

**AMENDED CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

This Class Action and Private Attorneys General Act (“PAGA”) Settlement Agreement and Release of Claims of the case entitled *Enriquez v. ShipBob, Inc.*, Riverside Superior Court Case No. CVRI2101452, is entered into by and between Plaintiff Sergio Enriquez (“Plaintiff” or “Class Representative”), individually, on behalf of all others similarly situated, and as the PAGA representative of the State of California, and Defendant ShipBob, Inc., subject to the terms and conditions herein and the Court’s approval.

A. Definitions

1. “Action” or “Lawsuit” means and refers to the case entitled *Enriquez v. ShipBob, Inc.*, Case No. CVRI2101452, filed in Riverside Superior Court.

2. “Agreement,” “Settlement Agreement,” “Settlement,” or “Stipulation” shall mean this Class Action and PAGA Settlement Agreement and Release of Claims, including any attached Exhibits.

3. “Class Claims” or “Released Class Claims” will include all claims that were asserted or that could have been asserted based on the facts alleged in Plaintiff’s original Complaint and Amended Complaint, whether known or unknown, including without limitation all known and unknown claims arising out of any alleged failure to pay all minimum, regular, and overtime wages, failure to provide meal periods or premium payments in lieu thereof, failure to provide rest periods or premium payments in lieu thereof, failure to provide accurate itemized wage statements (based on both direct and derivative theories of liability), failure to timely pay all wages due at separation, violation of California Business & Professions Code, sections 17200 *et seq.*, and any and all related penalties that arose during the Class Period.

4. “Class Counsel” refers to Mehrdad Bokhour of Bokhour Law Group, P.C. and Joshua Falakassa of Falakassa Law, P.C.

5. “Class Data” means a complete list that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator on one Confidential spreadsheet and shall include the Settlement Class Members’ full names; last known addresses;

1 Social Security Numbers; and dates of employment during the Class Period and PAGA Period
2 and/or number of Pay Periods Worked as non-exempt or hourly employees of Defendant during
3 the Class Period and the PAGA Period for each Settlement Class Member.

4 6. "Class Member" refers to individual members of the Class.

5 7. "Class" and "Class Members" refers to all persons who are or were previously
6 employed by Defendant in California and classified as a non-exempt employee during the Class
7 Period.

8 8. "Class Period" shall mean March 17, 2017 through July 29, 2022.

9 9. "Class Representative" or "Plaintiff" means and refers to Sergio Enriquez.

10 10. "Complaint" refers to Plaintiff's original Complaint and the operative First
11 Amended Complaint filed in the Riverside County Superior Court action entitled *Enriquez v.*
12 *ShipBob, Inc.*, Case No. CVT12101452.

13 11. "Court" means the California Superior Court, County of Riverside.

14 12. "Defendant" means and refers to ShipBob, Inc.

15 13. "Defendant's Counsel" or "Defense Counsel" mean and refer to Joshua Levine
16 and Jocelyn Hannah of Littler Mendelson, P.C.

17 14. "Effective Date" means the date when the Settlement becomes "Effective" which
18 will be 60 days after the notice of an order granting final approval of the Settlement is served,
19 provided there have been no appeals filed within that time. If an appeal is filed on or before the
20 65th day after final approval, the Effective Date shall be the date that the Settlement and any
21 ensuing order or judgment can no longer be appealed or challenged, and the Settlement has
22 become final and binding. Defendant ShipBob, Inc. shall fund the Settlement within 15 calendar
23 days after the Effective Date. Payments to Class Counsel, Plaintiff Enriquez, the Settlement
24 Administrator, and Participating Class Members under the Settlement will occur within 10
25 calendar days after the Settlement is funded. The Effective Date will not occur, and Defendant
26 will not be obligated to fund this Settlement, until and unless there is no possibility of an appeal,
27 writ, or further appeal that could potentially prevent this Settlement Agreement from becoming
28 final and binding.

1 15. “Final” means that the Settlement has been granted “Final Approval” by the Court
2 and the “Effective Date” has occurred.

3 16. “Final Approval” or “Final Approval Order” refers to the order of the Court
4 granting final approval of this Settlement Agreement and entering a judgment approving this
5 Settlement on substantially the same terms provided herein and in the Proposed Final Approval
6 Order attached to this Settlement as Exhibit “C,” as may be modified by subsequent agreement
7 of the Parties or order of the Court.

8 17. “Final Settlement Class” means, collectively, all Participating Class Members and
9 all PAGA Employees.

10 18. “Gross Settlement Amount” is the maximum amount that will be paid by
11 Defendant as a result of this Settlement, which is Nine Hundred and Twenty-Five Thousand
12 Dollars and Zero Cents (\$925,000.00), which includes the Individual Settlement Amounts,
13 attorneys’ fees of Class Counsel, costs and expenses, the Service Award to Plaintiff, all Settlement
14 Administration Costs, employee-side tax withholdings for the wage component of the Individual
15 Settlement Amounts, and the PAGA Award, including all payments to PAGA Employees and the
16 Labor Workforce Development Agency (LWDA). With the sole exception of employer-side
17 taxes due on individual settlement payments to Participating Class Members (which Defendant
18 will pay in addition to the Gross Settlement Amount), the Gross Settlement Amount is the
19 maximum amount that Defendant will pay for any reason in connection with this Settlement.

20 19. “Individual Settlement Amount” or “Individual Settlement Payment” means the
21 amount payable from the Net Settlement Amount (defined below) that the Settlement
22 Administrator will pay to each Participating Class Member and/or PAGA Employee, as calculated
23 pursuant to Paragraph 54(d) below.

24 20. “Net Settlement Amount” or “Net Distribution Fund” is the Gross Settlement
25 Amount minus the amounts allotted to: (1) Class Counsel’s fees (up to \$308,333.33), (2) Class
26 Counsel’s litigation costs (up to \$15,000.00); (3) the Service Award for Plaintiff (up to
27 \$12,000.00), (5) the 75% of the PAGA Award to be paid to the LWDA (\$18,750.00); (6) the 25%
28 of the PAGA Award to be paid to PAGA Employees (\$6,250); and (7) Settlement Administration

Costs (up to \$12,000.00).

21. “Notice” means the Notice of Class Action and PAGA Settlement that will be sent to the Class Members consistent with the terms of this Settlement and substantially the same as the Proposed Notice attached to this Settlement as Exhibit “A” (or as may be modified by subsequent agreement of the Parties or order of the Court).

22. “Notice Response Deadline” is 45 calendar days from the date the Notice is mailed to the Class Members.

23. “Objecting Class Member” means a Class Member, other than Plaintiff, who submits a valid and timely objection to the terms of this Agreement with respect to the Class Claims pursuant to Paragraph 76(c) below.

24. “PAGA” shall refer to the California Private Attorneys General Act, California Labor Code 2698 et seq.

25. “PAGA Award” is the \$25,000 of the Gross Settlement Amount that is allocated to PAGA penalties in this Settlement, 75% of which (\$18,750.00) will be remitted to the LWDA and 25% of which (\$6,250.00) will go into a PAGA Distribution Fund and be distributed on a prorated basis to all PAGA Employees based on their number of pay periods worked during the PAGA Period as specified below

26. “PAGA Claims” or “Released PAGA Claims” shall include any and all claims for civil penalties pursuant to PAGA that were alleged or that could have been alleged based on the facts and underlying California Labor Code violations alleged in Plaintiff’s March 16, 2021 Labor and Workforce Development (“LWDA”) notice letter, including for underlying claims based on alleged failure to pay all minimum, regular, and/or overtime wages, failure to provide meal periods or premium payments in lieu thereof, failure to provide rest periods or premium payments in lieu thereof, failure to provide accurate itemized wage statements (based on both direct and derivative theories of liability), failure to timely pay all wages due at separation, and violation of California Business & Professions Code, sections 17200 *et seq.* Plaintiff and the State of California (acting through Plaintiff as its authorized PAGA representative) release the Released Parties from the PAGA claims.

1 27. “PAGA Distribution Fund” is the 25% of the PAGA Award (i.e., \$6,250) allocated
2 for distribution on a prorated basis to all PAGA Employees based on their number of pay periods
3 worked during the PAGA Period as specified below.

4 28. “PAGA Employees” include all persons who are or were previously employed by
5 Defendant in California and classified as a non-exempt or hourly employee at any time from
6 March 16, 2020 through July 29, 2022 (*i.e.*, the “PAGA Period”).

7 29. “PAGA Notice” or “LWDA notice letter” shall refer to the notice sent by Plaintiff,
8 by and through counsel, on or about March 16, 2021, to the LWDA and to Defendant, alleging
9 that Defendant engaged in violations of the California Labor Code and California Wage Order(s).

10 30. “PAGA Period” shall mean March 16, 2020 through July 29, 2022.

11 31. “Participating Class Member” means all Class Members who are deemed to
12 participate and receive an Individual Settlement Amount for the Class Claims and who do not
13 opt-out of the settlement of the Class Claims by submitting timely and valid Requests for
14 Exclusion.

15 32. “Parties” or “Settling Parties” mean Plaintiff, the Participating Class Members, the
16 PAGA Employees, and Defendant, collectively.

17 33. “Pay Periods Worked” for each Class Member and PAGA Employee means the
18 number of pay periods during the Class Period and/or the PAGA Period, as applicable, in which
19 the Class Member and/or PAGA Employee was employed by Defendant as a non-exempt
20 employee in California and worked at least one shift during the pay period for Defendant. Pay
21 Periods Worked will be calculated based on Defendant’s business records.

22 34. “Preliminary Approval Date” means the date the Court preliminarily approves the
23 Settlement Agreement, and the exhibits thereto, and enters the Preliminary Approval Order.

24 35. “Preliminary Approval Order” means the judicial Order to be entered by the Court,
25 upon the application or motion of the Plaintiff, preliminarily approving this Settlement on
26 substantially the same terms provided herein and in the Proposed Preliminary Approval Order
27 attached to this Settlement as Exhibit “B” (or as may be modified by subsequent agreement of the
28 Parties or order of the Court) and providing for the issuance of the Notice of Class Action and

1 PAGA Settlement, an opportunity to opt out of settlement of the Class Claims, an opportunity to
2 submit timely objections to the terms of this Settlement related to the Class Claims, and setting a
3 final approval hearing to address the fairness of the terms of Settlement, including approval of
4 Class Counsel's fees and costs.

5 36. "QSF" means the Qualified Settlement Fund set up by the Settlement
6 Administrator for the benefit of the Final Settlement Class, and from which the settlement
7 payments shall be made.

8 37. "Release" shall mean the release and discharge of the Class Claims by Plaintiff
9 and all of the Participating Class Members and the release and discharge of the PAGA Claims by
10 Plaintiff and all of the PAGA Employees.

11 38. "Released Parties" shall refer to Defendant ShipBob, Inc., together with its current
12 and former officers, employees, directors, agents, and successors and assignees in the event of a
13 future sale or acquisition.

14 39. "Response Deadline" shall refer to the date by which Settlement Class Members
15 must opt-out of or object to the settlement.

16 40. "Request for Exclusion" means a timely written request by a Class Member to
17 exclude herself/himself from the Settlement, which must be completed and mailed in the manner
18 set forth in this Settlement Agreement and the Notice of Settlement as further detailed in
19 Paragraph 76(a) below.

20 41. "Service Payment" or "Service Award" means the amount approved by the Court
21 to be paid to Class Representative (*i.e.*, Plaintiff) in addition to his Individual Settlement Amount
22 as a Participating Class Member in an amount up to \$12,000. The Service Payment is subject to
23 approval from the Court and will be paid from the Gross Settlement Amount. Any Service Award
24 not awarded by the Court will be added to the Net Distribution Fund and distributed to Class
25 Members who do not opt out of this Settlement.

26 42. "Settlement Administration Costs" means the costs payable from the Settlement
27 Amount to the Settlement Administrator for administering this Settlement, including, but not
28 limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, due

diligence, reporting and remittance obligations, distributing the Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The Settlement Administration Costs shall be paid from the Settlement Amount.

43. "Settlement Administrator" means and refers to Phoenix Settlement Administrators, that will provide the Notice to the Class Members and distribute the settlement amounts as described in this Agreement.

44. "Class Member" refers to individual members of the Settlement Class.

45. "Class" and "Class Members" refers to all persons who are or were previously employed by Defendant in California and classified as a non-exempt employee during the Class Period.

B. General Terms

46. On or about March 17, 2021, Plaintiff filed a class action complaint in this Court against Defendant, including allegations of: (1) unpaid wages and failure to pay minimum wages, (2) failure to pay overtime wages, (3) meal period violations, (4) rest period violations, (5) waiting time penalties, (6) wage statement violations, and (7) unfair competition. On or about June 10, 2021, Plaintiff filed a First Amended Complaint to add a cause of action for PAGA penalties based on the foregoing Labor Code violations. Prior to filing his lawsuit, Plaintiff submitted a notice letter to the LWDA on March 16, 2021 to exhaust administrative remedies for bringing his PAGA claim.

47. Defendant denies all of Plaintiff's claims and allegations and contends that the Action is not suitable for class certification and/or representative treatment outside of the context of this Settlement.

48. Class Representative believes he can proceed with his class and representative claims, that the Action is meritorious, and that class certification is appropriate.

49. The Parties have conducted a thorough investigation into the facts of the Action. This includes conducting extensive exchange of informal discovery, including the relevant written policies at issue, the production of a 15% random sample of payroll and timekeeping records for Class Members and PAGA Employees, a complete class list, and relevant data,

1 including the average hourly pay rate and pay period information for Class Members and PAGA
2 Employees. Defendant's productions included 4,920 pages of documents and data. Class Counsel
3 is both knowledgeable about and has done extensive research with respect to the applicable law
4 and potential defenses to the claims of the Class Members and PAGA Employees. Class Counsel
5 has diligently pursued an investigation of the Class Members' claims against Defendant. Based
6 on the foregoing data and on their own independent investigation and evaluation, Class Counsel
7 is of the opinion that the settlement with Defendant for the consideration and on the terms set
8 forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of
9 the Class Members and PAGA Employees in light of all known facts and circumstances, including
10 the risk of significant delay and uncertainty associated with litigation, various defenses asserted
11 by Defendant, and numerous potential appellate issues.

12 50. Although Defendant disputes all of Plaintiff's claims and any wrongdoing, it
13 recognizes that further litigation of this Action would be costly, time-consuming, and
14 burdensome. As such, Defendant has agreed to this Settlement to put this matter to rest and agrees
15 that the Settlement represents a good faith compromise of the claims, which is fair, adequate, and
16 reasonable.

17 51. On June 27, 2022, the Parties participated in mediation before Marc Feder, Esq.,
18 a highly experienced class action mediator. After a full-day mediation and the issuance of a
19 mediator's proposal, the Parties reached a settlement and signed a Memorandum of
20 Understanding with the key terms, which are further described in this Settlement Agreement.

21 52. No Admission of Liability. The Parties enter into this Agreement to resolve the
22 dispute that has arisen between them and to avoid the burden, expense, and risk of continued
23 litigation. In entering into this Agreement, Defendant does not admit, and specifically denies,
24 that it has: violated any federal, state, or local law; violated any regulations or guidelines
25 promulgated pursuant to any statute or any other applicable laws, regulations, or legal
26 requirements; breached any contract; violated or breached any duty; engaged in any
27 misrepresentation or deception; or engaged in any other unlawful conduct with respect to its
28 employees or any other person or entity. Neither this Agreement, nor any of its terms or

provisions, nor any of the negotiations connected with it, or proceedings, payouts or other events associated with it, shall be construed as an admission or concession by Defendant of any such violation(s) or failure(s) to comply with any applicable law by Defendant or any Released Parties. Except as necessary in a proceeding to approve, interpret, or enforce the terms of this Agreement, this Agreement and its terms and provisions shall not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of the Released Parties or to establish the existence of any condition constituting a violation of, or noncompliance with, federal, state, local, or other applicable law.

53. Stipulation for Class Certification and Representative Treatment for Settlement Purposes. For settlement purposes only, Defendant will stipulate that the Class Members described herein who do not submit a Request for Exclusion from the Class may be conditionally certified as a settlement class and that the PAGA Employees are appropriate for representative treatment for purposes of settlement. This stipulation to certification and representative treatment for settlement purposes is in no way an admission that class action certification and/or representative treatment is proper in a non-settlement context and shall not be admissible in this or in any other action except for the sole purpose of enforcing this Agreement. Should, for whatever reason, the Court not grant Final Approval consistent with the terms of this Settlement or if the Settlement does not become Effective, the Parties' stipulation to class certification and representative treatment as part of the Settlement shall become null and void *ab initio* and shall have no bearing on and shall not be admissible in connection with the issue of whether or not class certification and/or representative treatment would be appropriate in a non-settlement context. Defendant expressly reserves its right to and declare that it will continue to oppose class certification, representative treatment, and the substantive merits of the case should the Court not grant Final Approval. Plaintiff expressly reserves his rights and declares that he will continue to pursue class certification and representative treatment and a trial should the Court not grant Final Approval.

C. Terms of Settlement

54. The financial terms of the Settlement are as follows:

1 (a) Gross Settlement Amount: The Parties agree to settle this Action for the total
2 maximum amount of Nine Hundred Twenty-Five Thousand Dollars (\$925,000) (“the Settlement
3 Amount” or “Gross Settlement Amount”). With the sole exception of employer-side taxes due
4 on settlement payments to Class Members, the Gross Settlement Amount is the maximum amount
5 that Defendant will pay for any reason in connection with this Settlement. The Gross Settlement
6 Amount will be used to pay: (1) Individual Settlement Payments to Participating Class Members;
7 (2) the PAGA Award, with 75% of the PAGA Award going to the LWDA and 25% being
8 distributed on a prorated basis based on pay periods worked to PAGA Employees as further
9 described below; (3) Plaintiff’s Counsel’s attorneys’ fees; (4) Plaintiff’s costs; (5) Settlement
10 Administration Costs; (6) the Service Award to Plaintiff Enriquez (as specified in the Service
11 Award paragraphs below); and (7) employee-side taxes for the wage component of Individual
12 Settlement Payments to Class Members.

13 (b) The Settlement is based on Defendant’s representation that there are
14 approximately 584 individuals who worked approximately 22,895 workweeks from March 17,
15 2017 through April 14, 2022. (Defendant paid Class Members on a weekly basis so the number
16 of pay periods are the same as the workweeks).

17 (c) Net Settlement Amount: The “Net Settlement Amount” or “Net Distribution
18 Fund” is the Gross Settlement Amount minus the amounts allotted to: (1) Class Counsel’s fees
19 (up to \$308,333.33), (2) Class Counsel’s litigation costs (up to \$15,000.00); (3) the Service Award
20 for Plaintiff (up to \$12,000.00), (4) the 75% of the PAGA Award to be paid to the LWDA
21 (\$18,750.00); (5) the 25% of the PAGA Award to be paid to PAGA Employees (\$6,250) and (6)
22 Settlement Administration Costs (up to \$12,000.00). In the event that the Court reduces the
23 attorneys’ fees and litigation costs or Service Award or either increases or decreases the amount
24 allocated to the PAGA Award or Settlement Administration Costs, the Net Settlement Amount
25 shall be increased or decreased accordingly. In the event that the Court approves amounts for
26 attorneys’ fees and costs, the Service Award, the PAGA Award or Settlement Administration
27 Costs that are different than the amounts requested, the maximum Gross Settlement Amount that
28 Defendant must pay in accordance with the terms of this Settlement will remain the same as this

1 is a non-reversionary settlement.

2 (d) Individual Settlement Amounts for the Settlement Class and PAGA Employees:

3 The Settlement Administrator will use the Class Data provided by Defendant to calculate each
 4 Participating Class Member's and PAGA Employee's Individual Settlement Amounts. As noted
 5 above, the Net Distribution Fund is the Gross Settlement Amount *minus* the amounts allotted to:
 6 (1) Plaintiff's counsel's fees (up to \$308,333.33), (2) Plaintiff's counsel's litigation costs (up to
 7 \$15,000.00); (3) the Service Award for Plaintiff (up to \$12,000.00), (4) the 75% of the PAGA
 8 Award to be paid to the LWDA (\$18,750.00); (5) the 25% of the PAGA Award to be paid to PAGA
 9 Employees (\$6,250); and (6) Settlement Administration Costs (up to \$12,000.00). Individual
 10 Settlement Payments will be distributed to Participating Class Members and/or PAGA Employees
 11 based on the following formulas:

12 a. Payments to Participating Class Members: The Settlement Administrator will
 13 calculate the total number of pay periods that all Class Members who do not opt
 14 out (*i.e.*, "Participating Class Members") worked during the Class Period ("Total
 15 Class Pay Periods"). The value of each pay period shall be determined by the
 16 Settlement Administrator by dividing the Net Distribution Fund by the total number
 17 of Pay Periods Worked by Participating Class Members during the Class Period
 18 ("Class Pay Period Value"). To determine each Participating Class Member's
 19 settlement payment, the Settlement Administrator will multiply the individual's
 20 Total Class Pay Periods Worked by the Class Pay Period Value (if the Class
 21 Member is a Participating Class Member). These payments will be subject to any
 22 legally-required tax withholdings or deductions as calculated by the Settlement
 23 Administrator.

24 b. PAGA Employee Calculations: For PAGA Employees, the Settlement
 25 Administrator will calculate the total number of pay periods that each PAGA
 26 Employee worked during the PAGA Period ("Total PAGA Pay Periods"). The
 27 value of each PAGA Pay Period shall be determined by the Settlement
 28

1 Administrator by dividing the 25% of the PAGA Award allocated for PAGA
2 Employees (*i.e.*, \$6,250) by the Total PAGA Pay Periods for all PAGA Employees
3 (“PAGA Pay Period Value”). To determine each PAGA Employee’s payment for
4 their prorated portion of the PAGA Distribution Fund (*i.e.*, \$6,250), the Settlement
5 Administrator will multiply the PAGA Employee’s Total PAGA Pay Periods by
6 the PAGA Pay Period value. A Class Member who is also a PAGA Employee will
7 receive a payment under this section for their prorated portion of the PAGA Award
8 even if they opt-out of the Class settlement and will be bound by the release of the
9 PAGA claims released through this Settlement.

10 (e) Allocation of Individual Settlement Amounts: The Individual Settlement Amounts
11 to Participating Class Members will be allocated for tax purposes based on the allegations in the
12 Action as follows: one-third (33.33%) will be allocated to allegedly unpaid wages subject to
13 withholding of all applicable local, state, and federal taxes; and two-thirds (66.67%) will be
14 allocated to interest and alleged civil penalties (pursuant to, e.g., California Labor Code sections
15 203, 226) from which no taxes will be withheld. The Settlement Administrator will issue to each
16 Participating Class Member an Internal Revenue Service Form W-2 and comparable state forms
17 with respect to the wage allocation and a Form 1099 with respect to the civil penalties and interest
18 allocations.

19 (f) Service Payment to Class Representative: The amount awarded to Class
20 Representative as a Service Payment will be set by the Court in its discretion, not to exceed
21 \$12,000. Defendant agrees not to oppose this request. The Service Payment to Class
22 Representative will be paid out of the Gross Settlement Amount. Class Representative will be
23 issued IRS Form 1099 in connection with this payment. Plaintiff shall be solely and legally
24 responsible to pay any and all applicable taxes on this payment. The Parties agree that any amount
25 awarded by the Court as the Service Payment to Plaintiff less than the requested amount shall not
26 be a basis for Plaintiff or Class Counsel to void this Stipulation. Should the Court approve a lesser
27 amount for the Service Payment, the difference shall be added to the Net Settlement Amount to
28 be distributed to the Participating Class Members. In the event of any appeal of the amount of the

1 service award (if any) approved by the Court, if, after the exhaustion of any such appellate review,
2 additional amounts not awarded to Class Representative shall be added to the Net Settlement
3 Amount to be distributed to the Participating Class Members.

4 (g) Attorneys' Fees and Costs: Defendant agrees not to oppose a request by Class
5 Counsel to the Court for an award of attorneys' fees of one-third (33.33%) of the Gross Settlement
6 Amount (*i.e.*, up to \$308,333.33), plus reasonable litigation costs not to exceed \$15,000
7 ("Attorneys' Fees and Cost Award"). The Attorneys' Fees and Cost Award shall be paid from
8 the Gross Settlement Amount, and except for this award, Defendant shall have no further
9 obligation to pay any attorneys' fees, costs, expenses, or other amounts to Class Counsel or any
10 other attorneys with respect to this Settlement. Should the Court approve a lesser amount than
11 what is sought by Class Counsel, the difference shall be added to the Net Settlement Amount to
12 be distributed to the Participating Class Members. Any Court order awarding less than the amount
13 sought by Class Counsel shall not be grounds to rescind the Settlement Agreement or otherwise
14 void the Settlement. In the event of any appeal of the amount of the awards of attorneys' fees and
15 costs (if any) approved by the Court, final funding and administration of the portion of the
16 attorneys' fees and/or costs award in dispute will be segregated and stayed pending the exhaustion
17 of appellate review. If, after the exhaustion of any such appellate review, additional amounts not
18 awarded as attorneys' fees and costs shall be added to the Net Settlement Amount to be distributed
19 to the Participating Class Members and/or PAGA Employees. The Settlement Administrator shall
20 issue to Class Counsel an IRS Form 1099 reflecting the amount of attorneys' fees and costs
21 awarded by the Court. Class Counsel agrees that any allocation of fees between or among Class
22 Counsel and any other attorney representing or claiming to represent the Class Members shall be
23 the sole responsibility of Class Counsel.

24 (h) Settlement Administration Costs: The fees and other charges of the Settlement
25 Administrator will be paid from the Gross Settlement Amount, not to exceed \$12,000 subject to
26 Court approval, unless approved by all Parties and the Court. The Settlement Administration
27 Costs shall be paid entirely from the Gross Settlement Amount. Any Settlement Administration
28 Costs not incurred by the Settlement Administrator or awarded by the Court will be added to the

1 Net Distribution Fund and will be distributed to Participating Class Members.

2 (i) PAGA Penalties: The Parties agree that \$25,000 is allocated to alleged PAGA
3 Penalties and is to be paid from the Gross Settlement Amount, subject to Court approval. Of this
4 amount, \$18,750 (75%) shall be paid to the LWDA in satisfaction of Plaintiff's claims for civil
5 penalties under the PAGA and \$6,250 (25%) will be included in the Individual Settlement
6 Amounts, payable to the PAGA Employees as set forth in Paragraph 54(d)(b).

7 (j) Tax Liability: Class Counsel, Defendant, and Defendant's Counsel make no
8 representations as to the tax treatment or legal effect of Individual Settlement Amounts called for
9 hereunder, and Plaintiff and the Class Members and PAGA Employees are not relying on any
10 statement or representation by Class Counsel, Defendant, or Defendant's Counsel in this regard.
11 Plaintiff and Participating Class Members will be solely responsible for the payment of any taxes
12 and penalties assessed on their respective Individual Settlement Amounts described herein.
13 Income tax withholding will also be made pursuant to applicable federal, state, and/or local
14 withholding codes or regulations as determined by the Settlement Administrator. Forms W-2
15 and/or Forms 1099 will be distributed at times and in the manner required by the Internal Revenue
16 Code of 1986 (the "Code") and consistent with this Agreement. If the Code, the regulations
17 promulgated thereunder, or other applicable tax law, are changed after the date of this Agreement,
18 the processes set forth in this Section may be modified in a manner to bring Defendant into
19 compliance with any such changes.

20 (k) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS AGREEMENT (FOR
21 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY
22 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER
23 PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
24 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
25 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
26 INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE
27 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN
28 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31

CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, THEIR, OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

55. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. No portion of the Gross Settlement Amount will revert to Defendant once the Settlement is funded provided that Final Approval is granted and the Settlement becomes final and Effective in accordance with the terms of this Settlement. Participating Class Members will not have to make a claim to receive an Individual Settlement Amount. Distributions, in the form of Individual Settlement Amounts, will be made directly to each Participating Class Member. The Settlement Administrator shall be responsible for accurately and timely reporting any remittance obligations with respect to unclaimed funds as a result of a Plaintiff, Participating Class Members, or PAGA Employees not cashing an Individual Settlement Amount by the check cashing deadline, as set forth herein.

56. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable, and adequate, and will so represent same to the Court.

D. Release by Participating Class Members and PAGA Employees

1 57. Upon the Effective Date of this Settlement, Plaintiff and each Participating Class
2 Member, for themselves and for their respective spouses, domestic partners, marital community,
3 children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors,
4 administrators, trustees, conservators, guardians, assigns, and representatives, will forever
5 completely release and discharge the Released Parties from the Released Class Claims for the
6 time period from March 17, 2017 (*i.e.*, the beginning of the Class Period) through the Response
7 Deadline (*i.e.*, the deadline for Class Members to object or opt out of the Settlement). The
8 Released Class Claims include all claims that were asserted or that could have been asserted based
9 on the facts alleged in Plaintiff's original Complaint and Amended Complaint, whether known or
10 unknown, including without limitation all known and unknown claims arising out of any alleged
11 failure to pay all minimum, regular, and overtime wages, failure to provide meal periods or
12 premium payments in lieu thereof, failure to provide rest periods or premium payments in lieu
13 thereof, failure to provide accurate itemized wage statements (based on both direct and derivative
14 theories of liability), failure to timely pay all wages due at separation, violation of California
15 Business & Professions Code, sections 17200 *et seq.*, and any and all related penalties.

16 58. Each Participating Class Member will be deemed to have made the foregoing
17 Release as if by manually signing it.

18 59. Upon the Effective Date of this Settlement, Plaintiff, the LWDA and State of
19 California (acting through Plaintiff as its deputized representative), for themselves and for their
20 respective spouses, domestic partners, marital community, children, estates, trusts, attorneys,
21 heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees,
22 conservators, guardians, assigns, and representatives, will forever completely release and
23 discharge the Released Parties from the Released PAGA Claims for the time period from March
24 16, 2020 through the Response Deadline. The Released PAGA Claims include any and all claims
25 for civil penalties pursuant to PAGA that were alleged or that could have been alleged based on
26 the facts and underlying California Labor Code violations alleged in Plaintiff's March 16, 2021
27 LWDA notice letter, including for underlying claims based on alleged failure to pay all minimum,
28 regular, and/or overtime wages, failure to provide meal periods or premium payments in lieu

thereof, failure to provide rest periods or premium payments in lieu thereof, failure to provide accurate itemized wage statements (based on both direct and derivative theories of liability), failure to timely pay all wages due at separation, and violation of California Business & Professions Code, sections 17200 *et seq.*

60. The LWDA will be deemed to have made the foregoing Release as if by manually signing it.

61. Plaintiff and Defendant intend that the Settlement described in this Agreement will release and preclude any further claim, whether by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and all of the Participating Class Members to obtain a recovery based on, arising out of, and/or related to any and all of the Released Class Claims. The Class Members shall be so notified in the Notice. This paragraph is a statement of the Parties' intent in agreeing to this Settlement that it will be given *res judicata* effect with respect to the Released Class Claims.

62. Plaintiff and Defendant intend that the Settlement described in this Agreement will release and preclude any further claim, whether by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and all of the PAGA Employees and the LWDA to obtain a recovery based on, arising out of, and/or related to any and all of the Released PAGA Claims. The PAGA Employees and the LWDA shall be so notified in the Notice and via the submission of a copy of this Settlement, which Class Counsel will provide to the LWDA concurrently with the filing of Plaintiff's motion requesting preliminary approval of this Settlement. This paragraph is a statement of the Parties' intent in agreeing to this Settlement that it will be given *res judicata* effect with respect to the Released PAGA Claims.

63. Class Representative, on behalf of himself and the Participating Class Members, acknowledges and agrees that the claims for unpaid wages and all other amounts sought through this Action are disputed, and that the payments set forth herein constitute payment of all sums allegedly due to them. Class Representative, on behalf of himself and the Participating Class Members, acknowledges and agrees that California Labor Code Section 206.5 is not applicable to the Parties hereto. Section 206.5 provides in pertinent part as follows: "An employer shall not

1 require the execution of any release of any claim or right on account of wages due, or to become
2 due, or made as an advance on wages to be earned, unless payment of those wages has been
3 made.”

4 **E. General Release by Plaintiff**

5 64. As a material inducement to Defendant to enter into this Settlement Agreement, in
6 addition to Plaintiff’s release of the Released Class Claims and Released PAGA Claims, as
7 discussed above, Plaintiff Sergio Enriquez does hereby, for himself and for his respective spouses,
8 domestic partners, marital community, children, estates, trusts, attorneys, heirs, successors,
9 beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians,
10 assigns, and representatives, forever completely release and discharge the Released Parties from
11 any and all charges, complaints, claims, liabilities, obligations, promises, agreements, contracts,
12 controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and
13 expenses (including for alleged back wages, statutory penalties, civil penalties, liquidated
14 damages, exemplary damages, interest, attorneys’ fees, and costs) of any nature whatsoever, from
15 the beginning of time through the execution of this Settlement, whether known or unknown,
16 suspected or unsuspected, concealed or hidden, including but not limited to all claims arising out
17 of, based upon, or relating to Plaintiff’s employment with Defendant or the remuneration for or
18 termination of such employment (collectively, the “Class Representative’s Claims”).

19 65. Without limiting the generality of the foregoing, Plaintiff expressly releases all
20 claims or rights against Released Parties for any and all charges, complaints, claims, causes of
21 action, debts, sums of money, controversies, agreements, promises, damages and liabilities of any
22 kind or nature whatsoever, both at law and equity, known or unknown, suspected or unsuspected,
23 arising from conduct including without limitation all actions, claims and grievances, whether
24 actual or potential, known or unknown, related, incidental to or arising out of any act or omission
25 committed or omitted by Defendant or the Released Parties including, but not limited to, a release
26 of all claims under (a) the California Civil Code, (b) the California Fair Employment and Housing
27 Act, (c) Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et. seq., (d) the
28 Employment Act of 1967, (e) the Civil Rights Act of 1991, (f) the Civil Rights Act of 1866 and

1 1870, (g) 42 U.S.C. § 1981, as amended, (h) Executive Order 11246, (i) the Americans with
2 Disabilities Act 42 U.S.C. § 12101, et. seq., as amended, (j) the Family and Medical Leave Act,
3 as amended, (k) the Equal Pay Act of 1963, as amended, (l) the Immigration and Reform Control
4 Act, as amended, (m) any other state, federal, and local law, regulation and ordinance dealing
5 with discrimination in employment, disability, wrongful discharge, and retaliation for exercising
6 any right or participating or engaging in any activity, (n) the Occupational Safety and Health Act,
7 as amended, (o) the Sarbanes-Oxley Act of 2002, as amended, (p) the Employment Retirement
8 Income Security Act of 1974, as amended (except vested benefits), (q) the Worker Adjustment
9 and Benefit Protection Act of 1990, as amended, (r) the Worker Adjustment and Retraining
10 Notification Act, as amended, (s) any federal, state or common law claim or cause of action for
11 breach of contract, wrongful discharge, constructive discharge, retaliation, defamation, slander,
12 libel, intentional or negligent infliction of emotional distress, misrepresentation, fraud,
13 promissory estoppel, any other tort or negligence claim, or obligations arising out of any of
14 Defendant's employment policies or practices, employee handbooks, and/or any statements by
15 any employee or agent of Defendant whether oral or written, and (t) any federal, state or common
16 law claim or cause of action for reinstatement, back pay, bonus, attorneys' fees, compensatory
17 damages, costs, front pay, any form of equitable or declaratory relief, liquidated damages,
18 emotional distress, personal injury, punitive damages, pain and suffering, medical expenses,
19 damage to reputation, damage for personal, emotional or economic injury or damage of any kind.
20 This provision is intended by the Parties to be all-encompassing and to act as a full and total
21 release of any claims, whether specifically enumerated herein or not, that Plaintiff might have or
22 have had, that exists or ever has existed, on or prior to the Response Deadline.

23 66. Plaintiff expressly waives and relinquishes all rights and benefits afforded by
24 Section 1542 of the Civil Code of the State of California and does so understanding and
25 acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code of
26 the State of California states:

27 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
28 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE

1 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
2 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
3 DEBTOR OR RELEASED PARTY.

4 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
5 full and complete release and discharge of all parties, Plaintiff, and Class Counsel, expressly
6 acknowledge that this Settlement Agreement is intended to include in its effect, without
7 limitation, all claims that Plaintiff knew of, as well as all claims that he did not know or suspect
8 to exist in his favor against the Released Parties, or any of them, for the time period from the
9 beginning of time to the execution of this Settlement Agreement, and that this Settlement
10 Agreement contemplates the extinguishment of any such Plaintiff's claims to the maximum extent
11 permitted by law.

12 **F. Interim Stay of Proceedings**

13 67. Pending completion of all of the prerequisites necessary to effectuate this
14 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action
15 except such as are necessary to effectuate the Settlement.

16 **G. Notice Process**

17 68. Appointment of Settlement Administrator. The Parties have agreed to the
18 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
19 including mailing the Notice, using standard methods to obtain forwarding addresses, addressing
20 questions from Class Members and PAGA Employees, independently reviewing and verifying
21 documentation associated with any objections or opt-out requests, as needed, resolving any
22 disputes regarding the calculation or application of the formula for determining the Individual
23 Settlement Amounts, drafting and mailing the settlement checks to Participating Class Members
24 and PAGA Employees, issuing Forms W-2 and 1099, handling all required tax reporting and
25 filings related to the Settlement, disbursing payments in accordance with the Settlement and the
26 Court's orders, and performing such other tasks as set forth herein or as the Parties mutually agree
27 or that the Court orders.

28 69. Disputes Regarding Settlement Administration. Any and all disputes relating to
administration of the Settlement by the Settlement Administrator (except for disputes regarding

Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement Agreement, until Plaintiff and Defendant notify the Court that all payments and obligations contemplated by this Settlement Agreement have been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the dispute without the necessity of Court intervention. The Settlement Administrator shall also be responsible for issuing to Plaintiff, Participating Class Members, PAGA Employees, and Class Counsel any Forms W-2, Forms 1099, or other Tax Forms as may be required by law for all amounts paid pursuant to this Agreement. The Settlement Administrator shall also be responsible for setting up all necessary tax accounts and forwarding all payroll taxes and penalties to the appropriate government authorities.

70. Class Data. Within ten (10) days after entry of the Preliminary Approval Order, Defendant shall provide the Class Data to the Settlement Administrator. The Settlement Administrator will run a check of the Class Members' addresses against those on file with the U.S. Postal Service's National Change of Address List. The Class Data provided to the Settlement Administrator must be safeguarded and will not be provided to Class Counsel unless required to effectuate Class Counsel's duties with the express written permission of Defendant's counsel or order of the Court. The Class Data will remain confidential, it shall be used solely to administer the Settlement, and it will not be used or disclosed to anyone, except as required by applicable tax authorities, pursuant to Defendant's express written consent, or by order of the Court.

71. Notice. The Notice, as approved by the Court, shall be sent by the Settlement Administrator to the Class Members, by first class mail, in English and Spanish, within ten (10) calendar days following the Settlement Administrator's receipt of the Class Data. The Settlement Administrator shall use standard methods, including a skip trace, to obtain forwarding addresses of Class Members if any envelopes with the Notice are returned.

72. Returned Notices. The Settlement Administrator will take steps to ensure that the Notice is received by all Class Members, including utilization of the National Change of Address Database maintained by the United States Postal Service to review the accuracy of and, if possible, update a mailing address. Notices will be re-mailed to any Class Member for whom an

1 updated address is located within ten (10) calendar days following both the Settlement
2 Administrator learning of the failed mailing and its receipt of the updated address. The Notice
3 shall be identical to the original Notice, except that it shall notify the Class Member that the
4 exclusion (opt-out) request or objection must be returned by the later of the Response Deadline
5 or fifteen (15) days after the remailing of the Notice.

6 73. Presumption Regarding Receipt of Notice. It will be conclusively presumed that
7 if an envelope has not been returned within thirty (30) days of the mailing that the Class Member
8 received the Notice.

9 74. Disputes Regarding Class Data. Class Members are deemed to participate in the
10 Settlement unless they opt-out. The Notice will inform Class Members of his/her/their estimated
11 Individual Settlement Amount and the number of Pay Periods Worked during the Class Period
12 and during the PAGA Period. Class Members may dispute their Pay Periods Worked if they feel
13 they were employed more pay periods in the Class Period in California than Defendant's records
14 show by timely submitting evidence to the Settlement Administrator. Defendant's records will be
15 presumed determinative absent reliable evidence to rebut Defendant's records, but the Settlement
16 Administrator will evaluate the evidence submitted by the Class Member and provide the
17 evidence submitted to Class Counsel and Defense Counsel who agree to meet and confer in good
18 faith about the evidence to determine the Class Member's actual number of Pay Periods Worked
19 and estimated Individual Settlement Amount. If Class Counsel and Defense Counsel are unable
20 to agree, they agree to submit the dispute to the Settlement Administrator to render a final
21 decision. Class Members will have until the Notice Response Deadline to dispute Pay Periods
22 Worked, object, or opt out, unless extended by the Court. The Response Deadline shall be 45
23 days after the original mailing date of the Notice by the Settlement Administrator. In the event
24 that the Settlement Administrator increases the number of Pay Periods Worked for any Class
25 Member, then the Settlement Administrator will recalculate the Participating Class Members'
26 Individual Settlement Amounts; accordingly, in no event will Defendant be required to increase
27 the Gross Settlement Amount.

28 75. Declaration of Due Diligence. The Settlement Administrator shall provide counsel

1 for the Parties, at least twenty-five (25) days prior to the final approval hearing, a declaration of
2 due diligence and proof of mailing with regard to the mailing of the Notice.

3 76. Class Members' Rights. Each Class Member will be fully advised of the
4 Settlement, the ability to object to the provisions in the Settlement related to the Class Claims,
5 and the ability to opt out or request exclusion from the Class Claims provisions of the Settlement.
6 The Notice will inform the Class Members of the Court-established deadlines for submitting
7 objections or requesting exclusion from the Class Claims provisions of the Settlement in
8 accordance with the following guidelines:

9 (a) Requests for Exclusion from Class Members. Any Class Member, other
10 than Plaintiff, may request to be excluded from the Class by submitting a "Request for Exclusion"
11 to the Settlement Administrator, postmarked on or before the Notice Response Deadline. The
12 Request for Exclusion should state in words to this effect:

13 "I WISH TO BE EXCLUDED FROM THE CLASS IN THE *ENRIQUEZ*
14 *V. SHIPBOB, INC.* SETTLEMENT. I UNDERSTAND THAT IF I ASK
15 TO BE EXCLUDED FROM THE CLASS, I WILL NOT RECEIVE ANY
16 MONEY FROM THE SETTLEMENT OF THE CLASS CLAIMS IN THIS
LAWSUIT.

17 Any Request for Exclusion must include the full name, address, telephone number,
18 employee number or last four digits of the social security number or date of birth, and the
19 signature of the Class Member requesting exclusion. The Request for Exclusion must be returned
20 by mail to the Settlement Administrator at the specified address for the Settlement Administrator
21 in the Notice. Any such Request must be made in accordance with the terms set forth in the Notice.
22 A Request for Exclusion will be timely only if postmarked by the Notice Response Deadline,
23 unless the Parties otherwise agree in writing. Any Class Member who timely requests exclusion
24 in compliance with these requirements: (i) will not have any rights under this Agreement with
25 respect to the Class Claims, including the right to object, appeal, or comment on the Settlement;
26 (ii) will not be entitled to receive any payments under this Agreement with respect to Class
27 Claims; and (iii) will not be bound by this Agreement, or the Judgment, with respect to the
28 Released Class Claims.

1 (b) Binding Effect on Participating Class Members. Except for those Class
2 Members who exclude themselves in compliance with the procedures set forth above, all Class
3 Members will: (i) be deemed to be Participating Class Members for all purposes under this
4 Agreement; (ii) will be bound by the terms and conditions of this Agreement, the Judgment, and
5 the releases set forth herein; and (iii) except as otherwise provided herein, will be deemed to have
6 waived all objections and oppositions to the fairness, reasonableness, and adequacy of the
7 Settlement.

8 (c) Objections to Settlement of Class Claims. Provided they do not opt out,
9 any Class Member, other than Plaintiff, may object to the terms of this Agreement with respect
10 to the Class Claims and may appear at the Final Approval Hearing and object whether or not they
11 have submitted a written objection as outlined herein (“Objecting Class Member”). To object, a
12 Class Member can inform the Settlement Administrator, in writing, of his/her/their objection,
13 which must be postmarked by the Notice Response Deadline at the address set forth in the Notice.
14 Such objection shall include the full name, address, telephone number, dates of employment with
15 Defendant of the Objecting Class Member, the case name and number, the basis for the objection,
16 including any legal support and each specific reason in support of the objection, as well as any
17 documentation or evidence in support thereof, and, if the Objecting Class Member is represented
18 by counsel, the name and address of his/her/their counsel. If any Objecting Class Member wishes
19 to speak at the Final Approval Hearing with respect to the Class Claims, that Objecting Class
20 Member’s written submission should include a request to be heard, and the Court will determine
21 whether Objecting Class Members will be permitted to speak. The Settlement Administrator shall
22 provide objections, if any, to Class Counsel and Defense Counsel within three (3) days of receipt,
23 and the Settlement Administrator shall attach the same to its declaration of due diligence it files
24 with the Court prior to the Final Approval Hearing. Any Participating Class Member who files an
25 objection must not opt out and will remain eligible to receive monetary compensation from the
26 Settlement if it becomes final and binding. Plaintiff and Defendant shall not be responsible for
27 any fees, costs, or expenses incurred by any Class Member and/or his/her/their counsel related to
28 any objections to the Settlement. PAGA Employee may not object to or opt out of the Settlement

1 with respect to the PAGA Claims.

2 (d) Failure to Object. Any Class Member who desires to object with respect to
3 the Class Claims but fails to timely submit a written objection waives any right to object in writing
4 and will be foreclosed from making any written objection to this Settlement.

5 (e) Responses to Objections. Counsel for the Parties may file a response to any
6 objections submitted by Objecting Class Members at least five (5) court days before the date of
7 the Final Approval Hearing.

8 77. Class Members will have until the Notice Response Deadline to object or submit
9 a Request for Exclusion to the Settlement Administrator by U.S. Mail using the address provided
10 in the Notice. The Settlement Administrator shall disclose jointly to Class Counsel and
11 Defendant's counsel the written objections that were timely submitted and provide the number of
12 Requests for Exclusion that were submitted on a weekly basis, and upon the request of Class
13 Counsel or Defense Counsel.

14 78. Funding of the Settlement Amount. Defendant shall make a one-time deposit into
15 the QSF of the Gross Settlement Amount as specified by the Settlement Administrator that is
16 necessary to make all payments required under this Settlement, within fourteen (14) days after
17 the Effective Date. Defendant shall also fund with the Settlement Administrator its share of
18 employer payroll taxes on the portion of the Individual Settlement Payments allocated to unpaid
19 wages as specified in this Agreement and as calculated and directed by the Settlement
20 Administrator for use by the Settlement Administrator to pay employer-side taxes owed as a result
21 of the Settlement. Aside from funding the Gross Settlement Amount and employer-side taxes
22 owed as a result of this Settlement, Defendant shall have no further obligation to pay any amount
23 for any reason in connection with this Settlement.

24 79. Distribution of Funds. No later than seven (7) calendar days after deposit of the
25 payment into the QSF, the Settlement Administrator will mail the Individual Settlement Payments
26 to the Participating Class Members, the payment for the attorneys' fees and costs to Class
27 Counsel, any Service Award to the Class Representative (*i.e.*, Plaintiff), the payment to the
28 LWDA for its portion of the PAGA Award, and will pay itself the Settlement Administration

Costs.

80. Deadline for Cashing Settlement Checks. Participating Class Members shall have 180 calendar days after mailing by the Settlement Administrator to cash their settlement checks. If any Participating Class Member's check is not cashed within that period, the check will be void and a stop-payment will be issued. All unclaimed funds after the 180-day deadline shall be sent to the California Unclaimed Property Fund in the name of the class member. The release will be binding upon all Participating Class Members regardless of whether or not they cash their checks within the 180-day period. In the event that any settlement check is returned to the Settlement Administrator within 180 days of mailing, the Settlement Administrator will, within five (5) business days of receipt of the returned settlement check, perform a skip trace to try to locate the individual. If a new address is located by these means or if a forwarding address is available, the Administrator will have ten (10) business days to re-issue the check. Neither Defendant, Defense Counsel, Class Counsel, Plaintiff, nor the Settlement Administrator will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a Participating Class Member notifies the Settlement Administrator that he/she/they believe that a settlement check has been lost or stolen, the Settlement Administrator shall immediately stop payment on such check. If the check in question has not been negotiated prior to the stop payment order, the Settlement Administrator will issue a replacement check.

81. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on mailings, distributions, payments, or reports made in accordance with or pursuant to this Agreement. This provision does not, however, prevent a Party from seeking enforcement of this Agreement.

H. Duties of the Parties Prior to the Court's Approval

82. Upon completion of confirmatory discovery, Plaintiff will move the Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order accomplishing the following:

- (a) Scheduling the Final Approval Hearing on the issue of whether this

Settlement should be finally approved as fair, reasonable, and adequate as to the Class Members and a hearing on fees, costs, and the Service Award;

(b) Approving as to form and content the proposed Notice;

(c) Directing the mailing of the Notice by first class mail to the Class Members;

(d) Preliminarily approving this Settlement in accordance with this Agreement and by submitting the Proposed Preliminary Approval Order attached to this Settlement as Exhibit “B,” subject to any modifications as ordered by the Court and mutually agreed upon by the Parties; and

(e) Preliminarily certifying the class for purposes of this Settlement.

83. Good Faith Efforts and Cooperation to Secure Approval. In the event the Court declines to approve this Agreement on its first hearing or subsequent hearings, the Parties agree to meet and confer in good faith to address the Court’s concerns and to work together in good faith to evaluate potential revisions and/or additional submissions of information, declarations, etc., to address the Court’s concerns and renew a motion for approval.

I. Duties of the Parties Following Court’s Final Approval

84. In connection with the Final Approval Hearing provided for in this Settlement Agreement, Class Counsel shall submit the proposed Final Approval Order attached to this Settlement as Exhibit “C”, subject to any modifications as ordered by the Court and mutually agreed upon by the Parties:

(a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable, and adequate, and directing consummation of its terms and provisions;

(b) Approving Class Counsel’s application for an award of attorneys’ fees and reimbursement of litigation costs and expenses, the Service Award to the Class Representative, the PAGA Award, and the payment to the Settlement Administrator for costs of administering the settlement; and

(c) Entering judgment approving the Settlement, thereby permanently barring all Participating Class Members from prosecuting any Released Class Claims against any of the

Released Parties and permanently barring all PAGA Employee and the State of California and LWDA from prosecuting any Released PAGA Claims against any of the Released Parties.

J. Voiding the Agreement

85. If the Court fails or refuses to issue the Final Approval Order or fails to approve any material condition of this Settlement Agreement which effects a fundamental change of the Settlement, the entire Settlement Agreement shall be rendered voidable and unenforceable as to all Parties herein at the option of either Party.

86. If fifteen percent (15%) or more of the Class Members timely submit a Request for Exclusion, Defendant shall have the option of terminating or modifying this Agreement without prejudice to its pre-settlement positions and defenses in the Action. If Defendant exercise such option under this paragraph, they shall be relieved of any obligation to pay the Gross Settlement Amount or any other obligations from the Settlement by giving notice to Plaintiff's Counsel and the Settlement Administrator within ten (10) days after the Notice Response Deadline. If Defendant exercises its option under this paragraph, Defendant shall be solely responsible for all Settlement Administration Costs incurred.

87. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount, or any amounts that otherwise would have been owed under this Settlement. In addition, the Parties will be placed in the same position they were in prior to reaching this Settlement with the same rights, including without limitation the right of Defendant to contest the merits of Plaintiff's claims, class certification and Plaintiff's pursuit of a representative action under PAGA.

88. If the Settlement is voided or fails for any reason, any costs incurred by the Settlement Administrator shall be borne equally by Defendant and Plaintiff, unless otherwise specified in this Agreement.

K. Other Terms

89. Full and Complete Defense. This Agreement may be pleaded by any Released Party as a full and complete defense to and may be used as the basis for an injunction against, any

1 action, suit, or other proceeding that has been or may be instituted, prosecuted, or attempted,
2 asserting any Released Class Claim or Released PAGA Claim.

3 90. Waiver. The waiver by one Party of any breach of this Agreement by another Party
4 shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

5 91. Parties' Authority. The signatories hereto represent that they are fully authorized
6 to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions
7 hereof.

8 92. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
9 accomplish the terms of this Settlement Agreement, including but not limited to, execution of
10 such documents and to take such other action as may reasonably be necessary to implement the
11 terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best
12 efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that
13 may become necessary by order of the Court, or otherwise, to effectuate this Settlement
14 Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement
15 Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and
16 Defendant's Counsel, take all necessary steps to secure the Court's preliminary and final approval
17 of the settlement and the final entry of judgment.

18 93. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
19 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
20 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
21 cause of action, or rights released and discharged by this Settlement Agreement.

22 94. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
23 Order, nothing contained herein, nor the consummation of this Settlement Agreement, is to be
24 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
25 of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
26 Settlement Agreement with the intention of avoiding further disputes and litigation with the
27 attendant inconvenience and expenses. This Settlement Agreement is a settlement document, and
28 it, along with all related documents such as the notices, and motions for preliminary and final

approval, shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement. The stipulation for class certification as part of this Settlement Agreement is for settlement purposes only and if, for any reason the settlement is not approved, the stipulation will be of no force or effect.

95. Notices. Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed:

To the Class Members and PAGA Employee:

Mehrdad Bokhour
mehrdad@bokhourlaw.com
 1901 Avenue of the Stars, Suite 450
 Los Angeles, California 90067
 Tel: (310) 975-1493; Fax: (310) 675-0861

Joshua Falakassa
josh@falakassalaw.com
 1901 Avenue of the Stars, Suite 450
 Los Angeles, California 90067
 Tel: (818) 456-6168; Fax: (888) 505-0868

To Defendant:

Joshua Levine
jdlevine@littler.com
 Jocelyn Hannah
JHannah@littler.com
 501 W. Broadway, Suite 900
 San Diego, California 92101-3577
 Tel: (619) 232-0441; Fax: (619) 232-4302

96. Publicity: Plaintiff Enriquez and his Class Counsel agree to discuss the terms of this Settlement only in declarations submitted to a court or court hearings to establish their adequacy to serve as a class representative in this case, in declarations submitted to a court in support of a motion for attorney's fees in this case, and in discussions with Class Members in the context of administering this Settlement. Plaintiff and Class Counsel agree not to otherwise publicize this Settlement, including, but not limited to, issuing press releases, posting summaries online, or otherwise speaking to the press regarding the terms of this Settlement. If Plaintiff or

1 Class Counsel are contacted by members of the press, they will respond only that the lawsuit
2 exists and has been resolved.

3 97. Construction. The Parties hereto agree that the terms and conditions of this
4 Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the
5 Parties and that this Settlement Agreement shall not be construed in favor of or against any Party
6 by reason of the extent to which any Party or their counsel participated in the drafting of this
7 Settlement Agreement. Plaintiff and Defendant expressly waive the common-law and statutory
8 rule of construction that ambiguities should be construed against the drafter of an agreement and
9 further agree, covenant, and represent that the language in all parts of this Agreement shall be in
10 all cases construed as a whole, according to its fair meaning.

11 98. Captions and Interpretations. Paragraph titles or captions contained herein are
12 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
13 describe the scope of this Settlement Agreement or any provision hereof. Each term of this
14 Settlement Agreement is contractual and not merely a recital.

15 99. Modification. This Settlement Agreement may not be changed, altered, or
16 modified, except in writing and signed by the Parties hereto, and approved by the Court. This
17 Settlement Agreement may not be discharged except by performance in accordance with its terms
18 or by a writing signed by all of the Parties hereto.

19 100. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
20 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall provide
21 written notice to the other Party and allow an opportunity to cure the alleged deficiencies, and
22 Plaintiff and Defendant agree to seek the help of the mediator identified in this Agreement to
23 resolve any dispute they are unable to resolve informally. During this period, the Parties shall
24 bear their own attorneys' fees and costs. This provision shall not apply to any legal action or other
25 proceeding instituted by any person or entity other than Plaintiff or Defendant.

26 101. Court Retains Jurisdiction. The Parties agree that upon the entry of judgment of
27 dismissal pursuant to the terms of this Agreement, that, pursuant to Code of Civil Procedure
28 section 664.6, the Court shall retain exclusive and continuing equity jurisdiction of this Action

1 over all Parties to interpret, enforce, and effectuate the terms, conditions, intents, and obligations
2 of this Agreement.

3 102. Enforceability. Pursuant to California Evidence Code section 1123(a) and (b), this
4 Agreement is intended by the Parties to be, and shall be, enforceable, binding and admissible in
5 a court of law.

6 103. Choice of Law. This Settlement Agreement shall be governed by and construed,
7 enforced, and administered in accordance with the laws of the State of California, without regard
8 to its conflicts-of-law rules.

9 104. Integration Clause. This Settlement Agreement contains the entire agreement
10 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
11 or contemporaneous agreements, understandings, representations, and statements, whether oral
12 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
13 hereunder may be waived except in writing.

14 105. Binding On Assigns. This Settlement Agreement shall be binding upon and inure
15 to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
16 successors, and assigns.

17 106. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
18 because the members of the Settlement Class are numerous, it is impossible or impractical to have
19 each Participating Class Member execute this Settlement Agreement. The Notice will advise all
20 Participating Class Members of the binding nature of the releases provided herein and such shall
21 have the same force and effect as if this Settlement Agreement were executed by each
22 Participating Class Member.

23
24
25 **[Continued on Next Page]**
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27
28

107. Counterparts. This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures and photocopies of signature pages shall have the same force and effect as an original.

APPROVAL AND EXECUTION BY PARTIES:

Dated: _____, 2022

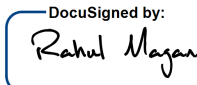
CLASS REPRESENTATIVE:

Sergio Enriquez

Dated: 12/3/2022, 2022

DEFENDANT:

SHIPBOB, INC. by:

Signature: 
26DE554A8FAC43A...
Printed Name: Rahul Magan

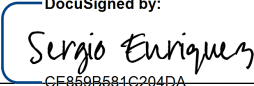
Position: VP, Legal

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APPROVAL AND EXECUTION BY PARTIES:

Dated: 12/3/2022, 2022

CLASS REPRESENTATIVE:

DocuSigned by:

CE850B584C204DA...
Sergio Enriquez

Dated: _____, 2022

DEFENDANT:

SHIPBOB, INC. by:

Signature: _____

Printed Name: _____

Position: _____