or retaliation, whether known or unknown, and whether anticipated or unanticipated, arising from or relating to Class Representative’s relationship, or termination of relationship, with any Released Party through the date of Final Approval for any type of relief. Class Representative further covenants that he will not become a member of any

other legal Action against the Released Parties asserting any of Class Representative's Released Claims and will opt out of any such Action if necessary. For the avoidance of doubt, this is a complete and general release of all claims to the maximum extent permitted by law.

The scope of this release does not include claims for unemployment insurance, disability, social security, and workers' compensation (except for claims pursuant to California Labor Code Sections 132(a) and 4553).

9. Complaint

"Complaint" means the First Amended Complaint filed by Plaintiff on July 15, 2024, entitled *Romello Sheppard, individually and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act v. Ghirardelli Chocolate Company, a California Corporation*, Superior Court of the State of California in and for the County of Alameda, Case No. 22CV020713 (the "Complaint").

10. Court

"Court" means the Superior Court for the County of Alameda.

11. Defendant

"Defendant" means Defendant Ghirardelli Chocolate Company.

12. Effective Date

"Effective Date" means the date when both of the following have occurred: (a) the Court enters a Judgment on its order granting Final Approval of the Settlement; and (b) the Judgment is final. The judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Class Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Class Settlement and no appeal was filed, the day after the deadline for filing a notice of appeal from the Judgment has expired; or (c) if one or more Participating Class Members objects to the Class Settlement and a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

13. Eligible Workweeks

“Eligible Workweeks” means any workweek in which a Class Member worked for any amount of time for Defendant during the Class Period as shown by Defendant’s timekeeping data for each Class Member.

14. Eligible Pay Periods

“Eligible Pay Period” means any pay period in which a PAGA Member worked for any amount of time for Defendant during the PAGA Period, as shown by Defendant’s timekeeping data for each PAGA Member.

15. Final Approval Hearing

“Final Approval Hearing” means the hearing at which the Court ascertains the fairness, reasonableness, and adequacy of the Settlement and decides whether the Settlement meets all requirements for final approval.

16. Final Judgment

“Final Judgment” or “Judgment” means a judgment issued by the Court approving this Agreement as binding upon the Parties following the Final Approval Hearing.

17. Individual PAGA Payment

“Individual PAGA Payment” means the amounts paid from the PAGA Payment to PAGA Members that shall in the aggregate comprise 25% of the PAGA Payment, namely \$87,500.00 as consideration for settlement of claims for civil penalties under PAGA.

18. Individual Settlement Payment

“Individual Settlement Payment” means the amount paid from the Net Settlement Amount to a Participating Class Member. Any Class Member who timely submits a valid Request for Exclusion pursuant to the procedures set forth herein is not a Participating Class Member and is not eligible to receive an Individual Settlement Payment.

19. LWDA

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

20. LWDA PAGA Payment

“LWDA PAGA Payment” means the amount of Two Hundred and Sixty-Two Thousand Five Hundred Dollars and Zero Cents (\$262,500.00) to be paid to the LWDA as its 75% share of the PAGA Payment, as consideration for settlement of claims for civil penalties under PAGA.

21. Modification Provision

On the February 19, 2024, mediation date, Defendant represented that its data team extrapolated the total number of Eligible Workweeks of the Action from October 27, 2018, through February 19, 2024 (the “Mediation Period”) as 132,339. If the actual count of the workweeks during the Mediation Period is later validated by the Settlement Administrator to be more than 10% larger than 132,339 Eligible Workweeks, meaning that the total actually exceeds 145,572 Eligible Workweeks, then for each workweek that is in addition to 145,572 shall add an additional \$23.80 to the Maximum Settlement Amount. For example, if the actual number of workweeks in the Mediation Data is later validated to be 145,582, then the Maximum Settlement Amount will be increased by \$238.00.

22. Net Settlement Amount

“Net Settlement Amount” means the Total Settlement Amount less the Court-approved Class Counsel Award, The Class Representative’s Enhancement Award, the PAGA Payment, and the Settlement Administrator Costs. The Net Settlement Amount is the total amount that will be paid to Participating Class Members, in the form of Individual Settlement Payments.

23. Notice of Class Action Settlement

“Notice of Class Action Settlement” or “Notice” means the notice approved by the Parties and subject to Court approval, substantially in the form of **Exhibit A** hereto, explaining the terms of this Agreement and the settlement process, which the Settlement Administrator will mail to each Class Member.

24. PAGA

“PAGA” refers to the California Labor Code Private Attorneys General Act of 2004, California Labor Code § 2698 et seq.

25. PAGA Members

“PAGA Members” means all Class Members who worked any Eligible Pay Periods at any time during the PAGA Period.

26. PAGA Notice Letter

“PAGA Notice Letter” refers to the September 5, 2023, letter sent to the LWDA on behalf of the Plaintiff regarding his intent to pursue civil penalties under the PAGA for various alleged violations of the California Labor Code which was assigned LWDA Case No. LWDA-CM-903448-22.

27. PAGA Payment

“PAGA Payment” means the portion of the Total Settlement Amount that shall be allocated to claims under PAGA. The Parties have agreed to allocate Three Hundred Fifty Thousand Dollars and Zero Cents (\$350,000.00). Seventy-five percent (75%) shall be payable to the LWDA (i.e., the LWDA PAGA Payment) and the remaining twenty-five percent (25%) shall be used to pay all of the Individual PAGA Payments to PAGA Members in settlement of all claims for PAGA penalties as defined in this Agreement.

28. PAGA Period

“PAGA Period” means the period from August 23, 2021, through April 19, 2024.

29. Participating Class Members

“Participating Class Members” means those Class Members who do not file a valid and timely Request for Exclusion.

30. Parties

“Parties” means Plaintiff and Defendant, collectively.

31. Plaintiff

“Plaintiff” means Plaintiff Romello Sheppard.

32. Preliminary Approval Date

“Preliminary Approval Date” means the date on which the Court issues an order granting preliminary approval of the proposed Settlement.

33. Qualified Settlement Fund

“Qualified Settlement Fund” or “QSF” means the account established by the Settlement Administrator which the Parties agree will at all times be treated as a “qualified settlement fund” within the meaning of Treas. Reg. §1.468B-1, *et seq.*

34. Released Class Claims

“Released Class Claims” shall mean all claims and/or causes of Action under any state, local, or federal law or administrative regulation by Participating Class Members against the Released Parties that were or could have been alleged based on the facts pleaded in the Action, including all class claims stated in the Action alleging violations of California Labor Code sections 201, 202, 203, 204, 210, 218, 226(a), 226 et seq, 226.7, 227.3, 510, 512(a), 558, 1174(d), 1194, 1194.2, 1197, 1197.1, 1198, 2800 and 2802, and:

- (a) All claims for unpaid wages, including claims for minimum, regular, overtime, and double-time wages, the alleged failure to pay for all time worked, the alleged failure to pay for all time worked at correct rates;
- (b) All claims for meal period violations, including claims for short, late, missed, interrupted and/or improperly controlled meal periods, the failure to pay premium wages, the failure to pay premium wages at the correct regular rates, and the failure to properly record meal periods;
- (c) All claims for rest break violations, including claims for short, late, missed, interrupted, and/or improperly controlled rest breaks, the

failure to pay premium wages, and the failure to pay premium wages at the correct regular rates;

- (d) All claims for the untimely payment of final wages and associated waiting time penalties under sections 201, 202 and 203 of the California Labor Code;
- (e) All claims for the untimely payment of wages, including minimum, regular, overtime, and premium wages to employees in violation of section 204 of the California Labor Code;
- (f) All claims for improper or inaccurate itemized wage statements, including any alleged violations of California Labor Code Section 226(a)(1)-(9) based on the facts and legal theories contained in the Complaint, including the allegations that sales employees were improperly classified resulting in various wage statement discrepancies, and that wage statements lacked the total number of hours worked and corresponding rates, and including claims for injuries suffered therefrom;
- (g) All claims for the alleged failure to keep accurate records in violation of Section 1174(d) of the California Labor Code;
- (h) All claims for any and all unreimbursed expenses;
- (i) All claims for the failure to accrue, record, notify, and pay accrued vacation and paid time off;
- (j) All claims under the California Business & Professions Code (including Section 17200 et seq.) premised on the facts, claim, and causes of Action alleged in the Action; and
- (k) All claims for statutory penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation and other costs, expenses, restitution, and equitable and declaratory relief based on the allegations in the Complaints.

The period of the release of Released Claims shall not extend beyond the Class Period.

35. Workweeks Dispute

“Workweeks Dispute” means a Class Member’s written letter disputing the pre-printed information on the Notice of Class Action Settlement as to his or her Eligible Workweeks during the Class Period, which must: (a) contain the case name and number of the Action; (b) contain the Class Member’s full name, signature, address, telephone number, and last four (4) digits of Social Security number; (c) clearly state that the Class Member disputes the number of Eligible Workweeks credited to him or her for the Class Period and what he or she contends is the correct number to be credited to him or her; (d) attach any documentation that he or she has to support the dispute; and (e) be submitted by mail, fax or email to the Settlement Administrator at the specified address, postmarked (if mailed) or received (if faxed or emailed) on or before the Response Deadline.

36. Released PAGA Claims

“Released PAGA Claims” shall mean all claims and causes of Action for civil penalties under the Private Attorneys General Act, California Labor Code section 2698, et seq. (“PAGA”) of the State of California with respect to PAGA Members against the Released Parties that were or could have been alleged based on the factual allegations and alleged Labor Code violations listed in the PAGA Notice Letter, including all claims for civil penalties based on alleged violations of California Labor Code sections 201, 202, 203, 204, 210, 226(a), 226.7, 227.3, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and related sections of the applicable IWC Wage Order, including Section 14 (suitable seating) of IWC Wage Order 1-2001, and:

- (a) All claims for civil penalties under PAGA based on the alleged failure to pay all wages earned, including minimum, regular, overtime, and double-time wages, the alleged failure to pay for all time worked, and the alleged failure to pay for all time worked at correct rates;
- (b) All claims for civil penalties under PAGA based on the alleged failure to provide a day of rest in violations of Sections 551 and 552 of the California Labor Code;
- (c) All claims for civil penalties under PAGA based on the alleged failure to provide compliant meal periods, including claims for short, late, missed, interrupted and/or improperly controlled meal periods, the failure to pay premium wages, the failure to pay premium wages at

the correct regular rates, and the failure to properly record meal periods;

- (d) All claims for civil penalties under PAGA based on the alleged failure to provide compliant rest breaks, including claims for short, late, missed, interrupted, and/or improperly controlled rest breaks, the failure to pay premium wages, and the failure to pay premium wages at the correct regular rates;
- (e) All claims for civil penalties under PAGA based on the alleged failure to pay wages on a timely basis, including minimum, regular, overtime, and premium wages to employees in violation of section 204 of the California Labor Code;
- (f) All claims for civil penalties under PAGA based on the alleged failure to provide timely payment of final wages in violation of Sections 201 and 202 of the California Labor Code;
- (g) All claims for civil penalties under PAGA based on the alleged failure to reimburse employees for any and all business expenses;
- (h) All claims for civil penalties under PAGA based on the alleged failure to provide accurate itemized wage statements, including any alleged violations of California Labor Code Section 226(a)(1)-(9) based on the facts and legal theories contained in the Complaint and PAGA Notice Letter, including the allegation that the wage statements lacked the total number of hours worked and corresponding rates;
- (i) All claims for civil penalties under PAGA based on the alleged failure to keep accurate records in violation of Section 1174(d) of the California Labor Code;
- (j) All claims for civil penalties under PAGA based on the failure to accrue, record, notify, and pay accrued vacation and paid time off;
- (k) All claims for civil penalties under PAGA based on the failure to provide suitable seating, including any claims under Sections 14(A) and 14(B) of the Wage Order, including claims that seats were not provided, were not adequate or suitable when the nature of the work reasonably permitted the use of seats, and were not adequate, suitable, provided, or within the reasonably proximity to the work area for employees during lulls in activities; and

- (l) any other claims for civil penalties alleged in the PAGA Notice Letter.

The period of the release of Released PAGA Claims will be the PAGA Period.

37. Released Parties

“Released Parties” means Defendant Ghirardelli Chocolate Company and its past, present and/or future, direct and/or indirect, owners, officers, directors, members, managers, management and executive-level employees, agents, representatives, attorneys, insurers, parent companies, subsidiaries, affiliates, successors, and assigns.

38. Request for Exclusion

“Request for Exclusion” means a Class Member’s written letter indicating a request to be excluded from the Class Settlement which must contain: (a) the case name and number of the Action; (b) the Class Member’s full name, present address, signature, telephone number, and last four (4) digits of Social Security number; (c) a statement electing to be excluded from the Class Settlement; and (d) be submitted by mail, email or fax to the Settlement Administrator at the specified address, postmarked (if mailed) or received (if faxed or emailed) on or before the Response Deadline. Specific details of how to submit a “Request for Exclusion” will be provided by the Notice of Class Action Settlement.

39. Response Deadline

“Response Deadline” means the date sixty (60) calendar days after the Settlement Administrator mails the Notice of Class Action Settlement to Class Members, which is the last date on which Class Members may: (a) submit a Request for Exclusion; (b) submit objections to the Class Settlement; or (c) dispute the information contained in the Notice of Class Action Settlement regarding the number of Eligible Workweeks to be credited to the Class Members. If the sixtieth (60th) day falls on a Sunday or Federal holiday, then the deadline is extended to the next day that the U.S. Postal Service is open.

40. Settlement

“Settlement” or “Agreement” means this Class and Representative Action Settlement Agreement and Release.

41. Settlement Administrator

“Settlement Administrator” means Phoenix Settlement Administrators, the third-party company that is responsible for administering the settlement, mutually agreed to by the Parties and appointed by the Court upon Class Counsel’s motion for preliminary approval of this Settlement.

42. Settlement Administrator Costs

“Settlement Administrator Costs” means the amount of \$18,750, to be paid to the Settlement Administrator from the Total Settlement Amount for administration of this Settlement. References herein to Action and responsibilities of the Settlement Administrator shall be to those Action and responsibilities it shall take as set forth in the Agreement.

43. Total Settlement Amount

“Total Settlement Amount” means the total maximum amount payable under the terms of this Agreement by Defendant, which is the gross sum of \$3,150,000.00 (Three Million One Hundred Fifty Thousand Dollars and Zero Cents), plus any additional amount owed pursuant to the “Modification Provision” below, which includes: the Individual Settlement Payments to Participating Class Members; payment of Settlement Administrator Costs to the Settlement Administrator as approved by the Court; the Class Representative’s Enhancement Award to Plaintiff as approved by the Court; a payment to Class Counsel of attorneys’ fees and reasonable litigation costs which shall be determined by motion with the Court; and the PAGA Payment to the LWDA and PAGA Members.

Payment of the amount necessary to cover the employer’s portion of payroll taxes associated with the portion of the settlement allocated to wages (“Employer’s Withholding Share”) shall be made by Defendant, separate and apart from the Total Settlement Amount.

The Settlement Administrator will make all required tax deductions and payments using a Qualified Settlement Fund. As set forth herein, the Settlement Administrator will issue all of the above-referenced payments from the Qualified Settlement Fund in accordance with the applicable provisions of this Agreement.

RECITALS

44. Procedural History

On August 23, 2022, Plaintiff Romello Sheppard provided written notice by online submission to the LWDA and by certified mail to Defendant, of his intent to seek civil penalties for alleged violations of the California Labor Code under PAGA.

On October 27, 2022, Plaintiff filed a class Action complaint in the Superior Court of California, County of Alameda, Case No. 22CV020713 (the “Complaint”). Defendant removed the Complaint to the Northern District of California December 15, 2022, Case No. 4:22-cv-08912-DMR.

On September 5, 2023, Plaintiff filed an amended PAGA Notice letter with the LWDA (the “PAGA Notice Letter”).

On February 19, 2024, the Parties mediated with Jeffrey Krivis, Esq., a prominent mediator experienced in resolving wage and hour class and representative Action. As a result of the mediator’s efforts, the Parties reached an agreement to settle all claims and causes of Action alleged by the Plaintiff under the California Labor Code, the California Business and Professions Code, the California Code of Regulations, the applicable California Wage Order, and the PAGA claims in the Action.

Before the mediation, Defendant produced extensive documentation including timekeeping and payroll data, policy documents, class size information, pay period and workweek information, and information regarding the hourly rates of the settlement class members. Defendant provided discovery sufficient to enable Plaintiff and Class Counsel to rigorously evaluate the strengths and risks of the Action and to perform an analysis of the potential damages arising from the claims made in the Action.

Based on the settlement, the Parties jointly agreed to remand the case back to the Superior Court of Alameda County, and Plaintiff filed a First Amended Complaint on July 15, 2024, Case No. 22CV020713.

45. No Admission

Defendant denies any liability or wrongdoing of any kind associated with the claims asserted in the Action. Defendant also disputes the damages and penalties claimed by Plaintiff, and further contends that, for any purpose other than

settlement, Plaintiff's claims are not appropriate for class or representative treatment. This Settlement is a compromise of disputed claims. Nothing contained in this Settlement, no documents referred to herein, and no Action taken to carry out this Settlement, shall be construed or used as an admission by or against Defendant as to the merits or lack thereof of the claims asserted in the Action or in any other proceeding.

Defendant contends that at all times it has complied with all applicable state, federal and local laws related to the Class Members' employment. Nevertheless, Defendant has entered into this Settlement to avoid the cost, risk and inconvenience of further litigation. Nothing contained in this Settlement, nor the fact of this Settlement itself, shall be construed or deemed as an admission of liability, or wrongdoing on the part of the Defendant collectively or individually, or an admission that class or representative Action treatment would be allowed outside the settlement context. The Parties agree that this Settlement cannot be used to support any claim for subsequent penalty violation rates under the Labor Code, including the PAGA, in any subsequent litigation.

Pursuant to California Evidence Code sections 1152 and 1154, this Settlement shall be inadmissible in evidence in any proceeding; except that the Settlement may be filed and used in this litigation or any related litigation as necessary to approve, interpret, or enforce this Settlement, or in any subsequent Action against or by Defendant to support a stay of any subsequent Action, or to establish a defense of res judicata, collateral estoppel, release, good faith settlement, judgment bar, or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

46. Benefits of Settlement to Class and PAGA Members

Class Counsel investigated the facts relevant to the Action, including reviewing documents and information provided by Defendant. Based on their own independent investigation and evaluation, Class Counsel believes that the Settlement with Defendant is fair, reasonable, and adequate, and in the best interest of the Class in light of all known facts and circumstances, including the risks of significant delay, defenses asserted by Defendant, uncertainties regarding a class trial, and numerous potential appellate issues. Accordingly, the Parties and their counsel desire to fully, finally, and forever settle, compromise, and discharge all disputes and claims arising from or relating to the Action on the terms set forth herein.

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

47. Settlement of Disputed Claims

This Agreement is a compromise of disputed claims. Defendant has claimed and continues to claim that the Released Class Claims and Released PAGA Claims have no merit and do not give rise to liability. Plaintiff and Participating Class Members and PAGA Members have claimed and continue to claim that the Released Class Claims and the Released PAGA Claims have merit and give rise to liability on the part of Defendant. Nothing contained in this Agreement, no documents referred to herein, and no Action taken to carry out this Agreement, may be construed or used as an admission by or against the Defendant or their Counsel, the Plaintiff, Participating Class Members, PAGA Members, or Class Counsel as to the merits or lack thereof of the claims asserted in the Action.

TERMS OF AGREEMENT

48. Release As To All Participating Class Members

Upon the Effective Date and full funding of the Total Settlement Amount and Payment of the Employer's Withholding Share, Plaintiff and all Participating Class Members in their capacities as Class Members, as well as their spouses, heirs, executors, administrators, trustees and/or permitted assigns, 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 Class Claims for the Class Period.

49. Release of Claims by the LWDA

Upon the Effective Date and full funding of the Total Settlement Amount and Payment of the Employer's Withholding Share, Plaintiff, as agent and proxy of the State of California and the LWDA, and the LWDA Plaintiff fully and finally

release and discharge the Released Parties from the Released PAGA Claims for the PAGA Period. These releases will take effect whether or not a PAGA Member receives his or her Individual PAGA Payment or cashes and deposits any check for the Individual PAGA Payment.

50. Release of Claims by Plaintiff

As of the Effective Date and full funding of the Total Settlement Amount and Payment of the Employer's Withholding Share, Plaintiff release the Released Parties from all the Class Representative's Released Claims. Plaintiff's releases set forth herein include a waiver of all rights under California Civil Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Plaintiff may hereafter discover claims or facts in addition to, or different from, those which they now know or believe to exist, but Plaintiff expressly agree to fully, finally and forever settle and release any and all claims against the Released Parties, known or unknown, suspected or unsuspected, which exist or may exist against Defendant at the time of the execution of this Agreement, including, but not limited to, any and all claims relating to or arising from Plaintiff's employment with Defendant.

51. The Motion for Preliminary Approval

Class Counsel shall be responsible for preparing the Motion for Preliminary Approval. Class Counsel agrees to provide Counsel for Defendant with drafts of all documents they intend to submit in support of their Motion for Preliminary Approval at least five (5) calendar days in advance of filing to allow Counsel for Defendant a reasonable time to review and comment on such papers. Class Counsel further agrees to reasonably incorporate the comments from Counsel for Defendant.

Defendant shall provide documentation or a declaration to support claims of

financial distress, if required by the Court, as necessary to support approval of the settlement. Subject to the Court's approval, any such Declaration may be filed under seal. Defendant will file an appropriate request to seal the declaration, which will not be opposed by Plaintiff.

52. Settlement Administrator

Within twenty-one (21) calendar days following the date that the Court grants Preliminary Approval of this Agreement, Defendant shall provide the Settlement Administrator with the accurate Class Information for purposes of mailing the Notice of Class Action Settlement to the Class Members. The Settlement Administrator shall maintain the Class Information as private and confidential and shall not disclose such data to any persons or entities other than Counsel for Defendant, except that relevant information can be provided to Class Counsel, on an individual basis only, and only when necessary for Class Counsel to respond to specific inquiries or requests from individual Class Members.

In addition, prior to mailing any Settlement Notices, the Settlement Administrator shall provide Class Counsel with a spreadsheet with an anonymous listing all class members, their Eligible Workweeks and PAGA Pay Periods and a preliminary calculation of the value of each Class Member's Individual Settlement Payment and PAGA Member's Individual PAGA Payment. The spreadsheet, as sent to Class Counsel, will be anonymized. It will **not include** Class Member names, not include employee ID numbers, not include contact information, and will not include social security numbers.

The Class Information is being supplied solely for purposes of the administration of the Settlement set forth in this Agreement and cannot be used by the Settlement Administrator or Class Counsel for any other purpose. The Parties agree that the Class Information will not be used to solicit Class Members to file any claim, charge or complaint of any kind whatsoever against Defendant and will only be used to administer the Settlement under the terms provided herein.

(a) Notice by First Class U.S. Mail.

Upon receipt of the Class Information, the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct any known or identifiable address changes. Within ten (10) calendar days of receipt of the Class Information, the Settlement Administrator will mail copies of the Notice of Class Action Settlement to all Class Members in English and Spanish

via regular First-Class U.S. Mail. The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Class Member, including performing a U.S. Postal Service National Change of Address database search to identify any updated addresses. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Class Member. The form of the proposed Notice of Class Action Settlement will be agreed to by the Parties, and subject to Court approval and modification as necessary to fulfill the Parties desire to resolve the Action.

(b) Undeliverable Notices.

Any Notice of Class Action Settlement returned to the Settlement Administrator as undeliverable on or before the Response Deadline shall be re-mailed once to the forwarding address affixed thereto, within three (3) business days of receipt of the returned undeliverable Notice of Class Action Settlement. If no forwarding address is affixed, the Settlement Administrator shall promptly attempt to determine a correct address by use of skip-tracing, or other search using the name, address and/or Social Security Number of the Class Member whose notice was undeliverable, and shall then re-mail all returned, undelivered mail within three (3) business days of receiving notice that a Notice of Class Action Settlement was undeliverable. Class Members who receive a re-mailed Notice of Class Action Settlement shall have their Response Deadline extended twenty (20) calendar days from the original Response Deadline.

(c) Disputes Regarding Eligible Workweeks.

Class Members will have the opportunity, should they disagree with the number of Eligible Workweeks stated on their Notice of Class Action Settlement by submitting a Workweeks Dispute, postmarked, faxed or emailed on or before the Response Deadline. If there is a Workweeks Dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility of each Class Member's eligibility for, and the amounts of, their Individual Settlement Payment under the terms of this Agreement. The Settlement Administrator's determination of the eligibility for and amount of any Individual Settlement Payment will be binding upon the Parties, subject to approval by the Court. In the absence of circumstances indicating fraud, manipulation or destruction, Defendant's records will be given a rebuttable presumption of accuracy.

(d) Disputes Regarding Administration of Settlement.

Any disputes not resolved by the Settlement Administrator concerning the administration of the Settlement will be resolved by the Court under the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties will confer in good faith to attempt to resolve the dispute without involving the Court.

(e) Exclusions.

- (1) The Notice of Class Action Settlement shall state that Class Members who wish to exclude themselves from the Class Settlement must submit a Request for Exclusion by the Response Deadline.
- (2) The date of the postmark on the return mailing envelope on the Request for Exclusion, the date reflected on a fax received by the Settlement Administrator and/or the date reflected on an email received by the Settlement Administrator shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Class Members who fail to submit a valid and timely Request for Exclusion on or before the Response Deadline shall be bound by all terms of the Settlement and any Judgment entered in the Action pursuant to the Settlement.
- (3) Any Class Member who submits a valid and timely Request for Exclusion will not be entitled to any recovery under the Class Settlement and will not be bound by the terms of the Class Settlement or have any right to object to or appeal the Class Settlement.
- (4) Any Request for Exclusion has no effect on the PAGA Settlement; any Class Member who is also considered a PAGA Member will still be issued their Individual PAGA Payment and be bound by the PAGA Settlement, regardless of whether they submit a Request for Exclusion.
- (5) No later than seven (7) calendar days after the Response Deadline, the Settlement Administrator will provide counsel for

the Parties with a complete list of all members of the Class who have submitted a timely and valid Request for Exclusion.

(f) Objections.

- (1) The Notice of Class Action Settlement shall state that Participating Class Members who wish to object to the Class Settlement may do so in person (or other method of personal appearance permitted by the court, e.g., Zoom) at the Final Approval Hearing and/or in writing. Any written objection (“Notice of Objection”) must be mailed, faxed or emailed to the Settlement Administrator by the Response Deadline. The date of mailing on the envelope, the date of faxing on the fax and/or the date of emailing on the email shall be deemed the exclusive means for determining that a Notice of Objection was timely received.
- (2) The Notice of Objection must be signed by the Settlement Class Member and state: (a) the case name and number of the Action; (b) the full name and address of the objecting Settlement Class Member; (c) the factual and/or legal basis for the objection; (d) whether the Settlement Class Member is represented by counsel, and if so, identify said counsel; and (e) whether the Settlement Class Member intends to appear at the Final Approval Hearing. Class Counsel will ensure that any Notice of Objection received by the Settlement Administrator by the Response Deadline is submitted with the Court along with the Motion for Final Approval.
- (3) Any of the Parties may file a response to any objection before the Final Approval Hearing. Any attorney who will represent an individual objecting to this Settlement who has not filed a Notice of Objection must file a notice of appearance with the Court and serve Class Counsel and counsel for Defendant with this notice no later than the Response Deadline. Any Settlement Class Member who fails to submit a timely and complete Notice of Objection or to present an objection in person at the Final Approval Hearing shall be deemed to have waived any objections and shall be foreclosed from making any objection to the Class Settlement whether by appeal or

otherwise.

53. No Solicitation of Settlement Objections or Exclusions

The Parties agree to use their best efforts to carry out the terms of this Settlement. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to object to the Settlement or file Requests for Exclusion, or to appeal from the Court's Judgment.

54. The Motion for Final Approval

Class Counsel shall be responsible for preparing the Motion for Final Approval, and any Motion Attorneys' Fees, Costs, and Class Representative's Enhancement Award, supporting declarations, and exhibits thereto, for final approval by the Court. Class Counsel agrees to provide Counsel for Defendant with drafts of all documents they intend to submit in support of their Motion for Final Approval and application for attorneys' fees and costs at least three (3) business days in advance of filing to allow Counsel for Defendant a reasonable time to review and comment on such papers. Class Counsel further agrees to reasonably incorporate the comments from Counsel for Defendant. The Parties must meet and confer and make all reasonable efforts to agree on any modifications to this Agreement that will result in entry of the Final Approval Order and Judgment.

55. Funding of the Qualified Settlement Fund

No later than seven (7) calendar days after the Effective Date, the Settlement Administrator shall send Defendant's Counsel electronic wiring instructions for paying the Total Settlement Amount into the QSF. The Settlement Administrator will also inform Defendant of the amount to be sent to the QSF to pay for the employer's share of payroll taxes. No later than twenty (20) calendar days after the Effective Date, Defendant shall fund the QSF.

56. Net Settlement Amount

- (a) The Net Settlement Amount will be determined by the Settlement Administrator by subtracting the Class Counsel Award, Class Representative's Enhancement Award, PAGA Payment, and Settlement Administrator Costs from the Total Settlement Amount.
- (b) This is a non-reversionary Settlement in which Defendant will pay the

Total Settlement Amount. No portion of the Total Settlement Amount will revert to Defendant. The employer's share of payroll taxes and other required withholdings from Individual Settlement Payments, including but not limited to the FICA and FUTA contributions, if applicable, shall be paid separately from, and in addition to, the Total Settlement Amount. Any award of less than the amounts requested for enhancements, administrative costs, litigation costs, or attorneys' fees will be a part of the Net Settlement Amount and distributed to the Participating Class Members.

57. Individual Settlement Payments

Individual Settlement Payments will be paid from the Net Settlement Amount and shall be paid pursuant to the settlement formula as follows:

- (a) After preliminary approval of the Settlement, using the Class Information (including Defendant's timekeeping data), the Settlement Administrator will compute the total number of Eligible Workweeks of all Class Members collectively during the Class Period, and this sum shall be known as the "Initial Workweek Total"; the Settlement Administrator will divide the projected Net Settlement Amount by the Workweek Total to determine the settlement value for each Eligible Workweek (the "Initial Workweek Value"); and the Settlement Administrator will multiply the number of Eligible Workweeks of a Class Member during the Class Period by the Initial Workweek Value to determine that Class Member's estimated Individual Settlement Payment.
- (b) After final approval of the Settlement, the Settlement Administrator will divide the Net Settlement Amount by the total number of Eligible Workweeks of all Participating Class Members collectively during the Class Period, and this sum shall be known as the "Final Workweek Total"; the Settlement Administrator will divide the final Net Settlement Amount by the Final Workweeks Total to determine the settlement value for each Eligible Workweek (the "Final Workweek Value"); the Final Workweek Value will be rounded to the nearest cent; and the Settlement Administrator will multiply the number of Eligible Workweeks of a Participating Class Member during the Class Period by the Final Workweek Value to determine that Participating Class Member's final Individual Settlement Payment.

- (c) Individual Settlement Payments shall be mailed by regular First-Class U.S. Mail to each Participating Class Member's last known mailing address within ten (10) calendar days after Defendant fully funds the Settlement.

58. PAGA Payments

- (a) A total amount of \$350,000.00 from the Total Settlement Amount will be allocated as the PAGA Payment to be paid as penalties under PAGA, seventy-five percent (75%) of this amount will be the LWDA PAGA Payment to be paid to the LWDA and the remaining twenty-five (25%) shall be distributed to the PAGA Members as Individual PAGA Payments. Any portion of the PAGA Payment not approved by the Court shall be added to the Net Settlement Amount and any additional amount ordered by the Court shall be paid from the Total Settlement Amount; in no event shall Defendant be required to pay in excess of the Total Settlement Amount.
- (b) The LWDA PAGA Payment will be paid to the LWDA within ten (10) calendar days after Defendant fully funds the Settlement.
- (c) The remaining 25% of the PAGA Payment to be distributed to the PAGA Members as Individual PAGA Payments and shall be distributed based on a *pro rata* share based on the number of Eligible Pay Periods during the PAGA Period. Individual PAGA Payments will be paid from the remaining 25% of the PAGA Payment and shall be paid pursuant to the settlement formula as follows: The Settlement Administrator will first determine the total number of Eligible Pay Periods during the PAGA Period. The "Pay Period Value" will be equal to 25% of the PAGA Payment divided by the total number of Eligible Pay Periods credited to PAGA Members during the PAGA Period. The Pay Period Value will be rounded to the nearest cent. The amount of the Individual PAGA Payment to be paid to each PAGA Member will be determined by multiplying the Pay Period Value by the total number of Eligible Pay Periods. Individual PAGA Payments shall be mailed by regular First-Class U.S. Mail to each PAGA Member's last known mailing address within ten (10) calendar days after Defendant fully funds the Settlement.

59. Class Representative's Enhancement Award

Plaintiff will make an application to the Court for a Class Representative Enhancement Award of up to \$10,000.00. The Class Representative's Enhancement Award shall be paid to Plaintiff from the Total Settlement Amount no later than ten (10) calendar days after Defendant fully funds the Settlement. The Class Representative's Enhancement Award shall be in addition to any Individual Settlement Payments and Individual PAGA Payments that he may be eligible to receive. Any amount requested by Plaintiff for the Class Representative's Enhancement Award and not granted by the Court shall be a part of the Net Settlement Amount and be distributed to Participating Class Members as provided in this Agreement. In the event the Court reduces or does not approve the requested Class Representative's Enhancement Award, Plaintiff and Class Counsel shall not have the right to modify or revoke the Settlement, or to appeal such order, nor will Plaintiff or Class Counsel seek, request, or demand an increase to the Total Settlement Amount on that basis.

60. Class Counsel Award

- (a) Class Counsel will file a motion for attorneys' fees in the amount of up to thirty-five percent (35%) of the Total Settlement Amount, and for the reimbursement of reasonable litigation costs and expenses associated with Class Counsel's prosecution of the Action, not to exceed \$25,000, to be paid from the Total Settlement Amount. Class Counsel shall be paid the Class Counsel Award no later than fifteen (15) calendar days after Defendant fully funds the settlement. Any amount requested by Class Counsel for the Class Counsel Award and not granted by the Court shall be a part of the Net Settlement Amount and be distributed to Participating Class Members as provided in this Agreement.
- (b) This Settlement is not contingent upon the Court awarding Class Counsel any particular amount in attorneys' fees and costs and, in the event that the Court reduces or does not approve the requested Class Counsel Award, Plaintiff and Class Counsel shall not have the right to modify or revoke the Settlement, nor will Plaintiff or Class Counsel seek, request, or demand an increase to the Total Settlement Amount on that basis.

61. **Tax Treatment**

- (a) The Settlement Administrator will report each payment made from the Qualified Settlement Fund to state and federal government authorities, including the Internal Revenue Service, to the extent required by law. All Individual Settlement Payments shall be allocated as follows: 20% wages and 80% penalties, interest, and non-wage damages. The 20% wage portion of Individual Settlement Payments shall be subject to required withholdings and deductions by the Settlement Administrator and shall be reported on Form W-2 (and such other state or local tax reporting forms as may be required by law) with respect to the year of payment as wage income to the Settlement Class Member by the Settlement Administrator on behalf of the Qualified Settlement Fund. All Individual PAGA Payments shall be allocated as 100% penalties, for which a 1099 will be issued if required. The Settlement Administrator shall issue I.R.S. Form 1099 if required for the remaining payments under this Agreement. Defendant shall solely be responsible for paying the Employer's Withholding Share on the amounts allocated as wages, which amount shall be paid separately from the Total Settlement Amount. Plaintiff, any Participating Class Member, and any PAGA Member who receives any Individual Settlement Payment or Individual PAGA Payment should consult with their tax advisors concerning the tax consequences of the payments they receive under the Settlement.
- (b) Participating Class Members, PAGA Members, and Class Counsel shall be solely responsible for the reporting and payment of their share of any federal, state, and/or local income tax or other tax or any other withholdings, if any, on any of the payments made to them pursuant to this Settlement. Defendant has not made any representations as to the taxability to any Participating Class Members of any portion of the Individual Settlement Payments, to any PAGA Members regarding the Individual PAGA Payments, the payment of any attorneys' fees and expenses to Class Counsel, or the payment of the Class Representative's Enhancement Award to the Class Representative. The Notice will advise each Class Member and PAGA Member to seek his/her own personal tax advice prior to acting in response to the Notice, and Defendant, the Class Representative, and Class Counsel agree that each Class Member and PAGA Member will have an

adequate opportunity to seek tax advice prior to acting in response to the Notice.

62. No Tax Advice

Neither Plaintiff, Class Counsel, nor Defendant's Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

63. Unclaimed Settlement Payment(s)

- (a) Individual Settlement Payment and Individual PAGA Payment checks shall be valid and negotiable for one hundred and eighty (180) calendar days after the mailing of the Individual Settlement Payment and Individual PAGA Payment checks, and thereafter, shall be canceled. After which, any remaining funds attributable to unclaimed, undeliverable, or expired Individual Settlement Payment and/or Individual PAGA Payment checks shall be transmitted by the Settlement Administrator to the following *cy pres* recipient: Children's Advocacy Institute, 5998 Alcala Park, San Diego, CA 92110. This organization advocates for children through litigation and lobbying. As such, it meets the requirements of Code of Civil Procedure section 384(b), which authorizes *cy pres* distributions to organizations that provide "child advocacy programs."
- (b) As part of the administration, one hundred (100) calendar days before the Individual Settlement Payment and Individual PAGA Payment checks expire, the Settlement Administrator shall mail reminder postcards to those Participating Class Members and PAGA Members whose settlement checks were not returned undeliverable and who have not cashed, deposited, or otherwise negotiated their checks.

64. Payment of Settlement Administrator Costs

Upon filing the motion for Final Approval, Plaintiff will request the Court to award an amount equal to the actual administration costs. The Settlement Administrator shall have the authority and obligation to make payments, credits, and disbursements to Participating Class Members and PAGA Members in the manner set forth herein, calculated in accordance with the methodology set out in this

Agreement and orders of the Court. The Parties agree to cooperate in the Settlement Administration process and to make reasonable efforts to control and minimize the cost and expenses incurred in administration of the Settlement. The Settlement Administrator shall be paid the Settlement Administrator Costs no later than ten (10) calendar days after Defendant fully funds the Settlement. Any amount requested for the Settlement Administrator Costs and not granted by the Court shall be a part of the Net Settlement Amount and be distributed to Participating Class Members as provided in this Agreement.

65. Settlement Administrator Responsibilities

- (a) In addition to establishing the Qualified Settlement Fund, the Settlement Administrator shall be responsible for the following: creating a plan of settlement administration and settlement fund distribution; using the Class Information to calculate each Class Member's approximate Individual Settlement Payment and each PAGA Member's Individual PAGA Payment; ascertaining the identity and whereabouts of the Class Members and mailing Notice of Class Action Settlement out to them; communicating with Class Members as necessary; printing, translating and mailing the Notice of Class Action Settlement and tax forms to the Participating Class Members and PAGA Members as directed by the Court (including, but not limited to, the DE 9, the DE 9C, 1099s, W-2s and W-3s); receiving and reporting requests for exclusion and objections; processing and mailing payments to Plaintiff, Class Counsel, Participating Class Members, the LWDA, and PAGA Members; notifying the Parties of, and resolving any disputes regarding Eligible Workweeks; complying with all tax reporting notice and filing requirements; carrying out all other duties related to the Qualified Settlement Fund's documentation and filing; providing declaration(s) as necessary in support of preliminary and/or final approval of this Settlement; providing status reports as needed, among other administrative duties; and other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform. The Settlement Administrator shall keep the Parties timely apprised of the performance of all Settlement Administrator responsibilities.
- (b) Defendant and their Counsel shall have no responsibility for validating or ensuring the accuracy of the Settlement Administrator's work. Plaintiff, Class Counsel, Defendant, and Defendant's Counsel

shall not bear any responsibility for any errors or omissions in the calculation or distribution of the Individual Settlement Payments, Individual PAGA Payments, or any other distribution of monies contemplated by this Agreement.

66. Final Approval Hearing and Entry of Final Judgment

Upon expiration of the Response Deadline, with the Court's permission, a Final Approval Hearing shall be conducted to determine final approval of the Settlement along with the amount properly payable for: (i) the Class Counsel Award; (ii) the Class Representative's Enhancement Award; (iii) Individual Settlement Payments; (iv) PAGA Payment to the LWDA and PAGA Members, and (v) Settlement Administrator Costs.

67. Final Approval Order

Plaintiff will request, and Defendant will concur in said request, that the Court enter, after the Final Approval Hearing, a Final Approval Order and Judgment. Plaintiff will request that the Final Approval Order and Judgment certify the Settlement Class; find that this Agreement is fair, just, adequate, and in the best interests of the Class; and require the Parties to carry out the provisions of this Agreement. The Parties shall jointly prepare the proposed Final Approval Order and Judgment.

68. Settlement Dates

Class Counsel shall provide Defendant's Counsel a draft Motion for Preliminary Approval for Defendant's review and input.	5 calendar days in advance of filing.
Defendant provides the Class Information to the Administrator	21 calendar days after the Court grants Preliminary Approval
Settlement Administrator to mail Notice of Class Action Settlement	10 calendar days after receipt of the Class Information
Settlement Administrator to re-mail Notice of Class Action Settlement	3 business days after receipt of notice that the Notice of Class Action Settlement was undeliverable.
Response Deadline to the Notice of Class Action Settlement	60 calendar days after mailing

New Response Deadline to the Notice of Class Action Settlement for those receiving re-mailed Notices of the Class Action Settlement	20 calendar days from the date of remailing or original Response Deadline
Settlement Administrator to provide counsel for the Parties a complete list of all Class Members who timely submitted a Request for Exclusion.	7 calendar days after the Response Deadline
Defendant has the option to nullify the Settlement.	10 calendar days after notification by the Settlement Administrator that more than 10% of the Class Members submitted valid Requests for Exclusion.
Class Counsel shall provide Defendant's Counsel a draft Motion for Final Approval for Defendant's review and input.	3 business days in advance of filing.
Settlement Administrator shall send to Defendant's Counsel the electronic wiring instructions for the Settlement Amount.	7 calendar days after the Effective Date.
Defendant shall fund the QSF.	20 calendar days after the Effective Date.
Settlement Administrator shall mail Individual Settlement Payments	10 calendar days after Defendant funds the QSF.
Settlement Administrator shall mail the LWDA PAGA Payment to the LWDA.	10 calendar days after Defendant funds the QSF.
Settlement Administrator shall mail Individual PAGA Payments	10 calendar days after Defendant funds the QSF.
Settlement Administrator shall mail the Class Representative Enhancement Awards	10 calendar days after Defendant funds the QSF.
Settlement Administrator shall mail the Class Counsel Award	10 calendar days after Defendant funds the QSF.
Settlement Administrator shall be paid the Settlement Administrator Costs.	10 calendar days after the Defendant funds the QSF
Settlement Administrator shall mail reminder postcards to the Participating Class Members and PAGA Members	100 calendar days <u>before</u> the Individual Settlement Payments and Individual PAGA Payments expire.

whose settlement checks were not returned or cashed.	
Checks for all payments shall be void and the Settlement Administrator will send the funds from all uncashed checks to the <i>cy pres</i> recipient identified above in Paragraph 63.	180 calendar days after the mailing of the Individual Settlement Payments and Individual PAGA Payments

69. Nullification of Agreement

- (a) In the event: (1) the Court denies preliminary approval of the Settlement; (2) the Court denies final approval of the Settlement; (3) the Court refuses to enter a Judgment as provided herein; or (4) the Settlement does not become final for any other reason, this Agreement shall be null and void and any order or judgement entered by the Court in furtherance of this Settlement shall be treated as void from the beginning.
- (b) To the extent that more than 10% of Class Members submit valid and timely Requests for Exclusion, Defendant shall have the option to nullify this Settlement within ten (10) calendar days after notification by the Settlement Administrator after the Response Deadline of the total number of Requests for Exclusion, via a written notice to Plaintiff's counsel. If Defendant exercises this option, the Settlement will become void and unenforceable in its entirety and the Parties shall be returned to their status as if this Agreement had not been executed, except that any fees already incurred by the Settlement Administrator shall be paid by the Defendant for terminating the Settlement.

70. Conditional Class Certification

- (a) The Parties are agreeing to class certification for settlement purposes only. This Agreement shall not constitute, in this or any other proceeding, an admission of any kind by Defendant, including without limitation, that certification of a class for trial or any other purpose is appropriate or proper or that Plaintiff can establish any of the requisite elements for class or representative treatment of any of the claims in these Action.

- (b) If, for any reason, the Settlement is not approved, the Parties agree to attend mediation again, either before the same mediator or another mutually agreed upon mediator experienced in California wage and hour class Action, in an effort to reach a settlement that will be approved by the Court.
- (c) If, even after the second mediation, the Agreement is ultimately not approved by the Court, this Agreement will be void and the Parties will be restored to their respective positions as if they had not entered into the Agreement. The Parties further agree that this Agreement will not be admissible in this or any other proceeding as evidence that either (i) a class Action should be certified or not decertified, or that this matter may proceed as a representative Action; or (ii) Defendant is liable to Plaintiff or any Class Member or any PAGA Member other than according to the Settlement's terms. In the event that the Settlement is not approved or otherwise voided, Defendant expressly reserves all rights to challenge certification of a class, or Plaintiff's ability to maintain a representative Action, for all purposes.

71. No Publicity

- (a) Prior to preliminary approval, the Parties agree not to disclose the terms of this Settlement except in court papers filed to seek approval or to make other disclosures jointly agreed to by the Parties in advance as necessary to effectuate the Settlement.
- (b) Before and after approval of this Settlement, Plaintiff and Class Counsel shall not issue a press release, hold a press conference, publish information about the settlement on any website, or otherwise publicize the Settlement.
- (c) Nothing herein restricts Class counsel from fulfilling its obligations, on behalf of Plaintiff, to submit documents and information required to be submitted to the LWDA pursuant to PAGA regarding the Settlement of the Action. Nothing herein restricts Class Counsel from fulfilling its duties to Class Members and PAGA Members. Class Counsel may (in future declarations submitted in Court) refer to the fact that this matter settled on a class and representative Action basis, but only for the reason of detailing the experience of counsel.

Plaintiff and Class Counsel agree not to respond to any media inquiries except to refer reporters to the papers filed with the court.

72. No Effect on Employee Benefits

Class Representative Enhancement Award, Individual Settlement Payments, and Individual PAGA Payments shall be deemed not to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any employee benefits (e.g., vacations, holiday pay, retirement plans, etc.) of the respective Plaintiff, Participating Class Members, and PAGA Members. The Parties agree that any Class Representative Enhancement Award, Individual Settlement Payments, and Individual PAGA Payments paid to Plaintiff, Participating Class Members, and PAGA Members under the terms of this Settlement do not represent any modification of any previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by any of the Defendant. Further, any Class Representative Enhancement Award, Individual Settlement Payments, and Individual PAGA Payments shall not be considered “compensation” in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan or employee welfare benefit plan sponsored by the Defendant.

73. Representation

- (a) All of the Parties have been represented by counsel throughout all negotiations which preceded the execution of this Settlement, and all Parties have been advised by counsel prior to entering into this Settlement.
- (b) Plaintiff and his Counsel represent that other than Plaintiff himself, they do not currently represent any other current or former employees of Defendant in connection with any actual or planned claims, charges, complaints, or other matters against Defendant, and Plaintiff’s Counsel is not currently aware of any current or former employees of Defendant who are planning to bring any claims, charges, complaints, or other matters against Defendant.

74. Exhibits and Headings

The terms of this Agreement include the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein. Any

Exhibits to this Agreement are an integral part of the Settlement. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

75. Interim Stay of Proceedings

Upon full execution of this Agreement, the Parties agree to jointly request the Court to stay proceedings except for the proceedings necessary to implement and complete the Settlement.

76. Amendment or Modification

This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest and approved by the Court.

77. Entire Agreement

This 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 representations, warranties, and covenants contained and memorialized in the Agreement and its Exhibits. The Parties are entering into this Agreement based solely on the representations and warranties herein and not based on any promises, representation, and/or warranties not found herein.

78. Authorization to Enter into Agreement

- (a) Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate Action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement.
- (b) The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the

Court to resolve such disagreement. The person signing this Agreement on behalf of the Defendant represents and warrants that he or she is authorized to sign this Agreement on behalf of the Defendant. Plaintiff represents and warrants that he is authorized to sign this Agreement and that he has not assigned any claim, or part of a claim, covered by this Settlement to a third-party.

79. Binding on Successors and Assigns

This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

80. California Law Governs

All terms of this Agreement and the Exhibits hereto shall be governed by and interpreted according to the laws of the State of California.

81. Counterparts

This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

82. Jurisdiction of the Court

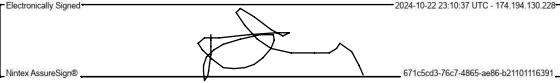
Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the settlement embodied in this Agreement and all orders and judgments entered in connection therewith.

83. Invalidity of Any Provision

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

WHEREFORE, Plaintiff, on behalf of themselves, the Participating Class Members, and the State of California with respect to PAGA Members pursuant to the Private Attorneys General Act, and Defendant have executed this Agreement as of the dates set forth below.

Date: 10/22/24

By: 
Romello Sheppard, Plaintiff

Date: _____

By: _____
Authorized Agent for Defendant
Ghirardelli Chocolate Company

APPROVED AS TO FORM

Date: October 22, 2024

By: 
Arby Aiwanian
Joanna Ghosh
Lawyers *for* Justice, PC
Counsel for Plaintiff

Date: October 22, 2024

By: 
Aaron C. Gundzik
Gundzik Gundzik Heeger LLP
Counsel for Plaintiff

Date: _____

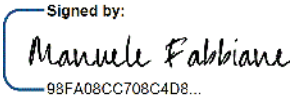
By: _____
Michael J. Nader
Ogletree, Deakins, Nash,
Smoak & Stewart, P.C.
Counsel for Defendant
Ghirardelli Chocolate Company

WHEREFORE, Plaintiff, on behalf of themselves, the Participating Class Members, and the State of California with respect to PAGA Members pursuant to the Private Attorneys General Act, and Defendant have executed this Agreement as of the dates set forth below.

Date: _____

By: _____
Romello Sheppard, Plaintiff

Date: 10/23/2024

By: 
98FA08CC708C4D8...
Authorized Agent for Defendant
Ghirardelli Chocolate Company

APPROVED AS TO FORM

Date: _____

By: _____
Arby Aiwarzian
Joanna Ghosh
Lawyers for Justice, PC
Counsel for Plaintiff

Date: October 22, 2024

By: 
Aaron C. Gundzik
Gundzik Gundzik Heeger LLP
Counsel for Plaintiff

Date: 10/23/24

By: 
Michael J. Nader
Ogletree, Deakins, Nash,
Smoak & Stewart, P.C.
Counsel for Defendant
Ghirardelli Chocolate Company

EXHIBIT A

(Notice of Class Action Settlement)

Alameda County Superior Court

Class and PAGA Action Settlement Notice

A court authorized this notice. This is not a solicitation from a lawyer.

Why am I receiving this? On [insert date of court order granting preliminary approval], the Court in this action granted preliminary approval of a proposed settlement as set forth in the Settlement Agreement available at [website] concerning the lawsuit noted above (the “Lawsuit”). You are receiving this notice because your employer’s records show that you are one of the people eligible to participate in the Settlement process.

What is the Lawsuit about? The person who brought the Lawsuit are known as “the Plaintiff.” The Plaintiff (Romello Sheppard) brought this Lawsuit against the Ghirardelli Chocolate Company (“Ghirardelli”). Plaintiff alleges that he and others were not paid all wages, not provided all compliant breaks, not reimbursed for all business expenses, and related claims. Plaintiff alleged that he brought their action on behalf of the following class: “All current and former hourly-paid or non-exempt employees who worked for Defendant Ghirardelli within the State of California at any time during the Class Period, which is from October 27, 2018, through April 19, 2024.”

What is the Settlement? The Plaintiff and Ghirardelli (collectively, “the Parties”) have agreed to settle the Lawsuit for a payment of \$3,150,000.

What is this notice? This notice only summarizes the Settlement. For more information, visit [insert site].

Defendant Ghirardelli denies any liability or wrongdoing of any kind associated with the claims asserted in the Lawsuit. This Settlement is a compromise of disputed claims. Thus, Ghirardelli supports the settlement and will not retaliate in any manner against any class member for any reason, including whether they decide to remain in the class and receive a settlement payment, or choose another option provided in this notice.

**Your legal rights are affected whether you act or do not act.
Read this notice carefully.**

Your legal rights and options in this settlement	
DO NOTHING AND GET YOUR SETTLEMENT CHECK	If you want to participate and receive your share of the money from the Class and PAGA settlement, you do not need to do anything . If you do nothing, you will be mailed a settlement payment and you will release certain claims. Your current address must be on file to get your check.
EXCLUDE YOURSELF FROM THE CLASS SETTLEMENT AND NOT GET A CLASS SETTLEMENT CHECK	If you want to exclude yourself from the Class portion of the settlement, then you will not get a related settlement check. If you exclude yourself, you keep any rights as an individual to sue Defendant separately about the same legal claims that are resolved here. You may exclude yourself from the settlement by submitting a written Request for Exclusion according to the instructions contained in this Notice. The deadline to submit a Request for Exclusion is [45 calendar days from date of mailing]. If you are a PAGA Member, even if you exclude yourself from the class action, you will still receive a portion of the PAGA settlement money and be bound by the release of PAGA claims.
OBJECT	Object to the Class Action Settlement if you think the Settlement is not fair, by sending your written objection to the Settlement Administrator and, if you wish, appear at the Final Approval Hearing. If you submit a Request for Exclusion from the Settlement, you cannot also object to it. The deadline to submit an objection is [45 calendar days from date of mailing].

Basic Information

1. Why did I get this notice package?

The purpose of this notice is to let you know that the Parties in the Lawsuit have reached a Settlement, subject to Court approval in the class and PAGA action known as *Sheppard v. Ghirardelli Chocolate Company*, Case No. 22CV020713, Alameda County Superior Court, which is the First Amended Complaint filed on July 15, 2024, (the “Lawsuit”). You have received this notice because Ghirardelli’s records show that you worked for Ghirardelli in California as a non-exempt employee during the class settlement period.

The Court authorized that you be sent this notice because you have a right to know about the proposed Settlement of the Lawsuit, and about your options, before the Court decides whether to grant final approval of the Settlement. If the Court approves it and after any objections and appeals are resolved, a third-party administrator appointed by the Court will make the payments that the Settlement allows. This notice provides you with instructions on the options available to you under the Settlement.

2. What is this lawsuit about?

In the Lawsuit, Plaintiff alleges that he represents a class of non-exempt employees who were not paid all wages, not provided all compliant breaks, not reimbursed for all business expenses, and related claims. Ghirardelli denies the allegations and asserts that no wages, damages, penalties, or PAGA penalties are due to any employees in California.

3. What is a class action, and a PAGA action?

In a class action, one or more people, called “Class Representatives” (in this case, Romello Sheppard) sues on behalf of people who have similar claims. In a class action, all people with similar class claims are called “Class Members.” Class Members do not need to do anything to be part of a class action in the context of a settlement. Once the Court decides that a case can proceed as a class action (as the Court has done here but only for purposes of this Settlement), all Class Members are included in the class by default, except for those who exclude themselves. In a class action, the court resolves the issues for all Class Members together in one legal proceeding.

In a PAGA action, a plaintiff sends a letter to the California Labor and Workforce Development Agency (“LWDA”) describing the alleged Labor Code violations committed against that employee and other employees (“PAGA Members”) by the Defendant employer. If the LWDA does not opt to pursue the alleged Labor Code violations, the plaintiff is allowed to sue the defendant on behalf of the State of California, on behalf of oneself and all other PAGA Members. PAGA Members cannot opt out of the settlement of a PAGA action. If the Settlement of a PAGA action is approved by the Court, the PAGA Members covered under the PAGA action will have their claims for PAGA penalties released, whether or not the PAGA Members opt out of the Settlement of the class action. The State of California receives 75% of the PAGA penalties, and the PAGA Members receive the other 25%.

Subject to the Court’s approval, a total of \$350,000 of the total settlement fund will be allocated to settle allegations that Ghirardelli owes penalties to the state for alleged violations of the California Labor Code. Of this amount, \$262,500 (75%) will be paid to the California Labor & Workforce Development Agency (“LWDA”). The other 25%, which is \$87,500, will be distributed to class members who worked for Ghirardelli at any time during the PAGA Period, which is from August 21, 2021, through April 19, 2024 (“PAGA Employees”). Each PAGA Employee’s portion of the \$87,500 in penalties will be calculated by dividing the individual’s number of pay periods worked during the PAGA Period by the total number of pay periods worked during the PAGA Period by all PAGA Employees and multiplying the resulting fraction by \$87,500.

4. Why is there a settlement?

The Court did not decide in favor of either party. Instead, both sides agreed to a settlement, which, if approved, brings the Lawsuit to an end. That way, Plaintiff, Class Members, PAGA Members, and Defendant Ghirardelli avoid the cost, delay, and uncertainty of moving forward in litigation to trial and possible appeals, and the Class Members and PAGA Members can receive their checks. The Class Representatives and their attorneys (“Class Counsel”) believe that the Settlement is fair, reasonable, adequate and in the best interests of the Class Members and PAGA Members.

Who is in the Settlement

5. Who is included in the Settlement?

The Settlement provides benefits to the Class Members and the PAGA Members. The Class Members include all current and former hourly-paid or non-exempt employees who worked for Defendant Ghirardelli within the State of California at any time during the Class Period, which is from October 27, 2018, through April 19, 2024.

The Settlement Benefits—What You Get

6. What does the Settlement provide?

Money. All Class Members who do not exclude themselves from this Settlement will get a settlement check.

After payment of Class Counsel attorney's fees and costs awarded by the Court, any enhancement awarded to the Plaintiff, the Settlement Administrator's fee (referenced in section 11 below) and the amount of the PAGA Settlement (discussed in section 3, above), the remainder (called the Net Settlement Amount) will be distributed to class members who do not exclude themselves from the settlement (called Settlement Class Members). The amount of each Settlement Class Member's share of the Net Settlement Amount will be calculated by dividing the total number of qualifying workweeks worked by the Class Member during the Class Period by the total number of qualifying workweeks worked by all of the Class Members during the Class Period and multiplying that fraction by the Net Settlement Amount. A qualifying workweek is a full or partial week that a class member worked for Ghirardelli for at least one day during the Class Period.

According to Ghirardelli's records, you worked a total of __ qualifying workweeks during the Class Period as a Class Member. Ghirardelli's records also show that you worked a total of __ pay periods during the PAGA Period. Based upon this information, under the settlement, you will receive approximately \$____. This amount may increase or decrease based on various factors.

Your settlement amount is based upon the number weeks and pay periods that you worked for Defendant during the relevant period. If you believe that the workweeks and pay periods listed for you above is not correct, you can contest the number of qualifying workweeks and/or PAGA Pay Periods. To do so, you must provide the Settlement Administrator with a written explanation of your position. The statement must also include your full name, current address and telephone number, and must identify this case. You should provide written documentation supporting the number of workweeks you believe that you worked. You must postmark, fax or email your written statement no later than [60 days from mailing]. The Settlement Administrator will consider your dispute and any documentation you submit and will communicate with you and the parties as necessary regarding the dispute to determine whether an adjustment is warranted before making a final determination regarding your settlement payment. The Settlement Administrator will notify you of its final determination.

Tax treatment.

Class Action. The Settlement Agreement allocates how payments made to you under this Settlement should be treated for tax purposes. Accordingly, 20% of all payments to Settlement Group members for the class action settlement will be allocated as wages, and normal payroll taxes and withholdings will be deducted from this portion of the payment as required by law, and it will be reported on an IRS Form W-2. The remaining 80% of payments to Settlement

Group members for Settlement of the class action will be allocated as non-wage penalties and interest and will be reported on an IRS form 1099.

PAGA Action. 100% of payments made to Settlement Group members for settlement of the PAGA action will be allocated as non-wage penalty payments and will be reported on an IRS form 1099.

You will be responsible for correctly reporting all income from this Settlement for tax purposes and for paying any taxes on the amounts received. You will be responsible for the tax obligations and consequences of all payments received from the Settlement. Ghirardelli, Defendant's Counsel, and Class Counsel are not providing tax advice to you, and they make no representations regarding the tax characterization of any Settlement payments or any tax obligations of, or tax consequences to, any Settlement Group members.

7. What can I get from the Settlement?

Each Settlement Group member will receive some money, depending on the number of weeks/pay periods worked at Ghirardelli as a member of the class/PAGA group from October 27, 2018, through April 19, 2024. Class Members who opt out will only get a check related to the PAGA settlement.

How You Get a Payment

8. When will I get my payment?

The terms and conditions of this Settlement are subject to Court approval. The Court will hold a hearing on [insert fairness hearing date], to decide whether to approve the Settlement. If the Court approves the Settlement, and there are no appeals, **we estimate that checks will be mailed around [insert approximate date]**. The Settlement Administrator will provide regular updates of the status of the Settlement at [website]. If your contact information changes, please promptly inform the Settlement Administrator.

Release Agreement

9. What am I giving up to get a payment?

Participating Class Members will be giving up or “releasing” the claims described below:

Released Class Claims: All claims and/or causes of action under any state, local, or federal law or administrative regulation by Participating Class Members against the Released Parties that were or could have been alleged based on the allegations in the Action, including all class claims stated in the Action alleging violations of California Labor Code sections 201, 202, 203, 204, 210, 218, 226(a), 226 et seq, 226.7, 227.3, 510, 512(a), 558, 1174(d), 1194, 1194.2, 1197, 1197.1, 1198, 2800 and 2802, and all claims for unpaid wages, non-compliant meal and rest breaks, untimely current and final wages, inaccurate records and wage statements, unreimbursed expenses, unpaid vacation and paid time off, unfair competition, and related claims.

The State of California will be giving up or “releasing” claims for civil penalties under PAGA for alleged Labor Code violations against PAGA Members:

Released PAGA Claims: All claims and causes of Action for civil penalties under the Private Attorneys General Act, California Labor Code section 2698, et seq. (“PAGA”) of the State of California with respect to PAGA Members against the Released Parties that were or could have been alleged based on the factual allegations and alleged Labor Code violations asserted in the PAGA Notice Letter, including all claims for civil penalties based on alleged violations of California Labor Code sections 201, 202, 203, 204, 210, 226(a), 226.7, 227.3, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and related sections of the applicable IWC Wage Order, including Section 14 (suitable seating) of IWC Wage Order 1-2001, and all claims for unpaid wages, non-compliant meal and rest breaks, untimely current and final wages, inaccurate records and wage statements, unreimbursed expenses, unpaid vacation and paid time off, unfair competition, day of rest violations, the alleged failure to provide suitable seating, and related claims for civil penalties.

A full list of the released claims is in the settlement agreement on file at [[website](#)].

The Lawyers Representing You

10. Do I have a lawyer in this case?

The Court appointed the following attorneys to represent you and the other Settlement Group members. Together, these lawyers are called Class Counsel or Plaintiff’ Counsel. (a) Arby Aiwarzian and Joanna Ghosh of LAWYERS for JUSTICE, PC, 410 West Arden Avenue, Suite 203, Glendale, California 91203, (818) 265-1020; and (b) Aaron C. Gundzik and Rebecca G. Gundzik of Gundzik Gundzik Heeger LLP, 14011 Ventura Blvd., Suite 206E, Sherman Oaks, CA 91423, (818) 290-7461.

11. How will Class Counsel, the Class Representative and the Settlement Administrator be paid?

Class Counsel will ask the Court for attorneys’ fees of up to \$1,102,500.00 of the \$3,150,000 Settlement fund and reimbursement of out-of-pocket costs of up to \$25,000, consistent with the terms of the Settlement Agreement. In addition, Class Counsel will apply to the Court for a service award of up to \$10,000 for the Class Representative. The Court will decide whether to approve Class Counsel’s and the Class Representative’s requests. These amounts, or any other amounts approved by the Court will be paid from the total settlement fund.

In addition, if approved by the Court, the Settlement Administrator will be paid a total \$18,750 for its work administering the settlement. This amount, or any other amount approved by the Court will be paid from the total settlement fund.

Excluding Yourself from the Settlement

12. What does excluding yourself from the Settlement mean?

If you want to preserve your right to sue Ghirardelli on your own about the legal issues in this case, then you need to take steps to remove yourself of the Settlement. This is called excluding yourself from – or opting out of – the Settlement. If you opt out, then you will not get a settlement check related to the class action settlement.

13. How do I remove myself/opt out of the Settlement?

To exclude yourself from (i.e., opt out of) the Settlement and not release any claims, you must send a letter stating your request to be excluded from the Class Settlement which must also contain: (a) the case name and number of the Lawsuit; (b) your full name, present address, signature, telephone number, and last four digits of your Social Security number; and (c) mail, email or fax your letter to the Settlement Administrator at the specified address, postmarked (if mailed) on or before the Response Deadline. Your opt-out request letter must be received or postmarked by [insert date 60 days from mailing settlement notice].

14. If I exclude myself, can I get money from this Settlement?

No. You cannot get money from the class action settlement if you exclude yourself. But you will still get a check from the settlement of the PAGA action (because you cannot opt out from the PAGA settlement).

Objecting to the Settlement

15. What does objecting to the Settlement mean?

If you don't think the Class Action Settlement is fair, and you don't request to be excluded from the class settlement, you can object to the Settlement and tell the Court that you don't agree with the Settlement, or some part of it, before the Court decides whether to grant final approval of the Settlement.

To object in writing, you must submit a timely written objection to the Settlement Administrator. Your objection must state that you object to the proposed Settlement of this case and be sure to include your name, address, telephone number, and signature, and the specific reasons you object to the Settlement. You must mail, fax or email your written objection to the Administrator at [address], postmarked (if mailed) on or before _____, 2024. [60 days from mailing of Settlement Notice Packet] Objections postmarked after this date may be disregarded.

If you have questions regarding this Settlement, you should contact Class Counsel or the Settlement Administrator. Please DO NOT contact attorneys for Defendant or any of the Defendant's managers, supervisors, or owners.

There is no option to object to the PAGA portion of the Settlement.

16. When and where will the Court decide whether to approve the Settlement?

The Court will hold a final approval hearing at [insert time and date and location of the Court and other details]. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court may consider them. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take. If you plan to attend the hearing, you should check [add details of administrator website] or the Court's site at [add details] to confirm that the hearing date has not been changed.

17. Do I have to come to the hearing?

No. Unless you opt out of the Settlement, Class Counsel will represent you and will answer any questions the Court may have. But you are welcome to come at your own expense. If you send a comment (including an objection), you do not have to come to Court to talk about it. As long as you submitted your objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

If You Do Nothing

18. What happens if I do nothing at all?

If you do nothing, you will get a check under the Settlement, and you will be bound to the release of claims in the Settlement.

Getting More Information

19. Are there more details about the Settlement?

This Notice is intended to be a summary of the terms of the Settlement. More information is available by contacting the Settlement Administrator at [add info].

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

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Exhibit B
(Preliminary Approval Order)

EDWIN AIWAZIAN (SBN 232943)
JOANNA GHOSH (SBN 272479)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, CA 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

AARON C. GUNDZIK (State Bar No. 132137)
REBECCA G. GUNDZIK (State Bar No. 138446)
GUNDZIK GUNDZIK HEEGER LLP
14011 Ventura Blvd., Suite 206E
Sherman Oaks, CA 91423
Tel: (818) 290-7461

Attorneys for Plaintiff Romello Sheppard

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

ROMELLO SHEPPARD, individually and on
behalf of other members of the general public
similarly situated and on behalf of other
aggrieved employees pursuant to the California
Private Attorneys General Act;

Plaintiff,

vs.

GHIRARDELLI CHOCOLATE COMPANY,
a California corporation; and DOES 1 through
100,

Defendants.

Case No.: 22CV020713
Hon. Noel Wise, Dept. 21

Reservation ID No: 213827830452

[PROPOSED] ORDER:

- (1) PRELIMINARILY APPROVING
CLASS ACTION
SETTLEMENT;
- (2) CONDITIONALLY
CERTIFYING A CLASS FOR
SETTLEMENT PURPOSES
ONLY;
- (3) APPROVING THE NOTICE OF
SETTLEMENT; AND
- (4) SETTING A HEARING ON
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT

Nov 5
Date: ~~October 8~~, 2024
Time: 1:30 p.m.
Dept.: 21

Complaint Filed: October 27, 2022

Recitals:

The Court, having considered the Motion for Preliminary Approval of Class Action
Settlement of Plaintiff Romello Sheppard ("Plaintiff"), the Declaration of Joanna Ghosh, the

FILED
ALAMEDA COUNTY

NOV 08 2024

CLERK OF THE SUPERIOR COURT
By *Nicole [Signature]*

1 Declaration of Aaron Gundzik, the Declaration of Plaintiff Romello Sheppard, the
2 Declaration of Phoenix Settlement Administrators, the Class and Representative Action
3 Settlement Agreement and Release^{as amended} ("Settlement Agreement") executed by Plaintiff and
4 Defendant Ghirardelli Chocolate Company ("Defendant"), as well as the Notice of Proposed
5 Class Action Settlement ("Notice of Settlement") attached as Exhibit A to Exhibit 1 to the
6 Declaration of Joanna Ghosh, makes the following findings:

7 Findings:

8 1. The parties to this action are Plaintiff Romello Sheppard ("Plaintiff") and
9 Defendant Ghirardelli Chocolate Company ("Defendant"). Plaintiff seeks to represent a
10 Class including all current and former hourly-paid or non-exempt employees who worked
11 for Defendant within the State of California at any time during the Class Period (from
12 October 27, 2018, through April 19, 2024).

13 2. After participating in an arms-length mediation, Plaintiff and Defendant have
14 agreed to a proposed settlement of this action on behalf of the class that Plaintiff seeks to
15 represent. The terms of the proposed settlement are fully set forth in the Settlement
16 Agreement (included as Exhibit 1 to the Declaration of Joanna Ghosh in support of
17 Plaintiff's Motion for Preliminary Approval).

18 3. The terms of the proposed settlement include the following:

19 a. The proposed Class consists of all current and former hourly-paid or
20 non-exempt employees who worked for Defendant within the State of California at any time
21 during the Class Period.

22 b. The Class Period shall begin on October 27, 2018 and end on April
23 19, 2024.

24 c. The "PAGA Period" means the period beginning August 23, 2021 and
25 ending April 19, 2024.

26 d. In settlement, Defendant will pay the gross amount of \$3,150,000,
27 plus the employer's share of withholding taxes. From the gross settlement amount, the
28 parties propose to deduct fees for settlement administration costs in the amount of \$18,750,

1 a payment of PAGA penalties in the amount of three hundred fifty thousand dollars
2 (\$350,000.00), 75% of which will be paid to the California Labor and Workforce
3 Development Agency ("LWDA"), with the remaining 25% paid to PAGA Members, a
4 service and release payment in the amount of \$10,000 to the Representative Plaintiff, Class
5 Counsel's reasonable and actual costs in an amount not to exceed \$25,000, and Class
6 counsel's attorneys' fees as approved by the Court, but not to exceed \$1,102,500.

7 e. The amount remaining, after deductions approved by the Court, will
8 be distributed to individual Settlement Class Members in accord with the formula specified
9 in the Settlement Agreement.

10 4. The Parties propose that notice of this proposed settlement be sent to all Class
11 Members by regular mail and that Class Members shall have sixty (60) days to opt out of or
12 object to the settlement.

13 5. The proposed Class counsel are experienced and in their view, the proposed
14 settlement is fair and reasonable.

15 6. The proposed settlement is fair and reasonable to Class Members.

16 7. The notice procedure set forth in the Settlement Agreement will adequately
17 notify the Class of the settlement and of their right to opt out or object.

18 8. The Settlement Agreement and Notice include a proposed release which will
19 bind those Class Members who do not opt out of the Class.

20
21 Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

22 1. The motion is granted.

23 2. The class action settlement, as set forth in the Settlement Agreement, is
24 preliminarily approved pursuant to Rules of Court 3.766 and 3.769.

25 3. The proposed class is provisionally certified as an opt-out class action under
26 Section 382 of the Code of Civil Procedure solely for the purpose of the settlement of this
27 matter, with the Class defined as specified above and in the Settlement Agreement.
28

1 4. Plaintiff Romello Sheppard is appointed as the class representative for the
2 provisionally-certified Class.

3 5. Edwin Aiwazian, Joanna Ghosh, Aaron C. Gundzik and Rebecca G. Gundzik
4 are appointed as Class counsel for the provisionally-certified Class.

5 6. Phoenix Settlement Administrators is approved as the Settlement
6 Administrator.

7 7. The Notice of Settlement ^{was amended} ~~in substantially the form attached hereto as Exhibit~~
8 ~~is~~ is approved, and the Settlement Administrator is authorized to send the Notice of
9 Settlement to the provisionally-certified Class.

10 8. The Court directs the Settlement Administrator to mail the Notice of
11 Settlement to the Class Members in a manner consistent with the Settlement Agreement.

12 9. The Court preliminarily approves of the Class release in the Settlement
13 Agreement.

14 10. The Court directs that any and all objections to the Settlement be sent to the
15 Settlement Administrator and postmarked no later than sixty (60) calendar days after the
16 Notice of Settlement is mailed or re-mailed.

17 11. The Court directs that all requests for exclusion must be sent to the
18 Settlement Administrator and postmarked no later sixty (60) calendar days after the Notice
19 of Settlement is mailed or re-mailed.

20 12. A Final Approval Hearing on the question of whether the proposed class
21 settlement should be finally approved as fair, reasonable, and adequate as to the members
22 of the proposed settlement class, for approval of Class Counsel's Attorneys' Fees and Class
23 Counsel's Costs, for approval of the service and release payments to the class
24 representatives, for approval of the fees of the settlement administrator and for approval of
25 the payment to the LWDA in settlement of all PAGA claims is set for

26 Counsel is instructed to
reserve the hearing on the
court's public portal

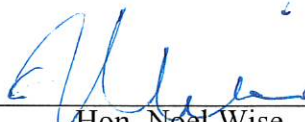
in Department 21 of the above-entitled Court.

13. The Court orders that the papers in support of the final approval of the settlement and Plaintiff's award of attorneys' fees and costs shall be filed by 16 court days before the hearing.

14. Based on the terms of the Settlement Agreement, the following sets forth the proposed schedule of events to occur with respect to the effectuation of the settlement:

Event	Date
Deadline for Defendant to provide Class data to settlement administrator	Within twenty-one (21) calendar days of preliminary approval
Deadline to mail Notice of Settlement to Class Members	within ten (10) calendar days of receipt of class data from Defendants
Deadline to dispute workdays, opt out of or object to settlement ("Response Deadline")	within sixty (60) days of mailing or re-mailing of Notice of Settlement
Deadline for Settlement Administrator to provide counsel for the Parties a complete list of all Class Members who timely submitted a Request for Exclusion.	7 calendar days after Response Deadline
Deadline to file motion for final approval of the settlement and award of attorneys' fees and costs	16 court days before final approval hearing
Hearing on motion for final approval of the settlement, granting of final approval, and entry of judgment	Counsel is instructed to reserve the hearing on the court's public portal

Dated: 11/8/24


Hon. Noel Wise

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA		Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612		FILED Superior Court of California County of Alameda 11/12/2024 Chad Finke, Executive Officer / Clerk of the Court By: <u>Nicole Hall</u> Deputy N. Hall
PLAINTIFF/PETITIONER: Romello Sheppard		
DEFENDANT/RESPONDENT: GHIRARDELLI CHOCOLATE COMPANY, a California corporation		
CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6		CASE NUMBER: 22CV020713

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the Order Granting Preliminary Approval of Class Action Settlement entered herein upon each party or counsel of record in the above entitled action, by electronically serving the document(s) from my place of business, in accordance with standard court practices.

Edwin Aiwazian
edwin@calljustice.com

Jade Butman
OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.
jade.butman@ogletree.com

Dated: 11/12/2024

Chad Finke, Executive Officer / Clerk of the Court

By:

Nicole Hall

N. Hall, Deputy Clerk

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Exhibit C
(Task-Time Chart)

ROMELLO SHEPPARD V. GHIRARDELLI CHOCOLATE COMPANY
Alameda County Superior Court Case No. 22CV020713

ATTORNEY TASK AND TIME CHART

Date	Task	Gundzik Gundzik Heeger LLP
<u>Settlement</u>		
5/1/24	Revise Draft Settlement Agreement	1.1
5/2/24	Revise Draft Settlement Agreement	1.7
5/6/24	Revise Draft Settlement Agreement	1.4
5/7/24	Draft Notice of Settlement	1.5
5/8/24	Emails with opposing counsel and co-counsel regarding Settlement Agreement	0.3
5/8/24	Revise and finalize drafts of Settlement Agreement and Notice of Settlement	1.1
5/11/24	Emails with co-counsel regarding status of Settlement Agreement	0.1
5/11/24	Emails with defense counsel regarding Settlement Agreement	0.1
5/14/24	Review and comment on revised draft LFA	2.1

5/14/24	Emails with defense counsel regarding revised draft LFA	0.5
5/14/24	Emails regarding TPA bids	1.2
5/15/24	Review and comment on draft Notice of Settlement	1.9
5/15/24	Emails with defense counsel regarding draft Notice of Settlement	0.3
6/3/24	Review correspondence regarding long form Settlement Agreement	0.2
6/3/24	Emails regarding Settlement Agreement	0.2
6/4/24	Revise draft Settlement Agreement	0.6
6/4/24	Emails with defense counsel regarding draft Settlement Agreement	0.2
6/4/24	Confer with co-counsel regarding status of settlement documents	0.4
6/6/24	Confer with TPA regarding administration bid	0.3
6/6/24	Emails with defense counsel regarding PAGA release	0.5
6/10/24	Emails with defense counsel regarding Settlement Agreement	0.3

6/10/24	Revise Settlement Agreement	1.2
7/18/24	Emails with defense counsel regarding Settlement Agreement and Notice of Settlement	1.4
7/19/24	Analysis of damages calculations used for mediation	1.7
7/23/24	Review defense counsel revisions to Settlement Agreement	0.4
7/23/24	Revise and finalize Settlement Agreement and Notice of Settlement	0.5
7/23/24	Emails with LFJ and defense counsel regarding Settlement Agreement and Notice of Settlement	0.4
7/24/24	Emails with LFJ regarding Settlement Agreement	0.2
7/29/24	Review co-counsel revisions to Settlement Stipulation	0.3
7/30/24	Emails with defense counsel regarding court guidelines and revisions to Settlement Agreement	0.4
7/30/24	Emails with LFJ re Settlement Agreement	0.2
7/30/24	Finalize and sign Settlement Agreement	0.7
1/13/25	Review TPA reports and opt-out	0.2

<u>Pleadings and Court Filings</u>		
5/16/24	Review and finalize Stipulation and Order to Remand	0.5
5/16/24	Emails with defense counsel regarding Stipulation to Remand	0.2
6/3/24	Revise and finalize Notice of Remand	0.2
6/11/24	Prepare Stipulation and Order regarding First Amended Complaint	1.1
6/11/24	Emails with defense counsel regarding Stipulation and Order regarding First Amended Complaint	0.4
7/12/24	Confer with co-counsel regarding status of settlement and First Amended Complaint	0.4
7/18/24	Revise and finalize First Amended Complaint, Settlement Agreement, and Notice of Settlement	1.4
<u>Law and Motion</u>		
7/12/24	Begin analysis regarding Motion for Preliminary Approval and draft beginning of Motion for Preliminary Approval	5.9
7/17/24	Review mediation information to prepare declarations for Motion for Preliminary Approval	3.4
7/19/24	Begin drafting J. Ghosh declaration for Motion for Preliminary Approval	5
7/19/24	Email with co-counsel regarding J. Ghosh declaration for Motion for Preliminary Approval	7.8

7/20/24	Continue working on J. Ghosh declaration	5.8
7/29/24	Review co-counsel comments regarding J. Ghosh declaration	0.5
7/29/24	Begin drafting Motion for Preliminary Approval	1.5
7/30/24	Draft Motion for Preliminary Approval	6.2
7/31/24	Draft Motion for Preliminary Approval and all supporting declarations and proposed order	9.4
8/5/24	Email with opposing counsel and co-counsel re Motion for Preliminary Approval drafts and declarations	0.8
8/19/24	Finalize all declarations re Motion for Preliminary Approval	1.6
8/19/24	Contact court regarding hearing on preliminary approval motion	0.2
8/20/24	Prepare all exhibits for declarations and Motion for Preliminary Approval	1.9
8/20/24	Revise all Motion for Preliminary Approval documents	2.7
8/21/24	Finalize Motion for Preliminary Approval for filing	0.8
8/21/24	Email with opposing counsel regarding Motion for Preliminary Approval filing	0.3

8/21/24	Prepare service information for Motion for Preliminary Approval filing	1.1
11/18/24	Review court orders and email with co-counsel regarding same	0.2
1/13/25	Confer with co-counsel regarding Motion for Final Approval	0.5
2/4/25	Review file to prepare declarations for Motion for Final Approval	2.1
2/6/25	Begin drafting J. Ghosh declaration for Motion for Final Approval	3.2
2/7/25	Review other Motion for Final Approval orders from Alameda Courthouse	0.6
2/7/25	Complete draft of J. Ghosh declaration for Motion for Final Approval	0.8
2/7/25	Draft A. Gundzik declaration regarding Motion for Final Approval	2.3
2/7/25	Draft Plaintiff declaration regarding Motion for Final Approval	0.6
2/7/25	Confer with TPA regarding TPA declaration	0.3
2/7/25	Draft proposed order and judgment	0.8
2/10/25	Begin drafting Motion for Final Approval	6.3

2/11/25	Draft Exhibit re time expended for Declaration of Aaron C Gundzik re MFA	1.5
2/11/25	Draft MFA and revise supporting declarations	4.9
Total Hours		105

Exhibit D
(Expenses Incurred)

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ROMELLO SHEPPARD V. GHIRARDELLI CHOCOLATE COMPANY
Alameda County Superior Court Case No. 22CV020713

GUNDZIK GUNDZIK HEEGER LLP COST DETAIL

Date	Payee	Expense Description	Amount
6/4/24	Express Network	Complex Filing Fee	\$53
6/11/24	Express Network	Complex Filing Fee	\$78
7/18/24	Express Network	Complex Filing Fee	\$53
8/21/24	Express Network	Complex Filing Fee	\$134
9/23/24	Express Network	Complex Filing Fee	\$53
10/24/24	Express Network	Complex Filing Fee	\$53
11/6/24	Alameda Superior Court	Document Download Fee	\$1
1/15/25	Express Network	Complex Filing Fee	\$53
Total			\$478

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Exhibit E
(Rate Survey)



National Association of Legal Fee Analysis
Specializing in Attorney Fees & Legal Billing
— *The Nation's Top Attorney Fee Experts*

News Release

FOR IMMEDIATE RELEASE

March 4, 2020

Survey: Defense Rates Keep Pace with Plaintiffs' Rates in Class Action Litigation

Chicago, IL -- Defense rates keep pace with plaintiffs' rates in class action litigation at partner and associate levels in 2020. That's just one of the findings from a recent survey, The 2020 Class Action Hourly Rate Survey, conducted by the National Association of Legal Fee Analysis (NALFA). This billing rate survey, conducted via email over a two month period, asked class action litigators from the nation's 16 largest legal markets if their current regular hourly rate falls within a given range.

The NALFA survey shows that 95 percent of all class actions fall within the \$200-\$1,200 hourly rate range for both defense and plaintiffs' counsel at partner and associate levels. In short, only 5 percent of class action hourly rates are less than \$200 and over \$1,200. Thus, nearly all class action hourly rates fall within a \$1,000 hourly rate statistical variance.

This survey is the first in a series of hourly rate surveys that NALFA will be conducting in specific practice areas. NALFA also conducts custom hourly rate surveys for clients such as law firms, corporate legal departments, and government agencies. NALFA surveys provide the most accurate and current hourly rate ranges within a given geography and practice area.

"This survey data may be the nation's first and only quantitative class action hourly rate data of its kind," said Terry Jesse, NALFA Executive Director. With more class action hourly rate data to follow, here are some of the top level findings from NALFA's 2020 Class Action Hourly Rate Survey:

The 2020 Average Hourly Rate Range in Class Actions		
	Plaintiffs' Rate	Defense Rate
Senior Partner (20+ Years in Practice)	\$801-\$900	\$801-\$900
Partner (16-19 Years in Practice)	\$701-\$800	\$601-\$700
Junior Partner (12-15 Years in Practice)	\$501-\$600	\$401-\$500
Senior Associate (9-11 Years in Practice)	\$401-\$500	\$301-\$400
Associate (5-8 Years in Practice)	\$201-\$300	\$201-\$300
Junior Associate (2-4 Years in Practice)	\$201-\$300	\$201-\$300
Estimated Margin of Error: +/- \$25.00		

For more information on this survey, visit <http://www.thenalfa.org/blog/survey-class-action-defense-rates-keep-pace-with-plaintiffs-rates-in-2020/> or contact Terry Jesse, NALFA Executive Director at terry@thenalfa.org or call us at (312) 907-7275.



The National Association of Legal Fee Analysis (NALFA) is a 501(c)(6) non-profit professional association for the legal fee analysis field. Our members provide a range of services on attorney fee and legal billing matters.

Courts and clients turn to us for expertise when attorney fees and expenses are at issue in large, complex cases. NALFA members are fully qualified attorney fee experts, special fee masters, bankruptcy fee examiners, fee dispute neutrals, and legal bill auditors. Our members follow

Best Practices in Legal Fee Analysis. Our services include: Custom Hourly Rate Surveys and Fee Dispute Mediation. For more on NALFA, visit www.thenalfa.org. Follow us on Twitter at [@AttorneyFees](https://twitter.com/AttorneyFees).

NALFA | 1336 W. Greenleaf Ave, #3E, Chicago, IL 60626

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Exhibit F
(Confirmation of LWDA Submission)