

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement ("Agreement") is made by and between Plaintiff Mario Tinaco ("Plaintiff") and Defendant Quik Stop Markets, Inc. ("Defendant"). Plaintiff and Defendant collectively are referred to in this Agreement as the "Parties."

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 *Mario Tinaco v. Quik Stop Markets, Inc.*, filed in the Superior Court of the State of California, County of Alameda, Case No. RG20061119.
- B. "Agreement," "Settlement," or "Settlement Agreement" means this Settlement Agreement.
- C. "Class" means all individuals who are or previously were employed by Defendant Quik Stop Markets, Inc. as hourly, nonexempt employees at any time during the Class Period.
- D. "Class Counsel" means Carolyn H. Cottrell of Schneider Wallace Cottrell Konecky LLP.
- E. "Class Counsel Fees Payment" means the amount of attorneys' fees to be paid to Class Counsel as approved by the Court to compensate them for, respectively, their legal work in connection with the Action, including their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement work, and all post-Settlement compliance procedures.
- F. "Class Counsel Litigation Expenses Payment" means the amount to be paid to Class Counsel as approved by the Court for litigation expenses as billed to their client in connection with this Action.
- G. "Class Data" means, for each Class Member, his or her name; last-known mailing address; Social Security number; his or her employee identification number; his or her number of workweeks employed during the Class Period as a Class Member.
- H. "Class Members" are members of the Class who do not opt out of the Settlement and did not release the claims that are the subject of this Agreement.
- I. "Class Notice" means the Notice of Pendency of Class Action Settlement and Hearing Date for Final Court Approval.
- J. "Class Notice Packet" means the Class Notice to be provided to the Class Members by the Settlement Administrator with Spanish translations of the Class Notice and all other documents included in the Class Notice Packet.

- K. "Class Period" means the period of time from May 14, 2016 to the earlier of the date of Preliminary Approval of Settlement or August 17, 2021.
- L. "Class Representative Service Payment" means the service payment made to Plaintiff as Class Representatives of not more than \$15,000 in order to compensate him for initiating the Action, performing work in support of the Action, undertaking the risk of liability for Defendant's expenses in the event that he was unsuccessful in the prosecution of the Action, and for the general release of all claims by Plaintiff.
- M. "Court" means the Superior Court of California, County of Alameda.
- N. "Defendant" means Quik Stop Markets, Inc.
- O. "Defendant's Counsel" means Michael W. Kelly and Lilah J. Sutphen of Squire Patton Boggs LLP.
- P. "Effective Date" means the date by which all of the following have occurred:
1. This Agreement is approved by the Court; and
 2. The Judgment becomes Final as defined in Section I(R) of this Agreement.
- Q. "Election Not to Participate in Settlement" means the written request by a Class Member to exclude himself or herself from the Settlement submitted in accordance with the instructions in the Class Notice.
- R. "Final" means the last of the following dates, as applicable:
1. If no objection to the Settlement is made, the date the Judgment is entered.
 2. If an objection to the Settlement is made and Judgment is entered, but no appeal is filed, the last date on which a notice of appeal from the Judgment may be filed and none is filed.
 3. If Judgment is entered and a timely appeal from the Judgment is filed, the date the Judgment is affirmed and is no longer subject to appeal.
- S. "Final Approval Hearing" means the hearing to be conducted by the Court to determine whether to approve finally and implement the terms of this Agreement and enter the Judgment.
- T. "Gross Settlement Amount" means Six Million Nine Hundred and Fifty Thousand Dollars (\$6,950,000) to be paid by Defendant as provided by this Agreement. This amount is an all-in amount without any reversion to Defendant and shall be inclusive of all payments contemplated in this resolution in this Agreement, excluding any employer payroll taxes which shall not be paid from the Gross Settlement Amount and shall remain the sole responsibility of Defendant.

- U. "Judgment" means the Final Approval Order and Judgment entered by the Court.
- V. "LWDA" means the California Labor and Workforce Development Agency.
- W. "LWDA Payment" means the portion of the payment from the Net Settlement Amount to be paid to the LWDA under the Settlement Agreement.
- X. "Net Settlement Amount" means the Gross Settlement Amount less the Court-approved amounts attributed to the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment to Plaintiff, LWDA Payment, and Settlement Administration Expenses.
- Y. "Non-Participating Class Member" means a Class Member who submits a valid and timely Election Not to Participate in Settlement.
- Z. "Participating Class Member" means a Class Member who does not submit a valid and timely Election Not to Participate in Settlement.
- AA. "PAGA Period" means the period between March 22, 2019 through the date the Court signs an order granting preliminary approval of this Settlement, or August 17, 2021, whichever occurs earlier.
- BB. "Preliminary Approval of the Settlement" means the Court's Preliminary Approval Order.
- CC. "Released Claims" means all claims that were or could have been asserted based on the facts alleged in the Amended Complaint by Plaintiff and Class Members, including, but not limited to, claims based on Defendant's alleged: (1) failure to provide employees with meal and rest periods; (2) failure to pay minimum wages and overtime; (3) failure to provide accurate wage statements; (4) failure to pay wages during employment at termination; (5) failure to reimburse business expenses; (6) failure to provide seating; (7) civil penalties under the Private Attorneys General Act ("PAGA"); (8) unfair competition; and violations of Labor Code sections 201, 202, 203, 204, 218.5, 221, 226, 226.3, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders, and all subsections. Released Claims expressly exclude all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and claims arising outside of the Class Period. The res judicata effect of the Judgment will be the same as that of the Release.
- DD. "Released Parties" means Defendant, together with all of Defendant's past and present parents, subsidiaries, predecessors, successors, affiliates and related entities, and their respective shareholders, officers, directors, employees, administrators, fiduciaries, trustees, heirs, representatives, principals, accountants, auditors, consultants, insurers and reinsurers, agents, attorneys, and any other entities that may be considered joint employers.

- EE. “Settlement” means the disposition of the Action and all related claims effectuated by this Agreement.
- FF. “Settlement Administrator” means the administrator proposed by the Parties and appointed by the Court to administer the Settlement. The determination of the Settlement Administrator will be by a not to exceed bid and shall be agreed to by all counsel.
- GG. “Settlement Share” means each Participating Class Member’s share of the Net Settlement Amount as provided by this Agreement.

II. RECITALS

- A. On May 14, 2020, Plaintiff Mario Tinaco filed a Class Action Complaint against Defendant in the Superior Court of the State of California, County of Alameda. Plaintiff asserted claims alleging that Defendant violated the California Labor Code and California Business and Professions Code § 17200 *et seq.* by (1) failing to pay Plaintiff and putative Class members minimum wage; (2) failing to pay Plaintiff and putative Class members overtime wages; (3) failing to authorize and permit Plaintiff and putative Class members to take meal and rest breaks to which they are entitled by law and pay premium compensation for missed breaks; (4) failing to compensate Plaintiff and putative Class members for all hours worked; (5) failing to provide Plaintiff and putative Class members accurate, itemized wage statements; and (6) failing to timely pay Plaintiff and putative Class members wages owed upon the termination of employment.
- B. Plaintiff submitted a letter to the LWDA on March 19, 2020 regarding the allegations above and Plaintiff’s intention to file a civil action under the Private Attorneys General Act, Cal. Labor Code §§ 2689 *et seq.* (“PAGA”) unless the LWDA elected to investigate the allegations on its own. The LWDA did not indicate an intention to investigate the allegations on its own within the applicable statutory time period.
- C. On May 26, 2020, following the expiration of the 65-day PAGA notice period, Plaintiff filed an Amended Class Action Complaint to add causes of action arising under the PAGA.
- D. On July 8, 2020, Defendant filed a general denial along with 35 affirmative defenses in response to the Amended Class Action Complaint.
- E. On June 18, 2021, the Parties participated in mediation with Deborah Crandall Saxe, Esq., a respected mediator in employment law. At the mediation, the Parties agreed to resolve all claims asserted and executed a Term Sheet, which serves as the basis for this Agreement.
- F. Prior to the mediation, the Parties conducted significant investigation and discovery of the facts and law related to the allegations in the Class Action Complaint and

Amended Class Action Complaint. Defendant produced hundreds of documents relating to their policies, practices, and procedures regarding paying non-exempt employees for all hours worked, overtime, meal and rest period policies, and payroll and operational policies. As part of Defendant's production, Plaintiff reviewed time records, pay records, and information relating to the size and scope of the Class Members, as well as data permitting Plaintiff to understand the number of workweeks in the Class Period. The Parties agree that the above-described investigation and evaluations, as well as the information exchanged during the settlement negotiations, are more than sufficient to assess the merits of the respect Parties' positions and to compromise the issues on a fair and equitable basis.

- G. **Benefits of Settlement to Class Members.** Plaintiffs and Class Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through class certification, trial and through any possible appeals. Plaintiff and Class Counsel also have taken into account the uncertainty and risk of further litigation, the potential impact of arbitration agreements signed by Plaintiff and Class Members, the potential outcome, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel have conducted extensive settlement negotiations, including a formal mediation on June 18, 2021. Based on the foregoing, Plaintiff and Class Counsel believe the Settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class Members.
- H. **Defendant's Reasons for Settlement.** Defendant recognizes that the defense of this litigation will be protracted and expensive. Substantial amounts of time, energy, and resources of Defendant have been and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiff. Defendant, therefore, has agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Released Claims.
- I. **Defendant's Denial of Wrongdoing.** Defendant generally and specifically denies any and all liability or wrongdoing of any sort with regard to any of the claims alleged, makes no concessions or admissions of liability of any sort, and contends that for any purpose other than settlement, the Class Action is not appropriate for class or representative treatment. Defendant asserts a number of defenses to the claims, and has denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Class Action. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendant or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. Nor should the Agreement be construed as an admission that Plaintiff can serve as an adequate Class Representative. There has been no determination by any court as to the merits of the claims asserted by Plaintiff against Defendant or as to whether a class or classes should be certified, other than for settlement purposes only.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

III. SETTLEMENT TERMS AND CONDITIONS

- A. **Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Gross Settlement Amount that Defendant will pay under this Settlement is Six Million Nine Hundred Fifty Thousand Dollars (\$6,950,000). This amount is all-inclusive of all payments contemplated in this resolution, excluding any employer-side payroll taxes. All of the Gross Settlement Amount will be disbursed pursuant to this Agreement without the need to submit a claim form and none of the Gross Settlement Amount will revert to Defendant. Defendant will separately pay the employer's share of payroll taxes to the Settlement Administrator.
- B. **Payments from the Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments out of the Gross Settlement Amount as finally determined based upon the total workweeks:
1. **To Plaintiff:** In addition to the Settlement Shares, Plaintiff will apply to the Court for an award of not more than \$15,000 as a Class Representative Service Payment. Defendant will not oppose a Class Representative Service Payment in this amount. The Settlement Administrator will pay the Class Representative Service Payment approved by the Court out of the Gross Settlement Amount. If the Court approves a Class Representative Service Payment for less than the amounts set forth above, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. Payroll tax withholding and deductions will not be taken from the Class Representative Service Payment and instead a Form 1099 will be issued to Plaintiff with respect to the payment. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on the Class Representative Service Payment and shall hold Defendant and the Released Parties harmless from any claim or liability for taxes, penalties, or interest arising as a result of the Class Representative Service Payment. To receive the payment, Plaintiff agrees to a California Civil Code § 1542 waiver and a general release of all claims as set forth herein below.
 2. **To Class Counsel:** Class Counsel will separately apply to the Court for the Class Counsel Fees Payment, which will not exceed one-third (1/3) of the Gross Settlement Amount of \$6,950,000 (\$2,316,666.67). Class Counsel will also be allowed to apply for Class Counsel Litigation Expenses Payment in an amount not to exceed actual expenses incurred in bringing this Action as documented in Class Counsel's billing records. Defendant will not oppose these requests for a Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment consistent with this Agreement. The Settlement Administrator will pay the amount approved by the Court for the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment out of the Gross Settlement Amount. If the Court approves a Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment of less than one-third of the Gross Settlement Amount, the remainder will be

retained in the Net Settlement Amount for distribution to Participating Class Members. Payroll tax withholding and deductions, if any, will not be taken from the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment and instead one or more Form 1099s will be issued to Class Counsel with respect to those payments. The payment of the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment shall be made to Schneider Wallace Cottrell Konecky LLP in the amount approved by the Court. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment. The Parties agree that, over and above the Court-approved Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, each of the Parties, including all Class Members, shall bear their own fees and costs, including, but not limited to, those related to the investigation, filing, prosecution, or Settlement of the Class Action; the negotiation, execution, or implementation of this Agreement; and/or the process of obtaining, administering, or challenging a Preliminary Approval Order and/or Final Approval Order and Judgment. In the event that the Court reduces or does not approve the requested Class Counsel Fees Payment or Class Counsel Litigation Expenses Payment, Plaintiff and Class Counsel shall not have the right to modify or revoke the Settlement and the Settlement will remain binding; however, Class Counsel retains the right to appeal an order awarding lesser Class Counsel Fees and Class Counsel Litigation Expenses Payments than requested. Should the Court award Class Counsel Fees and Class Counsel Litigation Expenses Payments in amounts lesser than requested, such an award will not alter Defendant's obligation to tender the Gross Settlement Amount to the Settlement Administrator upon the Effective Date but will only impact the timing and distribution of Settlement Shares to Participating Class Members.

3. **To LWDA.** The Parties will seek approval from the Court for a PAGA payment in the amount of \$100,000 out of the Gross Settlement Amount. \$75,000 of the Gross Settlement Amount shall be allocated to the LWDA as the LWDA's share of the settlement of civil penalties paid under this Agreement pursuant to the PAGA and \$25,000 allocated to the Net Settlement Amount for distribution to the Participating Class Members. If the Court approves a PAGA payment of less than \$100,000, the remainder will be retained in the Net Settlement Amount.
4. **To the Settlement Administrator.** The Settlement Administrator will pay out of the Gross Settlement Amount to itself its reasonable fees and expenses that are documented and approved by the Court ("Settlement Administration Expenses"). The Settlement Administrator's reasonable fees and expenses shall not exceed \$100,000.00.

- C. **Payments from the Net Settlement Amount.** The Net Settlement Amount shall include the following payments after the deductions have been made from the Gross

Settlement Amount as finally determined as described in this Agreement. The Net Settlement Amount shall include the following:

1. **Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay a Settlement Share from the Net Settlement Amount to each Participating Class Member. The submission of a claim form is not required in order to receive a Settlement Share.
2. **Calculation.** The Settlement Share for each Participating Class Member will be calculated by: (a) dividing the Net Settlement Amount by the total number of workweeks worked by all Participating Class Members during the Class Period; and (b) multiplying the result by each individual Participating Class Member's total number of workweeks worked during the Class Period.
3. **Withholding.**
 - a. One-third (1/3) of each Participating Class Member's Settlement Share is in settlement of wage claims (the "Wage Portion"). Accordingly, the Wage Portion is subject to wage withholdings, and shall be reported on IRS Form W-2 and shall be paid for from the Gross Settlement Amount. The Wage Portion shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 forms.
 - b. One-third (1/3) of each Participating Class Member's Settlement Share is in settlement of claims for interest and one-third (1/3) of each Participating Class Member's Settlement Share is in settlement of claims for penalties allegedly due to employees (collectively the "Non-Wage Portion"). The Non-Wage Portion shall not be subject to wage withholdings and shall be reported on IRS Form 1099.
 - c. Payment of all amounts will be made subject to backup withholdings unless a duly executed W-4 form is received from the payee(s). Participating Class Members will be responsible for the payment of any taxes and penalties assessed on their Settlement Shares and will be solely responsible for any penalties or other obligations resulting from their personal tax reporting of their Settlement Shares.
4. **Effect of Non-Participating Class Members.** Non-Participating Class Members will receive no Settlement Share, and their Election Not to Participate in Settlement will reduce neither the Gross Settlement Amount nor the Net Settlement Amount. Their respective Settlement Shares will remain a part of the applicable Net Settlement Amount.

5. **Class Size Modification.** Defendant has represented that the class consists of an estimated total of 1,929 Class Members who collectively worked approximately 54,527 workweeks during the Class Period through May 5, 2021. Defendant will provide a declaration under oath prior to the filing of the Motion for Preliminary Approval as to the exact number of Class Members and workweeks worked by the Class Members during the Class Period.

- D. **Appointment of Settlement Administrator.** In connection with the Motion for Preliminary Approval, the Parties will propose a Settlement Administrator to distribute Settlement Shares and other payments due under the Settlement; and otherwise administer the Settlement. The Settlement Administrator, 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 preparing, printing, and mailing the Class Notice Packet to all Class Members; conducting a National Change of Address search to update Class Member addresses before mailing the Class Notice Packets; re-mailing Class Notice Packets that are returned to the Class Member's new address; setting up a toll-free telephone number to receive calls from Class Members; receiving and reviewing for validity completed Elections Not to Participate in Settlement; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of completed Elections Not to Participate in Settlement; calculating Settlement Shares; issuing the checks to effectuate the payments due under the Settlement; issuing the tax reports required under this Settlement; printing and providing Participating Class Members and Plaintiff W-2s and IRS 1099 forms as required under this Agreement and applicable law; and otherwise administering the Settlement pursuant to this Agreement. The Settlement Administrator will have the authority to resolve all disputes concerning the calculation of a Participating Class Member's Settlement Share, subject to the dollar limitations and calculations set forth in this Agreement.

The Settlement Administrator shall have its own Employer Identification Number under Internal Revenue Service Form W-9 and shall use its own Employer Identification Number in calculating payroll withholdings for taxes and shall transmit the required employers' and employees' share of the withholdings to the appropriate state and federal tax authorities. The Settlement Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

- E. **CIRCULAR 230 DISCLAIMER.** Each Party to this Agreement (for purposes of this section, the "Acknowledging Party" and each Party to this Agreement other than the Acknowledging Party, an "Other Party") acknowledges and agrees that:
 1. No provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisors, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within

the meaning of U.S. Treasury Dept. Circular 230 (31 C.F.R. Part 10, as amended);

2. The Acknowledging Party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any Other Party or any attorney or advisor to any Other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or advisor to any Other Party to avoid any tax penalty that may be imposed on the Acknowledging Party; and
3. No attorney or advisor to any Other Party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

F. Procedure for Approving Settlement.

1. No more than fourteen (14) days after this execution of this Settlement Agreement, the Parties will stipulate to the filing of an Amended Complaint, and Plaintiff will file an Amended Complaint, alleging claims under California Labor Code and relevant Wage Orders for failure to provide suitable seating.
2. **Motion for Preliminary Approval of Settlement by the Court.**
 - a. After Execution of this Settlement Agreement, Plaintiff will file a joint Preliminary Approval Motion (the "Motion for Preliminary Approval") with the Court for an order giving Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice. Any disagreement among the Parties concerning the Class Notice, the proposed orders, or other documents necessary to implement the Settlement will be referred to the mediator, Deborah Crandall Saxe, Esq. for resolution. The Motion for Preliminary Approval shall be filed notwithstanding any new legal developments regarding the claims being litigated in the Action. The Motion for Preliminary Approval shall be filed within sixty (60) days of Execution of this Settlement Agreement.
 - b. At the hearing on the Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the motion, and submit a Preliminary Approval Order.
 - c. Should the Court decline to preliminarily approve material aspects of the Settlement (including but not limited to the scope of release

to be granted by Participating Class Members or the binding effect of the Settlement on Participating Class Members), the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court's approval.

3. **Notice to Class Members.** After the Court enters a Preliminary Approval Order, every Class Member will be sent the Class Notice Packet (which will include the Class Notice completed to reflect the Preliminary Approval Order and showing the Class Member's Settlement Share) as follows:
 - a. No later than 14 days after the Court enters a Preliminary Approval Order, Defendant will provide to the Settlement Administrator an electronic database containing each Class Member's Class Data. If any or all of the Class Data is unavailable to Defendant, Defendant will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon the Class Data prior to when it must be submitted to the Settlement Administrator. This information will otherwise remain confidential and will not be disclosed to anyone, except as required to applicable taxing authorities, in order to carry out the reasonable efforts described in section III.E.2.c., or pursuant to Defendant's express written authorization or by order of the Court. All Class Data will be used for settlement notification and settlement administration and shall not be used for any other purpose by Class Counsel.
 - b. Using best efforts to mail it as soon as possible, and in no event later than 14 days after receiving the Class Data, the Settlement Administrator will mail the Class Notice Packets to all Class Members via first-class regular U.S. Mail using the mailing address information provided by Defendant, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement.
 - c. If a Class Notice Packet is returned because of an incorrect address, the Settlement Administrator will promptly, and not longer than ten (10) days from receipt of the returned packet, search for a more current address for the Class Member and re-mail the Class Notice Packet to the Class Member. The Settlement Administrator will use the Class Data and otherwise work with Defendant 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 Defendant's Counsel of the date and address of each such re-mailing as part of a weekly status report provided to the Parties.

- d. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendant's Counsel of the number of Elections Not to Participate in Settlement it receives (including the numbers of valid and deficient), and number of objections received.
- e. Not later than 10 days before the date by which the Plaintiff files the motion for final approval of the Settlement, the Settlement Administrator will provide the Parties for filing with the Court a declaration of due diligence setting forth its compliance with its obligations under this Agreement and detailing the Elections Not to Participate in Settlement it received (including the numbers of valid and deficient Elections) and objections received. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

4. **Objections to Settlement; Disputes as to Workweeks Allocated to Class Members; Objections to Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; Elections Not to Participate in Settlement.** Participating Class Members may submit objections to the Settlement and objections to Class Counsel Fees Payment and Class Counsel Expenses Payment. Participating Class Members may also submit disputes as to workweeks allocated to them and Elections Not to Participate in Settlement pursuant to the following procedures:

- a. **Objections to Settlement and Disputes as to Workweeks.** The Class Notice will provide that only Participating Class Members who wish to object to the Settlement must submit to the Settlement Administrator with copies to the Parties' Counsel, not later than 45 days after the Settlement Administrator mails the Class Notice Packets, written objections to the Settlement setting forth the grounds for the objection. A Participating Class Member who does not submit a written objection in the manner and by the deadline specified above will be deemed to have waived any objection and will be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. Non-Participating Class Members shall have no ability to comment on or object to the Settlement.

Each Participating Class Member shall also have 45 days from the date of mailing the Class Notice Packet in which to dispute the

number of workweeks the Class Notice allocates to them during the Class Period. Any dispute as to this allocation shall be resolved by the Settlement Administrator. Any Notice of Dispute shall be directed to the Settlement Administrator.

- b. **Election Not to Participate in Settlement.** The Class Notice also will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator not later than 45 days after the Settlement Administrator mails the Class Notice Packets, a signed Election Not to Participate in Settlement. To be valid, an Election Not to Participate must be timely and must comply with the instructions in the Class Notice. If a question is raised about the authenticity of a signed Election Not to Participate in Settlement, the Settlement Administrator will have the right to demand additional proof of the Class Member's identity. A Non-Participating Class Member will not participate in or be bound by the Settlement and the Judgment. Defendant will remain free to contest any claim brought by the Non-Participating Class Member that would have been barred by this Agreement, and nothing in this Agreement will constitute or be construed as a waiver of any defense Defendant has or could assert against such a claim. A Class Member who does not complete and mail a timely Election Not to Participate in Settlement in the manner and by the deadline specified above will automatically become a Participating Class Member and be bound by all terms and conditions of the Settlement, including the Released Class Claims by the Class, if the Settlement is approved by the Court, and by the Judgment, regardless of whether he or she has objected to the Settlement. Persons who submit an Election Not to Participate in Settlement shall not be permitted to file objections to the Settlement or appear at the Final Approval Hearing to voice any objections to the Settlement.

All Participating Class Members who do not submit a valid and timely Election Not to Participate in Settlement will receive a Settlement Share, without the need to file a claim form, and will be bound by all of the terms of the Settlement, including without limitation, the release of the Released Class Claims by the Participating Class Members set forth in this Agreement.

- c. **Report.** Not later than 10 days after the deadline for submission of Elections Not to Participate in Settlement, the Settlement Administrator will provide the Parties with a complete and accurate list of all Participating Class Members and all Non-Participating Class Members.

- 5. **Right of Defendant to Reject Settlement.** If five percent (5%) or more of the Class Members who have not separately settled their Released Class

Claims with Defendant timely submit valid Elections Not to Participate in Settlement, Defendant will have the right, but not the obligation, to void the Settlement and the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount, or any amounts that otherwise would have been owed under this Agreement, except that Defendant will pay the Settlement Administration Expenses incurred as of the date that Defendant exercises the right to void the Settlement. Defendant will notify Class Counsel and the Court whether it is exercising this right to void not later than thirty (30) days after the expiration of the period to submit valid Elections Not to Participate in Settlement.

6. **No Solicitation.** The Parties and their counsel represent that neither the Parties nor their respective counsel have or 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. If a Class Member submits an Election Not to Participate in Settlement, Class Counsel will not solicit, represent, or otherwise encourage that Non-Participating Class Member to participate in separate litigation against Defendant.

7. **Additional Briefing and Final Approval.**

- a. Class Counsel will file with the Court their respective motions for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payments no later than the date the Plaintiff files the Motion for Final Approval, and the application will be scheduled to be heard by the Court at the Final Approval Hearing. As long as the requests for fees and expenses are consistent with the terms of this Agreement, Defendant, Class Counsel and any other counsel for the Parties will not oppose these requests.
- b. Not later than 16 court days before the Final Approval Hearing, the Plaintiff will file with the Court a joint motion for final approval of the Settlement, the PAGA Payment, the service awards and payment of the Settlement Administration Expenses.
- c. If any opposition is filed, then not later than 5 court days before the Final Approval Hearing, both Parties may file a reply in support of the motion for final approval of the Settlement, the PAGA payment, and payment of the Settlement Administration Expenses; and Plaintiff and Class Counsel may also file a reply in support of their requests for the Class Representative Service Payments, the Class Counsel Fees Payment, and the Class Counsel Litigation Expenses Payment. The only basis for an opposition is if Class Counsel requests relief that is inconsistent with the terms of this Agreement.

- d. If the Court does not grant final approval of the Settlement or grants final approval conditioned on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), then the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court's approval. However, an award by the Court of a lesser amount than that sought by Plaintiff and Class Counsel for the PAGA payment, Class Representative Service Payment, the Class Counsel Fees Payment, or the Class Counsel Litigation Expenses Payment, will not constitute a material modification to the Settlement within the meaning of this paragraph.
 - e. Upon final approval of the Settlement by the Court at or after the Final Approval Hearing, the Parties will present a Judgment for the Court's approval. After entry of the Judgment, the Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable law.
8. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, Plaintiff and Participating Class Members who did not timely submit an objection to the Settlement, Defendant, 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, but not limited to, a motion to vacate judgment, a motion for new trial, and any extraordinary writ. The Judgment therefore will become nonappealable 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. If an appeal is taken from the Judgment, the time for consummation of the Settlement (including making payments under the Settlement) will be suspended until such time as the appeal is finally resolved and the Judgment becomes Final.
9. **Vacating, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after a notice of appeal, a petition for review, 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 modification to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members, the definitions of the Class Members, or the definition of the Class Period), and that Court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher Court, then the Parties shall work together in good faith to address any concerns raised by the reviewing Court and propose a revised Settlement for the approval of the Court not later than fourteen days after the reviewing Court's decision vacating, reversing, or materially modifying the Judgment becomes Final. In the event that the

terms or conditions of the Parties' Settlement Agreement are materially modified by any court, any party in its sole discretion to be exercised within fourteen (14) days after such a material modification may declare this Agreement null and void. A vacation, reversal, or modification of the Court's award of the Class Representative Service Payment or the Class Counsel Fees Payment or Class Counsel Litigation Expenses Payment will not constitute a vacation, reversal, or material modification of the Judgment within the meaning of this paragraph, provided that Defendant's obligation to make payments under this Settlement will remain limited by the Gross Settlement Amount.

10. **Timing of Provision of Settlement Shares and Other Payments.** Defendant will fund the Gross Settlement Amount by depositing the money with the Settlement Administrator. Defendant shall fund the Gross Settlement Amount and the amount necessary to pay Defendant's share of payroll taxes within thirty (30) days of the Effective Date. Within fifteen (15) days after Defendant funds the Gross Settlement Amount, the Settlement Administrator will pay to Participating Class Members their Settlement Shares and their share of the PAGA award; to Plaintiff, the Class Representative Service Payment; to Class Counsel, the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment; to the LWDA, the LWDA Payment; and to the Settlement Administrator, the Settlement Administration Expenses.
11. **Uncashed Settlement Share Checks.** A Participating Class Member must cash or deposit his or her Settlement Share check within 180 days after it is mailed to him or her. If a check is returned to the Settlement Administrator, the Settlement Administrator will make all reasonable efforts to re-mail it to the Participating Class Member at his or her correct address. If a Participating Class Member's Settlement Share check is not cashed within 120 days after its last mailing to the Participating Class Member, the Settlement Administrator will send the Participating Class Member a notice informing him or her that unless the check is cashed in the next 60 days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed. If the check remains uncashed by the expiration of the 60-day period after this notice, the funds from such uncashed checks will be redistributed among Class Members who cashed their checks, using the same formula for the initial distribution, provided the total amount of uncashed checks for all Class Members equals or exceeds \$100,000.00. Any uncashed checks from this second distribution will be paid to California Rural Legal Assistance, a 501(c)(3) non-profit organization that provides legal assistance to low-income individuals and communities, as a *cy pres* recipient. If the total amount of uncashed checks from the initial distribution, following final 60-day notice period, is less than \$100,000.00, the funds from such uncashed checks will be paid to California Rural Legal Assistance, a 501(c)(3) non-profit organization that

provides legal assistance to low-income individuals and communities, as a *cy pres* recipient. In the event that funds from uncashed checks are to be distributed to the *cy pres* beneficiary, Class Counsel shall file a report within 30 days after the check-cashing deadline that details the total amount of the Net Settlement Amount that was actually paid to Participating Class Members and the total amount of uncashed checks. At that time, Class Counsel shall also lodge a proposed amended judgment that directs Defendant to pay the funds from uncashed checks, plus any interest that has accrued thereon, to the *cy pres* beneficiary, in compliance with California Code of Civil Procedure Section 384(b).

12. **Final Report by Settlement Administrator to Court.** Within ten days after final disbursement of all funds from the Gross Settlement Amount, the Settlement Administrator will serve on the Parties and file with the Court a declaration providing a final report on the disbursements of all funds from the Gross Settlement Amount.
- G. **Release of Claims.** As of the Effective Date, in exchange for the consideration set forth in this Agreement, Plaintiff and the Participating Class Members release the Released Parties from the Released Claims for the Class Period.
- H. **PAGA Release.** As of the Effective Date and upon Defendant fully funding the Settlement, all eligible and Participating Class Members employed in the PAGA Period, and the State of California, shall be deemed to have fully, finally, and forever released, relinquished and will release the Released Parties from the Released Claims arising under the PAGA during the PAGA Period.
- I. **Plaintiff.** As of the date the Judgment becomes Final, Plaintiff hereby fully and finally releases Defendant and the other Released Parties from any and all claims, losses, debts, charges, damages, demands, obligations, causes of action, lawsuits, liabilities, breaches of duty, misfeasance, malfeasance, promises, controversies, contracts, judgments, awards, penalties, costs, and expenses of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any local, state, or federal statute, rule, regulation, ordinance or common law, including but not limited to those claims raised in the Action and/or that could have been raised in the Action, and those arising from or related to his or her work with Defendant ("Plaintiff's Released Claims"). This release excludes only the release of claims not permitted by law.
- J. **Plaintiff's Waiver of Rights under California Civil Code Section 1542.** Plaintiff expressly waives and relinquishes the provisions, rights and benefits of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by

him or her, would have materially affected his or her settlement with the debtor or released party.

- K. **Class Counsel.** As of the date the Judgment becomes Final, and except as otherwise provided by this Agreement and the Judgment, Class Counsel and any counsel associated with Class Counsel waive any claim to costs and attorneys' fees and expenses against Defendant arising from or related to the Action.
- L. **No Effect on Other Benefits.** The Settlement Shares will not result in any additional benefit payments and shall not be deemed to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g., vacation, holiday pay, retirement plans, 401(k), bonuses, etc.). The Parties agree that any payments paid to Plaintiff and Participating Class Members under the terms of this Agreement do not represent any modification of Plaintiff's or Participating Class Member's previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendant.
- M. **Limitation on Public Statements about Settlement.** Plaintiff and Class Counsel represent that they have not and will not issue any press, publications, or other media releases about the Settlement (including, but not necessarily limited to advertising or marketing materials or on social media) or have any communication with the press or media or anyone else regarding the Settlement. This provision shall not prohibit Class Counsel from communicating with Class Members after preliminary approval is granted for the sole purpose of administering the Settlement. This provision also does not limit Class Counsel from complying with ethical obligations or from posting court-filed documents on their website for viewing by Class Members. This provision also does not prohibit Defendant from making the legally required disclosures of the Settlement necessary to comply with all federal and state laws governing publicly traded companies.
- N. **Miscellaneous Terms.**
1. **No Admission of Liability or Class Certification for Other Purposes.**
 - a. Defendant and the Released Parties deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, have any liability to anyone under the claims asserted in the Action, or that but for the Settlement a class should be certified in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by Defendant or the Released Parties, or an admission by Plaintiff that any of the claims were non-meritorious or any defense asserted by Defendant was meritorious. This Settlement and the fact that Plaintiff and Defendant were willing to settle the Action will have no bearing on, and will not be admissible in

connection with, any litigation (other than solely in connection with effectuating the Settlement pursuant to this Agreement).

- b. Whether or not the Judgment becomes Final, neither the Settlement, this Agreement, any document, statement, proceeding or conduct related to the Settlement or the Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Plaintiff or Defendant or any of the Released Parties, including, but not limited to, evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any of the Released Parties, in any further proceeding in the Action, or any other civil, criminal or administrative action or proceeding except for purposes of effectuating the Settlement pursuant to this Agreement.
 - c. This section and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may be admitted in evidence and otherwise used in any and all proceedings for the limited purpose of enforcing any or all terms of this Agreement or defending any claims released or barred by this Agreement.
2. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits 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 Agreement or its exhibits other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
3. **Attorney Authorization.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiff and Defendant, 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 including any amendments to 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 Mediator, Deborah Crandall Saxe, Esq., for resolution.

4. **No Prior Assignments:** The Parties 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, action, cause of action, or right released and discharged in this Settlement.
5. **No Tax Advice:** Neither Class Counsel nor Defendant's Counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
6. **Modification of Agreement.** Except as set forth in III.1.3 hereinabove 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 representatives.
7. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
8. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California.
9. **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.
10. **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 arms-length negotiations, taking into account all relevant factors, current and potential.
11. **Use and Return of Documents and Data.** All originals, copies, and summaries of documents and data provided to Class Counsel by Defendant in connection with the mediation or other settlement negotiations in this matter may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule. Within ninety days after the Judgment becomes Final, Class Counsel will return or destroy and confirm in writing to Defendant the destruction of all such documents and data.
12. **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.

13. **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 United States mail, addressed as follows:

To Plaintiff:

Carolyn Hunt Cottrell
David C. Leimbach
Schneider Wallace Cottrell Konecky LLP
2000 Powell Street, Suite 1400
Emeryville, CA 94608
Tel: (415) 421-7100
Fax: (415) 421-7105
Email: ccottrell@schneiderwallace.com
dleimbach@schneiderwallace.com

To Defendant:

Michael W. Kelly
Lilah J. Sutphen
Squire Patton Boggs (US) LLP
275 Battery Street, Suite 2600
San Francisco, California 94111
Tel: (415) 421-7100
Fax: (415) 421-7105
E-Mail: michael.kelly@squirepb.com
lilah.sutphen@squirepb.com

14. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts by facsimile, electronically or email which for purposes of this Agreement shall be accepted as an original. 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 signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
15. **Stay of Litigation.** The Parties agree that upon the signing of this Agreement by the Parties hereto the stay of the continuing litigation of this Action shall remain in effect and the time to bring this Action under CCP § 583.310 to trial shall be extended pending the outcome of the settlement process for the time period of the stay.
16. **Continuing Jurisdiction.** The Court shall retain continuing jurisdiction over the Action to ensure the continuing implementation of this Agreement.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: ^{09 / 09 / 2021} _____, 2021

Mario Tinaco



Dated: September 8, 2021

Quik Stop Markets, Inc.

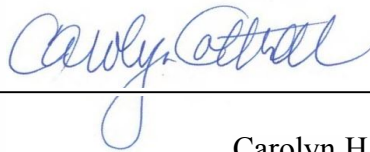


Nicholas Unkovic Senior Vice President, Secretary
and General Counsel

Dated: September 8, 2021

Schneider Wallace Cottrell Konecky LLP

By:



Carolyn H. Cottrell
Attorney for Plaintiff Mario Tinaco

Dated: _____, 2021

Squire Patton Boggs (US) LLP



By:

Michael W. Kelly, Lilah J. Sutphen
Attorneys for Defendant