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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

CHRISTIAN L. MOORE and MARIA
ARLENE EBORA, on behalf of themselves
and all others similarly situated,
Plaintiff,

v.

DNATA US INFLIGHT CATERING, LLC, a
New York limited liability company; 121
INFLIGHT CATERING, LLC, a New York
limited liability company; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: CGC-20-586512

[Assigned to the Hon. Curtis Karnow in
Dept. 611]

CLASS ACTION

**FIRST AMENDED JOINT
STIPULATION RE: CLASS ACTION
AND REPRESENTATIVE ACTION
SETTLEMENT**

Action Filed: September 11, 2020

Trial Date: None Set

This First Amended Joint Stipulation re: Class Action and Representative Action
Settlement (“Settlement” or “Agreement” or “Settlement Agreement”) is made by and between

plaintiffs Christian L. Moore (“Plaintiff Moore”) and Maria Arlene Eborá (“Plaintiff Eborá” and with Plaintiff Moore, “Plaintiffs”) individually and on behalf of the Settlement Class, on the one hand; and defendant Dnata US Inflight Catering LLC (“Dnata”) 121 Inflight Catering LLC (“121 (“with Dnata and 121, “Defendants”), on the other hand, in the lawsuit entitled *Moore, et al. v. Dnata US Inflight Catering LLC, et al.*, filed in San Francisco County Superior Court, Case No. CGC-20-586512. Plaintiffs and Defendants shall be, at times, collectively referred to as the “Parties”. This Agreement is intended by the Parties to fully, finally, and forever resolve the claims as set forth herein, based upon and subject to the terms and conditions of this Agreement.

1. DEFINITIONS

A. “Action” means collectively, *Moore, et al. v. Dnata US Inflight Catering LLC, et al.*, filed in San Francisco County Superior Court, Case No. CGC-20-586512.

B. “Aggrieved Employees” means Class Members working for Defendants during the PAGA Period as non-exempt, hourly-paid employees in California.

C. “Class Counsel” means: David D. Bibiyan and Diego Aviles of Bibiyan Law Group, P.C. The term “Class Counsel” shall be used synonymously with the term “Plaintiff’s Counsel.”

D. “Class Period” means the period from September 11, 2016 through December 13, 2021. This is not the same class period as applied to the FCRA/ICRAA Settlement Class (see definition below), which will run from the period of September 11, 2018 through December 13, 2021 (defined as “FCRA/ICRAA Class Period” below).

E. “Court” means the Superior Court of the State of California for the County of San Francisco.

F. “Final Approval Date” means the later of: (1) the date the Court signs an Order granting final approval of this Settlement (“Final Approval”) and Judgment; (2) if there is an objector, 60 days from the date the Final Approval and Judgment; or (3) to the extent any appeals have been filed, the date on which they have been resolved or exhausted.

G. “Defendants” means, collectively, Dnata US Inflight Catering LLC and 121 Inflight Catering LLC,.

1 **H. “FCRA/ICRAA”** means, collectively, the Fair Credit Reporting Act and the
2 California Investigative Consumer Reporting Agencies Act.

3 **I. “FCRA/ICRAA Class Period”** means the period from September 11, 2018
4 through December 13, 2021 .

5 **J. “FCRA/ICRAA Settlement Class”** or **“FCRA/ICRAA Settlement Class**
6 **Members”** or **“FCRA/ICRAA Class Members”** means all current and former employees who
7 worked for Defendants at any time during the FCRA/ICRAA Class Period in California.

8 **K. “FCRA/ICRAA Settlement Payments”** means a payment to a Participating
9 Class Member (defined below) of his or her share of the FCRA/ICRAA Settlement Amount
10 relating to disputed violations of FCRA/ICRAA during the FCRA/ICRAA Class Period. The
11 Parties have agreed that the FCRA/ICRAA Settlement Amount will be divided equally among
12 the Participating Class Members working during the FCRA/ICRAA Class Period from the
13 FCRA/ICRAA allocation (defined below).

14 **L. “FCRA/ICRAA Settlement Amount”** means the non-reversionary allocation of
15 Fifty Thousand Dollars and Zero Cents (\$50,000.00) from the Net Settlement Amount toward
16 FCRA/ICRAA Settlement Payments, as penalties, which will be divided equally among the
17 Participating Class Members working during the FCRA/ICRAA Class Period (hereinafter
18 “FCRA/ICRAA allocation”).

19 **M. “General Release”** means the broader release of claims by Plaintiffs, which is in
20 addition to Plaintiff’s limited release of claims as a Participating Class Member.

21 **N. “Gross Settlement Amount”** means a non-reversionary fund in the sum of Eight
22 Hundred Fifty Thousand Dollars and Zero Cents (\$850,000.00),¹ which shall be paid by
23 Defendants, from which all payments for the Individual Settlement Payments and FCRA/ICRAA
24 Settlement Payments to Participating Class Members, the Court-approved amounts for attorneys’
25 fees and reimbursement of litigation costs and expenses to Class Counsel, Settlement
26 Administration Costs, the Service Award, the PAGA Payment, and the LWDA Payment shall be
27

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¹ As the same may be increased in accordance with Paragraph 17, below.

1 paid. The Gross Settlement Amount is the maximum amount that Defendants will be required
2 to pay, with the exception of the Employer's Share of Payroll Taxes which shall be paid by
3 Defendants separate, apart, and in addition to the Gross Settlement Amount.

4 **O. "Individual PAGA Payment"** means a payment made to an Aggrieved
5 Employee for his or her share of the PAGA Payment, which may be in addition to his or her
6 Individual Settlement Share if he or she is also a Participating Class Member and his or her
7 FCRA/ICRAA Settlement Payment if he or she worked during the FCRA/ICRAA Class Period.
8 The Individual PAGA Payment will be paid regardless or whether or not an Aggrieved Employee
9 is a Participating Class Member.

10 **P. "Individual Settlement Payment"** means a payment to a Participating Class
11 Member of his or her net share of the Net Settlement Amount resulting from the settlement of
12 the non-FCRA/ICRAA claims.

13 **Q. "Individual Settlement Share"** means the gross amount of the Net Settlement
14 Amount that a Settlement Class Member is eligible to receive from the non-FCRA/ICRAA
15 portion of the Settlement based on the number of Workweeks that he or she worked as a
16 Settlement Class Member during the Class Period if he or she does not submit a timely and valid
17 Request for Exclusion.

18 **R. "LWDA Payment"** means the payment to the State of California Labor and
19 Workforce Development Agency ("LWDA") for its seventy-five percent (75%) share of the total
20 amount allocated toward penalties under the PAGA all of which is to be paid from the Gross
21 Settlement Amount. The Parties have agreed that Thirty Thousand Dollars and Zero Cents
22 (\$30,000.00) shall be allocated toward PAGA penalties, of which Twenty-Two Thousand Five
23 Dollars and Zero Cents (\$22,500.00) will be paid to the LWDA (*i.e.*, the LWDA Payment) and
24 Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) will be paid to Aggrieved
25 Employees on a *pro rata* basis based on the Workweeks worked for Defendant as a non-exempt,
26 hourly-paid employee in California in the PAGA Period (*i.e.*, the PAGA Payment).

27 **S. "Net Settlement Amount"** means the portion of the Gross Settlement Amount
28 that is available for distribution to the Participating Class Members after deductions for the Court-

1 approved allocations for Settlement Administration Costs, Enhancement Awards to Plaintiffs, an
2 award of attorneys' fees, reimbursement of litigation costs and expenses to Class Counsel, the
3 LWDA Payment, and the PAGA Payment.

4 **T. "Operative Complaint" or "Complaint"** means the Second Amended
5 Complaint to be filed in *Moore, et al. v. Dnata US Inflight Catering LLC, et al.*, filed in San
6 Francisco County Superior Court, Case No. CGC-20-586512.

7 **U. "PAGA Payment"** is the is the 25% portion of the Thirty-Thousand Dollars
8 and Zero Cents (\$30,000.00) that is allocated toward PAGA penalties (Seven Thousand Five
9 Dollars and Zero Cents (\$7,500.00)) that will be paid to Aggrieved Employees on a *pro rata*
10 basis based on the Workweeks worked as non-exempt, hourly-paid employees in California in
11 the PAGA Period, which would be in addition to their Individual Settlement Share if they are
12 Participating Class Members, as well.

13 **V. "PAGA Period"** means the period from July 28, 2019 through December 13,
14 2021.

15 **W. "Participating Class Members"** means all Settlement Class Members and
16 FCRA/ICRAA Settlement Class Members who do not submit a timely and valid Request for
17 Exclusion.

18 **X. "Participating Individual Settlement Share"** means the gross amount of the Net
19 Settlement Amount that a Participating Class Member is eligible to receive based on the number
20 of Workweeks that he or she worked as a Settlement Class Member during the Class Period once
21 all opt-outs have been factored in, excluding any Individual PAGA Payment to which he or she
22 may be entitled if he or she is also an Aggrieved Employee and any amounts he or she may be
23 eligible to receive as a FCRA/ICRAA Settlement Class Member.

24 **Y. "Plaintiffs", "Named Plaintiffs" or "Class Representatives"** shall refer to
25 Plaintiffs Christian L. Moore and Maria Arlene Ebor, collectively.

26 **Z. "Preliminary Approval Date"** means the date on which the Court enters an
27 Order granting preliminary approval of the Settlement.

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1 **AA. “Released Parties”** shall mean Defendants and each of their past, present, and
2 future respective subsidiaries, dba’s, affiliates, parents, insurers and reinsurers, and company-
3 sponsored employee benefit plans of any nature and their successors and predecessors in interest,
4 including all of their officers, directors, shareholders, employees, agents, principals, heirs,
5 representatives, accountants, auditors, consultants, attorneys, administrators, fiduciaries,
6 trustees, and agents.

7 **BB. “Response Deadline”** means the deadline for Settlement Class Members and
8 FCRA/ICRAA Settlement Class Members to mail any Requests for Exclusion, Objections, or
9 Workweek Disputes to the Settlement Administrator, which is forty-five (45) calendar days from
10 the date that the Class Notice is first mailed in English and Spanish by the
11 Settlement Administrator, unless a Class Member’s notice is re-mailed. In such an instance, the
12 Response Deadline shall be fifteen (15) calendar days from the re-mailing, or forty-five (45)
13 calendar days from the date of the initial mailing, whichever is later, in which to postmark a
14 Request for Exclusion, Workweek Dispute or Objection. The date of the postmark shall be the
15 exclusive means for determining whether a Request for Exclusion, Objection, or Workweek
16 Dispute was submitted by the Response Deadline.

17 **CC. “Request for Exclusion”** means a written request to be excluded from the
18 Settlement Class pursuant to Paragraph 9(C) below.

19 **DD. “Service Awards”** means monetary amounts to be paid to Plaintiffs each of up to
20 Seven Thousand, Five Hundred Dollars and Zero Cents (\$7,500.00), which subject to Court
21 approval, will be paid out of the Gross Settlement Amount.

22 **EE. “Settlement Administration Costs”** means all costs incurred by the Settlement
23 Administrator in administration of the Settlement, including, but not limited to, translating the
24 Class Notice to Spanish, the distribution of the Class Notice to the Settlement Class in English
25 and Spanish, calculating Individual Settlement Shares, Individual Settlement Payments,
26 FCRA/ICRAA Settlement Payments, Individual PAGA Payments, and Participating Individual
27 Settlement Shares, as well as associated taxes and withholdings, providing declarations,
28 generating Individual Settlement Payment checks and FCRA/ICRAA Settlement Payment

1 checks and related tax reporting forms, doing administrative work related to unclaimed checks,
2 transmitting payment to Class Counsel for the Court-approved amounts for attorneys' fees and
3 reimbursement of litigation costs and expenses, Plaintiffs' Service Awards, and to the LWDA
4 for the LWDA Payment, providing weekly reports of opt-outs, objections and related
5 information, and any other actions of the Settlement Administrator as set forth in this Agreement,
6 all pursuant to the terms of this Agreement. The Settlement Administration Costs are estimated
7 not to exceed \$11,000.00. If the actual amount of the Settlement Administration Costs is less
8 than \$11,000.00, the difference between \$11,000.00 and the actual Settlement Administration
9 Costs shall be a part of the Net Settlement Amount. If the Settlement Administration Costs exceed
10 \$11,000.00 then such excess will only be paid upon approval from the Court and shall be paid
11 solely from the Gross Settlement Amount and Defendant will not be responsible for paying any
12 additional funds in order to pay these additional costs.

13 **FF. "Settlement Administrator"** means the Third-Party Administrator mutually
14 agreed upon by the Parties that will be responsible for the administration of the Settlement
15 including, without limitation, translating the Class Notice in Spanish, the distribution of the
16 Individual Settlement Payments and FCRA/ICRAA Settlement Payments to be made by
17 Defendants from the Gross Settlement Amount and related matters under this Agreement.

18 **GG. "Settlement Class" or "Settlement Class Members"** means all current and
19 former non-exempt, hourly-paid employees who worked in California for Defendants at any time
20 during the Class Period.

21 **HH. "Workweeks"** means the number of weeks that a Settlement Class Member was
22 employed by and worked for the Defendants in a non-exempt, hourly position during the Class
23 Period in California, based on hire dates, re-hire dates, and termination dates.

24 **2. BACKGROUND**

25 **A.** On July 28, 2020, Plaintiff Moore filed with the LWDA and served on Defendants
26 a notice under Labor Code section 2699.3 stating Plaintiff Moore intended to serve as a proxy of
27 the LWDA to recover civil penalties for Aggrieved Employees for various Labor Code violations.
28 ("PAGA Notice").

1 **B.** On September 11, 2020, Plaintiff Moore filed a putative wage-and-hour class
2 action (“Class Action”) alleging that, during the Class Period, Defendant, as it pertains to Class
3 Members: (1) failure to pay overtime and minimum wages; (2) failure to provide meal and rest
4 periods, or compensation in lieu thereof; (3) failure to pay wages due upon separation from
5 employment; (4) failure to provide accurate wage statements; and (5) engaged in unfair
6 competition.

7 **C.** On November 13, 2020, Defendants removed the Class Action to the Federal
8 District Court of the Northern District of California. Plaintiff Moore subsequently filed a Motion
9 for Remand, which was granted by the District Court and the Class Action was remanded to the
10 Court on July 19, 2021.

11 **D.** On March 1, 2021, after sixty-five (65) days had passed without any Action by
12 the LWDA with respect to the alleged Labor Code violations, Plaintiff Moore filed a separate,
13 representative action under PAGA against Defendants for the Labor Code violations set out in
14 the PAGA Notice.

15 **E.** Shortly thereafter, the Parties agreed to exchange informal discovery and attend
16 an early mediation, in which Plaintiff was provided with, among other things: (1) all time and
17 payroll records for Class Members; (2) hire dates, termination dates, and rates of pay for all Class
18 Members; (3) Defendants’ employment policies included in its Collective Bargaining Agreement
19 (“CBA”), Lateness Disciplinary Policy, Call Out Policy, LAX Meal and Break Policy, Meal
20 Break Waiver, and Safety Shoe Policy. .

21 **F.** On December 6, 2021, the Parties participated in a full-day mediation before Jeff
22 Ross, Esquire, a well-regarded mediator experienced in mediating complex labor and
23 employment matters. During mediation, issues relating to disputed violations of FCRA/ICRAA
24 disclosures were raised by Class Counsel based on the informal discovery exchanged by the
25 Parties. With the aid of the mediator’s evaluation, and months of subsequent negotiations with
26 the aid of the mediator, in the months after mediation, the Parties reached the Settlement to
27 resolve the Action and all claims raised on the date of mediation.

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1 **G.** On December 28, 2021, Plaintiffs filed a First Amended Complaint in the Class
2 Action, including all allegations included in the PAGA Action and adding Plaintiff Eboras as a
3 named representative. On February 17, 2022, Plaintiffs dismissed the PAGA Action.

4 **H.** As set forth in Paragraph 5 below, as part of their Settlement, the Parties agree
5 that Plaintiff shall file a Second Amended Complaint that adds causes of action on a class basis
6 for FCRA and ICRAA. The term “Action”, “Litigation” and/or “Lawsuit” shall refer to the Class
7 Action as the same has been amended and will be amended by the Second Amended Complaint.

8 **I.** Class Counsel have conducted significant investigation of the law and facts
9 relating to the claims asserted in the Action and the PAGA Notice, and have concluded that that
10 the Settlement set forth herein is fair, reasonable, adequate, and in the best interests of the
11 Settlement Class and FCRA/ICRAA Settlement Class, taking into account the sharply contested
12 issues involved, the expense and time necessary to litigate the Action through trial and any
13 appeals, the risks and costs of further litigation of the Action, the risk of an adverse outcome, the
14 uncertainties of complex litigation, the information learned through informal discovery regarding
15 Plaintiff’s allegations, and the substantial benefits to be received by Settlement Class Members
16 and FCRA/ICRAA Settlement Class Members.

17 **J.** Defendants deny Plaintiffs claims. Defendants maintain that they have at all times
18 complied with state and federal law. Defendants have concluded that, because of the substantial
19 expense of defending against the Action, the length of time necessary to resolve the issues
20 presented herein, the inconvenience involved, and the concomitant disruption to its business
21 operations, it is in its best interest to accept the terms of this Agreement. Defendants deny each
22 of the allegations and claims asserted against it in the Action and the PAGA Notice. However,
23 Defendants nevertheless desires to settle the Action for the purpose of avoiding the burden,
24 expense and uncertainty of continuing litigation and for the purpose of putting to rest the
25 controversies engendered by the Action.

26 **K.** This Agreement is intended to and does effectuate the full, final, and complete
27 resolution of all Class Released Claims of Plaintiffs, Participating Class Members, and

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FCRA/ICRAA Settlement Class Members, and all PAGA Released Claims of Plaintiffs and, to the extent permitted by law, of the State of California and Aggrieved Employees.

3. JURISDICTION

The Court has jurisdiction over the Parties and the subject matter of the Action. The Action includes claims that, if proven, would authorize the Court to grant relief pursuant to the applicable statutes. After the Court has granted Final Approval of the Settlement and entered judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment pursuant to California Rule of Court, rule 3.769, subdivision (h).

4. STIPULATION OF CLASS CERTIFICATION

The Parties stipulate to the certification of the Settlement Class and FCRA/ICRAA Settlement Class under this Agreement for purposes of settlement only.

5. AMENDMENT OF PLEADING AND MOTIONS FOR APPROVAL OF SETTLEMENT

After full execution of this Agreement, the Parties will stipulate to the filing of a Second Amended Complaint Action that includes all allegations brought in the PAGA Action, all allegations raised at mediation, all FCRA/ICRAA allegations, and all allegations in the PAGA Notice, thereby effectively consolidated all allegations into the Class Action.

Thereafter, Plaintiff will move for an order granting preliminary approval of the Settlement, approving and directing the mailing of the proposed Notice of Class Action Settlement (“Class Notice”) attached hereto as **Exhibit “A”**, conditionally certifying the Settlement Class and FCRA/ICRAA Settlement Class for settlement purposes only, and approving the deadlines proposed by the Parties for the submission of Requests for Exclusion, Workweek Disputes, and Objections. If and when the Court preliminarily approves the Settlement, and after administration of the Class Notice in a manner consistent with the Court’s Preliminary Approval Order, Plaintiff will move for an order finally approving the Settlement and seek entry of a Judgment in line with this Settlement. The Parties may both respond to any Objections lodged to final approval of the Settlement up to five (5) court days before the Final Approval Hearing.

1 The Parties hereby expressly agree that whether or not the Court final approves the
2 Settlement, Plaintiff's allegations from the PAGA Action will related back to the date on which
3 Plaintiff filed the PAGA Action, and Defendants will be estopped from making any argument
4 that there is any adverse effect on the statute of limitations caused by Plaintiff's dismissal of the
5 PAGA Action without prejudice to effectuate this consolidation.

6 **6. STATEMENT OF NO ADMISSION**

7 Defendants deny any wrongdoing of any sort and further deny any liability to Plaintiffs,
8 the Settlement Class, and FCRA/ICRAA Settlement Class with respect to any claims or
9 allegations asserted in the Action and the PAGA Notice. This Agreement shall not be deemed
10 an admission by Defendants of any claims or allegations asserted in the Action or the PAGA
11 Notice. Except as set forth elsewhere herein, in the event that this Agreement is not approved by
12 the Court, or any appellate court, is terminated, or otherwise fails to be enforceable, Plaintiffs
13 will not be deemed to have waived, limited or affected in any way any claims, rights or remedies,
14 or defenses in the Action or the PAGA Notice, and Defendants will not be deemed to have
15 waived, limited, or affected in any way any of its objections or defenses in the Action and the
16 PAGA Notice. The Parties shall be restored to their respective positions in the Action prior to
17 the entry of this Settlement.

18 **7. RELEASE OF CLAIMS**

19 **A. Release by All Participating Class Members.**

20 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
21 of Judgment, and payment by Defendants to the Settlement Administrator of the full Gross
22 Settlement Amount and Employers' Taxes necessary to effectuate the Settlement, Plaintiffs and
23 all Participating Class Members release all claims against the Released Parties asserted in the
24 Operative Complaint filed in the Class Action, or any and all claims that may be asserted against
25 the Released Parties based on the factual allegations in the Operative Complaint, as follows:

26 **1. FCRA/ICRAA:** For the duration of the FCRA/ICRAA Class Period, the release
27 includes, for FCRA/ICRAA Settlement Class Members, all claims that could have been asserted
28 in the Operative Complaint pursuant to the Fair Credit Reporting Act (15 U.S.C. sections 1681

1 *et seq.*) and the Investigative Consumer Reporting Agencies Act (Cal. Civ. Code sections 1786
2 *et seq.*) (the “FCRA/ICRAA Released Claims”).

3 **2. Class Claims:** For the duration of the Class Period, the release includes, for
4 Participating Class Members: (a) all claims for failure to pay overtime wages; (b) all claims for
5 failure to pay minimum wages; (c) all claims for failure to provide compliant meal periods, or
6 compensation in lieu thereof; (d) all claims for failure to provide compliant rest periods, or
7 compensation in lieu thereof (e) all claims for the failure to timely pay wages upon termination
8 or resignation; (f) all claims for non-compliant wage statements; and (g) all claims asserted
9 through California Business & Professions Code section 17200, *et seq.* arising out of the Labor
10 Code violations referenced in the Complaint (the “Class Released Claims”).

11 **3. PAGA Claims:** For Aggrieved Employees, and, to the extent permitted by law,
12 the State of California, the release includes for the duration of the PAGA Period, all claims
13 asserted in the PAGA Notice and also alleged in the Operative Complaint, for PAGA civil
14 penalties for failure to pay meal and rest period premiums, failure to pay all minimum and
15 overtime wages, failed to provide accurate itemized wage statements, failure to timely pay wages,
16 failure to reimburse business expenses, failure to provide the proper accrual and use of paid sick
17 leave, and failure to pay all wages owed during employment and upon termination of
18 employment as specifically contained in Labor Code sections 210, 226.3, 558, 1174.5, 1197.1,
19 and 2699 in connection with alleged violations of Labor Code sections 201, 202, 203, 204, 226,
20 226.7, 246, *et seq.*, 404, 432, 510, 512, 1174, 1194, 1197, 1198.5, 2802, and 2810.5 (the “PAGA
21 Released Claims”).

22 **4.** The release expressly excludes all other claims, including claims for vested
23 benefits, wrongful termination, unemployment insurance, disability, social security, workers’
24 compensation, and any other claims outside of the Class Released Claims of Participating Class
25 Members arising during the Class Period and the PAGA Released Claims of Aggrieved
26 Employees (and, to the extent permitted by law, the State of California) arising outside of the
27 PAGA Period. The FCRA/ICRAA Released Claims, Class Released Claims and PAGA
28 Released Claims shall be referred to herein as the “Released Claims”.

1 **B. General Release.**

2 Except as expressly excluded in Paragraph 7(C) below, Plaintiffs, individually and on
3 behalf of Plaintiffs' heirs, executors, administrators, representatives, attorneys, successors, and
4 assigns knowingly and voluntarily releases and forever discharges the Released Parties, to the
5 full extent permitted by law, of and from any and all claims, known and unknown, asserted and
6 unasserted, which Plaintiffs have or may have against the Released Parties as of the date of
7 execution of this Settlement Agreement including, but not limited to, any alleged violation of:

- 8 • Title VII of the Civil Rights Act of 1964;
- 9 • The Civil Rights Act of 1991;
- 10 • Sections 1981 through 1988 of Title 42 of the United States Code, as amended;
- 11 • The Employee Retirement Income Security Act of 1974 (“ERISA”) (as modified below);
- 12 • The Immigration Reform and Control Act;
- 13 • The Americans with Disabilities Act of 1990;
- 14 • The Age Discrimination in Employment Act of 1967 (“ADEA”);
- 15 • The Workers Adjustment and Retraining Notification Act;
- 16 • The Occupational Safety and Health Act;
- 17 • The Sarbanes-Oxley Act of 2002;
- 18 • The Fair Credit Reporting Act;
- 19 • The Family and Medical Leave Act;
- 20 • The Equal Pay Act;
- 21 • The Genetic Information Nondiscrimination Act of 2008;
- 22 • [Executive Order 11246;
- 23 • The Rehabilitation Act;
- 24 • The Vietnam Era Veterans’ Readjustment Assistance Act (“ERAA”)]
- 25 • California Family Rights Act – Cal. Gov’t Code § 12945.2 as to Plaintiff Moore only;
- 26 • California Fair Employment and Housing Act – Cal. Gov’t Code § 12900 et seq. as to
27 Plaintiff Moore only;
- 28 • California Unruh Civil Rights Act – Cal. Civ. Code § 51 et seq.;

- 1 • Statutory Provisions Regarding the Confidentiality of AIDS Information – Cal. Health &
- 2 Safety Code § 120775 et seq.;
- 3 • California Confidentiality of Medical Information Act – Cal. Civ. Code § 56 et seq.;
- 4 • California Parental Leave Law – Cal. Lab. Code § 230.7 et seq.;
- 5 • California Military Personnel Bias Law – Cal. Mil. & Vet. Code § 394;
- 6 • The California Occupational Safety and Health Act, as amended, and any applicable
- 7 regulations thereunder;
- 8 • The California Consumer Credit Reporting Agencies Act – Cal. Civ. Code § 1785 et seq.
- 9 • California Investigative Consumer Reporting Agencies Act – Cal. Civ. Code § 1786 et
- 10 seq.;
- 11 • Those provisions of the California Labor Code that lawfully may be released;
- 12 • Any other federal, state or local civil or human rights law or any other federal, state or
- 13 local law, regulation or ordinance;
- 14 • Any public policy, contract, tort or common law; or
- 15 • Any basis for recovering costs, fees or other expenses including attorneys’ fees incurred
- 16 in these matters.

17 **C. Claims Not Released.**

18 This General Release expressly excludes any claims of Plaintiff Eborá against the

19 Released Parties under the Fair Employment and Housing Act (“FEHA”), the California Family

20 Rights Act (“CFRA”), wrongful termination in violation of public policy, intentional infliction

21 of emotional distress, and negligent infliction of emotional distress, which shall not be affected

22 by this Agreement.

23 **D. Waiver of California Civil Code section 1542**

24 To effect a full and complete general release as described above, Plaintiffs expressly

25 waive and relinquish all rights and benefits of section 1542 of the Civil Code of the State of

26 California, and does so understanding and acknowledging the significance and consequence of

27 specifically waiving section 1542. Section 1542 of the Civil Code of the State of California states

28 as follows:

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

6 Thus, notwithstanding the provisions of section 1542, and to implement a full and complete
7 release and discharge of the Released Parties, Plaintiffs expressly acknowledge this Settlement
8 Agreement is intended to include in its effect, without limitation, all claims Plaintiffs do not know
9 or suspect to exist in Plaintiffs' favor at the time of signing this Settlement Agreement, and that
10 this Settlement Agreement contemplates the extinguishment of any such claims. Plaintiffs
11 warrant Plaintiffs have read this Settlement Agreement, including this waiver of California Civil
12 Code section 1542, and that Plaintiffs have consulted with or had the opportunity to consult with
13 counsel of Plaintiffs' choosing about this Settlement Agreement and specifically about the waiver
14 of section 1542, and that Plaintiffs understand this Settlement Agreement and the section 1542
15 waiver, and so Plaintiffs freely and knowingly enter into this Settlement Agreement. Plaintiffs
16 further acknowledge that Plaintiffs later may discover facts different from or in addition to those
17 Plaintiffs now knows or believe to be true regarding the matters released or described in this
18 Settlement Agreement, and even so Plaintiffs agree that the releases and agreements contained
19 in this Settlement Agreement shall remain effective in all respects notwithstanding any later
20 discovery of any different or additional facts. Plaintiffs expressly assume any and all risk of any
21 mistake in connection with the true facts involved in the matters, disputes, or controversies
22 released or described in this Settlement Agreement or with regard to any facts now unknown to
23 Plaintiffs relating thereto.

24 **8. SETTLEMENT ADMINISTRATOR**

25 A. Plaintiffs and Defendants, through their respective counsel, have selected
26 Phoenix Settlement Administrators to administer the Settlement, which includes but is not limited
27 to translating the Class Notice to Spanish, distributing and responding to inquiries about the Class
28 Notice and calculating all amounts to be paid from the Gross Settlement Amount. Charges and

1 expenses of the Settlement Administrator, currently estimated to be \$11,000.00 will be paid from
2 the Gross Settlement Amount. If the actual amount of the Settlement Administration Costs is
3 less than \$11,000.00, the difference between \$11,000.00 and the actual Settlement
4 Administration Costs shall be a part of the Net Settlement Amount. If the Settlement
5 Administration Costs exceed \$11,000.00, then such excess, subject to Court approval, will be
6 paid solely from the Gross Settlement Amount and Defendants will not be responsible for paying
7 any additional funds in order to pay these additional costs.

8 **9. NOTICE, WORKWEEK DISPUTE, OBJECTION, AND EXCLUSION**
9 **PROCESS**

10 **A. Notice to the Settlement Class Members**

11 (1) Within twenty-one (21) calendar days after the Preliminary Approval
12 Date, Defendants' Counsel shall provide the Settlement Administrator with information with
13 respect to each Settlement Class Member and FCRA/ICRAA Settlement Class Member,
14 including his or her: (1) name; (2) last known address(es) currently in Defendants' possession,
15 custody, or control; (3) last known email address(es) currently in Defendants' possession,
16 custody, or control; (4) last known telephone number(s) currently in Defendants' possession,
17 custody, or control; (5) last known Social Security Number(s) in Defendants' possession,
18 custody, or control; and (6) the dates of employment (*i.e.*, hire dates, and, if applicable, re-hire
19 date(s) and/or separation date(s)) for each Settlement Class Member and FCRA/ICRAA Class
20 Member ("Class List"). The Settlement Administrator shall perform an address search using the
21 United States Postal Service National Change of Address ("NCOA") database and update the
22 addresses contained on the Class List with the newly-found addresses, if any. Within seven (7)
23 calendar days of receiving the Class List from Defendants, the Settlement Administrator shall
24 mail the Class Notice in English and Spanish to the Settlement Class Members and
25 FCRA/ICRAA Settlement Class Members via first-class regular U.S. Mail using the most current
26 mailing address information available. The Settlement Administrator shall maintain the Class
27 List and digital copies of all the Settlement Administrator's records evidencing the giving of
28

notice to any Settlement Class Member and FCRA/ICRAA Settlement Class Member, for at least four (4) years from the Final Approval Date.

(2) The Class Notice will set forth:

- (a) the Settlement Class Member's and/or FCRA/ICRAA Settlement Class Member's estimated Individual Settlement Payment, estimated FCRA/ICRAA Settlement Payment, and estimated Individual PAGA Payment, and the basis for each;
- (b) the information required by California Rule of Court, rule 3.766, subdivision (d);
- (c) the material terms of the Settlement;
- (d) the proposed Settlement Administration Costs;
- (e) the definition of the Settlement Class and FCRA/ICRAA Settlement Class;
- (f) a statement that the Court has preliminarily approved the Settlement;
- (g) how the Settlement Class Member and/or FCRA/ICRAA Settlement Class Member can obtain additional information, including contact information for Class Counsel;
- (h) information regarding opt-out and objection procedures;
- (i) the date and location of the Final Approval Hearing; and
- (j) that the Settlement Class Member and/or FCRA/ICRAA Settlement Class Member must notify the Settlement Administrator no later than the Response Deadline if the Settlement Class Member

1 and/or FCRA/ICRAA Settlement Class Member
2 disputes the accuracy of the number of Workweeks as
3 set forth on his or her Class Notice (“Workweek
4 Dispute”). If a Settlement Class Member and/or
5 FCRA/ICRAA Settlement Class Member fails to
6 timely dispute the number of Workweeks attributed to
7 him or her in conformity with the instructions in the
8 Class Notice, then he or she shall be deemed to have
9 waived any objection to its accuracy and any claim to
10 any additional settlement payment based on different
11 data.

12 (3) If a Class Notice from the initial notice mailing is returned as
13 undeliverable, the Settlement Administrator will attempt to obtain a current address for the
14 Settlement Class Member to whom the returned Class Notice had been mailed, within five (5)
15 calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class
16 Member and/or FCRA/ICRAA Settlement Class Member by phone, if possible, and (2)
17 undertaking skip tracing. If the Settlement Administrator is successful in obtaining a new
18 address, it will promptly re-mail the Class Notice to the Settlement Class Member and/or
19 FCRA/ICRAA Settlement Class Member. Further, any Class Notices that are returned to the
20 Settlement Administrator with a forwarding address before the Response Deadline shall be
21 promptly re-mailed to the forwarding address affixed thereto.

22 (4) No later than seven (7) calendar days from the Response Deadline, the
23 Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the
24 completion of the notice process, including the number of attempts to obtain valid mailing
25 addresses for and re-sending of any returned Class Notices, as well as the identities, number of,
26 and copies of all Requests for Exclusion and Objections received by the Settlement
27 Administrator.

28 ///

1 (5) The Settlement Administrator shall maintain a website where documents
2 in connection with this Action, including the Operative Complaint, Settlement Agreement,
3 motions for preliminary approval and final approval and all documents in support thereof, Class
4 Notice, application or motion for attorneys' fees and costs award, Court orders in connection
5 herewith and Judgment are, when possible, made available to Settlement Class Members and
6 FCRA / ICRAA Settlement Class Members after the Settlement Administrator shall have mailed
7 the Class Notices to the Settlement Class Members and FCRA / ICRAA Settlement Class
8 Members. Class Counsel shall cooperate with the Settlement Administrator so that these
9 documents are posted on the website after their filing and after the website shall have been
10 created.

11 (6) The Settlement Administrator shall also send to the Settlement Class
12 Members and FCRA / ICRAA Settlement Class Members their respective Class Notice via email
13 at email addresses provided by Defendants to the Settlement Administrator, if any.

14 **B. Objections.**

15 Only Participating Class Members may object to the Settlement. In order for any
16 Participating Class Member to object to this Settlement in writing, or any term of it, he or she
17 must do so by mailing a written objection to the Settlement Administrator at the address provided
18 on the Class Notice no later than the Response Deadline. The Settlement Administrator shall
19 email a copy of the Objection forthwith to Class Counsel and Defendant's counsel and attach
20 copies of all Objections to the Declaration it provides Class Counsel, which Class Counsel shall
21 file in support of Plaintiff's Motion for Final Approval. The Objection should set forth in writing:
22 (1) the Objector's name; (2) the Objector's address; (3) the last four digits of the Objector's
23 Social Security Number; (4) the Objector's signature; (5) a statement of whether the Objector
24 plans to appear at the Final Approval Hearing; and (6) the reason(s) for the Objection, along with
25 whatever legal authority, if any, the Objector asserts in support of the Objection. If a
26 Participating Class Member objects to the Settlement, the Participating Class Member will
27 remain a member of the Settlement Class and FCRA/ICRAA Settlement Class and if the Court
28 approves this Agreement, the Participating Class Member will be bound by the terms of the

1 Settlement in the same way and to the same extent as a Participating Class Member who does
2 not object. The date of mailing of the Class Notice to the objecting Settlement Class Member
3 shall be conclusively determined according to the records of the Settlement Administrator.
4 Participating Class Members need not object in writing to be heard at the Final Approval Hearing;
5 they may object or comment in person at the hearing at their own expense. Class Counsel and
6 Defendant's Counsel may respond to any objection lodged with the Court up to five (5) court
7 days before the Final Approval Hearing.

8 **C. Requesting Exclusion.**

9 Any Settlement Class Member or FCRA/ICRA Settlement Class Member may request
10 exclusion from (*i.e.*, "opt out" of) the Settlement by mailing a written request to be excluded
11 from the Settlement ("Request for Exclusion") to the Settlement Administrator, postmarked on
12 or before the Response Deadline. To be valid, a Request for Exclusion must include: (1) the
13 Class Member's name; (2) the last four digits of the Class Member's Social Security Number;
14 (3) the Class Member's signature; and (4) the following statement: "Please exclude me from the
15 Settlement Class in the *Moore, et al. v. Dnata US Inflight Catering LLC, et al.* matter" or a
16 statement of similar meaning. The Settlement Administrator shall immediately provide copies
17 of all Requests for Exclusion to Class Counsel (with the Class Members' contact information
18 redacted) and Defendant's Counsel and shall report the Requests for Exclusions that it receives,
19 to the Court, in its declaration to be provided in advance of the Final Approval Hearing. Any
20 Settlement Class Member or FCRA/ICRAA Settlement Class Member who requests exclusion
21 using this procedure will not be entitled to receive any payment from the Settlement and will not
22 be bound by the Settlement Agreement or have any right to object to, appeal, or comment on the
23 Settlement. Any Settlement Class Member or FCRA/ICRAA Settlement Class Member who
24 does not opt out of the Settlement by submitting a timely and valid Request for Exclusion will
25 be bound by all terms of the Settlement, including those pertaining to the Released Claims, as
26 well as any Judgment that may be entered by the Court if Final Approval of the Settlement is
27 granted. A Settlement Class Member or FCRA/ICRAA Settlement Class Member cannot submit
28 both a Request for Exclusion and an objection. If a Settlement Class Member or FCRA/ICRAA

1 Settlement Class Member submits an Objection and a Request for Exclusion, the Request for
2 Exclusion will control and the Objection will be overruled. Settlement Class Members or
3 FCRA/ICRAA Settlement Class Members who worked during the PAGA Period as Aggrieved
4 Employees that submit a valid Request for Exclusion will still be deemed Aggrieved Employees,
5 will still receive their Individual PAGA Payments, and will be bound by the release of the PAGA
6 Released Claims.

7 **D. Disputes Regarding Settlement Class Members' Workweek Data.**

8 Each Settlement Class Member and FCRA/ICRAA Settlement Class Member may
9 dispute the number of Workweeks attributed to him or her on his or her Class Notice ("Workweek
10 Dispute"). Any such disputes must be mailed to the Settlement Administrator by the Settlement
11 Class Member and FCRA/ICRAA Settlement Class Member, postmarked on or before the
12 Response Deadline. In the event of a dispute, Defendants' data is presumed correct and valid in
13 absence of evidence to the contrary. The Settlement Administrator shall immediately provide
14 copies of all disputes to Class Counsel (with names and contact information redacted) and
15 counsel for Defendant and shall immediately attempt to resolve all such disputes directly with
16 relevant Settlement Class Member(s) and FCRA/ICRAA Settlement Class Members with the
17 assistance of Defendant and Class Counsel. If the dispute cannot be resolved in this manner, the
18 Court shall adjudicate the dispute at Final Approval or at time and in a manner determined by the
19 Court.

20 **E. Defendants' Right to Withdraw from Settlement.**

21 In the event that more than 69 Class Members opt-out from the Settlement, Defendants
22 may, at their own election, withdraw from the settlement. If Defendants choose to exercise this
23 option to withdraw, Defendants shall notify Class Counsel of their withdrawal no later than 10
24 calendar days after the Response Deadline. If such event occurs, the parties will resume litigation
25 without prejudice to either side and bear their own costs with regard to the settlement, except for
26 any administration costs incurred up to Defendants' withdrawal, which shall be paid by
27 Defendants.

28 **10. INDIVIDUAL SETTLEMENT PAYMENTS AND INDIVIDUAL**

A. FCRA/ICRAA Settlement Payments to Participating Class Members. The Parties agree to allocate Fifty Thousand Dollars and Zero Cents (\$50,000) of the Net Settlement Amount toward FCRA/ICRAA Settlement Payment as penalties which will be divided equally among the FCRA/ICRAA Settlement Class Members (“FCRA/ICRAA allocation”).

C. The Settlement Administrator will determine the total number of Workweeks worked by each Settlement Class Member during the Class Period (“Class Member’s Workweeks”), as well as the aggregate number of Workweeks worked by all Settlement Class Members during the Class Period (“Class Workweeks”). Additionally, the Settlement Administrator will determine the total number of Workweeks worked by each Aggrieved Employee during the PAGA Period (“Aggrieved Employee’s Workweeks”), as well as the aggregate number of Workweeks worked by all Aggrieved Employees during the PAGA Period (“PAGA Workweeks”).

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1 **C.** To determine each Participating Class Member's Participating Individual
2 Settlement Share, the Settlement Administrator will determine the aggregate number of
3 Workweeks worked by all Participating Class Members during the Class Period
4 ("Participating
5 Class Workweeks") and use the following formula: Individual Settlement Share =
6 (Participating Class Member's Workweeks ÷ Participating Class Workweeks) × (Net Settlement
7 Amount – FCRA/ICRAA allocation).

8 **D.** The net amount of the Participating Individual Settlement Share is to be paid out
9 to Participating Class Members by way of check and is referred to as "Individual Settlement
10 Payment(s)".

11 **E.** To determine each Aggrieved Employee's Individual PAGA Payment, the
12 Settlement Administrator will use the following formula: Aggrieved Employee's Individual
13 PAGA Payment = (Aggrieved Employee's Workweeks ÷ PAGA Workweeks) x
14 \$5,000.00 (the PAGA Payment).

15 **F.** Individual Settlement Payments and Individual PAGA Payments shall be paid
16 to Participating Class Members and/or Aggrieved Employees by way of check. When a
17 Participating Class Member is also an Aggrieved Employee, one check may be issued that
18 aggregates both the Individual Settlement Payment and the Individual PAGA Payment

19 **11. DISTRIBUTION OF PAYMENTS**

20 **A. Distribution of Individual Settlement Payments.**

21 Participating Class Members will receive an Individual Settlement Payment and
22 FCRA/ICRAA Settlement Payment, and Aggrieved Employees will receive an Individual PAGA
23 Payment. Individual Settlement Payment, FCRA/ICRAA Settlement Payment, and Individual
24 PAGA Payment checks shall remain valid and negotiable for one hundred and eighty (180)
25 calendar days after the date of their issuance. Within seven (7) calendar days after expiration of
26 the 180-day period, checks for such payments shall be canceled and funds associated with such
27 checks shall be transmitted to the California Controller's Office, Unclaimed Property Fund,
28

1 thereby leaving no “unpaid residue” subject to the requirements of California Code of Civil
2 Procedure section 384.

3 **B. Funding of Settlement.**

4 Defendant shall, within twenty one (21) calendar days of Final Approval Date, make
5 payment of the Gross Settlement Amount (as the same may be escalated pursuant to Paragraph
6 17 of this Agreement) and Employer Taxes to the Settlement Administrator pursuant to Internal
7 Revenue Code section 1.468B-1 for deposit in an interest-bearing qualified settlement account
8 (“QSA”) with an FDIC insured banking institution, for distribution in accordance with this
9 Agreement and the Court’s Orders and subject to the conditions described herein.

10 **C. Time for Distribution.**

11 Within seven (7) calendar days after payment of the full Gross Settlement Amount and
12 Employer Taxes by Defendant, or as soon thereafter as practicable, the Settlement Administrator
13 shall distribute Payments from the QSA for: (1) the Service Award to Plaintiff as specified in
14 this Agreement and approved by the Court; (2) the Attorneys’ Fees and Cost Award to be paid
15 to Class Counsel, as specified in this Agreement and approved by the Court; (3) the Settlement
16 Administrator Costs, as specified in this Agreement and approved the Court; (4) the LWDA
17 Payment, as specified in this Agreement and approved by the Court; and (5) Individual PAGA
18 Payments as specified in this Agreement and approved by the Court. The balance remaining
19 shall constitute the Net Settlement Amount from which Individual Settlement Payments and
20 FCRA/ICRAA Settlement Payments shall be made to Participating Class Members, less
21 applicable taxes and withholdings. All interest accrued shall be for the benefit of the Class
22 Members and distributed on a *pro rata* basis to Participating Class Members based on the number
23 of Workweeks worked by them in the Class Period.

24 **12. ATTORNEYS’ FEES AND LITIGATION COSTS**

25 Class Counsel shall apply for, and Defendants shall not oppose, an award of attorneys’
26 fees of up to 35% of the Gross Settlement Amount, which, unless escalated pursuant to Paragraph
27 17 of this Agreement, amounts to Two Hundred Ninety-Seven Thousand, Five Hundred Dollars
28 and Zero Cents (\$297,500.00), during final approval of the Settlement. Class Counsel shall

1 further apply for, and Defendants shall not oppose, an application or motion by Class Counsel
2 for reimbursement of actual costs associated with Class Counsel's prosecution of this matter as
3 set forth by declaration testimony in an amount up to Twenty-Five Thousand Dollars and Zero
4 Cents (\$25,000.00), during final approval of the Settlement. Awards of attorneys' fees and costs
5 shall be paid out of the Gross Settlement Amount, for all past and future attorneys' fees and costs
6 necessary to prosecute, settle, and obtain Final Approval of the settlement in Action. The
7 "future" aspect of the amounts stated herein includes, without limitation, all time and expenses
8 expended by Class Counsel (including any appeals therein). There will be no additional charge
9 of any kind to either the Settlement Class Members or request for additional consideration from
10 Defendants for such work unless, Defendants materially breach this Agreement, including any
11 material term regarding funding, and further efforts are necessary from Class Counsel to remedy
12 said breach, including, without limitation, moving the Court to enforce the Agreement. Should
13 the Court approve attorneys' fees and/or litigation costs and expenses in amounts that are less
14 than the amounts provided for herein, then the unapproved portion(s) shall be a part of the Net
15 Settlement Amount.

16 **13. SERVICE AWARD TO PLAINTIFF**

17 Named Plaintiffs shall seek, and Defendants shall not oppose, Service Awards in an
18 amount not to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) for
19 Plaintiffs, each, for participation in and assistance with the Class Action. Any Service Awards
20 awarded to Plaintiffs shall be paid from the Gross Settlement Amount and shall be reported on
21 an IRS Form 1099. If the Court approves the Service Awards to Plaintiffs in less than the
22 amounts sought herein, then the unapproved portion(s) shall be a part of the Net Settlement
23 Amount.

24 **14. TAXATION AND ALLOCATION**

25 a. Each Individual Settlement Share shall be allocated as follows: 20% as wages (to
26 be reported on an IRS Form W2); and 80% as interest and penalties (to be reported on an IRS
27 Form 1099). Each Individual PAGA Payment shall be allocated entirely as penalties. The Parties
28 agree that the employees' share of taxes and withholdings with respect to the wage-portion of the

Individual Settlement Share will be withheld from the Individual Settlement Share in order to yield the Individual Settlement Payment. The amount of federal income tax withholding will be based upon a flat withholding rate for supplemental wage payments in accordance with Treasury Regulation § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also be made pursuant to applicable state and/or local withholding codes or regulations.

b. Forms W-2 and/or Forms 1099 will be distributed by the Settlement Administrator at times and in the manner required by the Internal Revenue Code of 1986 (the “Code”) and consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes set forth in this Section may be modified in a manner to bring Defendant into compliance with any such changes.

c. All Employer Taxes shall be paid by Defendant separate, apart, and in addition to the Gross Settlement Amount. Defendant shall remain liable to pay the employer’s share of payroll taxes as described above.

d. Neither Counsel for Plaintiff nor Defendant intend anything contained in this Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended) or otherwise.

15. PRIVATE ATTORNEYS’ GENERAL ACT ALLOCATION

The Parties agree to allocate Thirty Thousand Dollars and Zero Cents (\$30,000.00) of the Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five percent (75%) of the amount allocated toward PAGA (\$22,500.00) will be paid to the LWDA and twenty-five percent (25%) (\$7,500.00) will be distributed to all Aggrieved Employees on a *pro rata* basis based upon their respective Workweeks worked as Aggrieved Employees during the PAGA Period.

16. COURT APPROVAL

This Agreement is contingent upon an order by the Court granting Final Approval of the Settlement, and that the LWDA does not intervene and object to the Settlement. In the event it

1 becomes impossible to secure approval of the Settlement by the Court and the LWDA, the Parties
2 shall be restored to their respective positions in the Action prior to entry of this Settlement. If
3 this Settlement Agreement is voided, not approved by the Court or approval is reversed on appeal,
4 it shall have no force or effect and no Party shall be bound by its terms except to the extent: (a)
5 the Court reserves any authority to issue any appropriate orders when denying approval; and/or
6 (b) there are any terms and conditions in this Settlement Agreement specifically stated to survive
7 the Settlement Agreement being voided or not approved, and which control in such an event.

8 **17. ESCALATOR CLAUSE.**

9 Defendant represents that there are no more than 12,893 Workweeks worked
10 during the Class Period. In the event the number of Workweeks worked by Class Members
11 during the Class Period increases by more than 10%, or 1,289 Workweeks, then the Gross
12 Settlement Amount shall be increased proportionally by the Workweeks in excess of 14,182
13 Workweeks (12,893+10% adjustment or (1,289)) multiplied by the Workweek Value. The
14 Workweek Value shall be calculated by dividing the originally agreed-upon Gross Settlement
15 Amount (\$850,000.00) by 12,893, which amounts to a Workweek Value of \$65.93. Thus, for
16 example, should there be 15,000 Workweeks in the Class Period, then the Gross Settlement
17 Amount shall be increased by \$53,930.74 [(15,000 Workweeks – 14,182 Workweeks) x \$65.93].

18 **18. NOTICE OF JUDGMENT**

19 In addition to any duties set out herein, the Settlement Administrator shall provide
20 notice of the Final Judgment entered in the Action by posting the same on its website for a period
21 of no less than four (4) years.

22 **19. MISCELLANEOUS PROVISIONS**

23 **A. Interpretation of the Agreement.**

24 This Agreement constitutes the entire agreement between the Parties with respect to its
25 subject matter. Except as expressly provided herein, this Agreement has not been executed in
26 reliance upon any other written or oral representations or terms, and no such extrinsic oral or
27 written representations or terms shall modify, vary or contradict its terms. In entering into this
28 Agreement, the Parties agree that this Agreement is to be construed according to its terms and

1 may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and
2 enforced under the laws of the State of California, both in its procedural and substantive aspects,
3 without regard to its conflict of law provisions. Any claim arising out of or relating to the
4 Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior
5 Court of the State of California for the County of San Francisco, and Plaintiffs and Defendants
6 hereby consent to the personal jurisdiction of the Court in the Action over it solely in connection
7 therewith. The foregoing is only limited to disputes concerning this Agreement. The Parties,
8 and each of them, participated in the negotiation and drafting of this Agreement and had available
9 to them the advice and assistance of independent counsel. As such, neither Plaintiffs nor
10 Defendants may claim that any ambiguity in this Agreement should be construed against the
11 other. The Agreement may be modified only by a writing signed by counsel for the Parties and
12 approved by the Court.

13 **B. Further Cooperation.**

14 The Parties and their respective attorneys shall proceed diligently to prepare and execute
15 all documents, to seek the necessary approvals from the Court, and to do all things reasonably
16 necessary to consummate the Settlement as expeditiously as possible. The Parties agree that they
17 will not take any action inconsistent with this Agreement, including, without limitation,
18 encouraging Class Members to opt out of the Settlement. In the event the Court finds that any
19 Party has taken action inconsistent with the Settlement, including, without limitation,
20 encouraging Class Members to opt out of the Settlement, the Court may take any corrective
21 actions, including enjoining any Party from communicating regarding the Settlement on an *ex*
22 *parte* basis, issuing (a) corrective notice(s), awarding monetary, issue, evidentiary and/or
23 terminating sanctions against that Party, and/or enforcing this Agreement despite the presence of
24 opt-outs and/or objections.

25 **C. Counterparts.**

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

1 **D. Authority.**

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

4 **E. No Third-Party Beneficiaries.**

5 Plaintiffs, Participating Class Members, Aggrieved Employees, the State of California,
6 Class Counsel, and Defendants are direct beneficiaries of this Agreement, but there are no third-
7 party beneficiaries.

8 **F. Deadlines Falling on Weekends or Holidays.**

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

11 **G. Severability.**

12 In the event that one or more of the provisions contained in this Agreement shall for any
13 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
14 unenforceability shall in no way effect any other provision if Defendants' Counsel and Class
15 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed
16 as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

17
18 **IT IS SO AGREED:**

19
20 Dated: _____, 2023

Christian L. Moore
Plaintiff and Class Representative

21
22
23 Dated: _____, 2023

MARIA ARLENE EBORA
Plaintiff and Class Representative:

1 **D. Authority.**

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

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13 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
14 unenforceability shall in no way effect any other provision if Defendants' Counsel and Class
15 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed
16 as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

17
18 **IT IS SO AGREED:**

19 Dated: Nov 2, 2023, 2023


Christian Moore (Nov 2, 2023 16:18 EDT)

Christian L. Moore
Plaintiff and Class Representative

22
23 Dated: _____, 2023

MARIA ARLENE EBORA
Plaintiff and Class Representative:

1 **D. Authority.**

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

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10 or legal holiday, that deadline shall be continued until the following business day.

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13 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
14 unenforceability shall in no way effect any other provision if Defendants' Counsel and Class
15 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed
16 as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

17
18 **IT IS SO AGREED:**

19
20 Dated: _____, 2023

Christian L. Moore
Plaintiff and Class Representative

21
22
23 Dated: Nov 2, 2023, 2023


maria ebora (Nov 2, 2023 13:46 PDT)

MARIA ARLENE EBORA
Plaintiff and Class Representative:

1 Dated: November 1st, 2023


DNATA US INFLIGHT CATERING LLC
Defendant
By: Peter DeVito
Its: CEO

2
3
4 Dated: November 1st, 2023


121 INFLIGHT CATERING LLC
Defendant
By: Peter DeVito
Its: CEO

5
6
7
8
9 **AGREED AS TO FORM:**

10 Dated: November 2, 2023

Vedang J. Patel
DAVID D. BIBBYAN
VEDANG J. PATEL
IONA LEVIN
Counsel for Plaintiffs CHRISTIAN L.
MOORE AND MARIA ARLENE EBORA

11
12
13
14
15 Dated: November 1st, 2023

Shannon Nakabayashi
SHANNON B. NAKABAYASHI
Counsel for Defendant, DNATA US
INFLIGHT CATERING LLC, 121
INFLIGHT CATERING LLC, KEVIN
KLOIBER