

SECOND AMENDED SETTLEMENT AGREEMENT

REYES, ET AL. v. THE WHOLE CART, LLC, et al.

San Francisco Superior Court, Case No. CGC-20-584861 (the “Action”)

This Second Amended Settlement Agreement (this “Settlement” or “Agreement”) is entered into by and between between Plaintiffs Maria Victoria Reyes-Morales (“Reyes”) and Carlos Magana (“Magana”) (collectively “Plaintiffs”), for themselves, the Class, and the State of California, and Defendants The Whole Cart, LLC and Off the Grid Services, LLC (hereinafter “Defendants”) (collectively referred to as the Parties”), in the matter of *Reyes, et al. v. The Whole Cart, LLC, et al.*, San Francisco Superior Court Case No. CGC-20-584861 (hereinafter “Action”). Plaintiffs and Defendants collectively are referred to in this Agreement as the “Parties,” and each as a “Party.”

I. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

- A. “Action” means the civil action titled “*Reyes, et al. v. The Whole Cart, LLC, et al.*, Case No. CGC-20-584861, pending in the San Francisco County Superior Court (the “Superior Court”).
- B. “Agreement” or “Settlement Agreement” shall refer to this document.
- C. “Class” or “Class Member” or “Settlement Class” means all non-exempt employees employed by Defendants performing food preparation and cooking services in Defendants’ kitchens, except any employee who held the position of “InsTrucktional Entrepreneur,” within the State of California from June 1, 2016 through the Date of Preliminary Approval of the Parties’ Settlement, inclusive.
- D. “Class Counsel” means Marco A. Palau, Joseph D. Sutton and Eric S. Trabucco of Advocates for Worker Rights LLP.
- E. “Class Counsel Fees and Expenses Payment” means the amount awarded to Class Counsel by the Superior Court to compensate them for their attorneys’ fees and litigation expenses in connection with the Action, including their pre-filing investigation, their commencement of the Action and all related litigation activities, this Settlement, and all post-Settlement compliance procedures.
- F. “Class Notice” means the court-approved document, substantially in the form attached to this Settlement Agreement as Exhibit A, which will be sent to Class Members following preliminary approval of the Settlement Agreement to notify Class Members of the Settlement and explain Class Members’ options.
- G. “Class Notice Packet” means the Class Notice and the Individual Class Member Dispute Form, substantially in the form attached to this Settlement Agreement as Exhibit B.
- H. “Complaint” means the operative First Amended Complaint (“FAC”), filed on July 6, 2021 in the Superior Court, alleging the following causes of action:

- (1) Failure to Pay for All Hours Worked, LC §§ 200, *et seq.* & Wage Orders; (2) Minimum Wages, LC § 1194 & Wage Orders; (3) Overtime Wages, LC § 510 & Wage Orders; (4) Meal Period Violations, LC §§ 226.7, 512 & Wage Orders; (5) Rest Break Violations, LC § 226.7 & Wage Orders; (6) Failure to Indemnify for Necessary Business Expenses, LC § 2802; (7) Wage Statement Violations, LC § 226; (8) Failure to Produce or Permit Inspection of Records, LC §§ 226 & 1198.5; (9) Waiting Time Penalties, LC § 203; (10) Unfair Competition Law, Bus. & Prof. Code §§ 17200, *et seq.*; and (11) Private Attorney General Act (“PAGA”), LC §§ 2698 *et seq.*
- I. “Defendants’ Counsel” means Kyle Schriener of Schriener Law Firm, PC.
- J. “Effective Date” means (a) if no Class Member files and serves any timely and valid objection to the Settlement, then the date upon which the Court grants Final Approval of the Settlement; (b) if any Class Member files and serves a timely and valid objection but it is subsequently withdrawn, then the date upon which the Court grants Final Approval of the Settlement; or (c) if any Class Member files and serves a valid and timely objection, then the date which is sixty-five (65) days after (i) service of notice of entry of the Final Approval Order and Judgment on the Parties to the Action and all objectors to the Settlement, if any, without appeals or requests for review being taken, or (ii) an order affirming the Final Approval Order and Judgment or denying review after exhaustion of all appellate remedies, if appeals or requests for review have been taken.
- K. “Employer Payroll Contributions” shall mean those payroll taxes and other monetary contributions required by state and federal law to be made by an employer on wage payments, including but not limited to FICA, Medicare, FUTA, and SUTA, and any federal and state unemployment taxes, payable with respect to amounts treated as wages under this Agreement, but not amounts required to be withheld by an employer in satisfaction of an employee’s share of federal and state income and other taxes and FICA or other mandated employee insurance contributions.
- L. “Final Approval Hearing” means the hearing to be conducted by the Superior Court to determine whether to finally approve and implement the terms of this Agreement.
- M. “Individual Class Member Dispute Form” or “Dispute Form” means the court-approved form in the Class Notice Packet that Class Members may use to dispute the number of workweeks listed in section F of the Class Notice, as set forth in Paragraph III.F.4.b.
- N. “Judgment” means the Order Granting Final Approval of Class Action Settlement and Entering Final Judgment entered by the Superior Court.
- O. “Gross Settlement Amount” (“GSA”) means the maximum amount to be paid by Defendants as provided by this Agreement. The Gross Settlement Amount does not include Employer Payroll Contributions on the wage portion of Class Member Settlement Shares, which Defendants shall pay separately, and there shall be no reversion of the Gross Settlement Amount to the Defendants.

- P. “Net Settlement Amount” means the Gross Settlement Amount, less the following, as approved by the Superior Court: (1) the Representative Service Awards; (2) the Class Counsel Fees and Expenses Payment (which includes all attorneys’ fees and expenses incurred to date and to be incurred in documenting the Settlement, securing court approval of the Settlement, attending to the administration of the Settlement, and obtaining dismissal of the Action); (3) the PAGA Distribution Amount; and (4) the Settlement Administrator’s reasonable fees and expenses incurred in administering the Settlement.
- Q. “Notice Packet” means the packet that includes the Class Notice, Request for Exclusion/Opt-Out Form, and Individual Class Member Dispute Form that will be mailed to each Class Member following the Court’s approval and Preliminary Approval Order.
- R. “Objection” means the valid and timely written statement that a Class Member may submit to the Settlement Administrator objecting to the Settlement, as set forth in Paragraph III.F.4.a of this Settlement Agreement.
- S. “PAGA Claims” means the Plaintiffs’ representative claim seeking civil penalties pursuant to California’s Private Attorney General Act (“PAGA”), Labor Code §§ 2699 *et seq.*, as alleged in the eleventh (11th) cause of action in the Complaint.
- T. “PAGA Aggrieved Employees” means all non-exempt employees employed by Defendants performing food preparation and cooking services in Defendants’ kitchens, except any employee who held the position of “InsTrucktional Entrepreneur,” within the State of California from March 25, 2019 through the date of preliminary approval.
- U. “PAGA Aggrieved Employee Payment” means the amount to be paid to all PAGA Aggrieved Employees from the PAGA Distribution Amount on a pro-rata basis based on the comparative number of workweeks worked by each PAGA Aggrieved Employee from March 25, 2019 through the date of preliminary approval.
- V. “PAGA Distribution Amount” means the payment in the amount of \$10,000 from the Gross Settlement Amount to be paid to the LWDA and the PAGA Aggrieved Employees to settle claims for civil penalties pursuant to PAGA.
- W. “PAGA LWDA Payment” means the amount (\$7,500) to be paid to the LWDA from the PAGA Distribution Amount pursuant to Labor Code § 2699(i).
- X. “PAGA Share” means the amounts to be distributed to each PAGA Aggrieved Employee from the PAGA Aggrieved Employee Payment on a pro-rata basis based on the comparative number of workweeks worked by each PAGA Aggrieved Employee from March 25, 2019 through the date of preliminary approval.
- Y. “Participating Class Member” means all non-exempt employees employed by Defendants performing food preparation and cooking services in Defendants’ kitchens, except any employee who held the position of “InsTrucktional Entrepreneur,” within the State of California from June 1, 2016 through the Date of Preliminary Approval of the Parties’ Settlement, who do not submit valid and

timely requests to be excluded from the Settlement.

- Z. “Preliminary Approval Date” means the date on which the Superior Court enters an Order granting preliminary approval of the terms of settlement set forth in this Settlement Agreement or such modified terms as may be agreed to by the Parties in order to obtain preliminary approval.
- AA. “Preliminary Approval of the Settlement” means the Superior Court’s preliminary approval of the Settlement without material change, or with material changes to the Settlement to which the Parties agree.
- BB. “Released Claims” means the first (1st) through tenth (10th) causes of action pleaded in the First Amended Complaint for the period from June 1, 2016 through the date of preliminary approval of the settlement, as set forth in Paragraph III.G.2 of this Settlement Agreement, which Participating Class Members release against the Released Parties, which the Class Members have had, now have, or may have in the future against the Released Parties or any of them for any acts that are either or both: (1) alleged in the Action or (2) arise out of the facts, matters, transactions or occurrences set forth in the Complaint and could have been alleged as separate claims, causes of action, or other theories of relief.
- CC. “Released Parties” means The Whole Cart, LLC and Off the Grid Services, LLC, present, former and future controlling persons, parents, affiliates, subsidiaries, successors-in-interest, benefit plans sponsored by such companies, owners, members, officers, directors, principals, employees, agents, attorneys, insurers, managers, trustees, fiduciaries, representatives, divisions, predecessors, successors, and assigns.
- DD. “Representative Service Awards” means the payments made, in addition to their respective Settlement Shares, to Plaintiffs in their capacity as Class Representatives, to compensate them for initiating and pursuing the Action, and undertaking the risk of liability for attorneys’ fees and litigation costs in the event they were unsuccessful in the prosecution of the Action.
- EE. “Request for Exclusion” means the valid and timely written notice a Class Member may submit to the Settlement Administrator to request exclusion from the Settlement Class, but not of the PAGA Claims, as set forth in Paragraph III.F.4.c. of this Settlement Agreement.
- FF. “Response Deadline” means the date forty-five (45) calendar days from the date the Settlement Administrator completes its initial mailing of the Notice Packets to Class Members.
- GG. “Reyes Carveout” means the claims in the Disability Discrimination Case (DFEH No. 202102-12571310, EEOC Charge No. 37A-2021-01888-C) and the workers’ compensation claims being carved out of the general release that Plaintiff Reyes-Morales is not releasing against Defendant The Whole Cart, LLC (dba Off the Grid).
- HH. “Settlement” means the terms and conditions set forth in this Agreement meant to resolve the Action.

- II. “Settlement Administrator” means the administrator proposed by the Parties, Phoenix Class Action Administration Solutions (“Phoenix”), and appointed by the Superior Court to administer the Settlement.
- JJ. “Settlement Share” means the total gross amount each Participating Class Member will receive as their respective portion of the Net Settlement Amount.
- KK. “Superior Court” means Department 304 of the San Francisco County Superior Court, the Honorable Ethan P. Schulman presiding, or any other Department to which the case may be reassigned

II. RECITALS

- A. **Plaintiffs’ Class and Representative Action Complaint.** On June 1, 2020 , Plaintiffs, represented by Class Counsel, commenced the Action in the Superior Court of California, in and for the County of San Francisco. In the Action, Plaintiffs allege the following claims: (1) Failure to Pay for All Hours Worked; (2) Minimum Wages; (3) Overtime Wages; (4) Meal Period Violations; (5) Rest Break Violations; (6) Failure to Indemnify for Necessary Business Expenses; (7) Wage Statement Violations; (8) Failure to Produce or Permit Inspection of Records; (9) Waiting Time Penalties; (10) Unfair Competition Law; and (11) California’s Private Attorney General Act. Based on these allegations, Plaintiffs assert claims under the California Labor Code, California Industrial Welfare Commission Wage Orders, and the California Business & Professions Code. Based on these claims, Plaintiffs seek the recovery of wages, including minimum wages, liquidated damages, overtime premium wages, meal period and rest break premium wages, reimbursement of expenses, waiting time penalties, wage statement penalties, statutory and civil penalties, prejudgment interest, and attorneys’ fees and costs.
- B. **No Admission.** Defendants deny the allegations in the Action; deny they have engaged in any wrongdoing; deny that Plaintiffs’ allegations constitute valid claims; deny that a litigation class could properly be certified in the Action; deny that Plaintiffs’ claims could properly be maintained as a PAGA representative action; and state they are entering into this Settlement Agreement solely to eliminate the burden, expense, and delay of further litigation, and on the express conditions and agreement with the Plaintiffs that (a) if for any reason the Settlement is not finalized according to the terms of this Agreement, the Settlement and the documents generated as a result of the Settlement shall not be usable for any purpose in the Action, and (b) this Settlement and the documents generated as a result of the Settlement are not admissible or usable in any other civil or administrative proceeding or any arbitration, except to the extent necessary to enforce this Settlement and the orders, judgment and agreements arising from this Settlement.
- C. **Bona Fide Dispute.** The Parties agree a bona fide dispute exists as to whether any amount of penalties is due from Defendants to Plaintiffs, Class Members, PAGA Aggrieved Employees or to the LWDA.
- D. **Procedural History.** On March 25, 2020, Plaintiff Magana complied with

PAGA's administrative exhaustion procedure by giving written notice to Defendants and the Labor and Workforce Development Agency ("LWDA") of the alleged Labor Code and Wage Order violations, and the facts and theories supporting those violations. The Action was initiated on June 1, 2020 in San Francisco County Superior Court, and on July 6, 2021, Plaintiffs filed their operative First Amended Complaint. Defendants filed their answer to the Complaint on July 26, 2021. Shortly after the pleadings were settled, Defendants served a first set of written discovery requests on Plaintiffs on March 5, 2021, including form general and employment interrogatories, special interrogatories, and requests for production of documents. On April 1, 2021, Plaintiffs served their responses to Defendants' discovery requests. On April 20, 2021, Plaintiffs served a full set of discovery requests on Defendants. After receiving Plaintiffs' first set of discovery, the Parties agreed to stay formal discovery and instead facilitate an informal exchange of documents, data and information in anticipation of mediation with the Honorable Bonnie Sabraw (ret.) of ADR Services in Oakland, California, on October 6, 2021. The Parties informed the Court about these early ADR efforts on July 19, 2021 at the Initial Case Management Conference, and the Court issued a Minute Order in which it noted that the Parties had selected a mediator and were settling the pleadings, ordered the outstanding discovery deadlines vacated and suspended pending further order, and scheduled a subsequent Case Management Conference for November 12, 2021.

- E. **Settlement Efforts.** Based on the Parties expressing a willingness to attempt to resolve the action via private ADR in order to save party and attorney resources, over the next two months, the Parties exchanged information informally under mediation privilege. Defendants produced their employment handbook and policy documents, anonymized electronic payroll and timekeeping for the putative class, and a list of statistics specifying a class size of 145 Class Members and 116 PAGA Aggrieved Employees, with dates of service, rates of pay, workweeks, shifts, and pay periods. On October 6, 2021, the Parties participated in a virtual mediation facilitated by Hon. Bonnie Sabraw, sitting in Oakland, California. During the mediation, each side, represented by its respective counsel, recognized the substantial risk of an adverse result in the Action and agreed to settle the Action, and all other matters covered by this Agreement pursuant to the terms and conditions of this Agreement. This Agreement replaces and supersedes the "Memorandum of Understanding" entered into on October 6, 2021, and any other agreements, understandings, or representations between the Parties.

Based on these Recitals, the Parties agree as follows:

III. SETTLEMENT TERMS AND CONDITIONS

- A. **Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, including but not limited to section III.A.2., the Gross Settlement Amount that Defendants are obligated to pay in connection with the Settlement of the Action is four hundred and twenty five thousand dollars and zero cents (\$425,000.00). Payment of this amount, as approved by the Superior Court, will cover all monetary benefits and payments to the Settlement Class and all claims for interest, fees, and costs, and will include: (1) the Representative Service

Awards; (2) the Class Counsel Fees and Expenses Payment; (3) the PAGA Distribution Amount; and (4) the Settlement Administrator's fees and expenses; and (5) all Settlement Shares paid to Participating Class Members. The Gross Settlement Amount does not include required Employer Payroll Contributions on the wage portion of Class Member Settlement Shares, which Defendants shall pay separately. There shall be no reversion of the Gross Settlement Amount to Defendants.

B. Payments to Plaintiffs, Class Counsel, and Settlement Administrator. Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments out of the Gross Settlement Amount as follows:

1. **To Plaintiffs:** In addition to their Settlement Shares, Plaintiffs will each apply to the Superior Court for an award of not more than \$10,000.00 for a Representative Service Award in consideration for initiating and pursuing the Action, and undertaking the risk of liability for attorneys' fees, expenses and litigation costs in the event they were unsuccessful in the prosecution of the Action. Defendants will not oppose the Plaintiffs' request for Representative Service Awards of up to \$10,000.00 each. The Settlement Administrator will pay the Representative Service Award approved by the Superior Court out of the Gross Settlement Amount. If the Superior Court approves Representative Service Awards of less than \$10,000.00 each, the remainder will be retained in the Net Settlement Amount. Tax deductions and withholdings will not be taken from the Representative Service Awards, and instead a Form 1099 will be issued to the Plaintiffs with respect to these payments.
2. **To Class Counsel:** Class Counsel will apply to the Superior Court for an award of (a) attorneys' fees of not more than thirty-three and one-third percent (33 & $\frac{1}{3}$ %) of the Gross Settlement Amount (or \$141,666.67) and (b) litigation costs not to exceed eight thousand five hundred dollars (\$8,500) incurred in this action by Class Counsel. Class Counsel's litigation costs including, but not limited to, expert fees, up through the Court's approval of the Settlement and obtaining entry of the Judgment terminating the Action, and any other expenses. Defendants will not oppose Class Counsel's request for a Class Counsel Fees and Expenses Payment of these amounts. The Settlement Administrator will pay the amount approved by the Superior Court out of the Gross Settlement Amount. If the Superior Court approves Class Counsel fees and litigation costs of less than the amounts requested herein, the remainder will be retained in the Net Settlement Amount. Tax deductions and withholdings will not be taken from the Class Counsel Fees and Expenses Payment, and instead a Form 1099 will be issued to Class Counsel.
3. **To the Settlement Administrator.** The Settlement Administrator will pay to itself out of the Gross Settlement Amount its reasonable fees and expenses as approved by the Superior Court, not to exceed eight thousand three hundred and seventy-five dollars (\$9,750). If the Superior Court approves Settlement Administration Costs of less than \$9,750 total, the

remainder will be retained in the Net Settlement Amount.

C. **PAGA Distribution.** Ten thousand dollars (\$10,000) of the Gross Settlement Amount is allocated to settle claims for civil penalties under California's Private Attorney General Act, Labor Code sections 2698, *et seq.* as follows:

1. **PAGA LWDA Payment.** Seventy-five percent (75%) of the PAGA Distribution Amount, or no less than seven thousand five-hundred dollars (\$7,500), shall be paid to the LWDA, as required by Labor Code § 2699(i).
2. **PAGA Aggrieved Employee Payment.** Twenty-five percent (25%) of the PAGA Distribution Amount, or no less than two thousand five hundred (\$2,500), shall be paid to all PAGA Aggrieved Employees, as required by Labor Code § 2699(i).
3. **PAGA Share Calculation.** A PAGA Aggrieved Employee's PAGA Share will be equal to a pro rata share of the PAGA Aggrieved Employee Payment based on each Aggrieved Employee's proportionate workweeks worked during the PAGA Period, by multiplying the PAGA Aggrieved Employee Payment by a fraction, the numerator of which is (a) the number of workweeks worked by the PAGA Aggrieved Employee for Defendants during the PAGA Period, and the denominator of which is (b) the total number of workweeks worked by all PAGA Aggrieved Employees during the PAGA Period.
4. **Treatment.** Each PAGA Aggrieved Employee's PAGA Share shall be characterized as penalties and reported on an IRS Form 1099.

D. **Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will allocate Settlement Shares from the Net Settlement Amount to Participating Class Members as follows:

1. **Payments to all Participating Class Members:** The Net Settlement Amount will be distributed to all participating Class Members based on the proportion of workweeks each participating Class Member worked for Defendants during the Class Period in relation to all Participating Class Members, and will be computed as follows. Class Members will be entitled to a pro rata share of the Net Settlement Amount based on each participating Settlement Class member's proportionate workweeks worked during the Class Period, by multiplying the Net Settlement Amount by a fraction, the numerator of which is (a) the number of workweeks worked by each Class Member for Defendants during the Class Period, and the denominator of which is (b) the total number of workweeks worked by all Class Members during the Class Period.
2. **Treatment.**
 - a. Thirty-seven and a half percent (37 & ½%) of each Settlement Share will be treated as a payment in settlement of the Participating Class Member's claims for statutory and civil penalties. Thirty-seven and a

- half percent (37 & ½%) of each Settlement Share (the “Wage Portion”) will be treated as a payment in settlement of the Participating Class Member’s claims for interest. Collectively, this seventy-five percent (75%) portion (the “Non-Wage Portion”) will be treated separately for purposes of any tax withholding and deductions. The Settlement Administrator will issue to the Participating Class Members a Form 1099 when required with respect to the Non-Wage Portion.
- b. Twenty-five percent (25%) of each Settlement Share (the “Wage Portion”) will be treated as a payment in settlement of the Participating Class Member’s claims for unpaid wages. Accordingly, the Wage Portion will be reduced by applicable payroll tax withholding and deductions, and the Settlement Administrator will issue to the Participating Class Member a Form W-2 with respect to the Wage Portion.
3. **Administration of Taxes by the Settlement Administrator.** The Settlement Administrator is responsible for issuing to Plaintiffs, Class Members, and Class Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to this Settlement Agreement. The Settlement Administrator is also responsible for forwarding all payroll taxes, contributions, and withholdings to the appropriate government authorities.
 4. **Tax Liability.** Plaintiffs, Class Counsel, Defendants, and Defendants’ Counsel make no representations or warranties as to the tax consequences, treatment, or legal effect of any payments made under this Settlement Agreement, do not intend anything contained in this Settlement Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Settlement Agreement be relied on as such. Plaintiffs and Settlement Class Members understand and agree that, except for Defendants’ payment of the Employer Payroll Contributions, Plaintiffs and Settlement Class Members will be solely responsible for correctly characterizing any compensation received under the settlement on his/her personal income tax returns and paying any and all taxes due for any and all amounts paid to them under the settlement.
 5. **No Prior Assignments.** Plaintiffs represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign transfer or encumber to any person or entity and portion of any liability, claim, demand, cause of action or rights released and discharged in this Settlement. No Class Member may assign his/her entitlement to payment from the Settlement to any third party.
 6. **Class Members Are Not Required to Submit a Claim Form to Receive a Share of the Settlement.** In the Class Notice, Class Members will be provided with the total number of workweeks attributed in both the Class Period and the PAGA Period, if any, to that Class Member by Defendants’ records. If the Participating Class Member does not dispute the number of

workweeks set forth in the Class Notice, then the Settlement Administrator will mail that Class Member's individual Settlement Share within thirty-seven (37) days after the Effective Date.

7. **Effect of Class Members Who Request to Be Excluded from the Settlement.** A Class Member who elects not to participate in the Settlement and who timely submits a Request for Exclusion in accordance with the requirements set forth in Section III.F.4.c below will not share in any Class Settlement proceeds or be bound by the Settlement but will still receive a PAGA Aggrieved Employee Share and be bound by the release of claims pursuant to the PAGA. That Class Member's workweeks will not be included in the calculations of Settlement Shares for those Class Members who do not request exclusion; and the Settlement Share that otherwise would have been payable to such Class Member will be retained in the Net Settlement Amount for distribution to all other Participating Class Members who do not request to be excluded from the Settlement.
 8. **Settlement Awards Do Not Trigger Additional Benefits.** Class Members will not be entitled to any additional benefits including, for example (but without limitation), vacation, holiday pay, pension, or 401(k) plan contributions based on payments that are made under this Settlement. Payments made under this Settlement do not represent any modification of previously credited hours of service or other eligibility criteria under any employee pension or employee welfare benefit plan sponsored by Defendants. Payments made under this Settlement are not "compensation" for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan, an employee welfare benefit plan, or other plan sponsored by Defendant or its predecessors, subsidiaries, or successors.
- E. **Appointment of Settlement Administrator.** The Parties will ask the Superior Court to appoint Phoenix as Settlement Administrator, which, as a condition of appointment, will agree to be bound by this Agreement with respect to the performance of its duties and its compensation. The Settlement Administrator's duties will include receiving from Defendants the Class List, organizing and maintaining the Class List with the most recent and accurate information available, conducting a National Change of Address search and using Accurint or another reasonable and effective skip trace methods prior to mailing to ensure the most recent addresses are located for Class members; translating the Class Notice Packet from English to Spanish; preparing, printing, and mailing to all Class Members the Class Notice Packet; locating any Class Member whose Class Notice Packet was returned by the U.S. Postal Service as non-deliverable, and re-mailing the Class Notice Packet to the Class Member's new address; setting up a toll-free telephone number to field calls from Class Members in English and Spanish; receiving dispute forms, objections, and requests for exclusion to the Settlement; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of dispute forms, objections, and requests for exclusion; calculating Settlement Shares and PAGA Shares; issuing the checks to

effectuate the payments due under the Settlement; and otherwise administering the Settlement pursuant to this Agreement and its agreement with the Defendants. The Settlement Administrator will have the final authority to resolve all disputes concerning the calculation of all Class Member's Settlement Shares and PAGA Shares, including the PAGA Shares of PAGA Aggrieved Employees requesting exclusion from the Settlement, subject to the dollar limitations set forth in this Agreement. The Settlement Administrator's reasonable fees and expenses, including the cost of printing and mailing the Class Notice Packet, will be paid out of the Gross Settlement Amount.

F. Procedure for Approving Settlement.

1. Motion for Preliminary Approval.

- a. Only after the Settlement Agreement is signed by Plaintiffs and Defendants, and Class Counsel and Defendants' Counsel as to form, , Class Counsel will file a motion (the "Motion for Preliminary Approval") with the Superior Court for an order granting Preliminary Approval of the Settlement, conditionally certifying the Class, setting a date for the Final Approval Hearing, appointing Plaintiffs as Class Representatives and their counsel of record in the Action as Class Counsel, and approving the Class Notice. Plaintiffs and Class Counsel shall be responsible for drafting the Motion for Preliminary Approval. Class Counsel will provide Defendants' Counsel with a draft of the Motion for Preliminary Approval at least five business days prior to filing.
 - b. Defendants agree not to oppose the Motion for Preliminary Approval consistent with this Settlement Agreement.
 - c. Should the Superior Court decline to preliminarily approve all material aspects of the Settlement, or order material changes to the Settlement to which the Parties do not agree, the Settlement will be null and void and the Parties will have no further obligations under it.
2. Within ten (10) days of the Preliminary Approval Order, Class Counsel will notify the LWDA of the Preliminary Approval Order.
3. **Notice to Class Members.** After the Superior Court enters its order granting Preliminary Approval of the Settlement, every Class Member will be provided with the Class Notice Packet (which will include the Class Notice completed to reflect the order granting Preliminary Approval of the Settlement and an Individual Individual Class Member Dispute Form stating the total number of workweeks attributed to each Class Member and PAGA Aggrieved Employee by Defendants' records) in English and Spanish:
- a. Within thirty (30) calendar days after the Superior Court enters its order granting Preliminary Approval of the Settlement, Defendants will provide to the Settlement Administrator the Class List containing the Class Member Data, preferably in electronic form, containing each

Class Member's name, employee identification number, last known address and email address if available, Social Security number or Individual Taxpayer Identification Number (ITIN"), the end date for each Class Member's employment, and the number of workweeks worked by the Class Member for Defendants as a non-exempt employee. If any or all of the Class Members' Data are unavailable to Defendants, Defendants will use best efforts to deduce or reconstruct the Class Members' Data prior to when it must be submitted to the Settlement Administrator.

- b. Within five (5) business days following receipt of the Class Members' Data, the Settlement Administrator will conduct a National Change of Address search and using Accurant or another reasonable and effective skip trace methods to ensure the most recent addresses are located for Class members and populate the Class Notice Packets with the applicable information for each Class Member.
- c. Within five (5) business days following receipt of the Class Members' Data, the Settlement Administrator will mail and email (to the extent that email addresses are available) the Class Notice Packets (in English and Spanish) to all identified Class Members via first-class regular U.S. Mail using the mailing address information provided by Defendants, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement.
- d. If a Class Notice Packet is returned because of an incorrect address, the Settlement Administrator will promptly, and not later than seven (7) calendar days from receipt of the returned packet, search for a more current address for the Class Member using Accurant or other reasonable and cost-effective skip trace methods, and re-mail the Class Notice Packet to the Class Member to any new or more current address or addresses discovered. The Settlement Administrator will use the Class Members' Data and otherwise work with Defendants to find a more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, court orders, and fee, as agreed to with Class Counsel and according to the following deadlines, to trace the mailing address of any Class Member for whom a Class Notice Packet is returned by the U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. If the Class Notice Packet is re-mailed, the Settlement Administrator will note for its own records and notify Class Counsel and Defendants' Counsel of the date and address of each such re-mailing as part of a weekly status report provided to the Parties. Class Counsel and Defendants' Counsel will be entitled to receive

from the Settlement Administrator any updated address information about a Class Member as the Settlement Administrator obtains such information.

- e. Each week, the Settlement Administrator will provide to Class Counsel and Defendants' Counsel a report showing whether any Class Notice Packets have been returned and re-mailed and the receipt of any requests for exclusion.
4. **Class Member Objections to Settlement; Challenges to Number of Workweeks; Requests for Exclusion.**
- a. **Objection to Settlement.** A Class Member who wishes to object to any term of the Settlement must send to the Settlement Administrator a written Objection to the Settlement by either email, FAX, or mail postmarked not later than sixty (60) calendar days after the Settlement Administrator mails the Class Notice setting forth: the objector's name, address, signature, telephone number and social security number or Individual Taxpayer Identification Number (ITIN"), a clear reference to the Action, and a statement of the specific legal and/or factual bases for each objection argument. The Objection must also indicate whether the Class Member intends to appear at the Final Approval Hearing, either in person or through counsel, and if through counsel, the Objection must provide the counsel's name and bar number and contact information, including telephone number and e-mail address; the failure to do so will constitute a waiver of the right to appear at the hearing. Class Members who do not file and serve written Objections in the manner and by the deadlines specified in the Class Notice will be deemed to have waived any Objections and will be foreclosed from making any Objections (whether by appeal or otherwise) to the Settlement or other related matters. Class Counsel and/or Defendants' counsel, at Defendants' choice, will file a response to any Objection within seven (7) days prior to the Final Approval Hearing. Plaintiffs agree not to object to the settlement. The Parties will provide the Court with a complete and accurate list of all Class Members who object to the Settlement, along with their objections in the final approval motion.
 - b. **Right to Dispute Number of Workweeks; Resolution.** A Class Member who wishes to dispute the number of workweeks he or she worked in the Class Period as outlined in the Class Notice sent to the Class Member as part of the Class Notice Packet may do so by submitting the completed Dispute Form, including any supporting documents (such as paycheck stubs) to the Settlement Administrator by either email, FAX, or mail no later than sixty (60) calendar days after the Settlement Administrator mails the Class Notice. Upon receipt of a Dispute Form, the Settlement Administrator shall consult with Defendants' Counsel regarding the specific contentions made by the Class Member, and shall thereupon determine and resolve the

Dispute based on all records and documents provided by Defendant and the Class Member. There will be a presumption that Defendants' records are correct, absent evidence produced by a Settlement Class Member to the contrary. The Settlement Administrator's determination shall be final, binding, and non-appealable and Settlement and PAGA Shares will be calculated according to the Settlement Administrator's determination. The Settlement Administrator will inform any Class Member who submits a timely Dispute Form regarding the final determination of their total number of workweeks.

- c. **Request for Exclusion.** A Class Member who wishes to exclude himself from the Class Settlement must send the Settlement Administrator a written and signed request to be excluded by either email, FAX, or mail no later than sixty (60) calendar days after the Settlement Administrator mails the Class Notice. Class Members may object to or request exclusion from the Settlement, but may not do both. Any Class Member who submits a timely and proper request for exclusion may not object to the Settlement nor receive their respective Settlement Share, and shall be deemed to have waived any rights or benefits under the Settlement Agreement, with the sole exception of receipt of their respective PAGA Share, in consideration of the individual's release of the PAGA Claims or remedies under the Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009). If a Class Member files both an objection and a valid and timely request for exclusion, the request for exclusion will override the objection, and the objection shall therefore be ignored. The request must contain the name, address, telephone number and social security number or Individual Taxpayer Identification Number (ITIN") of the Class Member requesting exclusion from the Class Settlement. If a question is raised about the authenticity of any request for exclusion, the Settlement Administrator will have the right to demand additional proof of the Class Member's identity. A Class Member who submits a timely request for exclusion will not participate in or be bound by the Class Settlement and the Judgment and will not receive a Class Settlement Share, but will retain the right, if any, he or she may have to pursue an individual claim against Defendants. Notwithstanding the submission of a timely request for exclusion, Class Members will still be bound by the settlement and release of the PAGA Claims or remedies under the Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009). Requests for exclusion do not apply to the PAGA Claims, and will not be effective to preclude the release of the PAGA Claims. The Parties will provide the Court with a complete and accurate list of all Class Members who submitted a timely and complete Request for Exclusion in the final approval motion.
- d. **Failure to Timely Request Exclusion.** Class Members who do not submit a timely request for exclusion in the manner and by the

deadline specified in the Class Notice will automatically be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Superior Court, and by the Judgment, regardless of whether they have objected to the Settlement.

- e. **Report.** Not later than seven (7) calendar days after the deadline to submit the Dispute Form and request to be excluded from the Settlement, the Settlement Administrator will provide the Parties with a complete and accurate list of all Class Members who have objected or who have requested to be excluded from the Settlement.
 - f. **Late Submissions.** The Settlement Administrator shall not accept as valid any Request for Exclusion, Dispute Form, or Objection postmarked after the Response Deadline specified in the Class Notice Packet. It shall be presumed that if a Request for Exclusion, Dispute Form, or Objection is not postmarked on or before the Response Deadline specified in the Class Notice, the Class Member did not return it in a timely manner.
 - g. If five percent (5%) or more of the Class Members submit timely and valid Requests for Exclusion, Defendants may, at their election, rescind the Settlement Agreement by providing written notice of rescission to Class Counsel within ten (10) business days of being informed by the Settlement Administrator that five percent (5%) or more of the Class Members have submitted timely and valid Requests for Exclusion. If Defendants exercise their right to rescind, the Parties will revert to their positions prior to provisional class certification under the terms of this Settlement.
5. **No Solicitation of Objection, Appeal, or Election Not to Participate in Settlement.** Neither the Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, appeal from the Judgment, or elect not to participate in the Settlement.
6. **Additional Briefing and Final Approval.**
- a. Not later than sixteen (16) court days before the Final Approval Hearing, Class Counsel will file with the Superior Court a motion for final approval of the Settlement and payment of Plaintiffs' Representative Service Awards, Class Counsel's Fees and Expenses Payment, the PAGA Distribution Amount, and the Settlement Administrator's reasonable fees and expenses, pursuant to this Settlement. Plaintiffs and Class Counsel shall be responsible for drafting the Motion for Final Approval. Class Counsel will provide Defendants' Counsel with a draft of the Motion for Final Approval at least five business days prior to filing.
 - b. If the Superior Court does not grant final approval of the Settlement or grants final approval conditioned on any material change to the

Settlement to which the Parties do not agree, then either Party will have the right to void the Settlement; if that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendants to pay the Gross Settlement Amount, except the Parties will pay (50/50) the Settlement Administrator's reasonable fees and expenses incurred as of the date that the Party exercises the right to void the Settlement under this paragraph. However, an award by the Superior Court of a lesser amount than that sought by Plaintiffs and Class Counsel for the Representative Service Awards or the Class Counsel Fees and Expenses Payment will not constitute a material change to the Settlement within the meaning of this Agreement.

- c. Orders for the preliminary approval of the Settlement, certification of the Settlement Class and final approval of the proposed Settlement, and all actions associated with them, are entered and accepted by the Parties hereto on the condition that they may be vacated at either Party's option if the Settlement Agreement is terminated or material terms as defined herein are disapproved in whole or in part by the Court, or by any appellate court and/or other court of review, in which event the Agreement and the fact that it was entered into shall not be offered, received, or construed as an admission or as evidence for any purpose, including but not limited to an admission by any Party of liability or non-liability or of any misrepresentation or omission in any statement or written document approved or made by any Party, or of the certifiability of a litigation class or the appropriateness of maintaining a PAGA representative action, as further provided in this Settlement Agreement. In the event that: (i) the Court denies, with prejudice, approval of the Settlement, (ii) the Court's approval of the Settlement is overturned on appeal, (iii) the Judgment does not become final, or (iv) this Settlement Agreement is terminated, cancelled, or fails to become effective for any reason, then: (a) the Parties stipulate and agree that at either Party's option the Settlement, this Agreement, the Class Information, the list of Class Members who objected or excluded themselves (or attempted to do so) from the Settlement, and all documents exchanged and filed in connection with the Settlement shall be treated as privileged mediation communications under Cal. Evid. Code §§ 1115, *et seq.*; (b) the Settlement shall be without force and effect upon the rights of the Parties hereto, and none of its terms shall be effective or enforceable, with the exception of this Paragraph, which shall remain effective and enforceable; (c) the Parties shall be deemed to have reverted nunc pro tunc to their respective status prior to execution of this Agreement, including with respect to any Court-imposed deadlines; (d) all Orders entered in connection with the Settlement, including the certification of the Settlement Class, shall be vacated without prejudice to any party's position on the issue of class certification, the issue of amending the complaint, or any other issue, in the Action or any other action, and the Parties shall be restored to

their litigation positions existing on the date of execution of this Agreement; and (e) the Parties shall proceed in all respects as if the Settlement Agreement and related documentation and orders had not been executed, and without prejudice in any way from the negotiation or fact of the Settlement or the terms of the Settlement Agreement. The Settlement Agreement, the Settlement, all documents, orders, and evidence relating to the Settlement, the fact of their existence, any of their terms, any press release or other statement or report by the Parties or by others concerning the Settlement Agreement, the Settlement, their existence, or their terms, any negotiations, proceedings, acts performed, or documents executed pursuant to or in furtherance of the Settlement Agreement or the Settlement shall not be admissible in any proceeding, and shall not be offered, received, or construed as evidence of a presumption, concession, or an admission of liability, of the certifiability of a litigation class, or of any misrepresentation or omission in any statement or written document approved or made, or otherwise used by any person for any purpose whatsoever, in any trial of the Action or any other action or proceedings. Plaintiff, Class Counsel and the Settlement Administrator shall return to counsel for Defendants all copies of Class Information and lists and shall not use or disclose the Class Information or list of Class Members who objected or excluded themselves from the Settlement, or attempted to do so, for any purpose or in any proceeding.

- d. Upon final approval of the Settlement by the Superior Court, Class Counsel will present to the Superior Court an Order for its approval and entry of Judgment. Class Counsel will provide Defendants' Counsel with a draft of the Order at least five business days prior to filing. After entry of Judgment, the Superior Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of (1) enforcing this Agreement, (2) addressing settlement administration matters, and (3) addressing such post-judgment matters as may be appropriate under court rules or applicable law.
 - e. Interim Stay of Proceedings. The Parties agree to hold in abeyance all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement Agreement, pending the Final Approval hearing.
7. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the material terms of this Agreement, Plaintiffs, Class Members who do not timely submit an objection to the Settlement, Defendants, and their respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, a motion for new trial, and any extraordinary writ, and the Judgment therefore will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate

proceedings or post-judgment proceedings. This paragraph does not preclude Plaintiffs or Class Counsel from appealing a refusal by the Superior Court to award the full Representative Service Awards or the Class Counsel Fees and Expenses Payment sought by them, but not the approval of the Settlement otherwise. If an appeal is taken from the Judgment, the time for consummating the Settlement (including making payments to Class Members under the Settlement) will be suspended until such time as the appeal is finally resolved and the Judgment becomes Final, as defined in this Agreement.

8. **Vacation, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after a notice of appeal or a petition for certiorari, or any other motion, petition, or application, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material change to the Settlement, as the term “material change” is defined herein, and that court’s decision is not completely reversed and the Judgment approving the material terms of this Settlement is not fully affirmed on review by a higher court, then either Plaintiffs or Defendants will have the right to void the Settlement, which the Party must do by giving written notice to the other Parties, the reviewing court, and the Superior Court not later than thirty (30) days after the reviewing court’s decision vacating, reversing, or materially modifying the Judgment becomes Final. A vacation, reversal, or modification of the Superior Court’s award of the Representative Service Award or the Class Counsel Fees and Expenses Payment will not constitute a vacating, reversal, or material modification of the Judgment within the meaning of this Agreement
9. **Timing of Settlement Payments.** No later than thirty (30) days after the Effective Date of the Settlement, as defined in this Agreement, Defendants will transfer to the Settlement Administrator the Gross Settlement Amount. The Administrator shall maintain this amount in a qualified settlement account (“QSA”). The QSA shall be an interest-bearing escrow account created by the Administrator for the purpose of administering the payments required by this Settlement. Any interest generated by the account shall remain in the account and be drawn upon to make the payments required by this Settlement. Defendants’ failure to make timely payment will result in accrual of interest at the highest legal rate allowable in California, accruing from the last date of timely payment by Defendants. If Defendants fail to timely make this payment, Class Counsel shall provide Defendants’ counsel with written notice of the default. No later than thirty-seven (37) days after the Effective Date, the Settlement Administrator will pay to Class Members their individual Settlement Shares; to Plaintiffs, their Representative Service Awards; to Class Counsel, the Class Counsel Fees and Expenses Payment; PAGA Aggrieved Employee Payments to the PAGA Aggrieved Employees; the PAGA LWDA Payment to the LWDA; and to the Settlement Administrator, its reasonable fees and expenses.

10. No Settlement Class Member shall have any claim against the Plaintiffs, Class Counsel, or the Settlement Administrator based on distributions made substantially in accordance with this Settlement Agreement and/or orders of the Court. No Settlement Class Member shall have any claim against any Released Parties or their counsel relating to distributions made under this Settlement.
11. **Uncashed Settlement Share Checks.** A PAGA Aggrieved Employee and/or Class Member must cash his or her PAGA Settlement Share and/or Class Settlement Share checks within one-hundred and eighty (180) calendar days after it is mailed to them. If a check is returned to the Settlement Administrator, the Settlement Administrator will make all reasonable efforts to re-mail it to the PAGA Aggrieved Employee and/or Class Member at the correct address. If any Settlement Share or PAGA Share checks are not cashed within one-hundred and twenty (120) days after the last mailing to the Class or PAGA Aggrieved Employee, the Settlement Administrator will send the Class or PAGA Aggrieved Employee a letter or postcard informing the Member that unless the checks are cashed in the next sixty (60) days, they will expire and become non-negotiable, and offering to replace the checks if they were lost or misplaced but not cashed. If one or more Members fail to cash the check for their Shares within 180 days after they are mailed to their last known address, and if the aggregate funds represented by the uncashed checks total ten thousand dollars (\$10,000.00) or more, such undistributed funds will be distributed to each Participating Class Member who cashed the check for their Settlement Share, on a pro rata basis based on the Class Member's Settlement Share divided by the sum of all Settlement Shares of Class Members who cashed checks for their Settlement Shares. If the aggregate funds represented by the uncashed checks total less than \$10,000.00, they will be donated to La Raza Centro Legal, a San Francisco-based legal services nonprofit protecting and advancing the rights of low-income, immigrant, Black, and Latinx communities through bilingual legal representation, education, and advocacy (<https://lrcl.org/>).

G. Release and Waiver of Claims.

1. **Plaintiffs.** In consideration of the terms and conditions of the Settlement, Plaintiffs agree to release all claims, whether known or unknown, with the exception of Plaintiff Reyes' claims described in the "Carveout," *infra*, against Defendants The Whole Cart, LLC and Off the Grid Services, LLC, their present, former and future controlling persons, parents, affiliates, subsidiaries, successors-in-interest, benefit plans sponsored by such companies, owners, members, officers, directors, principals, employees, agents, attorneys, insurers, managers, trustees, fiduciaries, representatives, divisions, predecessors, successors, and assigns including, but not limited to, Cubert LLC and Technically Temporary, LLC. Likewise, Defendants agree to releases all claims, whether known or unknown, against Plaintiffs, their heirs, successors, or assigns (the "Plaintiffs' Released Claims").

Plaintiffs' Released Claims include all claims, whether known or unknown, except for Plaintiff Reyes' claims described in the Carveout, *infra*. Thus, even if Plaintiffs discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of Plaintiffs' Released Claims, those claims will remain released and forever barred. Therefore, because Plaintiffs are granting a general release, they expressly waive and relinquish the provisions, rights and benefits of section 1542 of the California Civil Code, which reads:

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

- a. **Reyes Carveout.** On April 19, 2020, Plaintiff Reyes-Morales filed Department of Fair Employment and Housing ("DFEH") and Equal Employment Opportunity Commission ("EEOC") complaints against Defendant The Whole Cart, LLC (DFEH No. 202102-12571310, EEOC Charge No. 37A-2021-01888-C) alleging claims for disability discrimination, failure to accommodate, failure to engage in the interactive process, retaliation, and related claims. The foregoing shall be defined as the "Disability Discrimination Case." The Parties agree Plaintiff Reyes-Morales is not releasing her claims against Defendant The Whole Cart, LLC (dba Off the Grid) under the Disability Discrimination Case, which are hereby carved out of the above general release. Plaintiff Reyes-Morales also has a pending workers' compensation case related to her employment with Defendant The Whole Cart, LLC. The Parties agree Plaintiff Reyes-Morales is not releasing any of her workers' compensation claims against Defendant The Whole Cart, LLC, which are also hereby carved out of the above general release.
- b. Magana represents and warrants that he is younger than 40 years of age at the time of executing this Settlement Agreement.
- c. **ADEA Release.** Reyes acknowledges that she is knowingly and voluntarily waiving and releasing any rights she may have under the Age Discrimination in Employment Act of 1967, as amended ("ADEA"), as amended. She also acknowledges that the consideration given for the general release is in addition to anything of value to which she was already entitled. She further acknowledges that she has been advised by this writing, as required by the ADEA, that: (a) her waiver and release do not apply to any rights or claims that may arise after the execution date of this Settlement Agreement; (b) she has been advised hereby that

she has the right to consult with an attorney prior to executing this Settlement Agreement; (c) she has twenty-one (21) days to consider this Settlement Agreement (although she may choose to voluntarily execute this Settlement Agreement earlier); (d) she has seven (7) days following the execution of this Settlement Agreement by the Parties to revoke this Settlement Agreement; and (e) this Settlement Agreement shall not be effective until the date upon which the revocation period has expired, which shall be the eighth day after this Agreement is executed by Reyes, provided that Defendants and Magana have also executed this Settlement Agreement by that date.

2. **Class Members.** In consideration of the Settlement, each Participating Class Member who does not timely request to be excluded from the Settlement releases the Released Parties from the Claims in the Action as set forth in the operative FAC for the entire class period (June 1, 2016 through the date of preliminary approval), specifically: (1) Failure to Pay for All Hours Worked, LC §§ 200, *et seq.* & Wage Orders; (2) Minimum Wages, LC § 1194 & Wage Orders; (3) Overtime Wages, LC § 510 & Wage Orders; (4) Meal Period Violations, LC §§ 226.7, 512 & Wage Orders; (5) Rest Break Violations, LC § 226.7 & Wage Orders; (6) Failure to Indemnify for Necessary Business Expenses, LC § 2802; (7) Wage Statement Violations, LC § 226; (8) Failure to Produce or Permit Inspection of Records, LC §§ 226 & 1198.5; (9) Waiting Time Penalties, LC § 203; (10) Unfair Competition Law, Bus. & Prof. Code §§ 17200, *et seq.*; and (11) Private Attorney General Act (“PAGA”), LC §§ 2698 *et seq.*, predicated on the same or similar facts and/or claims alleged in the Action and/or any PAGA Notice sent to the California Labor & Workforce Development Agency (“LWDA”) by Plaintiffs in or prior to the Action; as well as any claims that could have been pled which relate to such claims or arise from the same or similar facts concerning the Plaintiffs or the putative class, including any claims for unpaid wages (including minimum, regular and overtime wages), untimely wage payments both during and at the end of employment, non-compliant meal periods, non-compliant rest breaks, non-compliant wage statements, failure to reimburse for reasonable business expenses, and claims for interest, penalties (including but not limited to waiting time penalties), or premiums in connection therewith, as well as any claims under the California Labor Code and California Industrial Welfare Commission Wage Orders that were alleged or which could have been alleged under the same or similar facts, allegations and/or claims pleaded in the Action; Any claims for injunctive relief, declaratory relief, restitution, fraudulent business practices or punitive damages alleged or which could have been alleged under the facts, allegations and/or claims pleaded in the complaints filed as part of the Action; Any and all other claims under California or federal law that were or could have been alleged under the same or similar facts, allegations and/or claims pleaded in the Action; And

any related penalties, interest, costs, and/or attorney's fees (collectively referred to as the "Released Claims"). The Released Claims do not include any claims that cannot be released as a matter of law, including claims for workers' compensation.

3. **PAGA Aggrieved Employees.** Upon the Court's approval of the Parties' settlement of Plaintiffs' PAGA Claim, all PAGA Aggrieved Employees shall release all claims pursuant to the PAGA (and any related interest, attorneys' fees, and/or costs) pled or that could have been pled in the Complaint deriving from and/or based on the facts alleged, arising out of or related to services to or work performed for Defendants (or any of them) during the PAGA Period. Settlement Class Members who are also PAGA Aggrieved Employees and who otherwise submit a valid Request for Exclusion from the class action Settlement will nevertheless still be bound by the PAGA release and shall receive a PAGA Aggrieved Employee Payment. The Parties, including the Class Members, further stipulate and agree that even if any Class Member is considered or determined to be an "aggrieved employee" for purposes of the PAGA, said Class Member waives any potential right to recover any penalty allowed by the PAGA related to the Released Claims during the PAGA Period.

H. **Miscellaneous Terms.**

1. **Class Certification.** Plaintiffs shall move for, and Defendants will not oppose, certification of the Class as defined herein, including all Class Members for purposes of settlement only, and for appointment of Plaintiffs as Class Representatives, and Marco A. Palau, Joseph D. Sutton, and Eric S. Trabucco of Advocates for Worker Rights, LLP as Class Counsel. If, however, the Settlement does not become final for any reason, the Parties' Settlement Agreement, including Class Certification, shall become null and void *ab initio* and shall have no bearing on, and shall not be admissible in connection with, whether class certification would be appropriate in any other context in this litigation.
2. **Dismissal of Action with Prejudice.** Upon entry of the Superior Court's Order granting Final Approval of the Settlement, and following 180 days after the effective date of the Settlement, the Plaintiffs shall dismiss the Action with prejudice within thirty (30) days of receiving confirmation from the Settlement Administrator that all payments required pursuant to this Agreement have been made.
3. **No Admission of Liability.** The Parties enter into this Agreement to resolve the dispute that has arisen between them and to avoid the burden, expense and risk of continued litigation. In entering into this Agreement, Defendants do not admit, and specifically deny, violation of any federal, state, or local law; violation of any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations or legal requirements; breach of any contract; violation or breach of any duty; any misrepresentation or deception; or any other unlawful conduct with

respect to its employees or any other person or entity. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by Defendants of any such violation(s) or failure(s) to comply with any applicable law. Defendants have denied and continue to deny each and every material factual allegation and alleged claim asserted in the Action. Nothing in this Settlement Agreement will constitute an admission by Defendants of wrongdoing or liability or of the truth of any factual allegation in the Action. In addition, nothing in this Settlement will constitute an admission by Defendant that the Action is properly brought on a class action or representative basis other than for settlement purposes.

4. **References.** Defendants agree that any request for information or a reference related to Plaintiffs' employment with Defendants will be responded to with only the release of Plaintiffs' dates of employment and position(s) held.
5. **Confidentiality.** Plaintiffs agree to maintain the confidentiality of all confidential and proprietary information of Defendants in accordance with the Employee Non-Disclosure Agreement.
6. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement will constitute the entire agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this or other than the representations, warranties, covenants, and inducements expressly stated in this Agreement.
7. **Attorney Authorization.** Class Counsel and Defendants' Counsel warrant and represent that they are authorized by Plaintiffs and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Superior Court, and in all cases all such documents, supplemental provisions and assistance of the Superior Court will be consistent with this Agreement.
8. **Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their successors-in-interest.
9. **Agreement Binding on Successors.** The Settlement will be binding upon, and inure to the benefit of, the Parties' respective successors,

assigns, heirs, spouses, executors, administrators and legal representatives. The Settlement is not designed to and does not create any third-party beneficiaries either express or implied.

10. **Applicable Law.** All terms and conditions of this Agreement will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
11. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
12. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arm's length negotiations, taking into account all relevant factors, current and potential. In addition, Hon. Bonnie Sabraw (ret.) may, at her discretion, execute a declaration supporting the Settlement and the reasonableness of this Settlement, and the Superior Court may, in its discretion, contact Judge Sabraw to discuss the Settlement and whether or not the Settlement is fair and reasonable.
13. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
14. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by U.S. Mail, addressed as follows:

Class Counsel

Marco A. Palau
Joseph D. Sutton
Eric S. Trabucco
Advocates for Worker Rights LLP
212 9th Street, Suite 314
Oakland, CA 94607
Tel: (510) 269-4200
Fax: (408) 657-4684

Defendants' Counsel

Kyle Schriner
Schriner Law Firm, PC
1936 University Ave., Suite 110
Berkeley, CA 94704
Tel: (415) 321-4924

15. **Spanish Translation.** Class Counsel represent that the Settlement Agreement has been translated into Spanish and been made available to Plaintiffs before they execute this Agreement.
16. **Execution in Counterpart.** This Agreement may be executed in one or

more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile signatures will be accepted if the original signature is provided within seven days. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

17. **Signatories.** It is agreed that because the members of the Class are so numerous, it is impossible or impractical to have each Class Member execute this Settlement Agreement. The Class Notice will advise all Class Members of the binding nature of the release as to the Settlement Class Members, and the release shall have the same force and effect as if this Settlement Agreement were executed by each Settlement Class Member.
18. **Privacy of Documents and Information.** Plaintiffs and Class Counsel agree that they will destroy all confidential documents and information provided to them by Defendants within thirty (30) days of the Effective Date, except for documents that must be saved for malpractice purposes or ethical rules governing attorney conduct in California and the United States. Plaintiffs and Class Counsel further agree that none of the documents and information provided to them by Defendant shall be used for any purpose other than prosecution of the Action or the defense or prosecution of a malpractice action or defense of any state bar complaint.

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IV. EXECUTION BY PARTIES AND COUNSEL

The Parties hereby execute this Agreement.

READ THE ENTIRE AGREEMENT CAREFULLY BEFORE SIGNING

PLAINTIFFS:

Dated: 03/31/2022, 2022



Plaintiff Maria Victoria Reyes-Morales

Dated: 03/31/2022, 2022



Plaintiff Carlos Magana

DEFENDANTS:

THE WHOLE CART, LLC

Dated: March 29, 2022

DocuSigned by:



0F257A32B63E424...

Signature of Authorized Singatory

Matthew Gordon Cohen

Printed Name of Authorized Signatory

OFF THE GRID SERVICES, LLC

Dated: March 29, 2022

DocuSigned by:



0F257A32B63E424...

Signature of Authorized Singatory

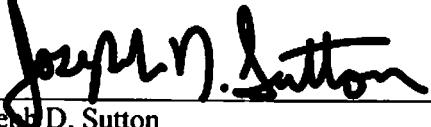
Matthew Gordon Cohen

Printed Name of Authorized Signatory

APPROVED AS TO FORM

ADVOCATES FOR WORKER RIGHTS LLP

Dated: March 29, 2022



Joseph D. Sutton
Class Counsel

SCHRINER LAW FIRM PC

Dated: March 30, 2022



Kyle L. Schriener
Attorneys for Defendants The Whole Cart, LLC and
Off The Grid Services, LLC