

JOINT STIPULATION AND SETTLEMENT AGREEMENT

Subject to final approval by the Court, this Joint Stipulation and Settlement Agreement is between Plaintiffs Martin Moreno and Loida Rivera (“Plaintiffs,” “Plaintiff Moreno,” and “Plaintiff Rivera”) on behalf of themselves, others similarly situated, and other allegedly aggrieved employees and Defendant Waiter.com, Inc. (“Defendant”).

I. DEFINITIONS

In addition to the other terms defined in this Joint Stipulation and Settlement Agreement, the terms below have the following meaning:

- A. **Administration Costs:** The costs incurred by the Settlement Administrator to administer this Settlement currently estimated at \$7,800 but will not exceed \$9,000 and shall be paid from the Qualified Settlement Fund.
- B. **Agreement, Settlement Agreement, Joint Stipulation, or Settlement:** The settlement agreement reflected in this document, titled “Joint Stipulation and Settlement Agreement.”
- C. **Attorney Fee Award:** The amount, not to exceed thirty-five percent (35%) of the Gross Settlement Amount or \$157,500.00, finally approved by the Court and awarded to Class Counsel. The Attorney Fee Award shall be paid from the Qualified Settlement Fund and will not be opposed by Defendant.
- D. **Case or Class Action:** The lawsuit originally filed by Plaintiff Moreno on August 26, 2020, entitled *Moreno v. Waiter.com, Inc.*, Case No. 20CV369926, in the Superior Court of California, County of Santa Clara.
- E. **Class:** All current and/or former hourly paid, non-exempt persons employed by Defendant in California at any time since August 26, 2016 through and including March 26, 2022.
- F. **Class Counsel:** Douglas Han and Shunt Tatavos-Gharajeh of Justice Law Corporation.
- G. **Class Member:** Each person eligible to participate in this Settlement who is a member of the Class as defined above.
- H. **Class Notice or Notice:** The “Notice of Class Action Settlement” or “Notice” shall mean the notice to be provided to all Class Members regarding the terms of this Settlement, substantially like the form attached hereto as **Exhibit A**, subject to Court approval.
- I. **Class Period:** The time period from August 26, 2016 through and including March 26, 2022.

- J. Class Representatives or Plaintiffs:** Martin Moreno and Loida Rivera.
- K. Class Representative Enhancement Payments:** The amount the Court awards to Plaintiffs for their services as Class Representatives, which will not exceed \$10,000.00 to Plaintiff Moreno and \$5,000.00 to Plaintiff Rivera. This payment shall be paid from the Qualified Settlement Fund and will not be opposed by Defendant. The Class Representative Enhancement Payments are subject to the approval of the Court.
- L. Complaint:** The wage-and-hour class action complaint filed by Plaintiff Moreno on August 26, 2020 along with the First Amended Complaint filed by Plaintiff Moreno on April 18, 2022.
- M. Cost Award:** The amount that the Court awards Class Counsel for payment of actual litigation costs, which shall not exceed \$25,000.00. The Cost Award will be paid from the Qualified Settlement Fund and will not be opposed by Defendant. The Cost Award is subject to Court approval.
- N. Counsel for Defendant:** Attorneys Hope Anne Case and Erik T. Johnson of Ricketts Case, LLP.
- O. Court or Superior Court:** The Superior Court of California, County of Santa Clara.
- P. Defendant:** Waiter.com, Inc.
- Q. Effective Final Settlement Date:** The later of the following: (1) if no objections to the Settlement have been filed, or timely objections have been filed and then withdrawn, then ten (10) days after the date the Court enters judgment granting Final Approval; (2) if an objection to the Settlement has been filed, then ten (10) days after the date on which time expires to file an appeal of the Court's grant of Final Approval; or (3) if an objection was filed and a Notice of Appeal of the Court's grant of Final Approval was timely filed, then ten (10) days after the date the appeal is finally resolved, with the grant of Final Approval unaffected.
- R. Eligible PAGA Employees:** The employees eligible to recover the PAGA Payment that consist of all current and/or former hourly paid, non-exempt persons employed by Defendant in California at any time since February 25, 2021 through and including March 26, 2022 ("PAGA Period").
- S. Exclusion Form:** The Election Not to Participate In ("Opt Out" From) Class Action Settlement, substantially like the form attached hereto as **Exhibit B**, subject to Court approval.

- T. Final Approval, Final Approval Order, Judgment or Final Judgment:** “Final Approval” or “Final Approval Order” means the final order entered by the Court following the Final Fairness and Approval Hearing. “Judgment” or “Final Judgment” means the final judgment entered by the Court following the Final Fairness and Approval Hearing.
- U. Gross Settlement Amount:** The total value of the Settlement is a non-reversionary \$450,000.00. This is the gross amount Defendant can be required to pay under this Settlement Agreement, which includes without limitation: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Attorney Fee Award and the Cost Award to Class Counsel for attorneys’ fees and costs, as approved by the Court; (3) the Class Representative Enhancement Payments paid to the Class Representatives, as approved by the Court; (4) the Administration Costs paid to the Settlement Administrator, as approved by the Court; and (5) the PAGA Payment to the LWDA and to Eligible PAGA Employees, as approved by the Court. Defendant’s portion of the employer’s share of payroll taxes as the Class Members’ current or former employer is not included in the Gross Settlement Amount and will be a separate obligation of Defendant. No portion of the Gross Settlement Amount will revert to Defendant for any reason.
- V. Individual Settlement Share(s):** The amount payable to each Participating Class Member from the Net Settlement Amount under the terms of this Settlement Agreement. Class Members are not required to submit a claim form to receive their Individual Settlement Shares pursuant to this Agreement. Rather, Participating Class Members will receive an Individual Settlement Share automatically, without the return of a claim form.
- W. LWDA:** California Labor and Workforce Development Agency.
- X. Net Settlement Amount:** The total amount of money available from the Gross Settlement Amount for distribution to Participating Class Members, which is the Gross Settlement Amount less the Attorney Fee Award, the Cost Award, the Class Representative Enhancement Payments, Administration Costs, and the PAGA Payment. The Net Settlement Amount is the portion of the Gross Settlement Amount that will be distributed to Class Members who do not request exclusion from the Settlement.
- Y. Notice Packet:** The Class Notice and Exclusion Form.
- Z. PAGA:** The California Labor Code Private Attorneys General Act of 2004 (California Labor Code section 2698, *et seq.*).
- AA. PAGA Payment:** The PAGA Payment consists of \$20,000.00 of the Gross Settlement Amount allocated to satisfy the PAGA penalties claim as alleged in the Complaint. Seventy-five percent (75%) of the PAGA Payment (\$15,000.00)

shall be paid to the LWDA, and twenty-five percent (25%) of the PAGA Payment (\$5,000.00) shall be distributed to Eligible PAGA Employees, on a pro rata basis, as set forth below, subject to the Court's approval.

- BB. PAGA Released Claims:** PAGA Released Claims means any and all claims, debts, liabilities, demands, actions, or causes of action for civil penalties, interest, and attorneys' fees and costs that are based on, relate to, concern or arise out of any of the allegations that were asserted or which could have been alleged in the Complaint against the Released Parties based on the facts and allegations pleaded in the Complaint and Plaintiff Rivera's letter sent to the LWDA on February 25, 2022, whether or not specifically delineated as a claim or cause of action in the Complaint. The PAGA Released Claims include all claims for civil penalties based upon or arising out of Defendant's alleged: (1) failure to pay minimum and overtime wages; (2) failure to provide meal and rest breaks and pay all premium pay for noncompliant meal and rest breaks; (3) failure to provide complete and accurate wage statements; (4) failure to timely pay wages during employment and at separation; (5) failure to maintain compliant wage statements; (6) failure to reimburse business-related expenses; (7) failure to accurately calculate and pay sick leave; and (8) claims for civil penalties arising under, related to or based upon alleged violations of Labor Code sections 200, 201, 202, 203, 204, 206, 206.5, 210, 212, 218, 218.5, 218.6, 221, 226, 226.3, 226.7, 246-248.3, 300, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2698, *et seq.*, 2699, *et seq.*, 2800, 2802, Code of Regulations Title 8 section 11040, and/or those arising under applicable Industrial Welfare Commission Wage Orders. The period of the PAGA Released Claims shall coincide with and extend to the limits of the PAGA Period. Eligible PAGA Employees will still be bound by the PAGA Released Claims even if they submit valid and timely Exclusion Forms.
- CC. Participating Class Members:** All Class Members who do not submit valid and timely requests to exclude themselves from the Settlement.
- DD. Parties:** Plaintiff Moreno and Plaintiff Rivera, individually and as the Class Representatives, and, as to Plaintiff Rivera, PAGA representative, and Defendant Waiter.com, Inc.
- EE. Pay Period(s):** The biweekly period corresponding with Defendant's regularly scheduled biweekly pay periods that start on a Saturday and end on the second following Friday during which an Eligible PAGA Employee actually performed work for Defendant. This excludes any pay periods when Defendant employed an Eligible PAGA Employee, but the Eligible PAGA Employee performed no work during the pay period due to an absence, vacation, illness, leave of absence, suspension, lack of work, furlough, jury duty, or similar period when an Eligible PAGA Employee performed no actual work for Defendant. A given pay period will be credited as a Pay Period if an Eligible PAGA Employee worked at least one day in the Pay Period.

- FF. Preliminary Approval or Preliminary Approval Order:** The order entered by the Court following the Preliminary Approval Hearing approving the proposed Settlement.
- GG. Qualified Settlement Fund:** A fund within the meaning of Treasury Regulation section 1.46B-1, 26 C.F.R. sections 1.468B-1, *et seq.*, which is established by the Settlement Administrator for the benefit of Participating Class Members, Plaintiffs and Class Counsel.
- HH. Released Claims:** The Released Claims means any and all facts, injuries, debts, demands, rights, obligations, losses, damages, costs, attorneys' fees, expenses, interest, restitution, compensation, wages, interest, penalties, causes of action and claims, based on direct or vicarious liability, that are based on, relate to, concern or arise out of any of the allegations that were asserted or which could have been asserted in the Complaint against the Released Parties based on the facts alleged in the Complaint, whether or not specifically delineated as a claim or cause of action in the Complaint. These Released Claims include but are not limited to: (1) failure to pay minimum and overtime wages; (2) failure to provide meal and rest breaks and pay applicable premium pay; (3) failure to provide complete and accurate wage statements; (4) failure to reimburse business expenses; (5) failure to timely pay wages during employment and at separation; (6) failure to maintain compliant wage statements; (7) failure to accurately calculate and pay sick leave; and (8) engaging in unfair business practices. Thus, the Released Claims include claims covered by Labor Code sections 201, 202, 203, 206, 206.5, 212, 218, 218.5, 218.6, 226, 226.7, 246-248.3, 300, 510, 512, 558.1, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802; the Unfair Practices Act, codified at Business & Professions Code sections 17000 *et seq.*; Business & Professions Code sections 17200, *et seq.*; Code of Civil Procedure section 1021.5; and any other applicable provision of the Labor Code or any applicable Industrial Welfare Commission Wage Orders, in all of their iterations to the fullest extent permitted by law. The period of the Released Claims shall coincide with and extend to the limits of the Class Period.
- II. Released Parties:** Defendant and each of its respective current, former, and future parent companies, subsidiaries, divisions, and current and former affiliated individuals and entities, legal successors, predecessors (including companies they have acquired, purchased, or absorbed), assigns, joint ventures, and each and all of their respective officers, partners, directors, owners, stockholders, servants, agents, shareholders, members, managers, principals, investment advisors, consultants, employees, representatives, attorneys, accountants, lenders, underwriters, benefits administrators, investors, funds, and insurers, past, present, and future, and all persons acting under, by, through, or in concert with any of them.
- JJ. Response Deadline:** Sixty (60) calendar days from the initial mailing of the Notice Packet, subject to Section III(J)(2)(c).

- KK. Settlement Administration:** The Settlement Administrator will conduct a skip trace for the addresses of all former employee Class Members. The Settlement Administrator will mail the Notice Packet by first-class U.S. mail to all current employee Class Members at the addresses Defendant has on file for those Class Members and to all former employee Class Members at the addresses obtained via skip trace. The Notice Packet will inform Class Members that they have until the Response Deadline to either object to the Settlement or to opt out (exclude themselves) of the Settlement. Any Class Member who does not receive a Notice Packet after the Settlement Administrator has taken the steps outlined above will still be bound by the Settlement and/or Judgment.
- LL. Settlement Administrator:** The third-party administrator agreed upon by Parties to administer this Settlement is Simpluris, Inc. (“Simpluris”).
- MM. Workweek(s):** A week starting on a Saturday and ending on a Friday in which a Class Member actually performed work for Defendant, excluding any periods when Defendant employed a Class Member, but the Class Member performed no work due to an absence, vacation, illness, leave of absence, suspension, lack of work, furlough, jury duty, or similar period when a Class Member performed no actual work for Defendant. A given week will be credited as a Workweek if a Class Member worked at least one day in the Workweek.

II. RECITALS

Procedural History. On August 26, 2020, Plaintiff Moreno, a former employee of Defendant, filed a wage-and-hour class action lawsuit in the Superior Court of California, County of Santa Clara, alleging the following violations: (1) Labor Code sections 510 and 1198 (unpaid overtime); (2) Labor Code sections 226.7 and 512(a) (unpaid meal period premiums); (3) Labor Code sections 226.7 (unpaid rest period premiums); (4) Labor Code sections 1194 and 1197 (unpaid minimum wages); (5) Labor Code sections 201 and 202 (final wages not timely paid); (6) Labor Code section 226(a) (noncompliant wage statements); (7) Labor Code sections 2800 and 2802 (unreimbursed business expenses); and (8) Business & Professions Code sections 17200, *et seq.*

After engaging in litigation, exchange of information, and negotiations, the Parties attended mediation for the Class Action on February 24, 2022 with Mark S. Rudy, Esq., that resulted in the settlement of the Complaint.

Pursuant to the anticipated settlement, Plaintiff Rivera, another former employee of Defendant, provided written notice to the LWDA and Defendant on February 25, 2022 of the specific provisions of the Labor Code she contends were violated and the theories supporting her contentions. Moreover, the Parties agreed that Plaintiff Moreno will file a First Amended Complaint solely for purposes of effectuating the settlement containing the following changes: (1) adding Plaintiff Rivera as an additional plaintiff; (2) adjusting the Class

definition; (3) adding additional alleged facts and theories raised by Plaintiffs during the mediation and negotiations, including that Defendant maintained an improper rounding policy that resulted in underpayment to Plaintiffs and other class members and that Defendant failed to properly calculate and pay sick leave to Plaintiffs and other class members; and (4) adding the following cause of action: (a) violation of Labor Code sections 2698, *et seq.* (PAGA).

- A. **Investigation.** Prior to mediation, the Parties conducted significant investigation of the relevant facts and law. Specifically, Defendant provided documents relating to its wage-and-hour policies, practices, and procedures, including those regarding meal and rest periods, overtime, bonus and incentive plans, and other payroll and operational policies. Plaintiffs reviewed time records, pay records, and information provided by Defendant relating to the size and scope of the Class, as well as data permitting Plaintiffs to understand the number of Workweeks in the Class Period. Plaintiffs interviewed Class Members who worked for Defendant throughout the Class Period. The Parties agree that the above-described investigation and evaluation, as well as the information exchanged during the settlement negotiations, are sufficient to assess the merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis.
- B. **Mediation.** Plaintiffs and Class Counsel have engaged in good faith, arms'-length negotiations with Defendant concerning possible settlement of the claims asserted in the Class Action. Specifically, on February 24, 2022, the Parties participated in a mediation with Mark S. Rudy, Esq. This mediation took place only after the Parties informally exchanged extensive information and data, described in Section II(B) above. After a full day of negotiation, under the auspices of the mediator, the Parties reached a settlement of the Complaint.
- C. **Benefits of Settlement to Class Members.** Plaintiffs and Class Counsel recognize the expense and length of additional proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals. Plaintiffs and Class Counsel also have considered the uncertainty and risks, the potential outcome, and the difficulties and delays inherent in further litigation. Plaintiffs and Class Counsel conducted extensive settlement negotiations, including formal mediation on February 24, 2022. Based on the foregoing, Plaintiffs and Class Counsel believe the Settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class Members.
- D. **Defendant's Reasons for Settlement.** Defendant recognizes that the defense of this litigation will be protracted and expensive. Substantial amounts of Defendant's time, energy, and resources have been and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiffs. Defendant, therefore, has agreed to settle in the manner and upon the

terms set forth in this Agreement to put to rest the Released Claims and PAGA Released Claims.

- E. Defendant's Denial of Wrongdoing.** Defendant generally and specifically denies any and all liability or wrongdoing of any sort with regard to any of the claims alleged, makes no concessions or admissions of liability of any sort, and contends that for any purpose other than settlement, the Complaint is not appropriate for class or representative treatment. Defendant also asserts several defenses to the claims and has denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Complaint. Neither this Agreement nor any document referred to or contemplated herein, nor any statements, discussions, or communications, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendant or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. Nor should the Agreement be construed as an admission that Plaintiffs can serve as adequate Class or PAGA Representatives. There has been no final determination by any court as to the merits of the claims asserted by Plaintiffs against Defendant or as to whether a class or classes should be certified, other than for settlement purposes only.
- F. Plaintiffs' Claims.** Plaintiffs assert that Defendant's defenses are without merit. Neither this Agreement nor any documents referred to or contemplated herein, nor any action taken to carry out this Agreement is, may be construed as, or may be used as an admission, concession, or indication by or against Plaintiffs, Class Members, or Class Counsel as to the merits of any claims or defenses asserted, or lack thereof, in the Complaint. However, if this Settlement is finally approved by the Court, none of Plaintiffs, Participating Class Members, Eligible PAGA Employees, or Class Counsel will oppose Defendant's efforts to use this Agreement to prove that Plaintiffs and Participating Class Members and Eligible PAGA Employees have resolved and are forever barred from relitigating the Released Claims and PAGA Released Claims.

III. SETTLEMENT TERMS AND CONDITIONS

- A. Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the maximum Gross Settlement Amount that Defendant is obligated to pay, excluding payroll taxes, under this Settlement Agreement is \$450,000.00.
- B. Notice to the LWDA.** On February 25, 2022, Plaintiff Rivera filed and served her Notice of Labor Code Violations Pursuant to Labor Code section 2699.3. Thus, Plaintiff Rivera has satisfied her notice obligations under PAGA.
- C. Class Certification.** Solely for the purposes of this Settlement, the Parties stipulate and agree to certification of the claims asserted on behalf of Class

Members. As such, the Parties stipulate and agree that for this Settlement to occur, the Court must certify the Class as defined in this Agreement.

- D. Conditional Nature of Stipulation for Certification.** The Parties stipulate and agree to the certification of the claims asserted on behalf of Plaintiffs and Class Members for purposes of this Settlement only. This Stipulation is contingent upon Preliminary and Final Approval and certification of the Class for purposes of this Settlement only. If the Settlement does not become final, for whatever reason, the fact that the Parties were willing to stipulate provisionally to certification as part of the Settlement shall have no bearing on and shall not be admissible or used in any way in connection with, the question of whether the Court should certify any claims in a non-settlement context in this Class Action or in any other lawsuit or venue. Defendant reserves the right to oppose class certification and/or to proactively move to deny class certification should this Settlement be materially modified, reversed on appeal, or not become final.
- E. Appointment of Class Representative.** Solely for the purposes of this Settlement, the Parties stipulate and agree Plaintiffs shall be appointed as the representatives for the Class.
- F. Appointment of Class Counsel.** Solely for the purposes of this Settlement, the Parties stipulate and agree that Class Counsel shall be appointed to represent the Class.
- G. Individual Settlement Share.** Subject to the terms and conditions of this Agreement, and the approval of the Court, the Settlement Administrator will disburse an Individual Settlement Share from the Net Settlement Amount to each Participating Class Member.

1. Calculation.

- a. Individual Settlement Share Calculation.** Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to: (i) the number of Workweeks he or she worked as a non-exempt California employee of Defendant during the Class Period, based on the Class Data (as defined below) provided by Defendant, divided by (ii) the total number of Workweeks worked by any and all Participating Class Members collectively during the Class Period based on the same Class Data, (iii) which is then multiplied by the Net Settlement Amount. One day worked in a given week will be credited as a Workweek for purposes of this calculation. Thus, the value of each Participating Class Member's Individual Settlement Share is tied directly to the number of Workweeks he or she worked during the Class Period.

2. **Tax Withholdings.** Each Participating Class Member's Individual Settlement Share will be apportioned as follows: twenty percent (20%) in compromise of claims for alleged unpaid wages and eighty percent (80%) in compromise of claims for alleged non-wage amounts including penalties and interest. The amounts paid on account of claims for wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be determined by the Settlement Administrator and reported by W-2 forms issued by the Settlement Administrator. The amounts paid on account of claims for penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be determined by the Settlement Administrator and reported by IRS 1099 forms issued by the Settlement Administrator. The employees' share of payroll tax withholdings shall be withheld from each person's Individual Settlement Share and paid by the Settlement Administrator to the appropriate taxing authorities. Each Eligible PAGA Employee's portion of the PAGA Payment (as described below) will be allocated as one hundred percent (100%) in compromise of claims for alleged penalties and will be issued an IRS form 1099 if it exceeds \$600.00. Participating Class Members and Eligible PAGA Employees will be responsible for the payment of any additional taxes and penalties assessed on their individual payments and any other obligations resulting from their personal tax reporting, or failure to so report.

H. Settlement Disbursement. Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments out of the Gross Settlement Amount:

1. **To the Plaintiffs, Martin Moreno and Loida Rivera.** In addition to their respective Individual Settlement Shares and portion of the PAGA Payment, and subject to the Court's approval, Plaintiff Moreno will receive up to Ten Thousand Dollars (\$10,000.00) as a Class Representative Enhancement Payment and Plaintiff Loida will receive up to Five Thousand Dollars (\$5,000.00) as a Class Representative Enhancement Payment. The Settlement Administrator will pay the Class Representative Enhancement Payments out of the Qualified Settlement Fund. Payroll tax withholdings and deductions will not be taken from the Class Representative Enhancement Payments. An IRS Form 1099 will be issued to Plaintiffs with respect to their Class Representative Enhancement Payments. Plaintiffs shall be solely and legally responsible to pay any and all applicable taxes on the Class Representative Enhancement Payments and shall hold harmless Defendant, Class Counsel, and the Released Parties from any claim or liability for taxes, penalties, or interest arising as a result of the Class Representative Enhancement Payments. If the Court does not approve the entirety of the application for the Class Representative Enhancement Payments, the Settlement Administrator shall pay whatever amounts the

Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Plaintiffs, the differences shall become part of the Net Settlement Amount and be available for distribution to Participating Class Members. If the Court reduces or does not approve the requested Class Representative Enhancement Payments, Plaintiffs shall not have the right to revoke the Settlement, and it will remain binding, nor will Plaintiffs seek, request, or demand an increase in the Gross Settlement Amount on that basis.

- 2. To Class Counsel.** Class Counsel will apply to the Court for, and Defendant agrees not to oppose, a total Attorney Fee Award not to exceed thirty-five percent (35%) or \$157,500.00 of the Gross Settlement Amount and a Cost Award not to exceed \$25,000.00. The Settlement Administrator will pay the Court-approved amounts for the Attorney Fee Award and Cost Award out of the Gross Settlement Amount. Payroll tax withholding and deductions will not be taken from the Attorney Fee Award or the Cost Award. IRS Forms 1099 will be issued to Class Counsel with respect to these payments. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the Attorney Fee and Cost Awards. If the Court does not approve the entirety of the application for the Attorney Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Class Counsel for the Attorney Fee Award and/or Cost Award, the difference shall become part of the Net Settlement Amount and be available for distribution to Participating Class Members. If the Court reduces or does not approve the requested Attorney Fee Award, Plaintiffs shall not have the right to revoke the Settlement, and it will remain binding, nor will Plaintiffs seek, request, or demand an increase in the Gross Settlement Amount on that basis.
- 3. To the Responsible Tax Authorities.** The Settlement Administrator will withhold the amount of the Participating Class Members' portion of normal payroll withholding taxes out of each person's Individual Settlement Share. The Settlement Administrator will calculate the amount of the Participating Class Members' and Defendant's portion of payroll withholding taxes. The Settlement Administrator will submit Defendant's portion of payroll withholding tax calculation to Defendant for additional funding and forward those amounts along with each person's Individual Settlement Share withholdings to the appropriate taxing authorities.
- 4. To the Settlement Administrator.** The Settlement Administrator – Simpluris – will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court estimated at \$7,800 but will not exceed

\$9,000. This will be paid out of the Qualified Settlement Fund. If the amount of Administration Costs is less than the amount estimated, the difference shall become part of the Net Settlement Amount and be available for distribution to Participating Class Members. If the Court does not approve the entire application for the Administration Costs, the Settlement Administrator shall pay to itself whatever amount the Court awards, and neither Defendant nor the Plaintiffs shall be responsible for paying the difference between the amount requested and the amount awarded.

5. To Participating Class Members. The Settlement Administrator will pay Participating Class Members according to the Individual Settlement Share calculations set forth above. All payments to Participating Class Members shall be made from the Qualified Settlement Fund.

6. To Eligible PAGA Employees. The Settlement Administrator shall pay each Eligible PAGA Employee from the Qualified Settlement Fund according to his or her proportional share of twenty-five percent (25%) of the PAGA Payment (\$5,000.00), which will be based upon the total number of Pay Periods the Eligible PAGA Employee worked as a California hourly-paid, non-exempt employee of Defendant during the PAGA Period. Each individual share will be calculated by: (i) determining the total number of Pay Periods during the PAGA Period during which the Eligible PAGA Employee actually worked as California hourly-paid, non-exempt employee of Defendant, (ii) dividing this number by the total number of Pay Periods during the PAGA Period during which all Eligible PAGA Employees actually worked (*i.e.*, the sum of all Pay Periods when work was performed for all Eligible PAGA Employees), and (iii) multiplying this number by the \$5,000.00 allocated to the Eligible PAGA Employees.

7. To the LWDA. Seventy-five percent (75%) of the PAGA Payment (\$15,000.00) shall be paid to the LWDA.

I. Appointment of Settlement Administrator. Solely for the purposes of this Settlement, the Parties stipulate and agree that Simpluris shall be retained to serve as Settlement Administrator. The Settlement Administrator shall be responsible for: (a) preparing, printing, and mailing the Notice Packet to the Class Members; (b) keeping track of any objections or requests for exclusion from Class Members; (c) performing skip traces and remailing Notice Packets, Individual Settlement Shares, and portions of the PAGA Payment to Class Members and Eligible PAGA Employees respectively; (d) calculating any and all payroll tax deductions as required by law; (e) calculating each Participating Class Member's Individual Settlement Share and each Eligible PAGA Employee's portion of the PAGA Payment; (f) providing weekly status reports to Counsel for Defendant and Class Counsel, which are to include updates on any objections or requests for exclusion that have been received; (g) mailing Individual Settlement Shares and portions of the PAGA Payment to Participating Class Members and Eligible PAGA Employees,

respectively; (h) mailing the LWDA's portion of the PAGA Payment to the LWDA; (i) distributing the Attorney Fee Award and the Cost Award to Class Counsel; (j) printing and providing Class Members, Eligible PAGA Employees, and Plaintiffs with W-2 and 1099 forms as required under this Agreement and applicable law; (k) providing a due diligence declaration for submission to the Court upon completion of the Settlement and prior to the Final Approval Hearing; (l) providing any reports or declarations needed in connection with a post-approval compliance hearing; (m) turning over any funds remaining in the Qualified Settlement Fund at the close of the 180-day period as a result of uncashed checks to the California State Controller: Unpaid Wage Fund; and (n) performing other tasks as the Parties mutually agree or the Court may order. The Parties each represent that they do not have any financial interest in Simpluris or otherwise have a relationship with Simpluris that could create a conflict of interest.

J. Procedure for Approving Settlement.

1. Motion for Preliminary Approval and Conditional Certification.

- a.** Plaintiffs will move for an order conditionally certifying the Class for settlement purposes only, giving Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice and Exclusion Form. Class Counsel will prepare the Motion for Preliminary Approval and will make it available for Counsel for Defendant at least five (5) business days prior to the filing of the Motion for Preliminary Approval and work with Defendant in good faith to make such motion papers acceptable to Defendant. Defendant shall provide any comments to the Motion for Preliminary Approval within three (3) business days of its receipt, or it will be deemed acceptable to Defendant. Defendant may elect to submit additional materials in support of Preliminary Approval.
- b.** At the Preliminary Approval Hearing, Plaintiffs will appear, support the granting of the motion, and submit a proposed order granting conditional certification of the Class and Preliminary Approval of the Settlement; appointing the Class Representative, Class Counsel, and Settlement Administrator; approving the Notice Packet; and setting the Final Approval Hearing.
- c.** Should the Court decline to conditionally certify the Class or to Preliminarily Approve all material aspects of the Settlement, and if the Parties thereafter are unable to agree on changes to the Settlement sufficient to obtain conditional certification of the Class and preliminary approval of the Settlement, then the Settlement will be null and void, and the Parties will have no further obligations under it.

- d. The amounts of the Attorney Fee Award, the Cost Award, the Administration Costs, and the Class Representative Enhancement Payments shall be determined by the Court, and the Court's determination on these amounts shall be final and binding. The Court's approval or denial of any amount requested for these items are not conditions of this Settlement Agreement and are to be considered separate and apart from the fairness, reasonableness, and adequacy of the Settlement. Any order or proceeding relating to an application for the Attorney Fee Award, the Cost Award, the Administration Costs, and the Class Representative Enhancement Payments shall not operate to terminate or cancel this Agreement. Nothing in this Agreement shall limit Plaintiffs' or Class Counsel's ability to appeal any decision by the Court to award less than the requested Attorney Fee Award, the Cost Award, the Administration Costs, and the Class Representative Enhancement Payments.

2. Notice to Class Members. After the Court enters its Preliminary Approval Order, every Class Member will be provided with the Notice Packet in accordance with the following procedure:

- a. Within thirty (30) days after entry of the Preliminary Approval Order, Defendant shall deliver to the Settlement Administrator the following information about each Class Member: (1) first and last names; (2) last known mailing address; (3) last known phone numbers and email addresses; (4) Social Security Number; (5) the number of Workweeks a Class Member worked during the Class Period; and (6) the number of Pay Periods worked during the PAGA Period for each Class Member that is also an Eligible PAGA Employee, all as reflected in Defendant's records (collectively "Class Data"). The Settlement Administrator will conduct a skip trace for the addresses of all former employee Class Members of Defendant. The Settlement Administrator shall maintain the Class Data and all information contained within the Class Data as private and confidential. Class Counsel shall not have access to the Class Data. The Settlement Administrator shall not distribute or use the Class Data, or any information contained therein, for any purpose other than to administer this Settlement. Within two hundred and ten (210) days after the Effective Final Settlement Date, or such other date as the Court may order, the Settlement Administrator shall destroy all Class Members' personal identifying information received from Defendant and otherwise in connection with the implementation and administration of this Settlement. This provision is necessary to preserve the privacy rights of Class Members and will not impede Class Counsel's ability to discharge their fiduciary duties,

including effectuating the terms of this settlement. Furthermore, this confidentiality provision is in the interest of the Class because it will reduce the likelihood of Class Members' personal information being leaked, potentially subjecting them to crimes, such as identity theft.

- b.** The Settlement Administrator shall run all addresses contained in the Class Data through the United States Postal Service National Change of Address Database ("NCOA") (which provides updated addresses for individuals who have moved in the previous four years and who have provided the U.S. Postal Service with a forwarding address) to obtain current address information. The Settlement Administrator shall mail the Notice Packet to the Class Members via first-class regular U.S. Mail using the most current mailing address information available within fourteen (14) days after the receipt of the Class Data from Defendant.
- c.** If a Notice Packet is returned because of an incorrect address, within ten (10) calendar days after receipt of the returned Notice Packet, the Settlement Administrator will conduct a search for a more current address for the Class Member and remail the Notice Packet to the Class Member. The Settlement Administrator will use the NCOA and skip tracing to attempt to find the Class Member's current address. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Class Member for whom a Notice Packet is returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly remailing Notice Packets to Class Members for whom new addresses are found. If the Settlement Administrator is unable to locate a better address, the Notice Packet shall be remailed to the original address. If the Notice Packet is remailed, the Settlement Administrator will note for its own records the date and address of each remailing. Those Class Members who receive a remailed Notice Packet, whether by skip trace or forwarded mail, will have the later of the original Response Deadline or an additional ten (10) calendar days from the original Response Deadline to postmark a request for exclusion from or objections to the Settlement. The Settlement Administrator shall mark on the envelope whether the Notice Packet is a remailed packet.
- d.** Class Members may dispute the information provided in their Notice Packets. All such disputes must be in writing, postmarked by the Response Deadline, and sent via first-class regular U.S.

mail to the Settlement Administrator. To the extent a Class Member disputes the number of Workweeks or Pay Periods with which he or she has been credited or the amount of his or her Individual Settlement Share or portion of the PAGA Payment, the Class Member must produce and submit evidence to the Settlement Administrator showing that such information is inaccurate. Absent evidence rebutting Defendant's records, Defendant's records will be presumed determinative. However, if a Class Member produces evidence rebutting Defendant's records, the Parties will evaluate the evidence submitted by the Class Member and will make the final decision as to the number of eligible Workweeks or Pay Periods with which the Class Member should be credited and/or the amount of the Individual Settlement Share or portion of the PAGA Payment to which the Class Member may be entitled. If the Parties are unable to agree, the Settlement Administrator will make the determination.

- e. If the Settlement Administrator receives an incomplete or deficient request for exclusion, the Settlement Administrator shall send a letter informing the Class Member of the deficiency and shall provide the Class Member fourteen (14) calendar days with which to cure the deficiency. However, the provision of a cure period will not extend the Response Deadline. If the Settlement Administrator does not receive a cured request for exclusion, postmarked on or before the last day of the cure period, the Class Member will be determined not to have excluded himself or herself from the Settlement and will be bound by the Settlement.
- f. The Settlement Administrator shall provide a weekly status report to the Parties. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Counsel for Defendant of the number of Notice Packets mailed, the number of Notice Packets returned as undeliverable, the number of Notice Packets remailed, and the number of requests for exclusion received.
- g. Within twenty-one (21) calendar days after the latest response date for Class Members who receive remailed Notice Packets, Settlement Administrator will serve a declaration of due diligence setting forth its compliance with its obligations. The declaration from the Settlement Administrator shall also be filed with the Court by Class Counsel no later than ten (10) calendar days before the Final Approval Hearing. If any material changes occur after the date of the filing of Settlement Administrator's declaration of due diligence but before the Final Approval Hearing, the Settlement Administrator will supplement its declaration.

- 3. Objections to Settlement.** The Class Notice will provide that Class Members who wish to object to the Settlement must do so by submitting objections in writing, signed, and dated, to the Court, with a copy mailed to Class Counsel and Counsel for Defendant, postmarked no later than the Response Deadline. Class Members who object to this Settlement or any of its terms may not also submit requests for exclusion from this Settlement (*i.e.*, may not opt out of this Settlement). If a Class Member submits both a request for exclusion and a written objection, the request for exclusion will be deemed invalid, and the objection will remain valid. The date the objection is postmarked shall be the exclusive means for determining whether an objection was timely served.
- a. Format.** For an objection to be valid, it must: (1) clearly identify the case name and case number; (2) be submitted to the Court either by mailing the objection to: Clerk of the Court, Superior Court of California, County of Santa Clara, 191 N. 1st Street, San Jose, California 95113, or by filing in person at the same location; (3) be mailed to the law firms identified (Class Counsel and Counsel for Defendant); and (4) be filed or postmarked on or before the Response Deadline.
 - b. Appearance at Final Approval and Oral Objection.** Class Members may (though are not required to) appear at the Final Approval Hearing, either in person, telephonically, or through the objecting Class Member's own counsel, at the Class Member's own expense and orally object to the Settlement. Any attorney who will represent a Class Member objecting to this Settlement must file a notice of appearance with the Court and serve Class Counsel and Counsel for Defendant no later than fifteen (15) calendar days before the Final Approval Hearing.
 - c. Bound by the Settlement.** A Class Member who objects to the Settlement will remain a member of the Settlement (*i.e.*, a Participating Class Member) and if the Court finally approves the Settlement, the objecting Class Member will be bound by the terms of the Settlement in the same way and to the same extent as those Participating Class Members who do not object.
 - d. Response.** Class Counsel and Counsel for Defendant will forward objections received to the Settlement Administrator. Plaintiffs and Defendant will be permitted to respond in writing to such objections no later than seven (7) calendar days before the Final Approval Hearing. Plaintiffs waive any right to object to the Settlement and hereby endorse the Settlement as fair, reasonable, adequate and in the best interests of the Class Members.

4. **Request for Exclusion from the Settlement (“Opt-Out”).** The Notice Packet will provide that Class Members who wish to exclude themselves from the Settlement must mail a request for exclusion to the Settlement Administrator. The request for exclusion must: (a) include the Class Member’s name; (b) be addressed to the Settlement Administrator; (c) be signed by the Class Member or his or her lawful representative; and (d) be postmarked no later than the Response Deadline.
- a. **Confirmation of Authenticity.** The date of the initial mailing of the Notice Packet and the date the signed request for exclusion is postmarked shall be conclusively determined according to the records of the Settlement Administrator. If there is a question about the authenticity of a signed request for exclusion, the Settlement Administrator may demand additional proof of the Class Member’s identity. Any Class Member who returns a timely and valid executed request for exclusion will not participate in or be bound by the Settlement and Judgment, will not receive an Individual Settlement Share, and will not have any right to object, appeal, or comment thereon. A Class Member who does not complete and mail a timely request for exclusion will automatically be included in the Settlement, will receive an Individual Settlement Share, and will be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and by the Judgment, regardless of whether he or she has objected to the Settlement.
- b. **Report.** No later than fourteen (14) calendar days after the Response Deadline, the Settlement Administrator will provide the Parties with a complete and accurate accounting of the number of Notice Packets mailed to Class Members, the number of Notice Packets returned as undeliverable, the number of Notice Packets remailed to Class Members, the number of remailed Notice Packets returned as undeliverable, the number of Class Members who objected to the Settlement and copies of their submitted objections, the number of Class Members who returned valid requests for exclusion, the number of Workweeks attributable to Class Members who wish to exclude themselves from the Settlement, and the number of Class Members who returned invalid requests for exclusion.
- c. **Defendant’s Option to Terminate.** If (a) four percent (4%) or more of the total number of the Class Members to whom a Notice Packet is sent; or (b) Class Members to whom a Notice Packet is sent who represent more than four percent (4%) of Workweeks attributable to Class Members request to exclude themselves from the Settlement, Defendant will have the option, at its sole

discretion, of canceling the Settlement in its entirety. However, Defendant must notify Class Counsel and the Court in writing that it is exercising such option within fourteen (14) days after being notified by the Settlement Administrator of the number of Class Members who have timely requested exclusion.

- d. Eligible PAGA Employees May Not Opt Out of PAGA Settlement.** Notwithstanding the foregoing, the Parties agree that there is no statutory or other right for any Eligible PAGA Employee to opt out or otherwise exclude himself or herself from the PAGA portion of the Settlement, which releases the claims enumerated in Section III(L) below (“PAGA Released Claims”). An Eligible PAGA Employee who submits a timely and valid request for exclusion shall still receive his or her share of the PAGA Payment and shall release the PAGA Released Claims.

- 5. No Solicitation of Objection or Requests for Exclusion.** Neither the Parties nor their respective counsel will solicit or otherwise encourage, directly or indirectly, any Class Member to object to the Settlement, request exclusion from the Settlement, or appeal from the Final Approval Order or Judgment.

6. Motion for Final Approval.

- a.** Upon expiration of the Response Deadline, Class Counsel will file motions and memorandums in support thereof for Final Approval of the Settlement, the PAGA Released Claims encompassed by the Settlement, and the following payments unopposed by Defendant in accord with the terms of the Settlement: (1) the Attorney Fee Award; (2) the Cost Award; (3) the Administration Costs; (4) the Class Representative Enhancement Payments; and (5) the PAGA Payment. Class Counsel will also move the Court for an order of Final Approval (and associated entry of Judgment), pursuant to which all Participating Class Members and Eligible PAGA Employees shall release all Released Claims and PAGA Released Claims. Class Counsel will make the Motion for Final Approval available for Counsel for Defendant at least five (5) business days prior to the filing of the Motion for Final Approval and work in good faith to make such motion papers acceptable to Defendant. Defendant shall provide any comments to the Motion for Final Approval within three (3) business days of its receipt, or it will be deemed acceptable to Defendant. Defendant may elect to submit additional materials in support of Final Approval.
- b.** If the Court does not grant Final Approval of the Settlement in all material aspects, or if the Court’s Final Approval of the Settlement

is reversed or materially modified on appellate review, then this Settlement will become null and void. If that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount or any amounts that otherwise would have been owed under this Agreement. An award by the Court of a lesser amount than sought by Plaintiffs and Class Counsel for the Class Representative Enhancement Payments, the Attorney Fee Award, and/or the Cost Award, will not constitute a material modification to the Settlement within the meaning of this paragraph.

- c. Upon Final Approval of the Settlement, the Parties shall present to the Court a proposed Final Approval Order, approving the Settlement and entering Judgment in accordance therewith. After entry of Judgment, the Court shall have continuing jurisdiction over the Class Action for purposes of: (1) enforcing this Settlement Agreement; (2) addressing settlement administration matters; and (3) addressing such post-Judgment matters as may be appropriate under Court rules and applicable law.
- 7. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, if Class Members do not timely object to the Settlement, then the Parties and their respective counsel waive any and all rights to appeal from the Judgment, including, but not limited to, all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate or set aside judgment, and any extraordinary writ, and the Judgment will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceeding, or post-judgment proceeding.
- 8. **Vacating, Reversing, or Modifying Judgment on Appeal.** If, after a notice of appeal, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement, and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then this Settlement will become null and void and the Parties will have no further obligations under it. A material modification would include, but not necessarily be limited to, any alteration of the Gross Settlement Amount, other than as specifically provided in Section III(N)(19).
- 9. **Disbursement of Settlement Shares and Payments.** Subject to the Court finally approving the Settlement, the Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Superior Court's Final Approval Order and Judgment. The maximum amount Defendant can be required to pay under this Settlement for any purpose is the Gross Settlement Amount, excluding Defendant's portion of employer's

share of payroll taxes. The Settlement Administrator shall keep Counsel for Defendant and Class Counsel apprised of all distributions from the Gross Settlement Amount. The Settlement Administrator shall respond to questions from Counsel for Defendant and Class Counsel. No person shall have any claim against the Defendant, Counsel for Defendant, Plaintiffs, Class Counsel, or the Settlement Administrator based on the distributions and payments made in accordance with this Agreement.

- a. **Funding the Settlement:** Within fourteen (14) calendar days after the Effective Final Settlement Date, Defendant shall deposit the Gross Settlement Amount of Four Hundred Fifty Thousand Dollars (\$450,000.00) into the Qualified Settlement Fund (as defined below). Defendant shall also at this time provide any tax information that the Settlement Administrator may need to calculate each Participating Class Member's Individual Settlement Share.
- b. **Disbursement:** Within fourteen (14) calendar days after the deadline to fund the Settlement, the Settlement Administrator shall calculate and disburse all payments due under the Settlement Agreement, including all Individual Settlement Shares, the Attorney Fee Award, the Cost Award, the Class Representative Enhancement Payments, the PAGA Payment, and the Administration Costs. The Settlement Administrator will also forward a check for seventy-five percent (75%) of the PAGA Payment (\$15,000.00) to the LWDA for settlement of the PAGA claims.
- c. **Qualified Settlement Fund:** The Parties and Settlement Administrator shall treat the Qualified Settlement Fund as coming into existence on the earliest date permitted as set forth in 26 C.F.R. section 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.

10. Uncashed Checks. Participating Class Members and Eligible PAGA Employees must cash or deposit their settlement payment checks within one hundred eighty (180) calendar days after the checks are mailed to them. If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited in the next ninety (90) calendar days, it will expire and become non-negotiable, and offering to replace the check if it was lost or misplaced. If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are initially mailed, cancel the check(s), and pay the amount of the Individual Settlement Share to the

California State Controller: Unpaid Wage Fund and add the amount of the uncashed individual shares of the PAGA Payment to the funds being paid to the LWDA.

11. Final Report by Settlement Administrator. Within ten (10) calendar days after the disbursement of all funds, the Settlement Administrator will serve on the Parties a declaration providing a final report on the disbursements of all funds.

12. Defendant's Legal Fees. Defendant is responsible for paying for all Defendant's own legal fees, costs, and expenses incurred in this Class Action outside of the Gross Settlement Amount.

13. Plaintiffs' Legal Fees. Plaintiffs are responsible for paying for all of Plaintiffs' own legal fees, costs, and expenses incurred in connection with the Complaint in excess of the Attorney Fee Award and Cost Award, if any, outside of the Gross Settlement Amount. Except as otherwise provided by this Agreement and the Judgment, Class Counsel and any counsel associated with Class Counsel waive any claim to costs and attorneys' fees and expenses against Defendant arising from or related to the Complaint.

K. Release of Claims. Upon Defendant's fulfillment of its payment obligations pursuant to Section III (J)(9)(a) above, Plaintiffs and the other Participating Class Members will fully and finally release and discharge the Released Parties from the Released Claims.

L. Effect of PAGA Settlement. Upon Defendant's fulfillment of its payment obligations pursuant to Section III (J)(9)(a) above, Plaintiffs, the LWDA, and any other representative, proxy, or agent thereof, including, but not limited to, any and all Eligible PAGA Employees, are barred from pursuing any action for civil penalties defined within the PAGA Released Claims against the Released Parties.

M. Plaintiffs' Release of Claims and General Release. Upon Defendant's fulfillment of its payment obligations pursuant to Section III (J)(9)(a) above, in exchange for the Class Representative Enhancement Payments in an amount not to exceed Ten Thousand Dollars (\$10,000.00) to Plaintiff Moreno and Five Thousand Dollars (\$5,000) to Plaintiff Rivera, in recognition of their work and efforts in prosecuting the claims and obtaining the Settlement, and undertaking the risk for the payment of costs if this matter had not successfully resolved, Plaintiffs hereby provide a general release of claims for themselves and their spouses, heirs, successors and assigns, and forever release, remise, and discharge the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature whatsoever, arising from the beginning of time through the date the court grants Preliminary Approval, known or unknown, suspected or unsuspected, whether in tort, contract, equity, or

otherwise, for violation of any federal, state or local statute, rule, ordinance or regulation, including but not limited to all claims arising out of, based upon, or relating to their employment with Defendant or the remuneration for, or termination of, such employment. Plaintiffs' Release of Claims and General Release also includes a waiver of Civil Code section 1542, which provides as follows:

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

The foregoing release is intended to be as broad as the Parties can possibly create and includes but is not limited to any liability whatsoever:

-which arises directly or indirectly out of or is in any manner related to Plaintiffs' employment by Defendant or the termination of Plaintiffs' employment;

- which arises directly or indirectly out of or is in any manner related to the causes of action or injuries or damages alleged in the Complaint; or

- which arises directly or indirectly out of or is in any manner related to any of the matters, occurrences, or transactions which were raised or could have been raised in the Complaint, including without limitation, any and all claims for compensatory, economic, non-economic, punitive or other damages.

If any claim is not subject to release, Plaintiffs waive any right or ability to be class or collective action representatives or to otherwise participate in any putative or certified class, collective or multi-party action or proceeding based on such a claim in which Defendant or any of the other Released Parties identified in this Settlement Agreement is a party.

N. Miscellaneous Terms.

- 1. No Admission of Liability.** Defendant makes no admission of liability or wrongdoing by virtue of entering into this Agreement. Additionally, Defendant reserves the right to contest any issues relating to the Complaint, class certification and liability if the Settlement is not approved. Defendant denies that it has engaged in any unlawful activity, has failed to comply with the law in any respect, has any liability to anyone under the claims asserted in the Complaint, or that but for the Settlement, the Complaint would be proper, that a Class should be certified as to the Complaint, or that the Complaint could proceed on a representative basis. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended as or will be construed as an admission by Defendant of liability or wrongdoing. This Settlement and Plaintiffs' and Defendant's willingness to settle the Complaint will have no

bearing on, and will not be admissible in connection with, any litigation, administrative proceeding, or other special proceeding (other than solely in connection with this Settlement).

- 2. No Effect on Employee Benefits.** The amounts paid under this Agreement do not represent a modification of any previously credited hours of service under any employee benefit plan, policy or bonus program sponsored by Defendant or Released Parties. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under, benefit plans (self-insured or not) sponsored by Defendant's policies or bonus programs. Any payments made under the terms of this Settlement shall not be applied retroactively, currently or on a going forward basis as salary, earnings, wages, or any other form of compensation for the purposes of Defendant's benefit plans, policies, or bonus programs. Defendant retains the right to modify the language of its benefit plans, policies and bonus programs to effect this intent and to make clear that any amounts paid pursuant to this Settlement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies and bonus programs for purpose of eligibility, vesting, benefit accrual or any other purpose, and that additional contributions or benefits are not required by this Settlement.
- 3. Publicity.** Plaintiffs and Class Counsel agree that they have not and will not publish the Settlement Agreement. In response to any inquiries, Plaintiffs will state that "the case was resolved, and it was resolved confidentially." Class Counsel shall not report the Settlement Agreement in any medium or in any publication, shall not post or report anything regarding Plaintiffs' or the Class Member's claims or the Settlement Agreement on its website, and shall not contact any reporters or media regarding the Settlement Agreement. Despite this provision, Class Counsel can discuss the Settlement Agreement with Plaintiffs and the Class Members and in any filings with the Court. This provision shall not impede Class Counsel's ability to discharge their fiduciary duties, including effectuating the terms of the Settlement.
- 4. Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits. Except as expressly provided herein, this Agreement has not been executed in reliance upon any other written or oral representations or terms, and no such extrinsic oral or written representations or terms shall modify, vary, or contradict its terms. In entering this Agreement, the Parties agree that this

Agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence.

- 5. Authorization to Enter Into Settlement Agreement.** Class Counsel and Counsel for Defendant warrant and represent that they are authorized by the Parties, respectively, to take all appropriate action required or permitted to be taken by such Parties under this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to affect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions, and assistance of the Court will be consistent with this Agreement.
- 6. Exhibits and Headings.** The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.
- 7. Deadlines Falling on Weekends or Holidays.** To the extent that any deadline set forth in this Settlement Agreement falls on a Saturday, Sunday, or state court holiday, that deadline shall be continued until the following business day.
- 8. Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Complaint in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval Hearing to be conducted by the Court.
- 9. Amendment or Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest. Nonmaterial amendments or modifications to this Agreement may be made in writing between Class Counsel and Counsel for Defendant without the need to seek the Court's approval.
- 10. Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.

- 11. No Prior Assignment.** Plaintiffs hereby represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged.
- 12. Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of California, without giving effect to any conflict of law principles or choice of law principles.
- 13. Fair, Adequate, and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Class Action and have arrived at this Agreement through arm's-length negotiations, considering all relevant factors, current and potential.
- 14. No Tax or Legal Advice.** The Parties understand and agree that the Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement, and that Plaintiffs, Class Counsel, and Class Members will assume any such tax obligations or consequences that may arise from this Agreement, and that Plaintiffs, Class Counsel, and Class Members shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that, if any taxing body determines that additional taxes are due from any Class Member, such Class Member assumes all responsibility for the payment of such taxes.
- 15. Jurisdiction of the Superior Court.** Pursuant to Code of Civil Procedure section 664.6, the Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgment entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Superior Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments in connection therewith.
- 16. Invalidity of Any Provision; Severability.** Before declaring any provision of this Agreement invalid, the Parties request that the Court 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. If any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.

17. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

18. Execution in Counterpart. This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves original signed counterparts. Facsimile, PDF, or DocuSign signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

19. Escalation Clause. Defendant estimates that the Class Period of August 26, 2016 to March 26, 2022 consists of approximately 22,700 Workweeks. If the number of actual Workweeks exceeds 23,000 total Workweeks, Defendant shall elect one of the two following options: (a) limit the Class Period so that the number of Workweeks does not exceed 23,000; or (b) negotiate in good faith revisions to the terms of the Settlement to account for the number of Workweeks in excess of 23,000. If Defendant chooses the second option and the Parties are unable to agree on revised terms, Plaintiffs may elect to cancel the Settlement in its entirety. If the number of actual Workweeks does not exceed 23,000 total Workweeks, then the Settlement will proceed with no changes.

[SIGNATURES ON THE NEXT PAGE]

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

Dated: 05/04/2022, 2022

PLAINTIFF MARTIN MORENO



Martin Moreno

Dated: 05/04/2022, 2022

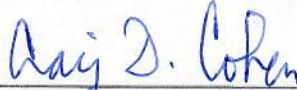
PLAINTIFF LOIDA RIVERA



Loida Rivera

Dated: 5/4/, 2022

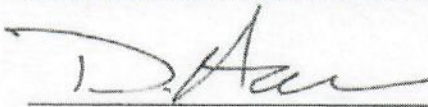
DEFENDANT WAITER.COM, INC.



Representative for Waiter.com, Inc.

Dated: 5/4/, 2022

JUSTICE LAW CORPORATION



Douglas Han, Esq.
Shunt Tatavos-Gharajeh, Esq.
Attorneys for Plaintiffs

Dated: May 4,, 2022

RICKETTS CASE, LLP



Hope Anne Case, Esq.
Erik T. Johnson, Esq.
Attorneys for Defendant

EXHIBIT A

NOTICE OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT

*A court authorized this notice. This is not a solicitation.
This is not a lawsuit against you, and you are not being sued.
However, your legal rights are affected by whether you act or don't act.*

TO: All current and/or former hourly paid, non-exempt persons employed by Defendant Waiter.com, Inc. ("Defendant") in California at any time since August 26, 2016 through and including March 26, 2022.

The California Superior Court, County of Santa Clara has granted preliminary approval to a proposed settlement ("Settlement") of the above-captioned action (the "Class Action"). Because your rights may be affected by this Settlement, it is important that you read this Notice of Class and Representative Action Settlement ("Notice") carefully.

The Court has certified the following class for settlement purposes ("Class" or "Class Members"):

All current and/or former hourly paid, non-exempt persons employed by Defendant in California at any time since August 26, 2016 through and including March 26, 2022.

The purpose of this Notice is to provide a brief description of the claims alleged in the Class Action, the key terms of the Settlement, and your rights and options with respect to the Settlement.

YOU MAY BE ENTITLED TO MONEY UNDER THE PROPOSED CLASS AND REPRESENTATIVE ACTION SETTLEMENT. PLEASE READ THIS NOTICE CAREFULLY; IT INFORMS YOU ABOUT YOUR LEGAL RIGHTS.

**Your estimated
Individual Settlement
Share:**

**Your number of
Workweeks worked
during the Class
Period:**

**Your estimated
individual share of the
PAGA Payment:**

**Your number of Pay
Periods worked during
the PAGA Period:**

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WHAT INFORMATION IS IN THIS NOTICE

1. Why Have I Received this Notice?	Page 2
2. What Is this Case About?	Page 2
3. Am I a Class Member?	Page 3
4. How Does this Class Action Settlement Work?.....	Page 3
5. Who Are the Attorneys Representing the Parties?	Page 4
6. What Are My Options?	Page 4
7. How Do I Opt Out or Exclude Myself from the Class Action Settlement?	Page 5
8. How Do I Object to the Class Action Settlement?	Page 6
9. How Does this Settlement Affect My Rights? What are the Released Claims?	Page 6
10. How Much Can I Expect to Receive from this Settlement?.....	Page 7
11. What is the PAGA Payment and Am I Eligible for It?.....	Page 9
12. How Will the Attorneys for the Class and the Class Representative Be Paid?	Page 10
13. Final Approval Hearing and Request for Additional Information.....	Page 10

1. Why Have I Received this Notice?

The personnel records of Defendant indicate that you may be a Class Member. The Settlement will resolve all Class Members' Released Claims, as described in Section No. 9 below, from the time period from August 26, 2016 through and including March 26, 2022 (the "Class Period").

A Preliminary Approval Hearing was held on [date of Preliminary Approval Hearing], in the Superior Court of California, County of Santa Clara. The Court conditionally certified the Class for settlement purposes only and directed that you receive this Notice.

The Court has determined only that there is sufficient evidence to suggest that the proposed Settlement might be fair, adequate, and reasonable, and that any final determination of those issues will be made at the Final Approval Hearing.

The Court will hold a Final Approval Hearing concerning the proposed Settlement on [date of Final Approval Hearing], 2022 at [time of Final Approval Hearing], before Honorable Patricia M. Lucas, in the Superior Court of California, County of Santa Clara, located at 191 North 1st Street, San Jose, California 95113, Department 3.

2. What Is this Case About?

On August 26, 2020, Plaintiff Martin Moreno ("Plaintiff Moreno"), a former employee of Defendant, filed a wage-and-hour class action lawsuit in the Superior Court of California, County of Santa Clara, alleging the following violations: (1) Labor Code sections 510 and 1198 (unpaid overtime); (2) Labor Code sections 226.7 and 512(a) (unpaid meal period premiums); (3) Labor Code sections 226.7 (unpaid rest period premiums); (4) Labor Code sections 1194 and 1197 (unpaid minimum wages); (5) Labor Code sections 201 and 202 (final wages not timely paid); (6) Labor Code section 226(a) (noncompliant wage statements); (7) Labor Code sections 2800 and 2802 (unreimbursed business expenses); and (8) Business & Professions Code sections 17200, *et seq.* (the "Class Action").

After engaging in litigation, investigation, and negotiations, the Parties attended mediation for the Class Action on February 24, 2022 with Mark S. Rudy, Esq., that resulted in the settlement of the Class Action, subject to certain conditions.

Pursuant to the anticipated settlement, Plaintiff Loida Rivera (“Plaintiff Rivera,” with Plaintiff Moreno, the “Plaintiffs”), another former employee of Defendant, provided written notice on February 25, 2022 to the California Labor and Workforce Development Agency (“LWDA”) and Defendant of the specific provisions of the Labor Code she contends were violated and the theories supporting her contentions. Moreover, Plaintiff Moreno filed a First Amended Complaint on April 18, 2022 containing the following changes: (1) adding Plaintiff Rivera as an additional plaintiff; (2) adjusting the Class definition; (3) adding additional allegations about Defendant’s alleged rounding policy and calculation and payment of paid sick leave; and (4) adding the following cause of action: (a) violation of Labor Code sections 2698, *et seq.* (Private Attorneys General Act of 2004 (“PAGA”)).

The Court has not made any determination as to whether the claims advanced by Plaintiffs have any merit. In other words, the Court has not determined whether any laws have been violated, nor has it decided in favor of Plaintiffs or Defendant (collectively, known as the “Parties”). Instead, both sides agreed to resolve the lawsuit with no decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, all Parties avoid the risks and cost of a trial.

Defendant expressly denies that it did anything wrong or that it violated the law and further denies any liability whatsoever to Plaintiffs or to the Class.

3. *Am I a Class Member?*

You are a Class Member if you are currently or were formerly an hourly paid, non-exempt person employed by Defendant in California at any time since August 26, 2016 through and including March 26, 2022.

4. *How Does this Class Action Settlement Work?*

In this Class Action, Plaintiffs sued on behalf of themselves and all other similarly situated individuals who were employed as hourly-paid, non-exempt California employees of Defendant during the Class Period. Plaintiffs and these other current and former employees comprise a “Class” and are “Class Members.” The Settlement of this Class Action resolves the Released Claims (defined in Section No. 9 below) of all Class Members, except for those who exclude themselves from the Class by requesting to be excluded in the manner set forth below.

Plaintiffs and Plaintiffs’ counsel (also, “Class Counsel”) believe the Settlement is fair and reasonable. The Court must also review the terms of the Settlement and determine if it is fair and reasonable to the Class. The Court file has the Settlement documents, which explain the Settlement in greater detail. If you would like copies of the Settlement documents, you can contact Class Counsel, whose contact information is below, and they will provide you with copies free of charge.

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5. Who Are the Attorneys Representing the Parties?

Attorneys for Plaintiffs and the Class	Attorneys for Defendant
JUSTICE LAW CORPORATION Douglas Han Shunt Tatavos-Gharajeh 751 North Fair Oaks Avenue, Suite 101 Pasadena, California 91103 Telephone: (818) 230-7502 Facsimile: (818) 230-7259	RICKETTS CASE, LLP Hope Anne Case 1900 Embarcadero Road, Suite 111 Palo Alto, CA 94303 Telephone: (650) 494-4950 Facsimile: (650) 847-1520 RICKETTS CASE, LLP Erik T. Johnson 162 South Rancho Santa Fe Road, Suite B-60 Encinitas, CA 92024 Telephone: (858) 381-0785 Facsimile: (858) 952-0617

The Court has decided that Justice Law Corporation is qualified to represent you and all other Class Members simultaneously for purposes of this Settlement. Class Counsel are working on your behalf. If you want your own attorney, you may hire one at your own cost.

6. What Are My Options?

The purpose of this Notice is to inform you of the proposed Settlement and of your options. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are summarized below and explained in more detail in this Notice.

Important Note: Defendant will not retaliate against you in any way for either participating or not participating in this Settlement.

- **DO NOTHING:** You do not have to do anything to receive payment under this Settlement. If you do nothing and the Court grants Final Approval of the Settlement, you will become part of the Class Action Settlement (a “Participating Class Member”) and will receive an Individual Settlement Share (explained below) based on the total number of Workweeks you were employed as a non-exempt California employee of Defendant during the Class Period. You will release all the Released Claims, as defined in Section No. 9 below, and you will give up your right to pursue the Released Claims, as defined in Section No. 9 below.
- **OPT OUT:** If you do not want to participate as a Class Member and do not want to receive an Individual Settlement Share, you may “opt out,” which will remove you from the Class and this Class Action. If the Court grants Final Approval of the Settlement, you will not receive an Individual Settlement Share, and you will not give up the right to sue the Released Parties, including Defendant, for any the Released Claims as defined in Section No. 9 below. If you are eligible to receive a portion of the PAGA Payment (explained below) and you do “opt out” of the Class Action Settlement, you will still

receive a portion of the PAGA Payment. Your right to pursue a claim or receive payment pursuant to PAGA will be extinguished, regardless of whether or not you opt out.

- **OBJECT:** You may submit a legal objection to the proposed Settlement. If you would like to object, you may not opt out of this Settlement.

The procedures for opting out and objecting are set forth below in the sections entitled “How Do I Opt Out or Exclude Myself from this Settlement?” and “How Do I Object to the Settlement?”

Regardless of which option you choose, you must keep the Settlement Administrator advised of any change of address.

7. *How Do I Opt Out or Exclude Myself from the Class Action Settlement?*

If you do not wish to participate in the Settlement, and do not want to receive an Individual Settlement Share, you may be excluded from the Settlement (*i.e.*, “opt out”) by sending a timely request for exclusion. A form (“ELECTION NOT TO PARTICIPATE IN (‘OPT OUT’ FROM) CLASS ACTION SETTLEMENT”) (“Exclusion Form”) has been provided to you along with this Notice, which can be used for this purpose; alternatively, you can submit your own written document that includes this same information. If you opt out of the Settlement, you will not be releasing the claims set forth in Section No. 9. If you opt out of the Settlement, the amount to be paid by Defendant for the Settlement in total will remain the same. The request for exclusion must be signed, dated, and mailed by first-class regular U.S. Mail, **postmarked no later than [REDACTED], 2022** (“Response Deadline”) to: **WAITER.COM, INC. SETTLEMENT ADMINISTRATOR C/O SIMPLURIS, INC., PO Box 7208, Costa Mesa, California 92626**. You cannot exclude yourself by phone.

Eligible PAGA Employees May Not Opt Out of PAGA Settlement. Notwithstanding the foregoing, you do not have the right to opt out or otherwise exclude yourself from the PAGA portion of the Settlement, which releases the PAGA Released Claims, described in Sections I(BB) and III(L) of the Settlement Agreement. If you submit a valid and timely request for exclusion, you will still receive your share of the PAGA Payment and will release the PAGA Released Claims.

If you received a remailed Class Notice and Exclusion Form (collectively, “Notice Packet”), whether by skip-trace or forwarded mail, you will have the later of the original Response Deadline or an additional ten (10) calendar days from the original Response Deadline to postmark a request for exclusion from the Settlement. The envelope should indicate whether the Notice Packet has been forwarded or remailed. We encourage you to keep copies of all documents, including the envelope, in the event the deadline is challenged.

The Court will exclude any Class Member who submits a complete and timely request for exclusion as described in the paragraph above. The request for exclusion must: (1) include the Class Member’s name; (2) be addressed to the Settlement Administrator; (3) be signed by the Class Member or his or her lawful representative; and (4) be postmarked no later than **[the Response Deadline]**. Requests for exclusion that do not include all required information and/or that are not timely submitted will be deemed null, void, and ineffective. Any Class Member who fails to submit a valid and timely request for exclusion on or before the above-specified Response Deadline shall be bound by all terms of the Settlement, release, and any Judgment entered in the Class Action if the Settlement receives Final Approval from the Court.

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If a Class Member submits both a request for exclusion and a written objection, the request for exclusion will be deemed invalid, and the objection will remain valid.

You are responsible for ensuring the Settlement Administrator receives any request for exclusion you submit.

8. *How Do I Object to the Class Action Settlement?*

If you are a Class Member who does not opt out of the Settlement, you may object to the Settlement, personally or through an attorney, by mailing an objection to the Superior Court of California, County of Santa Clara by **the Response Deadline**. For an objection to be valid, it must: (1) clearly identify the case name and case number; (2) be submitted to the Court either by mailing the objection to: Clerk of the Court, Superior Court of California, County of Santa Clara, 191 North 1st Street, San Jose, California 95113, or by filing in person at the same location; (3) be mailed to the Class Counsel and Counsel for Defendant; and (4) be filed or postmarked on or before the Response Deadline.

If you received a remailed Notice Packet, whether by skip-trace or forwarded mail, you will have the later of the original Response Deadline or an additional ten (10) calendar days from the original Response Deadline to file or postmark an objection to the Settlement. The envelope should indicate whether the Notice Packet has been forwarded or remailed. We encourage you to keep copies of all documents, including the envelope, in the event the deadline is challenged.

Class Members may (though are not required to) appear at the Final Approval Hearing, either in person, telephonically, or through the objecting Class Member's own counsel, at the Class Member's own expense and orally object to the Settlement. Any attorney who will represent a Class Member objecting to this Settlement must file a notice of appearance with the Court and serve Class Counsel and Counsel for Defendant no later than fifteen (15) calendar days before the Final Approval Hearing. Class Members' timely and valid objections to the Settlement will be considered even if the objector does not appear at the Final Approval Hearing.

Class Members who fail to object in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement. If the Court rejects the notice of objection, the Class Member will receive an Individual Settlement Share and will be bound by the terms of the Settlement.

9. *How Does this Settlement Affect My Rights? What Are the Released Claims?*

Released Parties.

If the proposed Settlement is approved by the Court, a Final Judgment will be entered by the Court. All Class Members who do not opt out of the Settlement will be bound by the Court's Final Judgment and will fully and finally release and discharge Defendant and each of its respective current, former, and future parent companies, subsidiaries, divisions, and current and former affiliated individuals and entities, legal successors, predecessors (including companies they have acquired, purchased, or absorbed), assigns, joint ventures, and each and all of their respective officers, partners, directors, owners, stockholders, servants, agents, shareholders, members, managers, principals, investment advisors, consultants, employees, representatives, attorneys, accountants, lenders, underwriters, benefits administrators, investors, funds, and insurers, past, present, and future, and all persons acting under, by, through, or in concert with any of them ("Released Parties").

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Released Claims.

Upon Defendant's fulfillment of its payment obligations pursuant to section III (J)(9)(a) of the Settlement Agreement, the claims that Plaintiffs and the other Participating Class Members are releasing in exchange for the consideration provided for by the Settlement Agreement include any and all facts, injuries, debts, demands, rights, obligations, losses, damages, costs, attorneys' fees, expenses, interest, restitution, compensation, wages, interest, penalties, causes of action and claims, based on direct or vicarious liability, that are based on, relate to, concern or arise out of any of the allegations that were asserted or which could have been asserted in the Complaint against the Released Parties based on the facts alleged in the Complaint, whether or not specifically delineated as a claim or cause of action in the Complaint. These Released Claims include but are not limited to: (1) failure to pay minimum and overtime wages; (2) failure to provide meal and rest breaks and pay applicable premium pay; (3) failure to provide complete and accurate wage statements; (4) failure to reimburse business expenses; (5) failure to timely pay wages during employment and at separation; (6) failure to maintain compliant wage statements; (7) failure to accurately calculate and pay sick leave; and (8) engaging in unfair business practices. Thus, the Released Claims include claims covered by Labor Code sections 201, 202, 203, 206, 206.5, 212, 218, 218.5, 218.6, 226, 226.7, 246-248.3, 300, 510, 512, 558.1, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802; the Unfair Practices Act, codified at Business & Professions Code sections 17000 *et seq.*; Business & Professions Code sections 17200, *et seq.*; Code of Civil Procedure section 1021.5; and any other applicable provision of the Labor Code or any applicable Industrial Welfare Commission Wage Orders, in all of their iterations to the fullest extent permitted by law. The period of the Released Claims shall coincide with and extend to the limits of the Class Period ("Released Claims").

PAGA Released Claims.

Upon Defendant's fulfillment of its payment obligations pursuant to section III (J)(9)(a) of the Settlement Agreement, Plaintiffs, the LWDA, and any other representative, proxy, or agent thereof, including, but not limited to, any and all Eligible PAGA Employees, are barred from pursuing any and all claims, debts, liabilities, demands, actions, or causes of action for civil penalties, interest, and attorneys' fees and costs that are based on, relate to, concern or arise out of any of the allegations that were asserted or which could have been alleged in the Complaint against the Released Parties based on the facts and allegations pleaded in the Complaint and Plaintiff Rivera's letter sent to the LWDA on February 25, 2022, whether or not specifically delineated as a claim or cause of action in the Complaint. The PAGA Released Claims include all claims for civil penalties based upon or arising out of Defendant's alleged: (1) failure to pay minimum and overtime wages; (2) failure to provide meal and rest breaks and pay all premium pay for noncompliant meal and rest breaks; (3) failure to provide complete and accurate wage statements; (4) failure to timely pay wages during employment and at separation; (5) failure to maintain compliant wage statements; (6) failure to reimburse business-related expenses; (7) failure to accurately calculate and pay sick leave; and (8) claims for civil penalties arising under, related to or based upon alleged violations of Labor Code sections 200, 201, 202, 203, 204, 206, 206.5, 210, 212, 218, 218.5, 218.6, 221, 226, 226.3, 226.7, 246-248.3, 300, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2698, *et seq.*, 2699, *et seq.*, 2800, 2802, Code of Regulations Title 8 section 11040, and/or those arising under applicable Industrial Welfare Commission Wage Orders. The period of the PAGA Released Claims shall coincide with and extend to the limits of the PAGA Period. Eligible PAGA Employees will still be bound by the PAGA Released Claims even if they submit valid and timely Exclusion Forms ("PAGA Released Claims").

10. How Much Can I Expect to Receive from this Settlement?

The total maximum amount that Defendant could be required to pay under the Settlement Agreement shall be up to but no more \$450,000.00 ("Gross Settlement Amount"). Defendant's portion of the employer's share of payroll

taxes as the Class Members' current or former employer is not included in the Gross Settlement Amount and will be a separate obligation of Defendant.

The "Net Settlement Amount" means the portion of the Gross Settlement Amount available for distribution to all Class Members who do not submit valid and timely requests to exclude themselves from the Settlement ("Participating Class Members") after the deduction of: (1) the Class Representative Enhancement Payments in the sum of \$10,000.00 and \$5,000.00 to Plaintiff Moreno and Plaintiff Rivera respectively; (2) Administration Costs to the Settlement Administrator, Simpluris, Inc., in an amount currently estimated at \$7,800 but will not exceed \$9,000; (3) the PAGA Payment of \$20,000.00, seventy-five percent (75%) of which (\$15,000.00) shall be paid to the LWDA, and twenty-five percent (25%) of which (\$5,000.00) shall be distributed to Eligible PAGA Employees, on a pro rata basis; (4) the Attorney Fee Award to Class Counsel in an amount not to exceed \$157,500.00; and (5) the Cost Award to Class Counsel in an amount not to exceed \$25,000.00 for litigation costs. All these payments are subject to Court approval.

After deducting the above-referenced items, the remaining Net Settlement Amount will be proportionately distributed among all Participating Class Members. The Settlement Administrator will pay an Individual Settlement Share to each Participating Class Member from the Net Settlement Amount. Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to: (1) the number of Workweeks he or she worked as a non-exempt California employee of Defendant during the Class Period, based on the Class Data provided by Defendant, divided by (2) the total number of Workweeks worked by any and all Participating Class Members collectively during the Class Period based on the same Class Data, (3) which is then multiplied by the Net Settlement Amount. A "Workweek" is a week starting on a Saturday and ending on a Friday in which a Class Member actually performed work for Defendant, excluding any periods when Defendant employed a Class Member, but the Class Member performed no work due to an absence, vacation, illness, leave of absence, suspension, lack of work, furlough, jury duty, or similar period when a Class Member performed no actual work for Defendant. A given week is credited as a Workweek if a Class Member worked at least one day in the Workweek.

Although your exact share of the Net Settlement Amount cannot be precisely calculated until after the Response Deadline, based upon the calculation above, your approximate share of the Net Settlement Amount (Individual Settlement Share) is as follows: \$ [REDACTED], less taxes. This is based on Defendant's records, which show you worked [REDACTED] Workweeks during the Class Period.

If you believe the number of eligible Workweeks with which you have been credited is incorrect, you must provide documentation and/or an explanation showing contrary information to the Settlement Administrator at PO Box 7208, Costa Mesa, California 92626 on or before [the Response Deadline]. If you do not provide documents and/or an explanation supporting your challenge, the number of Workweeks reported in Defendant's records will be presumed correct, and your challenge will be rejected by the Settlement Administrator. Class Counsel and Counsel for Defendant will review any evidence submitted and will make a final determination as to the number of eligible Workweeks with which you will be credited. If Class Counsel and Counsel for Defendant cannot agree on the number of eligible Workweeks with which you will be credited, the Settlement Administrator will make the determination.

Twenty percent (20%) of your Individual Settlement Share will be treated as paid for settling claims for wages. Applicable taxes will be withheld from that portion of your Individual Settlement Share only and reported on an IRS Form W-2. The remaining eighty percent (80%) of your Individual Settlement Share will be treated as paid for settling claims for penalties and interest and will be reported on an IRS Form 1099.

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Within fourteen (14) calendar days of the Effective Final Settlement Date, Defendant shall deposit the Gross Settlement Amount of \$450,000.00 into the Qualified Settlement Fund. The Effective Final Settlement Date will be the later of the following: (1) if no objections to the Settlement have been filed, or timely objections have been filed and then withdrawn, then the date the Court enters judgment granting Final Approval; (2) if an objection to the Settlement has been filed, then the date on which time expires to file an appeal of the Court's grant of Final Approval; or (3) if an objection was filed and a Notice of Appeal of the Court's grant of Final Approval was timely filed, then the date the appeal is finally resolved, with the grant of Final Approval unaffected. Your Individual Settlement Share will be calculated and distributed within fourteen (14) calendar days after Defendant funds the entire Gross Settlement Amount.

It is strongly recommended that upon receipt of your Individual Settlement Share, you immediately cash it or cash it before the 180-day void date shown on each check. If any checks remain uncashed or not deposited by the expiration of the 180-day period after mailing, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, cancel the checks, and pay the amount of the Individual Settlement Share to the California State Controller: Unpaid Wage Fund.

11. *What Is the PAGA Payment and Am I Eligible for It?*

Under the terms of the Settlement, \$20,000.00 has been set aside as the PAGA Payment. This portion is the total amount to resolve the claim for PAGA civil penalties on behalf of the State of California. From the PAGA Payment, seventy-five percent (75%) or \$15,000.00 will be sent to the State of California. Eligible PAGA Employees will share the remaining twenty-five percent (25%) or \$5,000.00 based on the number of Pay Periods they worked during the PAGA Period. A "Pay Period" is the biweekly period corresponding with Defendant's regularly scheduled biweekly pay periods that start on a Saturday and end on the second following Friday during which an Eligible PAGA Employee actually performed work for Defendant. This excludes any pay periods when Defendant employed an Eligible PAGA Employee, but the Eligible PAGA Employee performed no work during the pay period due to an absence, vacation, illness, leave of absence, suspension, lack of work, furlough, jury duty, or similar period when an Eligible PAGA Employee performed no actual work for Defendant. A given pay period will be credited as a Pay Period if an Eligible PAGA Employee worked at least one day in the Pay Period.

You are eligible to share in the PAGA Payment under the Settlement ("Eligible PAGA Employee"), if you are a current and/or former hourly paid, non-exempt person employed by Defendant in California at any time since February 25, 2021 through March 26, 2022 ("PAGA Period").

The Settlement Administrator shall pay each Eligible PAGA Employee according to his or her proportional share of the \$5,000.00 of the PAGA Payment allocated to the Eligible PAGA Employees. This payment will be based upon the total number of Pay Periods the Eligible PAGA Employee worked as a California hourly-paid, non-exempt employee of Defendant during the PAGA Period. Each individual share will be calculated by: (1) determining the total number of Pay Periods during the PAGA Period during which the Eligible PAGA Employee was employed, (2) dividing this number by the total number of Pay Periods during the PAGA Period during which all Eligible PAGA Employees were employed (*i.e.*, the sum of all pay periods of employment for all Eligible PAGA Employees), and (3) multiplying this number by the \$5,000.00 allocated to the Eligible PAGA Employees.

Based on the total number of Pay Periods during the PAGA Period during which you were employed, if applicable, your individual share of the PAGA Payment is \$ [redacted]. This is based on Defendant's records, which show you worked [redacted] pay periods during the PAGA Period.

One hundred percent (100%) of this payment will be considered as payment to resolve PAGA civil penalties, and you will be issued an IRS Form 1099 if this payment exceeds \$600.00. You are responsible for paying any federal, state, or local taxes owed because of this payment.

If you believe the number of eligible Pay Periods with which you have been credited is incorrect, you must provide documentation and/or an explanation showing contrary information to the Settlement Administrator at PO Box 7208, Costa Mesa, California 92626 on or before [the Response Deadline]. If you do not provide documents and/or an explanation supporting your challenge, the number of Pay Periods reported in Defendant's records will be presumed correct, and your challenge will be rejected by the Settlement Administrator. Class Counsel and Counsel for Defendant will review any evidence submitted and will make a final determination as to the number of eligible Pay Periods with which you will be credited. If Class Counsel and Counsel for Defendant cannot agree on the number of eligible Pay Periods with which you will be credited, the Settlement Administrator will make the determination.

Because the right to seek these penalties is owned by the State of California, you cannot exclude yourself from the PAGA portion of the Settlement if the Court gives Final Approval.

It is strongly recommended that upon receipt of your check for your portion of the PAGA Payment, you immediately cash it or cash it before the 180-day void date shown on each check. If any checks remain uncashed or not deposited by the expiration of the 180-day period after mailing, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, cancel the checks, and add the amount of the uncashed individual shares of the PAGA Payment to the funds being paid to the LWDA.

If you are not an Eligible PAGA Employee, this Section does not apply to you.

12. *How Will the Attorneys for the Class and the Class Representative Be Paid?*

The attorneys for Plaintiffs and the Class will be paid from the Gross Settlement Amount. Subject to Court approval, the attorneys for Plaintiffs and the Class shall be paid an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (or \$157,500.00) for attorneys' fees and up to \$25,000.00 for litigation costs.

Defendant has paid all its own attorneys' fees and costs.

As set forth in Section No. 10 above, the Plaintiffs will also be paid Class Representative Enhancement Payments, subject to Court approval.

13. *Final Approval Hearing and Request for Additional Information*

The Court will hold a Final Fairness and Approval Hearing concerning the proposed Settlement on [date of Final Approval Hearing], 2022 at [time of Final Approval Hearing], before Honorable Patricia M. Lucas, in the Superior Court of California, County of Santa Clara, located at 191 North 1st Street, San Jose, California 95113, Department 3. You are not required to appear at this hearing. Any changes to the hearing date will be available on the Settlement Administrator's website [INSERT WEBSITE ADDRESS].

Hearings before the judge overseeing this case are again being conducted in person. However, remote appearances are still permitted, and are offered with the assistance of a third-party service provider, CourtCall. If that remains the case at the time of the Final Fairness and Approval Hearing, Class Members who wish to appear at the final fairness hearing remotely should contact class counsel to arrange an appearance through

CourtCall, at least three days before the hearing if possible. Any CourtCall fees for an appearance by an objecting class member will be paid by Class Counsel.

You do not need to appear at this hearing unless you have timely submitted an objection to the Settlement or wish to object to the Settlement at the hearing. A timely and valid objection to the Settlement will be considered even if you do not appear at the Final Approval Hearing.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact Class Counsel, listed above, or the Settlement Administrator at the telephone number listed below, toll free. Please refer to the “Waiter.com, Inc. class action settlement.”

The above is a summary of the basic terms of the Settlement Agreement. For the precise terms and conditions of the Settlement, including the definition of several capitalized words used in this Notice, you are referred to the detailed Settlement Agreement, which is on file with the Clerk of the Court. The pleadings and other records in this litigation, including the Settlement Agreement, may be examined: (1) online on the Superior Court of California, County of Santa Clara’s Electronic Filing and Service Website at <http://www.scscourt.org/>; or (2) in person at Records, Superior Court of California, County of Santa Clara, 191 North 1st Street, San Jose, California 95113, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays and closures, or you may contact Class Counsel or the Settlement Administrator.

Finally, the Settlement Administrator will maintain a website that has links to this Notice along with the most important documents of the Class Action. The Settlement Administrator’s website is [**INSERT WEBSITE ADDRESS**].

PLEASE DO NOT TELEPHONE THE COURT, THE COURT’S CLERK, OR COUNSEL FOR DEFENDANT FOR INFORMATION ABOUT THIS SETTLEMENT.

EXHIBIT B

ELECTION NOT TO PARTICIPATE IN ("OPT OUT" FROM) CLASS ACTION SETTLEMENT

Superior Court of the State of California, County of Santa Clara

Moreno v. Waiter.com, Inc.

Case No. 20CV369926

DO NOT SIGN OR SEND THIS DOCUMENT UNLESS YOU WISH TO EXCLUDE YOURSELF FROM THE CLASS ACTION SETTLEMENT. IF YOU EXCLUDE YOURSELF, YOU WILL NOT RECEIVE ANY PAYMENT FROM THE CLASS ACTION SETTLEMENT.

THIS DOCUMENT MUST BE POSTMARKED NO LATER THAN _____, 2022. IT MUST BE SENT VIA REGULAR U.S. MAIL.

PLEASE MAIL THIS EXCLUSION FORM VIA REGULAR U.S. MAIL TO:

**WAITER.COM, INC. SETTLEMENT ADMINISTRATOR, C/O SIMPLURIS, INC.
PO Box 7208, Costa Mesa, California 92626**

IT IS MY DECISION NOT TO PARTICIPATE IN THE CLASS ACTION REFERRED TO ABOVE, AND NOT TO BE INCLUDED IN THE CLASS OF PLAINTIFFS IN THAT ACTION. I UNDERSTAND THAT BY EXCLUDING MYSELF, I WILL NOT RECEIVE ANY MONEY FROM THE CLASS ACTION SETTLEMENT. HOWEVER, IF I QUALIFY FOR A PORTION OF THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004 ("PAGA"), LABOR CODE SECTIONS 2698, *et seq.* PAYMENT, I WILL RECEIVE THAT PAYMENT REGARDLESS OF WHETHER OR NOT I EXCLUDE MYSELF FROM THE CLASS ACTION SETTLEMENT.

I UNDERSTAND THAT IF I ELECT TO OPT OUT OF THIS CLASS ACTION SETTLEMENT, ANY CLAIMS I HAVE WILL NOT BE RELEASED; EXCEPT THAT, EVEN IF I ELECT TO OPT OUT, I CANNOT PURSUE ANY ACTION UNDER PAGA AGAINST THE RELEASED PARTIES FOR ANY CLAIMS THAT AROSE BETWEEN FEBRUARY 25, 2021 THROUGH MARCH 26, 2022.

I confirm that I am and/or was employed by Waiter.com, Inc. as an hourly-paid, non-exempt employee in California at any time during the period from August 26, 2016 through March 26, 2022. I confirm that I have received and reviewed the Notice of Class Action Settlement in this action. I have decided to be excluded from the class, and I have decided **not** to participate in the proposed settlement.

Dated: _____

(Signature)

(Type or print name and former name(s))

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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is manderson@justicelawcorp.com

On July 7, 2022, I served the foregoing document described as

JOINT STIPULATION AND SETTLEMENT AGREEMENT

for the following case: **Moreno v. Waiter.com, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-870218-22**
Court Case No.: 20CV369926
Santa Clara County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 7, 2022, at Pasadena, California.



Mariah Anderson