



Liz Schalet &lt;lschalet@mmsjlaw.com&gt;

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**Re: ML San Jose/Liberato Restaurant, Case No. 02-CA-130853 et al.**

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Rose, Allen &lt;Allen.Rose@nlrb.gov&gt;

Mon, Nov 23, 2015 at 3:23 PM

To: Martin Restituyo &lt;restituyo@restituyolaw.com&gt;, Argilio Rodriguez &lt;argilio@lawrodriguez.com&gt;, Liz Schalet &lt;lschalet@mmsjlaw.com&gt;, "Jmirer@mmsjlaw.com" &lt;Jmirer@mmsjlaw.com&gt;

Dear Counsel:

The Regional Attorney and I will not be available after Tuesday this week, so it does not appear that we will have our meeting.

I want to clarify where things stand in light of your deadline with the judge on November 30. After I circulated my last draft of the Board Informal Settlement Agreement, we received Ms. Schalet's email that attached a draft of the non-Board (FLSA) settlement, and we have now looked at it terms.

Generally, in those cases where the parties want a global settlement of both Board charges and non-Board lawsuits or grievances, there are two ways to do it: (1) the parties can enter into two settlement agreements, i.e., a settlement agreement with the Board and another settlement of the lawsuits; or (2) the parties can enter into a non-Board settlement only and the charging party can request of the Regional Director that the NLRB charges be withdrawn based on the non-Board settlement. In any case where a charging party requests withdrawal of a charge in favor of a non-Board settlement, the Regional Director must be assured, before approving the withdrawal, that the non-Board settlement meets the NLRB's core standards. I urge you to read the attached NLRB memorandum for a full discussion of these minimum requirements.

Upon review of the terms of your non-Board settlement (the FLSA settlement), there are two provisions which do not meet our standards: the Non-Publicity and Non-Disparagement provisions. Both those provisions impinge on rights guaranteed by Sec. 7 of the NLRA. The reasons why are explained in the attached memorandum, in particular at p. 5. Unless these two provisions are changed in your FLSA settlement to conform to our core standards, the Regional Director will not be able to approve a request by the Charging Parties to withdraw any or all of the charges.

Your second option is to enter into the attached informal Board settlement agreement. Entering into the Board settlement would mean that the Regional Director would not have to take into consideration the terms of the FLSA settlement, including the two aforementioned provisions which do not meet our standards. The attached settlement agreement however must now include the three paragraphs that had been taken out (regarding the alleged baseless and retaliatory lawsuits) because the anticipated request to withdraw the charge related to those paragraphs cannot be approved due to the non-publicity and non-disclosure provisions in your FLSA settlement. (As I stated above, we received the FLSA settlement terms

only after those paragraphs were removed and thus had not been aware of the two provisions.)

Because the parties have worked hard to achieve the FLSA settlement, we strongly encourage the parties to talk further to try to resolve this last hurdle by selecting one of the two options described above.

Sincerely,

Allen M. Rose

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**2 attachments**



**SET 02-CA-130853 ISA.Final.11 23 2015.docx.pdf**

44K



**OM 07\_27 Non\_Board Settlement.doc.pdf**

31K

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
SETTLEMENT AGREEMENT

IN THE MATTER OF

**M.L. San Jose Enterprises Corp. and M L Restaurant Corp. D/B/A  
Liberato Restaurant, as a Single Employer (“Charged Party”)**

**Case 02-CA-130853  
Case 02-CA-135195  
Case 02-CA-137469  
Case 02-CA-138859  
Case 02-CA-144475  
Case 02-CA-145367  
Case 02-CA-154870**

Subject to the approval of the Regional Director for the National Labor Relations Board, the Charged Party and the Charging Parties **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS:**

**POSTING OF NOTICE** — After the Regional Director has approved this Agreement, the Regional Office will send copies of the approved Notice to the Charged Party in English and Spanish. A responsible official of the Charged Party will then sign and date those Notices and immediately post them in conspicuous locations, where notices to employees are commonly posted, at both the Charged Party’s restaurants located at 1 West 183<sup>rd</sup> Street, Bronx, NY and 10 West Burnside Avenue, Bronx, NY. The Charged Party will keep all Notices posted for 60 consecutive days after the initial posting.

**READINGS OF NOTICE**—The Charged Party will hold a meeting or meetings at both of the Charged Party’s restaurants described above, scheduled to ensure the widest possible attendance on each shift, at which a legal representative for the Charged Party will read the Notice in English and Spanish in the presence of a responsible management official of the Charged Party and a Board agent. The Notice in English and Spanish may alternatively be read by a responsible management official of the Charged Party in the presence of a Board agent. The readings will take place at a time when the Charged Party would customarily hold meetings and must be completed prior to the completion of the 60-day Notice posting period. The date and time(s) of the readings must be approved by the Regional Director. The announcement of the meeting(s) will be in the same manner the Charged Party normally announces meetings and must be approved by the Regional Director.

**COMPLIANCE WITH NOTICE** — The Charged Party will comply with all the terms and provisions of said Notice.

**NON-ADMISSION CLAUSE** — By entering into this Settlement Agreement, the Charged Party does not admit that it has violated the National Labor Relations Act.

**BACKPAY** — Within 14 days from approval of this agreement, the Charged Party will make whole Ramirez, Rutilio, Crecencio, Guerrero, and Herculano by payment to each of them of the amount opposite each name, by distributing the amounts to counsel for these foregoing employees, Mirer Mazzocchi Schalet & Julien, PLLC c/o Jeanne E. Mirer, Esq. or her designee. The Charged Party will provide evidence to the Regional Director that it has provided to counsel for the foregoing employees funds sufficient to cover the backpay and interest amounts. Counsel for the Charging Parties will distribute the backpay amounts to the foregoing employees from an escrow account established for such distribution, and the counsel for the employees will certify to the Regional Director that the distribution was made to the employees. Within 14 days from approval of this agreement, the Charged Party will issue to Diaz through his counsel Mirer Mazzocchi Schalet & Julien, PLLC c/o Jeanne E. Mirer, Esq. or her designee: (1) a check in the amount of backpay set forth opposite Diaz’s name below; and (2) a check in the amount of interest set forth opposite Diaz’s name below. Diaz’s backpay check will be subject to statutory deductions made by the Charged Party, and the Charged Party shall pay its portion of

FICA. The Charged Party will also file a report with the Social Security Administration allocating the payment(s) to the appropriate time periods. No deductions shall be taken from the check representing interest. Diaz's counsel will thereafter send both checks to the Regional Director, National Labor Relations Board, Region 2, 26 Federal Plaza, Suite 3614, New York, NY 10278.

<b>Name</b>	<b>Backpay</b>	<b>Interest</b>
Oscar Ramirez	\$14,880	\$625
Pablo Rutilio	\$22,470	\$624
Magdalena Andres Crecencio	\$5,890	\$34
Javier Guerrero	\$2,850	\$17
Geronimo Herculano	\$8,550	\$50
Erasmus Diaz	\$5,510	\$32

**SCOPE OF THE AGREEMENT** — This Agreement settles only the allegations in the above-captioned case(s), including all allegations covered by the attached Notice to Employees made part of this agreement, and does not settle any other case(s) or matters. It does not prevent persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved regardless of whether General Counsel knew of those matters or could have easily found them out. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case(s) for any relevant purpose in the litigation of this or any other case(s), and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to that evidence. By approving this Agreement the Regional Director withdraws any Complaint(s) and Notice(s) of Hearing previously issued in the above case(s), and the Charged Party withdraws any answer(s) filed in response.

**PARTIES TO THE AGREEMENT** — If the Charging Parties fail or refuse to become a party to this Agreement and the Regional Director determines that it will promote the policies of the National Labor Relations Act, the Regional Director may approve the settlement agreement and decline to issue or reissue a Complaint in this matter. If that occurs, this Agreement shall be between the Charged Party and the undersigned Regional Director. In that case, a Charging Party may request review of the decision to approve the Agreement. If the General Counsel does not sustain the Regional Director's approval, this Agreement shall be null and void.

**AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTY** — Counsel for the Charged Party authorizes the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original notices and a certification of posting directly to the Charged Party. If such authorization is granted, Counsel will be simultaneously served with a courtesy copy of these documents.

Yes \_\_\_\_\_ No \_\_\_\_\_  
 Initials Initials

**PERFORMANCE** — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Parties do not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director.

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will reissue the complaint previously issued on September 30, 2015 in the instant case(s), which will be amended to include all allegations

covered by the Notice to Employees attached hereto, as well as filing and service of the underlying charge(s), commerce facts necessary to establish Board jurisdiction, and any other allegations the General Counsel would ordinarily plead to establish unfair labor practices (the “Complaint”) Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the Complaint. The Charged Party understands and agrees that the allegations of the Complaint will be deemed admitted and any answers filed to the allegations in the September 30, 2015 complaint will be considered withdrawn, and the Charged Party will have waived its right to file any further answers to the Complaint. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon Charged Party/Respondent at the last address provided to the General Counsel.

**NOTIFICATION OF COMPLIANCE** — Each party to this Agreement will notify the Regional Director in writing what steps the Charged Party has taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If the Charging Parties do not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that the Charging Party did not request review or that the General Counsel sustained the Regional Director’s approval of this agreement. No further action shall be taken in the above captioned case(s) provided that the Charged Party complies with the terms and conditions of this Settlement Agreement and Notice.

<b>Charged Party:</b> <b>M.L. San Jose Enterprises Corp. and M L Restaurant Corp. D/B/A Liberato Restaurant, as a Single Employer</b>		<b>Charging Parties:</b> <b>Oscar Ramirez, Pablo Rutilio, Magdalena Andres Crecencio, Mahoma Lopez, and Ria Julien</b>	
By:	Name and Title	Date	
By:	Name and Title	Date	
Recommended By:	Date	Approved By:	Date
Allen M. Rose, Field Attorney		Karen P. Fernbach, Regional Director, Region 2	



**WE WILL** remove from our files all references to the discharges of Oscar Ramirez, Pablo Rutilio, Magdalena Andres Crecencio, Geronimo Herculano, Javier Guerrero, and Erasmo Diaz and **WE WILL** notify them in writing that this has been done and that the discharge will not be used against them in any way.

**WE WILL** remove from our files all references to the warning given to Magdalena Andres Crecencio and **WE WILL** notify her in writing that this has been done and that the warning will not be used against her in any way.

**WE WILL**, within 7 days from the date of execution of this Agreement, withdraw and if necessary, otherwise seek to dismiss our lawsuit in the United States District Court for the Southern District of New York, docketed as 15-cv-326 (VEC), which we filed against Laundry Workers Center United, Virgilio Oscar Aran, Rosanna Rodriguez Aran, Mahoma Lopez Garfias, Oscar Ramirez, Pablo Rutilio, and Maggie Andres Crecencio.

**WE WILL**, within 7 days from the date of execution of this Agreement, withdraw and if necessary, otherwise seek to dismiss our lawsuits in New York State Supreme Court, docketed as 652130/2014, which we filed against Laundry Workers Center United, Virgilio Oscar Aran, Rosanna Rodriguez Aran, and Mahoma Lopez Garfias

**M.L. San Jose Enterprises Corp. and M L  
Restaurant Corp. D/B/A Liberato Restaurant, as a  
Single Employer**  
\_\_\_\_\_  
(Employer)

**Dated:** \_\_\_\_\_ **By:** \_\_\_\_\_  
(Representative) (Title)

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*The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866-315-NLRB. You may also obtain information from the Board's website: www.nlr.gov.*

26 Federal Plz Ste 3614  
New York, NY 10278-3699

**Telephone:** (212)264-0300  
**Hours of Operation:** 8:45 a.m. to 5:15 p.m.

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**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.** This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.

**(To be printed and posted on official Board notice form)**

**FEDERAL LAW GIVES YOU THE RIGHT TO:**

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

**WE WILL NOT** do anything to prevent you from exercising the above rights.

**YOU HAVE THE RIGHT** to freely bring issues and complaints to us regarding your wages, hours, and other working conditions, on behalf of yourself and other employees and **WE WILL NOT** do anything to interfere with your exercise of that right.

**WE WILL NOT** fire you, or threaten to fire you, because you exercise your right to bring issues and complaints to us about your wages, hours and working conditions, on behalf of yourself and other employees, or because you file a Fair Labor Standards Act (FLSA) collective action against us, file charges with the National Labor Relations Board (NLRB), engage in peaceful protest, bring your issues and complaints to the attention of the public, or because you exercised your right by other means protected by the National Labor Relations Act.

**WE WILL NOT** demote, reduce the hours of, issue written warnings to, or reassign you because you exercise your right to bring issues and complaints to us on behalf of yourself and other employees, or because you took any of the actions described above.

**WE WILL NOT** file, maintain, or prosecute baseless and retaliatory lawsuits, or lawsuits preempted by the National Labor Relations Act, against you or against workers organizations, labor organizations or individuals who support you, in order to retaliate against your activities protected by the National Labor Relations Act, including the activities of filing an FLSA collective action against us, filing charges with the NLRB, engaging in peaceful protest, bringing complaints about your working conditions to the attention of the public, and otherwise bringing your issues and complaints to us, on behalf of yourself and other employees, about your wages, hours and working conditions.

**WE WILL NOT** interrogate you about your protected concerted activities, including concerning your participation in any FLSA collective action against us.

**WE WILL NOT** spy on your protected concerted activities, including peaceful protests.

**WE WILL NOT** in any like or related manner interfere with your rights under Section 7 of the Act.

**WE WILL** pay Oscar Ramirez, Pablo Rutilio, Magdalena Andres Crecencio, Geronimo Herculano, Javier Guerrero, and Erasmo Diaz for the wages and other benefits that they lost because we fired them. These employees have waived their right to return to their former positions.