

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JONGMIN CHOI, HYUN SUK PARK, and :  
WOOTAE JUNG, on behalf of themselves and all :  
others similarly situated, :

Plaintiffs, :

-against- :

16 Civ. 6495 (DCF)

BAYSIDE BCD INC. d/b/a BCD TOFU HOUSE :  
BAYSIDE, BEAN TREE CORP. d/b/a BCD TOFU :  
HOUSE MANHATTAN, and HEE SOOK LEE, :

Defendants. :  
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**CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release is entered into by and among: (1) plaintiff Wootae Jung, on behalf of himself and a class of similarly situated employees, and by plaintiffs Jongmin Choi and Hyun Suk Park (together with Wootae Jung, "Named Plaintiffs"); and (2) Bayside BCD Inc. d/b/a BCD Tofu House Bayside ("BCD Bayside"), Bean Tree Corp. d/b/a BCD Tofu House Manhattan ("BCD Manhattan"), and Hee Sook Lee (collectively, the "Defendants"). The Named Plaintiffs and the Defendants are referenced hereinafter jointly as the "Parties."

WHEREAS, a Complaint was originally filed in the United States District Court, Southern District of New York on August 16, 2016 (the "Complaint");

WHEREAS, the Named Plaintiffs filed the operative Amended Complaint in the above-referenced action on September 28, 2016 in the United States District Court, Southern District of New York (the "Amended Complaint" or the "Litigation");

WHEREAS, the Amended Complaint filed in the Litigation alleges, *inter alia*, that Defendants failed to pay Named Plaintiffs and similarly situated employees the statutorily required minimum wage and overtime rates, failed to pay spread-of-hours wages, took unlawful deductions, and failed to provide accurate wage notices and wage statements, in violation of the Fair Labor Standards Act ("FLSA") and the New York Labor Law ("NYLL") and the regulations promulgated thereunder;

WHEREAS, Defendants have denied the allegations contained in the Amended Complaint and continue to deny any wrongdoing;

WHEREAS, the Parties have engaged in substantial discovery, including but not limited to reviewing over twenty thousand documents provided by Defendants, and analyzing personnel documents including wage notices, time records, and payroll records;

WHEREAS, the Parties agree that there are *bona fide* disputes between them in this Litigation and agree that it is desirable that the Litigation be settled upon the terms and conditions set forth below to avoid further expense and uncertain, burdensome, and protracted litigation;

WHEREAS, the Parties participated in two mediations before Martin F. Scheinman, Esq. (the "Mediator"), an experienced mediator specializing in labor and employment matters. Mediation sessions were held on April 30, 2018 and August 6, 2018. Discussions between the Parties and the Mediator continued between and after the mediation sessions and the Parties reached a settlement of the Litigation following extensive arm's length negotiations, the terms of which are memorialized in this Agreement;

WHEREAS, without admitting or conceding any liability, Defendants have agreed to settle the Litigation on the terms and conditions set forth in this Agreement; and

WHEREAS, Named Plaintiffs' Counsel has analyzed and evaluated the merits of the claims made against Defendants in the Litigation, and the impact of this Agreement on the Named Plaintiffs and class members. Based upon the analysis and evaluation of a number of factors, and recognizing the substantial risks of continued litigation, including the possibility that the Litigation, if not settled now, might not result in any recovery whatsoever, or might result in a recovery that is less favorable and would not occur for several years, Named Plaintiffs' Counsel is satisfied that the terms and conditions of this Agreement are fair, reasonable and adequate and that this Agreement is in the best interest of the Named Plaintiffs and putative members of the collective and class actions;

NOW THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, as well as the good and valuable consideration provided for herein, the Parties hereto mutually agree to a full and complete settlement of the Litigation on the following terms and conditions:

## **1. DEFINITIONS**

The defined terms set forth in this Agreement have the meanings ascribed to them below.

- 1.1 Agreement.** "Agreement" means this Settlement Agreement and Release.
- 1.2 Claim Form.** "Claim Form" shall mean the form annexed hereto as Exhibit 2, as approved by the Court, that Class Members must complete as instructed on the Claim Form, sign, date and postmark or otherwise return (via, for example, fax or email) to the Claims Administrator within the Claim Period in order to be eligible for a distribution from the Net Settlement Fund. The Claim Form need not be completed and submitted by any Named Plaintiff that signs this Agreement.
- 1.3 Claim Period.** "Claim Period" means the period within which time Class Members must mail Claim Forms to the Claims Administrator in order to participate in the settlement of the Litigation. Each Class Member shall have ninety (90) days from the date of mailing of a Claim Form to him/her by the Claims Administrator to

return a Claim Form in order to be eligible to receive a payment from the settlement of the litigation. To be effective, a Claim Form must be post-marked within ninety (90) days of the date of mailing. A Class Member who requests a replacement Claim Form during the Claim Period will be afforded a one-time extension of thirty (30) days from the date of mailing of the replacement Claim Form by the Claims Administrator to return his/her Claim Form. If the Claim Period end date falls on a weekend or holiday, the Claim Period will close the next business day.

- 1.4 **Claimant.** "Claimant" shall mean any Class Member who submits a completed Claim Form within the Claim Period in accordance with Section 2.4 of this Agreement and the Named Plaintiffs who sign this Agreement.
- 1.5 **Claims Administrator.** "Claims Administrator" shall mean the entity selected by the Parties to provide Notice to the Class and administer payment of the Settlement to Class Members. The Parties have identified Arden Claims Service as the Claims Administrator, subject to the Court's approval.
- 1.6 **Class; Class Members.** "Class" or "Class Members" shall mean the Named Plaintiffs and all servers, greeters, cashiers, bussers, runners, kitchen workers, kitchen helpers, dishwashers, prep cooks, line cooks, central kitchen (a/k/a central K workers), and customer care workers who worked at BCD Bayside at any point from May 14, 2012 to the Date of Execution and /or BCD Manhattan at any point from April 1, 2013 to the Date of Execution.
- 1.7 **Class Counsel.** "Class Counsel" shall mean Louis Pechman, Esq., Laura Rodriguez, Esq., and Gregory Slotnick, Esq., Pechman Law Group PLLC, 488 Madison Avenue, 17th Floor, New York, New York 10022.
- 1.8 **Class List.** Defendants will provide the Claims Administrator with an electronic spreadsheet in Microsoft Excel format containing the names, addresses, telephone numbers, and email addresses of all Class Members, to the extent Defendants maintain such records. The spreadsheet shall also contain the job classification, the dates of employment, weeks worked, and any other information necessary to determine each Class Member's share of the settlement per the Net Settlement Fund allocation plan as set forth in Section 3.2, to the extent Defendants maintain such records. The spreadsheet shall also be provided to Class Counsel, except it will not contain addresses, telephone numbers, or email addresses of the Class Members. The Class List shall only be used by the Claims Administrator and Class Counsel to effectuate the settlement of the Litigation.
- 1.9 **Class Period.** The "Class Period" refers to the period starting on May 14, 2012, *i.e.* the date that BCD Bayside commenced operation, and continuing through the Date of Execution.
- 1.10 **Class Representative.** "Class Representative" means Named Plaintiff Wootae Jung.

- 1.11 **Court.** "Court" means the United States District Court, Southern District of New York.
- 1.12 **Date of Execution.** "Date of Execution" is November 9, 2018.
- 1.13 **Days.** "Days" shall mean calendar days, unless otherwise specified.
- 1.14 **Deadline Reminder Notice.** "Deadline Reminder Notice" means the form annexed hereto as Exhibit 3, as approved by the Court, that shall be sent by the Claims Administrator to Class Members from whom Class Counsel has not received a Claim Form fifty (50) days after the mailing of the Claim Form.
- 1.15 **Defendants.** "Defendants" shall mean Bayside BCD Inc. d/b/a BCD Tofu House Bayside ("BCD Bayside"), Bean Tree Corp. d/b/a BCD Tofu House Manhattan ("BCD Manhattan"), and Hee Sook Lee.
- 1.16 **Defendants' Counsel.** "Defendants' Counsel" shall mean Brian Gershengorn, Esq. and Melissa Osipoff, Esq., Fisher Phillips, LLP, 620 Eighth Avenue, 36th Floor, New York, New York 10018.
- 1.17 **Effective; Effective Date.** The "Effective Date" of the settlement shall mean the last of the following dates: (a) the date thirty (30) days after the entry of an order by the Court granting final approval of the Settlement, if there are no appeals; or (b) if there is an appeal of the Court's decision granting final approval, the date thirty (30) days after all appeals are finally resolved.
- 1.18 **Employer Payroll Taxes.** "Employer Payroll Taxes" means the employer's share of all payroll taxes and withholdings required to be made arising out of, or based upon, the payment of settlement amounts constituting wages in this Litigation, including FICA, FUTA, and SUTA obligations. Employer Payroll Taxes will be paid from the Final Payable Amount.
- 1.19 **Fairness Hearing.** "Fairness Hearing" means the hearing before the Court on the Motion for Final Approval and Dismissal of the Litigation, unless otherwise scheduled by the Court without the filing of a motion.
- 1.20 **Final Approval Order.** "Final Approval Order" means the Order entered by the Court after the Fairness Hearing, approving the terms and conditions of this Agreement, as further set forth in Section 2.8. The Final Approval Order is annexed hereto as Exhibit 5.
- 1.21 **Final Payable Amount.** "Final Payable Amount" refers to the sum total of all money payable under this Agreement, including Settlement Costs, attorneys' fees and costs awarded under Section 3.3, service awards awarded under Section 3.4, and the sums of all Claimants' Individual Settlement Amounts under Section 3.2. Under no circumstances shall the Final Payable Amount exceed the Settlement Amount or be less than the Minimum Settlement Amount.

- 1.22 Individual Settlement Amount.** “Individual Settlement Amount” shall mean each Class Member’s share of the Net Settlement Fund, as calculated by the Claims Administrator pursuant to Section 3.2 of this Agreement.
- 1.23 Litigation.** The “Litigation” means *Choi, et al. v. Bayside BCD Inc., et al.*, No. 16-cv-6495 (DCF), United States District Court, Southern District of New York.
- 1.24 Minimum Settlement Amount.** “Minimum Settlement Amount” shall mean the minimum amount that Defendants shall pay under this Agreement, which shall be One Million Nine Hundred Thousand Dollars (\$1,900,000.00), inclusive of all Settlement Costs, Class Counsel’s attorneys’ fees and costs, service awards to the Named Plaintiffs, Individual Settlement Amounts, and Employer Payroll Taxes.
- 1.25 Named Plaintiffs.** “Named Plaintiffs” means Jongmin Choi, Hyun Suk Park, and Wootae Jung, who is also the Class Representative.
- 1.26 Net Settlement Fund.** “Net Settlement Fund” shall mean the remainder of the Settlement Amount after deductions for Court-approved Settlement Costs, attorneys’ fees and costs, and service awards.
- 1.27 Notice or Notices.** “Notice” or “Notices” means the Court-approved form Notice of Proposed Settlement and Fairness Hearing provided to Class Members notifying them of this Agreement and attaching a Claim Form (*see* Exhibit 2) to submit in order to obtain their Individual Settlement Amount. The Notice shall be in the form annexed hereto as Exhibit 1, or in such other form as approved by the Court.
- 1.28 Objection Statement.** “Objection Statement” means a properly submitted written statement by a Class Member that objects to the proposed settlement (as set forth in Section 2.6) but does not include or refer to an Opt-Out Statement.
- 1.29 Objector.** “Objector” means an individual who properly submits an Objection Statement to the settlement (as set forth in Section 2.6), but does not include any individual who timely submits an Opt-Out Statement.
- 1.30 Opt-Out Date.** “Opt-Out Date” is the date by which any Class Member who has decided to opt-out and not be included in this Agreement, or participate in the Settlement, must file an Opt-Out Statement. The Opt-Out Date shall be no later than ninety (90) days after the initial mailing of the Notice, except as otherwise directed by the Court in the Preliminary Approval Order. Class Members whose Notice mailing was returned to the Claims Administrator as undeliverable will be allowed an additional ten (10) day period to opt-out from the date of the second mailing and under no circumstances shall have more than one-hundred (100) total days to file an Opt-Out Statement, except as otherwise directed by the Court.
- 1.31 Opt-Out Statement.** “Opt-Out Statement” is a written, signed statement by a Class Member that he/she has decided to opt-out and not be included in this Agreement or in the settlement of this Litigation, as further set forth in Section 2.5. A Class Member, including any Objector who does not submit a timely Opt-Out

Statement, waives and releases all Released State Law Claims against the Releasees. A Class Member who submits an Opt-Out Statement retains Released State Law Claims and Released Federal Law Claims, to the extent any claims exist.

- 1.32 Preliminary Approval Order.** "Preliminary Approval Order" means the Order entered by the Court preliminarily approving the terms and conditions of this Agreement and directing the manner and timing of providing Notices to the Class Members, as further set forth in Section 2.2. The proposed Preliminary Approval Order is annexed hereto as Exhibit 4.
- 1.33 Qualified Settlement Fund or QSF.** "Qualified Settlement Fund" or "QSF" shall be the settlement fund created by the payment by Defendants of the Final Payable Amount as per Section 3.1, of up to a maximum of Two Million Eight Hundred Forty Thousand Dollars (\$2,840,000.00). The QSF will be controlled by the Claims Administrator subject to the terms of this Agreement and the Court's Preliminary Approval Order and Final Approval Order. Interest, if any, earned on the QSF will revert back to Defendants.
- 1.34 Released Federal Law Claims.** "Released Federal Law Claims" shall mean all claims, debts, obligations, guarantees, costs, expenses, attorneys' fees, demands, actions, rights, causes of action, and liabilities against any Releasees, arising under federal law, relating to the payment of wages, minimum wages, overtime wages, and expenses including the Fair Labor Standards Act of 1938 ("FLSA"), whether known or unknown, and whether anticipated or unanticipated, by a Claimant, that arose or accrued through the Date of Execution. This includes (under such claims) requests for any type of relief, including without limitation claims for damages, unpaid wages, premium pay, unpaid overtime, tips, gratuities, adjustments to compensation, unreimbursed expenses, waiting-time penalties, liquidated damages, punitive damages, or other penalties for overtime, missed meal periods, and missed rest breaks; whether for attorneys' fees, declaratory relief or injunctive relief; whether sounding in contract, tort, or otherwise; and which were or which could have been asserted in this Litigation against any Releasees.
- 1.35 Released Persons and Releasees.** "Released Persons" or "Releasees" shall mean Defendants, their present and former parents, divisions, affiliates, subsidiaries, predecessors, successors, assigns, directors, partners, principals, officers, members, shareholders, fiduciaries, trustees, insurers, employees, attorneys, insurers, employee benefit plan administrators, agents, and all persons or entities acting by, through, under or in concert with any of them, and any individual or entity which could be jointly liable with any of them. It is expressly understood that, to the extent Releasees are not a party to the Agreement, all such Persons are intended third party beneficiaries of this Agreement.
- 1.36 Released State Law Claims.** "Released State Law Claims" means all claims, debts, obligations, guarantees, costs, expenses, attorneys' fees, demands, actions, rights, causes of action, and liabilities against any Releasees arising under New York law, relating to the payment of wages, minimum wages, overtime wages, and expenses including the, including, but not limited to all New York Labor Law claims, whether known or unknown, and whether anticipated or unanticipated, by a

Claimant, that arose or accrued through the Date of Execution, and any and all attorneys' fees, costs, incentive payments, expenses and administration costs associated with the settlement. Upon the Effective Date, and except as to such rights or claims as may be created by the Settlement, each Class Member who has not submitted a valid and timely Opt-Out Statement on their behalf and on behalf of their respective current, former and future heirs, spouses, executors, administrators, agents, and attorneys, fully releases and discharges the Releasees from any and all wage and hour claims, debts, wages, overtime, commission, losses, demands, obligations, liabilities, penalties, liquidated damages, punitive damages, causes of action, charges, grievances, complaints or suits of any type or nature, known and/or unknown, suspected and/or unsuspected, from the start of the Class Period until the preliminary approval date, for violations of any state or local wage and hour law, including, but not limited to nonpayment of wages and/or overtime, disputes over hours worked, and failure to provide proper wage statements or notices, arising under the laws of the State of New York (including but not limited to New York Labor Law, New York Labor Law, Article 5, § 160, *et seq.*, New York Labor Law, Article 6, § 190, *et seq.* and New York State Minimum Wage Act, New York Labor Law, Article 19, § 650, *et seq.*), arising from the Class Members' employment by Defendants. The Released State Law Claims include interest, liquidated damages, punitive damages, penalties, attorneys' fees and costs related to such claims from the date of the earliest statute of limitations applicable to the claims of any Class Member through the Effective Date.

- 1.37 Settlement Amount.** "Settlement Amount" shall mean the maximum amount that Defendants could be required to pay under this Agreement, which shall be Two Million Eight Hundred Forty Thousand Dollars (\$2,840,000.00), inclusive of all Settlement Costs, Class Counsel's attorneys' fees and costs, service awards to the Named Plaintiffs, Individual Settlement Amounts, and Employer Payroll Taxes. Defendants will not pay any monetary amount beyond the Settlement Amount.
- 1.38 Settlement Checks.** "Settlement Checks" means checks issued to Claimants from the Net Settlement Fund by the Claims Administrator in accordance with this Agreement.
- 1.39 Settlement Costs.** "Settlement Costs" shall mean Thirty-Three Thousand Two Hundred Fifty Dollars (\$33,250), representing the sum of (1) all costs attributable to the distributing and publishing of the Notice; (2) all administration costs associated with the calculation of the Class Members' potential Individual Settlement Amounts; (3) calculation of the Individual Settlement Amounts due to Claimants; (4) distribution of Settlement Checks to Claimants and; (5) all other reasonable and necessary administration costs, fees and disbursements paid to, or incurred by, the Claims Administrator.

## **2. INITIAL PROCEDURAL ISSUES**

- 2.1 Settlement Class Certification.** Solely for purposes of consummation and fulfillment of this Agreement, the Parties agree to the certification of the FLSA Collective and the Rule 23 Class. Should, for whatever reason, the settlement not become final, the Parties' stipulation for Class Certification shall become null and

void *ab initio* and shall have no bearing on, and shall not be admissible in connection with, the issue of whether or not certification would be appropriate in a non-settlement context.

## **2.2 Preliminary Approval Motion.**

- (A) Within fourteen (14) days after this Agreement is fully executed, Class Counsel will submit to the Court a Motion for an Order Conditionally Certifying the Class and Preliminarily Approving the Class Action Settlement ("Preliminary Approval Motion") for settlement purposes only. In connection with the Preliminary Approval Motion, Class Counsel will submit to the Court, *inter alia*, (a) the proposed Notice; (b) the proposed Claim Form; (c) the proposed Deadline Reminder Notice; and (d) the proposed Preliminary Approval Order. The Preliminary Approval Motion will request that the Court preliminarily approve this Agreement as fair and reasonable; conditionally certify the Class; appoint Class Counsel as class counsel; approve the Notice, Claim Form, and Deadline Reminder Notice; and set dates for the submission of Claim Forms, Opt-Out Statements, Objection Statements, and a Fairness Hearing. Class Counsel will consider any comments and proposed revisions suggested by Defendants' Counsel before filing the final version of the Preliminary Approval Motion. Defendants will not oppose the Preliminary Approval Motion provided it is consistent with the terms of this Agreement.
- (B) If the Court denies the Preliminary Approval Motion, unless the Parties jointly agree to seek reconsideration of the ruling, to appeal the ruling, or to seek Court approval of a renegotiated settlement, the Litigation will continue as if no settlement had been attempted.
- (C) The Parties will work together, diligently and in good faith, to expeditiously obtain a Preliminary Approval Order and Final Approval Order.

## **2.3 Duties of the Claims Administrator.** The Claims Administrator shall be responsible for the claims administration process and distributions to Claimants as provided herein, as well as for making any mailings required under this Agreement and providing any other services described in this Agreement. The Parties agree to cooperate with the Claims Administrator. The Settlement Costs shall be paid from the QSF, subject to Court Approval.

- (A) Unless otherwise directed by the Parties and subject to the Court's approval, following the Court's granting and entry of the Preliminary Approval Order, the Claims Administrator shall be responsible for:
  - (i) preparing, printing and disseminating the Notice in accordance with Section 2.4 of this Agreement;
  - (ii) keeping track of Claim Forms, including the original mailing envelope in any Claim Form was mailed;

- (iii) copying Class Counsel and Defendants' Counsel on material correspondence and promptly notifying them of any material requests or communications made by any Party;
  - (iv) promptly furnishing to all counsel for the Parties copies of any Opt-Out Statements, objections, or other written or electronic communications from any Class Member, which the Claims Administrator receives;
  - (v) keeping track of Opt-Out Statements, including maintaining the original mailing envelope in which any Opt-Out Statement was mailed;
  - (vi) mailing of the Notice and Deadline Reminder Notice and attempting to ascertain current address information for each one returned as undeliverable;
  - (vii) scheduling and sending pre-recorded calls to Class Members who fail to return a Notice;
  - (viii) referring to counsel for the Parties, all inquiries by Class Members regarding matters not within the Claims Administrator's duties specified herein;
  - (viii) responding to inquiries from counsel for the Parties consistent with the Claims Administrator's duties specified herein;
  - (ix) promptly apprising counsel for the Parties of the activities of the Claims Administrator; and
  - (x) maintaining adequate records of the Claims Administrator's activities including: the dates of the mailing of Notice(s) and the Deadline Reminder Notice; and dates of mailing and receipt of objections, Opt-Out Statements, returned mail and other communications and attempted written or electronic communications to and/or from Class Members.
- (B) No later than fifteen (15) days prior to the Fairness Hearing, the Claims Administrator shall certify and provide jointly to the Parties' counsel: (a) a complete list of Claimants; (b) a list of each Claimant's Individual Settlement Amount broken out by the 1099 payment and the W-2 income payment, less all applicable tax contributions and withholdings; (c) a list of all Class Members who filed a timely objection, and (d) a list of all Class Members who timely submitted a valid Opt-Out Statement.
- (C) Following the Effective Date of the Final Approval Order, the Claims Administrator shall be responsible for the following additional tasks pursuant to Section 3 of this Agreement: (i) establishing a QSF that will remain open for seven (7) months or otherwise as necessary to effectuate this Agreement; (ii) paying all court-approved Settlement Costs, attorneys' fees and costs; (iii) calculating the Individual Settlement Amounts due to

each Claimant; (iv) calculating and deducting from each Claimant's Individual Settlement Amount, all applicable employee taxes and withholdings as required by federal, state and local law and all applicable employer tax contributions; (v) preparing and filing all related government returns and reports and paying all contributions; and (vi) preparing and distributing all Settlement Checks and Form W-2s and Form 1099s to all Claimants. The Claims Administrator shall perform other tasks as the Parties mutually agree and shall be paid for all services from the Final Payable Amount.

- (D) The Parties will have equal access to the Claims Administrator throughout the claims administration period. The Claims Administrator shall provide reports to the Parties upon request by either Party, regarding the status of the mailing of the Notice to Class Members, the claims administration process, or any other aspect thereof and counsel for the Parties agree to provide the Claims Administrator with available information in its possession necessary to reasonably assist the Claims Administrator in locating Class Members.

**2.4 Notice to Class Members.** The Notice will inform Class Members about the settlement of the Litigation and advise them of their opportunity to object to or opt-out of the same and/or to appear at the Fairness Hearing.

- (A) Within fourteen (14) days of the entry of the Preliminary Approval Order, Defendants' Counsel will provide the Claims Administrator with the Class List.
- (B) Defendants will instruct managers having contact with Class Members to direct Class Members who have questions to review the Notice.
- (C) Prior to mailing the Notice and Claim Form, the Claims Administrator will update the addresses of members of the Class List as needed, using the National Change of Address database.
- (D) Within thirty (30) days of the entry of the Preliminary Approval Order, the Claims Administrator will mail and email to all Class Members, via First Class United States Mail, the Notice and the Claim Form. The Notice and the Claim Form shall be sent to all Class Members in English, Korean, and Spanish.
- (E) The Claims Administrator will take reasonable and customary steps to obtain the correct address of any Class Member for whom a Notice and Claim Form is returned as undeliverable or for whom an address is not provided, including one skip trace, and shall attempt a re-mailing to any Class Member for whom it obtains an additional address. Defendants will provide the Claims Administrator with the Social Security number for any Class Member for whom a skip trace is necessary, to the extent Defendants maintain such records. The Claims Administrator shall notify Class Counsel and Defendants' Counsel within three (3) days of receipt of any

Notice returned as undeliverable after the first mailing, as well as any such Notice returned as undeliverable after any subsequent mailing.

- (F) The Claims Administrator shall notify Class Members who submit deficient claim forms ("Deficient Claimant") of the deficiency within five (5) days of receipt, via phone, email, or mail. Deficient Claimants will have until the later of the Claim Form Deadline or fifteen (15) days after the date of mailing of the notice of the deficiency to cure said deficiency. If the deficiency is not cured within this time period, the Deficient Claimant's claim for payment under this Agreement will be waived and he or she will not receive an Individual Settlement Amount (unless the deficiency is excused, and the Claim Form is accepted in accordance with Section 3.5 of this Agreement), but the Deficient Claimant will still be bound by the release in this Agreement.
- (G) Except for Claim Forms accepted in accordance with Section 3.5, each Class Member must submit his/her completed Claim Form to the Claims Administrator within the Claim Period in order to be eligible to receive his or her Individual Settlement Amount. The postmark date of the Claim Form mailed by the Claims Administrator to the Class Member and the postmark date of the Claim Form mailed by the Class Member to the Claims Administrator shall be deemed the exclusive means for determining whether a Class Member timely submitted his/her Claim Form. In the event that there is no postmark date on the Claim Form mailed by the Class Member to the Claims Administrator, it shall be presumed that the Claim Form was mailed three (3) days prior to the Claims Administrator's receipt of the Claim Form.
- (H) Fifty (50) days after the mailing of the Notice, the Claims Administrator will send a Deadline Reminder Notice by First Class United States Mail and email (if an email address is available) to each Class Member who has not returned a Claim Form as of that date. On the same date, the Claims Administrator will send a pre-recorded reminder telephone message to each Class Member who has not returned a Claim Form, for whom a phone number is available. The pre-recorded message will be made available in English, Korean, and Spanish.
- (I) Within seven (7) days following the date the Preliminary Approval Order is entered, the Claims Administrator shall set up a website that (a) contains the same information as the Notice, and (b) allows any Class Member to file a Claim Form via the website using a claim number to be provided on the Claim Form and a PIN. The website's domain name shall be mutually agreed upon by the Parties. The website shall be taken down within sixty (60) days following the Effective Date.

## **2.5 Class Member Opt-Outs.**

- (A) Any Class Member may request exclusion from the Class as to the Released State Law Claims by "opting out," through the process set forth in this

Agreement. Class Members who elect to opt-out of the settlement of the Litigation, as a condition to doing so, must timely mail an Opt-Out Statement to the Claims Administrator stating that he or she is opting out of the monetary portion of the settlement. The Opt-Out Statement must include words to the effect that he or she is opting out of the settlement of the Litigation, and include his or her name, address, and telephone number. To be effective, an Opt-Out Statement must be post-marked within the Claims Period.

- (B) The Claims Administrator will send copies of all Opt-Out Statements to Class Counsel and Defendants' Counsel no later than three (3) days following receipt thereof. The Claims Administrator will retain the stamped originals of all Opt-Out Statements and originals of all envelopes accompanying Opt-Out Statements until such time as the Claims Administrator is relieved of its duties and responsibilities under this Agreement.
- (C) Any Class Member who does not timely submit an Opt-Out Statement pursuant to this Agreement will be deemed to have accepted the settlement and the terms of this Agreement, will be bound by the Final Approval Order, and will have released and dismissed Released State Law Claims. Only those Class Members who do not timely submit an Opt-Out Statement will be deemed eligible to participate in the Litigation settlement.
- (D) Defendants may revoke this Agreement if: (1) more than 10% of Class Members timely and properly submit Opt-Out Statements pursuant to Section 2.5(A), and (2) Defendants' Counsel delivers written notice to Class Counsel via email or overnight mail of its intent to revoke this Agreement within ten (10) days after the end of the Claims Period.

## **2.6 Objections to Settlement.**

- (A) Class Members who wish to present objections to the proposed Litigation settlement at the Fairness Hearing must first submit an Objection Statement to the Claims Administrator via First Class United States Mail post-marked within the Claim Period indicating his/her desire to present such objection(s). The Objection Statement must include all reasons for the objection, any supporting documentation, and must also include the name, address, and telephone number for the Class Member making the objection(s). The Claims Administrator will stamp the date received on the original Objection Statement and send copies of each Objection Statement (if any), and any supporting documents, to Class Counsel and Defendants' Counsel by email delivery no later than three (3) days after receipt of the Objection Statement.
- (B) An Objector has the right to appear at the Fairness Hearing either in person or through counsel hired by the Objector. An Objector who wishes to appear at the Fairness Hearing must state his or her intention to do so in writing in his or her Objection Statement. An Objector may withdraw his

or her Objection Statement at any time. No Class Member may present an objection at the Fairness Hearing based on a reason not stated in his or her Objection Statement. A Class Member who has submitted an Opt-out Statement may not submit an Objection Statement.

- (C) The Parties may file with the Court written responses to any filed Objection Statement no later than three (3) days before the Fairness Hearing.

**2.7 No Solicitation of Opt-Outs or Objections.** The Parties agree to use their best efforts to carry out the terms of the Litigation settlement. Neither the Parties nor their counsel or agents will contact Class Members for the purpose of attempting to influence them to not participate in the Litigation settlement. However, if contacted by a Class Member, Class Counsel may provide accurate information or assistance regarding any aspect of the Litigation settlement requested by the Class Member.

**2.8 Final Approval and Dismissal.**

- (A) No later than seven (7) days prior to the Fairness Hearing, Class Counsel will submit to the Court a Motion for an Order Issuing Final Approval and Dismissal of the Class Action. Plaintiffs will submit to the Court, *inter alia*, a memorandum of law and any necessary affidavits, objections or opt-out information in support of a Motion for Final Approval and Dismissal ("Final Approval Motion").
- (B) The Final Approval Motion will include a proposed Final Approval Order. At the Fairness Hearing, and through the Final Approval Motion, the Parties will request that the Court issue the Final Approval Order which will state that the Court: (a) certifies the Class under Fed. R. Civ. P. 23 and 29 U.S.C. § 216(b) for purposes of settlement only; (b) approves the settlement as fair, adequate, reasonable, and binding on all Class Members; (c) orders the Claims Administrator to distribute the Settlement Checks to the Claimants; (d) orders that attorneys' fees and costs be paid to Class Counsel from the QSF; (e) dismisses the Litigation with prejudice, (f) enters an order permanently enjoining all Class Members from pursuing and/or seeking to reopen claims that have been released by this Agreement; (g) incorporates the terms of this Agreement; and (h) retains jurisdiction.
- (C) If the Court fails to enter a Final Approval Order in accordance with this Agreement, or if the Final Approval Order is set aside by appeal, the Parties will resume the Litigation unless the Parties jointly agree to: (1) seek reconsideration or appellate review of the decision denying the Final Approval Motion; or (2) attempt to renegotiate the settlement of the Litigation and seek Court approval of the renegotiated settlement.
- (D) If the Final Approval Order is not entered or is set aside, Class Counsel will provide notice to Class Members that the Agreement did not receive final approval by the Court and that, as a result, the Agreement is null and void

and no payments will be made to Class Members under the Agreement. Such notice shall be mailed by the Claims Administrator via First Class United States Mail, postage prepaid, to the addresses used by the Claims Administrator in mailing the Notices. If the Final Approval Order is not entered or is set aside, payment of any and all Settlement Costs incurred by the Claims Administrator shall be split between Defendants and Class Counsel.

**2.9 Issuance of Payment to Claimants and Releases.**

- (A) Class Members who return a Claim Form within the Claim Period, as set forth in Section 2.4, and who do not timely submit Opt-Out Statements, will be deemed Claimants and the Claims Administrator will issue Settlement Checks to them if they are owed payment, as determined by the point allocation system detailed in Section 3.2(C).
- (B) Within fourteen (14) days of the deposit by Defendants of the amount of the Final Payable Amount into the QSF, the Claims Administrator will distribute Settlement Checks to Claimants, as set forth in Section 3.1.
- (C) The Claims Administrator will re-issue Settlement Checks to a Class Member who contacts the Claims Administrator within one hundred seventy-five (175) days of the date of mailing stating that he or she did not receive, or lost, the original Settlement Check, provided an effective stop-payment has been placed on the previously-issued Settlement Check.
- (D) The Settlement Checks shall contain the following language:

By endorsing, depositing, cashing, receiving, or otherwise negotiating this check, I hereby consent to release Defendants from all wage and hour claims under the Fair Labor Standards Act and New York Labor Law that were or could have been raised in any claim or lawsuit, including *Choi, et al. v. Bayside BCD Inc., et al.*, 16 Civ. 6495 (DCF), filed in the U.S. District Court, SDNY.

**2.10 Mailing of Checks.** The Settlement Checks, and Class Counsel's check to pay for all approved attorneys' fees and costs, will be mailed by the Claims Administrator in accordance with the terms of Section 3 below.

**2.11 Uncashed Checks.** Within one hundred fifty (150) days of the mailing of the Settlement Checks, the Claims Administrator will provide Class Counsel and Defendants' Counsel with a list of the names of the Claimants who have not yet cashed their Settlement Checks. If any of the Settlement Checks are returned or remain uncashed two hundred (200) days after the date of mailing, the Claims Administrator will notify Class Counsel and Defendants' Counsel. All unclaimed funds from uncashed Settlement Checks shall go to a charitable organization of Defendants choosing whose mission is consistent with the purposes of the settlement, by *cy pres* donation.

### **3. SETTLEMENT TERMS**

#### **3.1 Settlement Payment.**

- (A) Defendants agree to pay up to the Settlement Amount, which shall fully resolve and satisfy any claim for attorneys' fees and costs approved by the Court, any and all amounts to be paid to Claimants, any Court-approved service awards to Named Plaintiffs, and the Settlement Costs. Defendants will not be required to pay more than the Settlement Amount under the terms of this Agreement.
- (B) Within five (5) days following the Effective Date, Defendants shall cause the Final Payable Amount to be paid to the Claims Administrator for deposit into the QSF, which shall fully resolve and satisfy all claims asserted in this Litigation and all Released Claims.
- (C) Within fourteen (14) days of Defendants funding the QSF, the Claims Administrator will distribute the money in the QSF as follows: (a) payment to Class Counsel for attorneys' fees and costs as per Section 3.3; (b) payment of service awards to Named Plaintiffs as per Section 3.4; (c) payment of Settlement Costs; and (d) payment to Claimants as per Section 3.2.
- (D) Within five (5) days of completion, the Claims Administrator will confirm in writing to Class Counsel and Defendants' Counsel that it made the payments required by this Section 3.1.

#### **3.2 Individual Settlement Amounts Paid From Net Settlement Fund.**

- (A) Each Class Member's proportionate share of the Net Settlement Fund will be determined by the Claims Administrator.
- (B) The Net Settlement Fund shall be distributed among Class Members who worked for Defendants during the Class Period and submit a timely Claim Form.
- (C) The Net Settlement Fund shall be allocated as set forth below:
  - 1. Class Members who worked for Defendants for more than sixty (60) days from the start of the Class Period through December 31, 2016, are allocated points based on their work positions and the number of weeks:
    - a. 26 points per week worked by Claimants as kitchen workers or central kitchen ("Central K") workers;
    - b. 21 points per week worked by Claimants as kitchen helpers, line cooks, or prep cooks;
    - c. 17 points per week worked by Claimants as dishwashers;
    - d. 17 points per week worked by Claimants as bussers or runners;
    - e. 15 points per week worked by Claimants as servers or customer care workers;

- f. 2 points per week worked by Claimants as greeters; and
  - g. 2 points per week worked by Claimants as cashiers.
- 2. No Class Member who worked for Defendants for more than sixty (60) days from the start of the Class Period through December 31, 2016, shall receive an Individual Settlement Amount of less than One Hundred Dollars (\$100). To the extent that any such Class Member's Individual Settlement Amount is less than \$100 after allocating points, as per Section 3.2(C)(1), that Class Member's Individual Settlement Amount shall be increased to \$100, deducted from the Net Settlement Fund, and the calculations of Section 3.2(5) redone to determine all potential Individual Settlement Amounts.
- 3. Class Members who worked for Defendants for sixty (60) days or less during the Class Period shall not be allocated points as per Section 3.2(C)(1), and will instead each receive an Individual Settlement Amount of Twenty-Five Dollars (\$25).
- 4. As a result of changes in Defendants' policies as of January 1, 2017, there is no additional allocation of points as of this date. Additional points will only be allocated to those Class Members identified as having been subjected to additional alleged violations from January 1, 2017 to the Date of Execution. Otherwise, Class Members who only worked for Defendants as of January 1, 2017 through the Date of Execution, shall receive an Individual Settlement Amount of either: (1) Twenty-Five Dollars (\$25) if employed for sixty (60) days or less, or (2) One Hundred Dollars (\$100) if employed for more than sixty (60) days.
- 5. For each Class Member, the Claims Administrator shall determine his or her proportionate share of the Net Settlement Fund as follows:
  - a. If the Class Member worked sixty (60) days or less, or only worked on or after January 1, 2017: the Claims Administrator shall allocate either \$25 or \$100 to the Class Member per the terms set forth in Sections 3.2(C)(2) – (4) above and those amounts shall be subtracted from the Net Settlement Fund;
  - b. If the Class Member worked for Defendants for more than sixty (60) days from the start of the Class Period through December 31, 2016, the Claims Administrator shall: (1) calculate the total points the Class Member is owed per the point system in Section 3.2(C)(1) above; (2) divide the Class Member's total points by the aggregate number of points accrued by all the Class Members; (3) convert the result into a percentage; and (4) determine the Class Member's potential Individual Settlement Amount by multiplying the Class Member's percentage by the amount of the Net Settlement Fund remaining after subtracting the amounts payable to Class Members per Section 3.2(C)(5).

6. Although all Class Members' potential Individual Settlement Amounts will be calculated, only Claimants will receive payment of their Individual Settlement Amount, and that amount may differ from the amount calculated in Section 3.2(C)(5) depending on how many Class Members submit timely Claim Forms and/or Opt-Out Statements.
7. Claimants' Individual Settlement Amounts shall be paid to them via Settlement Checks, which will be mailed by the Claims Administrator to the address set forth on each Claimant's Notice, or at such updated address that has been obtained.
8. Defendants and the Claims Administrator shall exchange such information as is necessary for the Claims Administrator to make proper tax withholdings on the Claimants' Individual Settlement Amounts and comply with tax reporting obligations as described in Section 3.6.
9. Under no circumstances shall the Final Payable Amount be less than the Minimum Settlement Amount or greater than the Settlement Amount. Should the Final Payable Amount equal a number less than the Minimum Settlement Amount, the monetary difference between that number and the Minimum Settlement Amount shall be added to the Net Settlement Fund and apportioned to the Claimants proportionately, thus increasing each Claimant's Individual Settlement Amount.

### **3.3 Settlement Amounts Payable as Attorneys' Fees and Costs**

- (A) Prior to the Fairness Hearing, Class Counsel shall petition the Court for reimbursement of their reasonable litigation costs and expenses from the Settlement Amount. In addition, Class Counsel shall petition the Court for no more than one-third of the after-costs Settlement Amount as an award of attorneys' fees. Defendants will not oppose such applications.
- (B) The substance of Class Counsel's application for attorneys' fees and costs is not part of this Agreement and is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the settlement of the Litigation. The outcome of any proceeding related to Class Counsel's application for attorneys' fees and costs shall not terminate this Agreement or otherwise affect the Court's ruling on the Final Approval Motion. Any monetary reduction by the Court of Class Counsel's application for attorneys' fees and costs shall become part of the Net Settlement Fund.

### **3.4 Service Awards to Named Plaintiffs**

- (A) In return for services rendered to the Class Members, prior to the Fairness Hearing, Class Counsel shall petition the Court to receive a total of no more than Forty-Five Thousand Dollars (\$45,000) to be evenly distributed among the Named Plaintiffs in the amount \$15,000 each as a service award

included as part of the Final Payable Amount. Defendants shall not oppose this application.

- (B) The application for service awards to the Named Plaintiffs is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the settlement of the Litigation. The outcome of the Court's ruling on the application for service awards will not terminate this Agreement or otherwise affect the Court's ruling on the Final Approval Motion. Any monetary reduction by the Court of Plaintiffs' application for service awards shall become part of the Net Settlement Fund.

**3.5 Untimely, Deficient, or Disputed Claims.** The Claims Administrator shall promptly advise counsel for the Parties of any Class Members who file late or deficient Claim Forms, who dispute their Individual Settlement Amount, or who have come forward as individuals who were not identified as Class Members but have a good faith claim for inclusion in the Class. The Parties shall decide, after a good faith conferral, whether such individuals may participate (with the understanding that the default position is for Class Members who file late or deficient Claim Forms to participate whenever feasible, absent unusual circumstances) and whether their Individual Settlement Amounts should be amended (if applicable) and the Claims Administrator shall have authority to resolve any disputes between the Parties regarding these claims. If accepted, such individuals shall be considered Claimants for all purposes under this Agreement. Any Class Members whose Claim Forms are accepted or whose Individual Settlement Amount is permitted to be increased in accordance with this section shall be paid from the Net Settlement Fund, and the calculations of the Individual Settlement Amounts for all other Claimants will be adjusted as necessary in accordance with Section 3.2. In no event shall the acceptance of any Claim Forms or changes to Individual Settlement Amount allocations in accordance with this section result in Defendants being required to pay more than the Settlement Amount.

**3.6 Taxability of Settlement Payments.**

- (A) Fifty percent (50%) of each Claimant's Individual Settlement Amount shall be deemed W-2 wage income, 50% shall be deemed 1099 interest and liquidated damage income and all shall be reported as such by the Claims Administrator to the taxing authorities.
- (B) Payments treated as W-2 wage income pursuant to Section 3.6(A) shall be made net of all applicable employment taxes, including, without limitation, federal, state and local income tax withholding and the employee share of the FICA tax, and shall be reported to the Internal Revenue Service ("IRS") and the payee under the payee's name and social security number on an IRS Form W-2. The Claims Administrator shall be responsible for making all such withholdings.

- (C) All state and federal payroll taxes imposed by applicable law, including the employer's share of the FICA tax and any federal and state unemployment tax due, will be paid out of the Net Settlement Fund.
- (D) Payments of attorneys' fees and costs pursuant to Section 3.3 shall be made without withholding and Class Counsel will receive a Form 1099 for this payment.
- (E) Any service award payments pursuant to Section 3.4 shall be made without withholding and will be reported to the IRS and the payee under the payee's name and social security number on an IRS Form 1099.
- (F) Each individual Claimant will be solely responsible for all taxes, interest, and penalties due with respect to any payment he or she receives pursuant to this Agreement (other than the Employer Payroll Taxes). The Class Representative, on behalf of the Class, acknowledges and agrees that he has not relied upon any advice from Defendants as to the taxability of the payments received pursuant to this Agreement.

**3.7 Settlement Payments Do Not Trigger Additional Benefits.** All payments to any Claimant shall be deemed to be paid to such Claimant solely in the year in which such payments actually are received by the Claimant. The Parties agree that the payments provided for in the Settlement are the sole payments to be made to the Claimants, and that the Class Members are not entitled to any new or additional compensation or benefits as a result of having received the payments (notwithstanding any contrary language or agreement in any benefit or compensation plan document that might have been effect during the period covered by this Settlement).

**3.8 Defendants' Legal Fees and Costs.** All of Defendants' own legal fees, costs and expenses incurred in the Litigation shall be borne by Defendants.

**3.9 Return of Documents and Data.** Counsel for all Parties will destroy all documents produced by the opposing party or the opposing party's counsel (whether formally or for purposes of settlement) and shall delete all electronic records thereof within sixty (60) days of the Effective Date except as required by malpractice Insurance and the Rules of Professional Conduct.

**3.10 Non-Disclosure and Communications.**

- (A) Neither the Parties nor their counsel will contact the media or utilize any social media regarding this Agreement or its terms. If contacted regarding this Agreement, the Parties' counsels' response can be "no comment" or will be limited solely to words to the following effect: "The matter has been resolved to the satisfaction of all Parties."
- (B) Class Counsel may publish a copy of the Notice on its website and any developments in the case, but shall not disparage the Defendants in any

manner. The Notice shall be removed from Class Counsels' website within thirty (30) days following Effective Date.

- (C) Nothing in this Agreement shall prevent Defendants from filing any required regulatory disclosures regarding the Lawsuit or complying with their obligations under the law.
- (D) Nothing in this Agreement shall limit Class Counsels' ability to communicate with Class Members.
- (E) Named Plaintiffs and Class Counsel shall promptly notify Defendants' Counsel of any third-party demand that they disclose information pertinent to this Agreement.

#### **4. RELEASE**

##### **4.1 Release of Claims.**

- (A) By operation of the entry of the Final Approval Order, and except as to such rights or claims as may be created by this Agreement, each Class Member who does not timely submit an Opt-Out Statement pursuant to this Agreement forever and fully releases the Releasees from all Released State Law Claims.
- (B) In addition to the release of the Released State Law Claims set forth in Section 4.1(A) above, as described in Sections 1.36 and 2.9(D), each Claimant who cashes, deposits, receives or otherwise negotiates his/her Settlement Check thereby automatically releases Releasees from all Released Federal Law Claims. By operation of the entry of the Final Approval Order, and except as to such rights or claims as may be created by this Agreement, each Class Member who fails to submit a timely, valid Opt-Out Statement forever and fully releases Released Parties from all Released State Law Claims through the date of the Final Approval Order.
- (C) Except as provided in this Agreement, upon payment of Class Counsel's attorneys' fees and costs approved by the Court, Class Counsel and the Named Plaintiffs, including the Class Representative, on behalf of the Class, hereby irrevocably and unconditionally release, acquit, and forever discharge any claim that he, she or they may have against Defendants for attorneys' fees or costs associated with Class Counsel's representation of the Class. Class Counsel further understands and agrees that any fee payments approved by the Court will be the full, final and complete payment of all attorneys' fees, expenses and costs associated with Class Counsel's representation in the Litigation.
- (D) Class Members who file timely, valid Opt-Out Statements shall continue to retain all rights and claims against the Defendants. No person shall have any claim against the Parties, Counsel for the Parties, or the Claims Administrator based on mailings, distributions and payments made, or any

other action taken, in accordance with or pursuant to this Agreement or any order of the Court. For example, no person shall have any claim against any Party, Counsel for the Parties, or the Claims Administrator resulting from use of an incorrect mailing address for a Class Member, or the payment of an incorrect amount to a Claimant. The Parties shall take reasonable steps to remedy any correctable errors.

**5. INTERPRETATION AND ENFORCEMENT**

- 5.1 Denial of Wrongdoing.** Defendants deny all of the claims, contentions, and each and every allegation made by the Named Plaintiffs.
- 5.1 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with regard to the subject matter contained herein, and all prior and contemporaneous negotiations and understandings between the Parties shall be deemed merged into this Agreement.
- 5.2 No Assignment/ No Liens.** Class Counsel and the Named Plaintiffs represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein, including, but not limited to, any interest in the Litigation, or any related action. The Named Plaintiffs and Class Counsel represent that there are no outstanding liens or claims against the Litigation that they are aware of.
- 5.3 Cooperation between the Parties; Further Acts.** The Parties will fully cooperate with each other and with the Claims Administrator to accomplish the terms of this Agreement, including but not limited to, the preparation and execution of documents necessary to implement this Agreement. The Parties will use their best efforts to effectuate this Agreement, including during any appeals, and will use their best efforts to obtain the Court's approval of the Agreement and to defend the Agreement from any legal challenge. Each of the Parties, upon the request of any other Party, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement as required herein.
- 5.4 Knowing and Voluntary Agreement.** The Parties enter into this Agreement knowingly, voluntarily and with full knowledge of its significance. The Parties have not been coerced, threatened or intimidated into signing this Agreement and have consulted with legal counsel regarding the Agreement
- 5.5 Binding Effect.** This Agreement shall be binding upon the Parties and, with respect to Named Plaintiffs and Class Members who do not submit timely Opt-Out Statements, their spouses, children, representatives, heirs, administrators, executors, beneficiaries, conservators, attorneys and assigns.
- 5.6 Arm's Length Transaction; Materiality of Terms.** The Parties have negotiated all the terms and conditions of this Agreement at arm's length. All terms and conditions of this Agreement in the exact form set forth in this Agreement are material to this Agreement and have been relied upon by the Parties in entering

into this Agreement, unless otherwise expressly stated. The Parties represent that, in executing the Agreement, they are relying solely upon their own judgment, belief, and knowledge, and the advice and recommendations of their own independently selected counsel concerning the nature, extent and duration of their rights and claims hereunder and regarding all matters which relate in any way to the subject matter hereof.

- 5.7 Captions.** The captions or headings of the sections and Sections of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.
- 5.8 Construction.** The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each Party participated jointly in the drafting of this Agreement, and therefore the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any Party by virtue of draftsmanship.
- 5.9 Severability.** If any part of this Agreement is found to be illegal, invalid, inoperative or unenforceable in law or equity, such finding shall not affect the validity of any other part of this Agreement, which shall be construed, reformed and enforced to affect the purposes thereof to the fullest extent permitted by law
- 5.10 Governing Law.** This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of New York, without regard to choice of law principles, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern.
- 5.11 Continuing Jurisdiction.** The Court shall retain jurisdiction over the interpretation and implementation of this Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation of this Agreement and of the settlement contemplated thereby.
- 5.12 Waivers, etc. to Be in Writing.** No waiver, modification or amendment of the terms of this Agreement, whether purportedly made before or after the Court's approval of this Agreement, shall be valid or binding unless in writing, signed by or on behalf of all Parties and then only to the extent set forth in such written waiver, modification or amendment, subject to any required Court approval. Any failure by any Party to insist upon the strict performance by the other Party of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.
- 5.13 Execution of Agreement.** Execution of this Agreement by Defendants Bayside BCD Inc., Bean Tree Corp., and Hee Sook Lee, and by the Class Representative is sufficient to deem the Agreement fully executed. Jongmin Choi and Hyun Suk Park need not sign the Agreement for it to be deemed executed.

- 5.14 Counterparts.** The Parties may execute this Agreement in counterparts, and execution in counterparts shall have the same force and effect as if the Parties had signed the same instrument.
- 5.15 Facsimile and Email Signatures.** Any signature made and transmitted by facsimile or email for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the Party whose counsel transmits the signature page by facsimile or email.

**REMAINDER OF PAGE LEFT BLANK INTENTIONALLY.  
PARTY SIGNATURE PAGE FOLLOWS.**

**6. PARTY SIGNATURE PAGE**

**CLASS REPRESENTATIVE:**

WOOTAE JUNG

11/15/2018  
Date



**NAMED PLAINTIFFS:**

JONGMIN CHOI

1/16/2019  
Date



HYUN SUK PARK

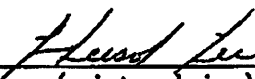
1/16/2019  
Date



**DEFENDANTS:**

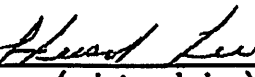
BAYSIDE BCD INC.

11/20/18  
Date

By:   
Name (print and sign)

BEAN TREE CORP.

11/20/18  
Date

By:   
Name (print and sign)

HEE SOOK LEE

11/20/18  
Date

