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ROBERT ZIEGLER, on behalf of himself and all others
7 similarly situated, and on behalf of the general public.

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GROUP, INC.

STATE OF CALIFORNIA

SUPERIOR COURT FOR THE COUNTY OF FRESNO

17 ROBERT ZIEGLER, on behalf of himself
18 and all others similarly situated, and on
behalf of the general public,

19 Plaintiffs,

20 v.

21 MARIHART RESTAURANT GROUP,
22 INC., a California Corporation, and DOES 1
through 10, inclusive.

23 Defendants.

Case No.: 23CECG00301

**CLASS ACTION AND PRIVATE
ATTORNEYS GENERAL ACT ("PAGA")
SETTLEMENT AGREEMENT**

Complaint Filed: January 26, 2023
Trial Date: None Set

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1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between
2 Plaintiff Robert Ziegler on behalf of himself, the putative class, and aggrieved employees, and
3 Defendant Marihart Restaurant Group, Inc. The Agreement refers to Plaintiff Robert Ziegler and
4 Defendant Marihart Restaurant Group, Inc., collectively as “Parties,” or individually as “Party.”

5 **1. DEFINITIONS**

6 1.1. “Action” means the matter of *Ziegler v. Marihart Restaurant Group, Inc.*, Fresno
7 County Superior Court, Case No. 23CECG00301.

8 1.2. “Administrator” means Apex Class Action Administrator the neutral entity the
9 Parties have agreed to appoint to administer the Settlement.

10 1.3. “Administration Expenses Payment” means the amount the Administrator will be
11 paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance
12 with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary
13 Approval of the Settlement.

14 1.4. “Aggrieved Employee” means a person directly employed by Defendant in
15 California and classified as a non-exempt employee who worked during the PAGA Period.

16 1.5. “Class” means all persons directly employed by Defendant in California and
17 classified as a non-exempt employee who worked during the Class Period.

18 1.6. “Class Counsel” means Roman Otkupman and Nidah Farishta of OTKUPMAN
19 LAW FIRM.

20 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment”
21 mean the amounts Class Counsel will be paid from the Gross Settlement Amount as payment for
22 reasonable attorneys’ fees and statutorily recoverable costs, respectively, incurred to prosecute the
23 Action.

24 1.8. “Class Data” means each Class Member’s name, last-known mailing address, Social
25 Security number, and number of Class Workweeks and PAGA Pay Periods.

26 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as
27 either a Participating Class Member or Non-Participating Class Member (including a Non-
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- 1 Participating Class Member who qualifies as an Aggrieved Employee).
- 2 **1.10.** “Class Member Address Search” means the Administrator’s investigation and search
3 for current Class Member mailing addresses using reasonably available sources, methods and means
4 including, but not limited to, the National Change of Address database, skip traces, and direct
5 contact by the Administrator with Class Members.
- 6 **1.11.** “Class Notice” means the Court-approved Notice of Class Action Settlement and
7 Hearing Date for Final Court Approval, in substantially the same form as that attached as Exhibit A
8 hereto.
- 9 **1.12.** “Class Workweeks” means any Workweek during the Class Period in which a Class
10 Member was employed directly by Defendant and was issued payment by Defendant for wages for
11 work performed within the Workweek.
- 12 **1.13.** “Class Period” means the period from January 26, 2019, through ninety (90) days
13 after mediation that occurred on April 16, 2024 or through the date of Preliminary Approval of the
14 Settlement, whichever occurs first, unless modified by Defendant pursuant to Section 8 of this
15 Agreement in Defendant’s sole discretion.
- 16 **1.14.** “Class Representative” means the named Plaintiff in the Operative Complaint in the
17 Action seeking Court approval to serve as a Class Representative.
- 18 **1.15.** “Class Representative Service Payment” means the amount the Class Representative
19 will be paid out of the Gross Settlement Amount for initiating the Action, providing services in
20 support of the Action, and providing a general release of claims and Civil Code §1542 waiver in
21 favor of Defendant.
- 22 **1.16.** “Court” means the Superior Court of California, County of Fresno.
- 23 **1.17.** “Defendant” means Defendant Marihart Restaurant Group, Inc.
- 24 **1.18.** “Defense Counsel” means Ian B. Wieland and Paul M. Parvanian of Sagaser Watkins
25 & Wieland PC.
- 26 **1.19.** The Effective Date of this Agreement is the later of the following dates: (1) the date
27 the Court finally approves this settlement if no objections are filed to the settlement; (2) if objections
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1 are filed and overruled, and no appeal is taken of the final approval order, 60 days after the final
2 approval order is signed; or, (3) if an appeal is take from the Court’s overruling of objections to the
3 settlement, 10 days after the appeal is withdrawn or after an appellate decision affirming the final
4 approval order becomes final.

5 **1.20.** “Final Approval” means the Court’s order granting final approval of the Settlement.

6 **1.21.** “Final Approval Hearing” means the Court’s hearing on the Motion for Final
7 Approval of the Settlement.

8 **1.22.** “Final Judgment” means the Judgment entered by the Court upon Granting Final
9 Approval of the Settlement.

10 **1.23.** “Gross Settlement Amount” means \$120,000.00 which is the total amount Defendant
11 agrees to pay under the Settlement, unless modified by Defendant pursuant to Section 8 of this
12 Agreement in Defendant’s sole discretion. The Gross Settlement Amount will be used to pay
13 Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel
14 Fees, Class Counsel Expenses, Class Representative Service Payment, and the Administrator’s
15 Expenses.

16 **1.24.** “Individual Class Payment” means a Participating Class Member’s pro rata share of
17 the Net Settlement Amount calculated according to the number of Class Workweeks worked by the
18 Participating Class Member.

19 **1.25.** “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of
20 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked by
21 the Aggrieved Employee.

22 **1.26.** “Judgment” means the judgment entered by the Court based upon the Final
23 Approval.

24 **1.27.** “LWDA” means the California Labor and Workforce Development Agency, the
25 agency entitled, under Labor Code §2699, subd. (i), to receive the LWDA PAGA Payment.

26 **1.28.** “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA
27 under Labor Code §2699, subd. (i).

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1 **1.29.** “Net Settlement Amount” means the Gross Settlement Amount, less the following
2 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
3 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
4 Litigation Expenses Payment, and the Administration Expenses Payment.

5 **1.30.** “Non-Participating Class Member” means any Class Member who opts out of the
6 Settlement by sending the Administrator a valid and timely Request for Exclusion.

7 **1.31.** “Notice Packet” means the Class Notice (Exhibit A).

8 **1.32.** “Operative Complaint” means the First Amended Class and Representative Action
9 Complaint filed by Plaintiff on April 4, 2023.

10 **1.33.** “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

11 **1.34.** “PAGA Pay Period” means any Pay Period during the PAGA Period in which a
12 Aggrieved Employee was employed directly by Defendant and was issued payment by Defendant
13 for wages for work performed within the Pay Period.

14 **1.35.** “PAGA Period” means the period from January 26, 2022, through ninety (90) days
15 after mediation that occurred on April 16, 2024 or through the date the Court grants the Preliminary
16 Approval of the Settlement, whichever occurs first.

17 **1.36.** “PAGA Notice” means Plaintiff’s January 26, 2023, letter to Defendant and the
18 LWDA providing notice pursuant to Labor Code §2699.3, subd. (a).

19 **1.37.** “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from
20 the Gross Settlement Amount, allocated 25% to the Aggrieved Employees and the 75% to LWDA
21 in settlement of PAGA claims.

22 **1.38.** “Participating Class Member” means a Class Member who does not submit a valid
23 and timely Request for Exclusion from the Settlement.

24 **1.39.** “Plaintiff” means Robert Ziegler, the named plaintiff in the Action.

25 **1.40.** “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of
26 the Settlement.

27 **1.41.** “Preliminary Approval Order” means the proposed Order Granting Preliminary
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1 Approval of the Settlement.

2 **1.42.** “Released Class Claims” means the Released Claims being released as described in
3 Section 5.4.1 below.

4 **1.43.** “Released PAGA Claims” means the Released Claims being released as described in
5 Section 5.4.2 below, which arise and/or are assertable under PAGA.

6 **1.44.** “Released Parties” means: Defendant together with its present and former parents,
7 subsidiaries, affiliated entities, commonly owned or controlled entities, present and former owners,
8 board members, officers, directors, trustees, shareholders, members, partners, employees, agents,
9 insurers, attorneys, representatives, heirs, executors, administrators, successors and assigns, and any
10 individual or entity to whom liability for claims released by Plaintiff, or the Released Class Claims
11 and Released PAGA Claims, could be assigned pursuant to Labor Code §558.1, or on a joint-
12 employer, alter-ego, or other joint or vicarious liability theory.

13 **1.45.** “Request for Exclusion” means a Class Member’s submission of a written request to
14 be excluded from the Class Settlement signed by the Class Member.

15 **1.46.** “Response Deadline” means 45 days after the Administrator mails Notice to Class
16 Members and Aggrieved Employees (plus an additional 14 days, in the case of Class Members
17 whose Notice Packets are resent by the Administrator after being returned as undeliverable), and
18 shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion
19 from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement.

20 **1.47.** “Settlement” means the disposition of the Action effected by this Agreement and the
21 Judgment.

22 **2. RECITALS**

23 **2.1.** On January 26, 2023, Plaintiff commenced this Action by filing a Class Action
24 Complaint. Plaintiff subsequently filed the Operative Complaint (the First Amended Complaint) on
25 April 4, 2023. Defendant denies the allegations in the Operative Complaint, denies any failure to
26 comply with the law, and denies any liability for the claims alleged in the Operative Complaint.

27 **2.2.** Pursuant to Labor Code §2699.3, subd. (a), Plaintiff gave timely written notice to
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1 Defendant and the LWDA by sending the PAGA Notice.

2 2.3. On April 16, 2024, the Parties participated in an all-day mediation presided over by
3 neutral Scott Radovich which led to this Agreement to settle the Action.

4 2.4. Prior to mediation, Plaintiff obtained, through informal discovery, the number of
5 putative Class Members, the number of Aggrieved Employees, the number of workweeks, the
6 number of pay periods, sample time records, sample payroll records, written policies, and related
7 information. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth
8 in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker*
9 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

10 2.5. The Court has not granted class certification.

11 3. MONETARY TERMS

12 3.1. Gross Settlement Amount. Defendant promises to pay \$120,000.00 and no more as
13 the Gross Settlement Amount, unless modified by Defendant pursuant to Section 8 of this
14 Agreement in Defendant's sole discretion, and to separately pay any and all employer payroll taxes
15 owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay
16 the Gross Settlement Amount (or any payroll taxes) prior to the deadlines stated in Section 4.3 of
17 this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking
18 or requiring Participating Class Members or Aggrieved Employees to submit any claim as a
19 condition of payment. None of the Gross Settlement Amount will revert to Defendant.

20 3.2. Payments from the Gross Settlement Amount. The Administrator will make and
21 deduct the following payments from the Gross Settlement Amount, in the amounts specified by the
22 Court in the Final Approval:

23 3.2.1. To Plaintiff: Class Representative Service Payment to the Class
24 Representative of not more than \$10,000.00 (in addition to any Individual Class Payment and
25 any Individual PAGA Payment the Class Representative is entitled to receive as a Participating
26 Class Member and Aggrieved Employee). Defendant will not oppose Plaintiff's request for a
27 Class Representative Service Payment that does not exceed this amount. As part of the motion
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1 for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek
2 Court approval for any Class Representative Service Payments no later than 16 court days prior
3 to the Final Approval Hearing. If the Court approves a Class Representative Service Payment
4 less than the amount requested, the Administrator will retain the remainder in the Net Settlement
5 Amount, and Plaintiff's general release of claims and waiver of rights under Civil Code §1542
6 will remain intact. The Administrator will pay the Class Representative Service Payment using
7 IRS Form 1099. Plaintiff assumes full responsibility and liability for taxes owed on the Class
8 Representative Service Payment and agrees to hold Defendant harmless, and indemnify
9 Defendant, from any dispute or controversy regarding any division, sharing, or taxation of this
10 payment.

11 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than one-third,
12 which is currently estimated to be \$39,600.00 and a Class Counsel Litigation Expenses Payment
13 of not more than \$20,000.00. Defendant will not oppose requests for these payments provided
14 that do not exceed these amounts and the Class Counsel Litigation Expenses Payment claimed
15 are recoverable under statute. Plaintiff and/or Class Counsel will file a motion for Class Counsel
16 Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the
17 Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class
18 Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will
19 allocate the remainder to the Net Settlement Amount. Defendant and Released Parties shall have
20 no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any
21 portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment.
22 The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses
23 Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and
24 liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation
25 Expenses Payment and agrees to hold Defendant harmless, and indemnify Defendant, from any
26 dispute or controversy regarding any division, sharing, or taxation of any of these payments.

27 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed
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1 \$10,000.00 except for a showing of good cause and as approved by the Court. To the extent the
2 Administration Expenses are less than \$10,000.00, or the Court approves payment less than
3 \$10,000.00 the Administrator will allocate the remainder in the Net Settlement Amount.

4 3.2.4. To Each Participating Class Member: An Individual Class Payment
5 calculated by (a) dividing the Net Settlement Amount by the total number of Class Workweeks
6 worked by all Participating Class Members during the Class Period and (b) multiplying the result
7 by each Participating Class Member's Class Workweeks. 2.5% of each Participating Class
8 Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage
9 Portion"). The Wage Portion of Individual Class Payments are subject to tax withholding and
10 will be reported on an IRS W-2 Form. 2.5% of each Participating Class Member's Individual
11 Class Payment will be allocated to settlement of reimbursement claims, and 95% of each
12 Participating Class Member's Individual Class Payment will be allocated to settlement of claims
13 for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portion of Individual Class
14 Payments are not subject to wage withholdings and will be reported on IRS 1099 Forms.
15 Participating Class Members assume full responsibility and liability for any taxes owed on their
16 Individual Class Payment. Non-Participating Class Members will not receive any Individual
17 Class Payments. The Administrator will retain amounts equal to their Individual Class Payments
18 in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

19 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of
20 \$15,000.00 to be paid from the Gross Settlement Amount, with 75% (\$11,250.00) allocated to
21 the LWDA PAGA Payment and 25% (\$3,750.00) allocated to the Individual PAGA Payments.
22 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of
23 the Aggrieved Employees' 25% share of PAGA Penalties (\$3,750.00) by the total number of
24 PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b)
25 multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved
26 Employees assume full responsibility and liability for any taxes owed on their Individual PAGA
27 Payment. If the Court approves PAGA Penalties of less than the amount requested, the
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1 Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will
2 report the Individual PAGA Payments on IRS 1099 Forms.

3 **4. SETTLEMENT FUNDING AND PAYMENTS.**

4 **4.1. Class Size.** Based on a review of its records through April of 2024, Defendant
5 estimates there are 186 Class Members who collectively worked a total of 10,165 Workweeks.

6 **4.2. Class Data.** Not later than 30 days after service of the Court’s Preliminary Approval
7 of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a
8 Microsoft Excel spreadsheet. To protect Class Members’ privacy rights, the Administrator must
9 maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and
10 for no other purpose, and restrict access to the Class Data to Administrator employees who need
11 access to the Class Data to effect and perform under this Agreement. The Administrator shall not
12 disclose any Class Member or Aggrieved Employee information to Plaintiff, attorneys for Plaintiff,
13 third parties, or to any of their agents, consultants, experts, or subcontractors, without Defendant’s
14 prior written consent. Defendant has a continuing duty to immediately notify Class Counsel if it
15 discovers that the Class Data omitted Class Members’ identifying information and to provide
16 corrected or updated Class Data as soon as reasonably feasible. Without any extension of the
17 deadline by which Defendant must send the Class Data to the Administrator, the Parties and their
18 counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any
19 issues related to missing or omitted Class Data.

20 **4.3. Funding of Gross Settlement Amount.** Defendant shall fund the Gross Settlement
21 Amount, and also fund the amounts necessary to pay Defendant’s share of payroll taxes on the Wage
22 Portions of the Individual Class Payments as calculated by the Administrator by transmitting the
23 Gross Settlement Amount and amounts necessary to fund Defendant's share of payroll taxes to the
24 Administrator, or as otherwise directed by the Administrator, no later than 30 days after the
25 Effective Date.

26 **4.4. Payments from the Gross Settlement Amount.** Within 14 days after Defendant funds
27 the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments,
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1 all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment,
2 the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class
3 Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class
4 Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not
5 precede disbursement of Individual Class Payments and Individual PAGA Payments.

6 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or
7 Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail,
8 postage prepaid. The face of each check shall prominently state the date (not less than 180 days
9 after the date of mailing) when the check will be voided. The Administrator will cancel all
10 checks not cashed by the void date. The Administrator will send checks for Individual Class
11 Payments to all Participating Class Members (including those for whom Notice Packet was
12 returned undelivered). The Administrator will send checks for Individual PAGA Payments to
13 all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved
14 Employees (including those for whom Notice Packet was returned undelivered). The
15 Administrator may send Participating Class Members and Aggrieved Employees a single check
16 combining the Individual Class Payment and the Individual PAGA Payment.

17 4.4.2. The Administrator must conduct a Class Member Address Search for all
18 Class Members whose checks are returned undelivered without USPS forwarding address.
19 Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS
20 forwarding address provided or to an address ascertained through the Class Member Address
21 Search. The Administrator need not take further steps to deliver checks to Class Members whose
22 re-mailed checks are returned as undelivered. The Administrator shall promptly send a
23 replacement check to any Class Member whose original check was lost or misplaced, as
24 requested by the Class Member prior to the void date.

25 4.4.3. For any Class Member whose Individual Class Payment check or Individual
26 PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall
27 transmit the funds represented by such checks to Clovis Senior Activities Center located in
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1 Clovis, California (501c3- 81-4445919) thereby leaving no “unpaid residue” subject to the
2 requirements of California Code of Civil Procedure §384, subd. (b).

3 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments
4 shall not obligate Defendant to confer any additional benefits or make any additional payments
5 to Class Members (such as 401(k) contributions, bonuses, vacation plans, sick leave plans, PTO
6 plans, regular rate of pay calculations, or other benefit plan) beyond those specified in this
7 Agreement.

8 **5. RELEASES OF CLAIMS**

9 **5.1. Effective Date of Release.** The releases described in this Agreement shall take effect
10 upon the Effective Date.

11 **5.2. Plaintiff’s General Release.** Plaintiff, on behalf of himself and on behalf of his
12 respective former and present spouses, representatives, agents, attorneys, heirs, administrators,
13 successors, and assigns, agrees to release and discharge Defendant and Released Parties from all
14 known and unknown claims of whatever type that Plaintiff has or may have against Defendant and
15 Released Parties through the date of Plaintiff’s execution of this Agreement, except for claims to
16 enforce this Agreement or claims that Plaintiff cannot release via a general release as a matter of
17 law, including claims for unemployment and workers’ compensation benefits (“Plaintiff’s General
18 Release”).

19 **5.3. Plaintiff’s Waiver of Rights Under California Civil Code Section 1542.** Plaintiff
20 acknowledges that he may discover facts or law different from, or in addition to, the facts or law
21 that he now knows or believes to be true, which could materially affect his decision to agree to the
22 releases set forth in this Agreement. Nonetheless, Plaintiff voluntarily assumes this risk, and agrees
23 that Plaintiff’s General Release shall remain in effect notwithstanding such different or additional
24 discoveries. To this end, Plaintiff expressly waives and relinquishes his rights under California Civil
25 Code §1542, which provides:

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

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5.4. Release by Participating Class Members and Aggrieved Employees:

5.4.1. Release of Class Claims: As of the Effective Date, all Participating Class Members shall release Defendant and Released Parties of all claims that are not assertable under PAGA and that Plaintiff alleged, or could have alleged, based on the facts pled in the Operative Complaint, and which arose or existed during the Class Period (“Released Class Claims”). Without limiting the foregoing, Released Class Claims shall include:

5.4.1.1. All claims relating to unpaid wages (including claims for failure to pay minimum wages, straight time wages, overtime and double-time compensation); all claims related to the timeliness of wage payments (whether regular or final wages); all claims relating to the failure to provide compliant meal, rest, and recovery periods; all claims relating to the failure to pay premiums for violations of meal, rest, and recovery period laws (including the failure to make premium payments at all, or failure to make premium payments at the correct rate of pay); all claims relating to the provision of wage statements; all claims relating to the failure to maintain accurate employment records; all claims relating to the reimbursement of necessary business expenses; all claims relating to the failure to pay reporting time pay (including the failure to pay reporting time pay at all when required by law, or failure to pay reporting time pay at the correct rate of pay); all claims relating to failure to provide a place of employment that is safe and healthful, and all claims relating to unfair business practices resulting from any of the foregoing.

5.4.1.2. All claims arising under California Labor Code §§201, 202, 203, 204, 204b, 208, 210, 218.5, 218.6, 221, 226, 226.7, 246, 248, 248.2, 248.5, 248.6, 510, 512, 558, 558.1, 1174, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2802, 6400, 6401, 6402, 6403, 6404, 6407, ; 8 C.C.R. §11160, Sections 3, 4, 5, 6, 7, 8, 10, 11, and 18; 8 C.C.R. §§ 3202, 3395; California Business and Professions Code §§17200-17208; California Civil Code §§3287 and 3289; California Code of Civil Procedure §1021.5; and related claims under the applicable provisions of the Fair Labor Standards Act (29 U.S.C. §§201, et seq.).

1 5.4.1.3. All remedies associated with any of the claims described herein,
2 including but not limited to compensatory, consequential, incidental, liquidated, and punitive
3 damages; statutory penalties; restitution; interest; costs; attorneys' fees; injunctive or other
4 equitable relief.

5 5.4.2. Release of PAGA Claims: As of the Effective Date, all Aggrieved Employees
6 and the LWDA shall release Defendant and Released Parties of all claims that are assertable
7 under PAGA and that Plaintiff alleged, or could have alleged, based on the facts pled in the
8 Operative Complaint or Plaintiff's PAGA Notice, and which arose or existed during the PAGA
9 Period ("Released PAGA Claims"). Without limiting the foregoing, Released PAGA Claims
10 shall include:

11 5.4.2.1. All claims for civil penalties recoverable under PAGA relating to
12 unpaid wages (including claims for failure to pay minimum wages, straight time wages,
13 overtime and double-time compensation); all claims for civil penalties recoverable under
14 PAGA related to the timeliness of wage payments (whether regular or final wages); all
15 claims for civil penalties recoverable under PAGA relating to the failure to provide
16 compliant meal, rest, and recovery periods; all claims for civil penalties recoverable under
17 PAGA relating to the failure to pay premiums for violations of meal, rest, and recovery
18 period laws (including the failure to make premium payments at all, or failure to make
19 premium payments at the correct rate of pay); all claims for civil penalties recoverable under
20 PAGA relating to the provision of wage statements; all claims for civil penalties recoverable
21 under PAGA relating to the failure to maintain accurate employment records; all claims for
22 civil penalties recoverable under PAGA relating to the failure to pay reporting time pay
23 (including the failure to pay reporting time pay at all when required by law, or failure to pay
24 reporting time pay at the correct rate of pay); and all claims for civil penalties recoverable
25 under PAGA relating to the reimbursement of necessary business expenses.

26 5.4.2.2. All claims for civil penalties recoverable under PAGA and set forth
27 in California Labor Code §§ 201-203, 204, 210, 225.5, 226, 226.3, 226.7, 248.5, 510, 512,
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1 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197.1, 2802, 6400, 6401, 6403, 6404, 6407, 8
2 C.C.R. §§ 3202, 11160, Sec. 18, 8 C.C.R., Bus. & Prof. Code §§ 17200 et seq., and other
3 default civil penalties for the Released PAGA Claims available under California Labor Code
4 § 2699.

5 **5.5. Releases Effective Regardless of Receipt of Class Notice and/or Payment.** The
6 releases described in this section shall bind all Participating Class Members and Aggrieved
7 Employees regardless of whether they receive the Class Notice, receive their Individual Class
8 Payment and/or Individual PAGA Payment, and/or whether they deposit their Individual Class
9 Payment and/or Individual PAGA Payment.

10 **5.6. Construction.** The Parties intend that this release be construed as broadly as possible.

11 **5.7. Resolution of Good Faith Dispute.** The Parties warrant and represent that the releases
12 for Participating Class Members and Aggrieved Employees resolve, pursuant to Labor Code §§206
13 and 206.5, and applicable case law (including but not limited to *Chindarah v. Pick Up Stix, Inc.*
14 (2009) 171 Cal.App.4th 796) a good faith dispute regarding any and all wages, if any, owed by
15 Defendant to Participating Class Members / Aggrieved Employees through their last day of
16 employment with Defendant within the Class Period and PAGA Period. The Parties further warrant
17 and represent that the Gross Settlement Amount described in this Agreement is in addition to any
18 undisputed wages and other benefits owed to Class Members by Defendant.

19 **6. MOTION FOR PRELIMINARY APPROVAL.** Plaintiff shall prepare and file a motion
20 for preliminary approval (“Motion for Preliminary Approval”). Defendant shall not oppose the
21 motion to the extent it is consistent with this Agreement.

22 **6.1. Plaintiff’s Responsibilities.** Plaintiff will prepare and deliver to Defense Counsel all
23 documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice and
24 memorandum in support of the Motion for Preliminary Approval that includes an analysis of the
25 Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code
26 §2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of
27 PAGA Settlement; (iii) a draft proposed Notice Packet; (iv) a signed declaration from the
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1 Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its
2 willingness and ability to serve as an administrator in this matter, including information related to
3 its financial relationship with Class Counsel; (v) a signed declaration from Plaintiff confirming his
4 willingness and competency to serve and disclosing all facts relevant to any actual or potential
5 conflicts of interest with Class Members, and/or the Administrator; (vi) a signed declaration from
6 Class Counsel attesting to their competency to represent the Class Members; and (vii) proof of
7 Plaintiff’s timely transmission to the LWDA of all necessary PAGA documents (including the initial
8 notice of violations sent to Defendant and the LWDA pursuant to Labor Code §2699.3, subd. (a),
9 the Operative Complaint (Labor Code §2699, subd. (l)(1)), and this Agreement (Labor Code §2699,
10 subd. (l)(2))).

11 **6.2. Responsibilities of Counsel.** Class Counsel is responsible for expeditiously
12 finalizing and filing the Motion for Preliminary Approval no later than 75 days after the full
13 execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary
14 Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval.
15 Class Counsel is responsible for delivering the Court’s Preliminary Approval Order to the
16 Administrator.

17 **6.3. Duty to Cooperate.** If the Parties disagree on any aspect of the proposed Motion for
18 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
19 Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or
20 by telephone, and in good faith, to attempt to resolve the disagreement. If the Court does not grant
21 Preliminary Approval or conditions Preliminary Approval on any material change to this
22 Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the
23 Parties by meeting in good faith to modify the Agreement and otherwise attempt to satisfy the
24 Court’s concerns. However, no Party shall be obligated to consent to any material change (including
25 but not limited to changes to the Gross Settlement Amount or the releases set forth herein) in the
26 Agreement, whether or not such material change is caused or requested by the Court.

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1 **7. SETTLEMENT ADMINISTRATION**

2 **7.1. Selection of Administrator.** The Parties have jointly selected Apex Class Action
3 Administrator to serve as the Administrator and verified that, as a condition of appointment, Apex
4 Class Action Administrator agrees to be bound by this Agreement and to perform, as a fiduciary, all
5 duties specified in this Agreement in exchange for the Administration Expenses Payment. The
6 Parties, Class Counsel, and Defense Counsel represent that they have no interest or relationship,
7 financial or otherwise, with the Administrator other than a professional relationship arising out of
8 prior experiences administering settlements.

9 **7.2. Qualified Settlement Fund.** The Administrator shall establish a settlement fund that
10 meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation
11 section 468B-1.

12 **7.3. Notice to Class Members.**

13 **7.3.1.** No later than three (3) business days after receipt of the Class Data, the
14 Administrator shall notify Class Counsel that the list has been received and state the number of
15 Class Members, Aggrieved Employees, Class Workweeks, and PAGA Pay Periods in the Class
16 Data.

17 **7.3.2.** Using best efforts to perform as soon as possible, and in no event later than
18 30 days after receiving the Class Data, the Administrator will send to all Class Members
19 identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the
20 Notice Packet substantially in the forms attached to this Agreement as Exhibits A, B, C, and D.
21 The first page of the Class Notice shall prominently estimate the dollar amounts of any
22 Individual Class Payment and/or Individual PAGA Payment payable to the Class Member
23 and/or Aggrieved Employee, and the number of Class Workweeks and PAGA Pay Periods (if
24 applicable) used to calculate these amounts.

25 **7.3.3.** Not later than 3 business days after the Administrator’s receipt of any Notice
26 Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice Packet
27 using any forwarding address provided by the USPS. If the USPS does not provide a forwarding
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address, the Administrator shall conduct a Class Member Address Search, and re-mail the Notice Packet to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Notice Packet to Class Members whose Notice Packet is returned by the USPS a second time.

7.3.4. The deadlines for Class Members' written objections, Challenges to Class Workweeks and/or PAGA Pay Periods (disputes), and Requests for Exclusion will be extended an additional 14 days beyond the 45 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Notice Packet.

7.3.5. If the Administrator, Defendant, or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Notice Packet, the Parties will expeditiously meet and confer in person or by telephone, and in good faith in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send a Notice Packet requiring them to exercise options under this Agreement within the timeframes applicable to Class Members whose Notice Packet is re-mailed by the Administrator.

7.4. Requests for Exclusion (Opt-Outs).

7.4.1. Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 45 days after the Administrator mails the Notice Packet (plus an additional 14 days for Class Members whose Notice Packet is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

7.4.2. The Administrator may not reject a Request for Exclusion as invalid because

1 it fails to contain all the information specified in the Class Notice. The Administrator shall accept
2 any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of
3 the person as a Class Member and the Class Member's desire to be excluded. The
4 Administrator's determination shall be final and not appealable or otherwise susceptible to
5 challenge. If the Administrator has reason to question the authenticity of a Request for
6 Exclusion, the Administrator may demand additional proof of the Class Member's identity. The
7 Administrator's determination of authenticity shall be final and not appealable or otherwise
8 susceptible to challenge.

9 7.4.3. Every Class Member who does not submit a timely and valid Request for
10 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all
11 benefits and bound by all terms and conditions of the Settlement, including the Participating
12 Class Members' Releases under Section 5.4.1 of this Agreement, regardless of whether the
13 Participating Class Member actually receives the Notice Packet, an Individual Class Payment,
14 objects to the settlement, or disputes the pay periods set forth in the Class Notice.

15 7.4.4. Every Class Member who submits a valid and timely Request for Exclusion
16 is a Non-Participating Class Member and shall not receive an Individual Class Payment or have
17 the right to object to the class action components of the Settlement.

18 7.4.5. All Aggrieved Employees are entitled to all benefits and bound by all terms
19 and conditions of the Settlement as they pertain to PAGA claims, including the Aggrieved
20 Employees' Releases under Section 5.4.2 of this Agreement, regardless of whether the
21 Aggrieved Employee actually receives the Notice Packet, an Individual PAGA Payment, objects
22 to the settlement, or disputes the pay periods set forth in the Class Notice.

23 7.5. Challenges to Calculation of Workweeks. Each Class Member shall have 45 days
24 after the Administrator mails the Notice Packet (plus an additional 14 days for Class Members
25 whose Notice Packet is re-mailed) to challenge the number of Class Workweeks and PAGA Pay
26 Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may
27 challenge the allocation by communicating with the Administrator via fax, email or mail. The
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1 Administrator must encourage the challenging Class Member to submit supporting documentation.
2 In the absence of any contrary documentation, the Administrator is entitled to presume that the Class
3 Workweeks and PAGA Pay Periods contained in the Class Data are correct. The Administrator's
4 determination of each Class Member's allocation of Class Workweeks and/or PAGA Pay Periods
5 shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall
6 promptly provide copies of all challenges to calculation of Class Workweeks and/or PAGA Pay
7 Periods and the Administrator's determination as to such challenges to Defense Counsel and Class
8 Counsel, except that any information provided to Class Counsel in relation to pay period disputes
9 shall not contain any personal identifying information (e.g., names and contact information) of the
10 Class Members.

11 **7.6. Objections to Settlement.**

12 7.6.1. Only Participating Class Members may object to the class action components
13 of the Settlement and/or this Agreement, including contesting the fairness of the Settlement,
14 and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation
15 Expenses Payment, and/or the Class Representative Service Payment.

16 7.6.2. Participating Class Members may send written objections to the
17 Administrator, by fax, email, or mail. In the alternative, Participating Class Members may
18 appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final
19 Approval Hearing. A Participating Class Member who elects to send a written objection to the
20 Administrator must do so not later than 45 days after the Administrator's mailing of the Notice
21 Packet (plus an additional 14 days for Class Members whose Notice Packet was re-mailed).

22 7.6.3. Non-Participating Class Members have no right to object to any of the class
23 action components of the Settlement.

24 **7.7. Administrator Duties.** The Administrator has a duty to perform or observe all tasks
25 to be performed or observed by the Administrator contained in this Agreement or otherwise.

26 7.7.1. **Email Address, Fax Number, and Toll-Free Number.** The Administrator will
27 establish and maintain and use an email address, fax number, and a toll-free telephone number
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1 to receive Class Member emails, faxes, and calls.

2 7.7.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will
3 promptly review Requests for Exclusion to ascertain their validity. Not later than 5 days after
4 the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall
5 email a list to Defense Counsel containing (a) the names and other identifying information of
6 Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b)
7 the names and other identifying information of Class Members who have submitted invalid
8 Requests for Exclusion; and, (c) copies of all Requests for Exclusion documentation submitted
9 (whether valid or invalid). Upon request, the Administrator may provide summary information
10 regarding the information described in this section to Class Counsel, but shall not provide any
11 personal identifying information (e.g., names and contact information) to Class Counsel.

12 7.7.3. Weekly Reports. The Administrator must, on a weekly basis, provide written
13 reports to Class Counsel and Defense Counsel that, among other things, tally the number of:
14 Notice Packets mailed or re-mailed, Notice Packets returned undelivered, Requests for
15 Exclusion (whether valid or invalid) received, objections received, challenges to Class
16 Workweeks and/or PAGA Pay Periods received and/or resolved, and checks mailed for
17 Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly
18 Reports must include the Administrator’s assessment of the validity of Requests for Exclusion
19 and attach copies of all Requests for Exclusion and objections received, except that any
20 information provided to Class Counsel shall not contain any personal identifying information
21 (e.g., names and contact information) of the Class Members

22 7.7.4. Class Workweeks and/or PAGA Pay Period Challenges. The Administrator
23 has the authority to address and make final decisions consistent with the terms of this Agreement
24 on all Class Member challenges regarding the calculation of Class Workweeks and/or PAGA
25 Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise
26 susceptible to challenge.

27 7.7.5. Administrator’s Declaration. Not later than 21 days before the date by which
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1 Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator
2 will provide to Class Counsel and Defense Counsel a signed declaration suitable for filing in
3 Court attesting to its due diligence and compliance with its obligations under this Agreement,
4 including, but not limited to, its mailing of the Notice Packets, the Notice Packets returned as
5 undelivered, the re-mailing of Notice Packets, attempts to locate Class Members, the total
6 number of Requests for Exclusion it received (both valid or invalid), and the number of written
7 objections received. The Administrator shall provide along with such declaration the Exclusion
8 List with all personal identifying information (e.g., names and contact information) redacted.
9 The Administrator will supplement its declaration as needed or requested by the Parties and/or
10 the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

11 7.7.6. Final Report by Administrator. Within 14 days after the Administrator
12 disburses the Gross Settlement Amount, the Administrator will provide Class Counsel and
13 Defense Counsel with a final report detailing its disbursements. All personal identifying
14 information (e.g., names and contact information) shall be redacted from the report. At least 15
15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class
16 Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its
17 disbursement of all payments required under this Agreement. Class Counsel is responsible for
18 filing the Administrator's declaration in Court.

19 8. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE. If the number of Class
20 Members exceeds 186 by 15% by the date of preliminary approval (i.e., 213), or the number of Class
21 Work Weeks worked by Class Members exceeds 10,165 by 15% by the date of the end of the Class
22 Release Period (i.e., 11,690), whichever figure is more favorable to Defendant ("the Pro Rata
23 Increase Threshold"), the GSA will increase pro rata per additional class member above 213 or
24 additional work weeks above 11,690, whichever figure Defendant elects to use, but only to the
25 extent Defendant does not choose a date earlier than the date of the end of the Class Release Period
26 to avoid any pro rata increase. If the Pro Rata Increase Threshold is triggered, Defendant shall have
27 the exclusive right to choose an earlier date as the end of the Class Release Period to avoid triggering
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1 any pro rata increase. The PAGA Release Period shall extend through the date of preliminary
2 approval and shall not be subject to any pro rata increase.

3 **9. DEFENDANT'S RIGHT TO WITHDRAW.** Defendant shall have the right at its sole
4 discretion to terminate the settlement if more than 10% of Class Members timely elect to exclude
5 themselves from the Settlement, as determined by the Administrator. If Defendant exercises its right
6 under this Section, Defendant shall be solely liable for administrative costs incurred by the
7 Administrator. Defendant must exercise its right to terminate the settlement in a writing to Class
8 Counsel stating an intention to terminate the Settlement within 30 days of receiving the final
9 Exclusion List from the Administrator.

10 **10. MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared
11 Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement
12 that includes a request for approval of the PAGA settlement under Labor Code §2699, subd. (l), a
13 proposed Final Approval order, and a proposed Judgment (collectively "Motion for Final
14 Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later than 14
15 days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will
16 expeditiously meet and confer in person or by telephone, and in good faith, to attempt to resolve any
17 disagreements concerning the Motion for Final Approval.

18 **10.1. Response to Objections.** Each Party retains the right to respond to any objection
19 raised by a Participating Class Member, including the right to file responsive documents in Court
20 no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted
21 by the Court.

22 **10.2. Duty to Cooperate.** If the Court does not grant Final Approval or conditions Final
23 Approval on any material change to the Agreement (including but not limited to the scope of the
24 releases or changes to the Gross Settlement Amount), the Parties shall expeditiously work together
25 in good faith to address the Court's concerns in an endeavor to revise the Agreement as necessary
26 to obtain Final Approval. No Party shall be obligated to consent to any material change in the
27 Agreement, whether or not such material change is caused or requested by the Court. The Court's
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1 decision to award less than the amounts requested for the Class Representative Service Payment,
2 Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator
3 Expenses Payment shall not constitute a material modification to the Agreement within the meaning
4 of this section.

5 **10.3. Continuing Jurisdiction of the Court.** The Parties agree that, after entry of Judgment,
6 the Court will retain jurisdiction over the Parties, the Action, and the Settlement solely for purposes
7 of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters,
8 and (iii) addressing such post-Judgment matters that are permitted by law.

9 **10.4. Waiver of Right to Appeal.** Provided the Judgment is consistent with the terms and
10 conditions of this Agreement, the Parties and all Participating Class Members who did not object to
11 the Settlement as provided in this Agreement waive all rights to appeal from the Judgment, including
12 all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment,
13 motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any
14 waiver of the right to oppose such motions, writs or appeals.

15 **10.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment.** If the
16 appellate court vacates, reverses, or modifies the Judgment in a manner that requires a material
17 modification of this Agreement (including, but not limited to, the scope of releases or changes to
18 the Gross Settlement Amount), this Agreement shall be null and void. The Parties shall nevertheless
19 expeditiously work together in good faith to address the appellate court's concerns and to obtain
20 Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional administration
21 expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify
22 the Court's award of the Class Representative Service Payment, the Class Counsel Fees Payment,
23 and/or the Class Counsel Litigation Expenses Payment shall not constitute a material modification
24 of the Judgment within the meaning of this section, as long as the Gross Settlement Amount remains
25 unchanged. However, no party shall be obligated to consent to any material change in the
26 Agreement, whether or not such material change is caused or requested by the reviewing Court.

27 **11. AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil
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1 Procedure § 384, the Parties will work together in good faith to jointly submit and a proposed
2 amended judgment.

3 **12. ADDITIONAL PROVISIONS.**

4 **12.1. No Admission of Liability, Class Certification, or Representative Manageability for**
5 **Other Purposes.** This Agreement represents a compromise and settlement of highly disputed claims.
6 Nothing in this Agreement is intended or should be construed as an admission by Defendant that
7 any of the allegations in the Operative Complaint have merit or that Defendant has any liability for
8 any claims asserted. Nor shall this Agreement be intended or construed as an admission by Plaintiff
9 that Defendant’s defenses in the Action have merit. The Parties agree that class certification and
10 representative treatment is for purposes of this Settlement only. If, for any reason the Court does
11 grant Preliminary Approval, Final Approval, or enter Judgment, there shall be no class certification
12 or representative treatment of any kind, Defendant reserves the right to contest certification of any
13 class for any reasons, Defendant reserves all available defenses to the claims in the Action, and
14 Plaintiff reserves the right to move for class certification on any grounds available and to contest
15 Defendant’s defenses. The Settlement, this Agreement and Parties’ willingness to settle the Action
16 will have no bearing on, and will not be admissible in connection with, any litigation (except for
17 proceedings to enforce or effectuate the Settlement and this Agreement).

18 **12.2. Confidentiality.** Plaintiff and Class Counsel separately agree that, until the Motion
19 for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate
20 and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the
21 terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation,
22 association, government agency, or other entity except: (1) to the Parties’ attorneys, accountants, or
23 spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related
24 matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response
25 to a court order or subpoena; (5) in response to an inquiry or subpoena issued by a state or federal
26 government agency; or, (6) to Class Members for purposes of informing them about this Settlement
27 and its procedures. Thereafter, Class Counsel further agrees not to disclose this Settlement to current
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1 or former employees of Defendant, to the media, or on any websites, blogs, social media, and/or
2 online platforms. Class Counsel shall have the ability to disclose this Settlement in the following
3 circumstances: (i) disclosures necessary to comply with the law, judicial processes, or for financial
4 planning or tax preparation purposes; (ii) to the extent needed to enforce this Agreement; (iii)
5 disclosures to a court for purposes of describing its qualifications as counsel; (iv) to Class Members
6 for purposes of informing them about this Settlement and its procedures; or, (v) as part of a
7 declaration made by an attorney in Class Counsel’s firm to establish his/her experience in handling
8 wage and hour class action and/or PAGA matters. Each Party agrees to immediately notify the other
9 Party of any judicial or agency order, inquiry, or subpoena seeking such information.

10 **12.3. No Solicitation.** The Parties agree that they and their respective counsel and
11 employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal
12 from the Judgment. Nothing in this section shall be construed to restrict the Parties’ or their
13 respective counsel’s ability to communicate with Class Members for purposes of informing them
14 about this Settlement and its procedures.

15 **12.4. Integrated Agreement.** Upon execution by the Parties, this Agreement together with
16 its attached exhibits shall constitute the entire agreement between the Parties relating to the
17 Settlement, superseding any and all oral representations, warranties, covenants, or inducements
18 made to or by any Party.

19 **12.5. Cooperation.** The Parties and their counsel will cooperate with each other and use
20 their best efforts, in good faith, to implement the Settlement. In the event the Parties are unable to
21 agree upon the form or content of any document necessary to implement the Settlement, or on any
22 modification of the Agreement that may become necessary to implement the Settlement, the Parties
23 will seek the assistance of Scott Radovich and/or the Court for possible resolution. Nothing in this
24 section shall be construed as obligating the Parties to consent to any material change in the
25 Agreement, whether or not such material change is caused or requested by the Court or the reviewing
26 Court.

27 **12.6. No Prior Assignments.** The Parties separately represent and warrant that they have
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1 not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
2 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action,
3 or right released and discharged by the Party in this Settlement.

4 **12.7. No Tax Advice.** Plaintiff, Class Counsel, Defendant, and Defense Counsel are not
5 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied
6 upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part
7 10, as amended) or otherwise.

8 **12.8. Modification of Agreement.** This Agreement, and all parts of it, may be amended,
9 modified, changed, or waived only by an express written instrument signed by all Parties, and
10 approved by the Court.

11 **12.9. Agreement Binding on Successors.** This Agreement will be binding upon, and inure
12 to the benefit of, the successors of each of the Parties.

13 **12.10. Applicable Law.** All terms and conditions of this Agreement and its exhibits will be
14 governed by and interpreted according to the internal laws of the state of California, without regard
15 to conflict of law principles.

16 **12.11. Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation
17 of this Agreement. This Agreement will not be construed against any Party on the basis that the
18 Party was the drafter or participated in the drafting.

19 **12.12. Confidentiality.** To the extent permitted by law, all agreements made, and orders
20 entered during Action and in this Agreement relating to the confidentiality of information shall
21 survive the execution of this Agreement.

22 **12.13. Use and Return of Class Data.** Information provided to Class Counsel pursuant to
23 California Evid. Code §1152, and all copies and summaries of the Class Data provided to Class
24 Counsel by Defendant in connection with the mediation, other settlement negotiations, or in
25 connection with the Settlement, may be used only with respect to this Settlement, and no other
26 purpose, and may not be used in any way that violates any existing contractual agreement, statute,
27 or rule of court. Not later than 90 days after the Effective Date, Plaintiff shall destroy all paper and
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1 electronic versions of Class Data received from Defendant unless, prior to the Effective Date,
2 Defendant makes a written request to Class Counsel for the return, rather than the destruction, of
3 Class Data.

4 **12.14.** Headings. The descriptive heading of any section or section of this Agreement is
5 inserted for convenience of reference only.

6 **12.15.** Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement
7 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
8 weekend or legal holiday, such date or deadline shall be on the first business day thereafter.

9 **12.16.** Notice. All written notices, demands or other communications between the Parties in
10 connection with this Agreement shall be addressed as follows:

11 To Plaintiff:
12 Roman Otkupman
13 Nidah Farishta
14 **OTKUPMAN LAW FIRM, A LAW CORPORATION**
15 5743 Corsa Ave, Suite 123
16 Westlake Village, CA 91362
17 Emails: Roman@OLFLA.com; Nidah@OLFLA.com

18 To Defendant:
19 Ian B. Wieland, Esq.
20 Paul M. Parvanian, Esq.
21 Sagaser Watkins & Wieland PC
22 5260 N Palm Ave, Ste. 400
23 Fresno, CA 93704
24 Email: ian@sw2law.com; paulp@sw2law.com

25 **12.17.** Execution in Counterparts. This Agreement may be executed in one or more
26 counterparts by facsimile, electronically (i.e. DocuSign), or email, which for purposes of this
27 Agreement shall be accepted as an original. All executed counterparts and each of them will be
28 deemed to be one and the same instrument if counsel for the Parties will exchange between
themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove
the existence and contents of this Agreement.

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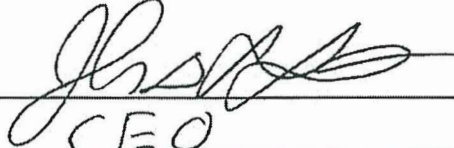
ROBERT ZIEGLER



By: _____

Dated: August 26, 2024

MARIHART RESTAURANT GROUP,
INC.

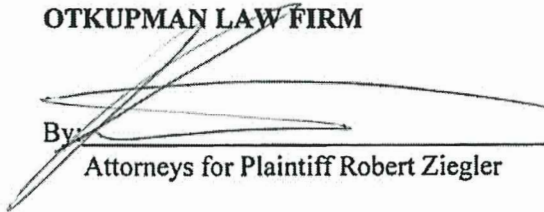

CEO

Its: _____

September
Dated: August 10, 2024

Approved as to Form

OTKUPMAN LAW FIRM


By: _____

Attorneys for Plaintiff Robert Ziegler

September
Dated: August 11, 2024

SAGASER, WATKINS & WIELAND PC


By: _____

Ian B. Wieland
Paul M. Parvanian
Attorneys for Defendant Marihart
Restaurant Group, Inc.