

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

2 This Joint Stipulation of Class Action Settlement and Release (“Settlement,” “Agreement” or
3 “Settlement Agreement”) is made and entered into by and between Plaintiff Joali Rodriguez (“Plaintiff”
4 or “Class Representative”), individually and on behalf of all others similarly situated, and Defendant
5 Surf Thru, Inc. (“Defendant”) (collectively with Plaintiff, the “Parties”).

6 This Settlement Agreement shall be binding on Plaintiff, Settlement Class Members (as defined
7 herein), and on Defendant, subject to the terms and conditions hereof and the approval of the Court.

8 **RECITALS**

9 1. On October 15, 2019, Plaintiff filed a Class Action Complaint for Damages (“Complaint”),
10 thereby commencing a putative class action entitled *Joali Rodriguez vs. Surf Thru, Inc.*, Superior Court of
11 California for the County of Tulare, Case No. VCU280787 (the “Action”) against Defendant. Plaintiff’s
12 Complaint alleges ten (10) causes of action against Defendant for failure to properly pay minimum and
13 overtime wages, provide compliant meal and rest periods and associated premium payments, timely pay
14 wages during and after employment and pay associated waiting-time penalties, provide compliant wage
15 statements, maintain complete and accurate payroll records, and reimburse necessary business-related
16 expenses, and for violations of California Business and Professions Code Section 17200 *et seq.*, on behalf
17 of all current and former hourly-paid or non-exempt employees who worked for Defendant within the
18 State of California at any time during the period from October 15, 2015 through final judgment.

19 2. Defendant denies all material allegations set forth in the Action and has asserted
20 numerous affirmative defenses. Notwithstanding, in the interest of avoiding further litigation,
21 Defendant desires to fully and finally settle the Action and Released Claims.

22 3. Class Counsel in the Action diligently investigated the claims against Defendant,
23 including any and all applicable defenses and the applicable law, and through formal and informal
24 discovery methods, obtained and reviewed extensive information, data, and documents to assess the
25 claims and allegations.

26 4. On July 1, 2021, the Parties participated in mediation with the Honorable Jeffrey
27 Winikow (Ret.) (the “Mediator”), a respected mediator of complex wage and hour actions. The
28 settlement discussions were conducted at arm’s-length, and the Settlement is the result of an informed

1 and detailed analysis of Defendant’s potential liability and total exposure in relation to the costs and
2 risks associated with continued litigation. Based on the documents produced, as well as Class Counsel’s
3 own independent investigation and evaluation, Class Counsel believes that the settlement with
4 Defendant for the consideration and on the terms set forth in this Settlement Agreement is fair,
5 reasonable, and adequate and is in the best interest of the Class Members in light of all known facts and
6 circumstances, including the risk of significant delay and uncertainty associated with litigation and
7 various defenses asserted by Defendant.

8 5. The Parties expressly acknowledge that this Settlement Agreement is entered into solely
9 for the purpose of compromising significantly disputed claims and that nothing herein is an admission
10 of liability or wrongdoing by Defendant. If for any reason the Settlement Agreement is not approved,
11 it will be of no force or effect, and the Parties shall be returned to their original respective positions.

12 **DEFINITIONS**

13 6. The following definitions are applicable to this Settlement Agreement. Definitions
14 contained elsewhere in this Settlement Agreement will also be effective:

15 a. “Attorneys’ Fees and Costs” means attorneys’ fees for Class Counsel’s litigation
16 and resolution of the Action, and all actual costs incurred and to be incurred by Class Counsel in the
17 Action, as set forth in Paragraph 10 below.

18 b. “Class Counsel” means Edwin Aiwazian, Arby Aiwazian, Joanna Ghosh, and
19 Annabel Blanchard of Lawyers *for* Justice, PC, counsel for Plaintiff, who will seek to be appointed
20 counsel for the Class.

21 c. “Class Data and List” means a complete list of all Class Members that Defendant
22 will diligently and in good faith compile from its records and provide to the Settlement Administrator
23 within twenty-one (21) calendar days after Preliminary Approval. The Class Data and List will be
24 password protected and formatted in a readable Microsoft Office Excel spreadsheet and will include
25 each Class Member’s last-known full name, mailing address, telephone number, Social Security
26 Number, hire and termination dates as an hourly-paid or non-exempt employee of Defendant in
27 California during the Class Period, and such other information as is necessary for the Settlement
28 Administrator to calculate Workweeks (as defined below).

1 d. "Class Member(s)" or "Class" mean all current and former hourly-paid or non-
2 exempt employees, who did not sign arbitration agreements with Defendant, employed by Defendant
3 within the State of California at any time during the Class Period.

4 e. "Class Notice" means the Notice of Class Action Settlement, substantially in the
5 form attached as "**Exhibit A.**"

6 f. "Class Period" means the period from October 15, 2015 through October 8, 2021.

7 g. "Class Representative" or "Plaintiff" means Joali Rodriguez.

8 h. "Court" means the Superior Court of the State of California for the County of
9 Tulare.

10 i. "Defendant" means Surf Thru, Inc.

11 j. "Defendant's Counsel" means Daniel K. Klingenberger of Lebeau Thelen, LLP.

12 k. "Effective Date" means the later of: in the event no appeal is taken from the Final
13 Approval Order and Judgment, then the day after the last day on which any appeal from the Final
14 Approval Order and Judgment might be filed; in the event a timely appeal is taken from the Final
15 Approval Order and Judgment, then, the date of successful resolution of any such appeal(s) with respect
16 to the Final Approval Order and Judgment, including expiration of any time to seek reconsideration or
17 further review.

18 l. "Employer Taxes" means the employer's share of taxes and contributions in
19 connection with the wages portion of Individual Settlement Shares, which shall be paid by Defendant
20 separately and in addition to the Maximum Settlement Amount.

21 m. "Enhancement Payment" means the amount to be paid to Plaintiff Joali Rodriguez
22 in recognition of her effort and work in prosecuting the Action on behalf of Class Members, as set forth
23 in Paragraph 11 below.

24 n. "Final Approval" means the determination by the Court that the Settlement is
25 fair, reasonable, and adequate, and entry of the Final Approval Order and Judgment based thereon.

26 o. "Final Approval Hearing" means the hearing at which the Court will consider and
27 determine whether the Settlement should be granted Final Approval.

28 p. "Individual Settlement Payment" means the net payment of each Settlement Class

1 Member's Individual Settlement Share, after reduction for the employee's share of taxes and
2 withholdings with respect to the wages portion of the Individual Settlement Share, as provided in
3 Paragraphs 24-25 below.

4 q. "Individual Settlement Share" means the *pro rata* share of the Net Settlement
5 Amount that a Class Member may be eligible to receive under the Settlement Agreement, to be
6 calculated in accordance with Paragraph 13.

7 r. "Maximum Settlement Amount" means the amount of Two Hundred Seventy-
8 Five Thousand Dollars (\$275,000) to be paid by Defendant in full resolution of all Released Claims and
9 the Action, which is inclusive of the Attorneys' Fees and Costs, Enhancement Payment, Net Settlement
10 Amount to be paid to the Settlement Class Members, and Settlement Administration Costs. Defendant
11 shall pay the Employer Taxes separate and in addition to the Maximum Settlement Amount. The
12 Maximum Settlement Amount is subject to increase, as provided in Paragraph 35.

13 s. "Net Settlement Amount" means the portion of the Maximum Settlement Amount
14 that is available for distribution to Settlement Class Members, which is the Maximum Settlement
15 Amount less the Court-approved Enhancement Payment, Settlement Administration Costs, and
16 Attorneys' Fees and Costs.

17 t. "Notice of Objection" means a Class Member's written objection to the
18 Settlement Agreement, which must: (a) include the case name and number of the Action; (b) include the
19 objector's full name, signature, address, telephone number, and last four (4) digits of his or her Social
20 Security Number; (c) include a written statement of all grounds for the objection accompanied by any
21 legal support for such objection; (d) include copies of any papers, briefs, or other documents upon which
22 the objection is based, and (e) be returned by fax or mail to the Settlement Administrator at the specified
23 address and/or facsimile number, postmarked or faxed on or before the Response Deadline. The date
24 of the postmark on the return mailing envelope or fax-stamp on the submission will be the exclusive
25 means to determine whether a Notice of Objection has been timely submitted.

26 u. "Parties" means Plaintiff and Defendant, collectively, and "Party" means either
27 Plaintiff or Defendant.

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1 v. “Preliminary Approval” means entry of the Court order granting preliminary
2 approval of the Settlement Agreement.

3 w. “Released Claims” means all claims under state, federal, or local law, whether
4 statutory, in tort, contract, or otherwise, pleaded in the Complaint or that could have been pleaded based
5 on the facts pleaded in the Complaint, arising during the Class Period, including but not limited to claims
6 under the California Labor Code, California Industrial Welfare Commission Wage Orders, regulations,
7 and/or other provisions of law, for failure to pay overtime wages, failure to pay minimum wages, failure
8 to provide compliant meal periods and associated premium pay, failure to provide compliant rest periods
9 and associated premium pay, failure to provide compliant wage statements, failure to timely pay wages
10 upon termination of employment, failure to timely pay wages during employment, failure to maintain
11 requisite payroll records, failure to reimburse necessary business-related expenses, and unfair or
12 unlawful business practices pursuant California Business and Professions Code § 17200, *et seq.* based
13 on the aforementioned.

14 x. “Released Parties” means Defendant and any of its past and present parents,
15 subsidiaries, and divisions, and their shareholders, officers, directors, employees, partners, attorneys,
16 insurers and reinsurers, predecessors, successors, successors-in-interest, assigns, accountants, auditors,
17 consultants, legal representatives, and any individual or entity that could be jointly or severally liable
18 for any of the Released Claims.

19 y. “Request for Exclusion” means a letter submitted by a Class Member indicating
20 a request to be excluded from the Settlement. The Request for Exclusion must: (a) include the case
21 name and number of the Action; (b) include the full name, signature, address, telephone number, and
22 last four (4) digits of the Social Security Number of the Class Member requesting exclusion; (d) clearly
23 state that the Class Member does not wish to be included in the Settlement; and (e) be returned by fax
24 or mail to the Settlement Administrator at the specified address and/or facsimile number, postmarked
25 or faxed on or before the Response Deadline. The date of the postmark on the return mailing envelope
26 or fax-stamp on the submission will be the exclusive means to determine whether a Request for
27 Exclusion has been timely submitted. A Class Member who does not request exclusion from the
28 Settlement will be deemed a Settlement Class Member and will be bound by all terms of the Settlement

1 Agreement if the Settlement is granted Final Approval by the Court.

2 z. “Response Deadline” means the deadline by which Class Members must submit
3 a Request for Exclusion, Notice of Objection, and/or dispute of the Workweeks credited to them, which
4 shall be the date that is forty-five (45) calendar days from the initial mailing of the Class Notice by the
5 Settlement Administrator, unless the 45th day falls on a Sunday or Federal holiday, in which case the
6 Response Deadline will be extended to the next day on which the U.S. Postal Service is open. In the
7 event that a Class Notice is re-mailed to a Class Member, the Response Deadline for that Class Member
8 shall be extended by fifteen (15) calendar days.

9 aa. “Settlement Administrator” means Phoenix Settlement Administrators, or any
10 other third-party class action settlement administrator agreed to by the Parties and approved by the Court
11 for purposes of administering this Settlement. The Parties and their counsel each represent that they do
12 not have any financial interest in the Settlement Administrator or otherwise have a relationship with the
13 Settlement Administrator that could create a conflict of interest.

14 bb. “Settlement Administration Costs” means the costs payable from the Maximum
15 Settlement Amount, subject to Court approval, to the Settlement Administrator for administering the
16 Settlement, as set forth in Paragraph 12 below.

17 cc. “Settlement Class Members” means all Class Members who do not submit a
18 timely and valid Request for Exclusion (collectively referred to as “Settlement Class”).

19 dd. “Workweeks” means the number of weeks each Class Member was employed by
20 Defendant as an hourly-paid or non-exempt employee in California during the Class Period, who did not
21 sign an arbitration agreement, which will be calculated by the Settlement Administrator using hire and
22 termination dates as an hourly-paid or non-exempt employee during the Class Period as provided in the
23 Class Data and List, counting one workweek for each week in which a Class Member performed any
24 work for Defendant.

25 **CLASS CERTIFICATION**

26 7. For the purposes of this settlement only, the Parties stipulate to the certification of the
27 Class.

28 8. The Parties agree that certification for the purpose of settlement is not an admission that

1 certification is proper under Section 382 of the California Code of Civil Procedure. Should, for
2 whatever reason, the Court not grant Final Approval, the Parties' stipulation to class certification as part
3 of the Settlement shall become null and void *ab initio* and shall have no bearing on, and shall not be
4 admissible in connection with, the issue of whether or not certification would be inappropriate in a non-
5 settlement context.

6 **TERMS OF AGREEMENT**

7 NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements set
8 forth herein, the Parties agree, subject to the Court's approval, as follows:

9 9. Funding and Disbursement of the Maximum Settlement Amount. Within fifteen (15)
10 calendar days after the Effective Date, the Settlement Administrator will provide the Parties with an
11 accounting of the amounts to be paid by Defendant pursuant to the terms of the Settlement Agreement.
12 Within thirty (30) calendar days of the Effective Date, Defendant will make a one-time deposit of the
13 Maximum Settlement Amount, plus an amount sufficient for Employer Taxes, into a qualified
14 settlement account to be established by the Settlement Administrator. Within seven (7) calendar days of
15 the funding of the Maximum Settlement Amount and an amount sufficient for Employer Taxes, the
16 Settlement Administrator will issue payments due under the Settlement and approved by the Court, as
17 follows: (a) Individual Settlement Payments to Settlement Class Members; (b) Enhancement Payment
18 to Plaintiff; (c) Attorneys' Fees and Costs to Class Counsel; and (d) Settlement Administration Costs to
19 itself (the Settlement Administrator). The Settlement Administrator will also undertake filings and
20 remittances in connection with the employee's share of taxes on the wages portion of Individual
21 Settlement Shares and the Employer Taxes, that are necessary for administration of the Settlement.

22 10. Attorneys' Fees and Costs. Class Counsel will request attorneys' fees of up to thirty-five
23 percent (35%) of the Maximum Settlement Amount (i.e., up to \$96,250 if the Maximum Settlement
24 Amount is \$275,000) and reimbursement of actual costs and expenses associated with Class Counsel's
25 litigation and settlement of the Action, in an amount not to exceed Thirty-Five Thousand Dollars
26 (\$35,000), both of which will be paid from the Maximum Settlement Amount subject to Court approval.
27 These amounts will cover any and all work performed and any and all costs incurred by Class Counsel
28 in connection with the litigation of the Action, including without limitation all work performed and

1 costs incurred to date, and all work to be performed and all costs to be incurred in connection with
2 obtaining the Court's approval of this Settlement. Class Counsel shall be solely and legally responsible
3 for correctly characterizing this compensation for tax purposes and for paying any taxes on the amounts
4 received. With respect to the Attorneys' Fees and Costs to Class Counsel, the Settlement Administrator
5 may purchase an annuity to utilize United States Treasuries and bonds or utilize other attorney fee
6 deferral vehicles, for Class Counsel, and any additional expenses for doing so shall be paid separately
7 by Class Counsel and shall not be included within the Settlement Administration Costs. Defendant and
8 Defendant's Counsel shall not be liable for any expenses associated with the purchase or use of any
9 attorney fee deferral vehicles for Class Counsel by the Settlement Administrator. Any portion of the
10 Attorneys' Fees and Costs not awarded to Class Counsel shall be a part of the Net Settlement Amount
11 for the benefit of Settlement Class Members.

12 11. Enhancement Payment. In recognition of her efforts and work in prosecuting the Action,
13 Defendant agrees not to oppose or impede any application or motion for an Enhancement Payment in
14 an amount up to Seven Thousand Five Hundred Dollars (\$7,500) to Plaintiff Joali Rodriguez. The
15 Enhancement Payment, which will be paid from the Maximum Settlement Amount, subject to Court
16 approval, will be in addition to her Individual Settlement Payment that is to be paid pursuant to the
17 Settlement. The Settlement Administrator will issue an IRS Form 1099 to Plaintiff for the Enhancement
18 Payment, and Plaintiff shall be solely and legally responsible for correctly characterizing this
19 compensation for tax purposes and for paying any taxes on the amounts received. Plaintiff agrees to
20 indemnify and hold Defendant harmless from any claim or liability for taxes, penalties, or interest
21 arising as a result of the Enhancement Payment. Should the Court approve the Enhancement Payment
22 to Plaintiff in an amount that is less than that set forth above, the difference between the lesser amount
23 approved by the Court and the amount allocated toward the Enhancement Payment will be part of the
24 Net Settlement Amount for the benefit of Settlement Class Members.

25 12. Settlement Administration Costs. The Settlement Administrator will be paid for the
26 reasonable costs of administration of the Settlement and distribution of payments under the Settlement,
27 which is currently estimated not to exceed Eighteen Thousand Dollars (\$18,000). These costs, which
28 will be paid from the Maximum Settlement Amount, subject to Court approval, will include, *inter alia*,

1 printing, distributing, and tracking Class Notices and other documents for this Settlement, calculating and
2 distributing payments due under the Settlement, issuing of 1099 and W-2 IRS Forms and all required
3 tax reporting, filings, withholdings, and remittances, providing necessary reports and declarations, and
4 other duties and responsibilities set forth herein to process this Settlement, and as requested by the Parties.
5 To the extent actual Settlement Administrations Costs are greater than the estimated amount stated herein,
6 such excess amount will be deducted from the Maximum Settlement Amount, subject to Court approval.
7 Any portion of the estimated, designated, and/or awarded Settlement Administration Costs which are
8 not in fact awarded or required to fulfill payment to the Settlement Administrator to undertake the
9 requirement settlement administration duties will be part of the Net Settlement Amount for the benefit
10 of the Settlement Class Members.

11 13. Individual Settlement Share Calculations. Individual Settlement Shares will be
12 calculated and apportioned from the Net Settlement Amount based on the Class Members' Workweeks,
13 as follows:

14 a. After Preliminary Approval of the Settlement, the Settlement Administrator will
15 determine the Workweeks of each Class Member, divide the Net Settlement Amount by the Workweeks
16 of all Class Members to yield the "Estimated Workweek Value," and multiply each Class Member's
17 individual Workweeks by the Estimated Workweek Value to yield his or her estimated Individual
18 Settlement Share that he or she may be eligible to receive under the Settlement.

19 b. After Final Approval of the Settlement, the Settlement Administrator will divide
20 the final Net Settlement Amount by the Workweeks of all Settlement Class Members to yield the "Final
21 Workweek Value," and multiply each Settlement Class Member's individual Workweeks by the Final
22 Workweek Value to yield his or her Individual Settlement Share.

23 14. Settlement Awards Do Not Trigger Additional Benefits. All payments made under the
24 Settlement shall be deemed to be paid to the payee solely in the year in which such payments actually
25 are issued to the payee. It is expressly understood and agreed that payments made under this Settlement
26 shall not in any way entitle Plaintiff or any Settlement Class Member to additional compensation or
27 benefits under any new or additional compensation or benefits, or any bonus, contest or other
28 compensation or benefit plan or agreement in place during the Class Period, nor will it entitle any

1 Settlement Class Member to any increased retirement, 401K benefits or matching benefits, or deferred
2 compensation benefits (notwithstanding any contrary language or agreement in any benefit or
3 compensation plan document that might have been in effect during the Class Period.

4 15. Delivery of the Class Data and List. Within twenty-one (21) calendar days of Preliminary
5 Approval, Defendant will provide the Class Data and List to the Settlement Administrator.

6 16. Notice by First Class U.S. Mail.

7 a. Within ten (10) business days after receiving the Class Data and List from
8 Defendant, the Settlement Administrator will perform a search based on the National Change of Address
9 Database or any other similar services available, such as provided by Experian, for information to update
10 and correct for any known or identifiable address changes, and will mail a Class Notice in English (in
11 the form attached as Exhibit A to this Settlement Agreement) to all Class Members via First-Class U.S.
12 Mail, using the most current, known mailing addresses identified by the Settlement Administrator.

13 b. With respect to Class Notices that are returned as undeliverable on or before the
14 Response Deadline, the Settlement Administrator will search for an alternate address by way of skip-
15 trace and re-mail the Class Notice within five (5) calendar days.

16 17. Dispute Regarding Workweeks. Class Members will have an opportunity to dispute the
17 number of Workweeks to which they have been credited, as reflected in their respective Class Notices.
18 In order to dispute Workweeks, Class Members must submit a written letter to the Settlement
19 Administrator that: (a) includes the case name and number of the Action; (b) includes the full name,
20 signature, address, telephone number, and last four (4) digits of the Social Security Number of the
21 disputing Class Member; (c) clearly states that the Class Member disputes the number of Workweeks
22 credited to him or her and what he or she contends is the correct number to be credited to him or her;
23 (d) includes information and/or attaches documentation demonstrating that the number of Workweeks
24 that he or she contends should be credited to him or her are correct; and (e) is returned by fax or mail to
25 the Settlement Administrator at the specified address and/or facsimile number, postmarked or fax-
26 stamped on or before the Response Deadline. The date of the postmark on the return mailing envelope
27 or fax-stamp on the submission will be the exclusive means to determine whether a dispute has been
28 timely submitted. Absent evidence rebutting the accuracy of Defendant's records and data as they

1 pertain to the number of Workweeks to be credited to a disputing Class Member, Defendant's records
2 will be presumed correct and determinative of the dispute. However, if a Class Member produces
3 information and/or documents to the contrary, the Settlement Administrator will evaluate the materials
4 submitted by the Class Member and the Settlement Administrator will resolve and determine the number
5 of eligible Workweeks that the disputing Class Member should be credited with under the Settlement.
6 The Settlement Administrator's decision on such disputes will be final and non-appealable.

7 18. Settlement Checks. The Settlement Administrator will be responsible for undertaking
8 appropriate deductions, required tax reporting, and issuing the Individual Settlement Payments by way
9 of check to the Settlement Class Members in accordance with this Settlement Agreement. Each
10 Individual Settlement Payment check will be valid and negotiable for one hundred and eighty (180)
11 calendar days from the date the checks are issued, and thereafter, shall be cancelled. Pursuant to
12 California Code of Civil Procedure Section 384, all funds associated with such cancelled checks will be
13 transmitted to Court Appointed Special Advocates (CASA) of Kern County, 1717 Columbus St,
14 Bakersfield, CA 93305. The Parties and their counsel each represent that they do not have any
15 significant affiliation or involvement with the proposed *cy pres* recipient. The Settlement Administrator
16 may, as necessary, undertake amended and/or supplemental tax filings and reporting, required under
17 applicable local, state, and federal tax laws, that are necessary due to the cancellation of any Individual
18 Settlement Payment checks. To the extent that the Settlement Administrator is able to obtain or receive
19 the return or refund of the amounts that were transmitted to taxing authorities for the employer's and
20 employees' share of taxes, contributions, and/or withholding associated with cancelled Individual
21 Settlement Payments, all such amounts shall also be transmitted to CASA of Kern County, 1717
22 Columbus St, Bakersfield, CA 93305. Settlement Class Members whose Individual Settlement Payment
23 checks are cancelled shall, nevertheless, be bound by this Settlement Agreement.

24 19. Procedure for Requesting Exclusion from the Settlement. Any Class Member wishing to
25 be excluded from the Settlement must submit a written Request for Exclusion to the Settlement
26 Administrator, by mail or fax, within the Response Deadline. The date of fax or the postmark on the
27 return mailing envelope will be the exclusive means to determine whether a Request for Exclusion has
28 been timely submitted. The Settlement Administrator will certify jointly to Class Counsel and

1 Defendant's Counsel the Requests for Exclusion that were timely submitted, and also identify the
2 individuals who have submitted a timely and valid Request for Exclusion in a declaration that is to be
3 filed with the Court in advance of the Final Approval Hearing. Any Class Member who submits a
4 Request for Exclusion is prohibited from making any objection to the Settlement Agreement.

5 20. Settlement Terms Bind All Class Members Who Do Not Request Exclusion. Any Class
6 Member who does not affirmatively request exclusion from the Settlement by submitting a timely and
7 valid Request for Exclusion will be bound by all of the terms of the Settlement Agreement, including
8 and not limited to the release of Released Claims, as well as any judgment that may be entered by the
9 Court if it grants Final Approval to the Settlement.

10 21. Procedures for Objecting to the Settlement. To object to the Settlement, a Class Member
11 must submit a timely and complete Notice of Objection to the Settlement Administrator, by fax or mail,
12 on or before the Response Deadline. The Notice of Objection must be signed by the Class Member and
13 contain all information required by this Settlement Agreement. The postmark or fax-stamp date will be
14 deemed the exclusive means for determining that the Notice of Objection is timely. Class Members
15 who fail to object in the specific and technical manner specified in this Settlement Agreement, or
16 otherwise ordered by the Court, will be deemed to have waived all objections. At no time will any of
17 the Parties or their counsel seek to solicit or otherwise encourage Class Members to object to the
18 Settlement Agreement or appeal from the Final Approval Order and Judgment. Settlement Class
19 Members may also present their objection orally at the Final Approval Hearing.

20 22. Reports By the Settlement Administrator Regarding Settlement Administration. The
21 Settlement Administrator will provide Defendant's Counsel and Class Counsel a weekly report which
22 certify: (a) the number of Class Members who have submitted a dispute of Workweeks; (b) the number
23 of Class Members who have submitted Requests for Exclusion or Notices of Objection; and (c) the
24 number of undeliverable and re-mailed Class Notices. Additionally, the Settlement Administrator will
25 provide to counsel for both Parties any updated reports regarding the administration of the Settlement
26 Agreement as needed or requested, and immediately notify the Parties when it receives a request from
27 an individual or any other entity regarding inclusion in the Class and/or settlement.

28 23. Certification of Completion. Upon completion of administration of the Settlement, the

1 Settlement Administrator will provide a written declaration under oath to certify such completion to the
2 Court and counsel for all Parties.

3 24. Treatment of Individual Settlement Payments. Each Individual Settlement Share will be
4 allocated as follows: 25% wages and 75% as penalties, interest, and non-wage damages. The portion
5 allocated to wages will be reported on an IRS Form W-2 and the portion allocated to penalties, interest,
6 and non-wage damages will be reported on an IRS Form-1099 by the Settlement Administrator. The
7 Settlement Administrator will withhold (and remit to the appropriate taxing authorities) the employee's
8 share of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares,
9 and issue checks to Settlement Class Members for their Individual Settlement Payment (i.e., payment
10 of their Individual Settlement Share net of these taxes and withholdings). The Settlement Administrator
11 shall also remit the Employer Taxes to the appropriate taxing authorities.

12 25. Administration of Taxes by the Settlement Administrator. The Settlement Administrator
13 will be responsible for issuing to Plaintiff, Settlement Class Members, and Class Counsel any W-2,
14 1099, or other tax forms as may be required by law for all amounts paid pursuant to this Settlement
15 Agreement.

16 26. Tax Liability. Plaintiff, Class Counsel, Defendant, and Defendant's Counsel make no
17 representations or warranties as to the tax consequences, treatment, or legal effect of any payments made
18 under this Settlement Agreement, do not intend anything contained in this Settlement Agreement to
19 constitute advice regarding taxes or taxability, nor shall anything in this Settlement Agreement be relied
20 on as such. Plaintiff and Settlement Class Members understand and agree that, except for Defendant's
21 payment of the Employer Taxes, Plaintiff and Settlement Class Members will be solely responsible for
22 correctly characterizing any compensation received under the Settlement on his/her personal income tax
23 returns and paying any and all taxes due for any and all amounts paid to them under the Settlement.

24 27. Circular 230 Disclaimer. EACH PARTY TO THIS SETTLEMENT AGREEMENT (FOR
25 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS
26 SETTLEMENT AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER
27 PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS SETTLEMENT
28 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR

1 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
2 INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE
3 OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF
4 UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS
5 AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS,
6 HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING
7 TAX ADVICE) IN CONNECTION WITH THIS SETTLEMENT AGREEMENT, (B) HAS NOT
8 ENTERED INTO THIS SETTLEMENT AGREEMENT BASED UPON THE RECOMMENDATION
9 OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND
10 (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
11 ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY
12 BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO
13 ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE
14 CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES
15 (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
16 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
17 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED
18 BY THIS SETTLEMENT AGREEMENT.

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

23 29. Release of Claims by Settlement Class Members. Upon the Effective Date and full
24 funding of the Maximum Settlement Amount, Plaintiff and all Class Members who do not submit a
25 timely and valid Request for Exclusion (i.e., Settlement Class Members) will be deemed to have fully,
26 finally and forever released, settled, compromised, relinquished, and discharged the Released Parties of
27 all Released Claims they may have or had.

28 30. General Release of Claims by Plaintiff. In addition, upon the Effective Date and full

1 funding of the Maximum Settlement Amount, Plaintiff will be deemed to have fully released and
2 discharged the Released Parties of and from all claims arising from her employment with Defendant,
3 separation of employment from Defendant, and any acts that have or could have been asserted in any legal
4 action or proceeding against Defendant, whether known or unknown, arising under any federal, state, or
5 local law, or statute, including, inter alia, those arising under the California Labor Code, Fair Labor
6 Standards Act, Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, Employee
7 Retirement Income Security Act, National Labor Relations Act, California Corporations Code, California
8 Business and Professions Code, California Fair Employment and Housing Act, California Constitution
9 (all as amended), and law of contract and tort, as well as for discrimination, harassment, retaliation,
10 wrongful termination, lost wages, benefits, other employment compensation, emotional distress, medical
11 expenses, other economic and non-economic damages, attorney fees, and costs, arising on or before the
12 date of execution of the Settlement Agreement. With respect to those claims released by Plaintiff in an
13 individual capacity, Plaintiff acknowledges and waives any and all rights and benefits available under
14 California Civil Code Section 1542, which provides:

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

18 Plaintiff understands and agrees that claims or facts in addition to or different from those which are now
19 known or believed by her to exist may hereafter be discovered. It is Plaintiff's intention to settle fully
20 and release all claims she now has against the Released Parties, whether known or unknown, suspected
21 or unsuspected. Notwithstanding the above, the general release by Plaintiff shall not extend to claims for
22 workers' compensation benefits, claims for unemployment benefits, or other claims that may not be
23 released by law.

24 31. Duties of the Parties with Respect to Obtaining Preliminary Approval of the Settlement.

25 Upon execution of this Settlement Agreement, Plaintiff shall promptly obtain a hearing date for
26 Plaintiff's motion for preliminary approval of the Settlement, which Plaintiff and Class Counsel will be
27 responsible for drafting, and submit this Settlement Agreement to the Court in support of said motion.
28 Class Counsel will provide Defendant's Counsel a draft of the motion before filing it with the Court.

1 Defendant agrees not to oppose the motion. Said motion shall apply to the Court for the entry of an
2 order (“Preliminary Approval Order”):

- 3 a. Conditionally certifying the Class for settlement purposes only;
- 4 b. Granting Preliminary Approval of the Settlement;
- 5 c. Preliminarily appointing Plaintiff as representative of the Class;
- 6 d. Preliminarily appointing Class Counsel as counsel for the Class;
- 7 e. Approving, as to form and content, the mutually-agreed upon and proposed Class
8 Notice and directing its mailing to the Class by First Class U.S. Mail;
- 9 f. Approving the manner and method for Class Members to request exclusion from
10 the Settlement as contained herein and within the Class Notice; and
- 11 g. Scheduling a Final Approval Hearing at which the Court will determine whether
12 the Settlement should be finally approved as fair, reasonable, and adequate as to the Settlement Class
13 Members.

14 32. Duties of the Parties With Respect to Obtaining Final Approval of the Settlement. After
15 the Response Deadline, and with the Court’s permission, a Final Approval Hearing will be conducted
16 to determine whether Final Approval of the Settlement should be granted, along with the amounts
17 properly payable for (a) Individual Settlement Payments; (b) Attorneys’ Fees and Costs; (c)
18 Enhancement Payment; and (d) Settlement Administration Costs. The Final Approval Hearing will not
19 be held earlier than thirty (30) calendar days after the Response Deadline. Plaintiff and Class Counsel
20 will be responsible for drafting the motion seeking Final Approval of the Settlement. Class Counsel
21 will provide Defendant’s Counsel a draft of the motion before filing it with the Court. By way of said
22 motion, Plaintiff will apply for the entry of the mutually-agreed upon proposed order and judgment
23 (“Final Approval Order and Judgment”), which will provide for, in substantial part, the following:

- 24 a. Approval of the Settlement as fair, reasonable, and adequate, and directing
25 consummation of its terms and provisions;
- 26 b. Certification of the Settlement Class;
- 27 c. Approval of the application for Attorneys’ Fees and Costs to Class Counsel;
- 28 d. Approval of the application for Enhancement Payment to Plaintiff;

1 e. Setting a date when the Settlement Administrator shall report to the Court the
2 completion of the distribution process and the total amount that was actually paid to the Settlement
3 Class Members;

4 f. Directing Defendant to fund all amounts due under the Settlement Agreement and
5 ordered by the Court; and

6 g. Entering judgment in the Action barring and enjoining all Settlement Class
7 Members from prosecuting the Released Claims against any of the Released Parties, while maintaining
8 continuing jurisdiction, in conformity with California Rules of Court 3.769 and the Settlement
9 Agreement.

10 33. Termination or Revocation of Settlement.

11 If ten percent (10%) or more of the Class Members submit timely and valid Requests for Exclusion,
12 Defendant may elect to rescind the Settlement Agreement by way of writing that is provided to Class
13 Counsel within ten (10) calendar days after the Settlement Administrator notifies the Parties of the total
14 number of timely and valid Requests for Exclusion received by the Response Deadline. If the Settlement
15 is terminated due to Defendant's exercise of this option, Defendant will be responsible for paying all
16 Settlement Administration Costs incurred by the Settlement Administrator.

17 34. Effects of Termination of the Settlement. Termination of the Settlement Agreement
18 (pursuant to Paragraph 33) shall have the following effects:

19 a. The Settlement Agreement shall be void and shall have no force or effect, and no
20 Party shall be bound by any of its terms;

21 b. In the event the Settlement Agreement is terminated, Defendant shall have no
22 obligation to make any payments to any Party, Class Member or attorney, except that the terminating
23 Party shall pay the Settlement Administrator for services rendered up to the date the Settlement
24 Administrator is notified that the Settlement has been terminated;

25 c. The Preliminary Approval Order, Final Approval Order and Judgment, including
26 any order certifying the Class, shall be vacated;

27 d. The Settlement Agreement and all negotiations, statements and proceedings
28 relating thereto shall be without prejudice to the rights of any of the Parties, all of whom shall be restored

1 to their respective positions in the Action prior to the execution of the Settlement Agreement;

2 e. Neither this Settlement Agreement, nor any ancillary documents, actions,
3 statements or filings in furtherance of the Settlement (including all matters associated with the mediation)
4 shall be admissible or offered into evidence in the Action or any other action for any purpose whatsoever.

5 f. Any documents generated to bring the Settlement into effect, will be null and
6 void, and any order or judgment entered by the Court in furtherance of this Settlement Agreement will
7 likewise be treated as void from the beginning.

8 35. Escalator Clause. Defendant represented that as of July 10, 2021, there were approximately
9 13,700 total Workweeks applicable to the Class Members. If it is determined that the total number of
10 Workweeks during the Class Period actually exceeds this amount by more than ten percent (10%) (i.e.,
11 the Workweeks for the Class Period are actually more than 15,070), then the Maximum Settlement
12 Amount will increase on a proportional basis to the extent the threshold is exceeded (e.g., if the
13 Workweeks exceed 13,700 by 15%, the Maximum Settlement Amount will increase by 5%).

14 36. Continued Jurisdiction. After entry of judgment pursuant to the Settlement, the Court
15 will have continuing jurisdiction pursuant to Rule 3.769 of the California Rules of Court and Section
16 664.6 of the California Code of Civil Procedure, for purposes of addressing: (a) the interpretation and
17 enforcement of the terms of the Settlement, (b) settlement administration matters, and (c) such post-
18 judgment matters as may be appropriate under court rules or as set forth in this Settlement Agreement.

19 37. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include the
20 terms set forth in any attached exhibits, which are incorporated by this reference as though fully set
21 forth herein.

22 38. Limitation on Publicity. Plaintiff and Class Counsel will not make any public disclosure
23 of the Settlement or discuss the Settlement with anyone other than those necessary to effectuate the
24 filing of the motion for preliminary approval, until after the motion for preliminary approval is filed.
25 Class Counsel will take all steps necessary to ensure Plaintiff is aware of, and will encourage her to
26 adhere to, the restriction against any public disclosure of the Settlement until after the motion for
27 preliminary approval is filed. Prior to and following Preliminary Approval of the Settlement, Plaintiff
28 and Class Counsel will not have any communications with any media other than to direct any media

1 inquiries to the public records of the Action on file with the Court and will not publicize the Settlement,
2 including on social media. Class Counsel will take all steps necessary to ensure Plaintiff is aware of,
3 and will encourage her to adhere to, the restriction against any media comment on the Settlement and
4 its terms. Class Counsel further agrees not to use the Settlement or any of its terms for any marketing
5 or promotional purposes. Nothing herein will restrict Class Counsel from including publicly available
6 information regarding this Settlement in future judicial submissions regarding Class Counsel's
7 qualifications and experience.

8 39. Entire Agreement. Upon being fully-executed, this Settlement Agreement and any
9 attached exhibits constitute the entirety of the Parties' settlement terms, and no other prior or
10 contemporaneous written or oral agreements may be deemed binding on the Parties. The Parties
11 expressly recognize California Civil Code § 1625 and California Code of Civil Procedure § 1856(a),
12 which provide that a written agreement is to be construed according to its terms and may not be varied
13 or contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral or written
14 representations or terms will modify, vary or contradict the terms of this Settlement Agreement.

15 40. Interim Stay of Proceedings. The Parties agree to hold in abeyance all proceedings in the
16 Action (including, and not limited to, the deadline to bring the Action to trial under California Code of
17 Civil Procedure section 583.310), except such proceedings necessary to implement and complete the
18 Settlement Agreement, pending the Final Approval Hearing to be conducted by the Court.

19 41. Amendment. Prior to the filing of the motion for preliminary approval of the Settlement,
20 the Parties may amend or modify any provision of this Settlement Agreement by written agreement
21 signed by counsel for all of the Parties. After the filing of the motion for preliminary approval of the
22 Settlement, the Parties may amend or modify any provision of this Settlement Agreement by written
23 agreement signed by counsel for all of the Parties, and subject to Court approval. A waiver or
24 amendment of any provision of this Settlement Agreement will not constitute a waiver of any other
25 provision.

26 42. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and
27 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement
28 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant

1 to this Settlement Agreement to effectuate its terms and to execute any other documents required to
2 effectuate the terms of this Settlement Agreement. The Parties warrant that they understand and have
3 full authority to enter into this Settlement Agreement, and further intend that this Settlement Agreement
4 will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to
5 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality
6 provisions that otherwise might apply under state or federal law.

7 43. Signatories. It is agreed that because the members of the Class are so numerous, it is
8 impossible or impractical to have each Settlement Class Member execute this Settlement Agreement.
9 The Class Notice will advise all Class Members of the binding nature of the release as to the Settlement
10 Class Members, and the release shall have the same force and effect as if this Settlement Agreement
11 were executed by each Settlement Class Member.

12 44. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,
13 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

14 45. California Law Governs. All terms of this Settlement Agreement and attached exhibits
15 hereto will be governed by and interpreted according to the laws of the State of California.

16 46. Execution and Counterparts. This Settlement Agreement is subject only to the execution
17 of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All
18 executed counterparts and each of them, including facsimile, electronic, and scanned copies of the
19 signature page, will be deemed to be one and the same instrument.

20 47. Acknowledgment that the Settlement is Fair and Reasonable. The Parties believe this
21 Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at
22 this settlement after arm's-length negotiations and in the context of adversarial litigation, taking into
23 account all relevant factors, present and potential. The Parties further acknowledge that they are each
24 represented by competent counsel and that they have had an opportunity to consult with their counsel
25 regarding the fairness and reasonableness of this Settlement Agreement. In addition, the Mediator may
26 execute a declaration supporting the Settlement and the reasonableness of the Settlement and the Court
27 may, in its discretion, contact the Mediator to discuss the Settlement and whether or not the Settlement
28 is objectively fair and reasonable.

1 48. Invalidity of Any Provision. Before declaring any provision of this Settlement
2 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
3 possible consistent with applicable precedents so as to define all provisions of this Settlement
4 Agreement valid and enforceable.

5 49. Plaintiff's Cooperation. Plaintiff agrees to sign this Settlement Agreement and, by
6 signing this Settlement Agreement, is hereby bound by the terms herein and agrees to fully cooperate
7 to implement the Settlement.

8 50. Non-Admission of Liability. The Parties enter into this Settlement Agreement to resolve
9 the dispute that has arisen between them and to avoid the burden, expense, and risk of continued
10 litigation. In entering into this Settlement Agreement, Defendant does not admit, and specifically
11 denies, that it has violated any state, federal, or local law; violated any regulations or guidelines
12 promulgated pursuant to any statute or any other applicable laws, regulations, or legal requirements;
13 breached any contract; violated or breached any duty; engaged in any misrepresentation or deception;
14 or engaged in any other unlawful conduct with respect to its employees. Neither this Settlement
15 Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be
16 construed as an admission or concession by Defendant of any such violations or failures to comply with
17 any applicable law. Except as necessary in a proceeding to enforce the terms of this Settlement
18 Agreement, this Settlement Agreement and its terms and provisions shall not be offered or received as
19 evidence in any action or proceeding to establish any liability or admission on the part of Defendant or
20 to establish the existence of any condition constituting a violation of, or a non-compliance with state,
21 federal, local or other applicable law.

22 51. Captions. The captions and paragraph numbers in this Settlement Agreement are inserted
23 for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the
24 provisions of this Settlement Agreement.

25 52. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
26 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed
27 more strictly against one Party than another merely by virtue of the fact that it may have been prepared
28 by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations

1 between the Parties, all Parties have contributed equally to the preparation of this Settlement Agreement.

2 53. Representation By Counsel. The Parties acknowledge that they have been represented
3 by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and
4 that this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed
5 in full.

6 54. All Terms Subject to Court Approval. All amounts and procedures described in this
7 Settlement Agreement herein will be subject to Court approval.

8 55. Notices. All notices, demands, and other communications to be provided concerning this
9 Settlement Agreement shall be in writing and delivered by overnight mail at the addresses set forth
10 below, or such other addresses as either Party may designate in writing from time to time:

11 To Plaintiff and Class Counsel:

12 Edwin Aiwazian, Esq.
13 **LAWYERS for JUSTICE, PC**
14 410 West Arden Avenue, Suite 203
Glendale, California 91203

11 To Defendant:

12 Daniel K. Klingenberger, Esq.
13 **LEBEAU THELEN, LLP**
14 Post Office Box 12092
Bakersfield, California 93389-2092

15 56. Final Approval Order and Judgment. The Parties shall provide the Settlement
16 Administrator with a copy of the Final Approval Order and Judgment once it is entered by the Court,
17 and the Settlement Administrator shall post the Final Approval Order and Judgment on its website for
18 sixty (60) calendar days. No individualized notice of the Final Approval Order and Judgment, to the
19 Class, will be required.

20 57. Cooperation and Execution of Necessary Documents. All Parties and their counsel will
21 cooperate with each other in good faith and use their best efforts to implement the Settlement, including
22 and not limited to, executing all documents to the extent reasonably necessary to effectuate the terms of
23 this Settlement Agreement. If the Parties are unable to reach agreement on the form or content of any
24 document needed to implement the Settlement Agreement, or on any supplemental provisions that may
25 become necessary to effectuate the terms of this Settlement Agreement, the Parties may seek the
26 assistance of the Mediator and then the Court to resolve such disagreement.

27 **IN WITNESS WHEREOF**, the Parties hereto knowingly and voluntarily executed this Joint
28 Stipulation of Class Action Settlement and Release between Plaintiff and Defendant:

1 **IT IS SO AGREED.**

2 **PLAINTIFF JOALI RODRIGUEZ**

3 Dated: 05/18/2022, 2022

Electronically Signed 2022-05-18 19:43:39 UTC - 45.17.67.254
Nintex AssureSign® 0a2174c6-3877-427b-af5e-ae990141460b

Joali Rodriguez, Plaintiff

6 **DEFENDANT SURF THRU, INC.**

8 Dated: _____, 2022

Scott Howry
President
On behalf of Surf Thru, Inc.

11 **APPROVED AS TO FORM:**

12 **LAWYERS for JUSTICE, PC**

14 Dated: 5/18/2022, 2022



Edwin Aiwazian
Attorneys for Plaintiff and Proposed Class Counsel

17 **LEBEAU THELEN, LLP**

19 Dated: _____, 2022

Daniel K. Klingenberg
Attorneys for Defendant

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IT IS SO AGREED.

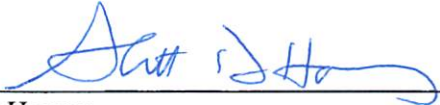
PLAINTIFF JOALI RODRIGUEZ

Dated: _____, 2022

Joali Rodriguez, Plaintiff

DEFENDANT SURF THRU, INC.

Dated: 5-16, 2022


Scott Howry
President
On behalf of Surf Thru, Inc.

APPROVED AS TO FORM:

LAWYERS for JUSTICE, PC

Dated: _____, 2022

Edwin Aiwazian
Attorneys for Plaintiff and Proposed Class Counsel

LEBEAU THELEN, LLP

Dated: 5/15, 2022

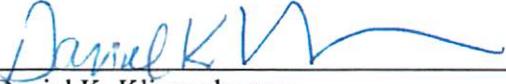

Daniel K. Klingenger
Attorneys for Defendant

EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT

Joali Rodriguez v. Surf Thru Inc.
Superior Court of California for the County of Tulare,
Case No. VCU280787

PLEASE READ THIS NOTICE CAREFULLY.

You have received this Notice because Defendant’s records indicate that you may be eligible to take part in the class action settlement reached in the above-referenced case.

You do not need to take any action to receive a settlement payment.

This Notice is designed to advise you of your rights and options with respect to the settlement, and how you can request to be excluded from the settlement, object to the settlement, and/or dispute the number of Workweeks that you are credited with, if you so choose.

YOU ARE NOTIFIED THAT: A class and representative action settlement has been reached between Plaintiff Joali Rodriguez (“Plaintiff”) and Defendant Surf Thru Inc. (“Defendant”) (Plaintiff and Defendant are collectively referred to as the “Parties”) in the case entitled *Joali Rodriguez v. Surf Thru Inc.*, Superior Court of California for the County of Tulare, Case No. VCU280787 (“Action”). The settlement may affect your legal rights. On [date of Preliminary Approval], the Court granted preliminary approval of the settlement and scheduled a hearing on [hearing date] at [hearing time] (“Final Approval Hearing”) to determine whether or not the Court should grant final approval of the settlement.

I. IMPORTANT DEFINITIONS

“Class” means all current and former hourly-paid or non-exempt employees, who did not sign arbitration agreements with the Defendant, employed by Defendant within the State of California at any time during the Class Period.

“Class Member” means a member of the Class.

“Class Period” means the period from October 15, 2015, through October 8, 2021.

II. BACKGROUND OF THE LAWSUIT

On October 15, 2019, Plaintiff commenced a putative class action lawsuit by filing the Class Action Complaint for Damages against Defendant Surf Thru Inc., in the Tulare County Superior Court, Case No. VCU280787 (“Action”) alleging ten (10) causes of action for failure to pay minimum wages, failure to pay overtime wages, failure to provide meal periods and associated premiums, failure to provide rest periods and associated premiums, failure to pay timely wages during employment, failure to timely pay final wages, failure to keep compliant payroll records, failure to keep compliant wage statements, failure to reimburse business expenses, and violations of California Business and Professions Code §§ 17200, *et seq.*, on behalf of herself and putative class members. Plaintiff seeks, among other things, recovery of unpaid wages and meal and rest period premiums, unreimbursed business expenses, restitution, penalties, interest, and attorneys’ fees and costs.

Defendant denies all of the allegations in the Lawsuit or that it violated any law.

The Parties participated in a full-day mediation session with a respected class action mediator, and as a result, the Parties reached a settlement. The Parties have since entered into the Joint Stipulation of Class Action Settlement and Release (“Settlement,” “Agreement” or “Settlement Agreement”).

On [date of Preliminary Approval], the Court entered an order preliminarily approving the Settlement. The Court has appointed Phoenix Settlement Administrators as the administrator of the Settlement (“Settlement Administrator”), Plaintiff Joali Rodriguez as the representative of the Class (“Class Representative”), and the following Plaintiff’s attorneys as counsel for the Class (“Class Counsel”):

Edwin Aiwazian
Arby Aiwazian
Joanna Ghosh
Annabel Blanchard
Lawyers for Justice, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Telephone: (818) 265-1020
Fax: (818) 265-1021

If you are a Class Member, you do not need to take any action to receive an Individual Settlement Payment, but you have the opportunity to request exclusion from the Settlement (in which case you will not receive an Individual Settlement Payment), object to the Settlement, and/or dispute the Workweeks credited to you, if you so choose, as explained more fully in Section III below.

The Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended or will be construed as an admission by Defendant that the claims in the Action have merit or that Defendant had any liability to Plaintiff or to Class Members. Plaintiff and Defendant, and their respective counsel, have concluded and agree that, in light of the risks and uncertainties to each side of continued litigation, the Settlement is fair, reasonable, and adequate, and is in the best interests of Class Members. The Court has made no ruling on the merits of the Class Members' claims and has determined only that certification of the Class for settlement purposes is appropriate under California law.

III. SUMMARY OF THE PROPOSED SETTLEMENT

A. Settlement Formula

The maximum settlement amount is Two Hundred Seventy-Five Thousand Dollars (\$275,000) (the "Maximum Settlement Amount"). The portion of the Maximum Settlement Amount that is available for payment to Class Members is referred to as the "Net Settlement Amount." The Net Settlement Amount will be the Maximum Settlement Amount less the following payments which are subject to approval by the Court: (1) Attorneys' Fees and Costs, consisting of attorneys' fees in an amount not to exceed 35% of the Maximum Settlement Amount (i.e., \$96,250) and reimbursement of litigation costs and expenses in an amount not to exceed Thirty-Five Thousand Dollars (\$35,000) to Class Counsel; (2) Enhancement Payment in an amount up to Seven Thousand Five Hundred Dollars (\$7,500) to Plaintiff for her services in the Action; and (3) Settlement Administration Costs in an amount not to exceed Eighteen Thousand Dollars (\$18,000) to the Settlement Administrator.

Class Members are eligible to receive payment under the Settlement of their *pro rata* share of the Net Settlement Amount ("Individual Settlement Share") based on the number of weeks that each Class Member who did not sign an arbitration agreement was employed by Defendant as an hourly-paid or non-exempt employee in California during the Class Period ("Workweeks"), which will be calculated by the Settlement Administrator using hire and termination dates as an hourly-paid or non-exempt employee during the Class Period as provided in the Class Data and List, counting one workweek for each week in which a Class Member performed any work for Defendant.

The Settlement Administrator has divided the Net Settlement Amount by the Workweeks of all Class Members to yield the "Estimated Workweek Value," and multiplied each Class Member's individual Workweeks by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Settlement (which is listed in Section III.C below). Class Members who do not submit a valid and timely Request for Exclusion ("Settlement Class Members") will be issued payment of their final Individual Settlement Share.

Each Individual Settlement Share will be allocated as twenty-five percent (25%) wages which will be reported on an IRS Form W2 and seventy-five percent (75%) penalties, interest, and non-wage damages which will be reported on an IRS Form 1099 (if applicable). Each Individual Settlement Share will be subject to reduction for the employee's share of taxes and withholdings with respect to the wages portion of Individual Settlement Shares, resulting in a net payment to the Settlement Class Members ("Individual Settlement Payment").

If the Court grants final approval of the Settlement, Individual Settlement Payments will be mailed to Settlement Class Members at the address that is on file with the Settlement Administrator. **If the address to which this Notice was mailed**

is not correct, or if you move after you receive this Notice, you must provide your correct mailing address to the Settlement Administrator as soon as possible to ensure you receive any payment that you may be entitled to under the Settlement.

B. Your Workweeks Based on Defendant's Records

According to Defendant's records, you have been credited with [REDACTED] Workweeks during the Class Period, i.e. from October 15, 2015 through October 8, 2021.

If you wish to dispute the Workweeks credited to you, you may submit your dispute by way of written letter that is sent to the Settlement Administrator. The written letter must (a) include the case name and number of the Action (*Joali Rodriguez v. Surf Thru Inc.*, Case No. VCU280787); (b) include your full name, signature, address, telephone number, and the last (4) four digits of your Social Security Number; (c) clearly state that you dispute the number of Workweeks credited to you and what you contend is the correct number to be credited to you; (d) include information and/or attach documentation demonstrating that the number of Workweeks that you contend should be credited to you are correct; and (e) be returned by fax or mail to the Settlement Administrator at the specified address and or facsimile number listed below (Section IV. B), postmarked or fax-stamped on or before [the Response Deadline].

C. Your Estimated Individual Settlement Share

As explained above, your estimated Individual Settlement Share is based on the number of Workweeks credited to you.

Under the terms of the Settlement, your Individual Settlement Share is estimated to be \$ [REDACTED]. The Individual Settlement Share is subject to reduction for the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Share and will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.

The settlement approval process may take multiple months. Your Individual Settlement Share reflected in this Notice is only an estimate. Your actual Individual Settlement Share and/or may be higher or lower.

D. Release of Claims

Upon the Effective Date and full funding of the Maximum Settlement Amount, Plaintiff and all Class Members who do not submit a valid and timely Request for Exclusion (i.e., Settlement Class Members) will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Claims he or she may have or had.

"Released Claims" means all claims under state, federal, or local law, whether statutory, in tort, contract, or otherwise, pleaded in the Complaint or that could have been pleaded based on the facts pleaded in the Complaint, arising during the Class Period, including but not limited to claims under the California Labor Code, California Industrial Welfare Commission Wage Orders, regulations, and/or other provisions of law, for failure to pay overtime wages, failure to pay minimum wages, failure to provide compliant meal periods and associated premium pay, failure to provide compliant rest periods and associated premium pay, failure to provide compliant wage statements, failure to timely pay wages upon termination or employment, failure to timely pay wages during employment, failure to maintain requisite payroll records, failure to reimburse necessary business-related expenses, and unfair or unlawful business practices pursuant California Business and Professions Code § 17200, *et seq.* based on the aforementioned.

"Released Parties" means Defendant and any of its past and present parents, subsidiaries, and divisions, and their shareholders, officers, directors, employees, partners, attorneys, insurers and reinsurers, predecessors, successors, successors-in-interest, assigns, accountants, auditors, consultants, legal representatives, and any individual or entity that could be jointly or severally liable for any of the Released Claims.

E. Attorneys' Fees and Costs to Class Counsel

Class Counsel will seek attorneys' fees in an amount of up to thirty-five percent (35%) of the Maximum Settlement Amount (i.e., an amount of up to \$96,250) and reimbursement of litigation costs and expenses in an amount not to exceed Thirty-Five Thousand Dollars (\$35,000) (collectively, "Attorneys' Fees and Costs"), subject to approval by the Court. All Attorneys' Fees and Costs awarded by the Court will be paid from the Maximum Settlement Amount. Class Counsel has been prosecuting the Action on behalf of Plaintiff and Class Members on a contingency fee basis (that is, without being

paid any money to date) and have been paying all litigation costs and expenses.

F. Enhancement Payment to Plaintiff

Plaintiff will seek the amount of Seven Thousand Five Hundred Dollars (\$7,500) (“Enhancement Payment”), in recognition of her services in connection with the Action. The Enhancement Payment will be paid from the Maximum Settlement Amount, subject to approval by the Court, and if awarded, will be paid to Plaintiff in addition to her Individual Settlement Payment that she is entitled to under the Settlement.

G. Settlement Administration Costs to Settlement Administrator

Payment to the Settlement Administrator is estimated not to exceed Eighteen Thousand Dollars (\$18,000) (“Settlement Administration Costs”) for the costs of the notice and settlement administration process, including and not limited to, the expense of notifying the Class Members of the Settlement, processing Requests for Exclusion, Notices of Objection, and disputes of Workweeks calculating Individual Settlement Shares, Individual Settlement Payments, and distributing payments and tax forms under the Settlement, and shall be paid from the Maximum Settlement Amount, subject to approval by the Court.

IV. WHAT ARE YOUR RIGHTS AND OPTIONS AS A CLASS MEMBER?

A. Participate in the Settlement

If you want to participate in the Settlement and receive money from the Settlement, you do not have to do anything. You will automatically be included in the Settlement and issued your Individual Settlement Payment unless you decide to exclude yourself from the Settlement.

Unless you elect to exclude yourself from the Settlement, you will be bound by the terms of the Settlement and the contemplated judgment to be entered by the Court based thereon if the Court grants final approval of the Settlement, and you will release the Released Claims described in Section III.D above.

As a Class Member you will not be separately responsible for the payment of attorney’s fees or litigation costs and expenses, unless you retain your own counsel, in which event you will be responsible for your own attorney’s fees and expenses.

B. Request Exclusion from the Settlement

If you do not wish to participate in the Settlement, you must seek exclusion from the Settlement by submitting a written letter (“Request for Exclusion”) to the Settlement Administrator.

A Request for Exclusion must: (a) include the case name and number of the Action (*Joali Rodriguez v. Surf Thru Inc.*, Case No. VCU280787); (b) include your full name, signature, address, telephone number, and the last four (4) digits of your Social Security Number; (c) clearly state that you do not wish to be included in the Settlement; and (d) be returned by fax or mail to the Settlement Administrator at the specified address and/or facsimile number, postmarked or faxed **on or before the [Response Deadline]**, at the following mailing address:

[Settlement Administrator]
[Mailing Address]

If the Court grants final approval of the Settlement, any Class Member who submits a valid and timely Request for Exclusion will not be entitled to receive an Individual Settlement Payment from the Settlement, will not be bound by the Settlement (and the release of Released Claims described in Section III.D above). Any Class Member who submits a Request for Exclusion is prohibited from making any objection to the Settlement Agreement. Any Class Members who do not submit a valid and timely Request for Exclusion will be deemed Settlement Class Members and will be bound by all terms of the Settlement, including, and not limited to those pertaining to the release of Released Claims described in Section III.D above, if the Settlement is granted Final Approval by the Court.

C. Object to the Settlement

You can object to the terms of the Settlement as long as you have not submitted a Request for Exclusion, by submitting a written objection (“Notice of Objection”) to the Settlement Administrator by mail, **on or before the [Response Deadline]** or by presenting your objection at the Final Approval Hearing.

A Notice of Objection must: (a) include the case name and number of the Action (*Joali Rodriguez v. Surf Thru Inc.*, Case No. VCU280787); (b) include your full name, signature, address, telephone number, and last four (4) digits of your Social Security Number; (c) include a written statement of all grounds for the objection accompanied by any legal support for such objection; (d) include copies of any papers, briefs, or other documents upon which the objection is based, and (e) be returned by fax or mail to the Settlement Administrator at the specified address and/or facsimile number, postmarked or faxed on or before the Response Deadline.

V. FINAL APPROVAL HEARING

The Court will hold a Final Approval Hearing in Department 7 of the Tulare County Superior Court, located at 221 South Mooney Blvd. Visalia, California 93291, on [date], at [time], to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court also will be asked to approve and award Attorneys' Fees and Costs to Class Counsel, Enhancement Payment to Plaintiff, and Settlement Administration Costs to the Settlement Administrator.

The hearing may be continued without further notice to Class Members. It is not necessary for you to appear at the Final Approval Hearing, although you may appear remotely if you wish to.

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement Agreement, you should review the detailed Settlement Agreement and other papers which are on file with the Court.

You may view the Settlement Agreement and other court records in the Action for a fee by visiting the civil clerk's office, located at 221 South Mooney Blvd. Visalia, California 93291 during business hours, or online by visiting the following website: <https://www.tulare.courts.ca.gov/>

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT.

IF YOU HAVE ANY QUESTIONS, YOU MAY CALL THE SETTLEMENT ADMINISTRATOR AT THE FOLLOWING TOLL-FREE NUMBER: [INSERT], OR YOU MAY ALSO CONTACT CLASS COUNSEL.