

Mendez v. Rotisystems, Inc.
Alameda Superior Court Case No. 22CV012376
Second Amended Settlement Agreement Subject to Court Approval

This Second Amended Class Action and PAGA Settlement Agreement (“Agreement”) is made between plaintiff Diana Mendez (“Plaintiff”) and defendant Rotisystems, Inc. dba Roli Roti (“Roti”). The Agreement refers to Plaintiff and Roti as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Roti Captioned *Diana Mendez v. Rotisystems, Inc. dba Roli Roti*, initiated on June 7, 2022, and pending in Superior Court of the State of California, County of Alameda, Case No. 22CV012376.
- 1.2. “Administrator” means ILYM Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “flat rate” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” means and refers to any nonexempt employee of Roti who was employed within California at any point during the PAGA Period.
- 1.5. “Class” means and refers to any nonexempt employee of Roti who was employed within California at any point during the Class Period.
- 1.6. “Class Counsel” means Kenneth A. Goldman of the Law Office of Kenneth A. Goldman, PC and Sahag Majarian II of the Law Offices of Sahag Majarian II.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8. “Class Data” means the Class Member’s name, last-known mailing address, Social Security number, date of hire, date of termination or resignation, and number of Class Period Workweeks and PAGA Pay Periods.
- 1.9. “Class Member” or “Settlement Class Member” mean a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be

mailed to Class Members in English, Mandarin, French, and Spanish translation in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

- 1.12. "Class Period" means the period from June 7, 2018, through June 16, 2023, inclusive, or as otherwise determined under Paragraph 8 below, which will be identified in the Final Approval order.
- 1.13. "Class Representative" means Plaintiff Diana Mendez.
- 1.14. "Class Representative Service Payment" means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15. "Court" means the Superior Court of California, County of Alameda.
- 1.16. "Defendant" means named Defendant Rotisystems, Inc. dba Roli Roti ("Roti").
- 1.17. "Defense Counsel" means Mollie Burks and Allison Ross of Gordon Rees Scully Mansukhani.
- 1.18. "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.19. "Final Approval" means the Court's order granting final approval of the Settlement.
- 1.20. "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval of the Settlement.
- 1.21. "Final Judgment" means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.22. "Gross Settlement Amount" means five hundred thousand dollars and zero cents (\$500,000.00), which is the total amount Roti agrees to pay under the Settlement except as provided in Paragraph 8.2 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator's Expenses.
- 1.23. "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.24. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.

- 1.25. "Judgment" means the judgment entered by the Court based upon the Final Approval.
- 1.26. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.27. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.28. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29. "Non-Participating Class Member" means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Roti for at least one day during the PAGA Period.
- 1.31. "PAGA Period" means the period from April 25, 2021, through June 16, 2023, inclusive, or as otherwise determined under Paragraph 8 below, which will be identified in the Final Approval order.
- 1.32. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.33. "PAGA Notice" means Plaintiff's April 25, 2022 letter to Roti and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.34. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, \$20,000, allocated 25% to the Aggrieved Employees (\$5,000.00) and 75% to LWDA (\$15,000.00) in settlement of PAGA claims.
- 1.35. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.36. "Plaintiff" means the plaintiff in this Action, Diana Mendez.
- 1.37. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.
- 1.38. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.39. "Released Class Claims" means the claims being released as described in Paragraph 5.2 below.
- 1.40. "Released PAGA Claims" means the claims being released as described in Paragraph 5.3 below.
- 1.41. "Released Parties" means Rotisystems, Inc. dba Roli Roti, and its former and present parent companies or subsidiaries, divisions and its or their respective directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns,

employees, agents, and any individual or entity that could be liable for any of the Released Class Claims and Released PAGA Claims.

- 1.42. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.43. "Response Deadline" means 45 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) email or mail Requests for Exclusion from the Settlement, or (b) email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.44. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.
- 1.45. "Workweek" means any week during which a Class Member performed work for Roti. for at least one day, during the Class Period.

2. RECITALS.

- 2.1. On June 7, 2022, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Roti for Failure to Pay All Wages Due Each Pay Period; Failure to Pay Overtime Wages; Failure to Pay Minimum Wages For All Hours Worked; Failure to Pay All Wages Owed Upon Termination; Failure to Furnish Accurate Wage Statements; Failure to Provide Adequate Meal Periods; Failure to Provide Adequate Paid Rest Breaks; Unfair Business Practices; and Enforcement of the Private Attorneys General Act. On September 21, 2022, Plaintiff filed a First Amended Complaint ("FAC") containing the same causes of action as the Complaint. On or about May 8, 2023, Plaintiff filed a Second Amended Complaint modifying the existing definition in the FAC of Plaintiff's "Unpaid Wages Class" to include current employees, and modifying the FAC to allege Labor Code section 1182.12 in relation to Plaintiff's cause of action for failure to pay minimum wages for all hours worked.
- 2.2. The SAC is the operative complaint in the Action (the "Operative Complaint"). Roti denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.
- 2.3. Pursuant to Labor Code section 2699.3, subd. (a), Plaintiff gave timely written notice to Roti and the LWDA by sending the PAGA Notice.
- 2.4. On February 13, 2023, the Parties participated in an all-day mediation presided over by Jason Marsili, Esq. which led to this Agreement to settle the Action.
- 2.5. Prior to mediation Plaintiff obtained, through informal discovery, time records for roughly 12,300 workweeks, payroll data for the Class, and pertinent written policies. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").
- 2.6. The Court has not granted class certification.

- 2.7. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraphs 8.2-8.3 below, Roti promises to pay five hundred thousand dollars and zero cents (\$500,00.00) and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portion (as defined in Paragraph 3.2.4.1) of the Individual Class Payments. Roti has no obligation to pay the Gross Settlement Amount or any employer payroll taxes prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Roti.

- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than ten thousand dollars and zero cents (\$10,000.00) in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member. Roti will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for this Class Representative Service Payment concurrently or combined with the filing of Plaintiff's motion for Final Approval. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than one-third (1/3 or 33.33%), which is currently estimated to be one hundred sixty-six thousand six hundred sixty-six dollars and sixty-seven cents (\$166,666.67) and a Class Counsel Litigation Expenses Payment of not more than twenty thousand dollars and zero cents (\$20,000.00). Roti will not oppose requests for these payments provided they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment concurrently with Plaintiff's motion for Final Approval, or the request for Class Counsel Fees Payment and Class Litigation Expenses Payment shall be included within the Final Approval motion. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion, any Class Counsel Fee Payment, and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes

owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Roti harmless, and indemnifies Roti, from any dispute or controversy regarding any division or sharing of any of these Payments.

- 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$11,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$11,000.00, the Administrator will retain the remainder in the Net Settlement Amount.
- 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.
 - 3.2.4.1. Tax Allocation of Individual Class Payments. Thirty-five percent (35%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The remaining sixty-five percent (65%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.
 - 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.
 - 3.2.4.3. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of twenty thousand dollars and zero cents (\$20,000.00) to be paid from the Gross Settlement Amount, with 75% (\$15,000.00) allocated to the LWDA PAGA Payment and 25% (\$5,000.00) allocated to the Individual PAGA Payments.
 - 3.2.4.4. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$5,000.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.
 - 3.2.4.5. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records as of February 13, 2023 Roti estimates there are 353 Class Members who collectively worked a total of 12,300 Workweeks, and 172 Aggrieved Employees who worked a total of 2,792 PAGA Pay Periods.
- 4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Roti will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Roti has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Roti must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.3. Funding of Gross Settlement Amount. Roti shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Roti's share of payroll taxes by transmitting the funds to the Administrator in two installments. The first installment shall be equal to fifty percent (50%) of the Gross Settlement Amount and shall be paid no later than 30 days after the Effective Date. The second installment shall be equal to 50% of the Gross Settlement Amount plus the amounts necessary to fully pay Roti's share of payroll taxes and shall be paid no later than 210 days after the Effective Date.
- 4.4. Payments from the Gross Settlement Amount. Within 14 days after Roti funds the final installment of the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
 - 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

- 4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.
- 4.4.3. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the funds shall be donated to Bay Area Legal Aid as a proper *cy pres* recipient pursuant to Code of Civil Procedure § 384.
- 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Roti to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.
5. **RELEASES OF CLAIMS.** Effective on the date when Roti fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:
- 5.1. Plaintiff's Release. Plaintiff and her former and present spouses, if any, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, or Plaintiff's PAGA Notice, including, but not limited to claims related to Labor Code sections §§ 201-204, 210-211, 218, 218.5, 218.6, 226, 226.3, 226.7, 510-512, 558, 558.1, 1182.12, 1194, 1194.2, 1197, 1197.1, 1199, 2698 *et seq.*, 2699.3, and Business and Professions Code § 17200 *et seq.*, and all other claims, such as those under the California Labor Code, Wage Orders, regulations, and/or other provisions of law, that could have been pleaded based on the facts asserted in the Operative Complaint or PAGA Notice, including: (1) Failure to Pay Minimum Wages for all Hours Worked; (2) Failure to Pay all Wages Earned each Pay Period; (3) Failure to Pay all Overtime Premiums Earned; (4) Failure to Provide Accurate Meal Periods; (5) Failure to Provide Accurate Rest Breaks; (6) Failure to Pay Timely Wages Upon Cessation of Employment; (7) Failure to Provide Compliant Wage Statements; (8) Unfair Competition Law; (9) all related claims for civil penalties pursuant to the Private Attorneys General Act, and (10) interest, fees, and costs ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

5.1.1. Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

5.2. Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint including claims under Labor Code sections §§ 201-204, 210-211, 218, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1182.12, 1194, 1194.2, 1197, 1197.1, 1199, and Business and Professions Code § 17200 *et seq.*, that could have been pleaded based on the facts asserted in the Operative Complaint, including: (1) Failure to Pay Minimum Wages for all Hours Worked; (2) Failure to Pay all Wages Earned each Pay Period; (3) Failure to Pay all Overtime Premiums Earned; (4) Failure to Provide Accurate Meal Periods; (5) Failure to Provide Accurate Rest Breaks; (6) Failure to Pay Timely Wages Upon Cessation of Employment; (7) Failure to Provide Compliant Wage Statements; (8) Unfair Competition Law; and (9) interest, fees, and costs. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

5.3 PAGA Release. Pursuant to the requirements of Labor Code sections 2698, *et seq.*, Plaintiff is the designated agent of the California Labor and Workforce Development Agency ("LWDA"), and is proceeding as a private attorney general by bringing this enforcement action to recover civil penalties pursuant to Labor Code sections 201-204, 210-211, 218, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1182.12, 1194, 1194.2, 1197, 1197.1, 1199, the applicable IWC Wage Orders, and any and all claims for civil penalties involving any alleged failure to pay minimum wages, failure to pay wages owed, failure to provide compliant meal breaks, failure to provide compliant paid rest periods, wage statement violations, continuation wages, and unpaid vacation wages, on behalf of the LWDA and the group of employees herein defined as Aggrieved Employees for the facts and theories set forth in Plaintiff's Operative Complaint or letter(s) to the LWDA. The PAGA Release does not release any claims beyond those identified in the PAGA Notice.

The Parties agree, and Plaintiff agrees, that upon the Effective Date, the LWDA shall be deemed to have, and by operation of the Final Approval and Judgment shall have, released the Released Parties from any claim for civil penalties arising out of the Released Claims or specifically enumerated in the preceding paragraph. As consideration for this release, the LWDA shall receive 75% of the PAGA Payment, consistent with the requirements of the Labor Code sections 2698, *et seq.*

~~Aggrieved Employees shall fully release and forever discharge Released Parties from any and all claims for PAGA penalties in connection with any of the Released Claims or the~~

~~specifically enumerated statutes identified in paragraph 5.2, that are based on facts and circumstances that occurred during the PAGA Period and that may be released by Aggrieved Employees under California law.~~ Aggrieved Employees shall receive a 25 percent share of the PAGA payment consistent with the requirements of the Labor Code sections 2698, et seq. The Released Parties can assert this Agreement as a defense to any future claims for penalties brought by the LWDA or any claims brought on behalf of the LWDA under PAGA.

6. **MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”).
 - 6.1. Roti’s Declaration in Support of Preliminary Approval. Within five (5) business days of the full execution of this Agreement, and after making a reasonable inquiry of Roti, Defense counsel will prepare and deliver to Class Counsel a signed Declaration averring that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement that there are no known conflicts of interest with the proposed Administrator.
 - 6.2. Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, the Administrator and/or the proposed Cy Pres; (v) a signed declaration from Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (1)(1)), this Agreement (Labor Code section 2699, subd. (1)(2)); and (vi) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator and/or the Cy Pres Recipient. In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.
 - 6.3. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 45 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court’s Preliminary Approval to the Administrator.
 - 6.4. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by

telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

- 7.1. Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 7.2. Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 7.4. Notice to Class Members.
 - 7.4.1. No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.
 - 7.4.2. Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice with Spanish, French, and Mandarin translation substantially in the form attached to this Agreement as Exhibit "A". The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.
 - 7.4.3. Not later than 3 business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
 - 7.4.4. The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 45 days otherwise provided in the Class Notice for all Class

Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

7.4.5. If the Administrator, Roti or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

7.5. Requests for Exclusion (Opt-Outs).

7.5.1. Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by email, or mail, a signed written Request for Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely emailed or postmarked by the Response Deadline.

7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

7.5.3. Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

7.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 5.3 of this Agreement and are eligible for an Individual PAGA Payment.

7.6. Challenges to Calculation of Workweeks. Each Class Member shall have 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

7.7. Objections to Settlement.

7.7.1. Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

7.7.2. Participating Class Members may send written objections to the Administrator, by email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 45 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

7.7.3. Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

7.8.1. Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls and emails.

7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than [5] days after the expiration of the deadline for submitting

Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

- 7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
- 7.8.4. Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- 7.8.5. Administrator’s Declaration. Not later than 7 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.
- 7.8.6. Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement, including the total amount of funds from uncashed checks, if any. Class Counsel is responsible for filing the Administrator’s declaration in Court.
- 7.8.7. If any unclaimed funds from uncashed checks exist after the check void date, upon the Court’s issuance of an amended judgment, the Administrator shall disburse all funds from uncashed checks to Bay Area Legal Aid as the *cy pres* recipient.

8. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE

- 8.1. Based on its records, Roti estimates that, as of February 13, 2023, (1) there are 353 Class Members and 12,300 total Workweeks during the Class Period and (2) there are 172 Aggrieved Employees who worked 2,792 Pay Periods during the PAGA Period.
- 8.2. If, as of June 16, 2023, the actual number of Total Workweeks attributable to the Class is more than ten percent (10%) greater than 12,300 (i.e., if the actual Total Workweeks is 13,531 or more), then either (1) the Gross Settlement Amount as defined in Paragraph 1.22 shall be increased on a proportional basis based on the amount in excess of 13,530 (e.g. if the actual number of Workweeks attributable to the Class Period is 14,500, then the Gross Settlement Amount would be 970 workweeks above the allowable amount, or 7.17% higher than the allowable amount, and would result in an increase of the Gross Settlement Amount of \$35,850, which is equivalent to 7.17% of \$500,000.00); or (2) the Class Period and Released Claims will end as of the date the Workweek count exceeds remains below the 10% cap (e.g., if the Total Workweeks attributable to the Class as of March 17, 2023 is 13,525 and Total Workweeks as of March 24, 2023 would exceed 13,530, then the Class Period would be capped as of March 17, 2023). In the event this escalator clause is potentially triggered then Defendant, in its sole discretion, will choose which of these two options shall apply.
- 8.3. In the event that Defendant's option described in Section 8.2 is triggered by an excess of Total Workweeks, Defendant shall notify Plaintiff of its option to increase the Gross Settlement Amount (option 1 above) or cap the Class Period (option 2 above) not later than five (5) business days after the Settlement Administrator notifies the Parties that the Total Workweeks exceeds 13,530, as required pursuant to Section 7.4.1. The Settlement Administrator shall not send the Class Notice to the Class prior to the earlier of Defendant's option to increase the Gross Settlement Amount or cap the Class Period.

In the event that Defendant's response is required pursuant to Section 8.2 and Defendant fails to respond within the prescribed timeframe, the Class Period shall be capped as described in option (2) of Section 8.2. However, if under any circumstances the Total Workweeks exceeded 13,530 and the capped Total Workweeks would shorten the Class Period to a date earlier in time than February 13, 2023, then the Class Period shall end on February 13, 2023, and the Gross Settlement Amount shall be increased pursuant to the formula described in option (1) in Section 8.2.

9. **ROTI'S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds eight percent (8%) of the total of all Class Members, Roti may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if Roti withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Roti will remain responsible for paying all Settlement Administration Expenses incurred to that point. Roti must notify Class Counsel and the Court of its election to withdraw not later than seven (7) days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.
10. **MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code

section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiff shall provide drafts of these documents to Defense Counsel not later than five (5) days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

- 10.1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
- 10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The Court’s decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.
- 10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.
- 10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties’ obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.
- 10.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court’s concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court’s award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

11. AMENDED JUDGMENT. If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

12. ADDITIONAL PROVISIONS.

- 12.1. No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Roti that any of the allegations in the Operative Complaint and/or PAGA Notice have merit or that Roti has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Roti's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Roti reserves the right to contest certification of any class for any reasons, and Roti reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Roti's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).
- 12.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Roti and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose or disseminate, or cause or permit another person to disclose or disseminate, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Roti and Defense Counsel separately agree not to, directly or indirectly, engage in any conversation or other communication with any third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members. This paragraph does not authorize Plaintiff and Class Counsel to publicize this Agreement at any time in violation of Paragraph 12.4 below.
- 12.3. No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 12.4. No Publicity. Plaintiff and Class Counsel shall not publicize this Agreement, the existence of this Agreement, or the amount of the settlement, and shall not use the results of this Agreement or Action in any manner.
- 12.5. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the

Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

- 12.6. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Roti, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 12.7. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 12.8. No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 12.9. No Tax Advice. Neither Plaintiff, Class Counsel, Roti nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 12.10. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 12.11. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.12. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 12.13. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.14. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.15. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Roti in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing

contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Roti unless, prior to the Court's discharge of the Administrator's obligation, Roti makes a written request to Class Counsel for the return, rather than the destruction, of Class Data.

12.16. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

12.17. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

12.18. Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Kenneth A. Goldman
Law Office of Kenneth A. Goldman, PC
16133 Ventura Boulevard, Suite 1200
Encino, California 91436
ken@kengoldmanlaw.com

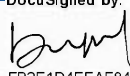
To Roti:

Mollie M. Burks
Allison Ross
Gordon Rees Scully Mansukhani, LLP
315 Pacific Avenue
San Francisco, CA 94111
mburks@grsm.com
arross@grsm.com

12.19. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12.20. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to C.C.P. section 583.330 to extend the date to bring a case to trial under C.C.P. section 583.310 for the entire period of this settlement process.

DATED: 4/10/2024, 2024

DocuSigned by:

EB2E1D4EEAF84CA

Diana Mendez, Plaintiff

DATED: _____, 2024

ROTISYSTEMS, INC.

By:

Thomas Odermatt, CEO

12.20. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to C.C.P. section 583.330 to extend the date to bring a case to trial under C.C.P. section 583.310 for the entire period of this settlement process.

DATED: _____, 2024

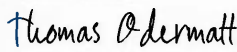
Diana Mendez, Plaintiff

April 9, 2024 | 11:52 AM PDT

DATED: _____, 2024

ROTISYSTEMS, INC.

By:

DocuSigned by:


950DA06C4404483
Thomas Odermatt, CEO