

Kevin Mahoney, Esq. (SBN: 235367)
kmahoney@mahoney-law.net
Lilit Tunyan, Esq. (SBN: 329351)
ltunyan@mahoney-law.net
MAHONEY LAW GROUP, APC
249 E. Ocean Blvd., Ste. 814
Long Beach, CA 90802
Telephone: (562) 590-5550
Facsimile: (562) 590-8400

Attorneys for Plaintiff DANIEL MORALES, as an individual and on behalf of all similarly situated employees,

SUPERIOR COURT OF THE STATE OF CALIFORNIA
THE COUNTY OF SAN DIEGO

DANIEL MORALES,

Plaintiff,

v.

WISEGUYS CUSTOM HOME
THEATER, L.L.C.; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 37-2019-00070151-CU-OE-CTL

CLASS ACTION

**JOINT STIPULATION OF SETTLEMENT
AND RELEASE OF CLAIMS**

Assigned for all purposes to:
Hon. Katherine Bacal, Dept. C-69

Complaint Filed: November 27, 2019
Trial Date: None Yet Set

1 This Joint Stipulation of Class Action Settlement and Release (“Settlement,”
2 “Agreement” or “Settlement Agreement”) is made and entered into by and between Plaintiff
3 Daniel Morales (“Plaintiff”) and Defendant WISEGUYS CUSTOM HOME THEATER, L.L.C.
4 together with its officers, directors, employees, and agents (collectively “Defendant”). Plaintiff
5 and Defendant herein are referred to collectively as the “Parties,” with each being referred to as a
6 “Party.”

7 **WHEREAS**, on November 27, 2019, Plaintiff Daniel Morales filed a class action lawsuit
8 against Defendant in the Superior Court for the State of California, in and for the County of San
9 Diego, Case Number 37-2019-00070151-CU-OE-CTL, alleging the following claims and causes
10 of action: (1) failure to pay wages, (2) failure to provide meal periods or compensation in lieu
11 thereof, (3) failure to provide rest periods or compensation in lieu thereof, (4) failure to pay
12 wages of terminated or resigned employees, (5) failure to reimburse business expenses, (6)
13 failure to comply with the employee itemized wage statement provision, (7) violations of the
unfair competition law: B&P section 17200 et seq. (“Complaint”).

14 **WHEREAS**, on June 3, 2020, Plaintiff filed a First Amended Complaint to include a
15 cause of action for PAGA for violation of Labor Code section 2698 et seq. (Private Attorney
16 General Act (2004) (“PAGA”). Defendant filed an answer to the first amended complaint on
17 August 26, 2020 denying all claims alleged therein.

18 **WHEREAS**, the Defendant conducted internal and informal investigations regarding the
19 instant matter. Plaintiff served extensive written discovery pertaining to a wide range of topics,
20 including, but not limited to, Defendant’s policies and practices regarding overtime
21 compensation, meal and rest periods and timekeeping procedures.

22 **WHEREAS**, the Parties agreed to participate in mediation. Defendant through both
23 informal and formal discovery produced redacted copies of time cards and payroll records for all
24 forty-six (46) putative class members, prior to the mediation. Defendant represented before
25 mediation there were approximately forty-six (46) putative Class Members during the Class
26 Period. Defendant also represented and provided redacted signed settlement agreements for
27 twenty (20) putative Class Members who signed settlement and release of class and individual
28 claims prior to mediation.

1 **WHEREAS**, on December 21, 2020, the Parties participated in a full-day of remote
2 mediation of this dispute with mediator Leonid Zilberman, Esq. and reached a resolution of all
3 claims;

4 **WHEREAS**, the Parties desire to settle, compromise, and avoid litigation relating to the
5 claims described in the pleadings in the Action, and have agreed to settle the Action upon the
6 terms and conditions and for the consideration set forth in this Settlement Agreement;

7 **NOW, THEREFORE**, in consideration of the mutual promises and covenants contained
8 herein, the Parties agree as follows:

9 **I. OPERATIVE TERMS OF SETTLEMENT**

10 **A. RELATING TO CLASS MEMBERSHIP:**

11 1. “Class Members” means all current and former non-exempt employees employed
12 by Defendant in California on or after November 27, 2015 through the Date of Preliminary
13 Approval of the Stipulation. Current and former non-exempt employees of Defendant who have
14 previously settled with Defendant for any and all claims and causes of action as alleged in the
15 operative complaint (“Settling Class Members”) shall not receive an individual settlement
16 payment for the Class Allocation. The rest of the Class shall be referred to as the Non-Settling
17 Class Members. Both the Settling Class Members and the Non-Settling Class Members shall be
18 entitled to receive individual settlement payment for the PAGA allocation.

19 2. “Class” is the group of people comprised of the Class Members.

20 3. “Class Period” shall mean November 27, 2015 through the Date of Preliminary
21 Approval of the Stipulation.

22 4. “PAGA Period” shall mean one (1) year and sixty-five (65) days prior to the filing of
23 Plaintiff’s initial complaint in this matter, through the present.

24 **B. RELATING TO CLASS NOTICE:**

25 5. “Class List” means the list of all Class Members that Defendant will in good faith
26 compile from its records. Said list will include, in a readable format, each Class Member’s name,
27 most recent mailing address and telephone number as shown in Defendant’s records, Social
28 Security number as shown in Defendant’s records, and the number of workweeks worked for
Defendant during the Class Period. The Class List shall not be provided to Plaintiff’s counsel

1 except in de-identified format—i.e., without names or contact information, using employee
2 identification numbers only to identify Class Members.

3 6. “Notice Packet” and “Notice” means the document(s) attached as **Exhibit A**.

4 7. “Response Deadline” means sixty (60) calendar days after the date on which the
5 Settlement Administrator initially mails Notice Packets to Class Members.

6 C. RELATING TO CLASS PAYMENT:

7 8. “Settlement Member(s)” means any Class Member who does not timely and
8 properly Opt-Out of the settlement pursuant to the terms set forth herein.

9 9. “Settlement Amount” means seventy-six thousand dollars (\$76,000.00), which is
10 the maximum amount Defendant will and must pay under this Agreement. The Settlement
11 Amount includes all payments to be made to Settlement Members, to Plaintiff, to Class Counsel,
12 to Settlement Administration costs and to the California Labor and Workforce Development
13 Agency (“LWDA”) in settlement of California Private Attorney General Act, Cal. Lab. Code §§
14 2698, et seq. claims. The Settlement Amount is allocated as follows: (a) twenty-nine thousand
15 six hundred sixty-six dollars and sixty-seven cents (\$29,666.67.00) for payment to the Non-
16 Settling Class Settlement Members, of which ten percent (10%) shall, for tax purposes, be
17 deemed wages subject to Form W-2 reporting, and forty-five percent (45%) shall, for tax
18 purposes, be deemed non-wage penalties and forty-five percent (45%) shall be deemed interest;
19 (b) a maximum of twenty-five thousand three hundred thirty-three dollars and thirty-three cents
20 (\$25,333.33) (1/3rd) of the Settlement Amount) for the payment of Class Counsel’s Attorney
21 Fees, subject to Court approval; (c) a maximum of eight thousand dollars (\$8,000.00) for
22 payment of Class Counsel’s Costs, subject to Court approval; (d) seven thousand dollars
23 (\$7,000.00) allocated to PAGA, of which seventy-five percent (75%) or five thousand two
24 hundred fifty dollars (\$5,250.00) will be paid to the State of California for its share of the
25 Settlement Amount which will be paid by the Class Action Administrator to the LWDA, and
26 twenty-five percent (25%) or two thousand seven hundred fifty dollars(\$1,750.00) shall be paid
27 on a pro rata basis to the Settling and Non-Settling Class Members, all subject to the approval of
28 the Court; (e) a maximum of one thousand dollars (\$1,000.00) for the payment of a Class
Representative Service Payment to the named Plaintiff; and (f) a maximum of five thousand

1 dollars (\$5,000.00) for Settlement Administration Costs. . The Settlement Amount shall not
2 include employer payroll taxes. From the 10% allocated to wages payable to Settlement Class
3 Members the Defendant shall pay its employer payroll taxes in addition to the Settlement
4 Amount. In the event the Court does not approve and/or award the maximum sums stated in
5 subsections (b)-(f), any unapproved or un-awarded sums shall be added to the Class Recovery
6 (subsection (a)).

7 10. "Class Recovery" means the Settlement Amount less any amounts awarded by
8 the Court for Class Counsel's Attorney Fees, Class Counsel's Costs, any amounts awarded to the
9 State of California for its share of the PAGA claims, a Class Representative Service Payment,
10 and Settlement Administration Costs.

11 D. RELATING TO OTHER PAYMENTS:

12 11. "Class Counsel" means Kevin Mahoney and Lilit Tunyan of the Mahoney Law
13 Group, located at 249 E. Ocean Boulevard, Suite 814, Long Beach, California 90802.

14 12. "Class Counsel's Attorney Fees" means attorneys' fees, which shall not exceed
15 twenty-five thousand three hundred thirty-three dollars and thirty-three cents (\$25,333.33)
16 (1/3rd), subject to approval by the Court for Class Counsel's effort in investigating the Action,
17 litigating the Action, resolving the Action, administering the Settlement, including fees incurred
18 through final approval and disbursement of payments under this Settlement and obtaining an
19 entry of Judgment terminating the Action. Defendant agrees not to challenge or oppose Class
20 Counsel's motion or application for attorneys' fees up to twenty-five thousand three hundred
21 thirty-three dollars and thirty-three cents (\$25,333.33) (1/3rd).

22 13. "Class Counsel's Costs" means attorneys' costs (including expert fees and
23 associated costs) not to exceed eight thousand dollars (\$8,000.00), actually incurred by Class
24 Counsel in litigating and settling the Action, subject to approval by the Court. Said amounts
25 include, but are not limited to, costs incurred in investigating the Action, litigating the Action,
26 resolving the Action, administering the Settlement, including costs incurred through final
27 approval and disbursement of payments under this Settlement and obtaining entry of a Judgment
28 terminating the Action. Defendant agrees not to challenge or oppose Class Counsel's motion or
application for costs in any amount up to eight thousand dollars (\$8,000.00).

1 14. “Class Representative Service Payment” means the amount that the Court may
2 approve to be paid to Plaintiff in recognition of his effort and work in prosecuting the Action on
3 behalf of the Class Members which shall not exceed one thousand dollars (\$1,000.00).
4 Defendant agrees not to challenge or oppose Class Counsel’s motion or application for a Class
5 Representative Service Payment up to the amount stated in this paragraph.

6 15. “Settlement Administrator” means a third-party class action settlement
7 administrator agreed to by the Parties and approved by the Court for the purposes of
8 administering this settlement. The Parties each represent that they do not have any financial
9 interest in the Settlement Administrator or otherwise have a relationship with the Settlement
10 Administrator that could create a conflict of interest.

11 16. “Settlement Administration Costs” or “Administrator Costs” or “Administration
12 Costs” means the costs payable from the Settlement Amount to the Settlement Administrator for
13 administering this Settlement, including, but not limited to, printing, distributing, and tracking
14 documents for this Settlement, calculating estimated amounts per Settlement Member,
15 distributing the Settlement Amount, providing necessary reports and declarations, and other
16 duties and responsibilities set forth herein to process this Settlement, which amount shall not
exceed five thousand dollars (\$5,000.00).

17 E. RELATING TO RELEASED CLAIMS AND RELEASED PARTIES:

18 17. “Settlement Member Class Release” means the following release of claims, which
19 each Settlement Member gives Defendant in exchange for the consideration set forth in this
20 Agreement:

21 I hereby fully, forever, irrevocably, and unconditionally release and discharge for the
22 time period of November 27, 2015 through the Date of Preliminary Approval of the Stipulation,
23 WISEGUYS CUSTOM HOME THEATER, LLC, its future, past and present parent
24 corporations, subsidiaries, shareholders, members, employees, owners, directors, officers,
25 (collectively referred to as the “Released Parties”), from any and all claims that were alleged in
26 the Action, or that could have been alleged based on the facts alleged in the operative First
27 Amended Complaint in this Action, whether such claims were known or unknown to the
28 Settlement Member, including, but not limited to, claims for: (1) Any claims for unpaid wages

1 (including but not limited to overtime pay, minimum wage, bonuses, commissions, regular
2 wages, salary, (2) penalties for alleged missed meal period pay, missed rest period pay, failure to
3 pay wages of terminated or resigned employees, waiting time penalties, interest penalties, and all
4 other Labor Code and Wage Order penalties; (3) Any claims for failure to comply with the
5 employee itemized wage statement provision under California Labor Code section 226; (4) Any
6 claims for failure to keep accurate payroll records under California Labor Code section 1174; (5)
7 Any claims for failure to provide or make available meal and rest periods as required under
8 California Labor Code §§226.7, 512 and IWC Wage Orders; (6) Any claims for failure to
9 reimburse business expenses; (7) any other claims arising under the Labor Code or any Wage
10 Order, including but not limited to Labor Code § 2802; (8) claims under California Business and
11 Professions Code section 17200 et seq. This Release expressly excludes claims involving
12 workers' compensation, ERISA, unemployment insurance benefits and any other claims
13 prohibited from release by law.

14 18. "Settlement Member PAGA Release" means the following release from any and all
15 claims that were alleged in the Action, or that could have been alleged based on the facts alleged
16 in the operative First Amended Complaint in this Action.

17 **F. RELATING TO PRELIMINARY AND FINAL APPROVAL:**

18 19. "Settlement Court" means the Superior Court of California for the County of San
19 Diego, and specifically the courtroom in which case no. 37-2019-00070151-CU-OE-CTL is
20 pending, or any other court and/or courtroom holding jurisdiction.

21 20. "Preliminary Approval" means the Court order granting preliminary approval of
22 the Settlement Agreement.

23 21. "Final Approval" means the Court order granting final approval of the Settlement
24 Agreement.

25 22. "Effective Date" means the date on which the court order granting final approval
26 of the Settlement Agreement becomes a final Judgment and the Settlement is fully funded, and
27 after the time period for expiration of any appeals.

28 **II. ADDITIONAL TERMS**

23. **Preliminary Approval Hearing.** Within twenty-one (21) calendar days of the

1 execution of this Settlement Agreement or as necessary for the presently-set Motion for
2 Preliminary Approval hearing date, Plaintiff will file a motion with the Settlement Court seeking
3 an order in the form attached as **Exhibit B**. In conjunction with the Preliminary Approval
4 hearing, Plaintiff will submit this Settlement Agreement, which sets forth the terms of this
5 Settlement, and will include all attachments hereto. Class Counsel will be responsible for
6 drafting all documents necessary to obtain preliminary approval, and Class Counsel will submit
7 the settlement approval papers to the Settlement Court. Defendant may, but is not obligated to,
8 submit a separate brief in support of preliminary approval.

9 24. Delivery of the Class List. Within ten (10) calendar days of entry of
10 Preliminary Approval, Defendant will provide the Class List to the Settlement Administrator.
11 Defendant shall provide the Claims Administrator with the following information that is within
12 Defendant's possession for each Class Member: (1) the Class Member's name, (2) last known
13 address, (3) last four digits of the Class Member's social security number, (4) the Class
14 Member's employee identification number; and (4) each Class Member's total number of
15 workweeks. This information shall be based on Defendant's payroll and other business records
16 and in a format readily accessible to Defendant. The Settlement Administrator will use the Class
17 List solely for the administration of this Settlement Agreement and for no other purpose, and
18 shall not share the Class List with any persons or entities not employed by the Settlement
19 Administrator and working on the administration of this Settlement Agreement. To be clear, the
20 Class List shall not be shared with Plaintiff, Plaintiff's counsel, or any agent or employee
21 thereof; provided, however, that a de-identified version of the Class List (i.e., without Class
22 Member names or contact information, using employee identification numbers only to identify
23 Class Members) may be shared with Plaintiff's counsel, at Plaintiff's counsel expense for the
24 redaction. If the Court does not finally approve the Settlement Agreement, or if the Agreement is
25 altered or disapproved in any way on appeal, the Plaintiff's counsel and Settlement
26 Administrator shall not thereafter use the Class List, and shall immediately destroy any and all
27 copies or versions of it (including any in electronic form).

28 25. Notice by First-Class U.S. Mail. Within fourteen (14) calendar days after

1 receiving the Class List from Defendant, the Settlement Administrator will mail a Notice Packet
2 to all Class Members via regular First-Class U.S. Mail, using the most current, known mailing
3 addresses identified in the Class List or through a National Change of Address database search.
4 For any envelopes from this mailing returned as non-deliverable on or before thirty (30) days
5 after mailing, the Settlement Administrator will use any forwarding address provided to re-mail
6 the returned envelope and, if no forwarding address is provided, will perform a skip trace to
7 identify an address to which the envelope may be forwarded. The Settlement Administrator shall
8 undertake such effort and further mailing within five (5) calendar days after receipt of the
9 returned envelope. If a Class Member's Notice packet is re-mailed, the Class Members shall
10 have an additional fourteen (14) calendar days from the date of re-mailing or until the sixty (60)
11 day Response Deadline has expired, whichever is later to provide his/her dispute, request for
12 exclusion or objection. The Settlement Administrator will maintain a report of the date of such
13 re-mailings of the Notice Packet. No additional mailings shall occur. Any Class Member who
14 does not actually receive notice after the steps outlined above and thus does not properly and
15 timely opt out as discussed below is a Settlement Member, subject to the terms of this
16 Settlement.

16 26. Opt Out Procedures. To Opt-Out from the Settlement, a Class Member
17 must submit a written Request for Exclusion to the Settlement Administrator by the Response
18 Deadline a copy of which is included in **Exhibit A**. The Request for Exclusion must: (1) contain
19 the name and address of the person requesting exclusion; (2) a statement that he or she is an
20 employee and requests exclusion from the settlement in *Morales v. Wiseguys Custom Home*
21 *Theater, LLC*, Case No. 37-2019-00070151-CU-OE-CTL; (3) be signed by the Class Member;
22 and (4) be postmarked by the Response Deadline and delivered to the Settlement Administrator
23 at the specified address. Subject to review by Class Counsel, Counsel for Defendant and the
24 Court, the date of the postmark on the return mailing envelope on the Request for Exclusion shall
25 be the exclusive means used by the Settlement Administrator to determine whether a Class
26 Member has timely requested exclusion from the Settlement. Any Class Member who properly
27 requests to be excluded from the Settlement shall not be entitled to any benefits under the Class
28 Allocation of the Settlement and shall not be bound by the terms of the Settlement and shall not

1 have any right to object to the Settlement or appeal from the entry of the Judgment. Class
2 Members who do not submit a valid and timely Request for Exclusion as set forth above are
3 Settlement Members and shall be bound by all terms of the Settlement and Judgment entered in
4 this Action upon the Court finally approving the Settlement. Both Settling and Non-Settling
5 Class members shall be entitled to an Individual Settlement Payment for the PAGA Allocation of
6 the Settlement and shall still be considered as granting a full release of all PAGA claims that are
7 subject to this Settlement.

8 27. Objections to the Settlement. A Settlement Member who has not opted out may
9 object to the Settlement as defined in **Exhibit A** by mailing a copy of his/her written objection to
10 the Settlement Administrator at the address listed in the Notice Packet. An objecting Settlement
11 Member must object by stating the grounds of his/her objection to the settlement, signing and
12 dating the form, printing his/her name, providing his/her full address, and mailing it to the
13 Settlement Administrator via U.S. First Class Mail to the address found on the first page of the
14 Notice Packet, postmarked by no later than the Response Deadline. If a Class Member's Notice
15 packet is re-mailed, the Class Members shall have an additional fourteen (14) calendar days from
16 the date of re-mailing or until the sixty (60) day Response Deadline has expired, whichever is
17 later to provide his/her objection to the Settlement. The objection must be signed by the
18 objecting Settlement Member, set forth the objecting Settlement Member's name and address,
19 and state why he/she objects to the proposed Settlement and whether he/she or his/her legal
representative intends to appear at the Final Approval Hearing.

20 28. Compliance. Compliance with the procedures described in paragraphs 23 through
21 26 above shall constitute due and sufficient notice to Class Members of this Settlement.

22 29. Class Members; Release Given by Each Settlement Member. Each Settlement
23 Member consents to, and grants, the Settlement Member Release defined above.

24 30. Certification Reports Regarding Individual Settlement Payment Calculations.
25 Within fourteen (14) calendar days after expiration of the Response Deadline, the Settlement
26 Administrator will provide Defendant's counsel and Class Counsel with a written report which
27 certifies: (a) the number of Class Members who have submitted valid Election to Opt-Out Forms;
28 (b) the number of Settlement Members who have submitted an objection to the settlement, along

1 with copies of any objections. Additionally, the Settlement Administrator will provide to counsel
2 for the Parties any updated reports regarding the administration of the Settlement Agreement on
3 a bi-weekly basis and as reasonably requested by a Party.

4 31. Final Settlement Approval Hearing and Entry of Judgment / Motion for Fees, Etc.

5 Within twenty-one (21) calendar days after expiration of the Response Deadline, Plaintiff will
6 submit a Motion for Final Approval/Settlement Fairness Hearing. Class Counsel is responsible
7 for drafting all documents necessary to obtain final approval, and Class Counsel will submit the
8 settlement approval papers to the Settlement Court. Defendant may submit a separate brief in
9 support of final approval. Class Counsel may file a motion requesting an award of Class
10 Counsel's Attorney Fees, Class Counsel's Costs, and Class Representative Service Payments
11 seeking amounts no greater than the maximum amount stated herein, to which Defendant will
12 not object, provided the amounts sought are within the limits stated. The hearing on these
13 motions shall be as specified in the Preliminary Approval Order or, if no such date is specified,
14 at the earliest available date on the Settlement Court's calendar.

15 32. Notice to the Labor and Workforce Development Agency. Plaintiff shall be
16 responsible for timely providing all notices to the Labor and Workforce Development Agency
17 and providing Defendant's counsel confirmation of same, including submission of the proposed
18 settlement contemporaneously with the filing of the motion for preliminary approval, under
19 California Labor Code § 2699(1)(2), and submission of any judgment within 10 days after entry
20 of same, under California Labor Code § 2699(1)(3).

21 33. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by
22 the Settlement Court or in conjunction with or after the Final Approval/Settlement Fairness
23 Hearing, the Parties will present the Settlement Judgment (which will expressly note that no
24 liability has been found, and there is no admission of wrongdoing) to the Court for approval.
25 After entry of the Settlement Judgment, the Court will have continuing and exclusive jurisdiction
26 solely for purposes of addressing: (a) the interpretation and enforcement of the terms of the
27 Settlement; (b) Settlement administration matters; and (c) such post-Judgment matters as may be
28 appropriate under court rules or as set forth in this Settlement.

34. Allocation of the Class Recovery and Reporting of Same to the Settlement

1 Administrator. The Class Recovery shall be allocated among Non-Settling Class Settlement
2 Members by dividing the number of workweeks that each Settlement Member worked within the
3 Class Period by the total workweeks that all Settlement Members worked within the Class
4 Period, and multiplying that fraction by the Class Recovery to determine that Settlement
5 Member's total personal recovery (the "Individual Settlement Member Total Recovery"). As
6 discussed above, ten percent (10%) of each Individual Settlement Member's Total Recovery
7 shall for tax purposes be designated as wages and shall be reported using a Form W-2, and forty-
8 five percent (45%) of each Individual Settlement Member's Total Recovery shall for tax
9 purposes be designated as non-wages penalties, including PAGA penalties, and shall be reported
10 using a Form 1099, and forty-five percent (45%) shall be deemed interest and shall be reported
11 using a Form 1099. The Individual Settlement Member Total Recovery and allocation as
12 discussed immediately above shall be finally calculated by Settlement Administrator within ten
13 (10) calendar days of the Effective Date. Both Non-Settling and Settling Class Members,
14 however, shall receive a pro rata portion of the 25% PAGA recovery amount of \$1,750.00
15 ("PAGA Recovery Amount").

16 35. Funding the Settlement. The Parties herein agree that Defendant will provide the
17 total settlement amount in monthly equal installments within fifteen (15) months from the date of
18 Final Approval Order by the court is final and enters into force to the Settlement Administrator.
19 The Defendant shall deposit the first installment of five thousand sixty-six dollars and sixty-
20 seven cents (\$5,066.67) within five (5) business days from the date of entering into force of Final
21 Approval Order of the court, and shall deposit the rest of the Settlement amount in equal
22 installment payments in the amount of five thousand sixty-six dollars and sixty-seven cents
23 (\$5,066.67) each thirty (30) calendar days thereafter for the following fourteen (14) months. no
24 later than (15) calendar days from the date of receipt of the last installment payment. The Class
25 Action Administrator shall advise Defendant's Counsel of the total funds necessary to make the
26 employer payroll taxes required by this Settlement no later than seven (7) calendar days after the
27 receipt of each installment and Defendant shall deposit that additional amount with the Class
28 Action Administrator no later than (15) calendar days from each installment date.

1 **Cure Period.** The Parties agree that Defendant shall be entitled to a Cure Period, as
2 follows: If any one of the payments listed above does not arrive within five business days of its
3 due date, Plaintiff or Plaintiff's counsel shall contact Defendant's counsel at The Watkins Firm
4 (tel. 858-535-1511). After that contact date, Defendant shall have three (3) business days to cure
5 the late payment by mailing or delivering the missing payment to the Settlement Administrator's
6 office and Defendant will be deemed to not be in breach of this Agreement so long as the missing
7 payment arrives within that three (3) business day grace period.

8 36. Distribution of Payments. Within fourteen (14) calendar days after Defendant
9 makes the last fifteen (15) installment and transfers to the Settlement Administrator fully the
10 Settlement Amount, the Settlement Administrator shall distribute equally:

11 a. to Class Counsel – Class Counsel Attorney's Fees, if any, and the Class Counsel's
12 Costs, if any, awarded by the Court, all of which shall be reported on a Form 1099;

13 b. to Plaintiff Daniel Morales – the Class Representative Service Payment, if any,
14 awarded by the Court which shall be reported on a Form 1099;

15 c. to the LWDA – \$5,250.00 representing its share of the Settlement Amount
16 allocated to the settlement of PAGA claims;

17 d. to each Settlement Member – his or her Individual Settlement Member Total
18 Recovery with appropriate tax forms as described herein, directly and without submission of a
19 claim form or application, along with a copy of the Final Approval Order;

20 e. to the Settlement Administrator - Administrative Costs incurred and approved up
21 to \$ 5,000.00.

22 37. Administration of Tax Forms. The Settlement Administrator is responsible for
23 issuing to Plaintiff, Settlement Members, the LWDA, the Settlement Administrator, and Class
24 Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid
25 pursuant to this Settlement, and for forwarding all payroll taxes and penalties to the appropriate
26 government authorities.

27 38. Tax Liability. Defendant, Released Parties, and its counsel and Plaintiff and
28 Class Counsel make no representation about the tax treatment or legal effect of the payments
called for hereunder, and Plaintiff and Class Members are not relying on any statement,

1 representation, or calculation by Defendant, the Released Parties or by the Settlement
2 Administrator in this regard. Plaintiff and Class Members understand and agree that they each
3 will be solely responsible for the payment of any taxes and penalties assessed on their share of
4 the payments described herein and will hold Defendant, its counsel, Released Parties, Plaintiff
5 and Class Counsel free and harmless from and against any claims resulting from treatment of
6 such payments as non-taxable damages. Each Party to this Settlement (for purposes of this
7 section, the “Acknowledging Party” and each Party to this agreement other than the
8 Acknowledging Party, an “other Party”) acknowledges and agrees that: (1) no provision of this
9 Settlement, and no written communication or disclosure between or among the Parties or their
10 attorneys and other advisers, is or was intended to be, nor will any such communication or
11 disclosure constitute, be construed or be relied upon as, tax advice within the meaning of United
12 States Treasury Department Circular 230 (31 CFR Part 10, as amended); (2) the Acknowledging
13 Party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for
14 advice (including tax advice) in connection with this Settlement, (b) has not entered into this
15 Settlement based upon the recommendation of any other Party or any attorney or advisor to any
16 other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney
17 or adviser to any other Party to avoid any tax penalty that may be imposed on the acknowledging
18 party; and (3) no attorney or adviser to any other Party has imposed any limitation that protects
19 the confidentiality of any such attorney’s or adviser’s tax strategies (regardless of whether such
20 limitation is legally binding) upon disclosure by the Acknowledging Party of the tax treatment or
21 tax structure of any transaction, including any transaction contemplated by this agreement.

22 39. Uncashed Settlement Checks. Settlement Members will have 180 calendar days
23 within which to negotiate (cash or deposit) their settlement checks from the date on which they
24 are mailed. If any settlement check is not negotiated within that time period, it will be voided. If
25 a settlement check is returned to the Settlement Administrator within 160 calendar days of
26 mailing and a forwarding address is provided within that time period, the Settlement
27 Administrator shall re-mail the settlement check to the forwarded address and notify the
28 Settlement Class Member of the deadline to cash the check to avoid it being voided. For any
settlement checks deemed void due to being uncashed for more than 180 days, the Parties agree

1 that any unclaimed funds in the Settlement Fund Account as a result of the failure to cash
2 Individual Settlement Payment checks by the Void Date shall be transmitted by the Settlement
3 Administrator to the Bet Tzedek, as cy pres recipient, in accordance with California law
4 regarding such escheatment, within twenty-one (21) calendar days of the Void Date.

5 40. Certification of Completion. Upon completion of administration of the
6 Settlement, the Settlement Administrator will provide a written declaration under oath to certify
7 such completion to the Court and counsel for all Parties and any and all supplemental
8 information the Court requires.

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

13 42. Revocation of Settlement Agreement (by Defendant). Defendant shall have, in its
14 sole discretion, the right to void and withdraw from the Settlement Agreement if, as of the
15 Response Deadline, five percent (5%) or more of the Class Members submit timely and valid
16 Election to Opt-Out Forms. Defendant must exercise this right of rescission, in writing, to Class
17 Counsel within ten (10) business days of receipt of the report from the Settlement Administrator
18 referenced in the first sentence of paragraph 30 ("Certification Reports Regarding Individual
19 Settlement Payment Calculations"). If the option to rescind is exercised, then Defendant will be
20 solely responsible for all settlement administration costs incurred to that point.

21 43. Nullification of Settlement Agreement. In the event: (a) the Settlement Court
22 does not finally approve the Settlement as provided herein; or (b) the Settlement does not
23 become final for any reason, then this Settlement Agreement, and any documents generated to
24 bring it into effect, will be null and void. Any order or judgment entered by the Court in
25 furtherance of this Settlement Agreement will likewise be void from the beginning.

26 44. Exhibits Incorporated by Reference. The terms of this Settlement include the
27 terms set forth in any attached Exhibits, which are incorporated by this reference as though fully
28 set forth herein. Any Exhibits to this Settlement are an integral part of the Settlement.

45. Entire Agreement. This Settlement Agreement and any attached Exhibits

1 constitute the entirety of the Parties' settlement terms. No other prior or contemporaneous
2 written or oral agreements with respect to the subject matter are binding on the Parties.

3 46. Amendment or Modification. This Settlement Agreement may be amended or
4 modified only by a formal written instrument signed by counsel for all Parties or their
5 successors-in-interest.

6 47. Authorization to Enter Settlement Agreement. Counsel for all Parties warrant and
7 represent they are expressly authorized by the Parties whom they represent to negotiate this
8 Settlement Agreement and to take all appropriate action required or permitted to be taken by
9 such Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any
10 other documents required to effectuate the terms of this Settlement Agreement.

11 48. Binding on Successors and Assigns. This Settlement Agreement will be binding
12 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously
13 defined.

14 49. California Law Governs. All terms of this Settlement Agreement and Exhibits
15 hereto will be governed by and interpreted according to the laws of the State of California.

16 50. Execution and Counterparts. This Settlement Agreement may be executed in one
17 or more counterparts. All executed counterparts and each of them, including facsimile, electronic
18 and scanned copies of the signature page, will be deemed to be one and the same instrument
19 provided that counsel for the Parties will exchange among themselves original signed
20 counterparts if requested by one Party. A signature through Adobesign or DocuSign or similar
21 software, facsimile, electronic means, or scan shall for purposes of this Settlement Agreement be
22 as valid and enforceable as an original signature.

23 51. Acknowledgement that the Settlement is Fair and Reasonable. The Parties
24 believe, and will so represent to the Court, this Settlement Agreement is a fair, adequate, and
25 reasonable settlement of the Action. They have arrived at this Settlement after arm's-length
26 negotiations and in the context of adversarial litigation, accounting for all relevant factors,
27 present and potential. The Parties also acknowledge that they are each represented by competent
28 counsel and that they have had an opportunity to consult with their counsel regarding the fairness
and reasonableness of this Settlement.

1 52. Waiver of Certain Appeals. In the event the Court finally approves this
2 Settlement, the Parties agree to waive appeals concerning this Settlement and stipulate to class
3 certification for purposes of this Settlement only. The waiver of appeal does not include any
4 waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings.

5 53. Class Action Certification for Settlement Purposes Only. The Parties stipulate to
6 class action certification only for purposes of the Settlement. If, for any reason, the Settlement is
7 not approved, the stipulation to certification will be void. The Parties further agree that
8 certification for purposes of the Settlement is not an admission that class action certification is
9 proper under the standards applied to contested certification motions and that this Settlement
10 Agreement will not be admissible in this or any other proceeding as evidence that either: (a) a
11 class action should be certified; or (b) Defendant is liable to Plaintiff or any Class Member, other
12 than according to the Settlement's terms. Defendant denies liability on all claims made in the
13 Action.

14 54. Waiver. No waiver of any condition or covenant contained in this Settlement
15 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered
16 to imply or constitute a further waiver by such party of the same or any other condition,
17 covenant, right or remedy.

18 55. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
19 and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not
20 be construed more strictly against one party than another, it being recognized that, because of the
21 arms-length negotiations between the Parties, all Parties have contributed to the preparation of
22 this Settlement Agreement.

23 56. Representation By Counsel. The Parties acknowledge that they have been
24 represented by counsel throughout all negotiations that preceded the execution of this Settlement
25 Agreement, and that this Settlement Agreement has been executed with the consent and advice
26 of counsel, and reviewed in full. Plaintiff and Class Counsel also warrant and represent that there
27 are no liens on the Settlement Agreement.

28 57. Cooperation and Execution of Necessary Documents. The Parties and their

counsel will cooperate with each other and use their best efforts to implement the Settlement. If the Parties cannot reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the mediator used for the December 21, 2020 mediation to resolve such disagreement.

58. Limitation on Communications with the Class: The Notice Packet is the approved manner for communicating with the Class Members. Plaintiff, his counsel, and Class Counsel shall not issue a press release or make any other public representation regarding the Settlement, including posting any information pertaining to this Settlement on social media (Instagram, Facebook, Twitter, LinkedIn, YouTube, Google+, Tumblr, etc.). Class Counsel is limited solely to responding to direct contact by a Class Member to Class Counsel (for example by a phone call or letter), which response shall be directed to the contacting Class Member only. The Parties agree that submission of an Election to Opt-Out Form does not constitute an inquiry that would permit Class Counsel to respond to a Class Member. This section shall not in any way limit Class Counsel from performing its duties as Class Counsel.

59. Binding Agreement. The Parties warrant that they have full authority to enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties. The Parties further agree that this Agreement will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any confidentiality provisions that otherwise might apply under federal or state law.

DATED: March 2, 2021

By:

DocuSigned by:

Daniel Morales

Plaintiff DANIEL MORALES

DATED: March 2, 2021

By:

J GREGORY SHERMAN FOR

WiseGuys Custom Home Theater, LLC
Defendant WISEGUYS CUSTOM HOME
THEATER LLC

By:

sole member