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14 as an aggrieved employee, and on behalf of all other aggrieved employees

15 *[Other Counsel listed on the next page]*

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **FOR THE COUNTY OF ORANGE**

18 ASUNCION GONZALEZ RUVALCABA, as
19 an aggrieved employee, and on behalf of all
20 other aggrieved employees under the Labor
21 Code Private Attorneys General Act of 2004,

22 Plaintiff,

23 v.

24 ROD FRASER ENTERPRISES, INC., a
25 California Corporation; RODERICK A
26 FRASER II, an individual; and DOES 1
27 through 100, inclusive,

28 Defendants.

CASE NO.: 30-2023-01308022-CU-OE-CXC
CONSOLIDATED CASE NO.: 30-2023-
01320538-CU-OE-CXC

[Assigned for all purposes to the Hon. Lon
F. Hurwitz Wilson in Dept. CX103]

**JOINT STIPULATION RE:
REPRESENTATIVE ACTION
SETTLEMENT**

ACTION FILED: April 20, 2023
TRIAL DATE: None Set

1 **SHEPPARD, MULLIN, RICHTER & HAMPTON LLP**

2 A Limited Liability Partnership

3 Including Professional Corporations

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5 KRISTI L. THOMAS, Cal. Bar No. 276511

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7 Costa Mesa, California 92626-1993

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12 Attorneys for Defendants, ROD FRASER ENTERPRISES, INC.
13 and RODERICK A FRASER II
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1 **JOINT STIPULATION RE: REPRESENTATIVE ACTION**

2 This Joint Stipulation Re: Representative Action Settlement (“Settlement,” “Agreement,”
3 or “Settlement Agreement”) is made by and between plaintiff Asuncion Gonzalez Ruvalcaba
4 (“Plaintiff”), on one hand; and defendants Rod Fraser Enterprises, Inc. (“RFE”) and Roderick A
5 Fraser II (collectively, “Defendants”) on the other hand. The Agreement refers to Plaintiff and
6 Defendants collectively as “Parties,” or individually as “Party.”

7 **I. DEFINITIONS**

8 **A. “Actions”** means Plaintiff’s lawsuits seeking PAGA civil penalties against
9 Defendants, captioned *Asuncion Gonzalez Ruvalcaba v. Rod Fraser Enterprises, Inc., et al.*, Case
10 No. 30-2023-01320538-CU-OE-CXC, initiated on April 20, 2023, and pending before the
11 Superior Court of the State of California, County of Orange (the “PAGA Action”), and Case No.
12 30-2023-01308022-CU-OE-CXC initiated on February 14, 2023, filed as a Class Action and
13 pending before the Superior Court of the State of California, County of Orange.

14 **B. “Agreement,” “Settlement” or “Settlement Agreement”** means this Joint
15 Stipulation Re: Representative Action Settlement, and its exhibits, attached hereto and
16 incorporated herein.

17 **C. “Aggrieved Employees”** means all individuals who are or were employed as non-
18 exempt hourly employees by RFE within the State of California during the PAGA Period.

19 **D. “Aggrieved Employee List”** means a complete list of all Aggrieved Employees
20 that RFE will diligently and in good faith compile from its records and provide to the Settlement
21 Administrator after the Court grants approval of the Settlement. The Aggrieved Employee List
22 will include information regarding the Aggrieved Employees compiled from RFE’s records and
23 provided to the Settlement Administrator in a Microsoft Excel spreadsheet, including each
24 Aggrieved Employee’s: (1) full name; (2) last known address; (3) last known phone number; (4)
25 social security number; (5) hire date(s), termination dates(s) (as applicable), and re-hire date(s)
26 (as applicable); and (6) pay periods worked during the PAGA period.

27 **E. “Aggrieved Employee Address Search”** means the Administrator’s
28 investigation and search for current Aggrieved Employees’ mailing addresses using the National

1 Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved
2 Employees.

3 **F. "Approval Order"** means the Court Order Granting Approval of PAGA
4 Settlement.

5 **G. "Court"** means the Superior Court of the State of California for the County of
6 Orange.

7 **H. "Defendants"** means Rod Fraser Enterprises, Inc., and Roderick A. Fraser II.

8 **I. "Defense Counsel"** means Greg S. Labate and Kristi L. Thomas of Sheppard,
9 Mullin, Richter & Hampton LLP.

10 **J. "Effective Date"** means the date that the Court or any party hereto serves notice
11 of the Court's order and judgment approving the PAGA Settlement and no timely appeal thereto
12 has been filed within 60 days ("Approval Order" and "Judgment"). In the event that a timely
13 appeal is filed within 60 days of the Court Approval Order and Judgment, the Effective Date
14 shall occur when the appeal is adjudicated and no longer subject to further judicial review. At
15 no time will Defendant have any obligation to fund the settlement, in whole or in part, until after
16 this Effective Date.

17 **K. "Gross Settlement Amount"** means the settlement amount of Six Hundred
18 Twelve Thousand Five Hundred Dollars and Zero Cents (\$612,500.00), as the same may be
19 escalated pursuant to Paragraph III(L)(2) of this Agreement. The Gross Settlement Amount
20 represents a global settlement of all allegations, claims, and causes of action asserted in the
21 Actions and will include all the following: Plaintiff's Counsel Attorneys' Fees (subject to Court
22 approval), Plaintiff's Counsel Attorneys' Costs (subject to Court approval), Service Award
23 (subject to Court approval), Settlement Administration Costs (subject to Court approval), LWDA
24 PAGA Payment, and Individual PAGA Payments.

25 **L. "Individual PAGA Payment"** means the 25% of the Net Settlement Amount to
26 be paid to the Aggrieved Employees.

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1 **M. “Individual Settlement Payment(s)”** means the *pro rata* amount payable to each
2 Aggrieved Employee from the 25% of the Net Settlement Amount to be calculated based on the
3 number of Pay Periods worked by the Aggrieved Employee.

4 **N. “Judgment”** means the judgment entered by the Court based upon the Final
5 Approval.

6 **O. “LWDA”** means the California Labor and Workforce Development Agency, the
7 agency entitled, under Labor Code section 2699, subd. (i).

8 **P. “LWDA PAGA Payment”** means the 75% of the Net Settlement Amount to be
9 paid to the LWDA under Labor Code section 2699, subd. (i).

10 **Q. “Net Settlement Amount”** means the Gross Settlement Amount, less the
11 following payments, in the amounts approved by the Court: Plaintiff’s Counsel’s Attorneys’
12 Fees, Plaintiff’s Counsel’s Attorneys’ Costs, Plaintiff’s Enhancement Payment and Settlement
13 Administration Costs.

14 **R. “Operative Complaint”** means the complaint filed by Plaintiff in the Orange
15 County Superior Court on April 20, 2023.

16 **S. “PAGA”** means the Private Attorneys General Act of 2004 as codified in
17 California Labor Code section 2698, *et seq.*

18 **T. “PAGA Notice”** means Plaintiff’s letter to Defendants and the LWDA
19 providing notice pursuant to Labor Code section 2699.3, subd.(a).

20 **U. “PAGA Payment Letter”** means a letter that the Settlement Administrator will
21 send to each Aggrieved Employee with his or her Individual Settlement Payment, which explains
22 the reason for the Individual Settlement Payment, substantially in the form attached hereto as
23 Exhibit “A,” excluding any revisions by the Court.

24 **V. “PAGA Penalties”** means the total amount of PAGA civil penalties to be paid
25 from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees and the 75% to
26 LWDA in settlement of PAGA claims.

27 **W. “PAGA Period”** means the period from February 8, 2022 through February 20,
28 2024, subject to the escalator clause in paragraph III(K)(2) of this Agreement.

1 **X. “PAGA Released Claims”** means the claims being released by Plaintiff,
2 Aggrieved Employees and, to the extent permitted by law, the State of California, and as
3 described in section III(J)(1) of this Agreement.

4 **Y. “Pay Period”** means any pay period when an Aggrieved Employee worked at any
5 time as an employee for RFE in a non-exempt, hourly-paid position during the PAGA Period,
6 based on timekeeping data and applicable hire dates, re-hire dates (as applicable), and termination
7 dates (as applicable).

8 **Z. “Parties”** means, collectively, Plaintiff and Defendants.

9 **AA. “Plaintiff” or “Named Plaintiff”** shall refer to Asuncion Gonzalez Ruvalcaba.

10 **BB. “Plaintiff’s Counsel”** means: David D. Bibiyan, Jeffrey D. Klein and Vedang J.
11 Patel of Bibiyan Law Group, P.C.

12 **CC. “Plaintiffs’ Counsel’s Attorneys’ Costs”** means the amount not to exceed Thirty
13 Thousand Dollars and Zero Cents (\$30,000.00), according to proof and subject to approval by
14 the Court. Plaintiff’s Counsel’s Attorneys’ Costs will be paid from, and not in addition to, the
15 Gross Settlement Amount. The amount of Plaintiff’s Counsel’s Attorneys’ Costs shall include
16 all past and future attorneys’ costs to Plaintiff’s Counsel—including, without limitation, all costs
17 expended by Plaintiff’s Counsel in defending the Settlement and securing approval of the
18 Settlement (including any appeals).

19 **DD. “Plaintiffs’ Counsel’s Attorneys’ Fees”** means the amount not to exceed thirty-
20 five percent (35%) of the Gross Settlement Amount which, subject to escalation pursuant to
21 section III(L)(2) of this Agreement and approval by the Court, amounts to \$214,375.00.
22 Plaintiff’s Counsel’s Attorneys’ Fees will be paid from, and not in addition to, the Gross
23 Settlement Amount. The amount of Plaintiff’s Counsel’s Attorneys’ Fees shall include all past
24 and future attorneys’ fees to Plaintiff’s Counsel—including, without limitation, all time expended
25 by Plaintiff’s Counsel in defending the Settlement and securing approval of the Settlement
26 (including any appeals).

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1 **EE. “Plaintiff’s Enhancement Payment”** means the payment of up to \$7,500.00 to
2 the Plaintiff for initiating the Actions and providing services in support of the Actions, subject to
3 Court approval and paid out of the Gross Settlement Amount.

4 **FF. “Released Parties”** shall refer to RFE, and each of its past, present and future
5 agents, employees, servants, officers, directors, partners, trustees, representatives, shareholders,
6 stockholders, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations
7 and/or partnerships, divisions, assigns, predecessors, successors, insurers, consultants, joint
8 venturers, joint employers, affiliates, alter-egos, and affiliated organizations, and all of its
9 respective past, present and future employees, directors, officers, agents, attorneys, stockholders,
10 fiduciaries, parents, subsidiaries, affiliates, and assigns, and each of them, including Roderick A.
11 Fraser II.

12 **GG. “RFE”** shall refer to defendant Rod Fraser Enterprises, Inc.

13 **HH. “Settlement Administration Costs”** means the costs payable from the Gross
14 Settlement Amount to the Settlement Administrator for administering this Settlement. All
15 Settlement Administration Costs shall be paid from, and not in addition to, the Gross Settlement
16 Amount. The Settlement Administration Costs include, but are not limited to, the required tax
17 reporting on the Individual Settlement Payments, the issuance of appropriate tax forms, as
18 needed, the confirmation/audit of claims for payments for compliance with the Settlement, the
19 calculation and distribution of all payments to be made pursuant to the Settlement, and the
20 provision of reports and declarations. The Settlement Administration Costs are currently
21 estimated to be no more than \$5,850.00. If the actual amount of the Settlement Administration
22 Costs is less than \$5,850.00, the difference between \$5,850.00 and the actual Settlement
23 Administration Costs shall be a part of the Individual PAGA Payment. If the Settlement
24 Administration Costs exceed \$5,850.00, then such excess will be paid solely from the Gross
25 Settlement Amount and Defendants will not be responsible for paying any additional funds in
26 order to pay these additional costs.

27 **II. “Settlement Administrator” or “Administrator”** means the third-party
28 administrator mutually agreed upon by the Parties and approved by the Court that will be

1 responsible for the administration of the Settlement. The Parties will obtain a not-to-exceed quote
2 from the mutually acceptable qualified settlement administrator for claims administration costs.
3 The Settlement Administrator mutually agreed upon by the Parties is ILYM Group, Inc.
4 (“ILYM”).

5 **II. BACKGROUND**

6 **A. The Actions.** On February 8, 2023, Plaintiff filed with the LWDA and served on
7 Defendants a notice under Labor Code section 2699.3, stating Plaintiff intended to serve as a
8 proxy of the LWDA to recover civil penalties on behalf of other non-exempt, hourly-paid
9 employees for various Labor Code violations (“PAGA Notice”). On February 14, 2023, Plaintiff
10 filed a putative wage-and-hour class action in Orange County Superior Court, Case Number 30-
11 2023-01308022-CU-OE-CXC alleging causes of action against Defendants for: (1) failure to pay
12 overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods or
13 compensation in lieu thereof; (4) failure to provide rest periods or compensation in lieu thereof;
14 (5) failure to pay all wages due upon separation from employment; (6) failure to provide accurate
15 wage statements; (7) failure to timely pay wages during employment; (8) failure to indemnify for
16 business expenses; (9) failure to pay interests on deposits; (10) failure to provide suitable seating;
17 (11) engaging in unfair competition (the “Class Action”). On April 20, 2023, after sixty-five (65)
18 days had passed without any action by the LWDA with respect to the alleged Labor Code
19 violations, Plaintiff filed this separate representative action under PAGA against Defendants for
20 the Labor Code violations set out in the PAGA Notice (the “PAGA Action”). On April 27, 2023,
21 the Parties stipulated to dismiss the class claims in the Class Action without prejudice. On June
22 5, 2023, the Class Action and the PAGA Action were consolidated, with the Class Action as the
23 lead case. The only remaining claims in the Class Action are Plaintiff’s individual claims, which
24 are resolved as part of this agreement.

25 **B. Informal Discovery.** Shortly thereafter, the Parties agreed to exchange informal
26 discovery and attend an early mediation, in which Plaintiff was provided with, among other
27 things: (1) time and payroll records for approximately 8.8% of the estimated 699 Aggrieved
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1 Employees from February 8, 2022 through January 29, 2024; (2) all policy documents of RFE,
2 including RFE's employee handbook; and (3) Plaintiff's personnel records.

3 **C. Mediation.** On January 29, 2024, the Parties participated in a full-day mediation
4 before mediator Tagore Subramaniam, Esquire, a well-regarded mediator experienced in
5 mediating complex labor and employment matters. With the aid of the mediator's evaluation, the
6 Parties reached this Settlement to resolve the Actions.

7 **D. Plaintiff's Position as to Settlement.** Plaintiff's Counsel have conducted
8 significant investigation of the law and facts relating to the claims asserted in the Actions, and
9 have concluded that the Settlement set forth herein is fair, reasonable, adequate, and in the best
10 interests of Aggrieved Employees, and to the extent permitted by law, the State of California,
11 taking into account the sharply contested issues involved, the expense and time necessary to
12 litigate the Actions through trial and any appeals, the risks and costs of further litigation, the risk
13 of an adverse outcome, the uncertainties of complex litigation, the information learned through
14 informal discovery regarding Plaintiff's allegations, and the substantial benefits to be received
15 by Aggrieved Employees.

16 **E. Defendants' Position as to Settlement.** Defendants and the Released Parties
17 deny that they have engaged in any unlawful activity, deny that they have failed to comply with
18 the law in any respect, and deny that they have any liability to anyone under the claims asserted
19 in the Actions. This Agreement is entered into solely for the purpose of compromising highly
20 disputed claims. Nothing in this Agreement is intended or will be construed as an admission of
21 liability or wrongdoing by Defendants or the Released Parties. This Settlement and the fact that
22 Plaintiff and Defendants were willing to settle the Actions will have no bearing on, and will not
23 be admissible in connection with, any litigation (other than solely in connection with effectuating
24 the Settlement pursuant to this Agreement).

25 **III. TERMS OF SETTLEMENT**

26 **A. All Terms Subject to Court Approval.** The Court has jurisdiction over the
27 Parties and the subject matter of the Actions. The Actions includes claims that, if proven, would
28 authorize the Court to grant relief pursuant to the applicable statutes. This Agreement shall be

1 submitted to the Court for approval and final judgment. The Parties agree that upon the
2 occurrence of the dismissal of this case pursuant to the terms of this Agreement, this Settlement
3 Agreement shall be enforceable by the Court pursuant to Code of Civil Procedure Section 664.6
4 and the Court shall retain exclusive and continuing equity jurisdiction of the Actions over all
5 Parties and Aggrieved Employees to interpret and enforce the terms, conditions and obligation
6 of the Settlement Agreement. Should the Court not grant approval of the Settlement as described
7 in this Settlement Agreement, then the entirety of this Settlement Agreement shall be null and
8 void. Notwithstanding the foregoing, the Parties agree to meet and confer to address any Court
9 concerns regarding the Settlement, including the filing of any supplemental briefs, amended
10 settlement agreement(s), or other documents mutually acceptable by the Parties and their counsel.

11 **B. Gross Settlement Amount.** Defendants shall pay the Gross Settlement Amount
12 of Six Hundred Twelve Thousand Five Hundred Dollars and Zero Cents (\$612,500.00) to settle
13 the PAGA Action, unless escalated pursuant to section III(L)(2) of this Agreement. The Gross
14 Settlement Amount will be to satisfy all of Defendants' liabilities arising from the Settlement.
15 No portion of the Gross Settlement Amount shall revert to Defendants.

16 **C. Plaintiff's Counsel's Attorneys' Fees and Costs.** Plaintiff's Counsel shall apply
17 for an award of Plaintiff's Counsel's Attorneys' Fees and Plaintiffs' Counsel's Attorneys' Costs,
18 as described and defined in this Agreement. Defendants will not oppose Plaintiff's request
19 consistent with this Settlement. Awards of Plaintiff's Counsel's Attorneys' Fees and Plaintiff's
20 Counsel's Attorneys' Costs shall be paid out of the Gross Settlement Amount, for all past and
21 future attorneys' fees and costs necessary to prosecute, settle, and obtain approval of this
22 Settlement. There will be no additional charge of any kind to either the Aggrieved Employees or
23 request for additional consideration from Defendants for such work unless Defendants materially
24 breach this Agreement, including any term regarding funding, and further efforts are necessary
25 from Class Counsel to remedy said breach, including, without limitation, moving the Court to
26 enforce the Agreement. Should the Court approve Plaintiffs' Counsel's Attorneys' Fees and
27 Plaintiffs' Counsel's Attorneys' Costs in an amount less than the amounts provided herein, then
28 the unapproved portion(s) shall be a part of the Net Settlement Amount.

1 **D. Plaintiff's Enhancement Payment.** Plaintiff will request and apply for the
2 Enhancement Payment referred to in Paragraph I(EE) of this Agreement in exchange for general
3 releases referred to in Paragraph III(I)(4). Specifically, Plaintiff will apply for a payment of up
4 to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00). The Enhancement
5 Payment shall be paid from, and not in addition to, the Gross Settlement Amount. Any amounts
6 not awarded by the Court under this provision shall be included in the Individual PAGA Payment.
7 Defendants agree not to oppose any such application which is consistent with this paragraph.

8 **E. LWDA PAGA Payment.** Subject to Court approval, the Parties agree that an
9 amount equal to seventy-five percent (75%) of the PAGA Penalties of \$354,775.00 will be paid
10 to the LWDA in settlement of all representative claims alleged by or on behalf of Plaintiff and
11 the Aggrieved Employees. Should the Court grant Plaintiff's Counsel's Attorneys' Fees,
12 Plaintiff's Counsel's Attorneys' Costs, Plaintiff's Enhancement Payment and Settlement
13 Administration Costs, and should the Settlement not be escalated pursuant to section III(L)(2) of
14 this Agreement, the amount paid to the LWDA will be no less than \$266,081.25 (75%), and no
15 less than \$88,693.75 (25%) of the Net Settlement Amount will be available for Individual
16 Settlement Payments to Aggrieved Employees.

17 1) **Individual Settlement Payments.** Subject to Court approval, the Parties
18 agree that an amount equal to twenty-five percent (25%) of the PAGA Penalties (Aggrieved
19 Employees' Portion) which, unless the Settlement is escalated pursuant to section III(L)(2) of
20 this Agreement, amounts to \$88,693.75, will be paid to the Aggrieved Employees in settlement
21 of the PAGA Released Claims. Individual Settlement Payments will be calculated and
22 apportioned from the Aggrieved Employees' Portion based on the number of Pay Periods an
23 Aggrieved Employee worked during the PAGA Period. The Settlement Administrator will
24 determine the total number of Pay Periods worked by each Aggrieved Employee during the
25 PAGA Period based on the data provided by RFE in the Aggrieved Employee List and the
26 aggregate number of Pay Periods worked by all Aggrieved Employees during the Settlement
27 Period. To determine each Aggrieved Employee's Individual Settlement Payment, the Parties
28 agree that the Settlement Administrator will use the following formula: Individual Settlement

1 Payment = (Aggrieved Employee's Pay Periods worked during the PAGA Period / Aggregate
2 Number of Aggrieved Employees' Pay Periods worked during the PAGA Period) x (0.25 x
3 PAGA Penalties). Defendants agree this formula is reasonable and that the payments are designed
4 to provide a fair settlement to each Aggrieved Employee in light of the uncertainties regarding
5 the penalties alleged to be owed and the calculation of such amounts.

6 **F. Tax Treatment of Settlement Payments.** All Individual Settlement Payments
7 will be characterized as civil penalties, and IRS Forms 1099-MISC will be issued as necessary.
8 The payment of Plaintiff's Counsel's Attorneys' Fees and Plaintiff's Counsel's Attorneys' Costs
9 will also be reported on IRS Forms 1099-MISC. The Settlement Administrator will issue all such
10 forms.

11 **G. Aggrieved Employees' Tax Liability.** Other than the reporting requirements set
12 forth in this Agreement, the Aggrieved Employees shall be responsible for the reporting and
13 payment of any federal, state, and/or local income or other tax or any other withholdings, if any,
14 on any of the payments made pursuant to this Agreement. Counsel for Plaintiff and Defendants
15 make no representations, and it is understood and agreed that Counsel for Plaintiff and
16 Defendants have made no representations as to the taxability of any portions of the Individual
17 Settlement Payments to any Aggrieved Employee, the payment of any costs or an award of
18 attorney fees, or any payments to Plaintiff. The PAGA Payment Letter (Exhibit "A") will inform
19 Aggrieved Employees of the opportunity to seek their own tax advice in connection with their
20 receipt of Individual Settlement Payments.

21 **H. Defendants' Tax Liability.** The Parties do not expect there to be any employer
22 side taxes arising from this Settlement because this is a settlement of a representative action for
23 civil penalties. If it is determined that employer side taxes exist on the Gross Settlement Amount,
24 such taxes will be funded by the Gross Settlement Amount.

25 **I. Waivers and Releases**

26 1) **PAGA Released Claims.** Effective only upon the entry of an Order
27 granting approval of this Settlement, entry of Judgment, and payment by Defendants to the
28 Settlement Administrator of the full Gross Settlement Amount to effectuate the Settlement,

1 Plaintiff, Aggrieved Employees, and, to the extent permitted by law, the State of California,
2 release the Released Parties, for the duration of the PAGA Period, any and all claims, debts,
3 liabilities, demands, actions, or causes of action for civil penalties that were alleged or which
4 could have been alleged based on the factual allegations in the Operative Complaint in the PAGA
5 Action, and/or in the PAGA Notice, including all claims for civil penalties based upon or arising
6 out of RFE's failure to pay wages, including, but not limited to, failure to pay minimum wages,
7 straight time compensation, overtime compensation, double-time compensation, and interest; the
8 calculation of the regular rate of pay; wages related to alleged illegal time rounding; late, short
9 and/or missed meal periods and/or rest periods; rest periods taken under RFE's control;
10 reimbursement for all necessary business expenses; payment for all hours worked; off-the-clock
11 work, including but not limited to unpaid time waiting for entry/exit, healthcare screenings,
12 and/or timeclocks; failure to provide paid sick leave; failure to pay accrued and unused vacation
13 on separation; inaccurate wage statements; improper or unauthorized deductions; failure to
14 provide suitable seating; failure to keep accurate records; unfair business practices; penalties,
15 including, but not limited to, civil penalties, recordkeeping penalties, wage statement penalties,
16 meal/rest period penalties; minimum-wage penalties, and waiting-time penalties; and attorneys'
17 fees and costs. The Released Claims include all claims arising under the California Labor Code
18 (including, but not limited to, sections 96, 98.6, 200, 201, 201.1, 201.3, 201.5, 202, 203, 204,
19 205.5, 206, 210, 212, 213, 216, 218, 218.5, 218.6, 221, 222, 222.5, 223, 224, 225, 225.5, 226,
20 226.3, 226.7, 226.8, 227.3, 232, 232.5, 246, 256, 404, 432, 432.3, 432.5, 432.6, 432.7, 432.8,
21 450, 510, 511, 512, 516, 550, 551, 552, 558, 1102.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197,
22 1197.1, 1197.2, 1197.5, 1198, 1198.5, 2802, 2698 *et seq.*, and 2699 *et seq.*, 6401, 6402, 6403,
23 6409.6, 6432, 2810.5, 1527, 3366, 3457, 8397.4), and applicable California Industrial Welfare
24 Commission ("IWC") Wage Orders, including but not limited to IWC Wage Order No. 5 (Cal.
25 Code Regs., tit. 8, § 11050), Cal. Code Regs., tit. 8, § 110404(5)(A), California Business and
26 Professions Code Sections 17200, 16600, and 16700, and Government Code section 12952,
27 during the PAGA Period (the "PAGA Released Claims"), against the Released Parties.

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1 2) Exclusions to the PAGA Released Claims. The releases above expressly
2 exclude all other claims, including all non-PAGA claims, as well as, without limitation, claims
3 for vested benefits, wrongful termination, unemployment insurance, disability, social security,
4 workers' compensation, and any other claims arising outside of the PAGA Period.

5 3) Aggrieved Employees are bound by the Settlement. Because there is no
6 right to opt out of a PAGA settlement, all Aggrieved Employees will receive a proportional
7 distribution from the Settlement monies and will be bound by this Settlement Agreement, upon
8 its approval by the Court, regardless of whether they negotiate their settlement check. The Parties
9 agree that there is no statutory right for any Aggrieved Employee to object, opt out, or otherwise
10 exclude himself or herself from the Settlement Agreement. Except as otherwise stated, Plaintiffs
11 will vigorously defend against any attempt by any Aggrieved Employee or by any entity or
12 agency to intervene in this matter or object to/opt-out.

13 4) General Release by Plaintiff Asuncion Gonzalez Ruvalcaba. Effective
14 only upon the entry of an Order granting approval of the Settlement, entry of Judgment, and
15 payment by Defendants to the Settlement Administrator selected of the full Gross Settlement
16 Amount, in addition to the PAGA Released Claims, Plaintiff makes the additional following
17 General Release: Plaintiff will fully and finally release RFE, and each of its past, present and
18 future agents, employees, servants, officers, directors, partners, trustees, representatives,
19 shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, related
20 companies/corporations and/or partnerships, divisions, assigns, predecessors, successors,
21 insurers, consultants, joint venturers, joint employers, affiliates, alter-egos, and affiliated
22 organizations, and all of its respective past, present and future employees, directors, officers,
23 agents, attorneys, stockholders, fiduciaries, parents, subsidiaries, affiliates, and assigns, and each
24 of them, including Roderick A. Fraser II (collectively, the "Released Parties"), from any and all
25 claims, known and unknown, under federal, state and/or local law, statute, ordinance, regulation,
26 common law, or other source of law, including but not limited to claims arising from or related
27 to his respective employment with RFE and his respective compensation while an employee of
28 RFE through the date of signing this MOU ("Plaintiff's Released Claims"). Plaintiff's Released

1 Claims include, but are not limited to, all claims arising from or reasonably related to the Actions,
2 whether pleaded or not pleaded. Plaintiff's Released Claims also include all claims for unpaid
3 wages, including, but not limited to, failure to pay minimum wages, straight time compensation,
4 overtime compensation, double-time compensation, and interest; the calculation of the regular
5 rate of pay; wages related to alleged illegal time rounding; late, short and/or missed meal periods
6 and/or rest periods; rest periods taken under RFE's control; reimbursement for all necessary
7 business expenses; payment for all hours worked; off-the-clock work, including but not limited
8 to unpaid time waiting for entry/exit, healthcare screenings, and/or timeclocks; failure to provide
9 paid sick leave; failure to pay accrued and unused vacation on separation; inaccurate wage
10 statements; improper or unauthorized deductions; failure to provide suitable seating; failure to
11 keep accurate records; unfair business practices; penalties, including, but not limited to, civil
12 penalties, recordkeeping penalties, wage statement penalties, meal/rest period penalties;
13 minimum-wage penalties, and waiting-time penalties; and attorneys' fees and costs. Plaintiff's
14 Released Claims include all claims arising under the California Labor Code (including, but not
15 limited to, sections 96, 98.6, 200, 201, 201.1, 201.3, 201.5, 202, 203, 204, 205.5, 206, 210, 212,
16 213, 216, 218, 218.5, 218.6, 221, 222, 222.5, 223, 224, 225, 225.5, 226, 226.3, 226.7, 226.8,
17 227.3, 232, 232.5, 246, 256, 404, 432, 432.3, 432.5, 432.6, 432.7, 432.8, 450, 510, 511, 512, 516,
18 550, 551, 552, 558, 1102.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1197.5,
19 1198, 1198.5, 2802, 2698 et seq., and 2699 et seq., 6401, 6402, 6403, 6409.6, 6432, 2810.5,
20 1527, 3366, 3457, 8397.4); all claims arising under: the Wage Orders of the California Industrial
21 Welfare Commission; the California Private Attorneys General Act of 2004 ("PAGA");
22 California Business and Professions Code section 17200, et seq.; the California Civil Code, to
23 include but not limited to, sections 3287, 3336 and 3294; 12 CCR§ 11040; 8 CCR § 11060;
24 California Code of Civil Procedure § 1021.5; the California common law of contract; the FLSA,
25 29 U.S.C. § 201, et seq.; federal common law; and the Employee Retirement Income Security
26 Act, 29 U.S.C. § 1001, et seq. ("ERISA"). Plaintiff's Released Claims also include all claims for
27 lost wages and benefits, emotional distress, retaliation, discrimination, harassment, punitive
28 damages, and attorneys' fees and costs arising under federal, state, or local laws for

1 discrimination, harassment, retaliation, and wrongful termination, such as, by way of example
2 only, (as amended) 42 U.S.C. section 1981, Title VII of the Civil Rights Act of 1964, the
3 Americans With Disabilities Act, the Age Discrimination in Employment Act, and the California
4 Fair Employment and Housing Act; and the law of contract and tort. This release excludes the
5 release of claims not permitted by law.

6 5) Plaintiff's Waiver of Rights Under California Civil Code Section 1542. As
7 partial consideration for the Plaintiff's enhancement payment, Plaintiff's Released Claims shall
8 include all such claims, whether known or unknown. Thus, even if Plaintiff discovers facts and/or
9 claims in addition to or different from those that he now knows or believes to be true with respect
10 to the subject matter of the Plaintiff's Released Claims, those claims will remain released and
11 forever barred. Therefore, with respect to Plaintiff's Released Claims, Plaintiff expressly waives
12 and relinquishes the provisions, rights and benefits of California Civil Code section 1542, which
13 reads:

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

18 6) Waiver of Age Claims by Plaintiff. By signing this Settlement Agreement,
19 Plaintiff acknowledges: he has carefully read and understood this Settlement Agreement; he has
20 been given at least twenty-one (21) days to consider this Settlement Agreement; he has been and
21 hereby is advised to consult with an attorney before signing this Settlement Agreement; he
22 understands this Settlement Agreement is legally binding and by signing it he is giving up certain
23 rights; he has voluntarily chosen to enter into this Settlement Agreement and has not been forced
24 or pressured in any way to sign it; he knowingly and voluntarily releases the Released Parties
25 from any and all claims he may have, known or unknown, in exchange for the payments obtained
26 by signing this Settlement Agreement; he understands the Release in this Settlement Agreement
27 includes a waiver and release of all claims he may have under the Age Discrimination in
28 Employment Act ("ADEA") and the Older Workers Benefit Protection Act ("OWBPA"); and he

1 understands this Settlement Agreement and Release does not waive any rights or claims that may
2 arise under either the ADEA or the OWBPA after this Settlement Agreement is signed and
3 becomes effective, which is the eighth day after he signs it. Plaintiff knowingly and voluntarily
4 waives the remainder of the 21-day consideration period, if any, following the date he signs this
5 Settlement Agreement. Plaintiff has not been asked by the Released Parties to shorten the time
6 period to consider whether to sign this Settlement Agreement. The Released Parties have not
7 threatened to withdraw or alter the benefit due to Plaintiff prior to the expiration of the 21-day
8 period, nor have the Released Parties provided different terms to Plaintiff because he has decided
9 to sign this Release prior to the expiration of the 21-day consideration period. Plaintiff agrees
10 with Defendant that changes to this Settlement Agreement, whether material or immaterial, will
11 not restart the running of the 21-day consideration period. Plaintiff understands that if he signs
12 this Settlement Agreement, he can change his mind and revoke it as to his age claims within
13 seven (7) calendar days after signing it by returning it with written revocation notice to Kristi L.
14 Thomas, Sheppard, Mullin, Richter & Hampton LLP, 650 Town Center Drive, 10th Floor, Costa
15 Mesa, California 92626; email: kthomas@sheppardmullin.com. In the event Plaintiff revokes
16 the Settlement Agreement as to his age claims, Plaintiff shall not be entitled to seek Plaintiff's
17 Enhancement Payment set forth herein.

18 7) Good Faith Dispute re Plaintiff. There is a good faith dispute between
19 Defendant and Plaintiff as to whether Plaintiff is owed any additional payments, including but
20 not limited to wages, commissions, bonuses, PTO, vacation, sick leave, holidays,
21 reimbursements, benefits, and/or penalties, except for Plaintiff's Enhancement Payment in
22 addition to Plaintiff's individual settlement payment that is to be paid pursuant to the Settlement,
23 expressly set forth in Section 1(EE) above, and Plaintiff is willing to compromise and resolve all
24 such claims by accepting Plaintiff's Enhancement Payment in addition to Plaintiff's individual
25 settlement payment that is to be paid pursuant to the Settlement under the terms of this
26 Agreement.

27 8) Plaintiff's Counsel. As of the Effective Date, and except as otherwise
28 provided by this Settlement and the Judgment, Plaintiff's Counsel waive any claim to costs and

1 attorneys' fees and expenses against Defendants or the Released Parties arising from or related to
2 the Actions.

3 **J. Settlement Administration**

4 1) Settlement Administrator's Duties in General. The Settlement
5 Administrator shall be responsible for: (a) processing the data provided by RFE to be used in
6 calculating the Individual Settlement Payments; (b) preparing, printing, and mailing to the
7 Aggrieved Employees the PAGA Payment Letter (attached hereto as Exhibit "A"), as well as
8 following up with reasonable skip tracing; (c) calculating and mailing Individual Settlement
9 Payments to Aggrieved Employees; (d) filing any required federal and state tax forms and related
10 agency reporting; (e) filing any required reports with the Court; and (g) all other tasks described
11 in this Agreement, as to which the Parties mutually agree, and/or which the Court orders the
12 Settlement Administrator to perform.

13 2) Delivery of the Aggrieved Employee List. Within fourteen (14) calendar
14 days after the Effective Date, RFE will provide the Aggrieved Employee List to the Settlement
15 Administrator. The Administrator shall maintain the Employee List as private and confidential
16 and shall not disclose such data to any persons or entities other than Defendants' Counsel. The
17 Employee List is being supplied solely to be used for settlement notification and settlement
18 administration purposes, and shall not be used for any other purpose by the Administrator. The
19 Parties agree that the Employee List will not be used to solicit Aggrieved Employees to file any
20 claim, charge, or complaint of any kind whatsoever against Defendants or any other Released
21 Parties and will only be used to administer the Settlement under the terms provided herein. The
22 Employee List shall not be disclosed to Plaintiff's Counsel, except that relevant information of
23 individual Aggrieved Employees can be provided to Plaintiff's Counsel if necessary for
24 Plaintiff's Counsel to respond to inquiries or requests from individual Aggrieved Employees. No
25 later than three (3) days after receipt of the Employee List, the Administrator shall notify counsel
26 for the Parties that the information in the Employee List has been received.

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1 3) Funding of the Gross Settlement Amount. Within fifteen (15) calendar
2 days after the Effective Date, Defendants will deposit the Gross Settlement Amount into a
3 settlement fund to be established by the Settlement Administrator.

4 4) Distribution of Settlement Payments. Within seven (7) calendar days after
5 Defendants deposit the Gross Settlement Amount into a settlement fund, the Settlement
6 Administrator will issue payments to: (a) the Aggrieved Employees; (b) the LWDA; (c)
7 Plaintiff's Counsel for the Attorneys' Fees Payment and Plaintiff's Counsel's Attorneys' Costs
8 Payment; and (d) the Settlement Administrator. The Settlement Administrator will mail
9 Individual Settlement Payments to the Aggrieved Employees, along with the PAGA Payment
10 Letter (attached as Exhibit "A"), via regular First-Class U.S. Mail, using the most current, known
11 mailing addresses identified in the Aggrieved Employees List. The Settlement Administrator will
12 also issue a payment to itself for Court-approved services performed in connection with the
13 Settlement twenty (20) calendar days after the Effective Date.

14 5) Reports Regarding Settlement Administration. The Settlement
15 Administrator will provide Defendants' Counsel and Plaintiff's Counsel reports regarding the
16 administration of the Settlement Agreement as needed or requested.

17 6) Procedures for Uncashed Checks. Checks for Individual Settlement
18 Payments shall be negotiable for one hundred eighty (180) calendar days from the date of their
19 issuance. If a check is returned to the Settlement Administrator as undeliverable during the 180-
20 day period, the Settlement Administrator shall take all reasonable efforts to identify the
21 Aggrieved Employee's correct address, including the performance of a "skip-trace." If an
22 updated address can be identified, the Settlement Administrator shall issue another check to the
23 Aggrieved Employee and mail it to the Aggrieved Employee at his or her updated address. An
24 Aggrieved Employee who failed to receive their Individual Settlement Payment check despite
25 the procedures described herein shall nevertheless remain bound by the Settlement and the
26 release of the PAGA Released Claims contained herein. The funds represented by Individual
27 Settlement Payment checks remaining uncashed for more than 180 days after issuance
28 (collectively, the "Uncashed Settlement Checks") shall be canceled and funds associated with

1 such checks shall be transmitted to the California State Controller's Office, Unclaimed Property
2 Division in the name of each Aggrieved Employee thereby leaving no unpaid residue pursuant
3 to the requirements of Code of Civil Procedure section 384.

4 7) Administration of Taxes by the Settlement Administrator. Before or
5 concurrent with Plaintiff's filing of this Agreement for approval, Plaintiff's Counsel will send
6 this agreement to the LWDA pursuant to Section 2699(l)(2) of the California Labor Code.
7 Plaintiff or Plaintiff's Counsel will also file a declaration in support of the motion for Settlement
8 Approval confirming that he has submitted the Settlement to the LWDA in compliance with
9 Labor Code § 2699(l). Upon entry of judgment by the Court, Plaintiff's Counsel shall submit a
10 copy of the judgment to the LWDA.

11 8) Declaration of Payment. Within sixty (60) calendar days after the
12 Effective Date, the Settlement Administrator shall prepare a declaration of payment stating that
13 all payments required under the Settlement have been made. Plaintiff's Counsel shall file the
14 Settlement Administrator's declaration with the Court if requested by the Court.

15 9) Declaration Regarding Uncashed Settlement Check Funds. Within ten
16 (10) calendar days after the date the Settlement Administrator transfers the total amount of funds
17 represented by the Uncashed Settlement Checks to the Unclaimed Property Division, the
18 Settlement Administrator will prepare a declaration stating the total amount of funds represented
19 by the Uncashed Settlement Checks and confirming that the procedures for the treatment of
20 Uncashed Settlement Checks established by this Agreement have been followed. Plaintiff's
21 Counsel shall file the Settlement Administrator's declaration with the Court if requested by the
22 Court.

23 **K. Miscellaneous Provisions**

24 1) Acknowledgement that the Settlement is Fair, Adequate, and Reasonable.
25 The Parties and their respective counsel believe that this Settlement is a fair, adequate, and
26 reasonable settlement of the Actions, and they have arrived at this Settlement through arm's-
27 length negotiations, taking into account all relevant factors, present and potential.

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1 2) It was estimated for purposes of mediation and this settlement that there
2 were 22,723 Pay Periods worked by Aggrieved Employees for the period from February 8, 2022
3 to December 29, 2023. In the event the number of Pay Periods as of February 20, 2024 increases
4 by more than 10%, or 2,272 Pay Periods, RFE will have the option to either: (i) increase the
5 Gross Settlement Amount pro rata per additional pay period over 24,995 Pay Periods (22,723
6 Pay Periods + 2,272 Pay Periods); or (ii) end the PAGA Period on the date that is one day before
7 the date the number of Pay Periods reaches 24,995. For example, if the total number of Pay
8 Periods worked by Aggrieved Employees during the PAGA Period is 25,222, and RFE elects
9 option (i), then the Gross Settlement Amount shall be increased by \$6,125.00, to an increased
10 Gross Settlement Amount of \$618,625.00. It is in RFE's sole discretion whether to choose option
11 (i) or (ii) as set forth herein.

12 3) Mutual Cooperation. The Parties and their counsel will cooperate with
13 each other and use their best efforts to affect the implementation of the Settlement. Such
14 cooperation shall include, but is not limited to, the execution of such other documents and the
15 taking of such other actions as may reasonably be necessary to fulfill the terms of this Settlement
16 or as requested by the Court. The Parties shall use their best efforts, including all efforts
17 contemplated by this Agreement and any other efforts that may become necessary by Court
18 Order, or otherwise, to effectuate this Agreement and the terms set forth herein.

19 4) No Admissions by the Parties. Plaintiff has claimed and continues to claim
20 that the PAGA Released Claims have merit and give rise to liability on the part of Defendants.
21 Defendants claim that the PAGA Released Claims have no merit and do not give rise to liability.
22 This Agreement is a compromise of disputed claims. Nothing contained in this Agreement and
23 no documents referred to herein and no action taken to carry out this Agreement shall constitute
24 an admission on behalf of Defendants of any form of liability or the accuracy of any allegation
25 made by Plaintiff or Plaintiff's Counsel.

26 5) Amendment or Modification. This Agreement, and any and all parts of it,
27 may be amended, modified, changed, or waived only by an express written instrument signed by
28 all Parties or their successors-in-interest.

1 6) Mutual Drafting of Agreement. The Parties agree that the terms of this
2 Agreement and the accompanying exhibits are the result of substantial, arm's-length
3 negotiations, and that this Agreement shall not be construed in favor of or against any of the
4 Parties by reason of the extent to which any of the Parties or their respective counsel participated
5 in the drafting of this Agreement.

6 7) Attorney Authorization. Counsel for the Parties warrant and represent that
7 they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action
8 required or permitted to be taken by such Parties pursuant to this Settlement to effectuate its
9 terms, and to execute any other documents required to effectuate the terms of this Settlement.

10 8) Binding on Successors and Assigns. This Agreement is binding upon, and
11 inures to the benefit of, the Parties' successors and assigns.

12 9) Governing Law. This Agreement shall be governed by and interpreted
13 according to the laws of the State of California.

14 10) Exhibit(s) Incorporated by Reference. The terms of this Agreement
15 include the terms set forth in any attached exhibit(s), which are incorporated by reference as
16 though fully set forth herein. Any exhibit to this Agreement is an integral part of the Settlement.

17 11) Invalidity of Any Provision. The Parties request the Court that, before
18 declaring any provision of this Agreement invalid, the Court first attempts to construe the validity
19 of the provision(s) to the fullest extent possible consistent with applicable precedents so as to
20 define all provisions of this Settlement valid and enforceable.

21 12) Notices. Whenever this Agreement requires or contemplates that one of
22 the Parties shall or may give notice to the other, notice shall be provided by e-mail and/or next-
23 day (excluding Saturdays, Sundays, and holidays) express delivery service addressed to the
24 address of the Party's counsel appearing in this Agreement.

25 13) Jurisdiction of the Court. The Parties agree that the Court shall retain
26 jurisdiction under Code of Civil Procedure section 664.6 with respect to the interpretation,
27 implementation, and enforcement of the terms of this Agreement and all orders and judgments
28 entered in connection therewith, and the Parties and their respective counsel hereto submit to the

1 jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the settlement
2 embodied in this Agreement and all orders and judgments entered in connection therewith.

3 14) Binding Agreement. The Parties intend that this Agreement shall be fully
4 enforceable and binding on all Parties, and that it shall be admissible and subject to disclosure in
5 any proceeding solely to enforce its terms, notwithstanding any mediation confidentiality
6 provisions that otherwise might apply under federal or state law.

7 15) Confidentiality. Plaintiff, Defendants, Plaintiff's Counsel and Defendants'
8 Counsel agree that they shall not disclose or discuss with any member or representative of the
9 press or media the conditions or terms of this Settlement Agreement or of the settlement. They
10 further agree that they will not issue any press releases or comment for publication in any media
11 (including, but not limited to, print media, electronic media, or the internet). They will not cause,
12 encourage, or in any way facilitate any comment for publication in any media relating to the
13 litigation, or on the terms of this Settlement Agreement or the negotiations which culminated in
14 this Settlement Agreement. However, Plaintiff, Defendants, Plaintiff's Counsel and Defendants'
15 Counsel are not prohibited from disclosing information in the public record and nothing shall
16 restrict Plaintiff's Counsel from communicating with the Aggrieved Employees should they
17 inquire regarding the settlement.

18 16) Entire Agreement. This Agreement and any attached exhibits constitute
19 the entirety of the Parties' settlement terms as it pertains to this subject matter (*i.e.*, settlement
20 and release of the PAGA Released Claims by Aggrieved Employees). No other prior or
21 contemporaneous written or oral agreements may be deemed binding on the Parties as it pertains
22 to this limited subject matter.

23 17) Counterparts. This Agreement may be executed in one or more
24 counterparts. All executed counterparts and each of them, including facsimile and scanned copies
25 of the signature page, will be deemed to be one and the same instrument provided that counsel
26 for the Parties to this Agreement exchange among themselves copies or originals of the signed
27 counterparts.

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1 18) Advice of Counsel. The Parties to this Agreement are represented by
2 competent counsel, and they have had an opportunity to consult with counsel. The Parties to this
3 Agreement agree that it reflects their good faith compromise of the claims raised in the Actions,
4 based upon their assessment of the mutual risks and costs of further litigation and the assessments
5 of their respective counsel.

6 19) Parties' Authority. The signatories to this Agreement, including any
7 person executing on behalf of a corporate signatory, warrant and represent that they are fully
8 authorized to enter into this Agreement and to bind the Parties hereto to the terms and conditions
9 of the Agreement.

10 **IT IS SO AGREED:**

11
12 Dated: 7/30, 2024


Asuncion Gonzalez Ruvalcaba (Jul 30, 2024 08:13 PDT)
ASUNCION GONZALEZ RUVALCABA
Plaintiff

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15 Dated: August 19, 2024

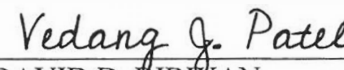

ROD FRASER ENTERPRISES, INC.
Defendant
By: Rod Fraser
Its: CEO

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19 Dated: August 19, 2024


RODERICK A. FRASER II
Defendant

20
21 **AGREED AS TO FORM:**

22
23 Dated: July 30, 2024


DAVID D. BIBIYAN
JEFFREY D. KLEIN
VEDANG J. PATEL
Counsel for Plaintiff Asuncion Gonzalez
Ruvalcaba



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Dated: August 21, 2024

GREG S. LABATE
KRISTI L. THOMAS
**Counsel for Defendant Rod Fraser Enterprises,
Inc., and Roderick A. Fraser II**