

## SETTLEMENT AND RELEASE OF CLAIMS

Subject to final approval by the Court, this Settlement and Release of Claims (“Agreement”) is made and entered into by the parties to *Gildardo Morales, Emilio Benitez et al. v. Greenleaf 3 Pacific Plaza, LLC, Greenleaf 4 Soco, LLC*, Case No. 30-2014-00754353-CU-OE-CXC- (Orange County Superior Court) (the “Lawsuit”). Plaintiffs Gildardo Morales and Emilio Benitez (collectively “Plaintiffs”) enter into this Agreement on behalf of themselves and the putative class consisting of Greenleaf 3 Pacific Plaza, LLC and Greenleaf 4 Soco, LLC’s non-exempt employees in California, from October 31, 2010 through December 3, 2015 (“Class Members”).

1. **Lawsuit.** In the Lawsuit, Plaintiffs individually and on behalf of all other similarly situated current and former non-exempt employees of Defendants assert the following claims: (1) Failure to Provide Required Meal Periods; (2) Failure to Provide Required Rest Periods; (3) Failure to Pay Overtime Wages; (4) Failure to Comply with Itemized Wage Statements; (5) Violations of Business & Professions Code section 17200, *et. seq.*; (6) Failure to Timely Pay Wages; and (7) violation of the California Labor Code Private Attorneys’ General Act of 2004.

1.1. **Second Amended Complaint.** Plaintiffs agree that for purposes of facilitating a comprehensive settlement they will file a Second Amended Complaint that will add claims for unpaid wages under the Fair Labor Standard Act (“FLSA”). In addition, Plaintiffs agree to amend the definition of class members in the Second Amended Complaint to conform with the definition of class members as set forth in paragraphs 2.1 and 2.2 of this Agreement. Defendants agree to stipulate to the filing of the Second Amended Complaint, provided that the language therein is acceptable to Defendants.

2. **Stipulation to Classes For Settlement Only.** It is the position of Greenleaf 3 Pacific Plaza, LLC and Greenleaf 4 Soco, LLC (collectively “Defendants”) (Plaintiffs and Defendants are collectively referred to as the “Parties”) that if the Lawsuit was to continue to be litigated, class certification would be inappropriate and unlikely because individual issues predominate. For settlement purposes only, Defendants will stipulate that the following classes may be certified for settlement only:

2.1. **California Class:** The California Class consists of all Class Members employed by Defendants at any time during the period of October 31, 2010 through December 3, 2015, (“Settlement Class Period”) who fail to opt out of the settlement provided for herein; and

2.2. **The FLSA Class:** The FLSA Class will consist of all members of the California Class who commenced employment with either Defendants on or after October 31, 2011, through December 3, 2015, and who submit valid claim forms, and who also opt into the FLSA Settlement Class as provided for in paragraph 10.4. It is estimated there are approximately 550 Settlement Class Members through September 2, 2015 .

2.3. The FLSA Class and the California Class are referred to collectively as the “Settlement Classes.”

3. **No Admission of Liability:** The Parties agree that certification for settlement purposes under the standard applied to settlements is in no way an admission by Defendants that class certification is proper under the more stringent standard applied for litigation purposes and that evidence of this limited stipulation for settlement purposes only will not be deemed admissible in this or any other proceeding. The Parties further agree that this Agreement shall not constitute an admission on behalf of Defendants of any form of liability or the accuracy of any fact or allegation. Defendants deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, have any liability to anyone under the claims asserted in the Lawsuit. This Agreement is entered into solely for the purpose of compromising highly disputed claims. This Agreement and the fact that Plaintiffs and Defendants were willing to settle the Lawsuit will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with the settlement).

4. **Settlement Amounts**

4.1. **Gross Fund Value and Scope of Release of Claims.** Defendants agree to collectively pay a Gross Fund Value (hereinafter the "GFV") of up to \$350,000 in settlement of this matter. The GFV includes release and settlement, as to the Settlement Period, of all claims that were or could have been asserted in the Lawsuit by members of the Settlement Classes that are related to the facts and/or claims asserted in the First Amended Complaint (hereinafter the "FAC") and the proposed Second Amended Complaint (hereinafter the "SAC"), including, without limitation, claims for wages, overtime, meal and rest period premium pay, penalties, damages, restitution, attorney's fees, interest, and any other type of monetary recovery or injunctive relief arising out of a failure (a) to pay wages, including overtime, (b) failure to provide meal periods or to authorize and permit rest breaks, (c) to pay wages timely upon termination of employment, (d) failure to provide complete, accurate, itemized wage statements or maintain wage records in the manner required by the California Labor Code, and (e) violation of the FLSA for wages and overtime.

4.2. **Net Fund Value.** The Net Fund Value ("NFV") is the GFV minus court-approved attorney's fees and costs, administrative costs, Enhancement Payments (defined in paragraph 8), and the amount of a Civil Penalty Fund (defined in paragraph 6). The Civil Penalty Fund shall be in the amount of \$10,000.00. The NFV will limit the total amount of money (other than a portion of the Civil Penalty Fund) available to be paid to the Settlement Classes. The difference between the amounts allocated by this Agreement for court-approved attorney's fees and costs, administrative costs, Enhancement Payments, and the amount of a Civil Penalty Fund and the actual amount awarded by the Court, if any, will be included in the NFV. The payout to the Settlement Classes from the NFV shall be at least 50% of the NFV, regardless of the number of Class Members who submit valid claims in the Settlement.

5. **Attorneys' Fees and Costs.** Defendants and their counsel will not object to, and Plaintiffs' counsel agrees to submit, an application for an award of reasonable attorneys' fees incurred by Plaintiffs' counsel of not more than One Hundred and Seventeen Dollars (\$117,000) in attorneys' fees and reasonable costs of suit not to exceed Twelve Thousand Dollars (\$12,000.00). Plaintiffs' counsel will be issued an IRS Form 1099 for whatever amount the court awards as attorneys' fees and costs. Payment for Court-approved attorneys' fees and costs will be made by the Class Administrator (defined in paragraph 10.1) within the time period set forth

in paragraph 10.8, and shall be issued to Plaintiffs' counsel by check(s) or wire transfer as directed by Plaintiffs' counsel. Plaintiffs' counsel shall provide an IRS Form W-9s as a prerequisite for receipt of payments under this paragraph. To the extent that the Court approves less than the amount of attorney's fees and costs, the difference between the requested and awarded amounts will be added to the NfV and distributed to the Qualified Claimants defined below on a proportional basis in accordance with the formulas set forth in paragraph 7.1.

6. **PAGA.** The Parties agree to allocate the sum of Ten Thousand Dollars (\$10,000) from the GFV to settlement of the claims for PAGA penalties asserted in the Lawsuit (hereinafter the "Civil Penalty Fund"), with \$7,500.00 of that amount payable to the Labor Workforce Development Agency ("LWDA") of the State of California, and the remainder to be part of the NfV available for distribution for payment of timely, valid claims submitted by members of the Settlement Classes (also referred to herein as "Class Members" or individually as "Class Member") who were employed on or after October 30, 2013, on a *pro rata* basis. The Parties agree that, given the uncertainty of litigation, and the issues and difficulty involved in obtaining class certification, this allocation is reasonable under the circumstances. The Class Administrator shall make the payment to the LWDA within the time period set forth in paragraph 10.8.

7. **Calculation of Payments to Settlement Class Members.** Once the memorialized Agreement and other settlement documents are finally approved by the Orange County Superior Court, the payment to each Class Member who submits a timely, valid claim form will be calculated in accord with the provisions as set forth below:

**7.1. Payments to Settlement Class Members.**

This settlement shall be a "claims made" settlement, with a minimum of 50% payout of the NfV, and payments will be made only to Class Members who return timely, valid claim forms (hereinafter "Qualified Claimants") as follows, understanding that the formulas below does not imply that the Parties are excluding consideration of any claim made in the Lawsuit but rather are providing a practical means to simplify the claims process:

- i) Each Qualified Claimant will be eligible to be paid a portion of the NfV in accordance with the following formula:

Divide (1) the total number of shifts each Qualified Claimant worked during the applicable Settlement Period, including any additional shifts credited pursuant to sub-paragraphs (iii), (iv) and (v), by (2) the total number of shifts worked by all California Class members during the Settlement Period. These values shall be determined from Defendants' internal payroll records. It is estimated there are approximately 58,000 shifts as of September 2, 2015. Should the number of shifts provided to the Class Administrator be exceeded by 15% as of September 2, 2015, Plaintiffs shall have the sole option to void the Settlement.

The equation for calculation of each Qualified Claimant's share is as follows: (Qualified Claimant Shifts ÷ Total Shifts). The corresponding value shall be the Qualified Claimant's percentage of the NfV.

- ii) Each Qualified Claimant employed on or after October 30, 2013 (the "Civil Penalty Period") who submits a valid claim form, shall be entitled to an equal share of the Civil Penalty Fund remaining after payment of three quarters thereof to the State of California LWDA.
- iii) Each Qualified Claimant who is a former employee as of October 31, 2011 or thereafter of Defendants shall receive credit for five additional work shifts.
- iv) Each Qualified Claimant who worked for Defendants commencing on or after October 31, 2013, shall receive credit for 1 additional shift for every five shifts worked on or after October 31, 2013.
- v) Each Qualified Claimant who also opts into the FLSA Class shall receive credit for an additional five shifts of work.

To the extent that the Qualified Claimants claim less than 50% of the NFV, the remainder of the NFV up to 50% will be shared on a *pro rata* basis among the Qualified Claimants up to 50% of the NFV. Notwithstanding, should less than 5% of the California Class Members submit timely, valid claims to recover under this Agreement, Defendants solely shall have the option to void the Settlement. Defendants shall be solely responsible for any claims administration costs should they elect to void this settlement under this section.

7.2. **Defendants To Provide Records.** To assist the Class Administrator in determining the amounts to be paid to Qualified Claimants, Defendants shall provide the Class Administrator with a list of names and last-known addresses for all Settlement Class members. The list provided to the Class Administrator shall identify Current Employees and Former Employees, using the definitions for each group as set forth in paragraphs 2.1 and 2.2 respectively. Defendants shall also provide data for the California Class members that identifies the number of shifts worked by the California Class Members.

8. **Class Representative Enhancements.** The class representatives, Gildardo Morales and Emilio Benitez (hereinafter "Class Representatives"), if approved by the court, will each receive, in addition to whatever payment they otherwise are entitled to as Class Members, an enhancement of Five Thousand Dollars, (\$5,000) (hereinafter the "Enhancement Payment") which will be paid from the GFV. The Class Representatives will be issued an IRS Form 1099 for their enhancement. Each Class Representative's right to receive an Enhancement Payment is contingent on his acceptance of the release and other terms and conditions of paragraph 9 (including subparagraphs 9.1-9.3) below, as well as all terms of this Agreement. Class Representatives agree that they shall not opt out of the settlement, and that they will opt in to the FLSA Class. Class Representatives further agree that they will not object to the settlement and that any objections they may have are hereby waived.

9. **Release.** In exchange for the consideration set forth in this Agreement, the Class Representatives and the Settlement Classes agree to release all claims as set forth herein.

9.1. **Release of Defendants.** The Class Representatives, on their own behalf and on behalf of all members of the Settlement Classes regardless of whether they submitted a

timely or properly completed Claim Form, except those opt out of the Settlement (as provided for in paragraph 10.5), and all persons purporting to act on their behalf or purporting to assert a claim under or through them, including, but not limited to, their dependents, heirs and assigns, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, personal representatives, and successors-in-interest, whether individual, class, representative, legal, equitable, direct or indirect, or any other type or in any other capacity (collectively, the "Releasing Parties") hereby forever completely and irrevocably release and discharge Greenleaf 3 Pacific Plaza, LLC and Greenleaf 4 Soco, LLC, jointly and severally, and any of their past, present, and future parents, affiliates, subsidiaries, divisions, predecessors, successors, and assigns, and each of their officers, directors, board members, trustees, shareholders, employees, agents, attorneys, auditors, accountants, experts, contractors, stockholders, representatives, partners, insurers, reinsurers, and other persons acting on their behalf (collectively, the "Released Parties"), from any and all causes of action, claims, rights, damages, punitive or statutory damages, penalties, liabilities, expenses, and losses and issues of any kind or nature whatsoever, relating to the allegations and/or causes of action in the operative FAC and the Proposed SAC or that could have been brought based upon the allegations and/or causes of action alleged in the FAC and the SAC that any of the Releasing Parties have or may have had against any of the Released Parties through December 3, 2015, at the time of final approval of the Settlement by the Court. The matters released as provided above in this paragraph are referred to in this Agreement as the "Released Claims".

9.2. **No Other Liability.** This Agreement shall be in full settlement, compromise, release and discharge of the Released Claims only and each of them, and the Released Parties shall have no further or other liability or obligation to any member of the Settlement Class or any other Releasing Party with respect to the Released Claims only, except as expressly provided herein.

9.3. **Waiver of California Civil Code Section 1542.** The Releasing Parties acknowledge that they each may have claims that are presently unknown and that the release contained in this Settlement Agreement is intended to and will fully, finally, and forever discharge all Released Claims, whether now asserted or un-asserted, known or unknown, suspected or unsuspected, which now exist, or heretofore existed or may hereafter exist, which if known, might have affected their decision to enter into this release. All Releasing Parties shall be deemed to waive, as to the Released Claims only, any and all provisions, rights, and benefits conferred by any law of the State of California, any law of the United States, any other state or territory of the United States, any other country, or any state or territory of any other country, or principle of common law or equity, which governs or limits a person's release of unknown claims. In making this waiver, Plaintiffs, the members of the Settlement Classes, and all other Releasing Parties understand and acknowledge that they may discover facts in addition to or different from those that are currently known or believed to be true with respect to the Released Claims, but agree that it is their intention to fully, finally, and forever settle and release any and all Released Claims, known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery or existence of such additional or different facts. The foregoing waiver includes, without limitation, an express waiver, as to the Released Claims only, to the fullest extent permitted by law, by Plaintiffs, all members of the Settlement Classes, and all other Releasing Parties of any and all rights under California Civil Code section 1542, which provides:

**“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him must have materially affected his or her settlement with the debtor.”**

In addition, Plaintiffs and all members of the Settlement Classes, also expressly waive, as to the Released Claims only, any and all provisions, rights and benefits conferred by any law or principle of common law or equity, that is similar, comparable, or equivalent, in whole or in part, to California Civil Code section 1542.

#### **10. Claims Procedure.**

**10.1. Class Administrator.** The Parties have chosen Simpluris to act as Class Administrator. The Class Administrator has agreed to perform all necessary class administration duties for a fee estimated not to exceed Twenty Five Thousand Dollars (\$25,000), including but not limited to translation of the Class Notice, Claim Form, Request for Exclusion and reminder Post Cards (attached as Exhibits A-D) (collectively referred to as the “Class Notice Packet”) into Spanish, preparing, printing, and mailing the Class Notice Packet to all Class Members; calculation of the amount of each Class Members’ work shifts during the applicable class periods, conducting a National Change of Address search on any Class Notice Packet returned by the U.S. Postal Service as non-deliverable, and re-mailing the Class Notice Packet to the Class Member’s new address; setting up a toll-free telephone number to receive calls from Class Members; receiving and reviewing for validity completed Claim Forms and Requests for Exclusion; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of completed Claim Forms and Requests for Exclusion; issuing the checks to effectuate the payments due under the Agreement; issuing the tax reports required under this Agreement; and otherwise administering the class settlement pursuant to this Agreement. The Class Administrator will have the final authority to resolve all disputes concerning the calculation of a Qualified Claimant’s settlement share, subject to the dollar limitations and calculations set forth in this Agreement. All costs of the Class Administrator associated with the administration of the settlement, including but not limited to those described herein, shall be paid from the GFV. All notices and mailing sent by the Class Administrator will be by U.S. first class mail. The Class Administrator shall have its own Employer Identification Number under Internal Revenue Service Form W-9 and shall use its own Employer Identification Number in calculating payroll withholdings for taxes and shall transmit the required employers’ and employees’ share of the withholdings to the appropriate state and federal tax authorities. The Class Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund under US Treasury Regulation section 468B-1.

**10.2. Obligations Following Preliminary Approval.** Each Class Member may submit a claim. The settlement will be on a claims-made basis. No fluid recovery fund will be created or maintained. Each Class Member will be advised of the settlement through a Class Notice, to be sent by mail to Class Members by the Class Administrator. Within fifteen (15) business days of court approval of Class Notice, and the Court’s granting of preliminary approval of the class settlement, the Class Administrator will send Class Members, by first-class mail, at their last known address, as shown by Defendants’ records, these items: the Class



Notice in English and in Spanish in the form attached hereto as Exhibit A (the "Class Notice"). Included with the Class Notice will be a Claim Form/FLSA Opt-In Form in the form attached hereto as Exhibit B (the "Claim Form"), and a Request for Exclusion Form in the form attached hereto as Exhibit C. Address information for any Class Notice Packet returned as non-deliverable shall be checked by a skip trace using the United States Postal Service National Change of Address ("NCOA") database. If there is a different address in the NCOA, the Class Notice Packet will be mailed to the address reflected in the NCOA. Class Members who have not responded within 30 days will be sent a Reminder Postcard in English and in Spanish in the form attached hereto as Exhibit D. Class Members who have not responded within 45 days will be sent a Second Reminder Postcard in English and in Spanish in the form attached hereto as Exhibit D.

10.3. **Objections.** The Class Notice shall provide that Class Members who wish to object to the settlement must file with the Orange County Superior Court and serve on one of the counsel for the Parties a written statement objecting to the Settlement that sets forth the grounds for objection. The statement shall also indicate whether the Class Member intends to appear and comment or object at the Final Approval Hearing; failure to so indicate will constitute a waiver of the right to appear at the hearing. Such written statement must be filed with the Orange County Superior Court and served on counsel for the Parties no later than sixty (60) days following the mailing of the original Class Notice Packet, which is the claim/FLSA opt-in/objection/exclusion deadline date. Class Members who fail to file and serve timely written objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the settlement.

10.4. **Claims.** In order to be entitled to a payment, a Class Member shall, within sixty (60) days of the initial mailing of the Class Notice Packet by the Class Administrator (1) fill out and mail to the Class Administrator a properly completed Claim Form; and (2) not opt-out the settlement (collectively "eligibility requirements"). To be considered timely, Claim Forms mailed to the Class Administrator must be postmarked no later than the 60th day after mailing of the Class Notice Packet. Class Members shall also have the option to opt-into the FLSA class by checking the designated box on the Claim Form to be eligible to receive additional compensation, as provided for in paragraph 7.1(v). Claim Forms will be submitted by Class Members to the Class Administrator who will certify jointly to counsel for the Parties what claims were timely submitted and were properly completed. Claimants will be notified in writing of any deficiencies in the Claim Forms, and be permitted no more than twenty-two (22) days of the date of mailing of the notice to cure all deficiencies in writing. Failure to execute and timely submit a Claim Form to the Class Administrator shall invalidate a claim and will not be considered a deficiency subject to cure.

10.5. **Opt-Outs.** Class Members will have an opportunity to opt out of this settlement by properly completing and timely return mailing to the Class Administrator a Request for Exclusion form attached hereto as Exhibit C. To be considered timely, a Request for Exclusion must be postmarked no later than the 60th day after mailing of the Class Notice Packet. If more than five percent (5%) of the members of the Settlement Classes opt-out, Defendants, at their sole option may, but is not required to, withdraw from this Agreement. Defendants shall notify Plaintiffs' attorneys of its intent to exercise its rights under this

paragraph within fifteen (15) days after the expiration of the opt-out period if more than 5% Class Members choose to opt out of this settlement. Defendants shall be solely responsible for any administration costs if elects to opt-out.

**10.6. Resolution Of Disputes Relating To Amount Of Payment To Class Settlement Members.** Class Members shall be entitled to dispute, in writing, the dates of their employment with one or both Defendants and/or the number of shifts they worked during the California Class period and the FLSA Class period. No other disputes are allowed. Notice of any dispute permitted by this paragraph must specify the grounds for the dispute and be mailed by U.S. first class mail to the Class Administrator, postmarked no later than the date to submit a timely Claim Form pursuant to paragraph 10.4. Upon receipt of notice of any such dispute, the Class Administrator shall promptly serve Plaintiffs' and Defendants' counsel with a copy of the notice of dispute and any accompanying papers. No such notice of dispute shall be effective or considered for any purpose unless it is timely mailed by U.S. first class mail to the Class Administrator, and received by the Class Administrator **within five (5)** business days of the postmark. Defendants shall have ten (10) days after the receipt of a notice of dispute to provide information to the Class Administrator regarding the Class Member initiating the dispute. All disputes by the Class Members shall be determined in a single, final, binding, non-appealable decision by the Class Administrator with the understanding that the only such objections permitted are those set forth under this paragraph 10.6. The Class Administrator will review documentation and may talk to the Class Member initiating the dispute and a representative of Defendants in making its non-appealable decision with respect to the dispute. The burden shall fall on the Class Member initiating the dispute to produce information and/or documents affirmatively rebutting the information provided by Defendants. There shall be no discovery conducted under this Agreement. The Class Administrator shall be neutral and unbiased. The Class Administrator shall render a decision within 30 days after receipt of the mailing initiating the dispute. Claims that Defendants believe are fraudulent or contain inaccurate information will also be decided in this manner.

**10.7. Class Administrator's Declaration.** Within ten days after final disbursement of all payments provided for under this Agreement, the Class Administrator will serve on the Parties and file with the Court a declaration proving a final report on the disbursements made pursuant to this Agreement.

**10.8. Payment Procedure.** Defendants will provide the Class Administrator with funds to make the payments called for by this Settlement no later than 18 months after the date preliminary approval of the Class Settlement provided that the Court grants final approval of the class Settlement. Within ten (10) business days after the "Effective Date" of the settlement or within ten (10) business days after Defendants provide the Class Administrator with funds to make the payments called for by this Agreement, whichever occurs later, the Class Administrator will distribute the funds in accordance with this Agreement. The "Effective Date" of the settlement shall occur on the latest of the following dates: twenty (20) business days of a determination that (a) there are no objections filed to the settlement, (b) all filed objections have been withdrawn, (c) objections have been overruled and more than sixty (60) days have elapsed since final approval and entry of judgment, with no filing of an appeal, or (d) an appeal from the overruling of objections to the settlement has been completed, and the judgment issued by the



Orange County Superior Court pursuant to its final approval of the class settlement has become final.

**10.9. Unclaimed Checks.** All settlement checks mailed out will expire after one hundred and twenty (120) days of issuance. The sum value of all expired checks will be tallied by the Class Administrator. Any unclaimed funds shall be paid by the Class Administrator to the DLSE Unpaid Wage Fund in the name of the Qualified Claimant, and the Qualified Claimant will remain bound by the Settlement. The tax credit, if any, corresponding to any payments pursuant to this settlement shall go to and be reportable for the benefit of Defendants only.

**11. IRS Withholdings.**

**11.1. Tax Treatment.** For amounts paid to Qualified Claimants from the NFV, the Class Administrator will issue Forms W-2 and make all deductions and withholdings, and will issue Forms 1099 to the extent that the payments represent interest and penalties. The Parties agree that two thirds of the amount distributed to each Qualified Claimant from the NFV will be considered penalties and interest and one third of the amount distributed to each Qualified Claimant from the NFV will be considered wages, and shall be subject to legally required withholdings and will be issued a separate W-2. The Parties further agree that two thirds of the amount distributed to each Qualified Claimant from the NFV will be considered interest and penalties and will be reported as such to each Qualified Claimant on an IRS Form 1099. For Enhancement Payments, any amount awarded to Class Counsel for attorney's fees and costs and the Civil Penalty Fund, the Class Administrator will issue IRS Forms 1099. Qualified Claimants assume full responsibility and liability for the payment of taxes due by them on all such payments. Any employer share of taxes shall be paid by Defendants separate and apart from the GFV.

**11.2. Settlement Payments Not Intended to Apply To Benefit Plans.** Notwithstanding the treatment of the settlement amounts above, none of the payments called for by this Agreement, including the wage portion, are intended to be treated as earnings or wages for any purpose of any of Defendants' benefit plans, unless required by such benefit plan.

**11.3. No Tax or Legal Advice.** The Parties understand and agree that Defendants are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement, and that Class Members will assume any such tax obligations or consequences that may arise from this Agreement, and that Class Members shall not seek any indemnification from Defendants in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any Class Member, such Class Member assumes all responsibility for the payment of any such taxes and agrees to indemnify, defend and hold Defendants harmless for the payment of such taxes, any failure to withhold, and any penalties associated therewith.

**12. No Common Fund.** The Parties agree that as there is not an express common fund to be created from which claims will be paid. To the extent that Class Members do not submit a timely, valid Claim Form for their share of the NFV, any unclaimed funds that exceed the guaranteed 50% minimum payout of the NFV shall remain the property of Defendants. The

Parties will work together expeditiously to obtain preliminary and final approval of this settlement. Defendants agree that Class Counsel may argue that the total settlement is the total benefit to the Class Members and may therefore argue this as a basis for any fee award.

### **13. Preliminary and Final Approval**

13.1. Class Counsel shall prepare and file with the Orange County Superior Court a Motion for Preliminary Approval of the Class Settlement, including their application for Class Counsel's fees and costs, and their application for the Class Representatives Enhancement Payments. Class Counsel shall provide Defendants' counsel with Plaintiffs' Motion for Preliminary Approval of the Class Settlement at least five (5) business days prior to filing the Motion to permit Defendants' counsel reasonable time to comment on the Motion. The Class Notice Packet shall not be mailed to any Class Member unless and until the Court grants preliminary approval of the class settlement in accordance with the terms of this Agreement.

13.2. At the hearing on the Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the Motion, and submit an Order Granting Conditional Certification of the Class and Preliminary Approval of Settlement; Approving Class Notice and Related Materials; Appointing the Class Administrator; and Scheduling a Final Approval Hearing.

13.3. Not later than 16 court days before the Final Approval Hearing, Plaintiffs shall file with the Orange County Superior Court a Motion for Final Approval of the Class Settlement, and payment of the Class Administrator's reasonable fees and expenses. Class Counsel shall provide Defendants' counsel with Plaintiffs' Motion for Final Approval of the Settlement at least five (5) business days prior to filing the Motion to permit Defendants' counsel reasonable time to comment on the Motion.

13.4. If the Orange County Superior Court does not grant final approval of the class settlement or grants final approval conditioned on any material change to the settlement set forth in this Agreement (including, but not limited to, the scope of release to be granted by Class Members to the Released Parties or the binding effect of the settlement on Class Members who do not timely opt out of the settlement), then the settlement will be null and void and the Parties will have no further obligations under this Agreement, including any obligation by Defendants to pay the GFV or any amounts that otherwise would have been owed under this Agreement, except that the Parties will pay the Class Administrator's reasonable fees and expenses incurred as of the date that the settlement becomes null and void under this paragraph. However, an award by the Orange County Superior Court of a lesser amount than that sought by Plaintiffs and Class Counsel for the Enhancement Payments, and/or the Class Counsel's fees and costs of suit, will not constitute a material modification to the settlement within the meaning of this paragraph.

13.5. Upon final approval of the class settlement by the Orange County Superior Court at or after the final approval hearing, the Parties will present for the Orange County Superior Court's approval and entry the Final Approval Order and Judgment pursuant to California Rules of Court 3.769(h). This Judgment shall only have res judicata, collateral estoppel, or other preclusive effect against Plaintiffs and the Class Members who do not timely opt-out, and, with respect to FLSA claims only, Class Members who opt-in.

13.6. After entry of the Judgment, the Orange County Superior Court will have continuing jurisdiction over the Lawsuit and the settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable law.

14. **No Press Releases.** The Parties and their counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry, or have any communication with the press about this case and/or the fact, amount or terms of the settlement. Until the Court grants preliminary approval of the settlement, Plaintiffs and their attorneys agree that they will keep confidential the fact, amount and terms of the settlement except as to their immediate families, attorneys and tax advisors. Nothing in this Agreement is intended to prohibit Defendants from reporting the terms of this Agreement to its shareholders, disclosing the terms of this Agreement in any SEC or other public filing, or otherwise prohibiting Defendants in any way from disclosing the terms of this Agreement as it deems proper as part of the operation of its business.

14.1. Whether or not the Judgment becomes final, neither the Settlement, this Agreement, any document, statement, proceeding or conduct related to the Settlement or the Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendants or any of the Released Parties, including, but not limited to, evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any of the Released Parties, in any further proceeding in the Litigation, or any other civil, criminal or administrative action or proceeding except for purposes of effectuating the settlement pursuant to this Agreement.

14.2. This section and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may be admitted in evidence and otherwise used in any and all proceedings to enforce any or all terms of this Agreement or in defense of any claims released or barred by this Agreement.

15. **No Appeals.** Provided that the Judgment entered is consistent with the terms and conditions of this Agreement, the Parties and Class Members who do not timely submit an objection to the settlement agree to waive appeals from the Judgment (including all rights to any post-judgment proceeding and appellate proceeding, such as, but not limited to, a motion to vacate judgment, a motion for new trial, and/or any extraordinary writ) and to stipulate to class certification for purposes of implementing this settlement only. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. If an appeal is taken from the Judgment, the time for consummation of the settlement (including making payments under the settlement) will be suspended until such time as their appeal is finally resolved and the Judgment becomes Final.

16. **Court Approval of Attorney's Fees and Costs.** The amounts of Plaintiffs' attorneys' fees and costs, settlement administration costs and Class Representative Enhancement Payments shall be determined by the Orange County Superior Court, and this determination shall be final and binding. The Parties agree that the Orange County Superior Court's approval or

denial of any amount requested for Plaintiffs' attorneys' fees and costs, settlement administration costs and Class Representative Enhancement Payments are not conditions of this Agreement, and are to be considered by the Orange County Superior Court separate and apart from the fairness, reasonableness, and adequacy of the settlement. Any order or proceeding relating to an application for Plaintiffs' attorneys' fees and costs, settlement administration costs or Class Representative Enhancement Payments shall not operate to terminate or cancel this Agreement.

17. **Attorney Authorization.** Class Counsel and Defendants' Counsel warrant and represent that they are authorized by Plaintiffs and Defendants, 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 required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the class settlement.

18. **Binding Effect.** The Parties intend that this Agreement shall be fully enforceable and binding upon all Parties, and that it shall be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding the mediation confidentiality provisions that otherwise might apply under federal or state law.

19. **Vacating, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after a notice of appeal, or any motion, petition, or application, the reviewing Court vacates, reverses, or modifies the Judgment such that there is a material modification to the class settlement (including, but not limited to, the scope of release to be granted by Class Members to the Released Parties or the binding effect of the Settlement on Class Members who are not Qualified Claimants), and that Court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher Court, then either Plaintiffs or Defendants will have the right to void the Settlement, which the Party must do by giving written notice to the other Parties, the reviewing Court, and the Orange County Superior Court not later than fourteen days after the reviewing Court's decision vacating, reversing, or materially modifying the Judgment becomes Final. A vacation, reversal, or modification of the Orange County Superior Court's award of the Class Representative Payment or the Class Counsel's fees or costs will not constitute a vacation, reversal, or material modification of the Judgment within the meaning of this paragraph, provided that Defendants' obligation to make payments under this Agreement will remain limited by the GFV.

20. **No Prior Assignment.** The Parties hereto represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

21. **Construction.** The Parties hereto agree that the terms and conditions of this Agreement are the result of lengthy, intensive arm's length negotiations between the Parties, and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or his, her or its counsel participated in the drafting of this Agreement.

22. **Captions And Interpretations.** Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or

describe the scope of this Agreement or any provision hereof. Each term of this Agreement is contractual and not merely a recital.

23. **Modification.** This Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the parties hereto.

24. **Integration Clause.** This Agreement contains the entire agreement between the Parties, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

25. **Binding On Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

26. **Signatories.** It is agreed that because the large number of Class Members, it is impossible or impractical to have each Class Member execute this Agreement. The Class Notice, Exhibit "A" hereto, will advise all Class Members of the binding nature of the release and such shall have the same force and effect as if this Agreement were executed by each Class Member who does not timely opt out of the settlement.

27. **Counterparts.** This Agreement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all Parties.

28. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the substantive laws of the State of California and procedural laws of the United States of America, without giving effect to any conflict of law principles or choice of law principles.

29. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Lawsuit and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.

30. **Use and Return of Documents and Data.** All originals, copies, and summaries of documents and data provided to Class Counsel by Defendants in connection with the mediation or other settlement negotiations in this matter 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. Within thirty days after the Judgment becomes Final, Class Counsel will return or destroy and confirm in writing to counsel for Defendants the destruction of all such documents and data.

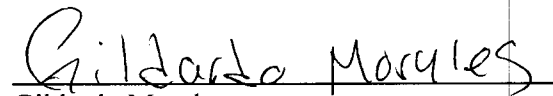
Dated: April 26, 2016

FOR PLAINTIFF GILDARDO MORALES  
AND THE CLASS

  
\_\_\_\_\_  
Gregory Mauro

Dated: April 20, 2016

GILDARDO MORALES

  
\_\_\_\_\_  
Gildardo Morales

Dated: April 26, 2016

FOR PLAINTIFF EMILIO BENITEZ AND  
THE CLASS

  
\_\_\_\_\_  
Gregory Mauro

Dated: April 21, 2016

EMILIO BENITEZ

  
\_\_\_\_\_  
Emilio Benitez

Dated: April \_\_\_\_, 2016

FOR DEFENDANTS GREENLEAF 3  
PACIFIC PLAZA, LLC and GREENLEAF  
4 SOCO, LLC

\_\_\_\_\_  
Jon Rollo



30. **Use and Return of Documents and Data.** All originals, copies, and summaries of documents and data provided to Class Counsel by Defendants in connection with the mediation or other settlement negotiations in this matter 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. Within thirty days after the Judgment becomes Final, Class Counsel will return or destroy and confirm in writing to counsel for Defendants the destruction of all such documents and data.

Dated: April \_\_, 2016

FOR PLAINTIFF GILDARDO MORALES  
AND THE CLASS

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Gregory Mauro

Dated: April \_\_, 2016

GILDARDO MORALES

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Gildardo Morales

Dated: April \_\_, 2016

FOR PLAINTIFF EMILIO BENITEZ AND  
THE CLASS

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Gregory Mauro

Dated: April \_\_, 2016

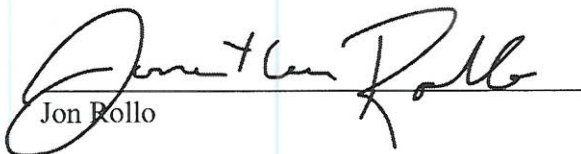
EMILIO BENITEZ

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Emilio Benitez

Dated: April 27, 2016

FOR DEFENDANTS GREENLEAF 3  
PACIFIC PLAZA, LLC and GREENLEAF  
4 SOCO, LLC



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Jon Rollo

**AMENDMENT TO SETTLEMENT AND RELEASE AGREEMENT**

1 In accordance with paragraph 23 of the Settlement and Release of Claims between the  
2 Parties hereto, the Parties hereby amend paragraphs 10.1 and 10.6 to the Settlement Agreement as  
3 required by the Court's May 27, 2016 order to provide as follows:

4 **10.1. Class Administrator.** The Parties have chosen Simpluris to act as Class  
5 Administrator. The Class Administrator has agreed to perform all necessary class  
6 administration duties for a fee estimated not to exceed Twenty Five Thousand Dollars  
7 (\$25,000), including but not limited to translation of the Class Notice, Claim Form,  
8 Request for Exclusion and reminder Post Cards (attached as Exhibits A-D) (collectively  
9 referred to as the "Class Notice Packet) into Spanish, preparing, printing, and mailing the  
10 Class Notice Packet to all Class Members; calculation of the amount of each Class  
11 Members' work shifts during the applicable class periods, conducting a National Change of  
12 Address search on any Class Notice Packet returned by the U.S. Postal Service as non-  
13 deliverable, and re-mailing the Class Notice Packet to the Class Member's new address;  
14 setting up a toll-free telephone number to receive calls from Class Members; receiving and  
15 reviewing for validity completed Claim Forms and Requests for Exclusion; providing the  
16 Parties with weekly status reports about the delivery of Class Notice Packets and receipt of  
17 completed Claim Forms and Requests for Exclusion; issuing the checks to  
18 effectuate the payments due under the Agreement; issuing the tax reports required under  
19 this Agreement; and otherwise administering the class settlement pursuant to this  
20 Agreement. The Class Administrator will have the authority to attempt to resolve all  
21 disputes concerning the calculation of a Qualified Claimant's settlement share, subject to  
22 the dollar limitations and calculations set forth in this Agreement. If the disputes cannot be  
23 resolved by the Class Administrator, the Court will have the authority to ultimately resolve  
24 the disputes. All costs of the Class Administrator associated with the administration of the  
25 settlement, including but not limited to those described herein, shall be paid from the GFV.  
26 All notices and mailing sent by the Class Administrator will be by U.S. first class mail.  
27 The Class Administrator shall have its own Employer Identification Number under  
28 Internal Revenue Service Form W-9 and shall use its own Employer Identification Number  
calculating payroll withholdings for taxes and shall transmit the required employers' and  
employees' share of the withholdings to the appropriate state and federal tax authorities.  
The Class Administrator shall establish a settlement fund that meets the requirements of a  
Qualified Settlement Fund under US Treasury Regulation section 4688-1.

23 **10.6. Resolution Of Disputes Relating To Amount Of Payment To Class**  
24 **Settlement Members.** Class Members shall be entitled to dispute, in writing, the dates of  
25 their employment with one or both Defendants and/or the number of shifts they worked  
26 during the California Class period and the FLSA Class period. Notice of any dispute  
27 permitted by this paragraph must specify the grounds for the dispute and be mailed by U.S.  
28 first class mail to the Class Administrator, postmarked no later than the date to submit a  
timely Claim Form pursuant to paragraph 10.4. Upon receipt of notice of any such dispute,  
the Class Administrator shall promptly serve Plaintiffs' and Defendants' counsel with a  
copy of the notice of dispute and any accompanying papers. No such notice of dispute

1 shall be effective pr considered for any purpose unless it is timely mailed by U.S. first  
2 class mail to the Class Administrator, and received by the Class Administrator within five  
3 (5) business days of the postmark. Defendants shall have ten (10) days after the receipt of  
4 a notice of dispute to provide information to the Class Administrator regarding the Class  
5 Member initiating the dispute. If the dispute cannot be resolved by the Class  
6 Administrator, all disputes by the Class Members shall be determined in a single, final,  
7 binding, non-appealable decision by the Court. The Class Administrator will review  
8 documentation and may talk to the Class Member initiating the dispute and a  
9 representative of Defendants in making its decision with respect to the dispute. The  
10 burden shall fall on the Class Member initiating the dispute to produce information and/or  
11 documents affirmatively rebutting the information provided by Defendants. There shall be  
12 no discovery conducted under this Agreement. The Class Administrator shall be neutral  
13 and unbiased. The Class Administrator shall render a decision within 30 days after receipt  
14 of the mailing initiating the dispute. Claims that Defendants believe are fraudulent or  
15 contain inaccurate information will also be decided in this manner. However, if the Class  
16 Class Member disputes the decision by the Class Administrator, the Court will have the  
17 ultimate authority to resolve the dispute.

18 **IT IS SO AGREED AND APPROVED:**

19 Dated: \_\_\_\_\_, 2016

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

Named Plaintiff/Class Representative  
Gildardo Morales

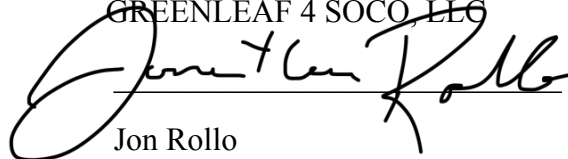
20 Dated: \_\_\_\_\_, 2016

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

Named Plaintiff/Class Representative  
Emilio Benitez

21 Dated: 06/03/16, 2016

By: FOR DEFENDANTS GREENLEAF 3  
PACIFIC PLAZA, LLC and  
GREENLEAF 4 SOCO, LLC

  
Jon Rollo

22 Dated: \_\_\_\_\_, 2016

JAMES HAWKINS APLC  
By: \_\_\_\_\_

JAMES HAWKINS  
GREGORY MAURO  
Class Counsel

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2 class mail to the Class Administrator, and received by the Class Administrator within five  
3 (5) business days of the postmark. Defendants shall have ten (10) days after the receipt of  
4 a notice of dispute to provide information to the Class Administrator regarding the Class  
5 Member initiating the dispute. If the dispute cannot be resolved by the Class  
6 Administrator, all disputes by the Class Members shall be determined in a single, final,  
7 binding, non-appealable decision by the Court. The Class Administrator will review  
8 documentation and may talk to the Class Member initiating the dispute and a  
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13 and unbiased. The Class Administrator shall render a decision within 30 days after receipt  
14 of the mailing initiating the dispute. Claims that Defendants believe are fraudulent or  
15 contain inaccurate information will also be decided in this manner. However, if the Class  
16 Class Member disputes the decision by the Class Administrator, the Court will have the  
17 ultimate authority to resolve the dispute.

18 **IT IS SO AGREED AND APPROVED:**

19 Dated: 06-03, 2016

20 By: Gildardo Morales

21 Named Plaintiff/Class Representative  
Gildardo Morales

22 Dated: 6-03, 2016

23 By: [Signature]

24 Named Plaintiff/Class Representative  
Emilio Benitez

25 Dated: \_\_\_\_\_, 2016

26 By: FOR DEFENDANTS GREENLEAF 3  
PACIFIC PLAZA, LLC and  
GREENLEAF 4 SOCO, LLC

27 Jon Rollo

28 Dated: June 6, 2016

By: [Signature]  
JAMES HAWKINS APLC

JAMES HAWKINS  
GREGORY MAURO  
Class Counsel