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 Delicatessen

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

MANUEL MATEO MIGUEL, individually,
 and on behalf of all others similarly situated,

Plaintiff,

vs.

NATE 'N AL'S THEN & NOW, LLC, a
 limited liability company dba NATE 'N AL'S
 DELICATESSEN; and DOES 1 through 10,
 inclusive,

Defendants.

Case No.: 21STCV14637

CLASS ACTION

[Assigned for all purposes to the Honorable
 William F. Highberger, Department 10]

**CLASS ACTION AND PAGA SETTLEMENT
 AGREEMENT AND CLASS NOTICE**

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Manuel Mateo Miguel (“Plaintiff”) and defendant Nate ‘N Al’s Then & Now, LLC, dba Nate ‘N Al’s Delicatessen (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. **DEFINITIONS.**

1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned *Manuel Mateo Miguel v. Nate ‘N Al’s Then & Now, LLC dba Nate ‘N Al’s Delicatessen*, initiated on April 16, 2021, Case Number 21STCV14637.

1.2. “Administrator” means Apex Class Action Administration, the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.

1.4. “Aggrieved Employee” means any person employed by Defendant in California and classified as a non-exempt employee who worked for Defendant during the PAGA Period.

1.5. “Class” means all persons employed by Defendant in California and classified as non-exempt who worked for Defendant during the Class Period.

1.6. “Class Counsel” means Kane Moon, Lilit Ter-Astvatsatryan, and Linh Tran of Moon Law Group, PC.

1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.

1.8. “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.

1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a

Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

1.11. “Class Notice” means the “Notice of Proposed Class Action Settlement”, to be mailed to Class Members in English with a Spanish translation in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

1.12. “Class Period” means the period from April 25, 2019 to August 30, 2023.

1.13. “Class Representative” means Manuel Mateo Miguel, the named Plaintiff in the Action seeking Court approval to serve as Class Representative.

1.14. “Class Representative Service Payment” means the up to \$2,500.00 payment to the named Class Representative for initiating the Action and providing services in support of the Action.

1.15. “Court” means the Superior Court of California, County of Los Angeles.

1.16. “Defendant” means named Defendant Nate ‘N Al’s Then & Now, LLC dba Nate ‘N Al’s Delicatessen.

1.17. “Defense Counsel” means Matthew Oster and Victor Balladares of Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP.

1.18. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, or if an objection is made but withdrawn prior to the Final Approval Hearing, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a

remittitur.

1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.

1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.

1.21. “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.

1.22. “Gross Settlement Amount” means Eighty-Five Thousand Dollars and Zero Cents (\$85,000.00) which is the total amount Defendant agrees to pay under this Settlement. In no event shall Defendant be obligated to pay more than the Gross Settlement Amount except as provided in Paragraphs 4.3 and 8 below (employers’ share of payroll taxes and optional escalator provision). The Gross Settlement Amount will be used to pay (i) Individual Class Payments, (ii) Individual PAGA Payments, (iii) the LWDA PAGA Payment, (iv) Class Counsel Fees, (v) the Class Counsel Litigation Expenses, (vi) Class Representative Service Payment, (vii) and the Administration Expense Payment.

1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.

1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.

1.25. “Judgment” means the judgment entered by the Court based upon the Final Approval.

1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code § 2699(i).

1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code § 2699(i).

1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: (i) Individual PAGA Payments, (ii) the LWDA PAGA Payment, (iii) Class Representative Service Payment, (iv) Class Counsel

Fees Payment, (v) Class Counsel Litigation Expenses Payment, and (vi) the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.

1.29. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.

1.30. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).

1.31. “PAGA Notice” means Plaintiff’s April 14, 2021 letter to Defendant and the LWDA providing notice pursuant to Labor Code § 2699.3(a).

1.32. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.

1.33. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$5,000) and the 75% to LWDA (\$15,000) in settlement of PAGA claims.

1.34. “PAGA Period” means the period from April 14, 2020 to August 30, 2023.

1.35. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

1.36. “Plaintiff” means Manuel Mateo Miguel, the named plaintiff in the Action.

1.37. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.

1.38. “Preliminary Approval Order” means the Order Granting Preliminary Approval and Approval of PAGA Settlement.

1.39. “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.

1.40. “Released PAGA Claims” means the claims being released as described in Paragraph 5.3 below.

1.41. “Released Parties” means: Defendant and any parent, subsidiary, affiliate, predecessor or successor entity, and all agents, employees, contracting parties, joint employers, officers, directors and attorneys thereof.

1.42. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.

1.43. "Response Deadline" means 60 days after the Administrator mails Notice to Class Members and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.

1.44. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

1.45. "Workweek" may be based on either: (1) weeks during which at least one day was worked, during the Class Period; or (2) hire dates and, where applicable, last dates worked or separation dates, re-hire dates, dates of any periods of leave, and dates of any transition between non-exempt and exempt status, during the Class Period.

2. **RECITALS.**

2.1. On April 16, 2021, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for 1) failure to pay minimum wages; 2) failure to pay overtime compensation; 3) failure to provide meal periods; 4) failure to authorize and permit rest breaks; 5) failure to timely pay final wages at termination; 6) failure to provide accurate itemized wage statements; and 7) unfair business practices. On August 19, 2021, Plaintiff filed a First Amended Complaint adding a ninth cause of action against Defendant for PAGA civil penalties under California Labor Code § 2699 *et seq.*

2.2. Pursuant to Labor Code § 2699.3(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice on April 14, 2021.

2.3. On November 18, 2021, the Parties participated in private mediation, with mediator Steve Pearl, Esq. which was unsuccessful.

2.4. Prior to mediation, Plaintiff obtained, through informal discovery, information sufficient to meaningfully evaluate the claims at issue, including applicable policy documents and a

sample of time and pay records for the Class. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.*, 48 Cal. App. 4th 1794, 1801 (1996) and *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 129-130 (2008) ("*Dunk/Kullar*").

2.5. After the Parties' unsuccessful attempt at a private mediation, the Parties returned to litigating the matter and seeking class discovery and were ultimately able to reach a resolution, the terms of which are memorialized herein to settle the Action.

2.6. The Court has not granted class certification.

2.7. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. **MONETARY TERMS.**

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraphs 4.3 and 8 below, Defendant promise to pay the total amount of Eighty-Five Thousand Dollars and Zero Cents (\$85,000.00). Defendant has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval Order and Judgement:

3.2.1. To Plaintiff: Class Representative Service Payment to the named Class Representative of not more than Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00) (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member and Aggrieved Employee). Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this

1 amount. As part of the motion for Class Counsel Fees Payment and Class
2 Litigation Expenses Payment, Plaintiff will seek Court approval for any Class
3 Representative Service Payment no later than 16 court days prior to the Final
4 Approval Hearing. If the Court approves a Class Representative Service Payment
5 less than the amount requested, the Administrator will retain the remainder in the
6 Net Settlement Amount. The Administrator will pay the Class Representative
7 Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and
8 liability for employee taxes owed on the Class Representative Service Payment.

9 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than thirty-three
10 percent (33%) of the Gross Settlement Amount (i.e., Twenty-Eight Thousand Fifty
11 Dollars and Zero Cents (\$28,050.00) and a Class Counsel Litigation Expenses
12 Payment of not more than Eighteen Thousand Dollars and Zero Cents
13 (\$18,000.00). Defendant will not oppose requests for these payments provided that
14 the payments do not exceed these amounts. Plaintiff and/or Class Counsel will file
15 a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment
16 no later than 16 court days prior to the Final Approval Hearing. If the Court
17 approves a Class Counsel Fees Payment and/or a Class Counsel Litigation
18 Expenses Payment less than the amounts requested, the Administrator will allocate
19 the remainder to the Net Settlement Amount. Released Parties shall have no
20 liability to Class Counsel or any other Plaintiff's Counsel arising from any claim
21 to any portion of any Class Counsel Fee Payment and/or Class Counsel Litigation
22 Expenses Payment. The Administrator will pay the Class Counsel Fees Payment
23 and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class
24 Counsel assumes full responsibility and liability for taxes owed on the Class
25 Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and
26 holds Defendant harmless, and indemnifies Defendant, from any dispute or
27 controversy regarding any division or sharing of any of these Payments.

28 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed Ten

Thousand Dollars and Zero Cents (\$10,000.00) except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$10,000.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.4.1. Tax Allocation of Individual Class Payments. Twenty percent (20%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The remaining Eighty percent (80%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties with Forty percent (40%) being allocated to interest and Forty percent (40%) being allocated to penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of Five Thousand Dollars and Zero Cents (\$5,000.00) to be paid from the Gross Settlement Amount, with 75% (i.e., Three Thousand and Seven Hundred Fifty Dollars and

Zero Cents (\$3,750.00)) allocated to the LWDA PAGA Payment and 25% (i.e., One Thousand and Two Hundred Fifty Dollars and Zero Cents (\$1,250.00)) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (i.e., \$1,250.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendant estimates there are approximately 2,658 Workweeks/Pay Periods,

4.2. Class Data. Not later than fifteen (15) days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Administrator shall verify all such relevant information with the National Change of Address database or the equivalent. Nothing in this confidentiality provision shall be construed or work to preclude Class Counsel from performing their fiduciary duties to the Class. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to

1 provide corrected or updated Class Data as soon as reasonably feasible. Without any
2 extension of the deadline by which Defendant must send the Class Data to the
3 Administrator, the Parties and their counsel will expeditiously use best efforts, in good
4 faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class
5 Data.

6 4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the non-reversionary
7 Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's
8 share of payroll taxes, separate and apart from the Gross Settlement Amount, by
9 transmitting the funds to the Administrator no later than 30 days after the Effective Date.
10 If the Court does not grant Final Approval, this amount will be returned to Defendant.

11 4.4. Payments from the Gross Settlement Amount. Within fourteen (14) days of the Effective
12 Date, the Administrator will mail checks for all Individual Class Payments, all Individual
13 PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the
14 Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the
15 Class Representative Service Payments. Disbursement of the Class Counsel Fees Payment,
16 the Class Counsel Litigation Expenses Payment and the Class Representative Service
17 Payments shall not precede disbursement of Individual Class Payments and Individual
18 PAGA Payments.

19 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or
20 Individual PAGA Payments and send them to the Class Members via First Class
21 U.S. Mail, postage prepaid. The face of each check shall prominently state the
22 date (not less than 180 days after the date of mailing) when the check will be
23 voided. The Administrator will cancel all checks not cashed by the void date. The
24 Administrator will send checks for Individual Settlement Payments to all
25 Participating Class Members (including those for whom Class Notice was returned
26 undelivered). The Administrator will send checks for Individual PAGA Payments
27 to all Aggrieved Employees including Non-Participating Class Members who
28 qualify as Aggrieved Employees (including those for whom Class Notice was

1 returned undelivered). The Administrator may send Participating Class Members
2 a single check combining the Individual Class Payment and the Individual PAGA
3 Payment. Before mailing any checks, the Settlement Administrator must update
4 the recipients' mailing addresses using the National Change of Address Database.

5 4.4.2. The Administrator must conduct a Class Member Address Search for all other
6 Class Members whose checks are returned undelivered without USPS forwarding
7 address. Within seven (7) days of receiving a returned check the Administrator
8 must re-mail checks to the USPS forwarding address provided or to an address
9 ascertained through the Class Member Address Search. The Administrator need
10 not take further steps to deliver checks to Class Members whose re-mailed checks
11 are returned as undelivered. The Administrator shall promptly send a replacement
12 check to any Class Member whose original check was lost or misplaced, requested
13 by the Class Member prior to the void date.

14 4.4.3. For any Class Member whose Individual Class Payment check or Individual
15 PAGA Payment check is uncashed and cancelled after the void date, the
16 Administrator shall transmit the funds represented by such checks to the California
17 Controller's Unclaimed Property Fund in the name of the Class Member thereby
18 leaving no "unpaid residue" subject to the requirements of California Code of Civil
19 Procedure § 384(b).

20 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall
21 not obligate Defendant to confer any additional benefits or make any additional
22 payments to Class Members (such as 401(k) contributions or bonuses) beyond
23 those specified in this Agreement.

24 **5. RELEASES OF CLAIMS.**

25 Effective on the date when Defendant fully fund the entire Gross Settlement Amount and the Court
26 enters an order granting Final Approval of this Settlement, Plaintiff, Class Members, and Class Counsel
27 will release claims against all Released Parties as follows:

28 5.1. Plaintiff's Release.

5.1.1. Scope of Plaintiff's Release. Plaintiff and her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

5.1.2. Plaintiff's Waiver of Rights Under California Civil Code § 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.

5.2. Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present spouses, family members, representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint during the Class Period,

including, e.g., any and all claims arising under California Labor Code sections 201, 202, 203, 204, 218.5, 218.6, 226, 226.7, 510, 512, 1174(d), 1194, 1194.2, 1197, 1198, 2802 and the applicable Industrial Welfare Commission Wage Orders based on any alleged failure to pay minimum wage; failure to pay overtime compensation; failure to pay paid time off wages; failure to provide meal periods; failure to authorize and permit rest periods; failure to indemnify necessary business expenses; failure to timely pay final wages; failure to timely pay wages during employment; failure to provide accurate wage statements; failure to keep adequate records; and unfair business practices arising under California Business and Professions Code section 17200 *et seq.* Excluded from this portion of the release are claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the Plaintiff's PAGA Notice during the PAGA Period. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

5.3. Release by Class Members Who Are Aggrieved Employees: All Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present spouses, family members, representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and/or the Plaintiff's PAGA Notice during the PAGA Period, including any claim for PAGA penalties based on alleged violations of California Labor Code sections 201, 202, 203, 204, 218.5, 218.6, 226, 226.7, 510, 512, 1174(d), 1194, 1194.2, 1197, 1198, 2802 and the applicable Industrial Welfare Commission Wage Orders based on any alleged failure to pay minimum wage; failure to pay overtime compensation; failure to pay paid time off wages; failure to provide meal periods; failure to authorize and permit rest periods; failure to indemnify necessary business expenses; failure to

1 timely pay final wages; failure to timely pay wages during employment; failure to
2 provide accurate wage statements; and/or failure to keep adequate records.

3 **6. MOTION FOR PRELIMINARY APPROVAL.**

4 The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion for
5 Preliminary Approval”).

6 6.1. Plaintiff’s Responsibilities. Plaintiff will prepare all documents necessary for obtaining
7 Preliminary Approval, including: (i) a draft of the notice, and memorandum in support of
8 the Motion for Preliminary Approval that includes an analysis of the Settlement under
9 *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code §
10 2699(f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of
11 PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from
12 Plaintiff confirming willingness and competency to serve as Class Representative; (v) a
13 signed declaration from Class Counsel firm attesting to its competency to represent the
14 Class Members; its timely transmission to the LWDA of all necessary PAGA documents
15 (initial notice of violations (Labor Code § 2699.3(a)), this Agreement (Labor Code §
16 2699(l)(2)); (vi) all facts relevant to any actual or potential conflict of interest with Class
17 Members, and/or the Administrator.

18 6.2. Responsibilities of Counsel. Class Counsel will be responsible for expeditiously finalizing
19 and filing the Motion for Preliminary Approval; obtaining a prompt hearing date for the
20 Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the
21 Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court’s
22 Preliminary Approval Order to the Administrator.

23 6.3. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for
24 Preliminary Approval and/or the supporting declarations and documents, Class Counsel
25 and Defense Counsel will expeditiously work together on behalf of the Parties by meeting
26 in person or by telephone, and in good faith, to resolve the disagreement. If the Court does
27 not grant Preliminary Approval or conditions Preliminary Approval on any material
28 change to this Agreement, Class Counsel and Defense Counsel will expeditiously work

1 together on behalf of the Parties by meeting in person or by telephone, and in good faith,
2 to modify the Agreement and otherwise satisfy the Court's concerns.

3 **7. SETTLEMENT ADMINISTRATION.**

4 7.1. Selection of Administrator. The Parties have jointly selected Apex Class Action
5 Administration to serve as the Administrator and verified that, as a condition of
6 appointment, Apex Class Action Administration agrees to be bound by this Agreement and
7 to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment
8 of Administration Expenses. The Parties and their Counsel represent that they have no
9 interest or relationship, financial or otherwise, with the Administrator other than a
10 professional relationship arising out of prior experiences administering settlements.

11 7.2. Employer Identification Number. The Administrator shall have and use its own Employer
12 Identification Number for purposes of calculating payroll tax withholdings and providing
13 reports to the state and federal tax authorities.

14 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets
15 the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation
16 § 468B-1.

17 7.4. Notice to Class Members.

18 7.4.1. No later than three (3) business days after receipt of the Class Data, the
19 Administrator shall notify Class Counsel that the list has been received and state
20 the number of Class Members, Aggrieved Employees, Workweeks, and Pay
21 Periods in the Class Data.

22 7.4.2. Using best efforts to perform as soon as possible, and in no event later than fourteen
23 (14) days after receiving the Class Data, the Administrator will send to all Class
24 Members identified in the Class Data, via first-class United States Postal Service
25 ("USPS") mail, the Class Notice with Spanish translation, substantially in the form
26 attached to this Agreement as Exhibit A. The first page of the Class Notice shall
27 prominently estimate the dollar amounts of any Individual Class Payment and
28 Individual PAGA Payment (if applicable) payable to the Class Member, and the

number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

7.4.3. Not later than three (3) business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

7.4.4. The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional fourteen (14) days beyond the sixty (60) days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

7.4.5. If the Administrator, Defendant or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than fourteen (14) days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

7.5. Requests for Exclusion (Opt-Outs).

7.5.1. Class Members who wish to exclude themselves (opt-out of) the Class Settlement

1 must send the Administrator, by fax, email, or mail, a signed written Request for
2 Exclusion not later than sixty (60) days after the Administrator mails the Class
3 Notice (plus an additional fourteen (14) days for Class Members whose Class
4 Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or
5 his/her representative that reasonably communicates the Class Member's election
6 to be excluded from the Settlement and includes the Class Member's name, address
7 and email address or telephone number. To be valid, a Request for Exclusion must
8 be timely faxed, emailed, or postmarked by the Response Deadline.

9 7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it fails
10 to contain all the information specified in the Class Notice. The Administrator shall
11 accept any Request for Exclusion as valid if the Administrator can reasonably
12 ascertain the identity of the person as a Class Member and the Class Member's
13 desire to be excluded. The Administrator's determination shall be final and not
14 appealable or otherwise susceptible to challenge. If the Administrator has reason
15 to question the authenticity of a Request for Exclusion, the Administrator may
16 demand additional proof of the Class Member's identity. The Administrator's
17 determination of authenticity shall be final and not appealable or otherwise
18 susceptible to challenge.

19 7.5.3. Every Class Member who does not submit a timely and valid Request for
20 Exclusion is deemed to be a Participating Class Member under this Agreement,
21 entitled to all benefits and bound by all terms and conditions of the Settlement,
22 including the Participating Class Members' Releases under Paragraphs 5.2 and 5.3
23 of this Agreement, regardless whether the Participating Class Member actually
24 receives the Class Notice or objects to the Settlement.

25 7.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a
26 Non-Participating Class Member and shall not receive an Individual Class
27 Payment or have the right to object to the class action components of the
28 Settlement. Because future PAGA claims are subject to claim preclusion upon

entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 5.3 of this Agreement will still receive an Individual PAGA Payment, notwithstanding their Request for Exclusion from the Class portion of the Settlement.

7.6. Challenges to Calculation of Workweeks. Each Class Member shall have sixty (60) days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator in writing via fax, email or mail. The Administrator must request that the challenging Class Member submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination as to the challenges.

7.7. Objections to Settlement.

7.7.1. Only Participating Class Members (i.e., Class Members who do not submit valid and timely Requests for Exclusion) may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment. Aggrieved Employees have no right to object to the PAGA portion of the Settlement.

7.7.2. For any Participating Class Member to object, the Class Member may send written objections to the Administrator, signed by the Class Member, or his or her

representative, by fax, email or mail, no later than sixty (60) days after the Administrator's mailing of the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice was re-mailed). The Settlement Administrator shall send all objections it receives to Defense Counsel and Class Counsel within three (3) business days of receipt. Participating Class Members may also appear in Court, in person or remotely, (or hire an attorney to appear in Court on their behalf) to present verbal objections at the Final Approval Hearing. The Court retains final authority with respect to the consideration and admissibility of any Class Member objections.

7.7.3. Non-Participating Class Members (i.e., Class Members who submit valid and timely Requests for Exclusion) have no right to object to any of the class action components of the Settlement.

7.7.4. Aggrieved Employees shall have no right to object to the PAGA portion of the Settlement and shall be bound by the Release of claims identified in Paragraph 5.3 of this Agreement.

7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise. Administrator shall maintain staffing sufficient to perform all duties delegated to the Administrator by and through this Agreement. If the Administrator makes a material or fraudulent misrepresentation to any party, conceals requested material information, or fails to perform adequately on behalf of Defendant or the Class, the Parties may agree to remove the Administrator. Disputes regarding the retention or dismissal of the Administrator shall be referred to the Court for resolution.

7.8.1. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of

1 Class Members who have timely submitted valid Requests for Exclusion
2 (“Exclusion List”); (b) the names and other identifying information of Class
3 Members who have submitted invalid Requests for Exclusion; (c) copies of all
4 Requests for Exclusion from Settlement submitted (whether valid or invalid).

5 7.8.2. Weekly Reports. The Administrator must, on a weekly basis, provide written
6 reports to Class Counsel and Defense Counsel that, among other things, tally the
7 number of: Class Notices mailed or re-mailed, Class Notices returned undelivered,
8 Requests for Exclusion (whether valid or invalid) received, objections received,
9 challenges to Workweeks and/or Pay Periods received and/or resolved, and checks
10 mailed for Individual Class Payments and Individual PAGA Payments (“Weekly
11 Report”). The Weekly Reports must include the Administrator’s assessment of the
12 validity of Requests for Exclusion and attach copies of all Requests for Exclusion
13 and objections received.

14 7.8.3. Workweek and/or Pay Period Challenges. The Administrator has the authority to
15 address and make final decisions consistent with the terms of this Agreement on
16 all Class Member challenges over the calculation of Workweeks and/or Pay
17 Periods. The Administrator’s decision shall be final and not appealable or
18 otherwise susceptible to challenge.

19 7.8.4. Administrator’s Declaration. Not later than fourteen (14) days before the date by
20 which Plaintiff is required to file the Motion for Final Approval of the Settlement,
21 the Administrator will provide to Class Counsel and Defense Counsel, a signed
22 declaration suitable for filing in Court attesting to its due diligence and compliance
23 with all of its obligations under this Agreement, including, but not limited to, its
24 mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing
25 of Class Notices, attempts to locate Class Members, the total number of Requests
26 for Exclusion from Settlement it received (both valid or invalid), the number of
27 written objections and attach the Exclusion List. The Administrator will
28 supplement its declaration as needed or requested by the Parties and/or the Court.

Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

7.8.5. Final Report by Settlement Administrator. Within ten (10) days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements, by employee identification number only, of all payments made under this Agreement. At least fifteen (15) days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE

Based on its records at the time of mediation, Defendant estimated that there were approximately 2,658 Total Workweeks in the Class Period. In the event the actual count of Workweeks during the Class Period increases by more than 15% from original estimate of 2,658 Workweeks, (i.e., by more than 399 Workweeks, or in other words, if the Workweeks worked between April 25, 2019 to August 30, 2023 exceed 3,057), Plaintiff shall have the option to request, at Defendant's election, either: (1) a pro-rata increase in the Gross Settlement Amount equal to the percentage increase from 3,057 Workweeks (i.e., if the total Workweeks increases by 20%, then a 5% increase to the Gross Settlement Amount); or (2) a cut-off of the Class Period to end on the date that the Total Workweeks reach 3,057.

9. DEFENDANT'S RIGHT TO WITHDRAW.

If the number of valid Requests for Exclusion identified in the Exclusion List exceeds ten percent (10%) of the total of all Class Members, Defendant may, but is not obligated, to elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not later than fourteen (14) days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

1 **10. MOTION FOR FINAL APPROVAL.**

2 Not later than sixteen (16) court days before the calendared Final Approval Hearing, Plaintiff will
3 file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA
4 settlement under Labor Code § 2699(I), a Proposed Final Approval Order and a proposed Judgment
5 (collectively “Motion for Final Approval”). Class Counsel and Defense Counsel will expeditiously meet
6 and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the
7 Motion for Final Approval.

8 10.1. Response to Objections. Each Party retains the right to respond to any objection raised by
9 a Participating Class Member, including the right to file responsive documents in Court no
10 later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered
11 or accepted by the Court.

12 10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval
13 on any material change to the Settlement (including, but not limited to, the scope of release
14 to be granted by Class Members), the Parties will expeditiously work together in good faith
15 to address the Court’s concerns by revising the Agreement as necessary to obtain Final
16 Approval. The Court’s decision to award less than the amounts requested for the Class
17 Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation
18 Expenses Payment and/or Administrator Expenses Payment shall not constitute a material
19 modification to the Agreement within the meaning of this paragraph.

20 10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the
21 Court will retain jurisdiction over the Parties, Action, and the Settlement solely for
22 purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement
23 administration matters, and (iii) addressing such post-Judgment matters as are permitted
24 by law.

25 10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
26 conditions of this Agreement, specifically including the Class Counsel Fees Payment and
27 Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the
28 Parties, their respective counsel, and all Participating Class Members who did not object

to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payments or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

11. AMENDED JUDGMENT.

If any amended judgment is required under Code of Civil Procedure § 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

12. ADDITIONAL PROVISIONS.

12.1. No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. Defendant has denied and continues to deny each and all of the claims and contentions alleged in the Action, and has denied and continues to deny that it has committed any violation of law or engaged in any wrongful act that was alleged, or that could have been alleged, in the Action. This Agreement represents a compromise and

1 settlement of highly disputed claims. Nothing in this Agreement is intended or should be
2 construed as an admission by Defendant that any of the allegations in the Operative
3 Complaint have merit or that Defendant has any liability for any claims asserted; nor
4 should it be intended or construed as an admission by Plaintiff that Defendant's defenses
5 in the Action have merit. The Parties agree that class certification and representative
6 treatment is for purposes of this Settlement only. If, for any reason the Court does not grant
7 Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to
8 contest certification of any class for any reasons, and Defendant reserves all available
9 defenses to the claims in the Action, and Plaintiff reserves the right to move for class
10 certification on any grounds available and to contest Defendant's defenses. The
11 Settlement, this Agreement and Parties' willingness to settle the Action will have no
12 bearing on, and will not be admissible in connection with, any litigation (except for
13 proceedings to enforce or effectuate the Settlement and this Agreement).

14 12.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant and
15 Defense Counsel separately agree that, until the Motion for Preliminary Approval of
16 Settlement is filed, they and each of them will not disclose, disseminate and/or publicize,
17 or cause or permit another person to disclose, disseminate or publicize, any of the terms of
18 the Agreement directly or indirectly, specifically or generally, to any person, corporation,
19 association, government agency, or other entity except: (1) to the Parties' attorneys,
20 accountants, or spouses, all of whom will be instructed to keep this Agreement
21 confidential; (2) counsel in a related matter only as necessary to litigate each related matter;
22 (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response
23 to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state
24 or federal government agency. Each Party agrees to immediately notify each other Party
25 of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff,
26 Class Counsel, Defendant, and Defense Counsel separately agree not to, directly or
27 indirectly, initiate any conversation or other communication, before the filing of the Motion
28 for Preliminary Approval, with any third party regarding this Agreement or the matters

1 giving rise to this Agreement except to respond only that “the matter was resolved,” or
2 words to that effect. This paragraph does not restrict Class Counsel’s communications with
3 Class Members in accordance with Class Counsel’s ethical obligations owed to Class
4 Members.

5 12.3. No Solicitation. The Parties separately agree that they and their respective counsel and
6 employees will not solicit any Class Member to opt out of or object to the Settlement, or
7 appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class
8 Counsel’s ability to communicate with Class Members in accordance with Class Counsel’s
9 ethical obligations owed to Class Members.

10 12.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement
11 together with its attached exhibits shall constitute the entire agreement between the Parties
12 relating to the Settlement, superseding any and all oral representations, warranties,
13 covenants, or inducements made to or by any Party.

14 12.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
15 represent that they are authorized by Plaintiff and Defendant, respectively, to take all
16 appropriate action required or permitted to be taken by such Parties pursuant to this
17 Agreement to effectuate its terms, and to execute any other documents reasonably required
18 to effectuate the terms of this Agreement including any amendments to this Agreement.

19 12.6. Cooperation. The Parties and their counsel will cooperate with each other and use their
20 best efforts, in good faith, to implement the Settlement by, among other things, modifying
21 the Agreement, submitting supplemental evidence and supplementing points and
22 authorities as requested by the Court. In the event the Parties are unable to agree upon the
23 form or content of any document necessary to implement the Settlement, or on any
24 modification of the Agreement that may become necessary to implement the Settlement,
25 the Parties will seek the assistance of a mediator and/or the Court for resolution.

26 12.7. No Prior Assignments. The Parties separately represent and warrant that they have not
27 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
28 encumber to any person or entity and portion of any liability, claim, demand, action, cause

of action, or right released and discharged by the Party in this Settlement.

12.8. No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

12.9. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.

12.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

12.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

12.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting. No parol or other evidence may be offered to explain, construe, contradict, or clarify its terms, the intent of the Parties or their counsel, or the circumstances under which this Agreement was made or executed.

12.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

12.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to Evidence Code § 1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than ninety (90) days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the

final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.

12.15. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

12.16. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

12.17. Reasonable Extensions. The Parties reserve the right, subject to the Court's approval, to agree to any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement.

12.18. Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Kane Moon, Esq.
Lilit Ter-Astvatsatryan, Esq.
Linh Tran, Esq.
MOON LAW GROUP, PC
1055 W. Seventh St., Suite 1880
Los Angeles, CA 90017

To Defendant:

Matthew Oster, Esq.
Victor Balladares, Esq.
WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP
11400 West Olympic Boulevard, 9th Floor
Los Angeles, CA 90064-1582

12.19. Opportunity to Cure. If one Party to this Agreement considers another Party to be in breach of its obligations under this Agreement, that Party must provide the breaching Party with

written notice of the alleged breach and provide a reasonable opportunity to cure the breach before taking any action to enforce any rights under this Agreement. Unless a longer time is agreed to in writing by the parties, thirty (30) days is deemed a “reasonable opportunity to cure.”

12.20. Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision if Defendant and Class Counsel, on behalf of Class Representatives and Class Members, mutually agree in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement. Any such agreement shall be reviewed and approved by the Court before it becomes effective.

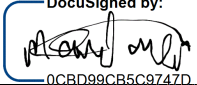
12.21. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12.22. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Plaintiff & Class Representative:

Dated: 2/6/2024

By:

DocuSigned by:

0CB089CB5C9747D

Manuel Mateo Miguel

Plaintiff's Counsel:

Dated: 2/6/2024

MOON LAW GROUP, PC

By: 

Kane Moon
Lilit Ter-Astvatsatryan
Linh Tran

Attorneys for Plaintiff

Defendant:

Dated: 02 / 06 / 2024

Nate 'N Al's Then & Now, LLC dba Nate 'N Al's
Delicatessen

By: _____

Shelli Azoff

Print Name



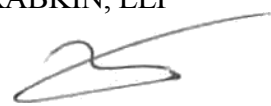
Signature

Title

Defendant's Counsel:

Dated: 02/06/2024

WOLF, RIFKIN, SHAPIRO, SCHULMAN
& RABKIN, LLP

By: 

Matthew Oster
Victor Balladares

Attorneys for Defendant

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