

1 Adam Rose (210880)
2 adam@frontierlawcenter.com
3 Manny Starr (319778)
4 manny@frontierlawcenter.com
5 Frontier Law Center
6 23901 Calabasas Road, #2074
7 Calabasas, CA 91302
8 Telephone: (818) 914-3433
9 Facsimile: (818) 914-3433

10 Attorneys for Plaintiffs
11 Mirian Maroquin, et al. and all similarly
12 situated and aggrieved employees

13 **SUPERIOR COURT OF CALIFORNIA**
14 **COUNTY OF SANTA CLARA**

15 MIRIAN MAROQUIN and HUMBERTO
16 MORALES, on behalf of themselves and all
17 similarly situated individuals;

18 PLAINTIFFS,

19 vs.

20 TELEFERIC BARCELONA PA, LLC, and
21 DOES 1 to 100;

22 DEFENDANTS.

Case No. 21CV388821

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

This Stipulation of Class Action Settlement and Release of Claims is entered into by and between Plaintiffs MIRIAN MAROQUIN and HUMBERTO MORALES (hereinafter “Plaintiffs”), individually and on behalf of the Settlement Class, and Defendant TELEFERIC BARCELONA PA LLC (hereinafter “Defendant”):

I. DEFINITIONS

- A. “Action” shall mean *Miriam Maroquin, et al. v. Teleferic Barcelona PA LLC*, Santa Clara Superior Court, Case No. 21CV388821.
- B. “Aggrieved Employees” shall mean all of Defendant’s current and former non-exempt employees employed in California during the PAGA Period.
- C. “Agreement” or “Settlement Agreement” means this Stipulation of Settlement of Class Action and Release of Claims.
- D. “Class Counsel” shall mean Manny Starr, Esq. and Adam Rose, Esq. of Frontier Law Center.
- E. “Class Counsel Award” means the award of fees and expenses that the Court authorizes to be paid to Class Counsel for the services they have rendered to Plaintiffs and the Class in the Action, consisting of attorneys’ fees not to exceed thirty-five percent (35%) of the Total Settlement Amount, currently estimated to be Fifty-Two Thousand Five Hundred Dollars and Zero Cents (\$52,500), plus costs and expenses not to exceed Five Thousand Dollars and Zero Cents (\$5,000).
- F. “Class Data” means information regarding Settlement Class Members that Defendant will in good faith compile from its records and provide to the Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include: each Settlement Class Member’s full name; last known address; Social Security Number; email address, if know; start dates and end dates of employment; and number of Workweeks as a Settlement Class Member during the Class Period and PAGA Period.
- G. “Class Period” means the period from October 21, 2017 through the date of preliminary approval of this settlement.

1 H. "Class Representative Service Award" means the amount that the Court authorizes to
2 be paid to the Class Representatives, in addition to their Individual Settlement
3 Payments and their pro-rata share of the PAGA Settlement, in recognition of their
4 efforts and risks in assisting with the prosecution of the Action and in exchange for
5 executing a General Release of Defendant.

6 I. "Class Representatives" shall mean plaintiffs MIRIAN MAROQUIN and
7 HUMBERTO MORALES.

8 J. "Court" means the Superior Court for the State of California, County of Santa Clara.

9 K. "Defendant" shall mean TELEFERIC BARCELONA PA, LLC, a California Limited
10 Liability Company.

11 L. "Effective Date" means the earliest date, following entry by the Court of an order and
12 judgment finally approving this Settlement, upon which one of the following has
13 occurred: (i) if no objection is filed to the settlement and no objector appears at the
14 hearing on final approval, the date of the Court's entry of the order granting final
15 approval, or (ii) if an objection is filed to the settlement and/or an objector appears at
16 the hearing on final approval, then the earlier of the following: (a) the expiration of
17 all potential appeal periods without a filing of a notice of appeal of the final approval
18 order or judgment; (b) final affirmance of the final approval order and judgment by
19 an appellate court as a result of any appeal(s), or (c) final dismissal or denial of all
20 such appeals (including any petition for review, rehearing, certiorari, etc.) such that
21 the final approval order and judgment is no longer subject to further judicial review.

22 M. "Final Judgment" shall mean the order of final judgment entered by the Court that the
23 Parties anticipate will be entered following a final approval hearing regarding this
24 Agreement.

25 N. "Funding Date" shall mean the date the date the Total Settlement Amount is deposited
26 by Defendant into the Qualified Settlement Fund Account in accord with the terms of
27 this Agreement.
28

- 1 O. "Individual Settlement Payment" means the amount payable from the Net Settlement
2 Amount to each Settlement Class Member and excludes any amounts distributed to
3 Settlement Class Members pursuant to PAGA.
- 4 P. "Net Settlement Amount" or "NSA" means the Total Settlement Amount, less Class
5 Counsel Award, Class Representative Service Awards, PAGA Settlement, and
6 Settlement Administration Costs.
- 7 Q. "Notice Packet" means the Class Notice to be provided to the Settlement Class
8 Members by the Settlement Administrator in the form set forth as Exhibit A to this
9 Agreement (other than formatting changes to facilitate printing by the Settlement
10 Administrator).
- 11 R. "PAGA" means the California Labor Code Private Attorneys General Act of 2004,
12 Labor Code § 2698 *et seq.*
- 13 S. "PAGA Payment Ratio" means the respective Workweeks during the PAGA Period
14 for each Aggrieved Employee divided by the sum total of the Workweeks for all
15 Aggrieved Employees during the PAGA Period.
- 16 T. "PAGA Period" means the period between October 21, 2020 and the date of
17 preliminary approval of this settlement.
- 18 U. "PAGA Settlement" shall mean Fifteen Thousand Dollars and Zero Cents (\$15,000)
19 to be allocated from the Total Settlement Amount.
- 20 V. "Parties" means Plaintiffs and Defendant, collectively, and "Party" shall mean either
21 Plaintiff or Defendant, individually.
- 22 W. "Payment Ratio" means the respective Workweeks for each Settlement Class Member
23 divided by the sum total Workweeks for all Settlement Class Members.
- 24 X. "Plaintiff" or "Plaintiffs" shall mean either MIRIAN MAROQUIN or HUMBERTO
25 MORALES, individually or collectively.
- 26 Y. "Qualified Settlement Fund Account" ("QSFA") means the means the account into
27 which the Settlement Administrator will transfer the Total Settlement Amount in
28 compliance with Internal Revenue Code Section 1.468B-1.

1 Z. “Released Class Claims” means any and all claims, demands, rights, liabilities, and
2 causes of action of any kind whatsoever that have been, or could have been, asserted
3 against the Released Party based on the facts alleged at any point in time in this Action
4 during the Class Period. The Released Class Claims expressly include, without
5 limitation, all claims for violations of the California Labor Code related to unpaid
6 wages, including overtime wages, off-the-clock claims, minimum wage claims;
7 claims for failure to provide meal periods; claims for failure to provide rest breaks;
8 claims for failure to provide accurate and complete wage statements; claims for
9 failure to timely pay wages, whether during or following employment; and alleged
10 violations of the UCL or any other law related to Defendant’s policies and practices
11 of collecting and distributing tips and/or gratuities to Class Members.

12 AA. “Released PAGA Claims” mean any and all PAGA claims that were, or could have
13 been, asserted against the Released Party based on the facts alleged at any point in
14 time in this Action during the PAGA Period. The Released PAGA Claims expressly
15 include, without limitation, all claims for penalties recoverable pursuant to PAGA
16 that relate to or arise out of the Released Class Claims.

17 BB. “Released Party” shall mean Defendant.

18 CC. “Response Deadline” means the date forty-five (45) days after the Settlement
19 Administrator mails Notice Packets to Settlement Class Members and the last date on
20 which Settlement Class Members may submit requests for exclusion or objections to
21 the Settlement.

22 DD. “Settlement” means the disposition of the Action pursuant to this Agreement.

23 EE. “Settlement Administrator” means Phoenix Class Action Administrators. The
24 Settlement Administrator establishes, designates and maintains, a QSFA under
25 Internal Revenue Code section 468B and Treasury Regulation section 1.468B-1, into
26 which the Total Settlement Amount is deposited for the purpose of resolving the
27 claims of Settlement Class Members. The Settlement Administrator shall maintain
28 the funds until distribution in an account(s) segregated from the assets of Defendant

1 and any person related to Defendant. *All accrued interest shall be paid and*
2 *distributed to the Settlement Class Members as part of their respective Individual*
3 *Settlement Payment.*

4 FF. "Settlement Class Members" or "Settlement Class" means all of Defendant's current
5 and former non-exempt employees employed in California during the Class Period.
6 The "Settlement Class Members" shall not include any person who submits a timely
7 and valid request for exclusion as provided in this Agreement.

8 GG. "Total Settlement Amount" means One Hundred Fifty Thousand Dollars and Zero
9 Cents (\$150,000) that Defendant must pay into the QSFA in connection with this
10 Settlement, inclusive of the sum of the Individual Settlement Payments, the Class
11 Representative Service Awards, the Class Counsel Award, PAGA Settlement, and the
12 Settlement Administration Costs and exclusive of the employer's share of payroll tax,
13 if any, triggered by any payment under this Settlement.

14 HH. "Workweeks", for purposes of calculating the distribution of the Net Settlement
15 Amount, means the number of weeks of employment during the Class Period that
16 each Settlement Class Member worked for Defendant. For purpose of determining
17 the Individual Settlement Payments and Payment Ratio, each Settlement Class
18 Member who is a former employee no longer working for Defendant will be assigned
19 four (4) additional Workweeks. For purposes of distributing the PAGA Settlement to
20 the Settlement Class, Workweeks means the number of weeks of employment for
21 each Settlement Class Member during the PAGA Period.

22 **II. RECITALS**

23 I. On October 21, 2021, Plaintiffs filed a Notice of Labor Code Violations with the
24 Labor and Workforce Development Agency (LWDA) and served the same on
25 Defendant alleging the following violations:

- 26 1. failure to pay minimum wages in violation of California Labor Code sections
27 1194, 1197 and 1197.1;
28

2. failure to provide required rest periods or pay premium pay in lieu thereof in violation of California Labor Code sections 226.7 and 512;
3. failure to provide required meal periods or pay premium pay in lieu thereof in violation of California Labor Code sections 226.7 and 512; and
4. failure to properly distribute tips to employees in violation of Labor Code section 351, an alleged violation of California Business & Professions Code Section 17200 *et seq.* (the “UCL”).

II. On October 21, 2021, Plaintiffs filed the Action alleging the following violations:

1. failure to pay overtime wages in violation of California Labor Code sections 510 *et seq.*;
2. failure to pay minimum wages in violation of California Labor Code sections 1194, 1197 and 1197.1;
3. failure to provide required rest periods or pay premium pay in lieu thereof in violation of California Labor Code sections 226.7 and 512;
4. failure to provide required meal periods or pay premium pay in lieu thereof in violation of California Labor Code sections 226.7 and 512;
5. failure to provide accurate itemized wage statements in violation of California Labor Code section 226;
6. failure to properly distribute tips to employees in violation of Labor Code section 351, an alleged violation of the UCL; and
7. failure to provide wages when due in violation of California Labor Code sections 201, 202 and 203.

III. On March 30, 2022, Defendant provided data with relevant excerpts from its employee handbook, two Excel sheets used by Defendant in the regular course of business to track and distribute tips to Class Members, and time records for all Class Members for the period from October 2020 to March 2022.

IV. On April 21, 2022, the Parties participated in mediation presided over by Hon. Patricia M. Lucas, judge of the Superior Court of California, County of Santa Clara.

V. On May 11, 2022, the parties continued their mediation in a second session with Hon. Patricia M. Lucas. The mediation concluded with a settlement.

VI. Based on their own thorough, independent investigation and evaluation of this case, Class Counsel are of the opinion that the settlement with Defendant for the consideration and on the terms set forth in this Agreement is fair, reasonable, adequate, and in the best interest of the Class Members in light of all known facts and circumstances, including the risk of significant costs and delay, the risk of non-certification of the Class, the defenses asserted by Defendant, the risks of adverse determinations on the merits, and numerous potential appellate issues. Although Defendant contends it has no liability in this case, Defendant's counsel shares Class Counsel's belief that the Agreement represents a fair and adequate settlement given the respective risks associated with the case.

VII. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that Plaintiffs' claims in the Action have merit or that it has any liability to Plaintiffs or the Class Members on those claims or to the State, or as an admission by Plaintiffs that Defendant's defenses raised in the Action have merit. This Agreement is intended to fully, finally, and forever compromise, release, resolve, discharge, and settle the released claims subject to the terms and conditions set forth in this Agreement.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

III. TERMS OF AGREEMENT

A. Settlement Consideration and Settlement Payments by Defendant.

1. Settlement Consideration. In full and complete settlement of the Action, and in exchange for the releases set forth below, Defendant will pay the sum of the Individual Settlement Payments, the Class Representative Service Award, the Class Counsel Award, PAGA Settlement, the Aggrieved Employee Payments, and the Settlement Administration Costs, as specified in this

1 Agreement, equal to the Total Settlement Amount of One Hundred Fifty
2 Thousand Dollars and Zero Cents (\$150,000). The Parties agree that this is a
3 non-reversionary Settlement and that no portion of the Total Settlement
4 Amount shall revert to Defendant. Other than the Defendant's share of
5 employer payroll taxes, or as otherwise specified in the Agreement, Defendant
6 shall not be required to pay more or less than the Total Settlement Amount.

7 2. Class Size. At the time of mediation, the parties estimate that the Settlement
8 Class is comprised of 344 individuals that collectively will have worked
9 approximately 13,671 Workweeks ("Projected Workweeks") during the Class
10 Period.

11 3. Escalator Provision. If, at the time the settlement administrator receives the
12 Class Data, the actual number of Workweeks exceeds the Projected
13 Workweeks by more than 20%, the Total Settlement Amount shall increase
14 proportionally (i.e. if the actual number of Workweeks exceeds the Projected
15 Workweeks by 19%, the Total Settlement Amount will not increase, but if the
16 actual number of Workweeks exceeds the Projected Workweeks by 21%, the
17 Total Settlement Amount will increase by 21%).

18 4. Settlement Payments. Defendant shall pay the Total Settlement Amount, via
19 wire transfer to the QSFA, within fourteen (14) calendar days of the Effective
20 Date.

21 5. Defendant's Share of Payroll Taxes. Defendant's share of employer side
22 payroll taxes is in addition to the Total Settlement Amount and shall be paid
23 by Defendant within ten (10) calendar days of request by the Settlement
24 Administrator.

25 B. Release by Settlement Class Members. As of the Funding Date, in exchange for the
26 consideration set forth in this Agreement, Plaintiffs and the Settlement Class Members
27 release the Released Party from the Released Class Claims for the Class Period.
28

1 C. Release by the Aggrieved Employees. As of the Funding Date, in exchange for the
2 consideration set forth in this Agreement, the Plaintiffs, the Aggrieved Employees, the
3 LWDA, and the State of California release the Released Party from the PAGA
4 Released Claims for the PAGA Period.

5 D. General Release by Plaintiffs. As of the Funding Date, for the consideration set forth
6 in this Agreement, Plaintiffs, for themselves and each of them individually, waive,
7 release, acquit and forever discharge the Released Party from any and all claims,
8 actions, charges, complaints, grievances and causes of action, of whatever nature,
9 whether known or unknown, which exist or may exist on their behalf as of the date of
10 this Agreement, including but not limited to any and all tort claims, contract claims,
11 wage claims, wrongful termination claims, disability claims, benefit claims, public
12 policy claims, retaliation claims, statutory claims, personal injury claims, emotional
13 distress claims, invasion of privacy claims, defamation claims, fraud claims, quantum
14 meruit claims, and any and all claims arising under any federal, state or other
15 governmental statute, law, regulation or ordinance, including, but not limited to
16 claims for violation of the Fair Labor Standards Act, the California Labor Code, the
17 Wage Orders of California's Industrial Welfare Commission, other state wage and
18 hour laws, the Americans with Disabilities Act, the Age Discrimination in
19 Employment Act (ADEA), the Employee Retirement Income Security Act, Title VII
20 of the Civil Rights Act of 1964, the California Fair Employment and Housing Act,
21 the California Family Rights Act, the Family Medical Leave Act, California's
22 Whistleblower Protection Act, California Business & Professions Code Section
23 17200 et seq., and any and all claims arising under any federal, state or other
24 governmental statute, law, regulation or ordinance. Plaintiffs also waive and
25 relinquish any and all claims, rights or benefits that they may have under California
26 Civil Code § 1542, which provides as follows:

27 ***A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE***
28 ***CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO***

1 ***EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE***
2 ***RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE***
3 ***MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE***
4 ***DEBTOR OR RELEASED PARTY.***

5 Plaintiffs are creditors and/or a “releasing party” within the meaning of Civil Code §
6 1542. Plaintiffs may discover claims or facts in addition to, or different from, those
7 which they now know or believe to exist, but Plaintiffs expressly agree to fully,
8 finally and forever settle and release any and all claims against the Released Party,
9 known or unknown, suspected or unsuspected, which exist or may exist on behalf of
10 or against the other at the time of execution of this Agreement, including, but not
11 limited to, any and all claims relating to or arising from Plaintiffs’ employment with
12 Defendant. The Parties further acknowledge, understand, and agree that this
13 representation and commitment is essential to the Agreement and that this
14 Agreement would not have been entered into were it not for this representation and
15 commitment.

16 E. Conditions Precedent: This Settlement will become final and effective only upon the
17 occurrence of all of the following events:

- 18 1. The Court enters an order granting preliminary approval of the Settlement;
- 19 2. The Court enters an order granting final approval of the Settlement and a Final
20 Judgment;
- 21 3. If an objector appears at the final approval hearing, the time for appeal of the
22 Final Judgment and Order Granting Final Approval of Class Action
23 Settlement expires; or, if an appeal is timely filed, there is a final resolution of
24 any appeal from the Judgment and Order Granting Final Approval of Class
25 Action Settlement; and
- 26 4. Defendant fully funds the Total Settlement Amount.

27 F. Nullification of Settlement Agreement. If this Settlement Agreement is not
28 preliminarily or finally approved by the Court, fails to become effective, or is reversed,

1 withdrawn, or modified by the Court, or in any way prevents or prohibits Defendant
2 from obtaining a complete resolution of the Released Claims, or if Defendant fails to
3 fully fund the Total Settlement Amount:

- 4 1. This Settlement Agreement shall be void *ab initio* and of no force or effect,
5 and shall not be admissible in any judicial, administrative or arbitral
6 proceeding for any purpose or with respect to any issue, substantive or
7 procedural;
- 8 2. The conditional class certification (obtained for any purpose) shall be void *ab*
9 *initio* and of no force or effect, and shall not be admissible in any judicial,
10 administrative, or arbitral proceeding for any purpose or with respect to any
11 issue, substantive or procedural; and
- 12 3. None of the Parties to this Settlement will be deemed to have waived any
13 claims, objections, defenses, or arguments in the Action, including with
14 respect to the issue of class certification.
- 15 4. Defendant shall bear the sole responsibility for any cost to issue or reissue any
16 curative notice to the Settlement Class Members and all Settlement
17 Administration Costs incurred to the date of nullification.

18 G. Certification of the Settlement Class. The Parties stipulate to conditional class
19 certification of the Settlement Class for the Class Period for purposes of settlement
20 only. In the event that this Settlement is not approved by the Court, fails to become
21 effective, or is reversed, withdrawn or modified by the Court, or in any way prevents
22 or prohibits Defendant from obtaining a complete resolution of the Released Claims,
23 the conditional class certification (obtained for any purpose) shall be void *ab initio* and
24 of no force or effect, and shall not be admissible in any judicial, administrative or
25 arbitral proceeding for any purpose or with respect to any issue, substantive or
26 procedural.

27 H. Tax Liability. The Parties make no representations as to the tax treatment or legal effect
28 of the payments called for, and Settlement Class Members are not relying on any

1 statement or representation by the Parties in this regard. Settlement Class Members
2 understand and agree that they will be responsible for the payment of any taxes and
3 penalties assessed on the Individual Settlement Payments and Aggrieved Employee
4 Payments described herein and will be solely responsible for any penalties or other
5 obligations resulting from their personal tax reporting of Individual Settlement
6 Payments and Aggrieved Employee Payments.

7 I. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
8 the “acknowledging party” and each Party to this Agreement other than the
9 acknowledging party, an “other party”) acknowledges and agrees that: (1) no provision
10 of this Agreement, and no written communication or disclosure between or among the
11 Parties or their attorneys and other advisers, is or was intended to be, nor shall any
12 such communication or disclosure constitute or be construed or be relied upon as, tax
13 advice within the meaning of United States Treasury Department circular 230 (31 CFR
14 part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his,
15 her or its own, independent legal and tax counsel for advice (including tax advice) in
16 connection with this Agreement, (b) has not entered into this Agreement based upon
17 the recommendation of any other Party or any attorney or advisor to any other Party,
18 and (c) is not entitled to rely upon any communication or disclosure by any attorney
19 or adviser to any other party to avoid any tax penalty that may be imposed on the
20 acknowledging party, and (3) no attorney or adviser to any other Party has imposed
21 any limitation that protects the confidentiality of any such attorney’s or adviser’s tax
22 strategies (regardless of whether such limitation is legally binding) upon disclosure by
23 the acknowledging party of the tax treatment or tax structure of any transaction,
24 including any transaction contemplated by this Agreement.

25 J. Preliminary Approval Motion. At the earliest practicable time, Plaintiffs shall file with
26 the Court a Motion for Order Granting Preliminary Approval and supporting papers,
27 which shall include this Settlement Agreement. Class Counsel shall provide drafts of
28 all materials to be filed in connection with Motion for Order Granting Preliminary

1 Approval to counsel for Defendant for review and comment at least two weeks in
2 advance of filing the motion. If Class Counsel is not provided with input from counsel
3 for Defendant within 10 days of providing said drafts, Class Counsel may proceed with
4 filing the motion papers as-is.

5 K. Settlement Administrator. The Settlement Administrator shall be responsible for:
6 establishing and administering the QSFA; calculating, processing and mailing
7 payments to the Class Representatives, Class Counsel, LWDA and Settlement Class
8 Members; printing, mailing and emailing the Notice Packets to the Settlement Class
9 Members as directed by the Court; establishing and maintaining a website containing
10 information about the Settlement; receiving and reporting the objections and requests
11 for exclusion; calculating, deducting and remitting all legally required taxes from
12 Individual Settlement Payments and Aggrieved Employee Payments and distributing
13 tax forms for the Wage Portion and Non-Wage Portion of the Individual Settlement
14 Payments and Aggrieved Employee Payments; processing and mailing tax payments
15 to the appropriate state and federal taxing authorities; providing declaration(s) as
16 necessary in support of preliminary and/or final approval of this Settlement; posting
17 notice of entry of judgment on its website; and other tasks as the Parties mutually agree
18 or the Court orders the Settlement Administrator to perform. The Settlement
19 Administrator shall keep the Parties timely apprised of the performance of all
20 Settlement Administrator responsibilities by among other things, sending a weekly
21 status report to the Parties' counsel stating the date of the mailing, the of number of
22 requests for exclusion it receives (including the numbers of valid and deficient), and
23 number of objections received.

24 L. Notice Procedure.

- 25 1. Class Data. No later than twenty-one (21) calendar days after the Preliminary
26 Approval Date, Defendant shall provide the Settlement Administrator with the
27 Class Data for purposes of preparing and mailing Notice Packets to Settlement
28 Class Members. Defendant shall verify the total number of Workweeks at the

1 time Class Data is provided to the Settlement Administer. For the avoidance
2 of doubt, the total number of workweeks shall be determined by reference to
3 Defendant's payroll data and not by reference to Class Members' dates of
4 employment.

5 2. Notice Packets.

6 a) The Notice Packet shall contain the Notice of Class Action Settlement
7 in a form substantially similar to the form attached as Exhibit A. The
8 Notice of Class Action Settlement shall inform Settlement Class
9 Members that they need not do anything in order to receive an
10 Individual Settlement Payment and Aggrieved Employee Payment and
11 to keep the Settlement Administrator apprised of their current mailing
12 address, to which the Individual Settlement Payments and Aggrieved
13 Employee Payments will be mailed following the Funding Date. The
14 Notice of Class Action Settlement shall set forth the release to be given
15 by all members of the Settlement Class who do not request to be
16 excluded from the Settlement Class in exchange for an Individual
17 Settlement Payment, the number of Workweeks worked by each
18 Settlement Class Member during the Class Period, and the estimated
19 amount of their Individual Settlement Payment, if they do not request
20 to be excluded from the Settlement, and Aggrieved Employee
21 Payment. The Settlement Administrator shall use the Class Data to
22 determine Class Members' Workweeks.

23 b) The Notice Packet's mailing envelope shall include the following
24 language: "IMPORTANT LEGAL DOCUMENT- YOU MAY BE
25 ENTITLED TO PARTICIPATE IN A CLASS ACTION
26 SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR
27 ADDRESS MAY BE REQUIRED AS EXPLAINED IN THE
28 ENCLOSED NOTICE."

1 3. Notice by First Class U.S. Mail and Email. Upon receipt of the Class Data,
2 the Settlement Administrator will perform a search based on the National
3 Change of Address Database to update and correct any known or identifiable
4 address changes. No later than fourteen (14) calendar days after receiving the
5 Class Data from Defendant, the Settlement Administrator shall mail and email
6 copies of the Notice Packet to all Settlement Class Members via regular First-
7 Class U.S. Mail and electronic mail. The Settlement Administrator shall
8 exercise its best judgment to determine the current mailing address for each
9 Settlement Class Member. The address identified by the Settlement
10 Administrator as the current mailing address shall be presumed to be the best
11 mailing address for each Settlement Class Member.

12 4. Undeliverable Notices. Any Notice Packets returned to the Settlement
13 Administrator as non-delivered on or before the Response Deadline shall be
14 re-mailed to any forwarding address provided. If no forwarding address is
15 provided, the Settlement Administrator shall promptly attempt to determine a
16 correct address by lawful use of skip-tracing, or other search using the name,
17 address and/or Social Security number of the Settlement Class Member
18 involved, and shall then perform a re-mailing, if another mailing address is
19 identified by the Settlement Administrator. In addition, if any Notice Packets,
20 which are addressed to Settlement Class Members who are currently
21 employed by Defendant, are returned to the Settlement Administrator as non-
22 delivered and no forwarding address is provided, the Settlement Administrator
23 shall notify Defendant. Defendant will request that the currently employed
24 Settlement Class Member provide a corrected address, and transmit to the
25 Settlement Administrator any corrected address provided by the Settlement
26 Class Member. Settlement Class Members who received a re-mailed Notice
27 Packet shall have their Response Deadline extended fifteen (15) days from the
28 original Response Deadline.

1 5. Disputes Regarding Individual Settlement Payments. Settlement Class
2 Members will have the opportunity, should they disagree with Defendant's
3 records regarding the start and end dates of employment, as stated in their
4 Notice Packet, to provide documentation and/or an explanation to show
5 contrary dates. If there is a dispute, the Settlement Administrator will consult
6 with the Parties to determine whether an adjustment is warranted. The
7 Settlement Administrator shall determine the eligibility for, and the amounts
8 of, any Individual Settlement Payments under the terms of this Agreement.
9 The Settlement Administrator's determination of the eligibility for and
10 amount of any Individual Settlement Payment shall be binding upon the
11 Settlement Class Member and the Parties.

12 6. Disputes Regarding Administration of Settlement. Any disputes not resolved
13 by the Settlement Administrator concerning the administration of the
14 Settlement will be resolved by the Court under the laws of the State of
15 California. Before any such involvement of the Court, counsel for the Parties
16 will confer in good faith to resolve the disputes without the necessity of
17 involving the Court.

18 7. Exclusions. The Notice of Class Action Settlement contained in the Notice
19 Packet shall state that Settlement Class Members who wish to exclude
20 themselves from the Settlement must submit a written request for exclusion
21 by the Response Deadline. The written request for exclusion must state that
22 Settlement Class Members wishing to exclude themselves from the Settlement
23 and (1) must contain the name, address, and the last four digits of the Social
24 Security number of the person requesting exclusion; (2) must be signed by the
25 Settlement Class Member; (3) must be postmarked or fax stamped by the
26 Response Deadline and returned to the Settlement Administrator at the
27 specified address or fax telephone number; and (4) contain a typewritten or
28 handwritten notice stating in substance: "I wish to opt out of the settlement of

1 the class action lawsuit entitled *Miriam Maroquin, et al. v. Teleferic*
2 *Barcelona PA, LLC*, currently pending in the Superior Court for the County
3 of Santa Clara, Case No. 21CV388821. I understand that by requesting to be
4 excluded from the settlement, I will receive no money from the Settlement
5 described in this Notice.” The request for exclusion will not be valid if it is
6 not timely submitted, if it is not signed by the Settlement Class Member, or if
7 it does not contain the name and address and last four digits of the Social
8 Security number of the Settlement Class Member. The date of the postmark
9 on the mailing envelope or fax stamp on the request for exclusion shall be the
10 exclusive means used to determine whether the request for exclusion was
11 timely submitted. Any Settlement Class Member who requests to be excluded
12 from the Settlement Class will not be entitled to an Individual Settlement
13 Payment and will not be otherwise bound by the terms of the Settlement or
14 have any right to object, appeal or comment thereon. However, any Settlement
15 Class Member that submits a timely request for exclusion that is also a
16 member of the Aggrieved Employees will still receive their pro rata share of
17 the PAGA Settlement, as specified below, and in consideration, will be bound
18 by the Release by the Aggrieved Employees as set forth herein. Settlement
19 Class Members who fail to submit a valid and timely written request for
20 exclusion on or before the Response Deadline shall be bound by all terms of
21 the Settlement and any final judgment entered in this Action if the Settlement
22 is approved by the Court. No later than fourteen (14) calendar days after the
23 Response Deadline, the Settlement Administrator shall provide counsel for
24 the Parties with a final list of the Settlement Class Members who have timely
25 submitted written requests for exclusion. At no time shall any of the Parties or
26 their counsel seek to solicit or otherwise encourage members of the Settlement
27 Class to submit requests for exclusion from the Settlement.
28

1 8. Objections. The Notice of Class Action Settlement contained in the Notice
2 Packet shall state that Settlement Class Members who wish to object to the
3 Settlement must submit to the Settlement Administrator a written statement of
4 objection (“Notice of Objection”) by the Response Deadline. The postmark
5 date of mailing shall be deemed the exclusive means for determining that a
6 Notice of Objection was served timely. The Notice of Objection must be
7 signed by the Settlement Class Member and state: (1) the case name and
8 number; (2) the name of the Settlement Class Member; (3) the address of the
9 Settlement Class Member; (4) the last four digits of the Settlement Class
10 Member’s Social Security number; (4) the basis for the objection; and (5) if
11 the Settlement Class Member intends to appear at the Final
12 Approval/Settlement Fairness Hearing. Settlement Class Members who fail to
13 make objections in writing in the manner specified above may still make their
14 objections orally at the Final Approval/Settlement Fairness Hearing with the
15 Court’s permission. Settlement Class Members will have a right to appear at
16 the Final Approval/Settlement Fairness Hearing to have their objections heard
17 by the Court. At no time shall any of the Parties or their counsel seek to solicit
18 or otherwise encourage Settlement Class Members to file or serve written
19 objections to the Settlement or appeal from the Order and Final Judgment.
20 Settlement Class Members who submit a written request for exclusion may
21 not object to the Settlement.

22 M. Funding and Allocation of the Total Settlement Amount. Defendant is required to pay
23 the Total Settlement Amount on or before the Funding Date, plus any employer’s share
24 of payroll taxes as mandated by law within the time specified herein.

25 1. Individual Settlement Payments. Individual Settlement Payments shall be paid
26 from the Net Settlement Amount and shall be paid pursuant to the formula set
27 forth below.
28

- 1 a) Calculation of Individual Settlement Payments. Using the Class Data,
2 the Settlement Administrator shall add up the total number of
3 Workweeks for all Settlement Class Members. The respective
4 Workweeks for each Settlement Class Member will be divided by the
5 total Workweeks for all Settlement Class Members, resulting in the
6 Payment Ratio for each Settlement Class Member. Each Settlement
7 Class Member's Payment Ratio will then be multiplied by the Net
8 Settlement Amount to calculate each Settlement Class Member's
9 estimated Individual Settlement Payments. Each Individual Settlement
10 Payment will be reduced by any legally mandated employee tax
11 withholdings (e.g., employee payroll taxes, etc.). Individual
12 Settlement Payments for Class Members who submit valid and timely
13 requests for exclusion will be redistributed to Settlement Class
14 Members who do not submit valid and timely requests for exclusion
15 on a pro rata basis based on their respective Payment Ratios.
- 16 b) Calculation of Individual Payments to the Aggrieved Employees.
17 Using the Class Data, the Settlement Administrator shall add up the
18 total number of Workweeks for all Aggrieved Employees during the
19 PAGA Period. The respective Workweeks for each Aggrieved
20 Employee will be divided by the total Workweeks for all Aggrieved
21 Employees, resulting in the "PAGA Payment Ratio" for each
22 Aggrieved Employee. Each Aggrieved Employee's PAGA Payment
23 Ratio will then be multiplied by the Aggrieved Employee Payment to
24 calculate each Aggrieved Employee's estimated Individual PAGA
25 Settlement.
- 26 c) Allocation of Individual Settlement Payments. For tax purposes,
27 Individual Settlement Payments shall be allocated and treated as
28 follows: 15% as wages ("Wage Portion"); 85% as penalties and

1 interest ("Non-Wage Portion"). The Wage Portion is subject to wage
2 withholdings and shall be reported on IRS Form W-2. The Non-Wage
3 Portion shall not be subject to wage withholdings and shall be reported
4 on IRS Form 1099. Settlement Class Members shall be solely and
5 legally responsible for their share of applicable payroll tax
6 withholdings and deductions.

7 d) Allocation of Aggrieved Employee Payments. For tax purposes,
8 Aggrieved Employee Settlement Payments shall be allocated and
9 treated as 100% penalties and shall be reported on IRS Form 1099.

10 e) Mailing. Individual Settlement Payments and Aggrieved Employee
11 Payments shall be mailed by regular First-Class U.S. Mail to
12 Settlement Class Members' last known mailing address no later than
13 fifteen (15) calendar days after the Funding Date.

14 f) Expiration. Any checks issued to Settlement Class Members shall
15 remain valid and negotiable for one hundred and eighty (180) days
16 from the date of their issuance. If a Settlement Class Member does not
17 cash his or her settlement check within 90 days, the Settlement
18 Administrator will send a letter to such persons, advising that the
19 check will expire after the 180th day, and invite that Settlement Class
20 Member to request reissuance in the event the check was destroyed,
21 lost or misplaced. In the event an Individual Settlement Payment check
22 has not been cashed within one hundred and eighty (180) days, all
23 funds represented by such uncashed checks, plus any interest accrued
24 thereon, shall be distributed consistent with California Code of Civil
25 Procedure Section 384 as follows: to Legal Aid at Work. Neither Class
26 Counsel nor Defendant's counsel has any interest, pecuniary or
27 otherwise, in Legal Aid at Work. Similarly, neither Defendant nor
28

1 Plaintiffs have any interest, pecuniary or otherwise, in Legal Aid at
2 Work.

3 2. Class Representative Service Award. In addition to the Individual Settlement
4 Payment to be paid to Plaintiffs, Plaintiffs will apply to the Court for an award
5 of not more than Five Thousand Dollars (\$5,000), each, as the Class
6 Representative Service Awards. Defendant does not presently intend to
7 oppose a Class Representative Service Awards of no more than Five Thousand
8 Dollars (\$5,000) for each Plaintiff. The Settlement Administrator shall pay the
9 Class Representative Service Awards, either in the amount stated herein if
10 approved by the Court or some other amount as approved by the Court, to
11 Plaintiffs from the Total Settlement Amount no later than ten (10) calendar
12 days after the Funding Date. Any portion of the requested Class
13 Representative Service Awards that are not awarded to the Class
14 Representatives shall be part of the Net Settlement Amount and shall be
15 distributed to Settlement Class Members as provided in this Agreement. The
16 Settlement Administrator shall issue an IRS Form 1099 — MISC to Plaintiffs
17 for their Class Representative Service Award. Plaintiffs shall be solely and
18 legally responsible to pay any and all applicable taxes on their Class
19 Representative Service Award and shall hold harmless the Released Party
20 from any claim or liability for taxes, penalties, or interest arising as a result of
21 the Class Representative Service Awards. The Class Representative Service
22 Awards shall be in addition to Plaintiffs' Individual Settlement Payment as a
23 Settlement Class Member. Approval of this Settlement shall not be
24 conditioned on Court approval of the requested amount of the Class
25 Representative Service Awards. In the event that the Court reduces or does
26 not approve the requested Class Representative Service Awards, Plaintiffs
27 shall not have the right to revoke the Settlement, and it will remain binding.
28

1 3. Class Counsel Award. Defendant understands that Class Counsel will seek
2 attorneys' fees not to exceed thirty-five percent (35%) of the Total Settlement
3 Amount, currently estimated to be Fifty-Two Thousand Five Hundred Dollars
4 and Zero Cents (\$52,500), plus costs and expenses supported by declaration
5 not to exceed Five Thousand Dollars and Zero Cents (\$5,000), from the Total
6 Settlement Amount. Any portion of the requested Class Counsel Award that
7 is not awarded to Class Counsel shall be part of the Net Settlement Amount
8 and shall be distributed to Settlement Class Members as provided in this
9 Agreement. The Settlement Administrator shall allocate and pay the Class
10 Counsel Award to Class Counsel from the Total Settlement Amount no later
11 than five (5) calendar days after the Funding Date. Class Counsel shall be
12 solely and legally responsible to pay all applicable taxes on the payment made
13 pursuant to this paragraph. The Settlement Administrator shall issue an IRS
14 Form 1099 — MISC to Class Counsel for the payments made pursuant to this
15 paragraph. In the event that the Court reduces or does not approve the
16 requested Class Counsel Award, Plaintiffs and Class Counsel shall not have
17 the right to revoke the Settlement, or to appeal such order, and the Settlement
18 will remain binding.

19 4. PAGA Settlement. Fifteen Thousand Dollars and Zero Cents (\$15,000) shall
20 be allocated from the Total Settlement Amount for settlement of claims for
21 civil penalties under the Private Attorneys General Act of 2004 ("PAGA
22 Settlement"). The Settlement Administrator shall pay seventy-five percent
23 (75%) of the PAGA Settlement Eleven Thousand Two Hundred Fifty Dollars
24 and Zero Cents (\$11,250) to the California Labor and Workforce
25 Development Agency no later than twenty-five (25) calendar days after the
26 Funding Date (hereinafter "LWDA Payment"). Twenty-five (25%) of the
27 PAGA Settlement Three Thousand Seven Hundred Fifty Dollars and Zero
28 Cents (\$3,750) will be distributed to the Aggrieved Employees as described

1 in this Agreement (each individual distribution of the PAGA Settlement to an
2 Aggrieved Employee is an “Aggrieved Employee Payment”). For purposes of
3 distributing the PAGA Settlement to the Aggrieved Employees, each
4 Aggrieved Employee shall receive their pro-rata share of the Aggrieved
5 Employee Payment using the PAGA Payment Ratio as defined above.

- 6 5. Settlement Administration Costs. The Settlement Administrator shall be paid
7 for the costs of administration of the Settlement, including translation of the
8 Settlement Agreement (including Exhibit A) to Spanish, from the Total
9 Settlement Amount. The estimate of the Settlement Administration Costs is
10 \$9,250. The Settlement Administrator shall be paid the Settlement
11 Administration Costs no later than twenty-five (25) calendar days after the
12 Funding Date.

- 13 N. Final Approval Motion. Class Counsel and Plaintiffs shall use best efforts to file with
14 the Court a Motion for Order Granting Final Approval and Entering Judgment, within
15 twenty-eight (28) days following the expiration of the Response Deadline, which
16 motion shall request final approval of the Settlement and a determination of the
17 amounts payable for the Class Representative Service Award, the Class Counsel
18 Award, the PAGA Settlement, and the Settlement Administration Costs.

- 19 1. Declaration by Settlement Administrator. No later than fourteen (14) days
20 after the Response Deadline, the Settlement Administrator shall submit a
21 declaration in support of Plaintiffs’ motion for final approval of this
22 Settlement detailing the number of Notice Packets mailed and re-mailed to
23 Settlement Class Members, the number of undeliverable Notice Packets, the
24 number of timely requests for exclusion, the number of objections received,
25 the amount of the average Individual Settlement Payment and highest
26 Individual Settlement Payment, the Settlement Administration Costs, and any
27 other information as the Parties mutually agree or the Court orders the
28 Settlement Administrator to provide.

2. Final Approval Order and Judgment. Class Counsel shall present an Order Granting Final Approval of Class Action Settlement to the Court for its approval, and Judgment thereon, at the time Class Counsel files the Motion for Final Approval.

O. Non-Publicity Provision. The Parties and their counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry, or have any communication with the press about the fact, amount, or terms of the Agreement. In addition, the parties and their counsel agree that they will not engage in any advertising or distribute any marketing materials relating to the settlement of this case, or the terms of this Agreement, that identifies the Defendant in any manner, including but not limited to any postings on any websites maintained by Class Counsel. Notwithstanding the other provisions of this Agreement, Class Counsel may refer to this settlement on their website so long as they do not use Defendant's name or use any combination of words or phrases from which an individual reading the reference could reasonably discern that the settlement involved Defendant. For example, Class Counsel may state that they represented a class of northern California restaurant employees in a wage-and-hour class action case that settled for \$150,000 while Class Counsel may not state that they represented employees of a Spanish restaurant in northern California. Neither Plaintiffs nor Class Counsel will discuss the terms or the fact of this Agreement with third parties other than (1) their immediate family members, (2) their respective accountants or lawyers as necessary for tax purposes, or (3) other Class Members. Class Counsel may identify this Agreement in other matters for the sole purpose of demonstrating their adequacy as counsel in such other matters.

P. Defendant's Option to Revoke Settlement. Defendant has the unilateral right to revoke the Settlement and Defendant shall have, in its sole discretion, the option to terminate this Settlement if, after the Response Deadline, the number of Settlement Class Members who submitted timely and valid written requests for exclusion from the

1 Settlement is at least ten percent (10%) of all Settlement Class Members. If Defendant
2 exercises the option to terminate this Settlement, Defendant shall: (a) provide written
3 notice to Class Counsel within five (5) calendar days after (i) providing the Class Data
4 to the Settlement Administrator or (ii) the Settlement Administrator provides
5 information regarding opt outs (which is to occur no later than fourteen (14) calendar
6 days after the Response Deadline, and (b) pay all Settlement Administration Costs
7 incurred up to the date or as a result of the termination; and the Parties shall proceed
8 in all respects as if this Agreement had not been executed.

9 Q. Cooperation. The Parties and their counsel will cooperate with each other and use their
10 best efforts to implement the Settlement and achieve Court approval for the Settlement
11 and this Agreement.

12 R. Stipulation to Filing of First Amended Complaint. The Parties agree to stipulate to the
13 Plaintiffs' filing of a First Amended Complaint as soon as the Court lifts the stay
14 currently imposed on the case, however the Parties will first attempt to file a stipulation
15 and order to allow a first amended complaint pending the stay. The First Amended
16 Complaint shall differ from the existing Complaint only in the following respects: (1)
17 addition of a PAGA cause of action; (2) correction of certain typos in the existing
18 Complaint; and (3) add such factual allegations as are reasonably necessary to support
19 Plaintiffs' allegation that Defendant failed to pay Class Members the correct overtime
20 rate of payment as a result of or in connection with Defendant's distributing to Class
21 Members as a bonus a portion of the mandatory service charge it has charged
22 customers during the Claims Period.

23 S. Filing of Supplemental PAGA Letter. As soon as possible following execution of this
24 Agreement, Class Counsel shall prepare and serve a supplemental PAGA letter
25 alleging those facts and allegations alleged in the First Amended Complaint which are
26 not alleged in the PAGA letter filed by Plaintiffs in October 2021.

27 T. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
28 except such proceedings as are necessary to implement and complete the Settlement,

including the filing of an amended complaint as contemplated herein, pending the Final Approval/Settlement Fairness Hearing to be conducted by the Court.

U. Amendment or Modification. This Agreement may be amended or modified only by a written instrument signed by the Parties and counsel for all Parties, or their successors-in-interest.

V. Entire Agreement. This Agreement and any attached Exhibit constitute the entire Agreement among these Parties, and no oral or written representations, warranties or inducements have been made to any Party concerning this Agreement or its Exhibit other than the representations, warranties and covenants contained and memorialized in this Agreement and its Exhibit.

W. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate Action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The persons signing this Agreement on behalf of Defendant represents and warrants that he/she is authorized to sign this Agreement on behalf of Defendant. Plaintiffs represent and warrant that they are authorized to sign this Agreement and that he/she has not assigned any claim, or part of a claim, covered by this Settlement to a third-party.

X. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties, as previously defined.

Y. California Law Governs. All terms of this Agreement and the Exhibit and any disputes shall be governed by and interpreted according to the laws of the State of California.

Z. Counterparts. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Agreement shall exchange among themselves copies or originals of the signed counterparts.

1 AA. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement
2 is a fair, adequate and reasonable settlement of this Action and have arrived at this
3 Settlement after extensive arms-length negotiations, taking into account all relevant
4 factors, present and potential.

5 BB. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction with
6 respect to the interpretation, implementation and enforcement of the terms of this
7 Agreement and all orders and judgments entered in connection therewith, and the
8 Parties and their counsel submit to the jurisdiction of the Court for purposes of
9 interpreting, implementing and enforcing the settlement and all orders and judgments
10 entered in connection with this Agreement.

11 CC. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,
12 the Court shall first attempt to construe the provisions valid to the fullest extent
13 possible consistent with applicable precedents so as to define all provisions of this
14 Agreement valid and enforceable.

15 DD. No Unalleged Claims. Plaintiffs and Class Counsel represent that they do not currently
16 intend to pursue any claims against the Released Party, including, but not limited to,
17 any and all claims relating to or arising from Plaintiffs' employment with Defendant,
18 regardless of whether Class Counsel is currently aware of any facts or legal theories
19 upon which any claims or causes of action could be brought against Released Party,
20 including those facts or legal theories alleged in the operative complaint in this Action.
21 The Parties further acknowledge, understand and agree that this representation is
22 essential to the Agreement and that this Agreement would not have been entered into
23 were it not for this representation.

24 EE. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class
25 certification for purposes of this settlement only.

26 FF. No Admissions by the Parties. Plaintiffs have claimed and continue to claim that the
27 Released Claims have merit and give rise to liability on the part of Defendant.
28 Defendant claims that the Released Claims have no merit and do not give rise to

1 liability. This Agreement is a compromise of disputed claims. Nothing contained in
2 this Agreement and no documents referred to and no action taken to carry out this
3 Agreement may be construed or used as an admission by or against the Defendant or
4 Plaintiffs or Class Counsel as to the merits or lack thereof of the claims asserted. Other
5 than as may be specifically set forth herein, each Party shall be responsible for and
6 shall bear its/his own attorney's fees and costs.

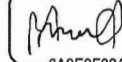
7
8 [SIGNATURES ON FOLLOWING PAGE]
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFFS:

06/01/22 | 5:58 PDT

DATED: _____

DocuSigned by:



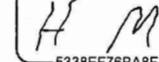
6A9E9F02A22642A...

Mirian Maroquin

06/01/22 | 3:13 PDT

DATED: _____

DocuSigned by:



5338EF76BA8F482...

Humberto Morales

IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANT:

DATED: June 3, 2022

Teleferic Barcelona PA, LLC

Xavi Padrosa

Chief Executive Officer

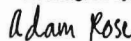
IT IS SO AGREED AS TO FORM BY COUNSEL:

06/02/22 | 6:53 PDT

DATED: _____

Frontier Law Center

DocuSigned by:



By: _____

CA441F1859902467...

Attorneys for the Plaintiffs and the Settlement Class Members

DATED: June 2, 2022

Lawson + Lawson LLP

By: _____



Attorneys for Defendant

Exhibit A

**IN THE SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

MIRIAN MAROQUIN and HUMBERTO
MORALES, on behalf of themselves and all
similarly situated individuals;

Case No. 21CV388821

PLAINTIFFS,

vs.

TELEFERIC BARCELONA PA, LLC, and
DOES 1 to 100;

DEFENDANTS.

NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT

I. WHY DID I GET THIS NOTICE?

The records of Teleferic Barcelona PA, LLC ("Teleferic") indicate that you were employed by Teleferic at some time between October 21, 2017 and <<close of class period>> (the "Class Period") as a current or former non-exempt server, busser, cook, host, or other similar title. This Notice explains that for settlement purposes only, the Court has granted preliminary approval of this class action settlement that may affect you. You have legal rights and options that you may exercise at this time.

II. WHAT IS THIS CLASS ACTION LAWSUIT ABOUT?

Plaintiffs, two former employees who worked for Teleferic, filed a class action lawsuit on behalf of themselves and similarly-situated employees claiming that Teleferic violated California labor laws by: (1) failing to pay all wages for all hours worked, including minimum, regular, overtime and doubletime wages; (2) failing to provide meal periods or compensation in lieu thereof; (3) failing to provide rest breaks or compensation in lieu thereof; (4) failure to provide accurate and itemized wage statements; and (5) failing to timely pay wages owed upon termination of employment.

Teleferic denies any wrongdoing, denies Plaintiffs' allegations, and contends it was in full compliance with all California labor laws.

The Court has not ruled on whether Plaintiffs' allegations have any merit. However, for the purpose of avoiding the time and expense of further litigation, the ultimate outcome of which is uncertain, and to provide a fair and reasonable resolution of this legal dispute, Plaintiffs and Teleferic have negotiated a settlement whereby Teleferic has agreed to pay One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00) to resolve all of the class claims listed above. The Settlement is not an admission by Teleferic of any liability.

1 **III. WHO IS INCLUDED IN THIS CLASS ACTION?**

2 The Class consists of all of Teleferic's current and former non-exempt server, busser, cook,
3 host, or other similar title (collectively "Non-Exempt Employees") who worked anytime during the
4 Class Period in California (an "Eligible Position").

4 **IV. WHAT DOES THE PROPOSED SETTLEMENT OFFER?**

5 A. Teleferic will pay \$150,000.00 to settle the claims. A Settlement Administrator has
6 been appointed to administer the settlement. The Settlement Administrator will pay from the
7 \$150,000: (1) costs of administering the claims up to \$9,250; (2) attorneys' fees up to \$52,500 plus
8 documented costs up to \$5,000; (3) an enhancement not to exceed \$5,000 each to Plaintiffs for
9 their work on the class claims; and (4) \$15,000 to the California Labor Workforce Development
10 Agency ("LWDA").

11 B. Your individual share will be based on the number of workweeks you worked for
12 Teleferic during the Class Period in an Eligible Position. The amount of money you receive will be
13 based on the size of your share in comparison to the size of all class members' shares combined.
14 The Settlement Administrator will assign to each class member a "Settlement Ratio," which will be
15 a fractional number comprised of (a) the number of workweeks that class member worked for
16 Teleferic in an Eligible Position during the Class Period as the numerator, and (b) the aggregate
17 total number of workweeks that all class members worked in Eligible Positions during the Class
18 Period as the denominator. The Settlement Administrator will assign to each Class Member the
19 "Settlement Share" which will be calculated by multiplying that class member's Settlement Ratio
20 by the amount allocated to class members from the net settlement amount.

21 C. If you do not exclude yourself from the settlement (according to the procedures
22 explain below), you will release Teleferic and its parents, future parents, predecessors, successors
23 (including but not limited to Teleferic Barcelona PA, LLC), subsidiaries, affiliates, partners,
24 assigns, and trusts, and all of its employees, officers, agents, attorneys, stockholders, fiduciaries,
25 other service providers, and assigns ("Releasees") as follows:

26 from any and all claims, actions, charges, complaints, grievances and causes of action, of
27 whatever nature, whether known or unknown, which exist or may exist on their behalf as of
28 the date of this Agreement, including but not limited to any and all tort claims, contract
claims, wage claims, wrongful termination claims, disability claims, benefit claims, public
policy claims, retaliation claims, statutory claims, personal injury claims, emotional distress
claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit
claims, and any and all claims arising under any federal, state or other governmental statute,
law, regulation or ordinance, including, but not limited to claims for violation of the Fair
Labor Standards Act, the California Labor Code, the Wage Orders of California's Industrial
Welfare Commission, other state wage and hour laws, the Americans with Disabilities Act,
the Age Discrimination in Employment Act (ADEA), the Employee Retirement Income
Security Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment and
Housing Act, the California Family Rights Act, the Family Medical Leave Act, California's
Whistleblower Protection Act, California Business & Professions Code Section 17200 et
seq., and any and all claims arising under any federal, state or other governmental statute,
law, regulation or ordinance (the "Released Claims").

26 **V. WHAT ARE MY OPTIONS?**

27 A. **You may accept your share of the \$150,000 settlement.** You will be deemed to
28 have accepted your share of the \$150,000 settlement if you do not submit a timely and valid
request to be excluded from the settlement as described in this Notice. In accepting your

1 settlement share, you will waive all "Released Claims" as described above.

2 **B. You may accept your share of the \$150,000.00 settlement but dispute the**
3 **number of your workweeks.** If you do not agree with the number of workweeks stated on the
4 attached Information Sheet, you should provide the corrected information and fully fill out the
5 attached Information Sheet. Write down all dates that you worked or the number of workweeks
6 you worked in an Eligible Position during the Class Period. Return the Information Sheet and any
7 documents to support your position by mail to the Settlement Administrator, Phoenix Class Action
8 Administrators, at the following address: P.O. Box 7208, Orange, California 92863, or by calling
9 (800) 523 5773. The Settlement Administrator will read the documents both you and Teleferic
10 provide and make the final determination of the amount of your settlement award. Your
11 Information Sheet and any supporting documentation must be postmarked by <<date>> to be valid.
12 Once the dispute is resolved by the Settlement Administrator, and if the Settlement is finally
13 approved by the Court, you will be sent a check for your Settlement Share and you will have
14 released all "Released Claims" as described above.

15 **C. You may exclude yourself from the class action settlement.** If you exclude
16 yourself from the class action settlement, you will no longer be a member o the Class so you will
17 not receive any class action settlement money and you will not be bound by the class settlement
18 Release. To be excluded from the class action settlement, you must send by mail, postmarked by
19 <<date>>, a written letter requesting that you be excluded from the class action with your name,
20 address, telephone number, and signature to the Settlement Administrator, Phoenix Class Action
21 Administrators, at the following address: P.O. Box 7208, Orange, CA 92863.

22 **D. You may object to the settlement.** If you want to object to the settlement because
23 you find it unfair, unreasonable, or inadequate, you may do so according to the procedures set forth
24 below in paragraph IX. By objecting, you are not excluding yourself from the settlement. To do
25 so, you should follow the procedures below. If the Court approves the settlement despite your
26 objection, you will be sent a check for your settlement share and you will be bound by the Release
27 described above. The Court will consider the merits of all timely objections, whether or not the
28 objector appears at the final fairness hearing.

19 **VI. WHAT IS MY ESTIMATED SHARE?**

20 Your *estimated* share is [insert estimated share]. This amount was calculated based on
21 Teleferic's records, which show you worked approximately [insert class member workweeks]
22 workweeks in an Eligible Position. This amount is an estimate. The actual amount you receive
23 may be more or less than the estimated amount shown, depending on a number of factors including
24 whether other class members request exclusion from the Settlement and how much the Court
25 approves in attorneys' fees, litigation expenses, and other costs.

24 **VII. WHAT ARE THE PROCEDURES FOR PAYMENT?**

25 **A.** The Settlement Administrator will calculate your share of the \$150,000 settlement
26 and issue you a check for your settlement share.

26 **B.** The settlement shares are allocated 15% each to wages (for which employment
27 taxes will be deducted and W-2s issued) and 85% to interest and penalties (for which 1099s will be
28 issued).

1 C. You will have one hundred and eighty (180) calendar days from the date of the
2 check's issuance to cash your settlement check. After the expiration of the 180-day period, any
3 amounts from settlement checks that remain uncashed and otherwise unclaimed, plus any interest
4 that has accrued on those funds, will be paid to the Legal Aid at Work, in accordance with
5 California Code of Civil Procedure § 384.

6 D. It is important for the parties to have your current address in order to be able to send
7 you other mailings regarding this case. You should contact the Settlement Administrator to report
8 any change of your address after you receive this Notice. Failure to report a change of address may
9 result in your not receiving money from the settlement.

10 **VIII. HEARING ON PROPOSED SETTLEMENT**

11 A final fairness hearing will be held by the Court at [time] on [date], in the Superior Court
12 for the County of Santa Clara, 191 N. First Street, San Jose, California 95113, Dept. 1 (Judge Sunil
13 Kulkarni), to decide whether or not the proposed settlement is fair, reasonable, and adequate. You
14 do not have to attend the hearing. Class Counsel will answer any questions the Judge may have.
15 But, you are welcome to attend at your own expense.

16 **IX. PROCEDURES FOR EXCLUSION FROM SETTLEMENT**

17 If you wish to exclude yourself from the settlement, and any payment of amounts under the
18 Agreement, as described above, you must mail a letter to the Settlement Administrator stating that
19 you want to be excluded from the Settlement. This letter must include your name, address,
20 telephone number, and signature on or before 45 days from the mailing of this Notice. The
21 objection must be mailed to the Settlement Administrator as follows:

22 *To Settlement Administrator:*

23 *Marroquin et al. v. Teleferic Barcelona PA, LLC*
24 Settlement Administrator
25 c/o Phoenix Class Action Administrators
26 P.O. Box 7208
27 Orange, CA 92863

28 **X. PROCEDURES FOR OBJECTING TO SETTLEMENT**

If you wish to object to the settlement as described above, you are strongly encouraged to
do two things: (1) submit an objection in writing to the Settlement Administrator stating why you
object to the settlement on or before 45 days from the mailing of this Notice; and (2) formally
intervene into the court action as an aggrieved party by filing separate paperwork with the Court
through your own independent legal counsel or as a *pro per*.

The written objection should be mailed to the Settlement Administrator as follows:

To Settlement Administrator:

Marroquin et al. v. Teleferic Barcelona PA, LLC
Settlement Administrator
c/o Phoenix Class Action Administrators
P.O. Box 7208
Orange, CA 92863

1 The written objection must state your full name, address, and the dates of your employment
2 with Teleferic. The written objection must state the basis for each specific objection and any legal
3 support in clear and concise terms. The written objection also should state whether you or your
4 lawyer plan to formally intervene in the action and intend to appear and object at the Final
5 Approval Hearing. Class Counsel will file any objections received with the Court within 5
6 business days of receipt. Objectors will be provided with the opportunity to speak at the final
7 approval hearing regardless of whether they have filed an appearance or submitted a written
8 opposition beforehand.

9 **If you do not timely object to the settlement and also formally intervene into the court**
10 **action as set forth above, you may waive your right and standing to appeal the class**
11 **settlement judgment that ultimately is entered by the Court.** If you send an objection and
12 formally intervene in the action, you may come to Court and be heard, but you do not have to come
13 to Court to talk about it. As long as you mail your written objection on time, the Court will
14 consider it. You may also pay your own lawyer to attend the Final Approval Hearing. The Court
15 will provide objectors the opportunity to speak at the Final Approval Hearing regardless of whether
16 they have filed an appearance or submitted a written opposition beforehand.

17 **XI. EXAMINATION OF COURT PAPERS AND INQUIRIES**

18 This Notice summarizes the class action settlement. To obtain additional information
19 regarding the settlement you may: (1) call the Settlement Administrator at (800) 523 5773; (2)
20 inspect the complete court file as maintained by the Clerk of the Superior Court for the County of
21 Santa Clara, 191 N. First Street, San Jose, California 95113, Department 1 (Judge Sunil Kulkarni);
22 or (3) access the court file via the Santa Clara County Superior Court's website (information about
23 filed civil cases can be found on the Court's general website at www.scscourt.org).

24 If you have any questions or comments regarding this Notice, the claims asserted in this
25 class action and/or your rights regarding the settlement, you may contact any of the attorneys for
26 the Class listed below ("Class Counsel"). You will not be charged for speaking with these lawyers.
27 If you want to be represented by your own lawyer, you may hire one at your own expense. The
28 attorneys by the Court to represent the class of employees are:

29 Manny Starr, Esq.
30 Adam Rose, Esq.
31 Frontier Law Center
32 23901 Calabasas Rd., Suite 2074
33 Calabasas, CA 91302
34 (818) 914 3433
35 eservice@frontierlawcenter.com

36 The Settlement Agreement and, ultimately, the order giving final approval to the Settlement will be
37 posted on the Settlement Administrator's website at www.<<insert address>>.com.