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COUNTY OF SAN BERNARDINO

CIVIL JUSTICE CENTER

JOSE A. GOMEZ, individually, and on behalf
of all other aggrieved employees,

Plaintiff,

v.

RABS, INC., doing business as ALFREDO'S
PIZZA & PASTA, a California corporation;
and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: CIVDS 2013897

[Hon. David Cohn, Dept. S-26]

**CLASS ACTION SETTLEMENT
AGREEMENT AND RELEASE**

1 This Class Action Settlement and Release ("Settlement Agreement") is entered into by and
2 between Plaintiff Jose A. Gomez ("Plaintiff"), on behalf of himself and the Class, on the one hand,
3 and Defendant RABS, Inc., doing business as Alfredo's Pizza & Pasta ("Defendant"), on the other
4 hand. Plaintiff and Defendant are collectively referred to herein as "Parties" and individually
5 referred to herein as "Party."

6 In consideration of the mutual covenants, promises, and agreements set forth herein, the
7 Parties agree that, pursuant to the terms and conditions set forth herein, which are subject to approval
8 of the Court, this Action and the Released Claims shall be settled and compromised as between
9 Plaintiff and the Class on the one hand and Defendant on the other hand.

10 **DEFINITIONS**

11 1. "Action" means *Gomez v. RABS, Inc., doing business as Alfredo's Pizza & Pasta*,
12 San Bernardino Superior Court, Case No.: CIVDS 2013897.

13 2. "Class" means: all non-exempt employees who worked as cooks for Defendant in
14 California during the Class Period.

15 3. "Class Counsel" means the Law Office of Scott E. Wheeler and the Wand Law Firm,
16 P.C.

17 4. "Class Counsel Award" means attorneys' fees for Class Counsel's litigation and
18 resolution of this Action and Class Counsel's expenses and costs incurred in connection with this
19 Action.

20 5. "Class Information" means information regarding Class Members that Defendant
21 will in good faith compile from its records and provide to the Settlement Administrator. It shall be
22 formatted as a Microsoft Excel spreadsheet or Microsoft Word Document and shall include: each
23 Class Member's full name; last four digits of their social security number; last known address; last
24 known telephone number; last known email address, if any; and number of Compensable Work
25 Weeks.

26 6. "Class Member" means each person who is a member of the Class defined above in
27 paragraph 2 and who is eligible to participate in this Settlement.

28 7. "Class Period" means the time-period from June 1, 2017, up to and including

1 November 1, 2020.

2 8. "Class Representative Service Award" means the amount that the Court authorizes
3 to be paid to Plaintiff, in addition to Plaintiff's Individual Settlement Payment, in recognition of,
4 *inter alia*, Plaintiff's efforts and risks in assisting with the prosecution of the Action and in return
5 for executing a general release with Defendant.

6 9. "Compensable Work Week" or "Compensable Work Weeks" mean a reasonable
7 estimate of weeks worked by each Class Member individually and collectively by all Class Members
8 during the Class Period based on Defendant's records and used as a value to calculate Individual
9 Settlement Payments. The number of Compensable Work Weeks for each Class Member will be
10 determined by adding all the calendar days within the inclusive dates of employment for the
11 employee and dividing that number by seven. Any partial workweek will be expressed as a
12 percentage of a full workweek.

13 10. "Court" means the Superior Court for the County of San Bernardino, State of
14 California.

15 11. "Defendant" means RABS, Inc., doing business as Alfredo's Pizza & Pasta.

16 12. "Effective Date" means the date on which the Superior Court's Final Approval Order
17 and Judgment becomes final. The Superior Court's Final Approval Order and Judgment "becomes
18 final" upon the latter of: (a) if there is no Objection to the Settlement, or if there is an Objection but
19 it is withdrawn, then, the date that the Final Approval Order and Judgment is filed by the Court; (b)
20 if there is an Objection to the Settlement that is not withdrawn, but no appeal is commenced
21 thereafter, then, sixty-five (65) calendar days following the date that the Final Approval Order and
22 Judgment is filed by the Court; or (c) if there is an Objection to the Settlement, that is not withdrawn,
23 and any appeal, writ, or other appellate proceeding opposing the Settlement has been filed within
24 sixty-five (65) calendar days following the date that the Final Approval Order and Judgment is filed
25 by the Court, then, when any such appeal, writ, or other appellate proceeding opposing the validity
26 of the Settlement has been resolved finally and conclusively with no right to pursue further remedies
27 or relief.

28 13. "Final Approval Order and Judgment" means an order and judgment that the Court

1 will file, substantially in the form attached hereto as **Exhibit 1**, which finally approves this
2 Settlement and enters a judgment in favor of Plaintiff.

3 14. "Gross Settlement Amount" means the maximum amount which Defendant is
4 obligated to pay under this Settlement Agreement, which is One Hundred and Eighty Thousand
5 Dollars (\$180,000.00), made in three equal installment payments of Sixty Thousand Dollars
6 (\$60,000) made by the following dates December 31, 2021, June 30, 2022, and December 31, 2022.
7 This is a non-reversionary Settlement in which Defendant is required to pay the entire Gross
8 Settlement Amount. No portion of the Gross Settlement Amount will revert to Defendant under any
9 circumstances. Defendant shall pay its share of the employer's side of the payroll taxes.

10 15. "Individual Settlement Payment" means the amount payable from the Net Settlement
11 Amount to each Settlement Class Member.

12 16. "LWDA" means the California Labor and Workforce Development Agency.

13 17. "Net Settlement Amount" means the Gross Settlement Amount, less the Class
14 Counsel Award, Class Representative Service Award, payment to the LWDA for PAGA penalties,
15 and Settlement Administration Costs.

16 18. "Notice of Class Settlement" means the notice, with an Addendum regarding a
17 PAGA payment as needed, substantially in the form attached hereto as **Exhibit 2**, which the
18 Settlement Administrator will mail to each Class Member, and which explains, *inter alia*, the terms
19 of this Settlement Agreement, the settlement process, and each Class Member's estimated Individual
20 Settlement Payment.

21 19. "Operative Complaint" means the First Amended Complaint on file in this action.

22 20. "Objection" means a letter or other written communication submitted by a Class
23 Member to the Settlement Administrator that contains a clear statement by the Class Member that
24 he or she is objecting to any of the terms of the Settlement.

25 21. "Parties" means Plaintiff and Defendant, collectively, and "Party" means either
26 Plaintiff or Defendant, individually.

27 22. "Payment Ratio" means the respective Compensable Work Weeks for each
28 Settlement Class Member divided by the total Compensable Work Weeks for all Settlement Class

1 Members.

2 23. "Plaintiff" means Jose A. Gomez.

3 24. "Preliminary Approval Date" means the date upon which the Court filed an order
4 substantially in the form attached hereto as **Exhibit 3**, and which grants preliminary approval of the
5 Settlement.

6 25. "Request for Exclusion" means a letter or other written communication submitted by
7 a Class Member to the Settlement Administrator that contains a clear statement by the Class Member
8 that he or she is electing to be excluded from the Settlement.

9 26. "Released Claims by Plaintiff" means: As of the Effective Date, Plaintiff, as a Class
10 Member, agrees to the Release of Claims by Settlement Class Members, which is set forth in
11 paragraph 27 below. In addition to Release of Claims by Settlement Class Members, Plaintiff agrees
12 to a general release, which includes any unknown claims that he did not know or suspect to exist in
13 his favor at the time of the general release, which, if known, might have affected his Settlement
14 with, and release of, the Released Parties. With respect to the general release, Plaintiff stipulates and
15 agrees that, upon the Effective Date, he shall be deemed to have expressly waived and relinquished,
16 to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the
17 California Civil Code, or any other similar provision under federal or state law as to the generally
18 released claims, which provides:

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

23 Plaintiff may hereafter discover facts in addition to or different from those now known or
24 believed to be true with respect to the subject matter of the general release, but upon the Effective
25 Date, he shall be deemed to have fully, finally, and forever settled and released any and all of the
26 claims released pursuant to the general release, whether known or unknown, suspected or
27 unsuspected, contingent or non-contingent, which now exist, or heretofore have existed upon any
28 theory of law or equity.

1 27. “Released Claims by Settlement Class Members” means: As of the Effective Date,
2 Settlement Class Members shall fully and finally release and discharge Released Parties, from June
3 1, 2017 through the Preliminary Approval Date, from any and all claims, debts, liabilities, demands,
4 obligations, guarantees, costs, expenses, attorneys’ fees, damages, or causes of action contingent or
5 accrued for, that are pleaded, or that could have been pleaded, based on the facts and claims alleged
6 in the Operative Complaint, including any claims for: (a) failure to provide meal periods, California
7 Labor Code §§226.7, 510 and 512; (b) failure to provide rest periods, California Labor Code §§226.7
8 and 512; (c) failure to pay overtime wages, California Labor Code §§510 and 1194; (d) failure to
9 pay minimum wages, California Labor Code §§1194 and 1197; (e) failure to pay all wages due to
10 discharged and quitting employees, California Labor Code §§201, 202 and 203; (f) failure to timely
11 pay wages, California Labor Code, §§204 and 210; (g) failure to maintain required records,
12 California Labor Code §§ 226, 1174; (h) failure to furnish accurate, itemized wage statements,
13 California Labor Code §§ 226, 1174; (i) violation of the California Unfair Competition Law, Cal.
14 Bus. & Prof. Code § 17200 *et seq.*; and (j) and violation of California Private Attorneys’ General
15 Act, California Labor Code § 2699 *et seq.*, predicated on any of the violations of the California
16 Labor Code and applicable IWC Wage Order alleged in the Operative Complaint.

17 28. “Released Parties” collectively mean: (i) Defendant; (ii) Defendant’s respective past,
18 present and future parents, subsidiaries and affiliates, successors and assigns; (iii) the past, present
19 and future shareholders, owners, principals, managers, officers, partners, members, agents,
20 employees, attorneys, insurers, predecessors, successors and assigns, and, any individual or entity
21 which could be or have been jointly liable for the claims or potential claims described in paragraphs
22 26 and 27 above, including but not limited to those pled in the Action or which could have been
23 pled.

24 29. “Response Deadline” means forty-five (45) days after the postmark date of the
25 Notice of Class Settlement that the Settlement Administrator shall mail to Class Members, and the
26 last date on which Class Members may: (a) submit a Request for Exclusion; or (b) submit an
27 Objection to the Settlement.

28 30. “Settlement” means the disposition of the Action pursuant to this Agreement.

31. “Settlement Administration Costs” means the amount to be paid to the Settlement Administrator from the Gross Settlement Amount for administration of this Settlement.

32. “Settlement Administrator” means Phoenix Settlement Administrators. The Settlement Administrator shall be responsible for, *inter alia*: (a) performing Spanish translations of the Notice of Class Settlement; printing and mailing the Notice of Class Settlement to the Class; (b) receiving and reporting the Requests for Exclusion and Objections submitted by Class Members; (c) providing declaration(s) as necessary in support of preliminary and/or final approval of this Settlement; (d) processing and mailing payments to Plaintiff, Class Counsel, the LWDA, and Settlement Class Members; and (e) any other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform. The Settlement Administrator shall keep the Parties timely apprised of the performance of all Settlement Administrator responsibilities. The Parties agree that they have no financial interest or other relationship with Phoenix that could create a conflict of interest. Should a conflict of interest or other issue lead to the disqualification of the selected Settlement Administrator, the Parties will meet and confer as to a suitable replacement.

33. “Settlement Class” or “Settlement Class Members” means all Class Members who have not opted out of the Class by submitting a valid and timely Request for Exclusion.

RECITALS

34. Procedural History. On July 10, 2020, Plaintiff filed a complaint against Defendant in San Bernardino County Superior Court, Case No. CIVDS 2013897 alleging PAGA claims only. On September 28, 2020, Defendant filed a General Appearance. On June 2, 2021, Plaintiff filed a First Amended Complaint adding class claims. The Parties agreed to stay the filing of an Answer pending approval of this settlement.

35. Investigation and Discovery. The Parties have conducted significant investigation of the facts and law during the prosecution of this Action and before this Settlement was reached. Such discovery and investigation includes, *inter alia*, the exchange of information and documents pertaining to Plaintiff and the Class, and numerous meetings and informal conferences wherein the Parties exchanged information, class data, and theories of the case. Plaintiff has also investigated the law as applied to the facts of Plaintiff's claims and Defendant's potential defenses thereto.

1 36. The Parties participated in a private mediation session with Ernest Will Klatte, on
2 March 30, 2021. On April 1, 2021, the Parties participated in a further mediation session and
3 thereafter, eventually accepted the mediator's proposal regarding the settlement amount for a
4 proposed class action settlement that would fully resolve this matter.

5 37. Benefits of Settlement to Class Members. Plaintiff and Class Counsel recognize the
6 expense and length of continued proceedings necessary to litigate Plaintiff's claims through trial
7 and any possible appeals. Plaintiff has also taken into account the uncertainty and risk of the
8 outcome of further litigation, and the difficulties and delays inherent in such litigation. Plaintiff and
9 Class Counsel are also aware of the burdens of proof necessary to establish liability for the claims
10 asserted in the Action, both generally and in response to Defendant's defenses thereto, and the
11 difficulties in establishing damages for the Class. Plaintiff and Class Counsel have also taken into
12 account Defendant's agreement to enter into a settlement that confers substantial relief upon the
13 members of the Class. Based on the foregoing, Plaintiff and Class Counsel have determined that the
14 Settlement set forth in this Settlement Agreement is a fair, adequate, and a reasonable settlement,
15 and is in the best interests of the Class.

16 38. Defendant's Reasons for Settlement. Defendant has concluded that any further
17 defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of
18 Defendant's time, energy, and resources have been and, unless this Settlement is completed, will
19 continue to be devoted to the defense of the claims asserted by Plaintiff. Defendant has also taken
20 into account the risks of further litigation in reaching its decision to enter into this Settlement. Even
21 though Defendant continues to contend that it is not liable for any of the claims alleged by Plaintiff
22 in this Action, Defendant has agreed, nonetheless, to settle in the manner and upon the terms set
23 forth in this Settlement Agreement to put to rest the claims in this Action. As to the Released Claims,
24 Defendant denies and continues to deny each of those claims.

25 **STIPULATION AND AGREEMENT**

26 39. NOW THEREFORE, in consideration of the mutual covenants, promises, and
27 agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:
28

1 40. It is agreed by and among Plaintiff and Defendant that this Settlement shall bind the
2 Plaintiff, Settlement Class Members, and Defendant, subject to the terms and conditions hereof.

3 41. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
4 the “acknowledging party” and each Party to this Agreement other than the acknowledging party,
5 an “other party”) acknowledges and agrees that (1) no provision of this Agreement, and no written
6 communication or disclosure between or among the Parties or their attorneys and other advisers, is
7 or was intended to be, nor shall any such communication or disclosure constitute or be construed or
8 be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230
9 (31 CFR Part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her,
10 or its own, independent legal and tax counsel for advice (including tax advice) in connection with
11 this Agreement, (b) has not entered into this Agreement based upon the recommendation of any
12 other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any
13 communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty
14 that may be imposed on the acknowledging party; and (3) no attorney or adviser to any other party
15 has imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax
16 strategies (regardless of whether such limitation is legally binding) upon disclosure by the
17 acknowledging party of the tax treatment or tax structure of any transaction, including any
18 transaction contemplated by this Agreement.

19 42. Class Certification. The Parties stipulate to class certification for purposes of
20 settlement only. If the Court does not grant either preliminary or final approval of this Settlement,
21 the Parties stipulate that this stipulation regarding class certification will be revoked and the Parties
22 will return to a point in litigation immediately prior to the execution of this Settlement Agreement.

23 43. Approval of Settlement. Plaintiff will move the Court to grant preliminary and final
24 approval of this class action Settlement. The Parties agree to work diligently and cooperatively to
25 have this matter presented to the Court for preliminary and final approval.

26 44. Release of Claims by Plaintiff. Plaintiff releases the “Released Claims by Plaintiff”
27 as of the Effective Date.

1 45. Release of Claims by Settlement Class Members. Settlement Class Members release
2 the “Released Claims by Settlement Class Members” as of the Effective Date.

3 46. Settlement Administration. Within ten (10) calendar days after the Preliminary
4 Approval Date, Defendant shall provide the Settlement Administrator with the Class Information.

5 47. Notice to the Class. Upon receipt of the Class Information, the Settlement
6 Administrator will perform a search based on the National Change of Address Database to update
7 and correct any known or identifiable address changes. Within fourteen (14) calendar days after
8 receiving the Class Information, the Settlement Administrator shall mail copies of the Notice of
9 Class Settlement to all Class Members via regular First Class U.S. Mail. The Settlement
10 Administrator shall exercise its best judgment to determine the current mailing address for each
11 Class Member. The address identified by the Settlement Administrator as the current mailing
12 address shall be presumed to be the best mailing address for each Class Member.

13 a. Undeliverable Notices. Any Notice of Class Settlement returned to the
14 Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed
15 to the forwarding address affixed thereto within seven (7) calendar days. If no forwarding address
16 is provided, the Settlement Administrator shall promptly attempt to determine a correct address by
17 use of skip-tracing, or other search using the name, address and/or Social Security number of the
18 Class Member involved, and shall then perform a re-mailing, if another mailing address is identified
19 by the Settlement Administrator. Class Members who receive a re-mailed Notice of Class Settlement
20 shall have forty-five (45) days after the postmark date of the re-mailed Notice of Class Settlement
21 to: (a) submit a Request for Exclusion; or (b) submit an Objection to the Settlement.

22 b. Disputes Regarding Individual Settlement Payments. Class Members will
23 have the opportunity, should they disagree with Defendant’s records regarding the dates of
24 employment stated in the Notice of Class Settlement, to provide documentation and/or an
25 explanation to show contrary information by the Response Deadline. The dispute form must: (a)
26 contain the full name, address, and telephone number of the Class Member, and the last four digits
27 of the Class Member’s social security number or full employee ID number; (b) contain the case
28 name and case number; (c) a clear statement by the Class Member that he or she is disputing the

1 number of Compensable Workweeks and the basis for the dispute; (d) any documentation
2 demonstrating that the number of Compensable Workweeks listed in the Notice of Class Settlement
3 is incorrect; (e) be signed by the Class Member; and (f) be postmarked by the Response Deadline.
4 The date of the postmark on the return mailing envelope on the dispute form shall be the exclusive
5 means used to determine whether it has been timely submitted. If there is a dispute, the Settlement
6 Administrator will consult with the Parties to determine whether an adjustment is warranted. The
7 Settlement Administrator shall then determine the eligibility for, and the amounts of, any Individual
8 Settlement Payments under the terms of this Agreement. In the absence of circumstances indicating
9 fraud, manipulation or destruction, Defendant's records shall be given a rebuttable presumption of
10 accuracy.

11 c. Request for Exclusion. Class Members who wish to exclude themselves from
12 the Settlement must mail to the Settlement Administrator a Request for Exclusion by the Response
13 Deadline. The Request for Exclusion must: (a) contain the full name, address, and telephone number
14 of the Class Member, and the last four digits of the Class Member's social security number or full
15 employee ID number; (b) contain the case name and case number; (c) a clear statement by the Class
16 Member that he or she is electing to be excluded from the Settlement; (d) be signed by the Class
17 Member; and (e) be postmarked by the Response Deadline. The date of the postmark on the return
18 mailing envelope on the Request for Exclusion shall be the exclusive means used to determine
19 whether it has been timely submitted. The Request for Exclusion will be deemed invalid if it does
20 not contain the foregoing information. Any Class Member who requests to be excluded from the
21 Settlement Class shall not be entitled to any recovery under the Settlement and shall not be bound
22 by the terms of the Settlement or have any right to object, appeal or comment thereon. Class
23 Members who fail to submit a valid and timely Request for Exclusion on or before the Response
24 Deadline shall be bound by all terms of the Settlement and any Final Approval Order and Judgment
25 entered in this Action.

26 d. Objections. Class Members who wish to object to the Settlement must mail
27 to the Settlement Administrator a written Objection by the Response Deadline. The Objection must:
28 (a) contain the full name, address, and telephone number of the Class Member, and the last four

1 digits of the Class Member's social security number or full employee ID number; (b) contain the
2 case name and case number; (c) the dates of employment of the Class Member; (d) state whether
3 the Class Member intends to appear at the final approval hearing; (e) be signed by the Class Member;
4 (f) state the basis for the Objection, including any legal briefs, papers or memoranda in support of
5 the Objection; and (g) be postmarked by the Response Deadline. The date of the postmark on the
6 return mailing envelope on the Objection shall be the exclusive means used to determine whether
7 the Objection has been timely submitted. Class Members who fail to make Objections in the manner
8 specified above shall be deemed to have waived any objections and shall be foreclosed from making
9 any objections (whether by appeal or otherwise) to the Settlement. Class Members who submit a
10 timely Objection will have a right to appear at the final approval hearing in order to have their
11 Objection heard by the Court. At no time shall any of the Parties or their counsel seek to solicit or
12 otherwise encourage Class Members to submit Objections to the Settlement or appeal from the Final
13 Approval Order and Judgment. Class Counsel shall not represent any Class Members with respect
14 to any such Objections. The Settlement Administrator will provide the Parties with any Objection
15 within five (5) calendar days of receipt of the Objection. Plaintiff will file any and all Objections
16 with the Court in advance of the Final Approval Hearing.

17 48. Funding Gross Settlement Amount. Defendant shall fund the Gross Settlement
18 pursuant to the installment payment schedule as set forth in Paragraph 14. Defendant shall wire
19 transfer each installment payment on the date due to the Settlement Administrator.

20 49. Allocation of Settlement. Individual Settlement Payments will be paid from the Net
21 Settlement Amount and shall be paid pursuant to the settlement formula set forth herein. Individual
22 Settlement Payments shall be mailed by regular First Class U.S. Mail to Settlement Class Members'
23 last known mailing address.

24 a. The Settlement Administrator shall calculate the total Compensable Work
25 Weeks for all Settlement Class Members based on the Class Information provided by Defendant.
26 The respective Compensable Work Weeks for each Settlement Class Member will be divided by the
27 total Compensable Work Weeks for all Settlement Class Members, resulting in the Payment Ratio
28

1 for each Settlement Class Member. Each Settlement Class Member's Payment Ratio will then
2 multiplied by the Net Settlement Amount to determine his or her Individual Settlement Payment.

3 b. Individual Settlement Payments due to each Settlement Class Member shall
4 be designated as follows:

5 1. Thirty percent (30%) of the Individual Settlement Payment shall
6 represent payment for alleged unpaid wages. This payment shall be subject to the withholding of
7 all applicable local, state, and federal taxes. Applicable payroll taxes and/or contributions will be
8 deducted from the amount paid to Settlement Class Members. The Settlement Administrator will
9 issue a W-2 Form to each Settlement Class Member in relation to this payment.

10 2. Seventy percent (70%) of the Individual Settlement Payment shall
11 represent payment of all penalties and interest. These payments will not be subject to withholding
12 of local, state, and federal taxes. The Settlement Administrator will issue an IRS Form 1099 to each
13 Settlement Class Member in relation to these payments.

14 c. Uncashed Settlement Checks for Class Members. Individual Settlement
15 Payment checks shall remain negotiable for one hundred and twenty (120) days from the postmark
16 date of issuance. If the Settlement Check is not cashed, deposited, or otherwise negotiated within
17 the 120-day deadline, the check will be voided, and the funds associated with any such voided
18 checks shall be distributed in accordance with California Code of Civil Procedure § 384 to Inland
19 Counties Legal Services, Inc. ("ICLS") is a nonprofit organization which provides legal services to
20 low-income persons residing in San Bernardino County, which maintains in Ontario, San
21 Bernardino and Victorville. The Parties represent that they do not have an interest in the governance
22 or work of ICLS. Should a conflict of interest or other issue lead to the disapproval of ICLS as a *cy*
23 *pres* recipient, the Parties will meet and confer as to a suitable replacement *cy pres* recipient.

24 d. Certification By Settlement Administrator. The Parties have the right to
25 monitor and review administration of the Settlement. Any disputes not resolved by the Settlement
26 Administrator concerning the administration of the Settlement will be resolved by the Court, under
27 the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties
28 will confer in good faith to resolve the disputes without the necessity of involving the Court. Upon

1 completion of administration of the Settlement, the Settlement Administrator shall provide written
2 certification of such completion to counsel for the Parties, and which shall be filed with the Court
3 as necessary.

4 e. Settlement Awards Do Not Trigger Additional Benefits. All monies received
5 by Settlement Class Members shall be deemed to be income to such Settlement Class Members
6 solely in the year in which such awards actually are received by the Settlement Class Members. It
7 is expressly understood and agreed that the receipt of such Individual Settlement Payments will not
8 entitle any Settlement Class Member to additional compensation or benefits under any company
9 compensation or benefit plan or agreement in place during the period covered by the Settlement,
10 nor will it entitle any Settlement Class Member to any increased pension and/or retirement, or other
11 deferred compensation benefits. It is the intent of this Settlement that any Individual Settlement
12 Payments provided for in this Agreement are the sole payments to be made by Defendant to the
13 Settlement Class Members in connection with this Settlement, and that the Settlement Class
14 Members are not entitled to any new or additional compensation or benefits as a result of having
15 received the Individual Settlement Payments (notwithstanding any contrary language or agreement
16 in any benefit or compensation plan document that might have been in effect during the period
17 covered by this Settlement).

18 f. Class Representative Service Award. Defendant agrees not to oppose or
19 object to a Class Representative Service Award to Plaintiff of up to Six Thousand Dollars
20 (\$6,000.00), subject to Court approval. The Settlement Administrator shall issue an IRS Form 1099
21 – MISC to Plaintiff in connection with the Class Representative Service Award payment. Plaintiff
22 shall be solely and legally responsible to pay any and all applicable taxes on his Class Representative
23 Service Award and shall hold harmless Defendant and Class Counsel from any claim or liability for
24 taxes, penalties, or interest arising as a result of the Class Representative Service Award payment.
25 The Class Representative Service Award shall be in addition to Plaintiff's Individual Settlement
26 Payment. This Settlement is not contingent upon the Court awarding Plaintiff a Class Representative
27 Service Award in any amount, and any amount requested by Plaintiff for the Class Representative
28

1 Service Award that is not granted by the Court shall return to the Net Settlement Amount and be
2 distributed to Settlement Class Members as provided in this Agreement.

3 g. Class Counsel Award. Defendant agrees not to oppose or object to any
4 application or motion by Class Counsel for attorneys' fees not to exceed one-third from the Gross
5 Settlement Amount, or Sixty Thousand Dollars (\$60,000.00). Defendant further agrees not to
6 oppose any application or motion by Class Counsel for the reimbursement of any costs or expenses
7 associated with Class Counsel's prosecution of this matter from the Gross Settlement Amount not
8 to exceed Twenty Thousand Dollars (\$20,000.00). Class Counsel shall be solely and legally
9 responsible to pay all applicable taxes on the payment made pursuant to this paragraph. The
10 Settlement Administrator shall issue an IRS Form 1099 – MISC to Class Counsel for the payments
11 made pursuant to this paragraph. This Settlement is not contingent upon the Court awarding Class
12 Counsel any particular amount in attorneys' fees and costs. Any amount requested by Class Counsel
13 for the Class Counsel Award and costs that is not granted by the Court shall return to the Net
14 Settlement Amount and be distributed to Settlement Class Members as provided in this Agreement.

15 h. Settlement Administration Costs. The Settlement Administrator shall be paid
16 for the costs of administration of the Settlement from the Gross Settlement Amount. The costs of
17 notice and administration for the disbursement of the Gross Settlement Amount shall not exceed
18 Ten Thousand Dollars (\$10,000). Prior to the filing of a motion for final approval of this Settlement,
19 the Settlement Administrator shall provide the Parties with a statement detailing the costs of
20 administration.

21 i. Payment to the LWDA and to the Aggrieved Employees for PAGA Claims.
22 Ten thousand dollars (\$10,000) from the Gross Settlement Amount will be allocated to penalties
23 under the Private Attorneys General Act of 2004. Seventy-five percent (75%) of that amount, or
24 \$7,500, will be paid to the LWDA and twenty-five (25%) of that amount, or \$2,500, will be paid to
25 the aggrieved employees. This PAGA Payment is made pursuant to California Labor Code §
26 2699(i). The PAGA period is July 10, 2019, to November 1, 2020 (date of remediation) and includes
27 fifteen (15) non-exempt employees (cooks) and 483 total pay periods.

1 50. Distribution of Settlement Payments. Individual Settlement Payments to Settlement
2 Class Members, the Class Representative Service Award, the Class Counsel Award, Settlement
3 Administration Costs, and payment to the LWDA, shall all be distributed by the Settlement
4 Administrator within fourteen (14) calendar days of receipt of the Gross Settlement Amount from
5 Defendant. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiff,
6 Settlement Class Members, Class Counsel, or the Settlement Administrator based on distributions
7 and payments made in accordance with this Agreement.

8 51. Work Weeks. There are 31 Class Members who have worked a total of 1,914
9 Compensable Workweeks during the Class Period. There are approximately 15 Class Members
10 who are also aggrieved employees who worked 483 pay periods during the PAGA Period.

11 52. Enjoinment of Actions Pending Settlement Approval. Plaintiff and all Settlement
12 Class Members shall be enjoined from filing or prosecuting any other cases, claims, suits or
13 administrative proceedings regarding claims released by the Settlement unless and until such Class
14 Members have served valid and timely Requests for Exclusion with the Settlement Administrator.

15 53. Final Settlement Approval Hearing and Entry of Final Judgment. Upon expiration
16 of the Response Deadline, a final approval hearing shall be conducted to determine, *inter alia*, final
17 approval of the Settlement and amounts properly payable for: (a) Individual Settlement Payments;
18 (b) the Class Counsel Award; (c) the Class Representative Service Award; (d) payment to the
19 LWDA; and (e) the Settlement Administration Costs.

20 54. Nullification of Settlement Agreement. In the event: (a) the Court does not enter the
21 Order for preliminary approval of the Settlement; (b) the Court does not finally approve the
22 Settlement; (c) the Court does not enter a Final Approval Order and Judgment as provided herein;
23 or (d) the Settlement does not become final for any other reason, this Settlement Agreement shall
24 be null and void and any order or judgment entered by the Court in furtherance of this Settlement
25 shall be treated as void from the beginning. In such cases, the Parties and any funds to be awarded
26 under this Settlement shall be returned to their respective statuses as of the date and time
27 immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects
28 as if this Agreement had not been executed, except that any fees already incurred by the Settlement

1 Administrator shall be paid by Defendant. In the event an appeal is filed from the Court's Final
2 Approval Order and Judgment, or any other appellate review is sought, administration of the
3 Settlement shall be stayed pending final resolution of the appeal or other appellate review, and any
4 fees incurred by the Settlement Administrator prior to it being notified of the filing of an appeal
5 from the Court's Final Approval Order and Judgment, or any other appellate review, shall be paid
6 to the Settlement Administrator by the party or person that filed the appeal, within thirty (30)
7 calendar days of said notification.

8 55. No Effect on Employee Benefits. Amounts paid to Plaintiff or other Settlement Class
9 Members pursuant to this Agreement shall be deemed not to be pensionable earnings and shall not
10 have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g., vacations,
11 holiday pay, retirement plans, etc.) of Plaintiff or Settlement Class Members.

12 56. No Admission by Defendant. Defendant denies any and all claims alleged in this
13 Action and denies all wrongdoing whatsoever. This Settlement Agreement is not a concession or
14 admission, and shall not be used against Defendant as an admission or indication with respect to any
15 claim of any fault, concession, or omission by any Defendant.

16 57. Exhibits and Headings. The terms of this Settlement Agreement include the terms
17 set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth
18 herein. Any Exhibits to this Agreement are an integral part of the Settlement. The descriptive
19 headings of any paragraphs or sections of this Agreement are inserted for convenience of reference
20 only and do not constitute a part of this Agreement.

21 58. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
22 except such proceedings necessary to implement and complete the Settlement, holding the Action
23 in abeyance pending the final approval hearing to be conducted by the Court.

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

27 a. If Plaintiff or Class Counsel, on behalf of Plaintiff or any Settlement Class
28 Member, or Defendant's Counsel, on behalf of Defendant, at any time believe that the other Party

1 has breached or acted contrary to the Agreement, that Party shall notify the other Party in writing of
2 the alleged violation.

3 b. Upon receiving notice of the alleged violation or dispute, the responding
4 Party shall have ten (10) calendar days to correct the alleged violation and/or respond to the
5 initiating Party with the reasons why the Party disputes all or part of the allegation.

6 c. If the response does not address the alleged violation to the initiating Party's
7 satisfaction, the Parties shall negotiate in good faith for up to ten (10) calendar days to resolve their
8 differences.

9 d. If Class Counsel and Defendant's Counsel are unable to resolve their
10 differences after twenty (20) calendar days, either Party shall first contact the mediator (Ernest Will
11 Klatte) to try to resolve the dispute. If that proves unsuccessful, the party may file an appropriate
12 motion for enforcement with the Court. The briefing of such motion should be in letter brief form
13 and shall not exceed five (5) single-spaced pages (excluding exhibits).

14 e. Reasonable attorneys' fees and costs for work done in resolving a dispute
15 under this Section may be recovered by any Party that prevails under the standards set forth within
16 the meaning of applicable law.

17 60. Amendment or Modification. This Agreement may be amended or modified only by
18 a written instrument signed by counsel for all Parties.

19 61. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute
20 the entire Agreement among these Parties, and no oral or written representations, warranties, or
21 inducements have been made to any Party concerning this Agreement or its Exhibits other than the
22 representations, warranties, and covenants contained and memorialized in the Agreement and its
23 Exhibits.

24 62. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant
25 and represent they are expressly authorized by the Parties whom they represent to negotiate this
26 Agreement and to take all appropriate actions required or permitted to be taken by such Parties
27 pursuant to this Agreement to effectuate its terms, and to execute any other documents required to
28 effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other

1 and use their best efforts to effect the implementation of the Settlement. In the event the Parties are
2 unable to reach agreement on the form or content of any document needed to implement the
3 Settlement, or on any supplemental provisions that may become necessary to effectuate the terms
4 of this Settlement, the Parties may seek the assistance of the Court or the mediator to resolve such
5 disagreement. The persons signing this Agreement on behalf of Defendant represent and warrant
6 that they are authorized to sign this Agreement on behalf of Defendant. Plaintiff represents and
7 warrants that he is authorized to sign this Agreement and that he has not assigned any claim, or part
8 of a claim, covered by this Settlement to a third-party.

9 63. Binding on Successors and Assigns. This Agreement shall be binding upon, and
10 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

11 64. California Law Governs. All terms of this Settlement Agreement and the Exhibits
12 hereto shall be governed by and interpreted according to the laws of the State of California.

13 65. Counterparts. This Settlement Agreement may be executed in one or more
14 counterparts. All executed counterparts and each of them shall be deemed to be one and the same
15 instrument.

16 66. This Settlement is Fair, Adequate and Reasonable. The Parties believe this
17 Settlement is a fair, adequate, and reasonable settlement of this Action and have arrived at this
18 Settlement after extensive arms-length negotiations, taking into account all relevant factors, present
19 and potential.

20 67. Jurisdiction of the Court. Pursuant to California Code of Civil Procedure section
21 664.6 and California Rules of Court, Rule 3.769(h), the Court shall retain jurisdiction with respect
22 to the interpretation, implementation, and enforcement of the terms of this Settlement Agreement
23 and all orders and judgments entered in connection therewith, and the Parties and their counsel
24 hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and
25 enforcing the settlement embodied in this Agreement and all orders and judgments entered in
26 connection therewith. All terms of this Settlement Agreement are subject to approval by the Court.

27 68. Invalidity of Any Provision. Before declaring any provision of this Settlement
28 Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent

possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

Dated: 11-30-21

By: Jose A. Gomez
Jose A. Gomez

Dated: _____

By: _____
Rabs, Inc. doing business as Alfredo's
Pizza and Pasta

Name: _____

Title: _____

As to Form Only:

Dated: 12/2/21

Scott E. Wheeler
Scott E. Wheeler
Law Office of Scott E. Wheeler

Aubry Wand
The Wand Law Firm

Attorneys for Plaintiff and the other
Aggrieved Employees

Dated: _____

By: _____
Thomas M. Diachenko
Law Offices of Thomas M. Diachenko, APC

Attorneys for Defendant, Rabs, Inc., doing
business as Alfredo's Pizza & Pasta

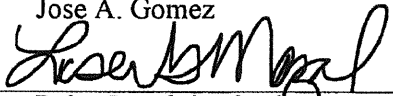
1 possible consistent with applicable precedents so as to define all provisions of this Agreement valid
2 and enforceable.

3
4 Dated: _____

5
6 Dated: 12/1/2021

By: _____

Jose A. Gomez

By: 

Rabs, Inc. doing business as Alfredo's
Pizza and Pasta

Name: Lisa G Maza

Title: Owner

7
8
9
10 As to Form Only:

11 Dated: _____

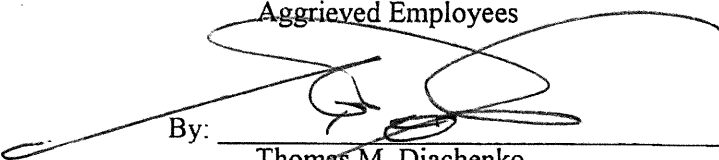
By: _____

Scott E. Wheeler
Law Office of Scott E. Wheeler

Aubry Wand
The Wand Law Firm

Attorneys for Plaintiff and the other
Aggrieved Employees

12
13
14
15
16
17 Dated: 12/2/2021

By: 

Thomas M. Diachenko
Law Offices of Thomas M. Diachenko, APC

Attorneys for Defendant, Rabs, Inc., doing
business as Alfredo's Pizza & Pasta