

Kevin Mahoney, Esq. (SBN: 235367)

kmahoney@mahoney-law.net

MAHONEY LAW GROUP, APC

249 E. Ocean Blvd., Ste. 814

Long Beach, CA 90802

Telephone: (562) 590-5550

Facsimile: (562) 590-8400

Jose Garay (SBN: 200494)

JOSE GARAY, APLC

249 E Ocean Blvd # 814

Long Beach, CA 90802

Telephone: (949) 208-3400

Facsimile: (949) 713-0432

jose@garaylaw.com

Attorneys for Plaintiff JOSE HERNAN, on behalf of himself and all similarly situated employees,

SUPERIOR COURT OF THE STATE OF CALIFORNIA

THE COUNTY OF VENTURA

JOSE HERNAN, as an individual and on behalf of all similarly situated employees,

Plaintiff,

v.

LOPES INC. dba RED'S BBQ & GRILLERY, a California corporation; and DOES 1 through 50, inclusive,

Defendant.

Case No. [56-2021-00555003-CU-OE-VTA]

CLASS ACTION

JOINT STIPULATION OF CLASS ACTION/PAGA SETTLEMENT AND RELEASE

Assigned for all purposes to:
Hon. Mark Borrell, Dept. # 40

Complaint Filed: June 3, 2021
Trial Date: None Yet Set

1 **STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE**

2 IT IS HEREBY STIPULATED, by and among Plaintiff JOSE HERNAN, on behalf of
3 himself and the Settlement Class Members on the one hand, and Defendant LOPES INC. dba
4 RED’S BBQ & GRILLERY, and subject to the approval of the Court, that the above-captioned
5 action is hereby being compromised and settled pursuant to the terms and conditions set forth in
6 this Joint Stipulation of Class Action/PAGA Settlement and Release (the “Settlement”).

7 **1. DEFINITIONS**

8 Capitalized terms used in this Settlement shall have the meanings set forth below:

9 1.1. “Action” shall mean the lawsuit entitled *Hernan v. Lopes Inc. dba Red’s BBQ &*
10 *Grillery*; and DOES 1 through 50, pending in the Superior Court of the State of California, County
11 of Ventura, and designated as Case No. 56-2021-00555003-CU-OE-VTA.

12 1.2. “Claims Administrator” means Phoenix Settlement Administrators.

13 1.3. “Claims Administration Costs” means the amount to be paid to the third-party
14 Claims Administrator to administer the Settlement, not to exceed twenty thousand dollars
15 (\$20,000.00).

16 1.4. "Class" or "Class Members" shall mean and include: non-exempt, hourly-paid
17 employees, currently and/or formerly employed by Defendant Lopes, Inc. dba Red’s Barbecue &
18 Grillery (“Defendant”), in the State of California during the Class Period. The terms "Class" or
19 "Class Members" shall exclude all persons who have previously released the Claims against
20 Defendant, any persons employed by the court, and any persons who are spouses, children,
21 officers, directors, or managing agents of Defendant.

22 1.5. “Class Counsel” means Kevin Mahoney of the Mahoney Law Group, APC.

23 1.6. “Class Counsel Award” means reasonable attorneys’ fees for Class Counsel’s
24 litigation and resolution of this Action in a maximum amount of one hundred sixteen thousand
25 six hundred sixty-six dollars (\$116,666.00) or (1/3rd of the Gross Settlement Amount). The Court
26 shall determine the amount of the Class Counsel Award, and it shall be paid from the Gross
27 Settlement Amount.

28 1.7. “Class Counsel Costs” means expenses incurred by Class Counsel for Class

1 Counsel's litigation and resolution of this Action, not to exceed fifteen thousand dollars
2 (\$15,000.00). The Court shall determine the amount of the Class Counsel Costs, and it shall be
3 paid from the Gross Settlement Amount.

4 1.8. "Class Information" means information regarding Settlement Class Members that
5 Defendant Lopes Inc. will in good faith compile from its records and provide to the Claims
6 Administrator. Class Information shall be provided as a Microsoft Excel spreadsheet and shall
7 include: each Settlement Class Member's full name; last known address; social security number;
8 employee identification number; and the total number of workweeks each Settlement Class
9 Member worked for Defendant Lopes Inc., during the Class Period.

10 1.9. "Class Period" means the period from [June 3, 2017, through April 12, 2021.

11 1.10. "Class Representative Enhancement Award" means the amount that the Court
12 authorizes to be paid to the Class Representative Jose Hernan, not to exceed five thousand dollars
13 (\$5,000.00), in addition to his Individual Settlement Payment, for his service in connection with
14 being the Class Representative. The Class Representative Enhancement Award shall be paid from
15 the Gross Settlement Amount. Any portion of the requested Class Representative Enhancement
16 Award that is not awarded to Plaintiff Jose Hernan shall be part of the Net Settlement Amount.

17 1.11. "Court" means the Superior Court of the State of California for the County of
18 Ventura.

19 1.12. "Defendant" means Lopes Inc. dba Red's BBQ & Grillery.

20 1.13. "Defense Counsel" means Alfred J. Landegger and Roxana E. Verano of
21 Landegger Verano & Davis.

22 1.14. "Enhancement Award" means the amount that the Court authorizes to be paid to
23 the Plaintiff in an amount not greater than five thousand dollars (\$5,000.00.) If the Court
24 authorizes an Enhancement Award, the Enhancement Award will be paid over and above the
25 Plaintiff's Individual Settlement Award. Plaintiff will not request more than \$5,000.00 as the
26 Enhancement Award for Plaintiff.

27 1.15. "Effective Date" means the date that the Gross Settlement Amount is fully funded
28 pursuant to the payment plan as agreed to in this Agreement.

1 1.16. “Employee Taxes” means the employee’s share of any and all applicable federal,
2 state, and local payroll taxes on the portion of Participating Class Members’ Individual
3 Settlement Payment that constitutes wages. The Employee Taxes will be paid out of the Net
4 Settlement Amount.

5 1.17. “Employer Taxes” means the employer’s share of any and all applicable federal,
6 state, and local payroll taxes on the portion of Participating Class Members’ Individual Settlement
7 Payment that constitutes wages. The Employer Taxes will be paid separately by the Employer
8 and shall not be paid out of the Gross Settlement Amount.

9 1.18.

10 Escalator Clause: Defendant has represented that the class comprises of 338 current and/or
11 former employees of Defendant. Should the class size increase by 10% or more (i.e, by 36 or
12 more individuals), the Gross Settlement Amount shall increase proportionately, i.e., if the class
13 size increases by eleven percent (11%), the class size shall increase by eleven percent (11%)
14 (thirty-eight thousand five hundred dollars (\$38,500.00)). Defendant shall have the right to
15 determine the class as closed as of the date of the execution of the MOU in order to avoid the
16 settlement increasing.

17 1.19. “Final Approval Hearing” means the hearing held by the Court, pursuant to class
18 action procedures and requirements, on the motion for final approval of the Settlement.

19 1.20. “Final Approval Date” means the date, which the Court grants final approval of
20 the Settlement.

21 1.21. “Final Judgment” means the Court’s entry of an order of judgment in this Action
22 following the Court’s final approval of the Settlement.

23 1.22. “Gross Settlement Amount” means the maximum amount Defendant shall have to
24 pay in connection with this Settlement, by way of a common fund, which shall be inclusive of
25 all Individual Settlement Amounts to Participating Class Members, Class Counsel Award, Class
26 Counsel Costs, Claims Administrator Costs, Class Representative Enhancement Award,
27 Employee Taxes, and LWDA PAGA Allocation. Subject to Court approval and the terms of this
28 Settlement, the Gross Settlement Amount Defendant shall be required to pay is three hundred

1 fifty thousand dollars (\$350,000.00). No portion of the Gross Settlement Amount will revert to
2 Defendant, and the Settlement does not require Participating Class Members to submit claims as
3 a prerequisite to receiving their Individual Settlement Payment. This settlement sum is based on
4 Defendant Lopes Inc.'s representation that the class size is approximately three hundred thirty-
5 eight (338) individuals. Defendant shall not be required to pay more than the Gross Settlement
6 Amount, as long as the class size does not increase by more than ten (10) percent, excluding any
7 employees hired between January 28, 2021 and the date of preliminary approval Under no other
8 circumstances shall Defendant be required to pay more than the Gross Settlement Amount except
9 as provided for in this Settlement.

10 1.23. "Individual Settlement Payment" means the amount payable to each Participating
11 Class Member, as calculated pursuant to Paragraph 3.23 of the Settlement, from the Net
12 Settlement Amount. Checks for Individual Settlement Payments will specifically indicate that
13 they are void if not negotiated within one hundred eight (180) days of their issuance.

14 1.24. "LWDA PAGA Allocation" means seven thousand five hundred dollars
15 (\$7,500.00), representing seventy-five percent (75%) of the PAGA Allocation, and is the amount
16 payable from the Gross Settlement Amount to California's Labor Workforce Development
17 Agency.

18 1.25. "Net Settlement Amount" means the Gross Settlement Amount, less (i) the Class
19 Representative Enhancement Award approved by the Superior Court (not to exceed \$5,000.00);
20 (ii) the Class Counsel Award approved by the Superior Court (not to exceed one hundred sixteen
21 thousand six hundred sixty-six dollars (\$116,666.00)); (iii) the Class Counsel Costs approved by
22 the Superior Court (not to exceed \$15,000.00) (iv) the LWDA PAGA Allocation approved by the
23 Superior Court (\$7,500.00); (v) the Settlement Administrator Costs approved by the Superior
24 Court (not to exceed \$20,000), (vi) any other fees or expenses (other than Class Counsel Award
25 and Class Counsel Costs) incurred by implementing the terms and conditions of this Agreement
26 as approved by the Superior Court.

27 1.26. "Non-Participating Class Member" shall mean a Class Member who submits a
28 complete, valid and timely request to be excluded from the Settlement pursuant to the instructions

1 provided in the Class Notice and/or who has signed a release with Defendant to resolve any claims
2 as alleged in the Action.

3 1.27. "Notice of Objection" means a written statement of objection to the Settlement
4 made and signed by a Settlement Class Member and includes the following: (1) the full name of
5 the Settlement Class Member; (2) the dates of employment of the Settlement Class Member; (3)
6 the last four (4) digits of the Settlement Class Member's Social Security number and/or the
7 Employee ID number; (4) the basis for the objection; and, (5) whether the Settlement Class
8 Member intends to appear at the Final Approval Hearing.

9 1.28. "Notice of Settlement" means the Notice of Proposed Class Action Settlement
10 (substantially in the form attached hereto as **Exhibit "A"**).

11 1.29. "Notice Packet" means the Notice of Proposed Class Action Settlement, Notice of
12 Estimated Individual Settlement Payment, and the Request for Exclusion.

13 "Objection Procedure" The Notice shall provide that Class Members who wish to object
14 to the settlement must either fax, email or mail a written statement of objection ("Notice of
15 Objection") to the Claims Administrator no later than the Objection/Exclusion Deadline Date.
16 Undelivered Notices must be remailed within three (3) days of the Administrator receipt of the
17 returned notice. Settlement Class Members to whom Notice Packets are resent after having been
18 returned undeliverable to the Claims Administrator shall have an additional fourteen (14) calendar
19 days from the date of re-mailing or until the Response Deadline has expired, whichever is later,
20 to mail his or her Notice of Objection. The Claims Administrator will provide copies of objections
21 to the Parties. The Objection must state: (a) the Objector's name, address, telephone number, and
22 last four digits of the person's Social Security Number; (b) the dates of employment with
23 Defendants; (c) if the Objector is represented by Counsel, the contact information of Counsel;
24 and (d) the basis for the objection. Even if a Class Member does not comply with the procedure
25 for objecting, the Class Member may appear at the hearing for final approval of the Settlement
26 and make their objection at that time. A Class Member may appear at the hearing for final
27 approval of the Settlement either in-person or remotely, by video or audio by contacting CourtCall
28 at <https://courtcall.com>, or LACourtconnect at <https://lascourtconnect.azurewebsites.net>.

1 1.30. "PAGA Aggrieved Employee Release" shall mean and include: all
2 persons currently and formerly employed by Defendant in the State of California during the
3 PAGA period. The terms " PAGA Aggrieved Employee " shall exclude all persons who have
4 previously released the Claims against Defendant, any persons employed by the court, and
5 any persons who are spouses, children, officers, directors, or managing agents of Defendant.

6 1.31. "PAGA Allocation" means Ten Thousand Dollars (\$10,000.00), allocated
7 from the Gross Settlement Amount for the compromise of claims for civil penalties brought
8 under the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Per California Labor
9 Code section 2699(i), seven thousand five hundred dollars (\$7,500.00), representing seventy
10 five percent (75%) of the PAGA Allocation, will be paid to California's Labor Workforce
11 Development Agency. The remaining Two Thousand Five Hundred Dollars (\$2,500.00),
12 representing twenty five percent (25%) of the PAGA Allocation, shall be part of the Net
13 Settlement Amount to be distributed to Participating Class Members.

14 1.32. "Participating Class Members" means all Settlement Class Members who do not
15 submit a valid and timely Request for Exclusion.

16 1.33. "Parties" means Plaintiff and Defendant collectively, and "Party" shall mean any
17 Plaintiff or any Defendant, individually.

18 1.34. "Plaintiff" means Jose Hernan.

19 1.35. "Plaintiff's General Released Claims" means, in addition to the releases made by
20 Participating Class Members, Plaintiff, on behalf of himself, his heirs, successors, assigns,
21 executors, trustees, and estates, in exchange for the terms and conditions of this Agreement,
22 including the Class Representative Enhancement Award requested or as otherwise authorized by
23 the Court, shall also, as of the Effective Date, fully and forever release the Released Parties, to
24 the full extent permitted by law, of and from any and all claims arising from his employment with
25 Defendant, known and unknown, asserted and unasserted, which Plaintiff had or may have had
26 against the Released Parties, whether sounding in tort, in contract, in law, in equity or otherwise,
27 and including but not limited to all claims for violation of any local, state, or federal statute, rule,
28 or regulation. Plaintiff shall execute a general release agreement which includes a Section 1542

1 waiver.

2 1.36. "Preliminary Approval Date" means the date the Court enters the Preliminary
3 Approval Order for the Settlement.

4 1.37. "Preliminary Approval Order" means the Proposed Order (filed concurrently with
5 this Settlement) for preliminary approval of the Settlement, as amended by the Court.

6 1.38. "Released Claims" means any and all known and unknown claims, debts,
7 liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or
8 causes of action contingent or accrued for, arising out of the allegations and claims asserted in
9 the Action, including without limitation, all wage and hour claims for unpaid wages including
10 minimum wage payments, failure to pay wages during employment, failure to pay overtime,
11 failure to pay wages upon termination, uniform maintenance costs, meal and rest break
12 violations, wage statement violations and penalties, waiting time penalties, reimbursement,
13 restitution and other equitable relief, disgorgement, conversion, unjust enrichment, civil and
14 statutory penalties, interests, liquidated damages, punitive damages, attorneys' fees and costs,
15 claims under California Labor Code sections 201-203, 204, 223, 226, 226.7, 510, 512, 558.1,
16 1194, 1194.2, 1197, 2698-2699.5, 2802, Industrial Welfare Commission Wage Order No. 5,
17 claims under California Business & Professions Code sections 17200-17204.

18 1.39. "Released PAGA Claims" mean penalties pursuant to the Private Attorneys
19 General Act ("PAGA"), and any other benefit claims on account of the allegations asserted in
20 the operative complaint. This release shall apply to all claims arising at any point between June
21 3, 2017 through April 12, 2021.

22 1.40. "Released Parties" means Lopes Inc. dba Red's BBQ & Grillery, and all of its
23 current, former, and future parents, owners, subsidiaries, predecessors and successors, and all of
24 their agents, employees, officers, directors, spouses, partners, shareholders, agents, and any other
25 successors, assigns, or legal representatives, as well as any other individual or entity which could
26 be jointly liable with any of the following.

27 1.41. "Request for Exclusion" means a Settlement Class Member's completed Request
28 for Exclusion form to opt out of the Settlement in the form substantially similar to that attached

1 hereto as **Exhibit B**. Class Members who wish to exclude themselves from the Class and not
2 receive any benefits under the Settlement or release any claims, must submit the request to be
3 excluded from the Settlement on or before the Objection/Exclusion Deadline Date. The date of
4 the postmark shall be the exclusive means used to determine if the Opt-out was timely sent. Any
5 requests for exclusion that are timely postmarked but are received after the five (5)-day grace
6 period for the Objection/Exclusion Deadline Date will be deemed untimely. Settlement Class
7 Members to whom Notice Packets are resent after having been returned undeliverable to the
8 Claims Administrator shall have an additional fourteen (14) calendar days from the date of re-
9 mailing or until the Response Deadline has expired, whichever is later, to mail the Request for
10 Exclusion. Undelivered Notices must be re-mailed within three (3) days of the Administrator
11 receipt of the returned notice. Any Class Member who opts out of the Class will not be entitled
12 to any recovery under the Class Settlement allocation and will not be bound by the Settlement or
13 have any right to object, appeal or comment thereon. However, if a Class Member does submit a
14 timely Request for Exclusion, that Class Member will still receive an Individual Settlement
15 Payment from the PAGA allocation and all PAGA claims will be released whether or not the
16 Class Member submits a timely Request for Exclusion. Class Members who fail to submit a valid
17 and timely request for exclusion shall be Participating Class Members and shall be bound by all
18 terms of the Settlement, if the Settlement is approved by the Court.

19 1.42. "Response Deadline" means the date sixty (60) days after the Claims
20 Administrator mails Notice Packets to Settlement Class Members, and shall be the last date on
21 which Settlement Class Members may: (a) postmark Requests for Exclusion from the
22 Settlement, or (b) postmark Objections to the Settlement. Even if a Class Member does not
23 submit his or her Objection by the Objection/Exclusion Deadline, the Class Member may
24 appear and be heard at the hearing for Final Approval of the Settlement with respect to his or
25 her Objection to the Settlement.

26 /-/-/

27 1.43. "Settlement" means the terms of this Joint Stipulation of Class Action Settlement
28 and Release.

1 1.44. "Settlement Class Member(s)" or "Settlement Class" means all non-exempt
2 employees, currently and formerly employed by Defendant Lopes Inc., in the State of California
3 during the Class Period. Similarly, Aggrieved Employees, as defined below, are included in this
4 Settlement Class.

5 1.45. "Similarly, Aggrieved Employees" means all non-exempt employees, currently
6 and formerly employed by Defendant Lopes Inc. dba Red's BBQ and Grillery in the State of
7 California during the period beginning March 9, 2020, through April 12, 2021. For purposes of
8 this Settlement, these Similarly Aggrieved Employees are members of the Settlement Class.

9 **1.46. RECITALS**

10 2.1. Class Certification. The Parties stipulate and agree to the certification of this
11 Action for purposes of this Settlement only. Should the Settlement not become final and effective,
12 class certification shall immediately be set aside (subject to further proceedings on motion of any
13 party to certify or deny certification thereafter), the Settlement shall be deemed null and void, and
14 will be of no force or effect whatsoever, and will not be referred to or utilized for any purpose
15 whatsoever. The Parties' willingness to stipulate to class certification as part of the Settlement
16 shall have no bearing on and shall not be admissible in or considered in connection with, the issue
17 of whether a class should be certified in a non-settlement context in this Action, and shall have
18 no bearing on and shall not be admissible or considered in connection with the issue of whether
19 a class should be certified in any other lawsuit.

20 2.2. Procedural History. On June 3, 2021, Plaintiff Jose Hernan, a former employee
21 of Defendant Lopes Inc., filed the Action in the Superior Court of California for the County of
22 Ventura as a proposed class action on behalf of all current and former non-exempt California
23 employees of Defendant Lopes Inc.. Plaintiff Hernan alleged that Defendant Lopes Inc, (1) failed
24 to pay all wages, including minimum wage, overtime, off-the clock, and split shifts wages, (2)
25 failed to provide meal periods; (3) failed to provide rest periods; (4) failed to provide accurate
26 itemized wage statements; (5) failed to pay wages upon termination of employment; (6) failed to
27 pay earned wages; (7) failed to reimburse for necessary business expenditures; (8) failed to
28 maintain records; (9) engaged in unfair business practices; and (10) for civil penalties under the

1 Private Attorney's General Act ("PAGA"), Labor Code section 2698, et seq. Plaintiff Hernan
2 sought recovery under the California Labor Code, the applicable Industrial Welfare Commission
3 Wage Order, and the California Business & Professions Code.

4 2.3. Settlement Negotiations. On January 26, 2021, the Parties participated in a private
5 mediation session with Judge Peter Lichtman, a well-respected, experienced mediator in the field
6 of wage and hour class actions. Prior to the mediation, Class Counsel conducted extensive
7 informal discovery and investigation during the prosecution of the Action. The informal
8 discovery and investigation included, among other things: (1) inspection and analysis of employee
9 documents and data, including personnel files, time and payroll records, employment policies and
10 procedures, and other relevant documents; (2) evaluation of legal positions taken by Defendant;
11 (3) evaluation of potential class-wide damages and PAGA penalties; and (4) review and research
12 of applicable law with respect to the claims and potential defenses brought by Defendant. Class
13 Counsel has vigorously prosecuted this Class Action, and Defendant has vigorously defended it.
14 The Parties have engaged in sufficient discovery and investigation to assess the relative merits of
15 the claims and contentions of the Parties. Based on this information and the settlement discussions
16 during the mediation conducted at arm's length and settlement discussions, the Parties came to
17 an agreement January 26, 2021. The settlement is the result of an informed and detailed
18 evaluation of the potential liability of total exposure in relation to the costs and risks associated
19 with continued litigation of the Action.

20 2.4. Benefits of Settlement to Settlement Class Members. Plaintiff and Class Counsel
21 recognize the length of continued proceedings necessary to litigate their disputes through
22 certification, trial, and any possible appeal. Plaintiff and Class Counsel have also taken into
23 account the uncertainty and risk of the outcome of further litigation, the difficulties and delays
24 inherent in such litigation, including, but not limited to, the risks related to a contested motion for
25 class certification, and the risks related to liability raised by the issues in this case. Plaintiff and
26 Class Counsel are also aware of the burdens of proof necessary to establish liability for the claims
27 asserted in the Action and the difficulties in establishing damages for the Settlement Class
28 Members. Plaintiff and Class Counsel have also taken into account Defendant's agreement to

1 enter into a settlement that confers substantial relief upon Settlement Class Members. Based on
2 the foregoing, Plaintiff and Class Counsel have determined that this Settlement is a fair, adequate,
3 and reasonable, and is in the best interests of the Settlement Class Members.

4 2.5. Defendant's Denial of Wrongdoing and Liability and Reasons for Settlement.

5 Defendant contends that the Settlement Class Members were properly and timely paid all wages
6 owed, including, but not limited to, all straight time and overtime, were properly reimbursed, and
7 were provided meal and rest periods as required under California law. However, Defendant has
8 concluded that any further defense of this litigation would be protracted and expensive for all
9 Parties. Substantial amounts of time, energy and resources of Defendant has been and, unless this
10 Settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiff
11 and Settlement Class Members. Defendant has also taken into account the risks of further
12 litigation in reaching their decision to enter into this Settlement. Nonetheless, Defendant has
13 concluded that further proceedings in the Action would be protracted and expensive and that it is
14 desirable that the Action be fully and finally settled in the manner and upon the terms and
15 conditions set forth in this Settlement in order to dispose of burdensome and protracted litigation,
16 to permit the operation of Defendant's business without further expensive litigation and the
17 distraction and diversion of its personnel with respect to matters at issue in the Action . Defendant
18 has also taken into account the uncertainty and risks inherent in any litigation, especially in
19 complex cases such as this Action. Defendant has therefore determined that it is desirable and
20 beneficial to them that the Action be settled in the manner and upon the terms and conditions set
21 forth in this Settlement.

22 2.6. No Admissions. The Parties understand and agree that this Settlement is the result
23 of a good faith compromise of disputed claims and allegations, and Defendant is entering into
24 this Settlement Agreement solely to resolve doubtful and disputed matters. No part of this
25 Settlement Agreement or any conduct or written or oral statements made in connection with this
26 Settlement, where or not the Settlement Agreement is finally approved and/or consummated,
27 may be offered as or construed to be an admission or concession of any kind by either of any of
28 the Parties. In particular, but without limiting the generality of the foregoing, nothing about this

1 Settlement or Settlement Agreement shall be offered or construed as an admission that
2 Defendant has violated any of their obligations under the California Labor Code, or of liability
3 in general, or any wrongdoing, impropriety, responsibility, or fault whatsoever on the part of
4 Defendant and/or Released Parties. In addition, this Settlement Agreement shall not be offered
5 or be admissible in evidence against any of the Parties or any of the Released Parties, except in
6 any action or proceeding brought by or against Plaintiff, the Class, Class Members, or Defendant
7 to enforce its terms, or by Defendant in defense of any claims brought by Plaintiff, the Class,
8 Class Members. The provision of this paragraph shall become effective when this Settlement is
9 signed and shall be binding on the Parties and their counsel regardless of whether the Settlement
10 Agreement is preliminarily and/or finally approved or terminated for any reason, or rendered
11 null and void.

12 2.7. Settlement Class Members' Claims. Plaintiff claims that the Released Claims
13 have merit and give rise to liability on the part of Defendant. This Settlement is a compromise
14 of disputed claims. Nothing contained in this Settlement and no documents referred to herein,
15 nor any action taken to carry out this Settlement may be construed or used as an admission by
16 or against the Settlement Class Members or Class Counsel as to the merits or lack thereof of the
17 claims asserted.

18 2.8. Defendant's Defenses. Defendant has denied and continues to deny each and all
19 of the allegations, claims, and contentions alleged by Plaintiff in the Action. Defendant has
20 expressly denied and continue to deny all charges of wrongdoing or liability against them arising
21 out of any of the conduct, statements, acts, or omissions alleged in the Action. Defendant
22 contends that it complied in good faith with California and federal wage-and-hour laws and has
23 dealt legally and fairly with Plaintiff and Settlement Class Members and Similarly Aggrieved
24 Employees. Defendant further denies that, for any purpose other than settling the Action, these
25 claims are appropriate for class or representative treatment.

26 2.9. Gross Amount Payable by Defendant. Under the terms of this Settlement, the
27 gross amount payable by Defendant shall not exceed the Gross Settlement Amount of three
28 hundred fifty thousand dollars (\$350,000.00) except as provided by this Agreement, exclusive

1 of the normal employer's share of any payroll taxes attributable to the Settlement Share
2 payments allocated to wages. Employer shall pay the employer's share of taxes separate and
3 apart from the Gross Settlement Amount.

4 **3. TERMS OF SETTLEMENT**

5 The Parties agree as follows:

6 3.1. Binding Settlement. This Settlement shall bind the Parties and all Participating
7 Class Members, subject to the terms and conditions hereof and the Court's approval.

8 3.2. Release as To Plaintiff and All Settlement Class Members.

9 3.2.1. Release as All Settlement Class Members. As of the Effective Date,
10 all Settlement Class Members, including Plaintiff, who do not opt out
11 of the Settlement, will be deemed to have fully, finally and forever
12 released, settled, compromised, relinquished, and discharged the
13 Released Parties from the Released Claims for the period of June 3,
14 2017 to April 12, 2021. Settlement Class Members, including Plaintiff,
15 who do not opt out of the Settlement will be deemed to have released
16 any further attempt, by lawsuit, administrative claim or action,
17 arbitration, demand, or other action of any kind by each and all of the
18 Settlement Class Members (including participation to any extent in any
19 class or collective action), to obtain recovery against the Defendant that
20 is reasonably related to the Released Claims for harms arising during
21 the Class Period.

22 3.2.2. Release as To Plaintiff. As of the Effective Date, Plaintiff will be
23 deemed to have fully, finally and forever released, settled,
24 compromised, relinquished, and discharged any and all of Plaintiff's
25 General Released Claims against the Released Parties. With respect to
26 the Plaintiff's General Released Claims only, Plaintiff shall be deemed
27 to have, and by operation of the Final Judgment shall have, expressly
28

1 waived and relinquished, to the fullest extent permitted by law, the
2 provisions, rights, and benefits of section 1542 of the California *Civil*
3 Code, or any other similar provision under federal or state law, which
4 section provides:

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

9 Plaintiff may hereafter discover facts in addition to or different from those they
10 now know or believe to be true with respect to the subject matter of the Plaintiff's General
11 Released Claims, but upon the Effective Date, shall be deemed to have, and by operation of the
12 Final Judgment shall have, fully, finally, and forever settled and released any and all of the
13 Plaintiff's General Released Claims, whether known or unknown, suspected or unsuspected,
14 contingent or non-contingent, which now exist, or heretofore have existed, upon any theory of
15 law or equity now existing or coming into existence in the future, including, but not limited to,
16 conduct that is negligent, intentional, with or without malice or a breach of any duty, law or rule,
17 without regard to the subsequent discovery or existence of such different or additional facts.
18 Plaintiff agrees not to sue or otherwise make a claim against any of the Released Parties for
19 Plaintiffs' General Released Claims.
20

21 3.3. Release as to Defendant: Pursuant to this Agreement, Defendant and Released
22 Parties and on behalf of their agents, representatives, attorneys, insurers, assigns, and/or anyone
23 acting on their respective behalf, and in consideration of the promises, assurances, and covenants
24 set forth in this Agreement, hereby fully release the Plaintiff and Plaintiff's heirs, agents,
25 representatives, assigns, executors, and/or anyone on Plaintiff's behalf (collectively, the Plaintiff
26 Released Parties") from all claims or causes of action by reason of any injuries and/or damages
27 or losses, known or unknown, foreseen or unforeseen, patent or latent, which the Defendant has
28 sustained or which may be sustained as a result of any facts and circumstances arising out of or

1 in any way related to Plaintiff's employment with Defendant, and to any other disputes, claims,
2 disagreements, or controversies, between the Parties up to and including the date of this
3 Agreement is signed.

4 3.4. Tax Liability. The Parties understand and agree that the Parties are not providing
5 tax or legal advice. Participating Class Members will remain responsible for any Employee
6 Taxes. Participating Class Members will assume any employee tax obligations or consequences
7 that may arise from this Settlement and should consult with a tax expert if they have questions.
8 However, Individual Settlement Payments will be allocated as follows: twenty percent (20%) as
9 wages (a W-2 will be issued) and eighty percent (80%) as interest and penalties (a 1099 will be
10 issued). Any required payroll deductions will be based on this apportionment. The Parties agree
11 that, in the event that any taxing body determines that additional employee taxes are due from
12 any Participating Class Member, such Participating Class Member assumes all responsibility
13 for the payment of such taxes.

14 3.5. Circular 230 Disclaimer. The Parties acknowledge and agree that (1) no provision
15 of this Settlement, and no written communication or disclosure between or among the Parties,
16 Class Counsel or Defense Counsel and other advisers, is or was intended to be, nor shall any
17 such communication or disclosure constitute or be construed or be relied upon as, tax advice
18 within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as
19 amended); (2) the acknowledging party (a) has relied exclusively upon his, her, or its own,
20 independent legal and tax counsel for advice (including tax advice) in connection with this
21 Settlement, (b) has not entered into this Settlement based upon the recommendation of any other
22 party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any
23 communication or disclosure by any attorney or advisor to any other party to avoid any tax
24 penalty that may be imposed on the acknowledging party; and (3) no attorney or advisor to any
25 other party has imposed any limitation that protects the confidentiality of any such attorney's or
26 adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure
27 by the acknowledging party of the tax treatment or tax structure of any transaction, including
28

1 any transaction contemplated by this Settlement.

2 3.6. Settlement Approval and Implementation Procedures. As part of this Settlement,
3 the Parties agree to the following procedures for obtaining the Court's preliminary approval of
4 the Settlement, certifying the Settlement Class, notifying Settlement Class Members of the
5 Settlement, obtaining the Court's final approval of the Settlement, and processing the Individual
6 Settlement Payments.

7 3.7. Preliminary Approval and Certification. As soon as practicable after execution of
8 this Settlement, but no later than thirty (30) days, the Parties will jointly submit this Settlement
9 to the Court for its preliminary approval. Such submission will include this Settlement, the
10 proposed Notice Packet, the proposed Preliminary Approval Order, and any, memoranda and
11 evidence as may be necessary for the Court to determine that this Settlement is fair, adequate,
12 and reasonable. The Parties agree to request the Court to enter an order conditionally certifying
13 the Settlement Class after the preliminary approval hearing, in accordance with California Rules
14 of Court, Rule 3.769(c).

15 3.8. Class Information. No more than twenty-one (21) calendar days after the entry of
16 the Preliminary Approval Order, Defendant, shall provide the Claims Administrator with the
17 Class Information for purposes of mailing Notice Packets to Settlement Class Members,
18 including: 1. Class Member's full name; 2. Class Member's last known address; 3. Class
19 Member's social security number or Class Member's employee identification number; and 4.
20 based on Defendant's payroll records, the Class Member's total number of workweeks. The
21 Settlement Administrator shall use commercially reasonable efforts to secure the data provided
22 by Defendant at all times so as to avoid inadvertent or unauthorized disclosure or use of such
23 data other than as permitted by the Settlement. The Settlement Administrator shall ensure that
24 the Class Notice and any other communications to Class Members shall not include the Class
25 Members' social security number, except for the last four (4) digits, if necessary.

26 3.9. Notice by First Class U.S. Mail. Upon receipt of the Class Information, the Claims
27 Administrator will perform a search on the National Change of Address database to update the
28

1 Settlement Class Members' addresses. No more than ten (10) calendar days after receiving the
2 Class Information from Defendant, as provided herein, the Claims Administrator shall mail
3 copies of the Notice Packet to all Settlement Class Members by regular First-Class U.S. Mail.
4 The Claims Administrator shall exercise its best judgment to determine the current mailing
5 address for each Settlement Class Member. The address identified by the Claims Administrator
6 as the current mailing address shall be presumed to be the best mailing address for each
7 Settlement Class Member.

8 3.10. Undeliverable Notices. Any Notice Packets returned to the Claims Administrator
9 as undeliverable on or before the sixty (60) day Response Deadline shall be re-mailed to the
10 forwarding address affixed thereto. Undelivered Notices must be remailed within three (3) days
11 of the Administrator receipt of the returned notice. Settlement Class Members to whom Notice
12 Packets are resent after having been returned undeliverable to the Claims Administrator shall
13 have an additional fourteen (14) calendar days from the date of re-mailing or until the Response
14 Deadline has expired, whichever is later.

15 3.11. For each Settlement Class Member whose Notice Packet is returned, there will be
16 one (1) skip trace by the Claims Administrator. If an updated mailing address is identified, the
17 Claims Administrator shall resend the Notice Packet to the Settlement Class Member. One (1)
18 supplemental Notice Packet shall be mailed to each Settlement Class Member whose original
19 Notice Packet is returned as undeliverable to the Claims Administrator. Such re-mailing shall
20 be made within three (3) business days of the Claims Administrator receiving notice that the
21 respective Notice Packet was undeliverable. Any requests by the Claims Administrator for
22 documents or information from Defendant must be responded to within a reasonable amount of
23 time by counsel for Defendant. It is the intent of the Parties that reasonable means be used to
24 locate the Settlement Class Members and apprise them of their rights.

25 3.12. Settlement Class Members to whom Notice Packets are resent after having been
26 returned undeliverable to the Claims Administrator, during the entire Response Deadline, shall
27 have an additional fourteen (14) calendar days from the date of re-mailing, or until the sixty (60)
28

1 day Response Deadline has expired, whichever is later, to mail the Request for Exclusion or a
2 Notice of Objection. Notice Packets that are resent shall inform the recipient of this adjusted
3 deadline. The date of the postmark on the return envelope shall be the exclusive means used to
4 determine whether a Settlement Class Member has returned his or her Request for Exclusion on
5 or before the adjusted deadline. If a Settlement Class Member's Notice Packet is returned to the
6 Claims Administrator more than once as undeliverable, then an additional Notice Packet shall
7 not be re-mailed. Nothing further shall be required of, or done by, the Parties, Class Counsel, or
8 Defendant's Counsel to provide notice of the proposed Settlement.

9
10 3.13. Compliance with the procedures specified in paragraphs 3.9-3.12 of this
11 Settlement shall constitute due and sufficient notice to Settlement Class Members of this
12 Settlement and shall satisfy the requirement of due process. In the event the procedures set forth
13 herein are followed and the intended recipient of a Notice Packet still does not receive the Notice
14 Packet, the intended recipient will be a participating Class Member and will be bound by all
15 terms of the Settlement and the Order Granting Final Approval entered by the Court. Nothing
16 else shall be required of, or done by, the Parties, Class Counsel, and Defense Counsel to provide
17 notice of the proposed Settlement.

18 3.14. Disputes. Settlement Class Members will have the opportunity during the sixty
19 (60) day response period, should they disagree with Defendant's records regarding their days
20 worked during the Class Period, to provide documentation and/or an explanation to show
21 contrary days worked. A space will be provided on the Notice of Settlement to raise such
22 disputes. For a Class Member's dispute to be considered, the Class Member must fully complete
23 the notice and timely return it to the Settlement Administrator. Class Members will have sixty
24 (60) days after the date the Notice Packet is mailed by the Settlement Administrator to mail in
25 a dispute, including any supporting evidence the Class Member may have. The date of the
26 postmark of the return mailing envelope shall be the exclusive means used to determine whether
27 a dispute has been timely submitted to the Settlement Administrator. If there is a dispute, the
28 Claims Administrator will consult with the Parties to determine whether an adjustment is

1 warranted. The Claims Administrator shall determine the eligibility for, and the amounts of,
2 any Individual Settlement Payments under the terms of this Settlement. The Claims
3 Administrator's determination of the eligibility for and amount of any Individual Settlement
4 Payment shall be binding upon the Settlement Class Member and the Parties. Undelivered
5 Notices must be re-mailed within three (3) days of the Administrator receipt of the returned
6 notice. Settlement Class Members to whom Notice Packets are resent after having been returned
7 undeliverable to the Claims Administrator shall have an additional fourteen (14) calendar days
8 from the date of re-mailing or until the Response Deadline has expired, whichever is later, to
9 submit any proof in support of the Class Members dispute to the Claims Administrator. The
10 Claims Administrator will provide copies of objections to the Parties.

11 3.15. Request for Exclusion (Opt-Outs). The Notice Packet shall state that Settlement
12 Class Members who wish to exclude themselves from the Settlement must submit a Request for
13 Exclusion Form by the Response Deadline. The Request for Exclusion: (1) must contain the
14 name, address, and the last four (4) digits of the Social Security number of the Settlement Class
15 Member requesting exclusion/ or an Employee Identification Number, (2) must be signed by the
16 Settlement Class Member; and (3) must be postmarked by the Response Deadline and returned
17 to the Claims Administrator at the specified address. If the Request for Exclusion does not
18 contain the information listed in (1)-(2), it will not be deemed valid for exclusion from this
19 Settlement. The date of the postmark on the return-mailing envelope shall be the exclusive
20 means used to determine whether a Request for Exclusion has been timely submitted. Any
21 Settlement Class Member who requests to be excluded from the Settlement will not be entitled
22 to any recovery under the Settlement and will not be bound by the terms of the Settlement.
23 Settlement Class Members who receive a Notice Packet, but fail to submit a valid and timely
24 Request for Exclusion on or before the Response Deadline shall be bound by all terms of the
25 Settlement and any Final Judgment entered in this Action if the Settlement is approved by the
26 Court. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage
27 members of the Settlement Class to submit Requests for Exclusion from the Settlement. Class
28

1 Counsel shall not represent any Settlement Class Member with respect to any such Requests for
2 Exclusion. Settlement Class Members who submit a valid Request for Exclusion may not also
3 submit a Notice of Objection.

4 3.16. Objections. The Notice Packet shall state that Settlement Class Members who
5 wish to remain Class Members, but desire to object to the Settlement must not submit a Request
6 for Exclusion and must submit a written statement of objection (“Notice of Objection”) by the
7 Response Deadline to the Claims Administrator. The Notice of Objection must be signed by the
8 Settlement Class Member or his or her representative and state: (1) the full name of the
9 Settlement Class Member; (2) the dates of employment of the Settlement Class Member; (3) the
10 last four (4) digits of the Settlement Class Member’s Social Security number or the Employee
11 ID number; (4) the basis for the objection; and, (5) whether the Settlement Class Member intends
12 to appear at the Final Approval Hearing. The Notice of Objection must be postmarked by the
13 Response Deadline and returned to the Claims Administrator at the specified address. Within
14 five (5) days of receiving a notice of objection from a Settlement Class Member, the Claims
15 Administrator shall forward the notice of objection to Class Counsel and Defense Counsel. The
16 Parties will thereafter lodge the Settlement Class Member’s Notice of Objection with the Court.
17 Settlement Class Members, regardless of whether or not they submit a timely Notice of
18 Objection, will have a right to appear at the Final Approval Hearing, with or without an attorney.
19 At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage
20 Settlement Class Members to file or serve written objections to the Settlement or appeal from
21 the Final Judgment. Class Counsel shall not represent any Settlement Class Members with
22 respect to any such objections.
23

24 3.17. Plaintiffs’ Participation. By executing this Settlement, Plaintiff hereby stipulates
25 he will not object to or exclude himself from the Settlement in anyway.

26 3.18. No Solicitation of Settlement Objections or Exclusions. The Parties and their
27 counsel agree to use their best efforts to carry out the terms of this Settlement. At no time shall
28 any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class

1 Members to submit either written objections to the Settlement or Requests for Exclusion from
2 the Settlement, or to appeal from the Court's Final Judgment.

3 3.19. Funding of the Gross Settlement. This is a non-reversionary Settlement in which
4 Defendant is required to pay the entire Gross Settlement Amount. No portion of the Gross
5 Settlement Amount will revert to Defendants. Payment of the Gross Settlement shall be made
6 in two equal installments. Defendant shall tender the first installment payment of the Gross
7 Settlement pursuant to the Settlement Administrator's instructions within sixty (60) days after
8 Final Approval has been granted and any appeal time has expired, but no sooner than December
9 31, 2021, and the second installment, six (6) months after the first installment, but in no event
10 prior to June 1, 2022. Defendant's payment obligations are deemed satisfied upon tendering
11 payment to the Settlement Administrator pursuant to its instructions. No payments from the
12 Gross Settlement Amount shall be made before the Gross Settlement Amount is fully funded.
13 No release in this Settlement shall be effective until the Gross Settlement Amount is fully
14 funded. If Defendant defaults, Plaintiff and all Participating Class Members will be able to
15 pursue all claims, and the Settlement becomes null and void.

16
17 3.20. No more than five (5) business days after the Gross Settlement Amount is fully
18 funded, the Claims Administrator will provide the Parties with an accounting of all anticipated
19 payments from the Gross Settlement Amount. The Net Settlement Amount shall be calculated
20 by deducting from the Gross Settlement Amount payments for (1) Class Representative
21 Enhancement Award, as specified in this Settlement and approved by the Court; (2) Class
22 Counsel Award, as specified in this Settlement and approved by the Court; (3) Class Counsel
23 Costs, as specified in this Settlement and approved by the Court; (4) Claims Administration
24 Costs, as specified in this Settlement and approved by the Court; and (5) the LWDA PAGA
25 Allocation, as specified in this Settlement and approved by the Court. The Net Settlement
26 Amount shall be distributed in Individual Settlement Payments in accordance with Paragraphs
27 3.21 and 3.22.

28 3.21. Individual Settlement Payments. Each Participating Class Member shall be

1 eligible to receive an Individual Settlement Payment, which is a share of the Net Settlement
2 Amount, based on the number of weeks worked by the Participating Class Member during the
3 Class Period, as a proportion of all weeks worked by all Participating Class Members during the
4 Class Period. Individual Settlement Payments shall be paid pursuant to the formula set forth in
5 Paragraph 3.22 below. Individual Settlement Payments shall be mailed by regular First-Class
6 U.S. Mail to Participating Class Members' last known mailing address no later than fifteen (15)
7 calendar days after the Gross Settlement Amount is fully funded. Individual Settlement
8 Payments will specifically indicate that they are void if not negotiated within one hundred eight
9 (180) days of their issuance. Individual Settlement Payments reflect settlement of a dispute
10 regarding wages, interest, and penalties. Individual Settlement Payments will be allocated as
11 follows: twenty percent (20%) as wages; and eighty percent (80%) as interest and penalties. The
12 "wage" portion of each Individual Settlement Payment will be reduced by Employee Taxes.
13 The Claims Administrator shall issue the appropriate tax documents associated with the
14 Individual Settlement Payments, including an IRS Form W-2 for the amounts allocated as
15 "wages" and an IRS Form 1099 for the amounts allocated as "interest" or "penalties."

17 3.22. Individual Settlement Payment Formula. After deducting the Class Counsel
18 Award and Class Counsel Costs, the LWDA PAGA Allocation, Class Representative
19 Enhancement Award, and Claims Administration Costs, the remaining funds (the "Net
20 Settlement Amount"), will be distributed as follows: The Claims Administrator shall divide the
21 Net Settlement Amount by the total number of workweeks Participating Class Members worked
22 during the Class Period in order to determine the amount each Participating Class Member is
23 entitled to for each workweek he or she was employed by Defendant (the "Weekly Amount").
24 The Claims Administrator will multiply the Weekly Amount by the estimated total number of
25 workweeks that each Participating Class Member worked during the Class Period. The product
26 of each calculation represents the gross Individual Settlement Payment for the respective
27 Participating Class Member. The Claims Administrator will then deduct Employee Taxes
28 attributable to wages to arrive at the net Individual Settlement Payment for each respective Class

1 Member. Within twenty-one (21) calendar days after Preliminary Approval, Defendant, shall
2 provide the Claims Administrator with any information reasonably necessary to perform the
3 calculation of number of workweeks for each Settlement Class Member, and any other
4 reasonably required information the Claims Administrator requests to perform the calculations
5 required under this Settlement. Defendant shall have no responsibility for deciding the validity
6 of any Individual Settlement Payment or any other payments made pursuant to this Settlement,
7 shall have no involvement in or responsibility for the determination or payment of Employee
8 Taxes, and shall have no liability for any errors made with respect to such Employee Taxes.

9 3.23. Individual PAGA Settlement Payment Formula. To calculate each Participating
10 Class Member's respective Individual PAGA Settlement Award, the Claims Administrator will
11 sum the following amount: (a) the product of twenty-five percent of the amount allocated to
12 PAGA penalties multiplied by the Participating Class Member's respective pro-rata PAGA
13 percentage. No withholding shall be made on the PAGA Settlement Award component of the
14 Individual PAGA Settlement Payments. Even if a Class Member excludes him or herself from
15 the Settlement, the Class Member shall be entitled to an Individual PAGA Settlement payment
16 if the Class Member worked during the PAGA period.

17 3.24. Settlement Class Members are not eligible to receive any compensation other than
18 the Individual Settlement Payment, and they may only receive an Individual Settlement Payment
19 if they do not submit a valid and timely Request for Exclusion to opt out of the Settlement. Even
20 if a Class Member excludes him or herself from the Settlement, the Class Member shall be
21 entitled to an Individual PAGA Settlement payment if the Class Member worked during the
22 PAGA period. Plaintiff, however, is also eligible to receive a Class Representative Enhancement
23 Award.
24

25 3.25. No benefit, including but not limited to pension benefits, shall increase or accrue
26 as a result of any payment made pursuant to this Settlement.

27 3.26. If a check for an Individual Settlement Payment is returned to the Claims
28 Administrator as undeliverable, the Claims Administrator shall promptly attempt to obtain a

1 valid mailing address by performing a skip trace search. If another address is identified, the
2 Claims Administrator shall mail the check to the newly identified address. If an Individual
3 Settlement Payment check is returned to the Claims Administrator a second time as
4 undeliverable, the Claims Administrator shall not attempt any further re-mailing of that check.
5 Any settlement checks that remain uncashed one hundred eighty (180) or more calendar days
6 after issuance shall be voided. The Claims Administrator shall forward all voided settlement
7 checks to the California State Controller's Office's Unclaimed Property Division. The Claims
8 Administrator shall also compile a list of the Participating Class Members for whom their funds
9 were deposited with the California State Controller's Office's Unclaimed Property Division. In
10 such event, the Participating Class Member shall nevertheless remain bound by the Settlement.
11 The Parties agree that good cause exists for the Court to approve this distribution because the
12 unclaimed funds are unclaimed wages of employees that will be held by the State of California
13 for the benefit of these employees, who may request receipt of payment from the California
14 State Controller's Office's Unclaimed Property Division.
15

16 3.27. Class Representative Enhancement Award. Defendant agrees not to oppose or
17 object to any application or motion by Plaintiff for a Class Representative Enhancement Award,
18 not to exceed five thousand dollars (\$5,000.00) for Plaintiff Jose Hernan, as consideration for
19 Plaintiff's time and effort in bringing and prosecuting this matter. The Class Representative
20 Enhancement Award shall be paid to Plaintiff from the Gross Settlement Amount no later than
21 fifteen (15) calendar days after the Gross Settlement Amount is fully funded. The Claims
22 Administrator shall issue an IRS Form 1099 — MISC to Plaintiff for his Class Representative
23 Enhancement Award. Plaintiff shall be solely and legally responsible for payment of all
24 applicable taxes on their Class Representative Enhancement Award and shall hold Defendant
25 harmless from any claim or liability for taxes, penalties, or interest arising as a result of the Class
26 Representative Enhancement Award. The Class Representative Enhancement Award shall be
27 in addition to Plaintiff's Individual Settlement Payment as a Participating Class Member. In the
28 event that the Court awards lesser amounts than the Class Representative Enhancement Award

1 requested, then any portion of the requested amounts not awarded to Plaintiff shall be added to
2 the Net Settlement Amount. Plaintiff shall not have the right to revoke their agreement to the
3 Settlement on the grounds the Court did not approve any or all of his request for a Class
4 Representative Enhancement Award.

5 3.28. Class Counsel Award and Costs. Defendant agrees not to oppose or object to any
6 application or motion by Class Counsel for a Class Counsel Award not to exceed one hundred
7 sixteen thousand six hundred sixty-six dollars (\$116,666.00) and Class Counsel Costs not to
8 exceed fifteen thousand dollars (\$15,000.00) from the Gross Settlement Amount. The Class
9 Counsel Award and Class Counsel Costs shall be paid no later than fifteen (15) calendar days
10 after the Gross Settlement Amount is fully funded. Class Counsel shall be solely and legally
11 responsible to pay all applicable taxes on the payments made pursuant to this paragraph. The
12 Claims Administrator shall issue an IRS Form 1099 — MISC to Class Counsel for the payments
13 made pursuant to this paragraph. This Settlement is not contingent upon the Court awarding
14 Class Counsel any particular amount in attorneys’ fees and costs. Any amount requested by
15 Class Counsel for the Class Counsel Award and Class Counsel Costs and not granted by the
16 Court shall be part of the Net Settlement Amount.

17 3.29. PAGA Allocation. Subject to Court approval, the Parties shall allocate a total of
18 Ten Thousand Dollars (\$10,000.00) from the Gross Settlement Amount for the compromise of
19 claims for civil penalties brought under the PAGA (the “PAGA Allocation”). Per California
20 Labor Code section 2699(i), seven thousand five hundred dollars (\$7,500.00), representing
21 seventy-five percent (75%) of the PAGA Allocation, will be paid to California’s Labor
22 Workforce Development Agency. The remaining Two Thousand Five Hundred Dollars
23 (\$2,500.00), representing twenty-five percent (25%) of the PAGA Allocation, shall be part of
24 the Net Settlement Amount to be distributed to Participating Class Members.

25 3.30. LWDA PAGA Allocation. The LWDA PAGA Allocation shall be Seven
26 Thousand Five Hundred Dollars (\$7,500.00), representing seventy-five percent (75%) of the
27 PAGA Allocation, and shall be paid to California’s Labor Workforce Development Agency
28

1 from the Gross Settlement Amount by the Claims Administrator no later than fifteen (15)
2 calendar days after the Gross Settlement Amount is fully funded. The remaining Two Thousand
3 Five Hundred Dollars (\$2,500.00), representing twenty-five percent (25%) of the PAGA
4 Allocation, shall be part of the Net Settlement Amount for distribution to Participating Class
5 Members.

6 3.31. Defendant's Option to Terminate Settlement. If, after the Response Deadline and
7 before the Final Approval Hearing, ten percent (10%) or more of the number of Settlement Class
8 Members submit timely and valid Requests for Exclusion from the Settlement, Defendant shall
9 have, in its sole discretion, the option to terminate this Settlement. Defendant shall exercise its
10 option to terminate, if it wishes, prior to the Final Approval Hearing. If Defendant decides to
11 void the Settlement, then the Settlement and conditional class certification shall be considered
12 void, and neither the Settlement, conditional class certification, nor any of the related
13 negotiations or proceedings, shall be of any force or effect, and the Parties shall stand in the
14 same position, without prejudice, as if this Settlement had been neither entered into nor filed
15 with the Court. Should Defendant void the Settlement under this paragraph, it shall be
16 responsible for all Claims Administration Costs.
17

18 3.32. Claims Administration Costs. The Claims Administrator shall be paid for the costs
19 of administration of the Settlement from the Gross Settlement Amount. Such costs of
20 administration are not to exceed twenty thousand dollars (\$20,000.00), unless the court approves
21 a higher amount. No fewer than twenty (20) days prior to the Final Approval Hearing, the
22 Claims Administrator shall provide the Parties with a statement detailing the costs of
23 administration. The Claims Administrator, on Defendants' behalf, shall have the authority and
24 obligation to make payments, credits and disbursements, including payments and credits in the
25 manner set forth in this Settlement, to Participating Class Members, calculated in accordance
26 with the methodology set out in this Settlement and orders of the Court. The Parties agree to
27 cooperate in the administration of the Settlement and to make all reasonable efforts to control
28 and minimize the costs and expenses incurred in administration of the Settlement. The Parties

1 each represent they do not have any financial interest in the Claims Administrator or otherwise
2 have a relationship with the Claims Administrator that could create a conflict of interest. The
3 Claims Administrator shall be responsible for: processing and mailing all court-approved
4 payments to the Plaintiffs, Class Counsel, Participating Class Members, and the LWDA;
5 printing and mailing the Notice Packets to the Settlement Class Members as called for in this
6 Settlement and ordered by the Court; receiving and reporting Notice of Objections and Requests
7 for Exclusion submitted by Settlement Class Members; providing declaration(s) as necessary in
8 support of preliminary and/or final approval of this Settlement; and other tasks as the Parties
9 mutually agree or the Court orders the Claims Administrator to perform. The Claims
10 Administrator shall keep the Parties timely apprised of the performance of all Claims
11 Administrator responsibilities. Any legally mandated tax reports, tax forms, tax filings, or other
12 tax documents required by administration of this Settlement shall be prepared by the Claims
13 Administrator. Any expenses incurred in connection with such preparation shall be Claims
14 Administration Costs. The Claims Administrator shall be paid the Claims Administration Costs
15 from the Gross Settlement Amount no later than fifteen (15) calendar days after the Gross
16 Settlement Amount is fully funded.

18 3.33. Final Approval Hearing. At a reasonable time following the Response Deadline,
19 the Court shall hold the Final Approval Hearing, where objections, if any, may be heard, and
20 the Court shall determine amounts properly payable for (i) the Class Counsel Award, (ii) the
21 Class Counsel Costs, (iii) the Class Representative Enhancement Awards, (iv) the LWDA
22 PAGA Allocation; and (v) the Claims Administration Costs.

23 3.34. Entry of Final Judgment. If the Court approves this Settlement at the Final
24 Approval Hearing, the Parties shall request that the Court enter the Final Judgment after the
25 Gross Settlement Amount has been fully funded, with the Court retaining jurisdiction over the
26 Parties to enforce the terms of the judgment. If the Court grants final approval to the Settlement,
27 notice of Final Approval shall be posted on the Settlement Administrator's website, at
28 www.phoenixclassaction.com.

1 3.35. No Effect on Employee Benefits. Amounts paid to Plaintiff or other Participating
2 Class Members pursuant to this Settlement will not count as earnings or compensation for
3 purposes of any benefits (e.g., pensions or retirement plans) sponsored by Defendants. It is
4 expressly understood and agreed that the receipt of Individual Settlement Amount shall not
5 entitle any Participating Class Member to additional compensation or benefits under any
6 collective bargaining agreement or under any bonus, contest or other compensation or benefit
7 plan or agreement in place during the period covered by the Settlement, nor shall it entitle any
8 Participating Class Member to any increased pension and/or retirement, or other deferred
9 compensation benefits. It is the intent of the Parties that Individual Settlement Amounts
10 provided for in this Stipulation are the sole payments to be made by Defendant to Participating
11 Class Members in connection with this Settlement, with the exception of Plaintiffs, and that the
12 Participating Class Members are not entitled to any new or additional compensation or benefits
13 as a result of having received the Individual Settlement Awards. Furthermore, the receipt of
14 Individual Settlement Amounts by Participating Class Members shall not, and does not, by itself
15 establish any general, special, or joint employment relationship between and among the
16 Participating Class Member(s) and Defendants.

17
18 3.36. Nullification of Settlement. In the event: (i) the Court does not enter the
19 Preliminary Approval Order as specified herein; (ii) the Court does not grant final approval of
20 the Settlement as provided herein; (iii) the Court does not enter a Final Judgment as provided
21 herein; or (iv) the Settlement does not become final for any other reason, this Settlement shall
22 be null and void and any order or judgment entered by the Court in furtherance of this Settlement
23 shall be treated as void from the beginning. In such a case, the Parties and any funds to be
24 awarded under this Settlement shall be returned to their respective statuses as of the date and
25 time immediately prior to the execution of this Settlement, and the Parties shall proceed in all
26 respects as if this Settlement had not been executed, except that any costs and fees already
27 incurred by the Claims Administrator shall be paid jointly by the Parties. In the event an appeal
28 is filed from the Court's Final Judgment, or any other appellate review is sought, administration

1 of the Settlement shall be stayed pending final resolution of the appeal or other appellate review,
2 and any other payments required hereunder by Defendant will not be paid pending the
3 completion and final resolution of the appeal, and any payment thereafter will: (1) occur only if
4 the Order Granting Final Approval is upheld after all appeals; and (2) be in a manner that is
5 provided for in the Settlement and in the Order Granting Final Approval.

6 3.37. No Admission by the Parties. Defendant denies any and all claims alleged in this
7 Action and deny all wrongdoing whatsoever. This Settlement is not a concession or admission,
8 and shall not be used against Defendant as an admission or indication, with respect to any claim,
9 of any fault, concession, or omission by Defendant. Neither this Settlement, nor any of its terms
10 and conditions, nor any of the negotiations connected with it, is a concession or admission, and
11 none shall be used against Defendant as an admission or indication with respect to any claim of
12 any fault, concession, or omission by Defendant or that class certification is proper under the
13 standard applied to contested certification motions. The Parties stipulate and agree to the
14 certification of the proposed class for settlement purposes only. The Parties further agree that
15 this Settlement will not be admissible in this or any other proceeding as evidence that either: (i)
16 a class action should be certified or (ii) Defendant is liable to Plaintiff or any Class Member,
17 other than according to the terms of this Settlement.

18 3.38. Dispute Resolution. Except as otherwise set forth herein, all disputes concerning
19 the interpretation, calculation or payment of settlement claims, or other disputes regarding
20 compliance with this Settlement shall be resolved as follows:
21

22 3.38.1. If Plaintiff or Class Counsel, on behalf of Plaintiff or any
23 Settlement Class Members, or Defendant, at any time believe that the
24 other Party or Parties have breached or acted contrary to the Settlement,
25 that Party shall notify the other Party or Parties in writing of the alleged
26 violation. Upon receiving notice of the alleged violation or dispute, the
27 responding Party shall have ten (10) days to correct the alleged
28 violation and/or respond to the initiating Party with the reasons why the

1 Party disputes all or part of the allegation.

2 3.38.2. If the response does not address the alleged violation to the initiating
3 Party's satisfaction, the Parties shall negotiate in good faith for up to ten
4 (10) days to resolve their differences.

5 3.38.3. If thereafter, the Parties still cannot resolve the dispute, the Parties shall
6 utilize the services of Hon. Peter Lichtman (Mediator) in a good-faith
7 attempt to mediate and resolve the dispute.

8 3.38.4. If the Parties are unable to resolve their differences after twenty (20)
9 days, either Party may file an appropriate motion for enforcement with
10 the Court.

11 3.39. Exhibits and Headings. The terms of this Settlement include the terms set forth in
12 Exhibits A and B, which are attached to this Settlement and incorporated by this reference as
13 though fully set forth in this paragraph. Any Exhibits to this Settlement are an integral part of
14 the Settlement. The descriptive headings of any paragraphs or sections of this Settlement are
15 inserted for convenience of reference only and do not constitute a part of this Settlement.

16 3.40. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the
17 Action and thereafter implement and complete the Settlement.

18 3.41. Amendment or Modification. This Settlement may be amended or modified only
19 by a written instrument signed by all the Parties and counsel for all Parties or their successors-
20 in-interest.

21 3.42. Entire Settlement. This Settlement and any attached Exhibits constitute the entire
22 agreement among these Parties, and no oral or written representations, warranties or
23 inducements have been made to any Party concerning this Settlement or its exhibits, other than
24 the representations, warranties and covenants contained and memorialized in the Settlement and
25 its exhibits. No other prior or contemporaneous written or oral agreements may be deemed
26 binding on the Parties.

27 3.43. Authorization to Enter into Settlement. Counsel for all Parties warrant and
28

1 represent they are expressly authorized by the Parties whom they represent to negotiate this
2 Settlement and to take all appropriate actions required or permitted to be taken by such Parties
3 pursuant to this Settlement to effectuate its terms, and to execute any other documents required
4 to effectuate the terms of this Settlement. The Parties and their counsel will cooperate with each
5 other and use their best efforts to affect the implementation of the Settlement. In the event the
6 Parties are unable to reach agreement on the form or content of any document needed to
7 implement the Settlement, or on any supplemental provisions that may become necessary to
8 effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve
9 such disagreement. The person signing this Settlement on behalf of Defendant Lopes Inc.
10 represents and warrants that he or she is authorized to sign this Settlement on behalf of
11 Defendant Lopes Inc. Plaintiff Jose Hernan represents and warrants that he is authorized to sign
12 this Settlement and that he has not assigned any claim, or part of a claim, covered by this
13 Settlement to a third-party.

14
15 3.44. Binding on Successors and Assigns. This Settlement shall be binding upon, and
16 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

17 3.45. No Prior Assignments. The Parties and their counsel represent, covenant, and
18 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported
19 to assign, transfer, or encumber to any person or entity any portion of any liability, claim,
20 demand, action, cause of action or right herein released and discharged.

21 3.46. California Law Governs. All terms of this Settlement and the exhibits hereto shall
22 be governed by and interpreted according to the laws of the State of California.

23 3.47. This Settlement is Fair, Adequate and Reasonable. The Parties believe this
24 Settlement is a fair, adequate, and reasonable settlement of the Action and have arrived at this
25 Settlement after extensive arms-length negotiations, taking into account all relevant factors,
26 present and potential.

27 3.48. Jurisdiction of the Court. In accordance with California Rule of Court 3.769(h),
28 the Parties agree that the Court shall retain jurisdiction with respect to the interpretation,

1 implementation, and enforcement of the terms of this Settlement and all orders and judgments
2 entered in connection therewith, and the Parties and their counsel hereto submit to the
3 jurisdiction of the Court for purposes of interpreting, implementing, and enforcing this
4 Settlement and all orders and judgments entered in connection therewith.

5 3.49. Invalidity of Any Provision. Before declaring any provision of this Settlement
6 invalid, the Court shall first attempt to construe the provision to be valid to the fullest extent
7 possible, consistent with applicable precedents.

8 3.50. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to
9 class certification for purposes of this Settlement only.

10 3.51. Cooperation. The Parties agree to cooperate fully with one another to accomplish
11 and implement the terms of this Settlement. Such cooperation shall include, but not be limited
12 to, execution of such other documents and the taking of such other action as may be reasonably
13 necessary to fulfill the terms of this Settlement. The Parties to this Settlement shall use their
14 best efforts, including all efforts contemplated by this Settlement and any other efforts that may
15 become necessary by Court order, or otherwise, to effectuate this Settlement and its terms.

16 3.52. Publicity. Plaintiff and Class Counsel agree that they will not issue any press
17 releases, initiate any contact with the press, respond to any press inquiry, or have any
18 communication with the press about the Action and/or the fact, amount, or terms of the
19 Settlement. However, for marketing purposes, Class Counsel may refer to the settlement amount
20 and the nature of the case without identifying any of the Parties directly or indirectly. Before the
21 date of the filing of the motion for preliminary approval of the Settlement, Plaintiff and Class
22 Counsel will not initiate any contact with Settlement Class Members about the Settlement,
23 except that: (a) Class Counsel, if contacted by a Settlement Class Member, may respond that a
24 settlement has been reached and that the details will be communicated in a forthcoming Court-
25 approved notice; and (b) Plaintiff, if contacted by a Settlement Class Member, may respond only
26 that the Settlement Class Member should contact Class Counsel. Neither Plaintiff nor Class
27 Counsel shall hold a press conference or otherwise seek to affirmatively contact the media about
28

1 the Settlement. If contacted by the media regarding the Settlement, Class Counsel shall state, “It
2 is a fair settlement, and we are happy with the results.” Additionally, no Party or their counsel
3 shall disparage the Settlement. Nothing in this paragraph shall prevent Class Counsel from
4 carrying out their duties.

5 3.53. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
6 and conditions of this Settlement. Accordingly, this Settlement will not be construed more
7 strictly against one party than another merely by virtue of the fact that it may have been prepared
8 by counsel for one of the Parties, it being recognized that, because of the arm’s-length
9 negotiations between the Parties, all Parties have contributed to the preparation of this
10 Settlement.

11 3.54. Representation by Counsel. The Parties acknowledge that they have been
12 represented by counsel throughout all negotiations that preceded the execution of this
13 Settlement, and that this Settlement has been executed with the consent and advice of counsel,
14 and reviewed in full. Further, Plaintiff and Class Counsel warrant and represent that there are
15 no liens on the Settlement Agreement.
16

17 3.55. All Terms Subject to Final Court Approval. All amounts and procedures described
18 in this Stipulation are subject to final Court approval.

19 3.56. Notices. Unless otherwise specifically provided, all notices, demands or other
20 communications in connection with this Settlement shall be: (1) in writing; (2) deemed given
21 on the third business day after mailing; and (3) sent via United States registered or certified mail,
22 return receipt requested, addressed as follows:
23
24
25
26
27
28

To Plaintiffs:

Kevin Mahoney, Esq.
kmahoney@mahoney-law.net
Berkeh Alemzadeh, Esq.
balem@mahoney-law.net
MAHONEY LAW GROUP, APC
249 East Ocean Boulevard, Suite 814
Long Beach, CA 90802
Telephone: (562) 590-5550
Facsimile: (562) 590-8400

Jose Garay, Esq.
jose@garaylaw.com
249 E Ocean Blvd # 814
Long Beach, CA 90802
949.208.3400 office
562.590.8400 fax

To Defendants:

Alfred J. Landegger, Esq.
alfred@landeggeresq.com
Roxana E. Verano, Esq.
roxana@landeggeresq.com

LANDEGGER VERANO & DAVIS
15760 Ventura Blvd., Suite 1200
Encino, California 91436
Telephone: (818) 986-7561
Facsimile: (818) 986-5147

3.57. Execution by Settlement Class Members. It is agreed that it is impossible or impractical to have each Settlement Class Member execute this Settlement. The Notice of Settlement will advise all Settlement Class Members of the binding nature of the release and such shall have the same force and effect as if each Settlement Class Member executed this Settlement.

3.58. Execution by Plaintiff and Defendant. Plaintiff and Defendant, by signing this Settlement, are bound by the terms herein.

3.59. Fair, Adequate and Reasonable Settlement. The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, intensive, arms-length negotiations between the Parties and that this Settlement shall not be construed in favor of or against any of the Parties by reason of their participation in the drafting of this Settlement.

3.60. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

3.61. Counterparts. This Settlement shall become effective upon its execution by all of

1 the undersigned. Plaintiff, Class Counsel, Defendant, and Defense Counsel may execute this
2 Settlement in counterparts, and execution of counterparts shall have the same force and effect
3 as if each had signed the same instrument. Copies of the executed Settlement shall be effective
4 for all purposes as though the signatures contained therein were original signatures.

5 April

6 Dated: March 14, 2022

By: Jose Hernan MUKVI

7 Jose Hernan

8
9 Dated: March _____, 2022

By: _____

10 Defendant Lopes Inc. dba Red's BBQ & Grillery

1 the undersigned. Plaintiff, Class Counsel, Defendant, and Defense Counsel may execute this
2 Settlement in counterparts, and execution of counterparts shall have the same force and effect
3 as if each had signed the same instrument. Copies of the executed Settlement shall be effective
4 for all purposes as though the signatures contained therein were original signatures.

5
6 Dated: March ____, 2022

By: _____
Jose Hernan

7
8
9 Dated: March 30, 2022

By: Timothy M. Lopez
Defendant Lopes Inc. dba Red's BBQ & Grillery