

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This Settlement Agreement and Release (hereinafter "Agreement") is made and voluntarily entered into between **Luis Meza, Joseline Meza, and Asuncion Cordova**, and each of his representatives, heirs, successors and assigns (hereinafter, collectively "Plaintiffs"), on the one hand, and **Lumpy's Diner LLC, the Estate of Jeremy Sturgill, d.b.a. Lumpy's Diner, and Mardi Sturgill**, and each of their representatives, heirs, predecessors, successors and assigns (hereinafter, collectively, "Lumpy's"), on the other hand. Plaintiffs and Lumpy's are hereinafter referred to collectively as the "Parties."

WHEREAS, Plaintiffs are former employees of Lumpy's; and

WHEREAS, on or about May 24, 2016, Plaintiffs filed a civil action against Lumpy's in the Superior Court of California, Contra Costa County, Case No. C16-00929 (hereinafter the "Action"); and

WHEREAS, to avoid costly, time-consuming and uncertain litigation, the Parties desire to settle fully and finally any and all disputes or claims between them arising out of the employment relationship and the termination of such employment, association and relationship (hereinafter the "Dispute");

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained and other good and valuable consideration, receipt of which is hereby acknowledged, it is hereby agreed by and between the Parties as follows:

1. Consideration: In exchange for a mutual release of all claims related in any way to the transactions or occurrences between the Parties to date, including, but not limited to all losses, liabilities, claims, charges, attorney's fees, costs, interest, demands, grievances and causes of action, now known or unknown, suspected or unsuspected, arising directly or indirectly out of or in any way connected with the Dispute, the Parties agree to the following consideration:
 - a. Lumpy's shall pay to Plaintiffs the gross amount of \$140,000 (One-hundred and Forty Thousand Dollars and No Cents) in eight installments. The first installment of \$30,000 will be paid by October 15, 2017 ("Initial Payment"). The second installment of \$20,000 will be paid by November 15, 2017 ("Second Payment"). The remainder of the settlement amount will be paid in six equal payments of \$15,000, payable on the 15th of each month from December 2017 until May of 2018 ("Installment Payments").
 - b. The parties agree that of the total settlement amount, \$16,028.80 (Sixteen Thousand and Twenty Eight Dollars With Eighty Cents), less legally required withholdings for state and federal taxes, represent payment to Plaintiffs in settlement of claimed unpaid wages and meal wage premiums ("Wage Portion"). Of the remaining, \$64,115.20 (Sixty-Four Thousand,

One Hundred and Fifteen Dollars With Twenty Cents) represents payment to the Plaintiffs in settlement of claimed penalties under Labor Code Sections 203 and 226, and interest on unpaid wages ("Non-Wage Portion"), and \$59, 856.00 (Fifty-Nine Thousand, Eight Hundred and Fifty Six Dollars) represents payment to Villegas Carrera, LLP for their attorneys' fees and costs ("Attorneys' Fees Portion").

- c. Lumpy's shall withhold federal and state taxes from the Wage Portion payable to each of the Plaintiffs. The sum of \$16,028.80 (Sixteen Thousand and Twenty Eight Dollars With Eighty Cents) representing the total Wage Portion of the Settlement Amount will be payable to each Plaintiff as follows:
 - i. \$8,986.40 (Eight Thousand, Nine Hundred and Eighty Six Dollars with Forty Cents) to Luis Meza;
 - ii. \$ 4,676.59 (Four Thousand, Six Hundred and Seventy-Six Dollars with Fifty-Nine Cents) to Joseline Meza; and
 - iii. \$2,365.81 (Two Thousand, Three Hundred and Sixty-Five Dollars with Eighty One Cents) to Asuncion Cordova.
- d. The amounts described in paragraph 1(a) shall be paid by check and delivered to Plaintiffs' counsel of record in the Action. : Of the Initial Payment of \$30,000 (Thirty Thousand Dollars), \$3,434.75 (Three Thousand, Four Hundred and Thirty Four Dollars with Seventy-Five Cents) will be allocated towards the Wage Portion of the Settlement Amount, as described in paragraph 1b, and will be made payable to each Plaintiff as follows:
 - i. One check payable to Luis Meza for \$1,925.66, less legally required deductions for state and federal taxes;
 - ii. One check payable to Joseline Meza for \$1,002.13, less legally required deductions for state and federal taxes;
 - iii. One check payable to Asuncion Cordova for \$506.96, less legally required deductions for state and federal taxes;
- e. Lumpy's will pay the remaining \$26,565.25 (Twenty Six Thousand Five Hundred and Sixty-Five Dollars With Twenty-Five Cents) representing the Non-Wages and Attorneys' Fees Portions of the Initial Payment, by a check payable to the Villegas Carrera, LLP Attorney-Client Trust Account.
- f. The Initial Payment may be hand delivered or sent via next-day (overnight express) mail or delivery to Villegas Carrera, LLP to the attention of Adalberto Corres, Esq., on or before the due date described hereinabove.

- g. Of the Second Payment of \$20,000 (Twenty Thousand Dollars), \$2,289.82 (Two Thousand, Two Hundred and Eighty Nine Dollars With Eighty-Two Cents), will be allocated towards the Wage Portion of the Settlement Amount, as described in paragraph 1b, and will be made payable to each Plaintiff as follows:
 - i. One check payable to Luis Meza for \$1,283.76, less legally required deductions for state and federal taxes;
 - ii. One check payable to Joseline Meza for \$668.08, less legally required deductions for state and federal taxes;
 - iii. One check payable to Asuncion Cordova for \$337.97, less legally required deductions for state and federal taxes;
- h. Lumpy's will pay the remaining \$17,710.18 (Seventeen Thousand, Seven Hundred and Ten Dollars with Eighteen Cents) representing the Non-Wages and Attorneys' Fees Portions of the Second Payment, by a check payable to the Villegas Carrera, LLP Attorney-Client Trust Account.
- i. The Second Payment may be hand delivered or sent via next-day (overnight express) mail or delivery to Villegas Carrera, LLP to the attention of Adalberto Corres, Esq., on or before the due date described hereinabove.
- j. Commencing on or before the fifteenth (15th) day of December 2017, Lumpy's will pay the first of a total of 6 monthly Installment Payments, each in the amount of Fifteen Thousand Dollars (\$15,000.00). The Installment Payments will be divided into a Wage Portion of \$1,717.37 (One Thousand, Seven Hundred and Seventeen Dollars with Thirty Seven Cents) and a Non-Wage Portion and Attorneys' Fees Portion of \$ 13,282.63 (Thirteen Thousand, Two Hundred and Eighty Two Dollars and Sixty Three Cents).
- k. The Wage Portion of the Installment Payments will be payable to each Plaintiff as follows:
 - i. One check payable to Luis Meza for \$962.83, less legally required deductions for state and federal taxes;
 - ii. One check payable to Joseline Meza for \$501.06, less legally required deductions for state and federal taxes;
 - iii. One check payable to Asuncion Cordova for \$253.48, less legally required deductions for state and federal taxes;
- l. Lumpy's will pay the remaining \$13,282.63 (Thirteen Thousand, Two Hundred and Eighty Two with Sixty Three Cents) representing the Non-Wages and Attorneys' Fees Portions of each Installment Payment, by a

check payable to the Villegas Carrera, LLP Attorney-Client Trust Account.

- m. Lumpy's shall pay and deliver each Installment Payment so that it is received by Villegas Carrera, LLP on or before the due date each month for a total period of 6 months.
- n. For each year during which any portion of the Settlement Amount is paid, Lumpy's will prepare and send Villegas Carrera, LLP an IRS Form W-2 for each Plaintiff with respect to each Plaintiff's share of the Wage Portion of the Settlement Amount paid during such year. Plaintiffs will each provide to Lumpy's a current address for use in such W-2 forms. For each year during which any portion of the Settlement Amount is paid, Lumpy's shall prepare and issue an IRS Form 1099 MISC to Villegas Carrera, LLP for the Non-Wage and Attorneys' Fees Portions of the Settlement Amount paid during such year. Villegas Carrera, LLP shall be responsible for distributing the Non-Wage Portion of the Settlement Amount to the Plaintiffs and issuing IRS Forms 1099 to each of the individual Plaintiffs for their shares of the Non-Wage Portion of the Settlement Amount.
- o. Plaintiffs agree that the foregoing payments shall constitute an accord and satisfaction and a full and complete settlement of Plaintiffs' claims. Plaintiffs further agree that these settlement payments constitute the entire amount of monetary consideration provided to them under this Agreement and that Plaintiffs will not seek any further compensation for any claimed damages, costs or attorney's fees in connection with the matters encompassed by this Agreement.
- p. Plaintiffs acknowledge and agree that Lumpy's has made no representations to them regarding the tax consequences of any amounts received by them pursuant to this Agreement. The Parties agree that each of them shall be solely liable for any tax consequences of the payments made or received under this Agreement, including any and all tax obligations, if any, arising from the manner in which any party reports or characterizes the payments made or received pursuant to this Agreement on his, her, or its tax return, and arising from any ruling of the Internal Revenue Service pertaining thereto.
- q. Plaintiffs shall not pursue the Action and agree to the dismissal of the Action with prejudice as to their individual claims (First through Eighth Causes of Action, inclusive) and without prejudice as to their PAGA cause of action (Ninth Cause of Action);
- r. To secure performance under this Agreement, Lumpy's agrees to execute a Stipulation for the Entry of Judgment in the amount of \$140,000 (One-hundred and Forty Thousand Dollars and No Cents). Within three days of

both parties' signing this Agreement, Counsel for Plaintiffs shall prepare and deliver to counsel for Lumpy's a suitable Stipulation for the Entry of Judgment for Lumpy's review and approval. Lumpy's shall execute the Stipulation no later than October 15, 2017.

- s. The Stipulation for the Entry of Judgment shall be held by Counsel for Plaintiffs and not filed or recorded unless Lumpy's fails to pay the Settlement Amounts described in paragraph 1(a). There shall be a single grace period for one missed payment, wherein if payment is not received by the due date, notice shall be given by electronic mail to marta@johnfmartinlaw.com, and Lumpy's shall have ten calendar days from that notice to make the missed payment. No additional notice or presentment is necessary. Any payments made shall be credited dollar for dollar against the principal amount of the stipulated Judgment. The Judgment shall bear interest at the legal rate from the date of entry of judgment. However, the settlement amount shall be a net amount and shall not bear interest.

2. Release

- a. Plaintiffs agree (except as otherwise indicated in paragraph 2(b)) to forever and fully release and discharge Lumpy's from all charges, complaints, claims, damages and liabilities of any kind or nature whatsoever, known or unknown, suspected or unsuspected (hereinafter referred to as "Claim" or "Claims") that Plaintiffs at any time heretofore had or claimed to have or that Plaintiffs may have or claim to have regarding events that have occurred as of the date of this Agreement, including, without limitation, any and all claims related or in any manner incidental to Plaintiffs' relationship with, employment by, or work for Lumpy's or Plaintiffs' separation therefrom.

This Release includes, but is not limited to, any rights or claims arising under the California Constitution; California Labor Code; California statutory and common law (including contract law, employment law and tort law); the California Fair Employment and Housing Act ("FEHA"); the Age Discrimination in Employment Act ("ADEA"); Title VII of the Civil Rights Act of 1964, as amended; the Americans with Disabilities Act ("ADA"); federal and state family leave statutes; and any and all other federal, state and local laws, statutes, executive orders, regulations and common law; and any claim for any loss, cost, damage, or expense arising out of any dispute over the non-withholding or other tax treatment of any of the proceeds received by Plaintiffs as a result of this Agreement; any and all claims for attorney's fees and costs.

- b. Plaintiffs agree and represent that, other than the Action, neither them nor any of their agents or representatives has filed or initiated any complaint,

lawsuit or claim in any local, state or federal court or governmental agency against Lumpy's. Plaintiffs hereby agree that neither them nor any of their representatives or agents will ever assert in any forum any claim as to which this release of claims may lawfully be applied. Plaintiffs hereby agree to the fullest extent permitted by law, that they will not join, assist, or voluntarily participate in any lawsuit or class action brought or filed against Lumpy's. Nothing in this Agreement shall be construed to prevent Plaintiffs from lodging a complaint or filing an administrative charge with a government agency or from participating in any government investigation, including the U.S. Equal Employment Opportunity Commission ("EEOC"), the California Department of Fair Employment and Housing ("DFEH"), the U.S. Securities & Exchange Commission ("SEC"), and the National Labor Relations Board ("NLRB"). To the extent that the law permits Plaintiffs to file a claim with any governmental or administrative agency notwithstanding this Release of Claims, or that a claim is pursued on Plaintiffs' behalf by any governmental or administrative agency, Plaintiffs hereby agree not to seek or accept any damages, remedies, or other relief with respect to the Claims released in this Agreement.

Further, it is expressly understood that nothing in this Agreement shall in any way prohibit the parties from bringing any complaint, claim or action alleging a breach of this Agreement by the other Party.

3. Plaintiffs acknowledge and agree that they have received all salary, wages, accrued vacation, bonuses, commissions, or other such sums due to them other than amounts to be paid pursuant to this Agreement. In light of the payment by Lumpy's of all wages due, the Parties further acknowledge and agree that California Labor Code section 206.5 is not applicable to this Agreement or to the Parties. That Section provides in pertinent part as follows:

"No employer shall require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of such wages has been made."

4. The Parties acknowledge that there is a risk that after signing this Agreement, the Parties may discover losses or claims that the Parties believe were in some way caused by the matters alleged in the Action, that are released under this Agreement, but that are presently unknown to the Parties. The Parties assume this risk and understand that this release shall apply to any such losses and claims. Therefore, the Parties expressly waive the provisions of California Civil Code section 1542, which states:

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

5. The Plaintiffs understand that the terms and existence of this Agreement are personal to the Parties and that maintaining the confidential nature of this Agreement is a material term of this Agreement. The Plaintiffs covenant that they have not disclosed and will not disclose the existence or terms of this Agreement to anyone other than the Plaintiffs' spouses, registered domestic partners, attorneys, and accountants. In the event that any of the Plaintiffs breaches this confidentiality obligation, due to the difficulty of calculating the actual damages caused to Lumpy's by such breach, the Party in breach shall pay liquidated damages in the amount of \$5,000 (Five Thousand Dollars and No Cents) for each such breach, as a reasonable estimate of Lumpy's damages caused by each such breach, and not as a penalty. The Parties may make such disclosures as are required by law and as are necessary for legitimate law enforcement or compliance purposes.
6. As a condition of this Agreement, Plaintiffs agree not to seek or accept employment/service with Lumpy's and its current affiliates in the future and that Lumpy's may reject, without cause, any such application for employment made by Plaintiffs or may terminate their employment/agency immediately upon discovery.
7. Plaintiffs represent and warrant that they have returned to Lumpy's all documents, data, and proprietary information of any nature pertaining to Lumpy's or its affiliated companies as well as any Company property. Plaintiffs also affirm that they have not taken from Lumpy's or its affiliated companies any documents or data of any description or any reproduction containing or pertaining to any proprietary information, nor utilized same.
8. Plaintiffs agree not to disparage Lumpy's, its management, employees, agents, clients, products, service, or strategy. Lumpy's agrees not to disparage Plaintiffs. The obligation of non-disparagement for both Parties set forth in this section includes disparagement in any form or forum, including book, television, radio, or other public media, creation or use of a web site or other internet feature, or statements in the press or any trade press. If employment inquiries are made to Lumpy's, Lumpy's shall disclose Plaintiffs' position, dates of employment, and salary at termination of employment and nothing more. The Parties are permitted to provide truthful information in response to a legal subpoena or other legal process.
9. This Agreement and compliance with this Agreement shall not be construed as an admission by Lumpy's of any liability or wrongdoing whatsoever, or as an admission by Lumpy's of any violation of the rights of Plaintiffs or any person, or of the violation of any order, law, statute, duty, or contract whatsoever against Plaintiffs or any person. Lumpy's specifically disclaims any liability to Plaintiffs or any other person for any alleged violation of the rights of Plaintiffs or any

person, or for any alleged violation of any order, law, statute, duty, or contract on the part of Lumpy's, its employees or agents or related companies.

10. The Parties hereto represent and acknowledge that in executing this Agreement they do not rely and have not relied upon any representation or statement made by any of the Parties or by any of the Parties' agents, attorneys, or representatives with regard to the subject matter, basis, or effect of the Agreement or otherwise, other than those specifically stated in this written Agreement.
11. This Agreement shall be binding upon the Parties hereto and upon their heirs, administrators, representatives, executors, successors and assigns, and shall inure to the benefit of said Parties and each of them and to their heirs, administrators, representatives, executors, successors, and assigns. Plaintiffs expressly warrants that he has not transferred to any person or entity any rights, causes of action, or claims released in this Agreement.
12. Should any provision of this Agreement be found to be invalid or unenforceable, that provision shall be considered severable and the remaining provisions shall remain in effect and enforced.
13. This Agreement sets forth the entire agreement between the Parties hereto and fully supersedes any and all prior agreements or understandings, written or oral, between the Parties hereto pertaining to the subject matter hereof.
14. This Agreement shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against any of the Parties hereto.
15. This Agreement shall be deemed to have been executed and delivered within the State of California, and it shall be construed, interpreted, governed, and enforced in accordance with the laws of the State of California, without regard to the State of California's conflict of law principles.
16. In an action to enforce any term or terms of this Agreement or to seek damages for breach of this Agreement, the prevailing party in that action shall be entitled to recover reasonable costs and attorney's fees. The Parties agree that any dispute regarding any aspect of this Agreement, including the confidentiality provisions, shall be submitted to the jurisdiction of the Superior Court of Contra Costa County.
17. Each party represents that they have had the opportunity to be fully advised by counsel of their choice of the ramifications of their decision to settle this matter, including the loss of any right to proceed to a trial to determine their rights and duties in this matter. Each party warrants and represents that there are no liens or claims of lien, or assignments in law or equity or otherwise, of or against any of the claims or causes of action released herein.

18. This Agreement may be executed in counterparts and each counterpart, when executed, shall have the efficacy of a second original. Photographic copies of such signed counterparts may be used in lieu of the original for any said purpose.

AGREED TO AND EXECUTED BY:

Dated: ~~September~~ ^{October} 13, 2017

Luis a meza
Luis Meza

Dated: ~~September~~ ^{October} 13, 2017

Josefina Meza
Josefina Meza

Dated: ~~September~~ ^{October} 13, 2017

Asuncion Cordova A-
Asuncion Cordova

Dated: ~~September~~ ^{October} 12, 2017

Marci Sturgill
Marci Sturgill for Lumpy's

APPROVED AS TO FORM:

Adalberto Correa
Adalberto Correa
Attorney for Plaintiffs

Marta R. Vanegas
Marta R. Vanegas
Attorney for Lumpy's