

# **EXHIBIT**

## **A**

### **PARTIES' FULLY EXECUTED SETTLEMENT AGREEMENT**

**A-1: PROPOSED CLAIM FORM**

**A-2: PROPOSED NOTICE**

**A-3: CONFESSION OF JUDGMENT**

**PARTIES' FULLY  
EXECUTED SETTLEMENT  
AGREEMENT**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

LAURA PONTONES, on behalf of herself and )  
all others similarly situated, )  
)  
*Plaintiff,* )

v. )

SAN JOSE RESTAURANT, )  
INCORPORATED; SAN JOSE )  
MANAGEMENT, INC., d/b/a SAN JOSE )  
MEXICAN RESTAURANT AND SPORTS )  
CANTINA; SAN JOSE MEXICAN )  
RESTAURANT #2 OF LUMBERTON, INC.; )  
SAN JOSE MEXICAN RESTAURANT OF )  
ELIZABETHTOWN, INC.; SAN JOSE )  
MEXICAN RESTAURANT OF N.C. INC.; )  
SAN JOSE MEXICAN RESTAURANT OF )  
PEMBROKE, NC, INC.; SANJOSE )  
MEXICAN RESTAURANT OF RALEIGH )  
INC.; SAN JOSE MEXICAN )  
RESTAURANT OF SHALLOTTE, INC.; )  
SAN JOSE OF ROCKY MOUNT #2 INC., )  
d/b/a SAN JOSE TACOS AND TEQUILA; )  
SAN JOSE OF ZEBULON, INC.; SAN JOSE )  
OF ROANOKE RAPIDS, INC.; SAN JOSE )  
WAKEFIELD, INC., d/b/a SAN JOSE MEX )  
AND TEQUILA BAR; PLAZA AZTECA )  
RALEIGH, INC., d/b/a SAN JOSE TACOS )  
AND TEQUILA; HECTOR FLORES; )  
ALBERTO FLORES; JOSUE FLORES; )  
JOSE PEREZ; VICENTE PEREZ; PABLO )  
MEZA; EDGARDO FLORES; and EDGAR )  
FLORES, )

Case No. 5:18-cv-219-D

*Defendants.*

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**SETTLEMENT AGREEMENT OF CLASS AND COLLECTIVE ACTION  
AND RELEASE OF CLAIMS**

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Named Plaintiff, Laura Pontones, individually and on behalf of Opt-in Plaintiffs and all members of the Settlement Class and Settlement Collective, as defined herein, and their counsel of record, and San Jose, Inc., *et al.*, and their counsel of record, hereby enter into this Settlement Agreement (“Agreement”). This Agreement is subject to approval by the United States District Court for the Eastern District of North Carolina, Western Division, and is made for the sole purpose of consummating the settlement of this Action on a collective- and class-wide basis subject to the following terms and conditions. The instant Action shall be dismissed with prejudice upon final approval of this settlement by the Court. Alternatively, and as detailed below, in the event the Court does not enter an order granting final approval of the Settlement in substantially the same form and substance set forth below, the Court’s Order Granting Final Approval of the Settlement is appealed and reversed, or the conditions precedent are not met for any reason, this Agreement and the Settlement are void and of no force whatsoever.

## **I. RECITALS AND BACKGROUND**

### **A. The Nature of the Case and Claims Raised**

Named Plaintiff Laura Pontones (“Plaintiff” or “Plaintiff Pontones”), Opt-in Plaintiffs, and Rule 23 class members were employed as servers for Defendants at all locations, from approximately May 2015 to the present. Plaintiff Pontones was employed at the Raleigh Brier Creek North Carolina location from October 2, 2016 to January 22, 2017. She also worked at the Raleigh Triangle Town Center Mall location, from January 23, 2017, to April 2017, and then from approximately July 2017 until August 2017. Dkt. 7 ¶ 47. While Defendants admit that Plaintiff was employed by Defendants Plaza Azteca Raleigh, Inc. and San Jose Mexican Restaurant of Raleigh, Inc. (Dkt. 13, ¶ 14), they deny that Defendants are joint employers for Named, Opt-ins, and Rule 23 class members. *Id.*



Plaintiff asserts that San Jose Restaurants; Hector Flores; Alberto Flores; Josue Flores; Jose Perez; Vicente Perez; Pablo Meza; Edgardo Flores; and Edgar Flores et al.,<sup>1</sup> (collectively “Defendants”) failed to compensate Plaintiff, opt-in Plaintiffs, and Fed. R. Civ. P. 23 (“R.23”) putative class members (collectively “Plaintiffs”) as required by the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.*, and the North Carolina Wage and Hour Act (“NCWHA”), N.C. Gen. Stat. §§ 95-25.1, *et seq.*, by (1) failing to pay Plaintiffs for all hours worked; (2) failing to pay Plaintiffs all owed and/or earned wages such as minimum wage, overtime; (3) subjecting Plaintiffs (servers) to unlawful deductions or a percentage of daily total food and beverage sales for each shift and workweek; and (4) violating statutory record-keeping provisions. *See generally* Dkt. 7. More specifically, Plaintiffs allege that Defendants failed to pay Plaintiffs all owed, earned, and accrued minimum wages, and/or overtime wages, in violation of the FLSA, and the violation of the FLSA was willful. *Id.* ¶¶ 82-92. Furthermore, Plaintiff alleges that Defendants intentionally refused to pay all lawful wages on their regular pay date and took tips from Plaintiffs to lower their overhead costs and pay other employees in violation of the NCWHA. *Id.* ¶¶ 93-102.

Defendants assert that they are in compliance with the FLSA and NCWHA.

**B. Procedural History of the Case**

Plaintiff filed her initial Complaint on May 17, 2018. *See* Dkt. 1.<sup>2</sup> On June 26, 2018, Defendants filed their Answer to Plaintiff’s Collective and Class Action Complaint. Dkt. 130. Following the Court’s entering of its scheduling order, (Dkt. 42), on August 29, 2018, Plaintiff

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<sup>1</sup> In the interest of efficiency and brevity, Plaintiff does not, here, identify all defendants by name, but they are found herein, *infra* Section II.A.9. *See* Dkt. 7.

<sup>2</sup> Plaintiff filed her First Amended Collective/Class Action Complaint on June 11, 2018. Dkt. 7. \

served Defendants with Plaintiff's Initial Disclosures, First Set of Request for Production of Documents, and First Set of Interrogatories to Defendants. *See* Dkt. 50; Dkt. 50-1.

On April 26, 2019, pursuant to 29 U.S.C. § 216(b) and Fed. R. Civ. P. 23, Plaintiff Laura Pontones ("Plaintiff") moved for conditional collective certification and/or class certification of this action, and to issue notice to all similarly situated persons, so that those similarly situated current and former employees will have the opportunity to exercise their rights under the Fair Labor Standards Act ("FLSA"). Dkt. 66. The Court granted Plaintiff's motion for conditional collective and class certification on October 31, 2019. Dkt. 77. On November 14, 2019, Defendants filed a Rule 23(f) Petition for Leave to Appeal the Court's order granting certification. Approximately one month later, the Fourth Circuit subsequently denied Defendants' petition for permission to appeal on December 10, 2019. Dkt. 85-1.

On February 11, 2020, Plaintiff filed her motion for summary judgment. Dkts. 99, 100, 101. The same day, Defendants filed their motion for summary judgment as well as a motion for decertification. Dkts. 106, 103. On November 2, 2020, this Court entered its order denying Plaintiff's motion for summary judgment, as well as both Defendants' motion for summary judgment and motion for decertification. Dkt. 169. Thereafter, Defendants filed a motion for evidentiary hearing, to address the joint employment issue, which the Court ultimately denied, noting the Court could fashion questions for the jury concerning joint employment to resolve the factual issues concerning the joint employment parts of trial and Plaintiffs' claims. Dkts. 169, 185.

As to notice of the lawsuit, following substantial coordination and oral arguments by the Parties on the substance and method of notice to be issued to class members (Dkts. 94, 108, 128, 129), on May 11, 2020, through the claims' administrator (Angeion Group), Plaintiff sent, via U.S. mail, a copy of Plaintiff's notice and opt-in and opt-out forms to all identified FLSA collective and

Rule 23 class members. Dkt. 134. Currently, there are approximately 52 opt-in Plaintiffs who have joined this action and have worked across the majority, if not all, of Defendants' locations.<sup>3</sup> In addition to the current Opt-in Plaintiffs, there are approximately 667 Rule 23 class members.

**C. Trial Preparation**

On October 18, 2021, this Court entered its Case Management Order, scheduling trial in this matter to begin March 1, 2022. Dkt. 194. Accordingly, the Parties worked diligently to abide by the Court's pretrial deadlines. On January 7, 2022, the Parties filed their respective Motions in Limine. Dkts. 195, 196. On February 1, 2022, Defendants filed a motion to dismiss time-barred plaintiffs and to strike untimely consents to opt-in, which Plaintiff adamantly opposed, particularly given Defendants' efforts on the eve of trial, to raise the issue for the first time. Dkts. 200, 203. The Parties also exchanged pretrial disclosures and memoranda of authorities, proposed voir dire questions, as well as diligently coordinated drafting proposed jury instructions and a proposed pretrial order.

Soon thereafter, on February 16, 2022, the Parties attended a Pretrial Conference with the Court, wherein the Court issued rulings on the Parties' motions in limine as well as denied Defendants' motion to dismiss time-barred plaintiffs and to strike untimely consent forms. The Court also advised the parties, the jury would receive an instruction regarding permissible adverse inferences against Defendants regarding the failure to produce documents.

**D. Settlement Negotiations and Mediation**

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<sup>3</sup> See Dkts. 135-1, 135-2, 135-3, 135-4, 135-5, 135-6, 135-7, 135-8; 140-1, 140-2, 140-3, 140-4, 140-5, 140-6; 144-1, 144-2, 144-3; 150-1, 150-2, 150-3, 150-4, 150-5, 150-6, 150-7, 150-8, 150-9, 150-10, 150-11, 150-12, 150-13, 150-14; 154-1, 154-2, 154-3, 154-4, 154-5, 154-6, 154-7, 154-8, 154-9, 154-10, 154-11, 154-12, 154-13, 154-14, 154-15, 154-16; 158-1, 158-2, 158-3, 158-4; 160-1; 162-1, 162-2, 162-3; and 163-1.

On January 21, 2020, this Court hosted the parties' first settlement conference. Dkt. 87. Despite the Parties best efforts and the assistance of Magistrate Judge Gates, the parties were unable to reach an agreement. After more than a year of further litigation, the Parties participated in a second Court-hosted settlement conference on September 27, 2021. Dkt. 188. Again, the Parties were unable to reach an agreement. Following the Pretrial Conference, the Parties agreed as to the potential value of attending a third Court-hosted settlement conference before the scheduled trial. In anticipation of the same, counsel for the Parties worked diligently in continuing communications and productive negotiations, in an effort to reach a fair, reasonable agreement. On February 23, 2022, the Parties attended a Court-Hosted Settlement Conference, and were able to successfully reach an agreement through the assistance of Magistrate Judge Gates. Dkt. 222.

**E. Discovery, Investigation, and Research**

Plaintiff's Attorneys conducted an extensive investigation into the facts before and during the prosecution of the Action. This discovery and investigation has included among other things, (a) multiple meetings and conferences with the lead Named Plaintiff, Laura Pontones, for several weeks or months before the filing of the Action, (b) analysis of the legal positions which could be taken by Defendants; (c) investigation into the viability of class treatment of the claims, and which claims would be suitable for class treatment; (d) analysis of potential class-wide damages; and (e) research of the applicable law with respect to the potential claims and potential defenses thereto.

**F. Parties' Statements and Recognition of the Benefits of Settlement**

**1. Plaintiffs' Statement**

Named Plaintiff has vigorously prosecuted this case, and Defendants have vigorously contested it. The factual investigation conducted in this matter, and discussions between counsel for the parties, have been adequate to give Named Plaintiff and her counsel, a sound understanding

of the merits of their positions and to evaluate the potential worth of the claims of the classes. The settlement was reached with the assistance of the Honorable Magistrate Judge James E. Gates' assistance, after several arm's-length settlement conferences, (Dkts. 79, 186, 223), and discovery, including written discovery, limited production of documents, depositions, and litigation of multiple issues related to discovery, (Dkts. 41, 43, 49, 51), dispositive motions, (Dkts. 99, 103, 106), Defendants' Fourth Circuit appeal, following the District Court's ruling, granting Plaintiff's motion for conditional and class certification, (Dkts. 77, 116-1, 118-1), and subsequent motion for an evidentiary hearing regarding joint employment. *See* Dkt. 169. The discovery conducted in this Action and the information exchanged by the parties are sufficient to reliably assess the merits of the parties' respective positions and to compromise the issues on a fair and equitable basis.

Named Plaintiff believes the claims asserted in the Litigation on behalf of all servers who have worked for Defendants in North Carolina have merit under the FLSA and North Carolina law. Plaintiff was prepared for the parties' March 1, 2022 trial. However, Plaintiff also recognizes the uncertainty of the outcome and the risk of loss in any litigation, including trial. Further, Plaintiff has considered the cost and delay of continued proceedings necessary to prosecute the instant Action against Defendant, as well as trying the claims of the FLSA Collective and Rule 23 Class, and any potential appeal. Plaintiff believes that the settlement set forth in this Agreement confers substantial benefits on members of the Settlement Class and Settlement Collective, and that an independent review of this settlement by the Court during the approval process will confirm this conclusion. Based on their own independent investigation and evaluation, Plaintiff has determined the settlement is in the best interest of Named Plaintiff, the Opt-in Plaintiffs, and the other members of the Settlement Class and Settlement Collective.

## 2. Defendants' Statement

Defendants deny each of the claims alleged by Plaintiff in the Litigation and expressly denies any and all charges of wrongdoing or liability alleged in the instant Action. As a result, Defendants also deny that the asserted claims are appropriate for collective treatment under 29 U.S.C. § 216(b) or class treatment under Fed. R. Civ. P. 23. Nevertheless, Defendants have taken into account the uncertainty and risks inherent in any litigation and trial would be protracted, expensive, and disruptive to their business. Defendants, therefore, have determined it is desirable and beneficial that the Litigation be settled in the manner and upon the terms and conditions set forth in this Agreement.

## II. DEFINITIONS AND PRELIMINARY REQUIREMENTS

### A. Definitions

As used throughout this Agreement, the following terms have the meanings specified below:

1. **Action.** “Action” or “Litigation” shall mean the civil action in the United States District Court for the Eastern District of North Carolina, Western Division, styled *Pontones et al. v. San Jose, Inc., et. al.*, CA No. 5:18-CV-219-D.

2. **Authorized Claimant.** “Authorized Claimant” shall mean any member of a Settlement Class or Settlement Collective who is entitled to a Settlement Payment – either because he or she timely submits the required Claim Form, as described herein in Parts III.B and V.A.3 *infra* or because he or she is a Named Plaintiff or an Opt-In Plaintiff.

3. **Claim Form.** “Claim Form” refers to a written form to be mailed to all members of the Settlement Class and the Settlement Collective which must be completed and

returned to the Settlement Administrator pursuant to the terms below in order to receive payment.

A copy of the Claim Form is attached as **Exhibit 1**.

**4. Class Counsel.** “Class Counsel” shall mean the attorneys representing Plaintiffs and Rule 23 Class Members in the Litigation: The Law Offices of Gilda A. Hernandez, PLLC, 1020 Southhill Drive, Suite 130 Cary, NC 27513.

**5. Class Representative.** “Class Representative,” “Plaintiff,” or “Named Plaintiff” refer to Laura Pontones.

**6. Complaint.** “Complaint” shall mean the Collective and Class Action Complaint filed in the Court on May 17, 2018, in this Action.

**7. Collective/Class Member Information.** “Collective/Class Member Information” shall mean the following information for all individuals employed by Defendants as servers in North Carolina during the time period of May 17, 2015 to the present: (1) his or her name; (2) his or her last known address; (3) social security number; and (4) last known telephone number.

**8. Court.** “Court” shall mean the United States District Court for the Eastern District of North Carolina, Western Division.

**9. Defendants.** “Defendants” shall mean Defendants, San Jose Restaurant, Incorporated; San Jose Management, Inc., d/b/a San Jose Mexican Restaurant and Sports Cantina; San Jose Mexican Restaurant #2 of Lumberton, Inc.; San Jose Mexican Restaurant of Elizabethtown, Inc.; San Jose Mexican Restaurant of N.C. Inc.; San Jose Mexican Restaurant of Pembroke, NC, Inc.; San Jose Mexican Restaurant of Raleigh Inc.; San Jose Mexican Restaurant of Shallotte, Inc.; San Jose of Rocky Mount #2 Inc., d/b/a San Jose Tacos and Tequila; San Jose of Zebulon, Inc.; San Jose of Roanoke Rapids, Inc.; San Jose Wakefield, Inc., d/b/a San Jose Mex

and Tequila Bar; Plaza Azteca Raleigh, Inc., d/b/a San Jose Tacos and Tequila (collectively “San Jose Restaurant Defendants”); Hector Flores; Alberto Flores; Josue Flores; Jose Perez; Vicente Perez; Pablo Meza; Edgardo Flores; and Edgar Flores (collectively, along with San Jose Restaurant Defendants, the “Defendants”), which operate restaurant locations in North Carolina, Virginia, and South Carolina.

**10. Defense Counsel.** “Defense Counsel” shall mean Wimberly, Lawson, Steckel, Schneider, & Stine, P.C.

**11. Effective Date.** “Effective Date” shall be the date by which the following has occurred: This settlement has received final approval from the Court.

**12. Final Settlement Hearing.** “Final Settlement Hearing” means the hearing to be conducted by the Court to determine whether to finally approve the Settlement explained herein.

**13. Gross Settlement Amount.** “Gross Settlement Amount” refers to \$1,500,000.00, which is the total and maximum amount Defendants will be required to pay under this Settlement to completely resolve and settle the claims against Defendants in the Litigation, except that, in addition to the Gross Settlement Amount, Defendants will pay the employer share of payroll taxes associated with payments to Authorized Claimants pursuant to this Agreement that are attributable to back wages. The Gross Settlement Amount expressly includes, but is not necessarily limited to, the following elements: (i) cash Settlement Payments to Authorized Claimants; (ii) Named Plaintiff’s and Select Opt-In Plaintiffs’ Service Awards; (iii) Plaintiffs’ Attorneys’ Fees; (iv) Plaintiffs’ Litigation Expenses; and (v) Settlement Expenses.

**14. Initial Payment.** “Initial Payment” refers to the initial payment of TWO HUNDRED THOUSAND DOLLARS (\$200,000.00), Defendants will make, following the



Effective Date into the Settlement Fund, which will be maintained by the Settlement Administrator.

**15. Members.** “Members” refers collectively to members of the Settlement Class and members of the Settlement Collective.

**16. Motion for Preliminary Approval.** “Motion for Preliminary Approval” refers to the motion for preliminary approval of this Settlement and its supporting papers that Plaintiff will file with the Court.

**17. Named Plaintiff.** “Named Plaintiff” refers to Laura Pontones.

**18. Notice of Settlement.** “Notice of Settlement” refers to the official notice of settlement of class action and Final Settlement Hearing, substantially in the form attached hereto as **Exhibit 2**.

**19. Opt-in Plaintiff.** “Opt-in Plaintiff” means any individual who, pursuant to 29 U.S.C. § 216(b), filed a written consent with the Court in the Litigation, asking to participate in Plaintiff’s claims under the FLSA as a party plaintiff prior to the date of this Agreement, and who is a member of the Settlement Collective.

**20. Order Granting Final Approval.** “Order Granting Final Approval” refers to the order or statement of decision in the Litigation by the Court granting final approval to this settlement following a Fairness Hearing.

**21. Order Granting Preliminary Approval.** “Order Granting Preliminary Approval” refers to the order or statement of decision in the Litigation by the Court granting preliminary approval to this Settlement.

**22. Plaintiff.** “Plaintiff” refers to Laura Pontones, individually and on behalf of all Opt-in Plaintiffs, and all members of the Settlement Class and the Settlement Collective.

**23. Plaintiff’s Attorneys’ Fees.** “Plaintiff’s Attorneys’ Fees” refers to the fee amount to be paid to Plaintiff’s Attorneys under the terms of this Agreement, as authorized by the Court.

**24. Plaintiff’s Attorneys.** “Plaintiff’s Attorneys” shall mean the attorneys representing Plaintiffs in the Litigation: The Law Offices of Gilda A. Hernandez, PLLC, 1020 Southhill Drive, Suite 130 Cary, NC 27513.

**25. Plaintiff’s Litigation Expenses.** “Plaintiff’s Litigation Expenses” means the litigation costs and expenses incurred by Plaintiff in connection with the Litigation, which shall be paid to Plaintiff’s Attorneys under the terms of this Agreement, as authorized by the Court.

**26. Service Award.** “Service Award” means a sum, as explained in Part III.C.3 *infra*, and as authorized by the Court to be paid to the Named Plaintiff and/or select Opt-in Plaintiffs/Class Members in recognition of their service to the Settlement Class and Settlement Collective in the Litigation and in anticipation of the scheduled March 1, 2022, trial.

**27. Settlement.** “Settlement” means the agreement of the parties to settle on the terms reflected in this Agreement.

**28. Settlement Fund.** “Settlement Fund” is a qualified settlement fund that will be established by the Settlement Administrator consistent with the requirements of 26 U.S.C. § 468B.

**29. Revised Gross Settlement Amount.** “Revised Gross Settlement Amount” shall refer to the portion of the Gross Settlement Amount available for distribution as cash Settlement Payments to Authorized Claimants, as described in Parts III.C *infra*. The Revised

Gross Settlement Amount is equal to the Gross Settlement Amount less: (i) Named and Select Opt-in Plaintiffs' Service Awards; (ii) Plaintiffs' Attorneys' Fees; (iii) Plaintiffs' Litigation Expenses; and (iv) Settlement Expenses.

**30. Select Opt-in Plaintiffs.** "Select Opt-in Plaintiffs" refers to Angel Berber, Jackie Bullard, Vicente Urbina Perez, Tiana Locklear, Imran Shafiq Khan, Carolina San Agustin, Oscar Torres, Olivia Pineda, Sandy Johnson, and Kathi Johnson.

**31. Settlement Administrator.** "Settlement Administrator" refers to a qualified neutral, independent, third-party settlement administration firm, to effectuate the Settlement by issuing the Notice of Settlement, collecting required Claim Forms, distributing Settlement Payments, and any other tasks specified in this Agreement or by order of the Court.

**32. "Settlement Class" is defined as follows:**

- a. "NCWHA Class," which corresponds to Plaintiffs' NCWHA Rule 23 class claims, means all current and/or former employees of Defendants in North Carolina whose primary duty is/was non-exempt work, who are/were not paid for all of their hours worked, including promised regular and/or overtime wages, and who are/were subjected to unlawful deductions of a fixed percentage of all credit and cash purchases made by Defendants' customers, at any time within the two (2) year period prior to the filing of this lawsuit.

**33. "Settlement Collective" is defined as follows:**

- a. "FLSA Collective," which corresponds to Plaintiffs' FLSA Collective claims, means all current and/or former servers of Defendants whose primary duty is/was non-exempt work, who were not paid minimum wage

and/or overtime, and who are/were subjected to deductions of a fixed percentage of all credit and cash purchases made by Defendants' customers, , at any time within the three (3) year period prior to joining this lawsuit under 29 U.S.C. § 216(b).

**34. Settlement Expenses.** "Settlement Expenses" means all expenses associated with administering the Settlement, including, but not limited to, the fee of the Settlement Administrator, the costs of mailing the Notice of Settlement, and the costs of disbursing the Settlement Payments, Service Awards and Plaintiffs' Attorneys' Fees and Litigation Costs.

**35. Settlement Payments.** "Settlement Payments" means the amounts to be paid to individual Authorized Claimants from the Revised Gross Settlement Amount.

**B. Court Approval of Settlement**

Settlement of the Litigation is contingent upon final Court approval of the Agreement. The parties agree that Plaintiff will move the Court for preliminary and subsequently final approval of the Settlement. Defendants will not oppose Plaintiff's motions seeking approval of this settlement.

As part of the approval process, Plaintiff will request Service Awards for the Named Plaintiff, and for Select Opt-in Plaintiffs, as set forth herein. Defendants agree not to oppose such a request, so long as it does not exceed the amounts referenced in Part IV, *infra*. As part of the approval process, Class Counsel will also petition the Court for an award of Plaintiff's Attorneys' Fees and Plaintiff's Litigation Expenses, as set forth herein. Defendants agree not to oppose such a petition, so long as the amount of Plaintiff's Attorneys' Fees sought does not exceed one-third of the Gross Settlement Amount.

### **III. SETTLEMENT PAYMENTS AND ALLOCATION**

#### **A. Defendants' Payment of the Gross Settlement Amount**

In order to settle the Litigation, and as consideration for Plaintiff's release of claims, dismissal of the Litigation with prejudice, and the other good and valuable consideration described herein that Plaintiff is providing to Defendants, Defendants agree to pay up to \$1,500,000.00, the Gross Settlement Amount, which shall be used to provide, among other things, for any and all: (i) Settlement Payments to Authorized Claimants; (ii) Service Awards; (iii) Plaintiff's Attorneys' Fees; (iv) Plaintiff's Litigation Expenses; and (v) Settlement Expenses.

Pursuant to this Agreement, Defendants will not be required to pay any amount above the Gross Settlement Amount, except that, in addition to the Gross Settlement Amount, Defendants will pay the employer share of payroll taxes associated with the portions of Settlement Payments to Authorized Claimants that are attributable to back wages.

#### **B. Claims Made Procedure**

Any member of a Settlement Class or Settlement Collective who is not a Named Plaintiff or current Opt-in Plaintiff must return a simple Claim Form (which also serves as an opt-in form for the FLSA collective action), a copy of which is included as **Exhibit 1**, to the Settlement Administrator by one of the methods outlined on the Claim Form within the time period outlined on the Claim Form in order to receive a Settlement Payment. To the extent that any member of the Settlement Class or Settlement Collective does not timely submit the required Claim Form or chooses to opt out of the Settlement, their share of the Revised Gross Settlement Amount will revert to or remain with Defendants.<sup>4</sup> However, notwithstanding the foregoing, any Named Plaintiff and any Opt-in Plaintiff who previously opted into this Action and who otherwise falls

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<sup>4</sup> Under no circumstances will any amount beyond \$300,000.00 revert back to Defendants.

within the definition of the Settlement Class or Settlement Collective will not be required to submit a Claim Form, as these individuals have already opted into the Action. As such, the Named Plaintiff and the Opt-in Plaintiffs are automatically entitled to a Settlement Payment.

**C. Allocation of Settlement Payments, Minimum Settlement Payments, and Service Awards**

All Settlement Payments (but not the Named and Select Opt-in Plaintiffs' Service Awards, which will be paid out of the Gross Settlement Amount, as stated in Part III.(A), *supra*, shall be paid from the Revised Gross Settlement Amount. The Revised Gross Settlement Amount will be divided among the Authorized Claimants as described herein.

**1. Estimated Unpaid Wages**

Plaintiffs' Attorneys calculated the unpaid wages due for members of the Settlement Class and Settlement Collective, using a recollection of weekly hours worked and fixed percentage deductions. Such information was then extrapolated to those for whom no information was available. Plaintiff used information from Plaintiffs (Named, opt-in, and Rule 23 class members), as well as information provided by Defendants, to create a damages model. For the servers, because Defendants did not maintain complete or accurate records, Plaintiff calculated the average weekly hours for each sever using Plaintiffs' information, which came out to an estimated 53.23 hours weekly.<sup>5</sup> Using the data provided, Plaintiffs calculated the number of workweeks during each period worked by each individual or used the full two years if there was no employment period

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<sup>5</sup> *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1047-49 (2016) (finding Plaintiffs and class members are able to introduce mere statistical evidence to draw inferences for the hours worked of thousands of employees); *See, e.g., Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 687 (1946) (*Mumbower v. Callicott*, 526 F.2d 1183, 1186 (8th Cir. 1975) (relying on an employee's recollection is proper to avoid the occurrence of employers benefitting from their failure to maintain records); *Marroquin v. Canales*, 505 F. Supp. 2d 283, 297 (D. Md. 2007) (“[p]laintiffs’ burden of proof can be met “through an employee’s testimony giving his recollection of hours worked”); *Turner v. Human Genome Sciences, Inc.*, 292 F. Supp. 2d 738, 748 (D. Md. 2003) (same).

data or if the provided data was unreliable. The calculated average weeks worked for each server using Plaintiffs' information came out to 52.18 weeks. According to information available, there are approximately 653 individuals who would be entitled to receive payment under the settlement. Damages were calculated pursuant to a two-year statute of limitations as provided under federal wage and hour law. Thus, damages were assessed from May 17, 2016, through the present (if applicable).

First, Plaintiff calculated Plaintiffs' uncompensated hours for the relevant period, and then multiplied hours worked by \$7.25 because Plaintiff alleges servers worked for tips only, and time and one-half for hours over 40 per week. Plaintiff alleges that Defendants did not pay *any* wages, the tip credit could not be invoked, and Plaintiff necessarily used hours from Opt-in Plaintiffs' recollection of hours worked, along with approximate calculations of weeks worked within the relevant period and multiplied for the actual amount of wages owed to Plaintiffs. Then, Plaintiff calculated damages, as to the unlawful deductions of averaged three percent (3%) of daily total food and beverage sales for each shift and workweek. To accomplish this, and given Defendants' failure to maintain proper records, Plaintiff again relied on the recollection of Opt-in Plaintiffs, as to the average deduction Defendants would assess them per shift, then averaged these amounts to determine an average deduction for all Plaintiffs/Rule 23 class members per shift, and used this average and extrapolated for the entire class to determine the class-wide damages. The total estimated damages encapsulate the sum of wages owed, including damages for unlawful deductions, as well as interest at the rate set forth in N.C. Gen. Stat. § 24-1, and liquidated damages. While Defendants disagree with a number of statements made above, they agree that Plaintiff is entitled to calculate the base wages and Defendants do not object to the method used.

## **2. Settlement Payments**

Plaintiff will provide the Settlement Administrator with the calculation of unpaid wages for each member of a Settlement Class or Settlement Collective as described in paragraph 1, *supra*. Defendants will provide the Settlement Administrator and Class Counsel with the Collective/Class Members' Information. Members of the Settlement Class and Settlement Collective shall be entitled to receive payment under this Agreement, subject to the requirement of submitting a Claim Form as described in Part V.A.4 *infra*. Named Plaintiff shall receive her unpaid wages plus an equal amount of their liquidated damages as calculated by Class Counsel. Current Opt-in Plaintiffs (or individuals who have filed an opt-in form as of the date of the execution of this Agreement) shall receive a portion of their unpaid wages plus an equal amount of liquidated damages, as calculated by Class Counsel. Authorized Claimants, other than the Named Plaintiff and Current Opt-in Plaintiffs, who timely return the Claim Form will be entitled to receive a share of the Revised Gross Settlement Amount, proportionate to their alleged estimated actual damages as compared to the total alleged estimated damages for the entire Settlement Class and Settlement Collective. Specifically, funds will be allocated on a pro-rata basis.

### **3. Service Awards for the Named and Select Opt-in Plaintiffs**

In addition to the Settlement Payments due to Named and Select Opt-in Plaintiffs under the allocation formula, Plaintiff will request Named and Select Opt-in Plaintiffs' Service Awards, in the amount of \$50,000.00 for Named Plaintiff Laura Pontones, for her preliminary research efforts, engaging in numerous communications with Class Counsel months, prior to the initiation of this Action, tirelessly committing to this. Additionally, as the named Plaintiff in this action, she communicated and responded to putative plaintiffs' questions about the lawsuit and referred them to Class Counsel to better understand their rights. The Named Plaintiff was committed to this lawsuit and its continued litigation, (i.e., engaging in written discovery, preparing for



mediation and engaging in multiple settlement negotiations for the benefit of the Settlement Class and Settlement Collective, and providing a declaration in support of Plaintiffs' motion for conditional/class certification, and preparation and commitment to testifying in Court; for Opt-in Plaintiff, Angel Berber, \$30,000.00, for his committed efforts, constant communications during this litigation, assisting Class Counsel with preparing for mediation of the Settlement Class and Settlement Collective, and providing declarations, in support of Plaintiffs' motion for summary judgment, and preparation and commitment to testifying in Court against all Defendants; for Opt-In Plaintiff, Vicente Urbina Perez, \$30,000.00, for his committed efforts, constant communications during this litigation, assisting Class Counsel with critical details in preparing for mediation on the benefit of the Settlement Class and Settlement Collective, and preparation and commitment to testifying in Court against all Defendants; for Opt-in Plaintiff, Jackie Bullard, \$20,000.00, for her committed efforts, constant communications during this litigation, assisting Class Counsel with preparing for mediation and engaging in multiple settlement negotiations for the benefit of the Settlement Class and Settlement Collective, providing a declaration in support of Plaintiffs' motion for summary judgment, and preparation and commitment to testifying in Court against Defendants; for Opt-in Plaintiff, Tiana Locklear, \$20,000.00, for her committed efforts, constant communications during this litigation, assisting Class Counsel with preparing for mediation for the benefit of the Settlement Class and Settlement Collective, and preparation and commitment to testifying in Court against Defendants; for Opt-in Plaintiff, Imran Shafiq Khan, \$20,000.00, for his committed efforts, constant communications during this litigation, assisting Class Counsel with preparing for mediation for the benefit of the Settlement Class and Settlement Collective, and preparation and commitment to testifying in Court against Defendants; for Opt-in Plaintiffs Carolina San Augustin, Oscar Torres, Olivia Pineda, Sandy Johnson, and Kathi Johnson \$1,000

each, in addition to their wage-related damages, for their assistance during the litigation, including providing declarations and additional information at various stages during the litigation. Defendants agree not to oppose such a request. If approved by the Court, such Service Awards shall be paid from the Gross Settlement Amount.

**D. Tax Treatment**

The Settlement Fund shall be a qualified settlement fund under 26 U.S.C. § 468B. The parties agree that each Settlement Payment to be issued to each Authorized Claimant pursuant to this Agreement shall be separated into two amounts: 50 percent shall be allocated to the claims asserted in the Litigation for unpaid wages and 50 percent shall be allocated to the claims asserted in the Litigation for liquidated damages and interest. The portion of each Settlement Payment allocated to claims of unpaid overtime and other wages will be subject to authorized or required deductions, including but not limited to employee-paid payroll tax withholdings. However, Defendants will remain responsible for paying the employer's share of all required payroll taxes, and the amount of that share of the taxes is not included in the Gross Settlement Amount. The portion of each Settlement Payment allocated to liquidated damages and interest shall be reported as non-wage income to the recipient. Named and Opt-in Plaintiffs' Service Awards shall be reported as non-wage income to the recipient.

The Settlement Administrator will report the portion of the Settlement Payment made to each Authorized Claimant attributable to wages on an I.R.S. Form W-2, and the portion of the Settlement Payment attributable to non-wages and any Service Awards on an I.R.S. Form 1099. The Settlement Administrator shall be responsible for issuing the settlement checks, less required withholdings and deductions, to each Authorized Claimant and mailing the settlement checks, Form W-2s, and Form 1099s to each such individual. The Settlement Administrator shall be

responsible for paying and reporting the taxes on all amounts paid to Named Plaintiff, the Opt-in Plaintiffs and other Authorized Claimants to the appropriate taxing authorities. The Settlement Administrator shall also be responsible for calculating the employer's share of all required payroll taxes on the Settlement Payments, soliciting that amount from Defendants, and paying and reporting those taxes to the appropriate taxing authorities.

#### **IV. PLAINTIFF'S ATTORNEYS' FEES AND PLAINTIFF'S LITIGATION EXPENSES**

Plaintiff's Attorneys may make an application to the Court for an award of Plaintiff's Attorneys' Fees and an award of Plaintiff's Litigation Expenses. The amount of Plaintiff's Attorneys' Fees will not exceed one third of the Gross Settlement Amount. Such application shall be filed in connection with the Motion for Preliminary Approval of the Agreement. Defendants will not oppose any such application for fees or costs, provided that Plaintiff's Attorneys do not seek to recover attorneys' fees in excess of one third of the Gross Settlement Amount. Upon Defendants' payment of Plaintiff's Attorneys' Fees and Plaintiff's Litigation Expenses hereunder, Plaintiff's Attorneys, the Authorized Claimants and Settlement Class and Settlement Collective members shall release Defendants from any and all claims for attorneys' fees, expenses, and costs relating to this Litigation. Plaintiff's Attorneys' Fees, Plaintiff's Litigation Expenses, and the Settlement Expenses, shall be paid solely from the Gross Settlement Amount.

#### **V. SETTLEMENT ADMINISTRATION**

The parties agree that Angeion Group shall serve as the Settlement Administrator for this Settlement, if approved by the Court. To that end, as part of their Motion for Preliminary Approval, Plaintiff shall request that the Court approve Angeion to serve in this capacity and order Angeion to perform the specific tasks assigned to the Settlement Administrator in this Agreement

or by order of the Court, and only those tasks, unless otherwise agreed to by the parties. This shall include the issuance of the agreed Notice of Settlement, substantially in the form attached hereto as **Exhibit 2**, to all members of the Settlement Class and Settlement Collective defined herein after entry of the Order Granting Preliminary Approval of the settlement outlined in this Agreement.

**A. Settlement Administrator and Notice of Settlement**

**1. Providing and Updating Contact Information for Members of the Settlement Class and the Settlement Collective.**

Within seven (7) calendar days after the date the Court enters an Order Granting Preliminary Approval of this Agreement, Plaintiff will provide the Settlement Administrator with the names and last known mailing addresses for the Named and Opt-in Plaintiffs. Within that same time period, Defendants will provide the Settlement Administrator with the Collective/Class Member Information for all members of the Settlement Class and Settlement Collective. This information will remain confidential and will not be disclosed to anyone other than the Settlement Administrator and Class Counsel, with the exception of applicable taxing authorities or pursuant to express written authorization by the party providing the information or by court order. To ensure the Settlement Administrator has the most up to date addresses possible, the Settlement Administrator shall update all addresses the parties provide for the members of the Settlement Class and Settlement Collective using the national change of address database. In addition, if any Notice of Settlement is returned as undeliverable, the Settlement Administrator will perform a “skiptrace,” as described in Part V.A.3, *infra*. Any fees or costs incurred by the Settlement Administrator in updating addresses are Settlement Expenses and are included in the Gross Settlement Amount.

## **2. Confidentiality of Collective/Class Member Information.**

The Settlement Administrator will (i) hold the Collective/Class Member Information in strictest confidence and not disclose or divulge the Collective/Class Member Information to anyone except as provided above (ii) keep the Collective/Class Member Information in secure facilities; (iii) not post on its website the names or any other identifying information concerning the same, or the Agreement, and (iv) use the Collective/Class Member Information exclusively for or to assist in administration of this Settlement and for no other purpose. No copies or duplication of Collective/Class Member Information shall be retained by the Settlement Administrator.

## **3. Mailing the Notice of Settlement and Related Materials**

Within thirty (30) calendar days after the Court enters an Order Granting Preliminary Approval of the Agreement, the Settlement Administrator will mail the Notice of Settlement, a Claim Form, and a postage pre-paid return envelope in a single mailing to all members of the Settlement Class and Settlement Collective defined herein. The Settlement Administrator shall issue the Notice of Settlement by First Class U.S. Mail using envelopes that include the name and logo of Plaintiff's Attorneys' law firm, to ensure proper delivery and notice to all Members of the Settlement Class and Settlement Collective. However, Members of the Settlement Class and Settlement Collective may also contact the Settlement Administrator or Class Counsel to obtain the claim form. The Settlement Administrator shall also cause to be issued via text message a brief message.<sup>6</sup> The Notice and text message will contain a URL link, to a website maintained by Angeion for members of the Settlement Class and Settlement Collective. Along with the Court-

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<sup>6</sup> The proposed brief message to be sent via text message is "You may be eligible to participate in a settlement between servers and San Jose Restaurants for unpaid wages. Visit [URL] for details." The Parties understand changes may be needed to the proposed text, given character constraints and the unknown length of the URL.

approved Notice of Settlement, the Settlement Administrator shall mail the Claim Form that members of the Settlement Class and Settlement Collective are required to complete in order to receive Settlement Payments, as discussed in Part III.B, *supra*, and Part V.A.3-4, *infra*, and a postage pre-paid return envelope. If any Notice is returned undeliverable, the Settlement Administrator will perform a “skiptrace” and make reasonable efforts to find an updated address and re-send the notice via U.S. mail.

#### **4. Responses to the Notice of Settlement**

The Notice of Settlement will inform the Settlement Class and Settlement Collective that any member of a Settlement Class or Settlement Collective who is not a Named Plaintiff or Opt-in Plaintiff must return a Claim Form, a copy of which is included as **Exhibit 1**, to receive a Settlement Payment. Members of the Settlement Class and Settlement Collective shall have 45 calendar days following the mailing of the Notice to postmark or submit online via the Settlement Administrator-maintained website the Claim Form to the Settlement Administrator. In the event a member of the Settlement Class or Settlement Collective submits the Claim Form in a timely manner (i.e., postmarked or submitted online within the 45 days of the mailing of the Notice of Settlement), but the Claim Form is missing a signature, the Settlement Administrator will (no later than seven (7) calendar days of receipt of the unsigned form) return the deficient document to the member with a letter explaining the signature is required and reminding the individual that the Claim Form must be submitted by the end of the 45-day period. The Settlement Administrator’s decision on whether a form has been “signed” shall be binding on the parties and the individual member of the Settlement Classes.

The Notice of Settlement will also explain the option for members of the Settlement Class who are not Named or Opt-In Plaintiffs to opt out of the Settlement. Members of the Settlement

Class who are not Named or Opt-In Plaintiffs and who wish to opt out of the Settlement must submit a written statement expressly asserting that he or she wishes to be excluded from the settlement. Such written statements should state at the top of the letter “Request for Exclusion from Settlement in *Pontones et al. v. San Jose Restaurants, Inc., et al.*, CA No. 5:18-cv-219-D,” and should include the name, address, telephone number, and signature of the member requesting exclusion from the Settlement. All written requests for exclusion must be returned by First-Class U.S. Mail to the Settlement Administrator and must be postmarked no later than 45 calendar days from the postmark of the Notice of Settlement sent to members of the Settlement Class and Settlement Collective. Any member of the Settlement Class who requests exclusion from the settlement will not be eligible to receive a Settlement Payment and cannot object to the Settlement. In the event that any members of the Settlement Class timely and properly submit a written request for exclusion, and also timely submit the required Claim Form necessary to receive a Settlement Payment, or also timely submit an objection to the Settlement, the Settlement Administrator shall contact such members, inform them that they cannot both request exclusion from the Settlement and request a Settlement Payment and/or object to the Settlement, and shall ask such members which option they wish to pursue. Any member of the Settlement Class who properly and timely requests exclusion from the Settlement will not be legally bound by the terms of the Agreement or the final order approving the Settlement. In contrast, any member of the Settlement Class who does not return a valid and timely written request for exclusion will be bound by all terms of the Agreement and Order Granting Final Approval, regardless of whether they have objected to the Settlement.

Additionally, the Notice of Settlement will inform the Settlement Class and the Settlement Collective of their right to object to the Settlement and that to do so they must file with the Court,

and serve on counsel for the parties, either a written statement objecting to the Settlement or a written notice of their intention to appear and object at the Final Settlement Hearing. Such written statement or notice must be filed and served within 45 calendar days after the mailing date of the Notice of Settlement. Members of the Settlement Class or Settlement Collective who fail to timely file and serve written objections or notice of intention to appear and object in the manner specified above will be deemed to have waived any objections and will be foreclosed from making any objection to the Settlement, whether by appeal or otherwise.

Within sixty (60) calendar days of the mailing of the Notice of Settlement, the Settlement Administrator shall provide to counsel for both parties a declaration from an appropriate agent or agents working for it, stating under penalty of perjury: (a) a listing of the total number of all individuals (identified by a unique identifier), who were mailed Notice; (b) how many individuals timely and properly submitted the required Claim Form to receive a Settlement Payment and, if so, the amount of that payment; (c) the identity of all such individuals who validly and timely requested exclusion from the settlement; and (d) whether each such individual was a member of the Settlement Collective, and/or member of a Settlement Class. The names and addresses of those individuals who were issued Notice shall be maintained in a confidential manner, and used solely to confirm to individuals who inquire whether or not they were mailed Notice.

#### **5. Settlement Administrator's Website**

The Settlement Administrator shall maintain a website from the date that the Notice of Settlement is mailed until at least 180 calendar days following the date of the Final Settlement Hearing. This website shall: (i) provide a brief summary of who is to receive the Notice of Settlement and the purpose of the Notice of Settlement; (ii) provide members of the Settlement Class and Settlement Collective with access to downloadable copies of the Notice of Settlement and the Claim



Form they are required to submit in order to receive a Settlement Payment; (iii) provide a mechanism for members of the Settlement Class and Settlement Collective to submit their Claim Form; and (iv) provide contact information for the Settlement Administrator. The parties shall agree as to the URL and specific language and formatting of that website before it is operational.

**B. Funding of Gross Settlement Amount and Payments from Gross Settlement Amount.**

**1. Defendants' Payment of the Gross Settlement Amount**

No later than five (5) calendar days after the Effective Date, the Settlement Administrator shall establish the Settlement Fund, which will be maintained by the Settlement Administrator.

**2. Timing of Defendants' Initial Payment into the Settlement Fund**

**a. Initial Payment.** Following the Settlement Effective Date or from the date the Court enters final approval of the Settlement Agreement, Defendants will make an Initial Payment toward the Gross Settlement Amount of **TWO HUNDRED THOUSAND DOLLARS AND NO CENTS (\$200,000.00)**. This amount will constitute partial payment for Plaintiff's Attorneys' Fees, Litigation Expenses, and/or Settlement Expense. The remaining amount of the Gross Settlement Fund will be **ONE MILLION THREE HUNDRED THOUSAND (\$1,300,000.00)**.

**b. Payment of Remaining Balance.** Defendants shall make monthly payments of at least, **THIRTY-SIX THOUSAND ONE HUNDRED FORTY-TWO DOLLARS AND EIGHTY-SIX CENTS (\$36,142.86)** per month, beginning on the first day of the first month, following the Effective Date, or within thirty (30) calendar days following Defendants' initial payment of \$200,000.00, whichever is later, until the entire remaining balance of \$1,300,000.00 is paid in full; however, should any money revert to Defendants, the Settlement

Administrator will determine the amount reverting to the Defendants not to exceed \$300,000.00 and will inform Defendants that the Settlement Fund is fully paid and that Defendants may stop payments at that time. Defendants shall deposit into the Settlement Fund the required monthly payments of the Gross Settlement Amount, to satisfy the payment of Settlement Payments to Authorized Claimants who submitted Claim Forms, the approved and remaining Plaintiffs' Attorneys' Fees and Plaintiffs' Litigation Expenses, and the approved Service Awards.

**3. Settlement Administrator's Payment of Plaintiffs' Attorneys' Fees and Plaintiffs' Litigation Expenses.**

Following Defendants' Initial Payment as stated *supra* in Part V(B)(2)(b), the Settlement Administrator will issue the first check of \$200,000 to Class Counsel, as partial payment for Plaintiff's Attorneys' fees and litigation expenses. Plaintiff's Attorneys' Fees and Plaintiff's Litigation Expenses, as authorized by the Court, will be paid by the Settlement Administrator from the Settlement Fund, within five (5) calendar days of when Defendants' Initial Payment of the portion of the Gross Settlement Amount described in Part V(B)(2)(b) is received by the Settlement Administrator. The Settlement Administrator will continue to make payments toward the remaining balance of Plaintiff's Attorney's Fees and Plaintiff's Litigation Expenses on an either a semi-annual or annual basis, until the completion of Plaintiff's Attorneys' fees and Plaintiff's Litigation Expenses have been paid in its entirety. The Settlement Administrator will issue an I.R.S. Form 1099 to Plaintiffs' Attorneys' firm for the payments to Plaintiff's Attorneys' firm. Plaintiff's Attorneys' firm will provide the Settlement Administrator with completed I.R.S. Form W-9s prior to the deadline for the Settlement Administrator to pay Plaintiff's Attorneys' Fees and Plaintiffs' Litigation Expenses.

**4. Settlement Administrator's Issuance of Named and Select Opt-in Plaintiffs' Service Awards.**

The Named and Select Opt-in Plaintiffs' Service Awards, if authorized by the Court, will be paid by the Settlement Administrator from the Gross Settlement Amount consistent with Part III(C)(3) *supra*.<sup>7</sup> Following Defendants' monthly payments into the Gross Settlement Fund, the Settlement Administrator will pay the Named and Select Opt-In Plaintiffs' Service Awards as ordered by the Court, on either a semi-annual or annual basis, until the completion of Named and Select opt-in Plaintiffs' Service Award amounts have been paid in their entirety. At an appropriate time, following the issuance of such Named and Select Opt-in Plaintiffs' Service Awards, the Settlement Administrator will issue to each recipient an I.R.S. Form 1099 that accounts for the payment of the Named and Select Opt-In Plaintiffs' Service Awards.

**5. Settlement Administrator's Issuance of Settlement Payments to Authorized Claimants.**

If authorized by the Court, Settlement Payments will be paid by the Settlement Administrator from the Gross Settlement Fund to Named and Opt-in Plaintiffs, along with Authorized Claimants consistent with Part III(C)(1)-(2). The Settlement Administrator will pay the Authorized Claimants, following Defendants' payments into the Settlement Fund on either a semi-annual or annual basis, until the completion of Authorized Claimants Settlement Payments have been completed in their entirety. The Settlement Administrator will make Settlement Payments via check, sent by U.S. Mail to each Authorized Claimant. Those members of the Settlement Class who have properly and timely opted out of the Settlement are not Authorized

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<sup>7</sup> Named Plaintiff, Laura Pontones, will receive \$50,000 as a service award for her dedication and efforts; Opt-in Angel Berber will receive \$30,000 000 as a service award for his dedication and efforts; Opt-in Plaintiff Vicente Urbina will receive \$30,000 as a service award for his dedication and efforts; Opt-in Plaintiff Jackie Bullard will receive \$20,000 as a service award for her dedication and efforts; Opt-in Plaintiff Tianya Locklear will receive \$20,000 as a service award for her dedication and efforts; and Opt-in Plaintiff, Imran Shafiq Khan will receive \$20,000 as a service award for his dedication and efforts; and Opt-in Plaintiffs Carolina San Augustin, Oscar Torres, Olivia Pineda, Sandy Johnson, and Kathi Johnson will apply for a service award of \$1,000 each. Named and Select Optin Plaintiffs will receive this service award in addition to their wage-related damages

Claimants and are not entitled to a Settlement Payment. Additionally, any member of the Settlement Class or Settlement Collective who is not a Named Plaintiff or Opt-in Plaintiff and who did not timely return a Claim Form is not an Authorized Claimant and is not entitled to any Settlement Payments. The Settlement Administrator's determination of whether a member of the Settlement Class or Settlement Collective is an Authorized Claimant will be conclusive and binding on all members of a Settlement Class or Settlement Collective, subject to the dispute resolution provisions of this Agreement as set forth in Part VI.B, *infra*.

Each Authorized Claimant who is entitled to receive a Settlement Payment will have 180 calendar days from the date on which the settlement check for the Settlement Payment is mailed to cash his or her settlement check. If any settlement check is not cashed in that period of time, that settlement check will be voided, and a stop-payment will be placed on the settlement check. In such event, the Authorized Claimants whose Settlement Payment has not been cashed will remain in the Gross Settlement Fund, until the Authorized Claimant or next of kin is found and claims the Settlement Payment.

Neither Defendants, Defense Counsel, Plaintiffs' Attorneys, Class Counsel, Plaintiff, nor the Settlement Administrator shall have any liability for lost or stolen settlement checks, for forged signatures on settlement checks, or for unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event an Authorized Claimant notifies the Settlement Administrator that he or she believes that a settlement check has been lost or stolen, the Settlement Administrator shall immediately stop payment on such check. If the settlement check in question has not been cashed prior to the stop payment order, the Settlement Administrator will issue a replacement check, from which the fees associated with the stop payment order will first be deducted. Any Authorized Claimant who receives a re-issued check will have either 45 calendar days to cash such

re-issued check from the date of its mailing, or 180 days from the date of the original check, whichever is longer. If any settlement check is not cashed in that period of time, that settlement check will be voided. The Settlement Administrator will issue to each Authorized Claimant the appropriate tax forms from the Qualified Settlement Fund. These tax forms may be issued and mailed to Authorized Claimants at the same time as the Settlement Payment is mailed, or at an appropriate time thereafter.

**6. Payment of the Settlement Administrator's Expenses**

The portion of the Settlement Expense required by the Settlement Administrator to process the initial mailing of the Notice and Claim Forms and the setting up of the website will be paid by Plaintiffs' Counsel as part of Plaintiff's Litigation Expenses. The remaining Settlement Expense will be paid solely from the Gross Settlement Fund or as part of Defendants' \$200,000, Initial Payment. Disputes of any kind relating to the Settlement Administrator will be resolved pursuant to the dispute resolution procedures set forth in Part VI.B, *infra*, if they cannot be resolved informally by the parties. The Settlement Administrator will regularly report to counsel, in written form, the substance of the work performed, including all amounts paid under this Agreement.

**C. Termination of the Settlement Agreement**

**1. Grounds for Settlement Termination**

This Agreement may be terminated on the following grounds:

(a) Plaintiffs' Attorneys or Defense Counsel may terminate the Agreement if the Court declines to enter an Order Granting Preliminary Approval or an Order Granting Final Approval in substantially the same form as that submitted by the parties, the Agreement does not become final for any other reason, or a Court of Appeals reverses the entry of an Order Granting Final Approval or a final judgment in this Litigation, provided that the parties agree to work cooperatively and in

good faith to address and resolve any concerns identified by the Court in declining to enter an Order Granting Preliminary Approval, an Order Granting Final Approval, or a judgment in the form submitted by the parties.

## **2. Procedures for Termination**

To terminate this Agreement on one of the grounds specified above, the terminating counsel (i.e., Plaintiffs' Attorneys or Defense Counsel) shall give written notice to the opposing counsel no later than fifteen (15) business days after the Court acts.

## **3. Effect of Termination**

In the event that this Agreement is canceled, rescinded, terminated, voided, or nullified, however that may occur, or the Settlement of the Litigation is barred by operation of the law, is invalidated, is not approved or otherwise is ordered not to be carried out by any court:

(a) The Agreement shall be terminated and shall have no force or effect, and no party shall be bound by any of its terms;

(b) Defendants shall have no obligation to make any payments to any Plaintiff, any member of the Settlement Class or Settlement Collective, or Plaintiffs' Attorneys, but the parties shall be jointly and equally responsible for paying the Settlement Administrator for services rendered up to the date the Settlement Administrator is notified that the Agreement has been terminated;

(c) Any Order Granting Preliminary Approval, Order Granting Final Approval and/or judgment, including any order of class certification, shall be vacated;

(d) The Agreement and all negotiations, statements, and proceedings relating thereto, shall be without prejudice to the rights of any of the parties, all of whom shall be restored to their respective positions in the Action prior to the Settlement;

(e) Neither this Agreement, nor any ancillary documents, actions, statements, or filings in furtherance of settlement (including all matters associated with the mediation) shall be admissible or offered into evidence in the Litigation or any other action.

## **VI. OTHER SETTLEMENT PROVISIONS**

### **A. Releases of Claims**

To settle the Litigation, and as consideration for Defendants's payment of the Gross Settlement Amount, and the other good and valuable consideration described herein, Plaintiffs agree to the following releases of claims:

#### **1. Description of released claims**

As of the Effective Date, Named Plaintiff, Select Opt-In Plaintiffs, and Authorized Claimants and Members of a Settlement Class ("Releasers") hereby forever completely settle, compromise, release, and discharge Defendants from any and all past and present matters, disputes, claims, demands, rights, liabilities, expenses, damages, losses of any kind, and causes of action, whether at common law, pursuant to statute, ordinance, or regulation, in equity or otherwise, and whether arising under federal, state, or other applicable law, which any Releaser has or might have, known or unknown, asserted or unasserted, of any kind whatsoever, that relate to hours worked or the payment of wages arising on or before the date of the Court's final approval of the settlement, except to the extent that any such claim may not be waived as a matter of law. The claims released by Releasers specifically include without limitation (i) any and all claims asserted in the Litigation; (ii) any and all claims for unpaid wages, minimum wages, overtime, late payment of wages, tips received, deductions to wages made, retaliation for complaining about wages or for asserting wage-related claims and/or any other claims of any kind, or any other wage-related or recordkeeping-related claims, damages or relief of any kind, including but not limited to the federal

FLSA, 29 U.S.C. § 201, *et seq.*, any and all claims under North Carolina state law, including but not limited to the North Carolina Wage and Hour Act (“NCWHA”), N.C. Gen. Stat. § 95-25.1, *et seq.*; or any other statutes and/or regulations regulating hours of work, wages, the payment of wages, wage-related or recordkeeping-related claims, the payment of minimum wages, and/or the payment of overtime compensation; (iii) any and all claims under state and federal law for earned wages, overtime, and/or missed or interrupted meal breaks, including such claims for breach of express contract or labor agreement, implied contract, money had and received in *assumpsit*, *quantum meruit*/unjust enrichment, fraud, negligent misrepresentation, equitable estoppel, promissory estoppel, conversion, and failure to keep accurate records. The settlements, compromises, releases, and discharges described in this paragraph shall extend to any such claims that arose at any time up to the date on which the Court grants final approval of the settlement. The settlements, compromises, releases, and discharges described in this paragraph have no application to any claim by any Releasor, except for Named and Opt-in Plaintiff (who have received service awards and therefore do release any and all claims whatsoever), for discrimination in violation of state or federal law, or any claim of any type arising on or after the date on which the Court grants preliminary approval of this Agreement.

In addition, the Named Plaintiff and Select Opt-in Plaintiffs will release all known and unknown claims of any type against the Defendants, except to the extent that any such claim may not be waived as a matter of law. This Release has no application to any claim of any type arising on or after the Effective Date of this Agreement.

**2. Claims Released by Settlement Class Members Who Do Not Become Authorized Claimants.**



Members of the Settlement Class who do not return a Claim Form (and who are not Named Plaintiff or Select Opt-in Plaintiffs) will release any claims they have against Defendants under the NCWHA relating to the payment or non-payment of wages.

**3. Recognition of Binding Nature of Agreement, Orders, Settlement and Judgment.**

The parties agree that, as of the Effective Date, all Authorized Claimants and Members of the Settlement Classes will be bound by the terms and conditions of this Agreement, any order by the Court (or any other court taking jurisdiction of the Litigation) granting final approval to the Agreement and this Settlement, and the final judgment in the Litigation.

**B. Acceleration Clause and/or Confession of Judgment**

As security for the payment of the foregoing amount, Defendants will execute, contemporaneously with this Agreement, a Confession of Judgment in the amount of \$1,500,000.00, substantively in the form of attached as **Exhibit 3**.<sup>8</sup> Plaintiff's counsel will hold in trust and maintain possession and control and will not file the Confession of Judgment with the appropriate court until and unless there is a default under the terms of this Agreement and Defendants are unable to cure such default pursuant to the terms of this paragraph. If any of the payments under this Agreement are more than five (5) business days overdue, Named Plaintiff and/or her attorney(s) may send a demand letter via certified mail to Counsel for Defendants as stated *infra* in Part VI(K), as well as to the Registered Agent for Defendants, requesting immediate payment of the overdue amount. Defendants will then have thirty (30) business days to pay any overdue payments under the Agreement that are described in the demand letter. If Defendants do not cure the default within thirty (30) business days following receipt of the

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<sup>8</sup> The Confession of Judgment will be executed By Defendants, simultaneously with the Settlement Agreement, and will be held at Plaintiff's Counsel's office.

certified letter, the parties agree that the Confession of Judgment in favor of Plaintiffs may be entered into the and filed with a court of competent jurisdiction, which judgment shall be for an amount equal to \$1,500,000.00 less any amounts that have been paid by Defendants pursuant to the terms of this Agreement. The Confession of Judgment may be entered by the court without the need for a motion to be filed by Plaintiff (or Plaintiff can file an unopposed motion for entry of judgment if such a motion is necessary). Upon receipt of the final payment from Defendants, Class Counsel will return the Original Confession of Judgment to Defendants' Counsel.

**C. Defendants' Commitment to Retaining An Independent Wage and Hour Consultant to Confirm Future Compliance**

Defendants agree to ensure future compliance with the FLSA and the NCWHA. Defendants commit to retaining an independent Wage and Hour Consultant, within ninety (90) days of the Court's final approval of the Settlement Agreement. The parties agree to confer regarding such individual(s), and to the extent the parties are unable to reach an agreement on a neutral independent consultant, the parties will submit one name per party to Magistrate Judge James Gates within fifteen (15) days after the Court grants preliminary approval of the Settlement Agreement. Upon completion of such an audit by Defendants, the consultant will provide notice of the same to Class Counsel.

**D. Dispute Procedure; Retention of Court Jurisdiction Over Settlement**

Except as otherwise set forth herein, in the event of a dispute concerning the proper interpretation of the Agreement, the enforcement of this Agreement, the parties' rights or obligations under the Agreement, or any alleged breach of the terms of the Agreement, notice must be mailed to counsel for the opposing party as provided in Part VI(L), *infra* within fifteen (15) calendar days after the party was made aware of the dispute. After receipt of such notice, the

parties shall meet and confer in a good faith attempt to resolve the matter for ten (10) calendar days. The Court shall retain exclusive jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of the Agreement and to hear and adjudicate any dispute or litigation arising from the Agreement. All Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the terms of this Agreement.

**E. Assignment of Claims**

Defendants, Defense Counsel, Plaintiffs' Attorneys, and Plaintiffs represent, covenant and warrant that they have not directly or indirectly, assigned or transferred to any person or entity any portion of any liability, claim, demand, action, cause of action, or rights herein released and discharged except as set forth herein.

**F. Binding Effect**

This Agreement is binding upon and shall inure to the benefit of the parties to this Agreement. Without limiting the foregoing, this Agreement specifically shall inure to the benefit of Defendants as well as their past, present and future subsidiaries, affiliated companies, divisions, successors, predecessors, affiliates and assigns and all of their respective current or former owners, officials, directors, officers, shareholders, agents, employee benefit plans, plan administrators, representatives, employees, and attorneys. Also without limiting the foregoing, this Agreement shall be binding upon the spouses, children, heirs, assigns, administrators, executors, beneficiaries, conservators, successors of Named Plaintiff and Opt-in Plaintiffs. This Agreement is binding and effective if signed by Defendants and Named Plaintiff.

**G. Construction and Interpretation**

The parties hereto agree that the terms and conditions of the Agreement are the result of lengthy, intensive, arms-length negotiations among the parties, through counsel, and the

Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or his, her, or its counsel participated in the drafting of the Agreement.

Paragraph, part and section titles are inserted as a matter of convenience for reference, and in no way define, limit, extend, or describe the scope of this Agreement or of its provisions. With the exception of Part I, *supra*, each term of this Agreement is contractual and not merely a recital.

All exhibits attached to the Agreement, and referenced herein, are incorporated into the Agreement by such references and are a material part of this Agreement. Any notice or other exhibit that requires approval of the Court must be approved without material alteration from its current form for this Agreement to become effective.

This Agreement shall be governed by and enforced in accordance with the laws of the State of North Carolina.

**H. Modification**

This Agreement, and any of its parts, may be amended, modified, or waived only by an express written instrument signed by all signatories below or their successors-in-interest.

**I. Counterparts**

This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

**J. No Reliance on Representations or Extrinsic Evidence.**

Except as expressly provided herein, this Agreement has not been executed in reliance upon any other oral or written representations or terms, and no such extrinsic oral or written representations or terms shall modify, vary or contradict its terms. In entering into this Agreement,

the parties agree that this Agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence.

**K. Parties Shall Cooperate to Effectuate Settlement**

The parties shall cooperate with each other to achieve the purpose of this Agreement, and shall execute such other and further documents and take such other and further actions as may be necessary or convenient to effect the transaction described herein.

**L. Notices, Demands, and Communications Concerning the Settlement**

Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by First Class U.S. Mail, addressed as follows:

To Plaintiffs, Named Plaintiff, Opt-in Plaintiffs, Members of the Settlement Class or Settlement Collective, and/or Plaintiffs' Attorneys:

Gilda Adriana Hernandez, Esq.  
Charlotte C. Smith, Esq.  
**THE LAW OFFICES OF GILDA A. HERNANDEZ, PLLC**  
1020 Southhill Drive, Suite 130  
Cary, NC 27513  
ghernandez@gildahernandezlaw.com  
csmith@gildahernandezlaw.com

To Defendants and/or Defense Counsel:

Henry W. Jones, Jr.  
Lori Peoples Jones  
**JORDAN PRICE WALL GRAY JONES & CARLTON, PLLC**  
P.O. Box 10669  
1951 Clark Avenue  
Raleigh, NC 27604  
(919) 828-2501  
(919) 834-8447 (fax)  
[hjones@jordanprice.com](mailto:hjones@jordanprice.com)  
[ljones@jordanprice.com](mailto:ljones@jordanprice.com)

James Larry Stine  
**WIMBERLY, LAWSON, STECKEL, SCHNEIDER, & STINE, P.C.**  
3400 Peachtree Rd., NE  
Suite 400, Lenox Towers  
Atlanta, GA 30326  
(404) 365-0900  
(404) 261-3707  
jls@wimlaw.com

**M. Authorization**

Plaintiff's Attorneys warrant and represent that they are fully authorized by Plaintiffs, and Defense Counsel warrants and represents that they are fully authorized by Defendants, to take all appropriate action required or permitted by this Agreement. The parties agree to fully cooperate with each other to accomplish the terms of the Settlement and this Agreement, including, but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of the Agreement. The parties to the Agreement shall use their best efforts, including all efforts contemplated by the Agreement and any other efforts that may become necessary by order of the Court, or any other court taking jurisdiction over the Litigation, or otherwise, to effectuate the Agreement and the terms set forth herein.

**N. Dismissal**

Upon entry of an Order Granting Final Approval, Plaintiffs agree to execute all documents necessary to dismiss with prejudice any and all claims raised against Defendants in the Litigation. But if an appeal leads to reversal of approval of this Agreement, then the parties agree that the claims will be reinstated and Litigation shall continue.

**O. Reasonableness of Settlement**

The parties believe that this is a fair, reasonable, and adequate settlement and have arrived at this Settlement through arms-length negotiations, taking into account all relevant factors, present and potential.

**P. Integration Clause**


This Agreement (including its exhibits) constitutes the entire agreement of the parties and fully supersedes any and all prior agreements or understandings, written or oral, between the parties pertaining to the subject matter hereof, including, but not limited to, any and all written and oral agreements reached between the parties during the mediation that resulted in this Agreement.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement:

Dated: Mar 25, 2022

  
By: Laura Pontones (Mar 25, 2022 16:09 EDT)  
Named Plaintiff Laura Pontones

Dated: 3/25/2022

  
By: Gilda A. Hernandez  
Gilda A. Hernandez, Esq.  
Charlotte C. Smith, Esq.  
**LAW OFFICES OF GILDA A. HERNANDEZ, PLLC**  
Attorneys for Plaintiffs

Dated: 3/24/2022

DocuSigned by:  
  
By: Alberto Flores  
Defendant, Alberto Flores

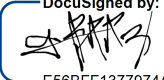
Dated: 3/23/2022

DocuSigned by:  
Hector Flores  
By: 4BC3AE8913F64FE...  
Defendant, Hector Flores

Dated: 3/23/2022

DocuSigned by:  
JOSUE FLORES  
By: 8E3424F7C3D542F...  
Defendant, Josue Flores

Dated: 3/23/2022

DocuSigned by:  
  
By: E56BFF1377974A8...  
Defendant, Edgardo Flores

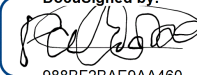
Dated: 3/23/2022

DocuSigned by:  
Jose Perez  
By: E56BFF1377974A8...  
Defendant, Jose Perez

Dated: 3/24/2022

DocuSigned by:  
Vicente P  
By: 8E3424F7C3D542F...  
Defendant, Vicente Perez


Dated: 3/23/2022

DocuSigned by:  
  
By: 988BE2BAE9AA460...  
Defendant, Pablo Meza

Dated: 3/23/2022

DocuSigned by:  
JOSUE FLORES  
By: 8E3424F7C3D542F...  
Defendant, San Jose Management, Inc.

Dated: 3/23/2022

DocuSigned by:  
  
By: E56BFF1377974A8...  
Defendant, San Jose Mexican Restaurant #2 of  
Lumberton, Inc.

Dated: 3/23/2022

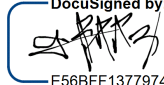
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JOSUE FLORES  
By: 8E3424F7C3D542F...  
Defendant, San Jose Mexican Restaurant of  
Elizabethtown, Inc.



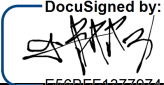
Dated: 3/23/2022 \_\_\_\_\_

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By: \_\_\_\_\_  
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Defendant, San Jose Mexican Restaurant of N.C., Inc.

Dated: 3/23/2022 \_\_\_\_\_

DocuSigned by:  
  
By: \_\_\_\_\_  
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Defendant, San Jose Mexican Restaurant of Oak Island, Inc.

Dated: 3/23/2022 \_\_\_\_\_

DocuSigned by:  
  
By: \_\_\_\_\_  
E56BFF1377974A8...  
Defendant, San Jose Mexican Restaurant of Pembroke, NC, Inc.

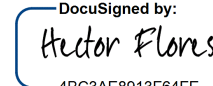
Dated: 3/23/2022 \_\_\_\_\_

DocuSigned by:  
  
By: \_\_\_\_\_  
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Defendant, San Jose Mexican Restaurant of Raleigh, Inc.

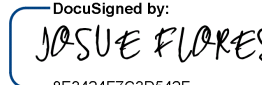
Dated: 3/23/2022 \_\_\_\_\_

DocuSigned by:  
  
By: \_\_\_\_\_  
8E3424F7C3D542F...  
Defendant, San Jose Mexican Restaurant of Shallotte, Inc.

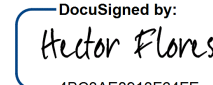
Dated: 3/23/2022 \_\_\_\_\_

DocuSigned by:  
  
By: \_\_\_\_\_  
4BC3AE8913F64FE...  
Defendant, San Jose of Rocky Mount #2 Inc.

Dated: 3/23/2022 \_\_\_\_\_

DocuSigned by:  
  
By: \_\_\_\_\_  
8E3424F7C3D542F...  
Defendant, San Jose of Zebulon, Inc.

Dated: 3/23/2022 \_\_\_\_\_

DocuSigned by:  
  
By: \_\_\_\_\_  
4BC3AE8913F64FE...  
Defendant, San Jose of Roanoke Rapids, Inc.

Dated: 3/23/2022

DocuSigned by:  
JOSUE FLORES  
8E3424F7C3D542F...  
By: \_\_\_\_\_  
Defendant, San Jose Wakefield, Inc

Dated: 3/23/2022

DocuSigned by:  
JOSUE FLORES  
8E3424F7C3D542F...  
By: \_\_\_\_\_  
Defendant, Plaza Azteca Raleigh, Inc.

Dated: 3/23/2022

DocuSigned by:  
Hector Flores  
4BC3AE8913F64FE...  
By: \_\_\_\_\_  
Defendant, San Jose Restaurant, Incorporated

Dated: 3/25/2022

DocuSigned by:  
Larry Stine  
4D8D36A98D804EC...  
By: \_\_\_\_\_  
James Larry Stine, Esq.  
**WIMBERLY, LAWSON, STECKEL,  
SCHNEIDER, & STINE, P.C.**  
Attorney for Defendants

**A-1**  
**PROPOSED CLAIM**  
**FORM**

Pontones v. San Jose Restaurant, Incorporated, et al.  
Settlement Administrator  
c/o [Name of Settlement Administrator]  
\*\*\*\*\*  
\*\*\*\*\*, \*\* \*\*\*\*\*\_\*\*\*\*

Pontones v. San Jose Rest., Inc., et al.  
Case No. 5:18-cv-219-D  
United States Court for the Eastern  
District of North Carolina

Estimated Award (before taxes): \$ \_\_\_\_\_

[Class Member Name]  
[Mailing Address 1]  
[Mailing Address 2]  
[City, State ZIP]

### **CLAIM FORM AND CONSENT TO JOIN**

In order to receive a payment under the Settlement Agreement, please complete and timely submit this Claim Form to the Settlement Administrator. To be considered timely, these forms must be postmarked by no later than [MAIL DATE + 45] if returned by U.S. Mail or received by [MAIL DATE + 45] if returned by fax or e-mail. **SEND COMPLETED CLAIM FORMS BY {DATE} TO:**

*Pontones v. San Jose Restaurant, Inc., et al Settlement Administrator c/o*  
**Claims Administration**

\*\*\*\*\*

\*\*\*\*\*, \*\* \*\*\*\*\*\_\*\*\*\*

Fax: (\*\*\*) \*\*\*\_\*\*\*\* E-mail: [EMAIL FOR SETTLEMENT ADMINISTRATOR]

I, hereby opt into this settlement pursuant to Section 216(b) of the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* (“FLSA”), authorize Class Counsel to represent me in this Settlement, and agree to waive and release any and all claims under the federal Fair Labor Standards Act (“FLSA”), North Carolina Wage and Hour Act (“NCWHA”), and any other wage-related claims, laws, and regulations, from the start of my employment with San Jose Restaurants (“San Jose”) through the Effective Date of the settlement, including, but not limited to, claims for back pay, liquidated damages, penalties, interest, and attorneys' fees, costs, and expenses. Further:

- I wish to participate in the parties’ proposed settlement if approved by the Court.
- I understand that if the settlement is approved by the Court, I will receive a check totaling approximately \$ \_\_\_\_\_ before taxes.
- I understand that I must keep the Settlement Administrator informed of any change in my address. If I do not do so, I understand that I may not receive any settlement payment that I might otherwise be entitled to receive.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Use back of form for address updates**

**In order to receive a settlement payment, you must submit a signed claim form by {date}**

*Pontones v. San Jose Restaurant, Incorporated, et al.*

*Settlement Administrator*

c/o [Name of Settlement Administrator]

\*\*\*\*\*

\*\*\*\*\* , \*\* \*\*\*\*\*\_\*\*\*\*

*Pontones v. San Jose Rest., Inc., et al.*

Case No. 5:18-cv-219-D

United States Court for the Eastern

District of North Carolina

Name and Address Updates:		
<i>If your name or address is different from what is printed above, please provide updated information below:</i>		
First Name	MI	Last Name
Mailing Address		Apt/Unit
City	State	Zip Code

**Submit signed claim form and any address updates to:**

*Pontones v. San Jose Restaurant, Inc., et al Settlement Administrator c/o*

**Claims Administration**

\*\*\*\*\*

\*\*\*\*\* , \*\* \*\*\*\*\*\_\*\*\*\*

Fax: (\*\*\*) \*\*\*-\*\*\*\* E-mail: [EMAIL FOR SETTLEMENT ADMINISTRATOR]

**A-2**  
**PROPOSED NOTICE**

**NOTICE TO CLASS MEMBERS RE: PENDENCY OF A CLASS ACTION  
AND HEARING ON PROPOSED SETTLEMENT**

*Pontones v. San Jose Restaurant, Incorporated, et al.*

U.S. District Court, Eastern District of North Carolina, Case No. 5:18-CV-219-D

**IF YOU WORKED AS A SERVER AT A SAN JOSE RESTAURANT, PLEASE READ THIS NOTICE  
ABOUT YOUR RIGHTS.**

- A court authorized this notice. This is not a solicitation from a lawyer.
- A former server who worked for San Jose at two of their Raleigh, North Carolina, locations has sued San Jose, claiming San Jose did not pay servers hourly wages, including regular straight-time and premium overtime wages, for all hours worked, and improperly took deductions from servers' tips.
- The Court has not yet addressed whether San Jose did anything wrong, and San Jose denies any wrongdoing. The parties have proposed a settlement of this case, and the Court has authorized notice of that proposed settlement to people who may be eligible to participate in it. San Jose records indicate you are entitled to receive notice and, if you return the claim form, would receive a monetary payment under the settlement.
- *Your legal rights are affected whether you act or not.* These options are explained below.

<b>HERE ARE YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>RETURN A CLAIM FORM, RECEIVE A SETTLEMENT PAYMENT</b>	<b>To receive a settlement payment</b> , if the Court approves the settlement, <b>you must complete the claim form provided with this notice</b> and return it to the Settlement Administrator or file your claim online at <a href="http://www.website.com">www.website.com</a> . You will also be bound by the release of claims explained below.
<b>DO NOTHING, DO NOT RECEIVE A SETTLEMENT PAYMENT</b>	<b>If you do nothing</b> , and do not return the claim form, <b>you will not receive a settlement payment</b> , but you may still be bound by the release of claims explained below. If you do not return a claim form, your monetary portion of the settlement will be returned to San Jose.
<b>OPT OUT, DO NOT RECEIVE A SETTLEMENT PAYMENT</b>	<b>You may ask to be excluded</b> from the settlement. If you request exclusion, <b>you will not receive a settlement payment</b> and will not be bound by the release of claims explained below. If you ask to exclude yourself from the settlement, your monetary portion of the settlement will be returned to San Jose.

**YOU MUST RETURN THE ENCLOSED CLAIM FORM OR FILE YOUR CLAIM ONLINE BY  
[MAIL DATE + 45 DAYS] TO RECEIVE A PAYMENT FROM THIS SETTLEMENT.**

## BASIC INFORMATION

### 1. Why Did I Get This Notice? What Is the Lawsuit About?

You have received this notice because records indicate that you worked during the relevant time period as a server for San Jose in North Carolina. Plaintiff Laura Pontones has sued San Jose, on behalf of herself and other similarly situated servers. Plaintiff claims that San Jose did not pay call center associates for required pre-shift work (including booting up computers, launching software programs, checking emails, reviewing call schedules and callbacks, and other required tasks), and that San Jose (1) failed to pay Servers minimum wage; (2) failed to pay overtime premium pay for each hour they worked in excess of 40 hours per week; and (3) took unlawful deductions from Servers' tips. Plaintiff claims that San Jose violated the federal Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b), and the North Carolina Wage and Hour Act ("NCWHA"), N.C. Gen. Stat. §§ 95-25.6, 95-25.22(a), (a1), and (d).

You have a right to know about a proposed settlement of a class action lawsuit, and your options, before the Court decides whether to approve the settlement. If the Court approves it and after any appeals are resolved, an administrator appointed by the Court will make the payments described here.

The Court in charge of the case is the United States District Court for the Eastern District of North Carolina, and the case is known as *Pontones v. San Jose Restaurant, Incorporated, et al.*, Case No. 5:18-cv-219-D. The individual who sued is called the Plaintiff, and the companies she has sued, collectively operating as San Jose Mexican Restaurants, are called the Defendants.

Litigation is risky, and neither side can predict the outcome with certainty. As a result, Plaintiff Pontones and her counsel concluded, after careful consideration of the facts and circumstances following the exchange of extensive information and data and participation in a mediation, that the proposed settlement is fair, reasonable, and adequate, and is in the best interests of the opt-in plaintiffs and class members. This settlement avoids the costs and inconvenience associated with continued litigation while providing cash benefits to opt-in plaintiffs and class members.

Defendants deny all of the claims in the lawsuit and maintain that they have not engaged in any wrongdoing. San Jose has chosen to settle this matter and make payments to current and former employees solely for the purpose of avoiding disruption to its business and further expense of litigation.

### WHO IS INCLUDED IN THE NOTICE AND SETTLEMENT

### 2. Am I Part of the Settlement?

You are eligible to participate in the settlement if you were a server employed by San Jose between **May 17, 2016** and the present.

**If you return the enclosed claim form or file a claim online by the deadline, you are part of the FLSA class, and will receive a payment.**

**If you were a server for San Jose in North Carolina after May 17, 2016, you are part of the class. You will still need to return the claim form to receive a payment.**

### THE SETTLEMENT BENEFITS – WHAT YOU GET

### 3. What Does the Proposed Settlement Provide?

The total amount of the settlement is \$1,500,000. This amount will mostly be allocated to the current and former



servers working for San Jose who are eligible for the settlement, but it will also be used to pay for Attorneys' fees and costs awarded by the Court, the Settlement Administrator's costs, and any service awards to Plaintiff Pontones and other individuals who previously joined this lawsuit ("Opt-in Plaintiffs") or otherwise substantially assisted with this litigation, to the extent approved by the Court. Because the settlement amount other than fees, costs, and service awards, will be allocated to individual awards for eligible employees, if eligible employees do not submit a claim form, the portion of the settlement allocated to them will not be paid out, reducing the total amount of the settlement.

Plaintiffs will ask the Court to award Named Plaintiff Laura Pontones and opt-in Plaintiffs/Class Members Angel Berber, Jackie Bullard, Vicente Urbina, Tianya Locklear, Imran Shafiq Khan, Carolina San Augustin, Oscar Torres, Olivia Pineda, Sandy Johnson, and Kathy Johnson a collective \$175,000 in service awards, to be divided among these individuals pursuant to the terms in Section III.B.3 of the settlement agreement between the parties dated March 25, 2022 (the "Settlement Agreement"). The service awards requested would be paid to these individuals in addition to their regular settlement payment, for their role as named plaintiff and opt-in plaintiffs/class members and prosecuting this lawsuit on the behalf of all Class Members, their assistance and support in prosecuting this case, and for the broader release of claims they will provide. The Court has not yet ruled on whether it will award these amounts. The Court may deny these requests or award less than these amounts. The Court will make a determination on the reasonableness of these requests at a later date.

Your minimum payment is printed on your enclosed claim form. It was calculated as described in paragraph 9, below.

#### **4. What Am I Giving Up If I Remain in the Settlement?**

If you are part of the class, and you do not exclude yourself from the settlement by [MAIL DATE + 45 DAYS] using the procedure explained below in Section 10, you will be deemed to have forever released and discharged San Jose from any claims known or unknown, asserted or unasserted, of any kind whatsoever, that relate to hours worked or the payment of wages, that arose or will arise before the date of the Court's final approval of the settlement, except to the extent that any such claims may not be waived as a matter of law. That means you will waive all wage and hour claims that arise before [Date Court Grants Preliminary Approval], even if they are not claims asserted in this Litigation. However, if you do not exclude yourself, but also do not submit a claim form, you will not waive your claims under the Fair Labor Standards Act, only other wage and hour claims, and you will not receive a settlement payment.

If you are part of the FLSA class and you return the claim form, then you will be bound by the same release of claims. That means you will waive all wage and hour claims that arise before [Date Court Grants Preliminary Approval], even if they are not claims asserted in this Litigation. If you are part of the FLSA class and you **do not** return the claim form, you will **not** be bound by the terms of the release and you retain the right to sue Defendant for any valid wage and hour claims, subject to the statute of limitations and any other defenses Defendant may have.

This release of claims against Defendants (which includes their parents, affiliates and subsidiaries, and all of their successors and assigns and all owners, officers, directors, stockholders, managers, agents, employees, and representatives) specifically includes, without limitation:

(i) any and all claims asserted in the Litigation; AND

(ii) any and all claims for unpaid wages, minimum wages, overtime, late payment of wages, retaliation for complaining about wages or for asserting wage-related claims and/or any other claims of any kind, or any other wage-related or recordkeeping-related claims, damages or relief of any kind, including but not limited to the federal FLSA, 29 U.S.C. § 201, et seq., any and all claims under North Carolina state law, including but not

limited to the North Carolina Wage and Hour Act (“NCWHA”), N.C. Gen. Stat. § 95-25.1, et seq.; or any other statutes and/or regulations regulating hours of work, wages, the payment of wages, wage-related or recordkeeping-related claims, the payment of minimum wages, and/or the payment of overtime compensation;

AND

(iii) any and all claims under state and federal law for earned wages, overtime, and/or missed or interrupted meal breaks, including such claims for breach of express contract or labor agreement, implied contract, money had and received in assumpsit, quantum meruit/unjust enrichment, fraud, negligent misrepresentation, equitable estoppel, promissory estoppel, conversion, and failure to keep accurate records.

This release does not apply to any claim by any Class Member for discrimination in violation of state or federal law (except for Named Plaintiff), or any claim of any type arising on or after the date the settlement has received final approval from the U.S. District Court for the Eastern District of North Carolina.

## THE LAWYERS REPRESENTING YOU

### 5. Do I Have a Lawyer in the Case?

Opt-in plaintiffs and class members who do not request exclusion from the settlement are represented in this case by the following attorneys and law firm:

Gilda Adriana Hernandez, Esq.  
Charlotte Claire Smith, Esq.  
**THE LAW OFFICES OF GILDA A. HERNANDEZ,  
PLLC**  
1020 Southhill Drive, Suite 130  
Cary, NC 27513  
(919) 741-8693  
www.gildahernandezlaw.com  
rkreuz@gildahernandezlaw.com

The Court decided that these lawyers and law firm are qualified to represent the settlement class members in this case. These lawyers are called “Class Counsel.” You can contact Class Counsel if you have questions about this case. If you want to be represented by your own lawyer, you may hire one at your own expense.

### 6. How Will the Lawyers Be Paid?

Class Counsel will ask the Court to approve payment of up to one-third of the gross settlement amount (\$500,000.00), to compensate them for their services in this matter. Class Counsel will also ask the Court to approve reimbursement for their costs spent in litigating this case, which are currently estimated to be **approximately \$25,000**. Class Counsel will file a motion with the Court setting out the bases for their requested costs and fees. At a later date, the Court will decide whether Class Counsel’s request is reasonable. If the Court does not approve the full amount of the fee request, then any unawarded funds will be added to the amount available for distribution to the class/collective.

## HOW YOU GET A PAYMENT – SUBMITTING A CLAIM FORM

### 7. How Can I Get a Payment?

To receive a settlement payment, you must timely complete a Claim Form. You can submit a claim electronically at the website [[www.website.com](http://www.website.com)] or complete and sign the enclosed claim form and return it to

the settlement administrator by U.S. Mail in the postage pre-paid envelope included with this notice, or by e-mail **[SETTLEMENT ADMIN EMAIL]**.

To be considered timely, any completed forms returned to the settlement administrator by U.S. Mail must be postmarked no later than **[MAIL+45 DAYS]**. Any completed forms returned to the settlement administrator by fax or e-mail must be received no later than **[MAIL+45 DAYS]**.

If you lose, misplace, or need another one of these forms, you can contact the settlement administrator by email at [info@SanJoseSettlement.com](mailto:info@SanJoseSettlement.com) to request a new copy.

## **8. How Much Can I Expect to Receive?**

Your individual payment amount is printed on the enclosed claim form. Your payment depends on (1) the number of workweeks you worked during the Class Period, as well as the number of overtime hours you worked during each workweek; and (2) how many relevant bonuses you received during the Class Period, as well as the number of overtime hours you worked during the period applicable to the bonus payment.

Your estimated payment was calculated using the formulas set forth in the settlement agreement and assuming that the Court approves and awards the other amounts requested to be paid from the Gross Settlement Amount, which were discussed in Section 6. If the Court does not approve the full amount of these other payments, your award payment may increase.

Each final settlement payment will be separated into two amounts: 50% will be allocated to the claims asserted in the lawsuit for wage-related damages, and 50% will be allocated to the claims asserted in the lawsuit for liquidated damages and other relief. The portion allocated to claims asserted in this lawsuit for unpaid overtime and other wage-related damages will be subject to all authorized or required deductions, just as if it were a regular paycheck, including, but not limited to: local, state and federal taxes, garnishments, child support orders, and tax levies/liens. The portion allocated to wage claims will be reported on an I.R.S. Form W-2. The portion allocated to liquidated damages and other relief will be reported as non-wage income and reported on an I.R.S. Form 1099.

## **9. When Would I Get My Payment?**

If you are eligible to participate in the settlement and timely provide the form described in Section 8 above, you will be sent a settlement check following Defendants' completed payment of the gross settlement fund. Before the settlement is effective, however, settlement class members must be given time to object to the settlement or opt-out, the Court must hold a hearing to consider the fairness of the settlement and grant final approval of the settlement, and any appeals of the court's order granting final approval must be resolved. Please be patient.

Please watch your mail for a check and cash it when you get it. **You will have 180 days from issuance of the check to cash it. The check will be void after 180 days.** The settlement agreement provides that any amounts from voided, uncashed checks will then be returned to San Jose.

### **EXCLUDING YOURSELF FROM THE SETTLEMENT**

## **10. How Do I Get Out of the Settlement?**

If you do not wish to be part of this settlement, you may elect to "opt out" by excluding yourself from this action and the associated settlement and judgment. Class Members who opt out of this action, and FLSA class members who do not return a claim form, would remain free, subject to the statute of limitations, to bring claims against San Jose that are covered by this settlement and release, against which San Jose would assert defenses and litigate. If you decide to opt out, you will not be allowed to object to this settlement. The deadline to opt out is **[MAIL DATE + 45 DAYS]**.

This deadline is final, and forms not postmarked before the pertinent deadline will not be honored. **IF YOU OPT OUT OF THE SETTLEMENT, YOU WILL NOT RECEIVE A PAYMENT.**

To opt out, you must submit a written statement to the settlement administrator expressly stating that you wish to be excluded from the settlement. Such requests for exclusion should state at the top of the letter "Request for Exclusion from Settlement in *Pontones v. San Jose Restaurant, Incorporated, et al.*, Case No. 5:18-cv-219-D." Also be sure to include your name, address, telephone number, and signature. All written requests for exclusion must be sent by First-Class U.S. Mail, postmarked no later than **[MAIL DATE + 45 DAYS]** to:

*Pontones v. San Jose Restaurant, Inc., et al Settlement Administrator c/o*  
**Claims Administration**

\*\*\*\*\*

\*\*\*\*\* , \*\* \*\*\*\*\*\_\*\*\*\*

Fax: (\*\*\*) \*\*\*-\*\*\*\* E-mail: **[EMAIL FOR SETTLEMENT ADMINISTRATOR]**

You cannot exclude yourself by phone or by e-mail. Requests for exclusion that do not include all required information, or that are not timely postmarked, will be deemed null, void, and ineffective.

**11. If I Do Not Exclude Myself, Can I Sue This Defendant for the Same Thing Later?**

If you are receiving this notice, you have been identified as a class member for purposes of this lawsuit. As a class member, unless you exclude yourself, you give up any right to sue defendant for the claims that this settlement resolves, which are set forth in Section 4 above. If you have a pending lawsuit asserting the claims resolved by this settlement, speak to your lawyer in the pending lawsuit immediately. You must exclude yourself from this settlement to continue your own lawsuit against San Jose regarding the claims resolved by this settlement.

**12. If I Exclude Myself From the Settlement, Can I Get Money From This Settlement?**

No.

**OBJECTING TO THE SETTLEMENT**

**13. How Do I Object or Tell the Court That I Don't Like the Settlement?**

You can ask the Court to deny approval of the settlement by filing an objection with the Court. You cannot ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

To object, you must send a letter to the Court, Class Counsel, and counsel for San Jose giving the reasons why you object to the proposed settlement. The top of your letter should be labeled with the name and case number of this lawsuit ("*Pontones v. San Jose Restaurant, Inc., et al.*, Case No. 5:18-cv-219-D") and must include: (i) your full name, address, telephone number, the approximate dates of your employment with San Jose, and the restaurant(s) where you worked; and (ii) each specific reason for your objection, including any legal or evidentiary support you have for your objection. **You must mail copies of the objection to the Court, Class Counsel, and counsel for San Jose (addresses below), postmarked no later than [MAIL DATE + 45 DAYS]:**

THE COURT  
Clerk of Court  
U.S. District Court for the  
Eastern District of North  
Carolina  
310 New Bern Avenue  
Raleigh, NC 27611

CLASS COUNSEL  
Gilda A. Hernandez, Esq.  
Charlotte C. Smith, Esq.  
**THE LAW OFFICES OF  
GILDA A. HERNADNEZ, PLLC**  
1020 Southhill Dr., Ste. 130  
Cary, NC 27513

COUNSEL FOR DEFENDANTS  
James Larry Stine  
**WIMBERLY, LAWSON, STECKEL,  
SCHNEIDER & STINE, P.C.**  
3400 Peachtree Rd., NE  
Suite 400, Lenox Towers  
Atlanta, GA 30326

Albert J. Bolet (GA Bar No. 065785)  
Hipolito M. Goico (GA Bar No. 299195)  
**GOICO & BOLET, P.C.**  
2021 North Druid Hills Road, N.E.  
Suite 200  
Brookhaven, GA 30329

If you file a timely written objection, you may (but are not required to) appear at the Fairness Hearing, described in Section 16, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney.

#### **14. What Happens if the Court Rejects my Objection?**

The Court will consider any objections that are timely filed. This does not mean, however, that the Court will necessarily take action based on any objection. If the Court rejects your objection, you will still be bound by the terms of the settlement and the release of claims explained in Section 4 above.

Moreover, if you intend to object to the settlement, but still wish to receive a settlement payment, you must timely file the required claim form described in Section 7 above. If the Court approves the settlement despite your objections, and you have not timely filed the required form necessary to receive a settlement payment, you will not receive a settlement payment.

#### **15. What's the Difference Between Objecting and Excluding?**

Objecting is telling the Court you do not like something about the settlement. You can object only if you stay in the settlement. If you exclude yourself from this lawsuit, you are telling the Court you do not want to be part of the lawsuit or settlement. If you request to be excluded from the lawsuit, you have no basis to object to the settlement, because the case no longer affects you.

### **THE COURT'S FAIRNESS HEARING**

#### **16. When and Where Will the Court Decide Whether to Approve the Settlement?**

The Court preliminarily approved this settlement on **[DATE PRELIMINARY APPROVAL GRANTED]**. The Court will hold a final hearing (sometimes called a fairness hearing) on this settlement on **[DATE OF FINAL APPROVAL HEARING]** at **X:XX am**. This hearing will take place in Courtroom **[ ]** of the U.S. District Court for the Eastern District of North Carolina, located at 310 New Bern Avenue, Raleigh, North Carolina, 27611, Judge James C. Dever III presiding. After the hearing, the Court will decide whether to approve the settlement. We do not know how long the decision will take.

**17. Do I Have to Come to the Hearing?**

No. Attendance at this hearing is completely optional. It is not required to participate in the settlement or opt out of the lawsuit.

**18. May I Speak at the Hearing?**

You may ask the Court for permission to speak at the fairness hearing. To do so, you must send a letter saying that it is your “Notice of Intention to Appear at Hearing on Final Approval of Class Settlement in *Pontones v. San Jose Restaurant, Incorporater, et al.*, Case No. 5:18-cv-219-D.” Be sure to include your full name, address, telephone number, and signature. Your notice of intention to appear must be postmarked no later than **[MAILING DATE + 45 DAYS]**, and be sent to the Clerk of Court, and to Class Counsel and Counsel for San Jose at the addresses list above in Section 13. You cannot speak at the hearing if you have opted out of the lawsuit.

**IF YOU DO NOTHING**

**19. What Happens If I Do Nothing at All?**

You have the right to do nothing. If you do nothing, however, you will not receive any money from this proposed settlement. In addition, unless you timely return a written request for exclusion, you will be bound by the Court’s orders in this lawsuit and the release of claims explained in Section 4 above. You will not be able to start a legal action, continue with a legal action, or be part of any other legal action against San Jose regarding the claims resolved by this settlement.

**NO RETALIATION OR DISCRIMINATION**

**20. If I Am a Current Employee, Will I Experience Any Retaliation or Discrimination?**

No. It is against the law to retaliate or discriminate against an employee who decides to participate in this settlement agreement. San Jose will not discriminate or retaliate against you in any way because of your decision to participate or not in the lawsuit or this settlement.

**GETTING MORE INFORMATION**

**21. Are There More Details About the Settlement?**

This notice summarizes the basic terms of the proposed settlement. Further information is available from the settlement administrator and/or Class Counsel. See Section 5 above.

More details of the settlement are also contained in the stipulation of settlement and the pleadings and other documents relating to the lawsuit that are on file with the U.S. District Court for the Middle District of North Carolina. Copies of the complete stipulation of settlement and select other filings in the lawsuit are available by contacting Class Counsel. Their contact information is located in Section 5 above.

**22. How Do I Get More Information?**

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. A copy of the Settlement Agreement is available at [www.website.com]. You can also write to *Pontones v. San Jose Restaurant, Incorporated, et al.*, Settlement Administrator, **c/o Angeion Group 1650 Arch St. Suite 2210, Philadelphia, PA**

19103, or email the Settlement Administrator at [info@SanJoseSettlement.com](mailto:info@SanJoseSettlement.com). In addition, see Section 5 for Class Counsel's contact information.

**PLEASE DO NOT CALL THE COURT, THE CLERK, OR NTRHIVE OR ITS COUNSEL ABOUT THIS SETTLEMENT.**

If, for any future reference or mailings, you wish to change the name or address listed on the envelope in which this Notice was sent, please inform the settlement administrator of your new address. You can do so by sending a letter to:

*Pontones v. San Jose Restaurant, Incorporated, et al.*, Settlement Administrator  
c/o Angeion Group  
1650 Arch St. Suite 2210  
Philadelphia, PA 19103  
[info@SanJoseSettlement.com](mailto:info@SanJoseSettlement.com)

**A-3**  
**CONFESSION OF**  
**JUDGMENT**



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

LAURA PONTONES, on behalf of herself )  
and all others similarly situated, )  
 )  
 *Plaintiff,* )  
 )  
 v. )  
 )  
 SAN JOSE RESTAURANT, )  
 INCORPORATED, *et al.* )  
 )  
 *Defendants.* )  
 )

Case No. 5:18-cv-219-D

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**CONFESSION OF JUDGMENT**

Defendants San Jose Restaurant, Incorporated; San Jose Management, Inc., d/b/a San Jose Mexican Restaurant and Sports Cantina; San Jose Mexican Restaurant #2 of Lumberton, Inc.; San Jose Mexican Restaurant of Elizabethtown, Inc.; San Jose Mexican Restaurant of N.C. Inc.; San Jose Mexican Restaurant of Pembroke, NC, Inc.; San Jose Mexican Restaurant of Raleigh Inc.; San Jose Mexican Restaurant of Shallotte, Inc.; San Jose of Rocky Mount #2 Inc., d/b/a San Jose Tacos and Tequila; San Jose of Zebulon, Inc.; San Jose of Roanoke Rapids, Inc.; San Jose Wakefield, Inc., d/b/a San Jose Mex and Tequila Bar; Plaza Azteca Raleigh, Inc., d/b/a San Jose Tacos and Tequila (collectively “San Jose Restaurant Defendants”); Hector Flores; Alberto Flores; Josue Flores; Jose Perez; Vicente Perez; Pablo Meza; Edgardo Flores; and Edgar Flores (collectively, along with San Jose Restaurant Defendants, the “Defendants”) make this statement and do hereby authorize the entry of judgment against them in favor of Named and Opt-in Plaintiffs (collectively “Plaintiffs”) and Rule 23 Class Members in the amount of \$1,500,000.00, less any and all amounts already paid, in the event of default under the Settlement Agreement executed

simultaneously herewith, plus interest of eight percent (8%) per annum from the date of default under the Settlement Agreement until such debt is paid in full. In support of such entry, Defendants further state that:

1. They are indebted to Plaintiffs for the principal sum of One Million Five Hundred Thousand Dollars (\$1,500,000.00) less any and all credits for payment received by Plaintiffs and Rule 23 Class Members pursuant to the Settlement Agreement, plus any allowable costs and reasonable attorneys' fees incurred in connection with the enforcement of the Settlement Agreement.

2. This Confession of Judgment is for a debt now justly due by the Defendants to Plaintiffs and Rule 23 Class Members.

3. Defendants acknowledge and agree that the obligation assumed hereunder is in full settlement and satisfaction of claims raised by Plaintiffs and for no other purpose.

Effective this the \_\_\_\_ day of \_\_\_\_\_, 2022.

Respectfully submitted March 25, 2022.

**[SIGNATURES BEGIN ON THE FOLLOWING PAGE]**

**DEFENDANTS' SIGNATURES**

**1. San Jose Restaurant, Incorporated**

SAN JOSE RESTAURANT, INCORPORATED

By: \_\_\_\_\_

STATE OF NORTH CAROLINA

\_\_\_\_\_ COUNTY

I, \_\_\_\_\_, Notary Public, certify that \_\_\_\_\_, a member of SAN JOSE RESTAURANT, INCORPORATED, after being duly sworn/affirmed, certified to me this day that he/she signed the foregoing Confession of Judgment and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 202\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

**2. San Jose Management, Inc. (d/b/a San Jose Sports Cantina)**

SAN JOSE MANAGEMENT, INC.

By: \_\_\_\_\_

STATE OF NORTH CAROLINA

\_\_\_\_\_ COUNTY

I, \_\_\_\_\_, Notary Public, certify that \_\_\_\_\_, a member of SAN JOSE MANAGEMENT, INC., after being duly sworn/affirmed, certified to me this day that he/she signed the foregoing Confession of Judgment and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

**3. San Jose Mexican Restaurant #2 of Lumberton, Inc.**

SAN JOSE MEXICAN RESTAURANT #2 OF LUMBERTON, INC.

By: \_\_\_\_\_

STATE OF NORTH CAROLINA

\_\_\_\_\_ COUNTY

I, \_\_\_\_\_, Notary Public, certify that \_\_\_\_\_, a member of SAN JOSE MEXICAN RESTAURANT #2 OF LUMBERTON, INC., after being duly sworn/affirmed, certified to me this day that he/she signed the foregoing Confession of Judgment and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

4. San Jose Mexican Restaurant of Elizabethtown, Inc.

SAN JOSE MEXICAN RESTAURANT OF  
ELIZABETHTOWN, INC.

By: \_\_\_\_\_

STATE OF NORTH CAROLINA

\_\_\_\_\_ COUNTY

I, \_\_\_\_\_, Notary Public, certify that  
\_\_\_\_\_, a member of SAN JOSE MEXICAN RESTAURANT  
OF ELIZABETHTOWN, INC., after being duly sworn/affirmed, certified to me this day that  
he/she signed the foregoing Confession of Judgment and acknowledged that he executed the same  
in the capacity therein stated and for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_,  
202\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

**5. San Jose Mexican Restaurant of N.C. Inc.**

SAN JOSE MEXICAN RESTAURANT OF N.C.  
INC.

By: \_\_\_\_\_

STATE OF NORTH CAROLINA

\_\_\_\_\_ COUNTY

I, \_\_\_\_\_, Notary Public, certify that \_\_\_\_\_, a member of SAN JOSE MEXICAN RESTAURANT OF N.C. INC., after being duly sworn/affirmed, certified to me this day that he/she signed the foregoing Confession of Judgment and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

**6. San Jose Mexican Restaurant of Pembroke, NC, Inc.**

SAN JOSE MEXICAN RESTAURANT OF  
PEMBROKE, NC, INC.

By: \_\_\_\_\_

STATE OF NORTH CAROLINA

\_\_\_\_\_ COUNTY

I, \_\_\_\_\_, Notary Public, certify that  
\_\_\_\_\_, a member of SAN JOSE MEXICAN RESTAURANT  
OF PEMBROKE, NC, INC., after being duly sworn/affirmed, certified to me this day that he/she  
signed the foregoing Confession of Judgment and acknowledged that he executed the same in the  
capacity therein stated and for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_,  
202\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_



7. SanJose Mexican Restaurant of Raleigh Inc.

SANJOSE MEXICAN RESTAURANT OF  
RALEIGH INC.

By: \_\_\_\_\_

STATE OF NORTH CAROLINA

\_\_\_\_\_ COUNTY

I, \_\_\_\_\_, Notary Public, certify that  
\_\_\_\_\_, a member of SANJOSE MEXICAN RESTAURANT  
OF RALEIGH INC., after being duly sworn/affirmed, certified to me this day that he/she signed  
the foregoing Confession of Judgment and acknowledged that he executed the same in the capacity  
therein stated and for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_,  
202\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

**8. San Jose Mexican Restaurant of Shallotte, Inc.**

SAN JOSE MEXICAN RESTAURANT OF  
SHALLOTTE, INC.

By: \_\_\_\_\_

STATE OF NORTH CAROLINA

\_\_\_\_\_ COUNTY

I, \_\_\_\_\_, Notary Public, certify that  
\_\_\_\_\_, a member of SAN JOSE MEXICAN RESTAURANT  
OF SHALLOTTE, INC., after being duly sworn/affirmed, certified to me this day that he/she  
signed the foregoing Confession of Judgment and acknowledged that he executed the same in the  
capacity therein stated and for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_,  
202\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

9. San Jose of Roanoke Rapids, Inc.

SAN JOSE OF ROANOKE RAPIDS, INC.

By: \_\_\_\_\_

STATE OF NORTH CAROLINA

\_\_\_\_\_ COUNTY

I, \_\_\_\_\_, Notary Public, certify that \_\_\_\_\_, a member of SAN JOSE OF ROANOKE RAPIDS, INC., after being duly sworn/affirmed, certified to me this day that he/she signed the foregoing Confession of Judgment and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 202\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

**10. San Jose of Rocky Mount #2 Inc. (d/b/a San Jose Tacos & Tequila)**

SAN JOSE OF ROCKY MOUNT #2 INC. (D/B/A  
SAN JOSE TACOS & TEQUILA)

By: \_\_\_\_\_

STATE OF NORTH CAROLINA

\_\_\_\_\_ COUNTY

I, \_\_\_\_\_, Notary Public, certify that  
\_\_\_\_\_, a member of SAN JOSE OF ROCKY MOUNT #2 INC.  
(D/B/A SAN JOSE TACOS & TEQUILA), after being duly sworn/affirmed, certified to me this  
day that he/she signed the foregoing Confession of Judgment and acknowledged that he executed  
the same in the capacity therein stated and for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_,  
202\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

**11. San Jose of Zebulon, Inc.**

SAN JOSE OF ZEBULON, INC.

By: \_\_\_\_\_

STATE OF NORTH CAROLINA

\_\_\_\_\_ COUNTY

I, \_\_\_\_\_, Notary Public, certify that \_\_\_\_\_, a member of SAN JOSE OF ZEBULON, INC., after being duly sworn/affirmed, certified to me this day that he/she signed the foregoing Confession of Judgment and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 202\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

**12. San Jose Wakefield, Inc. (d/b/a San Jose Mex and Tequila Bar)**

SAN JOSE WAKEFIELD, INC. (D/B/A SAN JOSE MEX AND TEQUILA BAR)

By: \_\_\_\_\_

STATE OF NORTH CAROLINA

\_\_\_\_\_ COUNTY

I, \_\_\_\_\_, Notary Public, certify that \_\_\_\_\_, a member of SAN JOSE WAKEFIELD, INC. (D/B/A SAN JOSE MEX AND TEQUILA BAR), after being duly sworn/affirmed, certified to me this day that he/she signed the foregoing Confession of Judgment and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 202\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

**13. Plaza Azteca Raleigh, Inc. (d/b/a San Jose Tacos & Tequila)**

PLAZA AZTECA RALEIGH, INC. (D/B/A SAN JOSE TACOS & TEQUILA)

By: \_\_\_\_\_

STATE OF NORTH CAROLINA

\_\_\_\_\_ COUNTY

I, \_\_\_\_\_, Notary Public, certify that \_\_\_\_\_, a member of PLAZA AZTECA RALEIGH, INC. (D/B/A SAN JOSE TACOS & TEQUILA), after being duly sworn/affirmed, certified to me this day that he/she signed the foregoing Confession of Judgment and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 202\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

**14. Hector Flores**

HECTOR FLORES

By: \_\_\_\_\_

STATE OF NORTH CAROLINA

\_\_\_\_ COUNTY

I, \_\_\_\_\_, Notary Public, certify that HECTOR FLORES, after being duly sworn/affirmed, certified to me this day that he signed the foregoing Confession of Judgment and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 202\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_



**15. Alberto Flores**

ALBERTO FLORES

By: \_\_\_\_\_

STATE OF NORTH CAROLINA

\_\_\_\_ COUNTY

I, \_\_\_\_\_, Notary Public, certify that ALBERTO FLORES, after being duly sworn/affirmed, certified to me this day that he signed the foregoing Confession of Judgment and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

**16. Josue Flores**

JOSUE FLORES

By: \_\_\_\_\_

STATE OF NORTH CAROLINA

\_\_\_\_ COUNTY

I, \_\_\_\_\_, Notary Public, certify that JOSUE FLORES, after being duly sworn/affirmed, certified to me this day that he signed the foregoing Confession of Judgment and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 202\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

**17. Jose Perez**

JOSE PEREZ

By: \_\_\_\_\_

STATE OF NORTH CAROLINA

\_\_\_\_ COUNTY

I, \_\_\_\_\_, Notary Public, certify that JOSE PEREZ, after being duly sworn/affirmed, certified to me this day that he signed the foregoing Confession of Judgment and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 202\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

**18. Vicente Perez**

VICENTE PEREZ

By: \_\_\_\_\_

STATE OF NORTH CAROLINA

\_\_\_\_ COUNTY

I, \_\_\_\_\_, Notary Public, certify that VICENTE PEREZ, after being duly sworn/affirmed, certified to me this day that he signed the foregoing Confession of Judgment and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 202\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

**19. Pablo Meza**

PABLO MEZA

By: \_\_\_\_\_

STATE OF NORTH CAROLINA

\_\_\_\_ COUNTY

I, \_\_\_\_\_, Notary Public, certify that PABLO MEZA, after being duly sworn/affirmed, certified to me this day that he signed the foregoing Confession of Judgment and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 202\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

**20. Edgard (“Edgar”) Flores**

EDGARDO (“EDGAR”) FLORES

By: \_\_\_\_\_

STATE OF NORTH CAROLINA

\_\_\_\_ COUNTY

I, \_\_\_\_\_, Notary Public, certify that EDGARDO (“EDGAR”) FLORES, after being duly sworn/affirmed, certified to me this day that he signed the foregoing Confession of Judgment and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 202\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_