

BIBIYAN LAW GROUP, P.C.

David D. Bibiyan (SBN 287811)

david@tomorrowlaw.com

Vedang J. Patel (SBN 328647)

vedang@tomorrowlaw.com

Brandon M. Chang (SBN 316197)

brandon@tomorrowlaw.com

1460 Westwood Boulevard

Los Angeles, CA 90024

Tel: (310) 438-5555; Fax: (310) 300-1705

Attorneys for Plaintiff, JEFF V. LACAP, on behalf of himself
and all others similarly situated and aggrieved

Joseph Lavi, Esq. (SBN 209776)

Vincent C. Granberry, Esq. (SBN 276483)

William Tran, Esq. (SBN 335908)

Eric J. Naessig, Esq. (SBN 343081)

LAVI & EBRAHIMIAN, LLP

8889 W. Olympic Boulevard, Suite 200

Beverly Hills, CA 90211

Telephone: (310) 432-0000

Facsimile: (310) 432-0001

Email: *jlavi@lelawfirm.com*

vgranberry@lelawfirm.com

wtran@lelawfirm.com

enaessig@lelawfirm.com

Attorneys for Plaintiff OFELIA MIRANDA DE QUIROZ,
on behalf of herself and all others similarly situated and aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

JEFF V. LACAP, an individual, OFELIA
MIRANDA DE QUIROZ, an individual, on
behalf of themselves and all others similarly
situated and aggrieved,

Plaintiffs,

v.

COMFORT CALIFORNIA, INC., a
California corporation; SUNBURST
HOSPITALITY CORPORATION, a
Delaware corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: CGC-22-603274

Consolidated with Case No. CGC-23-605319

[Assigned for all purposes to Honorable
Ethan P. Schulman in Dept. 304]

**SECOND AMENDED CLASS AND
PAGA SETTLEMENT AGREEMENT**

Action Filed: December 2, 2022

Trial Date: None Set

HIRSCHFELD KRAEMER LLP

Monte Grix (SBN 241050)
233 Wilshire Boulevard, Suite 600
Santa Monica, CA 90401
Telephone: (310) 255-0705
Facsimile: (310) 255-0986
Email: mgrix@hkemploymentlaw.com
Darianne Young (SBN 345934)
456 Montgomery Street, Suite 2200
San Francisco, CA 94104
Telephone: (415) 835-9000
Facsimile: (415) 834-0443
Email: dyoung@hkemploymentlaw.com

Attorneys for Defendants, COMFORT CALIFORNIA, INC. and SUNBURST
HOSPITALITY CORPORATION

1 This Second Amended Class Action and PAGA Settlement Agreement (“Agreement”) is
2 made by and between plaintiffs Jeff V. Lacap (“Plaintiff Lacap”) and Ofelia Miranda De Quiroz
3 (“Plaintiff Quiroz” and collectively, with Plaintiff Lacap, the “Plaintiffs”) on the one hand, and
4 defendants Comfort California, Inc., and Sunburst Hospitality Corporation (collectively,
5 “Defendants”) on the other hand. The Agreement refers to Plaintiffs and Defendants collectively
6 as “Parties,” or individually as “Party.”

7 **1. DEFINITIONS**

8 1.1. “Action(s)” means the Plaintiff Lacap’s lawsuit alleging wage and hour violations against
9 Defendants, captioned *Jeff V. Lacap v. Comfort California, Inc., et al.*, Case No. CGC-22-
10 603274, and pending in the Superior Court of the State of California, County of San Francisco
11 (the “Lacap Class Action”), Plaintiff Lacap’s Private Attorneys’ General Act of 2004 (“PAGA”)
12 representative action against Defendants captioned *Jeff V. Lacap v. Comfort California, Inc., et*
13 *al.*, Case No. CGC-23-605319, consolidated with the Lacap Class Action and pending in the
14 Superior Court of the State of California, County of San Francisco (the “Lacap PAGA Action”),
15 Plaintiff Quiroz’s lawsuit alleging wage and hour violations against Defendant Comfort
16 California, Inc. captioned *Ofelia Miranda De Quiroz v. Comfort California, Inc.*, and pending in
17 the Superior Court of the State of California, County of Orange, Case No. 30-2022-01296410-
18 CU-OE-CXC (the “Quiroz Class Action”), and Plaintiff Quiroz’s PAGA representative action
19 against Defendant Comfort California, Inc. captioned *Ofelia Miranda De Quiroz v. Comfort*
20 *California, Inc.*, and pending in the Superior Court of the State of California, County of Orange,
21 Case No. 30-2023-01308454-CU-OE-CXC (the “Quiroz PAGA Action”).

22 1.2. “Administrator” means ILYM Group, Inc. (“ILYM”), the neutral entity the Parties have
23 agreed to appoint to administer the Settlement.

24 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid
25 from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance
26 with the Administrator’s “not to exceed” bid submitted to the Court in connection with
27 Preliminary Approval of the Settlement.

28 ///

1 1.4. “Aggrieved Employee” means all current and former California non-exempt hourly
2 employees of Defendants who worked at any time during the PAGA Period.

3 1.5. “Class” means all current and former California non-exempt hourly employees of
4 Defendants who worked at any time during the Class Period.

5 1.6. “Class Counsel” means David D. Bibiyan and Vedang J. Patel of Bibiyan Law Group,
6 P.C., and Joseph Lavi, Vincent C. Granberry, William Tran, and Eric J. Naessig of Lavi &
7 Ebrahimian, LLP.

8 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean
9 the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and
10 expenses, respectively, incurred to prosecute the Action.

11 1.8. “Class Data” means Class Member identifying information in Defendants’ custody,
12 possession, or control, including the Class Member’s (1) name; (2) last known address(es); (3)
13 last known telephone number(s); (4) last known email address(es), if any; (5) last known Social
14 Security Number(s); and (6) the dates of employment (i.e., hire dates, and, if applicable, re-hire
15 date(s) and/or separation date(s)).

16 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either
17 a Participating Class Member or Non-Participating Class Member (including a Non- Participating
18 Class Member who qualifies as an Aggrieved Employee).

19 1.10. “Class Member Address Search” means the Administrator’s investigation and search for
20 current Class Member mailing addresses using all reasonably available sources, methods and
21 means including, but not limited to, the National Change of Address database, skip traces, and
22 direct contact by the Administrator with Class Members.

23 1.11. “Class Notice” means the Court approved NOTICE OF PROPOSED CLASS AND
24 PAGA ACTION SETTLEMENT AND DATE FOR FINAL APPROVAL HEARING, to be
25 mailed to Class Members in English and Spanish in the form, without material variation, attached
26 as Exhibit A and incorporated by reference into this Agreement.

27 1.12. “Class Period” means the period from December 2, 2018 through May 6, 2024.

28 ///

1.13. “Class Representative(s)” means the named Plaintiffs in the operative complaint in the Action seeking Court approval to serve as Class Representatives.

1.14. “Class Representative Service Payment” means the payment to the Class Representatives for initiating the Actions and providing services in support of the Actions.

1.15. “Court” means the Superior Court of California, County of San Francisco.

1.16. “Defendants” means named defendants Comfort California, Inc. and Sunburst Hospitality Corporation.

1.17. “Defense Counsel” means Monte Grix and Darianne Young of Hirschfeld Kraemer LLP.

1.18. “Effective Date” means the later of: (a) the sixty-first (61) calendar day after Final Approval, provided no appeal has been initiated, whether by an absent Class Member who has timely intervened or moved to vacate the judgment or by a Party or Class Counsel [regarding limited appeals of attorney fee reductions]; or (ii) if such an appeal is timely initiated, the date of final resolution of that appeal (including any requests for rehearing and/or petitions for certiorari), resulting in final judicial approval of the Settlement.

1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.

1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.

1.21. “Final Judgment” means the Judgment entered by the Court based upon the Final Approval.

1.22. “Gross Settlement Amount” means \$600,000.00 (Six Hundred Thousand Dollars and Zero Cents) which is the total amount Defendants agree to pay under the Settlement, except as provided in Paragraph 8.1 below and any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment, and Administrator’s Expenses.

///

///

1 1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the
2 Net Settlement Amount calculated according to the number of Workweeks worked during the
3 Class Period.

4 1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of
5 the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during
6 the PAGA Period.

7 1.25. “Judgment” means the judgment entered by the Court based upon Final Approval.

8 1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency
9 entitled, under Labor Code section 2699, subd. (i).

10 1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA
11 under Labor Code section 2699, subd. (i).

12 1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following
13 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
14 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
15 Litigation Expenses Payment, and Administration Expenses Payment. The remainder is to be
16 paid to Participating Class Members as Individual Class Payments.

17 1.29. “Non-Participating Class Member” means any Class Member who opts out of the
18 Settlement by sending the Administrator a valid and timely Request for Exclusion.

19 1.30. “PAGA Pay Period” means any pay period during which an Aggrieved Employee worked
20 for Defendant for at least one day during the PAGA Period, based on hire dates, re-hire dates (as
21 applicable), and termination dates (as applicable).

22 1.31. “PAGA Period” means the period from December 2, 2021 through the end of the Class
23 Period.

24 1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).

25 “PAGA Notice(s)” means Plaintiff Lacap’s December 2, 2022 letter and Plaintiff Quiroz’s
26 December 13, 2022 letter to defendants and the LWDA, providing notice pursuant to Labor Code
27 section 2699.3 subd. (a).

28 ///

1 1.33. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the
2 Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$15,000.00) and the 75%
3 to the LWDA (\$45,000.00) in settlement of PAGA claims.

4 1.34. "Participating Class Member" means a Class Member who does not submit a valid and
5 timely Request for Exclusion from the Settlement.

6 1.35. "Plaintiffs" means Jeff V. Lacap and Ofelia Miranda De Quiroz, the named plaintiffs in
7 the Actions.

8 1.36. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the
9 Settlement.

10 1.37. "Preliminary Approval Order" means the proposed Order granting Preliminary Approval
11 and Approval of PAGA Settlement.

12 1.38. "Released Class Claims" means the claims being released as described in Paragraph 5.2
13 below.

14 1.39. "Released PAGA Claims" means the claims being released as described in Paragraph 5.4
15 below.

16 1.40. "Released Parties" means: Defendants, and each of their former, present and future
17 owners, parents, and subsidiaries, and all of their current, former, and future officers, directors,
18 members, managers, employees, consultants, partners, shareholders, joint venturers, agents,
19 predecessors, successors, assigns, accountants, insurers, reinsurers, and/or legal representatives.

20 1.41. "Request for Exclusion" means a Class Member's submission of a written request to be
21 excluded from the Class Settlement signed by the Class Member.

22 1.42. "Response Deadline" means forty-five (45) days after the Administrator mails Notice to
23 Class Members and Aggrieved Employees, and shall be the last date on which Class Members
24 may: (a) mail or email Requests for Exclusion from the Settlement, or (b) mail or email his or
25 her objection to the Settlement. Class Members to whom Notice Packets are resent after having
26 been returned undeliverable by mail to the Administrator shall have an additional 15 days beyond
27 the Response Deadline has expired.

28 ///

1 1.43. “Settlement” means the disposition of the Action effected by this Agreement and the
2 Judgment.

3 1.44. “Workweek” means any week during which a Class Member worked for Defendants, for
4 at least one day during the Class Period, based on hire dates, re-hire dates (as applicable), and
5 termination dates (as applicable).

6 **2. RECITALS**

7 2.1. On December 2, 2022, Plaintiff Lacap commenced this Action by filing a class action
8 Complaint in the Superior Court of California, County of San Francisco (Case No. CGC-22-
9 603274) alleging causes of actions against Defendants for: failure to pay overtime and minimum
10 wages; failure to provide meal breaks, rest breaks, or compensation in lieu thereof; waiting time
11 penalties; wage statement violations; failure to timely pay wages, failure to indemnify, and unfair
12 competition (“Action”).

13 2.2. On December 2, 2022, Plaintiff Lacap provided a written notice pursuant to Labor Code
14 section 2699.3 online and by certified mail, with return receipt requested, of Defendants’ alleged
15 violation of various, including the herein-described, provisions of the Labor Code, to the
16 California Labor and Workforce Development Agency (“LWDA”), as well as by certified mail,
17 with return receipt requested, to Defendants (the “PAGA Notice”).

18 2.3. On December 12, 2022, Plaintiff Quiroz filed a class action Complaint in the Superior
19 Court of California, County of Orange (Case No. 30-2022-01296410-CU-OE-CXC) alleging
20 causes of action against Defendant Comfort California, Inc. for (1) failure to pay minimum
21 wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to
22 provide rest periods; (5) failure to timely pay earned wages during employment; (6) wage
23 statement violations; (7) failure to timely pay all earned wages and final paychecks due at time
24 of separation of employment (waiting time penalties); and (8) unfair business practices in
25 violation of Business and Professions Code sections 17200, *et seq.*

26 2.4. On December 13, 2022, Plaintiff Quiroz provided a written notice of defendant Comfort
27 California, Inc.’s alleged violations of the Labor Code to LWDA pursuant to Labor Code section
28 2699.3.

1 2.5. On February 17, 2023, Plaintiff Quiroz filed a separate representative action Complaint
2 in the Superior Court of California, County of Orange (Case No. 30-2023-01308454-CU-OE-
3 CXC) against Defendant Comfort California, Inc. for civil penalties under PAGA.

4 2.6. On March 22, 2023, Plaintiff Lacap filed a separate representative action Complaint in
5 the Superior Court of California, County of San Francisco, (Case No. CGC-23-605319) for civil
6 penalties under PAGA. The Court consolidated Plaintiff Lacap's class action Complaint and
7 representative action Complaint on December 1, 2023.

8 2.7. Thereafter, the Parties agreed to exchange informal discovery and attend mediation.

9 2.8. Prior to mediation Plaintiffs obtained, through informal discovery: (a) time and payroll
10 records for Class Members during the class period; (b) class data points; (c) relevant policy
11 documents such as employee handbooks and collective bargaining agreements; and (d) all
12 documents pertaining to Plaintiffs available to Defendants.

13 2.9. Plaintiffs' investigation was sufficient to satisfy the criteria for court approval set forth in
14 *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker*
15 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

16 2.10. On May 6, 2024, the Parties participated in an all-day mediation presided over by
17 Christopher Barnes, Esq. The mediation was successful, and the Parties agreed to globally resolve
18 all class and PAGA claims in the Action.

19 2.11. As part of this Agreement, the Parties agree to stipulate to Plaintiff Lacap filing a First
20 Amended Complaint in the Lacap Class Action, adding Plaintiff Quiroz as a named plaintiff, and
21 adding the claims alleged in the Lacap PAGA Action, Quiroz Class Action, and Quiroz PAGA
22 Action, to the Lacap Class Action, effectively consolidating the four actions for the purposes of
23 settlement approval. The First Amended Complaint in the Lacap Action is the operative
24 complaint in the Action ("Operative Complaint").

25 2.12. The Court has not granted class certification.

26 2.13. The Parties represent that they and their respective counsel are not aware of any other
27 pending matter or action asserting claims that will be extinguished or affected by the Settlement.

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

3. MONETARY TERMS

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8.1 below, Defendants promise to pay \$600,000.00 as the Gross Settlement Amount, unless increased pursuant to Paragraph 8.1 of this Agreement, and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendants have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1. To Plaintiffs: Class Representative Service Payment to Plaintiffs of not more than \$10,000.00 to each Plaintiff, for a total of \$20,000.00, in addition to any Individual Class Payment and any Individual PAGA Payment Plaintiffs are entitled to receive as a Participating Class Member and Aggrieved Employee. Defendants will not oppose Plaintiffs' request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiffs will seek Court approval for any Class Representative Service Payments prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiffs assume full responsibility and liability for employee taxes owed on their respective Class Representative Service Payments.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than one-third (1/3) of the Gross Settlement Amount, which, unless escalated pursuant to Paragraph

1 8.1 of this Agreement, is currently estimated to be \$200,000.00 and a Class Counsel
2 Litigation Expenses Payment of not more than \$30,000.00 according to proof.
3 Defendants will not oppose requests for these payments provided they do not exceed
4 these amounts. Plaintiffs and/or Class Counsel will endeavor to file a motion for Class
5 Counsel Fees Payment and Class Litigation Expenses Payment prior to the Final
6 Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class
7 Counsel Litigation Expenses Payment less than the amounts requested, the
8 Administrator will allocate the remainder to the Net Settlement Amount. Released
9 Parties shall have no liability to Class Counsel or any other Plaintiffs' Counsel arising
10 from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel
11 Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees
12 Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms.
13 Class Counsel assume full responsibility and liability for taxes owed on the Class
14 Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds
15 Released Parties harmless, and indemnifies Released Parties, from any dispute or
16 controversy regarding any division or sharing of any of these Payments. There will be
17 no additional charge of any kind to either the Settlement Class Members or request for
18 additional consideration from Defendants for such work unless, Defendants materially
19 breach this Agreement, including any term regarding funding, and further efforts are
20 necessary from Class Counsel to remedy said breach, including, without limitation,
21 moving the Court to enforce the Agreement. Should the Court approve attorneys' fees
22 and/or litigation costs and expenses in amounts that are less than the amounts provided
23 for herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.

24 3.2.3. To the Administrator: An Administration Expenses Payment not to exceed
25 \$8,500.00 except for a showing of good cause and as approved by the Court. To the
26 extent the Administration Expenses are less or the Court approves payment less than
27 \$8,500.00, the Administrator will retain the remainder in the Net Settlement Amount.

28 ///

1 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated
2 by using the following formula (a) dividing the Net Settlement Amount by the total
3 number of Workweeks worked by all Participating Class Members during the Class
4 Period and (b) multiplying the result by each Participating Class Member's number of
5 Workweeks worked during the Class Period.

6 3.2.4.1. Tax Allocation of Individual Class Payments. Ten percent (10%) of each
7 Participating Class Member's Individual Class Payment will be allocated to
8 settlement of wage claims (the "Wage Portion"). The Wage Portions are subject
9 to tax withholding and will be reported on an IRS W-2 Form. Ninety percent
10 (90%) of each Participating Class Member's Individual Class Payment will be
11 allocated to settlement of claims for interest and penalties (the "Non-Wage
12 Portion"). The Non-Wage Portions are not subject to wage withholdings and
13 will be reported on an IRS 1099 Form. Participating Class Members assume
14 full responsibility and liability for any employee taxes owed on their Individual
15 Class Payment.

16 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual
17 Class Payments. Non-Participating Class Members will not receive any
18 Individual Class Payments. The Administrator will retain amounts equal to
19 their Individual Class Payments in the Net Settlement Amount for distribution
20 to Participating Class Members on a pro rata basis.

21 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of
22 \$60,000.00 to be paid from the Gross Settlement Amount, with 75% (\$45,000.00)
23 allocated to the LWDA PAGA Payment and 25% (\$15,000.00) allocated to the
24 Individual PAGA Payments.

25 3.2.5.1. The Administrator will calculate each Individual PAGA
26 Payment by (a) dividing the amount of the Aggrieved Employees' 25% share
27 of PAGA Penalties (\$15,000.00) by the total number of PAGA Pay Periods
28 worked by all Aggrieved Employees during the PAGA Period and (b)

1 multiplying the result by each Aggrieved Employee's PAGA Pay Periods.
2 Aggrieved Employees assume full responsibility and liability for any taxes
3 owed on their Individual PAGA Payment.

4 3.2.5.2. If the Court approves PAGA Penalties of less than the
5 amount requested, the Administrator will allocate the remainder to the Net
6 Settlement Amount. The Administrator will report the Individual PAGA
7 Payments on IRS 1099 Forms.

8 **4. SETTLEMENT FUNDING AND PAYMENTS**

9 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records
10 to date, Defendants estimate there are 205 Class Members who collectively worked a total of
11 11,098 Workweeks, and 126 Aggrieved Employees who worked a total of 3,254 PAGA Pay
12 Periods.

13 4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval of the
14 Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in the
15 form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the
16 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes
17 of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator
18 employees who need access to the Class Data to effect and perform under this Agreement.
19 Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class
20 Data omitted class member identifying information and to provide corrected or updated Class
21 Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant
22 must send the Class Data to the Administrator, the Parties and their counsel will expeditiously
23 use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or
24 omitted Class Data.

25 4.3. Funding of Gross Settlement Amount. Defendants shall fully fund the Gross Settlement
26 Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll taxes by
27 transmitting the funds to the Administrator no later than 30 days after the Effective Date.

28 ///

1 4.4. Payments from the Gross Settlement Amount. Within 7 days after Defendants fund the
2 Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments,
3 all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses
4 Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and
5 the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment,
6 the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment
7 shall not precede disbursement of Individual Class Payments, and the Individual PAGA
8 Payments.

9 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or
10 Individual PAGA Payments and send them to the Class Members via First Class U.S.
11 Mail, postage prepaid. The face of each check shall prominently state the date (not less
12 than 180 days after the date of mailing) when the check will be voided. The
13 Administrator will cancel all checks not cashed by the void date. The Administrator
14 will send checks for Individual Settlement Payments to all Participating Class Members
15 (including those for whom Class Notice was returned undelivered). The Administrator
16 will send checks for Individual PAGA Payments to all Aggrieved Employees including
17 Non-Participating Class Members who qualify as Aggrieved Employees (including
18 those for whom Class Notice was returned undelivered). The Administrator may send
19 Participating Class Members a single check combining the Individual Class Payment
20 and the Individual PAGA Payment. Before mailing any checks, the Settlement
21 Administrator must update the recipients' mailing addresses using the National Change
22 of Address Database.

23 4.4.2. The Administrator must conduct a Class Member Address Search for all other
24 Class Members whose checks are returned undelivered without USPS forwarding
25 address. Within 7 days of receiving a returned check the Administrator must re-mail
26 checks to the USPS forwarding address provided or to an address ascertained through
27 the Class Member Address Search. The Administrator need not take further steps to
28 deliver checks to Class Members whose re-mailed checks are returned as undelivered.

1 The Administrator shall promptly send a replacement check to any Class Member whose
2 original check was lost or misplaced, requested by the Class Member prior to the void
3 date.

4 4.4.3. For any Class Member whose Individual Class Payment check or Individual
5 PAGA Payment check is uncashed and cancelled after the void date, the Administrator
6 shall transmit the funds represented by such checks to the California Controller's
7 Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid
8 residue" subject to the requirements of California Code of Civil Procedure Section 384,
9 subd. (b).

10 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall
11 not obligate Defendants nor be utilized to confer any additional benefits or make any
12 additional payments under any benefit plans to which any Class Members may be
13 eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans,
14 stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit
15 plan. Rather, it is the Parties' intention that this Agreement will not affect any rights,
16 contributions, or amounts to which any Class Members may be entitled under any
17 benefit plans.

18 **5. RELEASE OF CLAIMS**

19 Effective upon entry of Judgment, the Order Granting Final Approval of this Settlement,
20 and on the date when Defendants fully fund the entire Gross Settlement Amount and fund all
21 employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs,
22 Class Members, and Class Counsel will release claims against all Released Parties as follows:

23 5.1. Plaintiffs' Release. Plaintiffs and their respective former and present spouses,
24 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release
25 and discharge Released Parties from all claims, transactions, or occurrences, including, but not
26 limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts
27 contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could
28 have been, alleged based on facts contained in the Operative Complaint and Plaintiffs' PAGA

1 Notices (“Plaintiffs’ Release.”) Plaintiffs’ Release does not extend to any claims or actions to
2 enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability
3 benefits, social security benefits, workers’ compensation benefits that arose at any time, or based
4 on occurrences outside the Class Period. Plaintiffs acknowledge that they may discover facts or
5 law different from, or in addition to, the facts or law that they now know or believe to be true but
6 agree, nonetheless, that Plaintiffs’ Release shall be and remain effective in all respects,
7 notwithstanding such different or additional facts or Plaintiffs’ discovery of them.

8 5.1.1. Plaintiffs’ Waiver of Rights Under California Civil Code Section 1542. For
9 purposes of Plaintiffs’ Release only, Plaintiffs expressly waive and relinquish the
10 provisions, rights, and benefits, if any, of section 1542 of the California Civil Code,
11 which reads:

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

16 5.2. Release by Participating Class Members: For the duration of the Class Period, all
17 Participating Class Members, on behalf of themselves and their respective former and present
18 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released
19 Parties from all claims, rights, demands, liabilities, and causes of action that were alleged or
20 reasonably arise from the same set of operative facts as those set forth in the Operative Complaint.
21 The Released Class Claims are those that accrued during the Class Period.

22 5.3. Except as set forth in Section 5.2 of this Agreement, Participating Class Members do not
23 release any other claims, including claims for vested benefits, wrongful termination, violation of
24 the Fair Employment and Housing Act, unemployment insurance, disability, social security,
25 workers’ compensation, or claims based on facts occurring outside the Class Period.

26 5.4. Release by Aggrieved Employees: For the duration of the PAGA Period and to the extent
27 permitted by law, the LWDA and the State of California, by and through Plaintiffs as agents and
28 proxies of the LWDA, release the Released Parties from all claims for PAGA penalties that were

1 alleged, or reasonably could have been alleged, based on the facts stated in the Operative
2 Complaint and Plaintiffs' PAGA Notices.

3 **6. MOTION FOR PRELIMINARY APPROVAL**

4 The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion
5 for Preliminary Approval") that complies with the Court's current checklist for Preliminary
6 Approvals.

7 6.1. Plaintiff's Responsibilities. Plaintiffs will prepare and deliver to Defense Counsel at least
8 10 business days prior to filing all documents necessary for obtaining Preliminary Approval,
9 including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary
10 Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for
11 approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft
12 proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft
13 proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to
14 exceed" bid for administering the Settlement and attesting to its willingness to serve;
15 competency; operative procedures for protecting the security of Class Data; amounts of insurance
16 coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any
17 actual or potential conflicts of interest with Class Members; and the nature and extent of any
18 financial relationship with Plaintiffs, Class Counsel or Defense Counsel; (v) a signed declaration
19 from Plaintiffs confirming willingness and competency to serve and disclosing all facts relevant
20 to any actual or potential conflicts of interest with Class Members; (v) a signed declaration from
21 each Class Counsel firm attesting to its competency to represent the Class Members; its timely
22 transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor
23 Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)),
24 this Agreement (Labor Code section 2699, subd. (l)(2)); and (vi) all facts relevant to any actual
25 or potential conflict of interest with Class Members and the Administrator.

26 6.2. Responsibilities of Counsel. Parties will advise their respective counsel that they are
27 jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval
28 after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for

Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Plaintiffs will advise Class Counsel of their responsibility for delivering the Court's Preliminary Approval to the Administrator.

6.3. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Parties will expeditiously work together by meeting and conferring, in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Parties will expeditiously work together by meeting and conferring, in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION

7.1. Selection of Administrator. The Parties have jointly selected ILYM to serve as the Administrator and verified that, as a condition of appointment, ILYM agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

7.2. Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports to state and federal tax authorities.

7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

7.4. Notice to Class Members

7.4.1. No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, Aggrieved Employees, Workweeks, and PAGA Pay Periods in the Class Data.

1 7.4.2. Using best efforts to perform as soon as possible, and in no event later than 14
2 days after receiving the Class Data, the Administrator will send to all Class Members
3 identified in the Class Data, via first-class United States Postal Service (“USPS”) mail
4 and via email where email addresses are available, the Class Notice with Spanish
5 translation, substantially in the form attached to this Agreement as Exhibit A. The Class
6 Notice shall prominently estimate the dollar amounts of any Individual Class Payment
7 and/or Individual PAGA Payment payable to the Class Member, and the number of
8 Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before
9 mailing Class Notices, the Administrator shall update Class Member addresses using the
10 National Change of Address database.

11 7.4.3. Not later than 3 business days after the Administrator’s receipt of any Class Notice
12 returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice
13 using any forwarding address provided by the USPS. If the USPS does not provide a
14 forwarding address, the Administrator shall conduct a Class Member Address Search,
15 and re-mail the Class Notice to the most current address obtained. The Administrator
16 has no obligation to make further attempts to locate or send Class Notice to Class
17 Members whose Class Notice is returned by the USPS a second time.

18 7.4.4. The deadlines for Class Members’ written objections, challenges to Workweeks
19 and/or PAGA Pay Periods, and Requests for Exclusion will be extended an additional
20 15 days beyond the 45 days otherwise provided in the Class Notice for all Class
21 Members whose notice is re-mailed. The Administrator will inform the Class Member
22 of the extended deadline with the re-mailed Class Notice.

23 7.4.5. If the Administrator, Defendant or Class Counsel is contacted by or otherwise
24 discovers any persons who believe they should have been included in the Class Data
25 and should have received Class Notice, the Parties will expeditiously meet and confer,
26 in good faith, in an effort to agree on whether to include them as Class Members. If the
27 Parties agree, such persons will be Class Members entitled to the same rights as other
28 Class Members, and the Administrator will send, via email or overnight delivery, a Class

1 Notice requiring them to exercise options under this Agreement not later than 15 days
2 after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are
3 later.

4 7.5. Requests for Exclusion (Opt-Outs).

5 7.5.1. Class Members who wish to exclude themselves (opt-out of) the Class Settlement
6 must send the Administrator, by mail or email, a signed written Request for Exclusion
7 not later than 45 days after the Administrator mails the Class Notice (plus an additional
8 15 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion
9 is a letter from a Class Member or his/her representative, signed by the Class Member,
10 that reasonably communicates the Class Member's election to be excluded from the
11 Settlement and includes the Class Member's name, address, and email address or
12 telephone number. To be valid, a Request for Exclusion must be timely postmarked by
13 the Response Deadline.

14 7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it
15 fails to contain all the information specified in the Class Notice. The Administrator
16 shall accept any Request for Exclusion as valid if the Administrator can reasonably
17 ascertain the identity of the person as a Class Member and the Class Member's desire
18 to be excluded. The Administrator's determination shall be final and not appealable or
19 otherwise susceptible to challenge. If the Administrator has reason to question the
20 authenticity of a Request for Exclusion, the Administrator may demand additional proof
21 of the Class Member's identity. The Administrator's determination of authenticity shall
22 be final and not appealable or otherwise susceptible to challenge.

23 7.5.3. Every Class Member who does not submit a timely and valid Request for
24 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled
25 to all benefits and bound by all terms and conditions of the Settlement, including the
26 Participating Class Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement,
27 regardless of whether the Participating Class Member actually receives the Class Notice
28 or objects to the Settlement.

1 7.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a
2 Non-Participating Class Member and shall not receive an Individual Class Payment or
3 have the right to object to the class action components of the Settlement. Because future
4 PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-
5 Participating Class Members who are Aggrieved Employees are deemed to release the
6 claims identified in Paragraph 5.4 of this Agreement and are eligible for an Individual
7 PAGA Payment.

8 7.6. Challenges to Calculation of Workweeks and PAGA Pay Periods. Each Class Member
9 shall have 45 days after the Administrator mails the Class Notice (plus an additional 15 days for
10 Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks
11 and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class
12 Member may challenge the allocation by communicating with the Administrator via mail or
13 email. The Administrator must encourage the challenging Class Member to submit supporting
14 documentation. In the absence of any contrary documentation, the Administrator is entitled to
15 presume that the Workweeks contained in the Class Notice are correct so long as they are
16 consistent with the Class Data. The Administrator's determination of each Class Member's
17 allocation of Workweeks and/or PAGA Pay Periods shall be final and not appealable or otherwise
18 susceptible to challenge. The Administrator shall promptly provide copies of all challenges to
19 calculation of Workweeks and/or PAGA Pay Periods to Defense Counsel and Class Counsel and
20 the Administrator's determination of the challenges. The Administrator shall also inform Class
21 Members who submit Workweek or Pay Period challenges of its final determination.

22 7.7. Objections to Settlement

23 7.7.1. Only Participating Class Members may object to the class action components of
24 the Settlement and/or this Agreement, including contesting the fairness of the
25 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class
26 Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

27 7.7.2. Participating Class Members may send written objections to the Administrator by
28 mail or email. A written objection should include the objecting Class Member's name,

1 address, signature, a statement of whether the objecting Class Member plans to appear
2 at the Final Approval Hearing, and a statement of the reason(s) for the objection, along
3 with whatever legal authority, if any, the objector asserts in support of their objection.
4 In the alternative, Participating Class Members may appear in Court (or hire an attorney
5 to appear in Court) to present verbal objections at the Final Approval Hearing. A
6 Participating Class Member who elects to send a written objection to the Administrator
7 must do so not later than 45 days after the Administrator's mailing of the Class Notice
8 (plus an additional 15 days for Class Members whose Class Notice was re-mailed).

9 7.7.3. Non-Participating Class Members have no right to object to any of the class action
10 components of the Settlement.

11 7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be
12 performed or observed by the Administrator contained in this Agreement or otherwise.

13 7.8.1. Website, Email Address and Toll-Free Number. The Administrator will maintain
14 and use an internet website to post information of interest to Class Members including
15 the date, time and location for the Final Approval Hearing and copies of the Settlement
16 Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class
17 Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment,
18 Class Counsel Litigation Expenses Payment and Class Representative Service Payment,
19 the Final Approval and the Judgment. The Administrator will also maintain and monitor
20 an email address and a toll-free telephone number to receive Class Member calls and
21 emails.

22 7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will
23 promptly review on a rolling basis Requests for Exclusion to ascertain their validity.

24 7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written
25 reports to Class Counsel and Defense Counsel that, among other things, tally the number
26 of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for
27 Exclusion (whether valid or invalid) received, objections received, challenges to
28 Workweeks and/or PAGA Pay Periods received and/or resolved, and checks mailed for

1 Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The
2 Weekly Reports must include the Administrator’s assessment of the validity of Requests
3 for Exclusion.

4 7.8.4. Workweek and/or PAGA Pay Period Challenges. The Administrator has the
5 authority to address and make final decisions consistent with the terms of this
6 Agreement on all Class Member challenges over the calculation of Workweeks and/or
7 PAGA Pay Periods. The Administrator’s decision shall be final and not appealable or
8 otherwise susceptible to challenge.

9 7.8.5. Administrator’s Declaration. Before the date by which Plaintiffs are required to
10 file the Motion for Final Approval of the Settlement, the Administrator will provide to
11 Class Counsel and Defense Counsel, a declaration suitable for filing in Court attesting
12 to its due diligence and compliance with all of its obligations under this Agreement,
13 including, but not limited to, its mailing of Class Notice, the Class Notices returned as
14 undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total
15 number of Requests for Exclusion from Settlement it received (both valid or invalid),
16 and the number of written objections and the number of Class Members who have
17 submitted valid Requests for Exclusion. The Administrator will supplement its
18 declaration as needed or requested by the Parties and/or the Court. Class Counsel is
19 responsible for filing the Administrator’s declaration(s) in Court.

20 7.8.6. Final Report by Settlement Administrator. Within 10 days after the Administrator
21 disburses all funds in the Gross Settlement Amount, the Administrator will provide
22 Class Counsel and Defense Counsel with a final report detailing its disbursements by
23 employee identification number only of all payments made under this Agreement. At
24 least 10 days before any deadline set by the Court, the Administrator will prepare, and
25 submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in
26 Court attesting to its disbursement of all payments required under this Agreement. Class
27 Counsel is responsible for filing the Administrator's declaration in Court.

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

8. ESCALATOR CLAUSE

8.1. Increase in Workweeks. Defendants represent that there are no more than 11,098 Workweeks worked during the Class Period. In the event the number of Workweeks worked by Class Members during the Class Period increases by more than 10%, or 1,110 Workweeks, then the Gross Settlement Amount shall be increased proportionally by the Workweeks in excess of 12,208 Workweeks multiplied by the Workweek Value. The Workweek Value shall be calculated by dividing the originally agreed-upon Gross Settlement Amount (\$600,000.00) by 11,098. The Parties agree that the Workweek Value amounts to, and the settlement amounts to \$54.06 per Workweek ($\$600,000 / 11,098$ Workweeks). Thus, for example, should there be 12,319 Workweeks in the Class Period, then the Gross Settlement Amount shall be increased by \$6,000.66 $[(12,319 \text{ Workweeks} - 12,208 \text{ Workweeks}) \times \$54.06 / \text{Workweek}]$.

9. MOTION FOR FINAL APPROVAL

Prior to the calendared Final Approval Hearing, Plaintiffs will file in Court, a Motion for Final Approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiffs shall endeavor to provide drafts of these documents to Defense Counsel at least 7 days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer, in good faith, to resolve any disagreements concerning the Motion for Final Approval.

9.1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

9.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The Court’s decision to award less than the amounts requested for the Class

Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Administration Expenses Payment, shall not constitute a material modification to the Agreement within the meaning of this paragraph.

9.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

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

9.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

10. AMENDED JUDGMENT

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

11. ADDITIONAL PROVISIONS

11.1. No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the Operative Complaint have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that Defendants' defenses in the Action have merit. In entering into this Agreement, Defendants do not admit, and specifically deny, that they violated any law, breached any contract, or otherwise harmed Plaintiffs or the Class Members in any way. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason, the Court does not grant Preliminary Approval, Final Approval or enter Judgment, Defendants reserve the right to contest certification of any class for any reasons, and Defendants reserve all available defenses to the claims in the Action, and Plaintiffs reserve the right to move for class certification on any grounds available and to contest Defendants' defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

11.2. No Public Comment. The Parties agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry, or have any communication with the press about the fact, amount or terms of the Settlement. Parties shall, and hereby do, direct their respective counsels to abide by the requirements of this paragraph.

11.3. The Parties separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court

1 order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal
2 government agency. Each Party agrees to immediately notify each other Party of any judicial or
3 agency order, inquiry, or subpoena seeking such information. The Parties separately agree not to,
4 directly or indirectly, initiate any conversation or other communication, before the filing of the
5 Motion for Preliminary Approval, any with third party regarding this Agreement or the matters
6 giving rise to this Agreement except to respond only that “the matter was resolved,” or words to
7 that effect. Plaintiffs and Defendant agree to instruct their respective counsels to abide by the
8 same confidentiality provision in this paragraph. This paragraph does not restrict Class Counsel’s
9 communications with Class Members in accordance with Class Counsel’s ethical obligations
10 owed to Class Members.

11 11.4. No Solicitation. The Parties separately agree that they and their respective counsel and
12 employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal
13 from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel’s
14 ability to communicate with Class Members in accordance with Class Counsel’s ethical
15 obligations owed to Class Members.

16 11.5. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement
17 together with its attached exhibits shall constitute the entire agreement between the Parties
18 relating to the Settlement, superseding any and all oral representations, warranties, covenants, or
19 inducements made to or by any Party.

20 11.6. Attorney Authorization. Plaintiffs and Defendants separately warrant and represent that
21 they have authorized Class Counsel and Defense Counsel, respectively, to take all appropriate
22 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate
23 its terms, and to execute any other documents reasonably required to effectuate the terms of this
24 Agreement including any amendments to this Agreement.

25 11.7. Cooperation. The Parties and their counsel will cooperate with each other and use their
26 best efforts, in good faith, to implement the Settlement by, among other things, modifying the
27 Settlement Agreement, submitting supplemental evidence and supplementing points and
28 authorities as requested by the Court. In the event the Parties are unable to agree upon the form

1 or content of any document necessary to implement the Settlement, or on any modification of the
2 Agreement that may become necessary to implement the Settlement, the Parties will seek the
3 assistance of a mediator and/or the Court for resolution.

4 11.8. No Prior Assignments. The Parties separately represent and warrant that they have not
5 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
6 encumber to any person or entity and portion of any liability, claim, demand, action, cause of
7 action, or right released and discharged by the Party in this Settlement.

8 11.9. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES
9 OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS
10 AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”)
11 ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT,
12 AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE
13 PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO
14 BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE
15 CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF
16 UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS
17 AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY
18 UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR
19 ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT,
20 (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
21 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
22 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
23 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
24 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
25 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
26 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
27 OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF
28 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE

1 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
2 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
3 AGREEMENT.

4 11.10. Modification of Agreement. This Agreement, and all parts of it, may be amended,
5 modified, changed, or waived only by an express written instrument signed by all Parties or their
6 representatives, and approved by the Court.

7 11.11. Agreement Binding on Successors. This Agreement will be binding upon, and inure to
8 the benefit of, the successors of each of the Parties.

9 11.12. Applicable Law. All terms and conditions of this Agreement and its exhibits will be
10 governed by and interpreted according to the internal laws of the state of California, without
11 regard to conflict of law principles.

12 11.13. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of
13 this Agreement. This Agreement will not be construed against any Party on the basis that the
14 Party was the drafter or participated in the drafting.

15 11.14. Confidentiality. To the extent permitted by law, all agreements made, and orders entered
16 during Action and in this Agreement relating to the confidentiality of information shall survive
17 the execution of this Agreement.

18 11.15. Use of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code
19 §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendants
20 in connection with the mediation, other settlement negotiations, or in connection with the
21 Settlement, may be used only with respect to this Settlement, and no other purpose, and may not
22 be used in any way that violates any existing contractual agreement, statute, or rule of court.

23 11.16. Headings. The descriptive heading of any section or paragraph of this Agreement is
24 inserted for convenience of reference only and does not constitute a part of this Agreement.

25 11.17. Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall
26 be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
27 weekend or federal legal holiday, such date or deadline shall be on the first business day
28 thereafter.

11.18. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall be accepted as an original. 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 signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

11.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

11.20. Severability. In the event that one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way effect any other provision if Defendants' Counsel and Class Counsel, on behalf of the Parties and the Settlement Class Members, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

IT IS SO AGREED:



Plaintiff, Jeff V. Lacap

For Defendant, Comfort California, Inc.
Pamela M. Williams, President

Plaintiff, Ofelia Miranda De Quiroz

For Defendant, Sunburst Hospitality
Corporation
Pamela M. Williams, President

11.18. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall be accepted as an original. 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 signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

11.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

11.20. Severability. In the event that one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way effect any other provision if Defendants' Counsel and Class Counsel, on behalf of the Parties and the Settlement Class Members, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

IT IS SO AGREED:

Plaintiff, Jeff V. Lacap

For Defendant, Comfort California, Inc.
Pamela M. Williams, President

OFELIA MIRANDA DE QUIROZ

Plaintiff, Ofelia Miranda De Quiroz

For Defendant, Sunburst Hospitality
Corporation
Pamela M. Williams, President

AGREED AS TO FORM ONLY:

David D. Bibiyan
Vedang J. Patel
Counsel for Plaintiff Jeff V. Lacap

Monte Grix
Darianne Young
Counsel for Defendants

JOSEPH LAVI

Lavi & Ebrahimian, LLP
Joseph Lavi
Vincent C. Granberry
William Tran
Eric J. Naessig
Counsel for Plaintiff Ofelia Miranda De Quiroz

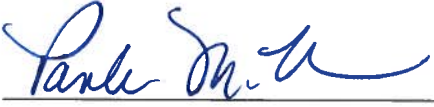
1 11.18. Execution in Counterparts. This Agreement may be executed in one or more counterparts
2 by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall
3 be accepted as an original. All executed counterparts and each of them will be deemed to be one
4 and the same instrument if counsel for the Parties will exchange between themselves signed
5 counterparts. Any executed counterpart will be admissible in evidence to prove the existence
6 and contents of this Agreement.

7 11.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the
8 litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
9 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend
10 the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
11 process.

12 11.20. Severability. In the event that one or more of the provisions contained in this Agreement
13 shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity,
14 illegality, or unenforceability shall in no way effect any other provision if Defendants' Counsel
15 and Class Counsel, on behalf of the Parties and the Settlement Class Members, mutually elect
16 in writing to proceed as if such invalid, illegal, or unenforceable provision had never been
17 included in this Agreement.

18 **IT IS SO AGREED:**

19
20 _____
21 Plaintiff, Jeff V. Lacap



For Defendant, Comfort California, Inc.
Pamela M. Williams, President

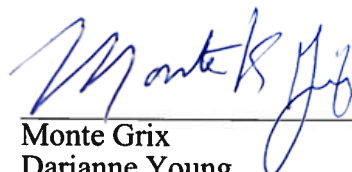
22
23 _____
24 Plaintiff, Ofelia Miranda De Quiroz



For Defendant, Sunburst Hospitality
Corporation
Pamela M. Williams, President

1 **AGREED AS TO FORM ONLY:**

2
3 _____
4 David D. Bibiyan
5 Vedang J. Patel
6 Counsel for Plaintiff Jeff V. Lacap



Monte Grix
Darianne Young
Counsel for Defendants

7 _____
8 Lavi & Ebrahimian, LLP
9 Joseph Lavi
10 Vincent C. Granberry
11 William Tran
12 Eric J. Naessig
13 Counsel for Plaintiff Ofelia Miranda De Quiroz