

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (this “Agreement”) is made by and between plaintiff Omar Ramirez (“Plaintiff” or “Class Representative”), on behalf of himself, the putative class members (“Putative Class Member”), and the allegedly aggrieved employees he claims to represent (“Allegedly Aggrieved Employees”), and on the other hand by defendant DAMM Fine Pizza, LLC (“DFP”) (collectively referred to as the “Parties”). The Parties hereby agree to the following Settlement, which if approved by the Court resolves the pending case: San Luis Obispo County Superior Court, Case No. 19CV-0365 (the “Action” or “Lawsuit”).

I. DEFINITIONS

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

A. “Alleged Aggrieved Employees” are all current or former employees who worked for DFP at any time from March 15, 2018 (one year prior to the date of Plaintiff’s PAGA notice letter) through March 15, 2021 (“PAGA Period”). The Settlement Class Period is inclusive of the PAGA Period.

B. “Class” means the combined class members as proposed in the Lawsuit, consisting of the following employees:

All individuals who worked for DFP in the State of California as an hourly paid, non-exempt employee at any time between June 17, 2015 and March 15, 2021 (“the Class Period”). DFP represents that as of January 2021 there were 3,010 employees (employee information which was produced informally in preparation for mediation). The number of employees covered by this agreement shall not exceed 3,300.

C. “Class Counsel” means Mallison & Martinez.

D. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts awarded to Class Counsel by the Court to compensate them for, respectively, their attorneys’ fees and litigation expenses incurred in connection with the Lawsuit, including their pre-filing investigation, their filing of the Lawsuit and all related litigation activities, this Settlement, and all post-Settlement compliance and approval procedures.

E. “Class Member” is any individual who worked for DFP in the State of California as an hourly paid, non-exempt employee at any time between June 17, 2015 and March 15, 2021 (“the Class Period”).

F. “Class Notice” means the Notice of Proposed Settlement of Class Action Lawsuit, which will be submitted by Plaintiff along with the Motion for Preliminary Approval.

- H. “Class Notice Packet” means the Class Notice and Election Not to Participate in Settlement form, which will be submitted by Plaintiff along with the Motion for Preliminary Approval (including Spanish-translated version).
- I. “Class Representative Payment” means the payment made to Plaintiff Omar Ramirez in his capacity as Class Representative to compensate him for initiating the Lawsuit, performing work in support of the Lawsuit, undertaking the risk of liability for attorneys’ fees and expenses in the event he was unsuccessful in the prosecution of the Lawsuit. DFP will not object to Plaintiff’s request for court approval of the Class Representative Payment of up to \$10,000.
- J. “Defense Counsel” means Chandra Beaton and Kathleen Fellows of LightGabler.
- K. “Covered Position” means the position worked by the Class, which includes any individual who worked for DFP in the State of California as an hourly paid, non-exempt employee at any time between June 17, 2015 and March 15, 2021 (“the Class Period”).
- L. “Court” means the California Superior Court for the County of San Luis Obispo.
- M. “Defendants” means DAMM Fine Pizza, LLC, Matiullah (Last Name Unknown “LNU”), Kelly LNU, Hugo Cuevas, Sky LNU, Kendal LNU.
- N. “Effective Date” of this Settlement Agreement shall mean seven (7) calendar days after *all* of the following conditions have been satisfied:
1. Execution of this Settlement Agreement by all Parties, Class Counsel and Defense Counsel.
 2. Submission of this Settlement Agreement to the Court, along with appropriate motions and requests for approval of this Settlement Agreement by the Court.
 3. Preliminary Approval of the settlement by the Court.
 4. Mailing of the Class Notice Packet to the Class Members in accordance with the Court’s Order of Preliminary Approval.
 5. Expiration of the date by which Class Members must submit a completed Election Not to Participate in Settlement form, as stated in the Class Notice.
 6. A Final Approval Hearing, and entry of a written final order by the Court approving this Settlement Agreement and entering final judgment with respect to the Lawsuit. Except that, in the event there are written objections made prior to the Final Approval Hearing, or an appeal of the Court’s approval of the Settlement notwithstanding whether an objection is taken, then the Effective Date shall be the later of the following events: (i) when the period for filing any appeal, writ or other appellate proceeding opposing

the Settlement has elapsed following entry of the Court's final order approving this Settlement (the "Final Approval Order") and no appeal has been taken contesting the Final Approval Order; or (ii) if any appeal has been filed contesting this Settlement and/or the Final Approval Order, then the date which is thirty (30) days after any appeal opposing or contesting this Settlement and/or Final Approval Order has been dismissed finally and conclusively with no right to pursue similar remedies or relief, or any appeal has been resolved to uphold the Final Approval Order.

- O. "Election Not to Participate in Settlement" means the form by which a Class Member may elect to exclude themselves from the Settlement. Plaintiff will draft for Defense Counsel's review, revision, and approval, and submit an Election Not to Participate in Settlement form to the Court, along with the Motion for Preliminary Approval.
- P. "Final Approval Hearing" means the hearing to be conducted by the Court to determine whether to approve finally and implement the terms of this Agreement.
- Q. "Gross Settlement Amount" means the maximum amount of \$750,000. The Gross Settlement Amount is the maximum total amount that DFP is obligated to pay for any and all purposes under this Agreement, except that DFP will be required to pay its share of any payroll taxes in addition to the Gross Settlement Amount.
- R. "Final Approval Order" means an order finally and unconditionally granting final approval of this Settlement Agreement, entering final judgment with respect to the Lawsuit, and authorizing payments to the Settlement Administrator, the Participating Class Members, Plaintiff, the LWDA, and Class Counsel as provided in this Settlement Agreement.
- S. "Judgment" means the Order of Final Judgment entered by the Court. The Parties will draft and submit a proposed Final Judgment to the Court along with the Motion for Final Approval in the Lawsuit.
- T. "Net Settlement Amount" means the Gross Settlement Amount of \$750,000 to be paid by DFP pursuant to this Settlement, less (i) the Class Representative Payment, as described in this Agreement and approved by the Court; (ii) the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment, as described in this Agreement and approved by the Court; (iii) the payment to the LWDA, as described in this Agreement and approved by the Court; (iv) the Settlement Administrator's reasonable fees and expenses, as described in this Agreement and approved by the Court; and (v) any other fees or expenses (other than attorneys' fees and expenses) incurred in implementing the terms and conditions of this Agreement and securing dismissal of the Lawsuit as awarded by the Court.
- U. "Non-Participating Class Member" means a Class Member who submits a valid and timely Election Not to Participate in Settlement.

- V. “PAGA Settlement Amount” refers to a payment of up to \$50,000 of the Gross Settlement Amount that will be allocated to the resolution of all Allegedly Aggrieved Employees’ claims arising under the California Labor Code Private Attorneys General Act of 2004 (California Labor Code §§ 2698, et seq., “PAGA”).
- W. “Participating Class Member” means a Class Member who does not submit a valid and timely Election Not to Participate in Settlement.
- X. “Pay Periods” means the pay periods during the Settlement Class Period and PAGA Period in which the Class Member worked for DFP in a Covered Position.
- Y. “Preliminary Approval of the Settlement” means the Court’s preliminary approval of the Settlement.
- Z. “Released Claims” refers to any and all claims, debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorney’s fees, damages, actions or causes of action of every nature and description whatsoever in law, equity or otherwise, whether known or unknown, contingent or accrued, arising from, related to, or which were alleged or which could have been alleged against Defendants based on the facts or claims alleged in the Lawsuit or Plaintiff’s PAGA notice letter. Released Claims include but are not limited to claims for unpaid wages, failure to pay minimum wages, failure to pay overtime compensation, failure to provide meal breaks or pay premium pay in lieu thereof, failure to provide rest breaks or pay premium pay in lieu thereof, failure to provide and maintain accurate and itemized wage statements, failure to reimburse business expenses, waiting time penalties, damages, premium pay, statutory penalties, civil penalties, injunctive relief, declaratory relief, restitution, interest, costs and attorneys’ fees, and any other claims or damages during the Class Period, whether known or unknown.
- AA. “Settlement” means the disposition of the Lawsuit and all related claims as detailed in, and to be effectuated by, this Agreement.
- BB. “Settlement Administrator” means the administrator proposed by the Parties and appointed by the Court to provide notice of this proposed class action settlement to the Class and to perform other related functions to administer the Settlement as described herein.
- A. “Settlement Class Period” means the period of time from June 17, 2015 to March 15, 2021.
- B. “Settlement Share” means each Participating Class Member’s share of the Net Settlement Amount as provided by this Agreement.

II. RECITALS

- A. Plaintiff Omar Ramirez filed a class action and Private Attorneys General Act (PAGA) enforcement action in the California Superior Court for the County of San

Luis Obispo on June 17, 2019. The operative complaint alleges the following: failure to pay minimum wages, failure to pay overtime wages, failure to provide rest breaks or pay additional wages in lieu thereof, failure to provide meal periods or pay additional wages in lieu thereof, failure to pay all wages owed upon termination or resignation, failure to comply with itemized employee wage statement provisions, failure to indemnify employees for all necessary business expenses, violation of Unfair Competition Law, and violations of the PAGA based on the foregoing.

- B. In connection with the Lawsuit, DFP produced documents, including payroll and timekeeping records for Class Members during the Settlement Class Period. Class Counsel engaged in extensive review of these records in advance of the class certification motion and for purposes of mediation.
- C. On March 15, 2021, the Parties participated in a mediation session with mediator Jeffrey Krivis, Esq. and reached a memorandum of understanding on terms to resolve the Lawsuit. This Agreement replaces any other agreements, understandings, or representations between the Parties, and is fully admissible to prove the terms and conditions of the Settlement.
- D. Class Counsel represents it has conducted a thorough investigation into the facts of the Lawsuit. Based on the foregoing discovery and their own independent investigation and evaluation, Class Counsel and the Class Representative are of the opinion that the Settlement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by DFP, or that Class Counsel anticipates could be raised by Defendants, and potential appellate issues.
- E. It is the mutual desire of the Parties to fully, finally, and forever settle, compromise, and discharge all disputes and claims raised in or related in any way to the Lawsuit. In order to achieve a full and complete release of the released persons, the Class, including Plaintiff and each Class Member, acknowledge that this Settlement is intended to include and resolve all claims arising from or related to the Lawsuit as more fully set forth in this Agreement.
- F. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by DFP that the claims in Plaintiff's Lawsuit have merit or that Defendants bear any liability to Plaintiff or the Class on those claims or any other claims, or as an admission by Plaintiff that DFP's defenses in the Lawsuit have merit. DFP denies each and all of the claims alleged by Plaintiff in the Lawsuit. Nevertheless, DFP has taken into account the uncertainty and risks inherent in any litigation and has also concluded that further defense of the Lawsuit would be protracted and expensive. DFP, therefore, has determined that it is desirable and beneficial that the Lawsuit be settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

Based on these Recitals, the Parties agree as follows:

III. SETTLEMENT TERMS AND CONDITIONS

- A. **Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, and in consideration for settlement of the Lawsuit and the release of claims of the Class, DFP agrees to pay or cause to be paid the Gross Settlement Amount as defined above. Any Class Representative Payment, Class Counsel Fees and Litigation Expenses payments, payments to the Labor & Workforce Development Agency (LWDA), Participating Class Members' Settlement Shares, and the Settlement Administrator's reasonable fees and expenses in administering the Settlement, as approved by the Court, shall be deducted from the Gross Settlement Amount. All of the Gross Settlement Amount will be disbursed pursuant to this Agreement, and none of it will revert to DFP. The Gross Settlement Amount shall be paid into a Qualified Settlement Fund ("QSF") created by the Settlement Administrator within ten (10) business days after the Effective Date. The Settlement Administrator shall handle such monies pursuant to the terms of the Settlement.
1. **Maximum Amount Paid.** The Gross Settlement Amount is the maximum total amount that DFP is obligated to pay for any and all purposes under this Agreement, except that DFP will be required to pay its share of any payroll taxes in addition to the Gross Settlement Amount.
 2. **Timing of Provision of Settlement Shares and Other Payments.** Subject to the terms of this Agreement, DFP shall pay the entire Gross Settlement Amount into the QSF within ten business (10) days after the Effective Date.
 3. **Effect of Nonpayment by DFP.** If DFP does not pay into the QSF as provided above, Class Counsel and Defense Counsel agree to meet and confer in an attempt to secure prompt payment and to preserve the intent of this Agreement. Class Counsel reserves the right to petition the court for a finding that any and all releases provided for in this Agreement are voided.
- B. **Payments from the Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments out of the Gross Settlement Amount subject to timing as directed by counsel for the Parties and/or the Court:
1. **To the Class Representative:** In addition to the amounts determined to be due to Plaintiff as Participating Class Members under this Settlement Agreement, the Class Representative/Plaintiff will apply to the Court for the Class Representative Payment of up to \$10,000, to be paid out of the Gross Settlement Amount promptly upon receipt by the Settlement Administrator. DFP will not oppose a request for the Class Representative Payment for Plaintiff. The Settlement Administrator will pay the Class Representative Payments approved by the Court out of the Gross Settlement Amount.

Payroll tax withholding and deductions will not be taken from the Class Representative Payments and instead a Form 1099 will be issued to Plaintiff by the Settlement Administrator reflecting the Class Representative Payments.

2. **To Class Counsel:** In consideration for settling this matter, DFP will not oppose Class Counsel's application to the Court for an award of not more than 33.33% of the Gross Settlement Amount as their Class Counsel Fees Payment, plus an additional amount for reasonable costs. The ultimate amount of any award for Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment is to be determined by the Court. Class Counsel will submit an application for fees, costs, and expenses to the Court for approval prior to the date of the hearing for final approval of the Settlement. The Settlement Administrator will pay the amount approved by the Court out of the Gross Settlement Amount promptly upon receipt by the Settlement Administrator. If the Court approves a Class Counsel Fees Payment of less than 33.33%, or approves an amount less than the reasonable costs and expenses (Class Counsel Litigation Expenses Payment) requested from the Court, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. Payroll tax withholding and deductions will not be taken from the Class Counsel Fees and Expenses Payment and instead one or more Forms 1099 will be issued by the Settlement Administrator to Class Counsel with respect to those payments.

- a. The Parties agree that, over and above the total amount of the Court-approved award for the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment, Plaintiff and DFP shall each bear their own fees and costs incurred by them or arising out of the Lawsuit; the negotiation, execution, or implementation of this Settlement; and/or the process of obtaining, administering or challenging an order granting preliminary approval or final order and judgment. The Parties will not seek reimbursement of any such fees and/or costs from any party to this Settlement Agreement or the Released Parties.
- b. Any order, finding, ruling, holding or proceeding relating to any such applications for an award for the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment, or any separate appeal from any separate order, finding, ruling, holding, or proceeding relating to them or reversal or modification of them, shall not operate to terminate or cancel this Settlement or otherwise affect or delay the finality of the final order and judgment or this Settlement.
- c. All claims for attorneys' fees and costs that Class Counsel and Plaintiff may possess against Defendants have been compromised

and resolved in this Settlement and shall not be affected by any appeal that Class Counsel may file.

3. **To the Labor & Workforce Development Agency (LWDA).** The Parties agree that up to \$50,000 (“PAGA Settlement Amount”) of the Gross Settlement Amount shall be allocated to the resolution of any Class Member and Allegedly Aggrieved Employees’ claims arising under the California Labor Code Private Attorneys General Act of 2004 (California Labor Code §§ 2698, et seq., “PAGA”). Pursuant to PAGA, seventy-five percent (75%) of the PAGA Settlement Amount shall be paid to the California Labor and Workforce Development Agency, and twenty-five percent (25%) of the PAGA Settlement Amount shall be distributed to Allegedly Aggrieved Employees, as part of the Net Settlement Amount, pro rated among them based on their respective Pay Periods in the PAGA Period. The Parties will apply to the Court for a payment out of the Gross Settlement Amount to the LWDA of up to \$37,500 (the “LWDA Payment”) as the LWDA’s share of the settlement of civil penalties paid under this Agreement pursuant to PAGA. If the Court approves an LWDA Payment of less than \$37,500, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. Pursuant to California Labor Code § 2699(1)(2), settlement of a PAGA action must be approved by the Court and a copy of the proposed settlement will be provided to the LWDA at the same time that it is submitted to the Court. In the event the LWDA objects to the Settlement, the Parties will meet and confer with the Court and the LWDA to reach a penalty allocation acceptable to all Parties that does not materially alter the terms of this Settlement.
4. **To the Settlement Administrator.** The parties agree to pay a Settlement Administrator chosen by Class Counsel and approved by DFP for its reasonable fees and expenses related to administering this Settlement, including, but not limited to, printing, distributing, and tracking forms for this Settlement, calculating estimated amounts per Class Member, tax reporting, distributing all payments from the Gross Settlement Amount (including conducting skip trace address searches, as necessary), and providing necessary reports and declarations, and other duties and responsibilities set forth herein to process this Settlement, as requested by the Parties. The amount paid to the Settlement Administrator for its reasonable fees and expenses will be paid out of the Gross Settlement Amount. Every effort will be undertaken to minimize this cost and the Settlement Administrator will ensure proper notice and administration of the fund. The Parties anticipate that Settlement Administration fees shall not exceed \$20,000.

- C. **Responsibility for Taxes.** As to the portion of Participating Class Members’ settlement proceeds that constitute wages, DFP will be separately responsible for only its share of any employer payroll taxes, including the employer FICA, FUTA, and SDI contributions, which shall not be paid from the Gross Settlement Amount.

D. **Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay a Settlement Share from the Net Settlement Amount within fifteen (15) business days of the Effective Date to each Participating Class Member.

1. **Calculation.** After deducting the Class Representative Payment, Class Counsel Fees and Litigation Expenses payments, payments to the LWDA and the Allegedly Aggrieved Employees, and the Settlement Administrator's fees and expenses, each Participating Class Member shall be eligible to receive a pro rata share of the balance of the Net Settlement Amount. The settlement payments will be reduced by any required legal deductions (including taxes and withholdings) for each Participating Class Member. The payments to the Settlement Class are to be distributed from the Net Settlement Amount on a pro rata basis, calculated by dividing the Net Settlement Amount by the total number of workweeks worked by each class member during the Class Period. The Settlement Share paid to each Allegedly Aggrieved Employee shall also include their share of the PAGA Settlement Amount.
2. **Settlement Payment Allocation.** All Settlement Shares will be allocated as follows: 33% to settlement of wage claims, 47% to settlement of claims for interest, and 20% to settlement of claims for penalties. The portion allocated to wages shall be subject to all applicable withholdings and reported on an IRS Form W-2 and the portion allocated to interest and penalties shall be reported on an IRS Form 1099 by the Settlement Administrator. After appropriate tax withholding from each Participating Class Member's Settlement Share, the net payment to be received by each Participating Class Member as required by law via a W-2 Form, the Settlement Administrator shall immediately pay all such withheld funds to the appropriate state and federal taxing authorities. The Settlement Administrator shall provide each Participating Class Member with appropriate documentation setting forth the amount of any tax or other deductions in accordance with state and federal tax requirements.
3. **Tax Obligations.** Each Party and Participating Class Member will be responsible for their own tax obligations. The Parties agree and understand that DFP has not made any representations regarding the tax obligations or consequences, if any, related to this Settlement. The Parties agree that DFP and each Participating Class Member is solely responsible for determining the tax consequences of payments made pursuant to this Settlement and for paying taxes, if any, which are determined to be owed by each of them or on such payments (including penalties and interest related thereto) by any taxing authority, whether state, local, or federal.
4. **No Determination of Eligibility for Employee Benefits.** DFP will not use the settlement payments for determination of eligibility for, or calculation of, any employee benefits (e.g., vacations, holiday pay, retirement plans,

etc.) of the Participating Class Members, and DFP will not modify the Participating Class Members' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare plan sponsored by DFP, unless otherwise required by law.

5. **No Reversion.** Participating Class Members are entitled to 100% of the Net Settlement Amount. DFP maintains no reversionary right to any portion of the Net Settlement Amount.
6. **Effect of Non-Participating Class Members.** Non-Participating Class Members will receive no Settlement Share. Their shares will be part of the Net Settlement Amount distributed to Participating Class Members.
7. **Employer's Share of Payroll Taxes.** The Settlement Administrator will give DFP an estimate of the employer's share of payroll taxes within five (5) business days of sending out the Class Notice. Upon calculation of each Participating Class Member's Settlement Share, and at least three (3) business days after Final Approval (if not sooner), the Settlement Administrator shall advise DFP of the amount of the employer's share of payroll taxes. DFP will provide that amount to the Settlement Administrator within ten (10) business days after the Effective Date.

E. **Procedure for Approving Settlement.** The Parties stipulate and agree to the following schedule and procedures for obtaining the Court's approval of the Settlement, including seeking conditional certification of those subclasses not previously certified by the Court only for purposes of settlement, notifying the Class, and processing all benefits provided under this Settlement Agreement:

1. **Motion for Preliminary Approval of Settlement by the Court.**
 - a. Plaintiff will move the Court for (collectively, "Motion for Preliminary Approval):
 - (i) Conditional certification, solely for settlement purposes, of a Class pursuant to California Code of Civil Procedure Section 382. Solely for settlement purposes, Plaintiff agrees to seek, and DFP consents to, certification by the Court of the Class as defined in this Agreement.
 - (ii) Preliminary approval of the terms of this Settlement.
 - (iii) Approval of the Class Notice Packet, settlement procedure, and appointment of the Settlement Administrator.
 - (iv) Scheduling of a Final Approval Hearing on the question of whether the terms of this Settlement should be finally approved as fair, reasonable, and adequate as to Plaintiff and the Class Members.

DFP will not oppose said motion, so long as the motion and supporting papers are consistent with the terms of this Settlement Agreement.

- b. The Parties have agreed to the certification of the Class identified in this Agreement for the sole purpose of effectuating this Settlement. The conditional certification of the Class identified above shall be binding only with respect to the settlement of the Lawsuit. In the event that this Settlement Agreement is cancelled or voided pursuant to its terms, or not approved by the Court, or should Judgment not become final, the certification of this Class shall be vacated, the Lawsuit shall proceed as though the Class had never been certified for settlement purposes, this Settlement Agreement shall be of no force or effect and the fact that the Parties were willing to stipulate to certification of this class as part of the Settlement will have no bearing on, and will not be admissible in connection with, the issue of whether either or any class should be certified in a non-settlement context in the Lawsuit or any other action, and in any of those events DFP expressly reserves the right to oppose class certification and/or seek decertification.
- c. In the event that the terms or conditions of this Settlement, other than the terms pertaining to the Class Counsel Award, LWDA payments, Class Representative Payments, are materially modified by any Court, any party in its sole discretion to be exercised within fourteen (14) days after such a material modification may declare this Settlement null and void. For purposes of this subparagraph, material modifications mean any modification to the Settlement Class Period, Released Parties, or Released Claims. In addition, DFP, at its sole option, may declare this Settlement null and void within five (5) business days after learning that 7.5% or more of the Class Members timely and properly requested exclusion from the Settlement. If DFP exercises its right under this paragraph, it shall be solely liable for administrative costs.
- d. At the hearing on the Motion for Preliminary Approval, the Parties will jointly appear and support the granting of the motion, so long as the motion and supporting papers are consistent with the terms of this Settlement Agreement. Class Counsel will draft and submit with the Motion for Preliminary Approval and a Proposed Order Granting Preliminary Approval of Settlement and Setting Hearing for Final Approval of Settlement. The Proposed Order granting the Motion for Preliminary Approval shall be mutually agreed to by the Parties prior to Plaintiff submitting the proposed Order to the Court. Plaintiff will also provide Defense Counsel with the opportunity to review and comment upon draft of all other pleadings to be filed in connection with the Motion for Preliminary Approval (e.g., notice

of motion, memorandum of points and authorities, and declarations) within three (3) business days of filing the Motion for Preliminary Approval with the Court.

2. **Notice to Class Members.** If the Court enters an Order granting Preliminary Approval of the Settlement, every Class Member who can be located will be provided with the Class Notice Packet (which will include the Class Notice completed to reflect the order granting Preliminary Approval of the Settlement and each Class Member's estimated Settlement Share based on his or her Class Data) as follows:

- a. **Notice Packet.** Plaintiff will prepare the Class Notice and Election Not to Participate in Settlement, for Defense Counsel's review, revision, and approval, which Plaintiff will then submit to the Court for approval with the Motion for Preliminary Approval. The Class Notice will include, non-exclusively, information regarding the nature of the Lawsuit; a summary of the substance of the Settlement's terms; the Class definition; the procedure for submitting Elections Not to Participate in Settlement; the procedure for objecting to the Settlement, the date for the final approval hearing; and the formula used for the Settlement Shares. The Class Notice shall include the Class Member's estimated Settlement Share.
- b. **Settlement Administrator.** The parties agree that the Settlement Administrator shall have the authority to establish and maintain an interest-bearing Qualified Settlement Fund, mail the Class Notice; process opt outs ("Elections Not to Participate in Settlement"), objections, and disputes; and disburse sums from the Qualified Settlement Fund.
- c. **Elections Not to Participate in Settlement.** The Class Members will have forty-five (45) calendar days after the date on which the Settlement Administrator mails the Class Notice Packets (or the first business day after this deadline, if the deadline falls on a weekend or holiday) (the "Submission Deadline") to complete and submit to the Settlement Administrator the Election Not to Participate in Settlement Form. Plaintiff does not have a right to elect not to participate.
 - i. In the event that an Election Not to Participate form is submitted timely but is deficient in one or more respects, the Settlement Administrator will return the form to the Class Member within seven (7) business days of receipt with a notice explaining the deficiencies and stating that the Class Member will have ten (10) business days from the date of the deficiency notice to correct the deficiency and resubmit the form. The envelope containing

the resubmitted form must be postmarked within ten (10) business days of the date of the deficiency notice to be considered timely. However, any cure period will not extend the Submission Deadline. If after the cure period, the Election Not to Participate in Settlement form is not cured, it will be determined that the Class Member did not exclude himself or herself from the Settlement and will be bound by the Settlement.

- ii. The Settlement Administrator shall not review or consider any Election Not to Participate in Settlement form postmarked after the Submission Deadline, except upon mutual agreement by the Parties or as required by the Court.
 - iii. In the event that a Class Member inadvertently does not receive a Class Notice, and requests to be included in the Settlement, no requests for inclusion may be accepted where funding has been exhausted by payment of other claims, but may be satisfied based upon uncashed check funds prior to their distribution to an approved cy pres recipient.
- d. **Objections.** To object to the Settlement, a Class Member must, no later than the Submission Deadline, complete and submit to the Settlement Administrator a written objection (along with any supporting documents). The written objection must set forth (i) the objecting person's full name, address, and telephone number; (ii) the words "Notice of Objection" or "Formal Objection"; (iii), in clear and concise terms, the legal and factual arguments supporting the objection; (iv) list identifying witness(es) the objector may call to testify at the Final Approval hearing; and (v) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing. Class Members who fail to make objections in this manner shall be deemed to have waived any and all objections and shall be foreclosed from making any objections, whether by appeal or otherwise, to the Settlement or this Settlement Agreement. Class Members may not both object to the Settlement and request to be excluded from the Settlement. Class Members who timely and properly submit a written objection have the option to appear at the Final Approval Hearing, either in person or through their own counsel at their own expense. To appear, Class Members must include a statement about the intent to appear at the Final Approval Hearing ("Notice of Intention to Appear") in the objection. No Class Member shall be entitled to be heard at the Final Approval Hearing without permission of the Court unless the Class Member includes the Notice of Intention to Appear. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member will present to the Court in connection with the Final Approval Hearing.

- e. **Provision of Class Member Names to Settlement Administrator.** Within fifteen (15) calendar days of Preliminary Approval of the Settlement, DFP shall provide the Settlement Administrator with the names, most recent known mailing address and telephone number, Social Security Number and the respective number of workweeks that each Class Member worked for DFP in a Covered Position during the Settlement Class Period in a readable Microsoft Office Excel spreadsheet (collectively “Class List and Data”). The Settlement Administrator will then have an opportunity to review the data provided and to calculate each Class Member’s estimated Settlement Share. If there is an unanticipated delay in the Settlement Administrator’s review of the data, the Parties agree to jointly apply to the Court for an extension of the schedule provided herein to allow the Parties to resolve any issues with the Class List and Data. The above-described information will be provided to the Settlement Administrator on a confidential basis, and the Settlement Administrator shall not use this information for any purpose other than the administration of this settlement in accordance with the terms of this Settlement Agreement. The Settlement Administrator shall not disclose the information to any third party. Notwithstanding the foregoing, the Settlement Administrator may disclose to Class Counsel the number of workweeks that each Class Member worked during the applicable Settlement Class Period, dates of employment, and position(s) held for Class Counsel to approve of the Settlement Administrator’s settlement share calculations and determinations. Class Counsel will inform Defense Counsel prior to requesting this information.
- f. **Class List and Data Confirmation Checks.** Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database or any other similar services available, such as provided by Experian, to update and correct for any known or identifiable address changes. If a new address is obtained by a way of a returned Class Notice, then the Settlement Administrator shall promptly forward the original Class Notice to the updated address via first-class regular U.S. Mail indicating on the original Class Notice the date of such remailing. Where a Class Notice is returned as undeliverable, without a forwarding address, the Settlement Administrator will perform a computer/SSN and “skiptrace” search to obtain an updated address. If no current address is located, the Class Notice for that individual will be deemed undeliverable. If the procedures herein are followed, DFP, Class Counsel and the Settlement Administrator shall be deemed to have satisfied their obligation to provide the Class Notice to the Class, and any Participating Class Members shall be deemed to have released the Released Claims against the Released Parties,

regardless of whether they actually received the Class Notice or their settlement check.

- g. **Mailing of Notice.** Within ten (10) calendar days after receipt of the Class List and Data, the Settlement Administrator shall mail the Class Notice Packet to Class Members via first-class regular U.S. Mail. Class Members will have 45 calendar days from the mailing of the Class Notice to submit Elections Not to Participate in Settlement or objections to the Settlement.
- h. **Class Member Disputes.** If a Class Member disagrees with the number of pay periods used to calculate his or her estimated Settlement Share, the Class Member must complete and send a notice of dispute to the Settlement Administrator, together with any supporting written documentation. Such documentation may consist of official records, pay stubs, weekly schedules or personal logs. To be considered, the notice of dispute and supporting written documentation must be received by the Settlement Administrator no later than thirty (30) calendar days after the postmark date of the Class Notice. The Settlement Administrator shall immediately notify Class Counsel and Defense Counsel of any such disputes by sharing with both Class Counsel and Defense Counsel the notice of dispute and any documentation submitted by a Class Member in support of his or her dispute. The Settlement Administrator shall make the final determination regarding the dispute based on the written documentation submitted by the Class Member and any materials submitted by Class Counsel and/or Defense Counsel within ten (10) calendar days of receipt of the notice of dispute and supporting written documentation, or no later than forty (40) calendar days after the postmark date of the Class Notice, whichever is later. The Settlement Administrator shall inform Class Counsel, Defense Counsel, and the Class Member of the final determination by a telephone call and by an email or regular U.S. Mail if no email for that Class Member is available. The Class Member will then have an additional ten (10) calendar days following notification by the Settlement Administrator of the final determination of the dispute to submit an Election Not to Participate in Settlement form.
- i. **Certification of Opt-Outs.** All Elections Not to Participate will be submitted to the Settlement Administrator, who will certify jointly to Class Counsel and Defense Counsel the Elections Not to Participate that were timely submitted.
- j. **Expiration of Settlement Checks.** Any checks issued by the Settlement Administrator to Class Members shall be negotiable for 180 calendar days from issuance.

- k. **Declaration of Due Diligence.** At least sixteen (16) Court days before the Final Approval Hearing, the Settlement Administrator shall prepare a declaration of due diligence and proof of mailing with regard to the mailing of the Class Notice, and any attempts by the Settlement Administrator to locate the members of the Class (“Due Diligence Declaration”), to Class Counsel and Defense Counsel for presentation to the Court. Class Counsel shall be responsible for filing the Due Diligence Declaration with the Court.
3. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, Plaintiff and Participating Class Members who did not timely submit an objection to or Election Not to Participate in the Settlement, and DFP hereby waives any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as, but not limited to, a motion to vacate judgment, a motion for new trial, a motion for relief and any extraordinary writ, and the Judgment therefore will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. This paragraph does not preclude Plaintiff or Class Counsel from appealing from a refusal by the Court to award the full Class Representative Payment, the Class Counsel Fees Payment, or the Class Counsel Litigation Expenses Payment sought by them.
4. **Distribution to Class Members, Plaintiff, and Class Counsel.** The occurrence of the Effective Date is a prerequisite to any distributions from the Gross Settlement Amount. If all other conditions necessary for the Effective Date have been satisfied, the Settlement Administrator will release the total amount of payments due to Plaintiff, the LWDA, and Participating Class Members within fifteen (15) business days of: (a) the last day on which to appeal an order granting final approval of the Settlement if timely objections are filed, or the resolution of any such appeal that does not alter the terms of the Settlement; or (b) if no timely objections are filed, the date upon which the Court enters an order granting final approval of the Settlement. At or after this time, Class Counsel will determine the date of distribution of fees and/or costs to Class Counsel and the Settlement Administrator.
5. **Uncashed or Returned Settlement Share Checks.** The Settlement Administrator will provide notice to Class Counsel and Defense Counsel of any settlement checks returned as undeliverable and any settlement checks remaining un-cashed for more than 180 calendar days after issuance. In the event any Class Member cannot be located within 180 days of the expiration of the initial settlement checks, funds represented by uncashed settlement check(s) will be distributed to the proposed cy pres recipient, Legal Aid at Work, which shall be approved by the Court.

6. **Final Report by Settlement Administrator to Court.** Within seven (7) business days after final disbursement of all funds from the Gross Settlement Amount, the Settlement Administrator will serve on the Parties and Plaintiff will file with the Court a declaration proving a final report on the disbursements of all funds from the Settlement Amount.

F. Settlement Administration.

1. **Monitoring and Reviewing Settlement Administration.** The Parties have the right to monitor and review the administration of the Settlement to verify that the monies allocated under the Settlement are distributed in the correct amount, as provided for in this Agreement.
2. **Disbursement Summary.** Prior to disbursement of any funds, the Settlement Administrator will provide a disbursement summary of the calculations the Class Representative Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, LWDA payment, Settlement Administrator Payment and payments to the Participating Class Members for review and approval by Plaintiff's Counsel and Defense Counsel.

Release of Claims.

3. **Plaintiff.** In consideration of his Settlement Shares, and the other terms and conditions of the Settlement, Plaintiff, on behalf of himself and his respective heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors in interest and assigns, hereby fully and finally releases Defendants, as well as any and all persons acting by, through, under, or in concert with any of these persons or entities, including but not limited to, their respective present and former parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity which could be liable for any of the Released Claims ("Released Parties") from any and all claims, rights, demands, liabilities, obligations, penalties, costs, expenses, attorneys' fees, rights, damages, suits, indemnities, actions and causes of action of every nature and description whatsoever in law, equity or otherwise, or any other monetary or non-monetary relief, that any of them had, now have, or may have in the future, including any arising in any way from Plaintiff's employment with DFP or the cessation thereof, whether such claims are known or unknown, suspected or unsuspected, arising on or before the date on which Plaintiff sign this Agreement (unless a release of claims is excluded by law). Plaintiff further expressly waives any rights against Defendants and the Released Parties conferred upon them by California Civil Code Section 1542, and expressly consents that this Agreement shall be given full force and effect according to all of its terms,

including those terms relating to unknown and unsuspected claims, if any. Section 1542 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.

Plaintiff further agrees that:

- a. He shall not make any assignment of any claim released herein, and represents that no such assignment has been made;
 - b. He alone is responsible for the tax consequences, including any penalties or interest, relating to the payment of the Class Representative Payment; and
 - c. In the event that the Court denies, modifies, or reduces any request for a Class Representative Payment, he, his counsel and the Participating Class Members may not seek to modify, revoke, cancel, terminate, or void this Settlement Agreement and will not seek, request, or demand an increase in the Settlement Amount.
4. **DFP.** DFP hereby releases Plaintiff and his respective heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors in interest from any and all known claims, actions, rights, obligations or causes of action of any kind whatsoever it had or now has, arising on or before the date on which it signs this Agreement, except as to claims related to enforcement of this Settlement.
5. **Participating Class Members.** In consideration of, and subject to, DFP's payment of the Gross Settlement Amount and other terms and conditions of this Agreement, each Class Member who does not submit a timely and valid Election Not to Participate in Settlement, shall, upon the Effective Date, be deemed to have released on behalf of their respective heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors in interest and assigns, the Defendants and the other Released Parties from any and all claims under state, federal or local law, rights, demands, liabilities obligations, penalties, costs, expenses, attorneys' fees, rights, damages, suits, indemnities, actions and causes of action of every nature and description whatsoever in law, equity or otherwise, whether known or unknown, arising from, related to, or which were made or which could have been made against Defendants based on the facts or claims alleged in the Lawsuit or Plaintiff's PAGA notice letter. By way of example

only, the Released Claims include but are not limited to claims for unpaid wages, meal breaks, rest breaks, inaccurate wage statements, unreimbursed business expenses, statutory penalties, civil penalties, injunctive relief, interest, costs and attorneys' fees.

6. **Participating Class Members' Released Claims Period.** The Participating Class Members' Released Claims are those that accrued during the Settlement Class Period.

7. **Release Binding on Participating Class Members.** The Parties intend that this Settlement Agreement, including the Release of Claims set forth in this Agreement, shall be binding on ALL Class Members who do not timely submit a valid Election Not to Participate in Settlement, whether or not they actually receive a Notice or payment pursuant to this Settlement Agreement. This Settlement Agreement shall constitute, and may be pleaded as, a complete and total defense to any Released Claims if raised in the future.

G. **No Effect on Other Benefits.** The Settlement Shares will not result in any additional benefit payments (such as 401(k) or bonus) beyond those provided by this Agreement to Plaintiff or Participating Class Members, and Plaintiff and Participating Class Members will be deemed to have waived all such claims, whether known or unknown by them, as part of their release of claims under this Agreement. In addition, Plaintiff and Participating Class Members may not contribute any portion of their Settlement Shares to DFP's 401(k) or other benefit plans if they exist.

H. **Miscellaneous Terms.**

1. **No Admission of Liability.** DFP denies each and all of the claims alleged by Plaintiff and Class Members in the Lawsuit. In addition, DFP contends that it has complied with its obligations under California law. Neither this settlement, nor any document referred to or contemplated therein, nor any action taken to carry out this Settlement, is, may be construed as, or may be used as an admission, concession, or indication by or against Defendants of any fault, wrongdoing or liability whatsoever. This Settlement and the fact that Plaintiff and DFP were willing to settle the Lawsuit will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with the Settlement).

2. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement will constitute the entire agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this Agreement other than the representations, warranties, covenants, and inducements expressly stated in this Agreement. All prior or contemporaneous agreements, understandings,

and statements, whether oral or written, whether express or implied, and whether by a Party or a Party's counsel, are merged herein.

3. **Attorney Authorization.** Class Counsel and Defense Counsel warrant and represent that they are authorized by Plaintiff and DFP, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement.
4. **Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their successors-in-interest.
5. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
6. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
7. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Settlement reflects a fair, reasonable, and adequate settlement of the Lawsuit and have arrived at this Settlement and this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential, and will so represent to the court. In addition, the mediator may execute a declaration supporting the Settlement and the reasonableness of this Settlement, and the Court may, in its discretion, contact the mediator to discuss the Settlement and whether or not the Settlement is fair and reasonable.
8. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
9. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, addressed as follows:

To Plaintiff Omar Ramirez and the Class:

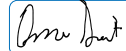
Stan S. Mallison, Esq.
Hector R. Martinez, Esq.
Liliana Garcia, Esq.

MALLISON & MARTINEZ
1939 Harrison Street, Suite 730
Oakland, California 94612
Telephone: (510) 832-9999
Facsimile: (510) 832-1101

To Defendant DAMM Fine Pizza, LLC:

Chandra A. Beaton, Esq.
Kathleen M. Fellows, Esq.
LightGabler
760 Paseo Camarillo, Suite 300
Camarillo, CA 93010
Telephone: (805) 248-7208
Facsimile: (805) 248-7045
Email: cbeaton@lightgablerlaw.com
kfellows@lightgablerlaw.com

IN WITNESS WHEREOF, the undersigned Settling Parties and their duly-authorized representatives accept and agree to the terms of this Agreement and hereby execute it voluntarily and with a full understanding of its consequences.


ID 9orwmhE8VTKnHgV4pNRaXsi3

Omar Ramirez
Plaintiff

8/31/2021

Date

By: _____, [Title]
On Behalf of Defendant DAMM Fine Pizza, LLC

Date

APPROVED AS TO CONTENT AND FORM:

MALLISON & MARTINEZ

Stan Mallison
Hector Martinez



By: Stan Mallison
Counsel for Plaintiff

08-31-2021

Date

LightGabler

Chandra A. Beaton
Kathleen M. Fellows

By: Chandra A. Beaton
Counsel for Defendant DAMM Fine Pizza, LLC

Date

IN WITNESS WHEREOF, the undersigned Settling Parties and their duly-authorized representatives accept and agree to the terms of this Agreement and hereby execute it voluntarily and with a full understanding of its consequences.

Omar Ramirez
Plaintiff



Date

September 3, 2021

By: COO, [Title]
On Behalf of Defendant DAMM Fine Pizza, LLC

Date

APPROVED AS TO CONTENT AND FORM:

MALLISON & MARTINEZ

Stan Mallison
Hector Martinez

By: Stan Mallison
Counsel for Plaintiff

Date

LightGabler
Chandra A. Beaton
Kathleen M. Fellows



By: Chandra A. Beaton
Counsel for Defendant DAMM Fine Pizza, LLC

September 7, 2021

Date