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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF AMADOR

ROBERT JAMES MILLIGAN, individually
and on behalf of all others similarly situated,

Plaintiff,

vs.

URBAN PARK CONCESSIONARIES, a
California corporation; and DOES 1 through
10, inclusive,

Defendants.

Case No. 22-CVC-12499

CLASS ACTION

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

Trial Date: None Set

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

3 This Joint Stipulation of Class and PAGA Action Settlement and Release (“Agreement”
4 or “Settlement Agreement”) is made and entered into by and between Plaintiff ROBERT
5 JAMES MILLIGAN (“Plaintiff” or “Class Representative”), as an individual and on behalf of
6 all others similarly situated, and URBAN PARK CONCESSIONAIRES (“Defendant”)
7 (collectively, the “Parties”). In consideration of the promises and mutual covenants and
8 agreements herein contained, the Parties hereby covenant and agree as follows:

9 **RECITALS**

10 1. On January 28, 2022, Plaintiff initiated this putative class action by filing a
11 Complaint in the California Superior Court for the County of Amador, Case No. 22-CV-12499
12 (the “Action”) on behalf of himself and all current and former non-exempt employees who
13 worked for Defendant in California from January 28, 2018, to present. The action is currently
14 proceeding on Plaintiff’s First Amended Complaint, filed on April 4, 2022, which asserts the
15 following causes of action: (1) failure to pay minimum wages; (2) failure to pay overtime wages;
16 (3) failure to provide compliant meal periods and pay meal period premiums; (4) failure to
17 provide compliant rest periods and pay rest period premiums; (5) failure to indemnify necessary
18 business expenses; (6) failure to timely pay all wages upon termination; (7) failure to provide
19 accurate itemized wage statements; (8) unfair business practices; and (9) civil penalties under
20 the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Lab. Code, § 2698, et seq.
21 (the “Operative Complaint”).

22 2. Defendant denies all material allegations set forth in the Operative Complaint and
23 this Action and has asserted numerous affirmative defenses.

24 3. The Parties have investigated the facts and analyzed the relevant legal issues with
25 regard to the claims and defenses in the Action. Plaintiff’s Counsel’s investigation included,
26 *inter alia*, the exchange of information pursuant to informal discovery methods and review of
27 numerous corporate policies and practices. Based on their investigation and analysis, Plaintiff
28 believes the Action has merit, while Defendant believes the Action has no merit.

1 4. On December 6, 2022, the Parties participated in mediation before Steven A.
2 Rottman, Esq. (the “Mediator”), a respected mediator for wage and hour class actions. The
3 settlement discussions were conducted at arm’s-length, and the settlement is the result of an
4 informed and detailed analysis of Defendant’s potential liability of total exposure in relation to
5 the costs and risks associated with continued litigation. Based on the documents produced, as
6 well as Plaintiff’s Counsel’s own independent investigation and evaluation, and the Mediator’s
7 efforts, Plaintiff’s Counsel believe that the settlement with Defendant for the consideration and
8 on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate, and is in
9 the best interest of the putative Class Members in light of all known facts and circumstances,
10 including the risk of significant delay and uncertainty associated with litigation and various
11 defenses asserted by Defendant.

12 5. In the interest of avoiding further litigation, the Parties agree to fully and finally
13 and forever settle and dispose of all actual or potential claims by the putative Class Members.
14 This Settlement Agreement is made and entered into by and between Plaintiff, individually and
15 on behalf of all others similarly situated, and Defendant, and is subject to the terms and
16 conditions hereof, and to the Court’s approval. The Parties expressly acknowledge that this
17 Settlement Agreement is entered into solely for the purpose of compromising significantly
18 disputed claims and that nothing herein is an admission of liability or wrongdoing by Defendant.
19 If for any reason the Settlement Agreement is not approved, it will be of no force or effect, and
20 the Parties shall be returned to their original respective positions.

21 6. The Settlement Class includes all current and former hourly non-exempt persons
22 employed by Defendant in the State of California between March 9, 2020, through March 27,
23 2023.¹ Defendant represents the number of putative Class Members to be approximately 800 as
24 of the date such information was provided to Plaintiff’s Counsel.

25
26
27 ¹ There was a prior class action suit against Defendant, *Sarah Naticchioni v. Urban Park*
28 *Concessionaires*, that was settled. The release period in the *Naticchioni* matter runs through
March 8, 2020. Accordingly, the Parties agree that the class period in this Action effectively starts
on March 9, 2020.

DEFINITIONS

7. The following definitions are applicable to this Settlement Agreement.

Definitions contained elsewhere in this Settlement Agreement will also be effective:

8. “Action” means *Robert James Milligan v. Urban Park Concessionaires*, filed on January 28, 2022, in Amador County Superior Court, Case No. 22-CV-12499.

9. “Attorneys’ Fees and Costs” means such award of attorneys’ fees as may be approved by the Court for Class Counsel’s litigation and resolution of this Action, and all costs incurred and to be incurred by Class Counsel in the Action, including, but not limited to, costs associated with documenting the Settlement, securing the Court’s approval of the Settlement, administering the Settlement, obtaining entry of a Judgment terminating this Action, and expenses for any experts.

10. “Class Counsel” means Moon & Yang, APC, which will seek to be appointed counsel for the Settlement Class.

11. “Class List” means a complete list of all putative Class Members that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator within thirty (30) calendar days after the Court’s Preliminary Approval of this Settlement. The Class List will be formatted in a readable Microsoft Office Excel spreadsheet and will include each putative Class Member’s full name; last known address; Social Security Number; and dates of employment.

12. “Class Member(s)” or “Settlement Class” means all current and former hourly non-exempt persons employed by Defendant in the State of California during the Class Period.

13. “Class Period” means the period from March 9, 2020, through March 27, 2023.

14. “Class Representative” means Plaintiff Robert James Milligan (“Milligan”), who will seek to be appointed as the representative for the Settlement Class.

15. “Plaintiff” means Robert James Milligan, who may also be referred to herein as the Class Representative.

16. “Class Representative Enhancement Payment” means the amount to be paid to Plaintiff in recognition of his effort and work in prosecuting the Action on behalf of the putative

1 Class Members and negotiating the Settlement, at no additional cost to Defendant and subject to
2 Court approval.

3 17. "Defendant" means Urban Park Concessionaires.

4 18. "Effective Date" means either (a) the date sixty (60) calendar days after the entry
5 of Final Judgment and Order Approving Settlement, if no motions for reconsideration and no
6 appeals or other efforts to obtain review have been filed, or (b) in the event a motion for
7 reconsideration, an appeal or other effort to obtain review of the Final Judgment and Order
8 Approving Settlement, the date sixty (60) calendar days after such reconsideration, appeal or
9 review has been finally concluded and is no longer subject to review, whether by appeal, petition
10 for rehearing, petition for review or otherwise.

11 19. "Individual Class Settlement Payment" means each Participating Class Member's
12 share of the Net Settlement Amount, to be distributed to the Participating Class Members.

13 20. "Individual PAGA Settlement Payment" means each PAGA Employees' share of
14 the PAGA Allocation, to be distributed to all PAGA Employees.

15 21. "Maximum Settlement Amount" means the maximum settlement amount of Five
16 Hundred Eighty Thousand Dollars (\$580,000.00) to be paid by Defendant in full satisfaction of
17 all claims arising from the Action, which includes all Individual Class Settlement Payments, all
18 Attorneys' Fees and Costs, the Class Representative Enhancement Award, the PAGA Allocation
19 , and Settlement Administration Costs. In no event will Defendant be liable for more than the
20 Maximum Settlement Amount, unless the escalator clause, described in Paragraph 52, is
21 triggered. No portion of the Maximum Settlement Amount shall revert to Defendant.
22 Defendant's share of any employer payroll taxes to be paid in connection with the settlement
23 (e.g., FICA, FUTA, payroll taxes, and/or any similar tax or charge – collectively "Employer
24 Taxes") shall be paid in addition to the Maximum Settlement Amount. The Settlement
25 Administrator will then be responsible for making appropriate deductions, reporting obligations,
26 and issuing the individual settlement awards.

1 22. “LWDA Payment” means the amount that the Parties have agreed to pay to the
2 California Labor and Workforce Development Agency (“LWDA”) for resolution of the claims
3 for civil penalties alleged pursuant to PAGA, and which are included in the Released Claims.

4 23. “Net Settlement Amount” means the portion of the Maximum Settlement Amount
5 remaining after deduction of all Attorneys’ Fees and Costs, the Class Representative
6 Enhancement Award, the PAGA Allocation, and Settlement Administration Costs. The Net
7 Settlement Amount will be distributed to Participating Class Members.

8 “Notice of Objection” means a Participating Class Member’s valid and timely written
9 objection to the Settlement Agreement. For the Notice of Objection to be valid, it must
10 include: (a) the case name and number; (b) the objector’s full name, signature, address,
11 telephone number and the last four digits of the objector’s Social Security number; (c) a
12 written statement of all grounds for the objection accompanied by any legal support for
13 such objection; (d) copies of any papers, briefs, or other documents upon which the
14 objection is based; (e) the identity of the objector’s counsel, if the objector is represented
15 by counsel; and (f) whether the objector wishes to be heard at the Final Approval
16 Hearing.

17 24. “Notice Packet” means the Notice of Class Action Settlement (“Class Notice”)
18 and Mailing Envelope.

19 25. “PAGA Allocation” means the the portion of the Maximum Settlement Amount
20 that the Parties have agreed to allocate to resolution of the Released PAGA Claims. The Parties
21 have agreed that the PAGA Allocation will be \$50,000.00. Pursuant to PAGA, Seventy-Five
22 Percent (75%), or \$37,500.00, of the PAGA Allocation will be paid to the Labor and Workforce
23 Development Agency (“LWDA Payment”) and Twenty-Five Percent (25%), or \$12,500.00, of
24 the PAGA Allocation will be paid to the PAGA Employees (“Individual PAGA Settlement
25 Payments”).

26 26. “PAGA Employees” or “Aggrieved Employees” means all current and former
27 hourly non-exempt persons employed by Defendant in the State of California during the PAGA
28 Period.

1 27. “PAGA Pay Periods” means the number of pay periods worked by a PAGA
2 Employee for Defendant in California during the PAGA Period.

3 28. “PAGA Period” means the period from January 24, 2021, through March 27, 2023.

4 29. “PAGA Pay Period Value” means the value of each compensable PAGA Pay
5 Period, as determined by the formula set forth herein.

6 30. “PAGA Representative” means Plaintiff.

7 31. “Parties” means Plaintiff and Defendant, collectively, and “Party” means either
8 Plaintiff or Defendant.

9 32. “Participating Class Members” means all Class Members who do not submit a
10 Request for Exclusion.

11 33. “Preliminary Approval” means the Court order granting preliminary approval of
12 the Settlement Agreement.

13 34. “Qualified Settlement Account” means a qualified settlement fund account
14 established by the Settlement Administrator into which Defendant will make a one-time deposit
15 of Five Hundred Eighty Thousand Dollars (\$580,000.00) for payment of all Court-approved and
16 claimed amounts from the Maximum Settlement Amount.

17 35. “Released Claims” include all claims, debts, liabilities, demands, obligations,
18 damages, and actions or causes of action of any kind, arising under state, federal or local law,
19 whether statutory, common law, or administrative law, at any time during the Class Period, that
20 were or could have been asserted based on the factual allegations in the Operative Complaint or
21 based on any facts discovered in the course of the Action, including (without limitation), claims
22 for failure to pay minimum or overtime wages, failure to provide meal and rest periods or to pay
23 meal and rest period premiums, failure to indemnify necessary business expenses, failure to pay all
24 wages due to discharged or quitting employees, failure to provide accurate itemized wage
25 statements; claims under California Labor Code sections 201 to 204, 210, 218.5, 218.6, 226,
26 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698 et seq., 2802,
27 and the Wage Orders promulgated thereunder, California Business and Professions Code section
28 17200, et seq., and the federal Fair Labor Standards Act (“FLSA,” 29 U.S.C. § 201 et seq.); and

1 claims for injunctive relief, punitive damages, penalties of any nature (including PAGA civil
2 penalties and statutory penalties), interest, fees, and costs). As to federal claims arising under the
3 FLSA that could have been pleaded based on the facts pleaded in the Operative Complaint, such
4 claims shall not be released unless and until a Participating Class Member signs their settlement
5 check, which will constitute consent to opt into the release of all FLSA claims that could have
6 been pleaded based on the facts pleaded in the Operative Complaint.

7 36. "Released Claims Period" means the period from March 9, 2020, through March
8 27, 2023.

9 37. "Released Parties" means Urban Park Concessionaires, and its past, present, and
10 future parents, subsidiaries, divisions, affiliates, predecessors, successors, assigns, and related
11 companies, and each of their past, present, and future shareholders, members, owners, officers,
12 directors, employees, agents, investment bankers, accountants, insurers, reinsurers, attorneys,
13 trustees, representatives, administrators, fiduciaries, beneficiaries, subrogees, executors,
14 partners, privies, and any other individual or entity which could be liable for any of the Released
15 Claims.

16 38. "Request for Exclusion" means a timely letter submitted by a Class Member
17 indicating a request to be excluded from the Settlement. The Request for Exclusion must:
18 (a) include the case name and number; (b) contain the full name, address, telephone number, and
19 the last four digits of the Social Security Number of the Class Member requesting exclusion;
20 (c) clearly state that the Class Member does not wish to be included in the settlement; (d) be
21 signed by the Class Member; (e) be returned by fax or mail to the Settlement Administrator at
22 the specified address and/or facsimile number; and (f) be postmarked or faxed on or before the
23 Response Deadline. The date of the fax or postmark on the return mailing envelope will be the
24 exclusive means to determine whether a Request for Exclusion has been timely submitted. A
25 Class Member who does not request exclusion from the settlement will be deemed a
26 Participating Class Member and will be bound by all terms of the Settlement, if the Settlement is
27 granted final approval by the Court.

28 39. "Response Deadline" means the deadline by which Class Members must

1 postmark to the Settlement Administrator a valid Request for Exclusion or Notice of Objection.
2 The Response Deadline will be sixty (60) calendar days from the initial mailing of the Notice
3 Packet by the Settlement Administrator, unless the 60th falls on a Sunday or Federal holiday, in
4 which case the Response Deadline will be extended to the next day on which the U.S. Postal
5 Service is open. Under no circumstances, other than circumstances described in Paragraph 62,
6 will the Settlement Administrator have the authority to extend the deadline for Class Members
7 to submit a Request for Exclusion or Notice of Objection to the Settlement.

8 40. "Settlement Administrator" means ILYM Group, Inc. or any other third-party
9 class action settlement administrator agreed to by the Parties and approved by the Court for
10 purposes of administering this Settlement pursuant to the terms of this Agreement, the Class
11 Notice, the Preliminary Approval Order, and the Judgment, including, without limitation,
12 printing, distributing, and tracking documents for this Settlement, calculating estimated amounts
13 per Class Member, tax reporting, distributing the appropriate settlement amounts, and providing
14 necessary reports and declarations, and other duties and responsibilities set forth herein to process
15 this Settlement, and as requested by the Parties. The Settlement Administrator shall agree to
16 confidentiality terms as may be required by Defendant regarding personnel and payroll data
17 provided to the Settlement Administrator and shall work with Class Counsel and Counsel for
18 Defendant to implement and administer appropriate fraud-prevention policies. The Parties each
19 represent that they do not have any financial interest in the Settlement Administrator or
20 otherwise have a relationship with the Settlement Administrator that could create a conflict of
21 interest.

22 41. "Settlement Administration Costs" means the costs approved by the Court to be
23 paid to the Settlement Administrator for administering this Settlement. The Settlement
24 Administration Costs will be paid from the Maximum Settlement Amount, including, if necessary,
25 any such costs in excess of the amount represented by the Settlement Administrator as being the
26 maximum costs necessary to administer the settlement. The Settlement Administration Costs are
27 currently estimated to be \$14,800.00.

28 42. "Workweeks" means the number of weeks worked by Class Members for

1 Defendant in California during the Class Period, which shall be calculated by the Settlement
2 Administrator based on the start and end dates of each individual's employment during the Class
3 Period as maintained by Defendant. Class Members may dispute the number of Workweeks
4 they worked during the Class Period by submitting a written Workweeks dispute to the
5 Settlement Administrator, which should include the Class Member's (a) full name, signature,
6 address, telephone number, and the last four digits of the Class Member's Social Security number; (b)
7 the number of Workweeks the Class Member contends is correct; and (c) any evidence supporting the
8 Class Member's contention.

9 43. "Workweek Value" means the value of each compensable Workweek, as
10 determined by the formula set forth herein.

11 **STIPULATION OF CLASS CERTIFICATION**

12 44. The Parties stipulate to the certification of this Settlement Class for settlement
13 purposes only. This Agreement is contingent upon preliminary and final approval by the Court,
14 and certification of the Settlement Class is only for purposes of settlement. If, for any reason,
15 the Settlement does not become final, any certification of any Settlement Class will be vacated and
16 the Parties will be returned to their positions with respect to the Action as if the Agreement had
17 not been entered into. Should the Settlement not become final, for whatever reason, the fact that
18 the Parties were willing to stipulate provisionally to class certification as part of the Settlement
19 shall have no bearing on, and shall not be admissible in connection with, the issue of whether a
20 class should be certified in a non-settlement context. Defendant expressly reserves the right to
21 oppose class certification and/or proactively move to deny certification should this Settlement be
22 reversed on appeal or otherwise not become final. Defendant does not consent to certification of
23 the Settlement Class or any class for any purpose other than to effectuate the Settlement of this
24 Action.

25 **TERMS OF AGREEMENT**

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

28 46. Funding of the Settlement Amount. Within five (5) business days after the

1 Effective Date, the Settlement Administrator will provide the Parties with an accounting of the
2 amounts to be paid by Defendant pursuant to the terms of the Settlement. Within twenty (20)
3 business days of the Effective Date, Defendant will make a one-time deposit of Five Hundred
4 Eighty Thousand Dollars (\$580,000.00), plus applicable payroll taxes, for payment of all Court-
5 approved and claimed amounts from the Maximum Settlement Amount into a Qualified
6 Settlement Account to be established by the Settlement Administrator. Within five (5) business
7 days of the funding of Maximum Settlement Amount, the Settlement Administrator will issue
8 payments to (a) Participating Class Members; (b) PAGA Employees; (c) the Labor and
9 Workforce Development Agency ("LWDA"); (d) Plaintiff; and (f) Class Counsel. The
10 Settlement Administrator will also issue a payment to itself for Court-approved services
11 performed in connection with the settlement.

12 47. Attorneys' Fees and Costs. Defendant agrees not to oppose or impede any
13 application or motion by Class Counsel for Attorneys' Fees up to 33% of the Maximum
14 Settlement Amount, or One Hundred Ninety-Three Thousand Three Hundred Thirty-Three
15 Dollars and Thirty-Three Cents (\$193,333.33) and reasonable Costs and expenses not to exceed
16 Twenty Thousand Dollars (\$20,000.00), subject to Court approval. The Attorneys' Fees and
17 Costs Award shall represent payment for all claims for Class Counsel's attorneys' fees and costs,
18 past and future, incurred in the Action. The Attorneys' Fees and Costs Award shall be paid from
19 the Maximum Settlement Amount, and Defendant shall not otherwise be required to pay for any
20 portion of Plaintiff's or the Class Members' attorneys' fees, costs, or expenses. The Attorneys'
21 Fees and Costs Award shall be paid to Class Counsel following the Effective Date. Any amounts
22 of attorneys' fees and costs applied for but not awarded by the Court to Class Counsel shall
23 revert back into the Net Settlement Amount. An award by the Court of attorneys' fees or costs
24 that is less than the amounts applied for will not be grounds for Plaintiff or Class Counsel to
25 challenge or withdraw from the Settlement.

26 48. Class Representative Enhancement Payment. In exchange for a general release of
27 all claims, and in recognition of his effort and work in prosecuting the Action on behalf of Class
28 Members and negotiating the Settlement, Defendant agrees not to oppose or impede any

1 application or motion by Plaintiff for a Class Representative Enhancement Payment up to Five
2 Thousand Dollars (\$5,000.00), subject to Court approval. The Class Representative
3 Enhancement Payment will be in addition to Plaintiff's Individual Class Settlement Payment as
4 a Participating Class Member or Individual PAGA Settlement Payment as a PAGA Employee
5 paid pursuant to the Settlement.

- 6 a. **Plaintiff's General Release.** Plaintiff hereby fully and finally releases
7 and discharges the Released Parties from any and all of the Released
8 Claims and from any and all claims, charges, complaints, liens, demands,
9 causes of action, obligations, damages and liabilities, known or unknown,
10 suspected or unsuspected, that Plaintiff had, now has, or may hereafter
11 claim to have against the Released Parties arising out of, or relating in any
12 way to, the Plaintiff's hiring by, employment with, separation of
13 employment with, or otherwise relating to the Released Parties
14 (collectively with Released Claims, "Plaintiff's Released Claims"), arising
15 or accruing through the Released Claims Period. The Plaintiff's Released
16 Claims include, but are not limited to, claims arising from or dependent on
17 the California Labor Code; the Wage Orders of the California Industrial
18 Welfare Commission; California Business and Professions Code § 17200
19 et seq.; the California Fair Employment and Housing Act, Cal. Gov't Code
20 § 12900 et seq.; the California common law of contract and tort; Title VII
21 of the Civil Rights Act of 1964; the Americans with Disabilities Act, 42
22 U.S.C. § 12101 et seq.; the Employee Retirement Income Security Act of
23 1974, 29 U.S.C. § 1001 et seq.; the Fair Labor Standards Act, 29 U.S.C. §
24 201 et seq. and the Portal to Portal Act, 29 U.S.C. § 251 et seq.
- 25 b. To effect a full and complete general release as described above, Plaintiff
26 expressly waives and relinquishes all rights and benefits of section 1542 of
27 the Civil Code of the State of California and does so understanding and
28 acknowledging the significance and consequence of specifically waiving

1 section 1542. Section 1542 of the Civil Code of the State of California
2 states as follows:

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

8 c. Thus, notwithstanding the provisions of section 1542, and to implement a
9 full and complete release and discharge of the Released Parties, Plaintiff
10 expressly acknowledges this Settlement Agreement is intended to include
11 in its effect, without limitation, all claims Plaintiff does not know or
12 suspect to exist in Plaintiff's favor at the time of signing this Settlement
13 Agreement, and that this Settlement Agreement contemplates the
14 extinguishment of any such claims.

15 d. The Settlement Administrator will issue an IRS Form 1099 for the Class
16 Representative Enhancement Payment to the Plaintiff, and Plaintiff shall
17 be solely and legally responsible for correctly characterizing this
18 compensation for tax purposes and for paying any taxes on the amounts
19 received. The Plaintiff agrees to indemnify and hold Defendant harmless
20 from any claim or liability for taxes, penalties, or interest arising as a
21 result of the Class Representative Enhancement Payment. No benefit,
22 including but not limited to 401K benefits, shall increase or accrue as a
23 result of any payment as a result of this Settlement. Any portion of the
24 Class Representative Enhancement Payment applied for but not awarded
25 by the Court to Plaintiff shall be added to the Net Settlement Amount for
26 the benefit of Participating Class Members. An award by the Court of a
27 Class Representative Enhancement Payment that is less than the amount
28

1 applied for will not be grounds for Plaintiff or Class Counsel to challenge
2 or withdraw from the Settlement.

3 49. Settlement Administration Costs. The Settlement Administrator will be paid for
4 the reasonable costs of administration of the Settlement and distribution of payments from the
5 Maximum Settlement Amount, which is currently estimated to be \$14,800.00. These costs,
6 which will be paid from the Maximum Settlement Amount, will include, *inter alia*, the required
7 tax reporting on the Individual Settlement Payments, the issuing of 1099 and W-2 IRS Forms,
8 distributing the Notice Packet, calculating and distributing the Maximum Settlement Amount
9 and Attorneys' Fees and Costs, and providing necessary reports and declarations.

10 50. Labor and Workforce Development Agency Payment. Subject to Court approval,
11 the Parties agree that the amount of Fifty Thousand Dollars (\$50,000.00) from the Maximum
12 Settlement Amount will be designated for satisfaction of Plaintiff's and Class Members' PAGA
13 claims. Pursuant to PAGA, 75%, *i.e.*, Thirty-Seven Thousand Five Hundred Dollars
14 (\$37,500.00) of this sum will be paid to the LWDA ("LWDA Payment") and 25%, *i.e.*, Twelve
15 Thousand Five Hundred Dollars (\$12,500.00) will be distributed to PAGA Employees
16 ("Individual PAGA Settlement Payments").

17 51. Net Settlement Amount. The Net Settlement Amount will be used to satisfy
18 Individual Class Settlement Payments to Participating Class Members from the Settlement Class
19 in accordance with the terms of this Agreement

20 52. Escalator Clause. If it is later determined that the number of Workweeks is more
21 than 10% greater than the 40,035 workweeks estimated by Defendant at the time of the Parties'
22 informal pre-mediation exchange of information (or 44,039 or more Workweeks), then the
23 Maximum Settlement Amount shall be increased by the percentage that the actual number of
24 Workweeks exceeds 44,039 Workweeks.

25 53. Non-reversionary Settlement. No portion of the Maximum Settlement Amount
26 will revert to Defendant.

27 54. Individual Class Settlement Payment Calculations. Individual Class Settlement
28 Payments will be calculated and apportioned from the Net Settlement Amount based on the

1 number of Workweeks a Participating Class Member worked during the Class Period. Specific
2 calculations of Individual Class Settlement Payments will be made as follows:

3 a. The Settlement Administrator will calculate the number of Workweeks
4 worked by each Participating Class Member (“Individual Workweeks”) during the Class Period,
5 the amount to be paid per Workweek, and the individual settlement awards to eligible
6 Participating Class Members.

7 b. Defendant’s employee data will be presumed to be correct unless a
8 particular Class Member proves otherwise to the Settlement Administrator by credible evidence.
9 All Workweek disputes will be resolved and decided by the Settlement Administrator, and the
10 Settlement Administrator’s decision on all Workweek disputes will be final and non-appealable.

11 c. The individual settlement awards will be determined by dividing the Net
12 Settlement Amount by the total number of Workweeks for all Participating Class Members,
13 resulting in the Workweek Value, and then multiplying the Workweek Value by the number of
14 Workweeks worked by each Participating Class Member.

15 55. Individual PAGA Settlement Payment Calculations. Individual PAGA
16 Settlement Payments will be calculated and apportioned from the Net Settlement Amount based
17 on the number of PAGA Pay Periods a PAGA Employee worked during the PAGA Period.
18 Specific calculations of Individual PAGA Settlement Payments will be made as follows:

19 a. The Settlement Administrator will calculate the number of PAGA Pay
20 Periods worked by each PAGA Employee (“Individual Pay Periods”) during the PAGA Period,
21 the amount to be paid per PAGA Period, and the individual PAGA awards to eligible Class
22 Members.

23 b. Defendant’s employee data will be presumed to be correct, unless a
24 particular PAGA Employee proves otherwise to the Settlement Administrator by credible
25 evidence. All PAGA Period disputes will be resolved and decided by the Settlement
26 Administrator, and the Settlement Administrator’s decision on all PAGA Pay Period disputes
27 will be final and non-appealable.

28 c. The individual PAGA awards will be determined by dividing \$12,500.00

1 by the total number of PAGA Pay Periods for all PAGA Employees, resulting in the Pay Period
2 Value, and then multiplying the Pay Period Value by the number of PAGA Pay Periods worked
3 by each PAGA Employee.

4 56. Settlement Awards Do Not Trigger Additional Benefits. Defendant shall fully
5 discharge its obligations to Plaintiff and the Participating Class Members through the remittance
6 of the Maximum Settlement Amount to the Settlement Administrator, regardless of whether the
7 checks representing individual settlement awards are actually received and/or negotiated by
8 Participating Class Members. Once Defendant has remitted the Maximum Settlement Amount
9 in accordance with this Settlement Agreement, it will be deemed to have satisfied all terms and
10 conditions under this Agreement, shall be entitled to all protections afforded to it under this
11 Settlement Agreement, and shall have no further obligations under the terms of the Agreement,
12 regardless of what occurs with respect to the further administration of the Settlement. It is
13 expressly understood and agreed that the receipt of such individual settlement awards will not
14 entitle any Participating Class Member to additional compensation or benefits under any
15 company bonus, contest or other compensation or benefit plan or agreement in place during the
16 period covered by the Settlement, nor will it entitle any Participating Class Member to any
17 increased retirement, 401K benefits or matching benefits, or deferred compensation benefits. It
18 is the intent of this Settlement that the individual settlement awards provided for in this
19 Settlement are the sole payments to be made by Defendant to the Participating Class Members,
20 and that the Participating Class Members are not entitled to any new or additional compensation
21 or benefits as a result of having received the individual settlement awards (notwithstanding any
22 contrary language or agreement in any benefit or compensation plan document that might have
23 been in effect during the period covered by this Settlement).

24 57. Settlement Administration Process. The Parties agree to cooperate in the
25 administration of the Settlement and to make all reasonable efforts to control and minimize the
26 costs and expenses incurred in administration of the Settlement. Without prejudice to any other
27 remedies, the Settlement Administrator shall hold Defendant harmless from and against all
28 liabilities, claims, causes of action, costs, and expenses (including legal fees and expenses)

1 arising out of any failure to timely or properly compensate Participating Class Members as
2 provided for in this Agreement. No person shall have any claim against any of the Released
3 Parties, Counsel for Defendant, Plaintiff, the Class Members, Class Counsel, or the Settlement
4 Administrator based on mailings, distributions, and payments made in accordance with or
5 pursuant to this Agreement.

6 58. Delivery of the Class List. Within thirty (30) calendar days of Preliminary
7 Approval, Defendant will provide the Class List to the Settlement Administrator. The
8 information Defendant provides to the Settlement Administrator shall be used solely to
9 administer the terms of the Agreement as described herein, shall remain confidential, and shall
10 not be disclosed to anyone, except pursuant to the express written authorization of Defendant or
11 the individual in question, by order of the Court, or to the extent necessary to fulfill the
12 Settlement Administrator's reporting obligations hereunder.

13 59. Notice by First-Class U.S. Mail. Within twenty (20) business days of receiving
14 the Class List, the Settlement Administrator will perform an NCOA check and shall mail a
15 Notice Packet in Spanish and English to all Class Members via regular First-Class U.S. Mail,
16 using the most current, known mailing addresses identified in the Class List. There will not be a
17 claim process requirement and, as such, Class Members will not receive, nor will they be
18 required to submit a claim form to receive their individual settlements.

19 60. Confirmation of Contact Information in the Class List. Prior to mailing, the
20 Settlement Administrator will perform a search based on the National Change of Address
21 Database or any other similar services available, such as provided by Experian, for information
22 to update and correct for any known or identifiable address changes.

23 61. Time for Objections. The Class Members will then have sixty (60) days in which
24 they must postmark and send written notice to the Settlement Administrator of their decision to
25 object in writing to the Settlement.

26 62. Notice Packets. All Class Members will be mailed a Notice Packet in English
27 and Spanish, which shall be translated into Spanish by the Settlement Administrator. Each
28 Notice Packet will provide: (a) information regarding the nature of the Action; (b) a summary of

1 the Settlement's principal terms; (c) the Settlement Class definition; (d) the total number of
2 Workweeks each respective Class Member worked for Defendant during the Class Period; (e)
3 each Class Member's estimated Individual Class Settlement Payment and the formula for
4 calculating Individual Settlement Payments; (f) the dates which comprise the Class Period; (g)
5 the total number of PAGA Pay Periods each respective PAGA Employee worked for Defendant
6 during the PAGA Period; (h) each PAGA Employee's estimated Individual PAGA Settlement
7 Payment and the formula for calculating Individual PAGA Payments; (i) the dates which
8 comprise the PAGA Period; (j) information regarding disputing Workweeks or PAGA Pay
9 Periods, Requests for Exclusion, or Notice of Objections; (k) the deadlines by which the Class
10 Member must fax or postmark dispute of Workweeks or PAGA Pay Periods, Requests for
11 Exclusions, or Notice of Objections to the Settlement; (l) the claims to be released, as set forth
12 herein; and (m) the date for the Final Approval Hearing. For every Class Member where the
13 Notice Packet is returned after mailing with a forwarding address, the Settlement Administrator
14 shall re-mail the Notice Packet to the forwarding address. For every Class Member where the
15 Notice Packet is returned after mailing without a forwarding address, the Settlement
16 Administrator shall perform one "skip trace" search in a consumer information database
17 comparable to Accurant in an effort to locate a current address. It shall be presumed that each
18 Class Member whose Notice Packet is not returned to the Settlement Administrator as
19 undeliverable within the 60-day notice period has actually received the Notice Packet. The
20 Response Deadline for any Settlement Class Member who is re-mailed a Notice Packet shall be
21 extended fifteen (15) calendar days from the date of the re-mailing or the original sixty (60)
22 calendar day deadline, whichever is later. If the Response Deadline for any Class Member is later
23 than the original 60-day notice period, the Settlement Administrator shall include a letter with the
24 Notice Packet advising the Class Member of the adjustment to the Response Deadline.

25 63. Disputed Information on Notice Packets. Class Members will have an
26 opportunity to dispute the information provided in their Notice Packets. To the extent Class
27 Members dispute the number of Workweeks to which they have been credited or the amount of
28 their Individual Settlement Payment, Class Members may produce evidence to the Settlement

1 Administrator showing that such information is inaccurate. Absent evidence rebutting
2 Defendant's records, Defendant's records will be presumed determinative. However, if a Class
3 Member produces evidence to the contrary, the Parties will evaluate the evidence submitted by
4 the Class Member and the Settlement Administrator will make the final decision as to the
5 number of eligible Workweeks that should be applied and/or the Individual Settlement Payment
6 to which the Class Member may be entitled. Class Members shall have until the Response
7 Deadline to provide evidence to the Settlement Administrator demonstrating that the number of
8 Workweeks to which they have been credited is incorrect.

9 64. Settlement Checks. The expiration date on the settlement checks will be one
10 hundred and eighty (180) calendar days from the date the settlement checks are issued. If a
11 Participating Class Member or PAGA Employee does not cash his or her check within 180 days,
12 the check will be cancelled. Pursuant to California Code of Civil Procedure Section 384, all
13 funds associated with such cancelled checks will be transmitted to Legal Aid for Work. The
14 Parties each represent that they do not have any significant affiliation or involvement with the
15 proposed cy pres recipient. The Settlement Administrator may, as necessary, undertake amended
16 and/or supplemental tax filings and reporting, required under applicable local, state, and federal
17 tax laws, that are necessitated due to the cancellation of any Individual Settlement Payment and/or
18 Individual PAGA Payment checks. To the extent that the Settlement Administrator is able to
19 obtain or receive the return or refund of the amounts that were transmitted to taxing authorities for
20 the employer's and employees' share of taxes, contributions, and/or withholding associated with
21 cancelled Individual Class Settlement Payments and/or Individual PAGA Settlement Payment, all
22 such amounts shall also be transmitted to Legal Aid for Work. Settlement Class Members and/or
23 PAGA Employees whose Individual Class Settlement Payment and/or Individual PAGA
24 Settlement Payment checks are cancelled shall, nevertheless, be bound by this Settlement
25 Agreement.

26 65. Request for Exclusion Procedures. Any Class Member wishing to be excluded
27 from the Settlement Agreement must sign and postmark or fax a written Request for Exclusion
28 to the Settlement Administrator within the Response Deadline. The date of fax or the postmark

1 on the return mailing envelope will be the exclusive means to determine whether a Request for
2 Exclusion has been timely submitted. All Requests for Exclusion will be submitted to the
3 Settlement Administrator, who will certify jointly to Class Counsel and Defendant's Counsel the
4 Requests for Exclusion that were timely submitted. Any Class Member who submits a Request
5 for Exclusion is prohibited from making any objection to the Settlement Agreement.

6 66. Settlement Terms Bind All Class Members Who Do Not Request Exclusion. Any
7 Class Member who does not affirmatively Request Exclusion of the Settlement Agreement by
8 submitting a timely and valid Request for Exclusion will be bound by all of its terms, including
9 those pertaining to the Released Claims, as well as any Judgment that may be entered by the
10 Court if it grants final approval to the Settlement. The entry of a final order approving
11 settlement of this Action and Judgment which discharges Defendant and Released Parties from
12 liability for any and all of the Released Claims shall have a *res judicata* effect and bar Plaintiff
13 and Class Members who did not submit a timely and valid Request for Exclusion from bringing
14 any actions or claims asserting the Released Claims.

15 67. Written Objection Procedures. To object to the Settlement Agreement in writing,
16 a Class Member must postmark a valid Notice of Objection to the Settlement Administrator on
17 or before the Response Deadline. The Notice of Objection must be signed by the Class Member
18 and contain all information required by this Settlement Agreement. The postmark date will be
19 deemed the exclusive means for determining that the Notice of Objection is timely. Class
20 Members who fail to object in writing in the specific and technical manner specified above will
21 be deemed to have waived all written objections to the Settlement and will be foreclosed from
22 making written objections and seeking any adjudication or review of such written objections,
23 whether by appeal or otherwise, to the Settlement Agreement. Aside from these procedures
24 governing written objections, the Court will otherwise control the acceptance of objections prior
25 to or at the final approval hearing. At no time will any of the Parties or their counsel seek to
26 solicit or otherwise encourage Class Members to submit written objections to the Settlement
27 Agreement or appeal from the Order and Judgment. Class Counsel will not represent any Class
28 Members with respect to any such objections to this Settlement.

68. Certification Reports Regarding Individual Settlement Payment Calculations. The Settlement Administrator will provide Defendant's counsel and Class Counsel a weekly report which certifies: (a) the number of Participating Class Members from the Settlement Class who have submitted a dispute of Workweeks; (b) the number of Class Members who have submitted valid Requests for Exclusion or Notice of Objections; and (c) whether any Class Member has submitted a challenge to any information contained in their Notice Packet. Additionally, the Settlement Administrator will provide to counsel for both Parties any updated reports regarding the administration of the Settlement Agreement as needed or requested.

69. Payroll Taxes. In accordance with this Settlement, the transfer of the Gross Settlement approved by the Court shall, to the fullest extent possible, resolve, satisfy and completely extinguish all of Defendant's liability with respect to the Settlement Class except that Defendant shall solely be responsible for the employer portion of the payroll taxes. Upon the transfer of funds to the Settlement Administrator, Defendant shall have no further payment or defense obligation whatsoever with respect to any claims covered by this Settlement made or asserted by any person or entity anywhere in the world in connection with the Settlement Class.

70. Certification of Completion. Upon completion of administration of the Settlement, the Settlement Administrator will provide a written declaration under oath to certify such completion to the Court and counsel for all Parties. Plaintiff and Class Counsel will file a Satisfaction of Judgment within ten (10) calendar days of the submission of said declaration.

71. Treatment of Individual Settlement Payments. All Individual Settlement Payments will be allocated as follows: 20% of each Individual Settlement Payment will be allocated as alleged unpaid wages, 40% will be allocated as alleged unpaid interest, and the remaining 40% will be allocated as alleged non-wages. The portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated to interest and penalties will be reported on an IRS Form-1099 by the Settlement Administrator.

72. Administration of Taxes by the Settlement Administrator. The Settlement Administrator will be responsible for issuing to Plaintiff, Participating Class Members, PAGA Employees, and Class Counsel any W-2, 1099, or other tax forms as may be required by law for

1 all amounts paid pursuant to this Agreement. The Settlement Administrator will also be
2 responsible for forwarding all payroll taxes and penalties to the appropriate government
3 authorities.

4 73. Tax Liability. Defendant makes no representation as to the tax treatment or legal
5 effect of the payments called for hereunder, and Plaintiff and Participating Class Members are
6 not relying on any statement, representation, or calculation by Defendant or by the
7 Administrator in this regard. Plaintiff and Participating Class Members understand and agree
8 that except for Defendant's payment of the employer's portion of any payroll taxes, they will be
9 solely responsible for the payment of any taxes and penalties assessed on the payments
10 described herein.

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

1 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
2 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
3 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
4 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
5 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
6 AGREEMENT.

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

11 76. Release of Claims by Class Members. Upon the date upon which Defendant
12 transfers the Maximum Settlement Amount to the Settlement Administrator, Plaintiff and all
13 Class Members who do not Request Exclusion will be deemed to have fully, finally and forever
14 released, settled, compromised, relinquished, and discharged with respect to all of the Released
15 Parties for any and all Released Claims that accrued during the Released Claims Period. The
16 release of Released Claims will have a *res judicata* effect against any Class Members who make
17 a claim against any of the Released Parties for any of the Released claims, file any actions,
18 claims, complaints or proceedings regarding the Released Claims with the California Division of
19 Labor Standards Enforcement, initiate any other proceedings against any of the Released Parties
20 regarding any of the Released Claims, or seek to participate in any judgment or settlement of
21 claims that are the subject of the Released Claims in any other class, collective, or representative
22 action against any of the Released Parties.

23 77. Inability to Object / Opt Out of PAGA. The Parties agree that there is no statutory
24 right for any PAGA Employee to object to, opt out of, or otherwise exclude himself or herself
25 from the settlement of the PAGA claims. Accordingly, any timely objection or exclusion from the
26 Settlement submitted by a Class Member shall be construed as relating only to the putative class
27 action claims and shall have no effect whatsoever on the settlement of the PAGA claims.

1 78. Release of Claims by PAGA Employees. Upon the date upon which Defendant
2 transfers the Maximum Settlement Amount to the Settlement Administrator, Plaintiff and all
3 PAGA Employees will be deemed to have fully, finally and forever released, settled,
4 compromised, relinquished, and discharged with respect to all of the Released Parties for any
5 and all claims for penalties and any other available relief pursuant to PAGA, to the extent asserted
6 in Plaintiff's administrative exhaustion letter submitted to the LWDA in this Action on January
7 24, 2022, arising during the PAGA Period ("Released PAGA Claims"). The release of Released
8 PAGA Claims will have a *res judicata* effect against any PAGA Employee who makes a claim
9 against any of the Released Parties for any of the claims or seek to participate in any judgment
10 or settlement of claims that are the subject of the Released PAGA Claims in any other
11 representative action against any of the Released Parties.

12 79. Duties of the Parties Prior to Court Approval. The Parties shall promptly submit
13 this Settlement Agreement to the Court in support of Plaintiff's Motion for Preliminary
14 Approval and determination by the Court as to its fairness, adequacy, and reasonableness.
15 Promptly upon execution of this Settlement Agreement, the Parties shall apply to the Court for
16 the entry of an order:

- 17 a. Scheduling a fairness hearing on the question of whether the proposed
18 settlement, including payment of attorneys' fees and costs, and the Class Representative's
19 enhancement payment, should be finally approved as fair, reasonable and adequate as to the
20 members of the Settlement Class;
- 21 b. Conditionally certifying the Settlement Class for settlement purposes only;
- 22 c. Approving, as to form and content, the proposed Notice of Class Action
23 Settlement;
- 24 d. Approving as to form and content the proposed Notice Packet;
- 25 e. Approving the manner and method for Class Members to request
26 exclusion from the Settlement as contained herein and within the Notice of Class Action
27 Settlement;
- 28

1 f. Directing the mailing of the Notice of Class Action Settlement, by first
2 class mail to the Class Members; and

3 g. Preliminarily approving the Settlement subject only to the objections of
4 Class Members and final review by the Court.

5 80. Duties of the Parties Following Final Court Approval. Following final approval
6 by the Court of the Settlement provided for in this Settlement Agreement, Class Counsel will
7 submit a proposed final order of approval and judgment:

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

10 b. Approving Class Counsel's application for an award of attorneys' fees and
11 costs;

12 c. Approving the Class Representative Enhancement Payment to the Class
13 Representative;

14 d. Setting a date when the Parties shall report to the court the total amount
15 that was actually paid to the Class Members; and

16 e. Entering judgment in this Action encompassing Defendant and all
17 members of the Settlement Class, with a reservation of continuing jurisdiction by the Court over
18 the Settlement Agreement and its implementation.

19 f. Posting the judgment on the Settlement Administrator's website for at
20 least 90 days after entry by the Court.

21 81. Nullification of Settlement Agreement. In the event that the Settlement is barred
22 by operation of law, or invalidated, or ordered not to be carried out by a court of competent
23 jurisdiction, this Settlement Agreement, and any documents generated to bring it into effect, will
24 be null and void. Any order of judgment entered by the Court in furtherance of this Settlement
25 Agreement will likewise be treated as void from the beginning, and all Parties to this Agreement
26 shall stand in the same position, without prejudice, as if the Agreement had been neither entered
27 into nor filed with the Court. Defendant will cease to have any obligation to pay any portion of
28 the Maximum Settlement Amount to the Qualified Settlement Account, or any other party under

1 the terms of this Agreement and all previous disbursements made from Defendant to the
2 Qualified Settlement Account will immediately revert back to Defendant. Any Settlement
3 Administration Costs incurred will be split equally between the Parties.

4 82. Rescission of Settlement Agreement (by Defendant). If more than ten percent
5 (10%) of the Class Members opt out of the Settlement, Defendant may, at its election, rescind the
6 Settlement and all actions taken in furtherance of it will thereby be null and void. Defendant must
7 exercise this right of rescission, in writing, to Class Counsel and with a copy to the Settlement
8 Administrator within ten (10) business days after the Settlement Administrator notifies the Parties
9 of a greater than ten percent (10%) opt-out rate. If the option to rescind is exercised, then
10 Defendant shall be solely responsible for all costs of the claims administration accrued to that
11 point, not to exceed the amount approved by the Court in the Preliminary Approval Order. If
12 Defendant exercises this option, the Parties shall return to their respective positions that existed
13 before the execution of this Agreement, and no term of this Agreement or any draft thereof, or the
14 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
15 have any effect or be admissible as evidence for any purpose in the Action, or in any other
16 proceeding.

17 83. Termination of Settlement. Either Party may terminate this Settlement if the
18 Court declines to enter the Preliminary Approval Order, the Final Approval Order or final
19 judgment in substantially the form submitted by the Parties, or the Settlement Agreement as
20 agreed does not become final because of appellate court action. The terminating Party shall give
21 to the other Party (through its counsel) written notice of its decision to terminate no later than
22 ten (10) calendar days after receiving notice that one of the above enumerated events has
23 occurred. Termination shall have the following effects:

- 24 a. The Settlement Agreement shall be terminated and shall have no force or
25 effect, and no Party shall be bound by any of its terms;
26 b. In the event the Settlement is terminated, Defendant shall have no
27 obligation to make any payments to any party, Class Member or attorney,
28 except that the terminating Party shall pay the Settlement Administrator for

1 services rendered up to the date the Settlement Administrator is notified that
2 the settlement has been terminated;

3 c. The Preliminary Approval Order, Final Approval Order and Judgment,
4 including any order of class certification, shall be vacated;

5 d. The Settlement Agreement and all negotiations, statements and proceedings
6 relating thereto shall be without prejudice to the rights of any of the Parties,
7 all of whom shall be restored to their respective positions in the Action prior
8 to the settlement;

9 e. Neither this Stipulated Settlement, nor any ancillary documents, actions,
10 statements or filings in furtherance of settlement (including all matters
11 associated with the mediation) shall be admissible or offered into evidence
12 in the Action or any other action for any purpose whatsoever.

13 84. Public Statements. Plaintiff and Class Counsel shall not hold any press
14 conferences or issue any press releases with respect to this Settlement at any time. Until the
15 Parties submit a request for preliminary approval from the Court, Plaintiff and Class Counsel
16 will keep the terms of this Agreement confidential. Prior to final approval of this Settlement,
17 Plaintiff and Class Counsel will not discuss this Action or the Settlement or otherwise disclose
18 the terms of this Agreement with third parties other than Class Members and the Settlement
19 Administrator, except (1) as required by the PAGA statute, (2) as necessary to effectuate this
20 Agreement, and (3) to the Parties' tax advisors. After final approval of this Settlement, Plaintiff,
21 Defendant, and their respective counsel shall not issue any public statements with respect to the
22 Action or Settlement, except as required by law. The Parties and their counsel shall not engage
23 in any publicity, including website or social media postings, of any type related to the Action,
24 Settlement, or litigation against Defendant. Notwithstanding the specific limitations to public
25 disclosure identified herein, Class Counsel shall not be precluded from disclosing the Parties to
26 the lawsuit and the fact that the matter settled to a Court or other tribunal. Furthermore, nothing
27 herein limits Plaintiff's or any Class Member's ability to communicate with any government
28

1 agency or otherwise cooperate in any investigation or proceeding that may be conducted by any
2 government agency.

3 85. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by
4 the Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present the
5 Judgment to the Court for its approval, pursuant to Rule 3.770 of the California Rules of Court.
6 After entry of the Judgment, the Court will have continuing jurisdiction under California Code
7 of Civil Procedure section 664.6.

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

11 87. Entire Agreement. This Settlement Agreement and any attached Exhibits
12 constitute the entirety of the Parties' settlement terms. No other prior or contemporaneous
13 written or oral agreements may be deemed binding on the Parties. The Parties expressly
14 recognize California Civil Code section 1625 and California Code of Civil Procedure section
15 1856(a), which provide that a written agreement is to be construed according to its terms and
16 may not be varied or contradicted by extrinsic evidence, and the Parties agree that no such
17 extrinsic oral or written representations or terms will modify, vary or contradict the terms of this
18 Agreement.

19 88. Amendment or Modification. This Settlement Agreement may be amended or
20 modified only by a written instrument signed by the named Parties and counsel for all Parties or
21 their successors-in-interest.

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

1 content of any document needed to implement the Settlement, or on any supplemental provisions
2 that may become necessary to effectuate the terms of this Settlement, the Parties may seek the
3 assistance of the Court to resolve such disagreement.

4 90. Signatories. It is agreed that because the members of the Class are so numerous,
5 it is impossible or impractical to have each member of the Class execute this Settlement
6 Agreement. The Notice of Class Action Settlement, attached hereto as Exhibit "A," will advise
7 all Class Members of the binding nature of the release, and the release shall have the same force
8 and effect as if this Settlement Agreement were executed by each member of the Class.

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

12 92. California Law Governs. All terms of this Settlement Agreement and Exhibits
13 hereto will be governed by and interpreted according to the laws of the State of California.

14 93. Execution and Counterparts. This Settlement Agreement is subject only to the
15 execution of all Parties. However, the Agreement may be executed in one or more counterparts.
16 All executed counterparts and each of them, including facsimile and scanned copies of the
17 signature page, will be deemed to be one and the same instrument provided that counsel for the
18 Parties will exchange among themselves original signed counterparts.

19 94. Acknowledgement that the Settlement is Fair and Reasonable. The Parties
20 believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action
21 and have arrived at this Settlement after arm's-length negotiations and in the context of
22 adversarial litigation, taking into account all relevant factors, present and potential. The Parties
23 further acknowledge that they are each represented by competent counsel and that they have had
24 an opportunity to consult with their counsel regarding the fairness and reasonableness of this
25 Agreement. In addition, the Mediator may execute a declaration supporting the Settlement and
26 the reasonableness of the Settlement and the Court may, in its discretion, contact the Mediator to
27 discuss the Settlement and whether or not the Settlement is objectively fair and reasonable.

1 95. Invalidity of Any Provision. Before declaring any provision of this Settlement
2 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
3 extent possible consistent with applicable precedents so as to define all provisions of this
4 Settlement Agreement valid and enforceable.

5 96. Plaintiff's Waiver of Right to Be Excluded and Object. Plaintiff agrees to sign
6 this Settlement Agreement and, by signing this Settlement Agreement, is hereby bound by the
7 terms herein.

8 97. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to
9 class certification for purposes of this Settlement only; and either party may appeal any court
10 order that materially alters the Settlement Agreement's terms.

11 98. Non-Admission of Liability. The Parties enter into this Agreement to resolve the
12 dispute that has arisen between them and to avoid the burden, expense and risk of continued
13 litigation. In entering into this Agreement, Defendant does not admit, and specifically denies, it
14 has violated any state, federal, or local law; violated any regulations or guidelines promulgated
15 pursuant to any statute or any other applicable laws, regulations or legal requirements; breached
16 any contract; violated or breached any duty; engaged in any misrepresentation or deception; or
17 engaged in any other unlawful conduct with respect to its employees. Neither this Agreement,
18 nor any of its terms or provisions, nor any of the negotiations connected with it, shall be
19 construed as an admission or concession by Defendant of any such violations or failures to
20 comply with any applicable law. Except as necessary in a proceeding to enforce the terms of
21 this Agreement, this Agreement and its terms and provisions shall not be offered or received as
22 evidence in any action or proceeding to establish any liability or admission on the part of
23 Defendant or to establish the existence of any condition constituting a violation of, or a non-
24 compliance with state, federal, local or other applicable law.

25 99. Captions. The captions and section numbers in this Agreement are inserted for
26 the reader's convenience, and in no way define, limit, construe or describe the scope or intent of
27 the provisions of this Agreement.

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

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

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

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

22 104. All Terms Subject to Final Court Approval. All amounts and procedures
23 described in this Settlement Agreement herein will be subject to final Court approval.

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

27 106. Integration Clause. This Settlement Agreement contains the entire agreement
28 between the Parties relating to the settlement and transaction contemplated hereby, and all prior

1 or contemporaneous agreements, understandings, representations, and statements, whether oral
 2 or written and whether by a party or such party's legal counsel, are merged herein. No rights
 3 hereunder may be waived except in writing.

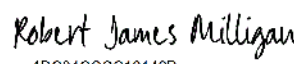
4 107. Binding Agreement. The Parties warrant that they understand and have full
 5 authority to enter into this Agreement, and further intend that this Agreement will be fully
 6 enforceable and binding on all parties and agree that it will be admissible and subject to
 7 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality
 8 provisions that otherwise might apply under state or federal law.

9 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this
 10 Joint Stipulation of Class Settlement and Release between Plaintiff and Defendant as of the
 11 date(s) set forth below:

12 **SIGNATURES - READ CAREFULLY BEFORE SIGNING**

13 **PLAINTIFF**

14
 15 Dated: 1/18/2023

DocuSigned by:

 4DC34CCCC12146B...
 Plaintiff ROBERT JAMES MILLIGAN

17 **DEFENDANT**
 18 **URBAN PARK CONCESSIONAIRES, INC.**

19 Dated: _____

 President

21 **APPROVED AS TO FORM:**

22
 23 Dated: 01/18/2023

MOON & YANG, APC

24 BY: 
 25 KANE MOON
 26 ALLEN FEGHALI
 26 JACQUELYNE VANEMMERIK

27 Attorneys for Plaintiff

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1 or contemporaneous agreements, understandings, representations, and statements, whether oral
2 or written and whether by a party or such party's legal counsel, are merged herein. No rights
3 hereunder may be waived except in writing.

4 107. Binding Agreement. The Parties warrant that they understand and have full
5 authority to enter into this Agreement, and further intend that this Agreement will be fully
6 enforceable and binding on all parties and agree that it will be admissible and subject to
7 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality
8 provisions that otherwise might apply under state or federal law.

9 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this
10 Joint Stipulation of Class Settlement and Release between Plaintiff and Defendant as of the
11 date(s) set forth below:

12 **SIGNATURES - READ CAREFULLY BEFORE SIGNING**

13 **PLAINTIFF**

14
15 Dated: _____

Plaintiff ROBERT JAMES MILLIGAN

17 **DEFENDANT**
18 **URBAN PARK CONCESSIONAIRES, INC.**

19 Dated: 1/17/2023



Chief Executive Officer

21 **APPROVED AS TO FORM:**

22
23 Dated: _____

MOON & YANG, APC

24
25 BY: _____
26 KANE MOON
27 ALLEN FEGHALI
28 JACQUELYNE VANEMMERIK

Attorneys for Plaintiff

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1 Dated: 1/17/2023

LEWIS BRISBOIS BISGAARD & SMITH LLP

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BY: 

MEGAN A. CHILDRESS

Attorneys for Defendant