

CONFIDENTIAL SETTLEMENT AGREEMENT
AND GENERAL RELEASE OF ALL CLAIMS

This Confidential Settlement Agreement and General Release of All Claims ("Settlement Agreement") is entered into by and between Patricia McDonald ("Plaintiff") and Defendant Check 'N Go of California, Inc. ("CNG" or "Defendant"). The term "Party" or "Parties" as used herein shall refer to Plaintiff, Defendant or both, as may be appropriate.

1. **Recitals.** This Settlement Agreement is made with reference to the following facts:

a. On April 8, 2016, Plaintiff brought a wage and hour Private Attorneys General Act ("PAGA") representative action against Defendant concerning CNG's compensation, meal and rest period, and related employment practices as applied to non-exempt employees in California, which was filed as *McDonald v. Check 'N Go of California, Inc.* in Superior Court of the State of California, County of Alameda, Case No. RG16810746 (the "Action");

b. Plaintiff subsequently filed a Second Amended Complaint adding, in addition to her First Cause of Action PAGA claim, five individual causes of action: failure to provide meal and rest periods, unlawful failure to pay wages, failure to provide itemized wage statements, failure to reimburse expenses and/or prohibited cash bond, and unfair competition;

c. Based on Plaintiff and Defendant's investigation into the underlying facts of this Action, Plaintiff has determined that her claims are best resolved on an individual basis as opposed to a representative basis;

d. There has been no determination on the merits of the Action but, in order to avoid additional cost and the uncertainty of litigation, the Parties desire to resolve any and all claims, known and unknown, asserted and unasserted, which Plaintiff has or may have against the Released Parties (as defined in Section 6(a) below) as of the date of execution of this Settlement Agreement.

2. **Nonadmission of Wrongdoing.** The Parties agree that neither this Settlement Agreement nor the furnishing of the consideration for this Settlement Agreement shall be deemed or construed at any time for any purpose as an admission by the Released Parties of wrongdoing or evidence of any liability or unlawful conduct of any kind.

3. **Consideration/Indemnification For Tax Consequences.**

a. In consideration for signing this Settlement Agreement and complying with its terms, Defendant will issue two separate checks as follows:

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- i. \$5,000 made payable to "Patricia McDonald" allocated as penalties and interest. Defendant will report this amount to the government agencies as the basis for an IRS Form 1099;
- ii. \$17,500 made payable to "Scott Cole & Associates, APC" for legal work performed and for costs incurred in investigating and asserting the PAGA claim on behalf of aggrieved employees.

b. Plaintiff understands and agrees that should the IRS, or any other taxing authority or other federal, state or local agency assert, argue or determine that any money received by or paid to Plaintiff pursuant to this Settlement Agreement under Section 3(a) is taxable wages, income or benefits of any kind, Plaintiff solely and individually will be responsible for the payment of any and all taxes, contributions from any of the Released Parties or withholdings including, but not limited to, any related interest, costs, penalties or other charges regardless of whether any of the Released Parties should have withheld or paid such taxes or made such contributions (including Social Security or Medicare). Plaintiff will hold each of the Released Parties harmless for any and all taxes, contributions, withholdings, fees or interest owed or claimed to be owed or any penalties, fines or assessments that may be imposed on these amounts and assume any and all liability for all such taxes, contributions, fees, interest, penalties or fines assessed against the Released Parties.

4. **No Consideration Absent Execution of this Agreement.** Plaintiff understands and agrees that Plaintiff would not receive the consideration specified in Section 3(a) above, except for Plaintiff's execution of this Settlement Agreement and the fulfillment of the promises contained herein.

5. **Disbursal of Settlement Funds/Dismissal of Action.**

a. Defendant, through Defendant's Counsel, shall make available to Plaintiff's Counsel the sums described more fully in Section 3(a) within ten (10) calendar days from the date *all* of the following have occurred: (i) Defense Counsel is provided with the Settlement Agreement bearing the original signatures of Plaintiff and Plaintiff's Counsel; (ii) Defense Counsel is provided with fully-executed Requests for the Taxpayer Identification Number and Certification (IRS Form W-9) for both Plaintiff and Plaintiff's Counsel; and (iii) Plaintiff files and the Court enters a dismissal without prejudice of the First Cause of Action. If the date by which the payment is to be made falls on a Saturday, Sunday or legal holiday in the State of California, then the payment shall be made by the next following day which is not a Saturday, Sunday or legal holiday.

b. Within five (5) business days of providing the sums described in Section 3(a), Plaintiff will file a dismissal with prejudice of her individual claims.

c. No Party shall claim to be the prevailing party in the Action.

6. General Release of Claims.

a. Plaintiff, individually and on behalf of Plaintiff's heirs, executors, administrators, representatives, attorneys, successors and assigns knowingly and voluntarily releases and forever discharges Defendant, including its parent corporations, past or present affiliates, subsidiaries, divisions, predecessors, insurers, third party vendors, successors and assigns, and their current and former employees, attorneys, officers, directors and agents thereof, both individually and in their business capacities, and their employee benefit plans and programs and their administrators, fiduciaries and insurers of such plans and programs, specifically including Axxess Financial Services, Inc. (collectively, the "Released Parties"), to the full extent permitted by law, of and from any and all claims, known and unknown, asserted and unasserted, which Plaintiff has or may have against the Released Parties as of the date of execution of this Settlement Agreement including, but not limited to, any alleged violation of:

- any and all claims identified in the Complaint (including but not limited to the PAGA period of one year prior to the filing of Plaintiff's Complaint to present) seeking unpaid wages and/or civil penalties under the Labor Code that: (i) were asserted or could have been asserted in the Action or that are predicated upon, arise out of, or relate to the facts alleged in the Action as they have evolved as a result of information obtained through discovery in the Action; or (ii) arise out of or relate to allegations that preceding and/or during the PAGA Period, CNG (a) failed to provide all requisite meal periods and rest periods, (b) failed to properly reimburse all business expenses and/or (c) failed to pay or underpaid wages for all time worked (including as a result of alleged off-the-clock time) resulting in failure to pay minimum and/or overtime wages, and (d) for derivative claims alleged such as failure to provide and maintain accurate itemized wage statements, to timely pay wages due during or at separation of employment, and related claims arising under or relating to the alleged violations of California Labor Code §§200, 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1198, 2802, and claims under IWC Wage Order Nos. 4-2001 or 7-2011, and Labor Code § 2699 et seq. as they relate to the underlying Labor Code claims referenced above;
- Title VII of the Civil Rights Act of 1964;
- The Civil Rights Act of 1991;
- Sections 1981 through 1988 of Title 42 of the United States Code, as amended;
- The Employee Retirement Income Security Act of 1974 ("ERISA");
- The Immigration Reform and Control Act;
- The Americans with Disabilities Act of 1990;

- The Age Discrimination in Employment Act of 1967 ("ADEA");
- The Workers Adjustment and Retraining Notification Act;
- The Occupational Safety and Health Act;
- The Sarbanes-Oxley Act of 2002;
- The Fair Credit Reporting Act;
- The Family and Medical Leave Act;
- The Equal Pay Act;
- California Business and Professions Code §§ 17200-17208;
- California Code of Civil Procedure §§ 382 and 1021.5;
- California Family Rights Act – Cal. Gov't Code § 12945.2 *et seq.*;
- California Fair Employment and Housing Act – Cal. Gov't Code § 12900 *et seq.*;
- California Unruh Civil Rights Act – Cal. Civ. Code § 51 *et seq.*;
- California Ralph Civil Rights Act – Cal. Civ. Code § 51.7 *et seq.* ;
- California Bane Civil Rights Act – Cal. Civ. Code § 52.1 *et seq.* ;
- California Sexual Orientation Bias Law – Cal. Lab. Code § 1101 *et seq.*;
- California Equal Pay Law – Cal. Lab. Code § 1197.5 *et seq.*;
- California Military Personnel Bias Law – Cal. Mil. & Vet. Code § 394 *et seq.*;
- The California Occupational Safety and Health Act, as amended, California Labor Code § 6300 *et seq.*, and any applicable regulations thereunder;
- Those other provisions of the California Labor Code that lawfully may be released;
- Any other federal, state or local civil or human rights law or any other federal, state or local law, regulation or ordinance;

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- Any public policy, contract, tort or common law; and
- Any basis for recovering costs, fees or other expenses including attorneys' fees incurred in these matters.

b. If any claim is not subject to release, to the extent permitted by law, Plaintiff waives any right or ability to be a class, or collective action representative or to otherwise participate in any putative or certified class, collective or multi-party action or proceeding based on such a claim in which any Defendant or any of the other Released Parties identified in this Settlement Agreement is a party. To the extent permitted by law, Plaintiff also agrees she will not be entitled to any monetary recovery under any such enumerated statute.

7. **Acknowledgment of Waiver of Claims under ADEA.** Plaintiff acknowledges that she is waiving and releasing any rights she may have under the Age Discrimination in Employment Act of 1967 ("ADEA"), and that this waiver and release is knowing and voluntary. Plaintiff agrees that this waiver and release does not apply to any rights or claims that may arise under the ADEA after the Effective Date of this Agreement. Plaintiff acknowledges that the consideration given for this waiver and release is in addition to anything of value to which Plaintiff was already entitled. Plaintiff further acknowledges that she has had a reasonable amount of time to consider the effect of the Release of Claims in Section 6 and this Waiver of Claims under the ADEA in this Section 7.

8. **Waiver of California Civil Code section 1542.** To effect a full and complete general release as described above, Plaintiff expressly waives and relinquishes all rights and benefits of section 1542 of the Civil Code of the State of California, and does so understanding and acknowledging the significance and consequence of specifically waiving section 1542. Section 1542 of the Civil Code of the State of California states as follows:

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

Thus, notwithstanding the provisions of section 1542, and to implement a full and complete release and discharge of the Released Parties, Plaintiff expressly acknowledges this Settlement Agreement is intended to include in its effect, without limitation, all claims Plaintiff does not know or suspect to exist in her favor at the time of signing this Settlement Agreement, and that this Settlement Agreement contemplates the extinguishment of any such claims. Plaintiff warrants that she has read this Settlement Agreement, including this waiver of California Civil Code section 1542, and that she has consulted with or had the opportunity to consult with counsel of her choosing about this Settlement Agreement and specifically about the waiver of section 1542, and that Plaintiff understand this Settlement Agreement and the section 1542

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waiver, and so Plaintiff freely and knowingly enters into this Settlement Agreement. Plaintiff further acknowledges that she later may discover facts different from or in addition to those she now knows or believes to be true regarding the matters released or described in this Settlement Agreement, and even so Plaintiff agrees that the releases and agreements contained in this Settlement Agreement shall remain effective in all respects notwithstanding any later discovery of any different or additional facts. Plaintiff expressly assumes any and all risk of any mistake in connection with the true facts involved in the matters, disputes or controversies released or described in this Settlement Agreement or with regard to any facts now unknown to the parties relating thereto.

9. Acknowledgements and Affirmations.

a. Plaintiff affirms that Plaintiff has not filed or caused to be filed any claim, complaint, action or arbitration claim against any of the Released Parties in any forum or form, other than the Action and related complaints with the Labor and Workforce Development Agency ("LWDA"), and that Plaintiff presently is not a party to any claim, complaint, action or arbitration claim against any of the Released Parties in any forum or form, other than the Action and such related LWDA complaints.

b. Plaintiff further affirms that she has not and does not intend to make any demand for arbitration related to this Action, her employment with Defendant or based on claims or allegations that could have been asserted in this Action.

c. Plaintiff also affirms and acknowledges that she has not filed and has no knowledge of or intent to file any claim for work-related injuries and acknowledges she is currently able to work without limitation, either physical or mental, and is not suffering any injury or disease caused by or related to her employment with Defendant.

d. The Parties acknowledge that this Settlement Agreement does not limit any Party's right, where applicable, to file or participate in any investigative proceeding of any federal, state or local government agency. To the extent permitted by law, Plaintiff agrees that if such an administrative charge is made, Plaintiff shall not be entitled to recover any individual monetary relief or other individual remedies.

10. Confidentiality.

a. Plaintiff agrees that Plaintiff will not publicize or disclose or cause or knowingly permit or authorize the publicizing or disclosure of the fact of this Settlement Agreement, the contents of this Settlement Agreement or of the negotiations leading up to it, or of the basis for any claims or allegations which were or could have been made against the Released Parties which concern and are within the scope of this Settlement Agreement (hereafter collectively referred to as "Confidential Information") to any person, firm, organization or entity of any and every type, public or private, for any reason, at any time, without the prior written consent of Defendant unless otherwise compelled by operation of law. The Parties acknowledge

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their intention that the provisions of this Section 10(a) create no liability for disclosures made: (i) pursuant to Sections 13(b) or 13(c) below to enforce the terms of this Settlement Agreement; or (ii) as otherwise compelled by operation of law. Plaintiff and Plaintiff's counsel further acknowledge that no disclosures regarding the settlement of the claims resolved herein shall be made to any publication or reporting service regarding settlements and verdicts. Further, neither the Parties nor their counsel shall submit or file this Agreement with the Court except in an action to enforce its terms and, in such case, this Agreement must be submitted under seal or lodged with the Court rather than filed.

b. The Parties and their Counsel further agree that the Parties and each Counsel must treat information learned during the litigation of this case as confidential and may not use any information gained or otherwise obtained in relation to this Action for purposes of another Action.

c. The foregoing notwithstanding, Plaintiff acknowledges the confidentiality provisions of this Section 10 constitute a material inducement to Defendant to enter into this Settlement Agreement.

d. Plaintiff is permitted to disclose Confidential Information to Plaintiff's attorneys, accountants, healthcare providers, and Plaintiff's spouse if applicable. However, each such person to whom Plaintiff discloses Confidential Information shall be bound to the confidentiality provisions hereof and any disclosure of Confidential Information by any such person so informed shall constitute a breach by Plaintiff of Paragraph 10(a) above. Plaintiff also is permitted to disclose the amount of consideration set forth in Section 3(a) above, as required by law, to governmental taxing authorities. In response to inquiries from third parties concerning the status of this dispute or which would require the disclosure of Confidential Information, Plaintiff and Plaintiff's Counsel only will state that the dispute has been resolved and that they cannot talk about it.

e. It is agreed that in the event of a breach of the provisions of this Section 10(a) by Plaintiff, it would be impractical or extremely difficult to fix actual damages to Defendant. Therefore, Plaintiff agrees that in the event of such a breach, Plaintiff shall pay to Defendant, as liquidated damages, and not as penalty, the sum of ONE THOUSAND DOLLARS AND NO CENTS (\$1,000.00), per breach which represents reasonable compensation to Defendant for the loss incurred because of such a breach. However, exceptions to this provision include disclosures made to an accountant, attorney, spouse, taxing authority, or by either order of the court or subpoena (after notice to Defendant).

11. **No Transfer/Assignment of Claims.** Plaintiff warrants and represents that Plaintiff has not assigned or transferred or purported to assign or transfer to any person or entity all or any part of or any interest in any claim released under this Settlement Agreement. Plaintiff and Plaintiff's counsel agree that they solely are responsible for the satisfaction of any assignment or lien to any lien holder and will hold the Released Parties harmless against any liens, damages, penalties, fines, fees, assessments, taxes or attorneys' fees that may be imposed

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against or incurred by any of the Released Parties as a result of the actions of any lien holder or any lien Plaintiff or any taxing authority or any court in relation to any interest which any third party may have in any claim which Plaintiff is releasing under this Settlement Agreement or any interest in any of the proceeds paid to Plaintiff or Plaintiff's counsel under this Settlement Agreement.

12. **Waiver of Reemployment.** Plaintiff acknowledges that because of circumstances unique to Plaintiff, *inter alia*, irreconcilable differences, Plaintiff shall not apply in the future for employment with Defendant or their present or future divisions, affiliated, related, successor, parent or subsidiary companies. Plaintiff further agrees that Defendant and their present or future divisions, affiliated, related, successor, parent or subsidiary companies shall not be liable for any damages now or in the future because one of them refuses to employ Plaintiff for any reason whatsoever. However, this provision shall not apply in the event Plaintiff is working for an entity that is acquired by Defendant subsequent to execution of this agreement.

13. **Governing Law and Interpretation.**

a. This Settlement Agreement shall be governed and conformed in accordance with the laws of the State of California provided, however, that parol evidence shall not be admissible to alter, vary or supplement the term of this Settlement Agreement. Should any provision of this Settlement Agreement be declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable, excluding the general release language, such provision immediately shall become null and void, leaving the remainder of this Settlement Agreement in full force and effect.

b. In the event of a breach of any provision of this Settlement Agreement, any Party may institute an action specifically to enforce any term or terms of this Settlement Agreement or seek damages for breach. However, the Party instituting such an action must take steps to file this Settlement Agreement or any documents setting forth the terms of this Settlement Agreement with the court under seal. In an action to enforce any term or terms of this Settlement Agreement or to seek damages for breach of this Settlement Agreement, the prevailing party in that action shall be entitled to recover reasonable attorney's fees, with the sole exception of a legal action challenging or seeking a determination in good faith of the validity of the waiver herein under the ADEA.

c. It is the intent of the Parties, pursuant to Evidence Code sections 1122(a)(1) and 1123, that all of the terms of this Settlement Agreement shall be admissible in an action or proceeding to approve, interpret, or enforce this Settlement Agreement and, for that purpose, may be disclosed under seal to a court of law and shall be enforceable and binding upon them in a court of law. This Settlement Agreement is otherwise inadmissible as evidence in any other proceeding.

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14. **Amendment.** This Settlement Agreement may not be modified, altered or changed except in writing and signed by all Parties wherein specific reference is made to this Settlement Agreement.

15. **Miscellaneous.**

a. This Settlement Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which, taken together shall constitute the same instrument. A signature made on a faxed or electronically mailed copy of the Settlement Agreement or a signature transmitted by facsimile or electronic mail shall have the same effect as the original signature.

b. The section headings used in this Settlement Agreement are intended solely for convenience of reference and shall not in any manner amplify, limit, modify or otherwise be used in the interpretation of any of the provisions hereof.

c. This Settlement Agreement was the result of negotiations between the Parties and their respective counsel. In the event of vagueness, ambiguity or uncertainty, this Settlement Agreement shall not be construed against the Party preparing it, but shall be construed as if all Parties prepared it jointly.

d. If Plaintiff or Defendant fail to enforce this Settlement Agreement or to insist on performance of any term, that failure does not mean a waiver of that term or of the Settlement Agreement. The Settlement Agreement remains in full force and effect anyway.

16. **Entire Agreement.** This Settlement Agreement sets forth the entire agreement between the Parties hereto, and fully supersedes any prior agreements or understandings between the Parties hereto. Plaintiff acknowledges that Plaintiff has not relied on any representations, promises or agreements of any kind made to Plaintiff in connection with Plaintiff's decision to accept this Settlement Agreement, except for those set forth in this Settlement Agreement.

HAVING ELECTED TO EXECUTE THIS SETTLEMENT AGREEMENT, TO FULFILL THE PROMISES AND TO RECEIVE THE CONSIDERATION SET FORTH IN SECTION 3(a) ABOVE, PLAINTIFF FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS SETTLEMENT AGREEMENT INTENDING TO WAIVE, SETTLE AND RELEASE ALL CLAIMS PLAINTIFF HAS OR MIGHT HAVE AGAINST THE RELEASED PARTIES AS OF THE DATE OF EXECUTION OF THIS SETTLEMENT AGREEMENT.

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IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed
this Settlement Agreement as of the date set forth below:

Executed on Jan 20, 2017

pmcdonald
PATRICIA MCDONALD

Executed on Jan 24, 2017 By:

CHECK 'N GO OF CALIFORNIA, INC.
[Signature]
By:
Its:

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Approved as to form and content.

SCOTT COLE & ASSOCIATES, APC

Executed on Jan. 19, 2017 By: 
JEREMY GRAHAM

Attorneys for Plaintiff
PATRICIA MCDONALD

SQUIRE PATTON BOGGS (US) LLP

Executed on January 26, 2017 By: 
MICHAEL W. KELLY

Attorneys for Defendant
CHECK 'N GO OF CALIFORNIA, INC.