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19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 20 **IN AND FOR THE COUNTY OF CONTRA COSTA**

21 JOSE RAMON DE LA CRUZ, an individual,
 22 on behalf of himself, and on behalf of all
 23 persons similarly situated,

24 Plaintiff,

25 v.

26 GALPAO GAUCHO TWO, LLC, a Texas
 27 limited liability company; GALPAO
 28 GAUCHO THREE, LLC, a California limited
 liability company; GALPAO GAUCHO FOUR
 LLC, a California limited liability company;
 GALPAO GAUCHO FIVE LLC, a California
 limited liability company; GALPAO
 GAUCHO EIGHT LLC, a California limited
 liability company; GALPAO GAUCHO NINE
 LLC, a California limited liability company;
 and DOES 1-50, Inclusive,

Defendants.

Case No. C23-01770

[Complaint Filed: July 20, 2023]

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

Judge: Hon. Charles S. Treat
 Dept. 12

1 This Stipulation of Settlement of Class Action and PAGA Claims and Release of Claims is
2 entered into by and between Plaintiff Jose Ramon De La Cruz (hereinafter collectively “Plaintiff”),
3 an individual, on behalf of himself, and on behalf of all persons similarly situated, and in his
4 representative capacity on behalf of the State of California and the Aggrieved Employees, and
5 Defendants Galpao Gaucho Two, LLC, Galpao Gaucho Three, LLC, Galpao Gaucho Four LLC,
6 Galpao Gaucho Five LLC, Galpao Gaucho Eight LLC, and Galpao Gaucho Nine LLC (hereinafter
7 “Defendants”):

8 **I. DEFINITIONS**

- 9 A. “Action” shall mean the putative class action lawsuit designated *De La Cruz v.*
10 *Galpao Gaucho Two LLC, et. al.*, Contra Costa County Superior Court, Case No.
11 C23-01770, filed July 20, 2023.
- 12 B. “Aggrieved Employees” shall mean all non-exempt employees who are or previously
13 were employed by any of the Defendants in California at any time during the PAGA
14 Period.
- 15 C. “Aggrieved Employee Payment” shall mean the Aggrieved Employees’ pro-rata share
16 of the 35% portion of the PAGA Payment (\$10,500) allocated and distributed to the
17 Aggrieved Employees.
- 18 D. “Agreement” or “Settlement Agreement” means this Stipulation of Settlement of
19 Class and PAGA Action Claims and Release of Claims.
- 20 E. “Class Counsel” shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC and
21 Shani Zakay of Zakay Law Group, APLC.
- 22 F. “Class Counsel Award” means the award of fees and expenses that the Court
23 authorizes to be paid to Class Counsel for the services they have rendered to Plaintiff
24 and the Class in the Action, consisting of attorneys’ fees currently not to exceed one-
25 third of the Gross Settlement Amount currently estimated to be \$241,666.67 out of
26 \$725,000.00, plus costs and expenses in the amount up to \$30,000.00. Class
27 Counsel’s award for attorneys’ fees will be divided equally between Class Counsel
28 (50% to JCL Law Firm, APC; and 50% to Zakay Law Group, APLC).

- 1 G. “Class Data” means information regarding Class Members that Defendants will in
2 good faith compile from their records and provide to the Settlement Administrator. It
3 shall be formatted as a Microsoft Excel spreadsheet and shall include: each Class
4 Member’s full name; last known address; Social Security Number; start dates and end
5 dates of employment; and any other information the Settlement Administrator deems
6 necessary to accurately calculate the number of Workweeks and Pay Period worked
7 by each Class Member and Aggrieved Employee during the Class and PAGA Periods.
- 8 H. “Class Members” or the “Class” means all persons who are or previously were
9 employed by Defendants in California and classified as non-exempt employees
10 during the Class Period.
- 11 I. “Class Period” means the period from July 20, 2019 to July 1, 2024.
- 12 J. “Class Representative” shall mean plaintiff Jose Ramon De La Cruz.
- 13 K. “Class Representative Service Award” means the amount of up to and not to exceed
14 Ten Thousand Dollars and Zero Cents (\$10,000.00) that the Court authorizes to be
15 paid to the Class Representative, in addition to his Individual Class Payment and his
16 Aggrieved Employee Payment, in recognition of his efforts and risks in assisting with
17 the prosecution of the Action.
- 18 L. “Court” means the Superior Court for the State of California, County of Contra Costa
19 currently presiding over the Action.
- 20 M. “Defendants” shall mean Defendants Galpao Gaucho Two, LLC, Galpao Gaucho
21 Three, LLC, Galpao Gaucho Four LLC, Galpao Gaucho Five LLC, Galpao Gaucho
22 Eight LLC, and Galpao Gaucho Nine LLC.
- 23 N. “Effective Date” means the earliest date, following entry by the Court of an order and
24 judgment finally approving this Settlement, upon which one of the following have
25 occurred: (i) if no objection is filed to the settlement and no objector appears at the
26 hearing on final approval, the date of the Court’s entry of the order granting final
27 approval, (ii) if an objection is filed to the settlement and/or an objector appears at the
28 hearing on final approval, then the earlier of the following: (a) the expiration of all

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potential appeal periods without a filing of a notice of appeal of the final approval order or judgment; (b) final affirmance of the final approval order and judgment by an appellate court as a result of any appeal(s), or (c) final dismissal or denial of all such appeals (including any petition for review, rehearing, certiorari, etc.) such that the final approval order and judgment is no longer subject to further judicial review.

O. “Funding Date” shall mean sixty (60) days after the Effective Date and is the date Defendants transfer the Gross Settlement Amount into the QSF in accordance with the terms of this Agreement.

P. “Gross Settlement Amount” means Seven Hundred Twenty-Five Thousand Dollars and Zero Cents (\$725,000.00) that Defendants must pay into the QSF in connection with this Settlement, inclusive of the sum of the Individual Class Payments, the Class Representative Service Award, the Class Counsel Award, PAGA Payment and the Settlement Administration Expenses and *exclusive* of the employer’s share of payroll tax, if any, triggered by any payment under this Settlement.

Q. “Individual Class Payment” means the amount payable from the Net Settlement Amount to each Settlement Class Member and excludes any amounts distributed to Aggrieved Employees pursuant to PAGA.

R. “LWDA Payment” shall mean the sixty-five percent (65%) of the PAGA Payment (\$19,500) allocated to the California Labor and Workforce Development Agency.

S. “Net Settlement Amount” or “NSA” means the Gross Settlement Amount, less Class Counsel Award, Class Representative Service Award, PAGA Payment, and Settlement Administration Expenses.

T. “Notice Packet” means the Class Notice to be provided to the Class Members by the Settlement Administrator in the form set forth as **Exhibit A** to this Agreement (other than formatting changes to facilitate printing by the Settlement Administrator).

U. “PAGA” means the California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698 *et seq.*

- 1 V. "PAGA Payment" shall mean Thirty Thousand Dollars and Zero Cents (\$30,000.00)
2 to be allocated from the Gross Settlement Amount in settlement of the Released
3 PAGA Claims. Sixty-Five percent (65%) of the PAGA Payment shall be allocated to
4 the LWDA and the remaining thirty-five percent (35%) shall be allocated and
5 distributed to the Aggrieved Employees.
- 6 W. "PAGA Payment Ratio" means the respective pay periods during the PAGA Period
7 for each Aggrieved Employee divided by the sum-total of the pay periods for all
8 Aggrieved Employees during the PAGA Period.
- 9 X. "PAGA Pay Periods," for purposes of calculating the distribution of the Aggrieved
10 Employee Payment, as defined herein, means the number of pay periods of
11 employment during the PAGA Period that each Aggrieved Employee worked in
12 California.
- 13 Y. "PAGA Period" means the period beginning July 1, 2023 to July 1, 2024.
- 14 Z. "Parties" means Plaintiff and Defendants, collectively, and "Party" shall mean either
15 Plaintiff or Defendants, individually.
- 16 AA. "Payment Ratio" means the respective Workweeks for each Class Member divided
17 by the sum-total Workweeks for all Class Members.
- 18 BB. "Plaintiff" shall mean Jose Ramon De La Cruz.
- 19 CC. "QSF" means the Qualified Settlement Fund established, designated, and maintained
20 by the Settlement Administrator to fund the Gross Settlement Amount.
- 21 DD. "Released Class Claims" means all class claims alleged, or reasonably could have
22 been alleged based on the facts alleged, in the operative complaint in the *Jose Ramon*
23 *De La Cruz v. Galpão Gaucho Two, LLC et al.* Action which occurred during the
24 Class Period, and expressly excluding all other claims, including claims for vested
25 benefits, wrongful termination, unemployment insurance, disability, social security,
26 workers' compensation, and class claims outside of the Class Period.
- 27 EE. "Released PAGA Claims" means all PAGA claims alleged in the operative complaint
28 in the Action matter and Plaintiff's PAGA notice to the LWDA which occurred during

1 the PAGA Period, and expressly excluding all other claims, including claims for
2 vested benefits, wrongful termination, unemployment insurance, disability, social
3 security, workers' compensation, and PAGA claims outside of the PAGA Period.

4 FF. "Released Party" shall mean Defendants and any of their past, present and future
5 direct or indirect parents, subsidiaries, predecessors, successors, affiliates, and all
6 entities that could be held to be joint employers, as well as each of its or their past,
7 present and future officers, directors, employees, partners, members, shareholders and
8 agents, attorneys, insurers, reinsurers, and any individual or entity which could be
9 jointly liable with Defendants.

10 GG. "Response Deadline" means the date forty-five (45) days after the Settlement
11 Administrator mails Notice Packets to Class Members and the last date on which
12 Class Members may submit requests for exclusion or objections to the Settlement.

13 HH. "Settlement" means the disposition of the Action pursuant to this Agreement.

14 II. "Settlement Administrator" means Apex Class Action LLC, 18 Technology Drive,
15 Suite 164 Irvine, CA 92618. The Settlement Administrator establishes, designates
16 and maintains, as a QSF under Internal Revenue Code section 468B and Treasury
17 Regulation section 1.468B-1, into which the amount of the Gross Settlement Amount
18 is deposited for the purpose of resolving the claims of Settlement Class Members.
19 The Settlement Administrator shall maintain the funds until distribution in an
20 account(s) segregated from the assets of Defendants and any person related to
21 Defendants. ***All accrued interest shall be paid and distributed to the Settlement Class***
22 ***Members as part of their respective Individual Class Payment.***

23 JJ. "Settlement Administration Expenses" shall mean the amount to be paid for the costs
24 of administration of the Settlement from the Gross Settlement Amount in an amount
25 not to exceed \$14,000.00.

26 KK. "Settlement Class Members" or "Settlement Class" means all Class Members who
27 have not submitted a timely and valid request for exclusion as provided in this
28 Agreement.

1 LL. “Workweeks”, for purposes of calculating the distribution of the Net Settlement
2 Amount, means the number of weeks of employment during the Class Period that
3 each Class Member was employed by Defendants in California.

4 **II. RECITALS**

5 A. On July 1, 2024, Plaintiff filed a Notice of Violations with the Labor and Workforce
6 Development Agency (LWDA) and served the same on Defendants.

7 B. On July 13, 2023, Plaintiff filed a Class Action complaint in the Superior Court for
8 the State of California, County of Contra Costa Case No. C23-01770, alleging causes
9 of action for:

- 10 1. Unfair Competition in Violation of Cal. Bus. & Prof. Code §17200 et seq.;
- 11 2. Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197
12 & 1197.1;
- 13 3. Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510, et seq;
- 14 4. Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§
15 226.7 & 512 and the applicable IWC Wage Order;
- 16 5. Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§
17 226.7 & 512 and the applicable IWC Wage Order;
- 18 6. Failure to Provide Accurate Itemized Statements in Violation of Cal. Lab.
19 Code § 226;
- 20 7. Failure To Provide Wages When Due in Violation of Cal. Lab. Code §§ 201,
21 202 and 203;
- 22 8. Failure To Reimburse Employees For Required Expenses in Violation of Cal.
23 Lab. Code § 2802; and
- 24 9. Failure to Provide Gratuities in Violation of Cal. Lab. Code § 351.

25 C. On August 23, 2024, the Parties stipulated to the filing of a First Amended Complaint
26 to add an additional cause of action for violations of PAGA.

27 D. The Class Representative believes he has meritorious claims based on alleged
28 violations of the California Labor Code, and the Industrial Wage Commission Orders,

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and that class certification is appropriate because the prerequisites for class certification can be satisfied in the Action, and this action is manageable as a PAGA representative action.

E. Defendants deny any liability or wrongdoing of any kind associated with the claims alleged in the Action, dispute any wages, damages and penalties claimed by the Class Representative are owed, and further contend that, for any purpose other than settlement, the Action is not appropriate for class or representative action treatment. Defendants contend, among other things, that at all times they complied with the California Labor Code and the Industrial Wage Commission Orders.

F. Class Counsel represent the Class Representative. Class Counsel conducted a thorough investigation into the facts relevant to the Action, including conducting an independent investigation as to the allegations, reviewing documents and information exchanged through informal discovery, and reviewing documents and information provided by Defendants pursuant to informal requests for information to prepare for mediation. Defendants produced for the purpose of settlement negotiations certain employment data concerning the Settlement Class, which Class Counsel reviewed and analyzed. Based on their own independent investigation and evaluation, Class Counsel are of the opinion that the Settlement with Defendants is fair, reasonable and adequate, and is in the best interest of the Settlement Class in light of all known facts and circumstances, including the risks of significant delay, defenses asserted by Defendants, uncertainties regarding class certification, and numerous potential appellate issues. Although it denies any liability, Defendants agree to this Settlement solely to avoid the inconveniences and cost of further litigation. The Parties and their counsel have agreed to settle the claims on the terms set forth in this Agreement.

G. On July 1, 2024, the Parties participated in mediation presided over by Tripper Ortman, Esq., a mediator of wage and hour class and PAGA actions. The mediation concluded with a settlement after both sides agreed to a Mediator’s proposal which

1 was subsequently memorialized in the form of a Memorandum of Understanding
2 (“MOU”).

3 H. This Agreement replaces and supersedes any other agreements, understandings, or
4 representations between the Parties. This Agreement represents a compromise and
5 settlement of highly disputed claims. Nothing in this Agreement is intended or will
6 be construed as an admission by Defendants that the claims in the Action of Plaintiff
7 or the Class Members have merit or that Defendants bear any liability to Plaintiff or
8 the Class on those claims or any other claims, or as an admission by Plaintiff that
9 Defendants’ defenses in the Action have merit.

10 I. The Parties believe that the Settlement is fair, reasonable and adequate. The
11 Settlement was arrived at through arm’s-length negotiations, considering all relevant
12 factors. The Parties recognize the uncertainty, risk, expense and delay attendant to
13 continuing the Action through trial and any appeal. Accordingly, the Parties desire to
14 fully, finally, and forever settle, compromise and discharge all disputes and claims
15 arising from or relating to the Action.

16 J. The Parties agree to certification of the Class for purposes of this Settlement only. If
17 for any reason the settlement does not become effective, Defendants reserve the right
18 to contest certification of any class for any reason and reserves all available defenses
19 to the claims in the Action.

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

21 **III. TERMS OF AGREEMENT**

22 A. Settlement Consideration and Settlement Payments by Defendants.

23 1. Settlement Consideration. In full and complete settlement of the Action, and
24 in exchange for the releases set forth below, Defendants will pay the sum of
25 the Individual Class Payment, the Class Representative Service Award, the
26 Class Counsel Award, PAGA Payment, and the Settlement Administration
27 Expenses, as specified in this Agreement, equal to the Gross Settlement
28 Amount of Seven Hundred Twenty-Five Thousand Dollars and Zero Cents

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(\$725,000.00). The Parties agree that this is a non-reversionary Settlement and that no portion of the Gross Settlement Amount shall revert to Defendants. Other than the Defendants' share of employer payroll taxes and as provided for in Section III(A)(2) below, if any, Defendants shall not be required to pay more than the Gross Settlement Amount, except as provided hereinbelow.

2. Class Size. At the time of mediation, Defendants estimated that the Settlement Class was comprised of 1,350 Class Members who collectively worked approximately 25,500 Workweeks ("Projected Workweeks") during the Class Period. Should the number of workweeks increase by more than 10% of what was represented at the mediation during the Class Period, the Gross Settlement Amount will increase proportionally for the number of workweeks over 110% of 25,500, for example, if the total workweeks in the Class Period are 125% of 25,500, the Gross Settlement Amount shall increase by 15%. In regard hereto, Defendants will provide a declaration under penalty of perjury at least two (2) weeks before the deadline for filing the motion for preliminary approval of the settlement, confirming the number of applicable Class Members and workweeks they worked during the applicable Class Period.

3. Settlement Payment. Defendants and the Released Parties, and each of them, are jointly and severally liable for payment of the Gross Settlement Amount. Defendants shall pay the Gross Settlement Amount to the Settlement Administrator on the Funding Date.

4. Defendants' Share of Payroll Taxes. Defendants' share of employer side payroll taxes is separate and in addition to the Gross Settlement Amount and shall be paid together with the Gross Settlement Amount.

B. Release by Settlement Class Members. As of the Funding Date, in exchange for the consideration set forth in this Agreement, Plaintiff and the Settlement Class Members release the Released Parties from the Released Class Claims for the Class Period.

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C. Release by the Plaintiff and State of California. As of the Funding Date, in exchange for the consideration set forth in this Agreement, the Plaintiff, the Aggrieved Employees, the LWDA, and the State of California release the Released Parties from the Released PAGA Claims for the PAGA Period. As a result of this release, the Aggrieved Employees shall be precluded from bringing claims against Released Parties for the Released PAGA Claims.

D. General Release by Plaintiff. Upon funding of the Gross Settlement Amount, Plaintiff waives, releases, acquits and forever discharges the Defendant and Released Parties from any and all claims, whether known or unknown, which exist or may exist on his behalf as of the date of this Agreement, including but not limited to any and all tort claims, contract claims, wage claims, wrongful termination claims, disability claims, benefit claims, public policy claims, retaliation claims, statutory claims, personal injury claims, emotional distress claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit claims, and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance, including, but not limited to claims for violation of the Fair Labor Standards Act, the California Labor Code, the Wage Orders of California’s Industrial Welfare Commission, other state wage and hour laws, the Americans with Disabilities Act, the Age Discrimination in Employment Act (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, the California Family Rights Act, the Family Medical Leave Act, California’s Whistleblower Protection Act, California Business & Professions Code Section 17200 et seq., and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance. Plaintiff also waives and relinquishes any and all claims, rights or benefits that he may have under California Civil Code § 1542, which provides as follows:

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

7
8 Thus, notwithstanding the provisions of section 1542, and to implement a full and
9 complete release and discharge of the Released Parties, Plaintiff expressly
10 acknowledges this Settlement Agreement is intended to include in its effect, without
11 limitation, all claims Plaintiff does not know or suspect to exist in Plaintiff's favor at
12 the time of signing this Agreement, and that this Agreement contemplates the
13 extinguishment of any such claims. Plaintiff warrants that Plaintiff has read this
14 Agreement, including this waiver of California Civil Code section 1542, and that
15 Plaintiff has consulted with or had the opportunity to consult with counsel of Plaintiff's
16 choosing about this Agreement and specifically about the waiver of section 1542, and
17 that Plaintiff understands this Agreement and the section 1542 waiver, and so Plaintiff
18 freely and knowingly enters into this Agreement. Plaintiff further acknowledges that
19 Plaintiff later may discover facts different from or in addition to those Plaintiff now
20 knows or believes to be true regarding the matters released or described in this
21 Agreement, and even so Plaintiff agrees that the releases and agreements contained in
22 this Agreement shall remain effective in all respects notwithstanding any later
23 discovery of any different or additional facts. Plaintiff expressly assumes any and all
24 risk of any mistake in connection with the true facts involved in the matters, disputes,
25 or controversies released or described in this Agreement or with regard to any facts now
26 unknown to Plaintiff relating thereto.

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

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1. The Court enters an order granting preliminary approval of the Settlement;
2. The Court enters an order granting final approval of the Settlement and a Final Judgment;
3. If an objector appears at the final approval hearing, the time for appeal of the Final Judgment and Order Granting Final Approval of Class Action Settlement expires; or, if an appeal is timely filed, there is a final resolution of any appeal from the Judgment and Order Granting Final Approval of Class Action Settlement; and
4. Defendants fully fund the Gross Settlement Amount.

F. Nullification of Settlement Agreement. In the event that this Settlement Agreement is not preliminarily or finally approved by the Court, fails to become effective, or is reversed, withdrawn or modified by the Court, or in any way prevents or prohibits Defendants from obtaining a complete resolution of the Released Class Claims, or if Defendants fail to fully fund the Gross Settlement Amount:

1. This Settlement Agreement shall be void *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural;
2. The conditional class certification (obtained for any purpose) shall be void *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; and
3. None of the Parties to this Settlement will be deemed to have waived any claims, objections, defenses or arguments in the Action, including with respect to the issue of class certification.
4. If Defendants fail to fully fund the Gross Settlement Amount, Defendants shall bear the sole responsibility for any cost to issue or reissue any curative

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notice to the Settlement Class Members and all Settlement Administration Expenses incurred to the date of nullification.

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

H. Tax Liability. The Parties make no representations as to the tax treatment or legal effect of the payments called for, and Class Members and/or Aggrieved Employees are not relying on any statement or representation by the Parties in this regard. Class Members and/or Aggrieved Employees understand and agree that they will be responsible for the payment of any taxes and penalties assessed on the Individual Class Payments and/or Aggrieved Employee Payment described and will be solely responsible for any penalties or other obligations resulting from their personal tax reporting of Individual Class Payments and/or Aggrieved Employee Payment.

I. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section, the “acknowledging party” and each Party to this Agreement other than the acknowledging party, an “other party”) acknowledges and agrees that: (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department circular 230 (31 CFR part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon

1 the recommendation of any other Party or any attorney or advisor to any other Party,
2 and (c) is not entitled to rely upon any communication or disclosure by any attorney
3 or adviser to any other party to avoid any tax penalty that may be imposed on the
4 acknowledging party, and (3) no attorney or adviser to any other Party has imposed
5 any limitation that protects the confidentiality of any such attorney's or adviser's tax
6 strategies (regardless of whether such limitation is legally binding) upon disclosure by
7 the acknowledging party of the tax treatment or tax structure of any transaction,
8 including any transaction contemplated by this Agreement.

9 J. Preliminary Approval Motion. Plaintiff shall draft and file with the Court a Motion for
10 Order Granting Preliminary Approval and supporting papers within a reasonable
11 period of time after complete execution of this agreement and will provide Defendants
12 with a draft of the Motion at least three (3) business days prior to the filing of the
13 Motion to give Defendants an opportunity to propose changes or additions to the
14 Motion.

15 K. Settlement Administrator. The Settlement Administrator shall be responsible for:
16 establishing and administering the QSF; calculating, processing and mailing payments
17 to the Class Representative, Class Counsel, LWDA and Class Members; printing and
18 mailing the Notice Packets to the Class Members as directed by the Court; receiving
19 and reporting the objections and requests for exclusion; calculating, deducting and
20 remitting all legally required taxes from Individual Class Payments and distributing
21 tax forms for the Wage Portion and Non-Wage Portion of the Individual Class
22 Payments and/or Aggrieved Employee Payment; processing and mailing tax payments
23 to the appropriate state and federal taxing authorities; providing declaration(s) as
24 necessary in support of preliminary and/or final approval of this Settlement; and other
25 tasks as the Parties mutually agree or the Court orders the Settlement Administrator to
26 perform. The Settlement Administrator shall keep the Parties timely apprised of the
27 performance of all Settlement Administrator responsibilities by among other things,
28 sending a weekly status report to the Parties' counsel stating the date of the mailing,

1 the of number of Elections Not to Participate in Settlement it receives (including the
2 numbers of valid and deficient), and number of objections received.

3 L. Notice Procedure.

4 1. Class Data. No later than fifteen (15) calendar days after the Preliminary
5 Approval Date, Defendants shall provide the Settlement Administrator with
6 the Class Data for purposes of preparing and mailing Notice Packets to the
7 Class Members.

8 2. Notice Packets.

9 a) The Notice Packet shall contain the Notice of Class Action Settlement
10 in a form substantially similar to the form attached as **Exhibit A** and
11 will include Spanish translation. The Notice of Class Action
12 Settlement shall inform Class Members and Aggrieved Employees
13 that they need not do anything in order to receive an Individual Class
14 Payment and/or Aggrieved Employee Payment and to keep the
15 Settlement Administrator apprised of their current mailing address, to
16 which the Individual Class Payments and/or Aggrieved Employee
17 Payment will be mailed following the Funding Date. The Notice of
18 Class Action Settlement shall set forth the release to be given by all
19 members of the Class who do not request to be excluded from the
20 Settlement Class and/or Aggrieved Employees' in exchange for an
21 Individual Class Payment and/or Aggrieved Employee Payment, the
22 number of Workweeks worked by each Class Member during the
23 Class Period and PAGA Period, if any, and the estimated amount of
24 their Individual Class Payment if they do not request to be excluded
25 from the Settlement and each Aggrieved Employee's share of the
26 PAGA Payment, if any. The Settlement Administrator shall use the
27 Class Data to determine Class Members' Workweeks and PAGA Pay
28 Periods. The Notice will also advise the Aggrieved Employees that

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they will release the Released PAGA Claims and will receive their share of the PAGA Payment regardless of whether they request to be excluded from the Settlement.

b) The Notice Packet’s mailing envelope shall include the following language: “IMPORTANT LEGAL DOCUMENT- YOU MAY BE ENTITLED TO PARTICIPATE IN A CLASS ACTION SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED NOTICE.”

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

4. Undeliverable Notices. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to any forwarding address provided. The Settlement Administrator will re-mail Notices within five (5) days of receiving a returned Notice. If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine a correct address by lawful use of skip-tracing, or other search using the name, address and/or Social Security number of the Class Member involved, and shall then perform a re-mailing, if another mailing address is identified by the Settlement Administrator. In addition, if any

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Notice Packets, which are addressed to Class Members who are currently employed by Defendants, are returned to the Settlement Administrator as non-delivered and no forwarding address is provided, the Settlement Administrator shall notify Defendants. Defendants will request that the currently employed Class Member provide a corrected address and transmit to the Administrator any corrected address provided by the Class Member. Class Members who received a re-mailed Notice Packet shall have their Response Deadline extended fifteen (15) days from the original Response Deadline.

5. Disputes Regarding Individual Class Payments. Class Members will have the opportunity, should they disagree with Defendants’ records regarding the start and end dates of employment, to provide documentation and/or an explanation to show contrary dates. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Class Payments under the terms of this Agreement. The Settlement Administrator’s determination of the eligibility for and amount of any Individual Class Payment shall be binding upon the Class Member and the Parties, except as provided herein below in Section III(K)(6).

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

7. Exclusions. The Notice of Class Action Settlement contained in the Notice Packet shall state that Class Members who wish to exclude themselves from the Settlement must submit a signed copy of the Request for Exclusion form that will be mailed together with the Notice Packet to all Class Members. The

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Request for Exclusion will not be valid if it is not timely submitted, if the Class Member does not sign it, or if it does not contain the name and address and last four digits of the Social Security number of the Class Member. The date of the postmark on the mailing envelope or fax stamp on the Request for Exclusion shall be the exclusive means used to determine whether the request for exclusion was timely submitted. Any Class Member who submits a timely Request for Exclusion shall be excluded from the Settlement Class will not be entitled to an Individual Class Payment and will not be otherwise bound by the terms of the Settlement or have any right to object, appeal or comment thereon. However, any Class Member that submits a timely Request for Exclusion that is also a member of the Aggrieved Employees will still receive his/her pro rata share of the PAGA Payment, as specified below, and in consideration, will be bound by the Release by the Aggrieved Employees as set forth herein. Settlement Class Members who fail to submit a valid and timely Request for Exclusion on or before the Response Deadline shall be bound by all terms of the Settlement and any final judgment entered in this Action if the Court approves the Settlement. No later than fifteen (15) calendar days after the Response Deadline, the Settlement Administrator shall provide counsel for the Parties with a final list of the Class Members who have timely submitted timely Requests for Exclusion. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage members of the Class to submit Requests for Exclusion from the Settlement. Defendants maintain the right, in their sole discretion, to revoke the settlement and their stipulation to class certification prior to the final fairness hearing in the event that five percent (5%) or more of Class Members opt out of the settlement.

8. Objections. The Notice of Class Action Settlement contained in the Notice Packet shall state that Class Members who wish to object to the Settlement may submit to the Settlement Administrator a written statement of objection

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

18 M. Funding and Allocation of the Gross Settlement Amount. Defendants are required to
19 pay the Gross Settlement Amount on or before the Funding Date, plus any employer's
20 share of payroll taxes as mandated by law within the time specified herein.

21 1. Individual Class Payments. Individual Class Payments shall be paid from the
22 Net Settlement Amount and shall be paid pursuant to the formula set forth
23 herein. Using the Class Data, the Settlement Administrator shall add up the
24 total number of Workweeks for all Class Members. The respective
25 Workweeks for each Class Member will be divided by the total Workweeks
26 for all Class Members, resulting in the Payment Ratio for each Class Member.
27 Each Class Member's Payment Ratio will then be multiplied by the Net
28 Settlement Amount to calculate each Class Member's estimated Individual

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Class Payments. Each Individual Class Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). Individual Class Payments for Class Members who submit valid and timely requests for exclusion will be redistributed to Settlement Class Members who do not submit valid and timely requests for exclusion on a pro rata basis based on their respective Payment Ratios.

2. Calculation of Individual Payments to the Aggrieved Employees. Using the Class Data, the Settlement Administrator shall add up the total number of PAGA pay periods for all Aggrieved Employees during the PAGA Period. The respective PAGA Pay Periods for each Aggrieved Employee will be divided by the total PAGA Pay Periods for all Aggrieved Employees, resulting in the “PAGA Payment Ratio” for each Aggrieved Employee. Each Aggrieved Employee’s PAGA Payment Ratio will then be multiplied by the Aggrieved Employee Payment to calculate each Aggrieved Employee’s estimated share of the PAGA Payment.

3. Allocation of Individual Class Payments. For tax purposes, Individual Class Payments shall be allocated and treated as follows: 20% as wages (“Wage Portion”); 80% as penalties and interest (“Non-Wage Portion”). The Wage Portion is subject to wage withholdings and shall be reported on IRS Form W-2. The Non-Wage Portion shall not be subject to wage withholdings and shall be reported on IRS Form 1099.

4. Allocation of Aggrieved Employee Payments. For tax purposes, Aggrieved Employee Payments shall be allocated and treated as 100% penalties and shall be reported on IRS Form 1099.

5. No Credit Toward Benefit Plans. The Individual Class Payments and Aggrieved Employee Payment made to Settlement Class Members and/or Aggrieved Employees under this Settlement Agreement, as well as any other payments made pursuant to this Settlement Agreement, will not be utilized to

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calculate any additional benefits under any benefit plans to which any Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Class Members may be entitled under any benefit plans.

6. All monies received by Settlement Class Members under the Settlement which are attributable to wages shall constitute income to such Settlement Class Members solely in the year in which such monies actually are received by the Settlement Class Members. It is the intent of the Parties that Individual Class Payments and Aggrieved Employee Payment provided for in this Settlement Agreement are the sole payments to be made by Defendants to Settlement Class Members and/or Aggrieved Employees in connection with this Settlement Agreement, with the exception of Plaintiff, and that the Settlement Class Members and/or Aggrieved Employees are not entitled to any new or additional compensation or benefits as a result of having received the Individual Class Payments and/or their shares of the PAGA Payment.

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

8. Expiration. Any checks issued to Settlement Class Members and Aggrieved Employees shall remain valid and negotiable for one hundred and eighty (180) days from the date of their issuance. If a Settlement Class Member and/or Aggrieved Employee does not cash his or her settlement check within ninety (90) days, the Settlement Administrator will send a letter to such persons, advising that the check will expire after the one hundred eightieth (180th) day, and invite that Settlement Class Member and/or Aggrieved Employee to

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request reissuance in the event the check was destroyed, lost or misplaced. In the event an Individual Class Payment and/or Aggrieved Employee’s Aggrieved Employee Payment check has not been cashed within one hundred and eighty (180) days, the check will be voided and the Settlement Class Member and/or Aggrieved Employee will remain bound by the Settlement. The funds from any such uncashed checks shall be transmitted to the California State Controller’s Office for Unclaimed Property in the name of each Class Member who failed to cash their Individual Class Payment. The Parties agreed that under this procedure, there is no residue as the entire Gross Settlement Amount will be distributed.

9. Class Representative Service Award. In addition to the Individual Class Payment and his Aggrieved Employee Payment to be paid to Plaintiff, Plaintiff will apply to the Court for an award of not more than \$10,000, as the Class Representative Service Award. Defendants will not oppose a Class Representative Service Award of not more than \$10,000 for Plaintiff. The Settlement Administrator shall pay the Class Representative Service Award, either in the amount stated herein if approved by the Court or some other amount as approved by the Court, to Plaintiff from the Gross Settlement Amount no later than fifteen (15) calendar days after the Funding Date. Any portion of the requested Class Representative Service Award that is not awarded to the Class Representative shall be part of the Net Settlement Amount and shall be distributed to Settlement Class Members as provided in this Agreement. The Settlement Administrator shall issue an IRS Form 1099 — MISC to Plaintiff for his Class Representative Service Award. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on his Class Representative Service Award and shall hold harmless the Released Parties from any claim or liability for taxes, penalties, or interest arising as a result of the Class Representative Service Award. The Class Representative

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Service Award shall be in addition to Plaintiff’s Individual Class Payment as a Settlement Class Member. Approval of this Settlement shall not be conditioned on Court approval of the requested amount of the Class Representative Service Award. If the Court reduces or does not approve the requested Class Representative Service Award, Plaintiff shall not have the right to revoke the Settlement, and it will remain binding.

10. Class Counsel Award. Defendants understand a motion by Class Counsel for attorneys’ fees not to exceed one-third of the Gross Settlement Amount currently estimated to be Two Hundred Forty-One Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$241,666.67) plus costs and expenses supported by declaration not to exceed Thirty Thousand Dollars and Zero Cents (\$30,000.00), from the Gross Settlement Amount will be filed. Defendants agree not to oppose the request for the Class Counsel Award. Any portion of the requested Class Counsel Award that is not awarded to Class Counsel shall be part of the Net Settlement Amount and shall be distributed to Settlement Class Members as provided in this Agreement. The Settlement Administrator shall allocate and pay the Class Counsel Award to Class Counsel from the Gross Settlement Amount no later than fifteen (15) calendar days after the Funding Date. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the payment made pursuant to this paragraph. The Settlement Administrator shall issue an IRS Form 1099 — MISC to Class Counsel for the payments made pursuant to this paragraph. In the event that the Court reduces or does not approve the requested Class Counsel Award, Plaintiff and Class Counsel shall not have the right to revoke the Settlement, or to appeal such order, and the Settlement will remain binding.

11. PAGA Payment. Thirty Thousand Dollars and Zero Cents (\$30,000.00) shall be allocated from the Gross Settlement Amount for settlement of claims for

1 civil penalties under the Private Attorneys General Act of 2004 (“PAGA
2 Payment”). The Settlement Administrator shall distribute the LWDA Payment
3 to the California Labor and Workforce Development Agency no later than
4 twenty-five (25) calendar days after the Funding Date. The Aggrieved
5 Employee Payment will be distributed to the Aggrieved Employees as
6 described in this Agreement. For purposes of distributing the Aggrieved
7 Employee Payments, each Aggrieved Employee shall receive their pro-rata
8 share of the Aggrieved Employee Payment using the PAGA Payment Ratio
9 as defined above.

10 12. Settlement Administration Expenses. The Settlement Administrator shall be
11 paid for the costs of administration of the Settlement from the Gross
12 Settlement Amount. The estimate of the Settlement Administration Expenses
13 is \$14,000. The Settlement Administrator shall be paid the Settlement
14 Administration Expenses no later than fifteen (15) calendar days after the
15 Funding Date.

16 N. Final Approval Motion. Class Counsel and Plaintiff shall use best efforts to file with
17 the Court a Motion for Order Granting Final Approval and Entering Judgment, within
18 twenty-eight (28) days following the expiration of the Response Deadline, which
19 motion shall request final approval of the Settlement and a determination of the
20 amounts payable for the Class Representative Service Award, the Class Counsel
21 Award, the PAGA Payment, and the Settlement Administration Expenses. Plaintiff
22 will provide Defendants with a draft of the Motion at least three (3) business days
23 prior to the filing of the Motion to give Defendants an opportunity to propose changes
24 or additions to the Motion.

25 1. Declaration by Settlement Administrator. No later than fifteen (15) days after
26 the Response Deadline, the Settlement Administrator shall submit a
27 declaration in support of Plaintiff’s motion for final approval of this
28 Settlement detailing the number of Notice Packets mailed and re-mailed to

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Class Members, the number of undeliverable Notice Packets, the number of timely requests for exclusion and the full names of the Class Members requesting exclusion (if any), the number of objections received, the amount of the average Individual Class Payment, lowest Individual Class Payment, and highest Individual Class Payment, the amount of the average Aggrieved Employee Payment, lowest Aggrieved Employee Payment, and highest Aggrieved Employee Payment, the Settlement Administration Expenses, and any other information as the Parties mutually agree or the Court orders the Settlement Administrator to provide.

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

N. Review of Motions for Preliminary and Final Approval. Class Counsel will provide an opportunity for Counsel for Defendants to review the Motions for Preliminary and Final Approval, including the Order Granting Final Approval of Class Action Settlement, and Judgment before filing with the Court. The Parties and their counsel will cooperate with each other and use their best efforts to affect the Court’s approval of the Motions for Preliminary and Final Approval of the Settlement, and entry of Judgment.

O. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts to implement the Settlement.

P. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval/Settlement Fairness Hearing to be conducted by the Court.

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

- 1 R. Entire Agreement. This Agreement and any attached Exhibit constitute the entire
2 Agreement among these Parties, and no oral or written representations, warranties or
3 inducements have been made to any Party concerning this Agreement or its Exhibit
4 other than the representations, warranties and covenants contained and memorialized
5 in this Agreement and its Exhibits.
- 6 S. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
7 represent they are expressly authorized by the Parties whom they represent to negotiate
8 this Agreement and to take all appropriate Action required or permitted to be taken by
9 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
10 documents required to effectuate the terms of this Agreement. The persons signing
11 this Agreement on behalf of Defendants represent and warrant that he/she is authorized
12 to sign this Agreement on behalf of Defendants. Plaintiff represents and warrants that
13 he is authorized to sign this Agreement and that he has not assigned any claim, or part
14 of a claim, covered by this Settlement to a third-party.
- 15 T. No Public Comment: The Parties and their counsel agree that they will not issue any
16 press releases, initiate any contact with the press, respond to any press inquiry, or have
17 any communication with the press about the fact, amount or terms of the Settlement
18 Agreement. Class Counsel further agrees not to use the Settlement Agreement or any
19 of its terms for any marketing or promotional purposes. Nothing herein will restrict
20 Class Counsel from including publicly available information regarding this settlement
21 in future judicial submissions regarding Class Counsel’s qualifications and experience.
22 Further, Class Counsel will not include, reference or use the Settlement Agreement for
23 any marketing or promotional purposes, either before or after the Motion for
24 Preliminary Approval is filed.
- 25 U. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure
26 to the benefit of, the successors or assigns of the Parties, as previously defined.
- 27 V. California Law Governs. All terms of this Agreement and the Exhibit and any disputes
28 shall be governed by and interpreted according to the laws of the State of California.

- 1 W. Counterparts. This Agreement may be executed in one or more counterparts. All
2 executed counterparts and each of them shall be deemed to be one and the same
3 instrument provided that counsel for the Parties to this Agreement shall exchange
4 among themselves copies or originals of the signed counterparts.
- 5 X. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement
6 is a fair, adequate and reasonable settlement of this Action and have arrived at this
7 Settlement after extensive arms-length negotiations, considering all relevant factors,
8 present and potential.
- 9 Y. Continuing Jurisdiction of the Court. The Parties agree that the Court shall retain
10 jurisdiction over this case under CCP section 664.6 to ensure the continuing
11 implementation of the provisions of this settlement and that the time within which to
12 bring this action to trial under CCP section 583.310 shall be executed from the date of
13 the signing of this Agreement by all Parties until the entry of the final approval order
14 and judgment or if not entered the date this Agreement shall no longer be of any force
15 or effect.
- 16 Z. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid,
17 the Court shall first attempt to construe the provisions valid to the fullest extent
18 possible consistent with applicable precedents so as to define all provisions of this
19 Agreement valid and enforceable.
- 20 AA. No Unalleged Claims. Plaintiff and Class Counsel represent that they do not currently
21 intend to pursue any claims against the Released Parties, including, but not limited to,
22 any and all claims relating to or arising from Plaintiff's employment with Defendants,
23 regardless of whether Class Counsel is currently aware of any facts or legal theories
24 upon which any claims or causes of action could be brought against Released Parties,
25 including those facts or legal theories alleged in the operative complaint in this Action.
26 The Parties further acknowledge, understand and agree that this representation is
27 essential to the Agreement and that this Agreement would not have been entered into
28 were it not for this representation.

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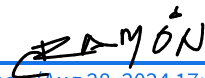
BB. Stipulation to Class Certification. The Parties agree to stipulate to class certification for purposes of this settlement only.

CC. No Admissions by the Parties. Plaintiff has claimed and continues to claim that the Released Claims have merit and give rise to liability on the part of Defendants. Defendants claim that the Released Claims have no merit and do not give rise to liability. This Agreement is a compromise of disputed claims. Nothing contained in this Agreement and no documents referred to and no action taken to carry out this Agreement may be construed or used as an admission by or against the Defendants or Plaintiff or Class Counsel as to the merits or lack thereof of the claims asserted. Other than as may be specifically set forth herein, each Party shall be responsible for and shall bear its/his own attorney's fees and costs.

DD. Attorneys' Fees. If Defendants fail to fund the Gross Settlement Amount in accordance with this Agreement, Plaintiff and the Settlement Class shall be entitled to reasonable attorneys' fees and costs incurred in any action seeking to enforce the terms of this Agreement.

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

DATED: 08/28/2024




Jose Ramon (Aug 28, 2024 17:45 PDT)

JOSE RAMON DE LA CRUZ

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

DATED: 9/5/2024

DocuSigned by:

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GALPAO GAUCHO TWO LLC

Laura Harker

Managing Member

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GALPAO GAUCHO THREE LLC

Laura Harker

Managing Member

DATED: 9/5/2024

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GALPAO GAUCHO FOUR LLC

Laura Harker

Managing Member

DATED: 9/5/2024

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GALPAO GAUCHO FIVE LLC

Laura Harker

Managing Member

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GALPAO GAUCHO EIGHT LLC

Laura Harker

Managing Member

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GALPAO GAUCHO NINE LLC

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Laura Harker

Managing Member

1 IT IS SO AGREED AS TO FORM BY COUNSEL:

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3 DATED: August 29, 2024

JCL LAW FIRM, APC

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By:  _____

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Jean-Claude Lapuyade

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Attorneys for Plaintiff and the Settlement Class
Members

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8 DATED: August 29, 2024

ZAKAY LAW GROUP, APLC

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By:  _____

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Shani Zakay

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Attorneys for Plaintiff and the Settlement Class
Members

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14 DATED: August 29, 2024

FARELLA BRAUN + MARTEL LLP

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By:  _____

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Holly L. Sutton

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Attorney for Defendants

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EXHIBIT A

**NOTICE OF PENDENCY OF CLASS ACTION SETTLEMENT
AND FINAL HEARING DATE**

*(De La Cruz v. Galpao Gaucho Two LLC, et. al.,
Contra Costa County Superior Court Case No. C23-01770)*

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT ACT. PLEASE
READ THIS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	<p>To receive a cash payment from the Settlement, you do not have to do anything.</p> <p>Your estimated Individual Class Payment is: \$<< [redacted] >>. Your estimated Aggrieved Employee Payment is << _____ >>. See the explanation below.</p> <p>After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below. In exchange for the settlement payment, you will release claims against the Defendants as detailed below.</p>
Exclude Yourself	<p>If you wish to exclude yourself from the Settlement, you must send a written request for exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive no money from the Settlement.</p> <p>Instructions are set forth below.</p>
Object	<p>You may write to the Court about why you believe the Settlement should not be approved.</p> <p>Directions are provided below.</p>

1. Why did I get this Notice?

A proposed class action settlement (the “Settlement”) of this lawsuit pending in the Superior Court for the State of California, County of Contra Costa (the “Court”) has been reached between Plaintiff Jose Ramon De La Cruz (“Plaintiff”) and Defendants Galpao Gaucho Two LLC, Galpao Gaucho Three LLC, Galpao Gaucho Four LLC, Galpao Gaucho Five LLC, Galpao Gaucho Eight LLC, and Galpao Gaucho Nine LLC (“Defendants”). The Court has granted preliminary approval of the Settlement. **You may be entitled to receive money from this Settlement.**

You have received this Class Notice because you have been identified as a member of the Class, which is defined as:

All persons who are or previously were employed by Defendants in California and classified as non-exempt employees during the period between July 20, 2019 to July 1, 2024 (“Class Period”).

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

2. What is this class action lawsuit about?

On July 20, 2023, Plaintiff filed a Complaint against Defendants in the Superior Court of the State of California, County of Contra Costa (the “Action”). Plaintiff asserted the following claims alleging that Defendants: (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code §17200 et seq.; (2) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197 & 1197.1; (3) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510, Et Seq; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the applicable IWC Wage Order; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the applicable IWC Wage Order; (6) Failure to Provide Accurate Itemized Statements in Violation of Cal. Lab. Code § 226; (7) Failure To Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203; (8) Failure To Reimburse Employees For Required Expenses in Violation of Cal. Lab. Code § 2802; and (9) Failure to Provide Gratuities in Violation of Cal. Lab. Code § 351.

On **MONTH XX**, 2024, Plaintiff filed a First Amended Complaint alleging an additional cause of action for violations of the Private Attorneys General Act, California Labor Code sections 2698, et seq. (“PAGA”). PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who does so as the proxy or agent of the state’s labor law enforcement agency. The purpose of the PAGA is not to recover damages or restitution, but to create a means of “deputizing” citizens as private attorney general to enforce the Labor Code.

Defendants deny and dispute all claims asserted in the Action. Specifically, Defendants contended (and continue to contend) that the Action could not properly be maintained as a class action; that Defendant properly paid members of the class all wages that were due; that Defendants provided members of the class with all legally required meal breaks and rest breaks; that Defendants paid any members of the class all wages due them at the time of their terminations; that Defendants reimbursed members of the class for required business expenses; that Defendants paid all gratuities owed; and that Defendants did not violate California Business and Professions Code section 17200.

The Court granted preliminary approval of the Settlement on <<**INSERT PRELIMINARY APPROVAL DATE**>>. At that time, the Court also preliminarily approved the Plaintiff to serve as the Class Representative, and the law firms of JCL Law Firm, APC and Zakay Law Group, APLC to serve as Class Counsel.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendants have agreed to pay an “all in” amount of Seven Hundred Twenty-Five Thousand Dollars and Zero Cents (\$725,000.00) (the “Gross Settlement Amount”) to fund the Settlement. The Gross Settlement Amount includes the payment of all Individual Class Payments to Settlement Class Members, Class Counsel Award, Settlement Administration Expenses, PAGA Payment, and the Class Representative Service Award to the Plaintiff.

After the Judgment becomes Final, Defendants will pay the Gross Settlement Amount by depositing the money with the Settlement Administrator. “Final” means the date the Judgment is no longer subject to appeal, or if an appeal is filed, the date the appeal process is completed, and the Judgment is affirmed.

Amounts to be Paid from the Gross Settlement Amount. The Settlement provides for certain payments to be made from the Gross Settlement Amount, which will be subject to final Court approval, and which will be deducted from the Gross Settlement Amount before settlement payments are made to Class Members, as follows:

- Settlement Administration Expenses. Payment to the Settlement Administrator, estimated not to exceed \$14,000.00 for expenses, including expenses of sending this Notice, processing opt-outs, and distributing settlement payments.

- Class Counsel Award. Payment to Class Counsel attorneys' not to exceed one-third of the Gross Settlement Amount (currently \$241,666.67) plus costs and expenses not to exceed \$30,000 for all costs and expenses incurred as documented in Class Counsel's billing records, both subject to Court approval. Class Counsel have been prosecuting the Action on behalf of Plaintiff and the Class on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses.
- Class Representative Service Award. Class Representative Service Award of up to Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff, or such lesser amount as may be approved by the Court, to compensate him for services on behalf of the Class in initiating and prosecuting the Action, and for the risks he undertook.
- PAGA Payment. A payment of Thirty Thousand Dollars and Zero Cents (\$30,000.00) relating to Plaintiff's claim under the Private Attorneys General Act ("PAGA"), \$19,500 of which will be paid to the State of California's Labor and Workforce Development Agency ("LWDA Payment") and the remaining \$10,500 will be distributed to the Aggrieved Employees ("Aggrieved Employee Payment").
- Calculation of Individual Class Payments. After all the above payments of the court-approved Class Counsel Award, the Class Representative Service Award, the PAGA Payment, and the Settlement Administration Expenses are deducted from the Gross Settlement Amount, the remaining portion, called the "Net Settlement Amount," shall be distributed to class members who do **not** request exclusion ("Settlement Class Members"). The Individual Class Payment for each Settlement Class Member will be calculated by dividing the Net Settlement Amount by the total number of workweeks for all Settlement Class Members that occurred during the Class Period and multiplying the result by each individual Settlement Class Member's workweeks that occurred during the Class Period. A "workweek" is defined as a normal seven-day week of work during the Class Period in which, according to Defendants' records, a member of the class worked at least one day during any such workweek.
- Calculation of Aggrieved Employee Payments to Aggrieved Employees. The Aggrieved Employee Payment portion of the PAGA Payment shall be distributed to Aggrieved Employees irrespective of whether they exclude themselves or opt-out. The Aggrieved Employee Payment will be divided by the total number of pay periods worked by all Aggrieved Employees during the PAGA Period, and then taking that number and multiplying it by the number of pay periods worked by each respective Aggrieved Employee during the PAGA Period. "Aggrieved Employees" means all non-exempt employees who are or previously were employed by any of the Defendants and performed work in California during the PAGA Period. The PAGA Period means the period between July 1, 2023 to July 1, 2024.

If the Settlement is approved by the Court, you will automatically be mailed a check for your Individual Class Payment to the same address as this Class Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Settlement Administrator to inform them of your correct address to ensure you receive your payment.

You may find the Settlement Agreement entitled "Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims" filed on **MONTH XX**, 2024, with the Contra Costa County Superior Court, 725 Court Street, Martinez, CA 94553 in Department 12. You may also find the Settlement Agreement online by visiting the Contra Costa County Superior Court website <https://www.cc-courts.org/>. The Settlement Agreement can be found at Exhibit 1 of the Declaration of Sydney Castillo-Johnson filed on **MONTH XX**, 2024.

Tax Matters. Twenty percent (20%) of each Individual Class Payment is allocated to wages. Taxes are withheld from this amount, and each Settlement Class Member will be issued an Internal Revenue Service Form W-2 for such payment. Eighty percent (80%) of each Individual Class Payment is allocated to interest, penalties and other non-wage payments, and no taxes will be withheld from this portion, and each Settlement Class Member will be

issued an Internal Revenue Service Form 1099 for such payment. In addition, no taxes will be withheld from Aggrieved Employee Payments paid to Aggrieved Employees, and each Aggrieved Employee will be issued an Internal Revenue Service Form 1099 for such payment. Neither Class Counsel nor Defendants’ counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

4. What Do I Release Under the Settlement?

Released Claims. Upon entry of final judgment and funding in full of the Gross Settlement Amount by Defendants, Plaintiff and the Settlement Class Members shall release all Released Class Claims that occurred during the Class Period as to the Released Parties. Released Class Claims means all class claims alleged, or reasonably could have been alleged based on the facts alleged, in the operative complaint in the Action which occurred during the Class Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers’ compensation, and class claims outside of the Class Period.

The Released Parties are defined as Defendants and any of their past, present and future direct or indirect parents, subsidiaries, predecessors, successors, affiliates, and all entities that could be held to be joint employers, as well as each of its or their past, present and future officers, directors, employees, partners, members, shareholders and agents, attorneys, insurers, reinsurers, and any individual or entity which could be jointly liable with Defendants.

The Released PAGA Claims shall be released as follows: Upon entry of final judgment and upon funding in full of the Gross Settlement Amount by Defendants, all Aggrieved Employees shall release all Released PAGA Claims, irrespective of whether they opted-out of the Class Settlement and will be bound by this PAGA Release (the “PAGA Release”). “Released PAGA Claims” means all PAGA claims alleged in the operative complaint in the Action and Plaintiff’s PAGA notice to the LWDA which occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers’ compensation, and PAGA claims outside of the PAGA Period.

This means that, if you do not timely and formally exclude yourself from the Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants about the legal issues resolved by this Settlement. It also means that all of the Court’s orders in this Action will apply to you and legally bind you.

5. How much will my payment be?

Defendants’ records reflect that you have <<_____>> Workweeks worked during the Class Period (Beginning July 20, 2019 to July 1, 2024).

Based on this information, your estimated Individual Class Payment is <<_____>>.

Defendants’ records reflect that you have <<_____>> pay periods worked during the PAGA Period (July 1, 2023 to July 1, 2024).

Based on this information, your estimated Aggrieved Employee Payment is <<_____>>.

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Notice no later than _____ [forty-five (45) days after the Notice or re-mailed Notice].

6. How can I get a payment?

To get money from the Settlement, you do not have to do anything. A check for your settlement payment will be mailed automatically to the same address as this Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is: Apex Class Action LLC at 1-800-355-0700. You can also contact the Settlement Administrator at the administrator's website at <https://apexclassaction.com/> or at the administrator's address 18 Technology Drive, Suite 164, Irvine, CA 92618.

The Court will hold a hearing on _____ to decide whether to finally approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed within a few months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient. After entry of the Judgment, the Settlement Administrator will provide notice of the final judgment to the Class Members by posting a copy of the Judgment on the administrator's website at <https://apexclassaction.com/>.

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt out." **If you opt out, you will receive NO money from the Settlement, and you will not be bound by its terms, except as provided as follows.** Irrespective of whether you exclude yourself from the Settlement or "opt out," you will be bound by the Released PAGA Claims, you will be deemed to have released the Released PAGA Claims, and you will receive a share of the Aggrieved Employee Payment.

To opt out, you must submit to the Settlement Administrator, by First Class Mail, a written, signed and dated request for exclusion postmarked no later than _____. The address for the Settlement Administrator is 18 Technology Drive, Suite 164, Irvine, CA 92618. The request for exclusion must state in substance: "I wish to opt out of the settlement of the class action lawsuit entitled *De La Cruz v. Galpao Gaucho Two LLC, et. al., Contra Costa County Superior Court, Case No. C23-01770*. I understand that by requesting to be excluded from the Settlement, I will receive no money from the Settlement described in this Notice." The request for exclusion must contain your name, address, signature and the last four digits of your Social Security Number for verification purposes. The request for exclusion must be signed by you. No other person may opt out for a member of the Class.

Written requests for exclusion that are postmarked after _____, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

8. How do I tell the Court that I would like to challenge the Settlement?

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason, may object to the proposed Settlement. Objections may be in writing and state the Class Member's name, current address, telephone number, and describe why you believe the Settlement is unfair. All written objections or other correspondence must also state the name and number of the case, which is *De La Cruz v. Galpao Gaucho Two LLC, et. al., Contra Costa County Superior Court, Case No. C23-01770*. You may also object without submitting a written objection by appearing at the final approval hearing scheduled as described in Section 9 below.

To object to the Settlement, you cannot opt out. If the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided in this Class Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

Written objections must be delivered or mailed to the Settlement Administrator no later than

[REDACTED]. The address for the Settlement Administrator is Apex Class Action LLC, 18 Technology Drive, Suite 164, Irvine, CA 92618.

The addresses for the Parties' counsel are as follows:

Class Counsel:

Jean-Claude Lapuyade, Esq.
JCL Law Firm, APC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Tel.: (619) 599-8292
Fax: (619) 599-2891
Email: jlapuyade@jcl-lawfirm.com

Class Counsel:

Shani O. Zakay, Esq.
Zakay Law Group, APLC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Tel: (619) 599-8292
Fax: (619) 599-8291
Email: shani@zakaylaw.com

Counsel for Defendants:

Holly Sutton, Esq.
Farella Braun + Martell LLP
One Bush Street, Suite 900
San Francisco, CA 94104
Tel: 415-954-4400
Fax: 415-954-4480
hsutton@fbm.com

9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at **00:00 AM/PM on [REDACTED]**, at the Contra Costa County Superior Court, 725 Court Street, Martinez, CA 94553 in Department 12 before Judge Charles S. Treat. The Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, reasonable, and adequate. At the Final Approval Hearing, the Court will determine whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them. The Court will listen to people who have made a timely written request to speak at the hearing or who appear at the hearing to object. This hearing may be rescheduled by the Court without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

10. How do I get more information about the Settlement?

You may call the Settlement Administrator at 1-800-355-0700 or write to *De La Cruz v. Galpao Gaucho Two LLC, et. al., Contra Costa County Superior Court, Case No. C23-01770*, Settlement Administrator, c/o _____.

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You may receive a copy of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims ("Settlement Agreement") filed on **MONTH XX**, 2024, the Final Judgment or other Settlement documents by writing to JCL Law Firm, APC, 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your Individual Class Payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall pay all funds from such uncashed checks shall be transmitted to the California State Controller's Office for Unclaimed Property in the name of each Class Member who failed to cash their Individual Class Payment. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

