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Attorneys for Defendants

DUKE'S SURF CITY PARTNERSHIP, A CALIFORNIA LIMITED PARTNERSHIP; TS ALOHA, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

LUCIO ROSAS, individually, and on behalf of
other members of the general public similarly
situated,

Plaintiff,

v.

DUKE'S SURF CITY PARTNERSHIP, A
CALIFORNIA LIMITED PARTNERSHIP, a
California limited partnership; TS ALOHA,
INC., a Hawaii corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No.: 20STCV47431

CLASS ACTION

**JOINT STIPULATION OF CLASS ACTION
SETTLEMENT AND RELEASE**

1 **JOINT STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE**

2 This Joint Stipulation of Class Action Settlement and Release (“Settlement” or “Settlement
3 Agreement”) is made and entered into by and between Plaintiff Lucio Rosas (“Plaintiff” or “Class
4 Representative”), as an individual and on behalf of all others similarly situated and the State of
5 California, and Defendants Duke’s Surf City Partnership, A California Limited Partnership and TS
6 Aloha, Inc. (“Defendants”) (collectively with Plaintiff, the “Parties”).

7 **DEFINITIONS**

8 The following definitions are applicable to this Settlement Agreement. Definitions contained
9 elsewhere in this Settlement Agreement will also be effective:

10 1. “Action” means *Lucio Rosas v. Duke’s Surf City Partnership, A California Limited*
11 *Partnership, et al.*, No. 20STCV47431 (Los Angeles County Superior Court).

12 2. “Attorneys’ Fees and Costs” means attorneys’ fees agreed upon by the Parties and
13 approved by the Court for Class Counsel’s litigation and resolution of the Action, and all Court approved
14 out-of-pocket costs incurred and to be incurred by Class Counsel in the Action, including but not limited
15 to expert/consultant fees, investigation costs, and costs associated with documenting the Settlement,
16 providing any notices required as part of the Settlement or Court order, securing the Court’s approval of
17 the Settlement, administering the Settlement, and obtaining entry of a Judgment terminating the Action.
18 Class Counsel will request attorneys’ fees not in excess of one-third (1/3) of the Class Settlement
19 Amount, or Three Hundred Thousand Dollars (\$300,000). The Attorneys’ Fees and Costs will also mean
20 and include the additional reimbursement of any costs and expenses associated with Class Counsel’s
21 litigation and settlement of the Action, up to Fifteen Thousand Dollars (\$15,000), subject to the Court’s
22 approval. Defendants have agreed not to oppose Class Counsel’s request for fees and reimbursement of
23 costs as set forth above.

24 3. “Class Counsel” means Capstone Law APC.

25 4. “Class List” means a complete list of all Class Members that Defendants will diligently
26 and in good faith compile from their records and provide to the Settlement Administrator within twenty-
27 one (21) calendar days after Preliminary Approval of this Settlement. The Class List will be formatted in
28 Microsoft Office Excel and will include each Class Member’s full name; most recent mailing address

1 and telephone number; Social Security number; the respective number of biweekly pay periods during
2 which each Class Member worked during the Class Period and PAGA Period; and any other relevant
3 information needed to calculate settlement payments.

4 5. “Class Member(s)” or “Settlement Class” means all nonexempt or hourly paid
5 employees of Defendants who worked in California from December 11, 2016, through the date of
6 preliminary approval of the class action settlement or October 20, 2021, whichever is earlier.

7 6. “Class Period” means the period from December 11, 2016 through the date of
8 Preliminary Approval.

9 7. “Class Representative Enhancement Payment” means the Court approved amount to be
10 paid to Plaintiff in recognition of his effort and work in prosecuting the Action on behalf of Class
11 Members, and for his general release of claims. Subject to the Court granting final approval of this
12 Settlement Agreement and subject to the exhaustion of any and all appeals, Plaintiff will request Court
13 approval of a Class Representative Enhancement Payment of Ten Thousand Dollars (\$10,000).

14 8. “Court” means the Los Angeles County Superior Court.

15 9. “Defendants” means Defendants Duke’s Surf City Partnership, A California Limited
16 Partnership and TS Aloha, Inc.

17 10. “Effective Date” means the date upon which both of the following have occurred:
18 (i) approval of the settlement is granted by the Court, or other court assuming jurisdiction of this Action,
19 and (ii) the Court’s Judgment approving the settlement becomes Final. “Final” shall mean the latest of:
20 (i) if there is an appeal of the Court’s Judgment, the date the Judgment is affirmed on appeal, the date of
21 dismissal of such appeal, or the expiration of the time to file a petition for writ of certiorari to the
22 California Supreme Court, or (ii) if a petition for writ of certiorari is filed, the date of denial of the
23 petition for writ of certiorari, or the date the judgment is affirmed pursuant to such petition; or (iii) if no
24 appeal is filed, the expiration date of the time for filing or noticing any appeal of the Judgment.

25 11. “Final Approval” means the date on which the Court enters an order granting final
26 approval of the Settlement Agreement.

27 12. “Gross Settlement Amount” means the Gross Settlement Amount of Nine Hundred
28 Thousand Dollars (\$900,000), to be paid by Defendants in full satisfaction of all Released Class Claims

1 and Released PAGA Claims, which includes all Individual Settlement Payments, Attorneys' Fees and
2 Costs, the Class Representative Enhancement Payment, the PAGA Settlement Amount, and Settlement
3 Administration Costs. This Gross Settlement Amount has been agreed to by Plaintiff and Defendants
4 based on the aggregation of the agreed-upon settlement value of individual claims. In no event will
5 Defendants be liable for more than the Gross Settlement Amount. There will be no reversion of the
6 Gross Settlement Amount to Defendants. Defendants will be separately responsible for any employer
7 payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions, which shall
8 not be paid from the Gross Settlement Amount.

9 13. "Individual Settlement Payment" means each Participating Class Member's and PAGA
10 Member's respective shares of the Net Settlement Fund and PAGA Fund.

11 14. "Net Settlement Fund" means the portion of the Gross Settlement Amount remaining
12 after deducting the Attorneys' Fees and Costs, the Class Representative Enhancement Payment, the
13 PAGA Settlement Amount, and Settlement Administration Costs. The Net Settlement Fund will be
14 distributed to Participating Class Members. There will be no reversion of the Net Settlement Fund to
15 Defendants.

16 15. "Notice of Objection" means a Class Member's valid and timely written objection to the
17 Settlement Agreement. For the Notice of Objection to be valid, it must include: (i) the objector's full
18 name, signature, address, and telephone number, (ii) a written statement of all grounds for the objection
19 accompanied by any legal support for such objection; (iii) copies of any papers, briefs, or other
20 documents upon which the objection is based; and (iv) a statement whether the objector intends to appear
21 at the final fairness hearing. Any Class Member who does not submit a timely written objection to the
22 Settlement, or who fails to otherwise comply with the specific and technical requirements of this section,
23 will be foreclosed from objecting to the Settlement and seeking any adjudication or review of the
24 Settlement, by appeal or otherwise.

25 16. "Notice Packet" means the Notice of Class Action Settlement, substantially in the form
26 attached as Exhibit A.

27 17. "PAGA Members" means all nonexempt or hourly paid employees of Defendants who
28 worked in California from December 11, 2019, through the date of Preliminary Approval or October 20,

2021, whichever is earlier.

18. “PAGA Period” means the period from December 11, 2019 through the date of Preliminary Approval.

19. “PAGA Settlement Amount” means the amount that the Parties have agreed to pay to the Labor and Workforce Development Agency (“LWDA”) and PAGA Members in connection with Plaintiff’s claim under the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”) (“PAGA Settlement”). The Parties have agreed that Forty Thousand Dollars (\$40,000) of the Gross Settlement Amount will be allocated to the PAGA Settlement. Pursuant to PAGA, Seventy-Five Percent (75%), or Thirty Thousand Dollars (\$30,000), of the PAGA Settlement Amount will be paid to the California Labor and Workforce Development Agency (“Labor and Workforce Development Agency Payment”), and Twenty-Five Percent (25%), or Ten Thousand Dollars (\$10,000), of the PAGA Settlement will be disbursed to PAGA Members, and regardless whether they request to be excluded from the Settlement Class.

20. “Parties” means Plaintiff and Defendants collectively.

21. “Participating Class Members” means all Class Members who do not submit timely and valid Requests for Exclusion.

22. “Plaintiff” means Plaintiff Lucio Rosas.

23. “Preliminary Approval” means the date on which the Court enters an order granting preliminary approval of the Settlement Agreement.

24. “Released Class Claims” means all claims, rights, demands, liabilities and causes of action, whether known or unknown, that were asserted or that could have been asserted based on the facts alleged in the operative complaint during the Class Period, including but not limited to, all claims under California Labor Code §§ 201-204, 210, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 2802, any applicable California Industrial Welfare Commission Wage Order, California Code of Regulations, tit. 8, § 11070(14), the California Unfair Competition Law, California Business & Professions Code §§ 17200, *et seq.*, and any remedies for any of the claims described herein, including damages, penalties, restitution, declaratory relief, equitable or injunctive relief, interest, and attorneys’ fees and costs.

1 25. “Released PAGA Claims” means all claims asserted through California Labor Code
2 §§ 2698, *et seq.*, that arise out of or are related to the Released Class Claims during the PAGA Period.

3 26. “Released Parties” means Defendants, and/or any of their current and former parents,
4 successors, predecessors, affiliates, subsidiaries and related entities, including Duke’s Malibu
5 Partnership, LP; Waterfront Restaurants Inc., a California S Corporation d/b/a Jake’s Del Mar; Duke’s
6 La Jolla, LLC; Sunnyside Resorts Inc., and any of their current or former officers, directors, members,
7 shareholders, managers, human resources representatives, employees, agents, contractors, insurance
8 carriers, representatives, or attorneys.

9 27. “Request for Exclusion” means a timely letter submitted by a Class Member indicating a
10 request to be excluded from the Settlement Class. The Request for Exclusion must: (i) set forth the name,
11 address, telephone number and last four digits of the Social Security Number of the Class Member
12 requesting exclusion; (ii) be signed by the Class Member; (iii) be returned to the Settlement
13 Administrator; (iv) clearly state that the Class Member does not wish to be included in the Settlement;
14 and (v) be faxed or postmarked on or before the Response Deadline.

15 28. “Response Deadline” means the deadline by which Class Members must postmark or
16 fax to the Settlement Administrator Requests for Exclusion, postmark or fax disputes concerning the
17 calculation of Individual Settlement Payments, or postmark Notices of Objection to the Settlement
18 Administrator. The Response Deadline will be forty-five (45) calendar days from the initial mailing of
19 the Notice Packet by the Settlement Administrator, unless the forty-fifth (45th) calendar day falls on a
20 Sunday or State holiday, in which case the Response Deadline will be extended to the next day on which
21 the U.S. Postal Service is open.

22 29. “Settlement Administration Costs” means the costs payable from the Gross Settlement
23 Amount to the Settlement Administrator for administering this Settlement, including, but not limited to,
24 printing, distributing, and tracking documents for this Settlement, tax reporting, distributing the Gross
25 Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The
26 Settlement Administration Costs will be paid from the Gross Settlement Amount, including, if necessary,
27 any such costs in excess of the amount represented by the Settlement Administrator as being the
28 maximum costs necessary to administer the Settlement. Based on an estimated Settlement Class of

1 approximately 2,700 Class Members, the Settlement Administration Costs are currently estimated to be
2 Twenty-Four Thousand Dollars (\$24,000).

3 30. "Settlement Administrator" means Simpluris Inc., or any other third-party class action
4 settlement administrator agreed to by the Parties and approved by the Court for the purposes of
5 administering this Settlement. The Parties each represent that they do not have any financial interest in
6 the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that
7 could create a conflict of interest.

8 **TERMS OF AGREEMENT**

9 The Plaintiff, on behalf of himself and the Settlement Class, and Defendants agree as follows:

10 31. Funding of the Gross Settlement Amount. Defendants will make a one-time deposit of
11 the Gross Settlement Amount of Nine Hundred Thousand Dollars (\$900,000) into a Qualified Settlement
12 Account to be established by the Settlement Administrator. Defendants will pay the employer's share of
13 payroll taxes separately. After the Effective Date, the Gross Settlement Amount will be used for:
14 (i) Individual Settlement Payments; (ii) the Labor and Workforce Development Agency Payment;
15 (iii) the Class Representative Enhancement Payment; (iv) Attorneys' Fees and Costs; and (v) Settlement
16 Administration Costs. Defendants will deposit the Gross Settlement Amount within thirty (30) calendar
17 days of the Effective Date ("Funding Date").

18 32. Attorneys' Fees and Costs. Defendants agree not to oppose or impede any application or
19 motion by Class Counsel for Attorneys' Fees and Costs of not more than Three Hundred Thousand
20 Dollars (\$300,000), plus the reimbursement of all out-of-pocket costs and expenses associated with Class
21 Counsel's litigation and settlement of the Action (including expert/consultant fees, investigations costs,
22 etc.), not to exceed Fifteen Thousand Dollars (\$15,000), both of which will be paid from the Class
23 Settlement Amount. However, if the amount of the requested Attorneys' Fees and Costs is reduced by
24 the Court, all other terms of this Settlement Agreement will remain in effect. Any reduction in Attorneys'
25 Fees and Costs shall be allocated back to the Net Settlement Amount.

26 33. Class Representative Enhancement Payment. In exchange for a general release, and in
27 recognition of his effort and work in prosecuting the Action on behalf of Class Members, Defendants
28 agree not to oppose or impede any application or motion for a Class Representative Enhancement

1 Payment of Ten Thousand Dollars (\$10,000). The Class Representative Enhancement Payment will be
2 paid from the Gross Settlement Amount and will be in addition to Plaintiff's Individual Settlement
3 Payment paid pursuant to the Settlement. Plaintiff will be solely and legally responsible to pay any and
4 all applicable taxes on the Class Representative Enhancement Payment. However, if the amount of the
5 requested Class Representative Enhancement Payment is reduced by the Court, all other terms of this
6 Settlement Agreement will remain in effect. Any reduction in Class Representative Enhancement
7 Payment shall be allocated back to the Net Settlement Amount.

8 34. Settlement Administration Costs. Subject to Court approval, the Settlement
9 Administrator will be paid for the reasonable costs of administration of the Settlement and distribution of
10 payments from the Gross Settlement Amount, which is currently estimated to be Twenty-Four Thousand
11 Dollars (\$24,000). These costs, which will be paid from the Gross Settlement Amount, will include, *inter*
12 *alia*, the required tax reporting on the Individual Settlement Payments, the issuing of 1099 and W-2 IRS
13 Forms, distributing Notice Packets, calculating and distributing the Gross Settlement Amount, and
14 providing necessary reports and declarations. Any Court ordered reduction or unused portion of the
15 Settlement Administration Costs shall be allocated back to the Net Settlement Amount.

16 35. PAGA Settlement Amount. Subject to Court approval, the Parties agree that the amount
17 of Forty Thousand Dollars (\$40,000) from the Gross Settlement Amount will be designated for
18 satisfaction of Plaintiff's PAGA claim. Pursuant to PAGA, Seventy-Five Percent (75%), or Thirty
19 Thousand Dollars (\$30,000), of this sum will be paid to the LWDA and Twenty-Five Percent (25%), or
20 Ten Thousand Dollars (\$10,000), will be paid to PAGA Members in proportion to the number of
21 biweekly pay periods worked during the PAGA Period.

22 36. No Right to Exclusion or Objections by PAGA Members. Because this settlement
23 resolves claims and actions brought pursuant to PAGA by Plaintiff acting as a proxy and as a Private
24 Attorney General of, and for, the State of California and the LWDA, the Parties agree that no PAGA
25 Member has the right to exclude himself or herself from the Settlement pertaining to the Released
26 PAGA Claims. PAGA Members will be bound by the terms of the Settlement Agreement, upon its
27 approval by the Court, regardless of whether he or she cashes any payment received as a result of this
28 Settlement. The Parties also agree that no PAGA Member has the right to object to the terms of the

Settlement Agreement pertaining to settlement of the PAGA claims and the Released PAGA Claims.

37. Net Settlement Fund. The entire Net Settlement Fund will be distributed to Participating Class Members. No portion of the Net Settlement Fund will revert to or be retained by Defendants.

38. PAGA Fund. The entire PAGA Fund will be distributed to all PAGA Members. No portion of the PAGA Fund will revert to or be retained by Defendants.

39. Individual Settlement Payment Calculations. Individual Settlement Payments will be calculated and apportioned from the Net Settlement Fund and PAGA Fund based on the number of biweekly pay periods a Participating Class Member worked during the Class Period and a PAGA Member worked during the PAGA Period. Specific calculations of Individual Settlement Payments will be made as follows:

39(a) Payments from the Net Settlement Fund. Defendants will calculate the total number of biweekly pay periods worked by each Class Member during the Class Period and the aggregate total number of biweekly pay periods worked by all Class Members during the Class Period. To determine each Class Member's estimated "Individual Settlement Payment" from the Net Settlement Fund, the Settlement Administrator will use the following formula: The Net Settlement Fund will be divided by the aggregate total number of biweekly pay periods worked, resulting in the "Pay Period Value." Each Class Member's "Individual Settlement Payment" will be calculated by multiplying each individual Class Member's total number of biweekly pay periods worked by the Pay Period Value. The Individual Settlement Payment will be reduced by any required deductions for each Participating Class Member as specifically set forth herein, including employee-side tax withholdings or deductions. The entire Net Settlement Fund will be disbursed to all Class Members who do not submit timely and valid Requests for Exclusion. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual Settlement Payment for each Participating Class Member

1 according to the number of biweekly pay periods worked, so that the
2 amount actually distributed to the Settlement Class equals 100% of the Net
3 Settlement Fund.

4 39(b) Payments from the PAGA Fund. Defendants will calculate the total number
5 of biweekly pay periods worked by each PAGA Member during the PAGA
6 Period and the aggregate total number of biweekly pay periods worked by
7 all PAGA Members during the PAGA Period. To determine each PAGA
8 Member's estimated "Individual Settlement Payment," the Settlement
9 Administrator will use the following formula: The PAGA Fund will be
10 divided by the aggregate total number of biweekly pay periods worked,
11 resulting in the "PAGA Pay Period Value." Each PAGA Member's
12 "Individual Settlement Payment" will be calculated by multiplying each
13 individual PAGA Member's total number of biweekly pay periods worked
14 by the PAGA Pay Period Value. Because PAGA payments are civil
15 penalties, no tax withholding will be made in connection with these
16 payments. The entire PAGA Fund will be disbursed to all PAGA
17 Members.

18 40. No Credit Toward Benefit Plans. None of the payments made pursuant to the Settlement
19 Agreement shall be considered for purposes of determining eligibility for, vesting or participation in, or
20 contributions to any benefit plan, including, without limitation, all plans subject to the Employee
21 Retirement and Income Security Act of 1974 ("ERISA"). The Individual Settlement Payments made to
22 Participating Class Members under this Settlement, as well as any other payments made pursuant to this
23 Settlement, will not be utilized to calculate any additional benefits under any benefit plans to which any
24 Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k)
25 plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan.
26 Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions,
27 or amounts to which any Class Members may be entitled under any benefit plans. For purposes of this
28 Agreement, "benefit plan" means each and every "employee benefit plan," as defined in 29 U.S.C.

§ 1002(3), and, even if not thereby included, any 401(k) plan, bonus, pension, stock option, stock purchase, stock appreciation, welfare, profit sharing, retirement, disability, vacation, severance, hospitalization, insurance, incentive, deferred compensation, or any other similar benefit plan, practice, program, or policy.

41. Administration Process. The Parties agree to cooperate in the administration of the settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in administration of the Settlement.

42. Delivery of the Class List. Within twenty-one (21) calendar days of Preliminary Approval, Defendants will provide the Class List to the Settlement Administrator.

43. Notice by First-Class U.S. Mail. Within ten (10) calendar days after receiving the Class List from Defendants, the Settlement Administrator will mail a Notice Packet to all Class Members via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class List.

44. Confirmation of Contact Information in the Class Lists. Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. Any Notice Packets returned to the Settlement Administrator as non-deliverable on or before the Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on the Notice Packet. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address and/or Social Security number of the Class Member involved, and will then perform a single re-mailing. Those Class Members who receive a re-mailed Notice Packet, whether by skip-trace or by request, will have either (i) an additional fifteen (15) calendar days or (ii) until the Response Deadline, whichever is later, to submit a Request for Exclusion or an objection to the Settlement.

45. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice Packet will provide: (i) information regarding the nature of the Action; (ii) a summary of the Settlement's principal terms; (iii) the Settlement Class and PAGA Member definitions; (iv) the total number of

1 biweekly pay periods each respective Class Member and PAGA Member worked for Defendants during
2 the Class Period and PAGA Period; (v) each Class Member's and PAGA Member's estimated
3 Individual Settlement Payment and the formula for calculating Individual Settlement Payments; (vi) the
4 dates which comprise the Class Period and PAGA Period; (vii) instructions on how to submit Requests
5 for Exclusion or Notices of Objection; (viii) the deadlines by which the Class Member must postmark or
6 fax Request for Exclusions, or postmark Notices of Objection to the Settlement; and (ix) the claims to be
7 released.

8 46. Disputed Information on Notice Packets. Class Members will have an opportunity to
9 dispute the information provided in their Notice Packets. To the extent Class Members dispute the
10 number of biweekly pay periods on record, Class Members may produce evidence to the Settlement
11 Administrator showing that such information is inaccurate. Defendants' records will be presumed
12 correct, but the Settlement Administrator shall contact the Parties regarding the dispute and the Parties
13 will work in good faith to resolve it. All disputes must be submitted by the Response Deadline, and will
14 be decided by the Settlement Administrator within ten (10) business days after the Response Deadline.

15 47. Defective Submissions. If a Class Member's Request for Exclusion is defective as to the
16 requirements listed herein, that Class Member will be given an opportunity to cure the defect(s). The
17 Settlement Administrator will mail the Class Member a cure letter within three (3) business days of
18 receiving the defective submission to advise the Class Member that his or her submission is defective
19 and that the defect must be cured to render the Request for Exclusion valid. The Class Member will have
20 until (i) the Response Deadline or (ii) fifteen (15) calendar days from the date of the cure letter,
21 whichever date is later, to postmark or fax a revised Request for Exclusion. If the revised Request for
22 Exclusion is not postmarked or received by fax within that period, it will be deemed untimely.

23 48. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the
24 Settlement Agreement must sign and fax or postmark a written Request for Exclusion to the Settlement
25 Administrator within the Response Deadline. In the case of Requests for Exclusion that are mailed to the
26 Settlement Administrator, the postmark date will be the exclusive means to determine whether a Request
27 for Exclusion has been timely submitted.

28 49. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class Member

1 who does not affirmatively opt-out of the Settlement Agreement by submitting a timely and valid
2 Request for Exclusion will be bound by all of its terms, including those pertaining to the Released Class
3 Claims, as well as any Judgment that may be entered by the Court if it grants final approval to the
4 Settlement.

5 50. Releases by Participating Class Members. Upon the Funding Date, and except as to such
6 rights or claims as may be created by this Settlement Agreement, each Participating Class Member,
7 together and individually, on their behalf and on behalf of their respective heirs, executors,
8 administrators, agents, and attorneys, shall fully and forever release and discharge all of the Released
9 Parties, or any of them, from each of the Released Class Claims during the Class Period.

10 51. Releases by PAGA Members. Upon the Funding Date, and except as to such rights or
11 claims as may be created by this Settlement Agreement, each PAGA Member, together and individually,
12 on their behalf and on behalf of their respective heirs, executors, administrators, agents, and attorneys,
13 shall fully and forever release and discharge all of the Released Parties, or any of them, from each of the
14 Released PAGA Claims during the PAGA Period.

15 52. Defendants' Right to Rescind. Defendants will have, in their sole discretion, the right to
16 void and withdraw from the Settlement if, at any time prior to Final Approval, Five Percent (5%) or
17 more of Class Members opt out of the settlement. Defendants must exercise this right of rescission in
18 writing to Class Counsel within fourteen (14) calendar days after the Response Deadline or any
19 extension of time afforded to the Class Members to respond to the Notice Packet, whichever is later. If
20 the option to rescind is exercised, then Defendants will be solely responsible for all Settlement
21 Administration Costs incurred to the date of rescission.

22 53. Objection Procedures. To object to the Settlement Agreement, a Class Member may
23 either postmark a valid Notice of Objection to the Settlement Administrator on or before the Response
24 Deadline, or appear in person at the Final Approval Hearing. Class Members who fail to object either by
25 submitting a valid Notice of Objection or appearing in person at the Final Approval Hearing will be
26 deemed to have waived all objections to the Settlement and will be foreclosed from making any
27 objections, whether by appeal or otherwise, to the Settlement Agreement. Class Members have a right to
28 appear at the Final Approval Hearing in order to have their objections heard by the Court. At no time will

1 any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit
2 written objections to the Settlement Agreement or appeal from the final approval order and judgment.
3 Class Counsel will not represent any Class Members with respect to any such objections to this
4 Settlement. If a Class Member timely submits both a Notice of Objection and a Request for Exclusion,
5 the Request for Exclusion will be given effect and considered valid, the Notice of Objection shall be
6 rejected, and the Class Member shall not participate in or be bound by the Settlement.

7 54. Certification Reports Regarding Individual Settlement Payment Calculations. The
8 Settlement Administrator will provide Defendants' counsel and Class Counsel a weekly report that
9 certifies the number of Class Members who have submitted valid Requests for Exclusion, objections to
10 the Settlement, and whether any Class Member has submitted a challenge to any information contained
11 in their Notice Packet. Additionally, the Settlement Administrator will provide to counsel for both Parties
12 any updated reports regarding the administration of the Settlement Agreement as needed or requested.

13 55. Distribution Timing of Individual Settlement Payments. Within ten (10) calendar days
14 of the Funding Date, the Settlement Administrator will issue payments to: (i) Participating Class
15 Members and PAGA Members; (ii) the Labor and Workforce Development Agency; (iii) Plaintiff; and
16 (iv) Class Counsel. The Settlement Administrator will also issue a payment to itself for Court-approved
17 services performed in connection with the Settlement.

18 56. Un-cashed Settlement Checks. Funds represented by Individual Settlement Payment
19 checks returned as undeliverable and Individual Settlement Payment checks remaining un-cashed for
20 more than one hundred and eighty (180) calendar days after issuance will be tendered to Worksafe.

21 57. Certification of Completion. Upon completion of administration of the Settlement, the
22 Settlement Administrator will provide a written declaration under oath to certify such completion to the
23 Court and counsel for all Parties.

24 58. Treatment of Individual Settlement Payments. All Individual Settlement Payments will
25 be allocated as follows: (i) Twenty Percent (20%) of each Individual Settlement Payment will be
26 allocated as wages for which IRS Forms W-2 will be issued; and (ii) Eighty Percent (80%) will be
27 allocated as non-wages for which IRS Forms 1099-MISC will be issued.

28 59. Administration of Taxes by the Settlement Administrator. The Settlement Administrator

1 will be responsible for issuing to Plaintiff, Participating Class Members, and Class Counsel any W-2,
2 1099, or other tax forms as may be required by law for all amounts paid pursuant to this Settlement. The
3 Settlement Administrator will also be responsible for forwarding all payroll taxes and penalties to the
4 appropriate government authorities.

5 60. Tax Liability. Defendants make no representation as to the tax treatment or legal effect
6 of the payments called for hereunder, and Plaintiff and Participating Class Members are not relying on
7 any statement, representation, or calculation by Defendants or by the Settlement Administrator in this
8 regard.

9 61. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES
10 OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS
11 AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”)
12 ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND
13 NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES
14 OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR
15 WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED
16 OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
17 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
18 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS
19 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
20 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS
21 AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY
22 ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY
23 UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO
24 ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
25 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
26 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF
27 ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER
28 SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE

1 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
2 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
3 AGREEMENT.

4 62. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant
5 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
6 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of
7 action or right herein released and discharged.

8 63. Nullification of Settlement Agreement. In the event that: (i) the Court does not finally
9 approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other
10 reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null
11 and void. Any order or judgment entered by the Court in furtherance of this Settlement Agreement will
12 likewise be treated as void from the beginning.

13 64. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to request
14 the Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary Approval Order
15 for: (i) conditional certification of the Settlement Class for settlement purposes only, (ii) preliminary
16 approval of the proposed Settlement Agreement, (iii) setting a date for a final fairness hearing. The
17 Preliminary Approval Order will provide for the Notice Packet to be sent to all Class Members as
18 specified herein. In conjunction with the Preliminary Approval hearing, Plaintiff will submit this
19 Settlement Agreement, which sets forth the terms of this Settlement, and will include the proposed
20 Notice of Class Action Settlement, attached as Exhibit A. Class Counsel will be responsible for drafting
21 all documents necessary to obtain preliminary approval.

22 65. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the
23 deadlines to postmark Requests for Exclusion or objections to the Settlement Agreement, and with the
24 Court's permission, a final fairness hearing will be conducted to determine the Final Approval of the
25 Settlement Agreement along with the amounts properly payable for: (i) Attorneys' Fees and Costs;
26 (ii) the Class Representative Enhancement Payment; (iii) Individual Settlement Payments; (iv) the Labor
27 and Workforce Development Agency Payment; (v) all Settlement Administration Costs. The final
28 fairness hearing will not be held earlier than thirty (30) calendar days after the Response Deadline. Class

1 Counsel will be responsible for drafting all documents necessary to obtain final approval. Class Counsel
2 will also be responsible for drafting the attorneys' fees and costs application to be heard at the final
3 approval hearing.

4 66. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by the
5 Court or after the final fairness hearing, the Parties will present the Judgment to the Court for its
6 approval. After entry of the Judgment, the Court will have continuing jurisdiction solely for purposes of
7 addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) Settlement
8 administration matters, and (iii) such post-Judgment matters as may be appropriate under court rules or
9 as set forth in this Settlement Agreement. A copy of the Judgment will be posted to the Settlement
10 Administrator's website.

11 67. Release by Plaintiff. Upon the Funding Date, in addition to the claims being released by
12 all Participating Class Members, Plaintiff will release and forever discharge the Released Parties, to the
13 fullest extent permitted by law, of and from any and all claims, known and unknown, asserted and not
14 asserted, which Plaintiff has or may have against the Released Parties as of the date of execution of this
15 Settlement Agreement. To the extent the foregoing release is a release to which Section 1542 of the
16 California Civil Code or similar provisions of other applicable law may apply, Plaintiff expressly waives
17 any and all rights and benefits conferred upon him by the provisions of Section 1542 of the California
18 Civil Code or similar provisions of applicable law which are as follows:

19 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
20 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
21 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE
22 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
23 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
24 PARTY.

25 68. Injunction from Pursuing Released Claims: Upon final approval of the Settlement,
26 Participating Class Members and PAGA Members shall be enjoined from filing, initiating, or continuing
27 to prosecute any actions, claims, complaints, or proceedings in any court, or with the California
28 Divisions of Labor Standards Enforcement ("DLSE"), or with the LWDA, or the United States

1 Department of Labor (“DOL”), or with any other entity regarding the Released Class Claims and/or the
2 Released PAGA Claims. This Settlement is conditioned upon the release by the Participating Class
3 Members and the PAGA Members as described herein.

4 69. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include the
5 terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth
6 herein. Any Exhibits to this Settlement Agreement are an integral part of the Settlement.

7 70. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the
8 entirety of the Parties’ settlement terms. No other prior or contemporaneous written or oral agreements
9 may be deemed binding on the Parties. The Parties expressly recognize California Civil Code Section
10 1625 and California Code of Civil Procedure Section 1856(a), which provide that a written agreement is
11 to be construed according to its terms and may not be varied or contradicted by extrinsic evidence, and
12 the Parties agree that no such extrinsic oral or written representations or terms will modify, vary or
13 contradict the terms of this Settlement Agreement.

14 71. Interim Stay of Proceedings: The Parties agree to refrain from further litigation in the
15 Action, except such proceedings necessary to implement and to obtain preliminary and final approval of
16 the terms of the Settlement. If the Settlement is not finally approved, the Parties agree that they will
17 revert to their positions in the lawsuit prior to the time the Settlement was reached, and no terms set forth
18 in this Settlement will be admissible in any future proceedings in this Action or any other action.

19 72. Amendment or Modification. No amendment, change, or modification to this Settlement
20 Agreement will be valid unless in writing and signed, either by the Parties or their counsel.

21 73. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and
22 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement
23 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant
24 to this Settlement Agreement to effectuate its terms and to execute any other documents required to
25 effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each
26 other and use their best efforts to effect the implementation of the Settlement. If the Parties are unable to
27 reach an agreement on the form or content of any document needed to implement the Settlement, or on
28 any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the

1 Parties may seek the assistance of the Court to resolve such disagreement.

2 74. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,
3 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

4 75. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto
5 will be governed by and interpreted according to the laws of the State of California.

6 76. Execution and Counterparts. This Settlement Agreement is subject only to the execution
7 of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All
8 executed counterparts and each of them, including electronic (e.g., DocuSign), facsimile, and scanned
9 copies of the signature page, will be deemed to be one and the same instrument.

10 77. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this
11 Settlement Agreement is a fair, adequate and reasonable settlement of the Action and have arrived at this
12 Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into account
13 all relevant factors, present and potential. The Parties further acknowledge that they are each represented
14 by competent counsel and that they have had an opportunity to consult with their counsel regarding the
15 fairness and reasonableness of this Settlement.

16 78. Invalidity of Any Provision. Before declaring any provision of this Settlement
17 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
18 possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement
19 valid and enforceable.

20 79. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class
21 certification for purposes of this Settlement only; except, however, that Plaintiff or Class Counsel may
22 appeal any reduction to the Attorneys' Fees and Costs below the amount they request from the Court,
23 and either party may appeal any court order that materially alters the Settlement Agreement's terms.

24 80. Class Action Certification for Settlement Purposes Only. The Parties agree to stipulate to
25 class action certification for purposes of the Settlement only. If, for any reason, the Settlement is not
26 approved, the stipulation to certification will be void. The Parties further agree that certification for
27 purposes of the Settlement is not an admission that class action certification is proper under the standards
28 applied to contested certification motions and that this Settlement Agreement will not be admissible in

1 this or any other proceeding as evidence that either (i) a class action should be certified or (ii) Defendants
2 are liable to Plaintiff or any Class Member, other than according to the Settlement's terms.

3 81. Non-Admission of Liability. The Parties enter into this Settlement to resolve the dispute
4 that has arisen between them and to avoid the burden, expense and risk of continued litigation. In
5 entering into this Settlement, Defendants do not admit, and specifically deny, that it violated any federal,
6 state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other
7 applicable laws, regulations or legal requirements; breached any contract; violated or breached any duty;
8 engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to
9 their employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the
10 negotiations connected with it, will be construed as an admission or concession by Defendants of any
11 such violations or failures to comply with any applicable law. Except as necessary in a proceeding to
12 enforce the terms of this Settlement, this Settlement Agreement and its terms and provisions will not be
13 offered or received as evidence in any action or proceeding to establish any liability or admission on the
14 part of Defendants or to establish the existence of any condition constituting a violation of, or a non-
15 compliance with, federal, state, local or other applicable law.

16 82. No Waiver by Defendants To Enforce the Arbitration Agreement: Defendants have
17 notified Plaintiff that some Class Members are subject to arbitration agreements with an express waiver
18 to participate in a class action. Defendants also timely asserted a defense based on the existence of the
19 arbitration agreements and at all times intend to enforce the arbitration agreements in the Action. Plaintiff
20 and Class Members reserve their right to challenge the validity and the enforceability of the arbitration
21 agreements either in the Action or future proceedings. However, Plaintiff and Class Members agree that
22 Defendants' participation in this Settlement shall not constitute any waiver of their right to enforce the
23 arbitration agreements in the Action or future proceedings.

24 83. No Public Comment: Plaintiff and Class Counsel will not publicize the Settlement on
25 their websites, in advertising/marketing materials or on social media, other than in court filings. The
26 Parties and their counsel agree that they will not issue any press releases or initiate any contact with the
27 media about the fact, amount, or terms of the Settlement. If counsel for any party receives an inquiry
28 about the Settlement from the media, counsel may respond only after the motion for approval of the

1 Settlement has been filed and only by confirming the accurate terms of the Settlement. Nothing in this
2 provision shall prevent Defendants from making any required disclosure.

3 84. Waiver. No waiver of any condition or covenant contained in this Settlement Agreement
4 or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
5 constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

6 85. Enforcement Actions. In the event that one or more of the Parties institutes any legal
7 action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement
8 or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be
9 entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including
10 expert witness fees incurred in connection with any enforcement actions.

11 86. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
12 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed
13 more strictly against one party than another merely by virtue of the fact that it may have been prepared
14 by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations
15 between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

16 87. Representation By Counsel. The Parties acknowledge that they have been represented
17 by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and
18 that this Settlement Agreement has been executed with the consent and advice of counsel. Further,
19 Plaintiff and Class Counsel warrant and represent that there are no liens on the Settlement Agreement.

20 88. All Terms Subject to Final Court Approval. All amounts and procedures described in
21 this Settlement Agreement herein will be subject to final Court approval.

22 89. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good
23 faith and execute all documents to the extent reasonably necessary to effectuate the terms of this
24 Settlement Agreement.

25 90. Binding Agreement. The Parties warrant that they understand and have full authority to
26 enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully
27 enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in
28 any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that

1 otherwise might apply under federal or state law.

2 **READ CAREFULLY BEFORE SIGNING**

3
4 **PLAINTIFF**

5 Dated: 09.29.21

6 
Lucio Rosas

7
8
9 **DEFENDANTS DUKE'S SURF CITY**
10 **PARTNERSHIP, A CALIFORNIA LIMITED**
11 **PARTNERSHIP AND TS ALOHA, INC.**

12 Dated: _____

13 _____
Please Print Name of Authorized Signatory

14 **APPROVED AS TO FORM**

15 **CAPSTONE LAW APC**

16 Dated: _____

17 By: _____

Raul Perez

18 Attorneys for Plaintiff Lucio Rosas

19
20 **SEYFARTH SHAW, LLP**

21
22 Dated: _____

23 By: _____

Laura Shelby

24 Attorneys for Defendants Duke's Surf City
25 Partnership, A California Limited Partnership and TS
26 Aloha, Inc.

otherwise might apply under federal or state law.

READ CAREFULLY BEFORE SIGNING

PLAINTIFF

Dated: _____

Lucio Rosas

**DEFENDANTS DUKE'S SURF CITY
PARTNERSHIP, A CALIFORNIA LIMITED
PARTNERSHIP AND TS ALOHA, INC.**

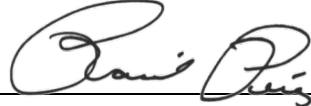
Dated: 9/10/2021

Jackie Reed
Jackie Reed

APPROVED AS TO FORM

CAPSTONE LAW APC

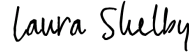
Dated: 9/30/2021

By: 
Raul Perez

Attorneys for Plaintiff Lucio Rosas

SEYFARTH SHAW, LLP

Dated: 9/13/2021

By: 
Laura Shelby

Attorneys for Defendants Duke's Surf City
Partnership, A California Limited Partnership and TS
Aloha, Inc.

Exhibit A

Rosas v. Duke's Surf City Partnership, et al., No. 20STCV47431
SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES
NOTICE OF CLASS ACTION SETTLEMENT

You are not being sued. This notice affects your rights. Please read it carefully

To: All nonexempt or hourly paid employees of Defendants Duke's Surf City Partnership, A California Limited Partnership and TS Aloha, Inc. (collectively, "Defendants") who worked in California from December 11, 2016, through October 20, 2021 ("Class Members").

All nonexempt or hourly paid employees of Defendants who worked in California from December 11, 2019, through October 20, 2021 ("PAGA Members").

On _____, the Honorable Carolyn B. Kuhl of the Los Angeles County Superior Court granted preliminary approval of this class action settlement and ordered the litigants to notify all Class Members of the settlement. **You have received this notice because Defendants' records indicate that you are a Class Member, and therefore entitled to a payment from the settlement.**

Unless you choose to opt out of the settlement by following the procedures described below, you will be deemed a Class Member and, if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement fund. The Final Fairness Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at ____:00 ____m. on _____, 2021 in Department 12 of the Los Angeles County Superior Court located at 312 North Spring Street, Los Angeles, California 90012.

You are not required to attend the hearing, but if you wish to attend, you may attend the hearing telephonically (remotely), which can be set up through LA Court Connect (www.lacourt.org/lacc/). A prescheduled appointment is currently necessary to review any documents in the clerk's office.

Please note that face masks and/or facial coverings are required and mandatory at all times to enter any courthouse or courtroom and must be worn covering the nose and mouth. This policy applies to attorneys, parties, witnesses, court staff, Judges, Commissioners, vendors and the general public. The only exceptions to this policy will be for a documented medical condition or excuse, or an ADA accommodation approved by the Court. If an exception is granted, admittance into the courthouse may be restricted to a specific time of the day. If necessary, the time allotted for any granted exception may require the individual to wait until later in the day or schedule an appointment for admittance. Visit http://www.lacourt.org/pdf/recovery_social_distancing.pdf for more information about the Court's social distancing protocol.

Please also note that the Final Fairness Hearing may be rescheduled by the Court to another date and/or time. Please visit [settlement website] for any scheduling changes.

If you move, you must send the Settlement Administrator your new address; otherwise, you may never receive your settlement payment. It is your responsibility to keep a current address on file with the Settlement Administrator.

Summary of the Litigation

Plaintiff Lucio Rosas, on his behalf and on behalf of other current and former non-exempt employees, alleges that Defendants violated California state labor laws as a result of their alleged failure to, among other things: (1) pay minimum and overtime wages to employees for all hours worked; (2) provide employees with meal and rest breaks; (3) timely pay all wages owed to employees during each pay period and upon termination of their employment; (4) failure to reimburse reasonable and necessary business expenses, and (5) provide employees with accurate, itemized wage statements.

Defendants have denied, and continue to deny the factual and legal allegations in the case and contend that they have complied with all California labor laws.

After the exchange of relevant information and evidence, the parties agreed to enter into settlement negotiations in an attempt to informally resolve the claims in the case. On July 20, 2021, the parties participated in a mediation with Louis Marlin, an experienced and well-respected class action mediator. With Mr. Marlin's guidance, the parties were able to negotiate a complete settlement of Plaintiff's claims.

By agreeing to settle, Defendants are not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action. Defendants have agreed to settle the case as part of a compromise with Plaintiff to avoid any further burden and expenses of litigation, which will allow Defendants to focus on reopening of its restaurants and recover from the unprecedented COVID-19 pandemic.

Counsel for Plaintiff, and the attorneys appointed by the Court to represent the class, Capstone Law APC ("Class Counsel"), have investigated and researched the facts and circumstances underlying the issues raised in the case and the applicable law. While Class Counsel believe that the claims alleged in this lawsuit have merit, Class Counsel also recognize that the risk and expense of continued litigation justify settlement. Based on the foregoing, Class Counsel believe the proposed settlement is fair, adequate, reasonable, and in the best interests of Class Members.

Conditional Certification For Settlement Purposes Only

The Court has conditionally certified the class for the sole purpose of the class action settlement. The Court has designated Plaintiff as a class representative in this lawsuit. The Court also appointed the attorneys at Capstone Law APC to be Class Counsel for the Class Members:

Raul Perez
Capstone Law APC
1875 Century Park E., Suite 1000
Los Angeles, CA 90067
Phone: 1 (888) 297-3489

Summary of The Proposed Settlement Terms

Plaintiff and Defendants have agreed to settle all claims alleged in this lawsuit, including the underlying class action claims, in exchange for a Gross Settlement Amount of \$900,000. This amount is inclusive of: (1) individual settlement payments to all Participating Class Members; (2) a Class Representative Enhancement Payment of \$10,000 to Lucio Rosas for his services on behalf of the class, and for a release of all claims arising out of his employment with Defendants; (3) \$300,000 in attorneys' fees and up to \$15,000 in litigation costs and expenses; (4) a \$40,000 settlement of claims under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), inclusive of a \$30,000 payment to the California Labor and Workforce Development Agency ("LWDA") in connection with the PAGA, and a \$10,000 payment ("PAGA Fund") to PAGA Members; and (5) reasonable Settlement Administrator's fees and expenses currently estimated at \$24,000. After deducting the above payments, a total of approximately \$_ will be allocated to Class Members who do not opt out of the Settlement Class ("Net Settlement Fund"). Additionally, all PAGA Members will receive a proportional share of the \$10,000 PAGA Fund, and regardless whether they opt out of the Settlement Class.

Payments from Net Settlement Fund. Defendants will calculate the total number of biweekly pay periods worked by each Class Member from December 11, 2016 through the date of Preliminary Approval ("Class Period") and the aggregate total number of biweekly pay periods worked by all Class Members during the Class Period. To determine each Class Member's estimated share of the Net Settlement Fund, the Settlement Administrator will use the following formula: The Net Settlement Fund will be divided by the aggregate total number of biweekly pay periods worked, resulting in the "Pay Period Value." Each Class Member's share of the Net Settlement Fund will be calculated by multiplying each

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

individual Class Member's total number of biweekly pay periods worked by the Pay Period Value. The Individual Settlement Payment will be reduced by any required deductions for each Class Members as specifically set forth herein, including employee-side tax withholdings or deductions. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionately increase each Participating Class Member's share of the Net Settlement Fund according to the number of biweekly pay periods worked, so that the amount actually distributed to the Settlement Class equals 100% of the Net Settlement Fund.

According to Defendants' records, you worked during the Class Period in a non-exempt position for a total of _____ biweekly pay periods. Accordingly, your estimated payment from the Net Settlement Fund is approximately \$_____.

Payments from PAGA Fund. Defendants will calculate the total number of biweekly pay periods worked by each PAGA Employee from December 11, 2019 through the date of Preliminary Approval ("PAGA Period") and the aggregate total number of biweekly pay periods worked by all PAGA Members during the PAGA Period. To determine each PAGA Employee's estimated share of the PAGA Fund, the Settlement Administrator will use the following formula: The PAGA Fund will be divided by the aggregate total number of biweekly pay periods, resulting in the "PAGA Pay Period Value." Each PAGA Employee's share of the PAGA Fund will be calculated by multiplying each individual Participating PAGA Employee's total number of biweekly pay periods by the PAGA Pay Period Value. A Request for Exclusion does not exclude a PAGA Employee from the release of claims under California Labor Code §§ 2698, *et seq.* and the PAGA Employee will receive their portion of the PAGA fund even if he or she submits a valid Request for Exclusion.

Your Estimated Payment: Based on the above, your estimated payment from the class action settlement is approximately \$_____. If you believe the Workweek information provided above is incorrect, please contact the Settlement Administrator to dispute the calculation. You must attach all documentation in support of your dispute (such as check stubs, W2s, or letters from HR). All disputes must be postmarked or faxed on or before [insert date of Response Deadline] and must be sent to:

Settlement Administrator

c/o _____

Fax No. _____

If you dispute the information stated above, Defendants' records will control unless you are able to provide documentation that establishes otherwise.

Taxes on Settlement Payments. IRS Forms W-2 and 1099 will be distributed to participating Class Members and the appropriate taxing authorities reflecting the payments they receive under the settlement. Class Members should consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement. For purposes of this settlement, 20% of each settlement payment will be allocated as wages for which IRS Forms W-2 will be issued, and 80% will be allocated as non-wages for which IRS Forms 1099-MISC will be issued.

Your Options Under the Settlement

Option 1 – Automatically Receive a Payment from the Settlement

If want to receive your payment from the settlement, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if and when the Settlement receives final approval by the Court.

If you choose **Option 1**, and if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement funds. In addition, you will be deemed to have released or waived the Released Class Claims and Released PAGA Claims:

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

Released Class Claims: All claims, rights, demands, liabilities and causes of action, whether known or unknown, that were asserted or that could have been asserted against the Released Parties based on the facts alleged in the operative complaint during the Class Period, including but not limited to, all claims under California Labor Code §§ 201-204, 210, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 2802, any applicable California Industrial Welfare Commission Wage Order, California Code of Regulations, tit. 8, § 11070(14), the California Unfair Competition Law, California Business & Professions Code §§ 17200, *et seq.*, and any remedies for any of the claims described herein, including, damages, penalties, restitution, declaratory relief, equitable or injunctive relief, interest, and attorneys' fees and costs. "Released Parties" means Defendants, and/or any of their current and former parents, successors, predecessors, affiliates, subsidiaries and related entities, including Duke's Malibu Partnership, LP; Waterfront Restaurants Inc., a California S Corporation d/b/a Jake's Del Mar; Duke's La Jolla, LLC; Sunnyside Resorts Inc., and any of their current or former officers, directors, members, shareholders, managers, human resources representatives, employees, agents, contractors, insurance carriers, representatives, or attorneys.

Released PAGA Claims: All claims asserted through California Labor Code §§ 2698, *et seq.*, that arise out of or are related to the Released Claims during the PAGA Period.

Option 2 – Opt Out of the Settlement

If you do not wish to participate in the settlement, you may exclude yourself from participating by submitting a written request to the Settlement Administrator expressly and clearly indicating that you have received this Notice of Class Action Settlement, decided not to participate in the settlement, and desire to be excluded from the settlement. The written request for exclusion must include your name, signature, address, telephone number, and last four digits of your Social Security Number. Sign, date, and mail the request for exclusion by First Class U.S. Mail or equivalent, to the address below.

Settlement Administrator

c/o _____

The Request for Exclusion must be postmarked or faxed not later than _____, 2021. If you submit a Request for Exclusion which is not postmarked or faxed by _____, 2021, your Request for Exclusion will be rejected, and you will be included in the settlement class.

If you choose **Option 2**, you will no longer be a Class Member, and you will:

- Not receive a payment from the Net Settlement Fund.
- Not release the Released Class Claims.
- You will, however, release the Released PAGA Claims, and will receive a payment from the PAGA Fund, provided that you worked for Defendants from December 11, 2019, through _____ [the date of preliminary approval of the class action settlement or October 20, 2021, whichever is earlier] (the "PAGA Period").

Option 3 – Object to the Settlement

If you decide to object to the settlement because you find it unfair or unreasonable, you may submit a written objection stating why you object to the settlement, or you may instead appear at the Final Fairness Hearing to object to the Settlement. Written objections must provide: (1) your full name, signature, address, and telephone number, (2) a written statement of all grounds for the objection accompanied by any legal support for such objection; (3) copies of any papers, briefs, or other documents upon which the objection is based; and (4) a statement about whether you intend to appear at the Fairness Hearing. The objection must be mailed to the administrator at [administrator's address].

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

All written objections must be received by the administrator by not later than _____ 2021. By submitting an objection, you are not excluding yourself from the settlement. To exclude yourself from the settlement, you must follow the directions described above. Please note that you cannot both object to the settlement and exclude yourself. You must choose one option only.

You may also, if you wish, appear at the Final Fairness Hearing set for _____ at _____ a.m./p.m. in the Superior Court of the State of California, for the County of Los Angeles and discuss your objection with the Court and the Parties at your own expense. You may also retain an attorney to represent you at the hearing.

If you choose **Option 3**, you will still be entitled to the money from the settlement. If the Court overrules your objection, you will be deemed to have released the Released Claims.

Additional Information

This Notice of Class Action Settlement is only a summary of the case and the settlement. For a more detailed statement of the matters involved in the case and the settlement, you may refer to the pleadings, the settlement agreement, and other papers filed in the case. All inquiries by Class Members regarding this Class Notice and/or the settlement should be directed to the Settlement Administrator.

Settlement Administrator
c/o _____

Phone: _____

PLEASE DO NOT CONTACT THE COURT.