

STIPULATION OF SETTLEMENT AND RELEASE

This stipulation of settlement and release (“Stipulation of Settlement”) is made and entered into by and between plaintiffs John Costa (“Costa”) and Kevin Payne (“Payne,”) (collectively “Plaintiffs” or “Class Representatives”), individually and on behalf of all others similarly situated, and defendants Smuggler, LLC (“SMI”), Rare Bird Holdings, Inc. (“RBHI”), Brian Carmody (“Carmody”), Patrick Milling-Smith (“Milling-Smith”), and Division7, LLC (“DSLCC”) (collectively “Defendants”), and their respective counsel of record, subject to the terms and conditions hereof and the court’s approval.

A. Definitions.

1. Plaintiffs and the other members of the Settlement Class (as defined below) and Defendants are collectively referred to herein as “the Parties.”
2. “Class Counsel” are Harris & Ruble.
3. The “Complaint” and the “Lawsuit” refer collectively to the class and representative action entitled *Costa v. Smuggler, LLC et al.*, Case No. 2:23-CV-01468--WLH (RAOx) pending before the United States District Court for the Central District of California.
4. The “Class Period” is January 18, 2019 through and including July 28, 2023.
5. The “Settlement Class” means all individuals who are or were employed by one or both of the Defendants as a non-exempt employee during any portion of the Class Period (hereinafter, “Class Member” or “Class Members”).
6. The terms “Class Member” or “Class Members” mean all persons, excluding those on permanent Staff payroll who are employed on a continuous basis, who were paid wages by SMI and/or DSLCC on account of services provided in the production of Motion Pictures during the Class Period in California.
7. The “PAGA Period” is January 13, 2022 and through and including July 28, 2023.
8. “Aggrieved Employee” means all Class Members in California during the PAGA Period.

B. General.

9. The original complaint was filed in Los Angeles County Superior Court on January 18, 2023, which Defendants removed to federal court on April 7, 2023. On July 11, 2023, Plaintiffs filed a First Amended Complaint in federal court, (collectively, the “Complaint”).
10. The Complaint is primarily based on the following claims: (1) failure to pay continuing wages (Cal. Labor Code sections 201.3, 201.5, and 203); (2) failure to pay minimum wages (Code sections 510, 1194, 1194.2, 1197, and 1197.1; (3) failure to provide compliant meal breaks (Code sections 226.7 and 512(a)); (4) failure to provide compliant rest breaks (Code section 226.7); (5) failure to provide accurate itemized wage statements (Code section 226(a)); (6) unfair competition (Business and Professions Code 17200); (7) failure to reimburse for necessary business expenses

(Code section 2802); (8) violation of the Fair Labor Standards Act (29 U.S.C., section 201, et seq.); (9) failure to keep accurate payroll records (Code section 226(b); and (10) failure to make personnel records available (Code section 1198.5). They further allege that Defendants engaged in unfair competition, and seek recovery of unpaid wages, restitution, damages for actual injury, statutory penalties, civil penalties, interest, attorneys' fees and costs.

11. Defendants deny any liability or wrongdoing of any kind associated with the claims alleged in the Lawsuit, and further deny that the Lawsuit is appropriate for class or representative action treatment for any purpose other than this settlement. Defendants contend, among other things, they have complied at all times with the California Labor Code and the applicable Industrial Welfare Commission Wage Order. In addition, it is Defendants' position that, if this case were to be litigated, class certification would be inappropriate because individual issues predominate, that class and/or representative action treatment would be improper.

12. The Class Representatives believe that the Lawsuit is meritorious and that class certification for purposes other than settlement would be appropriate.

13. Class Counsel have conducted an investigation into the facts of the Lawsuit, including an exchange of information. Class Counsel are knowledgeable about and have done research with respect to the applicable law and potential defenses to the claims of the Class Members. Class Counsel have diligently pursued an investigation of the Class Members' claims against Defendants. Plaintiffs' expert performed an analysis of the class data in anticipation for mediation. Ultimately, the Parties accepted a mediator's proposal. Based on the information provided by Defendants, and their own independent investigation and evaluation, Class Counsel are of the opinion that the settlement with Defendants for the consideration and on the terms set forth in this Stipulation of Settlement is fair, reasonable, and adequate and is in the best interest of the Class Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, various defenses asserted by Defendants, and numerous potential appellate issues. Defendants and Defendants' counsel agree that the settlement is fair, reasonable, and adequate.

14. For settlement purposes only, Defendants will stipulate that the Settlement Class described herein may be certified. The Parties agree that certification for settlement purposes under the more lenient standard courts have applied to settlements (*e.g.*, manageability is not an issue) is not an admission that class certification is proper under the more stringent standard applied for litigation purposes, and that evidence of this limited stipulation to certification for settlement will not be admissible in the Lawsuit for any purpose other than seeking court approval of the settlement, and will not be admissible for any purpose in any other future proceeding that may be brought against Defendants.

C. Terms of Settlement.

15. The financial terms of the Settlement are as follows:

(a) **Total Settlement Amount:** Defendants will pay a Total Settlement Amount of One Million Three Hundred Fifty Thousand Dollars (\$1,350,000) ("the Total Settlement Amount"), inclusive of attorneys' fees, costs, and expenses directly related to the Lawsuit, which includes all such fees and costs incurred to date, as well as all such fees and costs incurred in documenting the

Settlement, securing court approval of the Settlement, administering the Settlement (including the Settlement Administrator's fees and expenses), and obtaining a dismissal of the action, the service payment to the class representatives, and the payment to the State of California Labor Workforce and Development Agency ("LWDA") in connection with the claim for penalties under the California Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* ("PAGA"). This is an all paid Settlement; there shall be no reversion of any portion of the Total Settlement Amount to Defendants.

(b) **Net Settlement Proceeds:** The Total Settlement Amount will be reduced by (a) Class Counsel's awarded attorneys' fees and litigation costs and expenses; (b) the Settlement Administrator's fees and expenses; (c) the payment to the LWDA; and (d) the service payments to Plaintiffs as the Class Representatives. The amount remaining after these deductions are made is defined as the "Net Settlement Proceeds." The Net Settlement Proceeds shall be divided between those Class Members who do not opt out (Participating Class Members) on an equal basis.

(c) **Tax Treatment of Class Member Settlement Payments:** Because the Individual Settlement Payments are for settlement of claims for alleged unpaid wages, interest, and statutory and civil penalties, 25% of the Individual Settlement Amounts will be allocated to the unpaid wages claims, will be subject to tax withholdings, and this portion of the payment will be reported on an IRS Form W-2; 50% will be allocated to the penalties; and 25% will be allocated to interest, and the portions allocated to the interest and statutory and civil penalty claims will be paid without withholding any amount and will be reported on an IRS Form 1099. Defendants shall pay the employer's share of payroll taxes on the portion of the settlement attributable to unpaid wages.

(d) **Payment to LWDA:** The Parties agree that \$50,000 of the Total Settlement Amount shall be allocated to settle the PAGA claim, and will be distributed as follows: 75% of the apportioned PAGA settlement amount (\$37,500) will be paid to the LWDA, and the remaining 25% (\$12,500) will be divided among the Aggrieved Employees equally, and included in their Individual Settlement Payments. Any Non Participating Aggrieved Employee (who opts out of the settlement) will release their PAGA claim. See Robinson v. So. Ctys. Oil Co., 53 Cal. App. 5th 476 (2020). If the Court approves less than the amount requested, the Settlement Administrator will allocate the remainder of the payment to the Net Settlement Proceeds.

(e) **Service Payments to Class Representatives:** The amounts awarded to the Class Representatives as a service payment will be set by the Court in its discretion, not to exceed \$7,500 each, and the awarded amounts will come from the Total Settlement Amount, and shall be in addition to Plaintiffs' Individual Settlement Payments; provided, however, that to be eligible for a Class Representative service payment, Plaintiffs' individual claims in the Lawsuit must be dismissed with prejudice and each of them must execute a settlement agreement and general release document, containing a general release of all known and unknown claims they may have against Defendants, and their current and former parents, subsidiaries and affiliated entities, based on their employment with Defendants, in a form acceptable to Defendants and prepared by their counsel. An IRS Form 1099 will be issued with respect to Plaintiffs' awarded class representative service payments. Should the Court approve lesser amounts, the difference shall be added to the Net Settlement Proceeds.

(f) **Attorneys' Fees and Litigation Costs:** Defendants agree and will not object to an award of attorneys' fees and litigation costs to Class Counsel from the Total Settlement Amount in

amounts to be set by the Court, but not exceeding 33 1/3% of the Total Settlement Amount (*i.e.*, \$450,000.00) for attorneys' fees and not exceeding \$35,000 for documented out-of-pocket litigation costs and expenses. A Form 1099 will be issued to Class Counsel with respect to their awarded attorneys' fees and litigation costs and expenses. Should the Court approve lesser amounts, the difference shall be added to the Net Settlement Proceeds.

(g) **Settlement Administration Costs:** The Parties shall mutually agree upon and propose that the Court approve and appoint a third-party settlement administrator ("Settlement Administrator"). The Parties shall obtain a "not to exceed" commitment from the Settlement Administrator for its fees and other charges, which amount shall be paid from the Total Settlement Amount.

16. Any communication about the Settlement to Class Members prior to the Court-approved mailing will be limited to a statement that a settlement has been reached and the details will be communicated in a forthcoming Court-approved notice.

17. The Parties agree that the Settlement is fair, reasonable and adequate, and will so represent to the Court. In addition, Monique Ngo-Bonnici, who served as the mediator may, at her discretion, execute a declaration supporting the Settlement and the reasonableness of the Settlement, and the Court may, in its discretion, contact Ms. Ngo-Bonnici to discuss the Settlement and whether this Settlement is fair and reasonable.

D. Release of Claims.

18. Effective on the date when Defendants fully fund the entire Gross Settlement Amount and funds all employer-side payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs, and Class Members will release claims against all Released Parties, defined as Defendants, any division thereof, any direct or indirect parent or subsidiary, affiliated entity, or related entity, and any predecessors, successors, and assigns of any of the foregoing, as follows:

(a) All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Complaint, including: (1) failure to pay continuing wages (Cal. Labor Code sections 201.3, 201.5, and 203); (2) failure to pay minimum wages (Code sections 510, 1194, 1194.2, 1197, and 1197.1); (3) failure to provide compliant meal breaks (Code sections 226.7 and 512(a)); (4) failure to provide compliant rest breaks (Code section 226.7); (5) failure to provide accurate itemized wage statements (Code section 226(a)); (6) unfair competition (Business and Professions Code 17200); (7) failure to reimburse for necessary business expenses (Code section 2802); (8) violation of the Fair Labor Standards Act (29 U.S.C., section 201, *et seq.*); (9) failure to keep accurate payroll records (Code section 226(b)); and (10) failure to make personnel records available (Code section 1198.5). Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the FEHA, unemployment insurance, disability, social security, workers' compensation, wage claims, or claims based on facts occurring outside the Class Period. In addition, only those Participating Class Members who cash their settlement payment checks will be deemed to have released Released Parties on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs,

administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Complaint under the Fair Labor Standards Act. The following language will be printed on the reverse of each Individual Class Payment check, or words to this effect: “By endorsing or otherwise negotiating this check, I acknowledge that I read, understood, and agree to the terms set forth in the Notice of Class Action Settlement and I consent to join in the Fair Labor Standards Act (“FLSA”) portion of the Action, elect to participate in the settlement of the FLSA claims, and agree to release all of my FLSA claims that are covered by the Settlement.”

(b) Plaintiffs, Participating Class Members, and Non-Participating Class Members who are Aggrieved Employees also are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts contained Plaintiffs’ PAGA Notice letter and the Complaint.

(c) For purposes of Plaintiffs’ Release, Class Representatives expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

In consideration of their awarded attorneys’ fees and litigation costs and expenses, Class Counsel waive any and all claims to any further attorneys’ fees and expenses in connection with the Lawsuit.

E. Notices.

19. Pursuant to PAGA, Plaintiffs will submit a copy of this Agreement to the LWDA at the same time that it is submitted to the Court for preliminary approval of this Settlement.

20. Within ten (10) calendar days after entry of the order granting preliminary approval, Defendants shall provide to the Settlement Administrator a list of all Class Members, including their last known address and telephone number of each Class Member as reflected by the number of wage statements issued to the Class Member.

21. A notice of pendency of class action, proposed settlement and hearing date for court approval (“Notice”) in the form attached hereto as Exhibit 1, in English only, as all or virtually all class members are literate in English, and as approved by the court, shall be sent by the Settlement Administrator to the Class Members, by first class mail, within fourteen (14) calendar days after receiving the Class Member list from Defendants. The Notice will inform each Class Member of his or her estimated payment and the court-established deadlines for filing objections and the right to request exclusion. The Settlement Administrator shall use standard skip-tracing methods to obtain forwarding addresses of Class Members if any Notices are returned as undeliverable.

22. The Settlement Administrator will make reasonable efforts to ensure that the Notice is mailed to all Class Members. It will be conclusively presumed that a Class Member's Notice was received if the Notice has not been returned within forty-five (45) calendar days of the original mailing of Notice to the Class Member.

23. At least ten (10) calendar days prior to the final approval hearing¹, the Settlement Administrator will provide a declaration of due diligence and proof of mailing with regard to the mailing of the Notice to counsel for the Parties.

24. Each Class Member will be fully advised of the Settlement and the ability to request exclusion from the Settlement or to object to the Settlement.

25. Each Class Member shall have 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Pay Periods and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. To the extent a Class Member disputes the information listed on his or her Notice form, that Class Member may produce evidence to the Settlement Administrator showing such other dates he or she contends should be shown on the Notice form. The Parties will meet and confer to evaluate the evidence submitted by the Class Member. If the Parties cannot agree, the dispute will be submitted to the Settlement Administrator for input, and if the Parties still do not agree, the matter will be submitted to the court whose decision as to which information should be applied will be final and binding.

26. The Notice shall provide that Class Members who wish to exclude themselves from the Class must submit to the Settlement Administrator a written statement requesting exclusion from the Class no later than forty-five (45) calendar days after the original mailing of the Notice. Such written request for exclusion must contain the name, address, and telephone number of the person requesting exclusion, be returned to the Settlement Administrator's address provided in the Notice, and be postmarked on or before the request for exclusion deadline. Any Class Member who properly requests exclusion using this procedure will not be entitled to any Class Settlement payment from the Settlement and their share shall be paid in accordance with Paragraph 30, below, and they will not be bound by the Class Settlement or have any right to object, appeal or comment thereon. Class Members who fail to submit a valid and timely request for exclusion on or before the request for exclusion deadline date shall be bound by all terms of the Settlement and any judgment or order of dismissal entered in the Lawsuit if the Settlement is finally approved by the court, regardless of whether they ineffectively or untimely request exclusion from the Settlement. Class Members who opt out of the Class Settlement will still release their PAGA claims and be entitled to their portion of the \$12,500 allocated to settle the PAGA claims.

27. If ten percent (10%) or more of the Class Members submit a timely request for exclusion, Defendants shall have the option of canceling this Settlement and all actions taken in its furtherance will be null and void. Defendants must exercise this right within fourteen (14) calendar days after the Settlement Administrator notifies the Parties of the number of valid requests for exclusion received, which the Settlement Administrator must do within five (5) calendar days after the deadline for submission of the requests for exclusion. If Defendants exercise their right to cancel the

¹ The Parties agree that the Final Approval Hearing should take place no sooner than 100 days after the Court grants preliminary approval of the settlement.

Settlement, they shall be responsible for payment of the portion of the Settlement Administrator's costs, if any, incurred through the date notice of cancelation is given.

28. In order to object to the Settlement, a Class Member must mail his or her objection to the Settlement Administrator, and it must be postmarked no later than forty-five (45) calendar days after the mailing of the Notice.

29. Defendants will provide funds to the Settlement Administrator to cover the total amount of payments to Class Members, the court-approved attorneys' fees and litigation costs and expenses, the service payment to the Class Representative, the LWDA payment, and the Settlement Administrator's fees within thirty (30) calendar days after the final approval of the Settlement by the court if there are no objectors, or if there are objectors, within fifteen (15) business days of receiving final court approval of the Settlement and the expiration of the time to file appeals or the resolution of any appeals filed. Defendants are jointly and severally responsible for the Total Settlement Amount.

30. The Settlement Administrator will mail or wire all required payments no later than fourteen (14) calendar days after receipt of the funds from Defendants. It is expressly understood and agreed that the Individual Settlement Payments will become void and no longer available if not cashed within 180 days after mailing. Thereafter, amounts represented by uncashed checks shall be equally divided and paid to those Class Members who cashed their initial checks, with any uncashed second checks being distributed to the California Unclaimed Property Fund.

31. Defendants have represented that there are approximately 7,650 Class Members from January 18, 2019 to June 17, 2023. This is a material representation for Plaintiffs to enter into this Settlement. Should the actual number of Class Members who worked within this time frame increase beyond 10%, the Total Settlement Amount shall increase proportionately for each additional Class Member. For the sake of clarity, and by way of example, if the number of Class Members totals 8,415 Class Members, there shall be no increase in the Total Settlement Amount. If the number of Class Members totals 8,450, then the Total Settlement Amount shall increase by 10%.

F. Duties of the Parties Prior to Final Court Approval.

32. Promptly after execution of this Stipulation of Settlement, Plaintiffs will move the Court for preliminary approval of this Settlement, which will not be opposed by Defendants as long as Defendants are allowed to review and provide input into the moving papers, requesting entry of an order:

- (a) preliminarily approving this Settlement;
- (b) approving the proposed Notice as to form and content;
- (c) directing the mailing of the Notice to the Class Members;
- (d) preliminarily approving the PAGA payment of \$37,500 to the LWDA and \$12,500 to the Aggrieved Employees;
- (e) preliminarily setting attorneys' fees and costs payable to Class Counsel;

- (f) preliminarily setting the service payments to the Class Representatives;
- (g) appointing a Settlement Administrator and approving its not to exceed fees; and
- (h) scheduling a final approval hearing on the question of whether the proposed Settlement should be approved as fair, reasonable and adequate as to the Class Members.

A copy of this Stipulation of Settlement shall be submitted in support of the motion for preliminary approval of the Settlement.

G. Duties of the Parties in Connection with and Following Final Court Approval.

33. In connection with the hearing on final approval of the Settlement provided for in this Stipulation of Settlement, a proposed final order will be submitted:

- (a) approving the Settlement, adjudging the terms thereof to be fair, reasonable, and adequate, and directing consummation of its terms and provisions;
- (b) approving Class Counsel's application for an award of attorneys' fees and reimbursement of documented litigation costs and expenses, the service payments to the Class Representative, the payment to the LWDA, and the costs of administering the Settlement; and
- (c) entering a judgment that results in dismissal of the Lawsuit with prejudice, and permanently barring all Class Members from prosecuting any Class Members' Released Claims against any of the Released Parties.

H. Voiding the Agreement.

34. A failure of the court to approve any material provision or condition of this Stipulation of Settlement that effects a fundamental change of the Parties' Settlement, or any reversal or material modification on appeal of any court order preliminarily or finally approving the Settlement, shall render the entire Stipulation of Settlement voidable and unenforceable as to all Parties herein at the option of Plaintiffs or Defendants.

I. Parties' Authority.

35. The signatories hereto represent that they are fully authorized to enter into this Stipulation of Settlement and bind the Parties hereto to the terms and conditions hereof.

J. Mutual Full Cooperation.

36. The Parties agree to fully cooperate with each other to accomplish the terms of this Stipulation of Settlement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Stipulation of Settlement. The Parties to this Stipulation of Settlement shall use their best efforts, including all efforts contemplated by this Stipulation of Settlement and any other efforts that may become necessary by order of the court, or otherwise, to effectuate this Stipulation of Settlement and the terms set forth herein. As soon as practicable after execution of this Stipulation of Settlement, Class Counsel shall,

with the assistance and cooperation of Defendants and their counsel, take all necessary steps to secure the court's preliminary and final approval of the Settlement.

K. No Prior Assignments.

37. The Parties hereto represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights released and discharged by this Stipulation of Settlement.

L. No Admission.

38. Nothing contained herein, nor the consummation of this Stipulation of Settlement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendants or any of the other Released Parties. Each of the Parties hereto has entered into this Stipulation of Settlement with the intention of avoiding further disputes and litigation with the attendant risk, inconvenience, and expenses. This Stipulation of Settlement is a settlement document and, pursuant to Rule 408 of the Federal Rules of Evidence and/or any other similar law, shall not be admissible in evidence in any proceeding, except an action or proceeding to approve the Settlement, and/or interpret or enforce this Stipulation of Settlement.

M. Enforcement Actions.

39. Except as otherwise provided in this Stipulation of Settlement, in the event that one or more of the Parties to this Stipulation of Settlement institutes any legal action, arbitration, or other proceeding against any of the other Parties to enforce the provisions of this Stipulation of Settlement or to declare rights and/or obligations under this Stipulation of Settlement, the successful party shall be entitled to recover from the unsuccessful party reasonable attorneys' fees and costs, including expert witness fees, incurred in connection with any enforcement actions.

N. Notices.

40. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed:

To Plaintiffs and the Class Members:

Alan Harris, Esq.
David Garrett, Esq.
Min Ji Gal, Esq.
Harris & Ruble
655 N. Central Ave. 17th Floor
Glendale, CA 91203

To Defendants:

Scott J. Witlin, Esq.
Michael Witzak, Esq.
BARNES & THORNBURG LLP
2029 Century Park East, Suite 300
Los Angeles, California 90067
Telephone: 310-284-3880
Facsimile: 310-284-3894

O. Construction.

41. The Parties hereto agree that the terms and conditions of this Stipulation of Settlement are the result of lengthy, intensive arms-length negotiations between the Parties and that this Stipulation of Settlement shall not be construed in favor of or against any of the Parties by reason of the extent to which any party or his or its counsel participated in the drafting of this Stipulation of Settlement.

P. Captions and Interpretations.

42. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Stipulation of Settlement or any provision hereof. Each term of this Stipulation of Settlement is contractual and not merely a recital.

Q. Modification.

43. This Stipulation of Settlement may not be changed, altered, or modified, except in writing and signed by Plaintiffs, Class Counsel, and Defendants and their counsel, and if after preliminary court approval, upon approval of the court. This Stipulation of Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by Plaintiffs, Class Counsel, and Defendants and their counsel.

R. Integration Clause.

44. This Stipulation of Settlement contains the entire agreement between Plaintiffs and the Class Members, on the one hand, and Defendants, on the other hand, relating to the Settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

S. Binding On Assigns.

45. The Parties intend that this Stipulation of Settlement shall be fully enforceable and binding upon all Parties, and that it shall be admissible and subject to disclosure in any proceeding to enforce its terms. This Stipulation of Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

T. No Solicitation of Settlement Objections or Exclusions.

46. Plaintiffs and Defendants agree to use their best efforts to carry out the terms of this Settlement. None of the Parties or their counsel shall seek to solicit or otherwise encourage Class Members to submit written objections to the Settlement or request exclusion from the Settlement Class, or encourage Class Members to appeal from the Court's final approval order.

U. Signatures of All Class Members Unnecessary to be Binding.

47. It is agreed that, because the members of the Class Members are numerous, it is impossible or impractical to have each Class Member execute this Stipulation of Settlement. The Notice will advise all Class Members of the binding nature of the release provided herein and such shall have the same force and effect as if this Stipulation of Settlement were executed by each Class Member.

V. Counterparts.

48. This Stipulation of Settlement may be executed in counterparts, and when Plaintiffs, Class Counsel, Defendants, and counsel for Defendants have signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully-signed Stipulation of Settlement, which shall be binding upon and effective as to all Parties.

Dated: 9/1/2023 _____

PLAINTIFFS AND CLASS REPRESENTATIVES:

DocuSigned by:

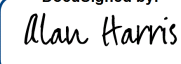
 FCA19FF7705F4F7
 JOHN COSTA

 KEVIN PAYNE

Dated: 9/1/2023 _____

CLASS COUNSEL:

HARRIS & RUBLE

DocuSigned by:

 By: _____
 9627375CC26B4C2
 ALAN HARRIS

Dated: _____

DEFENDANTS:

SMUGGLER, LLC

By: _____

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Dated: 9/1/2023 _____

PLAINTIFFS AND CLASS REPRESENTATIVES:

DocuSigned by:

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 KEVIN PAYNE

Dated: 9/1/2023 _____

CLASS COUNSEL:

HARRIS & RUBLE

By: DocuSigned by:

96273756C26B4C2...
 ALAN HARRIS

Dated: _____

DEFENDANTS:

SMUGGLER, LLC

By: _____

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Dated: _____

PLAINTIFFS AND CLASS REPRESENTATIVES:_____
JOHN COSTA_____
KEVIN PAYNE

Dated: _____

CLASS COUNSEL:

HARRIS & RUBLE

By: _____
ALAN HARRIS

Dated: 9/1/2023

DEFENDANTS:

SMUGGLER, LLC

By: 
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Dated: 9/1/2023

RARE BIRD HOLDINGS, INC.

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By: Patrick Milling-Smith
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Dated: 9/1/2023

BRIAN CARMODY

DocuSigned by:
By: Brian Carmody
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Dated: 9/1/2023

PATRICK MILLING-SMITH

DocuSigned by:
By: Patrick Milling-Smith
18643324659B43F...

Dated: 9/1/2023

DIVISION7, LLC

DocuSigned by:
By: Andrew Colón
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Dated: 9/1/2023

DEFENDANTS' COUNSEL:

BARNES & THORNBURG LLP

By: Scott J. Witlin
SCOTT J. WITLIN