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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MONTEREY

IRENE O. FLORES, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

MERCURIO BROTHERS, INC., a
California corporation, doing business as,
DOMENICO'S ON THE WHARF; and
DOES 1 through 50, inclusive,

Defendants.

CASE NO.: 23CV001694

*[Assigned for all purposes to the
Honorable Hon. Carrie M. Panetta, Dept. 14]*

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

Action Filed: May 25, 2023
Trial Date: None Set

This Class Action and PAGA Settlement and Release (“Settlement Agreement”) is entered into by and between Plaintiff Irene O. Flores (“Plaintiff”), on behalf of herself and the Class, on the one hand, and Defendant Mercurio Brothers, Inc., dba Domenico’s on the Wharf (“Defendant”), and the Released Parties, on the other hand. Plaintiff and Defendant are collectively referred to herein as “Parties” and individually referred to herein as “Party.”

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

DEFINITIONS

1. “Action” means *Irene O Flores v. Mercurio Brothers, Inc., dba Domenico’s on the Wharf*, Superior Court of the State of California for the County of Monterey, Case No.: 23CV001694.

2. “Class” means: All non-exempt employees who were employed by Defendant, in the State of California, at any time from May 25, 2019, through June 30, 2024.

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

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

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

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

7. “Class Period” means the time period from May 25, 2019, through June 30, 2024.

8. “Class Representative Service Award” means the amount that the Court authorizes to be paid individually to Plaintiff in recognition of, *inter alia*, Plaintiff’s efforts and risks in assisting

with the prosecution of the Action and in return for executing a general release with Defendant.

9. “Compensable Pay Period” or “Compensable Pay Periods” means a reasonable estimate of pay periods worked by each Class Member as a non-exempt employee in California for Defendant individually and collectively by all Class Members during the Class Period based on Defendant’s records and used as a value to calculate Individual Settlement Payments. If it can be readily determined, pay periods where someone was employed but did not record any hours can be excluded from this calculation.

10. “Compensable PAGA Pay Period” or “Compensable PAGA Pay Periods” means a reasonable estimate of pay periods worked by each PAGA Member, as a nonexempt employee in California for Defendant, individually and collectively by all PAGA Members, during the period from January 12, 2022, through June 30, 2024, based on Defendant’s records and used as a value to calculate PAGA Payments. If it can be readily determined, pay periods where someone was employed but did not record any hours can be excluded from this calculation.

11. “Court” means the Superior Court for the County of Monterey, State of California.

12. “Defendant” means Mercurio Brothers, Inc., dba Domenico’s on the Wharf.

13. “Effective Date” means the date on which the Superior Court’s Final Approval Order and Judgment becomes final and Defendant fully funds the settlement. The Superior Court’s Final Approval Order and Judgment “becomes final” upon the latter of: (a) if there is no Objection to the Settlement, or if there is an Objection but it is withdrawn, then, the date that the Final Approval Order and Judgment is filed by the Court; (b) if there is an Objection to the Settlement that is not withdrawn, but no appeal is commenced thereafter, then, sixty-five (65) calendar days following the date that the Final Approval Order and Judgment is filed by the Court; or (c) if there is an Objection to the Settlement, that is not withdrawn, and any appeal, writ, or other appellate proceeding opposing the Settlement has been filed within sixty-five (65) calendar days following the date that the Final Approval Order and Judgment is filed by the Court, then, when any such appeal, writ, or other appellate proceeding opposing the validity of the Settlement has been resolved finally and conclusively with no right to pursue further remedies or relief.

14. “Final Approval Order and Judgment” means an order and judgment that the Court

will file which finally approves this Settlement and enters a judgment in favor of Plaintiff.

15. “Gross Settlement Amount” means the maximum amount which Defendant is obligated to pay under this Settlement Agreement, which is One Hundred and Fifty Thousand Dollars (\$150,000.00), subject to increase under the circumstances as set forth in paragraph 58. This is an “all in” non-reversionary Settlement in which Defendant is required to pay the entire Gross Settlement Amount. No portion of the Gross Settlement Amount will revert to Defendant under any circumstances. Payments of any appropriate and lawfully-required employer’s share of the payroll taxes on the taxable portion of the settlement payments shall be paid separately from the Gross Settlement Amount by Defendant at the time the Gross Settlement Amount is funded.

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

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

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

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

20. “Operative Complaint” means the Class and Representative Action Complaint on file in this action.

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

22. “PAGA Member” or “PAGA Members” means any Class Member who was employed or has been employed by Defendant at any time during the time period of January 12, 2022, through June 30, 2024.

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

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

25. “PAGA Payment Ratio” means the respective Compensable PAGA Work Weeks for each PAGA Member divided by the total Compensable PAGA Work Weeks for all PAGA Members.

26. “PAGA Period” means the time period from January 12, 2022, through June 30, 2024.

27. “Plaintiff” refers to Irene O. Flores.

28. “Preliminary Approval Date” means the date upon which the Court files an order granting preliminary approval of the Settlement.

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

30. “Released Claims by Plaintiff” is set forth in paragraph 47 below. Plaintiff releases the “Released Claims by Plaintiff” as of the date Defendant fully funds this Settlement.

31. “Released Claims by Settlement Class Members” means: As of the date Defendant fully funds this Settlement, Settlement Class Members shall fully and finally release and discharge Released Parties, from May 25, 2019, through June 30, 2024, from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys’ fees, damages, or causes of action contingent or accrued for, that are pleaded, or that could have been pleaded, based on the facts and claims alleged in the Operative Complaint, including any claims for: (a) failure to provide required meal periods and pay premium payments, California Labor Code §§ 226.7, 510, 512, and 558; (b) failure to provide required rest periods and pay premium payments, California Labor Code §§ 226.7 and 512; (c) failure to pay overtime wages, California Labor Code §§ 510, 1194 and 1198; (d) failure to pay minimum wages, California Labor Code §§ 1194 and 1197; (e) failure to timely pay wages §§ 204 and 210; (f) failure to timely pay all wages during employment and to discharged and quitting employees, California Labor Code §§ 201-203; (g) failure to maintain required records, California

1 Labor Code §§ 226 and 226.3; (h) failure to furnish accurate, itemized wage statements, California
2 Labor Code §§ 226 and 226.3; (i) failure to provide and properly calculate mandatory sick leave;
3 California Labor Code §§ 246; (j) failure to indemnify for reasonable and necessary business
4 expenses; California Labor Code §2802; and (k) unlawful business practices under California,
5 Business and Professions Code §17200, et seq.; predicated on any of the violations of the California
6 Labor Code and IWC Wage Order 5-2001, as alleged in the Operative Complaint including but not
7 limited to, claims for restitution and other equitable relief, liquidated damages, or penalties; and any
8 other benefit, wages, penalties, or other amounts claimed on account of the allegations asserted or
9 which could have been asserted in the Operative Complaint and Plaintiff's LWDA Notice dated March
10 14, 2023. This release shall apply to any and all claims arising at any point during the Class Period.
11 Upon entry of the Final Approval Order and funding of the total Gross Settlement Amount, all
12 Participating Class Members will forever completely release and discharge the Released Parties from
13 the Released Claims for the Release Period. Plaintiff and Defendant intend that the Settlement
14 described in this Settlement Agreement will release and preclude any further claim, whether by
15 lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and
16 all of the Participating Class Members to obtain a recovery to any and all of the Released Claims. This
17 release excludes the release of claims not otherwise permitted by law, i.e. Worker's Compensation
18 and unemployment insurance benefits.

19 32. "Released Parties" collectively mean: (i) Defendant; (ii) Defendant's respective past,
20 present and future heirs, executors, administrators, parents, subsidiaries and affiliates, successors and
21 assigns; and (iii) the past, present and future shareholders, managers, officers, partners, members,
22 agents, employees, attorneys, insurers, predecessors, successors and assigns of any of the foregoing.

23 33. "Response Deadline" means forty-five (45) days after the postmark date of the Notice
24 of Class Settlement that the Settlement Administrator shall mail to Class Members, and the last date
25 on which Class Members may: (a) submit a Request for Exclusion; or (b) submit an Objection to the
26 Settlement.

27 34. "Settled PAGA Claims", means penalties only under the Private Attorneys General
28 Act ("PAGA"), based upon the Released Claims by PAGA Members that serves the basis for

1 penalties only pursuant to Labor Code § 2699 *et seq.*, for: (a) failure to provide required meal
2 periods and pay premium payments, California Labor Code §§ 226.7, 510, 512, and 558; (b) failure
3 to provide required rest periods and pay premium payments, California Labor Code §§ 226.7 and
4 512; (c) failure to pay overtime wages, California Labor Code §§ 510, 1194 and 1198; (d) failure to
5 pay minimum wages, California Labor Code §§ 1194 and 1197; (e) failure to timely pay wages §§
6 204 and 210; (f) failure to timely pay all wages during employment and to discharged and quitting
7 employees, California Labor Code §§ 201-203; (g) failure to maintain required records, California
8 Labor Code §§ 226 and 226.3; (h) failure to furnish accurate, itemized wage statements, California
9 Labor Code §§ 226 and 226.3; (i) failure to provide and property calculate mandatory sick leave;
10 California Labor Code §§ 246; (j) failure to indemnify for reasonable and necessary business
11 expenses; California Labor Code §2802; and primary rights alleged in Plaintiff's Operative
12 Complaint and in Plaintiff's PAGA Notice dated March 14, 2023.

13 35. "Settlement" means the disposition of the Action pursuant to this Agreement.

14 36. "Settlement Administration Costs" means the amount to be paid to the Settlement
15 Administrator from the Gross Settlement Amount for administration of this Settlement.

16 37. "Settlement Administrator" means Phoenix Settlement Administrators ("Phoenix"),
17 the Settlement Administrator shall be responsible for, *inter alia*: (a) performing Spanish translations
18 of the Notice of Class Settlement; printing and mailing the Notice of Class Settlement to the Class in
19 English and Spanish; (b) receiving and reporting the Requests for Exclusion and Objections submitted
20 by Class Members; (c) providing declaration(s) as necessary in support of preliminary and/or final
21 approval of this Settlement; (d) processing and mailing payments to Plaintiff's, Class Counsel, the
22 LWDA, and Settlement Class Members; and (e) any other tasks as the Parties mutually agree or the
23 Court orders the Settlement Administrator to perform. The Settlement Administrator shall keep the
24 Parties timely apprised of the performance of all Settlement Administrator responsibilities. The Parties
25 agree that they have no financial interest or other relationship with Phoenix that could create a conflict
26 of interest. Should a conflict of interest or other issue lead to the disqualification of the selected
27 Settlement Administrator, the Parties will meet and confer as to a suitable replacement.

28 38. "Settlement Class" or "Settlement Class Members" means all Class Members who

have not opted out of the Class by submitting a valid and timely Request for Exclusion.

RECITALS

39. Procedural History. On May 25, 2023, Plaintiff filed a complaint against Defendant in Monterey Superior Court, Case No.: 23CV001694. Defendant filed a General Denial on June 30, 2023.

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

41. Mediation. The Parties initially participated in a mediation session with the highly experienced mediator, Hon. Richard M. Silver, Jud. Ret., on June 3, 2024. After a full day of mediation, the Parties were able to reach a proposed settlement regarding the material terms for a proposed class action and PAGA settlement that would fully resolve this matter.

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

43. Defendant's Reasons for Settlement. Defendant has concluded that any further defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of Defendant's

1 time, energy, and resources have been and, unless this Settlement is completed, will continue to be
2 devoted to the defense of the claims asserted by Plaintiff. Defendant has also taken into account the
3 risks of further litigation in reaching its decision to enter into this Settlement. Even though Defendant
4 continues to contend that it is not liable for any of the claims alleged by Plaintiff in this Action,
5 Defendant has agreed, nonetheless, to settle in the manner and upon the terms set forth in this
6 Settlement Agreement to put to rest the claims in this Action.

7 **STIPULATION AND AGREEMENT**

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

10 45. It is agreed by and among Plaintiff and Defendant that this Settlement shall bind the
11 Plaintiff, Settlement Class Members, and Defendant, subject to the terms and conditions hereof.

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

1 47. Released Claims by Plaintiff. As of the date Defendant fully funds the Settlement,
2 Plaintiff agrees to the Release of Claims by Settlement Class Members. In addition to Release of
3 Claims by Settlement Class Members and as a material inducement to Defendant to enter into this
4 Settlement Agreement, Plaintiff does hereby, for herself and for her spouse, heirs, successors,
5 beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, personal
6 representatives, and assign, forever and completely release and discharge the Released Parties from
7 any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies,
8 damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses (including
9 back wages, statutory penalties, civil penalties, liquidated damages, exemplary damages, interest,
10 attorneys' fees, and costs) of any nature whatsoever, from the beginning of time through the execution
11 of this Settlement Agreement, whether known or unknown, suspected or unsuspected, including but
12 not limited to all claims arising out of, based upon, or relating to Plaintiff's employment with or work
13 for Defendant or the remuneration for or termination of such employment.

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

1 all rights and benefits under the terms of section 1542 of the California Civil Code. Section 1542
2 reads as follows:

3 **A general release does not extend to claims that the creditor or releasing party does**
4 **not know or suspect to exist in his or her favor at the time of executing the release**
5 **and that, if known by him or her, would have materially affected his or her**
6 **settlement with the debtor or releasing party.**

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

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

1 substantive merits of the case should the Court fail to issue Final Approval. Plaintiff expressly
2 reserves his rights and declare that they will continue to pursue class certification and a trial should
3 the Court fail to grant Final Approval.

4 49. Approval of Settlement. Plaintiff will move the Court to grant preliminary and final
5 approval of this class action Settlement. The Parties agree to work diligently and cooperatively to
6 have this matter presented to the Court for preliminary and final approval.

7 50. Release of Claims by Settlement Class Members. Settlement Class Members release
8 the “Released Claims by Settlement Class Members,” as defined, as of the date Defendant fully funds
9 the Settlement.

10 51. Release of Settled PAGA Claims. PAGA Members release the “Settled PAGA
11 Claims,” as defined, as of the date Defendant fully funds the Settlement.

12 52. Settlement Administration. Within ten (10) calendar days after the Preliminary
13 Approval Date, Defendant shall provide the Settlement Administrator with the Class Information.

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

22 a. Undeliverable Notices. Any Notice of Class Settlement returned to the
23 Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to
24 the forwarding address affixed thereto within ten (10) calendar days. For any undeliverable Notice of
25 Class Settlement returned for which no forwarding address is affixed, the Settlement Administrator
26 will conduct its investigation for an updated address of the Class Member and re-mail the Notice of
27 Class Action Settlement. If an updated address is found, the Settlement Administrator shall have
28 seven (7) days to re-mail the Notice of Class Action Settlement from receipt of the undelivered

1 envelope. The Settlement Administrator will provide a cover letter notifying the Class Member of the
2 extended Response Deadline. Any Class Member who receives a re-mailed Notice of Class Settlement
3 shall have forty-five (45) days after the postmark date of the re-mailed Notice of Class Settlement to:

4 (a) submit a Request for Exclusion; or (b) submit an Objection to the Settlement.

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

14 b. Disputes Regarding Individual Settlement Payments. Class Members will have
15 the opportunity, should they disagree with Defendant's records regarding the dates of employment
16 stated in the Notice of Class Settlement, to provide documentation and/or an explanation to show
17 contrary information by the Response Deadline. The dispute form must: (a) contain the full name,
18 address, and telephone number of the Class Member, and the last four digits of the Class Member's
19 social security number or full employee ID number; (b) contain the case name and case number; (c) a
20 clear statement by the Class Member that he or she is disputing the number of Compensable Pay
21 Periods and the basis for the dispute; (d) any documentation demonstrating that the number of
22 Compensable Pay Periods listed in the Notice of Class Settlement is incorrect; (e) be signed by the
23 Class Member; and (f) be postmarked by the Response Deadline. The date of the postmark on the
24 return mailing envelope on the dispute form shall be the exclusive means used to determine whether
25 it has been timely submitted. If there is a dispute, the Settlement Administrator will consult with the
26 Parties to determine whether an adjustment is warranted. In addition to U.S. Mail, a Class Member
27 may also submit a dispute form by facsimile or email to the Settlement Administrator within the
28 Response Deadline. The Settlement Administrator shall then determine the eligibility for, and the

1 amounts of, any Individual Settlement Payments under the terms of this Agreement. In the absence of
2 circumstances indicating fraud, manipulation or destruction, Defendant's records shall be given a
3 rebuttable presumption of accuracy.

4 c. Request for Exclusion. Class Members who wish to exclude themselves from
5 the Settlement must submit to the Settlement Administrator a Request for Exclusion by the Response
6 Deadline. The Request for Exclusion must: (a) contain the full name, address, and telephone number
7 of the Class Member, and the last four digits of the Class Member's social security number or full
8 employee ID number; (b) contain the case name and case number; (c) a clear statement by the Class
9 Member that he or she is electing to be excluded from the Settlement; (d) be signed by the Class
10 Member; and (e) be postmarked by the Response Deadline if submitted by U.S. Mail. The date of the
11 postmark on the return mailing envelope on the Request for Exclusion submitted by U.S. Mail shall
12 be the exclusive means used to determine whether it has been timely submitted. In addition to U.S.
13 Mail, a Class Member may also submit a Request for Exclusion by facsimile or email to the Settlement
14 Administrator within the Response Deadline. A Request for Exclusion shall not be presumptively
15 invalid if it does not contain the requirements of (a) through (d) if the Settlement Administrator can
16 ascertain the identity of the Class Member who wants to exclude themselves from the Settlement. Any
17 Class Member who requests to be excluded from the Settlement Class shall not be entitled to any
18 recovery under the Settlement and shall not be bound by the terms of the Settlement or have any right
19 to object, appeal or comment thereon except as to any distribution based upon PAGA penalties.
20 PAGA Members will receive their share of the PAGA Payment and the Settled PAGA Claims will be
21 released even if the Class Member submits a timely Request for Exclusion. Class Members who fail
22 to submit a valid and timely Request for Exclusion on or before the Response Deadline shall be bound
23 by all terms of the Settlement and any Final Approval Order and Judgment entered in this Action.

24 d. Objections. Class Members who wish to object to the Settlement can either
25 mail or send by facsimile or email to the Settlement Administrator a written Objection by the
26 Response Deadline. The Objection should: (a) contain the full name, address, and telephone number
27 of the Class Member, and the last four digits of the Class Member's social security number; (b)
28 contain the case name and case number; (c) the dates of employment of the Class Member; (d) be

1 signed by the Class Member; (e) state the basis for the Objection, including any legal briefs, papers
2 or memoranda in support of the Objection; and (f) be postmarked by the Response Deadline. The
3 date of the postmark on the return mailing envelope on the Objection shall be the exclusive means
4 used to determine whether the Objection has been timely submitted. Class Members who submit a
5 timely Objection will have a right to appear at the final approval hearing in order to have their
6 Objection heard by the Court. At no time shall any of the Parties or their counsel seek to solicit or
7 otherwise encourage Class Members to submit Objections to the Settlement or appeal from the Final
8 Approval Order and Judgment. Class Counsel shall not represent any Class Members with respect to
9 any such Objections. The Settlement Administrator will provide the Parties with any Objection
10 within five (5) calendar days of receipt of the Objection. Plaintiff will file any and all Objections
11 with the Court in advance of the Final Approval Hearing. Oral or written Objections may also be
12 made at the Final Approval hearing without a written objection being submitted, but only with the
13 Court's express permission. If the Court rejects the objection, the individual will be bound by the
14 terms of the Settlement.

15 e. If greater than fifteen (15) percent of the Class Members opt out or object to
16 this Settlement Agreement or a number of Class Members whose share of the Net Settlement Amount
17 is 15% or more, Defendant will have the right to rescind and terminate the Settlement without
18 prejudice to its pre-settlement positions and defenses in the litigation. In such a case, the Parties and
19 any funds to be awarded shall be returned to their respective statuses as of the date and time
20 immediately prior to the execution of this Agreement.

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

28 54. Funding Gross Settlement Amount. After the Effective Date, Defendant agrees to pay

1 a sum equal to \$150,000 ("the "Gross Settlement Amount") to fund the settlement of this action within
2 thirty (30) calendar days. The Settlement is "all-in", non-reversionary and no funds will return to
3 Defendant. Payments of any appropriate and lawfully-required employer share of the payroll taxes on
4 the taxable portion of the settlement payments shall be paid by Defendant separately from and in
5 addition to the Gross Settlement Amount. Defendant shall be jointly and several liable for paying the
6 entire Gross Settlement Amount.

7 55. Allocation of Settlement. Individual Settlement Payments will be paid from the Net
8 Settlement Amount and shall be paid pursuant to the settlement formula set forth herein. Individual
9 Settlement Payments shall be mailed by regular First Class U.S. Mail to Settlement Class Members'
10 last known mailing address.

11 a. The Settlement Administrator shall calculate the total Compensable Pay
12 Periods and Compensable PAGA Pay Periods for all Settlement Class Members based on the Class
13 Information provided by Defendant. The respective Compensable Pay Periods for each Settlement
14 Class Member will be divided by the total Compensable Pay Periods for all Settlement Class
15 Members, resulting in the Payment Ratio for each Settlement Class Member; a similar calculation will
16 apply to determining the Payment Ratio for Compensable PAGA Pay Periods. Each Settlement Class
17 Member's Payment Ratio will then be multiplied by the Net Settlement Amount to determine his or
18 her Individual Settlement Payment.

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

21 1. Fifty percent (50%) of the Individual Settlement Payment shall
22 represent payment for alleged unpaid wages. This payment shall be subject to the withholding of all
23 applicable local, state, and federal taxes. Applicable payroll taxes and/or contributions will be
24 deducted from the amount paid to Settlement Class Members. The Settlement Administrator will
25 issue a W-2 Form to each Settlement Class Member in relation to this payment.

26 2. Thirty-five percent (35%) of the Individual Settlement Payment shall
27 represent payment of all penalties. These payments will not be subject to withholding of local, state,
28 and federal taxes. The Settlement Administrator will issue an IRS Form 1099 to each Settlement

1 Class Member in relation to these payments.

2 3. Ten percent (10%) of the Individual Settlement Payment shall represent
3 payment of all interest. These payments will not be subject to withholding of local, state, and federal
4 taxes. The Settlement Administrator will issue an IRS Form 1099 to each Settlement Class Member
5 in relation to these payments.

6 (a). Class Members With Missing/Unverifiable Social Security
7 Numbers and Withholdings of Taxes and Applicable Penalties. In the event that an Individual
8 Settlement Payment exceeds the threshold amount that must be reported to the Internal Revenue
9 Service by means of a Form 1099, Class Counsel, and the Settlement Administrator, will take all
10 necessary and reasonable steps to obtain W-9's from Class Members and to comply with applicable
11 IRS regulations on issuing 1099's without a social security number or tax entity identification number,
12 and shall take all reasonable and necessary steps to avoid imposition of IRS penalties against the Gross
13 Settlement Amount, including, but not limited to limiting payments below the reportable threshold
14 and/or withholding of taxes and any applicable penalties. The Settlement Administrator will contact
15 Class Members who are entitled to payments that exceed the taxable income threshold twice, with at
16 least 30 days between the two contacts.

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

26 d. Certification By Settlement Administrator. The Parties have the right to
27 monitor and review administration of the Settlement. Any disputes not resolved by the Settlement
28 Administrator concerning the administration of the Settlement will be resolved by the Court, under

1 the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties
2 will confer in good faith to resolve the disputes without the necessity of involving the Court. Upon
3 completion of administration of the Settlement, the Settlement Administrator shall provide written
4 certification of such completion to counsel for the Parties, and which shall be filed with the Court as
5 necessary.

6 e. Settlement Awards Do Not Trigger Additional Benefits. All monies received
7 by Settlement Class Members shall be deemed to be income to such Settlement Class Members solely
8 in the year in which such awards actually are received by the Settlement Class Members. It is expressly
9 understood and agreed that the receipt of such Individual Settlement Payments will not entitle any
10 Settlement Class Member to additional compensation or benefits under any company compensation
11 or benefit plan or agreement in place during the period covered by the Settlement, nor will it entitle
12 any Settlement Class Member to any increased pension and/or retirement, or other deferred
13 compensation benefits. It is the intent of this Settlement that any Individual Settlement Payments
14 provided for in this Agreement are the sole payments to be made by Defendant to the Settlement Class
15 Members in connection with this Settlement, and that the Settlement Class Members are not entitled
16 to any new or additional compensation or benefits as a result of having received the Individual
17 Settlement Payments (notwithstanding any contrary language or agreement in any benefit or
18 compensation plan document that might have been in effect during the period covered by this
19 Settlement).

20 f. Class Representative Service Award. Defendant agrees not to oppose or object
21 to a Class Representative Service Award to Plaintiff of up to Seven Thousand Dollars (\$7,000.00),
22 subject to Court approval. The Settlement Administrator shall issue an IRS Form 1099 – MISC to
23 Plaintiff in connection with the Class Representative Service Award payment. Plaintiff shall be solely
24 and legally responsible to pay any and all applicable taxes on his Class Representative Service Award
25 and shall hold harmless Defendant and Class Counsel from any claim or liability for taxes, penalties,
26 or interest arising as a result of the Class Representative Service Award payment. The Class
27 Representative Service Award shall be in addition to Plaintiff's Individual Settlement Payment. This
28 Settlement is not contingent upon the Court awarding Plaintiff a Class Representative Service Award

1 in any amount, and any amount requested by Plaintiff for the Class Representative Service Award that
2 is not granted by the Court shall return to the Net Settlement Amount and be distributed to Settlement
3 Class Members as provided in this Amended Agreement.

4 g. Class Counsel Award. Defendant agrees not to oppose or object to any
5 application or motion by Class Counsel for attorneys' fees not to exceed one-third from the Gross
6 Settlement Amount, or Fifty Thousand Dollars and Zero cents (\$50,000). Defendant further agrees
7 not to oppose any application or motion by Class Counsel for the reimbursement of any costs or
8 expenses associated with Class Counsel's prosecution of this matter from the Gross Settlement
9 Amount not to exceed \$17,000. Class Counsel shall be solely and legally responsible to pay all
10 applicable taxes on the payment made pursuant to this paragraph. The Settlement Administrator shall
11 issue an IRS Form 1099 – MISC to Class Counsel for the payments made pursuant to this paragraph.
12 This Settlement is not contingent upon the Court awarding Class Counsel any particular amount in
13 attorneys' fees and costs. Any amount requested by Class Counsel for the Class Counsel Award and
14 costs that are not granted by the Court shall return to the Net Settlement Amount and be distributed
15 to Settlement Class Members as provided in this Agreement.

16 h. Settlement Administration Costs. The Settlement Administrator shall be paid
17 for the costs of administration of the Settlement from the Gross Settlement Amount. The costs of
18 notice and administration for the disbursement of the Gross Settlement Amount shall not exceed
19 Twelve Thousand Dollars (\$12,000.00). Prior to the filing of a motion for final approval of this
20 Settlement, the Settlement Administrator shall provide the Parties with a statement detailing the costs
21 of administration. Any amount requested by the Settlement Administrator for administration costs that
22 is not granted by the Court shall return to the Net Settlement Amount and be distributed to Settlement
23 Class members as provided in this Settlement Agreement. Defendant will pay any fees incurred by
24 the Settlement Administrator if the settlement is not approved.

25 i. PAGA Payment. Ten Thousand dollars (\$10,000) from the Gross Settlement
26 Amount will be allocated to penalties under PAGA. Seventy-five percent (75%) of that amount, or
27 \$7,500, will be paid to the LWDA and twenty-five (25%) of that amount, or \$2,500, will be paid to
28 the PAGA Members based upon Compensable PAGA Work Weeks as determined by the PAGA

1 Payment Ratio as set forth in Paragraph 25. This PAGA Payment is made pursuant to California
2 Labor Code § 2699(i).

3 56. Tax Liability: Class Counsel and Defendant make no representation as to the tax
4 treatment or legal effect of payments called for hereunder, and Plaintiff and the Settlement Class
5 Members are not relying on any statement or representation by Class Counsel or Defendant in this
6 regard. Plaintiff and Participating Class Members understand and agree that they will be solely
7 responsible for the payment of any taxes and penalties assessed on their respective payments described
8 herein. The amount of federal income tax withholding will be based upon a flat withholding rate for
9 supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or
10 supplemented. Income tax withholding will also be made pursuant to applicable state and/or local
11 withholding codes or regulations. Forms W-2 and/or Forms 1099 will be distributed at times and in
12 the manner required by the Internal Revenue Code of 1986 (the “Code”) and consistent with this
13 Settlement Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax
14 law, is changed after the date of this Settlement Agreement, the processes set forth in this Section may
15 be modified in a manner to bring Defendant into compliance with any such changes.

16 57. Distribution of Settlement Payments. Individual Settlement Payments to Settlement
17 Class Members, the Class Representative Service Award, the Class Counsel Award, Settlement
18 Administration Costs, Defendant’s share of employer payroll taxes and PAGA Payment, shall all be
19 distributed by the Settlement Administrator within ten (10) calendar days of receipt of the full Gross
20 Settlement Amount from Defendant. Prior to distribution of Individual Settlement Payments to the
21 Settlement Class Members and PAGA Members, the Settlement Administrator shall update the Class
22 and PAGA Members addresses using the National Change of Address Database.

23 58. Additional Pay Periods. It is currently estimated that there are 5,090 Pay Periods in
24 the Class Period through mid-April of 2024 based upon Defendant’s informal discovery responses.
25 Defendant shall provide Plaintiff within ten (10) days of notice that Plaintiff intends to file a Motion
26 for Preliminary Approval, the current number of Pay Periods. If fifteen (15%) percent more than 5,090
27 Pay Periods are identified by Defendant’s counsel for the Class Period through June 30, 2024, the
28 Gross Settlement Amount will be increased on a pro rata basis according to the number of additional

1 compensable pay periods worked by all Class Members in excess of fifteen (15%) percent, i.e. 5,853
2 with respect to the total number of Pay Periods worked by the entire Class.

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

8 60. Nullification of Settlement Agreement. In the event: (a) the Court does not enter the
9 Order for preliminary approval of the Settlement; (b) the Court does not finally approve the
10 Settlement; (c) the Court does not enter a Final Approval Order and Judgment as provided herein;
11 (d) the Settlement does not become final for any other reason; or (e) the Court fails or refuses to
12 approve any material condition of this Settlement Agreement which effects a fundamental change of
13 the Settlement Agreement, this entire Settlement Agreement shall be null and void and
14 unenforceable as to all Parties herein at the option of any Party but remains protected by California
15 Evidence Code Section 1152, and any order or judgment entered by the Court in furtherance of this
16 Settlement shall be treated as void from the beginning. In such cases, the Parties and any funds to be
17 awarded under this Settlement shall be returned to their respective statuses as of the date and time
18 immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects as
19 if this Agreement had not been executed, except that any fees already incurred by the Settlement
20 Administrator shall be paid by Defendant. Further, if the Settlement Agreement is voided or fails
21 for any reason, Plaintiff and Defendant will have no further obligations under the Settlement
22 Agreement, including any obligation by Defendant to pay the Settlement Amount, or any amounts
23 that otherwise would have been owed under this Settlement Agreement. In the event an appeal is
24 filed from the Court's Final Approval Order and Judgment, or any other appellate review is sought,
25 administration of the Settlement shall be stayed pending final resolution of the appeal or other
26 appellate review, and any fees incurred by the Settlement Administrator prior to it being notified of
27 the filing of an appeal from the Court's Final Approval Order and Judgment, or any other appellate
28 review, shall be paid to the Settlement Administrator by the party or person that filed the appeal,

1 within thirty (30) calendar days of said notification.

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

12 62. Mutual Non-Disparagement. The Parties mutually agree that they shall not publicly
13 assert, declare, avow, lay claim to, or in any other manner represent that any of them engaged in
14 actions or conduct with the purpose of attempting to harass, embarrass, ridicule, demean, demote,
15 defame, or otherwise denigrate each other, and any of them, their good name(s), personal and/or
16 professional reputations, and/or community standing. In the event of an employment inquiry regarding
17 the Plaintiff, Defendant shall only provide dates of employment and last position held. The Parties
18 and their counsel agree not to issue any press releases, initiate contact with press, or respond to press
19 inquiry regarding the Settlement.

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

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

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

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

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

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

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

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

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

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

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

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

12 To the Settlement Class:

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

19 To Defendant:

20 NOLAND HAMERLY ETIENNE & HOSS
21 Ana C. Toledo
22 333 Salinas Street/Post Office Box 2510
23 Salinas, California 93902
Telephone: (831) 424-1414
Facsimile: (831) 424-1975
Email: atoldedo@nheh.com

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

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

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

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

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

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

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

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

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

8 75. Counterparts. This Settlement Agreement may be executed in one or more
9 counterparts. All executed counterparts and each of them shall be deemed to be one and the same
10 instrument.

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

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

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

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

5 80. Binding On Assigns. This Settlement Agreement shall be binding upon and inure to
6 the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
7 successors and assigns.

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

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

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

24 84. Counterparts. This Settlement Agreement may be executed in counterparts, and when
25 each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed
26 an original, and, when taken together with other signed counterparts, shall constitute one fully-signed
27 Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic
28 signatures shall have the same force and effect as an original. To facilitate execution and delivery of

this Agreement, the Parties may execute and exchange by facsimile or electronic image (i.e., as a “.pdf” file) counterparts of the signature pages and/or sign by electronic means (i.e., with DocuSign).

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

Dated: _____

By: _____
IRENE O. FLORES

MERCURIO BROTHERS, INC.

Dated: 7/25/2024

Signed by:
Dominic Mercurio
By: _____
69ABBC52C7A6484...
DOMINIC MERCURIO, CEO

APPROVED AS TO FORM:

Dated: _____

LAW OFFICE OF SCOTT ERNEST WHEELER

By: _____
SCOTT ERNEST WHEELER
JUSTIN A. WHEELER
Attorneys for Plaintiff and the Putative Class

Dated: 7/24/2024

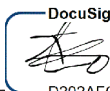
NOLAND HAMERLY ETIENNE & HOSS

Signed by:
Ana C. Toledo
By: _____
B2F3D381918F448...
ANA C. TOLEDO
Attorneys for Defendant, Mercurio Brothers, Inc., dba Domenico's on the Wharf

this Agreement, the Parties may execute and exchange by facsimile or electronic image (i.e., as a “.pdf” file) counterparts of the signature pages and/or sign by electronic means (i.e., with DocuSign).

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

Dated: 7/23/2024

By: 
IRENE O. FLORES

MERCURIO BROTHERS, INC.

Dated: _____

By: _____
DOMINIC MERCURIO, CEO

APPROVED AS TO FORM:

Dated: July 23, 2024

LAW OFFICE OF SCOTT ERNEST WHEELER

By: 
SCOTT ERNEST WHEELER
JUSTIN A. WHEELER
Attorneys for Plaintiff and the Putative Class

Dated: _____

NOLAND HAMERLY ETIENNE & HOSS

By: _____
ANA C. TOLEDO
Attorneys for Defendant, Mercurio Brothers, Inc., dba Domenico's on the Wharf