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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA
UNLIMITED JURISDICTION

	) Case No. RG20075270
	)
	) Assigned for all purposes to:
	) Judge: Hon. Brad Seligman
	) Dept.: 23
	)
ANDREA O'NEAL-ROBERTS, on behalf of	) CLASS ACTION
herself, the putative class, and on behalf of the	)
general public,	) DECLARATION OF ATTORNEY
	) RACHEL M. TERP IN SUPPORT OF
Plaintiff,	) MOTION FOR PRELIMINARY
	) APPROVAL OF CLASS ACTION
v.	) SETTLEMENT AND CLASS NOTICE,
	) CERTIFICATION OF SETTLEMENT
OFF THE GRID SERVICES, LLC, THE	) CLASS AND SUBCLASSES, AND
WHOLE CART, LLC, and DOES 1-10,	) APPROVING THE CLASS
inclusive.	) REPRESENTATIVE, CLASS COUNSEL,
	) AND SETTLEMENT ADMINISTRATOR
Defendants.	)
	) Ntc of Motion; MPA; Decls.: and Prop. Order
	) submitted herewith
	)
	) Date: September 6, 2022
	) Time: 3:00 p.m.
	) Dept: 23
	) Reservation No.: A-20075270-001
	)
	) Original Complaint Filed: Sept. 24, 2021

I, Rachel M. Terp, Esq., declare as follows:

1. I am counsel of record for Plaintiff in the above-captioned matter. I am over 18 years of age, and I am competent to testify. I would testify, if called upon to do so, to the following matters on the basis of my personal knowledge. I submit this declaration in support of Plaintiff's motion for approval of the class and Private Attorneys General Act ("PAGA") settlement.

OPINION OF COUNSEL

2. In my opinion, the proposed settlement between Plaintiff Andrea O’Neal-Roberts (“Plaintiff”) and Defendants Off the Grid Service, LLC and The Whole Cart, LLC (“Defendants”) represents an excellent result for the Class Members, PAGA Aggrieved Employees and the State, and should be approved.

CASE BACKGROUND AND LITIGATION

3. This case arose from Plaintiff's experience working as an Instructional Entrepreneur for Defendants in 2019 and 2020. Defendants are companies that specialize in providing mobile food truck events and previously did corporate catering. Between 2017 and 2020, Defendants employed Instructional Entrepreneurs as salaried employees, in the Bay Area. Plaintiff alleges that Defendant should have treated them as non-exempt employees and provided them with the benefits of that classification including overtime pay, meal and rest breaks, and missed meal and rest break premium pay, and such compensation should have been reflected in Instructional Entrepreneurs' paystubs.

4. After filing the original complaint, Plaintiff amended the pleadings twice: first, to add PAGA allegations; second, to provide additional specificity to ensure there was no overlap with the class definition for an off-the-clock case filed in San Francisco Superior Court, *Reyes, et al. v. The Whole Cart, LLC, et al.*, (S.F. Sup. Ct., file June 1, 2020) Case No. CGC20584861.

5. As part of Plaintiff's prosecution of the case, my co-counsel and I completed a thorough investigation of the claims alleged and the legal and practical issues of its prosecution. Plaintiff's counsel performed their own investigation including investigative interviews with a dozen former Instrukktional Entrepreneurs, as well as with other employees. Plaintiff propounded written discovery, including form and special interrogatories, and document requests. Defendants produced, and Plaintiff's counsel reviewed, more than four-thousand pages of documents in formal discovery, including organization charts, employee handbooks, guidelines, field guides, Instrukktional curricula,

schedules, training materials, checklists, job descriptions, employment agreements, other personnel file documents, select Class Member wage statements, emails including attachments resulting from a targeted ESI term search, and Slack messages. The information gathered, indicated that Class Members were subject to the same: job title, job duties, salaried pay scheme, and rough salary ranges; decision to misclassify workers as exempt-employees, denying them overtime and meal and rest breaks; policies, procedures, and manuals; expectations that they work more than 40 hours in a workweek; and wage violations. Plaintiff's counsel developed the necessary facts to consider fully the various contingencies of settlement and trial. Plaintiff is confident based on this discovery that:

- a. Plaintiff and the other Instructional Entrepreneurs worked overtime hours and missed meal and rest breaks in Defendants' kitchens and food trucks;
- b. Defendants classified Instructional Entrepreneurs as exempt from overtime and paid them salaries;
- c. Defendants did not pay Instructional Entrepreneurs overtime or missed break premiums;
- d. While the program involved developing a food truck concept, design, and business plan, a typical day during the program, Instructional Entrepreneurs' job duties were identical in nature to categories of Defendants' non-exempt employees, such as prep cooks, truck supervisors, and truck drivers who Defendants paid hourly to perform Defendants' core services.

6. The Whole Cart also propounded two sets of written discovery. Plaintiff responded to the first set. The Parties were meeting and conferring about scheduling depositions when they agreed to mediate and stipulated to extend discovery deadlines.

7. Based on my experience as a litigator and the informal and formal discovery in this case, it is my opinion that Plaintiff and her counsel were well positioned to analyze the reasonableness of the settlement currently before the Court.

SETTLEMENT CONSIDERATIONS AND MEDIATION

8. Though Plaintiff's counsel is confident that Plaintiff would have prevailed at trial, this action was not without risk. The evidence was strong that Class Members worked overtime, as

1 Defendants' records evinced the intent for Instrucktional Entrepreneurs to work 50- and 60-hour
2 weeks. However, like many misclassification cases, there were not clear records showing the actual
3 time Class Members worked or breaks missed. Further, the Instrucktional Program and Defendant's
4 operations changed significantly after the COVID-19 pandemic began, likely resulting in fewer
5 overtime hours worked until the Instrucktional program officially ended in 2020— Defendants
6 represent that the program ended on September 25, 2020.

7 9. In addition to record-keeping shortcomings customary of misclassification cases,
8 Plaintiff also had to consider the uncertainty surrounding misclassification law. Defendants would
9 have argued that Instrucktional Entrepreneurs were primarily engaged in exempt duties during most of
10 their assignments in the program and emphasized that individualized examinations of each
11 Instrucktional Entrepreneur's actual work, each week, would be relevant to determining whether a
12 Class Member was appropriately classified as exempt (under the executive, administrative, and/or
13 professional exemptions). Defendants would have asserted that liability, if any, would be restricted to
14 particular phases of each Instrucktional Entrepreneur's participation in the program. Given the
15 complexity of litigating misclassification claims, it is not certain that Plaintiff would prevail under her
16 theories of the case before a factfinder.

17 10. Further, Plaintiff would only succeed on Labor Code section 203 and 226 claims if
18 Defendants' good-faith defense fails, and their PAGA penalties would be similarly impacted.

19 11. Plaintiff also confronted risks in certifying and maintaining a class through trial.
20 Defendants would have argued that individual issues predominated over common issues of law and
21 fact – including how each Instrucktional Entrepreneur performed their assignment, and the time spent
22 on different tasks. Further, the class is small in size – only 23 individuals. The class, and less populous
23 subclasses would be subject to numerosity challenges. Plaintiff's Labor Code section 203 and 226
24 claims only have a one-year statute of limitations, and the subclasses for these claims would have
25 included about 13 Class Members. Investigation into the reimbursement claims indicated a lack of
26 numerosity as to those claims. At least one class member signed an arbitration agreement. Many class
27 members have moved away from the Bay Area including to Southern California, and some have
28 moved to other states including Illinois and Florida. If a class were not certified, there may have been a

number of individual lawsuits brought against Defendants, but it is likely that some class members would not have chosen to pursue individual cases.

12. In light of these factors, the risk of an adverse trial outcome and the continued expenditure of resources for both parties in prolonged litigation (including class certification, cross-motions for summary adjudication on exemption defenses, appeal, or other delay), support settlement in this case. The Settlement provides substantial funds promptly, avoiding the risks and delays of continued litigation and possible appeals.

13. The parties mediated the case on November 18, 2021, with experienced mediator Steve Pearl, Esq. At the full-day Zoom mediation, the parties engaged in good-faith, arm's-length negotiations, under Mr. Pearl's supervision. While the day did not result in a settlement, the Parties continued their arm's-length negotiations in earnest. On January 28, 2022, the Parties entered into a memorandum of understanding setting out the terms of a settlement agreement of the class and PAGA claims. The settlement was thereafter set forth in a long-form agreement between Plaintiff and Defendants, which was executed on June 3, 2022.

CLASS & PAGA DEFINITION

14. The Settlement Agreement alters the Class and Subclass definitions slightly as compared with the Second Amended Complaint. First, the Settlement Class definition excludes two former Instructional Entrepreneurs who worked for Defendants during the class period, and who, according to documents produced by Defendant in discovery, previously signed general releases of claims in exchange for monetary consideration. Second, the PAGA period is adjusted to reflect a period beginning one year before Plaintiffs sent the PAGA letter, rather than incorporating the tolling period set forth in Judicial Council of California's Emergency rule 9(a).

SETTLEMENT DAMAGE CALCULATIONS: WAGES AND STATUTORY PENALTIES

15. The Gross Settlement Amount of \$800,000 amounts to an average gross recovery of 34,782.60 per Class Member ($\$34,782.60 = \$800,000 / 23$).

16. At this time, Plaintiff estimates that the "Net Settlement Amount" will equal the Gross Settlement Amount of \$800,000 minus the,

a. requested attorneys' fees of one third of the settlement amount, \$266,666.67;

- b. attorneys' litigation costs, not expected to exceed \$14,000;
- c. settlement administration costs, not expected to exceed \$9,000;
- d. Service Award/General Release Consideration to Plaintiff, not to exceed \$10,000;
- e. PAGA distribution amount of \$22,000, with 75% (\$16,500) paid to the LWDA and 25% (\$5,500) distributed to PAGA Aggrieved Employees.

Based on these figures, I estimate that the Net Settlement Amount will be $\$478,333.33 = \$800,000 - \$266,666.67 - \$14,000 - \$9,000 - \$10,000 - \$22,000$. Based on these figures I estimate that the average payment from the Net Settlement Amount to each of the 23 Class Members will be $\$20,797.10 = \$478,333.33 / 23$.

17. In preparation for mediation, Defendants provided Plaintiff's counsel with a Microsoft Excel spreadsheet containing payroll data for all Instrucktional Entrepreneurs that tracked earnings per pay period. Based on my review and analysis of these records, documents produced in informal and formal discovery, and investigative interviews with various Class Members, I calculated that Defendants owed **\$1,359,502.25** to the 23 Class Members in unpaid wages, statutory penalties, and interest, as follows:

- a. I assumed there was one rest break premium (worth the hourly wage) owed per full day worked, and tallied 7,539 days with missed rest breaks, for a **total missed rest break premium wages estimate of \$172,197.84;**
- b. I assumed there was one meal break premium (worth the hourly wage) owed per full day worked, and tallied 7,539 days with missed meal breaks, for a **total missed meal break premium wages estimate of \$172,197.84;**
- c. I added together the total missed rest break premium wages estimate and the total missed meal break premium wages estimate and multiplied that number by 7% to calculate the **total missed meal and rest break premium interest estimate of \$24,107.70;**
- d. I assumed that each Class Member worked, on average, 3 overtime hours per day (based on Defendant's representations about expectations for work between 50 and 60 hours per week, and interviews performed with former Instrucktional Entrepreneurs),

and tallied 7,539 days with overtime worked, for which Class Members were entitled to an overtime premium of 1.5 times their hourly wage for a **total overtime pay estimate of \$774,890.28;**

e. I took the total overtime pay estimate and multiplied it by 10% to calculate the **total overtime interest estimate of \$77,489.03;**

f. I multiplied the hourly wage for each Class Member who worked for Defendants since April 6, 2017 by 30 workdays lasting 8 hours each to arrive at a **total failure to pay wages upon separation estimate of \$109,369.56;** and

g. I tallied 300 pay periods from April 6, 2019 through the end of the pay data among the 13 Itemized Wage Statement Subclass members, awarded a \$50 penalty for each subclass member's first pay period, and a \$100 penalty for each subsequent pay period to arrive at a **total inaccurate wage statement penalty estimate of \$29,250.00.**

h. I did not calculate Labor Code section 2802 expenses because, while not conclusive, Plaintiffs' counsel's investigation of this claim indicated that it was de minimis relative to the other claims.

18. The \$800,000 Gross Settlement Amount represents 59% of the total unpaid wages, statutory penalties, and interest that I calculated Defendants owed to the 23 Class Members at the time of mediation ($0.59 = \$800,000 / \$1,359,502.25$). The anticipated Net Settlement Amount represents 35% of that amount ($0.35 = \$478,333.33 / \$1,359,502.25$). The discount on the full damages amount reflects a variety of considerations, including the risks discussed in Paragraphs 8 through 12, above. The Gross Settlement Amount excludes the employer's share of payroll taxes on amounts allocated to wages, which Defendants will pay separately, and which Defendants estimate will exceed \$11,000.00. The settlement creates potential additional value for Qualifying Class Members, because by this settlement Defendants agreed to facilitate the release of creative materials they developed during the program. It is my understanding that these Qualifying Class Members would not have had any realistic opportunity to obtain this intellectual property absent this settlement agreement.

19. Allocation of Net Settlement Amount shall be 88% to wages, and 2% to the Itemized Wage Statement Subclass, and 10% to the Waiting Time Penalties Subclass, owing to the relative size

1 of the wage claims compared to the Labor Code section 203 and 226 claims, the relative strength of
2 the overtime claims, and the risk that Defendants would succeed on a good faith defense of the Labor
3 Code section 203 and 226 claims.

4 **SETTLEMENT PAGA PENALTY CALCULATIONS**

5 20. In preparation for mediation, Plaintiff's counsel utilized the Microsoft Excel
6 spreadsheet containing payroll data provided by Defendants to calculate the PAGA penalties owed to
7 PAGA Aggrieved Employees. Based on my review and analysis of these records, documents produced
8 in informal and formal discovery, and investigative interviews with various Class Members, I
9 calculated that Defendants' potential liability for PAGA penalties to 11 PAGA Aggrieved Employees
10 in this case was \$106,600, as follows,

- 11 a. I tallied the number of pay periods within the PAGA period and determined there were
12 211 pay periods worked by 11 PAGA Aggrieved Employees;
- 13 b. For Defendants' failure to pay overtime pursuant to Labor Code sections 510 and 1194,
14 I calculated that a \$50 per pay period penalty was owed under Labor Code section 558,
15 for a total of **\$10,550 in unpaid overtime penalties;**
- 16 c. For Defendants' failure to pay premiums of missed meal periods pursuant to Labor
17 Code sections 226.7 and 512, I calculated that a \$100 per pay period penalty was owed
18 under Labor Code section 2699(f), for a total of **\$21,100 in missed meal period**
19 **penalties;**
- 20 d. For Defendants' failure to pay premiums of missed rest periods pursuant to Labor Code
21 section 226.7, I calculated that a \$100 per pay period penalty was owed under Labor
22 Code section 2699(f), for a total of **\$21,100 in missed rest period penalties;**
- 23 e. For Defendants' failure to provide accurate, itemized wage statements pursuant to
24 Labor Code sections 226 and 1174, I calculated that a \$250 per pay period penalty was
25 owed under Labor Code section 226.3 for a total of **\$52,750 in inaccurate wage**
26 **statement penalties;**
- 27 f. For Defendants' failure to pay wages upon separation pursuant to Labor Code section
28 203, I calculated that a \$100 per pay period penalty was owed for 11 pay periods (one

per PAGA Aggrieved Employee) under Labor Code section 2699(f), for a total of
\$1,100 in failure to pay wages upon separation penalties.

21. The PAGA Distribution Amount of \$22,000 is over 20% of the potential liability for PAGA penalties in this case, assuming the Court would award full penalties for: overtime violations, meal and rest break violations, wage statement violations, and waiting time penalties ($0.206 = \$22,000 / \$106,600$). The PAGA Distribution Amount of \$22,000 is also 2.75% of the Gross Settlement funds ($0.275 = \$22,000 / \$800,000$). Adding together the estimated Net Settlement Amount (\$478,333.33) and the PAGA Aggrieved Employee Payment (\$5,500), the 23 Class Members are eligible for an estimated average payment of $\$21,036.23 = (\$478,333.33 + \$5,500) / 23$. The settlement discount on the full value of the case reflects a variety of considerations, the Court's discretion to reduce penalties, the harm stemming from the violations, the fact that Class Members who are the PAGA Aggrieved Employees will receive wages and statutory penalties, as well as the risks discussed in Paragraphs 6 through 9 of this declaration. In my opinion, based on my review of other PAGA cases, this reduction was reasonable under the circumstances and represents a strong recovery for the State.

22. Each PAGA Aggrieved Employee's will also be mailed a check for their PAGA Share – from the 25% or \$5,500 of the \$22,000 PAGA Distribution Amount – which will be based on the relative number of workweeks the employee worked during the PAGA Period compared with all PAGA Aggrieved Employees' workweeks during the PAGA Period.

23. Plaintiff administratively exhausted the PAGA claims with the LWDA before filing this action, notified the LWDA of the filing of the original and amended complaints. Plaintiff's counsel intends to notify the LWDA of the Settlement Agreement at the time of filing this motion.

FORM AND METHOD OF NOTICE

24. I believe the proposed Class Notice fairly apprises Class Members of the Settlement's terms and the options to participate in, object to, or opt out of the settlement, including those disclosures required by California Code of Civil Procedure, Rule 3.766(d).

25. I believe the methods of notice including first class mail, email, and a public website, have a strong chance of reaching most if not all of the 23 Class Members. Plaintiff's counsel has

1 managed to speak with a dozen former Instructional Entrepreneurs, and from our investigations it is
2 apparent that many of the Class Members are in touch with one another and are aware of the lawsuit.

3 **SETTLEMENT ADMINISTRATOR**

4 26. The Parties have agreed to have Atticus (“Atticus”) administer the settlement. Atticus,
5 is a reputable claims administration firm, which submitted a competitive bid relative to several other
6 well-known settlement administration firms from which bids were requested.

7 27. Plaintiffs anticipate that claims administrative costs will not exceed \$9,000, should this
8 settlement receive preliminary approval.

9 **CY PRES RECIPIENT**

10 28. The requested cy pres beneficiary Renaissance Entrepreneurship Center is a Bay Area
11 non-profit organization with a stated mission “to empower and increase the entrepreneurial capacities
12 of socially and economically diverse women and men, and thereby strengthen our communities
13 through the creation of sustainable new businesses, new jobs, and financial self-sufficiency.” More
14 information about this organization’s work can be found at the website, <https://rencenter.org/>.

15 29. The cy pres recipient has been selected to further purposes of the underlying class
16 action and promote justice for all Californians. Many of the Class Members joined the Instructional
17 program with the hopes of becoming food-truck entrepreneurs, and the Renaissance Entrepreneurship
18 Center assists individuals seeking to open their own food businesses, and to become employers
19 themselves. *See, e.g., https://rencenter.org/client-outcomes/*.

20 30. At least one Class Member has received services from this organization in furtherance
21 of her food business concept.

22 31. I have no financial interest in this organization. Several years ago, I took a business
23 planning course at this organization along with aspiring entrepreneurs of varying income levels.

24 32. The plan to dispose of residual funds, including uncashed settlement checks complies
25 with Code of Civil Procedure (“CCP”) section 384.

26 **PLAINTIFF ANDREA O’NEAL-ROBERTS’S SERVICE TO THE CLASS AND HER**
27 **REQUESTED SERVICE AWARD**

28 33. I have worked closely with Plaintiff Andrea O’Neal-Roberts throughout this case.

1 Plaintiff has diligently and responsibly represented the class in this litigation, understanding her
2 fiduciary obligations, and actively participating in the prosecution of this case. During that time
3 Plaintiff repeatedly demonstrated her commitment to the class, including by helping to develop the
4 facts and witnesses related to the lawsuit, reviewing the complaint and amended complaints, working
5 to draft a declaration, responding to 50 requests for production of documents as well as form and
6 special interrogatories, attending the Parties' November 18, 2021 day-long Zoom mediation,
7 contributing substantially to the settlement negotiations and terms, and more generally, evincing an
8 ongoing interest in vindicating the rights of class members.

9 34. Based on my work with the Plaintiff, I believe she has no conflicts with the class and
10 subclasses, and she would continue to serve the class and subclasses well as their Class
11 Representative if appointed by the Court.

12 35. I believe the award requested for the Plaintiff in a case of this nature viably promotes
13 the public policy interest in encouraging those with wage-and-hour claims to assert them despite the
14 fears and personal burdens of affiliating themselves publicly with litigation, and the time associated
15 with doing so. Without the Plaintiff stepping forward to publicly assert her claims, this lawsuit would
16 not have been brought. Other individuals declined to serve as class representatives for fear of
17 retaliation, public notoriety, unwillingness to commit the time, and other personal circumstances.

18 36. For the reasons described in Paragraphs 33 through 35, I believe that a \$10,000 service
19 award for Plaintiff is adequate and reasonable.

20 **ATTORNEYS' QUALIFICATIONS**

21 37. For the last nine years, I have litigated wage and hour class actions. I am qualified to
22 act as Class Counsel, having done so in similar actions. I do not have any conflicts with the class.
23 Some of my qualifications include:

- 24 a. I am a 2012 graduate of the University of California Berkeley School of Law, a 2004
25 graduate of Brown University, and a former Fulbright Scholar;
- 26 b. I am the principal attorney at Terp Law, a law firm that I founded in 2020, which
27 exclusively represents employees;
- 28 c. I have experience representing clients in California Superior Courts, federal District

- 1 Court's in California, New York, and New Jersey, and administrative agencies;
- 2 d. From 2013 to 2019, I served as an associate and then senior associate at Bryan
- 3 Schwartz Law, in Oakland, California, where I practiced employment law;
- 4 e. While at Bryan Schwartz Law, I was approved, by name, as class counsel in *Greene, et.*
- 5 *al. v. Shift Operations LLC, et al.*, (S.F. Super. Ct.) Case No. CGC-16-552307
- 6 (Karnow, J.) (Jul. 24, 2018 Order Granting Final Approval of Class Action Settlement,
- 7 ¶ 7);
- 8 f. I worked on numerous cases for which Bryan Schwartz Law was approved as class
- 9 and/or collective counsel, including:
- 10 i. *Karali, et al. v. BB&T*, (D.N.J.) 16-cv-2093;
- 11 ii. *Rueda, et al. v. Idemia Identity & Security USA, LLC, et al.*, (N.C. Cal.) 18-cv-
- 12 03794;
- 13 iii. *Gillespie, et al. v. Lumenis, Inc.*, (N.D. Cal.) 17-cv-02080;
- 14 iv. *Duque, et al. v. Bank of America, N.A.*, (C.D. Cal.) 18-cv-01298;
- 15 v. *Boyd, et al. v. Bank of America, et al.*, (C.D. Cal.) 13-cv-0561;
- 16 vi. *Yim, et al. v. Carey Limousine NY, Inc., et al.*, (E.D.N.Y.) 14-cv-4883;
- 17 vii. *Garcia et al. v. Landmark Hospitality Inc., et al.*, (S.F. Sup. Ct.) Case No. CGC-
- 18 13-532871;
- 19 viii. *Amenya et al. v. Henry Indus., Inc.*, (Alameda Sup. Ct.) Case No. RG15754205;
- 20 ix. *Turman, et al. v. Koji's Japan Inc., et al.*, (Orange Super. Ct.) Case No. Civ.
- 21 Civ. No. 30-2010-00425532;
- 22 g. I have been recognized each year as a "Rising Star" by *Super Lawyers* magazine since
- 23 2017;
- 24 h. I am an active member of the California Employment Lawyers Association (CELA),
- 25 where I currently serve on CELA's Wage and Hour Committee, and previously served
- 26 on CELA's Nominating Committee;
- 27 i. I also volunteer as a supervising attorney for Legal Aid At Work's workers rights'
- 28 clinics;

- j. I have spoken on topics relating to employment litigation at Berkeley Law, Legal Aid At Work, The Center for Workers' Rights, the National Employment Lawyers Association, the California Employment Lawyers Association, and the California Lawyers Association's Labor & Employment Law Section; and
- k. My writing has appeared in the California Litigation Review and Plaintiff Magazine.

FEES AND COSTS

38. Plaintiff's Counsel will move for approval of \$266,666.67 in attorneys' fees, which will potentially be a negative multiplier of their lodestar – in a separate fee petition. In the fee petition, Plaintiff's Counsel intends to provide the Court with a detailed breakdown of the hours Plaintiff's Counsel spent and the rates billed. Terp Law has spent more than 240 hours on this strictly-contingency matter, incurring more than \$145,000 of uncompensated attorneys' fees, and consequently diverting the solo law firm's attention from other paying cases.

39. From the inception of this case, Terp Law has vigorously advocated for the interests of class members, including conducting individual investigative interviews of Class Members and other witnesses, filing the complaint, amended complaint, and first amended complaint; obtaining seven signed declarations from Class Members in support of class claims; propounding discovery requests to Defendants; responding to the written discovery and document requests; analyzing thousands of pages of documents exchanged through formal and informal discovery, and obtained through the investigation process; attending one full-day of mediation; continuing to vigorously negotiate the terms of the memorandum of understanding and long-form settlement agreement.

40. Terp Law has incurred and, through approval, will continue to incur costs in prosecuting this lawsuit. The proposed Settlement Agreement provides up to \$14,000 in costs – any unused funds allocated for costs will be redistributed to class action members on a pro rata basis after the notice period, assuming the Court finally approves the proposed settlement.

EXHIBITS

Exhibit 1 is a true and correct copy of the Settlement Agreement;

Exhibit 2 is a true and correct copy of the Declaration of Andrea O'Neal Roberts;

Exhibit 3 is a true and correct copy of online marketing materials for the Instructional Program,

1 downloaded on August 24, 2020;

2 **Exhibit 4** is a true and correct copy of excerpts from two employee handbooks.

3 I declare under penalty of perjury under the laws of the State of California that the foregoing is
4 true and correct. Executed on July 11, 2022 in Berkeley, California.

5
6 By. 
7 RACHEL M. TERP, ESQ.
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Exhibit 1
to Preliminary Approval Motion
Joint Stipulation of Settlement and Release

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*Attorneys for Defendants Off The Grid Services, LLC
and Defendant The Whole Cart, LLC*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA - UNLIMITED JURISDICTION

	)	Case No. RG20075270
ANDREA O'NEAL-ROBERTS, on behalf of	)	Assigned for all purposes to
herself, the putative class, and on behalf of	)	Judge: Hon. Brad Seligman
the general public,	)	Dept.: 23
Plaintiff,	)	JOINT STIPULATION OF SETTLEMENT
v.	)	AND RELEASE
OFF THE GRID SERVICES, LLC, THE	)	
WHOLE CART, LLC, and DOES 1-10,	)	
inclusive.	)	
Defendants.	)	

1 This Stipulation of Class Action Settlement and Release (“Agreement” or “Settlement” or
2 “Settlement Agreement”) is made by and between class Plaintiff Andrea O’Neal-Roberts on
3 behalf of herself and others similarly situated, and the general public (“Plaintiff”), and
4 Defendant Off The Grid Services, LLC and Defendant The Whole Cart, LLC (“Defendants”)
5 (Plaintiff and Defendants are collectively referred to herein as the “Parties”).

6 IT IS HEREBY STIPULATED AND AGREED by and among the undersigned Parties,
7 subject to the approval of the Court, that the settlement of this action shall be effectuated upon
8 and subject to the following terms and conditions.

9 **I. DEFINITIONS**

10 The following defined terms used in this Agreement shall have the meanings ascribed to
11 them below.

12 **1.1 Action.** “Action” or “Lawsuit” shall mean the civil action that is currently pending
13 in the Superior Court of the State of California, Alameda County, entitled *Andrea O’Neal-*
14 *Roberts v. Off the Grid Services, LLC*, et al., Case No. RG20075270.

15 **1.2 Agreement.** “Agreement” or “Settlement” or “Settlement Agreement” means this
16 Joint Stipulation of Settlement and Release, which sets forth the terms and conditions of the
17 compromise and resolution of claims reached by the Parties.

18 **1.3 Class and Subclasses.**

19 **1.3.a** “Class,” “Class List,” “Class Members,” “Settlement Class”, and
20 “Settlement Class Members” shall mean: All individuals who work or worked as
21 Instrucktional Entrepreneurs, who Defendants classified as exempt from overtime within
22 the State of California at any time from April 6, 2016 through the Date of Preliminary
23 Approval, except for those who signed a general release of claims.

24 **1.3.b** The 23 individuals who fit this definition and comprise the Class Members
25 are: (1) Cassandra Brown, (2) Sindhu Chhabra, (3) Matthew Driscoll, (4) Samuel
26 Esquibel, (5) Ikeisha Fields, (6) Sofia Ghafari-Saravi, (7) Anthony Heffernan, (8)
27 Joonseok Hur, (9) Alia Jaziri, (10) Thomas Lane, (11) Dimitri Lilavois, (12) William
28 Lyons, (13) Elizabeth Miranda, (14) Shawndee Montero, (15) Andrea O’Neal-Roberts,

(16) Mark Paine, (17) Norma Quinonez, (18) Chelsea Ross, (19) Siska Silitonga, (20) Gregory Spangler, (21) Bradley Thathiah, (22) Christiano Vasconcelos, and (23) Tobias Waldhecker.

1.3.c Class Members may also fall into one of the following “Subclasses”:

1.3.b.i Waiting Time Penalties Subclass: All Class Members who no longer work for Defendants and have not been employed by Defendants for more than 72 hours, from April 6, 2017 through the Date of Preliminary Approval.

1.3.b.ii Itemized Wage Statement Subclass: All Class Members who work or worked for Defendants from April 6, 2019 through the Date of Preliminary Approval.

1.4 Class Counsel. “Class Counsel” or “Plaintiff’s Counsel” shall mean Darci Burrell, Esq. of Levy Vinick Burrell Hyams LLP, 180 Grand Avenue, Suite 1300, Oakland, California 94612 and Rachel Terp, Esq. of Terp Law, 2831 Telegraph Avenue, Oakland, California 94609.

1.5 Class Liability Period. “Class Liability Period” or “Class Period” shall mean the time period from April 6, 2016 through the Date of Preliminary Approval.

1.6 Complaint. Unless otherwise noted, "Complaint" shall mean the operative complaint filed in the Action.

1.7 Court. “Court” refers to the Superior Court of the State of California, Alameda County.

1.8 Date of Preliminary Approval. “Date of Preliminary Approval” shall mean the date on which the Court enters an Order granting preliminary approval of the terms of settlement set forth in this Settlement Agreement or such modified terms as may be agreed to by the Parties in order to obtain preliminary approval.

1.9 Day. Day shall mean a calendar day, unless expressly stated otherwise.

1.10 Defendants’ Counsel. “Defendants’ Counsel” and “Counsel for Defendants” shall mean Kyle L. Schriner of Schriner Law Firm, PC, 1936 University Ave., Suite 110, Berkeley, California 94704.

1.11 Final Effective Date. “Final Effective Date” shall mean the date when the Final

1 Approval Order and Judgment becomes final. For purposes of this Settlement, the Final
2 Approval Order and Judgment becomes final upon the last to occur of the following: (a) if there
3 are no objections to the Settlement, the date of Final Approval, (b) if there are objections to the
4 Settlement, and if an appeal, review, or writ is not sought from the Final Approval Order and
5 Judgment, the day after the time period to appeal the Final Approval Order and Judgment has
6 expired; or (c) if there are objections to the Settlement, and if an appeal, review, or writ is
7 sought from the Final Approval Order and Judgment, the day after the Final Approval Order and
8 Judgment is affirmed or the appeal, review, or writ is dismissed or denied, and the Final
9 Approval Order and Judgment is no longer subject to further judicial review.

10 **1.12 Final Approval Hearing.** “Final Approval Hearing” shall mean the hearing on the
11 Motion for Final Approval of Class Action Settlement.

12 **1.13 Gross Settlement Amount.** The “Gross Settlement Amount” shall mean an
13 amount not to exceed eight hundred thousand dollars (\$800,000) that Defendants agree to pay
14 into the QSF to settle this Action (equal to an average gross settlement payment of \$34,782.608
15 for each of the 23 Class Members). The Gross Settlement Amount excludes the employer’s
16 share of payroll taxes on amounts allocated to wages.

17 **1.14 Net Settlement Amount.** “Net Settlement Amount” shall mean Gross Settlement
18 Amount minus the (a) court approved Settlement Administration Costs, (b) Service
19 Award/General Release Consideration, (c) Class Counsel’s attorneys’ fees and costs, and (d)
20 PAGA Distribution Amount, as described in section 6.3.d below.

21 **1.15 Notice.** “Notice” shall mean the Court Authorized Notice of Pendency of Class
22 Action and Proposed Settlement as well as the Court Authorized Notice of Settlement Award,
23 substantially in the form attached as Exhibit A and Exhibit B to this Settlement Agreement or as
24 modified by the Court and sent to Class Members by mail in an envelope, and by email with a
25 subject line clearly identifying the nature of the contents. The Notice via email shall include a
26 subject line which shall read “NOTICE OF CLASS ACTION SETTLEMENT: O’Neal-Roberts
27 v. Off the Grid Services, LLC, et al.,” or other wording approved by the Court.

28 **1.16 Opt-Out(s).** “Opt-Out(s)” shall mean Class Members who timely submit a valid

1 and timely Opt-Out Request.

2 **1.17 Opt-Out Deadline.** “Opt-Out Deadline” shall be sixty (60) calendar days after the
3 Notice is initially mailed and emailed to the Settlement Class Members by the Settlement
4 Administrator.

5 **1.18 Opt-Out Request.** "Opt-Out Request" means a Settlement Class Member’s
6 request for exclusion from the Settlement, but not the PAGA Claims.

7 **1.19 PAGA Claims.** “PAGA Claims” shall mean the Plaintiff’s representative claim
8 seeking civil penalties pursuant to California’s Private Attorney General Act (“PAGA”), Labor
9 Code § 2699 et seq., as alleged in the seventh (7th) cause of action in the Complaint.

10 **1.20 PAGA Aggrieved Employees.** “PAGA Aggrieved Employees” shall mean all
11 Settlement Class Members who work or worked for Defendants during the PAGA Period.

12 **1.21 PAGA Aggrieved Employee Payment.** “PAGA Aggrieved Employee Payment”
13 shall mean the amount of five thousand five hundred dollars (\$5,500) to be paid to all PAGA
14 Aggrieved Employees from the PAGA Distribution Amount on a pro-rata basis based on the
15 comparative number of workweeks worked by each PAGA Aggrieved Employee during the
16 PAGA Period.

17 **1.22 PAGA Distribution Amount.** “PAGA Distribution Amount” shall mean the
18 payment in the amount of twenty-two thousand dollars (\$22,000) from the Gross Settlement
19 Amount to be paid to the LWDA and the PAGA Aggrieved Employees to settle claims for civil
20 penalties pursuant to PAGA.

21 **1.23 PAGA LWDA Payment.** “PAGA LWDA Payment” shall mean the amount of
22 sixteen-thousand five-hundred dollars (\$16,500) to be paid to the LWDA from the PAGA
23 Distribution Amount pursuant to Labor Code § 2699(i).

24 **1.24 PAGA Period.** “PAGA Period” shall mean the time period from September 17,
25 2019 through the Date of Preliminary Approval.

26 **1.25 PAGA Share.** “PAGA Share” shall mean the amount to be distributed to each
27 PAGA Aggrieved Employee from the PAGA Aggrieved Employee Payment on a pro-rata basis
28 based on the comparative number of workweeks worked by each PAGA Aggrieved Employee

1 during the PAGA Period.

2 **1.26 Participating Class Members.** “Participating Class Members” shall mean all
3 Class Members who after the Notice has issued do not exclude themselves by means of an Opt-
4 Out Request by the Opt-Out Deadline and are, therefore, bound by the Final Approval Order.

5 **1.27 Qualified Settlement Fund.** “Qualified Settlement Fund” or “QSF” shall mean
6 the Qualified Settlement Fund established by the Settlement Administrator for the benefit of the
7 Participating Class Members and PAGA Aggrieved Employees and from which the Settlement
8 Shares and PAGA Shares shall be paid. The QSF shall comply with Treas. Reg. § 1.468B-1, and
9 the "administrator" of the QSF, within the meaning of Treas. Reg. § 1.468B-2(k), shall comply
10 with all applicable requirements.

11 **1.28 Released Claims.** "Released Claims" shall mean all claims that were pleaded and
12 all claims that could have been pleaded based on the factual allegations in the Complaint,
13 including but not limited to: (1) failure to pay overtime wages; (2) failure to pay meal period
14 premiums and failure to pay rest period premiums; (3) failure to reimburse business expenses;
15 (4) failure to provide compliant wage statements; (5) failure to pay all wages due upon
16 termination; (6) violations of California’s unfair competition law; (7) violations of the Private
17 Attorneys’ General Act (“PAGA”); and potential claims reasonably arising out of or reasonably
18 relating to the same set of operative facts and/or factual allegations pled therein. Released
19 Claims exclude all other claims, including claims outside of the Class Period, claims for
20 unemployment insurance, short-term disability insurance, workers’ compensation,
21 discrimination, wrongful termination, intellectual property, and the class and representative
22 PAGA claims alleged in the wage and hour lawsuit filed against Defendants in the Superior
23 Court of the State of California, San Francisco County, entitled *Maria Victoria Reyes, et al. v.*
24 *The Whole Cart, LLC*, Case No. CGC-20-584861.

25 **1.29 Released Parties.** "Released Parties" shall mean Defendants, Defendants’
26 respective present, former, and future controlling persons, parent companies, affiliates,
27 subsidiaries, successors-in-interest, assigns, predecessors, benefit plans sponsored by such
28 companies, owners, members, officers, directors, principals, employees, agents, attorneys,

1 accountants, auditors, consultants, insurers and reinsurers, managers, trustees, fiduciaries, heirs,
2 representatives, and divisions, including, but not limited to, Cubert LLC.

3 **1.30 Service Award/General Release Consideration:** “Service Award/General
4 Release Consideration” shall mean the amount approved by the Court to be paid to Plaintiff in
5 addition to her Settlement Share and PAGA Share in recognition of her efforts in serving the
6 interests of the class as Class Representative for the purposes of the class action settlement. The
7 payment shall also include an amount designed to compensate Plaintiff for executing a general
8 release of all claims.

9 **1.31 Settlement Administration Costs.** “Settlement Administration Costs” shall mean
10 the fees and expenses reasonably and necessarily incurred by the Settlement Administrator as a
11 result of performing the settlement administration procedures and functions expressly required
12 in this Agreement and shall include all costs of administering the Settlement, including, but not
13 limited to, all tax document preparation, custodial fees, and accounting fees incurred by the
14 Settlement Administrator; all costs and fees associated with preparing, issuing, mailing, and
15 emailing any and all notices and other correspondence to Class Members; all costs and fees
16 associated with computing, processing, reviewing, and paying the Settlement Shares, and
17 resolving Workweek disputes; all costs and fees associated with calculating tax withholdings
18 and making related payment to federal and state tax authorities and issuing tax forms relating to
19 payments made under the Settlement; all fees and costs associated with any other payments to
20 be made out of or into the costs and fees associated with preparing any tax returns and any other
21 filings required by any governmental taxing authority or agency; all costs and fees associated
22 with preparing any other notices, reports, or filings to be prepared in the course of administering
23 disbursements from the QSF; and any other costs and fees incurred and/or charged by the
24 Settlement Administrator in connection with the execution of its duties under this Agreement.
25 Settlement Administration Costs are estimated not to exceed \$10,000.

26 **1.32 Settlement Administrator.** “Settlement Administrator” shall mean the third-party
27 entity, jointly selected by the Parties and approved and appointed by the Court in the
28 Preliminary Approval Order to mail and email the Notice to the Class and perform other duties

1 relating to the administration of the Settlement, including, but not limited to, mailing payments
2 to Participating Class Members and PAGA Aggrieved Employees. The Parties agreed to
3 recommend that the Court appoint Atticus as the notice provider and Settlement Administrator.

4 **1.33 Settlement Share.** “Settlement Share” shall mean the amount due to a Class
5 Member which shall be calculated pursuant to the terms of this Agreement.

6 **1.34 Workweek.** “Workweek” shall mean a workweek that a Class Member worked in
7 a position as a Class Member during the Class Liability Period.

8 **II. FACTUAL AND PROCEDURAL BACKGROUND**

9 **2.1** On September 17, 2020, Plaintiff submitted a PAGA notice to the LWDA.

10 **2.2** On September 24, 2020, Plaintiff filed the Action against Defendants, on behalf of
11 herself and a Putative Class, alleging various wage and hour law violations.

12 **2.3** On November 23, 2020, Plaintiff filed a First Amended Complaint adding
13 representative claims under PAGA.

14 **2.4** In December 2020, Plaintiff filed a Stipulation and Order Re: Amended Complaint
15 and the Court granted the Parties’ request for Plaintiff to file a Second Amended Complaint to
16 clarify the Putative Class definition, in a manner intended to clarify that the lawsuit did not
17 cover the class and representative PAGA claims alleged in the wage and hour lawsuit filed
18 against Defendants in the Superior Court of the State of California, San Francisco County,
19 entitled *Maria Victoria Reyes, et al. v. The Whole Cart, LLC*, Case No. CGC-20-584861.

20 The Putative Class definition changed **from**, “All individuals who work or worked as
21 Instrucktional Entrepreneurs, and any other employee performing the same or similar
22 duties, who Defendants classified as exempt from overtime within the State of California
23 at any time from April 6, 2016 through the final disposition of this case” (Page 7 of the
24 Original and First Amended Complaints (underlying added to show language removed in
25 the Second Amended Complaint)), **to**, “All individuals who work or worked as
26 Instrucktional Entrepreneurs, who Defendants classified as exempt from overtime within
27 the State of California at any time from April 6, 2016 through the final disposition of this
28 case” (Page 7 of the Second Amended Complaint).

1 **2.5** On March 8, 2021, Defendants filed an Answer to the Second Amended
2 Complaint.

3 **2.6** On July 15, 2021, Defendants filed a First Amended Answer to Plaintiff's Second
4 Amended Complaint.

5 **2.7** The Parties reached this Settlement Agreement after conducting significant
6 investigation, analysis, and discovery. In connection with the Parties' formal and informal
7 discovery and settlement negotiations, Defendants provided Plaintiff with thousands of pages of
8 data and documentary evidence, including but not limited to: electronically stored information
9 including emails containing targeted search terms; employee handbooks, policies, procedures,
10 training documents, contracts, job descriptions; paystubs, personnel file documents, and internal
11 communications for nine (9) Class Members; and pay data for putative class members.

12 **2.8** Additionally, on November 18, 2021, the Parties attended a full day mediation
13 with mediator, Steve Pearl. The Parties did not settle on that date, but continued their arms-
14 length negotiations over the course of weeks. On or about January 27, 2022, the Parties executed
15 a memorandum of understanding regarding the principal terms of a California class action
16 settlement on behalf of twenty-three (23) identified Class Members.

17 **2.9** Plaintiff and Class Counsel believe that this Agreement is in the best interest of the
18 Class Members. Specifically, Plaintiff and Class Counsel have concluded, based upon their
19 investigation and discovery, after performing a thorough study of the laws and facts relating to
20 the claims asserted in the Action and taking into account disputed factual and legal issues related
21 to the classification of workers involved in this Action, the various risks attendant in obtaining
22 and maintaining class certification as well as prosecuting the case to trial and judgment, the
23 uncertainties of complex litigation, the financial condition of at least one of the Defendants, the
24 strong likelihood of further appeals as litigation continues, the discovery and investigation
25 conducted to date, the expense and time necessary to pursue the Action through trial, the
26 substantial benefits to be received by the Class including at least one Class Member who signed
27 an arbitration agreement, and pursuant to the compromise and settlement of the Action, that the
28 settlement as embodied by this Agreement is fair, adequate, and reasonable and is in the best

1 interests of Plaintiff and Class Members. Plaintiff, on her own behalf and on behalf of the Class
2 Members, has agreed to settle the Action on the terms set forth in this Agreement.

3 **2.10** Defendants generally and specifically deny any and all liability or wrongdoing of
4 any sort with regard to any of the claims alleged, make no concessions or admissions of liability
5 of any sort, and contend that for any purpose other than settlement, the Action is not appropriate
6 for class treatment. Defendants assert a number of defenses to the claims, and have denied any
7 wrongdoing or liability arising out of any of the alleged facts or conduct in the Action. Neither
8 this Agreement, nor any document referred to or contemplated herein, nor any action taken to
9 carry out this Agreement, is or may be construed as, or may be used as an admission,
10 concession, or indication by or against Defendants or any of the Released Parties of any fault,
11 wrongdoing, or liability whatsoever. There has been no final determination by any court as to
12 the merits of the claims asserted by Plaintiff against Defendant or as to whether a class or
13 classes should be certified, other than for settlement purposes only.

14 **III. CONDITIONS PRECEDENT TO SETTLEMENT TAKING EFFECT**

15 **3.1** The Parties enter into this Settlement Agreement on a conditional basis. This
16 Agreement and Settlement is contingent upon, and will become final and effective only upon the
17 occurrence of, all of the following events: (1) the Court entering an order granting preliminary
18 approval of the Settlement and Settlement Class for settlement purposes only, consistent with
19 the terms described in this Agreement (or as otherwise agreed upon in writing by the Parties);
20 (2) mailing and emailing of the Notice to Class Members in accordance with the Court's order
21 of preliminary approval; (3) the Court setting and conducting a fairness hearing; (4) the Court
22 entering an order granting final approval of the Settlement and a Judgment consistent with the
23 terms described in this Agreement (or as otherwise agreed upon in writing by the Parties); and
24 (5) the Final Effective Date occurring, and any challenge to the Settlement, whether by objection
25 or appeal, being resolved in favor of enforcement of the Settlement.

26 **3.2** Unless the Court orders otherwise or as otherwise agreed upon in writing by the
27 Parties, this Agreement shall be deemed null and void ab initio unless each of the foregoing
28 conditions occurs.

1 **IV. CONSEQUENCES OF SETTLEMENT NOT BECOMING EFFECTIVE**

2 **4.1** This Agreement is contingent upon each of the conditions precedent in Paragraph
3 3.1 occurring and is entered into voluntarily by the Parties for settlement purposes only. If the
4 Court does not ultimately grant preliminary or final approval of this Settlement or, if appealed,
5 the Settlement is not affirmed, or if the Settlement does not become effective for any other
6 reason, the Parties agree that conditional class certification for settlement purposes only will
7 automatically be deemed revoked. In the event the conditional class certification for settlement
8 purposes is deemed revoked, then the class certification for settlement purposes only shall have
9 no precedential value and it shall not be introduced into evidence or used for any other purpose.
10 To the extent this Agreement is deemed void, the conditional certification of the Class shall be
11 void and of no further effect, and all matters covered by this Agreement and the releases
12 contained herein shall be null and void. In such event, nothing in this Agreement or any draft
13 thereof, or of the discussion, negotiation, documentation, or other part or aspect of the Parties'
14 settlement discussions leading to the execution of this Agreement, or any document filed with
15 the Court in support of this Agreement or Court approval thereof, shall have any effect, nor shall
16 any such matter be admissible in evidence for any purpose in the Action or in any other
17 proceeding or forum, nor shall any such matter be used or construed by or against any Party as a
18 determination, admission, or concession of any issue of law or fact in this, or any other litigation
19 or proceeding, and the Parties do not waive, and instead expressly reserve, their respective rights
20 with respect to the prosecution and defense of the Action as if this Agreement never existed. To
21 be clear, any document produced in formal discovery in this matter that is filed with the Court to
22 support the motion for preliminary or final approval, must be resubmitted to the Court at a later
23 date if used to support any claim or defense in this matter.

24 **V. COOPERATION**

25 **5.1** The Parties agree to use their best efforts to expedite the preparation and
26 submission of the Agreement and related documents to the Court for consideration and approval.
27 The Parties further agree to cooperate fully in the drafting and/or filing of any further documents
28 or filings reasonably necessary to be prepared or filed, shall take all steps consistent with the

1 terms of this Agreement that may be requested by the Court relating, or that are otherwise
2 necessary, to the approval and implementation of this Agreement and shall otherwise use their
3 respective best efforts to obtain the Court's approval of and implementation of this Agreement.
4 The Parties shall timely cooperate and present to the Court, for its consideration in connection
5 with the approval of this Agreement, any and all evidence as may be requested by the Court
6 under the appropriate standards for approving the proposed Settlement of the class and PAGA
7 claims, and/or facilitated Notice to Class Members.

8 **VI. SETTLEMENT CONSIDERATION**

9 **6.1** Defendants are obligated to pay the Gross Settlement Amount consistent with the
10 terms of this Agreement. Defendants also agree to pay separately the employer's share of
11 payroll taxes on the portion of the Net Settlement Amount designated as wages.

12 **6.2** The Gross Settlement Amount shall be "all-inclusive," meaning that it shall
13 include all Settlement Administration Costs, the Service Award/General Release Consideration,
14 all Class Counsel's attorneys' fees and costs, all possible Settlement Shares to Settlement Class
15 Members, and the PAGA Distribution Amount, and no part of the Gross Settlement Amount
16 shall revert to Defendants. The Notice sent to the Class Members shall state a minimum amount
17 each would receive if the claims rate was 100% of the Workweeks claimed, and state that this
18 amount may go up. The amount may go up depending, *e.g.*, on the total weeks claimed, the
19 number of individuals who choose to remain in the case, the fees and costs awarded by the
20 Court, or the absence of successful Workweek disputes.

21 **6.3** The Gross Settlement Amount shall be distributed as follows:

22 **6.3.a Attorneys' Fees and Costs.** In connection with the Final Approval
23 Hearing, Class Counsel will submit an application for an award of attorneys' fees not to
24 exceed one-third of the Gross Settlement Amount (\$266,666.67) and an award of court
25 costs and other litigation expenses in an amount not to exceed \$13,000 (excluding
26 Settlement Administration Costs) with the understanding that the Court may award lesser
27 amounts of fees and costs as are determined to be fair and reasonable by the Court.
28 Defendants will not contest Class Counsel's request for attorney's fees or reimbursement

1 of costs. The Parties expressly agree that the Court's approval or denial of any request for
2 attorneys' fees and costs are not material conditions to this agreement and are to be
3 considered by the Court separately from the fairness, adequacy, reasonableness, and good
4 faith of the settlement. Any order or proceeding relating to the application by Class
5 Counsel of an award for fees and costs shall not operate to terminate or cancel this
6 agreement. To the extent the Court awards less than the amount of attorneys' fees and
7 costs requested by Class Counsel the remaining amount will be redistributed among
8 Participating Class Members on a *pro rata* basis.

9 **6.3.b Settlement Administration Costs.** All Settlement Administration Costs
10 awarded by the Court shall be paid from the Gross Settlement Amount, in an amount
11 approved by the Court. The Parties estimate the Settlement Administration Costs will be
12 no more than ten-thousand dollars (\$10,000.00). To the extent the Court awards less than
13 the amount of Settlement Administration Costs requested by Class Counsel the remaining
14 amount will be redistributed among Participating Class Members on a *pro rata* basis.

15 **6.3.c Service Award/General Release Consideration.** Class Counsel shall seek
16 approval for a Service Award/General Release Consideration of ten-thousand dollars
17 (\$10,000.00) to Plaintiff. The Service Award/General Release Consideration paid from
18 the Gross Settlement Amount shall be a payment separate and apart from any Settlement
19 Share that Plaintiff may be entitled to receive as a Class Member. Plaintiff shall provide a
20 general release, including a waiver of Civil Code section 1542, as a condition of
21 receiving the Service Award. Defendants will not oppose a motion for approval of the
22 Service Award/General Release Consideration consistent with this Paragraph. The Parties
23 expressly agree that the Court's approval or denial of any request for Plaintiff's service
24 award is not a material condition to this agreement, and is to be considered by the Court
25 separately from the fairness, adequacy, reasonableness, and good faith of the settlement.
26 Any order or proceeding relating to the application by Class Counsel of Plaintiff's service
27 payment shall not operate to terminate or cancel this agreement. To the extent the Court
28 awards less than the amount of the requested Plaintiff's service payment amount, the

1 remaining amount will be redistributed amongst Participating Class Members on a *pro*
2 *rata* basis.

3 **6.3.d Payments for PAGA.** Plaintiff's Counsel shall seek approval of the PAGA
4 Distribution Amount of twenty-two thousand dollars (\$22,000) from the Gross
5 Settlement Amount, to settle claims for civil penalties under California's Private Attorney
6 General Act, Labor Code sections 2698, et seq. as follows:

7 **6.3.d.i PAGA LWDA Payment.** Seventy-five percent (75%) of the
8 PAGA Distribution Amount, or no less than of sixteen-thousand five-hundred
9 dollars (\$16,500), shall be paid to the LWDA, as required by Labor Code §
10 2699(i).

11 **6.3.d.ii PAGA Aggrieved Employee Payment.** Twenty-five percent
12 (25%) of the PAGA Distribution Amount, or no less five-thousand five-hundred
13 dollars (\$5,500), shall be paid to all PAGA Aggrieved Employees, as required by
14 Labor Code § 2699(i), and shall be distributed based on each PAGA Aggrieved
15 Employee's proportionate Workweeks worked during the PAGA Period, by
16 multiplying the PAGA Aggrieved Employee Payment by a fraction, the numerator
17 of which is the number of workweeks worked by the PAGA Aggrieved Employee
18 during the PAGA Period, and the denominator of which is the total number of
19 workweeks worked by all PAGA Aggrieved Employees during the PAGA Period.

20 **6.3.e Payments to Class Members.** From the Net Settlement Amount, the
21 Settlement Share to each Participating Class Member will be calculated by the Settlement
22 Administrator so that the aggregate recovery for all of these individuals equals the Net
23 Settlement Amount, as set forth below.

24 **6.3.e.i The Class Amount** shall be 88% of the Net Settlement
25 Amount and shall be distributed based on each Participating Class Member's
26 proportionate Workweeks worked during the Class Liability Period, by
27 multiplying the Class Amount by a fraction, the numerator of which is the
28 Participating Class Member's number of Workweeks worked during the Class

Liability Period, and the denominator of which is the total Workweeks worked by all Participating Class Members during the Class Liability Period.

6.3.e.ii The Itemized Wage Statement Subclass Amount shall be 2% of the Net Settlement Amount and shall be distributed based on participating Itemized Wage Statement Penalties Subclass member's number of Workweeks worked from April 6, 2019 to the end of the Class Liability Period, and the denominator of which is the total Workweeks worked by all participating Itemized Wage Statement Subclass members from April 6, 2019 to the end of the Class Liability Period.

6.3.e.iii The Waiting Time Penalties Subclass Amount shall be 10% of the Net Settlement Amount and shall be divided evenly between all participating Waiting Time Penalties Subclass members.

6.4 Defendants shall be obligated to pay the Gross Settlement Amount to the Settlement Administrator to be deposited in the QSF within thirty (30) calendar days of the Final Effective Date.

6.5 Facilitating Release of Intellectual Property: As part of the Settlement Agreement, Defendants agree to make efforts to facilitate the release or license of Qualifying Class Members' brands, marketing materials, and recipes, by Defendants and/or any third party. During the class notice period, Class Members who developed mobile food concepts while working for Defendants ("Qualifying Class Members") will be provided with the option to receive full title guarantee to all rights, title, and interest in and to the intellectual property they created (including mobile food concept name, designs and logos, and menu designs and menu logos) during and as part of the ITK Program in exchange for a license to use the intellectual property for a period of one year. Qualifying Class Members will be advised to consult with an attorney other than Class Counsel before signing the intellectual property assignment and license back agreement. A qualifying Class Members' acceptance or rejection of the intellectual property assignment and license back offer will not impact a Class Member's rights under this Settlement Agreement.

1 **VII. MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT**

2 **7.1** Plaintiff's Counsel will use their best efforts to finalize the preliminary approval
3 papers within two (2) months of finalizing the long-form settlement agreement, and subject to
4 Defendants' Counsel's review. Plaintiff's Counsel will provide Defendants' Counsel with a draft
5 of the motion at least five (5) court days prior to filing. Plaintiff will seek a hearing before the
6 Court to request the preliminary approval of this Settlement Agreement, and the entry of a
7 Preliminary Approval Order for: (a) conditional certification of the Class for settlement purposes
8 only; (b) preliminary approval of the proposed Settlement Agreement; (c) approval of a
9 Settlement Administrator to administer notice to the Settlement Class; and (d) setting a date for
10 a Final Approval Hearing. The Preliminary Approval Order will provide for the Notice to be
11 sent to all Class Members as specified herein. In conjunction with the Preliminary Approval
12 hearing, Plaintiff will submit this Settlement Agreement, which sets forth the terms, and will
13 include the proposed Notice documents, attached as Exhibit A and Exhibit B. Plaintiff's Counsel
14 will be primarily responsible for drafting all documents necessary to obtain preliminary
15 approval.

16 **7.2** If for any reason the Court does not approve this Agreement, fails to enter the
17 Final Judgment, or if this Agreement is terminated for any other reason, the Parties agree that
18 class certification for settlement purposes only will automatically be deemed revoked.

19 **7.3** The Parties shall request that the Court enter an order that pending final approval,
20 the Parties are barred from instituting, prosecuting, or participating in any claims or actions
21 against the Released Parties that fall within the definition of the Released Claims, and that any
22 pending actions against the Released Parties by any Settlement Class Member, whether in court
23 or arbitration, are stayed on an interim basis, as to any claims which fall within the definition of
24 the Released Claims. Defendants will disclose to Plaintiffs' Counsel any pending claims known
25 to Defendants.

26 **VIII. SETTLEMENT ADMINISTRATION AND COURT-FACILITATED NOTICE**

27 **8.1** The Parties agree to use the services of a Settlement Administrator to administer
28 the Settlement. The actions of the Settlement Administrator shall be governed by the terms of

1 this Agreement. Defendants or Class Counsel may engage in communications with the
2 Settlement Administrator without notice or copies to the other party, any Class Members, or the
3 Court.

4 **8.2** In the event that either Defendants or Class Counsel take the position that the
5 Settlement Administrator is not acting in accordance with the terms of the Agreement, such
6 party shall meet and confer first with counsel for the other Parties and then, if necessary, with
7 the Settlement Administrator and/or the Court.

8 **IX. LIST OF SETTLEMENT CLASS MEMBERS**

9 **9.1** Within thirty (30) calendar days after the Date of Preliminary Approval,
10 Defendants shall provide the following information for the twenty-three (23) Settlement Class
11 Members to the Settlement Administrator in electronic form: a Class List that will identify each
12 Class Member's full name, last known mailing address and email address (where email
13 addresses are available from Defendants' records), Social Security Number, the start and end
14 dates of each Class Member's employment as an Instructional Entrepreneur, the number of
15 Workweeks worked by each Class Member during the Class Period as an Instructional
16 Entrepreneur, and the total number of Workweeks worked by all Class Members during the
17 Class Period as Instructional Entrepreneurs. If any of the data for the Class List is unavailable
18 to Defendants, Defendants will use best efforts to deduce or reconstruct the Class Members'
19 data prior to when it must be submitted to the Settlement Administrator.

20 **9.2** Defendants' records will be presumed determinative with respect to whether an
21 individual is a Class Member and the number of Workweeks worked by the Class Member. If
22 for any reason a Class Member disagrees with Defendants' calculation of the Class Member's
23 number of Workweeks, which will be indicated in the Notice, the Class Member will have the
24 opportunity to dispute Workweeks or other information used to estimate his/her/their Settlement
25 Share and if applicable, his/her/their Share. The Class Member shall have the opportunity to
26 raise such disagreement and present any supporting documentation to the Settlement
27 Administrator. The Settlement Administrator, in consultation with the Parties, shall try to
28 resolve the dispute, based upon the information from Defendants and any information provided

1 by the Class Member, and will issue a decision. All disputes regarding the calculation of a Class
2 Member's Settlement Share will be resolved by the Settlement Administrator, and shall be final
3 and not subject to appeal, in the event the Parties cannot reach an agreement.

4 **9.3** The Class List, and any other data provided by Defendants to the Settlement
5 Administrator, shall be treated as confidential and not subject to disclosure by the Settlement
6 Administrator or Class Counsel to any third party (except to the extent necessary for the
7 Settlement Administrator to perform its obligations described in this Agreement and subject to
8 prior approval by Defendants' Counsel) and shall not be used by the Settlement Administrator
9 for any purpose other than as permitted by this Agreement. Further, the Settlement
10 Administrator shall use commercially reasonable efforts to secure the data provided by
11 Defendants at all times so as to avoid inadvertent or unauthorized disclosure or use of such data
12 other than as permitted by this Agreement, and shall destroy the data in a complete and secure
13 manner when such data is no longer required for purposes of this Agreement. At no time during
14 the settlement process will any Class Member's address, telephone number, or Social Security
15 Number be filed with the Court, except under seal as may be ordered by the Court. The
16 Settlement Administrator shall ensure that the Notice and any other communications to Class
17 Members shall not include the Class Members' Social Security Number, except for the last four
18 digits.

19 **X. NOTICE TO SETTLEMENT CLASS MEMBERS**

20 **10.1** Upon receipt of the Class List, the Settlement Administrator will perform a search
21 using the United States Postal Service National Change of Address List to update each
22 Settlement Class Member's last known address.

23 **10.2** The Settlement Administrator shall mail and email a Notice to each Settlement
24 Class Member informing each of an expected minimum payment that the Settlement Class
25 Member will receive under the Settlement. The Parties intend the minimum payment
26 information in the Notice to assist Class Members in assessing the Settlement. The Settlement
27 Administrator will calculate the minimum payment amounts that will appear in Settlement Class
28 Members' Notices in the manner described above in section 6.3 of this Settlement except that

1 the Settlement Administrator will include all Settlement Class Members (not just Participating
2 Class Members and PAGA Aggrieved Employees) and subtract forty-thousand dollars (\$40,000)
3 from the Net Settlement Amount. The forty-thousand dollars (\$40,000) shall serve as a reserve
4 of funds in the event that Class Members successfully dispute the number of Workweeks
5 reported in their Notices as described in section 9.2, above.

6 **10.3** Within thirty-five (35) calendar days after the Date of Preliminary Approval, the
7 Settlement Administrator shall mail the Notice, via First Class postage-prepaid United States
8 mail and email, to all Settlement Class Members at their most recent known addresses. In the
9 event that any Notice is returned as undeliverable by mail, the Settlement Administrator will
10 promptly have data searches conducted, including requesting the Parties' assistance in locating
11 the Class Member's updated mailing address, and performing a search using the Class
12 Member's Social Security Number to obtain a current valid mailing address for the Class
13 Member. Following each search that results in a corrected mailing address, the Settlement
14 Administrator shall promptly re-send the Notice to the Class Member via First Class postage-
15 prepaid United States mail as soon as possible and no later than ten (10) days following
16 discovery of an invalid mailing address. In the event that any Notice is returned as undeliverable
17 by email, the Settlement Administrator will request the Parties' assistance in locating the Class
18 Member's updated email, and if the Parties provide current contact information, shall promptly
19 re-send the notice via email.

20 **10.4** Within five (5) days of the Date of Preliminary Approval, Plaintiff's Counsel will
21 make a webpage publicly available that contains basic information about the Settlement process
22 as well as links to view the Notice, Settlement Agreement, and important litigation documents.
23 Before making the webpage publicly available, Plaintiff's Counsel shall obtain approval of the
24 webpage's contents from Defendants. The Notice shall include the address for the webpage.

25 **10.5** Compliance with these procedures shall constitute due and sufficient notice to
26 Settlement Class Members of this Settlement and shall satisfy the requirement of due process.
27 Nothing else shall be required of the Parties, Class Counsel, and Defendants' Counsel to provide
28 notice of the proposed Settlement to the Class. In the event the procedures in the Agreement are

1 followed and a Class Member nonetheless does not receive the Notice, the intended recipient
2 shall remain a Class Member and will be bound by all the terms of this Agreement, including the
3 Release of Claims and any orders of the Court.

4 **10.6** The Settlement Administrator will maintain all Opt-Out Requests received from
5 Settlement Class Members. After the Notices have been mailed and emailed to Settlement Class
6 Members, the Settlement Administrator shall provide counsel for the Parties a weekly updated
7 status report that states the number of timely and valid Opt-Out Requests received, the number
8 of deficient or untimely Opt-Outs received, the number of objections received, a copy of any
9 objections received, and other data as requested.

10 **10.7** Prior to the filing of a Final Approval Motion, the Settlement Administrator shall
11 provide Class Counsel a written declaration signed under penalty of perjury verifying that,
12 pursuant to the Court's Order, it mailed and emailed the Court-approved Notice Packet to the
13 Class Members and other data concerning efforts to contact Class Members and the Class's
14 responses to the Notice.

15 **XI. OPTING OUT OF THE SETTLEMENT**

16 **11.1** A Settlement Class Member's Opt-Out Request must be mailed to the Settlement
17 Administrator at the address provided in the Notice and be postmarked no later than the Opt-Out
18 Deadline, sixty (60) calendar days after the date of the initial mailing of the Notice. The date of
19 the postmark on the envelope requesting exclusion shall be the exclusive means used to
20 determine whether an Opt-Out Request has been timely submitted. The Opt-Out Request must
21 contain the Class Member's name and reasonably communicate that the Class Member requests
22 exclusion and does not wish to participate in the settlement. No Opt-Out Request may be made
23 on behalf of a group of Class Members. Any Class Member who submits a valid and timely
24 request for exclusion will not be entitled to any monetary recovery, will not be bound by this
25 Agreement, and will not have any right to object or appeal, with the sole exception that
26 Settlement Class Members who are also PAGA Aggrieved Employees shall receive their
27 respective PAGA Share. By failing to opt out of this Settlement Agreement, Participating Class
28 Members agree to release and finally resolve all Released Claims with respect to the Released

Parties. Class Members who fail to submit a valid and timely Opt-Out Request shall be barred from making claims against Defendants for Released Claims during the Class Liability Period.

11.2 Opt-Out Requests do not apply to the PAGA Claims and will not be effective to preclude the release of the PAGA Claims. Notwithstanding the submission of an Opt-Out Request, Class Members will still be bound by the settlement and release of the PAGA Claims or remedies under the Judgment pursuant to *Arias v. Superior Court* (2009) 46 Cal. 4th 969.

11.3 Defendants shall retain the right, in the exercise of their sole discretion, to nullify the settlement if more than twenty percent (20%) of the Class Members opt out of the Settlement. Such nullification must occur within ten (10) court days of being informed by the Settlement Administrator that more than twenty percent (20%) of the Class Members have opted out of the Settlement.

XII. OBJECTIONS

12.1 The Notice shall advise Settlement Class Members of their right to object to the proposed Settlement. Absent good cause found by the Court, to be “valid,” a Class Member’s written objection to the Settlement must be sent to the Settlement Administrator at the address provided in the Notice and be postmarked no later than sixty (60) calendar days after the date of the initial mailing of the Notice. Upon receipt, the Settlement Administrator must promptly notify Class Counsel and Defendants’ Counsel, including in the weekly updated status report. Class Counsel will be responsible for filing any Class Member’s objection with the Court, and will endeavor to do so within sixteen (16) court days prior to the Final Approval Hearing. Any Class Member who submits a valid and timely Opt-Out request will not have standing, and is barred from objecting to the Settlement. The Parties may file with the Court written responses to any valid objections no later than nine (9) court days prior to the Final Approval Hearing. A Class Member may also appear at the Final Approval Hearing either in person or through the objector’s own attorney, who they hire and pay for themselves, to address any written objection or to make an oral objection.

XIII. FINAL APPROVAL HEARING AND ORDER

13.1 Within roughly ninety (90) calendar days of the Date of Preliminary Approval,

1 and with the Court's permission and subject to the Court's calendar, a Final Approval Hearing
2 will be conducted to determine the Final Approval of this Settlement Agreement along with the
3 amounts properly payable for the (a) Net Settlement Amount; (b) Settlement Administration
4 Costs; (c) Service Award/General Release Consideration; (d) Attorneys' Fees and Costs; and (e)
5 PAGA Distribution Amount. The Final Approval Hearing will not be held earlier than thirty
6 (30) calendar days after the Opt-Out Deadline. Plaintiff's Counsel will be primarily responsible
7 for drafting all documents necessary to obtain final approval. Plaintiff's Counsel will provide
8 Defendants' Counsel with a draft of the motion at least five (5) court days prior to filing.
9 Plaintiff's Counsel will be responsible for drafting the attorneys' fees and costs application to be
10 heard at the Final Approval Hearing.

11 **13.2** At least sixteen (16) court days prior to the Final Approval Hearing, Plaintiff shall
12 file and serve their Motion for Final Approval of Class Action Settlement, requesting an order
13 from the Court granting final approval of the Settlement as fair, adequate, and reasonable, and in
14 the best interests of the Class Members, approving all payments set forth under this agreement,
15 and directing the Parties to carry out the provisions of this Agreement.

16 **13.3** At or in connection with the Final Approval Hearing, the Parties shall request that
17 the Court enter an Order of Final Approval of Settlement and Judgment, which shall state that
18 all Class Members who have not submitted a valid and timely Opt-Out Request are bound by the
19 Release of Claims set forth in this Agreement.

20 **XIV DISTRIBUTION OF SETTLEMENT PAYMENTS TO THE CLASS**

21 **14.1** If the Court grants final approval of the Settlement, then within ten (10) court days
22 after Defendants have paid the Gross Settlement Amount and Defendants' portion of payroll
23 taxes to the Settlement Administrator, the Settlement Administrator will mail the initial round of
24 settlement checks to Participating Class Members and PAGA Aggrieved Employees and a
25 separate check for any Service Award/General Release Consideration awarded to Plaintiff, and
26 wire transfer the Attorneys' Fees and Costs to Plaintiff's Counsel.

27 **14.2** Prior to mailing the monetary payments to each Participating Class Member, the
28 Administrator shall calculate and deduce required withholdings from each Settlement Class

1 Member's Settlement Share attributable to wages.

2 **14.3** All settlement payments to a Participating Class Member will be designated as
3 payment for and allocated as follows: (1) one third as wages; (2) one third as penalties; and (3)
4 one third as interest. Each Participating Class Member in the Settlement Class will receive two
5 settlement checks: one for wages (from which appropriate taxes will be withheld) and one for
6 interest and penalties.

7 **14.4** All PAGA Shares paid to PAGA Aggrieved Employees will be designated as
8 payment for civil penalties. Each PAGA Aggrieved Employee shall receive a check for their
9 PAGA Share.

10 **14.5** The Settlement Administrator shall provide, annually, as appropriate, an IRS Form
11 W-2 and Form 1099 to each Participating Class Member, Plaintiff, and Class Counsel.

12 **14.6** The expiration date of the settlement checks for Participating Class Members and
13 PAGA Aggrieved Employees will be ninety (90) days from the date the checks are mailed. On
14 that date, the un-cashed settlement checks shall be voided. If funds from un-cashed settlement
15 checks equal less than ten-thousand dollars (\$10,000), the funds will be donated to the *cy pres*
16 recipient Renaissance Entrepreneurship Center (the mission of this non-profit organization is to
17 “empower and increase the entrepreneurial capacities of socially and economically diverse
18 women and men” (see <https://rencenter.org/mission-history/>)) or another *cy pres* recipient
19 approved by the Court. If funds from the un-cashed settlement checks are equal to or worth
20 more than ten-thousand dollars (\$10,000) the funds will be distributed *pro rata* to the
21 Participating Class Members who previously cashed settlement checks. The second round of
22 checks shall be mailed within ten (10) days after the initial settlement checks are voided.
23 Recipients of the re-allocated checks will have another sixty (60) calendar days to cash the
24 checks before the checks are voided. All funds from un-cashed second round checks shall be
25 donated to the *cy pres* recipient.

26 **14.7** Within forty (40) calendar days after the date of mailing of the settlement checks,
27 the Settlement Administrator will mail a reminder postcard to Participating Class Members and
28 PAGA Aggrieved Employees who have not cashed their settlement checks within the first thirty

(30) calendar days after the date of mailing of the settlement checks.

14.8 Any taxes due as a result of income earned by the QSF will be imposed upon and paid from the QSF.

XV. RELEASE OF CLAIMS

15.1 Participating Class Member Release. The Plaintiff and each Participating Class Member, upon the Final Effective Date, shall be deemed to have and by operation of the Final Judgment shall have fully, finally, and forever settled and released any and all of the Released Claims against Released Parties for the time each Participating Class member worked as an Instructional Entrepreneur during the Class Liability Period.

15.2 PAGA Aggrieved Employee Release. Upon the Court's approval of the Parties' settlement of Plaintiff's PAGA Claim, all PAGA Aggrieved Employees shall release against Released Parties all PAGA claims pleaded, all PAGA claims that could have been pleaded based on the factual allegations in the Complaint, and all potential PAGA claims reasonably arising out of or reasonably relating to the same set of operative facts and/or factual allegations pled therein during the PAGA Period. Settlement Class Members who are also PAGA Aggrieved Employees and who otherwise submit a valid Opt-Out Request will nevertheless still be bound by the PAGA release and shall receive a PAGA Share.

15.3 Plaintiff's General Release. In addition to the releases above, Plaintiff makes the additional following general release of all claims, known or unknown (the "General Release"). Plaintiff fully, finally, and forever releases from all claims, demands, rights, liabilities, and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any local, state, or federal statute, rule or regulation arising out of, relating to, or in connection with any act or omission by or on the part of any of them committed or omitted prior to the execution hereof, against Defendants, Defendants' respective present, former, and future controlling persons, parent companies, affiliates, subsidiaries, successors-in-interest, assigns, predecessors, benefit plans sponsored by such companies, owners, members, officers, directors, principals, employees, agents, attorneys, accountants, auditors, consultants, insurers and reinsurers, managers, trustees,

1 fiduciaries, heirs, representatives, and divisions, including, but not limited to, Cubert LLC and
2 Technically Temporary LLC. This General Release excludes any and all past, present, and/or
3 future claims arising under the Workers Compensation laws.

4 The General Release includes any unknown claims Plaintiff does not know or suspect to
5 exist in Plaintiff's favor at the time of the General Release, which, if known by Plaintiff, might
6 have affected Plaintiff's decision to agree to rather than object to the Settlement and General
7 Release.

8 With respect to the General Release, Plaintiff stipulates and agrees that, upon the Final
9 Effective Date, Plaintiff shall be deemed to have, and by operation of the Final Approval Order
10 shall have, expressly waived and relinquished, to the fullest extent permitted by law, the
11 provisions, rights, and benefits of section 1542 of the California Civil Code, or any other similar
12 provision under federal or state law, which provides:

13 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
14 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT**
15 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**
16 **RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**
17 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE**
18 **DEBTOR OR RELEASED PARTY.**

19 Plaintiff may hereafter discover facts in addition to or different from those Plaintiff now
20 knows or believes to be true with respect to the subject matter of the General Release, but
21 Plaintiff, upon the Final Effective Date, shall be deemed to have, and by operation of the Final
22 Approval Order shall have fully, finally, and forever settled and released any and all of the
23 claims released pursuant to the General Release whether known or unknown, suspected or
24 unsuspected, contingent or non-contingent, which now exist, or heretofore have existed upon
25 any theory of law or equity now existing or coming into existence in the future, including, but
26 not limited to, conduct that is negligent, intentional, with or without malice, or a breach of any
27 duty, law, or rule, without regard to the subsequent discovery or existence of such different or
28 additional facts.

By signing this Settlement Agreement, Plaintiff is bound by the terms herein stated and

1 further agrees not to request to be excluded from the Settlement and agrees not to object to any
2 of the terms of this Settlement Agreement.

3 **XVI. CIRCULAR 230 DISCLAIMER**

4 **16.1** Each of the Parties acknowledges and agrees that:

5 **16.1.a** no provision of this Agreement, and no written communication or
6 disclosure between or among the Parties or their Counsel and other advisers is or was
7 intended to be, nor shall any such communication or disclosure constitute or be construed
8 or be relied upon as, tax advice within the meaning of United States Treasury Circular
9 230 (31 CFR part 10, as amended);

10 **16.1.b** each Party (i) has relied exclusively upon their or its own independent legal
11 and tax advisors, if any, for advice (including tax advice) in connection with this
12 Agreement, (ii) has not entered into this Agreement based upon the recommendation of
13 any other Party or any Counsel or advisor to any other Party, and (iii) is not entitled to
14 rely upon any communication or disclosure by any other Counsel or advisor to any other
15 Party to avoid any tax penalty that may be imposed on that Party; and

16 **16.1.c** no attorney or advisor to any other Party has imposed any limitation that
17 protects the confidentiality of any such attorney's or advisor's tax strategies (regardless
18 of whether such limitation is legally binding) upon disclosure by the Party of the tax
19 treatment or tax structure of any transaction, including any transaction contemplated by
20 this Agreement.

21 **XVII. NOTICE TO COUNSEL**

22 **17.1** For the purposes of this Agreement, all notices, requests, demands, and other
23 communications required or permitted to be given to the Parties' respective counsel, shall be
24 delivered to the undersigned persons at their respective addresses as set forth herein:

25 **17.1.a Counsel for Plaintiff:**

26 Rachel Terp
27 Terp Law
28 2831 Telegraph Avenue
Oakland, CA 94609
510-550-5103

1 rachel@terplaw.com

2 Darci Burrell
3 Levy Vinick Burrell Hyams LLP
4 180 Grand Avenue, Suite 1300
5 Oakland, CA 94612
6 510-318-7700
7 darci@levyvinick.com

8 **17.1.b Counsel for Defendant:**

9 Kyle L. Schriner
10 Schriner Law Firm, PC
11 1936 University Ave., Suite 110
12 Berkeley, CA 94704
13 415-321-4924
14 kyle@schrinerlaw.com

15 **XVIII. MISCELLANEOUS PROVISIONS**

16 **18.1** This Agreement may not be modified or amended except in a writing signed by
17 the Parties and their respective Counsel, and as approved by the Court, if necessary.

18 **18.2** This Agreement, including the Exhibits referenced herein (which form an integral
19 part hereof), constitutes the entire agreement between the Parties with respect to the subject
20 matter contained herein. Except as expressly provided herein, this Agreement has not been
21 executed in reliance upon any other oral or written representations or terms, and no such
22 extrinsic oral or written representations or terms shall modify, vary, or contradict the
23 Agreement's terms. In entering into this Agreement, the Parties agree that this Agreement is to
24 be construed according to its terms and may not be varied or contradicted by extrinsic evidence.
25 This Agreement shall be construed as a whole according to its fair meaning and intent, and not
26 strictly for or against any party, regardless of who drafted or who was principally responsible for
27 drafting this Agreement or any specific term or condition contained herein.

28 **18.3** Plaintiff and Defendants participated in the negotiation and drafting of this
Agreement and each had available the advice and assistance of their respective counsel. As such,
neither Plaintiff nor Defendants may claim that any ambiguity in this Agreement should be

1 construed against the other.

2 **18.4** This Agreement shall be subject to, governed by, construed, enforced, and
3 administered in accordance with the laws of the State of California in its substantive aspects, and
4 without regard for the principle of conflict of laws, or shall be interpreted and enforced, as
5 applicable, in accordance with the laws of the United States.

6 **18.5** Any failure of any Party, Class Counsel, or Defendants' Counsel to comply with
7 any obligation, covenant, agreement, or condition of this Agreement may be expressly waived in
8 writing, to the extent permitted under applicable law, by the Party or Parties and their respective
9 Counsel entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver
10 or failure to insist upon strict compliance with any representation, warranty, covenant,
11 agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any
12 subsequent or other failure.

13 **18.6** None of the rights, commitments, or obligations recognized under this Agreement
14 may be assigned by any Party, Settlement Class Member, Class Counsel, or Defendants'
15 Counsel without the express written consent of each other Party and their respective Counsel.
16 The representations, warranties, covenants, and agreements contained in this Agreement are for
17 the sole benefit of the Parties under this Agreement, and shall not be construed to confer any
18 right or to avail any remedy to any other person.

19 **18.7** This Agreement, any amendments or modifications to it, and any other documents
20 required or contemplated to be executed to consummate this Agreement, may be executed in one
21 or more counterparts, and exchanged by facsimile, pdf, email, or photocopy, each of which shall
22 be deemed an original of this Agreement.

23 **18.8** This Agreement is binding upon the Parties to this Agreement, and shall inure to
24 the benefit of their respective predecessors, successors, shareholders, officers, directors,
25 employees, agents, trustees, representatives, administrators, fiduciaries, assigns, subrogees,
26 executors, partners, parents, subsidiaries, and privies, and upon Class Members who do not opt-
27 out of this Action.

28 **18.9** Plaintiff agrees to sign this Agreement and by signing this Agreement is bound by

1 the terms stated herein.

2 **18.10** The Parties acknowledge that they have been represented by Counsel throughout
3 all negotiations that preceded the execution of this Agreement and that this Agreement has been
4 executed with the consent and advice of their respective Counsel.

5 **18.11** Plaintiff's Counsel, identified above, warrant and represent that they are expressly
6 authorized by Plaintiff to take all appropriate action required or permitted to be taken pursuant
7 to this Agreement to effectuate its terms. Counsel for Defendants warrant and represent that they
8 are authorized to take all appropriate action required or permitted to be taken by Defendants
9 pursuant to this Agreement to effectuate its terms.

10 **18.12** The Parties agree to stay and hold all proceedings in the Action in abeyance,
11 except such proceedings necessary to implement and complete the Settlement, pending the Final
12 Approval Hearing to be conducted by the Court.

13 **18.13** The Parties and their respective counsel believe and warrant that this Settlement
14 Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at
15 this Settlement Agreement through arms-length negotiations, taking into account all relevant
16 factors, current and potential.

17 **18.14 Limitation on Publicity.** The Parties and their counsel agree that they will not (1)
18 contact the press about the Settlement; (2) issue any press release; or (3) respond to any press
19 inquiry about the Settlement, other than to say that "the action has been resolved". Plaintiff and
20 Class Counsel agree that they will not advertise or distribute marketing materials about the
21 Settlement that refer to the Parties by name or list the case number, but Plaintiffs' counsel may
22 describe the Settlement in general terms in marketing materials. Notwithstanding the above
23 provisions, Plaintiff and Plaintiff's Counsel may post the webpage specified in section 10.4
24 above after the webpage's contents have been approved by Defendants, and the Parties and their
25 counsel may reference the Settlement with specificity in any court filing.

26 **18.15 Privacy of Documents and Information.** Plaintiff and Class Counsel agree that
27 they will destroy all payroll data for Class Members provided by Defendants under the
28 mediation privilege as well as all documents designated as "CONFIDENTIAL" per the

1 Stipulated Protective Order within thirty (30) calendar days of the Final Effective Date, except
2 for documents that must be saved for malpractice purposes or ethical rules governing attorney
3 conduct in California and the United States.

4 **18.16** Subject to Court approval, the Parties will adhere to the following schedule.

5 **18.16.a** Deadline for Plaintiff's Counsel to Make Publicly Available a
6 Settlement Webpage Containing Information about the Proposed
7 Settlement Process: five (5) calendar days after the Court Grants
8 Preliminary Approval.

9 **18.16.b** Deadline for Defendants to submit Class Member Information to
10 Settlement Administrator: thirty (30) calendar days after the Order Grants
11 Preliminary Approval.

12 **18.16.c** Deadline for Settlement Administrator to Mail the Notice to Class
13 Members: thirty five (35) calendar days after the Order Grants Preliminary
14 Approval.

15 **18.16.d** Deadline for Class Members to Postmark Requests to Opt Out: sixty
16 (60) calendar days after mailing of the Notice to Class Members.

17 **18.16.e** Deadline for Receipt by Settlement Administrator of any Objections
18 to Settlement: sixty (60) calendar days after mailing of the Notice to Class
19 Members.

20 **18.16.f** Deadline for Receipt by Settlement Administrator of any Dispute of
21 the Settlement Allocation: sixty (60) calendar days after mailing of the
22 Notice to Class Members.

23 **18.16.g** Deadline to file Motion for Final Approval: sixteen (16) court days
24 prior to Final Approval Hearing.

25 **18.16.h** Deadline to file Motion for Attorneys' Fees: sixteen (16) court days
26 prior to Final Approval Hearing.

27 **18.16.i** Deadline for Class Counsel to file Class Member Objections with
28 the Court: sixteen (16) court days prior to Final Approval Hearing.

1 **18.16.j** Deadline for Parties to file responses to any written Objections: nine
2 (9) court days prior to Final Approval Hearing.

3 **18.16.k** Final Approval Hearing: roughly (90) calendar days of the Date of
4 Preliminary Approval with the Court's permission and subject to the
5 Court's calendar.

6 **18.16.l** Deadline to Fund the QSF: thirty (30) calendar days after the Final
7 Effective Date.

8 **18.16.m** Deadline for Settlement Administrator to mail the initial round of
9 Participating Class Member and PAGA Aggrieved Employee settlement
10 checks: ten (10) court days after Defendants have paid the Gross Settlement
11 Amount and employer's portion of the payroll taxes to the Settlement
12 Administrator.

13 **18.16.n** Deadline to report compliance to Court: thirty (30) calendar days
14 after checks are sent.

15 **18.16.o** Date checks are voided and funds revert to QSF: ninety (90) days
16 after checks are sent.

17 **18.16.p** Deadline for second round of checks to be sent, if necessary, shall be
18 ten (10) days after the initial checks are voided.

19 **18.16.q** Date second round of checks are voided and funds revert to the QSF,
20 if necessary shall be sixty (60) days after second round of checks are sent.

21 **XIX. CONTINUING JURISDICTION**

22 **19.1** The Parties agree that upon the occurrence of the Final Effective Date, this
23 Agreement shall be enforceable by the Court and the Court shall retain jurisdiction over the
24 Parties and the Class Members to enforce the terms, conditions, and obligations of the
25 Agreement.

26
27 WHEREFORE, Plaintiff, on behalf of herself and the Class Members and as a
28 representative of herself and aggrieved employees, and Defendants have knowingly and

voluntarily executed this Settlement Agreement as of the dates set forth below.

IT IS SO AGREED:

For Defendant Off The Grid Services, LLC

Name: Matthew Cohen

For Defendant The Whole Cart, LLC

Name: Matthew Cohen

Plaintiff May 25, 2022

Andrea O'Neal-Roberts
Andrea O'Neal-Roberts (May 25, 2022 16:40 PDT)

Andrea O'Neal-Roberts

Approved as to form:

LEVY VINICK BURRELL HYAMS LLP

Darci E. Burrell

TERP LAW

Rachel M. Terp

SCHRINER LAW FIRM, PC

Kyle L. Schriner

1 voluntarily executed this Settlement Agreement as of the dates set forth below.

2 **IT IS SO AGREED:**

3 For Defendant Off The Grid Services, LLC

4 

6/1/22

5 Name: Matthew Cohen

6 For Defendant The Whole Car, LLC

7 

6/1/22

8 Name: Matthew Cohen

9 Plaintiff

10 

11 Approved as to form:

12 LEVY VINICK BURRELL HYAMS LLP

13 _____

14 _____

15 _____

16 _____

17 _____

1 voluntarily executed this Settlement Agreement as of the dates set forth below.

2 **IT IS SO AGREED:**

3 For Defendant Off The Grid Services, LLC

4
5 _____
6 Name: Matthew Cohen

7 For Defendant The Whole Cart, LLC

8
9 _____
10 Name: Matthew Cohen

11 Plaintiff

12
13 _____
14 Andrea O'Neal-Roberts

15 **Approved as to form:**

16 LEVY VINICK BURRELL HYAMS LLP

17
18 _____
19 Darci E. Burrell

20 TERP LAW

21
22 _____
23 Rachel M. Terp

24 SCHRINER LAW FIRM, PC

25
26 _____
27  6/2/22
28 Kyle L. Schriner

voluntarily executed this Settlement Agreement as of the dates set forth below.

IT IS SO AGREED:

For Defendant Off The Grid Services, LLC

Name: Matthew Cohen

For Defendant The Whole Cart, LLC

Name: Matthew Cohen

Plaintiff

Andrea O'Neal-Roberts

Approved as to form:

LEVY VINICK BURRELL HYAMS LLP

Date: June 3, 2022



Darci E. Burrell

TERP LAW

Date: June 3, 2022



Rachel M. Terp

SCHRINER LAW FIRM, PC

Kyle L. Schriner

Exhibit A

AUTHORIZED BY THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA - UNLIMITED JURISDICTION

ANDREA O'NEAL-ROBERTS, on behalf of
herself, the putative class, and on behalf of the
general public,

Plaintiff,

v.

OFF THE GRID SERVICES, LLC, THE WHOLE
CART, LLC, and DOES 1-10, inclusive.
Defendants.

) Case No. RG20075270
)
)
)

**COURT AUTHORIZED
NOTICE OF PENDENCY OF CLASS
ACTION AND PROPOSED SETTLEMENT**

**PLEASE READ THIS ENTIRE NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED
BY THE PROPOSED SETTLEMENT DESCRIBED IN THIS NOTICE.**

This is the first of two court authorized notices. This is not a solicitation from a lawyer. This is not a lawsuit against you, and you are not being sued. However, your legal rights may be affected whether you act or not.

TO: All individuals who work or worked as Instructional Entrepreneurs, who Defendants classified as exempt from overtime within the State of California at any time from April 6, 2016 through [Preliminary Approval Date], except for those who signed a general release of all claims.

I. WHY DID I RECEIVE THIS NOTICE?

You received this notice because your employment records indicate that you worked for Off the Grid Services, LLC or The Whole Cart, LLC as a salaried Instructional Entrepreneur between April 6, 2016 and [Preliminary Approval Date].

This Notice explains that, on [Preliminary Approval Date], the Court granted Preliminary Approval of a proposed Settlement of a class action lawsuit that may affect you. You have legal rights and options that you may exercise before the Court decides whether to grant Final Approval of the proposed Settlement, after a hearing on [Final Approval Hearing Date].

This package explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for benefits, and how to get these benefits.

The Court in charge of the case is the Superior Court of the State of California, County of Alameda, and the case is known as *Andrea O'Neal-Roberts, on behalf of herself, the putative class, and on behalf of the general public v. Off the Grid Services, LLC, The Whole Cart, LLC, and Does 1-10*, Case No. RG20075270 (the "Lawsuit").

II. WHAT IS THE LAWSUIT ABOUT?

Plaintiff Andrea O'Neal-Roberts ("Plaintiff") brought this action on behalf of herself and similarly situated employees. In summary, Plaintiff brought this action alleging that Off the Grid

Services, LLC and The Whole Cart, LLC (“Defendants”) were improperly classified as exempt employees and were therefore obligated to pay Plaintiff and Instrucktional Entrepreneurs overtime, provide required meal and rest breaks, pay wages timely, provide accurate itemized wage statements, reimburse necessary expenditures, and Defendants violated California’s unfair competition law. Plaintiff also seeks relief on behalf of the general public under the Private Attorneys General Act (“PAGA”), California Labor Code section 2698, *et seq.*

Defendants have denied each and every allegation by Plaintiff. The Court has not reached any decisions concerning the merits of the lawsuit, and the Court has not ruled for or against Plaintiff as to the merits of the legal claims.

III. WHAT ARE YOUR RIGHTS AND OPTIONS AS A SETTLEMENT CLASS MEMBER?

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	Class Members will not have to submit a claim form to receive a settlement payment. If you desire to participate in the settlement and receive your share of the settlement proceeds, you need not do anything and will receive a settlement payment. You will be bound by the Settlement Agreement, and you will give up the claims that are released by the Settlement Agreement. See Section VIII below for additional information.
EXCLUDE YOURSELF	You are entitled to exclude yourself from the Class by timely submitting a valid request for exclusion. If you exclude yourself by opting out of the Class, you will receive no payment, but you will retain your right to pursue your claims against Defendants in a separate action or proceeding. However, if you are considered PAGA Aggrieved Employees, you will receive PAGA related payment even if you opt out of the Class. See Section X below for additional information.
OBJECT	You are entitled to submit a timely written objection to the settlement. If the Settlement Agreement is approved after your objection, you will remain a member of the Settlement Class and will give up the claims that are released by the aSettlement Agreement. See Section XI below for additional information.

IV. WHO IS COVERED BY THE CLASS ACTION LAWSUIT AND THE PROPOSED SETTLEMENT?

The Lawsuit is being settled as a class action. In a class action, the plaintiff, also referred to as a class representative, sues on behalf of herself and other persons with similar claims.

The Court has granted preliminary approval of a class for settlement purposes only. The Settlement Class is defined as follows:

All individuals who work or worked as Instructional Entrepreneurs, who Defendants classified as exempt from overtime within the State of California at any time from April 6, 2016 through date of preliminary approval of settlement, except for those who signed a general release of claims.

The Settlement Class also consists of Subclasses, defined as follows:

Waiting Time Penalties Subclass: All Class Members who no longer work for Defendants and have not been employed by Defendants for more than 72 hours, from April 6, 2017 through the date of preliminary approval of the settlement.

Itemized Wage Statement Subclass: All Class Members who work or worked for Defendants from April 6, 2019 through the date of preliminary approval of the settlement.

If the Court approves the settlement, the settlement will bind all members of the Settlement Class who have not excluded themselves from the Settlement Class. The Court has not yet determined that the Lawsuit could be litigated as a class action. If the Court does not approve this settlement, the preliminary class certification will have no effect in any subsequent proceedings in the Lawsuit or in any other litigation.

V. THE PROPOSED SETTLEMENT

The proposed Settlement was negotiated with Defendants by the attorneys for the Settlement Class ("Class Counsel"). Class Counsel believes that this Settlement is in the best interest of the members of the Settlement Class.

The "Gross Settlement Amount" of this action is \$800,000. In exchange for the release of claims against released parties (explained in Section VII below), Defendants will provide the members of the Settlement Class monetary compensation in the total amount of \$800,000, less amounts approved by the Court for: attorneys' fees and costs; settlement administrative expenses; a class representative service award; the portion of the PAGA payment allocated to the California Labor and Workforce Development Agency ("LWDA"); and the portion of the PAGA payment allocated to PAGA Aggrieved Employees. The remaining amount, payable to the Settlement Class, is the "Net Settlement Amount." The deductions from the Gross Settlement Amount are as follows:

1. **Class Counsel's Attorneys' Fees and Costs.** You do not need to pay any portion of the attorneys' fees and costs incurred in this Lawsuit. Class Counsel will ask the Court to award attorneys' fees of up to \$266,666.67 (1/3 of the Gross Settlement Amount), and a cost award of up to \$[Estimated Costs Amount].
2. **Plaintiff's Service Award.** Class Counsel will ask the Court to authorize a Class Representative payment of \$10,000 to Plaintiff for her service on behalf of the Settlement Class and for signing a broader release of claims than other Settlement Class Members. Plaintiff will also be entitled to receive her share of the Net Settlement Amount and her share of the PAGA penalties.
3. **Settlement Administration Costs.** The Settlement Administrator will be paid no more than \$10,000 for administering the proposed settlement, which includes such work as mailing this Notice, calculating Settlement Class Member payments, mailing

checks, reminders, and tax forms, and reporting final data to the parties and the Court.

4. **PAGA Payment.** \$22,000 will be allocated to penalties under the Private Attorneys General Act. Pursuant to California Labor Code section 2699(i), 75 percent of that amount or \$16,500, must be paid to the LWDA (and 25 percent of that amount or \$5,500 will be distributed to PAGA Aggrieved Employees. PAGA Aggrieved Employees are Class Members who work or worked for Defendants between September 17, 2019 and [Date of Preliminary Approval].

VI. HOW MUCH CAN I EXPECT TO RECEIVE?

If the Court approves the Settlement and the Settlement becomes final, and assuming the Court approves the maximum amounts sought to be deducted from the Gross Settlement Amount, the Net Settlement Amount is estimated at \$[Net Settlement Amount], with the average Settlement Share being approximately \$[Average Settlement Share] per Settlement Class Member prior to tax withholdings. **The amount payable to each individual will vary, as explained below, and your estimated minimum Settlement Share is identified in the Notice of Settlement Award included with this Notice.**

Individual settlement shares will be higher or lower depending on the number of Workweeks each Settlement Class Member worked and whether the Settlement Class Member is part of any of the Subclasses defined above. Specifically, each Settlement Class Member's Settlement Share will be calculated as follows:

Class Amount: The Class Amount shall be 88% of the Net Settlement Amount and shall be distributed based on each Participating Class Member's proportionate Workweeks worked during the Class Liability Period, by multiplying the Class Amount by a fraction, the numerator of which is the Participating Class Member's number of Workweeks worked during the Class Liability Period, and the denominator of which is the total Workweeks worked by all Participating Class Members during the Class Liability Period. The Class Liability Period is April 6, 2016 to [Preliminary Approval Date].

Itemized Wage Statement Subclass Amount: The Itemized Wage Statement Subclass Amount shall be 2% of the Net Settlement Amount and shall be distributed based on participating Itemized Wage Statement Penalties Subclass member's number of Workweeks worked from April 6, 2019 to [Preliminary Approval Date], and the denominator of which is the total Workweeks worked by all participating Itemized Wage Statement Subclass members from April 6, 2019 to [Preliminary Approval Date].

Waiting Time Penalties Subclass Amount: The Waiting Time Penalties Subclass Amount shall be 10% of the Net Settlement Amount and shall be divided evenly between all participating Waiting Time Penalties Subclass members from April 6, 2017 to [Preliminary Approval Date].

Additionally, each Settlement Class Member who worked for Defendants between September 17, 2019 and [Preliminary Approval Date] ("PAGA Period") is also considered a PAGA Aggrieved Employee. PAGA Aggrieved Employees will receive a check for their proportionate share of the portion of the PAGA Aggrieved Employee Payment (\$5,500), calculated by multiplying the PAGA Aggrieved Employee Payment by a fraction, the numerator

of which is the number of workweeks worked by the PAGA Aggrieved Employee during the PAGA Period, and the denominator of which is the total number of workweeks worked by all PAGA Aggrieved Employees during the PAGA Period.

Settlement Class Members and PAGA Aggrieved Employees who disagree with their Workweeks, or other information used to calculate their Settlement Share may dispute the calculation of their Settlement Share by contacting the Settlement Administrator (at the address and phone number set forth in Section XII below). The Settlement Administrator will review the disputed information and make a decision regarding the Settlement Share and/or PAGA Share based on that review. The Settlement Administrator's decision on such disputes will be final and non-appealable.

Participating Class Members are responsible for the employee's share of employment taxes and all income taxes, which amounts, including withholding, will be deducted from the portion of Participating Settlement Class Member settlement checks designated as wages. For withholding tax characterization purposes and payment of taxes, the Participating Class Member's Settlement Share will be treated as one-third wages (reported on Tax Form W-2s), one-third penalties and one-third interest (reported on Tax Form 1099s).

Defendants also agree to pay separately from the Gross Settlement Amount, the employer's share of payroll taxes on the portion of the Participating Class Member's Settlement Share that is designated as wages.

PAGA Aggrieved Employees payments will be allocated as civil penalties (reported on Tax Form 1099s)

Participating Class Members and PAGA Penalties Subclass members will have 90 days from the date that settlement checks are mailed to cash the settlement checks. Those who have not yet cashed their settlement checks will be mailed a reminder postcard midway through the 90 day period. If \$10,000 or more in uncashed settlement checks remains after the 90 day expiration date, then a second round of checks will proportionally redistribute those funds to participating Class Members and/or PAGA Penalties Subclass members who cashed their first settlement checks. Recipients of the second round of checks will have 60 days from the date of mailing to cash their settlement checks.

For Settlement Class Members who developed mobile food concepts while working for Defendants ("Qualifying Class Members"), Defendants have agreed to facilitate the release or license of brands, marketing materials, and recipes, by Defendants and/or any third party. Defendants will be sending Qualifying Class Members an intellectual property assignment and license back offer for these materials soon. Qualifying Class Members are advised to consult with an attorney other than Class Counsel before signing the intellectual property assignment and license back agreement. A qualifying Class Members' acceptance or rejection of the intellectual property assignment and license back offer will not impact a Class Member's rights under this Settlement Agreement.

VII. SETTLEMENT CLASS REPRESENTATIVE AND CLASS COUNSEL

The Court has appointed Plaintiff as Settlement Class Representative to represent the Settlement Class. The Court has appointed the following attorneys to represent the Settlement Class as Settlement Class Counsel:

Rachel Terp
Terp Law
2831 Telegraph Avenue
Oakland, CA 94609
510-550-5103
rachel@terplaw.com

Darci Burrell
Levy Vinick Burrell Hyams LLP
180 Grand Avenue, Suite 1300
Oakland, CA 94612
510-318-7700
darci@levyvinick.com

I. WHAT AM I GIVING UP TO GET A PAYMENT?

If the Court approves the settlement and the Settlement becomes final, Plaintiff and all members of the Settlement Class who have not excluded themselves (1) will be deemed to have agreed that, except for the obligations imposed by the settlement, Defendants shall be released from all Released Claims (as defined below), and (2) will be barred from suing the Released Parties (as defined below) for any liability in any way related to or arising out of any Released Claim.

“Released Claims” means: All claims that were pleaded and all claims that could have been pleaded based on the factual allegations in the Complaint, including but not limited to: (1) failure to pay overtime wages; (2) failure to pay meal period premiums and failure to pay rest period premiums; (3) failure to reimburse business expenses; (4) failure to provide compliant wage statements; (5) failure to pay all wages due upon termination; (6) violations of California’s unfair competition law; (7) violations of the Private Attorneys’ General Act (“PAGA”); and potential claims reasonably arising out of or reasonably relating to the same set of operative facts and/or factual allegations pled therein.

“Released Parties” means: Off the Grid Services, LLC and The Whole Cart, LLC, Defendants’ respective present, former, and future controlling persons, parent companies, affiliates, subsidiaries, successors-in-interest, assigns, predecessors, benefit plans sponsored by such companies, owners, members, officers, directors, principals, employees, agents, attorneys, accountants, auditors, consultants, insurers and reinsurers, managers, trustees, fiduciaries, heirs, representatives, and divisions including, but not limited to, Cubert LLC.

Additionally, upon the Court’s approval of the Parties’ settlement of Plaintiff’s PAGA Claim, all PAGA Aggrieved Employees shall release against Released Parties all PAGA claims pleaded, all PAGA claims that could have been pleaded based on the factual allegations in the Complaint, and all potential PAGA claims reasonably arising out of or reasonably relating to the same set of operative facts and/or factual allegations pled therein during the PAGA Period. Settlement Class Members who are also PAGA Aggrieved Employees and who otherwise submit a valid Opt-Out Request will nevertheless still be bound by the PAGA release and shall receive a PAGA Share.

II. FINAL APPROVAL HEARING

A hearing (the “Final Approval Hearing”) has been scheduled on [Final Approval Hearing Date], before the Court, Hon. Brad Seligman, in Department 23 of the Alameda County Superior Court, located at 1225 Fallon Street, Oakland, CA 94612, at which time the Court will determine: (1) whether the proposed settlement should be approved as fair, adequate, and reasonable to members of the Settlement Class; (2) whether the application of Settlement Class Counsel for an award of attorneys’ fees and costs should be approved and in what amount; (3) whether the application for service award for Plaintiff should be approved and in what amount; (4) whether the costs of administration should be approved and in what amount; and (5) whether a proposed Final Approval Order should be entered. The motion for final approval will

be filed with the Court no later than 16 court days before the hearing and will be available for review after that date. The hearing may be continued (moved to another date) without further notice to the Settlement Class Members. It is not necessary for you to appear at this hearing, but you or an attorney who you hire and pay for yourself will likely want to appear if you have submitted an objection.

X. RIGHT TO BE EXCLUDED FROM THE SETTLEMENT

If you want to keep the right to sue or continue to sue Defendants on your own regarding the legal issues raised in or related to this case, then you must exclude yourself from the Settlement. This is called “opting out” of the Class. If you exclude yourself from the Settlement, you will not receive any payment from the Net Settlement Amount, and your Settlement Share will be distributed among those Class Members who did not submit a request for exclusion.

To exclude yourself from the Settlement, you must send a letter by mail containing your name and reasonably communicating that you request exclusion and do not wish to participate in the settlement. Please include in your request for exclusion: the name of the lawsuit, *Andrea O’Neal-Roberts, on behalf of herself, the putative class, and on behalf of the general public v. Off the Grid Services, LLC, et al.*, Case No. RG20075270; as well as your mailing address, email address (if any), and telephone number; and your signature. Your exclusion request must be postmarked no later than [Opt-Out Deadline] to:

O’Neal-Roberts et al v. Off the Grid, LLC, et al. Settlement Administrator
c/o [Settlement Administrator]
[address]
[address]

If you ask to be excluded: you will not receive any payment from the Net Settlement Amount and you cannot object to the Settlement; you will not release the Released Claims against the Released Parties; will not be legally bound by anything that happens in this lawsuit; and you will be able to sue or continue to sue Defendants in the future. However, if you are a PAGA Aggrieved Employee you will receive a PAGA Share payment and you will release PAGA claims, as described in Sections VI and XIII above.

If you are represented by an attorney in a pending lawsuit against Defendants, speak to your lawyer in that case immediately. You may need to exclude yourself from this Settlement Class to continue your own lawsuit.

Defendants have the right to terminate the settlement if opt-outs exceed 20 percent of the class.

XI. RIGHT TO OBJECT TO SETTLEMENT

If you are a Settlement Class Member and you do not request to be excluded from the class, you may choose to object to the settlement before final approval of the settlement by the Court. If you want to object to all or any part of the Settlement, you must send the Settlement Administrator a notice of objection. Absent good cause found by the Court, to be “valid,” your written objection to the Settlement must be sent to the Settlement Administrator at the address provided in the Notice and be postmarked no later than 60 days after the date of the initial mailing of the Notice. If there are any documents that you would like the Court to consider, you should send them to the Settlement Administrator with your notice of objection. You may object

to the settlement yourself or through an attorney you hire and pay for yourself. DO NOT FILE ANY OBJECTIONS WITH THE COURT.

You may also appear at the Final Approval Hearing yourself or through an attorney who you hire and pay for yourself, to address any written objection or to make an oral objection.

If the Court rejects your objection, you will still be bound by the terms of the settlement, including the release.

XII. SETTLEMENT ADMINISTRATOR

The settlement process will be administered by [Court Approved Settlement Administrator] (the "Settlement Administrator"), a company that provides settlement and administration services. The Court has approved [Court Approved Settlement Administrator] to act as the Settlement Administrator for purposes of this settlement. Any notices to the Settlement Administrator should be sent to:

O'Neal-Roberts et al v. Off the Grid, LLC, et al. Settlement Administrator
c/o [Settlement Administrator]
[address]
[address]
[telephone]

XIII. IMPORTANT SETTLEMENT DATES AND DEADLINES

The following are important dates and deadlines under the proposed settlement:

Exclusion Deadline: _____
Objection Deadline: _____
Final Approval Hearing: _____

XIV. ADDITIONAL INFORMATION

For more detailed information concerning the matters involved in the Lawsuit, please refer to the pleadings, the Settlement Agreement, the Orders entered in the Lawsuit, and to the other papers filed in the Lawsuit. These are available at the following webpage: terplaw.com/itksettlement.

The pleadings and other records in the Lawsuit may also be examined online on the Alameda County Superior Court's website at <https://eportal.alameda.courts.ca.gov/>. You will be required to create an account and then can access documents by clicking on "Searches," on the next page clicking on "Case Number Search," then entering the case number RG20075270 and clicking "Search." On the following page, click the link "O'Neal-Roberts VS Off The Grid Services, LLC. You may then download images of every document filed in the case for a charge. You may also view images of every document filed in the case free of charge by using one of the computer terminal kiosks available at each court location that has a facility for civil filings.

Any questions concerning the matters contained in the Notice may be directed to the Settlement Administrator or Settlement Class Counsel.

**DO NOT CALL OR WRITE THE COURT TO OBTAIN COPIES OF DOCUMENTS OR TO ASK
QUESTIONS ABOUT THE SETTLEMENT.**

Exhibit B

AUTHORIZED BY THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA - UNLIMITED JURISDICTION

ANDREA O'NEAL-ROBERTS, on behalf of
herself, the putative class, and on behalf of the
general public,

Plaintiff,

v.

OFF THE GRID SERVICES, LLC, THE WHOLE
CART, LLC, and DOES 1-10, inclusive.
Defendants.

) Case No. RG20075270
)
)
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**COURT AUTHORIZED
NOTICE OF SETTLEMENT AWARD**

**PLEASE READ THIS ENTIRE NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED
BY THE PROPOSED SETTLEMENT DESCRIBED IN THIS NOTICE.**

This is the second of two a court authorized notices. This is not a solicitation from a lawyer. This is not a lawsuit against you, and you are not being sued. However, your legal rights may be affected whether you act or not.

Dear **[Class Member Name]**:

You received this notice because your employment records indicate that you are a Settlement Class Member in the case known as *Andrea O'Neal-Roberts, on behalf of herself, the putative class, and on behalf of the general public v. Off the Grid Services, LLC, The Whole Cart, LLC, and Does 1-10*, Case No. RG20075270 (the "Lawsuit").

The Settlement Administrator has calculated the minimum settlement award that you can expect to receive if you do not request to be excluded from the Settlement and the Court grants final approval of the Settlement. Your minimum Settlement Share is: **[\$Minimum Settlement Share]**. **[[For PAGA Aggrieved Employees only:] Your minimum PAGA Share is: [\$Minimum PAGA Share]].**

This amount is based, in part, upon the following information provided by Defendants to the Settlement Administrator relating to your dates of employment:

Start Date: **End Date:** **Total workweeks:**

Please refer to the Court Authorized Notice of Pendency of Class Action and Proposed Settlement for more information about the Settlement, including how the Settlement Administrator calculated your minimum Settlement Share **[[For PAGA Aggrieved Employees only:] and PAGA Share]** (Section VI), how to dispute your workweek and other data (Sections VI & X), and how to contact the Settlement Administrator (Section XII), or for other information about the Settlement and Lawsuit.

**DO NOT CALL OR WRITE THE COURT TO OBTAIN COPIES OF DOCUMENTS OR TO ASK
QUESTIONS ABOUT THE SETTLEMENT.**

Exhibit 2
to Preliminary Approval Motion
Declaration of Andrea O'Neal Roberts
In Support of Plaintiffs' Motion for Preliminary Approval
of Class Action Settlement

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Attorneys for Plaintiff Andrea O'Neal-Roberts, Individually,
as a Representative Plaintiff, and for the Putative Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA
UNLIMITED JURISDICTION

) Case No. RG20075270

ANDREA O'NEAL-ROBERTS, on behalf of
herself, the putative class, and on behalf of the
general public,

Plaintiff,

v.

OFF THE GRID SERVICES, LLC, THE
WHOLE CART, LLC, and DOES 1-10,
inclusive.

Defendants.

**DECLARATION OF ANDREA O'NEAL-
ROBERTS IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

1 I, ANDREA O'NEAL-ROBERTS, declare:

2 1. I previously worked as an Instrucktional Entrepreneur for The Whole Cart and Off the Grid
3 (hereinafter "Defendants"). I am a California resident and over the age of 18. If called to testify, I could
4 and would competently testify to the matters set forth in this declaration. I submit this declaration in
5 connection with the Settlement Agreement provision by which Plaintiff's Counsel will ask the Court to
6 approve a \$10,000.00 Service Award payment.

7 2. When I worked as an Instrucktional Entrepreneur, Defendants were companies that
8 specialized in mobile food truck events and catering.

9 3. Defendants marketed the Instrucktional program to me as a roughly two (2) year, paid
10 program during which time Defendants would provide training to prepare me to launch my own food truck
11 business in the future. Defendants made clear that one expectation for the program was that Instrucktional
12 Entrepreneurs would work more than forty (40) hours per week.

13 4. I had significant prior culinary experience before joining the Instrucktional program. I
14 trained at Le Cordon Bleu Culinary Academy in Sacramento. I spent years working in high-volume
15 commercial kitchen settings, including at UC Davis Medical Center. I had fine-dining work experience,
16 including at The Kitchen in Sacramento – a Michelin star restaurant – and Park Avenue Catering in wine
17 country. I also operated my own catering business – Chef AMOR, Always Fresh. From conversations
18 with other Instrucktional Entrepreneurs, however, I understand that some program participants had little
19 or no prior on-the-job experience or formal training in cooking or food service.

20 5. I worked for Defendants from mid-February 2019 to mid-June 2020 as an Instrucktional
21 Entrepreneur within the companies' Instrucktional Program. The program was also called ITK.

22 6. As an Instrucktional Entrepreneur, I performed work for Defendants in locations including
23 Hayward, Mountain View, and San Francisco, California.

24 7. Defendants classified me as exempt from overtime pay and paid me a salary.

25 8. My starting pay was \$49,920.00 per year. My salary later increased to roughly \$54,080.00
26 per year, around the beginning of 2020. Based on my discussions with other Instrucktional Entrepreneurs,
27 I understand that Defendants paid them a fixed salary as well.

28 9. As an Instrucktional Entrepreneur, I regularly worked in excess of eight (8) hours per day

1 and in excess of forty (40) hours per week; however, Defendants did not pay me overtime compensation.
2 Indeed, on a typical week, I worked four (4) or more days per week and more than thirty-two (32) hours
3 on job duties that were identical to those of employees who Defendants compensated on an hourly basis,
4 including prep cooks, line cooks, truck supervisors, and truck drivers. During a typical week, I spent
5 additional hours performing other work including working on my food truck concept, completing
6 internship assignments, or attending internship meetings or related events. Based on my discussions with
7 other Instrucktional Entrepreneurs, and observations, other Instrucktional Entrepreneurs also worked long
8 hours.

9 10. Defendants had no policy or practice to consistently provide Instrucktional Entrepreneurs
10 with a thirty (30) minute, duty-free meal break starting before the end of the fifth hour for shifts lasting
11 more than five (5) hours. I do not recall signing any meal break waiver. On occasions where I worked
12 more than ten (10) hours in a row, there was no policy or practice of providing me with a second, thirty
13 (30) minute, duty-free meal break. Defendants provided no system for me to report missed meal breaks. I
14 missed meal breaks, but Defendants never paid me a premium worth an hour's pay for a missed meal
15 break. Based on my discussions with other Instructional Entrepreneurs, and observations, other
16 Instructional Entrepreneurs also missed meal breaks.

17 11. Defendants had no policy or practice to make available to me an official ten (10) minute,
18 duty-free rest break during the first four (4) hours of work or major fraction thereof. Similarly, Defendants
19 lacked a policy to make a second, third, or fourth rest break available for longer shifts. Defendants
20 provided no system for me to report missed rest breaks. Defendants never paid me a premium worth an
21 hour's pay for a missed rest break. I rarely took rest breaks. Based on my discussions with other
22 Instrucktional Entrepreneurs, other Instrucktional Entrepreneurs also missed rest breaks.

23 12. The Instrucktional program involved doing a rotation of job duties in Defendants' kitchens
24 and trucks, developing a design concept and menu for one of Defendants' food trucks under Defendants'
25 supervision, then working as the shift supervisor for the food concept I had developed. I also worked many
26 overtime hours in relation to a Friday night food event that Defendants put on regularly at Fort Mason in
27 San Francisco. The Fort Mason events often involved one to two days of preparatory work followed by a
28 workday starting at 8:00a.m. on Friday and ending around 2:00a.m. on Saturday. The majority of the time

1 I spent working during the Instrucktional program involved manual work, for which I did not exercise
2 discretion and independent judgment, and which was unrelated to the management policies or general
3 business operations of Defendants.

4 13. Throughout the program, my work was supervised by Defendants' managers.

5 14. I performed my work according to Defendants' established policies, procedures, and
6 practices.

7 15. I had no authority to hire or fire other employees and did not have authority to give weighty
8 suggestions as to other employees' employment status.

9 16. As part of the Instrucktional program, I had the opportunity to develop a concept and menu
10 for one of Defendants' food trucks. My concept was called 529 Maple Lane which involved beignets and
11 other southern cuisine. I carried out this project under the supervision of Defendants' managers, and
12 according to Defendants' policies, procedures, and practices. Defendants had complete control over my
13 concept. They could and did veto my ideas. For example, I wanted to make yeasted beignets which
14 required specific equipment. My managers vetoed the equipment and required me to make non-yeasted
15 beignets using baking powder. Defendants selected a truck for my concept that had two friers rather than
16 the three I requested, and a freezer that I did not need. Defendants eventually wrapped the truck in my 529
17 Maple Lane graphic design. Unfortunately, the COVID pandemic hit before I was able to serve food out
18 of the 529 Maple Lane truck.

19 17. My goal in entering the program was to develop a food truck concept and business plan so
20 that I would be in a strong position to launch my own food truck business in the future. In practice, I did
21 not feel Defendants' program focused on me as an entrepreneur. The program seemed more focused on
22 using my manual labor and my recipes for Defendants' benefit. My recipes were inspired by a long history
23 of cooking in my family. I consider my family's cooking traditions to be a form of generational wealth.
24 While participating in Defendant's program I felt as though the already well-off Defendants were relying
25 on my family's traditions to create even more wealth for themselves. When I ended my time with the
26 program, Defendants would not let me take my designs and menus with me. To my knowledge, no one
27 who participated in the program went on the launch a successful food truck business.

28 18. Additionally, during my time as an Instrucktional Entrepreneur, I incurred various

1 expenses that Defendants failed to reimburse, including, the purchase of a Wix account, home internet
2 plan, and other costs incurred in performing job functions as an Instrucktional Entrepreneur.

3 19. As a result of Defendants' misclassifying me as an exempt employee and paying me a
4 salary, Defendants failed to itemize rates of pay, total hours worked, overtime hours, and missed meal and
5 rest periods premiums on my wage statements.

6 20. While Defendants did not keep organized records of my time worked and did not require
7 me to formally clock in and out, other records – my work schedules, and data related to my use of job-
8 related applications such as Gmail, Slack – would help me to support my estimate of overtime hours
9 worked.

10 21. The COVID-19 pandemic brought major changes to the program. Initially, catering and
11 event services were put on hold and Instrucktional Entrepreneurs were told to work from home. I thought
12 we were going to have an opportunity to work on our business plan, but management had us doing online
13 coursework that jumped around in a manner I felt was distracting, inconsistent, and inconducive to
14 assisting me in completing my business plan. Eventually, the program informed me that Defendants would
15 not be running my concept, and that I would be assigned to work on one of Off the Grid's existing truck
16 concepts. The two-year program was supposed to end for me around February 2021. I resigned from the
17 program in mid-June 2020. At that time, Defendants did not release to me the concept or menu design
18 work that I developed during the program.

19 22. I brought this class and representative action for myself, the State of California, and other
20 workers to recover wages and penalties because I believe Defendants failed to pay me and other workers
21 overtime for all hours worked; failed to provide proper rest and meal breaks or wages in lieu of breaks;
22 failed to reimburse necessary business expenses; failed to issue accurate wage statements; and failed to
23 timely pay all wages due. I understand the role of a class representative and chose to take on that role to
24 make a positive impact beyond my own claims and interests. I believe I have diligently fulfilled my class
25 representative obligations, and that I was instrumental in achieving the exceptional relief obtained for the
26 class.

27 23. Although I had individual claims prior to filing this class action lawsuit, I voluntarily chose
28 to pursue the claims I had on a class-wide basis in order to obtain the maximum recovery for workers who

1 suffered the same wage violations as I did. In doing so, I believe I put the interests of other Instrukctional
2 Entrepreneurs on par with mine, and arguably, at times, above my own interests. I did this because I
3 believe Defendants were not complying with the law, and it was important for me to stand up for myself
4 and fellow workers.

5 24. I believe the settlement is fair and reasonable in light of the circumstances. I understand
6 that if the proposed distribution of settlement funds is approved by the Court, an average payment directly
7 to the Participating Class Members would be over \$20,000. I believe this a fair and reasonable result for
8 the 23 Class Members covered by the Settlement Agreement. It is my hope and wish for my colleagues
9 that they will be able to invest some of their settlement money in realizing their entrepreneurial dreams.

10 25. I estimate that I have spent more than 50 hours of my time on this litigation to date. My
11 contributions to the case include: researching my rights; speaking extensively with Plaintiff's Counsel
12 both in-person, over the phone, and via Zoom in order to assist them with their understanding of the facts
13 in this case – particularly, the job duties and manner of compensation of Instrukctional Entrepreneurs and
14 the interrelation of the two Defendants' businesses; delivering and explaining the substance of important
15 documents used by Plaintiff's Counsel both before and during the course of the litigation to advance the
16 case; providing feedback for all pleadings filed in this case; providing input on the written discovery
17 requests propounded on Defendants; discussing with Plaintiff's Counsel the Interrogatories and Requests
18 for Production of Documents that were served on me by Defendant The Whole Cart, LLC, searching for
19 electronic and hard copy documents called for by those requests, providing those documents to Plaintiff's
20 Counsel, and reviewing and verifying responses to requests; reviewing Defendants' responses to
21 Plaintiff's discovery requests; preparing for and attending a day long mediation; communicating with
22 Plaintiff's Counsel regarding the subsequent settlement discussions including the extensive memorandum
23 of understanding as well as the final settlement agreement; and communicating with other class members
24 about the lawsuit.

25 26. By serving as a named Plaintiff for the Instrukctional Entrepreneurs class, I took a chance
26 that other Class Members did not take. I chose to step up and speak out for myself and my colleagues. It
27 took bravery and courage to do so. As a result of my stepping forward and putting my name on the caption,
28 Instrukctional Entrepreneurs, many of whom now live across the country, will receive a sizeable

1 settlement payment to compensate them for claims of unpaid wages and penalties. I think the \$10,000 is
2 a fair amount for my service in representing the Class.

3 27. Attached as Exhibit A is the Employment Agreement that I reviewed and signed on
4 February 15, 2019.

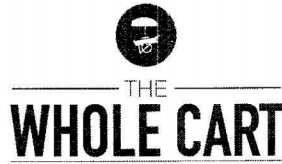
5 28. Attached as Exhibit B is the Instructional Entrepreneur Job Description that I reviewed
6 and signed on February 15, 2019.

7
8 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and
correct. Executed on May 24, 2022, in the city of Columbia Falls in Flathead County, Montana.

9
10 *Andrea O'Neal-Roberts*

11 By: Andrea O'Neal-Roberts (May 24, 2022 04:55 PDT)
12 ANDREA O'NEAL-ROBERTS

Exhibit A
to the O'Neal-Roberts Declaration



2 Marina Boulevard, Fort Mason Center Suite C370 San Francisco, California 94123

EMPLOYMENT AGREEMENT
Andrea O'Neal-Roberts

This agreement is entered into and shall become effective on 02/15/2019, by and between The Whole Cart Services, LLC (hereinafter: "The Whole Cart" or "employer") and Andrea O'Neal-Roberts (hereinafter: "employee" or "their").

1. **Employment** – The Whole Cart Services, LLC agrees to employ the services of employee and employee hereby accepts employment together with all terms and conditions set forth herein as the Instructional Entrepreneur.

2. **Employee's Services and Duties** – Employee agrees that while employed by The Whole Cart, employee shall devote their best energies in pursuit of all Instructional Entrepreneur duties on behalf of employer, and to the best of their ability, experience and talents, perform all that may be required as an employee. Employee agrees that employee shall observe and conform to the policies and directions established by the management of The Whole Cart. Employee agrees that employee will devote their full time, ability and attention to the business of The Whole Cart during the term of this agreement, and that employee will neither directly nor indirectly provide any compensated services of a business, commercial or professional nature to any other person, firm, corporation, organization or entity without prior written consent and approval of the President of The Whole Cart.

3. **Confidentiality and Non-Disclosure** – Employee understands and agrees that in the course of employment with The Whole Cart, employee will receive and become aware of information, projects, practices, vendor agreements, contact information, methodologies, management philosophy and other information relating to The Whole Cart Services' operations. Employee hereby acknowledges the sensitivity and confidential nature of such information, and covenants and agrees to keep all such information strictly confidential. Furthermore, employee understands and agrees to the terms and conditions of the employer's non-disclosure agreement.

4. **Compensation and Benefits** – In consideration of the services and duties required of this full time, exempt position, the confidentiality/non-disclosure agreement and the at-will and non-solicitation provisions of this agreement, The Whole Cart shall provide employee compensation as follows:

Salary: \$1,920.00 per pay period (\$ 49,920.00 per annum)

Vacation: Twelve (12) days of Vacation Time are accrued over a twelve (12) month period. PTO is pro-rated in the first year based upon the date of hire. Accrual begins on the first day of hire and employees will be able to use accrued Vacation Time as needed/approved. Employee is eligible for company paid holidays as outlined in The Whole Cart Holidays and Paid Time Off policies.

Sick Leave: For every thirty hours worked, one hour of paid sick leave is accrued. Accrual begins at the start of employment and can be used upon accrual. Accrued sick leave is carried over from year to year unless employee has reached their cap.

Health, Dental and Vision Insurance: The Whole Cart Services, LLC contributes 100% per month toward The Whole Cart Services, LLC group health care base plan option for employee only and 50% for employee dependents. The Whole Cart Services, LLC contributes 100% per month toward The Whole Cart Services, LLC group dental vision plan option for employee only. Employee will be eligible for this coverage effective the first of the month following date of hire.

401K Retirement Plan:

The Whole Cart Services, LLC offers a 401K Retirement Plan and you are entitled to participate in this retirement plan effective the first of the month following date of hire. After satisfying 1-year of service requirement, you will be eligible for the company match effective the first of the month following 1-year of service. The company matches 50% of your income that you defer into the plan with a maximum of 6% of employee income. If you contribute 6% of your income to the plan, then The Whole Cart will contribute 3% of your income to your account. This contribution is 50% vested if employee's employment ends before 2-years of service. After satisfying 2-years of service requirement, all contributions are 100% vested.

All benefits are subject to change at the discretion of the employer at any time.

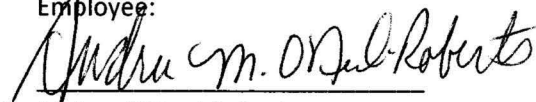
5. **Term of Employment** – Employee understands and agrees to employment-at-will. It has been and continues to be the policy of The Whole Cart that all employees are employed at-will for an unspecified period. Employees may resign from The Whole Cart and may be terminated by employer at any time, with or without cause or advance notice. Employees are employed at the will of The Whole Cart, and are subject to termination, demotion or other such changes in employment terms or conditions at any time, with or without cause or reason, and with or without advance notice. The employment-at-will policy may not be altered, changed or modified except in writing by the President of The Whole Cart.

6. **Non-Solicitation of Employees** – Employee hereby covenants and agrees that for a period of one year following the termination or expiration of this agreement, employee shall not, directly or indirectly, solicit for employment, or otherwise encourage the departure of any employee working for The Whole Cart.

7. **Miscellaneous Provisions** – The parties agree that any waiver of any part of this agreement shall not be a waiver of any other part of the whole.

EXECUTED in San Francisco County, California, on the day first above written.

Employee:


Andrea O'Neal-Roberts

Date

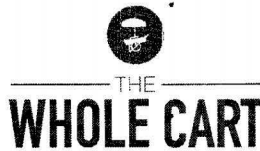
2-15-2019

Employer:

Matthew Cohen, President / Founder
The Whole Cart Services, LLC

Date

Exhibit B
to the O'Neal-Roberts Declaration



Instrucktional Entrepreneur Job Description

Job Title: Instrucktional Entrepreneur
Department: Instrucktional
Reports To: Instrucktional Operations Manager
FLSA Status: Exempt, Salary, Full-time

ABOUT THE WHOLE CART:

Building on Off the Grid's expertise in the mobile food services space, The Whole Cart is redefining corporate dining through the innovative use of mobile food infrastructure and technology, delivering premier employee dining solutions that are flavor-driven, endlessly scalable and geographically flexible.

Offering daily rotating fare from more than 25 unique mobile culinary concepts as well as custom interior services, stationary kiosks and carts, The Whole Cart provides an uncompromising standard of food quality and service and is proud to feature ethically-sourced ingredients from local farms, fisheries and ranches.

ABOUT INSTRUCKTIONAL:

InsTrucktional is a 24-month incubator program offering participants an immersive, comprehensive look at how to run a mobile food business. With the goal of empowering self-starters, this program provides a supportive, creative environment for aspiring entrepreneurs in the food industry to develop and test their concepts, along with the tools needed to be successful in the public market.

InsTrucktional will offer a highly skilled culinary team to mentor and train participants in the commercial culinary space. Additionally, Off the Grid, The Whole Cart, and Google have all committed to providing an intensive mentorship experience for all program participants with the hope of building the next generation of mobile food professionals.

JOB SUMMARY:

The InsTrucktional Entrepreneur is responsible for developing a food truck concept complete with original recipes and branding, and actively managing daily operations of that concept through service as part of The Whole Cart's catering fleet. After initial training and development phases, operational responsibilities include production planning and execution, purchasing and inventory, quality assurance and brand management, safety and sanitation controls, vehicle and equipment upkeep, and management of staff. These operations will likely occur over a broad geographic area, and as a result will require travel between locations and communication with onsite staff to ensure tasks are being performed adequately.

In addition, the Entrepreneur prepares for the eventuality of launching an independent business at the end of their two-year tenure with InsTrucktional, and must therefore pass various reviews and checkpoints at fixed intervals along the way. These include practical cooking evaluations, written assessments of knowledge gained, submissions of marketing collateral, and development of a thorough business plan. While some time is afforded to ensure that these checkpoints can reasonably be met, much of the developmental coursework is supplementary to the daily operational responsibilities described and must take place outside of a standard work schedule.

JOB RESPONSIBILITIES: *The following reflects essential functions for this position. Management*



Instrukltional Entrepreneur Job Description

may assign or reassign duties and responsibilities to this job at any time due to reasonable accommodation or other reasons.

The Instrukltional Candidate will spend time at the Commissary Kitchen and with Truck Operations.

Operations

- Manage and execute daily meal service from a food truck with one to three supporting crew members
- Make pragmatic decisions to promote efficiency and accommodate shifting priorities while upholding consistent brand integrity and quality standards
- Track inventory and communicate additional production/purchasing needs to commissary kitchen with a daily post-shift report
- Safely and responsibly drive company and/or client vehicles, and manage vehicle fleet upkeep including: proper refueling, overall exterior and interior cleanliness, reporting all mechanical and equipment issues and failures immediately, and general upkeep of all vehicle assets
- Ensure staff compliance with operational standards, company policies, federal/state/local laws, and ordinances; make recommendations for disciplinary action as needed
- Enforce sanitary practices for food handling, general cleanliness, and upkeep of truck, kitchens, and dining areas
- Maintain professional appearance of vehicles and personnel, including truck cleanliness, proper uniforms, and hygiene standards
- Supervise portion control and quantities of preparation to minimize waste
- Ensure that proper safety procedures and best practices are in place to protect employees, clients, guests, and company assets
- Accurately load truck's supplies, ingredients, and equipment to ensure smooth and seamless service
- Unload and break down truck upon returning to truck commissary, including daily cleaning of exterior and interior of truck and all kitchen equipment
- Assist in training of new incoming truck staff
- Promote a guest-centric attitude among supporting staff and ensure that guest and client needs are anticipated and exceeded
- Administer staff breaks and take other measures to ensure company compliance with current state labor guidelines

Development

- Demonstrate ability to contribute and comfortably succeed in a kitchen environment through multiple hands-on culinary evaluations
- Collaborate with communications and marketing teams to create a brand with unique visual design and formulate a marketing plan
- Collaborate with culinary team to develop 12 to 24 original dishes that are true to the concept and reasonable to execute
- Read relevant literature and articles as assigned by management to provide additional perspective on developmental projects



Instrukktional Entrepreneur Job Description

- Complete and submit written reflections on content learned under the following themes:
 - Safety and sanitation
 - Sourcing, purchasing, inventory, and forecasting
 - Vehicle and equipment management
 - Customer service
 - Time management, delegation, prioritization, and production strategies
 - Branding and marketing
 - Staff management and human resources
 - Bookkeeping and financial planning
- Write a business plan complete with realistic projections for revenue and expenses to be pitched to potential lenders

Instrukktional Team

- Attend weekly meetings with Instrukktional Participants to gain better insights into how the program operates
- Attend bi-weekly check-in's with Instrukktional managers to set goals and track progress

JOB QUALIFICATIONS: *To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge, skill and/or ability required.*

Education and Experience:

- Minimum of six months experience working in a full-service restaurant, catering operation, food truck, or similar environment
- College degree preferred, or equivalent work history/experience. Bachelor's degree in hotel/restaurant/hospitality management, preferred
- Knowledge of multiple cuisines, and thorough knowledge of multiple cooking techniques
- Experience in successfully managing, motivating, and developing a team of supporting staff, preferably in a culinary or similar environment
- Some experience with administrative work and professional correspondence in an office environment, a plus
- Must possess or be able to obtain a California Food Handler's Card before starting employment. ServSafe Manager certification required within 30-days of hire date
- Must possess a valid California Drivers License and eligible to be covered under company's vehicle insurance plan.

Skills and Abilities:

CULINARY MANAGEMENT

- Familiarity with and interest in a wide variety of cuisines
- Clear, consistent, and original culinary vision and values
- Knowledge of special diets, especially vegetarian and vegan
- Knowledge of commercial kitchen operations, equipment use and work flow



Instructional Entrepreneur Job Description

- Knowledge and ability to train and enforce food sanitation and safety requirements and policies
- Keen ability to work quickly/efficiently, coordinating and leading all cooking and preparation efforts to produce exemplary products in a timely manner
- Ability to anticipate and solve practical problems, and deal with a variety of challenging variables in a fast pace environment with focus, leadership and a calm demeanor
- Ability to lead, manage and develop a cohesive, top-performing and engaged team
- Strong work ethic and ability to lead by example
- Ability to act with patience, tact, and courtesy in dealing with staff, management, vendors, and guests at all times
- Able to work 40-60 hours in a work week, as needed

Language and Communication:

- Strong interpersonal skills applicable for teaching, coaching, encouraging, negotiating, clarifying and collaborating
- Pleasant, positive, and approachable demeanor in the workplace
- Demonstrable self-discipline, initiative, strong leadership ability and outgoing personality
- Ability to handle the pressures of simultaneously coordinating a wide range of activities and recommend appropriate solutions to unique problems
- Fluency in speaking, reading, writing, and understanding English, the primary language used in the workplace; ability to speak Spanish a plus
- Excellent verbal and written communication skills and succinct and effective communication to all levels in the internal organization and the general public
- Ability to represent oneself and the business to guests, the community and the media in an engaging and professional manner

Computer, Technical and Mathematical:

- Intermediate computer skills in Microsoft Excel, Word, Outlook and Google Applications, as well as restaurant POS systems; Micros or Aloha experience preferred
- Adept at utilizing basic office equipment: phones, computers (Mac preferred), fax machines, copiers, etc.
- Ability to accurately calculate inventory, purchasing, recipe ingredient adjustments, staffing hours, etc.

PHYSICAL DEMANDS: *The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.*

While performing the duties of this job, the employee is frequently required to:

- Repetitive use of hands and fingers using tools such as knives, peelers and other kitchen instruments
- Occasionally must be able to distinguish flavor profile when completing preparation lists
- Reach overhead and below the knees, including bending, twisting, pulling, and stooping



Instructtional Entrepreneur Job Description

- Move, lift, carry, push, pull, and place objects weighing more than or equal to 40 pounds without assistance
- Talk or hear during face-to-face communications in a noisy commercial kitchen work area
- Utilize specific vision abilities for viewing work related processes and materials handling
- Stand for prolonged periods using hot stove/oven, cooking utensils including sharp knives and industrial kitchen equipment
- Some exposure to smoke, steam, high temperatures and humidity
- Environmental exposure to extreme temperatures (coolers, ovens, freezer, outdoors, etc.)
- Bend and stoop to grasp objects and climb ladders
- Bend and twist neck and waist, reach above and below shoulders and squat
- Occasionally required to team lift heavy objects (40+ pounds)
- Push and pull carts weighing up to 100 pounds
- Stand, serve or work in a mobile food truck environment



Instructional Entrepreneur Job Description

- ☒ I have read, understand and voluntarily commit myself to the general guidelines contained in this document.

We comply with the ADA and consider reasonable accommodation measures that may be necessary for employees to perform essential functions.

- ☒ I understand the physical requirements of the position and am able to perform the essential functions of the position and am able to perform them without accommodation; or
- ☐ I understand the physical requirements of the position and require accommodations listed below:

Employee Signature: _____

Date: 2-15-2019

Manager Signature: _____ Date: _____

Exhibit 3
to Preliminary Approval Motion
Marketing Materials



Program Overview:

Instrucktional is an **incubator program** where aspiring mobile food entrepreneurs can learn the necessary skills to bring their businesses from concept to successful launch. With a combination of on the job skill-building, mentorship, management training, and tailored coursework, the Instrucktional program is a **paid internship** where motivated self-starters can develop their concepts in a challenging, yet low risk environment. Business models are tested for both market appeal and operational feasibility. Progress through the program is based on defined milestones and key learnings, with a variable **program length of up to 24 months**, dependent on prior experience and entrepreneurial hustle through the curriculum. Graduates complete the program with a fully developed business plan, tested recipes, visual branding collateral, and real-world experience operating their concept at Off the Grid catering clients and public-facing markets.

How much time will participants need to devote to this program?

Being in the program is a full-time job. Entrepreneurs are actively scheduled for approximately 50 hours a week, and should allow an additional 10 hours per week to keep up with off-site administrative work on their concepts.

How much does it cost to enroll?

There is no cost to enroll in the program. Although entrepreneurs are fully responsible for funding their businesses after graduation, all costs are covered during their tenure in the program. Once accepted into the program, participants will be offered competitive compensation.

What kind of experience does an applicant need?

We ask that applicants have a passionate concept with a willingness to learn and adapt. 2-3 years culinary experience, line cook equivalent.

What is the application process?

The first step is to submit an application on this website. After review, we will invite you to an in-person interview followed by a tour of one of our Google sites. The next step is for you to come in and do a tasting for us. You can expect to hear back within a week of sending in an application, but the full process will generally take around two months.

So I get to launch my own food truck concept?

After you have finished with the incubation period, consisting of concept, recipe, and brand development, you will launch a food truck concept on the Google campus.

Do I get the truck at the end?

No, you won't be given the physical truck, but you do get the rights to your business name, logo, and branding, along with a customized business and financial plan.

Exhibit 4
to Preliminary Approval Motion
Employee Handbooks



EMPLOYEE HANDBOOK

2015

leaves The Whole Cart for whatever reason, or whenever their manager requests, they must turn over to HR any confidential materials or data in their possession.

Such confidential information includes but is not limited to the following:

- Compensation data
- Confidential customer lists / contracts
- Financial information
- Marketing, public relations and development strategies and materials
- Pending projects and proposals
- Proprietary production processes and procedures
- Permit details
- Market designs, unique layouts and strategies
- Any inventions or ideas that are developed at The Whole Cart
- All documents, files and working papers generated in connection with the work of The Whole Cart

The Whole Cart maintains the confidentiality and security of records in compliance with the Health Insurance Portability and Accountability Act (HIPAA) and the Gramm-Leach-Bliley Act (GLBA), in addition to other federal and state laws. These laws pertain to the security and privacy of personal, medical and financial information, along with identifying information such as Social Security numbers.

ALL employees are required to sign a Non-Disclosure Agreement as a condition of employment. Any employee who discloses trade secrets or confidential business information will be subject to disciplinary action, including possible discharge, even if they do not actually benefit from the disclosed information. Legal action may also be taken against employees and others for unauthorized use or disclosure of confidential information.

NEW HIRE – INTRODUCTORY PERIOD

2.4

The first 90-days (ninety days) of a new employee's time with The Whole Cart is considered an introductory period. During this time, a new employee will have an opportunity to evaluate the Company and position fit. Conversely, The Whole Cart will also be evaluating the employee's qualifications and potential as a member of the team. At the end of the introductory period, both the employee and their supervisor will review job performance and determine if employment should continue. This process will not modify or change the employment at-will relationship.

EMPLOYMENT CLASSIFICATIONS

2.5

It is the intent of The Whole Cart to clarify the definitions of employment classifications so that employees understand their employment status and benefit eligibility. Each job within the Company is classified as "exempt" or "non-exempt" as defined by the Fair Labor Standards Act and from federal and state wage and hour laws. At the time of hire, employees will be notified of their classification.

NON-EXEMPT employees are entitled to over-time pay under the specific provisions of federal and state laws.

EXEMPT employees are excluded from specific provisions of federal and state wage and hour laws. In addition to the above classifications, each employee will belong to one of the following employment categories.

PART-TIME employees are those who are not assigned to a temporary or introductory status and who are scheduled to work less than 32 hours per week. While they do receive all legally mandated benefits, such as Workers Compensation Insurance

and Social Security benefits, regular part-time employees may be eligible for some The Whole Cart benefit programs, subject to the terms, conditions, and limitations of each benefit program.

EXEMPT AND NON-EXEMPT

2.5.1

Exempt employees are paid a set salary regardless of hours worked. Positions that are classified as exempt from the over-time requirements are not eligible for over-time pay.

Non-exempt employees are paid a wage based upon time worked for and must comply with designated break and meal times. Non-exempt employees are eligible for over-time pay.

REGULAR FULL-TIME

2.5.2

Employees, both exempt and non-exempt, who are regularly scheduled to work a minimum of thirty hours per week on an on-going basis, are regular full-time employees. Part-time employee's transition to full-time status when they have reached twelve weeks of continually scheduled hours of thirty-two or more hours a week.

REGULAR PART-TIME

2.5.3

Employees, both exempt and non-exempt, who are scheduled to work less than thirty hours per week, are considered regular part-time employees. Full-time employees will transition to part-time status when they have reached twelve weeks of a continuous work schedule consisting of twenty-nine or less hours a week.

TEMPORARY

2.5.4

Employees, both exempt and non-exempt and full-time and part-time, who are employed on a seasonal, project or other temporary basis, generally less than twelve months, are not eligible for most benefits.

JOB DUTIES

2.6

When an employee begins their employment with The Whole Cart, they learn the various duties and responsibilities of their job. The Whole Cart maintains certain expectations and standards applicable to each employee's job position.

It is expected that employees will perform additional duties and assume additional responsibilities as needed by management for the efficient operations of The Whole Cart. Due to changes in our business, it may become necessary to modify an employee's job description, add to or remove certain duties and responsibilities, or reassign them to an alternate job position.

HOURS OF WORK

2.7

The typical full-time office work schedule is eight hours per day, five days a week with occasional nights and weekends. Some employees depending on their position will have varying work schedules based on market and event schedules. Managers will advise all employees of the times their schedules will normally begin and end. Staffing needs and operational demands may necessitate variations in starting and ending times, as well as variations in the total hours that may be scheduled each day of the week. Depending upon the needs of The Whole Cart, an employee's work schedule may be changed. Employees may request a specific schedule and their manager will determine if such an accommodation can be made.

As part of The Whole Cart's responsibility to our clients, the public, and to other employees, we expect our employees to be at work as scheduled, to arrange their personal schedules to accommodate our established working hours, and to notify us



EMPLOYEE HANDBOOK

2017

NON-EXEMPT employees are entitled to over-time pay under the specific provisions of federal and state laws.

EXEMPT employees are excluded from specific provisions of federal and state wage and hour laws. In addition to the above classifications, each employee will belong to one of the following employment categories.

PART-TIME employees are those who are not assigned to a temporary or introductory status and who are scheduled to work less than 30 hours per week. While they do receive all legally mandated benefits, such as Workers Compensation Insurance and Social Security benefits, regular part-time employees may be eligible for some TWC benefit programs, subject to the terms, conditions, and limitations of each benefit program.

EXEMPT AND NON-EXEMPT

2.5.1

Exempt employees are paid a set salary regardless of hours worked. Positions that are classified as exempt from the over-time requirements are not eligible for over-time pay.

Non-exempt employees are paid a wage based upon time worked for and must comply with designated break and meal times. Non-exempt employees are eligible for over-time pay.

REGULAR FULL-TIME

2.5.2

Employees, both exempt and non-exempt, who are regularly scheduled to work a minimum of thirty hours per week on an on-going basis, are regular full-time employees. Part-time employee's transition to full-time status when they have reached twelve weeks of continually scheduled hours of thirty-two or more hours a week.

REGULAR PART-TIME

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TEMPORARY

2.5.4

Employees, both exempt and non-exempt and full-time and part-time, who are employed on a seasonal, project or other temporary basis, generally less than twelve months, are not eligible for most benefits.

JOB DUTIES

2.6

When an employee begins their employment with The Whole Cart, they learn the various duties and responsibilities of their job. TWC maintains certain expectations and standards applicable to each employee's job position.

It is expected that employees will perform additional duties and assume additional responsibilities as needed by management for the efficient operations of TWC. Due to changes in our business, it may become necessary to modify an employee's job description, add to or remove certain duties and responsibilities, or reassign them to an alternate job position.

HOURS OF WORK

2.7

The typical full-time office work schedule is eight hours per day, five days a week with occasional nights and weekends. Some