

CLASS ACTION AND PAGA REPRESENTATIVE ACTION SETTLEMENT
AGREEMENT AND RELEASE OF CLAIMS

This Class Action Settlement Agreement and Release of Claims is entered into by and between Plaintiffs Pernell Hunter Jr. and Joseph Leakes (collectively “Plaintiffs”), individually and on behalf of all others similarly situated, and Defendants Jarka Enterprises, Inc. and David Jarka (collectively “Defendants”), and is approved by their respective counsel of record, subject to the terms and conditions hereof and the Court’s approval.

A. Definitions

1. “Action” or “Lawsuit” means and refers to the consolidated class action and PAGA representative action entitled *Pernell Hunter Jr., et al. v. Jarka Enterprises, Inc., et al.*, Santa Clara County Superior Court Case No. 20CV366404 (consolidated with *Joseph Leakes, et al. v. Jarka Enterprises, Inc. dba JEI Corporate Services*, Santa Clara Superior Court Case No. 20CV368130).

2. “Settlement Agreement,” “Settlement,” “Agreement,” or “Stipulation” shall mean this Class Action and PAGA Representative Action Settlement Agreement and Release of Claims, including any attached Exhibits.

3. “Class Counsel” refers to Mehrdad Bokhour of Bokhour Law Group, P.C., Joshua Falakassa of Falakassa Law, P.C., and James M. Treglio of Potter Handy LLP.

4. “Class Data” means a complete list that Defendants will diligently and in good faith compile from its records and provide to the Settlement Administrator on one spreadsheet and shall include the Settlement Class Members’ full names; last known addresses; telephone numbers; Social Security Numbers; and dates of employment or number of Workweeks Worked as non-exempt employees of Defendants during the Class Period for each Settlement Class Member.

5. “Class Period” is deemed to be the period of April 29, 2016, through September 8, 2021.

6. “Class Representatives” or “Plaintiffs” means and refers to Pernell Hunter Jr and Joseph Leakes.

1 7. “Complaint” refers to the Consolidated Class and PAGA Representative
2 Complaint filed in the Santa Clara County Superior Court action entitled *Pernell Hunter Jr., et*
3 *al. v. Jarka Enterprises, Inc., et al.*, Case No. 20CV366404.

4 8. “Court” means the California Superior Court, County of Santa Clara or any
5 Court of competent jurisdiction.

6 9. “Defendants” means and refers to Jarka Enterprises, Inc. and David Jarka.

7 10. “Defendants’ Counsel” or “Defense Counsel” means and refers to Christopher J.
8 Olson and Rachael E. Brown of Sweeny Mason LLP.

9 11. “Effective Date” means the latest of the following dates: (i) if no Class Member
10 objects, timely and properly intervenes, or files a motion to vacate the judgment approving the
11 Settlement Agreement under Code of Civil Procedure § 663, then the date the Court enters an
12 order granting Final Approval of the Settlement; (ii) if a Class Member objects, intervenes, or
13 files a motion to vacate the judgment approving the Settlement Agreement, then sixty-one (61)
14 calendar days following the date the Court enters an order granting final approval of the
15 Settlement, assuming no appeal is filed; or (iii) if a timely appeal is filed, the date of final
16 resolution of that appeal (including any requests for rehearing and/or petitions for *certiorari*),
17 resulting in final judicial approval of the Settlement.

18 12. “Final” means that the Settlement has been granted “Final Approval” by the
19 Court and the “Effective Date” has occurred.

20 13. “Final Approval” refers to the order of the Court granting final approval of this
21 Settlement Agreement and entering a judgment approving this Settlement on substantially the
22 terms provided herein or as the same may be modified by subsequent agreement of the Parties
23 or order of the Court.

24 14. “Final Settlement Class” means, collectively, all Settlement Class Members who
25 have not opted out of the Settlement Class by submitting timely Requests for Exclusion.

26 15. “Individual Settlement Amount” shall have the meaning ascribed to it in
27 Paragraph 44(d) below.
28

1 16. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph
2 44(c) below.

3 17. “Notice” means the notice of settlement of class action that will be sent to the
4 Settlement Class Members.

5 18. “Notice Response Deadline” is 45 calendar days from the date the Notice is
6 mailed to the Settlement Class Members.

7 19. “Objecting Settlement Class Member” means a Settlement Class Member, other
8 than Plaintiffs, who submits a valid and timely objection to the terms of this Agreement,
9 pursuant to Paragraph 63(a) below.

10 20. “Participating Class Member” means any and all Settlement Class Members who
11 are deemed to participate and receive an Individual Settlement Amount and do not opt-out by
12 submitting timely valid Requests for Exclusion.

13 21. “Parties” or “Settling Parties” mean Plaintiffs, the Settlement Class, and
14 Defendants, collectively.

15 22. “Workweeks Worked” for each Settlement Class Members means any workweek
16 during the Class Period in which the Settlement Class Member was employed by Defendants as
17 a non-exempt employee in California and worked at least one shift during the workweek.

18 23. “Preliminary Approval Date” means the date the Court preliminarily approves
19 the Settlement Agreement, and the exhibits thereto, and enters the Preliminary Approval Order.

20 24. “Preliminary Approval Order” means the judicial Order to be entered by the
21 Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement
22 and providing for the issuance of the Notice to the Settlement Class, an opportunity to opt out of
23 the Settlement, an opportunity to submit timely objections to the Settlement, and setting a
24 hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees and
25 costs. Defendants will not object to Plaintiffs’ motion for preliminary approval as long as it
26 comports with the terms of this Agreement.

27 25. “QSF” means the Qualified Settlement Fund set up by the Settlement
28 Administrator for the benefit of the Final Settlement Class, and from which the settlement

1 payments shall be made, and which is intended to be a fund that qualifies under Internal
2 Revenue Code Sec. 468.

3 26. "Released Claims" by the Participating Class Members upon Final Approval of
4 the Settlement will include all claims which were pled in the operative Second Amended
5 Complaint or that could have been pled based on the facts alleged therein, including claims for
6 (1) failure pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal
7 breaks and/or pay missed meal period premiums, (4) failure to provide rest breaks and/or pay
8 missed rest period premiums, (5) failure to reimburse business expenses, (6) unlawful
9 deductions from wages, (7) failure to provide accurate itemized wage statement, (8) failure to
10 pay due wages at separation of employment, (9) background checks without proper
11 authorization; (10) unfair business practices, and (11) PAGA penalties based on the foregoing
12 Labor Code violations.

13 27. "Released Parties" means Defendants, individually and together with Jarka
14 Enterprise, Inc.'s current and former owners, principals, insurers, attorneys, officers, directors,
15 members, managers, shareholders, agents, parents, subsidiaries, affiliates, operators, partners,
16 successors, and assignees.

17 28. "Release Period" shall mean April 29, 2016, through September 8, 2021.

18 29. "Release" shall mean the release and discharge of the Released Claims by
19 Plaintiffs and all of the Participating Class Members.

20 30. "Request for Exclusion" shall have the meaning ascribed to it in Paragraph 63(a)
21 below.

22 31. "Service Payment" or "Service Award" means the amount approved by the Court
23 to be paid to the Class Representatives in addition to their Individual Settlement Amount as a
24 Participating Class Member.

25 32. "Settlement Administrator" means and refers to Simpluris, Inc., that will provide
26 the Notice to the Class Members and distribute the settlement amounts as described in this
27 Agreement.

33. "Settlement Administration Costs" means the costs payable from the Settlement Amount to the Settlement Administrator for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, translating the class notice into Spanish (if necessary), tax reporting, unclaimed property due diligence, reporting and remittance obligations, distributing the Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The Settlement Administration Costs shall be paid from the Settlement Amount.

34. "Settlement Amount" or "Gross Settlement Amount" shall have the meaning ascribed to it in Paragraph 44(a) below.

35. "Settlement Class" or "Covered Position" is defined as "All current and former non-exempt employees employed by Defendants in California at any time during the Class Period."

36. "Settlement Class Member" or "Class Member(s)" refers to individual members of the Settlement Class.

B. General Terms

37. On or about January 15, 2021, Plaintiffs filed a class and representative PAGA claims action, including: (1) failure pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal breaks and/or pay missed meal period premiums, (4) failure to provide rest breaks and/or pay missed rest period premiums, (5) failure to reimburse business expenses, (6) unlawful deductions from wages, (7) failure to provide accurate itemized wage statement, (8) failure to pay due wages at separation of employment, (9) background checks without proper authorization; (10) unfair business practices, and (11) PAGA penalties based on the foregoing Labor Code violations.

38. Defendants deny Plaintiffs' claims and allegations and contend that the Action is not suitable for class certification and/or representative treatment.

39. The Class Representatives believe they can proceed with their representative and class claims, that the Action is meritorious, and that class certification is appropriate.

1 40. The Parties have conducted a thorough investigation into the facts of the Action.
2 This includes conducting extensive exchange of informal discovery, including Defendants'
3 written policies and practices and the production of payroll and timekeeping records for
4 Settlement Class Members. Class Counsel is both knowledgeable about and has done extensive
5 research with respect to the applicable law and potential defenses to the claims of the Settlement
6 Class. Class Counsel has diligently pursued an investigation of the Class Members' claims
7 against Defendants. Based on the foregoing data and on their own independent investigation
8 and evaluation, Class Counsel is of the opinion that the settlement with Defendants for the
9 consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and
10 adequate and is in the best interest of the Class Members in light of all known facts and
11 circumstances, including the risk of significant delay and uncertainty associated with litigation,
12 various defenses asserted by Defendants, and numerous potential appellate issues.

13 41. On July 6, 2021, the Parties participated in a full-day mediation before Jeff Ross,
14 Esq., a highly experienced class action mediator. The matter did not resolve at mediation, but
15 the mediator continued to pursue negotiations with the Parties following the mediation.
16 Ultimately, Mr. Ross issued a mediator's proposal, which both parties accepted.

17 42. The Parties agree that neither the Parties' Settlement, this Agreement, nor the
18 acts to be performed or judgments to be entered pursuant to the terms of the Settlement and
19 Agreement, shall be construed as an admission by Defendants of any wrongdoing or violation
20 of any statute or law or liability on the claims or allegations in the Action.

21 43. Stipulation for Class Certification. For settlement purposes only, Defendants will
22 stipulate that the Settlement Class Members described herein who do not Request Exclusion
23 from the Settlement Class may be conditionally certified as a settlement class. This stipulation
24 to certification is in no way an admission that class action certification and/or representative
25 treatment is proper and shall not be admissible in this or in any other action except for the sole
26 purposes of enforcing this Agreement. Should, for whatever reason, the Court fail to issue Final
27 Approval, the Parties' stipulation to class certification as part of the Settlement shall become
28 null and void *ab initio* and shall have no bearing on and shall not be admissible in connection

1 with the issue of whether or not class certification and/or representative treatment would be
2 appropriate in a non-settlement context. Defendants expressly reserve their rights and declare
3 that they will continue to oppose class certification and the substantive merits of the case should
4 the Court fail to issue Final Approval. Plaintiffs expressly reserve their rights and declare that
5 they will continue to pursue class certification and representative treatment and a trial should
6 the Court fail to issue Final Approval.

7 **C. Terms of Settlement**

8 44. The financial terms of the Settlement are as follows:

9 (a) Gross Settlement Amount: The Parties agree to settle this Action for the total
10 sum of Three Hundred Fifty Thousand Dollars (\$350,000) (“the Settlement Amount”). The
11 Settlement Amount is the maximum amount that will be paid by Defendants, and includes
12 Individual Settlement Amounts, attorneys’ fees of Class Counsel, costs and expenses, the
13 Service Payment to the Class Representatives, all Settlement Administration Costs, and
14 payment to the Labor Workforce Development Agency (LWDA) for PAGA penalties.
15 Defendants shall separately pay its share the employers’ share of the payroll taxes.

16 (b) The Settlement is based on Defendants’ representation that there are
17 approximately 13,000 Workweeks Worked included in the Class Period. If it is determined that
18 the number of Workweeks Worked exceeds 13,000 by eleven percent (11%) or more,
19 Defendants shall *pro rata* increase the Gross Settlement Sum.

20 (c) Net Settlement Amount: The “Net Settlement Amount” is defined as the
21 Settlement Amount less attorneys’ fees and litigation costs as approved and awarded by the
22 Court, the Service Payment to the Class Representatives as approved and awarded by the Court,
23 the Settlement Administration Costs, and the ten thousand dollars (\$10,000.00) allocated to
24 payment for PAGA penalties as described in paragraph 45(i) below. In the event that the Court
25 reduces the attorneys’ fees and litigation costs or, Service Awards, or either increases or
26 decreases the amount allocated to PAGA penalties, the Net Settlement Sum shall be increased
27 or decreased accordingly.
28

1 (d) Individual Settlement Amounts for the Settlement Class: The Settlement
2 Administrator will use the Class Data provided by Defendants to calculate each Participating
3 Class Member's Individual Settlement Amounts based on the following formula:

4 i. PAGA Amount: \$10,000 of the Gross Settlement Amount has been
5 designated to the PAGA claims. Twenty-five percent (25%), or \$2,500 shall be paid out to
6 Settlement Class Members. Each Settlement Class Member shall receive a portion of the
7 \$2,500 proportionate to the number of Workweeks Worked by the Settlement Class Member
8 during the Class Period compared to the total number of Workweeks Worked by all Settlement
9 Class Members during the Class Period.

10 ii. Class Amount: The Net Settlement Amount shall be allocated to
11 Participating Class Members based on his or her proportionate Workweeks Worked during the
12 Class Period. This is determined by multiplying the Net Settlement Amount by a fraction, the
13 numerator which is the Participating Class Member's total Workweeks Worked during the Class
14 Period, and the denominator of which is the total Workweeks Worked by all Participating Class
15 Members during the Class Period. If there are any timely submitted Requests for Exclusion, the
16 Settlement Administrator shall proportionately increase the Individual Settlement Amounts for
17 each Participating Class Member so that the amount actually distributed to Participating Class
18 Members equals 100% of the Net Settlement Amount.

19 (e) Allocation of Individual Settlement Amounts: The Individual Settlement
20 Amounts will be allocated based on the allegations in the Action as follows: twenty-five (25%)
21 percent will be paid as wages subject to withholding of all applicable local, state, and federal
22 taxes; and seventy-five (75%) will be paid as interest and as penalties (pursuant to, e.g.,
23 California Labor Code sections 203, 226) from which no taxes will be withheld. The
24 Settlement Administrator will issue to each Participating Class Member an Internal Revenue
25 Service Form W-2 and comparable state forms with respect to the wage allocation and a Form
26 1099 with respect to the penalties and interest allocations.

27 (f) Service Payment to Class Representatives: The amount awarded to the Class
28 Representatives as a Service Payment will be set by the Court in its discretion, not to exceed

1 \$10,000 each. Defendants agree not to oppose this request. The Service Payment to Plaintiffs
2 will be paid out of the Gross Settlement Amount. The Class Representative will be issued IRS
3 Form 1099 in connection with this payment. Plaintiffs shall be solely and legally responsible to
4 pay any and all applicable taxes on this payment. The Parties agree that any amount awarded as
5 the Service Payment to Plaintiffs less than the requested amount shall not be a basis for
6 Plaintiffs or Class Counsel to void this Stipulation. Should the Court approve a lesser amount
7 for the Service Payment, the difference shall be added to the Net Settlement Amount to be
8 distributed to the Participating Class Members.

9 (g) Attorneys' Fees and Costs: Defendants agree to not oppose a request by Class
10 Counsel to the Court for an award of attorneys' fees of one-third of the Settlement Amount, plus
11 reasonable litigation costs not to exceed \$20,000 ("Attorney's Fees and Cost Award"). For
12 purposes of this Settlement, Defendants agree not to oppose any contention by Class Counsel
13 that attorneys' fees should be based on the common fund theory. The Attorney's Fee and Cost
14 Award shall be paid from the Gross Settlement Amount, and except for this award, Defendants
15 shall have no further obligation to pay any attorneys' fees, costs or expenses to Class Counsel.
16 Should the Court approve a lesser amount than what is sought by Class Counsel, the difference
17 shall be added to the Net Settlement Amount to be distributed to the Participating Class
18 Members. Any Court order awarding less than the amount sought by Class Counsel shall not be
19 grounds to rescind the Settlement Agreement or otherwise void the Settlement. The Settlement
20 Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount of
21 attorneys' fees and costs awarded by the Court. Class Counsel agrees that any allocation of fees
22 between or among Class Counsel and any other attorney representing or claiming to represent
23 the Class Members shall be the sole responsibility of Class Counsel.

24 (h) Settlement Administration Costs: The fees and other charges of the Settlement
25 Administrator will be paid from the Gross Settlement Amount, not to exceed \$7,500, unless
26 approved by all Parties and the Court.

27 (i) PAGA Penalties: The Parties agree that \$10,000 is allocated to PAGA Penalties
28 and is to be paid from the Gross Settlement Amount, subject to Court approval. Of this amount,

1 \$7,500 (75%) shall be paid to the LWDA in satisfaction of Plaintiffs' claims for penalties under
2 the Private Attorney General Act of 2004 ("PAGA") and \$2,500 (25%) will be included in the
3 Individual Settlement Amounts, payable to the Participating Class Members.

4 (j) Tax Liability: Class Counsel, Defendants, and Defendants' Counsel make no
5 representations as to the tax treatment or legal effect of Settlement Amounts called for
6 hereunder, and Plaintiffs and the Settlement Class Members are not relying on any statement or
7 representation by Class Counsel, Defendants, or Defendants' Counsel in this regard. Plaintiffs
8 and Participating Class Members understand and agree that they will be solely responsible for
9 the payment of any taxes and penalties assessed on their respective Settlement Amounts
10 described herein. Income tax withholding will also be made pursuant to applicable federal, state
11 and/or local withholding codes or regulations. Forms W-2 and/or Forms 1099 will be distributed
12 at times and in the manner required by the Internal Revenue Code of 1986 (the "Code") and
13 consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other
14 applicable tax law, is changed after the date of this Agreement, the processes set forth in this
15 Section may be modified in a manner to bring Defendants into compliance with any such
16 changes.

17 (k) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS AGREEMENT
18 (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH
19 PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN
20 "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF
21 THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE
22 BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER
23 ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
24 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
25 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
26 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
27 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
28 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX

1 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
2 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
3 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
4 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
5 ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
6 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
7 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
8 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
9 ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
10 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
11 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
12 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

13 45. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. Under
14 no circumstances will any portion of the Settlement Amount revert to Defendants. Participating
15 Class Members will not have to make a claim in order to receive an Individual Settlement
16 Amount. Distributions, in the form of Individual Settlement Amounts, will be made directly to
17 each Participating Class Member. The Settlement Administrator shall be responsible for
18 accurately and timely reporting any remittance obligations with respect to unclaimed funds as a
19 result of a Participating Class Member not cashing an Individual Settlement Amount by the
20 check cashing deadline, as set forth herein.

21 46. Class Counsel and Plaintiffs believe that the Settlement is fair and reasonable,
22 and adequate, and will so represent same to the Court.

23 **D. Release by Plaintiffs and the Settlement Class**

24 47. Upon the Effective Date of this Settlement, Plaintiffs and each Participating
25 Class Member, for themselves and for their respective spouses, heirs, successors, beneficiaries,
26 devisees, legatees, executors, administrators, trustees, conservators, guardians, personal
27 representatives, will forever completely release and discharge the Released Parties from the
28 Released Claims for the Release Period.

1 48. Each Participating Class Member will be deemed to have made the foregoing
2 Release as if by manually signing it.

3 49. Plaintiffs and Defendants intend that the Settlement described in this Agreement
4 will release and preclude any further claim, whether by lawsuit, administrative claim or action,
5 arbitration, demand, or other action of any kind, by each and all of the Participating Class
6 Members to obtain a recovery based on, arising out of, and/or related to any and all of the
7 Released Claims. The Class Members shall be so notified in the Notice. This paragraph does
8 not apply to any Class Member who timely and validly opts out of the Settlement.

9 50. Class Representatives, on behalf of themselves and the Settlement Class,
10 acknowledge and agree that the claims for unpaid wages and unreimbursed expenses in the
11 Action, and untimely payment of wages in the Action, are disputed, and that the payments set
12 forth herein constitute payment of all sums allegedly due to them. Class Representatives, on
13 behalf of themselves and the Settlement Class, acknowledge and agree that California Labor
14 Code Section 206.5 is not applicable to the Parties hereto. Section 206.5 provides in pertinent
15 part as follows:

16 An employer shall not require the execution of any release of any claim or right
17 on account of wages due, or to become due, or made as an advance on wages to
18 be earned, unless payment of those wages has been made.

19 **E. Release by Class Representatives**

20 51. As a material inducement to Defendants to enter into this Settlement Agreement,
21 in addition to the Class Representatives' release of the Released Claims as discussed in
22 Paragraph 47 above, Class Representatives do hereby, for themselves and for their respective
23 spouses, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees,
24 conservators, guardians, personal representatives, and assigns forever and completely release
25 and discharge the Released Parties from any and all charges, complaints, claims, liabilities,
26 obligations, promises, agreements, controversies, damages, actions, causes of action, suits,
27 rights, demands, costs, losses, debts, and expenses (including back wages, statutory penalties,
28 civil penalties, liquidated damages, exemplary damages, interest, attorneys' fees, and costs) of

1 any nature whatsoever, from the beginning of time through the execution of this Stipulation,
2 whether known or unknown, suspected or unsuspected, including but not limited to all claims
3 arising out of, based upon, or relating to Class Representatives' employment with Defendants or
4 the remuneration for or termination of such employment (collectively, the "Class
5 Representatives' Claims").

6 52. Without limiting the generality of the foregoing, Class Representatives expressly
7 release all claims or rights against Released Parties arising out of or relating to alleged
8 violations of any contracts, express or implied (including but not limited to any contract of
9 employment); any contract or covenant of good faith and fair dealing (express or implied); any
10 tort, including but not limited to, negligence, fraud, misrepresentation and violation of
11 California Labor Code section 970, negligent infliction of emotional distress, intentional
12 infliction of emotional distress, defamation, "retaliation" claims and claims for violation of
13 public policy, any claim for improper or unauthorized wage deductions, failure to pay the
14 applicable wage, unpaid wages, unpaid vacation benefits, penalties, liquidated damages, other
15 damages, overtime, and alleged "off the clock" work under federal and state law, including, but
16 not limited to, California Labor Code Sections 204 and 558, waiting time penalties pursuant to
17 California Labor Section 203, damages or penalties pursuant to California Labor Code Section
18 226, meal period and rest break payments and penalties pursuant to California Labor Code
19 Sections 226.7 and 512, failure to provide itemized wage statements pursuant to California
20 Labor Code Section 226, statutory or civil penalties pursuant to California Labor Code Sections
21 210, failure to indemnify for business expenses pursuant to Labor Code section 2802, unfair
22 competition and unfair business practices pursuant to Business and Professions Code Section
23 17200 et seq., interest and costs pursuant to California Civil Code Section 3287 and California
24 Labor Code Section 218.6, statutory or common law rights to attorneys' fees and costs,
25 including those pursuant to California Labor Code Section 1194 *et seq.*; claims under the
26 Private Attorneys General Act of 2004, Labor Code section 2699 *et seq.*, and the alleged
27 violation or breach of any other state or federal statute, rule and or regulation; including all
28 applicable Industrial Welfare Commission Wage Orders, and all similar causes of action,

1 including but not limited to, any claim for restitution, equitable relief, interest, penalties, costs
2 or attorneys' fees in connection with any of the foregoing, negligent infliction of emotional
3 distress, intentional infliction of emotional distress, and defamation; any "wrongful discharge,"
4 "constructive discharge," and "retaliation" claims; any claims relating to any breach of public
5 policy; any legal restrictions on Defendants' right to discharge employees; and any federal,
6 state, or other governmental statute, regulation, or ordinance, including, without limitation: (1)
7 Title VII of the Civil Rights Act of 1964 (race, color, religion, sex, and national origin
8 discrimination or harassment, including retaliation for reporting discrimination or harassment);
9 (2) 42 U.S.C. § 1981 (discrimination); (3) Equal Pay Act, 29 U.S.C. § 209(d)(1) and California
10 Labor Code 1197.5 (equal pay); (4) Americans with Disabilities Act, 42 U.S.C. § 12100 et seq.
11 (disability discrimination); (5) Family and Medical Leave Act, 29 U.S.C. § 2601 et
12 seq. (family/medical leave); (6) California Fair Employment and Housing Act, Cal. Government
13 Code § 12900 et seq. (discrimination or harassment in employment and/or housing, including
14 discrimination or harassment based on race, religious creed, color, national origin, ancestry,
15 disability, marital status, sex (including pregnancy), or age, including retaliation for reporting
16 discrimination or harassment); (7) California Family Rights Act, Cal. Government Code §
17 12945.1 et seq. (family/medical leave); (8) California Labor Code, including Section 1720 et
18 seq., or any Industrial Welfare Commission Wage Order; (9) Executive Order 11246 (race,
19 color, religion, sex, and national origin discrimination or harassment); (10) Executive Order
20 11141 (age discrimination); (11) Sections 503 and 504 of the Rehabilitation Act of 1973
21 (handicap discrimination); (12) the Fair Labor Standards Act; and (13) Employee Retirement
22 Income Security Act, 29 U.S.C. § 1000 et seq. (employee benefits).

23 53. Class Representatives expressly waive and relinquish all rights and benefits
24 afforded by Section 1542 of the Civil Code of the State of California and does so understanding
25 and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil
26 Code of the State of California states:

27 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
28 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT

1 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
2 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
3 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
4 DEBTOR OR RELEASED PARTY.

5 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
6 full and complete release and discharge of all parties, Class Representatives and Class Counsel
7 expressly acknowledge that this Settlement Agreement is intended to include in its effect,
8 without limitation, all claims that Class Representatives knew of, as well as all claims that they
9 do not know or suspect to exist in their favor against the Released Parties, or any of them, for
10 the time period from the beginning of time to the execution of this Settlement Agreement, and
11 that this Settlement Agreement contemplates the extinguishment of any such Class
12 Representatives' claims.

13 **F. Interim Stay of Proceedings**

14 54. Pending completion of all of the prerequisites necessary to effectuate this
15 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the
16 Action except such as are necessary to effectuate the Settlement, including amending the
17 operative complaint.

18 **G. Notice Process**

19 55. Appointment of Settlement Administrator. The Parties have agreed to the
20 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
21 including mailing the Notice, using standard devices to obtain forwarding addresses,
22 independently reviewing and verifying documentation associated with any claims or opt-out
23 requests, resolving any disputes regarding the calculation or application of the formula for
24 determining the Individual Settlement Amounts, drafting and mailing the settlement checks to
25 Participating Class Members, issuing W-2 and 1099 Tax Forms, reporting to taxing authorities,
26 unclaimed funds due diligence, reporting and remittance obligations, and performing such other
27 tasks as set forth herein or as the Parties mutually agree or that the Court orders.
28

1 56. Disputes Regarding Settlement Administration. Any and all disputes relating to
2 administration of the Settlement by the Settlement Administrator (except for disputes regarding
3 Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction
4 over the terms and conditions of this Settlement Agreement, until Plaintiffs and Defendants
5 notify the Court that all payments and obligations contemplated by this Settlement Agreement
6 have been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties
7 will confer in good faith to resolve the dispute without the necessity of Court intervention. The
8 Settlement Administrator shall also be responsible for issuing to Plaintiffs, Settlement Class
9 Members, and Class Counsel any W-2, 1099, or other Tax Forms as may be required by law for
10 all amounts paid pursuant to this Agreement. The Settlement Administrator shall also be
11 responsible for setting up all necessary tax accounts and forwarding all payroll taxes and
12 penalties to the appropriate government authorities.

13 57. Class Data. Within seven (7) days after entry of the Preliminary Approval
14 Order, Defendants shall provide the Class Data to the Settlement Administrator. The Settlement
15 Administrator will run a check of the Class Members' addresses against those on file with the
16 U.S. Postal Service's National Change of Address List. The Class Data provided to the
17 Settlement Administrator will remain confidential, shall be used solely to administer the
18 Settlement, and will not be used or disclosed to anyone including but not limited to Plaintiffs or
19 Class Counsel, except as required by applicable tax authorities, pursuant to Defendants' express
20 written consent, or by order of the Court.

21 58. Notice. The Notice, as approved by the Court, shall be sent by the Settlement
22 Administrator to the Settlement Class Members, by first class mail, in English and Spanish,
23 within seven (7) calendar days following the Settlement Administrator's receipt of the Class
24 Data. The Settlement Administrator shall use standard devices, including a skip trace, to obtain
25 forwarding addresses of Settlement Class Members if any envelopes are returned.

26 59. Returned Notices. The Settlement Administrator will take steps to ensure that
27 the Notice is received by all Settlement Class Members, including utilization of the National
28 Change of Address Database maintained by the United States Postal Service to review the

1 accuracy of and, if possible, update a mailing address. Notices will be re-mailed to any Class
2 Member for whom an updated address is located within ten (10) calendar days following both
3 the Settlement Administrator learning of the failed mailing and its receipt of the updated
4 address. The Notice shall be identical to the original Notice, except that it shall notify the Class
5 Member that the exclusion (opt-out) request or objection must be returned by the later of the
6 Notice Response Deadline or fifteen (15) days after the remailing of the Notice.

7 60. Presumption Regarding Receipt of Notice. It will be conclusively presumed that
8 if an envelope has not been returned within thirty (30) days of the mailing that the Settlement
9 Class Member received the Notice.

10 61. Disputes Regarding Class Data. Class Members are deemed to participate in the
11 Settlement, unless they opt-out. The Notice will inform Class Members of his/her estimated
12 Individual Settlement Amount and the number of Weeks Worked during the Class Period.
13 Class Members may dispute their Weeks Worked if they feel they were employed more
14 workweeks in the Class Period in California than Defendants' records show by timely
15 submitting evidence to the Settlement Administrator. Defendants' records will be presumed
16 determinative absent reliable evidence to rebut Defendants' records, but the Settlement
17 Administrator will evaluate the evidence submitted by the Class Member and provide the
18 evidence submitted to Class Counsel and Defense Counsel who agree to meet and confer in
19 good faith about the evidence to determine the Class Member's actual number of Workweeks
20 Worked and estimated Individual Settlement Amount. If Class Counsel and Defense Counsel
21 are unable to agree, they agree to submit the dispute to the Settlement Administrator to render a
22 final decision. Class Members will have until the Notice Response Deadline to dispute
23 Workweeks Worked, object or opt out, unless extended by the Court. In the event that the
24 Settlement Administrator increases the number of Workweeks Worked for any Settlement Class
25 Member, then the Settlement Administrator will recalculate the Pay Period Value; accordingly,
26 in no event will Defendants be required to increase the Gross Settlement Amount.

62. Declaration of Due Diligence. The Settlement Administrator shall provide counsel for the Parties, at least twenty-five (25) days prior to the final approval hearing, a declaration of due diligence and proof of mailing with regard to the mailing of the Notice.

63. Settlement Class Members' Rights. Each Settlement Class Member will be fully advised of the Settlement, the ability to object to the settlement, and the ability to opt-out or request exclusion from the Settlement. The Notice will inform the Settlement Class Members of the Court-established deadlines for filing objections or requesting exclusion from the Settlement in accordance with the following guidelines:

(a) Requests for Exclusion from Settlement Class. Any Settlement Class Member, other than Plaintiffs, may request to be excluded from the Settlement Class by submitting a "Request for Exclusion" to the Settlement Administrator, postmarked on or before the Notice Response Deadline. The Request for Exclusion should state:

"I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS
IN THE HUNTER ET AL. V. JARKA LAWSUIT. I
UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE
SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY
FROM THE SETTLEMENT OF THIS LAWSUIT."

Any Request for Exclusion must include the full name, address, telephone number, last four digits of the social security number or date of birth, and signature of the Settlement Class Member requesting exclusion. The Request for Exclusion must be returned by mail to the Settlement Administrator at the specified address. Any such Request must be made in accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only if postmarked by the Notice Response Deadline unless the Parties otherwise agree in writing. Any Settlement Class Member who timely requests exclusion in compliance with these requirements: (i) will not have any rights under this Agreement, including the right to object, appeal or comment on the Settlement; (ii) will not be entitled to receive any payments under this Agreement; and (iii) will not be bound by this Agreement, or the Judgment, except that Settlement Class Members who worked during the PAGA limitations period are nevertheless bound by the release of the PAGA claims.

1 (b) Binding Effect on Final Settlement Class Members. Except for those
2 Settlement Class Members who exclude themselves in compliance with the procedures set forth
3 above, all Settlement Class Members will: (i) be deemed to be Participating Class Members for
4 all purposes under this Agreement; (ii) will be bound by the terms and conditions of this
5 Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise
6 provided herein, will be deemed to have waived all objections and oppositions to the fairness,
7 reasonableness, and adequacy of the Settlement.

8 (c) Objections to Settlement. Any Settlement Class Member, other than
9 Plaintiff, may object to the terms of this Agreement. To object, a Settlement Class Member
10 shall inform the Settlement Administrator, in writing, of his or her objection which must be
11 postmarked by the Notice Response Deadline at the address set forth in the Notice. Such
12 objection shall include the full name, address, telephone number, dates of employment with
13 Defendants of the Objecting Settlement Class Member, the case name and number, the basis for
14 the objection, including any legal support and each specific reason in support of the objection,
15 as well as any documentation or evidence in support thereof, and, if the Objecting Settlement
16 Class Member is represented by counsel, the name and address of his or her counsel. If any
17 Objecting Settlement Class Member wishes to speak at the Final Approval Hearing, that
18 Objecting Settlement Class Member's written submission should include a request to be heard,
19 and the Court will determine whether Objecting Settlement Class Members will be permitted to
20 speak. The Settlement Administrator shall provide objections, if any, to Class Counsel and
21 Defense Counsel within three (3) days of receipt, and the Settlement Administrator shall attach
22 the same to its declaration of due diligence it files with the Court prior to the Final Approval
23 Hearing. Any Participating Class Member who files an objection remains eligible to receive
24 monetary compensation from the Settlement. Plaintiffs and Defendants shall not be responsible
25 for any fees, costs, or expenses incurred by any Class Member and/or his or her counsel related
26 to any objections to the Settlement. Submitting an objection does not preserve the right to
27 appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record
28 by timely and properly intervening or filing a motion to vacate the judgment under Code of

1 Civil Procedure § 663.

2 (d) Failure to Object. Any Settlement Class Member who desires to object
3 but fails to timely submit a written objection waives any right to object and will be foreclosed
4 from making any objection to this Settlement. Any Settlement Class Member who does not
5 timely and properly become a party of record by intervening or filing a motion to vacate the
6 judgment waives any and all rights to appeal from the Judgment, including all rights to any
7 post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment,
8 motion for new trial, a motion under California Code of Civil Procedure section 473, and
9 extraordinary writs.

10 (e) Responses to Objections. Counsel for the Parties may file a response to
11 any objections submitted by Objecting Settlement Class Members at least five (5) court days
12 before the date of the Final Approval Hearing.

13 64. Settlement Class Members will have until the Notice Response Deadline to
14 object or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The
15 Settlement Administrator shall disclose jointly to Class Counsel and Defendants' counsel what
16 objections or Requests for Exclusion were timely submitted on a weekly basis, and upon the
17 request of Class Counsel or Defense Counsel.

18 65. Funding of the Settlement Amount. Defendants shall make a one-time deposit
19 into the QSF of the Settlement Amount, as described in Paragraph 44(a) that is necessary to
20 make all payments required under this Settlement, including its share of employer payroll taxes
21 as calculated and directed by the Settlement Administrator, within thirty (30) days after Final
22 Approval of the Settlement.

23 66. Distribution of Funds. No later than ten (10) calendar days after deposit of the
24 payment into the QSF, the Settlement Administrator will mail the payments to the Participating
25 Class Members, the payment for the attorneys' fees and costs to Class Counsel, any Service
26 Payment to the Class Representatives, the payment to the LWDA for PAGA penalties, and will
27 pay itself the Settlement Administration Costs.

1 67. Deadline for Cashing Settlement Checks. Participating Class Members shall
2 have 180 calendar days after mailing by the Settlement Administrator to cash their settlement
3 checks. If any Participating Class Member's check is not cashed within that period, the check
4 will be void and a stop-payment will be issued, and the Settlement Administrator shall issue the
5 unclaimed funds to the California State Controller's Office in the name of the Class Member.
6 The release will be binding upon all Participating Class Members who do not cash their checks
7 within the 180-day period. In the event that any settlement check is returned to the Settlement
8 Administrator within 180 days of mailing, the Settlement Administrator will, within five (5)
9 business days of receipt of the returned settlement check, perform a skip trace to locate the
10 individual. If a new address is located by these means, the Administrator will have ten (10)
11 business days to re-issue the check and will notify Defense Counsel and Class Counsel that a re-
12 issued check has been sent. Neither Defendants, Defense Counsel, Class Counsel, Plaintiffs,
13 nor the Settlement Administrator will have any liability for lost or stolen settlement checks,
14 forged signatures on settlement checks, or unauthorized negotiation of settlement checks.
15 Without limiting the foregoing, in the event a Participating Class Member notifies the
16 Settlement Administrator that he or she believes that a settlement check has been lost or stolen,
17 the Settlement Administrator shall immediately stop payment on such check. If the check in
18 question has not been negotiated prior to the stop payment order, the Settlement Administrator
19 will issue a replacement check.

20 68. No person shall have any claim against Defendants (or its designee), Defendants'
21 Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on mailings,
22 distributions, payments or reports made in accordance with or pursuant to this Agreement. This
23 provision does not, however, prevent a Party from seeking enforcement of this Agreement.

24 69. Without prejudice to any other remedies, the Settlement Administrator shall
25 agree to be responsible for any breach of its obligations (whether committed by the Settlement
26 Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless
27 from and against all liabilities, claims, causes of action, costs and expenses (including legal fees
28 and expenses) arising out of any breach committed by the Settlement Administrator or its

agents.

H. Duties of the Parties Prior to the Court's Approval

70. Upon the execution by all parties of this Agreement, Plaintiffs will move the Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order accomplishing the following:

(a) Scheduling the Final Approval Hearing on the issue of whether this Settlement should be finally approved as fair, reasonable and adequate as to the Class Members and a hearing on fees, costs and the Service Payment;

(b) Approving as to form and content the proposed Notice;

(c) Directing the mailing of the Notice by first class mail to the Settlement Class Members;

(d) Preliminarily approving this Settlement; and

(e) Preliminarily certifying the class for purposes of this Settlement.

I. Duties of the Parties Following Court's Final Approval

71. In connection with the Final Approval Hearing provided for in this Settlement Agreement, Class Counsel shall submit a proposed Final Approval Order:

(a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;

(b) Approving Class Counsel's application for an award of attorneys' fees and reimbursement of litigation costs and expenses, the Service Payment to the Class Representative, and the payment to the Settlement Administrator for costs of administering the settlement; and

(c) Entering judgment approving settlement, thereby permanently barring all Settlement Class Members from prosecuting any Released Claims against any of the Released Parties.

J. Voiding the Agreement

72. If the Court fails or refuses to issue the Final Approval Order or fails to approve any material condition of this Settlement Agreement which effects a fundamental change of the

Settlement, the entire Settlement Agreement shall be rendered voidable and unenforceable as to all Parties herein at the option of either Party.

73. If six percent (6%) or more of the Class Members timely submit a Request for Exclusion, Defendants shall have the option of terminating or modifying this Agreement and Defendants being relieved of any obligation to pay the Settlement Amount or any other obligations from the Settlement by giving notice to Plaintiffs' Counsel and the Settlement Administrator within fifteen (15) days of the Notice Response Deadline. If Defendants exercise the option under this paragraph, Defendants and Plaintiffs shall be equally responsible for all Settlement Administration Costs incurred.

74. If the Settlement is voided or fails for any reason, Plaintiffs and Defendants will have no further obligations under the Settlement, including any obligation by Defendants to pay the Settlement Amount, or any amounts that otherwise would have been owed under this Settlement.

75. If the Settlement is voided or fails for any reason, any costs incurred by the Settlement Administrator shall be borne equally by Defendants and Plaintiffs, unless otherwise specified in this Agreement.

K. Other Terms

76. Waiver. The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

77. No Publicity. The Parties agree that Class Counsel or any other attorneys acting for Class Members or Plaintiffs shall not make any press releases or conduct any press conferences regarding the Lawsuit or the settlement of the Lawsuit with Defendants, including the terms of the settlement.

78. Parties' Authority. The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

79. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of

1 such documents and to take such other action as may reasonably be necessary to implement the
2 terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their
3 best efforts, including all efforts contemplated by this Settlement Agreement and any other
4 efforts that may become necessary by order of the Court, or otherwise, to effectuate this
5 Settlement Agreement and the terms set forth herein. As soon as practicable after execution of
6 this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of
7 Defendants and Defendants' Counsel, take all necessary steps to secure the Court's preliminary
8 and final approval of the settlement, and the final entry of judgment.

9 80. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
10 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
11 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
12 cause of action or rights released and discharged by this Settlement Agreement.

13 81. No Admission. Defendants deny any and all liability to Plaintiffs and/or any
14 Settlement Class Member in this Action, as to any and all causes of action that were asserted or
15 that might have been asserted in this Action. Nonetheless, Defendants wish to settle and
16 compromise the matters at issue in the Complaint to avoid further substantial expense and the
17 inconvenience and distraction of protracted and burdensome litigation. Defendants also have
18 taken into account the uncertainty and risks inherent in litigation, and without conceding any
19 infirmity in the defenses that they have asserted or could assert against Plaintiffs, have
20 determined that it is desirable and beneficial that Plaintiffs' claims be settled in the manner and
21 upon the terms and conditions set forth in this Agreement.

22 82. Inadmissibility of Agreement. Whether or not the Court issues the Final
23 Approval Order, nothing contained herein, nor the consummation of this Settlement Agreement,
24 is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing
25 on the part of Defendants or any of the other Released Parties. Each of the Parties hereto has
26 entered into this Settlement Agreement with the intention of avoiding further disputes and
27 litigation with the attendant inconvenience and expenses. This Settlement Agreement is a
28 settlement document, and it, along with all related documents such as the notices, and motions

1 for preliminary and final approval, shall, pursuant to California Evidence Code section 1152
2 and/or Federal Rule of Evidence 408, be inadmissible in evidence in any proceeding, except an
3 action or proceeding to approve the settlement, and/or interpret or enforce this Settlement
4 Agreement. The stipulation for class certification as part of this Settlement Agreement is for
5 settlement purposes only and if, for any reason the settlement is not approved, the stipulation
6 will be of no force or effect.

7 83. Notices. Unless otherwise specifically provided herein, all notices, demands or
8 other communications given hereunder shall be in writing and shall be deemed to have been
9 duly given as of the third business day after mailing by United States registered or certified
10 mail, return receipt requested, addressed:

11 To the Settlement Class:

12 Mehrdad Bokhour
13 *mehrdad@bokhourlaw.com*
14 1901 Avenue of the Stars, Suite 450
15 Los Angeles, California 90067
16 Tel: (310) 975-1493; Fax: (310) 675-0861

17 Joshua Falakassa
18 *josh@falakassalaw.com*
19 1901 Avenue of the Stars, Suite 450
20 Los Angeles, California 90067
21 Tel: (818) 456-6168; Fax: (888) 505-0868

22 To Defendants:

23 Christopher J. Olson
24 *colson@smwb.com*
25 Rachael E. Brown
26 *reb@smwb.com*
27 983 University Avenue, Suite 104C
28 Los Gatos, California 95032
Tel: (408) 356-3000; Fax: (408) 354-8839

84. Construction. The Parties hereto agree that the terms and conditions of this
Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the
Parties and that this Settlement Agreement shall not be construed in favor of or against any

1 Party by reason of the extent to which any Party or her or its counsel participated in the drafting
2 of this Settlement Agreement. Plaintiffs and Defendants expressly waive the common-law and
3 statutory rule of construction that ambiguities should be construed against the drafter of an
4 agreement and further agree, covenant, and represent that the language in all parts of this
5 Agreement shall be in all cases construed as a whole, according to its fair meaning.

6 85. Captions and Interpretations. Paragraph titles or captions contained herein are
7 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
8 describe the scope of this Settlement Agreement or any provision hereof. Each term of this
9 Settlement Agreement is contractual and not merely a recital.

10 86. Modification. This Settlement Agreement may not be changed, altered, or
11 modified, except in writing and signed by the Parties hereto, and approved by the Court. This
12 Settlement Agreement may not be discharged except by performance in accordance with its
13 terms or by a writing signed by all of the Parties hereto.

14 87. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
15 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall
16 provide written notice to the other Party and allow an opportunity to cure the alleged
17 deficiencies, and Plaintiffs and Defendants agree to seek the help of the mediator to resolve any
18 dispute they are unable to resolve informally. During this period, the Parties shall bear their own
19 attorneys' fees and costs. This provision shall not apply to any legal action or other proceeding
20 instituted by any person or entity other than Plaintiffs or Defendants.

21 88. Choice of Law. This Settlement Agreement shall be governed by and construed,
22 enforced and administered in accordance with the laws of the State of California, without regard
23 to its conflicts-of-law rules.

24 89. Integration Clause. This Settlement Agreement contains the entire agreement
25 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
26 or contemporaneous agreements, understandings, representations, and statements, whether oral
27 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
28 hereunder may be waived except in writing.

90. Binding On Assigns. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

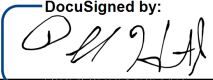
91. Signatures of All Class Members Unnecessary to be Binding. It is agreed that, because the members of the Settlement Class are numerous, it is impossible or impractical to have each Class member execute this Settlement Agreement. The Notice will advise all Settlement Class Members of the binding nature of the release provided herein and such shall have the same force and effect as if this Settlement Agreement were executed by each Settlement Class Member.

92. Counterparts. This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

APPROVAL AND EXECUTION BY PARTIES:

CLASS REPRESENTATIVES:

10/13/2021
Dated: September __, 2021

DocuSigned by:

7C84FCC614564A5...
Pernell Hunter Jr.

10/03/2021
Dated: September __, 2021


Joseph Leakes

DEFENDANTS: JARKA ENTERPRISES, INC.

Dated: September __, 2021

By _____
Title _____

Dated: September __, 2021

David Jarka

APPROVED AS TO FORM:

10/11/2021

Dated: September ___, 2021

CLASS COUNSEL:

FALAKASSA LAW, P.C.

DocuSigned by:

Joshua Falakassa

Joshua Falakassa

Attorneys for Plaintiffs

10/8/2021

Dated: September ___, 2021

BOKHOUR LAW GROUP, P.C.

DocuSigned by:

Mehrdad Bokhour

Mehrdad Bokhour

Attorneys for Plaintiffs

Dated: September ___, 2021

HANDY POTTER LLP

James M. Treglio

Attorneys for Plaintiffs

Dated: September ___, 2021

DEFENDANTS' COUNSEL:

SWEENEY MASON LLP

Christopher J. Olson

Rachael E. Brown

Attorneys for Defendants

This document was signed by:

Joseph Leakes

Joseph II

Vinesign

Date 10/3/2021 5:52 PM UTC

Phone 6503866551

IP Address 174.78.14.54

Confirmation 5F3A6FB6D0C53573C234C7604FB0B141
D3647AB0A753B6FB64DFB15F32C9ACBC



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APPROVAL AND EXECUTION BY PARTIES:

CLASS REPRESENTATIVES:

Dated: September __, 2021

Pernell Hunter Jr.

Dated: September __, 2021

Joseph Leakes

DEFENDANTS:

JARKA ENTERPRISES, INC.

Dated: September 27, 2021

Jarka Enterprises, Inc.
By David Jarka
Title President

Dated: September 27, 2021

David Jarka
David Jarka

1 APPROVED AS TO FORM:

2 **CLASS COUNSEL:**

3 Dated: September __, 2021

FALAKASSA LAW, P.C.

5 _____
Joshua Falakassa
6 Attorneys for Plaintiffs

7 Dated: September __, 2021

BOKHOUR LAW GROUP, P.C.

9 _____
Mehrdad Bokhour
10 Attorneys for Plaintiffs

11 Dated: September __, 2021

HANDY POTTER LLP

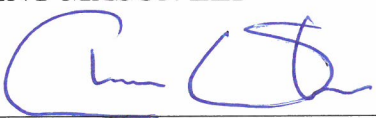
13 _____
James M. Treglio
14 Attorneys for Plaintiffs

15 Dated: ~~September~~ ⁸, 2021

16 *October*

DEFENDANTS' COUNSEL:

SWEENY MASON LLP

18 
19 _____
Christopher J. Olson
20 Rachael E. Brown
21 Attorneys for Defendants