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 12 HOSPITALITY, LLC

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 14 **FOR THE COUNTY OF SAN DIEGO**

16 JONPENN BLANDI, an individual, on behalf
 17 of himself, and on behalf of all persons
 similarly situated,

18 **Plaintiff,**

19 **v.**

20 FRANCESCA RESTAURANT, LLC., a
 21 California limited liability company; SCOTT
 HARRIS HOSPITALITY, LLC, an Illinois
 22 limited liability company; and DOES 1
 through 50, inclusive,

23 **Defendants.**

CASE NO.: 37-2022-00049034-CU-OE-
 CTL

[Assigned for all purposes to the Hon.
 Timothy Taylor in Dept. C-72]

**JOINT STIPULATION RE: CLASS
 ACTION AND REPRESENTATIVE
 ACTION SETTLEMENT**

ACTION FILED: December 07, 2022
 TRIAL DATE: None set

1 This Joint Stipulation Re: Class Action and Representative Action Settlement
2 (“Settlement,” “Agreement” or “Settlement Agreement”) is made by and between plaintiff
3 JONPENN BLANDI (“Plaintiff”), on behalf of himself and all others similarly situated and
4 aggrieved, on one hand; and defendants FRANCESCA RESTAURANT, LLC and SCOTT
5 HARRIS HOSPITALITY, LLC (collectively “Defendants”), on the other hand. This Settlement
6 Agreement is intended to resolve the lawsuit entitled *Blandi v. Francesca Restaurant, LLC et.*
7 *al.*, filed in San Diego County Superior Court, Case No. 32-2022-00049034-CU-OE-CTL.
8 Plaintiff and Defendants shall be, at times, collectively referred to as the “Parties.” This
9 Agreement is intended by the Parties to fully, finally and forever resolve the claims as set forth
10 herein, based upon and subject to the terms and conditions of this Agreement.

11 **1. DEFINITIONS**

12 **A.** “**Action**” means the action entitled *Blandi v. Francesca Restaurant, LLC, et. al.*,
13 filed in San Diego County Superior Court, Case No. 32-2022-00049034-CU-OE-CTL.

14 **B.** “**Aggrieved Employees**” or “**PAGA Members**” means all non-exempt
15 employees who work or worked for Defendants in California during the PAGA period.

16 **C.** “**Class Counsel**” means David D. Bibiyan of Bibiyan Law Group. The term
17 “Class Counsel” shall be used synonymously with the term “Plaintiff’s Counsel.”

18 **D.** “**Class Members,**” “**Settlement Class,**” or “**Settlement Class Members**” means
19 all hourly, non-exempt employees who work or worked for Defendants in California during the
20 Class Period.

21 **E.** “**Class Period**” means the period from December 7, 2018 through October 10,
22 2023.

23 **F.** “**Class Notice**” means and refers to the notice sent to Class Members after
24 preliminary approval of the Settlement in the manner described in Paragraph 9(A) of this
25 Agreement.

26 **G.** “**Court**” means the Superior Court of the State of California for the County of
27 San Diego.

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1 **H. “Final Approval Date”** means the later of: (1) the date the Court signs an Order
2 granting final approval of this Settlement (“Final Approval”) and Judgment; (2) if there is an
3 objector, 60 days from the date of the Final Approval and Judgment; or (3) to the extent any
4 appeals have been filed, the date on which they have been resolved or exhausted.

5 **I. “Defendants”** means Francesca Restaurant, LLC and Scott Harris Hospitality,
6 LLC.

7 **J. “Employer Taxes”** means employer-funded taxes and contributions imposed on
8 the wage portions of the Individual Settlement Payments under the Federal Insurance
9 Contributions Act, the Federal Unemployment Tax Act, and any similar state and federal taxes
10 and contributions required of employers, such as for unemployment insurance.

11 **K. “General Release”** means the broader release of claims by Plaintiff, which is in
12 addition to Plaintiff’s limited release of claims as a Participating Class Member.

13 **L. “Gross Settlement Amount”** means a non-reversionary fund in the sum of Three
14 Hundred Fifty Thousand Dollars and Zero Cents (\$350,000.00),¹ which shall be paid by
15 Defendants and from which all payments for the Individual Settlement Payments to Participating
16 Class Members, the Court-approved amounts for attorneys’ fees and reimbursement of litigation
17 costs and expenses to Class Counsel, Settlement Administration Costs, the Service Award, the
18 PAGA Payment and the LWDA Payment shall be paid. The Gross Settlement Amount expressly
19 excludes Employer Taxes, which shall be paid by Defendants separate, apart and in addition to
20 the Gross Settlement Amount.

21 **M. “Individual PAGA Payment”** means a payment made to an Aggrieved Employee
22 for his or her share of the PAGA Payment, which may be in addition to his or her Individual
23 Settlement Share if he or she is also a Participating Class Member.

24 **N. “Individual Settlement Payment”** means a payment to a Participating Class
25 Member of his or her net share of the Net Settlement Amount.

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28 ¹ As the same may be increased in accordance with Paragraph 17 below.

1 **O. “Individual Settlement Share”** means the gross amount of the Net Settlement
2 Amount that a Participating Class Member is projected to receive based on the number of
3 Workweeks that he or she worked as a Settlement Class Member during the Class Period, which
4 shall be reflected in his or her Class Notice.

5 **P. “LWDA Payment”** means the payment to the State of California Labor and
6 Workforce Development Agency (“LWDA”) for its seventy-five percent (75%) share of the total
7 amount allocated toward penalties under the PAGA, all of which is to be paid from the Gross
8 Settlement Amount. The Parties have agreed that Twenty Thousand Dollars and Zero Cents
9 (\$20,000.00) shall be allocated toward PAGA penalties, of which Fifteen Thousand and Five
10 Hundred Dollars and Zero Cents (\$15,000.00) will be paid to the LWDA (*i.e.*, the LWDA
11 Payment) Five Thousand Dollars and Zero Cents (\$5,000.00) will be paid to Aggrieved
12 Employees on a *pro rata* basis based on the Workweeks worked for Defendants as a non-exempt,
13 hourly-paid employee in California in the PAGA Period (*i.e.* the PAGA Payment).

14 **Q. “Net Settlement Amount”** means the portion of the Gross Settlement Amount
15 that is available for distribution to the Participating Class Members after deductions for the Court-
16 approved allocations for Settlement Administration Costs, a Service Award to Plaintiff, an award
17 of attorneys’ fees, reimbursement of litigation costs and expenses to Class Counsel, the LWDA
18 Payment and the PAGA Payment.

19 **R. “Operative Complaint”** or **“Complaint”** means the First Amended Complaint to
20 be filed in the Action.

21 **S. “PAGA Payment”** is the 25% portion of the Twenty Thousand Dollars and Zero
22 Cents (\$20,000.00) that is allocated toward PAGA penalties (Five Thousand Dollars and Zero
23 Cents (\$5,000.00)) that will be paid to Aggrieved Employees on a *pro rata* basis based on the
24 Workweeks worked as non-exempt, hourly-paid employees in California in the PAGA Period,
25 which would be in addition to the Aggrieved Employees’ Individual Settlement Payment if they
26 are also Participating Class Members.

27 **T. “PAGA Period”** means the period from December 7, 2021 until the date that the
28 Court grants preliminary approval of the Settlement.

1 **U. “Participating Class Members”** means all Settlement Class Members who do
2 not submit a timely and valid Request for Exclusion.

3 **V. “Participating Individual Settlement Share”** means the gross amount of the Net
4 Settlement Amount that a Participating Class Member is eligible to receive based on the number
5 of Workweeks that he or she worked as a Settlement Class Member during the Class Period once
6 all opt-outs have been factored in, excluding any Individual PAGA Payment to which he or she
7 may be entitled if he or she is also an Aggrieved Employee.

8 **W. “Plaintiff,” “Named Plaintiff” or “Class Representative”** shall refer to Plaintiff
9 Jonpenn Blandi.

10 **X. “Preliminary Approval Date”** means the date on which the Court enters an Order
11 granting preliminary approval of the Settlement.

12 **Y. “Released Parties”** shall mean Defendants Francesca Restaurant, LLC and Scott
13 Harris Hospitality, LLC and their past, present and/or future, direct and/or indirect, owners,
14 officers, directors, members, managers, employees, agents, representatives, attorneys, insurers,
15 parent companies, subsidiaries, affiliates, successor, and assigns.

16 **Z. “Response Deadline”** means the deadline for Settlement Class Members to mail
17 any Requests for Exclusion, Objections or Workweek Disputes to the Settlement Administrator.
18 The Response Deadline is forty-five (45) calendar days from the date that the Class Notice is first
19 mailed in English and Spanish by the Settlement Administrator, unless a Class Member’s notice
20 is re-mailed. In such an instance, the Response Deadline shall be fifteen (15) calendar days from
21 the re-mailing or forty-five (45) calendar days from the date of the initial mailing, whichever is
22 later. The date of the postmark shall be the exclusive means for determining whether a Request
23 for Exclusion, Objection or Workweek Dispute was submitted by the Response Deadline.

24 **AA. “Request for Exclusion”** means a written request to be excluded from the
25 Settlement Class pursuant to Paragraph 9(C) below.

26 **BB. “Service Award”** means a monetary amount to be paid to Plaintiff of up to Seven
27 Thousand and Five Hundred Dollars and Zero Cents (\$7,500.00), which, subject to Court
28 approval, will be paid out of the Gross Settlement Amount.

1 **CC. “Settlement Administration Costs”** means all costs incurred by the Settlement
2 Administrator in administration of the Settlement, including, but not limited to, translating the
3 Class Notice to Spanish, distribution of the Class Notice to the Settlement Class in English and
4 Spanish, calculating Individual Settlement Shares, Individual Settlement Payments, Individual
5 PAGA Payments and Participating Individual Settlement Shares, as well as associated taxes and
6 withholdings, providing declarations, generating Individual Settlement Payment checks and
7 related tax reporting forms, doing administrative work related to unclaimed checks, transmitting
8 payment to Class Counsel for the Court-approved amounts for attorneys’ fees and reimbursement
9 of litigation costs and expenses, to Plaintiff for his Service Award and to the LWDA for the
10 LWDA Payment, providing weekly reports of opt-outs, objections and related information, and
11 any other actions of the Settlement Administrator as set forth in this Agreement, all pursuant to
12 the terms of this Agreement. The Settlement Administration Costs are estimated not to exceed
13 \$8,500.00. If the actual amount of the Settlement Administration Costs is less than \$8,500.00,
14 the difference between \$8,500.00 and the actual Settlement Administration Costs shall be a part
15 of the Net Settlement Amount. If the Settlement Administration Costs exceed \$8,500.00, then
16 such excess will be paid solely from the Gross Settlement Amount and Defendants will not be
17 responsible for paying any additional funds in order to pay these additional costs.

18 **DD. “Settlement Administrator”** means the Third-Party Administrator selected by
19 agreement of the Parties that will be responsible for the administration of the Settlement
20 including, without limitation, translating the Class Notice in Spanish, distribution of the
21 Individual Settlement Payments to be made by Defendants from the Gross Settlement Amount
22 and related matters under this Agreement.

23 **EE. “Workweeks”** means the number of weeks that a Settlement Class Member
24 worked for Defendants in a non-exempt, hourly-paid position during the Class Period in
25 California, based on either (1) hire dates, re-hire dates (as applicable), and termination dates (as
26 applicable) or (2) actual timekeeping records.

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2. BACKGROUND

A. On December 7, 2022, Plaintiff filed with the Labor and Workforce Development Agency (“LWDA”) and served on Defendants a notice under Labor Code section 2699.3 (the “PAGA Notice”) stating that he intended to serve as a proxy of the LWDA to recover civil penalties for Aggrieved Employees for various Labor Code violations.

B. On December 7, 2022, Plaintiff commenced the Action by filing a Complaint alleging causes of action against Defendants for: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods or compensation in lieu thereof; (4) failure to provide rest periods or compensation in lieu thereof; (5) failure to pay all wages due upon separation; (6) failure to provide accurate wage statements; (7) failure to timely pay wages; (8) failure to indemnify; and (9) engaging in unfair competition (the “Class Action”).

C. On March 16, 2023, when after 65 days passed without any communication from the LWDA, Plaintiff filed a separate representative action under PAGA in the Superior Court of California for the County of San Diego, entitled as *Blandi v. Francesca Restaurant, LLC et. al*, Case Number 37-2023-00010934-CU-OE-CTL, for civil penalties under Labor Code sections 210, 226.3, 558, 1174.5, 1197.1 and 2699 in connection with the allegations made in the PAGA Notice (the “PAGA Action”).

D. The Class Representative believes he has claims based on alleged violations of the California Labor Code, and the Industrial Welfare Commission Wage Orders, and that class certification is appropriate because the prerequisites for class certification can be satisfied in the Action, and this action is manageable as a PAGA representative action.

E. Defendants deny any liability or wrongdoing of any kind associated with the claims alleged in the Action, dispute any wages, damages, and penalties claimed by the Class Representative are owed, and further contend that, for any purpose other than settlement, the Action is not appropriate for class or representative action treatment, Defendants contend that this Action is not manageable as a PAGA representative action. Defendants contend, among other things, that at all times it complied with the California Labor Code and the Industrial Welfare Commission Wage Orders.

1 **F.** The Class Representative is represented by Class Counsel. Class Counsel have
2 conducted significant investigation of the law and facts relating to the claims asserted in the
3 Action and in the PAGA Notice, and have concluded that the Settlement set forth herein is fair,
4 reasonable, adequate and in the best interests of the Settlement Class, taking into account the
5 sharply contested issues involved, the expense and time necessary to litigate the Action through
6 trial and any appeals, the risks and costs of further litigation of the Action, the risk of an adverse
7 outcome, the uncertainties of complex litigation, the information learned through informal
8 discovery regarding Plaintiff's allegations, and the substantial benefits to be received by
9 Settlement Class Members.

10 **G.** Defendants have concluded that, because of the substantial expense of defending
11 against the Action, the length of time necessary to resolve the issues presented herein, the
12 inconvenience involved and the concomitant disruption to its business operations, it is in its best
13 interest to accept the terms of this Agreement. Defendants deny each of the allegations and claims
14 asserted against them in the Action and in the PAGA Notice. However, Defendants, nevertheless,
15 desire to settle the Action for the purpose of avoiding the burden, expense and uncertainty of
16 continuing litigation, and for the purpose of putting to rest the controversies engendered by the
17 Action.

18 **H.** On July 12, 2023, the Parties participated in mediation with Louis Marlin, Esq.,
19 an experienced mediator of wage and hour class and PAGA representative actions. The mediation
20 concluded with a settlement, which was subsequently memorialized in the form of a
21 Memorandum of Understanding and this Agreement. As part of the Settlement, the Parties
22 agreed to file a First Amended Complaint in the Class Action, and thereafter dismiss the PAGA
23 Action, thereby effectively consolidating the PAGA Action into the Class Action.

24 **I.** In advance of the July 12, 2023 mediation, Defendants informally produced: (1)
25 time and payroll records for 33% of the approximate 302 Class Members; (2) all applicable
26 written wage and hour policy documents; and (3) all documents concerning Plaintiff available to
27 Defendants.

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1 **J.** The Parties believe that the Settlement is fair, reasonable, and adequate. The
2 Settlement was arrived at through arm’s-length negotiations, taking into account all relevant
3 factors. The Parties recognize the uncertainty, risk, expense and delay attendant to continuing the
4 Action through trial and any appeal. Accordingly, the Parties desire to settle, compromise and
5 discharge all disputes and claims arising from or relating to the Action fully, finally, and forever.

6 **K.** This Agreement is intended to and does effectuate the full, final and complete
7 resolution of all Class Released Claims (as that term is defined in Paragraph 7(A) below) of
8 Plaintiff and Participating Class Members, and all PAGA Released Claims (as that term is
9 defined in Paragraph 7(B) below) of Plaintiff and, to the extent permitted by law, of the State of
10 California and Aggrieved Employees.

11 **3. JURISDICTION**

12 The Court has jurisdiction over the Parties and the subject matter of the Action. The
13 Action includes claims that, if proven, would authorize the Court to grant relief pursuant to the
14 applicable statutes. After the Court has granted Final Approval of the Settlement and entered
15 judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment
16 pursuant to California Rules of Court, rule 3.769, subdivision (h).

17 **4. STIPULATION OF CLASS CERTIFICATION**

18 The Parties stipulate to the certification of the Settlement Class under this Agreement for
19 purposes of settlement only. Although not anticipated by the Parties, if for some reason this
20 Settlement is not approved by the Court and litigation activity resumes, the Parties agree then
21 that no class will have been certified at that time and/or until the Court makes such an order.

22 **5. AMENDMENT OF PLEADINGS AND MOTIONS FOR APPROVAL**
23 **OF SETTLEMENT**

24 The Parties hereby stipulate to the filing of a First Amended Complaint in the Class
25 Action that includes all of the allegations in the PAGA Action. If and when the First Amended
26 Complaint is filed, Plaintiff will dismiss the PAGA Action without prejudice, thereby effectively
27 consolidating all allegations in the PAGA Action into the Class Action.

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1 After full execution of this Agreement, Plaintiff will move for an order granting
2 preliminary approval of the Settlement, approving and directing the mailing of the proposed
3 Notice of Class Action Settlement (“Class Notice”) attached hereto as **Exhibit “A,”** conditionally
4 certifying the Settlement Class for settlement purposes only, and approving the deadlines
5 proposed by the Parties for the submission of Requests for Exclusion, Workweek Disputes and
6 Objections. If and when the Court preliminarily approves the Settlement, and after administration
7 of the Class Notice in a manner consistent with the Court’s Preliminary Approval Order, Plaintiff
8 will move for an order finally approving the Settlement and seek entry of a Judgment in line with
9 this Settlement. The Parties may both respond to any Objections lodged to final approval of the
10 Settlement up to five (5) court days before the Final Approval Hearing.

11 The Parties hereby expressly agree that whether or not the Court finally approves the
12 Settlement, Plaintiff’s allegations from the PAGA Action will be effectively consolidated into
13 the Class Action, will relate back to the date on which Plaintiff filed the PAGA Notice, and
14 Defendants will be estopped from making any argument that there is any adverse effect on the
15 statute of limitations caused by Plaintiff’s dismissal of the PAGA Action without prejudice to
16 effectuate this consolidation.

17 **6. STATEMENT OF NO ADMISSION**

18 Defendants deny any wrongdoing of any sort and further deny any liability to Plaintiff
19 and the Settlement Class with respect to any claims or allegations asserted in the Action and the
20 PAGA Notice. This Agreement shall not be deemed an admission by Defendants of any claims
21 or allegations asserted in the Action or in the PAGA Notice. Except as set forth elsewhere herein,
22 in the event that this Agreement is not approved by the Court or any appellate court, is terminated,
23 or otherwise fails to be enforceable, Plaintiff will not be deemed to have waived, limited or
24 affected in any way any claims, rights or remedies, or defenses in the Action or in the PAGA
25 Notice, and Defendants will not be deemed to have waived, limited or affected in any way any
26 of their objections or defenses in the Action and in the PAGA Notice. The Parties shall not
27 stipulate to class certification and shall be restored to their respective positions in the Action prior
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1 to the entry of this Settlement. Payment of wages under this Settlement neither extend nor alter
2 the Class Members' period of employment with Defendants for any purpose.

3 **7. RELEASE OF CLAIMS**

4 **A. Release by All Participating Class Members**

5 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
6 of Judgment and payment by Defendants to the Settlement Administrator of the full Gross
7 Settlement Amount and Employers Taxes necessary to effectuate the Settlement, Plaintiff and all
8 Participating Class Members, for the duration of the Class Period, release all claims that were
9 alleged or reasonably could have been alleged based on the facts stated in the Operative
10 Complaint, including, but not limited to: (a) all claims for failure to pay overtime wages,
11 including at the correct regular rate of pay; (b) all claims for failure to pay minimum wages,
12 including for alleged off-the-clock work; (c) all claims for failure to provide compliant meal
13 periods or compensation in lieu thereof, including meal period premiums at the correct regular
14 rate of pay; (d) all claims for failure to provide rest periods or compensation in lieu thereof,
15 including rest period premiums at the correct regular rate of pay; (e) all claims for waiting time
16 penalties; (f) all claims for wage statement violations; (g) all claims for failure to timely pay
17 wages; (h) all claims for failure to indemnify business expenses, including for laundering work
18 uniforms; and (i) all claims for unfair competition asserted through California Business &
19 Professions Code §§ 17200, *et seq.*, arising out of the Labor Code violations referenced in the
20 Operative Complaint. (the "Class Released Claims").

21 **B. Release by All Aggrieved Employees**

22 For Aggrieved Employees and, to the extent permitted by law, the State of California, the
23 release includes for the duration of the PAGA Period, all claims for PAGA civil penalties asserted
24 in the PAGA Notice and in the Operative Complaint, or that could have been based on the factual
25 allegations asserted in the PAGA Notice and the Operative Complaint for PAGA civil penalties,
26 including, but not limited to, pursuant to Labor Code sections 210, 226(e), 226.3, 432.3, 432.7,
27 432.8, 558, 1197.1, and 2699 for alleged violations of Labor Code sections 96, 98.6, 200, 201,
28 201.3, 202, 203, 204, 210, 212, 213, 221, 223, 226 (including 226(a)), 226.7, 227.3, 232, 232.5,

1 246, *et seq.*, 404, 432, 432.3, 432.5, 432.6, 432.7, 510, 512, 558, 1102.5, 1174, 1174.5, 1182.12,
2 1194, 1197, 1197.1, 1197.5, 1198.5, 1527, 2802, 2810.5, 3366, 3457, 6403, 6409.6, 6432, and
3 8397.4 and the IWC Wage Orders concerning the provision of suitable seating (the “PAGA
4 Released Claims”).

5 **C. Claims Not Released**

6 The releases above expressly exclude all other claims, including claims for vested
7 benefits, wrongful termination, unemployment insurance, disability, social security, workers’
8 compensation, and any other claims outside of the Class Released Claims of Participating Class
9 Members arising during the Class Period and the PAGA Released Claims of Aggrieved
10 Employees (and, to the extent permitted by law, the State of California) arising outside of the
11 PAGA Period.

12 **D. Plaintiff’s General Release**

13 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
14 of Judgment and payment by Defendants to the Settlement Administrator selected of the full
15 Gross Settlement Amount and Employer’s Taxes necessary to effectuate the Settlement, in
16 addition to the Released Claims, Plaintiff makes the additional following General Release:
17 Plaintiff releases the Released Parties from all claims, demands, rights, liabilities and causes of
18 action of every nature and description whatsoever, known or unknown, asserted or that might
19 have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule,
20 law or regulation arising out of, relating to, or in connection with any act or omission of the
21 Released Parties through the date of full execution of this Agreement in connection with
22 Plaintiff’s employment with Defendants or termination thereof, except for any and all other
23 claims that may not be released as a matter of law through this Agreement. To the extent of the
24 General Release provided herein, Plaintiff stipulates and agrees that, upon entry of an Order
25 granting Final Approval of the Settlement, entry of Judgment and payment by Defendants to the
26 Settlement Administrator selected of the full Gross Settlement Amount and Employer’s Taxes
27 necessary to effectuate the Settlement, Plaintiff shall have expressly waived and relinquished, to
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1 the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the
2 California Civil Code, or any other similar provision under federal or state law, which provides:

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

6 **8. SETTLEMENT ADMINISTRATOR**

7 **A.** Plaintiff, through Class Counsel, have selected Apex Class Action Administration
8 to administer the Settlement, which includes, but is not limited to, translating the Class Notice to
9 Spanish, distributing and responding to inquiries about the Class Notice, and calculating all
10 amounts to be paid from the Gross Settlement Amount. Charges and expenses of the Settlement
11 Administrator, currently estimated to be \$8,500.00, will be paid from the Gross Settlement
12 Amount. If the actual amount of the Settlement Administration Costs is less than \$8,500.00, the
13 difference between \$8,500.00 and the actual Settlement Administration Costs shall be a part of
14 the Net Settlement Amount. If the Settlement Administration Costs exceed \$8,500.00, then such
15 excess will be paid solely from the Gross Settlement Amount and Defendants will not be
16 responsible for paying any additional funds in order to pay these additional costs.

17 **9. NOTICE, WORKWEEK DISPUTE, OBJECTION AND EXCLUSION**
18 **PROCESS**

19 **A. Notice to the Settlement Class Members**

20 (1) Within seven (7) calendar days after the Preliminary Approval Date,
21 Defendants' Counsel shall provide the Settlement Administrator with information with respect
22 to each Settlement Class Member, including his or her: (1) name; (2) last known address(es)
23 currently in Defendants' possession, custody or control; (3) last known telephone number(s)
24 currently in Defendants' possession, custody or control; (4) last known Social Security
25 Number(s) in Defendants' possession, custody or control; and (5) the dates of employment (*i.e.*,
26 hire dates and, if applicable, re-hire date(s) and/or separation date(s)) for each Settlement Class
27 Member ("Class List"). The Settlement Administrator shall perform an address search using the
28 United States Postal Service National Change of Address ("NCOA") database and update the

1 addresses contained on the Class List with the newly found addresses, if any. Within seven (7)
2 calendar days or soon thereafter of receiving the Class List from Defendants, the Settlement
3 Administrator shall mail the Class Notice in English and Spanish to the Settlement Class
4 Members via first-class regular U.S. Mail using the most current mailing address information
5 available. The Settlement Administrator shall maintain the Class List and digital copies of all the
6 Settlement Administrator's records evidencing the giving of notice to any Settlement Class
7 Member for at least four (4) years from the Final Approval Date.

8 (2) The Class Notice will set forth:

- 9 (a) the Settlement Class Member's estimated Individual
10 Settlement Payment and Individual PAGA Payment,
11 and the basis for each;
- 12 (b) the information required by California Rules of Court,
13 rule 3.766, subdivision (d);
- 14 (c) the material terms of the Settlement;
- 15 (d) the proposed Settlement Administration Costs;
- 16 (e) the definition of the Settlement Class;
- 17 (f) a statement that the Court has preliminarily approved
18 the Settlement;
- 19 (g) how the Settlement Class Member can obtain
20 additional information, including contact information
21 for Class Counsel;
- 22 (h) information regarding opt-out and objection
23 procedures;
- 24 (i) the date and location of the Final Approval Hearing;
25 and
- 26 (j) that the Settlement Class Member must notify the
27 Settlement Administrator no later than the Response
28 Deadline if the Settlement Class Member disputes the

1 accuracy of the number of Workweeks worked as set
2 forth on his or her Class Notice and how to do so
3 (“Workweek Dispute”). If a Settlement Class Member
4 fails to timely dispute the number of Workweeks
5 attributed to him or her in conformity with the
6 instructions in the Class Notice, then he or she shall be
7 deemed to have waived any objection to its accuracy
8 and any claim to any additional settlement payment
9 based on different data.

10 (3) If a Class Notice from the initial notice mailing is returned as
11 undeliverable, the Settlement Administrator will attempt to obtain a current address for the
12 Settlement Class Member to whom the returned Class Notice had been mailed, within five (5)
13 calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class
14 Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator
15 is successful in obtaining a new address, it will re-mail the Class Notice to the Settlement Class
16 Member within three (3) business days. Further, any Class Notices that are returned to the
17 Settlement Administrator with a forwarding address before the Response Deadline shall be
18 promptly re-mailed to the forwarding address affixed thereto.

19 (4) No later than seven (7) calendar days from the Response Deadline, the
20 Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the
21 completion of the notice process, including the number of attempts to obtain valid mailing
22 addresses for and re-sending of any returned Class Notices, as well as the identities, number of,
23 and copies of all Requests for Exclusion and Objections received by the Settlement
24 Administrator.

25 **B. Objections**

26 Only Participating Class Members may object to the Settlement. In order for any
27 Settlement Class Member to object to this Settlement in writing, or any term of it, he or she must
28 do so by mailing a written objection to the Settlement Administrator at the address or phone

1 number provided on the Class Notice no later than the Response Deadline. The Settlement
2 Administrator shall email a copy of the Objection forthwith to Class Counsel and Defendants'
3 counsel and attach copies of all Objections to the Declaration it provides Class Counsel, which
4 Class Counsel shall file in support of Plaintiff's Motion for Final Approval. The Objection should
5 set forth in writing: (1) the Objector's name; (2) the Objector's address; (3) the last four digits of
6 the Objector's Social Security Number; (4) the Objector's signature; (5) a statement of whether
7 the Objector plans to appear at the Final Approval Hearing; and (6) the reason(s) for the
8 Objection, along with whatever legal authority, if any, the Objector asserts in support of the
9 Objection. If a Settlement Class Member objects to the Settlement, the Settlement Class Member
10 will remain a member of the Settlement Class and if the Court approves this Agreement, the
11 Settlement Class Member will be bound by the terms of the Settlement in the same way and to
12 the same extent as a Settlement Class Member who does not object. The date of mailing of the
13 Class Notice to the objecting Settlement Class Member shall be conclusively determined
14 according to the records of the Settlement Administrator. Settlement Class Members need not
15 object in writing to be heard at the Final Approval Hearing; they may object or comment in
16 person at the hearing at their own expense. Class Counsel and Defendants' Counsel may respond
17 to any objection lodged with the Court up to five (5) court days before the Final Approval Hearing
18 and may respond to oral objections presented at the Final Approval Hearing, if any.

19 **C. Requesting Exclusion**

20 Any Settlement Class Member may request exclusion from (*i.e.*, "opt out" of) the
21 Settlement by mailing a written request to be excluded from the Settlement ("Request for
22 Exclusion") to the Settlement Administrator, postmarked on or before the Response Deadline.
23 To be valid, a Request for Exclusion must include: (1) the Class Member's name; (2) the last
24 four (4) digits of the Class Member's Social Security Number; (3) the Class Member's signature;
25 and (4) the following statement: "Please exclude me from the Settlement Class in the *Blandi v.*
26 *Francesca Restaurant, LLC et. al* matter," or any statement of similar meaning standing for the
27 proposition that the Class Member does not wish to participate in the Settlement. The Settlement
28 Administrator shall immediately provide copies of all Requests for Exclusion to Class Counsel

1 and Defendants' Counsel and shall report the Requests for Exclusions that it receives, to the
2 Court, in its declaration to be provided in advance of the Final Approval Hearing. Any Settlement
3 Class Member who requests exclusion using this procedure will not be entitled to receive any
4 payment from the Settlement and will not be bound by the Settlement Agreement or have any
5 right to object to, appeal, or comment on the Settlement. Any Settlement Class Member who
6 does not opt out of the Settlement by submitting a timely and valid Request for Exclusion will
7 be bound by all terms of the Settlement, including those pertaining to the Released Claims, as
8 well as any Judgment that may be entered by the Court if Final Approval of the Settlement is
9 granted.

10 A Settlement Class Member cannot submit both a Request for Exclusion and an objection.
11 If a Settlement Class Member submits an Objection and a Request for Exclusion, the Request for
12 Exclusion will control and the Objection will be overruled. Settlement Class Members who
13 worked during the PAGA Period as Aggrieved Employees that submit a valid Request for
14 Exclusion will still be deemed Aggrieved Employees, will still receive their Individual PAGA
15 Payments, and will be bound by the release of the PAGA Released Claims.

16 **D. Disputes Regarding Settlement Class Members' Workweek Data**

17 Each Settlement Class Member may dispute the number of Workweeks attributed to him
18 or her on his or her Class Notice ("Workweek Dispute"). Any such disputes must be mailed to
19 the Settlement Administrator by the Settlement Class Member, postmarked on or before the
20 Response Deadline. The Settlement Administrator shall immediately provide copies of all
21 disputes to Class Counsel and counsel for Defendants and shall immediately attempt to resolve
22 all such disputes directly with relevant Settlement Class Member(s) with the assistance of
23 Defendants and Class Counsel. If the dispute cannot be resolved in this manner, the Court shall
24 adjudicate the dispute.

25 **10. INDIVIDUAL SETTLEMENT PAYMENTS AND INDIVIDUAL**
26 **PAGA PAYMENTS**

27 Individual Settlement Payments will be calculated and distributed to Participating Class
28 Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class

1 Members' respective number of Workweeks worked during the Class Period. Individual PAGA
2 Payments to Aggrieved Employees will be calculated and distributed to Aggrieved Employees
3 from the PAGA Payment on a *pro rata* basis based on Aggrieved Employees' respective
4 number of Workweeks worked during the PAGA Period. Specific calculations of the Individual
5 Settlement Shares and Individual PAGA Payments to Aggrieved Employees will be made as
6 follows:

7 **A.** The Settlement Administrator will determine the total number of Workweeks
8 worked by each Settlement Class Member during the Class Period ("Class Member's
9 Workweeks"), as well as the aggregate number of Workweeks worked by all Settlement Class
10 Members during the Class Period ("Class Workweeks"). Additionally, the Settlement
11 Administrator will determine the total number of Workweeks worked by each Aggrieved
12 Employee during the PAGA Period ("Aggrieved Employee's Workweeks"), as well as the
13 aggregate number of Workweeks worked by all Aggrieved Employees during the PAGA Period
14 ("PAGA Workweeks").

15 **B.** To determine each Settlement Class Member's Individual Settlement Share, the
16 Settlement Administrator will use the following formula: Individual Settlement Share =
17 (Settlement Class Member's Workweeks worked ÷ Class Workweeks) × Net Settlement
18 Amount.

19 **C.** To determine each Participating Class Member's Participating Individual
20 Settlement Share, the Settlement Administrator will determine the aggregate number of
21 Workweeks worked by all Participating Class Members during the Class Period ("Participating
22 Class Workweeks") and use the following formula: Individual Settlement Share =
23 (Participating Class Member's Workweeks worked ÷ Participating Class Workweeks) × Net
24 Settlement Amount.

25 **D.** The net amount of the Participating Individual Settlement Share is to be paid out
26 to Participating Class Members by way of check and is referred to as "Individual Settlement
27 Payment(s)".

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1 E. To determine each Aggrieved Employee's Individual PAGA Payment, the
2 Settlement Administrator will use the following formula: Aggrieved Employee's Individual
3 PAGA Payment = (Aggrieved Employee's Workweeks worked ÷ PAGA Workweeks) x
4 \$5,000.00 (the PAGA Payment).

5 F. Individual Settlement Payments and Individual PAGA Payments shall be paid
6 to Participating Class Members and/or Aggrieved Employees by way of check. When a
7 Participating Class Member is also an Aggrieved Employee, one check may be issued that
8 aggregates both the Individual Settlement Payment and the Individual PAGA Payment.

9 **11. DISTRIBUTION OF PAYMENTS**

10 **A. Distribution of Individual Settlement Payments**

11 Participating Class Members will receive an Individual Settlement Payment and
12 Aggrieved Employees will receive an Individual PAGA Payment. Individual Settlement
13 Payment and Individual PAGA Payment checks shall remain valid and negotiable for one
14 hundred and eighty (180) calendar days after the date of their issuance. For any Class Member
15 whose Individual Class Payment check or Individual PAGA Payment check is uncashed and
16 cancelled after the void date, the Administrator shall transmit the funds represented by such
17 checks to the California Controller's Unclaimed Property Fund in the name of the Class
18 Member thereby leaving no "unpaid residue" subject to the requirements of California Code of
19 Civil Procedure Section 384, subd (b).

20 **B. Funding of Settlement**

21 Defendants shall, within fourteen (14) calendar days of the Final Approval Date make
22 payment of the Gross Settlement Amount (as the same may be escalated pursuant to Paragraph
23 17 of this Agreement) and Employer Taxes to the Settlement Administrator pursuant to Internal
24 Revenue Code section 1.468B-1 for deposit in an interest-bearing qualified settlement account
25 ("QSA") with an FDIC insured banking institution, for distribution in accordance with this
26 Agreement and the Court's Orders, and subject to the conditions described herein.

27 **C. Time for Distribution**

28 Within seven (7) calendar days after payment of the full Gross Settlement Amount and

1 Employer Taxes by Defendants, or as soon thereafter as practicable, the Settlement Administrator
2 shall distribute all payments due from the QSA for: (1) the Service Award to Plaintiff, as
3 specified in this Agreement and approved by the Court; (2) the Attorneys' Fees and Costs Award
4 to be paid to Class Counsel, as specified in this Agreement and approved by the Court; (3) the
5 Settlement Administrator Costs, as specified in this Agreement and approved the Court; (4) the
6 LWDA Payment, as specified in this Agreement and approved by the Court; (5) Individual
7 PAGA Payments to Aggrieved Employees, as specified in this Agreement and approved by the
8 Court; and (6) Individual Settlement Payments to Participating Class Members, less applicable
9 taxes and withholdings, as specified in this Agreement and approved by the Court. All interest
10 accrued shall be for the benefit of the Class Members and distributed on a *pro rata* basis to
11 Participating Class Members based on the number of Workweeks worked by them in the Class
12 Period.

13 **12. ATTORNEYS' FEES AND LITIGATION COSTS**

14 Class Counsel shall apply for, and Defendants shall not oppose, an award of attorneys'
15 fees of up to thirty-five (35%) percent of the Gross Settlement Amount, which, unless escalated
16 pursuant to Paragraph 17 of this Agreement, amounts to One Hundred Twenty-Two Thousand
17 and Five Hundred Dollars and Zero Cents (\$122,500.00). Class Counsel shall further apply for,
18 and Defendants shall not oppose, an application or motion by Class Counsel for reimbursement
19 of actual costs associated with Class Counsel's prosecution of this matter as set forth by
20 declaration testimony in an amount up to Thirty Thousand Dollars and Zero Cents (\$30,000.00).
21 Awards of attorneys' fees and costs shall be paid out of the Gross Settlement Amount, for all
22 past and future attorneys' fees and costs necessary to prosecute, settle and obtain Final Approval
23 of the settlement in Action. The "future" aspect of the amounts stated herein includes, without
24 limitation, all time and expenses expended by Class Counsel (including any appeals therein).
25 There will be no additional charge of any kind to either the Settlement Class Members or request
26 for additional consideration from Defendants for such work unless, Defendants materially breach
27 this Agreement, including any term regarding funding, and further efforts are necessary from
28 Class Counsel to remedy said breach, including, without limitation, moving the Court to enforce

1 the Agreement. Should the Court approve attorneys' fees and/or litigation costs and expenses in
2 amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall
3 be a part of the Net Settlement Amount.

4 **13. SERVICE AWARD TO PLAINTIFF**

5 Named Plaintiff shall seek, and Defendants shall not oppose, a Service Award in an
6 amount not to exceed Seven Thousand and Five Hundred Dollars and Zero Cents (\$7,500.00) to
7 Plaintiff, for participation in and assistance with the Action. Any Service Award and additional
8 consideration awarded and/or paid to Plaintiff shall be paid from the Gross Settlement Amount
9 and shall be reported on an IRS Form 1099. If the Court approves the Service Award in less than
10 the amounts sought herein, then the unapproved portion(s) shall be a part of the Net Settlement
11 Amount.

12 **14. TAXATION AND ALLOCATION**

13 a. Each Individual Settlement Share shall be allocated as follows: 20% as wages (to
14 be reported on an IRS Form W2); and 80% as interest and penalties (to be reported on an IRS
15 Form 1099). Each Individual PAGA Payment shall be allocated entirely as penalties. The Parties
16 agree that the employees' share of taxes and withholdings with respect to the wage portion of the
17 Individual Settlement Share will be withheld from the Individual Settlement Share in order to
18 yield the Individual Settlement Payment. The amount of federal income tax withholding will be
19 based upon a flat withholding rate for supplemental wage payments in accordance with Treasury
20 Regulation § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also
21 be made pursuant to applicable state and/or local withholding codes or regulations.

22 b. Forms W-2 and/or Forms 1099 will be distributed by the Settlement
23 Administrator at times and in the manner required by the Internal Revenue Code of 1986 (the
24 "Code") and consistent with this Agreement. If the Code, the regulations promulgated
25 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes
26 set forth in this Section may be modified in a manner to bring Defendants into compliance with
27 any such changes.

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1 c. All Employer Taxes shall be paid by Defendants separate, apart, and in addition
2 to the Gross Settlement Amount. Defendants shall remain liable to pay the employer's share of
3 payroll taxes as described above.

4 d. Neither Counsel for Plaintiff nor Defendants intend anything contained in this
5 Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement
6 be relied upon as such within the meaning of United States Treasury Department Circular 230
7 (31 C.F.R. Part 10, as amended) or otherwise.

8 **15. PRIVATE ATTORNEYS' GENERAL ACT ALLOCATION**

9 The Parties agree to allocate Twenty Thousand Dollars and Zero Cents (\$20,000.00) of
10 the Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five
11 percent (75%) of the amount allocated toward PAGA (\$15,000.00) will be paid to the LWDA
12 and twenty-five percent (25%) or \$5,000.00 will be distributed to Aggrieved Employees on a *pro*
13 *rata* basis based upon their respective Workweeks worked as Aggrieved Employees during the
14 PAGA Period.

15 **16. COURT APPROVAL**

16 This Agreement is contingent upon an order by the Court granting Final Approval of the
17 Settlement, and that the LWDA does not intervene and object to the Settlement. In the event it
18 becomes impossible to secure approval of the Settlement by the Court and the LWDA, the Parties
19 shall be restored to their respective positions in the Action prior to entry of this Settlement. If
20 this Settlement Agreement is voided, not approved by the Court or approval is reversed on appeal,
21 it shall have no force or effect and no Party shall be bound by its terms except to the extent: (a)
22 the Court reserves any authority to issue any appropriate orders when denying approval; and/or
23 (b) there are any terms and conditions in this Settlement Agreement specifically stated to survive
24 the Settlement Agreement being voided or not approved, and which control in such an event.

25 **17. INCREASE IN WORKWEEKS**

26 Defendants represent, to the best of their knowledge at the time of mediation, that an
27 extrapolation of the Workweeks is 12,376 Workweeks worked by Class Members during the
28 period from December 7, 2018 through July 12, 2023. The Parties agree that if, once the data

1 covering the Class Period is reviewed by the Settlement Administrator, and the actual number of
2 workweeks during the Class Period is more than 10 percent (10%) greater than 12,376 (or greater
3 than 13,614), then the Gross Settlement Amount shall increase by \$28.28 for each additional
4 Workweek. For example, if the actual number of Workweeks during the Class Period is 13,624,
5 then the Gross Settlement Amount will increase in the amount of \$282.80.

6 **18. DEFENDANTS' RIGHT TO WITHDRAW**

7 If the number of valid Requests for Exclusion exceeds 10% of the total of all Class
8 Members, Defendants may, but are not obligated to, elect to withdraw from the Settlement. The
9 Parties agree that, if Defendants withdraw, the Settlement shall be void ab initio, have no force
10 or effect whatsoever, and that neither Party will have any further obligation to perform under
11 this Agreement; provided, however, Defendants will remain responsible for paying all
12 administration expenses incurred to that point. Defendants must notify Class Counsel and the
13 Court of its election to withdraw not later than fourteen (14) days after the receiving sufficient
14 information from the Settlement Administrator that the above limit has been exceeded; late
15 elections will have no effect.

16 **19. NOTICE OF JUDGMENT**

17 In addition to any duties set out herein, the Settlement Administrator shall provide
18 notice of the Final Judgment entered in the Action by posting the same on its website for a
19 period of no less than four (4) years.

20 **20. MISCELLANEOUS PROVISIONS**

21 **A. Interpretation of the Agreement**

22 This Agreement constitutes the entire agreement between the Parties with respect to its
23 subject matter. Except as expressly provided herein, this Agreement has not been executed in
24 reliance upon any other written or oral representations or terms, and no such extrinsic oral or
25 written representations or terms shall modify, vary, or contradict its terms. In entering into this
26 Agreement, the Parties agree that this Agreement is to be construed according to its terms and
27 may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and
28 enforced under the laws of the State of California, both in its procedural and substantive aspects,

1 without regard to its conflict of law provisions. Any claim arising out of or relating to the
2 Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior
3 Court of the State of California for the County of San Diego, and Plaintiff and Defendants hereby
4 consent to the personal jurisdiction of the Court in the Action over it solely in connection
5 therewith. The foregoing is only limited to disputes concerning this Agreement. The Parties, and
6 each of them, participated in the negotiation and drafting of this Agreement and had available to
7 them the advice and assistance of independent counsel. As such, neither Plaintiff nor Defendants
8 may claim that any ambiguity in this Agreement should be construed against the other. The
9 Agreement may be modified only by a writing signed by counsel for the Parties and approved by
10 the Court.

11 **B. Further Cooperation**

12 The Parties and their respective attorneys shall proceed diligently to prepare and execute
13 all documents, to seek the necessary approvals from the Court, and to do all things reasonably
14 necessary to consummate the Settlement as expeditiously as possible. The Parties agree that they
15 will not take any action inconsistent with this Agreement, including, without limitation,
16 encouraging Class Members to opt out of the Settlement. In the event the Court finds that any
17 Party has taken actions inconsistent with the Settlement, including, without limitation,
18 encouraging Class Members to opt out of the Settlement, the Court may take any corrective
19 actions, including enjoining any Party from communicating regarding the Settlement on an *ex*
20 *parte* basis, issuing (a) corrective notice(s), awarding monetary, issue, evidentiary and/or
21 terminating sanctions against that Party, and/or enforcing this Agreement despite the presence of
22 opt-outs and/or objections.

23 **C. Counterparts**

24 The Agreement may be executed in one or more actual or non-original counterparts, all
25 of which will be considered one and the same instrument and all of which will be considered
26 duplicate originals.

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E. Authority

Each individual signing below warrants that he or she has the authority to execute this Agreement on behalf of the Party for whom or which that individual signs.

F. No Third-Party Beneficiaries

Plaintiff, Participating Class Members, Aggrieved Employees, the State of California, Class Counsel, and Defendants are direct beneficiaries of this Agreement, but there are no third-party beneficiaries.

G. Deadlines Falling on Weekends or Holidays

To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday, or legal holiday, that deadline shall be continued until the following business day.

H. Jurisdiction of the Court

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

I. Severability

In the event that one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way effect any other provision if Defendants' Counsel and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

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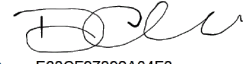
IT IS SO AGREED:

Dated: 12/09/2023, 2023

Jonpenn Blandi
Jonpenn Blandi (Dec 9, 2023 05:48 HST)
JONPENN BLANDI
Plaintiff and Class Representative

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12/14/2023
Dated: _____, 2023

DocuSigned by:

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FRANCESCA RESTAURANT, LLC

Defendant

By: _____

Its: _____

12/14/2023
Dated: _____, 2023

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SCOTT HARRIS HOSPITALITY, LLC

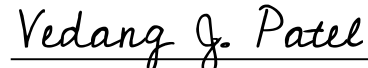
Defendant

By: _____

Its: _____

AGREED AS TO FORM:

Dated: December 11, 2023



DAVID D. BIBIYAN

VEDANG J. PATEL

Counsel for Plaintiff JONPENN BLANDI

Dated: December 21, 2023



ALEXANDRA ASTERLIN

MICHAEL NADER

Counsel for Defendants FRANCESCA
RESTAURANT, LLC and SCOTT HARRIS
HOSPITALITY, LLC