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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

HEATHER RAE WESOLEK, individually,
and on behalf of all others similarly situated,

Plaintiff,

vs.

MARTHA'S VILLAGE AND KITCHEN,
INC., a California corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No: CVRI2204171

CLASS ACTION

[Assigned to the Hon. Harold Hopp, Dept. 1]

**STIPULATION OF CLASS ACTION AND
PAGA SETTLEMENT**

Complaint filed: September 28, 2022

Trial date: Not set

1 **STIPULATION OF CLASS ACTION SETTLEMENT**

2 This Stipulation of Class Action and PAGA Settlement (“Stipulation of Settlement” or
3 “Settlement” or “Agreement”) is made and entered into by and between Plaintiff HEATHER RAE
4 WESOLEK, individually, and on behalf of all others similarly situated, (“Plaintiff” or “Class
5 Representative”), and Defendant MARTHA’S VILLAGE AND KITCHEN, INC. (“Defendant”).
6 Plaintiff and Defendant are sometimes referred to individually as a “Party” or collectively referred to
7 herein as “the Parties.” THE PARTIES STIPULATE AND AGREE as follows:

8 **DEFINITIONS**

9 1. For purposes of this Settlement, “Complaint” refers to the Second Amended Complaint filed in
10 the Action.

11 2. For purposes of this Settlement, “Action” refers to the above-captioned action entitled *Wesolek*
12 *v. Martha’s Village and Kitchen, Inc.*, Case No.: CVRI2204171.

13 3. For purposes of this Settlement, the “Class Period” is September 28, 2018 through May 5,
14 2024.

15 4. For purposes of this Settlement, the “Class” or “Class Members” consist of: All current and
16 former non-exempt employees of Defendant who worked in California during the Class Period. The
17 “Settlement Class” or “Settlement Class Members” are those Class Members who do not submit timely
18 and compliant exclusion requests to the Settlement Administrator. The Parties estimate that the Class
19 included approximately 277 Class Members who worked 15,447 workweeks as of December 20, 2023.

20 5. For purposes of this Settlement, “Class Counsel” means MOON LAW GROUP, PC.

21 6. For purposes of this Settlement, “Covered Workweeks” means the number of weeks a Class
22 Member worked at Defendant’s locations in California during the Class Period.

23 7. For purposes of this Settlement, “Response Deadline” means the date sixty (60) days after the
24 Settlement Administrator initially mails the Notice to Settlement Class Members (“Notice”) and the last
25 date on which Class Members may submit a request for exclusion or written objection to the Settlement.
26 In the case of a re-mailed Notice, the Response Deadline will be the later of sixty (60) calendar days after
27 the initial mailing or fourteen (14) calendar days from re-mailing. The Response Deadline may be
28 extended only as expressly described herein.

1 8. For purposes of the Settlement, “Defendant’s Counsel” means JACKSON LEWIS P.C.

2 9. For purposes of this Settlement, “PAGA” means the Labor Code Private Attorneys General
3 Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*).

4 10. For purposes of this Settlement, “PAGA Allocation” means the portion of the Gross
5 Settlement Amount that the Parties have agreed to allocate to resolution of the Released PAGA Claims.
6 The Parties have agreed that the PAGA Allocation will be \$15,000 from the Gross Settlement Amount.
7 Pursuant to PAGA, Seventy-Five Percent (75%), or \$11,250, of the PAGA Allocation will be paid to the
8 Labor and Workforce Development Agency (“LWDA”) (“PAGA Penalty Payment”), and Twenty-Five
9 Percent (25%), or \$3,750, of the PAGA Allocation will be paid to the PAGA Employees (“PAGA
10 Settlement Payment”).

11 11. For purposes of this Settlement, “PAGA Period” means the period from September 28, 2021,
12 through May 5, 2024.

13 12. For purposes of this Settlement, “PAGA Employee” means all Class Members that worked
14 during the PAGA Period. It is stipulated by the Parties that, for purposes of this Settlement, all PAGA
15 Employees are “aggrieved employees” as defined pursuant to PAGA.

16 13. For purposes of this Settlement, “PAGA Pay Periods” means the number of pay periods each
17 PAGA Employee worked during the PAGA Period.

18 14. For purposes of this Settlement, “PAGA Representative” means Plaintiff.

19 15. For purposes of this Settlement, “Released PAGA Claims” means all claims for civil penalties
20 and any other available relief pursuant to PAGA, to the extent asserted in Plaintiff’s administrative
21 exhaustion letter submitted to the LWDA in this Action on September 18, 2022, arising during the PAGA
22 Period.

23 16. For purposes of this Settlement, “Settlement Payments” means all of the payments to
24 Settlement Class Members (“Settlement Class Payments”) and all of the payments to PAGA Employees
25 (“PAGA Settlement Payments”).

26 **STIPULATED BACKGROUND**

27 17. On September 28, 2022, Plaintiff filed a putative Class Action alleging the following labeled
28 causes of action: (1) Failure to Pay Minimum Wage Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, 1197,

1 and the Industrial Welfare Commission Wage Orders]; (2) Failure to Pay Overtime Compensation [Cal.
2 Lab. Code §§ 1194,1198, and the Industrial Welfare Commission Wage Orders]; (3) Failure to Provide
3 Meal Periods [Cal. Lab. Code §§ 226.7, 512, and the Industrial Welfare Commission Wage Orders]; (4)
4 Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7, and the Industrial Welfare
5 Commission Wage Orders]; (5) Failure to Indemnify Necessary Business Expenses [Cal. Lab. Code
6 §2802]; (6) Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203]; (7) Failure to
7 Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226, and the Industrial Welfare
8 Commission Wage Orders]; and (8) Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, *et seq.*].
9 (The “Action.”) In the Complaint, Plaintiff sought to represent all persons that worked for Defendant in
10 California as an hourly-paid, non-exempt employee at any time during the period beginning four years
11 before the filing of the initial complaint and ending when Notice to the Class is sent.

12 18. On November 27, 2022, Plaintiff satisfied the administrative exhaustion requirement that is a
13 prerequisite to filing a claim for Civil Penalties under PAGA. After satisfying the administrative
14 exhaustion requirement, Plaintiff filed an amended complaint to add a single cause of action for Civil
15 Penalties under PAGA on or about January 4, 2023.

16 19. Solely for purposes of settling the Action, the Parties and their respective counsel stipulate and
17 agree that the requisites for establishing class certification with respect to the Class Members have been
18 met and are met. More specifically for settlement purposes only, the Parties stipulate and agree that:

19 (a) The Class is ascertainable and so numerous as to make it impracticable to join all
20 Class Members.

21 (b) There are common questions of law and fact including, but not limited to, the
22 following:

- 23 1) Whether or not Defendant properly paid all wages, including minimum and
24 overtime wages, to the Class;
- 25 2) Whether or not Defendant provided legally-compliant meal periods to the
26 Class;
- 27 3) Whether or not Defendant provided legally-compliant rest periods to the
28 Class;

- 4) Whether or not Defendant indemnified necessary business expenses incurred by the Class Members;
 - 5) Whether or not Defendant paid proper compensation timely upon separation of employment to Class Members whose employment ended during the Class Period;
 - 6) Whether or not Defendant paid proper compensation timely throughout Class Members' employment;
 - 7) Whether or not Defendant provided accurate and complete itemized wage statements to the Class;
 - 8) Whether or not waiting-time penalties are available to Class Members who are no longer employed by Defendant for violation of California Labor Code § 203;
 - 9) Whether or not Defendant maintained adequate and requisite records for Class Members;
 - 10) Whether or not Defendant paid proper meal period premiums and/or rest period premiums to the Class; and
 - 11) Whether or not Defendant engaged in unlawful or unfair business practices affecting the Class in violation of California Business and Professions Code §§ 17200-17208.
- (c) Plaintiff's claims are typical of the claims of the Class Members.
- (d) Plaintiff and Class Counsel will fairly and adequately protect the interests of the Class.
- (e) The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct.
- (f) With respect to the Class, questions of law and fact common to the members of the Class predominate over any questions affecting any individual member in such Class, and that a class action is superior to other available means for the fair and

1 efficient adjudication of the controversy.

2 20. Should, for whatever reason, the Settlement not become effective, the fact that the Parties were
3 willing to stipulate to class certification as part of the Settlement shall have no bearing on, and shall not be
4 admissible in connection with, the issue of whether the Class Members and/or the Class Claims should be
5 certified in a non-Settlement context in this Action or in any other lawsuit. Defendant expressly reserves
6 its right to oppose claim or class certification in this or any other action should this Settlement not become
7 effective.

8 21. Defendant denies any liability or wrongdoing of any kind whatsoever associated with the
9 claims alleged or which could have been alleged in the Complaint, and Defendant further denies that, for
10 any purpose other than settling this lawsuit, that the Action is appropriate for class or representative
11 treatment. With respect to Plaintiff's claims, Defendant contends, among other things, that Plaintiff and
12 the Class Members have been paid all wages, including minimum wages and overtime, have been
13 provided meal periods or they have been made available as required, have been provided rest periods or
14 they have been authorized and permitted as required, have been reimbursed for all necessary business
15 expenses, have been paid timely and proper wages upon separation of employment and during
16 employment, and have been provided with accurate and complete itemized wage statements. Defendant
17 contends, among other things, that it has complied at all times with the California Labor Code and the
18 applicable Wage Orders of the Industrial Welfare Commission. Furthermore, with respect to all claims,
19 Defendant contends that it has complied at all times with the California Business and Professions Code.

20 22. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all
21 disputes and claims arising from or related to the Complaint.

22 23. Class Counsel has conducted a thorough investigation into the facts of this Action, including
23 an extensive review of relevant documents, and has diligently pursued an investigation of the claims of the
24 Class against Defendant. Based on its own independent investigation and evaluation, Class Counsel is of
25 the opinion that the Settlement with Defendant for the consideration and on the terms set forth in this
26 Stipulation of Settlement is fair, reasonable, and adequate and is in the best interest of the Class in light of
27 all known facts and circumstances, including the risk of significant delay, the risk the Class will not be
28 certified by the Court, defenses asserted by Defendant, and numerous potential appellate issues.

Defendant and Defendant's Counsel also agree that the Settlement is fair, adequate and reasonable and in the best interest of the Class.

24. The Parties agree to cooperate and take all steps necessary and appropriate to obtain preliminary and final approval of this Settlement.

25. The Parties agree to stay all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Court.

PRIMARY TERMS OF SETTLEMENT

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

- (a) It is agreed by and among Plaintiff (on behalf of herself and the Class) and Defendant that this Action and any claims, damages, or causes of action arising out of the disputes which are the subject of this Action, be settled and compromised as between the Class and Defendant, subject to the terms and conditions set forth in this Settlement and the approval of the Court.
- (b) Effective Date: The terms of settlement embodied in this Settlement shall become effective when all of the following events have occurred: (i) this Stipulation of Settlement has been executed by all Parties and their respective counsel; (ii) the Court has given preliminary approval to the Settlement; (iii) the Notice has been given to the Class, providing them with an opportunity to dispute information contained in the Notice, to opt out of the Settlement, or to object to the Settlement; (iv) the Court has held a final approval hearing and entered a final order and judgment certifying the Class and approving this Settlement; and (v) the later of the following events: (a) the day final approval is granted if there are no objections to the settlement; (b) sixty-five (65) days following notice of entry of the Court's final order approving the Settlement if there are any objections by any Class Member; (c) or if any appeal, writ or other appellate proceeding opposing this Settlement has been filed within sixty-five (65) days following notice of entry of the Court's final order approving the Settlement, then twenty (20) days after when any appeal, writ

1 or other appellate proceeding opposing the Settlement has been resolved finally
2 and conclusively with no right to pursue further remedies or relief. In this regard, it
3 is the intention of the Parties that the Settlement shall not become effective until the
4 Court's order approving the Settlement is completely final, and there is no further
5 recourse by an appellant or objector who seeks to contest the Settlement.

6 (c) Gross Settlement Amount: Defendant's maximum total payment under the
7 Settlement, including all attorney's fees and costs, the Service Payment to the
8 named Plaintiff, the costs of settlement administration, the PAGA Allocation, and
9 any other payments provided by this Settlement, is \$150,000.00 ("Gross Settlement
10 Amount"), subject to the Escalator Clause and except that, to the extent that any
11 portions of the Settlement Class Payments constitute wages, Defendant will be
12 separately responsible for any employer-side payroll taxes required by law,
13 including the employer FICA, FUTA, and SDI contributions.

14 (d) Escalator Clause: Defendant estimates that, as of December 20, 2023, the Class
15 Members worked 15,447 workweeks, and the Parties agree that in the event the
16 15,447 estimate turns out to be understated by more than ten (10%) percent,
17 Defendant shall increase the Gross Settlement Amount by the percentage that the
18 actual number of workweeks exceeds a 10% increase from the original estimate.
19 (the "Escalator Clause"). In the alternative, Defendant may elect to end the Class
20 Period to an earlier date such that the Escalator is not triggered.

21 (e) The Gross Settlement Amount will not be reduced for any reason.

22 (f) Non-reversionary Settlement: No portion of the Gross Settlement Amount will
23 revert to Defendant.

24 (g) No Claims Required: Class Members will not be required to submit a claim to
25 receive their Settlement payment.

26 (h) Net Settlement Amount: The Net Settlement Amount shall be calculated by
27 deducting from the Gross Settlement Amount (\$150,000.00) the following sums,
28 subject to approval by the Court: (1) attorney's fees (not to exceed 33 1/3% of the

Gross Settlement Amount, or \$50,000.00); (2) reasonable litigation costs (not to exceed \$25,000.00); (3) the Service Payment (not to exceed \$5,000.00 to the named Plaintiff); (4) the PAGA Allocation to the LWDA (\$11,250.00); and (65) costs of settlement administration (estimated not to exceed \$10,000.00). The remainder is to be paid to Participating Class Members as Individual Class Payments. Settlement Class Payments will be calculated by the Settlement Administrator and paid out of the Net Settlement Amount as set forth below.

(i) Payroll Taxes and Required Withholdings: To the extent that any portions of the Settlement Class Payments constitute wages, Defendant will be separately responsible for any **employer-side** payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions. The Settlement Administrator will calculate and submit the Defendant's employer share of payroll taxes after advising Defendant of the total amount owed, in aggregate, as employer-side payroll taxes and receiving a lump sum payment from Defendant in that amount when the Gross Settlement Amount is delivered to the Settlement Administrator.

(j) Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL

1 AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN
2 CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
3 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY
4 OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER
5 PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
6 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER
7 TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE
8 IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY
9 OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
10 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S
11 OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH
12 LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
13 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
14 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION
15 CONTEMPLATED BY THIS AGREEMENT.

16 (k) Settlement Class Payments (Excludes PAGA Payments): Settlement Class
17 Payments will be paid out of the Net Settlement Amount. Each Settlement Class
18 Member will be paid a pro-rata share of the Net Settlement Amount as calculated
19 by the Settlement Administrator. The pro-rata share will be determined by
20 comparing the individual Settlement Class Member's Covered Workweeks
21 employed during the Class Period in California to the total Covered Workweeks of
22 all the Settlement Class Members during the Class Period as follows: [Workweeks
23 worked by a Settlement Class Member] ÷ [Sum of all Covered Workweeks worked
24 by all Settlement Class Members] × [Net Settlement Amount] = individual
25 Settlement Payment for a Settlement Class Member. Settlement Class Payments in
26 the appropriate amounts will be distributed by the Settlement Administrator by
27 mail to the Settlement Class Members. Uncashed, unclaimed or abandoned
28 checks, shall be transmitted by the Settlement Administrator to the California

Controller's Office, as set forth below.

- (l) PAGA Payments: PAGA Settlement Payments will be paid out of the PAGA Allocation deducted from the Gross Settlement Amount after the PAGA Penalty Amount (75 percent of the PAGA Allocation) is paid to the LWDA. Each PAGA Employee will be paid a pro-rata share of the PAGA Settlement Payment, as calculated by the Settlement Administrator. Class Members who are PAGA Employees will not be permitted to exclude themselves from this portion of the Settlement. Each PAGA Employee's pro-rata share will be determined by comparing the individual PAGA Employees' PAGA Pay Periods during the PAGA Period to the total PAGA Pay Periods of all the PAGA Employees during the PAGA Period as follows:
$$\frac{[\text{PAGA Pay Periods worked by a PAGA Employee}]}{[\text{Sum of all PAGA Pay Periods worked by all PAGA Employees}]} \times [\text{PAGA Settlement Payment}] = \text{individual PAGA Employee's portion of the PAGA Settlement Payment.}$$
 PAGA Settlement Payments to PAGA Employees in the appropriate amounts will be distributed by the Settlement Administrator by mail to the PAGA Employees at the same time Settlement Class Payments issue to the Settlement Class. Uncashed, unclaimed or abandoned checks, shall be transmitted by the Settlement Administrator to the California Controller's Office, as set forth below. The Settlement Administrator will send the PAGA Penalty Payment to the LWDA at the same time the Settlement Administrator send Settlement Payments to the Settlement Class and PAGA Settlement Payments to the PAGA Employees.
- (m) Allocation of Settlement Payments: The Parties have agreed that Settlement Class Payments will be allocated as follows: 90% to interest and penalties, and 10% to wages. The PAGA Settlement Payments will be entirely allocated to penalties. Appropriate federal, state and local withholding taxes will be taken out of the wage allocations, and each Settlement Class Member will receive an IRS Form W-2 with respect to this portion of the Settlement Class Payment. The Settlement Class Member's share of payroll taxes and other required withholdings will be remitted

1 by the Settlement Administrator to the appropriate taxing authorities as set forth
2 above, along with Defendant's employer portion of FICA and FUTA contributions,
3 based on the payment of claims to the Settlement Class Members. IRS Forms
4 1099 will be issued by the Settlement Administrator to each Settlement Class
5 Member and/or PAGA Employee reflecting the payments for penalties and
6 interest. Settlement Class Members and PAGA Employees are responsible to pay
7 appropriate taxes due on the Settlement Class Payments and PAGA Settlement
8 Payments they receive. To the extent required by law, IRS Forms 1099 and W-2
9 will be issued to each Settlement Class Member and PAGA Employee with respect
10 to such payments.

11 (n) Settlement Payments Do Not Give Rise to Additional Benefits: All Settlement
12 Payments to individual Settlement Class Members and PAGA Employees shall be
13 deemed to be paid to such Settlement Class Member or PAGA Employee solely in
14 the year in which such payments actually are received by the Settlement Class
15 Member or PAGA Employee. It is expressly understood and agreed that the
16 receipt of such Settlement Payments will not entitle any Settlement Class Member
17 or PAGA Employee to additional wages, compensation or benefits under any
18 company bonus, contest or other compensation or benefit plan or agreement in
19 place during the period covered by the Settlement up to and including the date the
20 Settlement becomes effective, nor will it entitle any Settlement Class Member or
21 PAGA Employee to any increased retirement, 401(k) benefits or matching benefits
22 or deferred compensation benefits. It is the intent of all Parties that the Settlement
23 Payments provided for in this Settlement are the sole payments to be made by
24 Defendant to the Settlement Class Members and PAGA Employees, and that the
25 Settlement Class Members and PAGA Employees are not entitled to any new or
26 additional compensation or benefits as a result of having received the Settlement
27 Payments (notwithstanding any contrary language or agreement in any benefit or
28 compensation plan document that might have been in effect during the period

covered by this Settlement).

- (o) Attorneys' Fees and Costs: Subject to approval by the Court, Defendant will not object to Class Counsel's application for attorney's fees not to exceed 33 1/3% of the Gross Settlement Amount (\$50,000.00) and reimbursement of litigation costs and expenses not to exceed \$25,000.00.
- (p) Service Payment: Subject to Court approval, and in exchange for a general release, Defendant will not object to Class Counsel's application for an additional payment of up to \$5,000.00 to Plaintiff for service as a Class Representative ("Service Payment"). It is understood that the Service Payment is in addition to the individual Settlement Payment to which the Plaintiff and Class Representative is entitled along with the other Settlement Class Members.
- (q) The Settlement Administrator will issue an IRS Form 1099 for the Service Payment to the Plaintiff. The Plaintiff will be individually responsible for correctly characterizing this compensation on personal income tax returns for tax purposes and for paying any taxes on the amounts received. Should the Court approve a Service Payment in an amount less than that set forth above, the difference between the lesser amount(s) approved by the Court and the Service Payment amount(s) set forth above shall be added to the Net Settlement Amount. Plaintiff agrees not to opt out or object to the Service Payment as the Class Representative.
- (r) Settlement Administrator: The Settlement Administrator will be ILYM Group, Inc. or such Settlement Administrator as may be mutually agreeable to the Parties and approved by the Court. Settlement Administration Costs are estimated not to exceed \$10,000. The costs of the Settlement Administrator for work done shall be paid regardless of the outcome of this Settlement. If the Settlement does not become final and effective, the cost of the Settlement Administrator will be shared equally by Plaintiff and Defendant.
- (s) Funding of Settlement Account: Defendant will fund the settlement account fifteen business days (15) after the Effective Date.

- 1 (t) Mailing of Settlement Payments: The Settlement Administrator shall cause the
2 Settlement Payments to be mailed to the Class Members within fourteen (14)
3 calendar days of the receipt of funding.
- 4 (u) Notice of Settlement: Each Class Member will be mailed a notice setting forth the
5 material terms of the proposed Settlement, along with instructions about how to
6 object or request exclusion from the proposed class action Settlement (“Notice”).
7 For each Class Member, there will be pre-printed information on the mailed
8 Notice, based on Defendant’s records, stating the Class Member’s Covered
9 Workweeks during the Class Period, PAGA Workweeks during the PAGA Period,
10 and the estimated total Settlement Payment under the Settlement, including the
11 Settlement Class Payment and the PAGA Settlement Payment. As discussed
12 below, the PAGA Settlement Payment will be distributed irrespective of any
13 exclusion request. The pre-printed information based on Defendant’s records shall
14 be presumed to be correct. A Class Member may dispute the pre-printed
15 information on the Notice as to his or her Covered Workweeks during the Class
16 Period or PAGA Workweeks during the PAGA Period. Class Members must
17 submit any dispute regarding the information on the Notice as to his or her
18 Covered Workweeks or PAGA Workweeks within the Response Deadline. Unless
19 a disputing Class Member submits documentary evidence in support of his or her
20 dispute, the records of the Defendant will be determinative.
- 21 (v) Settlement Notice Language: The Notice will issue in English and Spanish. If
22 there is any ambiguity between the English and Spanish translation, the English
23 version will be controlling.
- 24 (w) Class Members Cannot Exclude Themselves from the Released PAGA Claims:
25 Class Members submitting a Request for Exclusion will nevertheless receive their
26 pro-rata share of the PAGA Settlement Payment. If the Court approves the
27 compromise of the PAGA Claim, all Class Members are bound by the Court’s
28 resolution of that Claim. Plaintiff shall serve a notice of settlement on the

California Labor and Workforce Development Agency at or before the time Plaintiff files the motion for preliminary approval.

(x) Resolution of Workweek Disputes: If a Class Member disputes the accuracy of Defendant's records used to calculate Covered Workweeks or PAGA Workweeks, and the Parties' counsel cannot resolve the dispute informally, the matter will be referred to the Settlement Administrator. The Settlement Administrator will review Defendant's records and any information or documents submitted by the Class Member and issue a non-appealable decision regarding the dispute. The Class Member must submit information or documents supporting his or her position to the Settlement Administrator prior to the expiration of the Response Deadline. Information or documents submitted after the expiration of the Response Deadline will not be considered by the Settlement Administrator, unless otherwise agreed to by the Parties.

(y) Right of Class Member to Request Exclusion from the Settlement: Any Class Member may request to be excluded from the Settlement Class by mailing a "Request for Exclusion" from the Settlement within the Response Deadline, stating, as follows or in substantially similar terms:

"I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *WESOLEK V. MARTHA'S VILLAGE AND KITCHEN, INC.* CLASS ACTION LAWSUIT, RIVERSIDE COUNTY SUPERIOR COURT CASE NO. CVRI2204171. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OTHER THAN MY SHARE OF THE PAGA PAYMENT."

Any Request for Exclusion must include the name, address, telephone number, last four digits of the Class Member's Social Security Number, and the signature of the Class Member requesting exclusion. Any such request must be made in accordance with the terms of the Notice, and the Notice will advise Class Members of these requirements. Any Class Member who timely requests exclusion in compliance with these requirements (i) shall not have any rights under this Settlement other than a right to receive a pro-rata share of the PAGA Settlement

1 Payment if the Class Member is also PAGA Employee; (ii) shall not be entitled to
2 receive any Settlement Payments under this Settlement other than as stated herein;
3 and (iii) shall not be bound by this Settlement or the Court's Order and Final
4 Judgment other than as it applies to the PAGA Claim.

5 (z) Right of Settlement Class Member to Object to The Settlement: Any Settlement
6 Class Member may object to the Settlement. To object, the Settlement Class
7 Member may (1) appear at the Final Approval Hearing, remotely or in person, to
8 explain any objection, (2) have an attorney object for the Settlement Class
9 Member, or (3) submit a simple written brief or statement of objection to the
10 Settlement Administrator. If any Settlement Class Member chooses to submit a
11 written objection, the written objection should contain sufficient information to
12 confirm the identity of the objector and the basis of the objection, including (1) the
13 full name of the Settlement Class Member; (2) the signature of the Settlement
14 Class Member; (3) the grounds for the objection; and (4) be postmarked within the
15 Response Deadline to permit adequate time for processing and review by the
16 Parties of the written statement or objection. Class Counsel shall ensure that any
17 written objections are transmitted to the Court for the Court's review (either by
18 Class Counsel or as an attachment to a declaration from the Settlement
19 Administrator). Regardless of the form, an objection alone will not satisfy the
20 requirement that a Settlement Class Member must either make a timely complaint
21 in intervention before final judgment or by filing a motion to set aside and vacate
22 the class judgment under Code of Civil Procedure §663, to have standing to appeal
23 entry of judgment approving this Settlement, as is required under the California
24 Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260
25 (2018). A Settlement Class Member who does not object prior to or at the Final
26 Approval Hearing, will be deemed to have waived any objections and will be
27 foreclosed from making any objections (whether at the Final Approval Hearing, by
28 appeal, or otherwise) to the Settlement. If the objecting Settlement Class Member

1 does not formally intervene in the action or move to set aside any judgment and/or
2 the Court rejects the Settlement Class Member's objection, the Settlement Class
3 Member will still be bound by the terms of this Agreement and the Settlement.
4 Class Counsel and Defendant's Counsel may, at least five (5) calendar days (or
5 some other number of days as the Court shall specify) before the final approval
6 hearing, file responses to any written objections submitted to the Court. Class
7 counsel will not represent any Class Members with respect to any objections to the
8 Settlement.

9 **THE SETTLEMENT ADMINISTRATOR'S PRIMARY DUTIES**

10 27. Subject to the Court's approval, and subject to reconsideration by the Parties after a
11 competitive bidding process, the Parties have agreed to appoint ILYM Group, Inc. to perform the
12 customary duties of Settlement Administrator. The Settlement Administrator will mail the Notice, both in
13 English and Spanish, to the Class Members.

14 28. The Settlement Administrator will independently review the Covered Workweeks and PAGA
15 Workweeks attributed to each Class Member and PAGA Employee and will calculate the estimated
16 amounts due to each Class Member and the actual amounts due to each Settlement Class Member and
17 PAGA Employee in accordance with this Settlement. The Settlement Administrator shall report, in
18 summary or narrative form, the substance of its findings. The Settlement Administrator shall be granted
19 reasonable access to Defendant's records in order to perform its duties. The Settlement Administrator will
20 provide Defendant's counsel and Class Counsel a weekly report which certifies: (i) the number of Class
21 Members who have submitted valid Requests for Exclusion; (ii) the number of any deficient Requests for
22 Exclusion and (iii) whether a Class Member has submitted a challenge to information contained in their
23 Notice Packet. Additionally, the Settlement Administrator will provide to counsel for both Parties any
24 updated reports regarding the administration of the Settlement Agreement as needed or requested.

25 29. In accordance with the terms of this Settlement, and upon receipt of Gross Settlement Amount
26 from Defendant, the Settlement Administrator will issue and send out the Settlement Payment checks to
27 the Settlement Class Members and the PAGA Settlement Payments to the PAGA Employees. Tax
28 treatment of the Class Settlement Payments and PAGA Settlement Payments will be as set forth herein,

1 and in accordance with state and federal tax laws. The Settlement Administrator will also issue a payment
2 to Class Counsel and itself for Court-approved services performed in connection with the settlement.

3 30. All disputes relating to the Settlement Administrator's performance of its duties shall be
4 referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of
5 this Settlement until all payments and obligations contemplated by this Settlement have been fully carried
6 out.

7 **ATTORNEY'S FEES AND COSTS**

8 31. In consideration for resolving this matter and in exchange for the release of all claims by the
9 Settlement Class Members, including Plaintiff, and subject to approval by the Court, Defendant will not
10 object to Class Counsel's application for attorney's fees not to exceed 33 1/3% of the Gross Settlement
11 Amount (\$50,000.00 of \$150,000.00) and litigation costs not to exceed \$25,000.00. The amounts set forth
12 above will cover all work performed and all fees and costs incurred to date, and all work to be performed
13 and all fees and costs to be incurred in connection with the approval by the Court of this Settlement and
14 administration of the Settlement. Should Class Counsel request a lesser amount and/or the Court approve
15 a lesser amount(s) of attorney's fees and/or attorneys' costs, the difference between the lesser amount(s)
16 and the maximum amount set forth above shall be added to the Net Settlement Amount. The Parties agree
17 that there is no prevailing party, and the Class and Class Counsel shall not be entitled to any fees or costs
18 other than those awarded out of and deducted from the Gross Settlement Amount. As with the Class
19 Settlement Payments to the Settlement Class, the attorney's fees and costs approved by the Court shall be
20 distributed by the Settlement Administrator to Class Counsel within fourteen (14) calendar days of the
21 receipt of settlement funds by the Settlement Administrator. In the event that the Court awards less than
22 25% of the Gross Settlement Amount for attorney's fees, Class Counsel shall retain the right to appeal that
23 portion of any Final Approval Order and Judgment.

24 **THE NOTICE PROCESS**

25 32. A Notice in approximately the form attached hereto as Exhibit "A," and as approved by the
26 Court, shall be sent by the Settlement Administrator to the Class Members by first class mail. The Notice
27 shall be translated into Spanish so that Spanish and English language versions of the Notice are included in
28 the mailing.

- 1 (a) Within seven (7) calendar days from the date of preliminary approval of this
2 Settlement by the Court, Defendant shall provide to the Settlement Administrator a
3 class database containing the following information for each Class Member: (1)
4 name; (2) last known address; (3) last four digits of his, her, or their social security
5 number; and (4) dates of employment at Defendant's locations in California. This
6 database shall be based on Defendant's payroll and other business records and shall
7 be provided in a reasonable format to the Settlement Administrator. Defendant
8 agrees to consult with the Settlement Administrator prior to the production date to
9 ensure that the format will be acceptable to the Settlement Administrator. The
10 Settlement Administrator will run a check of the Class Members' addresses against
11 those on file with the U.S. Postal Service's National Change of Address List; this
12 check will be performed only once per Class Member by the Settlement
13 Administrator. Absent mutual written agreement of counsel for the Parties or
14 Court order, the Settlement Administrator will keep this database confidential and
15 secure and use it only for the purposes described herein and will return this
16 database to Defendant upon final approval of the settlement or destroy electronic
17 records containing the database after the Settlement is final and all payments are
18 distributed as required under this Agreement.
- 19 (b) Within fourteen (14) calendar days after the Class database is provided to the
20 Settlement Administrator, the Settlement Administrator will mail the Notices to the
21 Class Members by First Class United States mail.
- 22 (c) Notices returned to the Settlement Administrator as non-deliverable on or before
23 the initial Response Deadline shall be resent to the forwarding address, if any, on
24 the returned envelope. A returned Notice will be forwarded by the Settlement
25 Administrator any time that a forwarding address is provided with the returned
26 mail. If there is no forwarding address, the Settlement Administrator will do a
27 computer search for a new address using the last four digits of the Class Member's
28 social security number or other information. In any instance where a Notice is re-

1 mailed, that Class Member will have until the extended Response Deadline as
2 described above to submit objections or request exclusion. A letter prepared by the
3 Settlement Administrator will be included in the re-mailed Notice in that instance,
4 stating the extended Response Deadline. Upon completion of these steps by the
5 Settlement Administrator, Defendant and the Settlement Administrator shall be
6 deemed to have satisfied their obligations to provide the Notice to the affected
7 Class Member. The affected Class Member shall remain a member of the
8 Settlement Class and shall be bound by all the terms of the Settlement and the
9 Court's Order and Final Judgment.

- 10 (d) Class Counsel shall provide to the Court, at least five (5) calendar days prior to the
11 final approval hearing, or such other date as set by the Court, a declaration by the
12 Settlement Administrator of due diligence and confirming mailing of the Notices.

13 **DISPOSITION OF SETTLEMENT PAYMENTS AND UNCASHED CHECKS**

14 33. As set forth above, each Settlement Class Member will have until the expiration of the
15 applicable Response Deadline to submit to the Settlement Administrator any challenge or dispute to the
16 Settlement Class Member's Covered Workweek information on the Notice. No disputes will be honored
17 if they are submitted after the Response Deadline unless the Parties mutually agree to accept the untimely
18 dispute. Each Settlement Class Member is responsible to maintain a copy of any documents sent to the
19 Settlement Administrator and a record of proof of mailing.

20 34. The Settlement Administrator shall cause the Settlement Payments to be mailed to the
21 Settlement Class Members and PAGA Employees as provided herein. Settlement Class Payments and
22 PAGA Settlement Payments may be combined into one check. Settlement Payment checks shall remain
23 valid and negotiable for 180 calendar days from the date of their issuance. Settlement Payment checks
24 will automatically be cancelled by the Settlement Administrator if they are not cashed by the Settlement
25 Class Member within that time, and the Settlement Class Member's relevant claims will remain released
26 by the Settlement. Settlement Payment checks which have expired will not be reissued.

27 35. Funds from uncashed or abandoned Settlement Class Payment checks or PAGA Settlement
28 Checks, based on a 180-day void date, shall be transmitted by the Settlement Administrator and

1 redistributed to those class members who have cashed their checks.

2 36. Upon completion of its calculation of Settlement Class Payments and PAGA Settlement
3 Payments, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel with a
4 report listing the amounts of all payments to be made to Class Members (to be identified anonymously by
5 employee number or other identifier). A Declaration attesting to completion of all payment obligations
6 will be provided to Class Counsel and Defendant's Counsel and filed with the Court by Class Counsel.

7 **RELEASE BY THE PLAINTIFF AND BY THE CLASS AND PAGA EMPLOYEES**

8 37. Release by Class and PAGA Employees. Upon the final approval by the Court of this
9 Settlement and Defendant's payment of all sums due pursuant to this Settlement, and except as to such
10 rights or claims as may be created by this Settlement, the Class Representative, the Class and each Class
11 Member who has not submitted a valid and timely request for exclusion as to claims other than the PAGA
12 claim, and each PAGA Employee, regardless of whether they have requested exclusion from the
13 Settlement of Class claims, will release claims as follows:

- 14 (a) **Identity of Released Parties.** The released parties are Defendant, together with its
15 officers, directors, employees and agents. (collectively "Releasees").
- 16 (b) **Date Release Becomes Active.** The Released Claims and Released PAGA Claims
17 will be released upon the later of (1) the Settlement's Effective Date, or (2) the
18 satisfaction of Defendant's obligation to provide to the Settlement Administrator a
19 sum in the amount required to satisfy all required payments and distributions
20 pursuant to this Settlement and the Order and Judgment of final approval. Class
21 Members will not release the Released Claims or Released PAGA Claims until
22 both the Effective Date of the Settlement has occurred, **and** Defendant has paid all
23 amounts owing under the Settlement.
- 24 (c) **Claims Released by Settlement Class Members.** Each and every Class Member,
25 on behalf of himself or herself and his or her heirs and assigns, unless he or she has
26 submitted a timely and valid Request for Exclusion (which will not effectuate an
27 opt-out from the release of Released PAGA Claims), hereby releases Releasees
28 from the following claims for the entire Class Period:

1) (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Complaint., including, t: (1) claims for failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods or pay a premium in lieu thereof; (4) failure to authorize and permit rest periods or pay a premium in lieu thereof; (5) failure to reimburse employees for business expenses; (6) failure to timely pay final wages at the time of termination/end of employment; (7) failure to provide accurate itemized wage statements; (8) unfair business practices; (9) claims for penalties under the Private Attorney General Act for violation of California Labor Code sections 201-204, 210, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1174.5, 1194, 1195, 1197, 1197.1, 1198, 2698 et seq., 2699 et seq., 2802, or any applicable Wage Order (“Released Claims”);

(d) **PAGA Release.** Upon Court approval of the Settlement, Plaintiff, in her individual capacity and on behalf of the State of California and the LWDA, shall completely release and discharge the Defendants named in the Complaint, together with their officers, directors, employees, and agents collectively releases all claims for civil penalties that could have been sought by the Labor Commissioner for the violations identified in Plaintiff’s PAGA letter to the LWDA; Plaintiff does not release any Aggrieved Employee's claim for wages, statutory penalties, or damages.

1) **Date PAGA Release becomes Active.** The Parties agree that upon the Effective Date, the LWDA, the Aggrieved Employees, and Plaintiff shall be deemed to have, and by operation of the court’s Approval Order and Judgment shall have, released the Defendant and any Releasees, as further defined in this long form settlement agreement, from any claim for civil penalties arising out of the Released PAGA Claims or specifically enumerated herein.

1 (e) The Class and PAGA Employees, including Plaintiff and Class Representative,
2 acknowledge and agree that: (1) Class Claims for overtime compensation,
3 minimum wages, wages for all hours worked, statutory and civil penalties, and/or
4 any other payments and/or penalties in the Action are disputed; and (2) the
5 payments set forth herein constitute full payment of any amounts allegedly due.
6 The Class and PAGA Employees, including Plaintiff and Class Representative,
7 thus shall be deemed to have acknowledged and agreed that California Labor Code
8 Section 206.5 is not applicable to the Parties hereto. That section provides in
9 pertinent part as follows: An employer shall not require the execution of any
10 release of a claim or right on account of wages due, or to become due, or made as
11 an advance on wages to be earned, unless payment of those wages has been made.

12 38. Release by Plaintiff and Class Representative. Upon the final approval by the Court of this
13 Settlement and Defendant's payment of all sums due pursuant to this Settlement, and except as to such
14 rights or claims as may be created by this Settlement, the Plaintiff and Class Representative, will release
15 claims as follows:

16 (a) The Plaintiff and Class Representative hereby fully and finally releases and
17 discharges the Releasees (defined above), and Defendant's parent entities,
18 affiliates, subsidiaries, divisions, predecessors, insurers, reinsurers, successors, and
19 assigns, and their current and former employees, attorneys, officers, directors, and
20 agents thereof, both individually and in their business capacities, and their
21 employee benefit plans and programs and the trustees, administrators, fiduciaries,
22 and insurers of such plans and programs, both individually and in their business
23 capacities from any and all of the released claims (defined above) and from any
24 and all other claims, charges, complaints, liens, demands, agreements, contracts,
25 covenants, actions, suits, causes of action, penalties, wages, obligations, debts,
26 expenses, damages, attorneys' fees, costs, judgments, orders, and liabilities of
27 whatever kind or nature in law, equity, or otherwise, known or unknown, suspected
28 or unsuspected, that the Plaintiff and Class Representative had, now has, or may

hereafter claim to have against the Released Parties arising out of, or relating in any way to, the Plaintiff and Class Representative's hiring by, employment with, separation of employment with, or any other transactions, occurrences, acts or omissions or any loss, damage or injury whatsoever, known or unknown, suspected or unsuspected, resulting from any act or omission by or on the part of any Released Party (the "Class Representative's Released Claims"), arising or accruing from the beginning of time up through the Final Approval Order Date ("Class Representative's Released Period"). The Class Representative's Released Claims include, but are not limited to, claims arising from or dependent on the California Labor Code; the Wage Orders of the California Industrial Welfare Commission; California Business and Professions Code section 17200 et seq.; the California Fair Employment and Housing Act, Cal. Gov't Code § 12900 et seq.; the California Healthy Workplaces, Healthy Families Act, Cal. Labor Code § 245 et seq., the California common law of contract and tort; Title VII of the Civil Rights Act of 1964; the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.; the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq.; the Fair Labor Standards Act, 29 U.S.C. § 201 et seq., the Portal to Portal Act, 29 U.S.C. § 251 et seq., and the Families First Coronavirus Response Act.

(b) The Plaintiff and Class Representative also acknowledges that she has read Section 1542 of the Civil Code of the State of California, which provides as follows:

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.

39. The Plaintiff and Class Representative further warrants that she understands that Section 1542 gives her the right not to release existing claims of which she is not now aware unless she voluntarily chooses to waive this right. Having been so apprised, Plaintiff and Class Representative shall nevertheless voluntarily waive the rights described in Section 1542 and elects to assume all risks and to release the

claims set forth herein, that now exist in her favor, whether known or unknown.

EMPLOYMENT BY DEFENDANT

40. Employment of Plaintiff by Defendant is not consideration for, or a condition of, this Settlement.

DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

41. The Parties shall submit this Stipulation of Class Action Settlement to the Court in support of Plaintiff's unopposed motion for preliminary approval for determination by the Court as to its fairness, adequacy, and reasonableness. Upon execution of this Stipulation of Class Action and PAGA Settlement, the Parties shall apply to the Court for the entry of an order:

- (a) Scheduling a preliminary approval hearing and later final approval and fairness hearing on the question of whether the proposed Settlement, including payment of attorney's fees and costs, and the Class Representative's service payment, should be finally approved as fair, reasonable, and adequate as to the members of the Class;
- (b) Conditionally certifying a Class for settlement purposes only;
- (c) Approving as to form and content the proposed Notice;
- (d) Directing the mailing of the Notice by the Settlement Administrator;
- (e) Preliminarily approving the Settlement subject only to the objections of Class Members and final review by the Court;
- (f) Conditionally appointing Plaintiff and Class Counsel as representatives of the proposed Class Members; and,
- (g) Appointing ILYM Group, Inc. as the Settlement Administrator.

DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL

42. In conjunction with the hearing of a motion for final approval by the Court of the Settlement provided for in this Stipulation of Settlement, Class Counsel will submit to the Court a proposed final order and judgment containing provisions sufficient to accomplish the following:

- (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;

- (b) Approving Class Counsel's application for an award of attorney's fees and costs;
- (c) Approving the Service Payment to the Class Representatives;
- (d) Adjudging the Settlement Administrator has fulfilled its initial notice and reporting duties under the Settlement.
- (e) Adjudging Plaintiff and Class Counsel may adequately represent the Final Settlement Class for the purpose of entering into and implementing the Agreement;
- (f) Entering a final judgment in the action;
- (g) Adjudging that notwithstanding the submission of a timely request for exclusion, Class Members are still bound by the settlement and release of the Released PAGA Claims or remedies under the Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), as requests to be excluded from the Settlement do not apply to the Released PAGA Claims, and further affirming that the State's claims for civil penalties pursuant to PAGA are also extinguished;

NULLIFICATION AND TERMINATION

43. This Settlement will be null and void if any of the following occur: (a) the Court should for any reason fail to certify a Class for settlement purposes; (b) the Court should for any reason fail to preliminarily or finally approve of this Settlement in the form agreed to by the Parties, other than adjustments made to the attorney's fees and costs or granting of Service Payments; (c) the Court should for any reason fail to enter the final judgment; (d) the final judgment is reversed, modified, or declared or rendered void; or (e) the Settlement does not become final for any other reason.

44. Defendant has the right to cancel the Settlement if (a) more than ten percent (10%) of the Settlement Class Members submit timely and valid requests for exclusion from the Settlement; (b) the Settlement is construed in such a fashion that Defendant is required to pay more than the Settlement Amount; (c) the Court does not certify the Settlement Class or does not certify a class releasing the claims set forth in this Memorandum of Understanding and/or the long form settlement agreement, or otherwise makes an order inconsistent with any of the terms of this Memorandum of Understanding and/or the long form settlement agreement; or (d) Plaintiff or her counsel materially breach any term of the Memorandum of Understanding. Option (a) to cancel the Settlement must be exercised by

1 Defendant by providing written notice to Class Counsel within ten (10) business days of counsel for
2 Defendant receiving notification from the Settlement Administrator that more than ten percent (10%)
3 of the Class Members have submitted timely and valid requests for exclusions from the Settlement. If
4 Defendant exercises the option to terminate the Settlement under option (a), then, Defendant shall be
5 responsible for paying all settlement administration costs incurred to that date.

6 45. In the event this Settlement is nullified or terminated as provided above: (i) this Settlement
7 shall be considered null and void, (ii) neither this Settlement nor any of the related negotiations or
8 proceedings shall have any force or effect and no Party shall be bound by any of its terms, and (iii) all
9 Parties to this Settlement shall stand in the same position, without prejudice, as if the Settlement had been
10 neither entered into nor filed with the Court.

11 **PARTIES' AUTHORITY**

12 46. The signatories hereto hereby represent that they are fully authorized to enter into this
13 Settlement and bind the Parties hereto to the terms and conditions thereof.

14 **MUTUAL FULL COOPERATION**

15 47. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement
16 including, but not limited to, execution of such documents and taking such other action as reasonably may
17 be necessary to implement the terms of this Settlement. The Parties to this Settlement shall use their best
18 efforts, including all efforts contemplated by this Settlement and any other efforts that may become
19 necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set forth herein.
20 As soon as practicable after execution of this Settlement, Class Counsel shall, with the assistance and
21 cooperation of Defendant and Defendant's Counsel, take all necessary steps to secure the Court's
22 preliminary and final approval of this Settlement.

23 **NO PRIOR ASSIGNMENTS**

24 48. The Parties and their respective counsel represent, covenant, and warrant that they have not
25 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
26 any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein
27 released and discharged except as set forth herein, and that they are not on notice of any liens as to the
28 Gross Settlement Amount or any right to attorneys' fees or costs.

49. Nothing contained herein, nor the consummation of this Settlement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant. Defendant denies all the claims and contentions alleged by the Plaintiff in this case. Defendant does not admit, and specifically denies, that it has violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations or legal requirements; breached any contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to its current or former employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, will be construed as an admission or concession by Defendant of any such violations or failures to comply with any applicable law. Defendant has entered into this Settlement solely with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses. Except as necessary in a proceeding to enforce the terms of this Settlement Agreement, this Settlement Agreement and its terms and provisions will not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendant or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local or other applicable law.

50. In the event that one or more of the Parties to this Settlement institutes any legal action or other proceeding against any other party or parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful party or parties shall be entitled to recover from the unsuccessful party or parties reasonable attorney's fees and costs, including expert witness fees incurred in connection with any enforcement actions.

51. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows:

1 Class Counsel:

Counsel for Defendant:

2 Kane Moon
3 Enzo Nabiev
4 Sandy Pham
5 **MOON LAW GROUP, PC**
6 1055 W. Seventh St., Suite 1880
7 Los Angeles, California 90017
8 Telephone: (213) 232-3128
9 Facsimile: (213) 232-3125
10 kmoon@moonlawgroup.com
11 enabiev@moonlawgroup.com
12 spham@moonlawgroup.com

Peter J. Woo
Joseph F. Desiderio
JACKSON LEWIS P.C.
200 Spectrum Center Drive, Suite 500
Irvine, California 92618
Phone: (949) 885-1360
Fax: (949) 885-1380
Email:
Peter.Woo@jacksonlewis.com
Joseph.Desiderio@jacksonlewis.com

13 **CONSTRUCTION**

14 52. The Parties hereto agree that the terms and conditions of this Settlement are the result of
15 lengthy, intensive arms-length negotiations between the Parties, including, but not limited to, an all-day
16 mediation on December 20, 2023, with experienced neutral mediator Tripper Ortman, Esq., and this
17 Settlement shall not be construed in favor of or against any Party by reason of the extent to which any
18 Party or his, her or its counsel participated in the drafting of this Settlement.

19 **CAPTIONS AND INTERPRETATIONS**

20 53. Paragraph titles or captions contained herein are inserted as a matter of convenience and for
21 reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision
22 hereof. Each term of this Settlement is contractual and not merely a recital.

23 **MODIFICATION**

24 54. This Settlement may not be changed, altered, or modified, except in writing and signed by the
25 Parties hereto, and approved by the Court. This Settlement may not be discharged except by performance
26 in accordance with its terms or by a writing signed by the Parties hereto.

27 **CONFIDENTIALITY**

28 55. Confidentiality Agreement. The Parties and their counsel agree that none of them will issue
any marketing materials, press release, social media post, internet or website announcement, or otherwise
initiate any contact with the press, respond to any press inquiry or have any communication with the press
regarding the Settlement or the terms of this settlement. Class Counsel will not communicate with other

1 wage-hour plaintiffs' counsel about this settlement, nor utilize it in any way in their marketing or
2 advertising materials or website, prior to Preliminary Approval. Plaintiff will not discuss the Settlement
3 with anyone other than her counsel, tax advisors or spouses, except as required or authorized by law.
4 Additionally, Class Counsel agree that the fact that the Actions were filed and/or settled will not be
5 included in any filing or court submission in any other case or controversy unless required to do so by
6 applicable law or done in submissions to courts or arbitrators in connection with establishing adequacy as
7 class counsel or relevant experience in wage and hour lawsuits.

8 **INTEGRATION CLAUSE**

9 56. This Settlement contains the entire agreement between the Parties relating to the Settlement
10 and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings,
11 representations, and statements, whether oral or written and whether by a Party or such Party's legal
12 counsel, are merged herein. No rights hereunder may be waived except in writing. The Parties expressly
13 recognize California Civil Code Section 1625 and California Code of Civil Procedure Section 1856(a),
14 which provide that a written agreement is to be construed according to its terms and may not be varied or
15 contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral or written
16 representations or terms will modify, vary or contradict the terms of this Agreement.

17 **AMENDMENT**

18 57. Amendment or Modification. This Settlement Agreement may be amended or modified only
19 by a written instrument mutually signed by counsel for all Parties or their successors-in-interest.

20 **WAIVER OF APPEALS**

21 58. The Parties agree to waive appeals and to stipulate to class certification for purposes of
22 implementing this Settlement only, with the exception that Class Counsel retains the right to appeal the
23 amount awarded as attorney's fees in the event that the Court awards less than twenty-five percent of the
24 Gross Settlement Amount as attorney's fees.

25 **BINDING ON ASSIGNS**

26 59. This Settlement shall be binding upon and inure to the benefit of the Parties hereto and their
27 respective heirs, trustees, executors, administrators, successors and assigns.
28

CLASS COUNSEL SIGNATORIES

60. It is agreed that because the members of the Class are so numerous, it is impossible or impractical to have each member of the Class execute this Settlement. The Notice will advise all Class Members of the binding nature of the Released Claims and Released PAGA Claims, and the release shall have the same force and effect as if this Settlement were executed by each member of the Class.

COUNTERPARTS

61. This Settlement may be executed in counterparts and by electronic or facsimile signatures, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement, which shall be binding upon and effective as to all Parties.

FINAL JUDGMENT

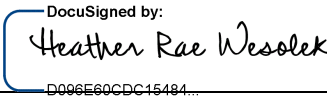
62. The Parties agree that, upon final approval of the Settlement, final judgment of this Action will be made and entered in its entirety at or following the final approval hearing. The final judgment may be included in the Order granting Final Approval of the Settlement.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Stipulation of Class Action Settlement between Plaintiff and Defendant as set forth below:

IT IS SO STIPULATED.

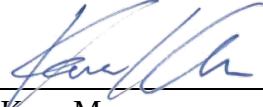
Plaintiff & Class Representative:

Dated: 6/24/2024

By: 
Heather Rae Wesolek

Plaintiff's Counsel:

Dated: 6/24/2024

MOON LAW GROUP, PC
By: 
Kane Moon
Enzo Nabiev
Sandy Pham

Attorneys for Plaintiff

Defendant:

Dated:

MARTHA'S VILLAGE AND KITCHEN, INC.

By: 
Sam Hollenbeck, CEO

Defendant's Counsel:

Dated:

JACKSON LEWIS, PC

By: 
Peter J. Woo
Joseph F. Desiderio
Attorneys for Defendant