

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement is entered into by and between plaintiff 640 Tenth LP dba Cowboy Star Restaurant and Butcher Shop (“640 Tenth”), individually, and in its representative capacity on behalf of the Class, on the one hand, and defendants County of San Diego and County of San Diego Department of Environmental Health (“County Defendants”), on the other hand (collectively, the “Parties”). Capitalized terms used herein are defined in Section 1 or indicated in parentheses elsewhere in the Agreement.

RECITALS

A. **WHEREAS**, on January 11, 2021, Plaintiff filed a class action complaint in the Superior Court for the County of San Diego. The complaint stated claims against the County Defendants and the California Department of Alcoholic Beverage Control contesting the collection of fees from restaurants during the COVID-19 pandemic when these same governmental entities restricted restaurant operations.

B. **WHEREAS**, because numerous other similar actions were pending in other California counties, the Parties agreed to stay the San Diego case while waiting response to a Petition for Coordination to be submitted to the Judicial Council of California.

C. **WHEREAS**, on May 3, 2021, a Petition for Coordination was submitted to the Judicial Council seeking to coordinate the San Diego case and eleven other similar actions in a Judicial Council Coordination Proceeding (JCCP).

D. **WHEREAS**, prior to and after submission of the Petition for Coordination, the Parties conducted arms-length settlement negotiations and exchanged information for settlement discussions and ultimately reached agreement on the terms of settlement in early July 2021. Upon receiving information that hearing on the Petition for Coordination could be months away, the Parties elected to seek settlement approval in San Diego Superior Court where this Action was filed and is pending.

E. **WHEREAS**, both Parties recognize and acknowledge the expense and length of continued litigation that would be necessary to prosecute the claims through trial and possible appeals.

NOW THEREFORE, subject to Court’s approval, it is hereby agreed by the Parties that, in consideration of the promises and covenants set forth in this Agreement and upon the entry by the Court of a Final Approval Order and the occurrence of the Final Effective Date, the Action shall be settled and compromised upon the terms and conditions contained herein.

1. DEFINITIONS

1.1. “**Action**” means the case filed by Plaintiff captioned *640 Tenth LP dba Cowboy Star Restaurant and Butcher Shop v. County of San Diego, County of San Diego Department of Environmental Health, and California Department of Alcoholic Beverage Control*, No. 37-2021-00001129-CU-MC-CTL, filed in San Diego Superior Court.

1.2. “**Agreement**” means this Settlement Agreement, including all Exhibits hereto.

1.3. “**Class**” or “**Class Members**” means all restaurants and limited food preparation facilities in the County of San Diego that paid or were required to pay annual permit fees to the County Defendants from March 16, 2020 through June 15, 2021, and who did not submit a valid request to be excluded from the Class.

1.4. “**Class Period**” means March 16, 2020 through June 15, 2021.

1.5. “**Class Representative**” means 640 Tenth dba Cowboy Star Restaurant and Butcher Shop in its representative capacity on behalf of the Class.

1.6. “**Class Counsel**” means:

Brian S. Kabateck
Shant A. Karnikian
Marina R. Pacheco
Kabateck LLP
633 W. Fifth Street, Suite 3200
Los Angeles, CA 90071
(213) 217-5000

Timothy G. Blood
Leslie E. Hurst
Blood Hurst & O’Reardon, LLP
501 West Broadway, Suite 1490
San Diego, CA 92101
(619) 338-1100

1.7. “**Court**” means the Superior Court of the State of California for the County of San Diego.

1.9 “**County Defendants’ Counsel**” or “**Defendants’ Counsel**” means:

Joshua M. Heinlein
**OFFICE OF COUNTY COUNSEL,
COUNTY OF SAN DIEGO**
1600 Pacific Highway, Room 355
San Diego, California 92101-2469
(619) 531-5850

1.10 “**County Defendants**” means defendants the County of San Diego and County of San Diego Department of Environmental Health. “County Defendants” does not include defendant California Department of Alcoholic Beverage Control who is not a party to this Settlement Agreement and who did not collect the permit fees covered by this Agreement.

1.11 “**Email Notice**” means the notice summarizing the terms of the proposed Settlement to be distributed according to the Notice Plan. The Email Notice shall be substantially in the form attached as **Exhibit B**.

1.12 “**Fairness Hearing**” means the hearing at or after which the Court will make a final decision whether to approve this Agreement as fair, reasonable, and adequate.

1.13 “Final Approval Order” means the Court order finally certifying the Class for settlement purposes, approving the Settlement and entering judgment, substantially in the form attached as **Exhibit E**.

1.14 “Final Effective Date” shall be (a) the date a judgment in the Court becomes final and non-appealable, or (b) an earlier date agreed to by Class Counsel and County Defendants’ Counsel.

1.15 “Full Class Notice” means the notice of the terms of the proposed Settlement to be distributed according to the Notice Plan. The Full Class Notice shall be substantially in the form attached as **Exhibit A**.

1.16 “Notice Date” means the date by which the County Defendants shall commence dissemination of the Full Class Notice and Email Notice, which shall be no later than seventy-five (75) calendar days before the Fairness Hearing.

1.17 “Notice Plan” means the plan for dissemination of notice to the Class as described in **Exhibit C**.

1.18 “Preliminary Approval Order” means the order substantially similar to **Exhibit D**: (1) provisionally certifying the Class for settlement purposes and determining that the proposed settlement is within the range for final approval; (2) appointing a Class Representative; (3) appointing Class Counsel; (4) approving the Notice Plan and notice forms; and (5) setting a date for the Fairness Hearing.

1.19 “Plaintiff” means 640 Tenth dba Cowboy Star Restaurant and Butcher Shop.

1.20 “Released Parties” means the County of San Diego and the County of San Diego Department of Environmental Health and each of their present and former directors, officers, members, agents, attorneys and employees.

1.21 “Settlement” means the settlement into which the Parties have entered to resolve the Action, which is set forth in this Agreement and the attached exhibits, which exhibits are incorporated into and part of this Agreement.

2. SETTLEMENT TERMS

2.1. Refunds of Permit Fees Paid. The County Defendants will provide Class Members who paid permit fees during the Class Period with a 50% refund of annual permit fees paid during the Class Period. If a Class Member paid two annual payments during the Class Period, the refund will be provided only for the most recent annual fees paid by that Class Member. The 50% refund will automatically be mailed to Class Member’s last known address of each Class Members within six months of the Final Effective Date. For any checks returned as undeliverable, the County Defendants will attempt to obtain a current address and promptly re-mail the refund check to the Class Members. The total amount of refund checks that remain uncashed 9 months after the check date, will be distributed to the California Restaurant Association Foundation.

2.2. Credit of Permit Fees Due. The County Defendants will provide Class Members who were required to pay permit fees during the Class Period, but have not yet paid the fees, with a 50% reduction in the annual permit fees owed by each such Class Member. If a Class Member

was required to pay two annual payments during the Class Period, the 50% reduction in the amount owed will be automatically credited for the most recent annual fees owed by that Class Member. The 50% reduction will automatically be applied to the Class Member's outstanding balance owed within six months of the Final Effective Date.

2.3. Waiver of Late Fees. The County Defendants will waive late fees for untimely payment of permit fees due during the Class Period, so long as the fees are paid within 12 months of the original due date or by December 31, 2021, whichever is sooner.

2.4. Attorneys' Fees and Expenses, and Service Award. Class Counsel shall make, and County Defendants agree not to oppose, an application for an award of attorneys' fees and expenses of up to \$446,435.75 (which is 10% of the license fee refunds payable to the Class), and a service award for the Class Representative up to \$500. The award of attorneys' fees and expenses and service award will be paid by County Defendants separate and apart from permit fee refunds paid to Class Members and will not reduce the credit or refund amounts paid. In the event the Court does not approve the attorneys' fees and expenses and/or the service award requested, or the Court awards an amount(s) less than that requested, such award shall not be a basis for rendering the entire Agreement null, void or unenforceable, provided however, that Class Counsel and the Class Representative retain the right to appeal any decision regarding the Court's award of attorneys' fees and expenses and/or the service award.

3. CLASS SETTLEMENT PROCEDURES

3.1. Settlement Approval. As soon as practicable after the signing of this Agreement, Plaintiff shall prepare and file a Motion for Preliminary Approval seeking entry of a Preliminary Approval Order.

3.2. Settlement Administration.

i. Notice. The County Defendants will provide and administer notice to the Class in accordance with the Notice Plan (Exhibit C), and orders of the Court. Subject to Court approval, the Parties agree that no later than seventy-five (75) days before the Fairness Hearing, the County Defendants will begin dissemination of notice to the Class in a manner consistent with the Notice Plan. The costs of administering and providing notice shall be paid by County Defendants and will not reduce the credit or refund amounts paid to Class Members. At or prior to the Fairness Hearing, the County Defendants shall provide the Court with a declaration attesting that notice was provided in accordance with the terms of the Settlement Agreement and the Court's Preliminary Approval Order.

ii. Distribution of Settlement Benefits. The County Defendants will administer the distribution of Settlement benefits to the Class, in accordance with the terms and conditions of the Settlement and orders of the Court. The costs of administering and providing license fee credits, distributing refunds, and all other costs of administering and distributing settlement benefits to the Class shall be paid by County Defendants and will not reduce the credit or refund amounts paid to Class Members. County Defendants will provide reports to Class Counsel regarding distribution of settlement benefits to Class Members.

iii. Payment of Attorneys' Fees and Service Award. Within thirty (30) days following entry of a Final Approval Order, County Defendants shall pay the amount of attorneys' fees and expenses awarded by the Court, provided that Class Counsel shall be obligated to return

any fees or expenses if the amount awarded by the Court is reduced prior to the Effective Date. Within thirty (30) days of the Effective Date, County Defendants shall pay the service award in the amount awarded by the Court to the Plaintiff.

3.3. Objections. Any Class Member who wishes to object to the Settlement must file a written objection with the Court, and serve copies on Class Counsel and Defendants' Counsel, no later than twenty-one (21) days before the date first set for the Fairness Hearing (or other date required by the Court). Objections must provide:

- i. The name of this Action (*640 Tenth LP v. County of San Diego, et. al.*, JCCP No. 5180);
- ii. The full name, address, and telephone number of the objecting Class Member, and the identity (name, title and telephone number) of the person with authority to act on behalf of the objecting restaurant;
- iii. The word "Objection" at the top of the document;
- iv. The legal and factual basis for the objection;
- v. The identity (name, address, and telephone number) of any counsel representing the objector and whether counsel will appear at the Fairness Hearing; and
- vi. The signature and date of signature of the person with authority to act on behalf of the objecting restaurant.

Class Members who fail to make objections in this manner will be deemed to have waived any objections and will be foreclosed from making any objections, whether by a subsequent objection, intervention, appeal, or any other process.

3.4. Intention to Appear at Fairness Hearing. Any Class Member who wishes to be heard at the Fairness Hearing must file a written Notice of Intention to Appear with the Court and serve copies on Class Counsel and Defendants' Counsel no later than twenty-one days (21) days before the date first set for the Fairness Hearing (or other date required by the Court). The Notice of Intention to Appear must provide:

- i. The name of this Action (*640 Tenth LP v. County of San Diego, et. al.*, JCCP No. 5180);
- ii. The full name, address, and telephone number of the person intending to appear at the Fairness Hearing;
- iii. The words "Notice of Intention to Appear" at the top of the document; and
- iv. The identity (name, address, and telephone number) of any counsel who will appear and speak on the Class Member's behalf.

3.5. Requests for Exclusion. Any Class Member who wishes to be excluded from or "opt out" of the Class must submit a written, signed request for exclusion to County Defendants' Counsel no later than twenty-one (21) days before the date first set for the Fairness Hearing (or

other date required by the Court) (the “Opt-Out Deadline”). Requests for exclusion must be signed by a person authorized to act on behalf of the Class Member who seeks to opt out. No opt out request may be made on behalf of a group of Class Members—i.e., so called “mass” or “class” opt outs are not allowed. Each Class Member who does not, on or before the Opt-Out Deadline, submit a request for exclusion substantially in compliance with this Section, shall be deemed to participate in the Settlement and all releases provided in this Agreement. For purposes of determining timeliness, requests for exclusion shall be deemed to have been submitted on the date postmarked by the postal service or other expedited delivery service. Any Class Member who properly requests to be excluded from the Class shall not: (a) be bound by any orders or judgments entered in the Action relating to the Settlement; (b) be entitled to any Settlement relief; (c) gain any rights by virtue of the Agreement; or (d) be entitled to object to any aspect of the Agreement. County Defendants’ Counsel shall file with the Court the final list of all Class Members who submitted timely requests for exclusion prior to or at the Fairness Hearing.

3.6. Motion for Final Approval. No later than thirty-five (35) days before the Fairness Hearing, or at such other time required by the Court, Plaintiff shall move the Court for final approval of the Settlement.

4. FINAL APPROVAL ORDER AND RELEASES.

4.1. Final Approval Order. This Agreement is conditioned upon the issuance by the Court of the Final Approval Order that finally certifies the Class for the purposes of this Settlement, grants final approval of the Settlement and enters judgment.

4.2. Release of County Defendants by Plaintiff and All Class Members. Upon the Final Effective Date, Plaintiff and each member of the Class, on behalf of themselves and any other legal or natural persons who may claim by, through or under them (“Releasing Parties”), agree to fully, finally and forever release, relinquish, acquit, and discharge the Released Parties from any and all claims, demands, suits, petitions, liabilities, causes of action, rights, injunctions, and damages of any kind regarding the claims asserted in the Action, including, but not limited to, compensatory, exemplary, punitive, expert and/or attorneys’ fees, whether past, present, or future, mature, or not yet mature, known or unknown, suspected or unsuspected, contingent or non-contingent, derivative or direct, asserted or un-asserted, whether based on federal, state or local law, constitution, statute, ordinance, regulation, code, contract, common law, or any other source, that relate to any claims alleged in the Action (“Released Claims”). The Parties expressly acknowledge and agree that the scope of the release set forth in this Paragraph excludes claims as set forth in *640 Tenth, LP et al v. Gavin Newsom et al.*, San Diego Superior Court Case No. 37-2020-00041316-CU-MC-CTL.

4.3. Waiver of California Civil Code section 1542. With respect to the Released Claims, Plaintiff expressly acknowledges and affirmatively waives California Civil Code section 1542 to the fullest extent permitted by law, which states:

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

4.4. In consideration for the Agreement, Defendants and their past or present officers, directors, members, and employees shall be deemed to have, and by operation of the Final Approval Order and judgment shall have, released Class Counsel and Plaintiff from any and all causes of action that were or could have been asserted pertaining solely to the conduct in filing and prosecuting the litigation or in settling the Action.

5. TERMINATION

5.1 This Agreement is being entered into only for the purpose of settlement. In the event that the Court does not enter a Final Approval Order confirming in material respects to Exhibit E, or if entered, such Final Approval Order is reversed or vacated by another court, then either Party may declare void ab initio the Agreement, and all of the provisions shall be vacated by its own terms. The terminating party must exercise its right to terminate the Agreement in writing within ten (10) days of the triggering event. Upon termination, the Action shall revert to the status that existed prior to the execution date of this Agreement and no term of this Agreement, or other part or aspect of the Parties' settlement discussions, shall have any effect, nor shall any such matter be admissible in evidence for any purpose in the Action, or in any other proceeding.

6. ADDITIONAL PROVISIONS.

6.1 No Admission of Liability / For Settlement Purposes Only. This Agreement reflects the compromise and settlement of disputed claims among the Parties and is for settlement purposes only. Neither the fact of this Agreement, nor any action taken hereunder, shall constitute, be construed as, or be admissible in evidence as an admission of: (a) the validity of any claim or allegation by Plaintiff, or of any defense asserted by County Defendants, in the Action or any other action or proceeding; or (b) any wrongdoing, fault, violation of law, or liability of any kind on part of any Party, Defendants, Released Party, or their respective counsel.

6.2 Change of Time Periods. The time periods and/or dates described in this Agreement with respect to the giving of notices and notices of hearings are subject to approval and change by the Court or by the written agreement of counsel for the Parties, without notice to the Class.

6.3 Real Parties in Interest. In executing this Agreement, the Parties warrant and represent that they, including Plaintiff, are the only persons or entities having any interest in any of the claims that are described in any of the pleadings, records, and papers in the Action, and, except as provided herein, the said claims have not been assigned, granted, or transferred to any other person, firm, or entity.

6.4 Binding on Successors. This Agreement shall bind and inure to the benefit of the respective successors, assigns, legatees, heirs, and personal representatives of each of the Parties.

6.5 Parties Represented by Counsel. The Parties hereby acknowledge that they have been represented in negotiations for and in the preparation of this Agreement by independent counsel of their choosing, that they have read this Agreement and have had it explained to them by their counsel, and that they are aware of the contents of this Agreement and of its legal effect. This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of the Parties, or of any other person, firm, or entity.

6.6 Authorization. Each Party warrants and represents that there are no liens or claims of lien or assignments in law or equity or otherwise of or against any of the claims or causes of action released herein and, further, that each Party is fully entitled and duly authorized to give this complete and final release and discharge.

6.7 Entire Agreement. This Agreement and Exhibits attached hereto contain the entire agreement between the Parties and constitutes the complete, final, and exclusive embodiment of their agreement with respect to the subject matter hereof. This Agreement is executed without reliance upon any promise, representation, or warranty by any Party or any representative of a Party, other than those expressly set forth herein.

6.8 Construction and Interpretation. Neither Party nor any of the Parties' respective attorneys shall be deemed the drafter of this Agreement for purposes of interpreting any provision hereof in any judicial or other proceeding.

6.9 Exhibits. The exhibits to this Agreement are integral parts of the Agreement and are hereby incorporated and made a part of this Agreement. The Parties contemplate that certain of the Exhibits relating to class notice may be modified by subsequent agreement of Class Counsel and Defendants' Counsel prior to dissemination to Class Members.

6.10 Modifications and Amendments. No amendment, change, or modification of this Agreement or any part thereof shall be valid unless in writing signed by the Parties and approved by the Court, except as otherwise expressly provided herein. However, after entry of the Final Approval Order and judgment, the Parties may by written agreement effect such amendments, modifications, or expansions of this Agreement and its implementing documents (including all exhibits thereto) without further notice to the Settlement Class or approval by the Court if such changes are consistent with the Court's Final Approval Order and do not limit the rights of Class Members under this Agreement.

6.11 Governing Law. This Agreement is entered into in accordance with the laws of the State of California and shall be governed by and interpreted in accordance with those laws.

6.12 Further Assurances. Each of the Parties hereto shall execute and deliver any and all additional papers, documents, and other assurances and shall do any and all acts or things reasonably necessary in connection with the performance of his or her or its obligations hereunder to carry out the express intent of the Parties.

6.13 Agreement Constitutes a Complete Defense. To the extent permitted by law this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of or contrary to this Agreement.

6.14 Execution Date. This Agreement shall be deemed executed upon the last date of execution of all the undersigned.

6.15 Continuing Jurisdiction. The Parties agree that the Court has, and shall continue to have, jurisdiction to make any orders as may be appropriate to approve awards of attorneys' fees and costs pursuant hereto, and to supervise the administration of and the distribution of settlement benefits to Class Members pursuant to this Agreement. The Parties shall cooperate in

good faith in the administration of this Settlement. Any unresolved dispute regarding the administration of this Agreement shall be decided by the Court.

6.16 Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. Photocopies or “pdfs” of executed copies of signatures shall have the same force and effect as originals.

6.17 Severability. Should any paragraph, sentence, clause or provision of this Agreement be held invalid or unenforceable, such provision shall be ineffective to the extent of such invalidity or unenforceability, without invalidating the remainder of such provision or the remaining portions of the Agreement.

IN WITNESS WHEREOF, the Parties hereto have so agreed.

Dated: 07/08/21 _____



Plaintiff 640 Tenth LP dba Cowboy Star
Restaurant and Butcher Shop

Dated: _____

Defendants County of San Diego and
County of San Diego Department of
Environmental Health

Dated: _____

Brian S. Kabateck, Class Counsel

Dated: _____

Timothy G. Blood, Class Counsel

Dated: _____

Joshua M. Heinlein, Counsel for Defendants

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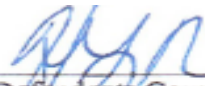
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IN WITNESS WHEREOF, the Parties hereto have so agreed.

Dated: _____

Plaintiff 640 Tenth LP dba Cowboy Star
Restaurant and Butcher Shop

Dated: 7/8/2021




Defendants County of San Diego and
County of San Diego Department of
Environmental Health

Dated: July 7, 2021



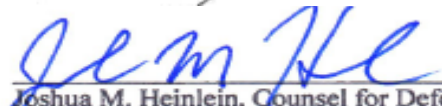
Brian S. Kabateck, Class Counsel

Dated: 7/7/21



Timothy G. Blood, Class Counsel

Dated: 7/8/2021



Joshua M. Heinlein, Counsel for Defendants

TABLE OF EXHIBITS

<u>Document</u>	<u>Exhibit Number</u>
Full Class Notice.....	A
Email Notice	B
Notice Plan.....	C
Preliminary Approval Order	D
Final Approval Order.....	E