

SETTLEMENT AGREEMENT AND RELEASE

Labor Commissioner v. XXXXXXXX, et al

This Settlement and Release Agreement (“Agreement”) is made as of August 23, 2018 (the “Effective Date of this Agreement”), by and between Labor Commissioner of the State of California (“Plaintiff”), on the one hand, and XXXXXXXX, XXXXXXXX, XXXXXXXX, XXXXXXXX, in its capacity as Trustee of the CZM 2015 Family Trust, (collectively “Defendants”) and XXXXXXXX, in its capacity as Trustee of the CZM 2015 Family Trust (“Trustee Defendant”), on the other hand. Plaintiff and Defendants and Trustee Defendant are sometimes hereafter collectively referred to as the “Parties” or separately as a “Party.”

RECITALS

1. On or about February 26, 2016, Plaintiff issued various citations to Defendants XXXXXXXX and XXXXXXXX for violations of the California Labor Code (the “Labor Commissioner Citations”).
2. Defendants XXXXXXXX and XXXXXXXX timely appealed these citations. After an administrative hearing, a Notice of Findings was issued finding that Defendants were liable for unpaid wages and penalties in the amount of \$486,042.15.
3. On or about December 1, 2016, Defendants XXXXXXXX and XXXXXXXX filed a writ of administrative mandamus with the Sonoma County Superior Court challenging a portion of the Labor Commissioner’s Notice of Findings. This petition was denied by the superior court on September 20, 2017.
4. Defendants XXXXXXXX and XXXXXXXX timely appealed of the superior court’s denial of their writ of administrative mandamus, challenging only the meal-break-violation-related damages of \$89,080.18. This appeal is currently pending before the First District Court of Appeal bearing case number A152975 (“The Appeal”).
5. In March of 2016, Defendants transferred title to various parcels of real estate from XXXXXXXX and XXXXXXXX to the CZM 2015 Family Trust, with Defendant XXXXXXXX acting as trustee. In June of 2016, Trustee Defendant XXXXXXXX was substituted as the trustee for the CZM 2015 Family Trust, and at such time was entirely unaware of any of the violations and/or proceedings between the Plaintiff and Defendants, including but not limited to those related to the Labor Commissioner Citations; Labor Commissioner’s Notice of Findings; and, the Appeal.

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6. On September 29, 2017, Plaintiff filed a civil action in the Marin County Superior Court against Defendants bearing Case No. CIV 1703694 (“Fraudulent Transfer Action” or “Action”). The Action alleges claims for fraudulent transfer related to the transfer of the real estate from Defendants, including XXXXXXXX, to the CZM 2015 Family Trust. Defendants denied the allegations of fraudulent transfer.
7. On August 8, 2017, the Marin County Superior Court entered judgment (“Citation Judgment”) in the amount of \$60,750.00 as to citation number PA028113, which had not been challenged on writ of mandate, and on or about April 25, 2018, Plaintiff levied execution on this judgment against Defendant XXXXXXXX’s bank account.
8. On May 7, 2018 Defendants paid to Plaintiff \$60,000 by cashier’s check in exchange for a temporary suspension of judgment levy activities.
9. Between March 2016 and April of 2018, XXXXXXXX paid a total of \$31,790 directly to four 4 employees in partial satisfaction of the overtime obligations that were incorporated into the Labor Commissioner’s citations.
10. On May 23, 2018, the Parties engaged in mediation and agreed to the general terms for a settlement of the fraudulent transfer litigation and the Citation Judgment entered pursuant to citation PA028113.

NOW, THEREFORE, in consideration of the foregoing Recitals and the Parties’ mutual covenants, forbearances and promises set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

AGREEMENT

1. Notice and Payment Addresses

- a. **Notices and Payments to Plaintiff.** Except as otherwise specified in this Agreement, all payments due under the Agreement shall be U.S. dollars *made payable to* “California Labor Commissioner”. Except as otherwise specified in this Agreement, payments and notices to Plaintiff shall be delivered to:

Labor Commissioner, Legal Unit
Attn: Matthew Sirolly

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320 W. 4th Street, Suite 600
Los Angeles, CA 90013.

This address may be changed by Plaintiff, on 15 days' notice, by mailing notice of change of address or substitution of attorney to Defendants.

- b. Notices to Defendants.** Except as otherwise specified in this Agreement, all notices given to Defendants pursuant to this Agreement shall be delivered to:

XXXXXX

This address may be changed by Defendants, on 15 days' notice, by mailing notice of change of address or substitution of attorney to Plaintiff.

- c. Notice to Trust Defendant.** Except as otherwise specified in this Agreement, all notices given to Trust Defendants pursuant to this Agreement shall be delivered to:

XXXX

This address may be changed by Defendants, on 15 days' notice, by mailing notice of change of address or substitution of attorney to Plaintiff.

2. Duties and Obligations of the Parties

- a. **Settlement Amount.** Defendants shall pay to Plaintiff the total principal sum of \$358,237.91 ("Settlement Principal") and additional interest as provided in paragraph 2.b.
- b. **Interest on Settlement Principal.** Interest shall accrue on the unpaid balance of the Settlement ("Settlement Interest") at the rate of five (5) percent per annum beginning July 1, 2018 and continuing until all amounts due under this Agreement are paid in full. If Defendants pay the Installment Settlement Payments in accordance with the payment schedule attached to this Agreement, the total interest paid shall be \$36,141.68.

Defendants may prepay, in part or in whole, the amounts due to Plaintiff at any time prior to the scheduled payment date without penalty. Such a pre-payment will reduce the total amount of interest Defendants pay on the Settlement Principal. Plaintiff shall

provide a payoff demand for the entire amount then-due under this Agreement within 15 days of receiving a written request from Defendants.

- c. **Initial Settlement Payment.** Within ten (10) days of the Parties' execution of this Agreement, Defendants shall pay to Labor Commissioner an initial payment of \$90,000 in certified funds. These funds will be delivered personally to the Labor Commissioner's office at **1515 Clay St., Suite 801, Oakland, CA 94612**. At same time that this check is provided, Defendants and Trust Defendant shall receive an original request for dismissal with prejudice in the form of the stipulation attached as **Exhibit B**. Defendants shall provide at least two-day's notice to Plaintiff's counsel by email or telephone regarding the date and time that this delivery will occur.
- d. **Installment Settlement Payments by Defendants.** Defendants shall deliver to Plaintiff 60 monthly payments of \$5,062.92, due and payable on or before the fifteenth of each month commencing October 15, 2018 and terminating on September 15, 2023. The schedule of payments is attached as **Exhibit A** to this Agreement.
- e. **Dismissal and Continuing Jurisdiction.** Upon payment of the Initial Settlement Payment (of \$90,000) and provision of the original deeds of trust and quit claim deed required by this Agreement, the Labor Commissioner shall provide to Defendants and Trust Defendant an original Request for Dismissal with Prejudice (subject to the Court retaining jurisdiction over Defendants under Code of Civil Procedure section 664.6) in the form of the stipulation attached as **Exhibit B**. Defendants shall be responsible for filing this document with the court.
- f. **Compliance with Labor and Employment Law.** Defendants represent that they are currently in compliance with California labor and employment law. Defendants shall provide to Labor Commissioner payroll records for XXXXXXXX for the months of March 2018 to May of 2018, for the Labor Commissioner to confirm compliance as soon as practicable after execution of this Agreement, but in no event later than September 15, 2018.

Furthermore, L'Chaim House (and any successor-in-interest to its business) agree to maintain compliance with all California labor and employment law in the future. Defendants recognize that the California Labor Commissioner has the legal authority to conduct compliance checks at any time. Failure to remain in compliance during the 60-month installment payment period, shall be considered a material breach of this Agreement and will permit the Labor Commissioner to declare a default of this Agreement. However, Labor Commissioner shall provide L'Chaim House with notice of any violations and at least 10 day's opportunity to cure any such violations

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(including making any necessary restitution to employees) prior to declaring a default of this Agreement.

- g. **Default.** If the Installment Settlement Payments required by this Agreement are not received by the Labor Commissioner within ten (10) days of the dates called for by this Agreement, or the Defendants otherwise commit a material breach of its terms, Plaintiff may declare the entire remaining balance, including all interest, costs, and attorney's fees authorized by this Agreement, due by Defendants and payable on fifteen (15) days' written notice to Defendants.

Defendants shall have the right to cure the default by paying any outstanding amount (and any additional late fees and penalties required by this Agreement), or otherwise coming into compliance with the Agreement, during the fifteen (15) day period after the Labor Commissioner declares a default. Labor Commissioner will give written notice of default to Defendants, specifying that Defendants have fifteen (15) days from the date of mailing of the notice of default to cure the default. If the default is not timely cured, Defendants shall be liable for interest on the full unpaid balance due under this Agreement from the date of breach at the statutory rate of ten (10) percent per annum.

Additionally, if any Defendant is adjudicated a bankrupt or seeks relief under the bankruptcy laws of any jurisdiction, a default will automatically be deemed to occur and the entire remaining balance of payments, including all interest, costs, and attorney's fees authorized by this Agreement shall become due and payable.

- h. **Late Payments and Dishonored Checks.** If any payment is received by the Labor Commissioner more than ten (10) days after the date called for by this Agreement or any payment is dishonored by the Labor Commissioner's bank, Defendants shall pay a late-fee/dishonored-check-fee of \$100 that will be due and payable on the date of the next Installment Settlement Payment. If this late-fee/dishonored-check-fee is not paid within ten (10) days of this date, the Labor Commissioner may declare a default in accordance with the procedures specified by this Agreement.

Defendants shall provide a replacement for any dishonored check within ten (10) days after being notified in writing by the Labor Commissioner that a check has been dishonored. If the replacement check is dishonored, the Labor Commissioner may declare a default in accordance with the procedures specified by this Agreement.

- i. **Execution of Necessary Documents.** The Parties agree to promptly execute and deliver to each other or any third party any additional document that may be required to effectuate any term of this Agreement.

- j. **Attorney's Fees and Costs.** Except as otherwise provided in this Agreement, the Parties shall bear their own attorney's fees and costs regarding the Action.
- k. **General Release.** Except as otherwise provided explicitly in this Agreement, as of the Effective Date of this Agreement, Plaintiff forever releases, waives, discharges, and holds harmless the Defendants and Trustee Defendant and their past, present and future officers, directors, partners, agents, servants, lawyers, employees, assigns, insurers, predecessors-in-interest, successors-in-interest, underwriters, and all their parent, affiliated and subsidiary entities, and each of them, from any and all causes of action, actions, liabilities, demands, obligations, costs, expenses, damages, rights, debts, judgments, contracts, attorneys' fees, losses or claims, which arise from or relate to the Citation Judgment, the Labor Commissioner Citations (except as to the amounts under appeal as set forth below) or the Fraudulent Transfer Action.

This release shall be limited to claims and allegations that were asserted in the Citation Judgment, the Labor Commissioner Citations and the Fraudulent Transfer Action, and shall expressly exclude any claims by Plaintiff against Defendants or Trustee Defendant arising from actions or activities that are unrelated to the Labor Commissioner Citations or occurred after the issuance of the Labor Commissioner Citations. Furthermore, the release shall expressly exclude the claims under appeal as set forth below.

- l. **Court of Appeal Case to Continue.** Defendants appeal of the Labor Commissioner's meal break citation (First District Court of Appeal case number A152975) shall continue, unabated by this settlement agreement. If the Court of Appeal denies Defendants relief, Defendants agree to pay this outstanding citation in full, and any interest on the citation permitted by law. If the Court of Appeal grants relief, Defendants shall pay whatever amount is found to be owed, if any, after all subsequent legal proceedings related to the matter are concluded.
- m. **Nullification of Purported Settlement Agreements with Four Employees.** Defendants hereby stipulate that the purported settlement agreements that were signed by XXXXXXXX, XXXXXXXX, XXXXXXXX, and in 2016 are null and void and shall in no way impact the rights of these employees. However, the amounts paid to these employees pursuant to these purported settlement agreements shall be credited against the amounts owed to these employees under the Labor Commissioner Citations. This credit has already been applied in the calculation of the Settlement Amount stipulated to in this Agreement. Thus, this credit does not in any way impact or change the payments called for in this Agreement

Furthermore, Defendants stipulate that the statute of limitations for any claims that were ostensibly released or barred by Defendants' purported settlement agreements with XXXXXXXX, XXXXXXXX, XXXXXXXX, and XXXXXXXX (other than the wage and hour claims that are encompassed in the Labor Commissioner Citations) shall be deemed tolled from the date that those agreements were signed until the date that this Agreement is fully executed.

3. Enforcement of Settlement Agreement

- a. **Stipulation to Continuing Jurisdiction by Court under CCP § 664.6.** Each Party has stipulated that this Agreement may be enforced by each other Party by a motion under California Code of Civil Procedure section 664.6, or by any other rule or procedure permitted by law, and that the Court will maintain jurisdiction for purposes of enforcing this Agreement. This Agreement may be used as evidence in any proceedings of any kind, including an action alleging a breach of this Agreement. The parties expressly agree to waive the provisions of California Evidence Code section 1152 solely to the extent necessary to render this Agreement admissible in a proceeding to enforce its provisions.

Furthermore, Defendants agree and stipulate that if Defendants default on their obligations under this Agreement, a judgment may be entered against them in the form attached to this Agreement as part of **Exhibit B**. This judgment shall be for the total balance due from Defendants at the time of default plus interest on the total unpaid amount from the time of breach at the rate of ten percent per annum, plus any costs, including attorney's fees and court fees, that arise from the breach.

The parties shall execute a stipulation to continuing jurisdiction and entry of judgment in the event of default attached as **Exhibit B** at the same time as executing this Agreement. This Agreement will not be considered fully executed until such time as that stipulation is executed.

- b. **Deed of Trust to Secure Installment Payments.** To secure the payments required by this Agreement, Defendants and Trustee Defendant shall, within ten (10) days of the execution of this Agreement, cause to be executed, notarized and delivered to Plaintiff (at **1515 Clay St., Suite 801, Oakland, CA 94612**) a trust deed, in the form attached as **Exhibit C**, sufficient to encumber the following real property, whose beneficial interest is owned by Defendants and is currently titled in the name of Trustee Defendant, in the County of Marin:

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

Plaintiff shall be responsible for all costs associated with the recording of this trust deed.

Plaintiff agrees to provide Defendants and Trustee Defendant with a deed of reconveyance upon payment in full of all sums owing pursuant to this Agreement. Defendants shall be responsible for all costs associated with recording of the deed of reconveyance.

- c. **Deed of Trust to Secure Claim on Appeal.** To secure payment of the amounts subject to the Appeal, Defendants and Trustee Defendant shall, within ten (10) days of the execution of this Agreement, cause to be executed, notarized and delivered to Plaintiff (at **1515 Clay St., Suite 801, Oakland, CA 94612**) a trust deed in the amount of \$89,080.18, in the form attached as **Exhibit D**, sufficient to encumber the following real property, whose beneficial interests in owned by Defendants and is currently titled in the name of Trustee Defendant, in the County of Marin:

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

Plaintiff shall be responsible for all costs associated with the recording of this trust deed.

Plaintiff agrees to provide Defendants and Trustee Defendant with a deed of reconveyance upon payment in full of the amounts due, if any, after completion of the appeal and any subsequent proceedings. Defendants shall be responsible for all costs associated with the recording of the deed of reconveyance.

- d. **Quit Claim Deed from Defendant XXXXXXXX.** Defendant XXXXXXXX represents that he has no interest, recorded or otherwise, in the property commonly known as XXXXXXXXXX. Defendant XXXXXXXX shall, within ten (10) days of the execution of this Agreement, cause to be executed, notarized and delivered to Plaintiff's Counsel an original quit claim deed in the form attached as **Exhibit E**.

Labor Commissioner shall retain this deed without recording it during the period that this Agreement is in effect and shall return the original to Defendants when all payments required under this Agreement have been made. However, if a default of the Agreement is declared by the Labor Commissioner (and not cured within the

time-period specified by this Agreement), the Labor Commissioner may record the quit-claim deed at her sole discretion.

- e. **No Waiver by Delay in Enforcement of Agreement.** No delay or omission of a Party in exercising any right or power arising from any breach or default hereunder shall be construed as a waiver of such breach or default or as acquiescence to it, nor shall any single or partial exercise of any such right or power preclude any further exercise thereof. A Party may waive or postpone satisfaction of any condition herein and any such waiver or postponement shall not be deemed a waiver of a Party's rights under this Agreement but shall be deemed made pursuant to, and not in modification of, this Agreement.
4. **Attorney's Fees and Costs for Enforcement of Agreement.** If any Party brings an action to enforce the terms of this Agreement, the prevailing party in such action shall be entitled to his reasonable attorney's fees and costs.
5. **Choice of Law.** The validity, construction and performance of this Agreement shall be governed by, construed and enforced in accordance with the laws of the State of California, applicable to agreements made and to be fully performed therein, without regard to the principles of conflict of laws. The Parties hereby acknowledge, agree, consent and submit to the personal and subject matter jurisdiction of California's courts and stipulate to Marin County, California, as the proper venue for any litigation that may arise out of the Action or this Agreement.
6. **Entire Agreement.** This Agreement constitutes the entire understanding between the Parties as to the subject matter hereof and may not be modified, amended or terminated except by written agreement signed by the Parties. This Agreement supersedes all prior representations, warranties and agreements, if any, between the Parties.
7. **Assignment.** Subject only to the express restrictions contained in this Agreement, all of the rights, duties and obligations contained in this Agreement shall inure to the benefit of and be binding upon the Parties, and their successors and assigns.
8. **Headings.** The headings used herein are for convenience of reference only and do not define or limit the scope of the provisions of this Agreement.
9. **Severability.** In the event that any term or provision contained in this Agreement is held to be invalid, unenforceable, void or illegal, in whole or in part, by any court of competent jurisdiction, (a) the same shall be deemed severable from the remainder of this Agreement and shall in no way affect, impair or invalidate any other term or provision contained herein,

and (b) the invalid or unenforceable term or provision shall be replaced by a term or provision that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term or provision. If such term or provision shall be deemed invalid due to its scope or breadth, such term or provision shall be deemed valid to the extent of the scope or breadth permitted by law.

10. Interpretation. In any event of claimed conflict, omission or ambiguity in this Agreement, no presumption or burden of proof or persuasion shall be implied by virtue of the fact that this Agreement was prepared by or at the request of a particular party to this Agreement. This Agreement shall be interpreted equally as to all parties and not against the party that drafted it. Further, as used in this Agreement, the masculine, feminine or neuter gender, the singular or plural pronoun, and the conjunctive or disjunctive connector shall each be deemed to include the other whenever the context reasonably indicates.

11. Time is of the Essence. Time is of the essence in the performance of each term or obligation of this Agreement.

12. Execution in Counterparts. This Agreement may be executed in one or more counterparts, all of which shall constitute one and the same document. Each counterpart shall be deemed an original as against any party who signed it. The Parties agree that a facsimile signature or a signature scanned into .PDF format shall have the same force and effect as an original signature.

13. Voluntary Acceptance. This Agreement has been carefully read by the Parties, and the Parties acknowledge that they know and fully understand its contents. The Parties acknowledge that they have had the opportunity to consult with legal counsel of their own choosing about their rights regarding the form and content of this Agreement.

WHEREFORE, the Parties to this Agreement have executed the same evidencing their approval and acceptance of the terms and conditions contained herein as of the Effective Date of this Agreement.

Dated: _____, 2018

LABOR COMMISSIONER, STATE OF
CALIFORNIA

Patti Huber, Deputy Labor Commissioner

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Dated: _____, 2018

XXXXXXXX

Dated: _____, 2018

XXXXXXXX

Dated: _____, 2018

XXXXXXXX

By (name):

Title:

Dated: _____, 2018

XXXXXXXX, as Trustee of the CZM 2015
FAMILY TRUST

By (name):

Title:

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Dated: _____, 2018

XXXXXXX.

By (name):
Title: