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VILLA & SONS ENTERPRISES, INC.,
18 d/b/a VILLA & SONS BUILDER SERVICES

19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
20 **FOR THE COUNTY OF SAN BENITO**

21 TOMAS MARTINEZ, an individual on behalf
22 of himself and all others similarly situated,

23 Plaintiff,

24 vs.

25 VILLA & SONS ENTERPRISES, INC., a
California corporation; d/b/a VILLA & SONS
26 BUILDER SERVICES; and DOES 1 through
27 50, inclusive,

28 Defendants.

Case No. CU-19-00120

CLASS ACTION

Assigned for All Purposes To:
Hon. J. Omar Rodriguez
Dept.: 1

**JOINT STIPULATION OF CLASS ACTION
SETTLEMENT**

1 This Joint Stipulation of Class Action Settlement (“Settlement” or “Settlement Agreement”) is
2 made and entered into by and between Plaintiff TOMAS MARTINEZ (“Plaintiff” or “Class
3 Representative”), an individual and on behalf of all others similarly situated, and Defendant
4 VILLA & SONS ENTERPRISES, INC., a California corporation doing business as VILLA &
5 SONS BUILDER SERVICES., (“Defendant” and “Villa & Sons Enterprises, Inc.”) (collectively
6 with Plaintiff, the “Parties”).

7 DEFINITIONS

8 The following definitions are applicable to this Settlement Agreement.

9 Definitions contained elsewhere in this Settlement Agreement will also be effective:

10 1. “Action” means *Tomas Martinez vs. Villa & Sons Enterprises, Inc.*, San Benito
11 County Superior Court Case No. CU-19-00120.

12 2. “Attorneys’ Fees and Costs” means attorneys’ fees and costs approved by the
13 Court for Class Counsel’s litigation and resolution of this Action.

14 3. “Class Counsel” means David Yeremian & Associates, Inc.

15 4. “Class List” means a complete list of all Class Members that Defendant will
16 diligently and in good faith compile from its records and provide to the Settlement
17 Administrator within twenty (20) days after Preliminary Approval of this Settlement. The Class
18 List will be formatted in Microsoft Office Excel and will include the following information
19 from Defendant’s records: each Class Member’s full name; last-known mailing address; Social
20 Security number; and dates of employment as a non-exempt employee in California during the
21 Class Period.

22 5. “Class Member(s)” or “Settlement Class” means all current and former non-
23 exempt hourly employees of Defendant who worked for Defendant in California during the
24 Class Period (or if any such person is incompetent, deceased, or unavailable due to military
25 service, the person’s legal representative or successor in interest evidenced by reasonable
26 verification). “Class Members” or “Settlement Class” shall not include any person who
27 submits a timely and valid request for exclusion.

1 6. “Class Period” means the period from July 8, 2015 through the date of
2 preliminary approval or August 31, 2020 (whichever is earlier).

3 7. “Class Representative Enhancement Payment” means the amount approved by
4 the Court to be paid to Plaintiff in recognition of his contributions to the Action on behalf of
5 Class Members.

6 8. “Court” means the Superior Court of California, County of San Benito.

7 9. “Defendant” means Villa & Sons Enterprises, Inc., d/b/a Villa & Sons Builder
8 Services.

9 10. “Effective Date” means: (a) the date of entry of the Court’s order granting final
10 approval of the Settlement Agreement, if no objections have been filed or if an objection was
11 filed and later withdrawn; or (b) if an objection to the Settlement Agreement is filed, then the
12 date when the time expires to file an appeal of the Court’s grant of Final Approval of the
13 Settlement Agreement; or (c) if an objection is filed, as well as a timely Notice of Appeal of the
14 Court’s grant of Final Approval of the Settlement Agreement, then the date the appeal is finally
15 resolved, with the final approval unaffected.

16 11. “Individual Settlement Payment” means each Class Member’s share of the Net
17 Settlement Amount.

18 12. “Gross Settlement Amount” is the amount of One Hundred Forty Thousand
19 Dollars and Zero Cents (\$140,000.00), which is the maximum amount to be paid by Defendant
20 pursuant to this Settlement Agreement. The Gross Settlement Amount includes all Individual
21 Settlement Payments to Class Members, the Class Representative Enhancement Payment to
22 Plaintiff, Attorneys’ Fees and Costs to Class Counsel, and the Settlement Administration Costs
23 to the Settlement Administrator as specified in this Agreement. Defendant shall pay the
24 employer’s share of payroll taxes due on the portion of Settlement Payments allocated to wages
25 separately and in addition to the Gross Settlement Amount. The Parties agree that Defendant
26 will have no obligation to pay any amount in connection with this Settlement Agreement apart
27 from the Gross Settlement Amount and the employer’s share of payroll taxes due on the portion
28

1 of Settlement Payments allocated to wages, and that none of the Gross Settlement Amount will
2 revert to Defendant.

3 13. "Net Settlement Amount" means the Gross Settlement Amount, less the Class
4 Representative Enhancement Payment, Attorneys' Fees and Costs, and Settlement
5 Administration Costs as specified in this Agreement.

6 14. "Objection" means any written objection to this Settlement sent by a Class
7 Member to the Settlement Administrator as specified herein and in the Notice of Class Action
8 Settlement. An Objection to Settlement must be sent to the Settlement Administrator within
9 the time limitations set forth in this Settlement Agreement. The Objection must state: (i) the
10 case name and number; (ii) the name of the Settlement Class Member; (iii) the address of the
11 Settlement Class Member; (iv) the last four digits of the Settlement Class Member's Social
12 Security number; (v) the basis for the objection; and (vi) if the Settlement Class Member
13 intends to appear at the Final Approval/Settlement Fairness Hearing.

14 15. "Notice of Class Action Settlement" means the notice of settlement, attached as
15 Exhibit A, to be mailed to all members of the Settlement Class upon Preliminary Approval.

16 16. "Parties" means Plaintiff and Defendant collectively.

17 17. "Plaintiff" means Tomas Martinez.

18 18. "Preliminary Approval" means the Court order granting preliminary approval of
19 the Settlement Agreement.

20 19. "Released Claims" means all causes of action and factual or legal theories that
21 were alleged in the operative complaints or that could have been alleged against Defendant
22 based on the facts contained in the operative complaint, including all of the following claims
23 for relief: (a) failure to pay all regular wages, minimum wages and overtime wages due; (b)
24 failure to provide proper meal and rest periods, and to properly provide premium pay in lieu
25 thereof; (c) waiting time penalties; (d) failure to reimburse all necessary business expenditures;
26 (e) unfair business practices that could have been premised on the claims, causes of action or
27 legal theories of relief described above or any of the claims, causes of action or legal theories of
28 relief pleaded in the operative complaint; (f) any other claims or penalties under the California

1 Labor Code or other wage and hour laws pleaded in the Action; and (g) all damages, penalties,
2 interest and other amounts recoverable under said claims, causes of action or legal theories of
3 relief. The period of the release of Released Claims shall extend to the limits of the Class
4 Period. The *res judicata* effect of the Final Approval Order will be the same as that of the
5 release of Released Claims. Defendant shall be entitled to a release of Released Claims which
6 occurred during the Class Period only during such time that the Settlement Class Member was
7 classified as non-exempt hourly, and expressly excluding all other claims for vested benefits,
8 wrongful termination, unemployment insurance, disability, social security, workers'
9 compensation, claims while classified as exempt, and claims outside of the Class Period.

10 20. "Released Parties" means Defendant, and its past, present and/or future, direct
11 and/or indirect, officers, directors, members, managers, employees, agents, principals, heirs,
12 accountants, auditors, consultants, representatives, attorneys, insurers, partners, investors,
13 shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors,
14 successors, assigns, and joint venturers, if any.

15 21. "Request for Exclusion" means a timely written request mailed to the
16 Settlement Administrator at its address to be provided in the Class Notice by a Class Member to
17 be excluded from the Settlement. The Request for Exclusion must: (i) set forth the name,
18 address, telephone number and last four digits of the Social Security number of the Class
19 Member requesting exclusion; (ii) be signed by the Class Member; (iii) be returned to the
20 Settlement Administrator; (iv) clearly state that the Class Member does not wish to be included
21 in the Settlement; and (v) be postmarked on or before the Response Deadline.

22 22. "Response Deadline" means the deadline by which Class Members must
23 postmark Requests for Exclusion or Objections to the Settlement to the Settlement
24 Administrator. The Response Deadline will be forty-five (45) calendar days from the initial
25 mailing of the Notice of Class Action Settlement by the Settlement Administrator, unless the
26 45th day falls on a Sunday or Federal holiday, in which case the Response Deadline will be
27 extended to the next day on which the U.S. Postal Service is open.
28

1 and Costs will be paid from the Gross Settlement Amount. Plaintiff and Class Counsel will not
2 have the right to revoke this Settlement in the event the Court fails to approve the amount of
3 Attorneys' Fees and Costs sought by Class Counsel. Any portion of the Attorneys' Fees and
4 Costs not awarded to Class Counsel will be added to the Net Settlement Amount.

5 29. Class Representative Enhancement Payment. Plaintiff will apply to the Court for
6 a Class Representative Enhancement Payment of not more than Five Thousand Dollars and Zero
7 Cents (\$5,000.00) for his effort and work in prosecuting the Action on behalf of Class Members
8 and Defendant agrees not to oppose such application. The Class Representative Enhancement
9 Payment, which will be paid from the Gross Settlement Amount, will be in addition to Plaintiff's
10 right to an Individual Settlement Payment pursuant to the Settlement. Plaintiff will be solely and
11 legally responsible to pay any and all applicable taxes on the payments made pursuant to this
12 paragraph and will hold Defendant harmless from any claim or liability for taxes, penalties, or
13 interest arising as a result of the payments. Plaintiff will not have the right to revoke this
14 Settlement in the event the Court fails to approve the amount sought by Plaintiff as a Class
15 Representative Enhancement Payment. Any portion of the Class Representative Enhancement
16 Payment not awarded to the Class Representatives will be added to the Net Settlement Amount.

17 30. Settlement Administration Costs. The Settlement Administrator will be paid for
18 the reasonable costs of administration of the Settlement and distribution of payments. These
19 costs, which will be paid from the Gross Settlement Amount, will include, *inter alia*, the costs
20 for the required tax reporting on the Individual Settlement Payments, the issuing of 1099 IRS
21 Forms, preparing and distributing Notices of Class Action Settlement, calculating and
22 distributing all payments to be made pursuant to the Settlement, and providing necessary
23 reports and declarations. Class Counsel obtained a "not to exceed" quote from the Settlement
24 Administrator to complete the administration for Fourteen Thousand dollars and Zero Cents
25 (\$14,000.00). The Settlement Administrator's "not to exceed" quote will represent the
26 Settlement Administrator's agreement that, based on the class size and distributions under the
27 terms of this Settlement, the costs for administration of the terms of this Settlement will not
28 exceed the specified amount. All of the Settlement Administration Costs shall be paid from the

1 Gross Settlement Amount upon completion of all duties required to be performed by the
2 Settlement Administrator under the terms of this Settlement, or as otherwise required by the
3 Court, subject to the “not to exceed” quote from the Settlement Administrator. The Settlement
4 Administrator will set up the Qualified Settlement Fund.

5 31. Class Size. This settlement is based on Defendant’s representation that there are
6 approximately 998 Class Members. If the number of Class Members increases by more than
7 10% (i.e. more than 100 additional Class Members), then Defendant shall have the option of
8 either limiting the Class to 998 or increasing the Gross Settlement Amount in an amount that is
9 proportional to the increase beyond 10%.

10 32. Individual Settlement Payment Calculations. Individual Settlement Payments
11 will be calculated and apportioned from the Net Settlement Amount based on the number of
12 Workweeks for each Class Member. Specific calculations of Individual Settlement Payments
13 will be made as follows:

14 34(a). The Settlement Administrator will calculate the total number of
15 Workweeks worked by each Class Member and the aggregate total number of Workweeks
16 worked by all Class Members.

17 34(b). To determine each Class Member’s estimated Individual Settlement
18 Payment, the Settlement Administrator will use the following formula: The Net Settlement
19 Amount will be divided by the aggregate total number of Workweeks, resulting in the
20 Workweek Value. Each Class Member’s Individual Settlement Payment will be calculated by
21 multiplying each individual Class Member’s total number of Workweeks by the Workweek
22 Value.

23 34(c). The entire Net Settlement Amount will be disbursed as Individual
24 Settlement Payments to Class Members. If there are any valid and timely Requests for
25 Exclusion from members of the Settlement Class, the Settlement Administrator shall remove
26 the individual Workweeks of all the Class Members requesting exclusion from the aggregate
27 total number of Workweeks , which will proportionately increase the Individual Settlement
28

1 Payment for each Class Member and so the amount actually distributed to the Settlement Class
2 equals 100% of the Net Settlement Amount.

3 33. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
4 Class Members under this Settlement, as well as any other payments made pursuant to this
5 Settlement, will not be utilized to calculate any additional benefits under any benefit plans to
6 which any Class Members may be eligible, including, but not limited to: (i) profit-sharing
7 plans, (ii) bonus plans, (iii) 401(k) plans, (iv) stock purchase plans, (v) vacation plans, (vi) sick
8 leave plans, (vii) PTO plans, and (viii) any other benefit plan. Rather, it is the Parties' intention
9 that this Settlement Agreement will not affect any rights, contributions, or amounts to which
10 any Class Members may be entitled under any benefit plans.

11 34. Settlement Administration Process. The Parties agree to cooperate in the
12 administration of the settlement and to make all reasonable efforts to control and minimize the
13 costs and expenses incurred in administration of the Settlement.

14 35. Delivery of the Class List. Within twenty (20) calendar days of entry of the
15 Court's Order Granting Preliminary Approval, Defendant will provide the Class List to the
16 Settlement Administrator.

17 36. Notice by First-Class U.S. Mail. Within ten (10) days after receiving the Class
18 List from Defendant, the Settlement Administrator will mail a Notice of Class Action
19 Settlement to all Class Members via regular First-Class U.S. Mail, using the most current,
20 known mailing addresses identified in the Class List.

21 37. Confirmation of Contact Information in the Class List and Undeliverable
22 Notices. Prior to mailing, the Settlement Administrator will perform a search based on the
23 National Change of Address Database for information to update and correct for any known or
24 identifiable address changes. Any Notices of Class Action Settlement returned to the Settlement
25 Administrator as non-deliverable on or before the Response Deadline will be sent promptly via
26 regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement
27 Administrator will indicate the date of such re-mailing on the Notice of Class Action
28 Settlement. If no forwarding address is provided, the Settlement Administrator will promptly

1 attempt to determine the correct address using an Accurant search/skip-trace, and will then
2 perform a single re-mailing.

3 38. Notices of Class Action Settlement. All Class Members will be mailed a Notice
4 of Class Action Settlement in the form attached as Exhibit A, or as provided by Court order.

5 39. Disputed Information on Notices of Class Action Settlement. Class Members
6 will have an opportunity to dispute the information provided in their Notice of Class Action
7 Settlement. To the extent Class Members dispute their employment dates or the number of
8 Workweeks, Class Members may produce evidence to the Settlement Administrator showing
9 that such information is inaccurate. The Settlement Administrator will advise the Parties of
10 such dispute, allow Defendant ten (10) business days to respond with any additional
11 information or records, and then decide the dispute. Defendant's records will be presumed
12 correct, but the Settlement Administrator will evaluate the evidence submitted by the Class
13 Member and Defendant and will make the final decision as to the merits of the dispute.

14 40. Requests for Exclusion. Any Class Member wishing to opt-out from the
15 Settlement Agreement must provide a compliant Request for Exclusion to the Settlement
16 Administrator within the Response Deadline. The postmark date will be the exclusive means to
17 determine whether a Request for Exclusion has been timely submitted. The Parties and their
18 counsel will not solicit or encourage any Class Member, directly or indirectly, to opt out of the
19 Settlement Agreement. . A Class Member who properly submits a valid and timely request to
20 be excluded from the Action will not receive any payment of any kind in connection with this
21 Agreement or this Action, will not be bound by or receive any benefit of this Agreement, and
22 will have no standing to object to the Settlement. Class Members who do not timely request
23 exclusion will be bound by the releases herein and receive an Individual Settlement Payment
24 ("Participating Class Members"). The Settlement Administrator will promptly transmit the
25 Requests for Exclusion to counsel for the Parties.

26 41. Defective Submissions. If a Class Member's Request for Exclusion is defective
27 as to the requirements listed herein, that Class Member will be given an opportunity to cure the
28 defect(s). The Settlement Administrator will mail the Class Member a cure letter within three

1 (3) business days of receiving the defective submission to advise the Class Member that his or
2 her submission is defective and that the defect must be cured to render the Request for
3 Exclusion valid. The Class Member will have until the later of (i) the Response Deadline or (ii)
4 fifteen (15) calendar days from the date of the cure letter, whichever date is later, to postmark a
5 revised Request for Exclusion. If the revised Request for Exclusion is not postmarked within
6 that period, it will be deemed untimely.

7 42. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
8 Member who does not affirmatively opt out of the Settlement Agreement by submitting a
9 timely and valid Request for Exclusion will be bound by all of its terms, including those
10 pertaining to the Released Claims, as well as any Judgment that may be entered by the Court if
11 it grants final approval of the Settlement.

12 43. Objection Procedures. The Class Notice shall state that Settlement Class
13 Members who wish to object to the Settlement may do so by a written statement of objection to
14 be mailed by the Response Deadline to the Settlement Administrator or by appearing at the
15 hearing for Final Approval. The Objection must be signed by the Class Member and contain all
16 information required by this Settlement Agreement. The postmark date of the filing and service
17 will be deemed the exclusive means for determining that the Objection is timely. The
18 Settlement Administrator will promptly provide any Objections to the Parties' counsel upon
19 receiving them. Class Counsel will include all Objections received and Plaintiff's response(s)
20 with Plaintiff's motion for final approval of the Settlement. Settlement Class Members may
21 also have a right to have their objections heard at the Final Approval/Settlement Fairness
22 Hearing. Class Counsel will not represent any Class Members with respect to any objections to
23 this Settlement, and any Class Members who request exclusion from the Settlement will not
24 have standing to object to it.

25 44. Settlement Administrator Reports. The Settlement Administrator will provide
26 Defendant's counsel and Class Counsel a weekly report of the number of Class Members who
27 have submitted valid Requests for Exclusion, Objections, and disputes regarding Workweeks
28 calculations. Additionally, the Settlement Administrator will provide to counsel for both Parties

1 any updated reports regarding the administration of the Settlement Agreement as needed or
2 requested.

3 45. Distribution and Timing of Payments. Within 30 days of the Effective Date, and
4 after Defendant has fully funded the Qualified Settlement Fund with the Gross Settlement
5 Amount, the Settlement Administrator will issue payments to: (i) all Class Members who have
6 not submitted a valid and timely Request for Exclusion, including any Class Member whose
7 notice was returned as undeliverable; (ii) Plaintiff; and (iii) Class Counsel. The Settlement
8 Administrator will also issue a payment to itself for Court-approved services performed in
9 connection with the Settlement. The Settlement Administrator will pay Individual Settlement
10 Payments from the Net Settlement Amount to all Participating Class Members. The Settlement
11 Administrator will do so by sending a check in the appropriate amount to the Class Member at
12 the address indicated in the list of Class Member names and addresses provided by Defendant,
13 or as subsequently determined by the Settlement Administrator to be correct.

14 46. Un-cashed Settlement Checks. Class Members will receive checks for their
15 Individual Settlement Payments. Checks will remain negotiable for 180 days (“Check-Cashing
16 Deadline”). Any check not cashed by the Check-Cashing Deadline will be void. The money
17 from the uncashed checks shall be distributed by the Settlement Administrator, in accordance
18 with California Code of Civil Procedure section 384. Any amounts from the settlement checks
19 that remain uncashed and otherwise unclaimed shall be tendered to the Community Food Bank
20 of San Benito County.

21 47. Certification of Completion. Upon completion of administration of the
22 Settlement, the Settlement Administrator will provide a written declaration under oath to certify
23 such completion to the Court and counsel for all Parties.

24 48. Allocation of Individual Settlement Payments. All Individual Settlement
25 Payments will be allocated as follows: (a) 10% as wages and (b) 90% as penalties and interest.
26 The Settlement Administrator will be responsible for issuing to claimants a form W-2 for
27 amounts deemed “wages” and an IRS Form 1099 for the portions allocated to penalties.
28

1 49. Administration of Taxes by the Settlement Administrator. The Settlement
2 Administrator will be responsible for issuing to Plaintiff, Class Members, and Class Counsel
3 tax forms as may be required by law for all amounts paid pursuant to this Settlement. The
4 Settlement Administrator will also be responsible for forwarding all taxes and penalties to the
5 appropriate government authorities as may be required by law.

6 50. Tax Liability. Defendant makes no representation as to the tax treatment or
7 legal effect of the payments called for hereunder, and Plaintiff and Class Members are not
8 relying on any statement, representation, or calculation by Defendant or by the Settlement
9 Administrator in this regard. Plaintiff and Class Members understand and agree that they will
10 be solely responsible for the payment of any taxes and penalties assessed on the payments
11 described herein and will defend, indemnify, and hold Defendant free and harmless from and
12 against any claims resulting from treatment of such payments as non-taxable damages.

13 51. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
14 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY
15 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER
16 PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
17 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN
18 OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR
19 WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE
20 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN
21 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31
22 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
23 EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX
24 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
25 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
26 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
27 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
28 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY

1 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
2 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
3 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
4 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
5 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
6 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
7 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
8 AGREEMENT.

9 52. No Prior Assignments. The Parties and their counsel represent, covenant, and
10 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported
11 to assign, transfer, or encumber to any person or entity any portion of any liability, claim,
12 demand, action, cause of action or right herein released and discharged.

13 53. Nullification of Settlement Agreement. In the event that: (i) the Court does not
14 finally approve the Settlement as provided herein; or (ii) the Settlement does not become final
15 for any other reason, then this Settlement Agreement, and any documents generated to bring it
16 into effect, will be null and void. Any order or judgment entered by the Court in furtherance of
17 this Settlement Agreement will likewise be treated as void from the beginning.

18 54. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court
19 to request the Preliminary Approval of the Settlement Agreement, and the entry of a
20 Preliminary Approval Order for: (i) conditional certification of the Settlement Class for
21 settlement purposes only, (ii) preliminary approval of the proposed Settlement Agreement, (iii)
22 setting a date for a Final Approval/Settlement Fairness Hearing. The Preliminary Approval
23 Order will provide for the Notice of Class Action Settlement to be sent to all Class Members as
24 specified herein. In conjunction with the Preliminary Approval hearing, Plaintiff will submit
25 this Settlement Agreement, which sets forth the terms of this Settlement, and will include the
26 proposed Notice of Class Action Settlement.

27 55. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of
28 the deadlines to postmark Requests for Exclusion or Objections to the Settlement Agreement,

1 and with the Court's permission, a Final Approval/Settlement Fairness Hearing will be
2 conducted to determine the Final Approval of the Settlement Agreement along with the
3 amounts properly payable for (i) Individual Settlement Payments; (ii) the Class Representative
4 Enhancement Payment; (iii) Attorneys' Fees and Costs; and (iv) all Settlement Administration
5 Costs. The Final Approval/Settlement Fairness Hearing will not be held earlier than thirty (30)
6 days after the Response Deadline. Class Counsel will be responsible for drafting all documents
7 necessary to obtain final approval. Class Counsel will also be responsible for drafting the
8 attorneys' fees and costs application to be heard at the final approval hearing.

9 56. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by
10 the Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present the
11 Judgment to the Court for its approval. After entry of the Judgment, the Court will have
12 continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement
13 of the terms of the Settlement, (ii) Settlement administration matters, and (iii) such post-
14 Judgment matters as may be appropriate under court rules or as set forth in this Settlement
15 Agreement.

16 57. General Release by Plaintiff. In consideration for the consideration set forth in
17 this Agreement, Plaintiff, for himself, his heirs, successors and assigns, does waive, release,
18 acquit and forever discharge the Released Parties, from any and all claims, actions, charges,
19 complaints, grievances and causes of action, of whatever nature, whether known or unknown,
20 which exist or may exist on Plaintiff's behalf as of the date of this Agreement, including but not
21 limited to any and all tort claims, contract claims, wage claims, wrongful termination claims,
22 disability claims, benefit claims, public policy claims, retaliation claims, statutory claims,
23 common law claims, administrative claims, regulatory claims, personal injury claims,
24 emotional distress claims, invasion of privacy claims, defamation claims, fraud claims,
25 quantum meruit claims, and any and all claims arising under any federal, state or other
26 governmental constitution, statute, law, rule, regulation or ordinance, including any claims
27 arising under the California Labor Code, the California Government Code, the California Civil
28 Code, the California Constitution, the Wage Orders of California's Industrial Welfare

1 Commission, other state wage and hour laws, the Americans with Disabilities Act, the Age
2 Discrimination in Employment Act (ADEA), the Employee Retirement Income Security Act,
3 Title VII of the Civil Rights Act of 1866, 1874, 1964, and/or 1991, 42 U.S.C. § 1981, as
4 amended; the Fair Labor Standards Act, as amended; the Equal Pay Act; the Consolidated
5 Omnibus Budget Reconciliation Act; the Rehabilitation Act of 1973; the Family and Medical
6 Leave Act; the Older Workers Benefit Protection Act of 1990; the Civil Rights Act of 1966; the
7 California Fair Employment and Housing Act (“FEHA”), the California Family Rights Act, the
8 Family Medical Leave Act, California’s Whistleblower Protection Act, Private Attorneys
9 General Act (“PAGA”), California Business & Professions Code Section 17200 et seq., and any
10 and all claims arising under any federal, state or other governmental statute, law, regulation or
11 ordinance. Plaintiff hereby expressly waives and relinquishes any and all claims, rights or
12 benefits that they may have under California Civil Code § 1542, which provides as follows:

13 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
14 **THAT THE CREDITOR OR RELEASING PARTY DOES**
15 **NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
16 **FAVOR AT THE TIME OF EXECUTING THE RELEASE**
17 **AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE**
18 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT**
19 **WITH THE DEBTOR OR RELEASED PARTY.**

20 Plaintiff may hereafter discover claims or facts in addition to, or different from, those
21 which he now knows or believes to exist, but he expressly agrees to fully, finally and forever
22 settle and release any and all claims against the Released Parties, known or unknown, suspected
23 or unsuspected, which exist or may exist against Released Parties at the time of execution of
24 this Agreement, including, but not limited to, any and all claims relating to or arising from
25 Plaintiff’s employment with Defendant. The Parties further acknowledge, understand and
26 agree that this representation and commitment is essential to the Agreement and that this
27 Agreement would not have been entered into were it not for this representation and
28 commitment.

58. Release by All Settlement Class Members. Plaintiff and all Class Members who
do not submit a valid and timely Request for Exclusion, on behalf of himself or herself, his or

1 her heirs, descendants, dependents, executors, administrators, assigns, and successors, fully and
2 finally release and discharge the Released Parties from any and all of the Released Claims for
3 the entirety of the Class Period. This waiver and release will be final and binding on the
4 Effective Date, and will have every preclusive effect permitted by law. Plaintiff and the
5 Settlement Class Members may hereafter discover facts or legal arguments in addition to or
6 different from those they now know or currently believe to be true with respect to the Released
7 Claims. Regardless, the discovery of new facts or legal arguments shall in no way limit the
8 scope or definition of the Released Claims, and by virtue of this Agreement, Plaintiff and the
9 Settlement Class Members shall be deemed to have, and by operation of the final judgment
10 approved by the Court, shall have, fully, finally, and forever settled and released all of the
11 Released Claims. The Parties understand and specifically agree that the scope of the release
12 described in this Paragraph: is a material part of the consideration for this Agreement; was
13 critical in justifying the agreed upon economic value of this settlement and without it
14 Defendant would not have agreed to the consideration provided; and is narrowly drafted and
15 necessary to ensure that Defendant is obtaining peace of mind regarding the resolution of
16 claims that were or could have been alleged based on the facts, causes of action, and legal
17 theories contained in the operative complaint in the Action.

18 59. Exhibits Incorporated by Reference. The terms of this Settlement Agreement
19 include the terms set forth in any attached Exhibits, which are incorporated by reference as
20 though fully set forth herein. Any Exhibits to this Settlement Agreement are an integral part of
21 the Settlement.

22 60. Publicity Agreement. Plaintiff and Class Counsel agree not to disclose or
23 publicize the Settlement, including the fact of the Settlement, its terms or contents, and the
24 negotiations underlying the Settlement, in any manner or form, directly or indirectly, to any
25 person or entity, except potential class members and as shall be contractually required to
26 effectuate the terms of the Settlement. For the avoidance of doubt, this section means Plaintiff
27 and Class Counsel agree not to issue press releases, communicate with, or respond to any
28 media or publication entities, publish information in manner or form, whether printed or

1 electronic, on any medium or otherwise communicate, whether by print, video, recording or
2 any other medium, with any person or entity concerning the Settlement, including the fact of
3 the Settlement, its terms or contents and the negotiations underlying the Settlement, except as
4 shall be contractually required to effectuate the terms of the Settlement. However, for the
5 limited purpose of allowing Plaintiff's Counsel to prove adequacy as class counsel in other
6 actions, Plaintiff's Counsel may disclose the name of the Parties in this action and the
7 venue/case number of this action (but not any other settlement details) for such purposes.

8 61. No Unalleged Claims. Except for those claims brought forth under *Tomas*
9 *Martinez vs. Villa & Sons Enterprises, Inc., et al.*, San Benito County Superior Court Case No.
10 CU-19-00120, to the extent they are not covered under the Released Claims, Plaintiff and Class
11 Counsel represent that they are not currently aware of any: (a) unalleged claims in addition to,
12 or different from, those which are finally and forever settled and released against the Released
13 Parties by this Settlement; and (b) unalleged facts or legal theories upon which any claims or
14 causes of action could be brought against Defendant, except such facts and theories specifically
15 alleged in the operative complaints in this Action. Plaintiff and Plaintiff's Counsel will further
16 represent that, other than the instant Action, they have no current intention of asserting any
17 other claims against Defendant in any judicial or administrative forum. Plaintiff and Plaintiff's
18 Counsel will further represent that they do not currently know of or represent any persons who
19 have expressed any interest in pursuing litigation or seeking any recovery against Defendant.
20 The Parties acknowledge, understand and agree that the representations described in this
21 paragraph are essential to the Settlement Agreement and that this Settlement Agreement would
22 not have been entered into were it not for this representation.

23 62. Entire Agreement. This Settlement Agreement and any attached Exhibits
24 constitute the entirety of the Parties' settlement terms. No other prior or contemporaneous
25 written or oral agreements may be deemed binding on the Parties.

26 63. Amendment or Modification. This Settlement Agreement may be amended or
27 modified only by a written instrument signed by counsel for all Parties or their successors-in-
28 interest.

1 64. Authorization to Enter Into Settlement Agreement. Counsel for all Parties
2 warrant and represent they are expressly authorized by the Parties whom they represent to
3 negotiate this Settlement Agreement and to take all appropriate action required or permitted to
4 be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to
5 execute any other documents required to effectuate the terms of this Settlement Agreement. The
6 Parties and their counsel will cooperate with each other and use their best efforts to effect the
7 implementation of the Settlement. If the Parties are unable to reach agreement on the form or
8 content of any document needed to implement the Settlement, or on any supplemental
9 provisions that may become necessary to effectuate the terms of this Settlement, the Parties
10 may seek the assistance of the Court to resolve such disagreement.

11 65. Binding on Successors and Assigns. This Settlement Agreement will be binding
12 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously
13 defined.

14 66. California Law Governs. All terms of this Settlement Agreement and Exhibits
15 hereto will be governed by and interpreted according to the laws of the State of California.

16 67. Execution and Counterparts. This Settlement Agreement is subject only to the
17 execution of all Parties. However, the Settlement may be executed in one or more counterparts.
18 All executed counterparts and each of them, including facsimile and scanned copies of the
19 signature page, will be deemed to be one and the same instrument provided that counsel for the
20 Parties will exchange among themselves original signed counterparts.

21 68. Acknowledgement that the Settlement is Fair and Reasonable. The Parties
22 believe this Settlement Agreement is a fair, adequate and reasonable settlement of the Action
23 and have arrived at this Settlement after arm's-length negotiations and in the context of
24 adversarial litigation, taking into account all relevant factors, present and potential. The Parties
25 further acknowledge that they are each represented by competent counsel and that they have
26 had an opportunity to consult with their counsel regarding the fairness and reasonableness of
27 this Settlement. In addition, the Mediator may execute a declaration supporting the Settlement
28 and the reasonableness of the Settlement and the Court may, in its discretion, contact the

1 Mediator to discuss the Settlement and whether or not the Settlement is objectively fair and
2 reasonable.

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

7 70. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate
8 to class certification for purposes of this Settlement only; except, however, that Plaintiff or
9 Class Counsel may appeal any reduction in Attorneys' Fees and Costs below the amount they
10 request from the Court, and either party may appeal any court order that materially alters the
11 Settlement Agreement's terms.

12 71. Non-Admission of Liability. The Parties enter into this Settlement to resolve the
13 dispute that has arisen between them and to avoid the burden, expense and risk of continued
14 litigation. In entering into this Settlement, Defendant does not admit, and specifically denies,
15 that it violated any federal, state, or local law; violated any regulations or guidelines
16 promulgated pursuant to any statute or any other applicable laws, regulations or legal
17 requirements; breached any contract; violated or breached any duty; engaged in any
18 misrepresentation or deception; or engaged in any other unlawful conduct with respect to its
19 employees. Neither this Settlement, nor any of its terms or provisions, nor any of the
20 negotiations connected with it, will be construed as an admission or concession by Defendant
21 of any such violations or failures to comply with any applicable law. Except as necessary in a
22 proceeding to enforce the terms of this Settlement, this Settlement and its terms and provisions
23 will not be offered or received as evidence in any action or proceeding to establish any liability
24 or admission on the part of Defendant or to establish the existence of any condition constituting
25 a violation of, or a non-compliance with, federal, state, local or other applicable law.

26 72. Waiver. No waiver of any condition or covenant contained in this Settlement or
27 failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
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1 constitute a further waiver by such party of the same or any other condition, covenant, right or
2 remedy.

3 73. Enforcement Action. In the event that one or more of the Parties institutes any
4 legal action or other proceeding against any other Party or Parties to enforce the provisions of
5 this Settlement or to declare rights and/or obligations under this Settlement, the appropriate
6 venue will be San Benito and the successful Party or Parties will be entitled to recover from the
7 unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees
8 incurred in connection with any enforcement actions.

9 74. Mutual Preparation. The Parties have had a full opportunity to negotiate the
10 terms and conditions of this Settlement. Accordingly, this Settlement will not be construed
11 more strictly against one party than another merely by virtue of the fact that it may have been
12 prepared by counsel for one of the Parties, it being recognized that, because of the arms-length
13 negotiations between the Parties, all Parties have contributed to the preparation of this
14 Settlement.

15 75. Representation By Counsel. The Parties acknowledge that they have been
16 represented by counsel throughout all negotiations that preceded the execution of this
17 Settlement, and that this Settlement has been executed with the consent and advice of counsel.
18 Further, Plaintiff and Class Counsel warrant and represent that there are no liens on the
19 Settlement Agreement.

20 76. All Terms Subject to Final Court Approval. All amounts and procedures
21 described in this Settlement Agreement herein will be subject to final Court approval.

22 77. Cooperation and Execution of Necessary Documents. All Parties will cooperate
23 in good faith and execute all documents to the extent reasonably necessary to effectuate the
24 terms of this Settlement Agreement.

25 78. Binding Agreement. The Parties warrant that they understand and have full
26 authority to enter into this Settlement, and further intend that this Settlement will be fully
27 enforceable and binding on all Parties, and agree that it will be admissible and subject to
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1 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality
2 provisions that otherwise might apply under federal or state law.

3 **SO AGREED AND STIPULATED.**

4
5 **PLAINTIFF**

6 Dated: August __, 2020

Tomas Martinez

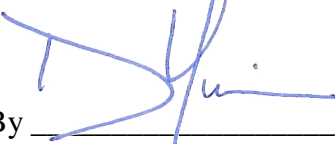
8
9 **DEFENDANT**

10 Dated: August __, 2020

11 By:
12 Title: President, Villa & Sons Enterprises

13
14 Dated: August __, 2020

DAVID YEREMIAN & ASSOCIATES, INC.

15
16 By  _____
17 David Yermian
18 Attorneys for Plaintiff TOMAS MARTINEZ
19 and all others similarly situated

20
21 Dated: August __, 2020

FENTON & KELLER, A.P.C.

22 By _____
23 Elizabeth Leitzinger
24 Attorneys for Defendant VILLA & SONS
25 ENTERPRISES, INC.
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disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

SO AGREED AND STIPULATED.

PLAINTIFF

Dated: August __, 2020

Tomas Martinez

DEFENDANT

September 25
Dated: ~~August~~ __, 2020

By: 
Title: President, Villa & Sons Enterprises


Dated: August __, 2020

DAVID YEREMIAN & ASSOCIATES, INC.

By _____
David Yeremian
Attorneys for Plaintiff TOMAS MARTINEZ
and all others similarly situated

October 1
Dated: ~~August~~ __, 2020

FENTON & KELLER, A.P.C.

By 
Elizabeth Leitzinger
Attorneys for Defendant VILLA & SONS
ENTERPRISES, INC.