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19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

20 **COUNTY OF SAN BERNARDINO**

21 **SAN BERNARDINO JUSTICE CENTER**

22 ELIZABETH MORENO, individually, and
23 on behalf of all others similarly situated,

24 Plaintiffs,

25 v.

26 A.H. RESTAURANTS, a California
27 corporation; and DOES 1 through 50,
28 inclusive,

Defendant.

CASE NO.: CIVSB2134700

[Hon. Joseph Ortiz, Dept. S-17]

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT AND
RELEASE**

Action Filed: December 20, 2021

Trial Date: None Set

1 This Class Action and PAGA Settlement and Release ("Settlement Agreement") is entered
2 into by and between Plaintiff Elizabeth Moreno ("Plaintiff"), on behalf of herself and the Class, on
3 the one hand, and Defendant A.H. Restaurants, and the Released Parties ("Defendant"), on the other
4 hand. Plaintiff and Defendant are collectively referred to herein as "Parties" and individually
5 referred to herein as "Party."

6 In consideration of the mutual covenants, promises, and agreements set forth herein, the
7 Parties agree that, pursuant to the terms and conditions set forth herein, which are subject to
8 approval of the Court, this Action and the Released Claims shall be settled and compromised as
9 between Plaintiff and the Class on the one hand and Defendant on the other hand.

10 DEFINITIONS

11 1. "Action" means *Moreno v. A.H. Restaurants*, Superior Court of the State of
12 California for the County of San Bernardino, Case No. CIVSB2134700.

13 2. "Class" means: All non-exempt employees employed by A.H. Restaurants, in the
14 State of California, at any time from December 20, 2017 through the date of preliminary approval.

15 3. "Class Counsel" means the Law Office of Scott Ernest Wheeler.

16 4. "Class Counsel Award" means attorneys' fees for Class Counsel's litigation and
17 resolution of this Action and Class Counsel's expenses and costs incurred in connection with this
18 Action.

19 5. "Class Information" means information regarding Class Members that Defendant
20 will in good faith compile from its records and provide to the Settlement Administrator. It shall be
21 formatted as a Microsoft Excel spreadsheet or Microsoft Word Document and shall include: each
22 Class Member's full name; social security number; last known address; last known telephone
23 number; and number of Compensable Work Weeks and Compensable PAGA Work Weeks.

24 6. "Class Member" means each person who is a member of the Class defined above and
25 who is eligible to participate in this Settlement.

26 7. "Class Period" means the time period from December 20, 2017, through the date that
27 the Court grants preliminary approval of the class action settlement.

1 8. “Class Representative Service Award” means the amount that the Court authorizes to
2 be paid to Plaintiff in recognition of, *inter alia*, Plaintiff’s efforts and risks in assisting with the
3 prosecution of the Action and in return for executing a general release with Defendant.

4 9. “Compensable Work Week” or “Compensable Work Weeks” means a reasonable
5 estimate of weeks worked by each Class Member as a non-exempt employee in California for
6 Defendant individually and collectively by all Class Members during the Class Period based on
7 Defendant’s records and used as a value to calculate Individual Settlement Payments. The number
8 of Compensable Work Weeks for each Class Member will be determined by adding all the calendar
9 days within the inclusive dates of employment for the employee and dividing that number by seven.
10 Any partial workweek will be expressed as a percentage of a full workweek. If it can be readily
11 determined, workweeks where someone was employed but did not record any hours can be excluded
12 from this calculation.

13 10. “Compensable PAGA Work Week” or “Compensable PAGA Work Weeks” means a
14 reasonable estimate of weeks worked by each PAGA Member, as a nonexempt employee in
15 California for Defendant, individually and collectively by all PAGA Members, during the period
16 from October 16, 2020, through preliminary approval of the settlement, based on Defendant’s
17 records and used as a value to calculate PAGA Payments. The number of Compensable PAGA
18 Work Weeks for each PAGA Member, will be determined by adding all the calendar days within the
19 inclusive dates of employment for the employee and dividing that number by seven. Any partial
20 workweek will be expressed as a percentage of a full workweek. If it can be readily determined,
21 workweeks where someone was employed but did not record any hours can be excluded from this
22 calculation.

23 11. “Court” means the Superior Court for the County of San Bernardino, State of
24 California.

25 12. “Defendant” means A.H. Restaurants.

26 13. “Effective Date” means the date on which the Superior Court’s Final Approval Order
27 and Judgment becomes final and Defendant fully funds the Gross Settlement Amount. The Superior
28 Court’s Final Approval Order and Judgment “becomes final” upon the full funding of the Gross

1 Settlement Amount and the latter of: (a) if there is no Objection to the Settlement, or if there is an
2 Objection but it is withdrawn, then, the date that the Final Approval Order and Judgment is filed by
3 the Court; (b) if there is an Objection to the Settlement that is not withdrawn, but no appeal is
4 commenced thereafter, then, sixty-five (65) calendar days following the date that the Final Approval
5 Order and Judgment is filed by the Court; or (c) if there is an Objection to the Settlement, that is not
6 withdrawn, and any appeal, writ, or other appellate proceeding opposing the Settlement has been
7 filed within sixty-five (65) calendar days following the date that the Final Approval Order and
8 Judgment is filed by the Court, then, when any such appeal, writ, or other appellate proceeding
9 opposing the validity of the Settlement has been resolved finally and conclusively with no right to
10 pursue further remedies or relief.

11 14. "Final Approval Order and Judgment" means an order and judgment that the Court
12 will file which finally approves this Settlement and enters a judgment in favor of Plaintiff.

13 15. "Gross Settlement Amount" means the maximum amount which Defendant is
14 obligated to pay under this Settlement Agreement, which is One Hundred and Seventy Thousand
15 Dollars (\$170,000.00), subject to increase under the circumstances as set forth in paragraph 60. This
16 is an "all in" non-reversionary Settlement in which Defendant is required to pay the entire Gross
17 Settlement Amount. No portion of the Gross Settlement Amount will revert to Defendant under any
18 circumstances. Payments of any appropriate and lawfully-required employer's share of the payroll
19 taxes on the taxable portion of the settlement payments shall be paid separately from the Gross
20 Settlement Amount by Defendant at the time the Gross Settlement Amount is funded.

21 16. "Individual Settlement Payment" means the amount payable from the Net Settlement
22 Amount to each Settlement Class Member.

23 17. "LWDA" means the California Labor and Workforce Development Agency.

24 18. "Net Settlement Amount" means the Gross Settlement Amount, less the Class
25 Counsel Award, Class Representative Service Award, payment to the LWDA and PAGA Members
26 for PAGA penalties, and Settlement Administration Costs.

27 19. "Notice of Class and PAGA Settlement" means the notice, substantially in the form
28 attached hereto as **Exhibit 1**, which the Settlement Administrator will mail to each Class and PAGA

1 Member, and which explains, *inter alia*, the terms of this Settlement Agreement, the settlement
2 process, and each Class Member's estimated Individual Settlement Payment. Notice of Class
3 Settlement will be provided to the Class in English and Spanish.

4 20. "Operative Complaint" means the Class Action Complaint on file in this action.

5 21. "Objection" means a letter or other written communication submitted by a Class
6 Member to the Settlement Administrator that contains a clear statement by the Class Member that he
7 or she is objecting to any of the terms of the Settlement.

8 22. "PAGA Member" or "PAGA Members" means any Class Member who was
9 employed or has been employed by Defendant at any time during the time period of October 6,
10 2020, through the date the Court grants preliminary approval of this settlement.

11 23. "Parties" means Plaintiff and Defendant, collectively, and "Party" means either
12 Plaintiff or Defendant, individually.

13 24. "Payment Ratio" means the respective Compensable Work Weeks for each
14 Settlement Class Member divided by the total Compensable Work Weeks for all Settlement Class
15 Members.

16 25. "PAGA Payment Ratio" means the respective Compensable PAGA Work Weeks for
17 each PAGA Member divided by the total Compensable PAGA Work Weeks for all PAGA
18 Members.

19 26. "PAGA Period" means the time period from October 6, 2020, through the date that
20 the Court grants preliminary approval of the class action settlement.

21 27. "Plaintiff" refers to Elizabeth Moreno.

22 28. "Preliminary Approval Date" means the date upon which the Court files an order
23 substantially in the form attached hereto as **Exhibit 2**, and which grants preliminary approval of the
24 Settlement.

25 29. "Request for Exclusion" means a letter or other written communication submitted by
26 a Class Member to the Settlement Administrator that contains a clear statement by the Class
27 Member that he or she is electing to be excluded from the Settlement.

1 30. “Released Claims by Plaintiff” is set forth in paragraph 47 below. Plaintiff releases
2 the “Released Claims by Plaintiff” as of the date Defendant fully funds this Settlement.

3 31. “Released Claims by Settlement Class Members” means: As of the date Defendant
4 fully funds this Settlement, Settlement Class Members shall fully and finally release and discharge
5 Released Parties, from December 10, 2017, through the date that the Court grants preliminary
6 approval of the class action settlement, from any and all claims, debts, liabilities, demands,
7 obligations, guarantees, costs, expenses, attorneys’ fees, damages, or causes of action contingent or
8 accrued for, that are pleaded, or that could have been pleaded, based on the facts and claims alleged
9 in the Operative Complaint, including any claims for: (a) failure to provide required meal periods,
10 California Labor Code §§ 226.7, 510 and 512; (b) failure to provide required rest periods, California
11 Labor Code §§ 226.7 and 512; (c) failure to pay overtime wages, California Labor Code §§ 510,
12 1194 and 1198; (d) failure to pay minimum wages, California Labor Code §§ 1194 and 1197; (e)
13 failure to timely pay wages §§ 204 and 210; (f) failure to timely pay all wages during employment
14 and to discharged and quitting employees, California Labor Code §§ 201-204, 210; (g) failure to
15 furnish accurate, itemized wage statements, California Labor Code §§ 226 and 226.3; (h) failure to
16 maintain required records; (i) failure to provide and calculate sick leave; and (j) unlawful business
17 practices under California, Business and Professions Code §17200, et seq.; predicated on any of the
18 violations of the California Labor Code and the applicable IWC Wage Order as alleged in the
19 Operative Complaint including but not limited to, claims for restitution and other equitable relief,
20 liquidated damages, or penalties; and any other benefit, wages, penalties, or other amounts claimed
21 on account of the allegations or the primary rights asserted in the Operative Complaint. This release
22 shall apply to any and all claims arising at any point during the Class Period. Upon entry of the
23 Final Approval Order and funding of the total Gross Settlement Amount, all Participating Class
24 Members will forever completely release and discharge the Released Parties from the Released
25 Claims for the Release Period. Plaintiff and Defendants intend that the Settlement described in this
26 Settlement Agreement will release and preclude any further claim, whether by lawsuit,
27 administrative claim or action, arbitration, demand, or other action of any kind, by each and all of
28 the Participating Class Members to obtain a recovery to any and all of the Released Claims. This

1 release excludes the release of claims not otherwise permitted by law, i.e. Worker's Compensation
2 and unemployment insurance benefits.

3 32. "Released Parties" collectively mean: (i) Defendant; (ii) Defendant's respective past,
4 present and future heirs, executors, administrators, parents, subsidiaries and affiliates, dbas,
5 successors and assigns; and (iii) the past, present and future shareholders, managers, officers,
6 partners, members, agents, employees, current and former management companies, attorneys,
7 insurers, predecessors, successors and assigns of any of the foregoing.

8 33. "Response Deadline" means forty-five (45) days after the postmark date of the
9 Notice of Class Settlement that the Settlement Administrator shall mail to Class Members, and the
10 last date on which Class Members may: (a) submit a Request for Exclusion; or (b) submit an
11 Objection to the Settlement.

12 34. "Settled PAGA Claims", means penalties only under the Private Attorneys General
13 Act ("PAGA"), based upon the Released Claims by PAGA Members that serves the basis for
14 penalties only pursuant to Labor Code § 2699 *et seq.*, for : (a) failure to provide required meal
15 periods, California Labor Code §§ 226.7, 510 and 512; (b) failure to provide required rest periods,
16 California Labor Code §§ 226.7 and 512; (c) failure to pay overtime wages, California Labor Code
17 §§510, 1194 and 1198; (d) failure to pay minimum wages, California Labor Code §§ 1194 and
18 1197; (e) failure to timely pay wages §§ 204 and 210; (f) failure to timely pay all wages due during
19 employment and to discharged and quitting employees, California Labor Code §§ 201-204, 210; (g)
20 failure to furnish accurate, itemized wage statements, California Labor Code §§ 226 and 226.3; (h)
21 failure to maintain required records, California Labor Code §§ 226, 1174; (i) failure to provide and
22 calculate sick leave; and primary rights alleged in Plaintiff's Operative Complaint and in Plaintiff's
23 PAGA Notice dated October 13, 2021.

24 35. "Settlement" means the disposition of the Action pursuant to this Agreement.

25 36. "Settlement Administration Costs" means the amount to be paid to the Settlement
26 Administrator from the Gross Settlement Amount for administration of this Settlement.

27 37. "Settlement Administrator" means Phoenix Settlement Administrators ("Phoenix"),
28 the Settlement Administrator shall be responsible for, *inter alia*: (a) performing Spanish translations

1 of the Notice of Class Settlement; printing and mailing the Notice of Class Settlement to the Class in
2 English and Spanish; (b) receiving and reporting the Requests for Exclusion and Objections
3 submitted by Class Members; (c) providing declaration(s) as necessary in support of preliminary
4 and/or final approval of this Settlement; (d) processing and mailing payments to Plaintiff, Class
5 Counsel, the LWDA, and Settlement Class Members; and (e) any other tasks as the Parties mutually
6 agree or the Court orders the Settlement Administrator to perform. The Settlement Administrator
7 shall keep the Parties timely apprised of the performance of all Settlement Administrator
8 responsibilities. The Parties agree that they have no financial interest or other relationship with
9 Phoenix that could create a conflict of interest. Should a conflict of interest or other issue lead to the
10 disqualification of the selected Settlement Administrator, the Parties will meet and confer as to a
11 suitable replacement.

12 38. "Settlement Class" or "Settlement Class Members" means all Class Members who
13 have not opted out of the Class by submitting a valid and timely Request for Exclusion.

14 RECITALS

15 39. Procedural History. On December 20, 2017, Plaintiff filed a complaint against
16 Defendant in San Bernardino Superior Court, Case No. CIVSB2134700, alleging causes of action
17 for a) failure to provide required meal periods, California Labor Code §§ 226.7, 510 and 512; (b)
18 failure to provide required rest periods, California Labor Code §§ 226.7 and 512; (c) failure to pay
19 overtime wages, California Labor Code §§ 510, 1194 and 1198; (d) failure to pay minimum wages,
20 California Labor Code §§ 1194 and 1197; (e) failure to timely pay wages §§ 204 and 210; (f) failure
21 to timely pay all wages during employment and to discharged and quitting employees, California
22 Labor Code §§ 201-204, 210; (g) failure to furnish accurate, itemized wage statements, California
23 Labor Code §§ 226 and 226.3; (h) failure to maintain required records; (i) failure to provide and
24 calculate sick leave; and (j) unlawful business practices under California, Business and Professions
25 Code §17200, et seq.; as well as for penalties under the Labor Code Private Attorneys General Act.
26 Defendant filed a Notice of General Appearance.

27 40. Investigation and Discovery. The Parties have conducted significant investigation of
28 the facts and law during the prosecution of this Action and before this Settlement was reached. Such

1 discovery and investigation included, *inter alia*, the exchange of information and extensive
2 documents pertaining to Plaintiff and the Class, and numerous meetings and informal conferences
3 wherein the Parties exchanged information, class data, and theories of the case. Plaintiff has also
4 investigated the law as applied to the facts of Plaintiff's claims and Defendant's potential defenses
5 thereto.

6 41. Mediation. The Parties participated in a private mediation session with the highly
7 experienced mediator, Judge Daniel Buckley (Ret.) on January 30, 2023. After a full day of
8 mediation, the Parties were able to resolve the matter after accepting a "Mediator's Proposal" for a
9 proposed class action and PAGA settlement that would fully resolve this matter.

10 42. Benefits of Settlement to Class Members. Plaintiff and Class Counsel recognize the
11 expense and length of continued proceedings necessary to litigate Plaintiff's claims through trial and
12 any possible appeals. Plaintiff has also taken into account the uncertainty and risk of the outcome of
13 further litigation, and the difficulties and delays inherent in such litigation. Plaintiff and Class
14 Counsel are also aware of the burdens of proof necessary to establish liability for the claims asserted
15 in the Action, both generally and in response to Defendant's defenses thereto, and the difficulties in
16 establishing damages for the Class. Plaintiff and Class Counsel have also taken into account
17 Defendant's agreement to enter into a settlement that confers substantial relief upon the members of
18 the Class. Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement
19 set forth in this Settlement Agreement is a fair, adequate, and a reasonable settlement, and is in the
20 best interests of the Class.

21 43. Defendant's Reasons for Settlement. Defendant has concluded that any further
22 defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of
23 Defendant's time, energy, and resources have been and, unless this Settlement is completed, will
24 continue to be devoted to the defense of the claims asserted by Plaintiff. Defendant has also taken
25 into account the risks of further litigation in reaching its decision to enter into this Settlement. Even
26 though Defendant continues to contend that it is not liable for any of the claims alleged by Plaintiff
27 in this Action, Defendant has agreed, nonetheless, to settle in the manner and upon the terms set
28 forth in this Settlement Agreement to put to rest the claims in this Action.

44. No Class Certification. The Court has not granted class certification.

45. No Other Pending Matters. The Parties, Class Counsel and Defendant's 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.

STIPULATION AND AGREEMENT

46. NOW THEREFORE, in consideration of the mutual covenants, promises, and agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

47. It is agreed by and among Plaintiff and Defendant that this Settlement shall bind the Plaintiff, Settlement Class Members, and Defendant, subject to the terms and conditions hereof.

48. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section, the “acknowledging party” and each Party to this Agreement other than the acknowledging party, an “other party”) acknowledges and agrees that (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within 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.

49. Released Claims by Plaintiff. As of the date Defendant fully funds the Settlement, Plaintiff agrees to the Release of Claims by Settlement Class Members, which is set forth in paragraph 31 above. In addition to Release of Claims by Settlement Class Members and as a

1 material inducement to Defendant to enter into this Settlement Agreement, Plaintiff does hereby, for
2 herself and for her spouse, heirs, successors, beneficiaries, devisees, legatees, executors,
3 administrators, trustees, conservators, guardians, personal representatives, and assigns, forever and
4 completely release and discharge the Released Parties from any and all charges, complaints, claims,
5 liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action,
6 suits, rights, demands, costs, losses, debts, and expenses (including back wages, statutory penalties,
7 civil penalties, liquidated damages, exemplary damages, interest, attorneys' fees, and costs) of any
8 nature whatsoever, from the beginning of time through the execution of this Settlement Agreement,
9 whether known or unknown, suspected or unsuspected, including but not limited to all claims
10 arising out of, based upon, or relating to Plaintiff's employment with or work for Defendant or the
11 remuneration for or termination of such employment. Plaintiff acknowledges that Plaintiff may
12 discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or
13 believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in
14 all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

15 Without limiting the generality of the foregoing, Plaintiff expressly releases all claims
16 arising under the California Labor Code (including, but not limited to, sections 201, 201.3, 202, 203,
17 204, 210, 216, 218.6, 221, 222, 225.5, 223.2, 224, 225, 225.5, 226.7, 227.3, 246, 248.1, 248.2,
18 248.3, 248.6, 450, 510, 511, 512, 558, 1174, 1174.5, 118.12, 1194, 1197, 1197.1, 1197.2, 1198,
19 2698 et seq., and 2802); the Wage Orders of the California Industrial Welfare Commission; the
20 California Private Attorneys General Act of 2004 ("PAGA"); California Business and Professions
21 Code section 17200 et seq.; the California Civil Code, to include, but not limited to, section 3336
22 and 3294; the California common law of contract; the Fair Labor Standards Act, 29 U.S.C. § 201 et
23 seq.; federal common law; and the Employee Retirement Income Security Act, 29 U.S.C. § 1001, et
24 seq. Plaintiff's Released Claims also include all claims for lost wages and benefits, emotional
25 distress, retaliation, punitive damages, and attorneys' fees and costs arising under federal, state, or
26 local laws for discrimination, harassment, and wrongful termination such as by way of example
27 only, (as amended) 42 U.S.C. section 1981, Title VII of the Civil Rights Act of 1964, the Americans
28 with Disabilities Act, the Age Discrimination in Employment Act, and the California Fair

1 Employment and Housing Act; and the law of contact and tort. This release excludes the release of
2 claims not permitted by law. As to the Plaintiff's Released Claims only, Plaintiff expressly waives
3 all rights and benefits under the terms of section 1542 of the California Civil Code. Section 1542
4 reads as follows:

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

9 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full
10 and complete release and discharge of all parties, Plaintiff and Class Counsel expressly
11 acknowledge that this Settlement Agreement is intended to include in its effect, without limitation,
12 all claims that Plaintiff knew of, as well as all claims that they do not know or suspect to exist in
13 their favor against the Released Parties, or any of them, for the time period from the beginning of
14 time to the execution of this Settlement Agreement, and that this Settlement Agreement
15 contemplates the extinguishment of any such claims. Plaintiff and Plaintiff's Counsel do not
16 currently intend to pursue any claims against Defendant, including, but not limited to, any and
17 all claims relating to or arising from Plaintiff's employment with Defendant, and Plaintiff's
18 Counsel is not currently aware of any facts or legal theories upon which any claims or causes of
19 action could be brought against Defendant, excepting those facts or legal theories alleged in the
20 Operative Complaint in this Action. This release does not include claims which cannot be
21 released such as unemployment or Worker's Compensation benefits.

22 50. Class Certification. This Agreement represents a compromise and settlement of
23 highly disputed claims. For settlement purposes only, Defendant will stipulate that the Settlement
24 Class Members described herein who do not request exclusion from the Settlement Class may be
25 conditionally certified as a settlement class. This stipulation to certification is in no way an
26 admission that class action certification is proper and shall not be admissible in this or in any other
27 action except for the sole purposes of enforcing this Agreement. Should the Court fail to issue Final
28 Approval for any reason, the Parties' stipulation to class certification as part of the Settlement
Agreement shall become null and void *ab initio* and shall have no bearing on but remains protected

1 by California Evidence Code Section 1152 and shall not be admissible in connection with, the issue
2 of whether or not certification would be appropriate in a non-settlement context, including any
3 litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).
4 Defendant expressly reserves its right and declares that Defendant will continue to oppose class
5 certification and contest the substantive merits of the case should the Court fail to issue Final
6 Approval. Plaintiff expressly reserves his rights and declares that he will continue to pursue class
7 certification and a trial should the Court fail to grant Final Approval.

8 51. Approval of Settlement. Plaintiff will move the Court to grant preliminary and final
9 approval of this class action Settlement. The Parties agree to work diligently and cooperatively to
10 have this matter presented to the Court for preliminary and final approval.

11 52. Release of Claims by Settlement Class Members. Settlement Class Members, on
12 behalf of themselves and their respective former and present representatives, agents, attorneys, heirs,
13 administrators, successors, and assigns, release the "Released Claims by Settlement Class
14 Members," as defined, as of the date Defendant fully funds the Settlement.

15 53. Release of Settled PAGA Claims. PAGA Members, on behalf of themselves and
16 their respective former and present representatives, agents, attorneys, heirs, administrators,
17 successors, and assigns, release the "Settled PAGA Claims," as defined, as of the date Defendant
18 fully funds the Settlement.

19 54. Settlement Administration. Within twenty-eight (28) calendar days after the
20 Preliminary Approval Date, Defendant shall provide the Settlement Administrator with the Class
21 Information. To protect Class Members' privacy rights, the Administrator must maintain the Class
22 Information in confidence, use the Class Information only for purposes of this Settlement and for no
23 other purpose, and restrict access to the Class Information to Administrator employees who need
24 access to the Class Information to effect and perform under this Agreement.

25 55. Notice to the Class. Upon receipt of the Class Information, the Settlement
26 Administrator will perform a search based on the National Change of Address Database to update
27 and correct any known or identifiable address changes. Within ten (10) calendar days after receiving
28 the Class Information, the Settlement Administrator shall mail copies of the Notice of Class

1 Settlement to all Class Members via regular First Class U.S. Mail. The Settlement Administrator
2 shall exercise its best judgment to determine the current mailing address for each Class Member.
3 The address identified by the Settlement Administrator as the current mailing address shall be
4 presumed to be the best mailing address for each Class Member.

5 a. Undeliverable Notices. Any Notice of Class Settlement returned to the
6 Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to
7 the forwarding address affixed thereto within ten (10) calendar days. For any undeliverable Notice
8 of Class Settlement returned for which no forwarding address is affixed, the Settlement
9 Administrator will conduct its investigation for an updated address of the Class Member and re-mail
10 the Notice of Class Action Settlement. If an updated address is found, the Settlement Administrator
11 shall have seven (7) days to re-mail the Notice of Class Action Settlement from receipt of the
12 undelivered envelope. The Settlement Administrator will provide a cover letter notifying the Class
13 Member of the extended Response Deadline. Any Class Member who receives a re-mailed Notice of
14 Class Settlement shall have forty-five (45) days after the postmark date of the re-mailed Notice of
15 Class Settlement to: (a) submit a Request for Exclusion; or (b) submit an Objection to the
16 Settlement.

17 (1) Verification of Class Member Employment Status. If Notice of Class
18 Action Settlement sent to a Class Member is determined to be
19 undeliverable, the Settlement Administrator shall verify the
20 employment status of the Class Member with Defendant within five
21 (5) days of receipt of the undeliverable Notice of Class Action
22 Settlement. If the Class Member is a current employee of Defendant,
23 Defendant shall take all reasonable efforts to obtain the current
24 address from the Class Member and shall provide the same with seven
25 (7) days of notice from the Settlement Administrator.

26 b. Disputes Regarding Individual Settlement Payments. Class Members will
27 have the opportunity, should they disagree with Defendant's records regarding the dates of
28 employment stated in the Notice of Class Settlement, to provide documentation and/or an

1 explanation to show contrary information by the Response Deadline. The dispute form must: (a)
2 contain the full name, address, and telephone number of the Class Member, and the last four digits
3 of the Class Member's social security number or full employee ID number; (b) contain the case
4 name and case number; (c) a clear statement by the Class Member that he or she is disputing the
5 number of Compensable Workweeks and the basis for the dispute; (d) any documentation
6 demonstrating that the number of Compensable Workweeks listed in the Notice of Class Settlement
7 is incorrect; (e) be signed by the Class Member; and (f) be postmarked by the Response Deadline.
8 The date of the postmark on the return mailing envelope on the dispute form shall be the exclusive
9 means used to determine whether it has been timely submitted. If there is a dispute, the Settlement
10 Administrator will consult with the Parties to determine whether an adjustment is warranted. In
11 addition to U.S. Mail, a Class Member may also submit a dispute form by facsimile or email to the
12 Settlement Administrator within the Response Deadline. The Settlement Administrator shall then
13 determine the eligibility for, and the amounts of, any Individual Settlement Payments under the
14 terms of this Agreement. In the absence of circumstances indicating fraud, manipulation or
15 destruction, Defendant's records shall be given a rebuttable presumption of accuracy.

16 c. Request for Exclusion. Class Members who wish to exclude themselves from
17 the Settlement must submit to the Settlement Administrator a Request for Exclusion by the
18 Response Deadline. The Request for Exclusion must: (a) contain the full name, address, and
19 telephone number of the Class Member, and the last four digits of the Class Member's social
20 security number or full employee ID number; (b) contain the case name and case number; (c) a clear
21 statement by the Class Member that he or she is electing to be excluded from the Settlement; (d) be
22 signed by the Class Member; and (e) be postmarked by the Response Deadline if submitted by U.S.
23 Mail. The date of the postmark on the return mailing envelope on the Request for Exclusion
24 submitted by U.S. Mail shall be the exclusive means used to determine whether it has been timely
25 submitted. In addition to U.S. Mail, a Class Member may also submit a Request for Exclusion by
26 facsimile or email to the Settlement Administrator within the Response Deadline. A Request for
27 Exclusion shall not be presumptively invalid if it does not contain the requirements of (a) through
28 (d) if the Settlement Administrator can ascertain the identity of the Class Member who wants to

1 exclude themselves from the Settlement. Any Class Member who requests to be excluded from the
2 Settlement Class shall not be entitled to any recovery under the Settlement and shall not be bound
3 by the terms of the Settlement or have any right to object, appeal or comment thereon except as to
4 any distribution based upon PAGA penalties. PAGA Members will receive their share of the PAGA
5 Payment and the Settled PAGA Claims will be released even if the Class Member submits a timely
6 Request for Exclusion. Class Members who fail to submit a valid and timely Request for Exclusion
7 on or before the Response Deadline shall be bound by all terms of the Settlement and any Final
8 Approval Order and Judgment entered in this Action.

9 d. Requests for Exclusion (Opt-outs) and Exclusion List. Not later than five (5) days
10 after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall
11 email a list to Class Counsel and Defendant's Counsel containing (a) the names and other
12 identifying information of Class Members who have timely submitted valid Requests for Exclusion
13 ("Exclusion List"); (b) the names and other identifying information of Class Members who have
14 submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement
15 submitted (whether valid or invalid).

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

25 f. Objections. Class Members who wish to object to the Settlement can either
26 mail or send by facsimile or email to the Settlement Administrator a written Objection by the
27 Response Deadline. The Objection should: (a) contain the full name, address, and telephone number
28 of the Class Member, and the last four digits of the Class Member's social security number; (b)

1 contain the case name and case number; (c) the dates of employment of the Class Member; (d) be
2 signed by the Class Member; (e) state the basis for the Objection, including any legal briefs, papers
3 or memoranda in support of the Objection; and (f) be postmarked by the Response Deadline. The
4 date of the postmark on the return mailing envelope on the Objection shall be the exclusive means
5 used to determine whether the Objection has been timely submitted. Class Members who submit a
6 timely Objection will have a right to appear at the final approval hearing in order to have their
7 Objection heard by the Court. At no time shall any of the Parties or their counsel seek to solicit or
8 otherwise encourage Class Members to submit Objections to the Settlement or appeal from the Final
9 Approval Order and Judgment. Class Counsel shall not represent any Class Members with respect to
10 any such Objections. The Settlement Administrator will provide the Parties with any Objection
11 within five (5) calendar days of receipt of the Objection. Plaintiff will file any and all Objections
12 with the Court in advance of the Final Approval Hearing. Oral or written Objections may also be
13 made at the Final Approval hearing without a written objection being submitted, but only with the
14 Court's express permission. If the Court rejects the objection, the individual will be bound by the
15 terms of the Settlement.

16 g. If greater than five (5) percent of the Class Members opt out or object to this
17 Settlement Agreement or a number of Class Members whose share of the Net Settlement Amount is
18 5% or more, Defendant will have the right to rescind and terminate the Settlement without prejudice
19 to its pre-settlement positions and defenses in the litigation. In such a case, the Parties and any funds
20 to be awarded shall be returned to their respective statuses as of the date and time immediately prior
21 to the execution of this Agreement.

22 h. Except for those Settlement Class Members who exclude themselves in
23 compliance with the Request for Exclusion procedures set forth above, all Settlement Class
24 Members will: (i) be deemed to be Participating Class Members for all purposes under this
25 Settlement Agreement; (ii) will be bound by the terms and conditions of this Settlement Agreement,
26 the Judgment, and the releases set forth herein; and (iii) except as otherwise provided herein, will be
27 deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy
28

1 of the Settlement, regardless of whether the Settlement Class Member actually receives the Class
2 Notice or objects to the Settlement.

3 56. Funding Gross Settlement Amount. By June 30, 2024, Defendant shall wire transfer
4 the Gross Settlement Amount in addition to the employer's share of the payroll taxes to the
5 Settlement Administrator.

6 57. Allocation of Settlement. Individual Settlement Payments will be paid from the Net
7 Settlement Amount and shall be paid pursuant to the settlement formula set forth herein. Individual
8 Settlement Payments by check shall be mailed by regular First Class U.S. Mail to Settlement Class
9 Members' last known mailing address.

10 a. The Settlement Administrator shall calculate the total Compensable Work
11 Weeks and Compensable PAGA Work Weeks for all Settlement Class Members based on the Class
12 Information provided by Defendant. The respective Compensable Work Weeks for each Settlement
13 Class Member will be divided by the total Compensable Work Weeks for all Settlement Class
14 Members, resulting in the Payment Ratio for each Settlement Class Member; a similar calculation
15 will apply to determining the Payment Ratio for Compensable PAGA Work Weeks. Each
16 Settlement Class Member's Payment Ratio will then be multiplied by the Net Settlement Amount to
17 determine his or her Individual Settlement Payment.

18 b. Individual Settlement Payments due to each Settlement Class Member shall
19 be designated as follows:

20 1. Thirty-Three and One Third percent (33.33%) of the Individual
21 Settlement Payment shall represent payment for alleged unpaid wages. This payment shall be
22 subject to the withholding of all applicable local, state, and federal taxes. Applicable payroll taxes
23 and/or contributions will be deducted from the amount paid to Settlement Class Members. The
24 Settlement Administrator will issue a W-2 Form to each Settlement Class Member in relation to this
25 payment.

26 2. Thirty-Three and One Third percent (33.33%) of the Individual
27 Settlement Payment shall represent payment of all penalties. These payments will not be subject to
28

1 withholding of local, state, and federal taxes. The Settlement Administrator will issue an IRS Form
2 1099 to each Settlement Class Member in relation to these payments.

3 3. Thirty-Three and One Third percent (33.33%) of the Individual
4 Settlement Payment shall represent payment of all interest. These payments will not be subject to
5 withholding of local, state, and federal taxes. The Settlement Administrator will issue an IRS Form
6 1099 to each Settlement Class Member in relation to these payments.

7 (a). Class Members With Missing/Unverifiable Social Security
8 Numbers and Withholdings of Taxes and Applicable Penalties. In the event that an Individual
9 Settlement Payment exceeds the threshold amount that must be reported to the Internal Revenue
10 Service by means of a Form 1099, Class Counsel and the Settlement Administrator will take all
11 necessary and reasonable steps to obtain W-9's from Class Members and to comply with applicable
12 IRS regulations on issuing 1099's without a social security number or tax entity identification
13 number, and shall take all reasonable and necessary steps to avoid imposition of IRS penalties
14 against the Gross Settlement Amount, including, but not limited to limiting payments below the
15 reportable threshold and/or withholding of taxes and any applicable penalties. The Settlement
16 Administrator will contact Class Members who are entitled to payments that exceed the taxable
17 income threshold twice, with at least 30 days between the two contacts.

18 c. Uncashed Settlement Checks. Individual Settlement Payment checks shall
19 remain negotiable for one hundred and eighty (180) days from the postmark date of issuance. If the
20 Settlement Check is not cashed, deposited, or otherwise negotiated within the 180-day deadline, the
21 check will be voided, and the funds associated with any such voided checks shall be distributed to
22 the State of California Controller's Office, Unclaimed Property Division, in the name of the affected
23 Class Member. The Release will be binding upon all Participating Class Members, including those
24 who do not cash their checks within the 180-day period. The Parties agree that this disposition
25 results in no "unpaid cash residue," or "unclaimed or abandoned funds" as the entire Net Settlement
26 Amount will be paid out to the Participating Class Members, whether or not they all cash their
27 payment checks.

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

9 e. Certification By Settlement Administrator. The Parties have the right to
10 monitor and review administration of the Settlement. Any disputes not resolved by the Settlement
11 Administrator concerning the administration of the Settlement will be resolved by the Court, under
12 the laws of the State of California. Prior to any such involvement of the Court, counsel for the
13 Parties will confer in good faith to resolve the disputes without the necessity of involving the Court.
14 Upon completion of administration of the Settlement, the Settlement Administrator shall provide
15 written certification of such completion to counsel for the Parties, and which shall be filed with the
16 Court as necessary.

17 f. Settlement Awards Do Not Trigger Additional Benefits. All monies received
18 by Settlement Class Members shall be deemed to be income to such Settlement Class Members
19 solely in the year in which such awards actually are received by the Settlement Class Members. It is
20 expressly understood and agreed that the receipt of such Individual Settlement Payments will not
21 entitle any Settlement Class Member to additional compensation or benefits under any company
22 compensation or benefit plan or agreement in place during the period covered by the Settlement, nor
23 will it entitle any Settlement Class Member to any increased pension and/or retirement, or other
24 deferred compensation benefits. It is the intent of this Settlement that any Individual Settlement
25 Payments provided for in this Agreement are the sole payments to be made by Defendant to the
26 Settlement Class Members in connection with this Settlement, and that the Settlement Class
27 Members are not entitled to any new or additional compensation or benefits as a result of having
28 received the Individual Settlement Payments (notwithstanding any contrary language or agreement

1 in any benefit or compensation plan document that might have been in effect during the period
2 covered by this Settlement).

3 g. Class Representative Service Award. Defendant agrees not to oppose or
4 object to a Class Representative Service Award to Plaintiff of up to Six Thousand Dollars
5 (\$6,000.00), subject to Court approval. The Settlement Administrator shall issue an IRS Form 1099
6 – MISC to Plaintiff in connection with the Class Representative Service Award payment. Plaintiff
7 shall be solely and legally responsible to pay any and all applicable taxes on his Class
8 Representative Service Award and shall hold harmless Defendant and Class Counsel from any claim
9 or liability for taxes, penalties, or interest arising as a result of the Class Representative Service
10 Award payment. The Class Representative Service Award shall be in addition to Plaintiff's
11 Individual Settlement Payment. This Settlement is not contingent upon the Court awarding Plaintiff
12 a Class Representative Service Award in any amount, and any amount requested by Plaintiff for the
13 Class Representative Service Award that is not granted by the Court shall return to the Net
14 Settlement Amount and be distributed to Settlement Class Members as provided in this Amended
15 Agreement.

16 h. Class Counsel Award. Defendant agrees not to oppose or object to any
17 application or motion by Class Counsel for attorneys' fees not to exceed one-third from the Gross
18 Settlement Amount, or Fifty-Six Thousand and Six Hundred and Ten Dollars (\$56,610.00).
19 Defendant further agrees not to oppose any application or motion by Class Counsel for the
20 reimbursement of any costs or expenses associated with Class Counsel's prosecution of this matter
21 from the Gross Settlement Amount not to exceed Twenty Thousand Dollars (\$20,000.00). Class
22 Counsel shall be solely and legally responsible to pay all applicable taxes on the payment made
23 pursuant to this paragraph. The Settlement Administrator shall issue an IRS Form 1099 – MISC to
24 Class Counsel for the payments made pursuant to this paragraph. This Settlement is not contingent
25 upon the Court awarding Class Counsel any particular amount in attorneys' fees and costs. Any
26 amount requested by Class Counsel for the Class Counsel Award and costs that is not granted by the
27 Court shall return to the Net Settlement Amount and be distributed to Settlement Class Members as
28 provided in this Agreement.

1 i. Settlement Administration Costs. The Settlement Administrator shall be paid
2 for the costs of administration of the Settlement from the Gross Settlement Amount. The costs of
3 notice and administration for the disbursement of the Gross Settlement Amount shall not exceed
4 Fifteen Thousand Dollars (\$15,000.00). Prior to the filing of a motion for final approval of this
5 Settlement, the Settlement Administrator shall provide the Parties with a statement detailing the
6 costs of administration. Any amount requested by the Settlement Administrator for administration
7 costs that is not granted by the Court shall return to the Net Settlement Amount and be distributed to
8 Settlement Class members as provided in this Amended Agreement. Defendant will pay any fees
9 incurred by the Settlement Administrator if the settlement is not approved.

10 j. PAGA Payment. Twenty Thousand dollars (\$20,000) from Gross Settlement
11 Amount will be allocated to penalties under the Private Attorneys General Act of 2004. Seventy-
12 five percent (75%) of that amount, or \$15,000, will be paid to the LWDA and twenty-five (25%) of
13 that amount, or \$5,000, will be paid to the PAGA Members based upon Compensable PAGA Work
14 Weeks as determined by the PAGA Payment Ratio as set forth in Paragraph 25. This PAGA
15 Payment is made pursuant to California Labor Code § 2699(i).

16 j. Effect of Non-Participating Class Members on Calculation of Individual Class
17 Payments. Class Members who opt out of the Settlement (“Non-Participating Class Members”) will not
18 receive any Individual Settlement Payments. The Administrator will retain amounts equal to their
19 Individual Settlement Payments in the Net Settlement Amount for distribution to Participating Class
20 Members on a pro rata basis.

21 58. Tax Liability: Class Counsel and Defendant make no representation as to the tax
22 treatment or legal effect of payments called for hereunder, and Plaintiff and the Settlement Class
23 Members are not relying on any statement or representation by Class Counsel or Defendant in this
24 regard. Plaintiff and Participating Class Members understand and agree that they will be solely
25 responsible for the payment of any taxes and penalties assessed on their respective payments
26 described herein. The amount of federal income tax withholding will be based upon a flat
27 withholding rate for supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-
28 1(a)(2) as amended or supplemented. Income tax withholding will also be made pursuant to

1 applicable state and/or local withholding codes or regulations. Forms W-2 and/or Forms 1099 will
2 be distributed at times and in the manner required by the Internal Revenue Code of 1986 (the
3 “Code”) and consistent with this Settlement Agreement. If the Code, the regulations promulgated
4 thereunder, or other applicable tax law, is changed after the date of this Settlement Agreement, the
5 processes set forth in this Section may be modified in a manner to bring Defendant into compliance
6 with any such changes.

7 59. Distribution of Settlement Payments. Individual Settlement Payments to Settlement
8 Class Members, the Class Representative Service Awards, the Class Counsel Award, Settlement
9 Administration Costs, Defendant’s share of employer payroll taxes and PAGA Payment, shall all be
10 distributed by the Settlement Administrator within ten (10) calendar days of receipt of the full Gross
11 Settlement Amount from Defendant. Prior to distribution of Individual Settlement Payments to the
12 Settlement Class Members and PAGA Members, the Settlement Administrator shall update the
13 Class and PAGA Members addresses using the National Change of Address Database.

14 60. Work Week Differential. It is currently estimated that there were 145 Class
15 Members who collectively worked 4,329 Compensable Work Weeks through December 5, 2022. If
16 it is determined by Plaintiff’s counsel and confirmed by the Settlement Administrator that more than
17 4,373 (10%) additional Class Members existed through final approval, the Gross Settlement Amount
18 will be increased on a pro rata basis according to the number of additional Class Members in excess
19 of 4,373 (10%).

20 61. Final Settlement Approval Hearing and Entry of Final Judgment. Upon expiration of
21 the Response Deadline, a final approval hearing shall be conducted to determine, *inter alia*, final
22 approval of the Settlement and amounts properly payable for: (a) Individual Settlement Payments;
23 (b) the Class Counsel Award; (c) the Class Representative Service Awards; (d) PAGA Payment; and
24 (e) the Settlement Administration Costs.

25 62. Nullification of Settlement Agreement. In the event: (a) the Court does not enter the
26 Order for preliminary approval of the Settlement; (b) the Court does not finally approve the
27 Settlement; (c) the Court does not enter a Final Approval Order and Judgment as provided herein;
28 (d) the Settlement does not become final for any other reason; or (e) the Court fails or refuses to

1 approve any material condition of this Settlement Agreement which effects a fundamental change of
2 the Settlement Agreement, this entire Settlement Agreement shall be null and void and
3 unenforceable as to all Parties herein at the option of any Party but remains protected by California
4 Evidence Code Section 1152, and any order or judgment entered by the Court in furtherance of this
5 Settlement shall be treated as void from the beginning. In such cases, the Parties and any funds to be
6 awarded under this Settlement shall be returned to their respective statuses as of the date and time
7 immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects as
8 if this Agreement had not been executed, except that any fees already incurred by the Settlement
9 Administrator shall be paid by Defendant. Further, if the Settlement Agreement is voided or fails
10 for any reason, Plaintiff and Defendant will have no further obligations under the Settlement
11 Agreement, including any obligation by Defendant to pay the Settlement Amount, or any amounts
12 that otherwise would have been owed under this Settlement Agreement. In the event an appeal is
13 filed from the Court's Final Approval Order and Judgment, or any other appellate review is sought,
14 administration of the Settlement shall be stayed pending final resolution of the appeal or other
15 appellate review, and any fees incurred by the Settlement Administrator prior to it being notified of
16 the filing of an appeal from the Court's Final Approval Order and Judgment, or any other appellate
17 review, shall be paid to the Settlement Administrator by the party or person that filed the appeal,
18 within thirty (30) calendar days of said notification.

19 63. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
20 conditions of this Agreement, specifically including the Class Counsel Award as set forth in this
21 Settlement, the Parties, their respective counsel, and all Participating Class Members who did not
22 object to the Settlement as provided in this Agreement, waive all rights to appeal from the
23 Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions
24 to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal
25 does not include any waiver of the right to oppose such motions, writs or appeals. If an objector
26 appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended
27 until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters
28 that do not affect the amount of the Net Settlement Amount.

1 64. No Effect on Employee Benefits. Amounts paid to Plaintiff or other Settlement Class
2 Members pursuant to this Agreement shall be deemed not to be pensionable earnings and shall not
3 have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g., vacations,
4 holiday pay, retirement plans, etc.) of Plaintiff or Settlement Class Members.

5 65. No Admission by Defendant. Defendant denies any and all claims alleged in this
6 Action and denies all wrongdoing whatsoever. This Settlement Agreement is not a concession or
7 admission and shall not be used against Defendant as an admission or indication with respect to any
8 claim of any fault, concession, or omission by Defendant. Nonetheless, Defendant desires to settle
9 and compromise the matters at issue in the Action to avoid further substantial expense and the
10 inconvenience and distraction of protracted and burdensome litigation. Defendant also has taken
11 into account the uncertainty and risks inherent in litigation, and without conceding any infirmity in
12 the defenses that it has asserted or could assert against Plaintiff and/or any Settlement Class
13 Member, has determined that it is desirable and beneficial that the claims of Plaintiff and the
14 Settlement Class be settled in the manner and upon the terms and conditions set forth in this
15 Settlement Agreement.

16 66. Amended Judgment. If any amended judgment is required under Code of Civil
17 Procedure section 384, the Parties will work together in good faith to jointly submit a proposed
18 amended judgment.

19 67. No Publicity. Plaintiff and Plaintiff's Counsel agree not to disclose or publicize
20 the settlement, including the Memorandum of Understanding, the fact of the Settlement, its
21 terms or contents, and the negotiations underlying the Settlement, in any manner or form,
22 directly or indirectly, to any person or entity, except potential class members and as shall be
23 contractually required to effectuate the terms of the Settlement as set forth herein. For the
24 avoidance of doubt, this section means Plaintiff and Class Counsel will not to issue press
25 releases, communicate with, or respond to any media or publication entities, publish information
26 in manner or form, whether printed or electronic, on any medium or otherwise communicate,
27 whether by print, video, recording or any other medium, with any person or entity concerning
28 the Settlement, including the fact of the Settlement, its terms or contents and the negotiations

1 underlying the Settlement, except as shall be contractually required to effectuate the terms of the
2 Settlement as set forth herein. However, for the limited purpose of allowing Class Counsel to
3 prove adequacy as class counsel in other actions, Class Counsel may disclose the name of the
4 Parties in this action and the venue/case number of this action (but not any other settlement
5 details) for such purposes.

6 68. Exhibits and Headings. The terms of this Settlement Agreement include the terms set
7 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth
8 herein. Any Exhibits to this Agreement are an integral part of the Settlement. The descriptive
9 headings of any paragraphs or sections of this Agreement are inserted for convenience of reference
10 only and do not constitute a part of this Agreement.

11 69. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
12 except such proceedings necessary to implement and complete the Settlement, holding the Action in
13 abeyance pending the final approval hearing to be conducted by the Court.

14 70. Dispute Resolution. Except as otherwise set forth herein, all disputes concerning the
15 interpretation, calculation or payment of Settlement claims, or other disputes regarding compliance
16 with this Agreement shall be resolved as follows:

17 a. If Plaintiff or Class Counsel, on behalf of Plaintiff or any Settlement Class
18 Member, or Defendant's Counsel, on behalf of Defendant, at any time believe that the other Party
19 has breached or acted contrary to the Agreement, that Party shall notify the other Party in writing of
20 the alleged violation.

21 b. Upon receiving notice of the alleged violation or dispute, the responding
22 Party shall have ten (10) calendar days to correct the alleged violation and/or respond to the
23 initiating Party with the reasons why the Party disputes all or part of the allegation.

24 c. If the response does not address the alleged violation to the initiating Party's
25 satisfaction, the Parties shall negotiate in good faith for up to ten (10) calendar days to resolve their
26 differences.

27 d. If Class Counsel and Defendant's Counsel are unable to resolve their
28 differences after twenty (20) calendar days, either Party shall first contact the mediator (Hon. Daniel

1 Buckley) to try to resolve the dispute. If that proves unsuccessful, the party may file an appropriate
2 motion for enforcement with the Court. The briefing of such motion should be in letter brief form
3 and shall not exceed five (5) single-spaced pages (excluding exhibits).

4 e. Reasonable attorneys' fees and costs for work done in resolving a dispute
5 under this Section may be recovered by any Party that prevails under the standards set forth within
6 the meaning of applicable law.

7 71. Notice. Unless otherwise specifically provided herein, all notices, demands or other
8 communications given hereunder shall be in writing and shall be deemed to have been duly given as
9 of the third business day after (i) emailing and (ii) mailing by United States registered or certified
10 mail, return receipt requested, addressed:

11 To the Settlement Class:

12 LAW OFFICE OF SCOTT ERNEST WHEELER
13 Scott Ernest Wheeler
14 Justin A. Wheeler
15 250 West First Street, Suite 216
16 Claremont, California 91711
17 Telephone: (909) 621-4988
Facsimile: (909) 621-4622
Email: sew@scottwheelerlawoffice.com
jaw@scottwheelerlawoffice.com

18 To Defendant:

19 HACKLER FLYNN & ASSOCIATES, APC
20 Elizabeth A. Ernster
21 479 South Marengo Avenue
22 Pasadena, California 91101
Telephone: (323) 247-7030
Fax: (323) 319-9242
Email: Liz@HacklerFlynnLaw.com

23 72. Amendment or Modification. This Agreement may be amended or modified only by
24 a written instrument signed by counsel for all Parties and approved by the Court.

25 73. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute
26 the entire Agreement among these Parties, and no oral or written representations, warranties, or
27 inducements have been made to any Party concerning this Agreement or its Exhibits other than the
28 representations, warranties, and covenants contained and memorialized in the Agreement and its

1 Exhibits.

2 74. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant
3 and represent they are expressly authorized by the Parties whom they represent to negotiate this
4 Agreement and to take all appropriate actions required or permitted to be taken by such Parties
5 pursuant to this Agreement to effectuate its terms, and to execute any other documents required to
6 effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other
7 and use their best efforts to affect the implementation of the Settlement. In the event the Parties are
8 unable to reach agreement on the form or content of any document needed to implement the
9 Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of
10 this Settlement, the Parties may seek the assistance of the Court or the mediator to resolve such
11 disagreement. The persons signing this Agreement on behalf of Defendant represent and warrant
12 that they are authorized to sign this Agreement on behalf of Defendant. Plaintiff represents and
13 warrants that he is authorized to sign this Agreement and that he has not assigned any claim, or part
14 of a claim, covered by this Settlement to a third-party.

15 75. Binding on Successors and Assigns. This Agreement shall be binding upon, and
16 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

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

21 77. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
22 Order and Judgment, nothing contained herein, nor the consummation of this Settlement Agreement,
23 is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the
24 part of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into
25 this Settlement Agreement with the intention of avoiding further disputes and litigation with the
26 attendant inconvenience and expenses. This Settlement Agreement is a settlement document, and it,
27 along with all related documents such as the notices, and motions for preliminary and final approval,
28 shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be

1 inadmissible as evidence in any proceeding, except an action or proceeding to approve the
2 Settlement, and/or interpret or enforce this Settlement Agreement. The stipulation for class
3 certification as part of this Settlement Agreement is for settlement purposes only and if for any
4 reason the Settlement is not approved, the stipulation will be of no force or effect.

5 78. California Law Governs. All terms of this Settlement Agreement and the Exhibits
6 hereto shall be governed by and interpreted according to the laws of the State of California.

7 79. This Settlement is Fair, Adequate and Reasonable. The Parties believe this
8 Settlement is a fair, adequate, and reasonable settlement of this Action and have arrived at this
9 Settlement after extensive arms-length negotiations, taking into account all relevant factors, present
10 and potential.

11 80. Jurisdiction of the Court. Pursuant to California Code of Civil Procedure section
12 664.6, the Court shall retain jurisdiction with respect to the interpretation, implementation, and
13 enforcement of the terms of this Settlement Agreement and all orders and judgments entered in
14 connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court
15 for purposes of interpreting, implementing, and enforcing the settlement embodied in this
16 Agreement and all orders and judgments entered in connection therewith. All terms of this
17 Settlement Agreement are subject to approval by the Court.

18 81. Construction. The Parties hereto agree that the terms and conditions of this
19 Settlement Agreement are the result of lengthy, intensive arms'-length negotiations among the
20 Parties and that this Settlement Agreement shall not be construed in favor of or against any Party
21 based on the extent to which any Party or their counsel participated in the drafting of this Settlement
22 Agreement. Plaintiff and Defendant expressly waive the common-law and statutory rule of
23 construction that ambiguities should be construed against the drafter of an agreement and further
24 agree, covenant, and represent that the language in all parts of this Settlement Agreement shall be in
25 all cases construed as a whole, according to its fair meaning.

26 82. Captions and Interpretations. Paragraph titles or captions contained herein are
27 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
28

1 describe the scope of this Settlement Agreement or any provision hereof. Each term of this
2 Settlement Agreement is contractual and not merely a recital.

3 83. Binding On Assigns. This Settlement Agreement shall be binding upon and inure to
4 the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
5 successors and assigns.

6 84. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
7 because the members of the Settlement Class are numerous, it is impossible or impractical to have
8 each Settlement Class Member execute this Settlement Agreement. The Notice will advise all
9 Settlement Class Members of the binding nature of the release provided herein and such Release
10 shall have the same force and effect as if this Settlement Agreement were executed by each
11 Settlement Class Member.

12 85. Voluntary Agreement. The Parties acknowledge that they have entered into this
13 Settlement Agreement voluntarily, on the basis of their own judgment and without coercion, duress,
14 or undue influence of any Party, and not in reliance on any promises, representations, or statements
15 made by the other Parties other than those contained in this Settlement Agreement. Each of the
16 Parties hereto expressly waves any right they might ever have to claim that this Settlement
17 Agreement was in any way induced by fraud.

18 86. Opportunity to Consult with Counsel. Prior to execution of this Settlement
19 Agreement, each Party has read this entire Settlement Agreement and has been given the
20 opportunity to consult with independent counsel of their choosing and to have such independent
21 counsel advise as to the meaning of this Settlement Agreement and its legal effect.

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

27 88. Invalidity of Any Provision. Before declaring any provision of this Settlement
28 Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent

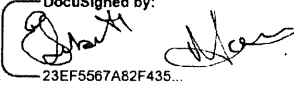
possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

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

90. 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.

91. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. 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.

Dated: 5/5/2023

DocuSigned by:

23EF5567A82F435...
By: Elizabeth Moreno

A.H. Restaurants

Dated: _____

By: _____

Title: _____

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Dated: _____

By: _____
Elizabeth Moreno

A.H. Restaurants

Dated: 5/17/2023

DocuSigned by:
By: Jeff Hansberger
DE2AA3DDEEBB415
Title: Secretary

1 **APPROVED AS TO FORM:**

2
3 DATED: May __, 2023

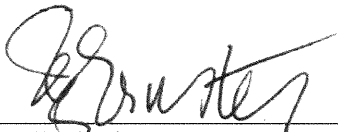
LAW OFFICE OF SCOTT ERNEST WHEELER

4 By: _____
5 Scott Ernest Wheeler
6 Justin A. Wheeler

7 *Attorneys for Plaintiff Elizabeth Moreno and the*
8 *Putative Class*

9
10 DATED: May 17, 2023

HACKLER FLYNN & ASSOCIATES, APC

11 By:  _____
12 Elizabeth A. Ernster

13 *Attorneys for Defendant, A.H. Restaurants*

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APPROVED AS TO FORM:

DATED: May 8, 2023

LAW OFFICE OF SCOTT ERNEST WHEELER

By: 

Scott Ernest Wheeler
Justin A. Wheeler

*Attorneys for Plaintiff Elizabeth Moreno and the
Putative Class*

DATED: May __, 2023

HACKLER FLYNN & ASSOCIATES, APC

By: _____
Elizabeth A. Ernster

Attorneys for Defendant, A.H. Restaurants