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 THE BIG COMPANY, INC. dba CAPO FIRESIDE

14
 15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 16 FOR THE COUNTY OF SAN BERNARDINO

17 VICTOR PEREZ, individually and on behalf of
 all others similarly situated,

18 Plaintiff,

19 vs.

20 THE BIG COMPANY, INC. DBA CAPO
 21 FIRESIDE, a California corporation, and DOES
 1 through 10, inclusive,

22 Defendants.

Case No. CIVDS2009691

CLASS ACTION

ASSIGNED FOR ALL PURPOSES TO:
HON. DAVID COHN, DEPT. S26

**SETTLEMENT AGREEMENT AND
STIPULATION TO RESOLVE CLASS
ACTION AND PAGA CLAIMS**

Date Action Filed: May 29, 2020

Trial Date: Not assigned

1 This Settlement Agreement and Stipulation To Resolve Class Action and PAGA Claims
2 (the “Settlement Agreement,” “Agreement,” or “Settlement”) is entered into to resolve the action
3 entitled *Victor Perez v. The BIG Company, Inc. dba CAPO Fireside, et al.*, San Bernardino County
4 Superior Court Case No. CIVDS2009691.

5 **DEFINITIONS**

6 1. Action. “Action” means *Victor Perez v. The BIG Company, Inc. dba CAPO*
7 *Fireside, et al.*, San Bernardino County Superior Court Case No. CIVDS2009691.

8 2. Agreement or Settlement or Settlement Agreement. “Agreement” or “Settlement”
9 or “Settlement Agreement” means this Settlement Agreement and Stipulation To Resolve Class
10 Action and PAGA Claims, entered into by the Parties to resolve the Action.

11 3. Aggrieved Employees. “Aggrieved Employees” means Class Members who
12 worked during the PAGA Period (as defined in Paragraph 22).

13 4. Attorneys’ Fees and Costs. “Attorneys’ Fees and Costs” means the amount
14 authorized by the Court for: (i) an award of attorneys’ fees to Class Counsel for litigation and
15 resolution of the matter, in the amount that does not exceed one-third or 33.33% percent of the
16 Gross Settlement Amount; and (ii) reimbursement of actual costs incurred by Class Counsel in
17 connection with this Action, in an amount to not to exceed twenty-five thousand dollars (\$25,000).

18 5. Class Counsel. “Class Counsel” means Wilshire Law Firm.

19 6. Class or Class Members. “Class” or “Class Members” means all current and former
20 employees who worked in a non-exempt or hourly-paid position for The BIG Company, Inc. dba
21 CAPO Fireside within the state of California during the Class Period.

22 7. Class Notice. “Class Notice” means the Notice of Class Action Settlement,
23 attached as **Exhibit A** to this Agreement, or a substantially similar notice approved by the Court.

24 8. Class Period. “Class Period” means the period from May 29, 2016 to the earlier of:
25 (i) the date the Court enters the Order preliminarily approving the Settlement; or (ii) July 19, 2021.

26 9. Court. “Court” means the San Bernardino County Superior Court, where the
27 Action is currently pending.

28 10. Defendant. “Defendant” means The BIG Company, Inc. dba CAPO Fireside.

1 11. Effective Date. The “Effective Date” of this Agreement will be the later of (i) the
2 61st day after service of notice of entry of the Final Order and Final Judgment, if no appeal, review,
3 or writ has been filed; or (ii) if an appeal, review, or writ is sought from the Final Order or Final
4 Judgment, the day after the Final Order and Final Judgment are affirmed or the appeal, review, or
5 writ is dismissed or denied, and the Final Order and Final Judgment are no longer subject to further
6 judicial review. The Effective Date is conditioned upon the Court’s having entered a Final Order
7 and Judgment as set forth in this Agreement.

8 12. Enhancement Award. “Enhancement Award” means the amount the Court
9 authorizes to be paid to Named Plaintiff in addition to his Individual Settlement Payment, in
10 recognition of his efforts and work in prosecution of the Action, up to \$7,500.00.

11 13. Final Hearing Date. “Final Hearing Date” means the date set by the Court for the
12 hearing on final approval of the Settlement.

13 14. Final Order and Judgment. “Final Order and Judgment” means the proposed order
14 granting final approval of the Settlement and entering judgment, which Plaintiff will submit to the
15 Court with the motion for final approval of the Settlement.

16 15. Gross Settlement Amount. “Gross Settlement Amount” means the total settlement
17 payment Defendant has agreed to make under this Agreement. The Gross Settlement Amount is
18 \$575,000.00.

19 16. Individual Settlement Payment. “Individual Settlement Payment” means the
20 individual settlement payment allocated to each Participating Class Member and/or Aggrieved
21 Employee as set forth in Paragraph 43.e.

22 17. Named Plaintiff. “Named Plaintiff” means Victor Perez.

23 18. Notice Period. “Notice Period” means the time period commencing on the date the
24 Class Notice is mailed to Class Members and ending 60 days thereafter.

25 19. Net Class Settlement Amount. “Net Class Settlement Amount” means the
26 settlement amount to be distributed to Participating Class Members, which is the Gross Settlement
27 Amount less Attorneys’ Fees and Costs, the Enhancement Award, the PAGA Amount, and
28 Settlement Administration Costs.

1 20. PAGA Claims. “PAGA Claims” means those claims that (a) arise from the facts,
2 matters, transactions or occurrences alleged in the Action or that could have been alleged in the
3 Action based on such facts; or (b) arise from the facts, matters, transactions or occurrences alleged,
4 or that could have been alleged, in the letter sent by Class Counsel to the Labor and Workforce
5 Development Agency (“LWDA”) on or about March 23, 2020, asserting that Defendant violated
6 various provisions of the Labor Code. Without limiting the foregoing, and in addition to the
7 foregoing, the PAGA Claims include claims premised on failure to pay the minimum wage; failure
8 to pay regular wages; failure to pay overtime compensation and other premium wages; off-the-
9 clock work; failure to provide and maintain complete and accurate itemized wage statements that
10 included all information required by the California Labor Code; failure to provide meal periods
11 and rest breaks or additional pay in lieu thereof; untimely payment of wages; violations of
12 California Labor Code §§ 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558,
13 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1191, and 2698 *et seq.*; and related
14 violations of the applicable California Wage Orders.

15 21. PAGA Amount. “PAGA Amount” means the amount of \$30,000.00, which
16 represents the portion of the Gross Settlement Amount allocated to the settlement of the PAGA
17 Claims. The PAGA Amount is paid from the Gross Settlement Amount, and will be allocated as
18 set forth in Paragraph 43.d. The Parties agree that 75% of the PAGA Amount (\$22,500.00) will
19 be paid to the LWDA as the “LWDA Payment,” and the remaining 25% (\$7,500.00) will be
20 allocated to the Aggrieved Employees as the “PAGA Payment.”

21 22. PAGA Period. “PAGA Period” means the period from March 26, 2019 to the
22 earlier of: (i) the date the Court enters the Order preliminarily approving the Settlement; or (ii)
23 July 19, 2021.

24 23. Parties. “Parties” means the Defendant and the Named Plaintiff, individually and
25 on behalf of all Class Members and Aggrieved Employees. Each of the Parties may be referred to
26 in the singular as a “Party.”

27 24. Participating Class Member. “Participating Class Member” means each Class
28 Member who has not timely opted out of the Settlement pursuant to Paragraph 48 of the

1 Agreement; “Settlement Class” means a class of all Participating Class Members.

2 25. Preliminary Approval Order. “Preliminary Approval Order” means an order from
3 the Court preliminarily approving this Settlement.

4 26. Released Parties. “Released Parties” means and includes The BIG Company, Inc.
5 dba CAPO Fireside and its past, present, and future predecessors, successors, assigns, affiliates,
6 shareholders, members, owners, officers, directors, investors, employees, managers, managing
7 agents, partners, affiliated companies or entities, parents, subsidiaries, holding companies, agents,
8 attorneys, insurers, and representatives.

9 27. Settled Claims or Released Claims. “Settled Claims” or “Released Claims” means
10 any and all claims, known or unknown, contingent or accrued, against Defendant and the other
11 Released Parties that (a) arise from the facts, matters, transactions or occurrences alleged in the
12 Action or that could have been alleged in the Action based on such facts; or (b) arise from the
13 facts, matters, transactions or occurrences alleged, or that could have been alleged, in the letter
14 sent by Class Counsel to LWDA on or about March 23, 2020, asserting that Defendant violated
15 various provisions of the Labor Code. Without limiting the foregoing, and in addition to the
16 foregoing, the Settled Claims include claims for failure to pay the minimum wage; failure to pay
17 regular wages; failure to pay overtime compensation and other premium wages; off-the-clock
18 work; failure to provide and maintain complete and accurate itemized wage statements that
19 included all information required by the California Labor Code; failure to provide meal periods
20 and rest breaks or additional pay in lieu thereof; untimely payment of wages; violations of
21 California Labor Code §§ 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558,
22 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1191; related violations of the
23 applicable California Wage Orders; violations of all related or corresponding federal laws;
24 violation of California Business and Professions Code Section 17200 *et seq.*; and claims under
25 California Labor Code Section 2698 *et seq.*

26 28. Settlement Administration Costs. “Settlement Administration Costs” means the
27 costs of settlement administration, including costs of notice to Class Members, distributing
28 settlement payments, and any other fees and costs incurred or charged by the Settlement

1 Administrator in connection with the execution of its duties under this Settlement.

2 29. Settlement Administrator. “Settlement Administrator” means Phoenix Settlement
3 Administrators or such other third-party administrator chosen by the Parties and approved by the
4 Court.

5 30. Settlement Hearing. “Settlement Hearing” means the hearing on the Final Hearing
6 Date at which the Court will determine whether to fully and finally approve the fairness and
7 reasonableness of this Agreement.

8 **RECITALS**

9 31. On May 29, 2020, Victor Perez filed a putative class action against defendant The
10 BIG Company, Inc. dba CAPO Fireside in a case styled *Victor Perez v. The BIG Company, Inc.*
11 *dba CAPO Fireside, et al.*, San Bernardino County Superior Court Case No. CIVDS2009691. The
12 Complaint alleges that Defendant violated various wage-and-hour laws, including: (1) failure to
13 pay minimum and regular wages; (2) failure to pay overtime; (3) failure to provide meal periods
14 and pay meal period premiums; (4) failure to authorize and permit rest periods and pay rest period
15 premiums; (5) failure to timely pay wages; (6) failure to provide accurate itemized wage
16 statements; and (7) violation of California Business and Professions Code § 17200 *et seq.* On June
17 24, 2020, the Named Plaintiff filed a First Amended Complaint, adding a cause of action for civil
18 penalties under PAGA.

19 32. Defendant denies that it engaged in any misconduct in connection with the wage-
20 and-hour practices associated with the Class Members (inclusive of the Aggrieved Employees).
21 Defendant further denies that it has any liability of any kind associated with the claims alleged in
22 the Action. Defendant contends that it has complied with both federal and state wage-and-hour
23 laws, and all other laws regulating its relationship with the Class Members, including the Named
24 Plaintiff.

25 33. On May 20, 2021, the Parties participated in mediation with Steve Serratore, Esq.
26 (the “Mediator”), a respected mediator of complex wage and hour actions, and with the assistance
27 of the Mediator’s evaluations, and in response to a proposal made by the Mediator, the Parties
28 reached the settlement that is memorialized in this Agreement.

1 34. Class Counsel has investigated the facts relating to the Action. Settlement
2 discussions were conducted at arm’s-length, a full-day mediation with a neutral third-party took
3 place, and the Settlement is the result of an informed and detailed analysis of Defendant’s potential
4 liability and exposure in relation to the costs and risks associated with continued litigation. Based
5 on the documents produced, as well as Class Counsel’s own independent investigation and
6 evaluation, Class Counsel believes that the Settlement documented by this Settlement Agreement
7 is fair, reasonable, and adequate, and in the best interest of the Class in light of all known facts and
8 circumstances, including the risk of significant delay and defenses asserted to the merits of the
9 Action. While Defendant specifically denies any liability in the Action, Defendant has agreed to
10 enter into this Settlement to avoid the costs associated with defending the Action.

11 **TERMS AND CONDITIONS**

12 NOW, THEREFORE, in consideration of the recitals listed above and the promises and
13 warranties set forth below, and intending to be legally bound and acknowledging the sufficiency of
14 the consideration and undertakings set forth below, Named Plaintiff, individually and on behalf of
15 the Class Members, Aggrieved Employees, and the State of California, and Defendant agree that
16 the Action shall be and is finally and fully compromised and settled on the following terms and
17 conditions:

18 35. Non-Admission Of Liability. The Parties enter into this Agreement to resolve the
19 dispute that has arisen between them and to avoid the burden, expense and risk of continued
20 litigation. In entering into this Agreement, Defendant and the other Released Parties do not admit,
21 and specifically deny, that they have violated any federal, state, or local law; violated any
22 regulations or guidelines promulgated pursuant to any statute or any other applicable laws,
23 regulations or legal requirements; breached any contract; violated or breached any duty; engaged
24 in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to
25 the Class or the Aggrieved Employees. Neither this Agreement, nor any of its terms or provisions,
26 nor any of the negotiations connected with it, shall be construed as an admission or concession by
27 Defendant or any of the other Released Parties of any such violations or failures to comply with
28 any applicable law. Except as necessary in a proceeding to enforce the terms of this Agreement,

1 this Agreement and its terms and provisions shall not be offered or received as evidence in any
2 action or proceeding to establish any liability or admission on the part of Defendant or to establish
3 the existence of any condition constituting a violation of, or a non-compliance with, federal, state,
4 local or other applicable law.

5 36. Conditional Nature Of Settlement. For settlement purposes *only*, the Parties agree
6 that (a) a class may be certified in the Action pursuant to California Code of Civil Procedure
7 Section 382, and (b) the Action may proceed as a PAGA representative action.

8 a. The Parties intend their settlement to be contingent upon the preliminary
9 and final approval of each and every term of this Agreement, without material modification. The
10 Parties and their respective counsel shall use their respective best efforts to obtain Court approval
11 and implement this Agreement in accordance with its terms. If the Court does not so approve this
12 Agreement, the Parties agree to meet and confer to address the Court's concerns. If the Parties are
13 unable to agree upon a resolution, the Parties intend this Agreement to become null and void, and
14 unenforceable, in which event the settlement terms set forth in this Agreement, including any
15 modifications made with the consent of the Parties, and any action taken or to be taken in
16 connection with this Agreement shall be terminated and shall become null and void and have no
17 further force or effect, and the class certified for settlement purposes pursuant to this Agreement
18 will be decertified for all purposes.

19 b. In the event the Court does not grant preliminary or final approval of the
20 Parties' settlement, or in the event that this Agreement shall terminate or the settlement embodied
21 in this Agreement does not become effective for any reason, the Agreement and all negotiations,
22 court orders and proceedings relating to the Agreement shall be without prejudice to the rights of
23 the Named Plaintiff, Class Members and Defendant, each of whom shall be restored to their
24 respective positions existing prior to the execution of this Agreement, and evidence relating to the
25 Agreement and all negotiations shall not be discoverable or admissible in the Action or any other
26 litigation. Defendant does not waive, and instead expressly reserves, its rights to challenge the
27 propriety of class certification and/or the Action proceeding on a representative basis for any
28 purpose should the Court not grant preliminary or final approval of the Parties' settlement.

1 37. Participating Class Member Release Of Claims. Upon the funding of the Gross
2 Settlement Amount, the Named Plaintiff and all Participating Class Members hereby do and shall
3 be deemed to have fully, finally, and forever released, settled, compromised, relinquished and
4 discharged any and all of the Released Parties from the Released Claims that arose during the Class
5 Period.

6 a. This release by the Named Plaintiff and each Participating Class Member is
7 intended to settle any and all of the Settled Claims, whether known or unknown, that any of them
8 may have against Defendant or any of the Released Parties during the Class Period. Thus, even if
9 the Named Plaintiff or any Participating Class Member may subsequently discover facts in
10 addition to or different from those they now know or believe to be true with respect to the subject
11 matter of the Released Claims, they shall be deemed to have, and by operation of the Final
12 Judgment shall have fully, finally, and forever settled and released any and all Settled Claims,
13 whether known or unknown, suspected or unsuspected, contingent or non-contingent, whether or
14 not concealed or hidden, which now exist, or have existed upon any theory of law or equity now
15 existing or coming into existence in the future.

16 b. Because it is impossible or impracticable to have each Class Member
17 execute this Agreement, the Class Notice will advise all Class Members of the binding nature of
18 the release and such notice will have the same force and effect as if the Agreement were executed
19 by each Class Member.

20 38. Aggrieved Employees Release of PAGA Claim: In exchange for the PAGA
21 Amount recited in this Agreement, the Named Plaintiff, as the representative for the State of
22 California and all Aggrieved Employees, and on behalf of their current, former, and future heirs,
23 executors, administrators, attorneys, agents, and assigns will forever completely release and
24 discharge Defendant and each of the Released Parties from the PAGA Claims that arose during
25 the PAGA Period. The Aggrieved Employees and the State of California will be deemed by
26 operation of the Final Order and Judgment to have agreed not to sue or otherwise make a claim
27 against Defendant and any of the Released Parties for the PAGA Claims that arose during the
28 PAGA Period.

1 39. Full Release By The Named Plaintiff. As of the occurrence of the Effective Date,
2 the Named Plaintiff fully releases and discharges Defendant and the other Released Parties from
3 the Released Claims and any other claims that the Named Plaintiff now has or claims to have, or
4 has ever had or claimed to have, against the Released Parties through the Effective Date. Without
5 limiting the generality of the foregoing, the Named Plaintiff specifically and expressly releases to
6 the maximum extent permitted by law any claims against Defendants and the Released Parties,
7 arising out of or relating to the Named Plaintiff’s employment or the termination of his
8 employment with Defendant and any other Released Party. This general release by the Named
9 Plaintiff includes a waiver of Named Plaintiff’s rights under Civil Code Section 1542, which
10 provides: “A general release does not extend to claims that the creditor or releasing party does not
11 know or suspect to exist in his or her favor at the time of executing the release and that, if known
12 by him or her, would have materially affected his or her settlement with the debtor or released
13 party.”

14 40. No Prior Assignments. The Named Plaintiff and Class Counsel represent and
15 warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to
16 assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand,
17 action, cause of action, or rights released and discharged by this Agreement.

18 41. Settlement Payments And Calculation Of Claims. Subject to final Court approval
19 and the conditions specified in this Agreement, and in consideration of the mutual covenants and
20 promises set forth in this Agreement, Defendant agrees to pay the Gross Settlement Amount of
21 \$575,000.00. The Gross Settlement Amount includes, but is not limited to, payments to be made
22 to Participating Class Members, Class Counsel’s Attorneys’ Fees and Costs, Enhancement Award
23 to the Named Plaintiff, the PAGA Amount, and Settlement Administration Fees and Costs. For
24 the avoidance of doubt, subject to the conditions set forth in this Agreement, Defendant shall not
25 be required to pay any amount over \$575,000.00 for this Settlement. The following table
26 summarizes the allocation of the Gross Settlement Amount:

27 ///

28 ///

Gross Settlement Amount of \$575,000.00, Allocated As Follows:

- **\$30,000.00** for the PAGA Amount
 - **\$22,500.00** for the LWDA Payment.
 - **\$7,500.00** for payments to Aggrieved Employees on a *pro rata* basis (the PAGA Payment).
- Class Counsel Attorneys' Fees not to exceed **\$191,666.66**
- Class Counsel Costs not to exceed **\$25,000.00**
- Up to **\$7,500.00** for an Enhancement Award for Named Plaintiff
- Settlement Administration Costs, not to exceed **\$7,500**
- Approximately **\$313,333.34** paid to Participating Class Members on a *pro rata* basis (the Net Class Settlement Amount).

42. Settlement Escalator. In preparation for the mediation, Defendant represented that there were approximately 19,711 non-exempt workweeks worked by the Class Members from May 29, 2016 to April 12, 2021. The Parties understood that the workweeks would increase between the date of the mediation and the end of the Class Period and, therefore, considered this during their settlement negotiations. Accordingly, should the actual number of workweeks increase by more than ten percent (10%) through May 20, 2021, the date of the Parties' mediation, (i.e. by more than 1,971 workweeks) Defendant shall increase the Net Class Settlement Amount on a proportional percentage basis equal to the percentage increase in the number of workweeks worked by the Class Members above 10%. For example, if the number of workweeks increases by 11% through May 20, 2021 to 21,879 workweeks, the Net Class Settlement Amount will increase by 1%.

43. Apportionment of Gross Settlement Amount. The Parties agree, subject to Court approval and the conditions specified in this Agreement, that the Gross Settlement Amount shall be apportioned as follows:

a. Class Counsel Attorneys' Fees and Costs: At the final approval hearing, Class Counsel will apply to the Court for an award of Attorneys' Fees of no more than 1/3 (33.33%) of the Gross Settlement Amount, which equals \$191,666.66. Class Counsel will also apply to the Court for an award of actual Costs incurred by Class Counsel not to exceed the amount of \$25,000.00. These fees and costs are included in, and shall come from, the Gross Settlement

1 Amount. Class Counsel will be issued an IRS Form 1099 for any fees and costs awarded by the
2 Court pursuant to this Paragraph 43.a. Except as provided in this Paragraph 43.a, each party will
3 bear his, her, or its own attorneys' fees, costs, and expenses incurred in the prosecution, defense,
4 or settlement of the Action. If the Court awards a lower amount of Attorneys' Fees and Costs than
5 the amount requested, any amount not awarded will be part of the distribution to the Participating
6 Class Members as set forth in this Agreement and shall not be a reason to invalidate/terminate this
7 Agreement.

8 b. Settlement Administrator Costs: At the final approval hearing, Class
9 Counsel will apply to the Court for approval of Settlement Administration costs not to exceed the
10 amount of \$7,500.00. These costs are included in, and shall come from, the Gross Settlement
11 Amount.

12 c. Named Plaintiff Enhancement Award: At the final approval hearing, Class
13 Counsel will apply to the Court for an award of up to \$7,500.00 to be paid to the Named Plaintiff
14 as an Enhancement Award for his services and for assuming the risks associated with this litigation,
15 and as consideration for providing a general release. Defendant will not oppose such application.
16 The Enhancement Award is included in, and shall come from, the Gross Settlement Amount.
17 Named Plaintiff will be issued an IRS Form 1099 for the Enhancement Award approved by the
18 Court pursuant to this Paragraph. The Enhancement Award payable to the Named Plaintiff shall
19 be in addition to any payment he may receive pursuant to Paragraph 43.e, below. If the Court
20 awards less than the amount requested, any amount not awarded will be part of the distribution to
21 the Participating Class Members as set forth in this Agreement and shall not be a reason to
22 invalidate/terminate this Agreement.

23 d. PAGA Amount: At the final approval hearing, Class Counsel will apply to
24 the Court for approval of the PAGA Amount of \$30,000.00 for claims for civil penalties asserted
25 under PAGA. Class Counsel will submit notice of this Settlement to the LWDA, as required by
26 Labor Code § 2699(l)(2). The Parties agree that 75% of the PAGA Amount (\$22,500.00) will be
27 paid to the LWDA as the "LWDA Payment," and the remaining 25% (\$7,500.00) will be allocated
28 to the Aggrieved Employees as the "PAGA Payment." The portion of the PAGA Payment

1 allocated to each of the Aggrieved Employees will be calculated using the same formula as set
2 forth in Paragraph 43.e, but will be limited to weeks worked during the PAGA Period. Any Class
3 Members who worked during the PAGA Period and who opt out of the Settlement will still be
4 considered Aggrieved Employees for purposes of this Paragraph 43.d and, therefore, will
5 (i) receive their portion of the PAGA Payment; and (ii) release all PAGA Claims against the
6 Released Parties.

7 e. Individual Settlement Payments. The Individual Settlement Payments shall
8 consist of: (i) each Participating Class Member's *pro rata* portion of the Net Class Settlement
9 Amount; and (ii) if applicable, each Aggrieved Employee's *pro rata* portion of the PAGA
10 Payment.

11 i) Participating Class Member Payments: After deducting the approved
12 amounts specified in Paragraphs 43.a-43.d above, each Participating Class Member will be entitled
13 to a *pro rata* portion of the remaining amount. Participating Class Member Payments will be
14 calculated from the Net Class Settlement Amount based on the respective number of weeks worked
15 by each Participating Class Member in a non-exempt position during the Class Period, rounded up.
16 Each Participating Class Member's share of the Net Class Settlement Amount will be calculated by
17 dividing the Participating Class Member's weeks worked in a non-exempt position by the total
18 number of weeks worked by all Class Members in a non-exempt position during the Class Period
19 and multiplying this figure by the Net Class Settlement Amount. The Class Notice will include the
20 number of weeks that the Class Member worked during the Class Period and the amount the Class
21 Member is estimated to receive under the terms of the Settlement.

22 Example: Class Member A worked 50 workweeks during the Class Period.

23 All Class Members who worked during the Class Period worked a total of 20,000
24 workweeks. Class Member A's Individual Settlement Payment would be calculated as
25 follows:

- 26 – 50 workweeks worked by Class Member A ÷ 20,000 workweeks for all
27 Class Members = 0.25%.
- 28 – Class Member A would be estimated to be entitled to a Participating

1 Class Member Payment in the amount of \$783.33 (0.25% x
2 \$313,333.34).

3 ii) PAGA Payment: For each Class Member who is also an Aggrieved
4 Employee, the Individual Settlement Payment to the Class Member will also include the Class
5 Member's *pro rata* share of the PAGA Payment, as set forth in Paragraph 43.d.

6 f. The Parties acknowledge and agree that the formula used to calculate the
7 Individual Settlement Payments does not mean that all of the elements of damages, restitutionary
8 relief, and penalties alleged in the Action are not being taken into account. The above formula
9 was devised as a practical and logistical method to simplify the participation process.

10 g. Individual Settlement Payments shall be distributed only to Participating
11 Class Members, with the exception that PAGA Payments will be distributed to all Aggrieved
12 Employees. The portion of the Net Class Settlement Amount allocated to Class Members who opt
13 out of the Settlement will be distributed to Participating Class Members on a *pro rata* basis based
14 on the formula set forth in Paragraph 43.e.

15 h. The Parties agree that, under no circumstances shall Defendant be obligated
16 to pay any amount under this Agreement to any Class Member other than Participating Class
17 Members, with the exception of the PAGA Payments. In addition, the Parties agree that under no
18 circumstances shall Defendant be obligated to pay more than the Gross Settlement Amount in full
19 settlement of the Action.

20 44. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
21 Participating Class Members under this Agreement, including the PAGA Payments made to
22 Aggrieved Employees, will not be utilized to calculate any additional benefits under any benefit
23 plans to which any Participating Class Member or Aggrieved Employees may be eligible
24 including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans,
25 vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties'
26 intention that this Agreement will not affect any rights, contributions, or amounts to which any
27 Participating Class Member or Aggrieved Employee may be entitled under any benefit plans.

28 45. Taxation Of Settlement Proceeds. All settlement payments paid to Participating

1 Class Members, Aggrieved Employees, and the Named Plaintiff, will be paid in a net amount after
2 applicable state and federal tax withholdings, including payroll taxes, have been deducted.

3 a. The Participating Class Member Payments shall be reported as follows:
4 (i) 10% of the amount distributed to each Participating Class Member will be considered wages,
5 and will be reported as such to each Participating Class Member on a W-2 Form; (ii) 45% of the
6 amount distributed to each Participating Class Member will be considered interest on the unpaid
7 wages, and will be reported as such to each Participating Class Member on an IRS Form 1099;
8 and (iii) 45% of the amount distributed to each Participating Class Member will be considered
9 statutory penalties, and will be reported as such to each Participating Class Member on an IRS
10 Form 1099. The PAGA Payments distributed to each Aggrieved Employee will be considered
11 penalties and will be reported on an IRS Form 1099.

12 b. Prior to mailing the Individual Settlement Payments, the Settlement
13 Administrator will calculate, withhold from the Individual Settlement Payment, and remit to
14 applicable governmental agencies sufficient amounts as may be owed by Participating Class
15 Members or Aggrieved Employees for required withholdings and taxes, including all payroll taxes.
16 The Settlement Administrator will issue appropriate tax forms to each Participating Class Member
17 and Aggrieved Employee consistent with the foregoing breakdown. The Parties understand that
18 the Named Plaintiff, Participating Class Members, and Aggrieved Employees who receive an
19 Individual Settlement Payment pursuant to this Agreement shall be solely responsible for any and
20 all tax obligations associated with such receipt.

21 c. The Parties stipulate that the Settlement Fund (as defined at Paragraph 50)
22 will qualify as a settlement fund pursuant to the requirements of Section 468(B)(g) of the Internal
23 Revenue Code of 1986, as amended, and Section 1.468B-1 *et seq.* of the federal income tax
24 regulations. Furthermore, the Settlement Administrator is designated as the “Administrator” of
25 the qualified settlement funds for purposes of Section 1.468B-2(k) of the income tax regulations.
26 Accordingly, all taxes imposed on the gross income of the Settlement Fund and any tax-related
27 expenses arising from any income tax return or other reporting document that may be required by
28 the Internal Revenue Service or any state or local taxing body will be paid from the Settlement

1 Fund.

2 d. All Parties represent and acknowledge that nothing in this Agreement
3 constitutes tax advice regarding the tax treatment of payments under federal, state, or local law.
4 The Named Plaintiff, Participating Class Members, and Aggrieved Employees will assume any
5 such tax obligations or consequences that may arise from this Agreement and Class Members shall
6 not seek any indemnification from the Parties or any of the Released Parties in this regard. In the
7 event that any taxing body determines that additional taxes are due from any Class Member or
8 Aggrieved Employee, including Named Plaintiff, such Class Member or Aggrieved Employee
9 assumes all responsibility for the payment of such taxes.

10 46. Notice Procedure. Within 14 calendar days after entry of the Preliminary Approval
11 Order, Defendant will provide to the Settlement Administrator a list of Class Members that
12 identifies each Class Member by name, Social Security Number, and last-known address; and
13 specifies the number of weeks worked by each Class Member in a non-exempt position during the
14 Class Period and the PAGA Period (the “Class List”). Defendant will provide the Class List in an
15 Excel file or other format reasonably acceptable to the Settlement Administrator. The Settlement
16 Administrator will keep the list confidential and use it only for the purposes described in this
17 Agreement.

18 a. Upon receipt of the Class List, the Settlement Administrator shall perform
19 a search based upon the National Change of Address Database to update and correct any known
20 or identifiable address changes. The Settlement Administrator shall exercise its best judgment to
21 determine the current mailing address for each Class Member. Within 14 calendar days after
22 receipt of the Class List from Defendant, the Settlement Administrator will send the Class Notice
23 to each Class Member via First Class U.S. Mail. Receipt of the Class Notice shall be presumed as
24 to each and every Class Member whose Class Notice is not returned to the Settlement
25 Administrator as undeliverable within 14 calendar days after mailing.

26 b. The Settlement Administrator will re-mail any notice packet returned by the
27 United States Postal Service with a forwarding address on or before the expiration of the Notice
28 Period. It shall be conclusively presumed that those Class Members whose re-mailed Class Notice

1 is not returned to the Settlement Administrator as undeliverable within 14 calendar days after re-
2 mailing, received the Class Notice.

3 c. The Settlement Administrator will use the appropriate skip tracing and
4 National Change of Address searches to increase the likelihood of delivery of the Class Notice to
5 Class Members, and to re-mail the notice packets returned by the Postal Service without a
6 forwarding address upon locating new or alternate addresses after a reasonable search.

7 d. Class Counsel will provide to the Court, in connection with seeking final
8 approval of the Settlement, a declaration from the Settlement Administrator confirming that the
9 Class Notice was mailed to all Class Members as required by this Agreement, as well as any
10 additional information Class Counsel deems appropriate to provide to the Court.

11 47. Dispute Procedure. The Class Notice will include a procedure by which a Class
12 Member may dispute the number of workweeks allocated to the Class Member by submitting a
13 written dispute sent via U.S. Mail to the Settlement Administrator postmarked no later than the
14 expiration of the Notice Period (“Workweek Dispute”). To be valid, a Workweek Dispute must
15 contain the following: (i) the Class Member’s full name, current address, and signature; (ii) the
16 Action name and case number; (iii) the number of workweeks the Class Member maintains is
17 correct; and (iv) documentary evidence sufficient to prove that Defendant’s calculation of the
18 workweeks for the Class Member is incorrect. Upon receipt of notice of a Workweek Dispute, the
19 Settlement Administrator shall promptly serve Class Counsel and Defendant’s counsel with a copy
20 of the Workweek Dispute and any accompanying papers. No Workweek Dispute shall be effective
21 or considered for any purpose unless it is timely mailed by U.S. mail to and received by the
22 Settlement Administrator as provided above. Defendant shall have the right to respond to the
23 Workweek Dispute by any Class Member. All information and documents relating to any such
24 disputes will be provided to Class Counsel. The Settlement Administrator will resolve the
25 Workweek Dispute and make a final and binding determination without hearing or right of appeal.
26 The Settlement Administrator’s determination will be subject to review by the Court at the time of
27 the Final Approval Hearing so long as the Participating Class Member submits an objection to the
28 Settlement Administrator’s determination at or before the Final Approval Hearing.

1 a. Within 14 calendar days after the close of the Notice Period, the Settlement
2 Administrator will provide Class Counsel and Defendant’s counsel with a report listing the amount
3 of all Individual Settlement Payments, including the *pro rata* portion of the PAGA Payment, to be
4 made to Participating Class Members and Aggrieved Employees. The report to Class Counsel will
5 not include the names or contact information of Participating Class Members and Aggrieved
6 Employees.

7 48. Opt-Out Procedure. Unless a Class Member opts out of the settlement described in
8 this Agreement, the Class Member will be bound by the terms and conditions of this Agreement,
9 including the release of the Released Claims that arose during the Class Period. A Class Member
10 will not be entitled to opt out of the settlement established by this Agreement unless the Class
11 Member submits a valid opt-out request (“Opt-Out Request”). A valid Opt-Out Request must:
12 (i) contain the Class Member’s full name, current address, and signature; (ii) the Action name and
13 case number; (iii) a written request clearly expressing the Class Member’s desire to be excluded
14 from (or opt out of) the Settlement; and (iv) be returned so that it is postmarked on or before the
15 expiration of the Notice Period. Any Class Members who worked during the PAGA Period and
16 who opt out of the Settlement will still be considered Aggrieved Employees for purposes of this
17 Agreement.

18 a. Upon receipt of any Opt-Out Request within the Notice Period, the
19 Settlement Administrator shall review the Opt-Out Request to confirm that it complies with the
20 opt-out requirements of this Agreement.

21 b. Any Class Member who fails to submit a timely, complete, and valid Opt-
22 Out Request will be barred from opting out of this Agreement or the settlement, unless otherwise
23 ordered by the Court. If the Settlement Administrator receives a timely Opt-Out Request that is
24 incomplete, it will make reasonable attempts to contact the class member to cure the defect. The
25 Settlement Administrator will not consider any Opt-Out Request postmarked after the end of the
26 Notice Period, but will report its receipt of any such requests to Class Counsel and counsel for
27 Defendant. It shall be presumed that, if an Opt-Out Request is not postmarked on or before the
28 end of the Notice Period, the Class Member did not make the request in a timely manner. A

1 declaration submitted by any Class Member attesting to the mailing of an Opt-Out Request on or
2 before the expiration of the Notice Period shall be insufficient to overcome the conclusive
3 presumption that the Opt-Out Request was untimely. Under no circumstances shall the Settlement
4 Administrator have the authority to extend the deadline for Class Members to submit a request to
5 opt out of the settlement without Defendant's written consent.

6 c. At the close of the Notice Period, the Settlement Administrator shall report
7 the names of all individuals who opted-out of the Agreement to the parties and include this
8 information in a Declaration regarding the distribution of the notice that will be provided in support
9 of Plaintiff's Motion for Final Approval.

10 d. If either: (i) 5% or more of the Class Members or (ii) Class Members who
11 account for 5% or more of the total workweeks, timely opt out of the settlement, Defendant will
12 have the sole and absolute discretion to withdraw from this Agreement within 14 calendar days
13 after Defendant receives notice of the number of opt outs. Defendant will provide written notice
14 to Class Counsel if it intends to withdraw from this Agreement. In the event that Defendant elects
15 to so withdraw, the withdrawal shall have the same effect as a termination of this Agreement for
16 failure to satisfy a condition of settlement, and the Agreement shall become null and void and have
17 no further force or effect, and the class certified pursuant to this Agreement will be decertified for
18 all purposes. If Defendant chooses to terminate this Settlement Agreement under this provision,
19 it shall be responsible to pay the Settlement Administrator's fees and costs. If the Settlement
20 Agreement is terminated for any other reason, including the Court's failure to grant final approval
21 of the Parties' settlement, then Class Counsel and Defendant will be jointly responsible for the
22 Settlement Administrator's fees and costs.

23 49. Objections To Settlement. Any Class Member may object to the Settlement. Any
24 written objection must be mailed to the Settlement Administrator (who shall promptly provide a
25 copy to Class Counsel and counsel for Defendant) by the close of the Notice Period. Class Counsel
26 will ensure that any written objections get filed with the Court concurrently with the final approval
27 documents. Class Members who have not objected in writing may still appear and be heard at the
28 Settlement Hearing.

1 a. Written objections to the Settlement must contain at least the following:
2 (i) the objecting Class Member’s full name, current address, and signature; (ii) a clear reference to
3 the Action; (iii) a statement of the specific reasons why the objector believes the Settlement is
4 unfair or objects to the Settlement; and (iv) a statement whether the objector intends to appear at
5 the final approval hearing, either in person or through counsel and, if through counsel, a statement
6 identifying that counsel by name, bar number, address and telephone number. All objections shall
7 be signed by the objecting Class Member or the Class Member’s legally authorized representative.

8 b. Class Counsel or Defendant’s counsel may, before the Final Hearing Date,
9 file responses to any written objections submitted to the Court.

10 c. Unless they opt out of the Settlement as specified in Paragraph 48, Class
11 Members who object to the proposed settlement or the Agreement will remain Participating Class
12 Members, and shall be deemed to have voluntarily waived their right to pursue an independent
13 remedy against Defendant and the other Released Parties. To the extent any Participating Class
14 Member objects to the proposed settlement or Agreement and such objection is overruled in whole
15 or in part, such individuals will be bound by the Court’s Final Approval Order.

16 d. In the event that any person objects to or opposes this proposed settlement
17 or the Agreement, or attempts to intervene in or otherwise enter the Action, the Parties and Class
18 Counsel will use their best efforts to defend the Settlement.

19 50. Funding And Distribution Of Settlement.

20 a. Within 14 calendar days of the close of the Notice Period, the Settlement
21 Administrator will provide a draft declaration to Class Counsel and Defendant’s counsel setting
22 forth: the number of Participating Class Members and Aggrieved Employees; the identity of those
23 individuals who opted-out of the Settlement; the total amount payable to all Participating Class
24 Members and Aggrieved Employees; and the total PAGA Amount, Attorneys’ Fees and Costs,
25 Enhancement Award, Settlement Administration Costs, Net Class Settlement Amount, and the
26 appropriate applicable employer’s taxes for any portion of the Individual Settlement Payments
27 designated as wages.

28 b. Within 14 calendar days after the Effective Date, Defendant shall remit to

1 the Settlement Administrator: (i) the Gross Settlement Amount of \$575,000.00 and (ii) the
2 employer's taxes for any portion of the Individual Settlement Payments designated as wages (the
3 "Settlement Fund"). The delivery by Defendant of the Settlement Fund to the Settlement
4 Administrator will constitute the full and complete discharge of the entire obligation of Defendant
5 under this Agreement. No Released Party will have any further obligation or liability to the Named
6 Plaintiff, Participating Class Members, Aggrieved Employees, or Class Counsel under this
7 Agreement, regardless of whether the Named Plaintiff, Participating Class Members, Aggrieved
8 Employees, or Class Counsel receive the payments from the Settlement Administrator set forth in
9 this Agreement.

10 c. The distribution of Individual Settlement Payments to Participating Class
11 Members and Aggrieved Employees will occur no later than 21 calendar days after receipt of the
12 Settlement Fund from Defendant ("Settlement Proceeds Distribution Deadline"). The Settlement
13 Administrator shall be deemed to have timely distributed Individual Settlement Payments if it
14 places in the mail Individual Settlement Payments for all Participating Class Members and
15 Aggrieved Employees by the Settlement Proceeds Distribution Deadline. No person will have any
16 claim against the Settlement Administrator, Defendant, Class Counsel, Defendant's counsel, or
17 any other agent designated by the Named Plaintiff or Class Counsel based upon the distribution of
18 Individual Settlement Payments made substantially in accordance with this Agreement or further
19 orders of the Court.

20 d. The distribution of the LWDA Payment, Attorneys' Fees and Costs, and the
21 Enhancement Award shall occur no later than 21 calendar days after the Settlement Administrator
22 receives the Settlement Fund from Defendant.

23 e. If a Participating Class Member's or Aggrieved Employee's check is
24 returned to the Settlement Administrator, the Settlement Administrator will make reasonable
25 efforts to re-mail it to the Participating Class Member or Aggrieved Employee at the correct
26 address. It is expressly understood and agreed that the checks for the Individual Settlement
27 Payments will become void and no longer available if not cashed within 180 days after mailing.
28 The funds from uncashed and voided checks will be transferred to the State of California's

1 Unclaimed Property Fund in the name of the Participating Class Member/Aggrieved Employee.

2 f. Defendant will not be obligated to make any payments contemplated by this
3 Agreement unless and until the Court enters the Final Order and Judgment, and after the Effective
4 Date of the Agreement.

5 g. Within 60 days of the Settlement Proceeds Distribution Deadline, the
6 Settlement Administrator will provide written certification of completion of settlement
7 administration to Class Counsel and to Defendants' Counsel.

8 51. Binding Effect Of Agreement On Class Members. Subject to final Court approval
9 and the occurrence of the Effective Date, and unless otherwise provided in this Agreement, all
10 Participating Class Members will be bound by this Agreement.

11 52. Binding Effect Of Agreement On Aggrieved Employees and State of California.
12 The Aggrieved Employees and the State of California are deemed by operation of the Final Order
13 and Judgment to have agreed not to sue or otherwise make a claim against Defendant or any of the
14 Released Parties for any of the PAGA Claims.

15 53. Provisional Approval Of Settlement. Named Plaintiff will file a motion in the
16 Action requesting that the Court enter the Preliminary Approval Order within 30 days of the
17 complete execution of this Agreement. Defendant will not oppose Class Counsel's motion for
18 preliminary approval of the settlement so long as the motion and supporting papers are consistent
19 with the terms of this Agreement. Class Counsel will provide Defendant's counsel with a
20 reasonable opportunity to review, and provide comments to, the motion for preliminary approval
21 of the settlement before the motion and supporting papers are filed with the Court.
22 Notwithstanding the foregoing, Defendant may, without opposing the preliminary approval
23 motion, advise the Court if Defendant disagrees with any of the factual statements included by the
24 Named Plaintiff in the motion and supporting papers. Defendant's counsel will meet and confer
25 with Class Counsel regarding any disputed factual statements before notifying the Court of any
26 disputes.

27 54. Non-Interference With Claims Procedure. The Parties and their counsel agree that
28 they will not advise, solicit, or otherwise encourage any Class Members to submit requests for

1 exclusion or objections to the settlement or to appeal from the Final Order or Final Judgment.

2 55. Final Order and Judgment. The Named Plaintiff will request that the Court enter,
3 after the Settlement Hearing finally approving this Agreement, a Final Order and Judgment.
4 Named Plaintiff will request that the Final Order and Judgment certify the Participating Class; find
5 that this Agreement is fair, just, equitable, reasonable, adequate and in the best interests of the
6 Class and the Aggrieved Employees; list the employees (if any) who opted-out of the settlement;
7 order that the Participating Class Members and Aggrieved Employees, and the State of California,
8 release the Released Parties from the Released Claims and PAGA Claims as set forth in this
9 Agreement; and require the Parties to carry out the provisions of this Agreement.

10 56. Automatic Voiding Of Agreement If Settlement Not Finalized. If for any reason
11 the settlement set forth in this Agreement does not become final, the settlement will be null and
12 void and the orders, judgment, and dismissal to be entered pursuant to this Agreement shall be
13 vacated, and the Parties will be returned to the status quo prior to entering this Agreement with
14 respect to the Action, as if the Parties had never entered into this Agreement, and the class certified
15 pursuant to this Agreement will be decertified for all purposes. In addition, in such event, the
16 Agreement and all negotiations, court orders, and proceedings relating to this Agreement shall be
17 without prejudice to the rights of any and all parties to this Agreement, and evidence relating to
18 the Agreement and all negotiations shall not be admissible or discoverable in the Action or
19 otherwise.

20 57. No Double Recovery. No person who has already released, assigned, or otherwise
21 forfeited the claims asserted in the Action will be considered a Class Member or be entitled to
22 recover under this Agreement.

23 58. No Publicity. The Named Plaintiff and Class Counsel agree that they shall not
24 discuss, answer questions about, promote, or publicize the filing of the Action, the Parties'
25 settlement, this Agreement and its terms, or the negotiations leading to this Agreement with anyone
26 other than the Court or those individuals necessary to effectuate the terms of the Agreement. The
27 prohibition set forth in this Paragraph 58 includes, but is not limited to: (i) publication by Named
28 Plaintiff or Class Counsel on any website (including, without limitation, publishing on any Twitter

1 account, Facebook, other social media, or blog, or business website) of the amount or terms of the
2 settlement, with or without identifying information; and (ii) the submission of information to
3 Verdicts & Settlements or any other publication that summarizes the results of jury verdicts and
4 settlements.

5 a. Notwithstanding the foregoing, Class Counsel may respond to questions
6 received from, and discuss any aspect of this Agreement with the Class Members or their legal
7 representatives, the Settlement Administrator, the Court, and representatives of the California
8 Labor and Workforce Development Agency.

9 b. Notwithstanding the forgoing, nothing in this Paragraph shall prohibit or the
10 filing of information with the Court or the LWDA relating to the Settlement that is necessary to
11 effectuate this Agreement, or the online posting of documents relating to the Action by the
12 Settlement Administrator as permitted by this Agreement including the Judgment entered by the
13 Court.

14 c. The Named Plaintiff and Class Counsel agree that all data and information
15 informally produced by Defendant in connection with the settlement of this Action will be
16 maintained in confidence, and will not be shared with any other persons or entities.

17 59. Invalidation Of Agreement For Failure To Satisfy Conditions. If the Court makes
18 material changes to the material terms or conditions of Paragraphs 1 through 58 of this Agreement
19 that are not agreed to by the Parties, either Party shall have the right to terminate this Agreement,
20 in which case Defendant would not be obligated to make any payments to any Class Member, to
21 Class Counsel, or to the Named Plaintiff. The Parties shall meet and confer in good faith before
22 exercising such right.

23 60. Modification In Writing. This Agreement may be altered, amended, modified or
24 waived, in whole or in part, only in a writing signed by all signatories to this Agreement. This
25 Agreement may not be amended, altered, modified or waived, in whole or in part, orally.

26 61. Ongoing Cooperation. The Named Plaintiff and Defendant will execute all
27 documents and perform all acts necessary and proper to effectuate the terms of this Agreement.
28 The execution of such documents must take place prior to the Final Hearing Date. In the event the

1 Parties are unable to reach agreement on the form or content of any document needed to implement
2 the Settlement, or any supplemental provisions that may become necessary to effectuate the terms
3 of the Settlement, the Parties agree to seek the assistance of the Court.

4 62. Notices. All notices, requests, demands, and other communications required or
5 permitted to be given pursuant to this Agreement shall be in writing, and shall be delivered
6 personally or by first class mail to the Settlement Administrator approved by the Court and the
7 undersigned persons at their respective addresses as set forth below:

8 **CLASS COUNSEL**

9 WILSHIRE LAW FIRM
10 Justin F. Marquez, Esq.
11 Nicol E. Hajjar, Esq.
12 Rachel J. Vinson, Esq.
13 3055 Wilshire Blvd., 12th Floor
14 Los Angeles, California 90010
15 Telephone: 213-381-9988

16 **COUNSEL FOR DEFENDANT**

17 RUTAN & TUCKER, LLP
18 Brandon L. Sylvia, Esq.
19 Kimberly A. Nayagam, Esq.
20 18575 Jamboree Road, 9th Floor
21 Irvine, California 92612
22 Telephone: (714) 641-5100

23 63. Binding on Successors. This Agreement will be binding upon and will inure to the
24 benefit of the Parties and their respective successors, assigns, executors, administrators, heirs and
25 legal representatives.

26 64. Entire Agreement. This Agreement constitutes the full, complete, and entire
27 understanding, agreement, and arrangement between the Named Plaintiff, the Class Members, and
28 the Aggrieved Employees, on the one hand, and Defendant, on the other hand, with respect to the
settlement of the Action. This Agreement supersedes any and all prior oral or written
understandings, agreements and arrangements between the Parties with respect to the settlement
of the Action. Except for those set forth expressly in this Agreement, there are no other

1 agreements, covenants, promises, representations or arrangements between the Parties with respect
2 to the settlement of the Action, the PAGA Claims, and the Released Claims against Defendant and
3 the Released Parties. The Parties explicitly recognize California Civil Code § 1625 and California
4 Code of Civil Procedure § 1856(a), which provide that a written agreement is to be construed
5 according to its terms, and may not be varied or contradicted by extrinsic evidence, and agree that
6 no such extrinsic oral or written representations or terms shall modify, vary, or contradict the terms
7 of this Agreement.

8 65. Execution In Counterparts. This Agreement may be signed in one or more
9 counterparts. All executed copies of this Settlement Agreement, and photocopies of the
10 Agreement (including facsimile and e-mail copies of the signature pages), shall have the same
11 force and effect and shall be as legally binding and enforceable as the original.

12 66. Captions. The captions, section numbers, and paragraph numbers, in this
13 Agreement are inserted for the reader's convenience, and in no way define, limit, construe, or
14 describe the scope or intent of the provisions of this Agreement.

15 67. Governing Law. This Agreement shall be interpreted, construed, enforced, and
16 administered in accordance with the laws of the State of California, without regard to conflict of
17 law rules.

18 68. Reservation Of Jurisdiction. Notwithstanding the dismissal of the Action and entry
19 of the Final Order and Judgment, the Court shall retain jurisdiction for purposes of interpreting
20 and enforcing the terms of this Agreement.

21 69. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
22 and conditions of this Agreement. Accordingly, this Agreement will not be construed more strictly
23 against one Party than another merely by virtue of the fact that it may have been prepared by
24 counsel for one of the Parties, it being recognized that, because of the arms-length negotiations
25 between the Parties, all Parties have contributed to the preparation of this Agreement.

26 70. Representation and Warranties. Class Counsel and the Named Plaintiff represent
27 and warrant to Defendant that they are not aware of any attorneys beyond those named as Class
28 Counsel who have claims for fees arising out of the Action or the Settlement contemplated by this

1 Agreement. To the extent those representations are false or other attorneys do have claims for fees
2 arising out of the Actions or this Settlement, Class Counsel and the Class jointly and severally
3 agree to fully indemnify Defendant for any damages it incurs as a result of those claims, including,
4 but not limited to, all attorneys' fees and costs.

5 71. Authorization to Act. Each Party to this Agreement covenants and warrants that
6 (a) such Party has full power and authority to enter into and consummate all transactions
7 contemplated by this Agreement and have duly authorized the execution, delivery and performance
8 of this Agreement and (b) the person executing this Agreement for such Party has the full right,
9 power and authority to enter into this Agreement on behalf of such Party, and the full right, power
10 and authority to execute any and all necessary instruments in connection with the Settlement, and
11 to fully bind such Party to the terms and obligations of this Agreement.

12 72. Representation By Counsel. The Parties acknowledge that each of them has been
13 represented by their respective counsel throughout all negotiations that preceded the execution of
14 this Agreement, and that this Agreement has been executed with the consent and advice of their
15 respective counsel. Further, the Named Plaintiff and Class Counsel warrant and represent that
16 there are no liens on the Settlement Agreement, and that after entry by the Court of the Final Order
17 and Judgment, the Settlement Administrator may distribute funds to Participating Class Members,
18 Aggrieved Employees, Class Counsel, the LWDA, the Settlement Administrator, and the Named
19 Plaintiff as provided by this Agreement.

20 73. Representation By The Named Plaintiff. The Named Plaintiff agrees not to request
21 to be excluded from the Class and not to object to any terms of this Agreement. Any such request
22 by the Named Plaintiff for exclusion or objection shall be void and of no force or effect.

23 74. Additional Attorneys' Fees and Costs. No Participating Class Member, Aggrieved
24 Employee, or Class Counsel, or any other attorney acting for any Participating Class Member or
25 Aggrieved Employee, may recover or seek to recover any amounts for fees, costs, or disbursements
26 arising from the Action or the Gross Settlement Amount from the Released Parties except as
27 expressly provided in this Agreement.

28 75. No Reliance on Representations. The Parties have made such investigations of the

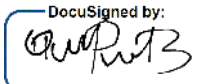
1 facts and the law pertaining to the matters described in this Agreement as they deem necessary,
2 and have not relied, and do not rely, on any statement, promise, or representation of fact or law,
3 made by any other Party, or any of their agents, employees, attorneys, or representatives, with
4 regard to any of their rights or asserted rights, or with regard to the advisability of making and
5 executing this Agreement, or with respect to any such matters. No representations, warranties, or
6 inducements have been made to any Party concerning this Agreement.

7 76. No Collateral Attack. This Agreement will not be subject to collateral attack by
8 any Class Member or any recipient of the Class Notice after the Final Order and Dismissal. Such
9 prohibited collateral attacks shall include but not be limited to claims that the Class Member failed
10 for any reason to receive timely notice of the procedure for disputing the calculation of his or her
11 Individual Settlement Payment, or for opting out of the Settlement.

12 IT IS SO AGREED:

13
14
15
16 Dated: 8/27/2021 _____

PLAINTIFF VICTOR PEREZ

17 By:  _____
18 Victor Perez
Named Plaintiff

19 Dated: _____

DEFENDANT THE BIG COMPANY, INC.
DBA CAPO FIRESIDE

21 By: _____

22 Title: _____

1 facts and the law pertaining to the matters described in this Agreement as they deem necessary,
2 and have not relied, and do not rely, on any statement, promise, or representation of fact or law,
3 made by any other Party, or any of their agents, employees, attorneys, or representatives, with
4 regard to any of their rights or asserted rights, or with regard to the advisability of making and
5 executing this Agreement, or with respect to any such matters. No representations, warranties, or
6 inducements have been made to any Party concerning this Agreement.

7 76. No Collateral Attack. This Agreement will not be subject to collateral attack by
8 any Class Member or any recipient of the Class Notice after the Final Order and Dismissal. Such
9 prohibited collateral attacks shall include but not be limited to claims that the Class Member failed
10 for any reason to receive timely notice of the procedure for disputing the calculation of his or her
11 Individual Settlement Payment, or for opting out of the Settlement.

12 IT IS SO AGREED:

13
14 PLAINTIFF VICTOR PEREZ

15
16 Dated: _____

17 By: _____

18 Victor Perez
19 Named Plaintiff

20 Dated: 8/21/2021

21 DEFENDANT THE BIG COMPANY, INC.
22 DBA CAPO FIRESIDE

23 By:  _____

24 Title: CEO _____

1 APPROVED AS TO FORM AND CONTENT AND
2 AGREE TO BE BOUND BY PARAGRAPH 58:

3 Dated: August 27, 2021

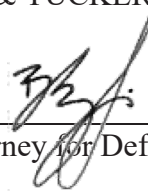
WILSHIRE LAW FIRM

4
5 By: 
6 Attorney for Plaintiff

7 APPROVED AS TO FORM AND CONTENT:

8 Dated: August 30, 2021

RUTAN & TUCKER, LLP

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10 By: 
11 Attorney for Defendant

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