

Herminio Resendiz v. Santa Ana Elks Lodge-794-BPOE, et al
United States District Court, Central District Case Nos. 8-20-cv-00990-JAK-ADS

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement”) is reached by and between Plaintiff HERMINIO RESENDIZ (“Plaintiff”), individually and on behalf of all members of the Settlement Class, defined below, and Defendant SANTA ANA ELKS LODGE-794-BPOE; (“BPOE” individually, or “Defendant”). Plaintiff and Defendant are referred to herein collectively as the “Parties.” Plaintiff and the Settlement Class are represented by Kevin Mahoney and Berkeh Alemzadeh of Mahoney Law Group. Defendant is represented by Clint Robinson and Payam Malakouti of O’Hagan Meyer (“Defense Counsel”). This Settlement Agreement is the product of mediated negotiations between the Parties.

On May 27, 2020, Plaintiff provided notice of Labor Code violations pursuant to Labor Code section 2698 et seq. (Private Attorneys General Act (“PAGA”). On May 28, 2020, Plaintiff filed a class action complaint, alleging various violations of the Labor Code, including, but not limited to: (1) violation of the Fair Labor Standards Act (29 U.S.C. §§ 206 and 207); (2) violation of Labor Code §§ 226.7, 512 (Meal Period Violations); (3) violation of Labor Code §§ 226.7, Wage Order 9 (Rest Period Violations); (4) violation of Labor Code §§ 204, 510, 1194 (Failure to Pay All Wages, Including Minimum Wage and Overtime); (5) violation of Labor Code §§ 201, 202, 203 (Failure to Pay Wages Due at Separation of Employment); (6) violation of Labor Code §§ 226, subd. (a) and (e) (Failure to Issue Accurate Itemized Wage Statements); (7) violation of Labor Code §2802 (Failure to Reimburse Business Expenses); and (8) violation of Bus. & Prof. Code §§ 17200 et seq. (Unfair Business Practices) (“Action”).

On June 6, 2022, the Parties filed a Joint Stipulation to allow Plaintiff to file a First Amended Complaint to add a ninth (9th) cause of action under the Private Attorney General Act (2004). On June 7, 2022, Plaintiff filed the First Amended Complaint, adding a cause of action for violation of Labor Code §2698 et. seq.

In advance of mediation, Defendant agreed to informally produce time and payroll records for 30% of the one hundred ten (110) potential Class Members (which includes the “Aggrieved Employees,” which Defendant represented are seventy-six (76).) In addition, Defendant provided data for start and end dates of employment and shifts worked for the sampling of Aggrieved Employees.

Given the risks and uncertainties of litigation, the Parties have agreed to settle the Action(s) on the terms set forth herein, conditioned upon and subject to the approval of Court. Nothing herein shall be construed as an admission of any wrongdoing or of liability as the Settlement Agreement is intended solely to allow the Parties to buy their peace and resolve the disputed claims asserted in this Action.

1. **Settlement Class.** For the purposes of this Settlement Agreement only, Plaintiff and Defendant stipulate to the class certification of the following Settlement Class:

all non-exempt, hourly-paid employees, currently and/or formerly employed by Defendant in the State of California during the Class Period at any time on or between May 28, 2016 through the date of preliminary approval of this settlement by the Court (the "Class Period"). The Settlement Class as defined are limited to the non-exempt employees located at SANTA ANA ELKS LODGE-794-BPOE only.

The Parties agree that certification for purposes of settlement is not an admission that class certification is proper or that Plaintiff is an adequate class representative under Section 382 of the Code of Civil Procedure. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

2. **PAGA Class:** For the purposes of this Settlement Agreement only, Plaintiff and Defendant stipulate to the Court's approval of the following PAGA Settlement Class:

all non-exempt, hourly-paid employees, currently and/or formerly employed by Defendant in the State of California during the PAGA Period at any time on or between May 27, 2019 through the date of preliminary approval of this settlement by the Court (the "PAGA Period"). The PAGA Settlement Class as defined are limited to the non-exempt employees located at SANTA ANA ELKS LODGE-794-BPOE only.

A. The Settlement Class and the PAGA Settlement Class may collectively be referred to herein as the Total Settlement Class.

3. **Releases.**

A. **Class Claims Release by Representative Plaintiff and Settlement Class Members.** In exchange for the consideration set forth in this Settlement Agreement, Representative Plaintiff and each Settlement Class Member who does not validly opt-out, on behalf of him or herself, and on behalf of all those who claim by and through the Settlement Class Member or in his or her stead, including, but not limited to heirs, spouses, executors, administrators, attorneys, agents, representatives, predecessors, successors and assigns, does hereby and forever release, acquit, and discharge, and covenant not to sue Defendant, including its past and present divisions, related entities, parents, subsidiaries, joint ventures, predecessors, successors, members, assigns, and their respective shareholders, owners, officers, agents, administrators, fiduciaries, beneficiaries, subrogees, executors, partners, and privies (collectively the "Released Parties" and each a "Released Party") from liability for the following claims, which are being released for the time period May 28, 2016, to the Effective Date The released claims include 1. Violation of the Fair Labor Standards Act (29 U.S.C. §§ 206 and 207); 2. Violation of Labor Code §§ 226.7, 512 (Meal Period Violations); 3. Violation of Labor Code §§ 226.7, Wage Order 9 (Rest Period Violations); 4. Violation of Labor

Code §§ 204, 510, 1194 (Failure to Pay All Wages, Including Minimum Wage and Overtime); 5. Violation of Labor Code §§ 201, 202, 203 (Failure to Pay Wages Due at Separation of Employment); 6. Violation of Labor Code §§ 226, subd. (a) and (e) (Failure to Issue Accurate Itemized Wage Statements); 7. Violation of Labor Code §2802 (Failure to Reimburse Business Expenses); 8. Violation of Bus. & Prof. Code §§ 17200 et seq. (Unfair Business Practices); as well as any and all other claims under California common law, the California Labor Code, California Wage Orders, the California Business and Professions Code, asserted in or that could have been asserted based on the facts set forth in the operative Complaint on file in the Action against Defendant, as well as any and all damages, restitution, disgorgement, civil penalties, statutory penalties, taxes, interest or attorneys' fee resulting therefrom ("Released Claims"). This release shall not apply to claims for workers' compensation benefits, unemployment insurance benefits, or any other claim or right that as a matter of law cannot be waived or released.

Settlement Class Members who choose to participate in this Settlement by endorsing/cashing their settlement check will be deemed to have opted into the action for purposes of the federal Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq. as amended ("FLSA"), and their Released Claims will include a release of any FLSA claims that could be asserted based on the facts alleged in the Lawsuit and as consistent with the state-law wage and hour claims alleged in the Lawsuit.

- B. **PAGA Release by Representative Plaintiff and Aggrieved Employees:** All claims and causes of action alleged or that could have been alleged based on the facts set forth in the Plaintiffs' notice to the LWDA, the Lawsuit(s) and operative complaints on file in the Actions against Defendant. These claims include, but are not limited to the following Labor Code §§: 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 515, 558, 1174, 1174.5, 1182.12, 1194, 1197, 28021 and violation of Labor Code §§ 2698-2690 (Private Attorney General Act); as well as any and all other claims that are and/or were asserted in or that could have been asserted based on the facts set forth in the notice to the LWDA, and operative Complaint on file in the Action against Defendant. ("Released Claims"). The Parties acknowledge that under this release, the right of the California Labor and Workforce Development Agency ("LWDA") to investigate the released PAGA claims is not released, but Released Claims do include any claims for penalties by any Class Member as a result of any such LWDA investigation for the statutes set forth in the Notice submitted by Plaintiff to the LWDA dated May 27, 2020. This release shall not apply to claims for workers' compensation benefits, unemployment insurance benefits, or any other claim or right that as a matter of law cannot be waived or released.
- C. **Effective Date.** For purposes of this Settlement Agreement, "Effective Date" means the date by which the Court's order granting Final Approval of this Settlement Agreement becomes final. Such order becomes final upon the following events: (i) upon the Court issuing an order granting Final Approval of this Settlement Agreement if no objections to the settlement are filed, or if an objection

is filed but is withdrawn prior to the Court's Final Approval Hearing; or (ii) in the event there are written objections filed prior to the Final Approval Hearing which are not thereafter withdrawn prior to the hearing, the later of the following events: (a) the day after the last day by which a notice of appeal of the order may be timely filed with the California Court of Appeal, and none is filed; (b) if an appeal is filed and is finally disposed of by ruling, dismissal, denial, or otherwise, the day after the last date for filing a request for further review of the Court of Appeal's decision passes and no further review is requested; (c) if an appeal is filed and there is a final disposition by ruling, dismissal, denial, or otherwise by the Court of Appeal, and further review of the Court of Appeal's decision is requested, the day after the request for review is denied with prejudice and/or no further review of the order can be requested; or (d) if review is accepted, the day the Supreme Court of the State of California affirms the Settlement. The Release is effective as to all Settlement Class Members upon full funding and distribution of the Settlement Payments. Should Defendant not fully fund the Settlement, the Release will be considered null and void.

- D. **Released Parties' Release of Claims Against Representative Plaintiff.** Released Parties, as defined herein, do hereby, for themselves, and for their heirs, successors, predecessors, attorneys, agents, representatives and assigns, forever release Plaintiff from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses (including attorneys' fees and costs actually incurred) of any nature whatsoever, from the beginning of time through the date of their signature on this Settlement Agreement, known or unknown, suspected or unsuspected, including but not limited to all claims arising out of, based upon, or relating to Plaintiff's employment with Defendant and related to this Lawsuit.
- E. **Released Parties – 1542.** Released Parties expressly waive and relinquish all rights and benefits afforded by section 1542 of the Civil Code of the State of California and do so understanding and acknowledging the significance of such specific waiver of section 1542. Section 1542 of the Civil Code of the State of California states as follows:

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

Thus, subject to and in accordance with this Settlement Agreement, even if Released Parties may hereafter discover facts in addition to or different from those they now know or believe to be true, Released Parties shall be deemed to have fully, finally, and forever settled and released any and all claims against Plaintiff that could have been alleged against her, as well as any other claims, whether known or unknown, suspected or unsuspected, contingent or non-contingent, that now exist,

upon any theory of law or equity, including without limitation, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts.

4. **Settlement Payment.** In exchange for the releases set forth in this Settlement Agreement, Defendant agrees to cause to be paid the sum of four hundred fifty thousand dollars (\$450,000.00) (the “Gross Settlement Amount”) in full and complete settlement of this matter, as follows:

- A. The Gross Settlement Amount (GSA) will be paid within fifteen (15) days of the Effective Date.
- B. Defendant has represented there were approximately six thousand two hundred eighty-six workweeks worked by Class Members which numbers approximately one hundred ten (110) individuals through December 31, 2021. If the actual total number of class members or collective workweeks increases by more than 10% (i.e., increases by more than 630 workweeks and 12 Class Members), Defendant will increase the Gross Settlement Amount proportionately. Defendant has represented that there are approximately one hundred ten (110) nonexempt employees who worked for Defendant from May 28, 2016, to December 31, 2021, who will be subject to this Settlement.
- C. This is not a “claims made” settlement. This is a non-reversionary settlement. The Gross Settlement Amount includes:
 - (1) All payments to the Settlement Class Members and their employee share of payroll tax withholdings;
 - (2) All fees and expenses of the Settlement Administrator associated with the administration of the settlement, up to an amount no greater than seven thousand dollars (\$7,000.00) (subject to proof acceptable to the Court);
 - (3) Up to five thousand dollars (\$5,000.00) for the named Plaintiff’s Enhancement Payment, subject to Court approval, in recognition of Plaintiff’s efforts in total, their time and risks in prosecuting this case, and service to the Settlement Class. In the event that the Court reduces or does not approve the requested Enhancement Payment, the Settlement Agreement remains in full force and effect, Plaintiff shall not have the right to revoke the settlement for that reason, it shall remain binding, and any unapproved amount shall be included in the Net Settlement Fund and allocated among the Class Members who did not opt-out of the Settlement;
 - (4) The Parties agree that ten thousand dollars (\$10,000.00) (“PAGA Settlement Amount”) of the Gross Settlement Amount will be allocated to the resolution of any Class Member claims arising under PAGA. Pursuant to PAGA, 75% of the PAGA Settlement Amount seven thousand five hundred (\$7,500.00) shall be paid to the California Labor and Workforce Development Agency

("LWDA Payment"), and 25% of the PAGA Settlement Amount two thousand five hundred (\$2,500.00) shall become part of the Net Settlement Fund; and

- (5) Up to 1/3rd of the Gross Settlement Amount in attorneys' fees, which is estimated to be one hundred fifty thousand dollars (\$150,000.00), plus up to twenty thousand dollars (\$20,000.00) in verified costs and expenses related to the Lawsuit which shall be subject to the District Court's approval, including all such fees and costs incurred in documenting the Settlement, securing Court approval of the Settlement, and administering the Settlement, as supported by declaration. In the event the Gross Settlement Amount is increased pursuant to Section (4)(B) above, the amount of attorneys' fees will become 1/3rd of the adjusted Gross Settlement Amount which shall be subject to the District Court's approval. In the event that the Court reduces or does not approve Class Counsel's requested fees and costs, the Settlement Agreement remains in full force and effect, Plaintiff shall not have the right to revoke the settlement for that reason, it shall remain binding, and any unapproved amount shall revert to the Net Settlement Fund.
- (6) Defendant's required FICA, FUTA, and other employer payroll tax payments resulting from payment of the settlement payments to participating Settlement Class Members shall be paid separate and apart from the Gross Settlement Amount.

D. **Confidential.** This settlement shall remain confidential until such time as the Motion for Preliminary Approval is filed with the Court.

4. **Settlement Payment Procedures.** Settlement Class Members are not required to submit a claim form to receive their individual settlement payment. Individual settlement payments will be determined and paid as follows:

- A. The Settlement Administrator, Phoenix Class Action Administration Solutions, shall first deduct from the Gross Settlement Amount the amounts approved by the Court for the Settlement Administrator's fees and expenses, Plaintiff's Enhancement Payment, Class Counsel's attorneys' fees, the LWDA Payment, and Class Counsel's costs and expenses. The remaining amount shall be known as the "Net Settlement Fund."
- B. From the Net Settlement Fund, the Settlement Administrator will calculate the individual settlement payments for Class Members based on Defendant's records and the workweeks actually worked by each Class Member during the Class Period ("Eligible Workweek") at Defendant SAE's location. These payments will be calculated by assigning a certain dollar value to each Eligible Workweek that Class Members worked during the Class Period. The dollar value of each week will be calculated by dividing the aggregate value of the Net Settlement Fund by the total number of Eligible Workweeks worked by all participating Class Members. Partial weeks will be rounded to one decimal point. A participating Class Member's individual Settlement Payment will be determined by multiplying the number of

weeks worked during the Class Period as a Class Member by the dollar value of each Eligible Workweek.

- C. Within seven (7) days following Defendant's full funding of the Gross Settlement Amount, the Settlement Administrator will calculate individual settlement payment amounts and will prepare and mail individual settlement payments to Settlement Class Members. Within ten (10) days following the full funding of the Gross Settlement Amount, the Settlement Administrator shall pay from the Gross Settlement Amount the LWDA Payment to the LWDA, Plaintiff's Enhancement Payment, and Class Counsels' fees and costs, all as approved by the Court.
 - D. For purposes of calculating applicable taxes and withholdings for the Settlement Class Members, twenty percent (20%) of each individual settlement payment shall be designated as wages subject to W-2 reporting and normal payroll withholdings; and the remaining eighty percent (80%) of each individual settlement payment shall be designated as penalties and interest and subject to IRS Form 1099 reporting with no withholdings. Notwithstanding the treatment of the payments to each Settlement Class Member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless specifically required by such plans. Defendant shall have no responsibility for the tax treatment of the non-wage components of the settlement payments. Defendant shall pay any employer tax obligations for these payment outside the Settlement.
 - E. Settlement payment checks issued to Settlement Class Members that remain uncashed one hundred and eighty (180) calendar days after such checks are mailed by the Settlement Administrator ("Check Expiration Date") shall become void, and the funds associated with such voided checks, plus any accrued interest that has not otherwise been distributed (together, "Unused Funds"), shall be submitted to the California State Controller as unclaimed property in the name of the Class Member who did not cash his or her check. Thirty (30) days prior to the expiration of the 180-check validity period Check Expiration Date, the Settlement Administrator will send a reminder postcard to any Settlement Class Member whose check has not been cashed.
 - F. The receipt of funds under this Settlement shall not entitle any Settlement Class Member to additional compensation or benefits of any kind under any of Defendant's compensation or benefits plans, nor will it entitle any Settlement Class Member to any increased retirement or 401k plan benefits of any kind.
 - G. Neither Plaintiffs nor Defendant shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by her or its own acts of omission or commission, the same is true for the Settlement Administrator.
5. **Class Counsel's Attorneys' Fees and Litigation Costs.** NDC will not object to a request for a total award of attorneys' fees to Class Counsel not to exceed 1/3rd of the Gross Settlement

Amount, which is estimated to be one hundred fifty thousand dollars (\$150,000.00), plus up to twenty thousand dollars (\$20,000.00) in verified costs and expenses related to the Action as supported by declaration, which shall be subject to the District Court's approval. In the event the Gross Settlement Amount is increased pursuant to Section (3) (B) above, the amount of attorneys' fees will become 1/3rd of the adjusted Gross Settlement Amount which shall be subject to the District Court's approval. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when it pays the fee award as approved by the Court.

6. **Plaintiff's Enhancement Payment.** Defendant will not object to a request for a class representative Enhancement Payment to named Plaintiff of five thousand dollars (\$5,000.00), in exchange for their general release of claims, time and risks in prosecuting this case, and service to the Settlement Class. This payment will be in addition to Plaintiff's individual settlement payment as a Settlement Class Member. It is the intent of the Parties that the Enhancement Payment to the Plaintiff is for his services in connection with this Lawsuits and are not wages, therefore the Settlement Administrator shall not withhold any taxes from the Enhancement Payment and shall report it on an IRS Form 1099, which shall be provided to Plaintiff and to the pertinent taxing authorities as required by law. Although it is the contemplation of the Parties that the Enhancement Payments do not represent wages, the Internal Revenue Service, the California Franchise Tax Board, or some other taxing authority may take the position that some or all of the Enhancement Payments constitutes wages for income tax and withholding purposes. Plaintiffs agree to assume the responsibility of remitting to the Internal Revenue Service, the California Franchise Tax Board, and any other relevant taxing authority the amounts required by law as their share of employee taxes, if any, to be withheld by Defendant from the Enhancement Payments paid under this Settlement Agreement. In addition, Plaintiff shall hold Defendant, Released Parties, Defense Counsel and Class Counsel harmless and indemnify Defendant, Released Parties, Defense Counsel and Class Counsel for all taxes, interest, penalties, other payments and costs, incurred by Defendant by reason of any claims relating to the non-withholding of taxes from the Enhancement Payments for employee share of taxes.

7. **Settlement Administrator.** Phoenix Class Action Administration Solutions shall serve as Settlement Administrator, and the Parties will seek Court approval to pay up to seven thousand dollars (\$7,000.00) from the Gross Settlement Amount for its services. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest. The Settlement Administrator shall be responsible for sending all required notices, calculating the Net Settlement Fund, calculating each Class Member's individual settlement payment amount, preparing all checks and mailings and disbursing all residuals resulting from uncashed settlement checks as set forth in Section 4(E). The Settlement Administrator shall be authorized to pay itself from the Gross Settlement Amount within ten (10) days after checks have been mailed to all participating Settlement Class Members.

8. **Circular 230 Disclaimer.** Each Party to this Agreement (for purposes of this section, the “Acknowledging Party” and each Party to this Agreement other than the Acknowledging Party, an “Other Party”) acknowledges and agrees that:

- A. Neither Class Counsel nor Defense Counsel intend anything contained in this Settlement Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Settlement Agreement or any written communication or disclosure between or among the Parties or their attorneys and other advisors, be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise;
- B. The Acknowledging Party (i) has relied exclusively upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Settlement Agreement, (ii) has not entered into this Settlement Agreement based upon the recommendation of any Other Party or any attorney or advisor to any Other Party, and (iii) is not entitled to rely upon any communication or disclosure by any attorney or advisor to any Other Party to avoid any tax penalty that may be imposed on the Acknowledging Party; and
- C. No attorney or advisor to any Other Party has imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Settlement Agreement.

9. **Preliminary Approval.** Within thirty (30) days after execution of the Settlement Agreement, and the remand of the consolidated matter of *Herminio Resendiz v Santa Ana Elks Lodge-794; BPOE; Benevolent & Protective Order Of Elks Of The USA*, or as otherwise directed by the Court, Plaintiffs shall apply to the Court for the entry of an Order:

- A. Appointing by Kevin Mahoney and Berkeh Alemzadeh of Mahoney Law Group, APC;
- B. Appointing Plaintiff Herminio Resendiz as Class Representatives for the Settlement Class;
- C. Approving Phoenix Class Action Administration Solutions as Settlement Administrator;
- D. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- E. Preliminarily approving the PAGA Settlement Amount;
- F. Approving the form and content of the Class Notice and Notice of Individual Settlement Share (collectively referred to as the “Notice Packet”), and directing the mailing of same; and

G. Scheduling a Final Approval hearing.

10. **Notice Procedures.** Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within ten (10) days after entry of an order preliminarily approving this Settlement Agreement, Defendant will provide the Settlement Administrator with a class list including the names, last known addresses, and social security numbers (in electronic format) of Settlement Class Members, as well as the total workweeks worked by each member of the Settlement Class during the Class Period.
- B. Within seven (7) days from receipt of the class list information, the Settlement Administrator shall: (i) run the names of all Settlement Class Members through the National Change of Address ("NCOA") database to determine any updated addresses for Settlement Class Members; (ii) update the addresses of any Settlement Class Member for whom an updated address was found through the NCOA search; and (iii) mail the Notice Packet (attached hereto as Exhibits A and B) via first-class U.S. mail to each Settlement Class Member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline (defined below) shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within five (5) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within three (3) business days of obtaining the updated address. Settlement Class members to whom Notice Packets are re-sent after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to mail a Request for Exclusion or objection. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class Member.
- D. **Opt-Out/Request for Exclusion Procedures.** All Class Members will automatically participate in the Settlement unless they affirmatively opt-out by submitting a timely request for exclusion. Any Settlement Class Member who wishes to opt-out of the settlement must complete and send a Request for Exclusion via mail or facsimile, in a form substantially similar to that attached hereto as Exhibit B, to the Settlement Administrator within forty-five (45) days of the date of the initial mailing of the Notice Packets (the "Response Deadline").
 - i. The Request for Exclusion: (1) must contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement

Class Member; (2) must be signed by the Settlement Class Member or his or her legal representative; and (3) must be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion fails to comply with items (1)-(3), it will not be deemed valid for exclusion from this settlement, except a Request for Exclusion form not containing a Class Member's telephone number and/or last four digits of the Social Security number will be deemed valid. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class Member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the class settlement or have any right to object, appeal or comment thereon. Any Class Member who requests to be excluded will still be eligible to receive an Individual PAGA Settlement Payment, if he or she worked during the PAGA period, which is defined as May 27, 2019 to the date of preliminary approval.

- E. **Objections.** Members of the Settlement Class who do not opt-out may object to this Settlement Agreement by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendant's counselor with the Settlement Administrator). Objections must be postmarked on or before the Response Deadline. If Class Counsel and/or Defendant receives an objection, they shall file any such objections with the Court within five (5) business days of their receipt.
- F. **Challenges to Individual Settlement Payment Calculations.** Settlement Class Members will have the opportunity, should they disagree with Defendant's records regarding the number of Eligible Workweeks stated in their Notice Packet, to challenge the data provided. In order to challenge Defendant's data, the Settlement Class Member must provide documentation and/or an explanation demonstrating that Defendant's data is incorrect and evidencing the correct number of Eligible Workweeks with which the Settlement Class Member believes he or she should have been credited. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. The Settlement Administrator shall provide a copy of the challenge and any supporting documentation to counsel for the Parties within five (5) days of receipt. If the Parties are unable to resolve the dispute, the Settlement Administrator will be the final arbiter of the Eligible Workweeks for each Class Member during the Class Period based on the information provided to it.
- G. **Dispute Resolution.** The Settlement Administrator shall have the initial responsibility of resolving all disputes that arise during the settlement administration process, including, without limitation, disputes (if any) regarding the calculation of individual Settlement Payments, the allocation of W-2 wages, and the number of Eligible Workweeks. With the exception of Eligible Workweek disputes, the Settlement Administrator shall jointly confer with Class Counsel and Defense Counsel to discuss and resolve the dispute. The Parties will resolve all

disputes jointly, which shall be final and binding on any Class Member disputes, and shall thereafter instruct the Settlement Administrator how to proceed in processing the disputed claim. If the Parties cannot reach agreement, disputes shall be referred to the Court for a final determination at the Final Approval hearing.

11. **Right to Revoke.** Defendant shall have the right at its sole discretion to revoke this Settlement Agreement and stipulation to class certification for settlement purposes if Class Members holding five percent (5%) or more of the amount to be actually distributed to the Settlement Class timely request exclusion from the settlement, by communicating that decision to the Settlement Administrator within fourteen (14) calendar days of the Response Deadline, provided however, Defendant will be responsible for any costs and fees incurred by the Settlement Administrator. Plaintiff, Class Counsel, Defense Counsel and Defendant agrees that he/they/it will not in any manner take any actions to encourage Settlement Class Members to opt out.

12. **Final Approval Process.** Following preliminary approval and the close of Response Deadline under this Settlement Agreement, Plaintiffs shall apply to the Court for entry of an Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiffs' application for Settlement Administrator's fees and expenses, Plaintiffs' Enhancement Payments, PAGA Settlement Amount, Class Counsels attorneys' fees, and Class Counsel's costs and expenses; and
- C. Entering judgment pursuant to California Rule of Court 3.769.

13. **Non-Admission.** Defendant denies that it has engaged in any unlawful activity, that it has failed to comply with the law in any respect, that it has any liability to anyone under the claims asserted in the Lawsuit, and that but for this settlement a class should not be certified in this Lawsuit. Nothing in this Settlement Agreement is intended or shall be construed as an admission of liability, fault or wrongdoing by Defendant or any Released Party. Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this settlement. The Parties have entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152.

14. **Amendments or Modifications.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

15. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery or by e-mail at the

addresses set forth on the following page, or such other addresses as the Parties may designate in writing from time to time:

If to Defendant:

Clint Robison, Esq.
Payam Malakouti, Esq.
O'Hagan Meyer
21550 W Oxnard St, Suite 1050
Woodland Hills, CA 91367
crobison@ohaganmeyer.com
pmalakouti@ohaganmeyer.com

If to Plaintiff:

Kevin Mahoney, Esq.
Berkeh Alemzadeh, Esq.
Mahoney Law Group, APC
249 E. Ocean Blvd., Suite 814
Long Beach, California 90802
kmahoney@mahoney-law.net
balem@mahoney-law.net

16. **Voluntary Agreement.** The Parties acknowledge that they have entered into this Settlement Agreement voluntarily, on the basis of their own judgment and without coercion, duress, or undue influence of any Party, and not in reliance on any promises, representations, or statements made by the other Parties other than those contained in this Settlement Agreement. Each of the Parties hereto expressly waves any right she/it might ever have to claim that this Settlement Agreement was in any way induced by fraud.

17. **Opportunity to Consult with Counsel.** Prior to execution of this Settlement Agreement, each Party has read this entire Settlement Agreement and has been given the opportunity to consult with independent counsel of their choosing and to have such independent counsel advise as to the meaning of this Settlement Agreement and its legal effect.

18. **Authorization to Act.** The signatories hereby represent that they are fully authorized to enter into this Settlement and to bind the Parties hereto to the terms and conditions hereof.

19. **Mutual and 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 such documents and to take such other action as may be reasonably necessary to implement the terms of this Settlement Agreement. The Parties shall use reasonable best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by

order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein.

20. **Fair Settlement and Cooperation in Drafting.** The Parties agree that this Settlement Agreement is the result of lengthy, intensive arms-length negotiations between the Parties after a full-day mediation with a neutral, professional mediator, and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which that Party has participated in the drafting of this Settlement Agreement.

21. **Assignment.** The Parties represent, covenant and warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement Agreement. None of the rights, commitments, or obligations recognized under this Settlement Agreement may be assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express written consent of each other Party and their respective counsel. The representations, warranties, covenants, and agreements contained in this Settlement Agreement are for the sole benefit of the Parties and shall not be construed to confer any right or to avail any remedy to any other person.

22. **Use and Return of Documents and Data.** All originals, copies, and summaries of documents and data provided to Class Counsel by Defense Counsel in connection with the mediation or other settlement negotiations in this matter may be used only with respect to this settlement, and for no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule. Within thirty (30) days after the Effective Date, Class Counsel will return or destroy all such documents and data. Upon written request from Defense Counsel, Class Counsel will confirm in writing to Defense Counsel the destruction of all such documents and data.

23. **No Reliance on Representations.** The Parties have made such investigation of the facts and the law pertaining to the matters described herein and to this Settlement Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other Parties, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or with regard to the advisability of making and executing this Settlement Agreement, or with respect to any such matters that would alter or change the terms of this Settlement Agreement. No representations, warranties, or inducements have been made to any Party concerning this Settlement Agreement other than those expressly set forth or referred to herein.

24. **Enforcement and Continuing Jurisdiction of the Court.** To the extent consistent with class action procedure, this Settlement Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6. The Court shall retain continuing jurisdiction over this Lawsuit and over all Parties and Settlement Class Members, to the fullest extent to enforce and effectuate the terms and intent of this Settlement Agreement, and to adjudicate any claimed breaches of this Settlement Agreement. The Court may award reasonable attorneys' fees and costs to the prevailing party in any motion or action taken and based on an alleged violation of any material term of the Settlement Agreement.

25. **Settlement A Binding on Successors.** This Settlement Agreement is binding upon, and inure to the benefit of, the successors and interest of each of the Parties.

26. **Meet and Confer Regarding Disputes.** Should any dispute arise among the Parties or their respective counsel regarding the implementation or interpretation of this Settlement Agreement, a representative of Class Counsel and defense counsel shall meet and confer in good faith in an attempt to resolve such disputes prior to submitting such disputes to the Court.

27. **Headings.** The descriptive heading of any section or paragraph of this Settlement Agreement is inserted for convenience of reference only and does not constitute a part of this Settlement Agreement and shall not be considered in interpreting this Settlement Agreement.

28. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts and writings prior to the date hereof relating to the subject matters hereof.

29. **Counterpart and Fax Electronic Signatures.** This Settlement Agreement may be executed by the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

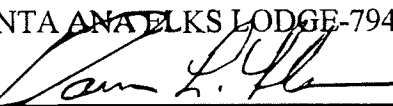
30. **No Collateral Attack.** This Settlement Agreement shall not be subject to collateral attack by any Class Member or any recipient of the Class Notice after the Final Effectiveness Date. Such prohibited collateral attacks shall include but not be limited to claims that the Class Member failed for any reason to receive timely notice of the procedure for disputing the calculation of her or his Individual Settlement Payment.

31. **Governing Law.** This Settlement Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California.

EXECUTION BY PARTIES

DATED: 8/18/2022

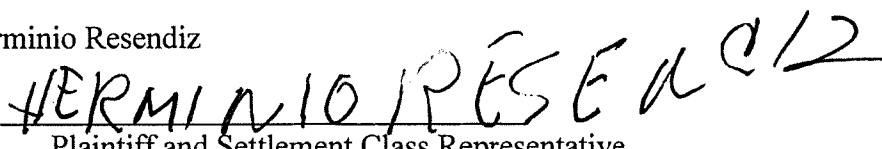
SANTA ANA ELKS LODGE-794-BPOE

By: 

Name: NORMAN L. FISHER
Title: TRUSTEE

DATED: 8/26/22

Herminio Resendiz

By: 

Plaintiff and Settlement Class Representative

**CONFIDENTIAL SEVERANCE AGREEMENT AND
GENERAL RELEASE OF ALL CLAIMS**

This Confidential Severance Agreement and General Release of All Claims (hereinafter referred to as the "Agreement") is made and entered into by and between Defendant SANTA ANA ELKS LODGE-794-BPOE; ("BPOE" individually, or "Defendant") and HERMINIO RESENDIZ (hereinafter referred to as "Plaintiff", and together with the Company, "Parties").

RECITALS

WHEREAS, Plaintiff was an at-will employee of Defendant from on or about sometime in 1990 until on or about May 28, 2019 (hereinafter "Separation Date");

WHEREAS, on May 28, 2020, Plaintiff filed a class action complaint, case number 8:20-cv-00990-LAK-ADS, alleging various violations of the Labor Code, including, but not limited to: (1) violation of the Fair Labor Standards Act (29 U.S.C. §§ 206 and 207); (2) violation of Labor Code §§ 226.7, 512 (Meal Period Violations); (3) violation of Labor Code §§ 226.7, Wage Order 9 (Rest Period Violations); (4) violation of Labor Code §§ 204, 510, 1194 (Failure to Pay All Wages, Including Minimum Wage and Overtime); (5) violation of Labor Code §§ 201, 202, 203 (Failure to Pay Wages Due at Separation of Employment); (6) violation of Labor Code §§ 226, subd. (a) and (e) (Failure to Issue Accurate Itemized Wage Statements); (7) violation of Labor Code §2802 (Failure to Reimburse Business Expenses); and (8) violation of Bus. & Prof. Code §§ 17200 et seq. (Unfair Business Practices) ("Action").

WHEREAS, on November 12, 2021, the Parties attended mediation of the Plaintiff's Class Action before mediator Mark LeHocky, the Parties. While the case didn't settle at mediation, the Parties continued settlement discussions with the help of the mediator and the Parties agreed to a general release in exchange for a one-time payment of fifty thousand dollars (\$50,000.00) to resolve Plaintiff's allegations for violations under the Fair Employment and Housing Act ("FEHA"), which would include, disability discrimination, failure to accommodate, and failure to engage in the interactive process. Plaintiff also would have alleged wrongful termination in violation of public policy as well as Intentional Infliction of Emotional Distress;

WHEREAS, the Company and Plaintiff have resolved the Class Action via a separate settlement agreement;

WHEREAS, Defendant expressly denies every allegation asserted by Plaintiff with respect to his Individual Claims, and denies Plaintiff has, had, or could have had any valid legal claim against Defendant for any claims under the FEHA;

WHEREAS, Plaintiff and Defendant mutually desire to settle and terminate fully and finally all claims, differences and disputes between them including, but not limited to, all matters related to Plaintiff's Individual Claims, his employment relationship with Defendant, the terms and conditions of Plaintiff's employment relationship with Defendant, and any other asserted or unasserted claims; and

WHEREAS, Plaintiff acknowledges that as of the date on which Plaintiff signs this Agreement (the "Execution Date"), Plaintiff is waiving all rights and claims described in this

Agreement in exchange for consideration that is in addition to anything of value to which Plaintiff has ever been and/or is already entitled. This section and/or this agreement as a whole is not meant to waive any rights or claims asserted in the Class Action, case number 8:20-cv-00990-LAK-ADS;

NOW THEREFORE, in consideration of the mutual covenants and promises contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties agree to be legally bound by the following terms and conditions, which constitute full settlement of all claims, differences and disputes between them:

1. Recitals. The Recitals set forth above are true, accurate, and correct, and are incorporated into this Agreement by this reference and made a material part of this Agreement. This Agreement shall become effective on the date Plaintiff returns the signed Agreement to Defendant (hereinafter referred to as the “Effective Date”).

2. Consideration. In full and final settlement of all claims, and subject to the Plaintiff complying with all of Plaintiff’s obligations under this Agreement, Defendant agrees to pay Plaintiff a total sum of fifty thousand dollars (\$50,000.00) (hereinafter referred to as the “Settlement Sum”). The first check will be issued to Plaintiff Herminio Resendiz in the amount of five thousand dollars (\$5,000.00), and will be subject to all withholdings. Defendant will issue IRS Form W-2 for this payment. The second check will be for thirty-five thousand dollars (\$35,000.00) and will not be subject to any withholdings. Defendant will issue an IRS Form 1099 for this payment to Plaintiff. The third and final check will be made out to Mahoney Law Group, APC in the amount of ten thousand dollars (\$10,000.00) which will represent attorney fees and costs. Defendant will issue an IRS Form 1099 for this payment to Mahoney Law Group, APC. The combined payments make up the Settlement Sum. Payment is contingent upon (1) receipt by Defendant of a completed W-9 from the Plaintiff and Mahoney Law Group, APC; and (2) receipt by the Company of a fully executed copy of this Agreement by Plaintiff. Settlement checks will be mailed to Mahoney Law Group, within fifteen (15) days of receipt of a completed W-9 from the Plaintiff and Mahoney Law Group, APC; and (2) receipt by the Company of a fully executed copy of this Agreement by Plaintiff.

3. Taxes. Plaintiff understands Defendant shall issue both an IRS Form 1099 and an IRS Form W-2as required by applicable law to Plaintiff. Defendant shall issue an IRS Form 1099 to Mahoney Law Group, as a result of the payment referenced in section 2, above. Defendant makes no representation regarding the tax consequences or liability arising from the Settlement Sum. The Plaintiff understands and agrees that any and all employee tax liability that may be due or become due because of the payments referenced in Paragraph 2 is the Plaintiff’s sole responsibility, and that Plaintiff will pay any such taxes that may be due or become due. The Plaintiff shall hold Defendant harmless and indemnify it for any employee tax liabilities, costs, and expenses, including attorneys’ fees and costs, by any tax authority relating in any way to the tax treatment of payments made pursuant to this Agreement.

4. Liens and Subrogation. Plaintiff represents and warrants that the Settlement Sum is not subject to any liens and/or subrogation by the Employment Development Department (“EDD”), or any state or federal agency for any benefits received by Plaintiff, or subject to any lien relating to any obligation at law to any individual or entity. Plaintiff shall protect and

indemnify The Company against any claims, subrogation claims and other rights that the EDD or any state or federal agency, or individual or entity, may assert against the Settlement Sum paid.

5. Release of All Claims by Plaintiff. Subject to the rights enumerated in Paragraph 6, in exchange for, and in consideration of, the payments, benefits, and other commitments described herein, Plaintiff, acting for himself, his spouse (if any), their marital community (if any), and their respective heirs, estates, representatives, executors, successors and assigns (all encompassed in the term "Plaintiff"), hereby fully, forever, irrevocably, and unconditionally releases and discharges Defendant, including its past and present divisions, related entities, parents, subsidiaries, joint ventures, predecessors, successors, members, assigns, and their respective shareholders, owners, officers, agents, administrators, fiduciaries, beneficiaries, subrogees, executors, partners, and privies (collectively the "Released Parties" and each a "Released Party"), from any and all claims of whatever kind and nature, character, and description, whether in law or equity, whether sounding in tort, contract or other common law or arising out of any federal, state, and/or local law, statute, ordinance, regulation, guidance, opinion, interpretation, caselaw, or other source of law, which Plaintiff may have against the Released Parties, including any and all claims arising out of and/or in any way related to Plaintiff's employment with Defendant or the circumstances of Plaintiff's separation from that employment, which could have arisen out of any act or omission occurring from the beginning of time to the Effective Date of this Agreement, whether now known or unknown, contingent or vested, whether anticipated or unanticipated, asserted or unasserted, at the time of execution of this Agreement or not, for any type of relief, including, without limitation, any and all claims, charges, grievances, causes of action, lawsuits or other actions of any kind seeking to recover or be awarded any form of compensation, benefits, damages, back pay, front pay, unpaid costs or reimbursements, penalties (including late payment penalties), liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or injunctive or other equitable relief.

This release includes, but is not limited to, any and all claims Plaintiff could bring have brought under any agreement between him and Defendant (except for this Agreement), claims arising from or dependent on the statutory and/or common law of California; as well as any and all claims Plaintiff brought or could have brought pursuant to or under any federal statute, law or regulatory authority.

The federal statutory and/or regulatory claims released by this Agreement, include, but are not limited to, the Civil Rights Acts of 1866 and 1964, as amended, 42 U.S.C. §§ 1981 and 2000(e) *et seq.*; the Civil Rights Act of 1991; the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*; the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 701 *et seq.*; the Age Discrimination in Employment Act of 1967 (ADEA), as amended; the Worker Adjustment and Retraining Notification Act (WARN), the Family and Medical Leave Act of 1993 (FMLA), 29 U.S.C. § 2601 *et seq.*; the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001 *et seq.*; the Equal Pay Act, 29 U.S.C. § 206(d); the Lily Ledbetter Fair Pay Act, the Pregnancy Discrimination Act; Occupational Safety and Health Act (OSHA), 29 U.S.C. § 651, *et seq.*; the National Labor Relations Act (NLRA), as amended; the Labor-Management Relations Act, as amended, and all claims Plaintiff brought or could have brought under any other statute set forth in the statutes or codes of the United States, or any related regulatory authority, that pertains or relates to, or otherwise touches upon, the employment relationship between the Company and Plaintiff.

The State statutory and/or regulatory claims released by this Agreement include, but are not limited to, California Bus. & Prof. Code §17200, *et seq.*; California Bus. & Prof. Code §1-25762, *et seq.*; California Code of Civil Procedure §1021.5; the California Fair Employment and Housing Act; the Unruh Civil Rights Act; the California Equal Pay law; the California Whistleblower Protection Law; the California Family Care Leave Act; the California Pregnancy Disability Leave Law; the California WARN Law; the California Constitution; and any and all claims brought or that could be brought under any other statute set forth in the statutes or codes of any State or local government or regulatory authority, that pertains or relates to, or otherwise touches upon, the employment relationship between Defendant and Plaintiff.

This release also includes, to the fullest lawful extent, any and all actions for breach of contract, express or implied, breach of the covenant of good faith and fair dealing, express or implied, promissory estoppel, wrongful termination in violation of public policy, all other claims for wrongful termination and constructive discharge, and all other tort claims, including, but not limited to, assault, battery, false imprisonment, intentional interference with contractual relations, intentional or negligent infliction of emotional distress, invasion of privacy, negligence, negligent investigation, negligent hiring, negligent supervision, or negligent retention, defamation, intentional or negligent misrepresentation, fraud, and any and all other common law causes of action or federal, state or local laws and regulations relating to employment, employment termination, employment discrimination, harassment (including sexual harassment), and/or retaliation, wages, hours, employee benefits, compensation, and any and all claims for attorneys' fees and costs, pursuant to or arising under any such law or order.

If any claim is not subject to release, to the extent permitted by law, Plaintiff waives any right or ability to be a class or collective action representative or to otherwise participate in any putative or certified class, collective or multi-party action or proceeding based on such a claim in which any Company or any of the other Released Parties identified in this Agreement.

In waiving and releasing any and all claims set forth in this Agreement, whether or not now known to the Parties, the Parties understands that if they later discover facts different from or in addition to those facts they currently knows or believes to be true, this Agreement, and any waivers and releases in this Agreement, will nevertheless remain effective in all respects despite such different or additional facts and even if the Party would not have agreed to this Agreement if he/it had had prior knowledge of such facts. The Parties expressly, knowingly, and intentionally waives the benefits and rights of any statute, rule, doctrine, or common law principle of any jurisdiction whatsoever that provides that a general release does not extend to unknown claim, including without limitation any applicable benefits or rights under California Civil Code §1542, which provides:

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

The Parties agree that this release is not a release on account of wages due, or to become due, or made as an advance on wages to be earned, and the Parties agree and warrant that Plaintiff has already received payment of all wages due to Plaintiff. The Parties further agree that this

section, and more specifically, the release language in this section **shall not** act as a waiver of any rights Plaintiff has with respect to his Class Action matter, specifically, case number 8-20-cv-00990-JAK-ADS.

6. Protected and Reserved Rights.

a. Notwithstanding paragraph 5, Plaintiff in this Agreement releases only his individual claims, and does not release and discharge in this Agreement the claims that were alleged in the Class Action (*Herminio Resendiz v. Santa Ana Elks Lodge-794-BPOE, et al, Case No. 8-20-cv-00990-JAK-ADS*, United States District Court, Central District; and

b. Notwithstanding Paragraph 5, Plaintiff does not release and discharge: (i) any right to vested benefits that he may have under the terms of any profit-sharing or retirement benefit plan administrated by Defendant; (ii) the right to file any claims that are not permitted to be waived or released under applicable law or regulation, including but not limited to, the right to file claims for workers' compensation and/or unemployment compensation; (iii) the right to bring a lawsuit to enforce Defendant's obligations under this Agreement; and (iv) any claims that arise after the date on which the Plaintiff signs this Agreement. Nor is this Agreement intended in any way to limit the Plaintiff's right or ability to: (a) make any disclosure of information required by law or protected under the whistleblower provisions of any law; (b) initiate a charge with, provide information to, testify at, participate, or otherwise assist in investigations conducted by or engage in communications with, the Equal Employment Opportunity Commission (EEOC), the National Labor Relations Board (NLRB), the Occupational Safety and Health Administration (OSHA), the Securities and Exchange Commission (SEC), or any other federal, state or local governmental agency or commission ("Government Agencies"); or (iii) respond to any inquiry from any such authority or Governmental Agencies, including an inquiry about the existence of this Agreement or its underlying facts. Plaintiff will, however, not seek or accept any award of back pay, front pay, compensatory damages, punitive damages, attorneys' fees, or reinstatement in any such charge, civil action, suit or proceeding. This Agreement does not limit Plaintiff's right to receive an award for information provided to the SEC.

7. No Pending Claims or Assignments. Plaintiff represents and warrants that, other than the Class Action case number 8-20-cv-00990-JAK-ADS (which he agreed to settle on November 23, 2021, by execution of a separate written agreement), there are no claims, charges, lawsuits, or any similar matters of any kind filed by Plaintiff, on Plaintiff's behalf or for Plaintiff's benefit, presently pending against any of the Released Parties in any forum whatsoever, including, without limitation, in any state or federal court, or before any federal, state, or local administrative agency, board, or governing body, nor any qui tam, whistleblower, or other similar type of private attorney general action. Plaintiff also represents and warrants that there has been no assignment or other transfer of any interest in any claim that Plaintiff may have against the Released Parties, and Plaintiff agrees to indemnify and hold the Released Parties harmless from any liability, claims, demands, damages, costs, expenses and attorneys' fees incurred by them due to any person asserting any such assignment or transfer. This indemnity shall not require payment as a condition precedent to recovery by the Released Parties against Plaintiff under this indemnity.

8. Covenant Not to Sue. Subject to the rights enumerated in Paragraph 6, Plaintiff covenants not to file any suits, complaints, claims, or charges against Defendant or the Released

Parties, either on Plaintiff's own behalf or in any representative capacity, in any state or federal court or before any federal, state, or local administrative agency, board, or governing body.

9. Compliance with Laws. The Plaintiff acknowledges, affirms, represents, and warrants that at all times during the Plaintiff's employment by Defendant, the Plaintiff complied with all state and federal laws, acted with the highest degree of fidelity to the Company, and committed no acts of theft, embezzlement, misappropriation, or other forms of misconduct contrary to the interests of Defendant.

10. Non-Admission. Execution of this Agreement and compliance with its terms shall not be considered or deemed an admission by Defendant of any liability whatsoever, or as an admission by Defendant of any violation of Plaintiff's rights or the rights of any other person, a violation of any order, law, statute, or duty, or breach of any duty owed to Plaintiff or any other person. The Company specifically disclaims any such liability.

11. Knowing and Voluntary Acknowledgments. Plaintiff specifically agrees and acknowledges that:

- a. Plaintiff has read this Agreement in its entirety and understands its terms;
- b. Plaintiff has been advised to consult with an attorney before executing this Agreement, and she has in fact consulted with such counsel;
- c. Plaintiff knowingly, freely, and voluntarily assents to its terms and conditions including, without limitation, the release, and covenants contained in this Agreement;
- d. Plaintiff is executing this Agreement, including the waiver and release, in exchange for good and valuable consideration in addition to anything of value to which Plaintiff is otherwise entitled;
- e. Plaintiff is not releasing rights or claim that may arise after Plaintiff executes this Agreement; and
- f. Plaintiff is not relying upon any oral representations made to Plaintiff regarding the subject matter of this Agreement.

12. Confidentiality. Subject to the rights enumerated in Paragraph 6.b., Plaintiff agrees to keep confidential, and not to divulge or cause or allow to be divulged in any manner, including on social media: (1) the terms of this Agreement; (2) the amount of the Settlement Sum described above in Paragraph 2 or the other terms of the consideration for this Agreement; or (3) the existence of or the factual basis for any claims, to any person or organization, including but not limited to, current or former employees of Defendant or the Released Parties, members of the press and/or media, or any other members of the public. Plaintiff and his attorneys further agree that Plaintiff's counsel may not make any statements about the dispute or about this Agreement, except that they may use these to promote or market their services or qualifications (including, for example, on any website) without naming Defendant and/or Defendant's counsel either directly or indirectly. Notwithstanding the foregoing, Plaintiff may permissibly disclose the existence and terms of this

Agreement to his attorney(s) and to his spouse (if any); provided that Plaintiff agrees that his spouse shall be deemed bound to the confidentiality provisions set forth in this paragraph, and that if Plaintiff's spouse divulges the existence and terms of this Agreement, its negotiation, its execution, and/or its implementation to any person or organization, including, but not limited to, employees or former employees of Defendant or the Released Parties, members of the press and/or media, or other members of the public, such divulgence shall be imputed to Plaintiff and shall constitute a breach of this paragraph by Plaintiff.

This paragraph shall not prohibit Plaintiff and Plaintiff's attorney(s), if any, from disclosing the terms of this Agreement to Plaintiff's tax advisor(s) or accountants to the extent necessary to prepare Plaintiff's income tax returns and to represent Plaintiff in connection with any proceedings relating thereto, or from advising a governmental taxing authority of the consideration being paid to Plaintiff, or of the existence of this Agreement in response to a question or questions posed by such taxing authority; provided that Plaintiff shall instruct Plaintiff's tax advisors that they are to keep confidential their knowledge of the settlement amount and that any breach of that confidence by them will be attributed and imputed to Plaintiff. Nor does this Paragraph prohibit Plaintiff from disclosing or discussing any matters regarding alleged sexual harassment or abuse. The Parties agree that any proven breach by either Party of this Paragraph will cause immediate and irreparable injury to Defendant, the exact amount of which is difficult, if not impossible, to determine. Accordingly, if either Party breaches this Paragraph, and the non-breaching Party proves the breach of this Paragraph, then the breaching Party the sum of five hundred dollars (\$500.000) as liquidated damages, per occurrence, which represents a fair estimate of the reasonable compensation for such a breach. The Parties acknowledge and agree that the liquidated damages are not a penalty, but rather reasonable damages that Defendant would be entitled to recover.

13. Irreparable Harm. Subject to the rights enumerated in Paragraph 6.b., the Parties agree that in the event of a breach or a threatened breach by either Party of any of the provisions of this Agreement, in addition to any and all other rights remedies available to it at law or equity, the non-breaching Party shall be entitled to: (a) money damages suffered by the non-breaching Party as a result of the breach; and (b) reimbursement of court costs and attorney fees and costs reasonably incurred by non-breaching Party in securing compliance with this Agreement. Nothing in this paragraph shall, or is intended to, limit or restrict any other rights or remedies the non-breaching Party may have under this Agreement or otherwise.

14. Non-Disparagement. Subject to the rights enumerated in Paragraph 6, Plaintiff agrees that neither Plaintiff nor anyone acting on her behalf will make any derogatory or disparaging statement about Defendant and/or the Released Parties to any individual or entity, including but not limited to, Defendant's actual or potential clients, customers, vendors, Plaintiff's financial or credit institutions, or the media, nor directly or indirectly take any action which is intended to embarrass any of them. For purposes of this paragraph, a disparaging statement is any communication, oral or written, which would tend to cause the recipient of the communication to question the business condition, integrity, competence, fairness, or good character of the person to whom, or entity to which, the communication relates.

15. Neutral Job Reference The Parties agree that all inquiries from prospective employers shall be directed to, and handled by, Defendant's Human Resources. It is Plaintiff's

responsibility to direct all employment inquires to Defendant's Human Resources. Defendant's Human Resources will only provide employment verification and if authorized salary information.

16. Non-Participation. To the fullest extent permitted by law, and except as otherwise provided by Paragraph 6.b., Plaintiff agrees not to participate in, aid, or assist in any way, any potential or actual claimants or plaintiffs that have, or may have in the future, any claims, actions, lawsuits or charges against Defendant or the Released Parties. Such claimants or plaintiffs may include both current and former employees, or individuals who are or may be contemplating pursuit of an action against Defendant and/or the Released Parties. Nothing in this section will limit Plaintiff's cooperation as required by law.

17. Amendment. This Agreement shall be binding upon Plaintiff and Defendant and may not be amended, supplemented, changed, or modified in any manner, orally or otherwise, except by an instrument in writing of subsequent date signed by both Plaintiff and the Company.

18. Cooperation. In the event that Defendant requires any information or testimony from the Plaintiff in connection with any claim made against Defendant, or any claims made by Defendant against persons or entities not party to this Agreement, the Plaintiff agrees to cooperate fully with, and with being reimbursed for reasonable costs by, Defendant, including: (a) appearing at any deposition, trial, hearing or arbitration; (b) meeting telephonically or in person with attorneys or agents designated by Defendant, at a reasonable time and place, prior to the giving of testimony, for the purpose of discussing such testimony; and (c) providing Defendant with any relevant documentation in the Plaintiff's custody, control or possession. The Company will pay for or reimburse the Plaintiff for any reasonable expenses, not including attorneys' fees, the Plaintiff incurs in connection with such cooperation, provided Defendant has agreed in advance to such expenses.

19. Entire Agreement. Except for the separate Class Action Settlement Agreement, this Agreement sets forth the entire Agreement between Plaintiff and Defendant. This Agreement fully supersedes any prior obligation of Defendant to Plaintiff, but all prior agreements and obligations of Plaintiff to Defendant related to inventions, business ideas, confidentiality of corporate information, non-solicitation, and non-competition remain intact and are hereby reaffirmed and incorporated in this Agreement. Plaintiff acknowledges that he has not relied on any representations, promises, or agreements of any kind made to Plaintiff in connection with his decision to accept this Agreement, except for those set forth in this Agreement.

20. Paragraph Titles. The paragraph titles in this Agreement are for convenience only; they form no part of this Agreement and shall not affect its interpretation.

21. Construction. Plaintiff and Defendant both acknowledge and agree that each has had a full and fair opportunity to participate in the drafting and/or negotiation of this Agreement and has had the opportunity to have legal counsel review this document. Plaintiff and Defendant agree that the rule of construction that any ambiguities are to be resolved against the drafting party shall not be applied to the interpretation of this Agreement and that no inference in favor of, or against, any party shall be drawn from the fact that one party has drafted any portion of this Agreement.

22. Execution in Counterparts; Facsimile Signatures. This Agreement may be executed in any number of counterparts, which means that the Plaintiff and Defendant may sign separate originals of this Agreement and that the executed originals, taken together, will be deemed binding. Scanned and/or facsimile signatures shall be sufficient and fully binding.

23. Choice of Law and Venue. This Agreement shall be governed by the laws of the State of California without regard to its conflicts of laws principles. With respect to any litigation based on, arising out of, or in connection with this Agreement, the Plaintiff and Defendant expressly submit to the personal jurisdiction of California and hereby expressly waive, to the fullest extent permitted by law, any objection that they may now or hereafter have to the laying of venue of any such litigation brought in any such court referred to above, including without limitation, any claim that any such litigation has been brought in an inconvenient forum.

24. Severability. The parties explicitly acknowledge and agree that the provisions of this Agreement are both reasonable and enforceable. However, if any portion or provision of this Agreement (including, without limitation, any portion or provision of any section of this Agreement) is determined to be illegal, invalid, or unenforceable by any court of competent jurisdiction and cannot be modified to be legal, valid, or enforceable, the remainder of this Agreement shall not be affected by such determination and shall be valid and enforceable to the fullest extent permitted by law, and said illegal, invalid, or unenforceable portion or provision shall be deemed not to be a part of this Agreement. To the extent any provision of the general release of claims described in Paragraph 5 above is deemed to be illegal, invalid, or unenforceable, Defendant may, at its sole option, void this Agreement, in which case Plaintiff shall immediately return the full Settlement Sum to Defendant.

25. Waiver. The Company's failure to insist upon Plaintiff's strict adherence to any term or obligation of this Agreement shall neither be considered a waiver nor deprive the Company of the right to thereafter expect or insist upon strict adherence to that term or obligation, or any other term or obligation, of this Agreement.

26. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of, as applicable, the Company's and Plaintiff's successors, assigns, heirs, estates, and representatives.

27. Notice Requirements. Any notice ("Notice") permitted or required to be given under this Agreement must be given in writing and delivered in person or by registered, U.S. mail, return receipt requested, postage prepaid, or through FedEx, UPS, DHL, or any other reputable, professional delivery service that maintains a confirmation of delivery system to the following addresses:

If to the Company:

If to Plaintiff:

MAHONEY LAW GROUP, APC

Attn: Kevin Mahoney

Beyonca Alemzadeh

249 E. Ocean Blvd., Suite 814

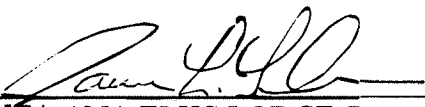
Long Beach, CA 90802

By signing below, the Plaintiff and Defendant acknowledge that they have carefully read and fully understand all of the provisions of this Agreement and that they are voluntarily entering into this Agreement.

Plaintiff:

HERMINIO RESENDEZ
Herminio Resendiz

For the Defendant:

By: 

SANTA ANA ELKS LODGE-7

BPOE

Name: NORMAN L. FISHER

Title: TRUSTEE

Dated: 8726722

Dated: 8/18/2022