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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES - CIVIL DIVISION
10

11
12 EDDIE MARTINEZ, on behalf of himself
13 and all others similarly situated,

14 Plaintiffs,

15 v.

16 STINK, LLC, a California Corporation;
17 JEFF BARON, an Individual; and DOES 1
to 100, inclusive,

18 Defendants.
19

CASE NO.: 20STCV10301
[Unlimited Jurisdiction]

*Assigned for all purposes to the
Honorable Ann I. Jones, Dept. SS11*

STIPULATION OF RESOLUTION

Complaint Filed: March 16, 2020
Trial Date: NONE SET

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1 Plaintiff EDDIE MARTINEZ (“Named Plaintiff”) and Defendants STINK, LLC
2 (“Stink”) and JEFF BARON (“Baron”) (collectively, “Defendants”), by and through their
3 respective counsel, hereby stipulate and agree as follows:

4 This Stipulation of Resolution is made by and between the Named Plaintiff, on his own
5 behalf and on behalf of all members of the Settlement Class, as defined below, on the one hand,
6 and Defendants on the other hand (collectively the “Parties”), in the lawsuit entitled *Martinez v.*
7 *Stink, et al.*, filed in Los Angeles County Superior Court, Case No. 20STCV10301. This
8 Stipulation of Resolution resolves all claims that were asserted or could have been asserted
9 against Defendants based on the facts alleged, pertaining to the claims in the Litigation.

10 **I. DEFINITIONS**

11 **A. Administrative Costs.** All administrative costs of settlement, including cost of
12 notice to the Settlement Class, claims administration, and any fees and costs incurred or charged
13 by the Settlement Administrator in connection with the execution of its duties under this
14 Stipulation of Resolution.

15 **B. Agreement.** The terms “Agreement” or “Settlement Agreement” are used
16 synonymously herein to mean this Stipulation of Resolution.

17 **C. Class Counsel.** The term “Class Counsel” as used herein means Harris & Ruble
18 and all the lawyers of that firm, specifically including but not limited to Alan Harris, Esq., David
19 Garrett, Esq. and Lin Zhan, Esq., who are (or were at some time) counsel for and acting on behalf
20 of Named Plaintiff and the Settlement Class. The term Class Counsel shall be used
21 synonymously with the term Plaintiff’s Counsel.

22 **D. Defense Counsel.** The term “Defense Counsel” shall mean and refer to Tiffany
23 Caterina from the firm of Frankfurt Kurnit Klein & Selz.

24 **E. Court.** The term “Court” as used herein means the Superior Court of the State of
25 California for the County of Los Angeles.

26 **F. Final.** The term “Final” means the latest of: (1) the date of final affirmation of
27 the Final Approval from any appeal, the expiration of the time for, or the denial of, a petition to
28 review the Final Approval, or if review is granted, the date of final affirmation of the Final

1 Approval following review pursuant to that grant; or (2) the date of final dismissal of any appeal
2 from the Final Approval or the final dismissal of any proceeding to review the Final Approval,
3 provided that the Final Approval is affirmed and/or not reversed in any part; or (3) if no appeal
4 is filed, the expiration date of the time for the filing or noticing of any appeal from the Court's
5 Final Approval of the Resolution, as determined under Rule 8.104(a)(3) of the California Rules
6 of Court.

7 **G. Date of Final Approval.** The terms "Date of Final Approval" or "Final
8 Approval" as used herein mean the final formal judgment entered by the Court at the Final
9 Fairness and Approval Hearing in accordance with the terms herein, approving this Agreement.

10 **H. Defendants.** The term "Defendants" as used herein means STINK, LLC and
11 JEFF BARON.

12 **I. Eligible Work Weeks.** The term "Eligible Work Week" refers to any workweek
13 during which the class member worked for Defendants during the Settlement Period.

14 **J. Litigation.** The term "Litigation" as used herein means the action entitled
15 *Martinez v. Stink et al.*, filed in Los Angeles County Superior Court, Case No. 20STCV10301.

16 **K. Named Plaintiff.** The term "Named Plaintiff" as used herein means EDDIE
17 MARTINEZ.

18 **L. Net Settlement Amount.** The term "Net Settlement Amount" or "NSA" as used
19 herein means the Settlement Amount minus any award of attorneys' fees and Litigation costs,
20 Administrative Costs, enhancement to the Named Plaintiff, and penalties recoverable pursuant
21 to California's Private Attorneys General Act ("PAGA") (the "PAGA Settlement"), and as
22 provided in Sections VIII, XIII, XIV, XV, and XVI, respectively.

23 **M. Net Settlement Payments.** The term "Net Settlement Payment(s)" shall include
24 payments made to the Settlement Class as part of the Resolution, including wages, penalties and
25 interest.

26 **N. Resolution.** The term "Resolution" as used herein means this Agreement to
27 resolve the Litigation.

28 **O. Settlement Administrator.** The term "Settlement Administrator" as used herein

means Phoenix Class Action Administration, which will be responsible for the administration of the Settlement Amount, as defined below, and all related matters.

P. Settlement Agreement. The terms “Settlement Agreement” or “Agreement” are used synonymously herein to mean this Stipulation of Resolution.

Q. Settlement Amount. The term “Settlement Amount” as used herein means the sum of One Hundred Twenty Five Thousand Dollars (\$125,000.00) (“Gross Settlement”). From the Settlement Amount all: Net Settlement Payments, Court-approved attorneys’ fees and Litigation costs pursuant to Section XIII, Administrative Costs pursuant to Section VIII, enhancement to Named Plaintiff pursuant to Section XIV, statutory penalties, interest, and employment taxes pursuant to Section XV, PAGA Settlement pursuant to Section XVI shall be paid, except as provided herein.

R. Settlement Class. For settlement purposes only, the Parties agree to the certification of a “Settlement Class” pursuant to California *Code of Civil Procedure* § 382 defined as: all persons who are or were engaged by Stink, LLC to render services in the State of California in connection with a music video for Gregory Porter, shot in December 2019 (the “Porter Video”), at any time between December 1, 2019 to January 24, 2020.

S. Settlement Period. The term “Settlement Period” as used herein means the time period from December 1, 2019 to January 24, 2020.

II. BACKGROUND

A. In the Litigation, the Named Plaintiff alleges, *inter alia*, on behalf of himself and all others similarly situated, that Defendants violated California state wage and hour laws, the California *Business and Professions Code* Section 17200 *et seq.*, and PAGA, as a result of Defendants’ California wage and hour policies and practices. Specifically, Named Plaintiff alleges that Defendants failed to pay its employees the applicable minimum wage rates, failed to provide regular, and overtime pay. Named Plaintiff further alleged that the aforementioned resulted in the employees receiving inaccurate wage statements, and the underpayment and late payment of wages to employees upon termination and/or resignation. Finally, Named Plaintiff alleged that Defendants failed to produce employment records.

1 B. Class Counsel conducted informal discovery that yielded information and
2 documentation concerning the claims set forth in the Litigation, such as Defendants' policies and
3 procedures regarding the payment of wages, time keeping policies, including recording hours,
4 issuance of wage statements, and providing all wages at separation, as well as information
5 regarding the number of putative class members, the average number of hours worked, the wage
6 rates in effect, and length of employment for the average putative class member.

7 C. Named Plaintiff and Class Counsel have engaged in good faith, arms-length
8 negotiations with Defendants concerning possible resolution of the claims asserted in the
9 Litigation. The Parties participated in a mediation before Lisa Klerman. The Parties accepted
10 Lisa Klerman's mediator's proposal following mediation and months of continuing negotiations,
11 resulting in a tentative settlement of the Litigation, subject to the approval of the Court. The
12 Parties have now entered into this formalized Settlement Agreement for submission to the Court
13 for preliminary and Final Approval.

14 D. Class Counsel have conducted an investigation of the law and facts relating to the
15 claims asserted in the Litigation and have concluded, taking into account the sharply contested
16 issues involved, the defenses asserted by Defendants, the expense and time necessary to pursue
17 the Litigation through trial and any appeals, the risks and costs of further prosecution of the
18 Litigation, the risk of an adverse outcome, the uncertainties of complex litigation, and the
19 substantial benefits to be received by Named Plaintiff and the members of the Settlement Class
20 pursuant to this Agreement, that a settlement with Defendants on the terms and conditions set
21 forth herein is fair, reasonable, adequate, and in the best interests of the Settlement Class. Named
22 Plaintiff, on his own behalf and on behalf of the Settlement Class, has agreed to settle the
23 Litigation with Defendants on the terms set forth herein.

24 E. Defendants have concluded that, because of the substantial expense of defending
25 against the Litigation, the length of time necessary to resolve the issues presented herein, the
26 inconvenience involved, and the concomitant disruption to their business operations, it is in
27 Defendants' best interests to accept the terms of this Agreement. Defendants deny each of the
28 allegations and claims asserted against them in the Litigation. However, Defendants nevertheless

1 desire to settle the Litigation for the purpose of avoiding the burden, expense and uncertainty of
2 continuing litigation and for the purpose of putting to rest the controversies engendered by the
3 Litigation.

4 F. This Agreement is intended to and does effectuate the full, final and complete
5 resolution of all allegations and claims that were asserted, or could have been asserted, in the
6 Litigation by Named Plaintiff and members of the Settlement Class as set forth in Sections I.R
7 & II.A.

8 **III. JURISDICTION**

9 The Court has jurisdiction over the Parties and the subject matter of this Litigation. The
10 Litigation includes claims that, while Defendants deny them in their entirety, would, if proven,
11 authorize the Court to grant relief pursuant to the applicable statutes. After the Court has granted
12 Final Approval of the Resolution and after the Court has ordered the entry of Judgment, pursuant
13 to California *Code of Civil Procedure* Section 664.6 the Court shall retain jurisdiction of this
14 action solely for the purpose of interpreting, implementing, and enforcing this Resolution
15 consistent with the terms set forth herein.

16 **IV. STIPULATION OF CLASS CERTIFICATION**

17 The Parties stipulate to the certification of this Settlement Class for purposes of
18 Resolution only. This Stipulation is contingent upon the Preliminary and Final Approval and
19 certification of the Settlement Class only for purposes of Resolution. Should the Resolution not
20 become final, for whatever reason, the fact that the Parties were willing to stipulate provisionally
21 to class certification as part of the Resolution shall have no bearing on, and shall not be admissible
22 in connection with, the issue of whether a class should be certified in a non-settlement context in
23 the Litigation. Defendants expressly reserve the right to oppose class certification and/or
24 proactively move to deny certification should this Resolution be modified or reversed on appeal
25 or otherwise not become final.

26 **V. MOTION FOR PRELIMINARY APPROVAL AND FOR LEAVE TO** 27 **FILE FIRST AMENDED COMPLAINT; DEFENDANTS' ANSWER**

28 Named Plaintiff will bring a motion before the Court for an order preliminarily approving

1 the Resolution including a Court-approved Notice of Proposed Class Action Resolution, to be
2 mutually-agreed upon by the Parties, and including certification of the Settlement Class for
3 settlement purposes only. The Parties stipulate to the filing of an amended complaint or
4 complaints as necessary to facilitate the approval process. The Parties stipulate that Defendant's
5 previously-filed answer will be deemed to be responsive to any amended complaint.

6 The date that the Court grants Preliminary Approval of this Agreement will be the
7 "Preliminary Approval Date." Class Counsel will prepare the Motion for Preliminary Approval;
8 on the same date on which it is filed with the Court, Class Counsel shall concurrently submit it
9 to the Labor & Workforce Development Agency in compliance with Labor Code § 2698 *et seq.*,
10 the Private Attorneys General Act ("PAGA").

11 **VI. STATEMENT OF NO ADMISSION**

12 A. Defendants deny liability to Named Plaintiff and to the Settlement Class upon any
13 claim or cause of action. This Agreement does not constitute, and is not intended to constitute,
14 an admission by Defendants as to the merits, validity, or accuracy of any of the allegations or
15 claims made against them in the Litigation.

16 B. Nothing in this Agreement, nor any action taken in implementation thereof, nor
17 any statements, discussions or communications, nor any materials prepared, exchanged, issued
18 or used during the course of the negotiations leading to this Agreement or the Resolution, is
19 intended by the Parties to constitute, nor will any of the foregoing constitute, be introduced, be
20 used or be admissible in any way in this case or any other judicial, arbitral, administrative,
21 investigative or other forum or proceeding as evidence of any violation of any federal, state, or
22 local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law
23 or in equity. The Parties themselves agree not to introduce, use, or admit this Agreement, directly
24 or indirectly, in this case or any other judicial, arbitral, administrative, investigative or other
25 forum or proceeding, as purported evidence of any violation of any federal, state, or local law,
26 statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in
27 equity, or for any other purpose. Notwithstanding the foregoing, this Agreement may be used in
28 any proceeding before the Court that has as its purpose the interpretation, implementation, or

1 enforcement of this Agreement or any orders or judgments of the Court entered in connection
2 with the Resolution.

3 C. None of the documents produced or created by Defendants in connection with the
4 claims procedures or claims resolution procedures constitute, and they are not intended to
5 constitute, an admission by Defendants of any violation of any federal, state, or local law, statute,
6 ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.

7 D. The Parties agree that class certification pursuant to California *Code of Civil*
8 *Procedure* Section 382 under the terms of this Agreement is for settlement purposes only.
9 Nothing in this Agreement will be construed as an admission or acknowledgement of any kind
10 that any class should be certified or given collective treatment in the Litigation or in any other
11 action or proceeding. Further, neither this Agreement nor the Court's actions with regard to this
12 Agreement will be admissible in any court or other tribunal regarding the propriety of class
13 certification or collective treatment. In the event that this Agreement is not approved by the
14 Court or any appellate court, is terminated, or otherwise fails to be enforceable, Named Plaintiff
15 will not be deemed to have waived, limited or affected in any way any claims, rights or remedies
16 in the Litigation, and Defendants will not be deemed to have waived, limited, or affected in any
17 way any of their objections or defenses in the Litigation, including their right to make use of any
18 affirmative defenses.

19 **VII. WAIVER, RELEASE AND CONFIDENTIALITY**

20 **A. Release as to All Settlement Class Members.**

21 Upon the Date of Final Approval, for the Settlement Period, Named Plaintiff and all
22 members of the Settlement Class, except those that make a valid and timely request to be
23 excluded from the Settlement Class and Resolution, waive, release, discharge, and promise never
24 to assert in any forum any and all claims against : (i) Defendants and each and all of Defendants'
25 respective past or present spouses, heir, assigns, partners, parents, subsidiaries, affiliates,
26 licensors, assignors, licensees, assignees distributors, exhibitors, as well as any person or entity
27 who or which collaborated on or contributed to the creation, authorship or production of the
28 Porter Video, including, but not limited to, Stink Digital USA, LLC, Stink US Holding, Inc.,

1 Universal Music Group, Blue Note Records, and Gregory Porter; (ii) each and all of the
2 predecessor or successor entities of any of those entities identified in subparagraph (i); (iii) any
3 other individuals or entities of any kind, including but not limited to any payroll companies,
4 which have been or could be alleged to be in any manner responsible (whether on an alter ego,
5 joint employer, integrated enterprise, or any other theory) for any actual or alleged violations
6 described in the Litigation; and (iv) all past and present directors, officers, principals, investors
7 representatives, insurers, agents, shareholders, partners, members, managers, lawyers, and
8 employees of any of the individuals or entities identified in subparagraphs (i), (ii), or (iii),
9 including but not limited to New Caps, LLC, and any and all other entities with whom they have
10 been, are now, or may hereafter be affiliated (hereinafter "Releasees"), from any and all claims,
11 demands, rights, liabilities fees, costs, and causes of action of every nature, including, but not
12 limited to, violations of any state or federal statutes, rules, regulations, orders, or principles of
13 common law, that were alleged in the Litigation or which could have been alleged in the
14 Litigation, whether known or unknown, suspected or unsuspected, asserted or unasserted, latent
15 or patent, regardless of legal theory or type or amount of relief or damages claimed, which any
16 Named Plaintiff and all members of the Settlement Class now has, at any time ever had, or
17 hereafter may have against any Releasee, and which in any way arises out of, is based on, or
18 relates in any way to: (i) the Porter Video, including, but not limited to, the facts asserted in the
19 Litigation, including but not limited to: 1) Failure to Pay Wages and Overtime Compensation; 2)
20 Failure to Pay Minimum Wages; 3) Failure to Timely Pay Wages Due At Termination and/or
21 Resignation; 4) Failure to Provide Accurate Itemized Employee Wage Statements; 5) Violation
22 of Business & Professions Code § 17200, *et seq.*; 6) Failure to Provide Records including
23 personnel or wage records; 7) Penalties Pursuant to PAGA (Labor Code § 2698, *et seq.*); and 8)
24 any other applicable provisions of state or federal law, including the applicable IWC wage orders,
25 based on the facts alleged in the Litigation; (ii) attorneys' fees due or allegedly due under Labor
26 Code Section 218.5 or any other statute, regulation, or contractual provision; (iii) other claims
27 that Named Plaintiff or member of the Settlement Class has arising out of, based upon, or relating
28 to the Porter Video, including, but not limited to, the allegations contained in the Litigation; and

(iv) penalties or other payments which in any way arise out of, are based on, or relate in any way to any of the foregoing, including but not limited to penalties, premiums, or payments under Labor Code Sections 203, 210, 226(e), 226.3, 226.7, 226.8, 558, 1174.5, 2802, the federal Fair Labor Standards Act, any California Industrial Commission Wage Order, and/or any other statute or regulation regarding the payment of wages (hereinafter the "Settled Claims"). Without in any way limiting the foregoing, Settled Claims shall include all claims, liabilities, rights, demands, suits, matters, obligations, liens, damages, losses, costs, expenses, debts, actions, and causes of action under statutes and regulations set forth in this Section VII(A), whether enforced directly or pursuant to Labor Code Section 2699, Business and Professions Code Section 17200, et seq., or any other mechanism.

To the fullest extent permitted by law, Named Plaintiff waives and relinquishes, and all members of the Settlement Class shall be deemed to have, and by operation of this Settlement Agreement shall have waived and relinquished, any and all rights or benefits under California Civil Code Section 1542, or any comparable provision of state or federal law. California Civil Code Section 1542 provides:

"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."

Named Plaintiff acknowledges that he is aware that he or his attorneys may hereafter discover claims or facts in addition to or different from those now known or believed to be true with respect to the subject matter of this Agreement and/or the Settled Claims. Named Plaintiff acknowledges that he intends to and will fully, finally, and forever settle and release any and all claims, including but not limited to the Settled Claims, whether known or unknown, suspected or unsuspected, which now exist, hereinafter may exist, or heretofore may have existed. In furtherance of this intention, the releases contained in this Agreement shall be and remain in effect as full and complete releases by Named Plaintiff without regard to the subsequent

1 discovery or existence of such different or additional claims or facts.

2 Without conceding that any release of claims under the Fair Labor Standards Act
3 (“FLSA”) requires any affirmative conduct or opt-in by the members of the Settlement Class, the
4 Parties agree that the cashing of checks by the members of the Settlement Class shall be deemed
5 an opt-in to an FLSA collective action, the settlement of which includes the FLSA releases
6 specified in this Section VII(A). However, nothing in this Section or elsewhere in this Agreement
7 shall preclude members of the Settlement Class from being bound by the releases in this
8 Agreement whether or not they receive or cash their checks.

9 **B. Publicity.**

10 Named Plaintiff and his counsel agree that they have not and will not publish the
11 Litigation or the Resolution. Named Plaintiff will state that “the case was resolved
12 confidentially” in response to any inquiries. Class Counsel shall not report the Litigation or the
13 Resolution in any medium or in any publication, shall not post or report anything regarding the
14 claims of Named Plaintiff or the Settlement Class or the Resolution on their website, and shall
15 not contact any reporters or media regarding the Resolution. Despite this provision, Class
16 Counsel can discuss the Resolution with the court for purposes of obtaining Preliminary and
17 Final Approval and with Named Plaintiff.

18 **VIII. SETTLEMENT ADMINISTRATOR**

19 Named Plaintiff and Defendants, through their respective counsel, have selected Phoenix
20 Class Action Administration as the Settlement Administrator to administer the Resolution, which
21 includes but is not limited to distributing and responding to inquiries about the Notice of
22 Proposed Class Action Resolution and Workweek Dispute Form, determining the validity of any
23 disputes and opt-outs, and calculating all amounts to be paid from the Net Settlement Amount.
24 Charges and expenses of the Settlement Administrator, estimated to be \$5,000.00, will be paid
25 from the Settlement Amount. Any charges and expenses of the Settlement Administrator greater
26 than the allocated \$5,000.00 will come from the Settlement Amount. If the actual Settlement
27 Administrator fees are less than the Parties’ estimation, the difference between the actual and
28 estimated Settlement Administrator fees will revert to the participating Settlement Class

1 members.

2 **IX. NOTICE, OBJECTIONS AND EXCLUSION RIGHTS**

3 Named Plaintiff and Defendants, through their respective attorneys, have jointly prepared
4 a Notice of Class Action and Proposed Resolution (the “Notice”) and a Workweek Dispute Form,
5 which in substance will be provided to the members of the Settlement Class as follows:

6 As soon as practicable following Preliminary Approval of the Resolution, but no later
7 than ten (10) calendar days after the Court’s Preliminary Approval order, Defendants will provide
8 to the Settlement Administrator the following information about each Settlement Class member
9 (“Class List”): (1) name; (2) last known home address; (3) number of Eligible Workweeks and
10 if applicable number of Eligible Pay Periods as a class member during the Settlement Period; and
11 (4) social security number. Defendants further agree to consult with the Settlement Administrator
12 prior to the production date to ensure that the format will be acceptable to the Settlement
13 Administrator.

14 The Settlement Administrator shall run all the addresses provided through the United
15 States Postal Service NCOA database (which provides updated addresses for any individual who
16 has moved in the previous four years who has notified the U.S. Postal Service of a forwarding
17 address) to obtain current address information, and shall mail the Notice and Workweek Dispute
18 Form to the members of the Settlement Class via first-class regular U.S. Mail using the most
19 current mailing address information available within ten (10) calendar days of the receipt of the
20 Class List from Defendants. The Notice shall provide the members of the Settlement Class forty-
21 five (45) days’ notice of all applicable dates and deadlines.

22 The Notice will also include information regarding the nature of the Litigation; a
23 summary of the terms of the Resolution; the definition of the Settlement Class; a statement that
24 the Court has preliminarily approved the Resolution; the nature and scope of the claims being
25 released; the procedure and time period for objecting to the Resolution, the date and location of
26 the Final Approval hearing; information regarding the opt-out procedure; Defendants’
27 calculation of the number of eligible workweeks or pay periods (if applicable) that each
28 Settlement Class member has worked as an employee in California at any time during the

1 Settlement Period, and the average potential recovery for each proposed Settlement Class
2 member. The Notice shall enclose the Dispute Form for Settlement Class members.

3 For each Settlement Class member, the Dispute Form will identify the number of Eligible
4 Workweeks that s/he was employed and inform the employee of their right to dispute this number
5 by completing and returning the form within forty-five (45) days of the postmark date of the
6 Workweek Dispute Form. A Settlement Class member's receipt of his or her share of the Net
7 Settlement Payments is not conditional on the submission of the Workweek Dispute Form.
8 Absent the receipt of a Workweek Dispute Form, the number of workweeks identified in the
9 Workweek Dispute Form shall be deemed accurate. The resolution of any disputes concerning
10 the number of Eligible Workweeks is discussed in Section X, below.

11 If a Notice is returned from the initial notice mailing, the Settlement Administrator will
12 submit the applicable and available information, including name, Social Security number, and
13 original mailing address, to a company that specializes in address skip tracing in an attempt to
14 locate a more current address. If the Settlement Administrator is successful in locating a new
15 address, it will re-mail the Notice to the Settlement Class member. Further, any Notices returned
16 with a forwarding address to the Settlement Administrator, as non-deliverable before the deadline
17 date, shall be sent to the forwarding address affixed thereto.

18 The Settlement Administrator will mail a reminder post-card to those Settlement Class
19 members who have not responded to the Notice fourteen (14) days before the expiration of the
20 claim period encouraging Settlement Class members to respond before the deadline.

21 Should any member of the Settlement Class timely submit a Workweek Dispute Form
22 with a deficiency, the Settlement Administrator shall, within five (5) calendar days of receipt by
23 the Settlement Administrator of each timely submitted Workweek Dispute Form, send a
24 deficiency notice. The deficiency notice will provide the member of the Settlement Class no
25 more than fourteen (14) days from the mailing of the deficiency notice to postmark a written
26 response to cure all deficiencies. The failure of a member of Settlement Class to timely submit
27 a Dispute or timely respond to a notice of deficiency shall invalidate the dispute unless all Parties'
28 counsel agree to allow the dispute.

1 No later than twenty-five (25) days before the Final Approval Hearing, the Settlement
2 Administrator shall provide counsel for Defendants and Class Counsel with a declaration
3 attesting to the completion of the Notice process, including the number of attempts to obtain valid
4 mailing addresses for re-sending of any returned Notices, as well as the number of valid
5 Workweek Dispute Forms, opt-outs and deficiencies that the Settlement Administrator received.

6 **B. Objections.**

7 In order for any Settlement Class member to object to this Resolution, or any term of it,
8 the person making the objection must not submit a request for exclusion (i.e., must not opt out).
9 A Settlement Class member making an objection, personally or through an attorney, must submit
10 his or her objection to the Settlement Administrator by mail postmarked by no later than forty-
11 five (45) days after the Notice of Proposed Class Action Resolution was initially mailed to the
12 Settlement Class members. Any Settlement Class Member may appear personally or through an
13 attorney, at his or her own expense, at the Final Approval hearing to present his or her objection
14 directly to the Court. However, any attorney who will represent an individual objecting to this
15 Resolution must file a notice of appearance with the Court and serve Class Counsel and Defense
16 Counsel no later than forty-five (45) days after the Notice of Proposed Class Action Resolution
17 was initially mailed to the Settlement Class members. If a Settlement Class member objects to
18 the Resolution, the Settlement Class member will remain a member of the Settlement Class and
19 if the Court approves this Agreement, the Settlement Class member will be bound by the terms
20 of the Resolution and Final Approval in the same way and to the same extent as a Settlement
21 Class member who does not object. The date of mailing of the Notice to the objecting Settlement
22 Class member shall be conclusively determined according to the records of the Settlement
23 Administrator. The Court retains final authority with respect to the consideration and
24 admissibility of any Settlement Class member objections. Any Settlement Class member who
25 submits an objection may also participate in the settlement.

26 Named Plaintiff waives any right to object to the Resolution, and hereby endorses the
27 Resolution as fair, reasonable and adequate and in the best interests of the Settlement Class.

28 //

1 **C. Opportunity to be Excluded.**

2 In order for any Settlement Class member to validly exclude himself or herself from the
3 Settlement Class and the Resolution (i.e., to validly opt out), a written request for exclusion
4 (“Request to be Excluded”) must be signed by the Settlement Class member or his or her
5 authorized representative and must be sent to the Settlement Administrator, postmarked by no
6 later than forty-five (45) days after the date the Settlement Administrator initially mails the
7 Notice to the Settlement Class members. The Notice shall contain instructions on how to opt
8 out.

9 The date of the initial mailing of the Notice and the date the signed Request to be
10 Excluded was postmarked, shall be conclusively determined according to the records of the
11 Settlement Administrator. Any Settlement Class member who timely and validly submits a
12 Request to be Excluded from the Settlement Class and the Resolution will not be entitled to any
13 portion of the Net Settlement Payments, will not be bound by the terms and conditions of the
14 Resolution, and will not have any right to object, appeal, or comment thereon.

15 Any member of the Settlement Class who does not timely file and mail a Request to be
16 Excluded from the Settlement Class will be deemed included in the Settlement Class in
17 accordance with this Resolution. Named Plaintiff waives any right to be excluded from the
18 Settlement Class.

19 **D. Cooperation.**

20 The Parties and their respective counsel agree not to encourage members of the
21 Settlement Class to refrain from participating in the Resolution, to opt out of the Resolution, or
22 to object to the Resolution, directly or indirectly, through any means. However, if a Settlement
23 Class member contacts Class Counsel, Class Counsel may discuss the terms of the Resolution
24 and the Settlement Class member’s options.

25 **X. DISPUTE PROCEDURE**

26 Named Plaintiff and Defendants have agreed upon the following procedure to resolve all
27 disputes of the Settlement Class during the Settlement Period.

28 //

A. Workweek and Pay Period Information.

In the Dispute Form, each member of the Settlement Class will receive a calculation of the total number of his or her Eligible Work Weeks.

If a member of Settlement Class does not dispute the number of Eligible Workweeks set forth in the Dispute Form, such person need not take further action to participate in the Resolution. If the member of the Settlement Class disputes the number of Eligible Workweeks set forth in the Dispute Form, such person must follow the directions in the Dispute Form and in the Notice, including preparing a statement setting forth the number of Eligible Workweeks or Eligible Pay Periods that such person believes in good faith is correct and stating that the member of the Settlement Class authorizes the Settlement Administrator to review the Settlement Class member's personnel/payroll records to determine such information and attaching any relevant documentation in support thereof. The member of the Settlement Class must mail the signed and completed statement no later than forty-five (45) days after the date of the mailing of the Dispute Form, or the number of eligible workweeks set forth in the Dispute Form will govern the Net Settlement Payments to the member of the Settlement Class.

Upon timely receipt of any such challenge, the Settlement Administrator, in consultation with counsel for Defendants, will review the pertinent payroll records showing the dates the Settlement Class member was employed and the pertinent leave(s) taken, which records Defendants agree to make available to the Settlement Administrator.

After consulting with counsel for Defendants, the Settlement Administrator shall compute the number of Eligible Workweeks to be used in computing the Settlement Class member's share of the Net Settlement Amount. In the event there is a disparity between the dates a Settlement Class member claims he or she worked during the Settlement Period and the dates indicated by Defendants' records, Defendants' records will control unless inconsistent with paycheck stub(s) (or bona fide copies thereof) provided by the Settlement Class member, in which case the paycheck stub(s) will control. The Settlement Administrator's decision as to the total number of Eligible Workweeks shall be final and non-appealable. The Settlement Administrator shall send written notice of the decision on any such claim to the Settlement Class member and counsel for

Defendants within ten (10) calendar days of receipt of the dispute.

XI. COMPUTATION AND DISTRIBUTION OF PAYMENTS

A. Distribution Formula.

Members of the Settlement Class not opting out will receive a lump sum payment as good and valuable consideration for the waiver and release of claims set forth in Section VII(A), above, in an amount determined by the Settlement Administrator as follows:

First, the administrator determines the NSA. Second, the NSA is divided by the total number of Eligible Workweeks for all Settlement Class members to compute the Workweek Amount. Third, the Class Administrator multiplies the Workweek Amount by the number of Eligible Workweeks worked by the individual class member as determined by the Settlement Administrator in accordance with Section X, above.

B. Funding of Resolution.

Within twenty-one (21) calendar days following the date on which the Court grants Final Approval of the Resolution and a determination of the pro-rata share of the settlement amount to which each member of the Settlement Class is entitled, Defendants will deposit the Settlement Amount into an interest-bearing trust account for the benefit of the participating Settlement Class members and Class Counsel, through the Settlement Administrator. At no time prior to Final Approval of the Resolution shall Defendants be required to escrow any portion of the Settlement Amount.

C. Time for Distribution.

The Settlement Administrator shall cause the Net Settlement Payments, the Court approved attorney's fees and Litigation costs, Court approved enhancement to Named Plaintiff, and PAGA Settlement to be mailed within thirty (30) calendar days following the Date of Final Approval.

If a check is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace search and, if another address is identified, shall mail the check to the newly identified address. Settlement checks will specifically indicate that they are void if not negotiated within one

1 hundred eighty (180) days of their issuance. Any settlement checks that remain uncashed one
2 hundred eighty (180) or more calendar days after issuance by the Settlement Administrator shall
3 be voided. The Settlement Administrator will remit the entire amount of each Class Member's
4 uncashed Net Settlement Payment to the California State Controller's Office in the name of the
5 Class Member to whom the uncashed Net Settlement Payment check was addressed.

6 **XII. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN**

7 The amounts paid under this Agreement do not represent a modification of any previously
8 credited hours of service under any employee benefit plan, policy or bonus program sponsored
9 by Defendants. Such amounts will not form the basis for additional contributions to, benefits
10 under, or any other monetary entitlement under, benefit plans (self-insured or not) sponsored by
11 Defendants, policies or bonus programs. Any payments made under the terms of this Resolution
12 shall not be applied retroactively, currently or on a going forward basis as salary, earnings, wages,
13 or any other form of compensation for the purposes of Defendants' benefit plan, policy or bonus
14 program. Defendants retain the right to modify the language of their benefit plans, policies and
15 bonus programs to effect this intent and to make clear that any amounts paid pursuant to this
16 Resolution are not for "hours worked," "hours paid," "hours of service," or any similar measuring
17 term as defined by applicable plans, policies and bonus programs for purpose of eligibility,
18 vesting, benefit accrual or any other purpose, and that additional contributions or benefits are not
19 required by this Resolution.

20 **XIII. CLASS COUNSEL ATTORNEYS' FEES AND LITIGATION COSTS**

21 Defendants shall not oppose an application by Class Counsel for, and Class Counsel shall
22 not seek or receive an amount in excess of, \$41,666.67, which represents 33 1/3% of the
23 Settlement Amount for all past and future attorneys' fees necessary to prosecute, settle and
24 administer the Litigation and this Resolution. Additionally, Defendants shall not oppose an
25 application by Class Counsel for, and Class Counsel shall not seek or receive an amount in excess
26 of, \$12,500.00, which represents all past and future Litigation costs and expenses necessary to
27 prosecute, settle and administer the Litigation and this Resolution. Any attorneys' fees or
28 Litigation costs awarded to Class Counsel by the Court shall be deducted from the Settlement

Amount for the purpose of determining the Net Settlement Amount. The “future” aspect of these amounts include, without limitation, all time and expenses expended by Class Counsel in defending the Resolution and securing Preliminary and Final Approval (including any appeals therein). There will be no additional charge of any kind to either the members of the Settlement Class or request for additional consideration from Defendants for such work. This amount shall include all attorneys’ fees, Litigation costs and expenses for which Named Plaintiff and Class Counsel could claim under any legal theory whatsoever. Within thirty (30) calendar days following the Date of Final Approval, the Settlement Administrator shall disburse payment from the Settlement Amount for the amount of attorneys’ fees and Litigation costs approved by the Court to Class Counsel. Should the Court approve a lesser percentage or amount of fees and/or Litigation costs than the amount that Class Counsel ultimately seeks, then the unapproved portion or portions shall revert into the Net Settlement Amount to be distributed between the participating Settlement Class members on a pro-rata basis.

XIV. ENHANCEMENT TO NAMED PLAINTIFF

Defendants shall not oppose an application by Named Plaintiff and Named Plaintiff shall not seek or receive an amount in excess of \$5,000.00 for Named Plaintiff’s participation in and assistance with the Litigation. Any enhancement awarded to Named Plaintiff by the Court shall be deducted from the Settlement Amount for the purpose of determining the Net Settlement Amount and shall be reported on IRS Form 1099. If the Court approves an enhancement of less than a total amount of \$5,000.00 to Named Plaintiff, then the unapproved portion or portions shall revert into the Net Settlement Amount to be distributed between the participating Settlement Class members on a pro-rata basis.

XV. TAXATION AND ALLOCATION

The Parties agree that, based upon an analysis of the facts and law relating to the Litigation, all Net Settlement Payments to all members of the Settlement Class will be treated as penalties and interest and shall not be subject to employment taxes. The Claims Administrator will distribute Forms 1099 at times and in the manner required by the Internal Revenue Code of 1986 (the “Code”) and consistent with this Agreement. If the Code, the regulations promulgated

thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes set forth in this Section may be modified in a manner to comply with any such changes.

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 ADVISERS, 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 UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR 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 ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER 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.

XVI. PRIVATE ATTORNEYS GENERAL ACT ALLOCATION

In order to implement the terms of this Resolution and to settle claims alleged under the Private Attorneys General Act, California *Labor Code* section 2698 *et seq.*, the Parties agree to allocate One Thousand Dollars and Zero Cents (\$1,000.00) of the PAGA claim from which \$750 will be paid as penalties to the LWDA and \$250 will be allocated to the NSA. Within thirty (30) calendar days following the Date of Final Approval, the Settlement Administrator shall disburse the \$750 penalty portion to the California Labor & Workforce Development Agency (“LWDA”) and will provide notice to the LWDA of the fact that the settlement has been approved by the Court along with a copy of the Settlement Agreement and the Court order confirming the

1 approval of the settlement through the appropriate LWDA/DIR website.

2 **XVII. COURT APPROVAL**

3 This Agreement and the Resolution is contingent upon Final Approval by the Court and
4 the entry of judgment. Named Plaintiff and Defendants agree to take all steps as may be
5 reasonably necessary to secure both Preliminary Approval and Final Approval of the Resolution,
6 to the extent not inconsistent with the terms of this Agreement, and will not take any action
7 adverse to each other in obtaining court approval, and, if necessary, appellate approval, of the
8 Resolution in all respects. Named Plaintiff and Defendants expressly agree that they will not file
9 any objection to the terms of the Resolution or assist or encourage any person or entity to file
10 any such objection.

11 **XVIII. COURT APPROVAL**

12 **A. Termination If Court Approval Is Not Obtained.**

13 This Agreement is expressly conditioned upon: (i) entry of a mutually-agreeable
14 Preliminary Approval order; and (ii) entry of a mutually-agreeable Final Approval order. If the
15 Court declines to enter either of these orders, or modifies (in what Defendants reasonably
16 determine to be a material way) any aspect of this Agreement or of such orders, Defendants
17 shall have the independent right to terminate this Agreement as set forth in Section XVIII.D.
18 For purposes of this Section, a “material” modification shall include, but is not limited to, any
19 modification in the releases to be provided, or any modification that would increase the
20 Settlement Amount.

21 **B. Termination If Opt Out Limit Is Exceeded.**

22 If more than six (6) members of the Settlement Class opt out of the Settlement Class,
23 Defendants shall have the right to terminate this Agreement as set forth in Section XVIII.D.

24 **C. Termination After Appeal.**

25 If a court of appeal on review of this Agreement and/or the Final Approval order
26 declares unenforceable, reverses, vacates, or modifies (in what Defendants reasonably
27 determines to be a material way) any aspect of this Agreement or the Final Approval order,
28 Defendants shall have the independent right to terminate this Agreement as set forth in Section

1 XVIII.D.

2 **D. Termination Procedure and Effect.**

3 If Defendants elect to terminate this Agreement pursuant to Sections XVIII.A.,
4 XVIII.B, and/or XVIII.C, Defendants may do so by giving written notice to Class Counsel.
5 Notice of termination pursuant to Section XVIII.B must be given prior to the Court's judgment
6 and order granting final approval of the class settlement. Notice of termination pursuant to
7 Sections XVIII.A and XVIII.C must be given prior to the later of the following (1) the date of
8 final affirmance on an appeal of the Final Approval order, (2) the date of final dismissal with
9 prejudice of any appeal from the Final Approval order; or (3) if no appeal is filed, three days
10 after the expiration date of the time for filing or noticing of any form for valid appeal from the
11 Final Approval order. If Defendants terminate this Agreement pursuant to Section XVIII, the
12 termination shall void all of the rights, obligations, and releases under this Agreement, except
13 for those provisions that are necessary to effectuate the termination. Within 15 calendar days
14 after notice of termination, the Settlement Administrator shall return all settlement payments
15 made by Defendants prior to such termination (inclusive of interest and exclusive of notice and
16 administration costs already expended). If this Agreement is terminated before Defendants
17 deposit sufficient funds to cover the foregoing items, Defendants shall send to the Settlement
18 Administrator an amount sufficient to cover the notice and administration costs already
19 expended within 30 calendar days after receipt of the Settlement Administrator's invoice of the
20 amounts due.

21 **XIX. MISCELLANEOUS PROVISIONS**

22 **A. Stay of Litigation.**

23 Named Plaintiff and Defendants agree to the stay of all discovery in the Litigation,
24 pending Final Approval of the Resolution by the Court.

25 **B. Interpretation of the Agreement.**

26 This Agreement constitutes the entire agreement between Named Plaintiff and
27 Defendants. Except as expressly provided herein, this Agreement has not been executed in
28 reliance upon any other written or oral representations or terms, and no such extrinsic oral or

1 written representations or terms shall modify, vary or contradict its terms. In entering into this
2 Agreement, the Parties agree that this Agreement is to be construed according to its terms and
3 may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and
4 enforced under the laws of the State of California, both in its procedural and substantive aspects,
5 without regard to its conflict of laws provisions. Any claim arising out of or relating to the
6 Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior
7 Court of the State of California for the County of Los Angeles, and Named Plaintiff and
8 Defendants hereby consent to the personal jurisdiction of the Court over them solely in
9 connection therewith. The foregoing is only limited to disputes concerning this Agreement and
10 in no way limits or negates the enforceability and effect of any arbitration agreements signed by
11 employees of Defendants obligating them to arbitrate any and all claims on an individual (and
12 not on a class, collective, or representative) basis. Named Plaintiff, on his own behalf and on
13 behalf of the Settlement Class, and Defendants participated in the negotiation and drafting of this
14 Agreement and had available to them the advice and assistance of independent counsel. As such,
15 neither Named Plaintiff nor Defendants may claim that any ambiguity in this Agreement should
16 be construed against the other.

17 The terms and conditions of this Agreement constitute the exclusive and final
18 understanding and expression of all agreements between Named Plaintiff and Defendants with
19 respect to the Resolution of the Litigation. The Agreement may be modified only by a writing
20 signed by the original signatories and approved by the Court.

21 **C. Further Cooperation.**

22 Named Plaintiff and Defendants and their respective attorneys shall proceed diligently to
23 prepare and execute all documents, to seek the necessary approvals from the Court, and to do all
24 things reasonably necessary or convenient to consummate the Agreement as expeditiously as
25 possible.

26 **D. Confidentiality of Documents.**

27 After the expiration of any appeals period, Named Plaintiff, the Settlement Administrator,
28 and Class Counsel shall maintain the confidentiality of all documents, deposition transcripts,

1 declarations and other information obtained in the lawsuit, unless necessary for appeal or such
2 documents are ordered to be disclosed by the Court or by a subpoena.

3 **E. Counterparts.**

4 The Agreement may be executed in one or more actual or non-original counterparts, all
5 of which will be considered one and the same instrument and all of which will be considered
6 duplicate originals.

7 **F. Authority.**

8 Each individual signing below warrants that he or she has the authority to execute this
9 Agreement on behalf of the party for whom or which that individual signs.

10 **G. No Third Party Beneficiaries.**

11 Named Plaintiff, members of the Settlement Class, and Releasees are direct beneficiaries
12 of this Agreement, but there are no third party beneficiaries.

13 **H. Force Majeure.**

14 The failure of any party to perform any of its obligations hereunder shall not subject such
15 party to any liability or remedy for damages, or otherwise, where such failure is occasioned in
16 whole or in part by acts of God, fires, accidents, earthquakes, other natural disasters, explosions,
17 floods, wars, interruptions or delays in transportation, power outages, labor disputes or shortages,
18 shortages of material or supplies, governmental laws, restrictions, rules or regulations, sabotage,
19 terrorist acts, acts or failures to act of any third parties, or any other similar or different
20 circumstances or causes beyond the reasonable control of such party.

21 **I. Deadlines Falling on Weekends or Holidays.**

22 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday,
23 or legal holiday, that deadline shall be continued until the following business day.

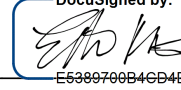
24 **J. Severability.**

25 In the event that any one or more of the provisions contained in this Agreement shall for
26 any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
27 unenforceability shall in no way effect any other provision if Defense Counsel and Class Counsel,
28 on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if such

invalid, illegal, or unenforceable provision had never been included in this Agreement.

Dated: March ²⁵____, 2021

DocuSigned by:



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By: EDDIE MARTINEZ

Dated: March ____, 2021

STINK, INC.

Name: _____

Title: _____

Dated: March ____, 2021

By: JEFF BARON

1 APPROVED AS TO FORM:

2 Dated: March ²⁵____, 2021

HARRIS & RUBLE

DocuSigned by:

David garrett

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ALAN HARRIS

DAIVD GARRETT

LIN ZHAN

Attorneys for Plaintiff EDDIE MARTINEZ

7 Dated: March ____, 2021

FRANKFURT KURNIT KLEIN & SELZ

TIFFANY CATERINA

Attorneys for Defendants

STINK, LLC; and JEFF BARON