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13
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT – SPRING STREET**

16 **COURTHOUSE**
17

18 ROBERT MARTINEZ, MAIKU BRAXTON, on
their own behalf and on behalf of all others
19 similarly situated,

20 Plaintiffs,

21 vs.

22 ALFRED CLUB, INC. and DOES 1 through 100,
inclusive,

23 Defendants.
24

CASE NO. 19STCV44314

[Assigned for All Purposes to:
The Hon. Ann I. Jones, Dept. 11]

CLASS ACTION

**[REVISED] JOINT STIPULATION RE:
CLASS ACTION SETTLEMENT**

Action Filed: December 11, 2019
Trial Date: None Set

25
26
27 Subject to final approval by the Court, which counsel and parties agree to pursue and
28 recommend in good faith, Plaintiffs ROBERT MARTINEZ and MAIKU BRAXTON individually

1 and on behalf of all employees similarly situated, on the one hand (“Named Plaintiffs”), and
 2 Defendant ALFRED CLUB, INC. (“Defendant”) hereby agree to the following binding non-
 3 reversionary settlement of the class action case of *Robert Martinez and Maiku Braxton v. Alfred*
 4 *Club, Inc.*, Los Angeles County Superior Court Case No. 19STCV44314.

5 **I. DEFINITIONS**

6 As used herein, the following terms are defined as:

7 1. “Action” means, and refers to, the case captioned *Robert Martinez and Maiku*
 8 *Braxton v. Alfred Club, Inc.*, Los Angeles County Superior Court Case No. 19STCV44314.

9 2. “Agreement,” “Settlement,” or “Stipulation” mean, and refer to, this Stipulation
 10 and Settlement of Class Action Claims.

11 3. “Aggregate Workweek Number” means, and refers to, the sum of all of the
 12 Participating Class Members’ Total Workweeks which will be used to calculate the Weekly
 13 Settlement Amounts to be used to calculate Participating Class Members’ Individual Settlement
 14 Payments, as set forth infra in Section III, Paragraph 12.

15 4. “Attorneys’ Fees and Cost Award” means, and refers to, the amount authorized by
 16 the Court to be paid to Class Counsel for the services they have rendered and expenses they have
 17 incurred in prosecuting the Action. As set forth infra in Section III, Paragraph 8, Class Counsel
 18 shall request, and Defendant will not oppose, an award of attorneys’ fees of up to Ninety Nine
 19 Thousand Dollars (\$99,000) or one-third of the Total Maximum Settlement Fund) and a Cost
 20 Award of up to \$15,000.00. The Attorneys’ Fees and Cost Award shall come out of the Total
 21 Maximum Settlement Fund and will not increase the amount of the Total Maximum Settlement
 22 Fund. Class Counsel will be issued IRS Form 1099 for the Attorneys’ Fees and Cost Award.

23 5. “Claims” means, and refers to, all allegations of wrongful conduct which were or
 24 could have been asserted in this Action, including allegations that Defendant failed to provide
 25 meal periods; failed to authorize and permit rest breaks; failed to pay straight time compensation;
 26 failed to pay overtime compensation; failed to provide itemized wage statements; failed to keep
 27 accurate payroll records; failed to pay waiting time penalties; failed to pay wages upon
 28

1 termination; unfair business practices; failed to reimburse business expenses and associated
2 penalties. In addition, “Claims” also means and refers to claims for any and all penalties pursuant
3 to the Private Attorneys General Act of 2004, Labor Code §2698, et seq., alleged in or arising out
4 of the aforementioned claims, and/or claims that are or could have been asserted based on the facts
5 alleged in the Action.

6 6. “Settlement Administrator” means, and refers to CPT, or another settlement
7 administration provider upon which the Named Plaintiffs, Class Counsel, Defendant, and
8 Defendant’s Counsel mutually agree.

9 7. “Settlement Administration Costs” means, and refers to, the amount that will be
10 paid to the Settlement Administrator, and includes all costs incurred in administering the
11 Settlement, which will be paid from the Total Maximum Settlement Fund, as defined in Section I,
12 Paragraph 40, infra. The Parties agree to work in good faith to minimize, as much as possible, the
13 Settlement Administration Costs, estimated to be \$10,000. Defendant will not object to any
14 application for approval of the Settlement Administration Costs, provided the Settlement
15 Administration Costs are paid out of the Total Maximum Settlement Fund and will not increase
16 the Total Maximum Settlement Fund.

17 8. “Class” and “Class Member” mean, and refer to, a member of the class conditionally
18 certified for settlement purposes only during the applicable Settlement Period, consisting of all
19 current and former non-exempt employees who worked for Defendant in California at any time
20 during the Settlement Period. Defendant represents and has represented throughout the course of
21 this litigations, that approximately 105 Class Members comprise this Class for purposes of this
22 Settlement. Should the size of the Class increase by more than seven percent (7%) on or before
23 October 15, 2020 or the Court’s granting of preliminary approval, whichever occurs sooner, then
24 Plaintiff may either void the entirety of this agreement or seek an increase of the Gross Settlement
25 to correspond with the increase in the Class Size.

26 9. “Class Counsel” and “Plaintiff’s Counsel” means and refers to Haig Kazandjian
27 and Cathy Gonzalez of Haig B Kazandjian Lawyers APC.

28 10. “Class List and Data Report” means a list of current and former non-exempt, employees

1 that Defendant will diligently and in good faith compile from its internal employee information database
2 and provide to the Settlement Administrator within fifteen (15) days of Preliminary Approval of the
3 Settlement. The Class List and Data Report shall be in excel format, and shall include each Class
4 Member's full name; employee ID while employed with Defendant; the Total Workweeks worked by each
5 class member as a non-exempt employee during the Settlement Period; any other relevant information
6 needed to calculate settlement payments; last known home address; and Social Security number. Because
7 Social Security numbers are included in the list, the Settlement Administrator will maintain the list in
8 confidence, and shall only access and use the list to administer the settlement in conformity with the
9 Court's orders.

10 11. "Complaint" means, and refers to the operative complaint filed by the Named
11 Plaintiffs in this Action titled *Robert Martinez and Maiku Braxton v. Alfred Club, Inc.*, Los
12 Angeles County Superior Court Case No. 19STCV44314.

13 12. "Court" means, and refers to, the Superior Court of the State of California for the
14 County of Los Angeles.

15 13. "Defendant" means, and refers to Alfred Club, Inc.

16 14. "Defendant's Counsel" or "Defense Counsel" means Rachel Lee, Esq. of Lewis
17 Brisbois Bisgaard & Smith, LLP.

18 15. "Effective Date" means the following: (a) if no one objects to the settlement, then
19 the Effective Date will be the first day after service by Plaintiff on Defendant of the Final Order
20 and Judgment following a Final Fairness and Approval hearing; (b) if a Class Member timely
21 objects to the settlement, and if an appeal, review, or writ is not sought from the Final Order and
22 Judgment, then the Effective Date will be sixty-one (61) days after service of the Final Order and
23 Judgment by Plaintiff on Defendant and any Objectors; or (c) if a Class Member timely objects to
24 the settlement, and if an appeal, review or writ is sought from the Final Order and Judgment, then
25 all of Defendant's remaining obligations under this Agreement will be stayed until the day after
26 the Judgment is affirmed, or the appeal or writ is dismissed or denied (or the time for filing an
27 appeal or writ expires) which day will then be the Effective Date.

28 16. "Excluded Class Members" means, and refers to, all Class Members who timely

1 and validly submit a written request to be excluded from the Class on or before the
2 Objection/Exclusion Deadline Date, as defined in Section I, Paragraph 27, *infra*.

3 17. "Final Approval" means, and refers to, the Court's order granting final approval
4 of the Settlement.

5 18. "Final Approval Date" means, and refers to, the date on which the Court's Final
6 Approval Order is entered.

7 19. "Final Approval Hearing/Settlement Fairness Hearing" means, and refers to, the
8 hearing at which the Court considers whether to approve the Settlement and to enter the Final
9 Approval Order.

10 20. "Final Approval Order" means, and refers to, the Court's Final Order on Final
11 Approval and Judgment, which shall be proposed in a form to be agreed upon by the Parties prior
12 to the hearing on the Motion for Final Approval.

13 21. "FLSA Settlement Class Member" means, and refers to, a Class Member who
14 timely cashes his or her Individual Settlement Payment check, and thereby will be deemed to have
15 opted into the action for purposes of the Fair Labor Standards Act, and thereby waived and
16 released any claims such FLSA Settlement Class Members may have under the Fair Labor
17 Standards Act, 29 U.S.C. §§ 201, et seq. Only those Class Members who timely cash their
18 settlement check will be deemed to have opted into the action for purposes of the Fair Labor
19 Standards Act and thereby released and waived any of their claims under the Fair Labor Standards
20 Act arising during the Settlement Period relating to the alleged claims.

21 22. "General Release" means, and refers to, the release in which the Named Plaintiffs,
22 in their individual capacity and with respect to their individual claims only, and in exchange for
23 their Service Awards, agree to release the Released Parties from all claims, demands, rights,
24 liabilities and causes of action of every nature and description whatsoever, known or unknown,
25 asserted or that might have been asserted, whether in tort, contract, or for violation of any
26 collective bargaining agreement, and/or any state or federal statute, rule or regulation arising out
27 of, relating to, or in connection with any act or omission by or on the part of any of the Released
28 Parties committed or omitted during the Settlement Period Date, including a waiver of Civil Code

1 §1542. Civil Code section 1542 reads as follows:

2 **Section 1542. [General Release – Claims Extinguished.] A general release does not**
3 **extend to claims that the creditor or releasing party does not know or suspect to exist**
4 **in his or her favor at the time of executing the release and that, if known by him or**
5 **her, would have materially affected his or her settlement with the debtor or released**
6 **party.**

7 23. “Individual Settlement Payment” means, and refers to, the amount to be paid to
8 each individual Participating Class Member from the Net Settlement Amount. The estimated
9 Individual Settlement amount shall be indicated on the Notice. Individual Settlement Payment for
10 each individual Participating Class Member will result from the calculations set forth in Section
11 III, paragraph 12, infra, less all applicable state and federal withholding taxes, including FICA,
12 FUTA and SDI contributions and any other applicable payroll deductions required by law as a
13 result of the payment of the amount allocated to such Participating Class Members under the terms
14 of this Stipulation.

15 24. “Named Plaintiffs” mean Robert Martinez and Maiku Braxton.

16 25. “Net Settlement Amount” or “NSA” means, and refers to, the funds available to be
17 distributed to Participating Class Members from the Total Maximum Settlement Fund after
18 payment of any Attorneys’ Fees and Cost Awards, Service Awards, Settlement Administration
19 Costs, and after Seventy Five Percent (75%) of the Twenty Five Thousand Dollars (\$25,000.00)
20 allocated to PAGA is paid to the California Labor Workforce Development Agency (“LWDA”),
21 which equates to Eighteen Thousand Seven Hundred Fifty Dollars (\$18,750.00).

22 26. “Notice” or “Notice Packet” means, and refers to, the “Notice of Class Action
23 Settlement” that the Court directs to be sent via regular mail to all Class Members (substantially in
24 the forms annexed hereto as Exhibit 1).

25 27. “Objection/Exclusion Deadline” means, and refers to, the date no later than forty-
26 five (45) calendar after the date the Notice Packets are mailed (judged by the postmark date) to
27 Class Members by the Settlement Administrator, on or before which a Class Member may (1)
28 validly submit a Notice of Objection, (2) submit a Request for Exclusion, or (3) challenge with

documentary evidence his or her Total Workweeks, with an additional fifteen (15) days for re-mailed notices.

28. "PAGA Payment" means, and refers to Twenty Five Thousand Dollars (\$25,000.00) of the Total Maximum Settlement Fund, which constitutes penalties pursuant to California's Private Attorneys General Act of 2004 (California Labor Code § 2699 et seq., or "PAGA,") and pursuant to Labor Code Section 2699(i), it will be distributed as follows: 25% to the Participating Class Members and 75% to the California Labor and Workforce Development Agency which equates to Eighteen Thousand Seven Hundred Fifty Dollars (\$18,750.00). The 25% portion of the PAGA Payment that shall be paid to the Participating Class Members shall remain within the Net Settlement Amount so that it is available to be included within the calculation of the Participating Class Members' Individual Settlement Payments.

29. "Participating Class Member" means, and refers to, any and all Class Members who are not Excluded Class Members.

30. "Parties" means, and refers to, Defendant, the Named Plaintiffs, and the Participating Class Members.

31. "Preliminary Approval Order" means, and refers to, the Order issued by the Court preliminarily approving the terms of the Settlement set forth in this Stipulation, in a form to be agreed upon by the Parties prior to the hearing on the Motion for Preliminary Approval (substantially in the form annexed hereto as Exhibit 2).

32. "Preliminary Approval Date" means, and refers to, the date that the Court enters the Preliminary Approval Order.

33. "Preliminary Approval Hearing" means, and refers to, the hearing on Named Plaintiff's Motion for Preliminary Approval, as discussed in Section III, Paragraph 10, *infra*.

34. "Qualified Settlement Fund" means, and refers to, the fund to be established by the Settlement Administrator pursuant to Internal Revenue Code Section 1.468B-1 into which Defendant will deposit the Total Maximum Settlement Fund within fifteen (15) days following the Effective Date.

35. "Released Claims" means all claims, rights, demands, damages, liabilities and

causes of action, whether known or unknown, contingent or vested, in law or in equity, arising at any time during the Settlement Period for unpaid wages or other compensation, and/or related penalties, interest, costs, attorneys' fees, and/or injunctive or other equitable remedies, allegedly owed or available, against Defendant and its respective former, current and future parent companies, subsidiaries, affiliates, shareholders, members, agents (including, without limitation, any investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors and employees) predecessors, successors, and assigns, allegedly owed or available, arising out of, or related to the claims, allegations and operative facts asserted in the operative complaint, or which could have been asserted in the Action based on the alleged facts in the operative complaint, including: (1) failure to pay straight and overtime compensation in violation of Labor Code; (2) failure to provide meal periods; (3) failure to provide itemized wage statements; (4) failure to keep accurate payroll records; (5) Unfair Competition or Business Practices under California's Business and Professions Code or similar laws related to the alleged claims; (6) failure to pay waiting time penalties; (7) failure to pay wages upon termination pursuant to Labor Code sections 201 and 202; (8) failure to pay wages upon termination pursuant to Labor Code section 1174(d); (9) failure to reimburse business expenses; (10) failure to authorize and permit rest breaks; and (11) all claims for penalties pursuant to the California Labor Code and/or the Private Attorneys General Act of 2004 arising out of the alleged claims. The release shall include release of California Labor Code, sections 201, 202, 203, 204, 218.5, 218.6, 221, 223, 226, 226.7, 323, 450, 510, 512, 558, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1198, 1199, 2800, 2802, 2698 *et seq.*, California Business & Professions Code section 17200 *et seq.*, based on the alleged labor code sections, the relevant Wage Orders issued by the Industrial Welfare Commission, any and all claims for attorneys' fees and costs, and/or California Code of Civil Procedure section 1021.

Additionally, any Participating Class Member who cashes his or her settlement check (and, in so doing, becomes a FLSA Settlement Class Member) will be deemed to have opted into the action for purposes of the Fair Labor Standards Act and, as to those FLSA Settlement Class Members, the Released Claims include any and all claims the FLSA Settlement Class Members

1 may have under the Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq. arising during the
 2 Settlement Period relating to the alleged claims. Only those Participating Class Members who
 3 cash their settlement check will be deemed to have opted into the action for purposes of the Fair
 4 Labor Standards Act and thereby released and waived any of their claims under the Fair Labor
 5 Standards Act relating to the alleged claims. Based on direction received from the Court, the
 6 Parties agree to add FLSA release language on the back of each settlement check. The back of
 7 each check shall contain language that by endorsing/signing the check, the putative class member
 8 is opting in and releasing any claims under the FLSA arising during the Settlement Period. The
 9 Participating Class Member's Individual Settlement Payment check will include the following
 10 language: "By endorsing this check for cash or deposit, I am hereby opting into the FLSA
 11 Settlement Class in the Martinez v. Alfred Club, Inc. litigation, Los Angeles County Superior
 12 Court Case No. BC 19STCV44314 and I agree and acknowledge that by doing so the claims that I
 13 am releasing will also include any claims that I may have under the Fair Labor Standards Act, 29
 14 U.S.C. §§ 201, et seq. related to the claims alleged in this action as set forth more fully in the
 15 Notice. However, if I do not timely cash this check, I will nonetheless be subject to the remainder
 16 of the Release as explained in the Notice." In addition to the Released Claims, the Named Plaintiff
 17 shall execute a General Release.

18 36. "Released Parties" means, and refers to, Defendant ALFRED CLUB, INC dba
 19 HELLO ALFRED, and its successors in interest, past, present, or future parents, subsidiaries and
 20 affiliated corporations, and their past, present, or future officers, directors, shareholders,
 21 employees, agents, principals, heirs, joint employers, representatives, accountants, auditors,
 22 attorneys, consultants, insurers, and reinsurers, and their respective successors and predecessors in
 23 interest, subsidiaries, affiliates, parents, and each of their company-sponsored employee benefit
 24 plans, and all of their respective officers, directors, employees, administrators, fiduciaries, trustees,
 25 and agents.

26 37. "Service Award" means, and refers to, the amount that the Court authorizes to be
 27 paid to the Named Plaintiffs over and above their Individual Settlement Payment, in recognition of
 28 their efforts in assisting with the prosecution of the Action on behalf of the Class Members and in

1 return for executing a General Release of all Claims against Released Parties. Named Plaintiffs
2 will request, and Defendant will not oppose, a Service Award up to Five Thousand Dollars
3 (\$5,000.00) to each named Plaintiff. Named Plaintiffs will be issued an IRS Form 1099 in
4 connection with their Service Award.

5 38. "Settlement Period" means, and refers to, the period from December 11, 2015
6 through the date of the signed Court order granting preliminary approval of Class Action
7 Settlement or October 15, 2020, whichever occurs sooner.

8 39. "Settlement Award" means, and refers to, total portion of the Net Settlement
9 Amount payable to each Class Member after deduction of all applicable state and federal
10 employment withholding taxes, FICA and FUTA contributions and any other applicable payroll
11 deductions required by law.

12 40. "Total Maximum Settlement Fund" means, and refers to, the total amount that
13 Defendant will be required to pay by this Stipulation. The Total Maximum Settlement Fund
14 consists of the Attorneys' Fees and Costs Award, the Service Award, the Settlement
15 Administration Costs, the PAGA Payment and the Net Settlement Amount. The Total Maximum
16 Settlement Fund is equal to, and shall not exceed, Three Hundred Thousand Dollars
17 (\$300,000.00), except as described in subparagraph (a) immediately below. The Parties further
18 agree, covenant, and represent that Defendant shall be required to pay only the Total Maximum
19 Settlement Fund of Three Hundred Thousand Dollars (\$300,000.00) in addition to the employer's
20 share of payroll taxes, as described further herein below.

21 41. "Total Workweeks" means, and refers to, the sum of all the verified Workweeks a
22 Class Member worked during the Settlement Period.

23 42. "Weekly Settlement Amount" means, and refers to, the amount to be paid to
24 Participating Class Members for each Class Member Workweek. The Weekly Settlement Amount
25 is the dollar amount resulting from the Net Settlement Amount being divided by the Aggregate
26 Workweek Number. The estimated Weekly Settlement Amount shall be indicated on the Notice.

27 43. "Workweek" is any calendar week during the Settlement Period in which a Class
28 Member worked for Defendant in California.

1 **II. RECITALS**

2 This Stipulation is made by the Named Plaintiffs on behalf of themselves and each of the
3 other Class Members, on the one hand, and the Defendant, on the other hand, in this Action, and is
4 subject to the approval of the Court.

5 **A. PROCEDURAL HISTORY**

6 1. The original Action was filed by Plaintiff Robert Martinez in the Los
7 Angeles County Superior Court on December 11, 2019, Case No. 19STCV44314, and Plaintiff
8 Martinez filed an Amended Complaint adding Plaintiff Maiku Braxton on July 8, 2020 alleging
9 the following: (1) Failure to pay straight and overtime compensation; (2) Failure to provide meal
10 periods; (3) Failure to provide itemized wage statements; (4) Failure to keep accurate payroll
11 records; (5) Unfair Competition or Business Practices under California's Business and Professions
12 Code or similar laws related to the alleged claims; (6) Failure to pay waiting time penalties; (7)
13 Failure to pay wages upon termination pursuant to Labor Code sections 201 and 202; (8) Failure
14 to pay wages upon termination pursuant to Labor Code section 1174(d); (9) failure to reimburse
15 business expenses; (10) Failure to authorize and permit rest breaks; and (11) Penalties pursuant to
16 the California Private Attorneys General Act of 2004 pursuant to Labor Code section 2698, *et*
17 *seq.* (the "Action"). The Action seeks recovery of alleged unpaid wages, penalties, interest, and
18 attorneys' fees and costs.

19 2. On or about June 15, 2020, The Parties participated in a private mediation
20 with Steven Rottman, Esq. and subsequently reached an agreement regarding the material terms
21 for a proposed class action settlement, as reflected in this Agreement that fully resolves the
22 Action. A memorandum of understanding regarding settlement was fully executed by the Parties
23 on or about July 21, 2020.

24 **B. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES**
25 **ONLY**

26 At or about the time that the Named Plaintiffs file their motion for preliminary approval of
27 this Settlement Agreement, the Named Plaintiff shall request certification of the Class as defined
28 in Section I, Paragraph 8, *supra*, for settlement purposes only.

1 1. Limitation on Effect of Certification. The certification of the Class – for settlement
2 purposes only – shall not constitute, in this or any other proceeding, an admission of any kind by
3 Defendant, including without limitation, that certification of a class or collective action for trial
4 purposes is appropriate or proper or that Named Plaintiffs could establish any of the requisite
5 elements for class or collective treatment of any of the claims in the Action. In the event that the
6 Settlement is not finally approved, or the Settlement is otherwise terminated or rendered null and
7 void, the certification of the Class shall be automatically vacated and shall not constitute evidence
8 or a binding determination that the requirements for certification of a class or collective action for
9 trial purposes in this Action or in any other actions are satisfied. In such circumstances, Defendant
10 expressly reserves all rights to challenge the Class certification for any purpose other than
11 settlement purposes in this Action or in any other action on all available grounds as if no class had
12 been certified for settlement purposes in the Action, and no reference to the prior certification of
13 this class, or any documents related thereto, shall be made for any purpose. Additionally, the
14 Parties stipulate that to further the certification, and for no other purpose or effect, the Named
15 Plaintiffs are typical of other Class Members and can represent the Class.

16 **C. INVESTIGATION IN THE CLASS ACTION**

17 The Parties have conducted significant investigation of the facts and law during the
18 prosecution of this Action. Discovery and investigation included: the production of documents by
19 both sides as part of informal discovery, including Defendant's employee handbooks, policies and
20 procedures regarding the payment of wages, time keeping, overtime, meal and rest periods and the
21 production of a sampling of detailed voluminous class-wide payroll and time punch data by
22 Defendant in response to informal requests for information for the purpose of mediation,
23 numerous conferences between representatives of the Parties and a full day-long mediation session
24 with Steven Rottman, Esq., an experienced mediator of wage-and-hour class actions. The
25 mediation session with Mr. Rottman occurred on June 15, 2020.

26 **D. BENEFITS OF SETTLEMENT TO CLASS MEMBERS**

27 Named Plaintiffs and Class Counsel recognize the expense and length of continued
28 proceedings necessary to litigate their disputes through trial and through any possible appeals.

1 Named Plaintiffs have also taken into account the uncertainty and risk of the outcome of further
2 litigation, and the difficulties and delays inherent in such litigation. Named Plaintiffs and Class
3 Counsel are also aware of the burdens of proof necessary to establish liability for the claims
4 asserted in the Action, both generally and in response to Defendant's defenses thereto (many of
5 which have been shared at the mediation and in settlement discussions). Named Plaintiffs and
6 Class Counsel have also taken into account the extensive settlement negotiations conducted.
7 Named Plaintiffs and Class Counsel have also taken into account Defendant's agreement to enter
8 into a settlement that confers substantial relief upon the Class Members. Based on the foregoing,
9 Named Plaintiffs and Class Counsel have determined that the Settlement set forth in this
10 Agreement is a fair, adequate and a reasonable settlement, and is in the best interests of the Class
11 Members.

12 **E. DEFENDANT'S REASONS FOR SETTLEMENT**

13 Defendant has concluded that any further defense of this litigation would be protracted and
14 expensive for all Parties. Substantial amounts of Defendant's time, energy and resources have
15 been and, unless this Settlement is made, will continue to be devoted to the defense of the Claims
16 asserted by the Class. Defendant has also taken into account the risks of further litigation in
17 reaching its decision to enter into this Settlement. Defendant has, therefore, agreed to settle in the
18 manner and upon the terms set forth in this Agreement to put to rest the Claims as set forth in the
19 Action.

20 **F. DEFENDANT'S DENIALS OF WRONGDOING**

21 Defendant does not admit any wrongdoing and contends that it fully complied with the law
22 at all times in all respects. This Agreement shall not constitute an admission on behalf of
23 Defendant of any form of liability of accuracy of any allegation made by Plaintiffs or Class
24 Counsel. Whether the Settlement is finally approved, neither this Settlement, nor any terms,
25 document, statement, proceeding or conduct related to settlement, nor any reports or accounts
26 thereof, shall in any event be (a) Construed as, offered or admitted in evidence as, received as, or
27 deemed to be evidence for any purpose, including, but not limited to, evidence of a presumption,
28 concession, indication, or admission by Defendant of any fault, wrongdoing, liability and/or

1 unlawful activity whatsoever or any effort to certify a class or collective action; or (b) Disclosed,
2 referred to, or offered or received in evidence, in any further proceeding in this action, or any other
3 civil, criminal or administrative action or proceeding except for purposes of settling this Action or
4 enforcing this Settlement, or as a defense to any claims released by the Settlement. Payment of
5 wages does not extend or alter the Class Members' period of employment for any purpose.

6 **G. NAMED PLAINTIFFS' CLAIMS**

7 Named Plaintiffs have claimed and continue to claim that the Released Claims have merit
8 and give rise to liability on the part of Defendant. This Agreement is a compromise of disputed
9 claims. Nothing contained in this Agreement and no documents referred to herein and no action
10 taken to carry out this Agreement may be construed or used as an admission by or against the
11 Named Plaintiffs or Class Counsel as to the merits or lack thereof of the Claims asserted.

12 **III. STIPULATION AND AGREEMENT**

13 ***NOW, THEREFORE, IT IS HEREBY STIPULATED***, by and among the Named
14 Plaintiffs on behalf of the Class Members on the one hand, and Defendant on the other hand, and
15 subject to the approval of the Court, that the Action is hereby being compromised and settled
16 pursuant to the terms and conditions set forth in this Agreement, subject to the definitions and
17 recitals set forth in Sections I and II, *supra*, which by this reference become an integral part of this
18 Agreement, and subject to the following terms and conditions:

19 1. Full Investigation. Named Plaintiffs and Class Counsel have fully investigated the
20 factual and legal bases for the causes of action asserted in the Action.

21 2. Release As To All Participating Class Members. As for the Settlement Period as
22 defined in Section I, Paragraph 38, *supra*, the Participating Class Members, including the Named
23 Plaintiffs, release the Released Parties, as defined in Section I, Paragraph 36 *supra*, for the
24 Released Claims as defined in Paragraph 35, *supra*. This Release is effective as of the date that
25 the Claims Administrator mails out the Settlement Checks to the Participating Class Members.
26 The FSLA claims and the FSLA claims only of Participating Class Members are released if and
27 when Participating Class Members deposit their Settlement Checks.

28 3. General Release By Named Plaintiffs Only. In addition to the releases made by the

1 Participating Class Members and FLSA Settlement Class Members as set forth in Section I,
2 Paragraphs 35 and 36, *supra*, Named Plaintiffs, in exchange for the Service Awards as requested
3 or as otherwise authorized by the Court, will, as of the date the Claims Administrator mails out the
4 Settlement Checks to the Participating Class Members, make the additional following General
5 Release of all Claims, known or unknown, in exchange and consideration of the sum set forth in
6 Section I, Paragraph 37, *supra*. Named Plaintiffs agree to the General Release of the Released
7 Parties. Named Plaintiffs also agree to release all wage and hour Claims, including, but not
8 limited to, minimum and overtime wages, meal and rest period sanctions, penalties under the
9 Labor Code and Private Attorneys General Act and all other Released Claims including but not
10 limited to FEHA, Contract, Wrongful Termination in Violation of Public Policy, and Intentional
11 Infliction of Emotional Distress claims. The General Release as to Named Plaintiffs includes any
12 unknown Claims that Named Plaintiffs do not know or suspect to exist in their favor at the time of
13 the General Release, which, if known by them, might have affected their settlement with, and
14 release of, the Released Parties or might have affected their decision not to object to this
15 Settlement or the General Release.

16 With respect to the General Release, Named Plaintiffs stipulate and agree that, upon the
17 date the Claims Administrator mails out the Settlement Checks to the Participating Class
18 Members, Named Plaintiffs shall be deemed to have, and by operation of the Final Judgment shall
19 have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions,
20 rights and benefits of Section 1542 of the California Civil Code, or any other similar provision
21 under federal or state law, which provides:

22 **A general release does not extend to claims that the creditor or releasing party**
23 **does not know or suspect to exist in his or her favor at the time of executing**
24 **the release and that, if known by him or her, would have materially affected**
25 **his or her settlement with the debtor or released party.**

26 Named Plaintiffs may hereafter discover facts in addition to or different from those they
27 now know or believe to be true with respect to the subject matter of the General Release, but
28 Named Plaintiffs upon the date the Claims Administrator mails out the Settlement Checks to the

1 Participating Class Members shall be deemed to have, and by operation of the Final Judgment
2 shall have, fully, finally, and forever settled and released any and all of the claims released
3 pursuant to the General Release whether known or unknown, suspected or unsuspected, contingent
4 or non-contingent, which now exist, or heretofore have existed upon any theory of law or equity
5 now existing or coming into existence in the future, including, but not limited to, conduct that is
6 negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard
7 to the subsequent discovery or existence of such different or additional facts.

8 4. Service Award. Subject to Court approval, and expressly in exchange
9 for the release of all Released Claims, and for their time and effort in bringing and prosecuting this
10 matter, Named Plaintiffs shall be paid a Service Award up to a total of Five Thousand Dollars
11 (\$5,000.00), or such other distribution or lower amount as the Court may order. The Service
12 Award shall be paid from the Total Maximum Settlement Fund and shall not increase the Total
13 Maximum Settlement Fund. The Service Award shall be paid to the Named Plaintiffs by the
14 Settlement Administrator no later than fifteen (15) days after Defendant delivers the Total
15 Maximum Settlement Fund to the Settlement Administrator for deposit into the Qualified
16 Settlement Fund. The Parties agree that a decision by the Court to award Named Plaintiffs an
17 amount less than the amount stated above shall not be a basis for Class Counsel to void this
18 Stipulation. The Settlement Administrator shall issue Named Plaintiffs an IRS Form 1099 for the
19 Service Award. Any amount awarded for service payments to the Named Plaintiffs less than the
20 requested amounts will result in the non-awarded funds to be awarded to Participating Class
21 Members on a proportionate basis to the amount of their Individual Settlement Payment. The
22 Named Plaintiffs shall be solely and legally responsible to pay any and all applicable taxes on this
23 payment. The Service Award shall be paid in addition to the Named Plaintiffs' share of the
24 Settlement Amount as a Participating Class Member.

25 5. Tax Liability. Defendant makes no representations as to the tax
26 treatment or legal effect of the payments called for hereunder, and Named Plaintiffs and
27 Participating Class Members are not relying on any statement or representation by Defendant in
28 this regard. Named Plaintiffs and Participating Class Members understand and agree that except

1 for Defendant's payment of the employer's portion of any payroll taxes, they will be solely
2 responsible for the payment of any taxes and penalties assessed on the payments described herein.

3 6. CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
4 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY"
5 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
6 PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO
7 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR
8 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
9 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
10 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED
11 UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY
12 DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
13 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
14 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
15 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
16 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
17 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
18 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
19 ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
20 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY
21 OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
22 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISOR'S TAX
23 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING)
24 UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT
25 OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION
26 CONTEMPLATED BY THIS AGREEMENT.

27 7. Creation Of The Qualified Settlement Fund And Administration Of The Settlement.
28 Within twenty (20) days after the Effective Date, Defendant shall deliver the sum of Three

1 Hundred Thousand Dollars (\$300,000.00) representing the Total Maximum Settlement Fund as
 2 required by this Stipulation into the Qualified Settlement Fund created by the Settlement
 3 Administrator. In addition and separate to the Three Hundred Thousand Dollars (\$300,000.00)
 4 Total Maximum Settlement Fund payment, Defendant is also required to pay, and will deliver into
 5 the Qualified Settlement Fund, its share of taxes, including the employer's portion of payroll
 6 taxes, including but not limited to, FICA, FUTA and SDI contributions. In addition to the
 7 employer's portion of payroll taxes, payments from the Qualified Settlement Fund shall be made
 8 (1) for the Service Award to the Named Plaintiffs, as specified in this Agreement and approved by
 9 the Court; (2) the Attorneys' Fees and Cost Award to be paid to Class Counsel, as specified in this
 10 Agreement and approved by the Court; (3) the Settlement Administration Costs; and (4) the
 11 amount allocated to PAGA penalties to be paid to the California Labor Workforce and
 12 Development Agency. The balance remaining shall constitute the Net Settlement Amount from
 13 which Individual Settlement Payments shall be made to Participating Class Members, less
 14 applicable taxes and withholdings.

15 8. Attorneys' Fees And Cost Award. Defendant agrees not to oppose any application
 16 or motion by Class Counsel for attorneys' fees not in excess of Ninety Nine Thousand Dollars
 17 (\$99,000.00), or one third of the Total Maximum Settlement Fund.

18 Defendant further agrees not to oppose any application or motion by Class
 19 Counsel for the reimbursement of any costs associated with Class Counsel's prosecution of this
 20 matter not in excess of Fifteen Thousand Dollars (\$15,000.00). Class Counsel will provide
 21 verification of the cost amount that it is seeking to be reimbursed. Any amount awarded for
 22 attorneys' fees and costs to Class Counsel less than Ninety Nine Thousand Dollars (\$99,000.00)
 23 and Fifteen Thousand Dollars (\$15,000.00), respectively, will result in the non-awarded amounts
 24 to be awarded to Participating Class Members on a proportionate basis to the amount of their
 25 Individual Settlement Payments. Class Counsel shall be paid any Court-approved fees and costs
 26 no later than twenty (20) days after Defendant delivers the Total Maximum Settlement Fund to the
 27 Settlement Administrator for deposit into the Qualified Settlement Fund. Class Counsel shall be
 28 solely and legally responsible to pay all applicable taxes on the payment made. Forms 1099 –

1 MISC, Box 14 shall be provided to Class Counsel for the payments made, and Class Counsel shall
2 provide, before the Effective Date, properly completed Forms W-9.

3 9. Settlement Administrator. The Settlement Administrator shall be paid for the costs
4 of administration of the Settlement out of the Total Maximum Settlement Amount as deposited in
5 the Qualified Settlement Fund. The estimate of such costs of administration for the disbursement
6 of the Total Maximum Settlement Amount is no more than Ten Thousand Dollars (\$10,000.00).
7 Any amount awarded for costs of administration to Settlement Administrator, or such other entity
8 upon whom the Parties mutually agree, less than Ten Thousand Dollars (\$10,000.00) will result in
9 the non-awarded amount to be awarded to Participating Class Members on a proportionate basis to
10 the amount of their Individual Settlement Payments. This estimate includes all tasks required of
11 the Settlement Administrator by this Agreement including the issuance of the Notice,
12 establishment of a website to make information about the settlement, hearing dates and notice of
13 final judgment available to Class Members, the issuance of settlement checks, the required tax
14 reporting on the settlement amounts, including the issuing of W2 and 1099 forms (if any), the
15 handling of Class Member questions and disputes and the calculation of employee withholding
16 taxes and the employer payroll taxes, which will be remitted to the tax authorities by the
17 Settlement Administrator. At least sixteen (16) court days prior to the Final Approval Hearing, the
18 Settlement Administrator shall provide the Court and all counsel for the Parties with a statement
19 detailing the costs of administration of the Total Maximum Settlement Fund and the breakdown of
20 the Total Maximum Settlement Fund.

21 10. Preliminary Settlement Hearing/Alterations to this Agreement. As part of this
22 Settlement, the Parties agree to the following procedures for obtaining preliminary Court approval
23 of the Settlement:

24 a. Plaintiffs shall file a Motion for Preliminary Approval and request a hearing before
25 the Superior Court to request preliminary approval of the Settlement and to request the entry of the
26 Preliminary Approval Order.

27 c. Simultaneous with and/or included in the filing of the Motion for Preliminary
28 Approval, and solely for purposes of this Settlement, Named Plaintiffs will request the Court to

1 enter the Preliminary Approval Order, preliminarily approving the proposed Settlement,
2 conditionally certifying the Class, and setting a date for a Final Approval Hearing.

3 d. In conjunction with the Motion for Preliminary Approval, Named Plaintiffs will
4 submit this Stipulation and Settlement of Class Action Agreement, which sets forth the terms of
5 this Settlement Agreement, and will include proposed forms of all notices and other documents as
6 attached hereto necessary to implement the Settlement. The Order shall provide for Notice of the
7 Settlement to be sent to Class Members as specified herein.

8 e. In the event any provision of the Settlement is rejected by the Court, the Parties
9 will work in good faith to negotiate alteration of the rejected term. The parties agree to use the
10 services of a mediator if informal efforts to negotiate alteration have been exhausted.

11 f. If, following the Parties' good faith efforts and mediation, the Parties cannot agree
12 on alterations, or if ultimately the Court does not grant preliminary or final approval of the
13 Settlement in its entirety, or if the Court's final approval of the Settlement agreement is reversed
14 or materially modified on appellate review, then this Settlement will become null and void. In
15 such case, the Settlement shall not be used or be admissible in any subsequent proceedings, either
16 in this Action, in this Court, or in any other Court or forum, and the Parties will not stipulate to
17 Class Certification.

18 11. Settlement Administration/Management. The Individual Settlement Payments shall
19 be managed and administered as follows:

- 20 a. Settlement administrator, CPT, mutually agreed upon by the Parties, shall be
21 retained to serve as Settlement Administrator. The Parties each represent they do
22 not have any financial interest in the Settlement Administrator or otherwise have a
23 relationship with the Settlement Administrator that could create a conflict of
24 interest.
- 25 b. Defendant shall provide the Settlement Administrator the Class List and Data
26 Report within Fifteen (15) days of the Preliminary Approval Date.
- 27 c. Within fourteen (14) days of receipt of the Class List and Data Report, the
28 Settlement Administrator shall mail the Notice Packet to each Class Member in

1 accordance with Section III, Paragraph 13, *infra*.

- 2 d. Participating Class Members will be eligible to receive an Individual Settlement
3 Payment, calculated in accordance with Section III Paragraph 12 *infra*.
- 4 e. Sixteen (16) court days prior to the Final Approval Hearing, the Settlement
5 Administrator shall provide Defendant's Counsel and Class Counsel a report
6 showing the names and number of Class Members who have objected to or
7 requested exclusion from the Settlement.
- 8 f. The Parties agree to cooperate in the settlement administration process and to make
9 all reasonable efforts to control and minimize the costs and expenses incurred in
10 administration of the Settlement.
- 11 g. The Settlement Administrator shall be responsible for: The Settlement
12 Administrator shall be responsible for: printing and mailing the Notice Packet in
13 English and Spanish as directed by the Court; receiving and reporting the
14 objections/requests for exclusion and challenges to the Individual Settlement
15 Payments submitted by Class Members; mailing the payment to the Labor
16 Workforce Development Agency; and other tasks as the Parties mutually agree or
17 the Court orders the Settlement Administrator to perform (including the calculation
18 and remittance of employer taxes which will be paid by Defendant in addition to
19 the Total Maximum Settlement Amount). The Claim Administrator shall keep
20 Defendant, Defendant's counsel and Class Counsel timely apprised of the
21 performance of all Settlement Administrator responsibilities. Translation to any
22 other language is not required as all of Defendant's employees can read either
23 English or Spanish.
- 24 h. The Settlement Administrator, on Defendant's behalf, shall have the authority and
25 obligation to make payments, credits and disbursements, including payments and
26 credits in the manner set forth herein to Participating Class Members, calculated in
27 accordance with the methodology set out in this Agreement and orders of the
28 Court.

i. Any tax return filing required by this Agreement shall be made by the Settlement Administrator. Any expenses incurred in connection with such filing shall be a cost of administration of the Settlement.

j. No person shall have any claim against Defendant or Defendant's Counsel, the Named Plaintiffs, Class Members, the Class, Class Counsel or the Settlement Administrator based on distributions and payments made in accordance with this Agreement.

12. Calculation Of Individual Settlement Payments. The Individual Settlement Payments will be calculated as follows:

- a. The Settlement Administrator will be provided each Class Members' Total Workweeks as defined in Section I, Paragraph 41, *supra*, based on the Class List and Data Report, which shall be presumed to be correct. A Class Member's workweek is defined as any calendar week during the Settlement Period in which a Class Member worked for Defendant in California. If a Class Member disagrees with his or her Total Workweeks, which shall be set forth in the Notice and in the "Class Member Workweek Optional Response Form" included in the Notice Packet, he or she may challenge the Total Workweeks in the manner set forth in Section III, Paragraph 14(c), *infra*.
- b. The Settlement Administrator will calculate the Aggregate Workweek Number by adding the sum of all of the Participating Class Members' Total Workweeks.
- c. The Settlement Administrator will divide the Net Settlement Amount by the Aggregate Workweek Number to calculate the Weekly Settlement Amount. The estimated Weekly Settlement Amount shall be indicated on the Notice.
- d. The Settlement Administrator will calculate each Class Members' Individual Settlement Award by multiplying his or her Total Workweeks times the Weekly Settlement Amount. Each Class Member's estimated Individual Settlement Award will be indicated on the Notice.
- e. The Weekly Settlement Amount and Individual Settlement Award estimates

1 indicated on the Notice are subject to change, depending on factors including: (i)
2 how many Class Members become Excluded Class Members (resulting in their
3 Total Workweeks being removed from the final Aggregate Workweek Number,
4 thereby increasing the final Weekly Settlement Amount); (ii) any changes to the
5 Total Workweeks resulting from challenges to Total Workweeks submitted by
6 Class Members resulting in workweek adjustments, which may increase or
7 decrease the final Aggregate Workweek Number and the final Weekly Settlement
8 Amount; and (iii) any increases or reductions in the Net Settlement Amount which
9 may result from, inter alia, changes to the actual amount of PAGA Payment, and/or
10 Settlement Administration Costs approved by the Court.

11 f. Each Participating Class Member's Individual Settlement Payment will be
12 allocated as follows: (a) 20% as wages; (b) 40% as penalties; and (c) 40% as
13 interest. The portion allocated to wages ("Wage Component") shall be reported on
14 an IRS Form W-2 and the portions allocated to interest and penalties (the "Non-
15 Wage Component") shall be reported on an IRS Form-1099 by the Settlement
16 Administrator.

17 g. The employee's portion of employment taxes, including payroll deductions for
18 state and federal withholding taxes, and any other applicable payroll deductions,
19 shall be made from each Participating Class Members Wage Component, resulting
20 in a "Net Wage Component." The Settlement Administrator will issue a W-2 for
21 the Wage Component.

22 i. No withholding shall be made on the Non-Wage Component of the
23 settlement. The Settlement Administrator will issue an IRS Form 1099 for
24 the Non-Wage Component.

25 ii. The Net Wage Component shall be added to the Non-Wage Component,
26 resulting in each Participating Class Members Individual Settlement
27 Payment.

28 h. The Settlement Administrator, on Defendant's and Class Counsel's collective

1 behalf, shall have the authority and obligation to make payments, credits and
2 disbursements, including payments and credits in the manner set forth herein, to
3 Class Members calculated in accordance with the methodology set out in this
4 Agreement and orders of the Court. The Settlement Administrator shall be
5 responsible for calculating and withholding all required state and federal taxes.

- 6 i. No person shall have any claim against Defendant, Defendant's Counsel, the
7 Named Plaintiffs, Plaintiffs, the Class, Class Counsel, or the Settlement
8 Administrator based on any errors or omissions in the distributions and payments
9 that are required to be made in accordance with the terms of this Agreement.

10 13. Notice To Class Members. Notice of the Settlement shall be provided to all
11 Class Members using the following procedures:

- 12 a. Notice By First-Class Mail. Within fourteen (14) days after receipt of the Class
13 List and Data Report, the Settlement Administrator shall mail the Notice Packet to
14 the Class Members *via* first-class regular U.S. Mail. The Notice Packet will
15 include the Notice of Pendency of Class Action, Proposed Settlement and Hearing
16 Date for Court Approval (substantially in the form annexed hereto as **Exhibit 1**).
17 Prior to mailing, the Settlement Administrator will perform a search based on the
18 National Change of Address Database information to update and correct for any
19 known or identifiable address changes. If a new address is obtained by a way of a
20 returned Notice Packet, then the Settlement Administrator shall promptly forward
21 the original Notice Packet to the updated address via first-class regular U.S. mail
22 indicating on the original Notice Packet the date of such re-mailing.
- 23 b. No Requirement for a Claim Form. Class Members shall not be required to submit
24 a Claim Form to receive an Individual Settlement Payment.
- 25 c. Objection/Exclusion Deadline Date and Deadline to Challenge Total Workweeks:
26 Class Members will have forty-five (45) calendar days from the mailing of the
27 Notice Packet to submit an objection and/or request for exclusion from the
28 Settlement, or challenge the Total Workweeks by providing their claimed

workweeks to the Settlement Administrator along with documentary evidence, as set forth *infra*, Section III, Paragraph 14(c). Class members whose notices are re-mailed will have an additional fifteen (15) days to submit an objection and/or request for exclusion and/or workweek challenge.

d. Procedure For Undeliverable Notices. Any Notices returned to the Settlement Administrator as non-delivered on or before the Objection/Exclusion Deadline Date shall be sent to the forwarding address affixed thereto within five (5) business days. If no forwarding address is provided, then the Settlement Administrator shall promptly attempt to determine a correct address using a single skip-trace, computer or other search using the name and address of the individual involved, and shall then perform a single re-mailing within five (5) business days. Those Class Members that receive a re-mailed Notice shall have their deadline for submitting an objection to and/or request for exclusion from the Settlement, or challenging their Total Workweeks, extended fifteen (15) business days from the post mark date of re-mailing. In the event the procedures in this paragraph are followed and the intended recipient of a Notice still does not receive the Notice, the Class Member shall be bound by all terms of the Settlement and any Final Judgment entered by the Court if the Settlement is approved by the Court.

e. Within sixteen (16) court days of the Final Approval Hearing, the Settlement Administrator shall provide Defendant's Counsel and Class Counsel: (i) the names and contact information of the Class Members objecting to or requesting exclusion from the Settlement; and (ii) the amount owed to each Participating Class Member.

14. Procedure For Objecting To or Requesting Exclusion From The Class Action Settlement, or Challenging Total Workweeks. The Class Members shall submit

objections to the Settlement and/or request exclusion from the Settlement and/or submit a challenge to their total workweeks using the following procedures:

a. Procedure For Objecting. The Notice shall provide that those Class Members who wish to object to the Settlement must mail a written statement of objection ("Notice

1 of Objection”) to the Settlement Administrator no later than the
2 Objection/Exclusion Deadline Date. The postmark date of the mailing shall be
3 deemed the exclusive means for determining if a Notice of Objection is timely.
4 The Notice of Objection must contain the Class Member’s name, the last four digits
5 of his/her social security number, dates of employment, current contact
6 information, a statement providing the basis for the Class Member’s objections, a
7 statement advising if the objecting Class Member plans to address the Court at the
8 Settlement Fairness Hearing, and a description of any legal briefs, papers or
9 memoranda the objecting Class Member proposes to submit to the Court. Class
10 Members who fail to include the information required and who fail to make
11 objections in the manner specified above shall be deemed to have waived any
12 objections and shall be foreclosed from making any objection (whether by appeal
13 or otherwise) to the Settlement Agreement. No later than sixteen (16) court days
14 before the Settlement Fairness Hearing, the Settlement Administrator shall provide
15 counsel for the Parties with complete copies of all objections received, including
16 the postmark dates for each objection. Class Members have a right to appear at the
17 Settlement Fairness Hearing in order to have their objections heard by the Court.
18 Class Counsel and Counsel for Defendant shall file any responses to any written
19 objections submitted to the Court in accordance with this Settlement Agreement at
20 least five (5) days before the Settlement Fairness Hearing.

- 21 b. Procedure For Requesting Exclusion. The Notice shall provide that Class Members
22 who wish to exclude themselves from the Class must submit a written request to be
23 excluded from the Class on or before the Objection/Exclusion Deadline Date. Class
24 Counsel and Counsel for Defendant agree to an opt-out period of forty-five (45)
25 calendar days, with an additional fifteen (15) days for re-mailed notices. Such
26 request for exclusion: (1) must contain the name, address, telephone number and
27 the last four digits of the Social Security number of the person requesting
28 exclusion; (2) must be signed by the person requesting exclusion; (3) must be

1 returned by mail to the Settlement Administrator at the specified address; (4) must
2 be postmarked on or before the Objection/Exclusion Deadline Date and (5) must
3 substantially state the following: *"I received the Class Notice and I wish to opt out*
4 *of the settlement in the case entitled Robert Martinez v. Alfred Club, Inc."* The
5 date of the postmark on the return mailing envelope shall be the exclusive means
6 used to determine whether a request for exclusion has been timely submitted. Any
7 Class Member who requests an exclusion from the Class will not be entitled to any
8 recovery under the Settlement and will not be bound by the Settlement or have any
9 right to object, appeal or comment thereon. Class Members who fail to submit
10 valid and timely requests for exclusion on or before the Objection/Exclusion
11 Deadline Date shall be Participating Class Members and shall be bound by all
12 terms of the Settlement and any Final Judgment entered in this Class Action if the
13 Settlement is approved by the Superior Court. No later than sixteen (16) court days
14 before the Settlement Fairness Hearing, the Settlement Administrator shall provide
15 counsel for the Parties with a complete list of all members of the Settlement Class
16 who have timely requested exclusion from the Settlement. At no time shall any of
17 the Parties or their counsel seek to solicit or otherwise encourage members of the
18 Settlement Class to submit requests for exclusion from the Settlement.

- 19 c. Procedure for Contesting Individual Settlement Payment: Each Class Member will
20 have the opportunity, should he/she disagree with Defendant's records regarding
21 his/her Total Workweeks, to provide documentation to show contrary employment
22 dates. To do so, Class Members must provide, in writing to the Settlement
23 Administrator, his/her name, address, last four digits of social security number and
24 all applicable documentary evidence to support his/her dispute regarding his/her
25 Total Workweeks prior to the Objection/Exclusion Deadline. Moreover, an
26 individual can only dispute his/her number of workweeks if he/she does not
27 exclude himself/herself from the Settlement. If there is a dispute, the Settlement
28 Administrator will consult with the Parties to determine whether a workweek

adjustment is warranted. Class Counsel and Defendant's Counsel shall meet and confer in an attempt to reach an agreement regarding whether a workweek adjustment is warranted based on the documentary evidence submitted by the Class Member to challenge his/her Total Workweeks. If they cannot agree, the Settlement Administrator shall make the final determination of whether or not a workweek adjustment is warranted based on the documentary evidence submitted by the Class Member to challenge his/her Total Workweeks, and that determination shall be conclusive, final and binding on all Parties, including all Class Members. In the event that a workweek adjustment is warranted, the additional amount owed to said Class Member, if any, shall be paid as part of that Participating Class Member's Individual Settlement Payment.

d. No Solicitation Of Settlement Opt Outs/Objections or Publicity. The Parties agree to use their best efforts to carry out the terms of this Settlement. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to opt out, submit written objections to the Settlement or appeal from the Order and Final Judgment, or seek publicity regarding the same.

15. Procedure For Payment Of Individual Settlement Payments:

- a. Except for Excluded Class Members, all Participating Class Members will receive an Individual Settlement Payment.
- b. Individual Settlement Payments for Class Members shall be paid exclusively from the Qualified Settlement Fund, pursuant to the settlement formula set forth herein, and shall be mailed within fifteen (15) days after Defendant delivers the Total Maximum Settlement Fund to the Settlement Administrator for deposit into the Qualified Settlement Fund.
- c. Should any question arise regarding the determination of eligibility for, or the amounts of, any Individual Settlement Payment under the terms of this Agreement, Class Counsel and Defendant's Counsel shall meet and confer in an attempt to reach agreement. If they cannot agree, the Settlement Administrator shall make the

1 final determination, and that determination shall be conclusive, final and binding on
2 all Parties, including all Class Members.

- 3 d. The Individual Settlement Payment checks will be void after 180 days from the
4 date of issuance. In compliance with Code of Civil Procedure section 384, for any
5 check not cashed after 180 calendar days, the Settlement Administrator will pay
6 over the amount represented by the uncashed check plus interest on that sum at the
7 legal rate of interest from the date of entry of the initial judgment to the California
8 State Controller's Office in the name of the individual Class Member. Any tax
9 forms issued by the Settlement Administrator to the class member who does not
10 cash his/her check shall be voided and the employer's share of payroll taxes will be
11 returned to Defendant. The Parties acknowledge that California Civil Procedure
12 Code section 384 and the Doctrine of Cy Pres are not applicable to this Settlement
13 because the terms of this Settlement Agreement expressly provide for the
14 disposition of the entire Gross Settlement Amount, whether claimed or unclaimed.
- 15 e. Although Participating Class Members who do not timely cash their Individual
16 Settlement Payments shall not receive the monies from those checks (because the
17 checks shall be deemed null and void), such persons shall nonetheless be
18 Participating Class Members and will be bound by all terms of the Settlement and
19 any Final Judgment entered in this Class Action if the Settlement is approved by
20 the Superior Court, including the release of the Released Claims, unless they timely
21 file a valid request for exclusion as set forth herein.
- 22 f. Participating Class Members who timely cash their Individual Settlement Payments
23 (and, in so doing, become FLSA Settlement Class Members) will be deemed to
24 have opted into the action for purposes of the Fair Labor Standards Act and, as to
25 those FLSA Settlement Class Members, the Released Claims include any claims
26 such FLSA Settlement Class Members may have under the Fair Labor Standards
27 Act, 29 U.S.C. §§ 201, et seq. related to the claims alleged in this action. Only
28 those Participating Class Members who timely cash their settlement check will be

1 deemed to have opted into the action for purposes of the Fair Labor Standards Act
2 and thereby released and waived any of their claims under the Fair Labor Standards
3 Act.

4 g. FLSA Settlement Class Opt-In Language: Each Participating Class Member's
5 Individual Settlement Payment check will include the following language
6 acknowledging that by cashing or depositing the Individual Settlement Payment
7 Check he/she is opting into the Action for purposes of the FLSA: "By endorsing
8 this check for cash or deposit, I am hereby opting into the FLSA Settlement Class
9 in the Martinez v. Alfred Club, Inc. litigation, Los Angeles County Superior Court
10 Case No. BC 19STCV44314 and I agree and acknowledge that by doing so the
11 claims that I am releasing will also include any claims that I may have under the
12 Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq. related to the claims alleged in
13 this action as set forth more fully in the Notice. However, if I do not timely cash
14 this check, I will nonetheless be subject to the remainder of the Release as
15 explained in the Notice."

16 16. Claims Deemed Waived. Any Class Member who does not request exclusion as set
17 forth above is deemed to be a Participating Class Member and thereby is deemed to have released
18 the Released Claims against Released Parties as set forth herein, regardless of whether or not they
19 timely cash their Individual Settlement Payment. Any Participating Class Member who timely
20 cashes their Individual Settlement Payment (and, in so doing, becomes a FLSA Settlement Class
21 Member) will also be deemed to have released any claims they may have under the Fair Labor
22 Standards Act, 29 U.S.C. §§ 201, et seq. related to the claims alleged in this action.

23 17. Option To Terminate Settlement. Notwithstanding any other provision of this
24 Settlement Agreement, Defendant shall retain the right, in the exercise of its sole discretion, to
25 nullify the settlement if seven (7%) percent or more of the Class Members request exclusion from
26 the class action settlement. Defendant must exercise its right of rescission, in writing, to the Court
27 and Class Counsel, within seven calendar days after the Claims Administrator notifies the Parties
28 of the total number of Requests for Exclusion received by the Response Deadline. If Defendant

1 exercises its option to rescind, Defendant shall be solely responsible for the initial payment to the
2 Claims Administrator of all costs of the Claims Administration, including any re-notice to the
3 Class as ordered by the Court, but such initial payment shall be treated as a taxable cost in the
4 event that this case is ultimately litigated and Defendant prevails in a manner permitting an award
5 of costs per applicable statute(s) and/or procedural rule(s). If Defendant exercises its option to
6 rescind the Settlement under this paragraph all actions taken in furtherance of the Settlement will
7 be null and void.

8 18. Certification By Settlement Administrator. Upon completion of administration of
9 the distributions, the Settlement Administrator shall provide written certification of such
10 completion to the Court and counsel for all Parties.

11 19. Final Settlement Approval Hearing And Entry Of Final Judgment. Upon expiration
12 of the Objection/Exclusion Deadline Date, with the Court's permission, a Final Fairness Hearing
13 shall be conducted to determine final approval of the Settlement along with the amount properly
14 payable for (i) the Attorneys' Fees and Cost Award, (ii) any Service Awards, and (iii) Settlement
15 Administration Costs. Upon final approval of the Settlement by the Court, the Parties shall
16 present the Final Approval Order and Judgment, in a form agreed to in advance by the Parties, for
17 the Court's approval. After entry of the Final Approval Order and Judgment, the Court shall have
18 continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of
19 the terms of the Settlement; (ii) Settlement administration matters; and (iii) such post-Final
20 Judgment matters as may be appropriate under court rules or as set forth in this Agreement.

21 20. Nullification Of Settlement Agreement. In the event: (i) the Court does not finally
22 approve the Settlement as provided herein; (ii) the Court does not enter a Final Approval Order as
23 provided herein, which becomes final as a result of the occurrence of the Effective Date; (iii) the
24 size of the Class increases by more than seven percent (7%) prior to the Court's entering of an order
25 granting preliminary approval or October 15, 2020, whichever date occurs sooner, then Plaintiff
26 may in his discretion void the entirety of this agreement. Defendant represents and has represented
27 throughout the course of this litigation, that approximately 105 Class Members comprise this Class
28 for purposes of this Settlement; or (iv) Defendant elects to terminate the Settlement as set forth supra

in paragraph 17, this Settlement Agreement shall be null and void and any order or judgment entered by the Court in furtherance of this Settlement shall be treated as void from the beginning. In such a case, the Parties and any funds to be awarded under this Settlement shall be returned to their respective statuses as of the date and time immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects as if this Settlement Agreement had not been executed, except that any fees already incurred by the Settlement Administrator shall be paid by Defendant. In the event an appeal is filed from the Court's Final Judgment, or any other appellate review is sought prior to the Effective Date, administration of the Settlement shall be stayed pending final resolution of the appeal or other appellate review, as well as any fees incurred by the Settlement Administrator prior to it being notified of the filing of an appeal from the Court's Final Judgment, or any other appellate review.

21. No Effect On Employee Benefits. Neither the Individual Settlement Payments nor the Service Award to Named Plaintiffs shall be deemed to be pensionable earning and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g., vacations, holiday pay, retirement plans, etc.) of the respective Named Plaintiffs or Participating Class Members. The Parties agree that any Individual Settlement Payments to Participating Class Members under the terms of this Agreement do not represent any modification of the Participating Class Members' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendant. Further, any Individual Settlement Payment, or Service Award hereunder shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan or employee welfare benefit plan sponsored by Defendant. Neither Defendant nor Named Plaintiffs are opining on the terms of any such Plan, each of which speaks for itself.

22. Dispute Resolution. Except as otherwise set forth herein, all disputes concerning the interpretation, calculation or payment of settlement claims, or other disputes regarding compliance with this Agreement shall be resolved as follows:

a. If the Named Plaintiffs or Class Counsel, on behalf of the Named Plaintiffs or any

1 Class Member, or the Defendant at any time believes that the other Party has
2 breached or acted contrary to the Agreement, that Party shall notify the other Party
3 in writing of the alleged violation.

- 4 b. Upon receiving notice of the alleged violation or dispute, the responding Party shall
5 have ten (10) calendar days to correct the alleged violation and/or respond to the
6 initiating Party with the reasons why the Party disputes all or part of the allegation.
- 7 c. If the response does not address the alleged violation to the initiating Party's
8 satisfaction, the Parties shall negotiate in good faith for up to ten (10) calendar days
9 to resolve their differences.
- 10 d. If Class Counsel and Defendant are unable to resolve their differences after twenty
11 (20) calendar days referenced in Section III, Paragraph 22(a)-(c), *supra*, either
12 Party may file an appropriate motion for enforcement with the Court.
- 13 e. In the event that the Court does not agree to adopt the above dispute resolution
14 procedure as part of its Order granting final approval to the Settlement, then the
15 above provisions for Dispute Resolution (Section III, paragraph 22(a)-(d)) are null
16 and void, the remainder of the settlement is unaffected, and the parties shall remain
17 free to submit disputes and/or motions for enforcement of the settlement via
18 appropriate noticed motion or ex parte application as though Section III, paragraph
19 22 was not included herein.

20 23. No Retaliation. Defendant shall not take any adverse action against any Class
21 Member because of the existence of, and/or participation in, the Settlement, or because they
22 choose to benefit from the Settlement or to object to the Settlement. The Parties shall not take
23 action to discourage Class Members from participating in the Settlement.

24 24. Exhibits And Headings. The terms of this Agreement include the terms set forth in
25 any attached Exhibit which is incorporated by this reference as though fully set forth herein. Any
26 exhibits to this Agreement are an integral part of the Settlement. The descriptive headings of any
27 paragraphs or sections of this Agreement are inserted for convenience of reference only and do not
28 constitute a part of this Agreement.

1 25. Interim Stay Of Proceedings. The Parties agree to hold all proceedings in the
2 Action, except such proceedings necessary to implement and complete the Settlement, in abeyance
3 pending the Settlement Hearing to be conducted by the Court.

4 26. Amendment Or Modification. This Agreement may be amended or modified only
5 by a written instrument signed by counsel for all Parties or their successors-in-interest.

6 27. Entire Agreement. This Agreement and any attached exhibits constitute the entire
7 agreement among these Parties, and no oral or written representations, warranties or inducements
8 have been made to any Party concerning this Agreement or its exhibits other than the
9 representations, warranties and covenants contained and memorialized in such documents.
10 Defendant shall not be required as part of the Settlement to modify or eliminate any of its
11 personnel, compensation or payroll practices, or adopt any new personnel, compensation or
12 payroll practices.

13 28. Authorization To Enter Into Settlement Agreement. Counsel for all Parties warrant
14 and represent they are expressly authorized by the Parties whom they represent to negotiate this
15 Agreement and to take all appropriate action required or permitted to be taken by such Parties
16 pursuant to this Agreement to effectuate its terms, and to execute any other documents required to
17 effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each
18 other and use their best efforts to effect the implementation of the Settlement. In the event the
19 Parties are unable to reach agreement on the form or content of any document needed to
20 implement the Settlement, or on any supplemental provisions that may become necessary to
21 effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve
22 such disagreement. The persons signing this Agreement on behalf of Defendant represent and
23 warrant that they are authorized to sign this Agreement on behalf of Defendant.

24 29. Binding On Successors And Assigns. This Agreement shall be binding upon, and
25 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

26 30. California Law Governs. All terms of this Agreement and the exhibits hereto shall
27 be governed by and interpreted according to the laws of the State of California.

28 31. Counterparts. This Agreement may be executed in one or more counterparts. All

1 executed counterparts and each of them shall be deemed to be one and the same instrument
2 provided that counsel for the Parties to this Agreement shall exchange among themselves original
3 signed counterparts.

4 32. This Settlement Is Fair, Adequate And Reasonable. The Parties believe this
5 Settlement is a fair, adequate and reasonable settlement of this Action and have arrived at this
6 Settlement after extensive arms-length negotiations, taking into account all relevant factors,
7 present and potential. The Parties to this Agreement are represented by competent counsel, and
8 they have had an opportunity to consult with counsel prior to its execution.

9 33. Jurisdiction Of The Court. The Court shall retain jurisdiction with respect to the
10 interpretation, implementation and enforcement of the terms of this Agreement and all orders and
11 judgments entered in connection therewith, and the Parties and their counsel hereto submit to the
12 jurisdiction of the Court for purposes of interpreting, implementing and enforcing the settlement
13 embodied in this Agreement and all orders and judgments entered in connection therewith.

14 34. Cooperation And Drafting. Each of the Parties has cooperated in the drafting and
15 preparation of this Agreement. Hence, in any construction made to this Agreement, the same shall
16 not be construed against any of the Parties.

17 35. Invalidity Of Any Provision. Before declaring any provision of this Agreement
18 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible
19 consistent with applicable precedents so as to define all provisions of this Agreement valid and
20 enforceable.

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28 *Signatures on next page*

1 DATED: February ____, 2021

**PLAINTIFFS AND CLASS
REPRESENTATIVES:**

3 *Robert Martinez*

4 ROBERT MARTINEZ

5 *Maiku Braxton*

6 MAIKU BRAXTON

11 DATED: February ____, 2021

DEFENDANT:

14 DocuSigned by:
ALFRED CLUB, INC.

15 BY: *Chelsea Cooper*
9418F4AB00634C2-17/2021

TITLE: