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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
CENTRAL DISTRICT – SPRING STREET COURTHOUSE

TONY VILLANUEVA, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

MESQUITE PRODUCTIONS, INC., a
California Corporation, MIKE HOPKINS, an
Individual, and DOE 1 through and including
DOE 10,

Defendants.

CASE NO. 20STCV37528

Judge: Hon. Elihu M. Berle
Dept: 6

CLASS SETTLEMENT AGREEMENT

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1 permitting Defendant to conduct its business unhampered by the distractions of continued
2 litigation; and (iii) the uncertainty and risks inherent in any litigation.

3 **1.4** The Parties to this Agreement recognize that the claims against Defendant are
4 strongly disputed, and the Parties wish to resolve completely and totally all Settled Claims against
5 Defendant and the other Released Parties.

6 **1.5** **NOW THEREFORE**, subject to Court approval, as hereinafter provided, it is
7 hereby agreed by the Parties that, in consideration of the promises and covenants set forth in this
8 Agreement, and upon the entry by the Court of a final order approving the Settlement and directing
9 the implementation of the terms and conditions of the Settlement as set forth in this Agreement,
10 this Action shall be settled and compromised upon the terms and conditions contained herein.

11 **2. DEFINITIONS**

12 As used in this Agreement, in addition to any definitions elsewhere in this Agreement, the
13 following terms shall have the meanings set forth below:

14 **2.1** **“Action”** means and refers to *Tony Villanueva v. Mesquite Productions, Inc.*, Los
15 Angeles County Superior Court Case No. 20STCV37528.

16 **2.2** **“Agreement”** means and refers to this Settlement Agreement.

17 **2.3** **“Claims Administrator”** means and refers to a mutually-agreeable claims
18 administrator with adequate security protocols, subject to Court approval, which will administer
19 the Settlement Fund as described in this Agreement.

20 **2.4** **“Class Notice”** means and refers to a mutually-agreeable class notice approved by
21 the Court.

22 **2.5** **“Compensable Final Payment Claims”** means and refers to Final Payment
23 Claims that are considered payable for purposes of receiving settlement proceeds. Final Payment
24 Claims are payable if they are supported by documentation demonstrating that the Participating
25 Class Member was not issued any payment for wages by the Final Check Due Date. For the
26 avoidance of doubt, if a Participating Class Member was issued any wage payment by check by
27 the Final Check Due Date, then a Final Payment Claim would not be payable. By way of
28 illustration, if a Participating Class Member was issued a check by the Final Check Due Date, but

1 later received a rate adjustment or additional wages for the same work week, the Final Payment
2 Claim would not be payable. Each Participating Class Member is limited to no more than one
3 Compensable Final Payment Claim.

4 **2.6 “Compensable Pay Periods”** means and refers to each payroll period during which
5 a Settlement Class Member worked on the Production and received an itemized wage statement at
6 any time during the Release Period.

7 **2.7 “Complaint”** means and refers to the operative complaint in the Action. The
8 parties may stipulate to file an amended complaint for purposes of facilitating approval.

9 **2.8 “Court”** means and refers to the Superior Court of California, County of Los
10 Angeles.

11 **2.9 “Defendant”** means and refers to Mesquite Productions, Inc.

12 **2.10 “Employment Taxes”** means and refers to all amounts which an employer is
13 required by state or federal law to withhold from wages paid to employees on behalf of the
14 employee including, without limitation, withholding of federal and state income taxes and payment
15 of the employee’s portion of FICA, Medicare taxes, and California State Disability Insurance.

16 **2.11 “Final Approval Order”** means and refers to the Court’s judgment and order
17 granting final approval of the class settlement following the motion as set forth in Section 5.3.
18 This Final Approval Order shall constitute approval pursuant to California Rules of Court 3.769(a)
19 and a judgment pursuant to California Rules of Court 3.769(h).

20 **2.12 “Final Check Due Date”** means and refers to one (1) business day after the
21 Thursday of the week following the Participating Class Member’s final day of work on the
22 Production (the “Check Due Date”). By way of illustration, if a Participating Claim Member’s
23 final day of work was Monday, July 12, 2019, the Final Check Due Date would be calculated by
24 determining the following Thursday (July 22, 2019) and counting forward by one business day to
25 Friday, July 23, 2019. If that Participating Class Member was issued a check for wages for his/her
26 final day of work by check dated July 23, 2019, then the check will be considered issued on or
27 before the Final Check Due Date.

1 **2.13 “Final Effective Date”** means and refers to: (a) if no appeal, writ, or other request
2 for appellate review is filed, the expiration date of the time for the filing for any such appeal, writ,
3 or request for appellate review (which expiration date will be sixty-five (65) calendar days after
4 service of notice of entry of the Final Approval Order); and (b) if any appeal, writ, or other request
5 for appellate review is filed, the date when that appeal, writ, or request for appellate review is
6 finally ruled upon, denied, or dismissed, and no other appeal, writ or appellate review is possible.

7 **2.14 “Final Payment Claim”** means and refers to a claim made by a Participating Class
8 Member that such member was issued a final wage payment after the Final Check Due Date.

9 **2.15 “Final Payment Settlement Amount”** means and refers to the amount to be
10 allocated to individual Participating Class Members who make a Compensable Final Payment
11 Claim, as calculated pursuant to the provisions of Section 10.2.3.

12 **2.16 “LWDA”** means and refers to the Labor & Workforce Development Agency.

13 **2.17 “Notice Program”** means and refers to the notice procedures set forth in Section 6.

14 **2.18 “Opt Out Period”** means and refers to the period of time between the
15 commencement of the Notice Program and an agreed date certain sixty (60) calendar days later
16 during which members of the Settlement Class may exercise the right to opt out of the Settlement
17 Class pursuant to the provisions of Section 7.

18 **2.19 “PAGA Letter”** means and refers to the letter sent by or on behalf of the
19 Settlement Class Members to the LWDA regarding the allegations in the Complaint, specifically
20 including the September 30, 2020 letter from Settlement Class Counsel to the LWDA regarding
21 Settlement Class Representative.

22 **2.20 “Participating Class Member”** means and refers to a Settlement Class member
23 who does not timely and validly opt-out of the Settlement Class pursuant to the provisions of
24 Section 7.

25 **2.21 “Participating Class Member Allocation Amount”** means and refers to the
26 amount to be allocated to individual Participating Class Members as calculated pursuant to the
27 provisions of Section 10.2.1.

1 **2.22 “Participating Class Member Allocation Range”** means and refers to the initial
2 estimate of the low and high ranges of the amount to be allocated to individual Participating Class
3 Members, as calculated pursuant to the provisions of Section 10.2.1.

4 **2.23 “Parties”** means and refers to the Settlement Class Representative, for himself and
5 on behalf of the Settlement Class, and Defendant.

6 **2.24 “Person”** means and refers to any individual, proprietorship, corporation, personal
7 loan-out corporation, partnership, association, trustee, unincorporated association, or any other
8 type of legal entity, except a governmental entity.

9 **2.25 “Preliminary Approval Order”** means and refers to the Court’s order granting
10 preliminary approval of this Agreement and approval of the Notice Program following the motion
11 as set forth in Section 5.1. This Preliminary Approval Order shall constitute an order for and
12 setting a final approval hearing pursuant to California Rules of Court 3.769(d) and 3.769(e).

13 **2.26 “Production”** means and refers to Season 2 of the television production of *L.A.’s*
14 *Finest*.

15 **2.27 “Release Period”** means and refers to the period between July 1, 2019 and
16 April 3, 2020.

17 **2.28 “Released Party” and “Released Parties”** means and refers to: (a) Defendant and
18 each and all of Defendant’s past or present partners, parents, subsidiaries, or related entities
19 (regardless of whether such partners, parents, subsidiaries, or related entities are individuals,
20 corporations, partnerships, limited partnerships, limited liability companies, or other forms of
21 entity); (b) each and all of the predecessor or successor entities of any of those entities identified in
22 subparagraph (a); (c) any other individuals or entities of any kind, including but not limited to any
23 payroll companies employed or used by the Released Parties, which have been or could be alleged
24 to be in any manner responsible (whether on an alter ego, joint employer, statutory employer,
25 integrated enterprise, or any other theory) for any actual or alleged violations described in
26 Section 2.30; and (d) all past and present directors, officers, representatives, insurers, agents,
27 shareholders, partners, members, lawyers, and employees of any of the individuals or entities

1 identified in subparagraphs (a), (b), or (c) (specifically including, but not limited to, Mike
2 Hopkins).

3 **2.29 “Releasing Party”** and **“Releasing Parties”** means and refers to the Settlement
4 Class and its members, agents, partners, joint venturers, affiliates, predecessors, successors, heirs,
5 assigns, insurers, personal loan-out corporations, and any other Persons or entities claiming by or
6 through the Settlement Class, in their capacities as such.

7 **2.30 “Settled Claims”** means and refers, in connection with the employment of the
8 Settlement Class Member on the Production during the Release Period, to any and all claims,
9 liabilities, rights, demands, suits, matters, obligations, liens, damages, losses, costs, expenses,
10 debts, actions, and causes of action, of every kind and/or nature whatsoever, whether now known
11 or unknown, suspected or unsuspected, asserted or unasserted, latent or patent, regardless of legal
12 theory or type or amount of relief or damages claimed, which Releasing Party now has or at any
13 time ever had against Released Party through the date the Preliminary Approval Order is entered,
14 and which in any way arises out of, is based on, or relates in any way to the facts alleged in the
15 Complaint, which specifically includes: (a) minimum, regular, and/or overtime wages allegedly
16 due; (b) meal or rest periods allegedly missed, not provided, and/or denied; (c) check stubs, wage
17 statements, documentation, information, or records provided, delivered, or maintained, or not
18 provided, delivered, or maintained; (d) the payment, non-payment, or timeliness of payment of
19 wages or premiums due or allegedly due; (e) record-keeping obligations; (f) the payment or non-
20 payment of reimbursements required under California Labor Code Section 2802; (g) violation or
21 alleged violation of California Labor Code Sections 201, 201.5, 202, 204, 226, 226.7, 510, 512,
22 558, 558.1, 1174, 1174.5, 1194, 1197.1, 1198, 1198.5, or 2802, the federal Fair Labor Standards
23 Act, any California Industrial Commission Wage Order, and/or any other statute or regulation
24 regarding the payment of minimum, regular, and/or overtime wages, meal or rest period
25 premiums, timing of payments, check stubs or wage statements, record-keeping obligations,
26 and/or reimbursement of expenses; (h) attorneys’ fees due or allegedly due under California Labor
27 Code Section 218.5 or any other statute, regulation, or contractual provision; (i) any other claims
28 that any Releasing Party has arising out of, based upon, or relating to the allegations contained in

1 the Complaint or in the PAGA Letter; and (j) penalties or other payments which in any way arise
2 out of, are based on, or relate in any way to any of the foregoing, including but not limited to
3 penalties, premiums, or payments under California Labor Code Sections 203, 210, 226(e), 226(f),
4 226.3, 226.7, 558, 1174.5, 1198.5(k), or 1199, the federal Fair Labor Standards Act, any
5 California Industrial Commission Wage Order, and/or any other statute or regulation regarding the
6 payment of minimum, regular, and/or overtime wages, meal or rest period premiums, timing of
7 payments, check stubs or wage statements, record-keeping obligations, and/or reimbursement of
8 expenses. Without in any way limiting the foregoing, Settled Claims shall include all claims,
9 liabilities, rights, demands, suits, matters, obligations, liens, damages, losses, costs, expenses,
10 debts, actions, and causes of action under statutes and regulations set forth in this Section, whether
11 enforced directly or pursuant to California Labor Code Section 2699, California Business and
12 Professions Code Section 17200, *et seq.*, or any other mechanism.

13 **2.31 “Settlement”** means and refers to the settlement reflected in and to be effectuated
14 through this Agreement.

15 **2.32 “Settlement Class” or “Settlement Class Member”** means and refers to all
16 Persons who were issued an itemized wage statement for services on the Production during the
17 Release Period. Excluded from the Settlement Class are all Persons who properly and timely elect
18 to opt out pursuant to Section 7.

19 **2.33 “Settlement Class Counsel”** means and refers to Alan Harris, David Garrett, Min Ji
20 Gal, and Lin Zhan of Harris & Ruble.

21 **2.34 “Settlement Class Counsel’s Fees, Costs, and Expenses”** means and refers to the
22 amount awarded by the Court to Settlement Class Counsel for reasonable attorneys’ fees, costs,
23 and expenses associated with this Action and the resolution thereof, and no other settlement, as
24 described in Section 11.1.

25 **2.35 “Settlement Class Representative(s)”** means and refers to Tony Villanueva, Paul
26 Menchaca, Sunti Singhanate, and Mario Ontiveros.

27 **2.36 “Settlement Fund”** means and refers to the financial institution account established
28 to hold all proceeds from whatever source necessary to provide the benefits under this Agreement.

1 **2.37 “Settlement Termination Date”** means and refers to the date, if any, that
2 Defendant exercises its right to terminate this Agreement.

3 **3. SETTLEMENT PURPOSES ONLY**

4 **3.1 General.** This Agreement is for settlement purposes only.

5 **3.2 Settlement Class Only.** Any certification of a preliminary or final Settlement
6 Class pursuant to the terms of this Agreement shall not constitute nor be construed as an
7 admission, and shall not be admissible in any proceeding as an admission, on the part of
8 Defendant or any other Person that this Action or any other action is appropriate for class or
9 representative treatment at trial pursuant to Rule 23 of the Federal Rules of Civil Procedure,
10 California Code of Civil Procedure Section 382, California Labor Code Section 2698, *et seq.*
11 California Business and Professions Code Section 17200, *et seq.*, or any similar class and/or
12 representative action statute or rule. This Agreement shall not prejudice Defendant’s rights or any
13 other Person’s rights to oppose certification of a litigated class or other representative treatment in
14 this Action or in any other action or proceeding. Settlement Class Counsel shall not refer to this
15 Agreement or make any argument concerning this Agreement in any contested proceeding to
16 certify a litigated class or obtain other representative treatment.

17 **3.3 Admissibility.** This Agreement, any negotiations or proceedings related hereto, the
18 implementation hereof, and any papers submitted in support of the motions for approval hereof
19 (collectively, the “Settlement Proceedings”) shall not be construed as, nor be deemed to be
20 evidence of, any admission or concession by any of the Parties or any other Person regarding
21 liability or the appropriateness of class treatment, and shall not be offered or received in evidence
22 in any action or proceeding for any purpose whatsoever; provided, however, that this Agreement
23 and the Settlement Proceedings may be presented to the Court in connection with the
24 implementation or enforcement of this Agreement.

25 **3.4 Denial of Liability.** By entering into this Agreement, it is understood that
26 Defendant does not admit and, in fact, expressly denies that: (i) it has breached any duty,
27 obligation, or agreement; (ii) it has engaged in any illegal, tortious, or wrongful activity; (iii) it is

liable to members of the Settlement Class; or (iv) any damages have been sustained by any Settlement Class Member or by any other Person.

4. JURISDICTION

4.1 Continuing Jurisdiction. The Court has, and shall continue to have, jurisdiction to make any orders as may be appropriate to effectuate, consummate, and enforce the terms of this Agreement, to approve the award of attorneys' fees and costs pursuant hereto, and to supervise the administration and distribution of money from the Settlement Fund pursuant to California Code of Civil Procedure Section 664.6. Any dispute or question relating to or concerning the interpretation, enforcement, or application of this Agreement shall be presented to the Court for resolution.

5. COURT APPROVAL OF THE SETTLEMENT

5.1 Preliminary Approval and Notice Approval. After the execution of this Agreement, Settlement Class Counsel shall move the Court for an order granting preliminary approval of this Agreement and approval of the proposed Notice Program and, in connection therewith, submit to the Court a mutually-acceptable proposed Preliminary Approval Order.

5.2 Objections. The Preliminary Approval Order shall specify that Settlement Class Members shall have until an agreed date certain, which shall be sixty (60) calendar days from the commencement of the Notice Program pursuant to Section 6, to file and serve objections to this Agreement.

5.3 Final Approval. Within thirty (30) calendar days following the expiration of the Opt Out Period, if the Agreement has not been terminated in accordance with Section 8, Settlement Class Counsel shall file a motion for final approval and, in connection therewith, submit to the Court a mutually-acceptable proposed Final Approval Order.

6. CLASS NOTICE

6.1 Mailed Notice. Within twenty (20) calendar days after entry of the Preliminary Approval Order, Defendant shall submit to the Claims Administrator, in electronic form, a list of all Settlement Class Members. The list shall include each Settlement Class Member's name, last known address, social security number, and the number of pay periods on the Production during

1 the Release Period for which the Settlement Class Member received an itemized wage statement,
2 which the Claims Administrator shall use to calculate the total number of Compensable Pay
3 Periods. Within fifteen (15) calendar days after receipt of the foregoing list, the Claims
4 Administrator and/or its designee shall run a national change of address update and send by first
5 class postage prepaid U.S. mail a copy of the Class Notice approved by the Court to each
6 Settlement Class Member on the final list. Such Class Notice to each Settlement Class Member
7 shall contain the Settlement Class Member's Compensable Pay Periods calculated from
8 Defendant's records and the estimated Participating Class Member Allocation Range. The Class
9 Notice also shall explain that seventy percent (70%) of the Remainder is available to pay
10 Compensable Final Payment Claims and direct Settlement Class Members to submit
11 documentation supporting any Final Payment Claim within forty-five (45) calendar days of the
12 date of the Class Notice.

13 **6.2 Cost of Notice and Administration.** The notice administration fees and costs for
14 this Settlement shall be paid from the Settlement Fund. Settlement Class Counsel preliminarily
15 estimates that such fees and costs will be approximately \$5,000. If the actual fees and costs
16 exceed \$5,000, the amounts payable to Settlement Class Members under Section 10 shall be
17 reduced *pro rata* to cover any excess notice and administration costs.

18 **6.3 Records of Notice.** The Claims Administrator shall keep records of all notices,
19 and the cost thereof. Promptly upon request, the Claims Administrator shall provide a sworn
20 proof of mailing.

21 **7. RIGHT OF EXCLUSION**

22 **7.1 Procedure.** Settlement Class Members may elect to opt out of the Settlement
23 Class and thus exclude themselves from the Action and the Settlement Class at any time during
24 the Opt Out Period. To exercise the opt out right set forth in this Section 7.1, a Settlement Class
25 Member must submit a written request to exclude himself or herself from this Agreement, which
26 request shall contain the Settlement Class Member's name, address, telephone number, and last
27 four digits of his or her social security number. Such requests for exclusion must be sent to the
28 Claims Administrator and must be postmarked on or before the end of the Opt Out Period. All

1 Settlement Class Members who do not opt out in accordance with this Agreement during the Opt
2 Out Period will be deemed to have forever waived their right to opt out of the Settlement Class
3 and will be deemed Settlement Class Members for all purposes under this Agreement and will be
4 irrevocably bound by this Agreement. Any individual who timely and properly opts out shall not
5 be entitled to any individual relief under this Agreement. The Claims Administrator shall provide
6 regular updates to Settlement Class Counsel and Mitchell Silberberg & Knupp LLP as to any and
7 all individuals who opt out of the Settlement Class.

8 **7.2 Withdrawal of Election to Opt Out.** Prior to the entry of the Final Approval
9 Order, any Person who has elected to opt out may withdraw that election by notifying the Claims
10 Administrator in writing that he or she wishes to be a Settlement Class Member. The Claims
11 Administrator shall maintain records of all withdrawn opt outs, and shall provide such information
12 to Settlement Class Counsel and Mitchell Silberberg & Knupp LLP. At any time after the entry of
13 the Final Approval Order, any Person who has elected to opt out of this Agreement may withdraw
14 that election only upon receiving the written consent of Defendant and Court approval.

15 **8. SETTLEMENT TERMINATION**

16 **8.1 Termination if Court Approval Is Not Obtained.** This Agreement is expressly
17 conditioned upon: (i) Court approval of this Agreement; (ii) entry of the Preliminary Approval
18 Order in a mutually-agreeable form; and (iii) entry of the Final Approval Order in a mutually-
19 agreeable form. If the Court declines to enter either of these Orders, or modifies (in what
20 Defendant reasonably determines to be a material way) any aspect of this Agreement or of such
21 Orders, Defendant shall have the independent right to terminate this Agreement as set forth in
22 Section 8.4. For purposes of this Section 8, a “material” modification shall include, but is not
23 limited to, any modification in the releases to be provided, or any modification that would increase
24 the Total Maximum Settlement Payment (defined below).

25 **8.2 Termination if Opt Out Limit Is Exceeded.** If more than ten percent (10%) of
26 Settlement Class Members opt out of the Settlement Class, Defendant shall have the right to
27 terminate this Agreement as set forth in Section 8.4.

1 **8.3 Termination after Appeal.** If a Court of Appeal on review of this Agreement
2 and/or the Final Approval Order declares unenforceable, reverses, vacates, or modifies (in what
3 Defendant reasonably determines to be a material way) any aspect of this Agreement or the Final
4 Approval Order, Defendant shall have the independent right to terminate this Agreement as set
5 forth in Section 8.4.

6 **8.4 Termination Procedure and Effect.** If Defendant elects to terminate this
7 Agreement pursuant to Sections 8.1, 8.2, and/or 8.3, Defendant may do so by giving written notice
8 to Settlement Class Counsel. Notice of termination pursuant to Section 8.1 must be given within
9 thirty (30) calendar days of the act or order declining to enter the Order or modifying this
10 Agreement, unless subject to further appeal, in which case the notice must be given prior to the
11 Final Effective Date. Notice of termination pursuant to Section 8.2 must be given prior to Final
12 Approval. Notice of termination pursuant to Section 8.3 must be given prior to the Final Effective
13 Date. If Defendant terminates this Agreement pursuant to Section 8, the termination shall void all
14 of the rights, obligations, and releases under this Agreement, except for those provisions that are
15 necessary to effectuate the termination. Within fifteen (15) calendar days after notice of
16 termination, the Claims Administrator shall return all settlement payments made by Defendant
17 prior to such termination (inclusive of interest and exclusive of notice and administration costs
18 already expended). The Claims Administrator shall then allocate such previously expended notice
19 and administration costs equally between Plaintiff and Defendant and invoice Plaintiff and
20 Defendant for half of such costs (with a credit to Defendant for previously paid costs). All
21 payments to the Claims Administrator shall be due thirty (30) calendar days after receipt of the
22 Claims Administrator's invoice.

23 **9. SETTLEMENT PAYMENTS**

24 **9.1 Funding Commitment.** Defendant shall fund the obligations of this Agreement in
25 accordance with the procedures set forth herein with a non-reversionary amount certain of
26 \$375,000 (the "Total Maximum Settlement Payment" or "TMSP"). The TMSP shall be used to
27 pay all of Settlement Class Counsel's Fees, Costs, and Expenses, all costs of claims
28 administration, all incentive payments to the Settlement Class Representative, the payment to the

1 LWDA, and all settlement payments to Participating Class Members. No Released Party shall be
2 required to pay anything above or beyond the TMSP, under any circumstance, as a result of this
3 Agreement.

4 **9.2 Funding upon Preliminary Approval.** Within ten (10) calendar days after the
5 entry of the Preliminary Approval Order, Defendant shall mail or wire to the Claims Administrator
6 the sum of \$3,000 to pay for the notice program and initial administrative expenses. The time to
7 make such payment may be extended by mutual consent of the Parties.

8 **9.3 Additional Funding upon Final Effective Date.** Within ten (10) calendar days
9 after the Final Effective Date, Defendant shall mail or wire to the Claims Administrator the sum
10 sufficient to pay Settlement Class Counsel's Fees, Costs, and Expenses, the incentive payments to
11 the Settlement Class Representative, the payment to the LWDA, any unpaid notice and
12 administration costs incurred to date, and the payments to the Participating Class Members. The
13 time to make such payment may be extended by mutual consent of the Parties.

14 **9.4 Payment of Settlement Class Counsel's Fees, Costs, and Expenses.** Within ten
15 (10) calendar days after receipt of the funds described in Section 9.3 above, the Claims
16 Administrator shall wire the amount of Settlement Class Counsel's Fees, Costs, and Expenses to
17 Settlement Class Counsel from the Settlement Fund, unless the Agreement is terminated.

18 **9.5 Funding for Final Administrative Expenses.** Within fifteen (15) calendar days
19 after all of the checks distributed by the Claims Administrator to Participating Class Members are
20 cashed, deposited, and/or expired (based on a 180-day stale date), the Claims Administrator shall
21 notify the Parties in writing as to the total additional amount, if any, needed to pay the Claims
22 Administrator's final invoice for fees and expenses. Within twenty (20) calendar days after
23 receipt of any notice under this Section 9.5, Defendant shall deposit such additional amount into
24 the Settlement Fund. In no circumstances will Defendant be responsible for more than the TMSP,
25 however.

26 **9.6 Interest on the Settlement Fund.** All interest generated by the monies in the
27 Settlement Fund shall accumulate and become part of the Settlement Fund.

1 **10. PROTOCOL FOR PAYMENTS TO SETTLEMENT CLASS MEMBERS**

2 **10.1 Claims Administrator.** Subject to Court approval, a reputable, experienced entity
3 shall be the Claims Administrator. The Claims Administrator shall have the sole authority to
4 administer the Settlement Fund, and to disburse sums from the Settlement Fund. The Claims
5 Administrator shall carry out its duties in strict accordance with the procedures set forth in this
6 Agreement, and any Party may move the Court to compel such compliance. The Claims
7 Administrator shall submit monthly invoices to the Parties. With or without good cause, the
8 Parties may jointly move the Court to replace the Claims Administrator. With good cause, any
9 Party may, of its own accord, move the Court to replace the Claims Administrator. The Court
10 may on its own motion replace the Claims Administrator at any time with or without cause.
11 Except for the specific funding obligations set forth in Section 9, the Parties shall have no
12 responsibility to members of the Settlement Class for the administration of claims or the
13 distribution of the cash benefits under this Agreement.

14 **10.2 Determination of Benefits.** After the Settlement Class Counsel's Fees, Costs, and
15 Expenses, all costs of claims administration (including a reasonable reserve for reasonably
16 anticipated future expenses), all incentive payments to the Settlement Class Representative, and
17 the payment to the LWDA have been satisfied from the Settlement Fund (or reserved for such
18 purpose if not yet paid), the remainder (the "Remainder") shall be available to pay Participating
19 Class Members. All Participating Class Members shall receive a payment based on their
20 Participating Class Member Allocation Amount, as calculated below. Participating Class
21 Members who make a Compensable Final Payment Claim shall also receive a Final Payment
22 Settlement Amount, in addition to their Participating Class Member Allocation Amount.

23 **10.2.1 Calculation of Participating Class Member Allocation Range.** Each
24 Participating Class Member shall initially be notified of their Participating Class Member
25 Allocation Range. The Participating Class Member Allocation Range for each
26 Participating Class Member shall be calculated as follows: (a) the number of Compensable
27 Pay Periods the Participating Class Member worked; divided by (b) the aggregate number
28 of Compensable Pay Periods worked by all Participating Class Members, which will result

1 in the Participating Class Member's "Pay Period Factor." The Participating Class
2 Member's Pay Period Factor shall then be multiplied by (c) thirty percent (30%) of the
3 Remainder to determine the low end of the Participating Class Member Allocation Range
4 and separately by (d) one hundred percent (100%) of the Remainder to determine the high
5 end of Class Member Allocation Range. This calculation shall be based on Defendant's
6 books and records and shall be provided to the Participating Class Members in the Class
7 Notice provided in Section 6.1, along with an explanation that Participating Class Member
8 is eligible to receive a payment in that range depending on the value of Compensable Final
9 Payment Claims.

10 **10.2.2 Disputes of Compensable Pay Periods.** If any Settlement Class Member
11 disputes the number of Compensable Pay Periods attributed to the Settlement Class
12 Member as indicated in the Class Notice, the Settlement Class Member may state the basis
13 of his or her disagreement and submit documentation supporting the Settlement Class
14 Member's position, by no later than the expiration of the Opt Out Period.

15 **10.2.3 Determination of Final Payment Settlement Amounts.** Seventy percent
16 (70%) of the Remainder shall be available to pay Final Payment Settlement Amounts
17 pursuant to the following procedure:

18 **10.2.3.a** Not later than fifty (50) calendar days after mailing the Class
19 Notice provided in Section 6.1, the Claims Administrator shall evaluate any Final
20 Payment Claims submitted by Settlement Class Members to determine whether any
21 such claims are Compensable Final Payment Claims.

22 **10.2.3.b** If any Final Payment Claim is determined not to be a
23 Compensable Final Payment Claim, the Claims Administrator shall notify the
24 Participating Class Member that made such claim of such determination and invite
25 them to submit additional documentation within 10 calendar days. Upon receiving
26 any additional documentation, the Claims Administrator shall make its final
27 determination on all Final Payment Claims. The Claims Administrator may consult

with Mitchell Silberberg & Knupp LLP and Settlement Class Counsel in making such determinations.

10.2.3.c The initial “Maximum Value” of each Compensable Final Pay Claim shall be nine hundred dollars (\$900). If the sum total of all of the Maximum Values are equal to or less than seventy percent (70%) of the Remainder, then the Final Payment Settlement Amount for each Compensable Final Pay Claim shall equal the Maximum Value of each Compensable Final Pay Claim. If the sum total of all Maximum Values exceeds seventy percent (70%) of the Remainder, then the Claims Administrator shall divide that sum total of all of the Maximum Values by the value of seventy percent (70%) of the Remainder to calculate a “Reduction Factor.” The Final Payment Settlement Amount for each Compensable Final Pay Claim shall then equal its Maximum Value divided by the Reduction Factor so that the sum total of all Final Payment Settlement Amounts does not exceed seventy percent (70%) of the Remainder.

10.2.4 Determination of Participating Class Member Allocation Amounts.

After determining the Final Payment Settlement Amounts, the Claims Administrator shall calculate the Participating Class Member Allocation Amounts as follows.

10.2.4.a If there are no Compensable Final Payment Claims, the Participating Class Member Allocation Amounts shall equal the high end of the Participating Class Member Allocation Range calculated in Section 10.2.1.

10.2.4.b If the sum total of all Maximum Values calculated in Section 10.2.3 exceed seventy percent (70%) of the Remainder, the Participating Class Member Allocation Amounts shall equal the low end of the Participating Class Member Allocation Amounts calculated in Section 10.2.1.

10.2.4.c If the sum total of all Maximum Values calculated in Section 10.2.3 do not exceed seventy percent (70%) of the Remainder, the Participating Class Member Allocation Amounts shall be calculated as follows:
The sum total of the Maximum Values calculated in Section 10.2.3 shall be

1 subtracted from seventy percent (70%) of the Remainder. The resulting amount
2 shall be added to the amount constituting thirty percent (30%) of the Remainder to
3 determine the “Updated Remainder.” Each Participating Class Member’s Pay
4 Period Factor (calculated in Section 10.2.1) shall then be multiplied by the Updated
5 Remainder to arrive at the Participating Class Member Allocation Amounts.

6 **10.3 Notification of Proposed Benefits.** Within ten (10) calendar days after the
7 determination of the Participating Class Member Allocation Amounts, the Claims Administrator
8 shall send a report to Settlement Class Counsel and Mitchell Silberberg & Knupp LLP showing
9 the proposed Participating Class Member Allocation Amount for each Participating Class
10 Member. Neither this report nor any other document provided to Settlement Class Counsel shall
11 include any identifying information for members of the Settlement Class.

12 **10.4 Corrections to the Proposed Benefits.** Settlement Class Counsel and Defendant
13 shall have ten (10) calendar days from the mailing of the report of proposed benefits referenced in
14 Section 10.3 to notify the Claims Administrator in writing of any errors in the calculation of the
15 Participating Class Member Allocation Amounts.

16 **10.5 Taxes.** Based upon an analysis of the facts of this Action, Settlement Class
17 Counsel determined that all payments to the Participating Class Members will be treated as
18 penalties and interest and shall not be subject to Employment Taxes. The Claims Administrator
19 shall issue to each Participating Class Member an IRS Form 1099 to report each Participating
20 Class Member’s cash benefit.

21 **10.6 Notice and Payment to Settlement Class Members.** Within twenty (20) calendar
22 days after receipt of the funds described in Section 9.3 above, the Claims Administrator shall
23 distribute to each Participating Class Member a check in the amount equal to the total cash
24 payment(s) such member is entitled to receive under Section 10.2, as corrected pursuant to
25 Section 10.4.

26 **10.6.1** All settlement checks sent to Participating Class Members and not cashed
27 within one hundred eighty (180) calendar days of issuance shall be sent to the California
28 State Controller’s Office: Unclaimed Property Fund. Any cash benefit owed to any

1 Participating Class Member whose addresses cannot be located (after use of the search
2 processes described in Section 6.1) shall also be sent to the California State Controller's
3 Office: Unclaimed Property Fund.

4 **10.7 Payment to LWDA.** Tony Villanueva, as an allegedly aggrieved employee, filed
5 this lawsuit on behalf of other current and former employees under the Private Attorneys General
6 Act, California Labor Code Section 2699, *et seq.* ("PAGA"). From the TMSP, \$10,000 is
7 allocated to and designated as penalties pursuant to PAGA, seventy-five percent (75%) of which
8 shall be paid to the LWDA. Within twenty (20) calendar days after receipt of the funds described
9 in Section 9.3 above, the Claims Administrator shall pay \$7,500 to the LWDA from the
10 Settlement Fund. This payment shall constitute full satisfaction of the obligation, if any, to pay
11 civil penalties to the LWDA pursuant to California Labor Code Section 2699(i).

12 **10.8 Maintenance of Records.** The Claims Administrator shall maintain complete,
13 accurate, and detailed records regarding the administration of the Settlement Fund, including but
14 not limited to, any objection to proposed benefits and the resolution thereof and any and all
15 receipts by and disbursements from the Settlement Fund. The Claims Administrator shall make
16 such records available to counsel for the Parties or to their designee upon reasonable request and at
17 reasonable times. Upon request, the Claims Administrator shall provide such records to
18 Defendant in an electronic format designated by Defendant. The Claims Administrator shall
19 maintain all records for a period of not less than four (4) years following the expiration of the
20 Final Effective Date.

21 **11. SETTLEMENT CLASS COUNSEL'S FEES, COSTS, AND EXPENSES AND**
22 **SETTLEMENT CLASS REPRESENTATIVE'S INCENTIVE PAYMENT**

23 **11.1 Settlement Class Counsel's Fees, Costs, and Expenses.** In connection with the
24 motion for final approval, Settlement Class Counsel shall file a motion with the Court seeking
25 approval of an award of attorneys' fees in an aggregate amount that does not exceed the sum of
26 \$125,000 and an award of costs and expenses that does not exceed \$12,500. Defendant agrees not
27 to oppose such motion for attorneys' fees, costs, and expenses. In the event that any Court
28 approves an award in excess of \$125,000 for attorneys' fees or in excess of \$12,500 for costs and

1 expenses, Settlement Class Counsel shall take only the amounts listed in this Section and the
2 difference shall be treated as otherwise provided herein. The amounts so awarded shall be for and
3 in complete satisfaction of all attorneys' fees, costs, and expenses incurred to date by the
4 Settlement Class Representative, Settlement Class Counsel on behalf of the Settlement Class
5 Representatives and the Settlement Class, and of all such future fees, costs, and expenses,
6 including fees, costs, and expenses incurred in documenting this Settlement, securing Court
7 approval of this Settlement, monitoring this Settlement, reviewing and participating in the claims
8 and distribution administration process, and obtaining the Final Approval Order. The Claims
9 Administrator will give Settlement Class Counsel an IRS Form 1099 for the awarded Settlement
10 Class Counsel's Fees, Costs, and Expenses. Not later than the Final Effective Date, Settlement
11 Class Counsel shall provide a fully and properly executed IRS Form W-9 for purposes of the
12 payments which the Claims Administrator will make to Settlement Class Counsel.

13 **11.2 Incentive Payments.** In connection with the motion for final approval, Settlement
14 Class Counsel shall submit a request to the Court seeking approval for an award of incentive
15 payment to each of the Settlement Class Representatives appointed by the Court that does not
16 exceed the sum of \$5,000. Such payments shall be in addition to the Settlement Class
17 Representative's cash benefit under Section 10. In the event that any Court awards an incentive
18 payment in excess of \$5,000 to any of the Settlement Class Representatives, the Settlement Class
19 Representative shall each take only \$5,000, and the difference shall be treated as otherwise
20 specified herein. The Claims Administrator shall mail the incentive payment checks to the
21 Settlement Class Representatives (care of Settlement Class Counsel) within ten (10) calendar days
22 after receipt of the funds described in Section 9.3 above. The Settlement Class Representatives
23 agree that the incentive payment is not a wage payment. The Claims Administrator shall issue an
24 IRS Form 1099 to the Settlement Class Representatives for the incentive payments.

25 **11.3 No Additional Fees, Costs, or Expenses.** Except as provided herein, each
26 Settlement Class Member shall bear his/her/its own attorneys' fees, costs, and expenses incurred
27 in connection with any claim against Defendant.

1 **12. FINAL ACCOUNTING AND DISPOSITION OF SETTLEMENT MONIES**

2 **12.1 Final Accounting.** By no later than ninety (90) calendar days after the earlier of
3 (a) the Settlement Termination Date or (b) the occurrence of both the Final Effective Date and the
4 distribution of all checks referenced in Section 10.6, the Claims Administrator shall submit to the
5 Parties a final accounting of all monies paid into and out of the Settlement Fund.

6 **12.2 No Further Obligations.** Upon receipt of the final accounting referenced in
7 Section 12.1 and the satisfaction of the final invoice referenced in Section 9.5, Defendant shall
8 have no obligation to provide further funding pursuant to this Agreement.

9 **13. RELEASES**

10 **13.1 Final Approval Order.** The Final Approval Order shall include a release by the
11 Releasing Parties of and from any and all Settled Claims.

12 **13.2 Release.** Except for the obligations and rights created by this Agreement, the
13 Releasing Parties hereby release and absolutely and forever discharge Defendant and all other
14 Released Parties and Persons of and from any and all Settled Claims.

15 **13.3 California Civil Code Section 1542.**

16 **13.3.1 Settlement Class Representative.** To the fullest extent permitted by law,
17 each Settlement Class Representative waives and relinquishes any and all rights or benefits
18 he has or may have under California Civil Code Section 1542, or any comparable
19 provision of state or federal law. California Civil Code Section 1542 provides:

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

26 Each Settlement Class Representative acknowledges that he is aware that he or his
27 attorneys may hereafter discover claims or facts in addition to or different from those now
28 known or believed to be true with respect to the subject matter of this Agreement and/or
the Settled Claims. Each Settlement Class Representative acknowledges that he intends to

1 and will fully, finally, and forever settle and release any and all claims, including but not
2 limited to the Settled Claims described in Section 2.30, whether known or unknown,
3 suspected or unsuspected, which now exist, hereinafter may exist, or heretofore may have
4 existed. In furtherance of this intention, the releases contained in this Agreement shall be
5 and remain in effect as full and complete releases by the Settlement Class Representatives
6 without regard to the subsequent discovery or existence of such different or additional
7 claims or facts.

8 **13.4 Release of FLSA Claims.** Without conceding that any release of claims under the
9 Fair Labor Standards Act (“FLSA”) requires any affirmative conduct or opt-in by the Releasing
10 Parties, the Parties agree that the cashing of checks by the Releasing Parties shall be deemed an
11 opt-in to an FLSA collective action, the settlement of which includes the FLSA releases specified
12 in Section 2.30. However, nothing in this Section or elsewhere in this Agreement shall preclude
13 the Releasing Parties from being bound by the releases in this Agreement whether or not they
14 receive or cash their checks. Each Releasing Party’s check will include the following language, or
15 words to that effect, immediately above the endorsement signature line: “I understand and
16 acknowledge that, by cashing or depositing this check, I reiterate my agreement to the release set
17 forth in the Settlement, including release of wage and hour claims, and to opt into the Settlement
18 for purposes of the Fair Labor Standards Act (FLSA), and forever release any FLSA claims related
19 to the claims asserted in the Action.”

20 **14. NOTICES**

21 **14.1 Designated Recipients.** Unless otherwise specified in this Agreement or agreed to
22 in writing by the Party receiving such communication, all notices, requests, or other required
23 communications hereunder shall be in writing and shall be sent by one of the following methods:
24 (a) by electronic mail; (b) by facsimile, with the original by first class mail, postage prepaid; or
25 (c) by personal or overnight delivery (including by Federal Express or other courier service). All
26 such communications shall be sent to the undersigned persons at their respective addresses as set
27 forth herein.

Settlement Class Counsel:

Alan Harris (harrisa@harrisandruble.com)
David Garrett (dgarrett@harrisandruble.com)
Min Ji Gal (mgal@harrisandruble.com)
Lin Zhan (lzhan@harrisandruble.com)
Harris & Ruble
655 North Central Avenue, 17th Floor
Glendale, California 91203
Facsimile: (323) 962-3004

Defendant:

Emma Luevano (eyl@msk.com)
Mitchell Silberberg & Knupp LLP
2049 Century Park East, 18th Floor
Los Angeles, California 90067
Facsimile: (310) 312-3100

Notice shall be deemed effective: (1) if given by electronic means, at the time of transmission if the sender does not receive an error message; (2) if given by mail or personal delivery, when signed for or when delivery is refused; and (3) if given by facsimile, when received as evidenced by a confirmation or evidence of delivery.

14.2 Changes in Designated Recipients. Any Party may re-designate the Person to receive notices, requests, demands, or other communications required or permitted by this Agreement by providing written notice to the other Parties and the Claims Administrator.

15. MISCELLANEOUS

15.1 Entire Agreement. This Agreement supersedes and replaces any and all other prior agreements and all negotiations leading up to the execution of this Agreement, whether oral or in writing, between the Parties with respect to the subject matter hereof. The Parties acknowledge that no representations, inducements, promises, or statements, oral or otherwise, have been made or relied upon by any of the Parties or by anyone acting on behalf of the Parties which are not embodied or incorporated by reference herein, and further agree that no other covenant, representation, inducement, promise or statement not set forth in writing in this Agreement shall be valid or binding.

15.2 Modification or Amendment. This Agreement may not be modified or amended, except in writing with the unanimous consent of the Parties and with the approval of the Court.

1 **15.3 Execution in Counterparts.** This Agreement may be executed by signature of the
2 Parties hereto, or their authorized representatives, on multiple copies of this Agreement, including
3 copies transmitted by facsimile or electronic portable document format (PDF), and, upon being so
4 executed by all Parties hereto, shall be effective as if all signatures appeared on the original of this
5 Agreement.

6 **15.4 Authority of Counsel.** Settlement Class Counsel are authorized by the members
7 of the Settlement Class, and by the Court, to take all appropriate action required and permitted to
8 be taken by the Settlement Class pursuant to this Agreement to effectuate its terms, and, subject to
9 Court approval, are authorized to enter into any modification or amendments to this Agreement on
10 behalf of the Settlement Class which they deem appropriate.

11 **15.5 Headings.** The headings of the sections, paragraphs, subparagraphs, and exhibits
12 of this Agreement are included for convenience only and shall not be deemed to constitute part of
13 this Agreement or to affect its construction.

14 **15.6 Liens.** The Parties released under this Agreement shall have no obligation to pay
15 or otherwise resolve any liens that are or may be asserted against settlement payments to members
16 of the Settlement Class pursuant to the terms of this Agreement. In the event any such lien is
17 asserted, it is the responsibility of the Settlement Class Member to pay, compromise, or otherwise
18 resolve the lien at no cost to Defendant, the Released Parties, or the Settlement Fund.

19 **15.7 Inapplicability of California Code of Civil Procedure Section 384.** The Parties
20 agree that California Code of Civil Procedure Section 384 does not apply to this Settlement, as
21 Defendant will not pay any portion of the TMSP to Settlement Class Members who opt out of the
22 Settlement. Thus, there will be no “unpaid residue” within the meaning of California Code of
23 Civil Procedure Section 384. Neither the Settlement Class Representatives nor Settlement Class
24 Counsel shall take, or cause any other person to take, a position before the Court that California
25 Code of Civil Procedure Section 384 applies to this Settlement.

26 **15.8 No Encouragement to Opt Out.** The Parties agree that neither they nor their
27 counsel will solicit or otherwise directly or indirectly encourage Settlement Class Members to
28 request exclusion from the Settlement Class, to object to this Settlement, or to appeal from the

1 Final Approval Order. The Settlement Class Representatives will not request exclusion from the
2 Settlement Class. The Settlement Class Representatives and Settlement Class Counsel will not
3 object to this Settlement and will not appeal from the Final Approval Order, or any portion of it.

4 **15.9 No Publicity.** The Parties agree not to contact the press, which includes issuing a
5 press release, or to hold a press conference announcing the terms of the Settlement. If the Parties
6 are contacted by the press or receive other third party inquiries regarding the Settlement or the
7 case, the Parties shall be limited in their response to inform the initiating contactor that the Parties
8 have reached agreement to their mutual satisfaction and that the initiating contactor should refer to
9 the public records filed with the Court for more information. Each Party shall use all reasonable
10 efforts to ensure that any public statements or press communication about the Settlement with
11 Settlement Class Members prior to the Court-approved Class Notice being mailed by the Claims
12 Administrator will be limited to a general statement that a settlement has been reached and the
13 details will be communicated to them by U.S. Mail in a forthcoming Court-approved Class Notice.

14 **15.10 Gender.** Whenever in this Agreement the context so requires, the neuter gender
15 shall refer to and include the masculine or feminine or non-binary, and the singular shall refer to
16 and include the plural.

17 **15.11 Further Acts.** The Parties shall perform such further acts and execute such further
18 documents as may be reasonably necessary or appropriate to effectuate the terms and purposes of
19 this Agreement.

20 **15.12 Beneficiaries.** This Agreement shall be binding upon the Parties and each of them,
21 and each of their respective heirs, successors, and assignees, and shall inure to the benefit of the
22 Parties, as well as to each of the Released Parties, each of whom shall be deemed a third party
23 beneficiary of this Agreement.

24 **15.13 Choice of Law and Jurisdiction.** This Agreement in all respects shall be
25 interpreted, enforced, and governed by and under the laws of the State of California applicable to
26 instruments, Persons, and transactions which have legal contacts and relationships solely within
27 the State of California. Any action pertaining to the terms of this Agreement that is not covered

1 by Section 4.1 shall be brought in a court of competent jurisdiction located in the State of
2 California.

3 **15.14 Warranty Regarding Advice.** Settlement Class Counsel warrants that each
4 Settlement Class Representative has been fully advised of and agrees to the terms of this
5 Agreement. Each Settlement Class Representative hereby acknowledges that he has been
6 represented by legal counsel throughout all negotiations which preceded the execution of this
7 Agreement, and that this Agreement has been executed with the consent and on the advice of said
8 counsel.

9 **15.15 No Tax Advice.** None of the Released Parties has any responsibility or liability for
10 any tax matters relating to any payments made under this Agreement including, but not limited to,
11 tax advice and/or the withholding of or reporting of taxes.

12
13 AGREED TO AND ACCEPTED.

14 **TONY VILLANUEVA**

15
16 Dated: _____

17 By: _____
Tony Villanueva
Settlement Class Representative

18
19 **PAUL MENCHACA**

20 Dated: _____

21 By: _____
Paul Menchaca
Settlement Class Representative

22
23 **SUNTI SINGHANATE**

24 Dated: _____

25 By: _____
Sunti Singhanate
Settlement Class Representative

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MARIO ONTIVEROS

Dated: _____

By: _____
Mario Ontiveros
Settlement Class Representative

MESQUITE PRODUCTIONS, INC.

Dated: _____

By: _____
Its: _____

APPROVED AS TO FORM.

HARRIS & RUBLE

Dated: _____

By: _____
Alan Harris
Settlement Class Counsel

MITCHELL SILBERBERG & KNUPP LLP

Dated: _____

By: _____
Emma Luevano
Attorneys for Defendant