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and the Putative Classes

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO

VICTOR MANUEL GIL PALOS, on behalf of
himself and all others similarly situated, and on
behalf of the general public,

Plaintiff,

vs.

GIBSON & SONS GOLF MANAGEMENT LLC,
a California Corporation, and DOES 1 through 10,
inclusive,

Defendants.

Case No. 23CV-0712

**CLASS AND REPRESENTATIVE
ACTION**

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

Complaint filed: December 5, 2023
Trial date: Not set

1 This Joint Stipulation of Class Action Settlement and Release of Claims (“Settlement” or
2 “Agreement”) is made and entered into by and between Plaintiff VICTOR MANUEL GIL PALOS
3 (“Plaintiff” or “Class Representative”), individually and on behalf of all putative class members and
4 aggrieved employees, and Defendant GIBSON & SONS GOLF MANAGEMENT LLC
5 (“Defendant”). Plaintiff and Defendant are referred to herein individually as a “Party” and
6 collectively as “the Parties.”

7 **I. DEFINITIONS**

8 The following definitions are applicable to this Settlement, in addition to other terms defined
9 elsewhere in this Settlement:

10 1. “Action” shall mean the operative Complaint of the civil action initially commenced
11 on December 5, 2023, filed and maintained by Plaintiff against Defendant in the Superior Court of
12 California, County of San Luis Obispo, Case No. 23CV-0712.

13 2. “Class” shall mean all hourly-paid, non-exempt employees who, during the Class
14 Period, have previously been or currently are employed in California by Defendant, as an hourly-
15 paid, non-exempt employee. “Class Member” shall mean an individual who is a member of the
16 Class (or if any such person is incompetent, deceased, or unavailable due to military service, the
17 person’s legal representative or successor in interest evidenced by reasonable verification). The
18 term “Class Member” shall not include any person who submits a timely and valid request for
19 exclusion.

20 3. “Class Counsel” shall mean the attorney representing Plaintiff in the Action, Roman
21 Otkupman, Esq. of Otkupman Law Firm, a Law Corporation.

22 4. “Class Counsel Fees Payment” shall mean an award to Class Counsel of up to
23 33.33% of the Maximum Settlement Amount (currently estimated to be One Hundred Sixteen
24 Thousand Six Hundred Fifty-Five Dollars and No Cents (\$116,655.00) subject to approval by the
25 Superior Court as Class Counsel’s attorneys’ fees incurred in connection with the Action, including
26 fees incurred in pre-filing investigation, filing of the Action, and all related litigation activities, this
27 Settlement, and all post-Settlement compliance procedures.

1 5. “Class Counsel Litigation Expenses Payment” shall mean the actual litigation
2 expenses and/or costs expended by Class Counsel subject to approval by the Superior Court
3 incurred in connection with the Action, including pre-filing investigation, filing of the Action, and
4 all related litigation activities, this Settlement, and all post-Settlement compliance procedures.
5 Class Counsel’s expenses are not to exceed Twenty Thousand Dollars and Zero Cents
6 (\$20,000.00).

7 6. “Class Notice” shall mean the Notice of Proposed Settlement, Preliminary Approval
8 of Settlement, and Hearing Date for Final Court Approval, a sample of which is attached hereto as
9 Exhibit “A.” The Class Notice shall further contain (i) a Class Member’s first and last name, (ii)
10 last known address, (iii) the Class Member’s Individual Workweeks, (iv) the PAGA Group
11 Member’s Individual Pay Periods, if applicable; (v) the Class Member’s estimated amount of the
12 Settlement Share; and (vi) the PAGA Group Member’s estimated PAGA Payment Share, if
13 applicable. The Class Notice shall also provide the Class Members with instructions on how to opt-
14 out of and/or object to the Settlement.

15 7. “Class Period” shall mean the period of time from December 5, 2019 through the
16 earlier of the preliminary approval of the class settlement or 60 days from the date of mediation.

17 8. “Class Representative Payment” shall mean the special payment made to Plaintiff in
18 his capacity as Class Representative to compensate him for prosecuting the Action, and performing
19 work in support of the Action, in the amount of Fifteen Thousand Dollars and Zero Cents
20 (\$15,000.00), subject to approval by the Superior Court.

21 9. “Defense Counsel” shall mean the attorneys representing Defendant in the Action,
22 Matthew C. Sgnilek, Esq. and Carla Vasques dos Santos-Moore, Esq. of O’Hagan Meyer.

23 10. “Effective Date” shall mean the first business day following the last of the following
24 occurrences: (i) if no Class Member both objects and also files either a timely motion to intervene
25 and/or a timely motion to vacate the judgment, then forty-five (45) days following the date the
26 Court enters an order granting Final Approval of the Settlement; (ii) if a Class Member both objects
27 and either files a timely motion to intervene or a timely motion to vacate the judgment, then sixty-
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one (61) days following the date the Court enters an order granting Final Approval of the Settlement, assuming no appeal is filed; or (iii) if a Class Member both objects and also files a timely motion to intervene or files a motion to vacate the Judgment and also files a timely appeal, then the date of final resolution of that appeal (including any requests for rehearing and/or petitions for certiorari), resulting in final and complete judicial approval of the Settlement in its entirety, with no further challenge to the Settlement being possible. The occurrence of the Effective Date is a prerequisite to any obligation of Defendant to pay any funds into the Settlement Account.

11. "Employer's Payroll Taxes" shall mean Defendant's share of all payroll taxes payable to any and all government agencies incurred for any payments of Settlement Shares to Participating Class Members pursuant to this Settlement. Defendant's payment of the normal employer's share of payroll taxes will be made separately and shall not come from the Maximum Settlement Amount.

12. "Final Approval Hearing" shall mean the hearing to be conducted by the Superior Court to determine whether to finally approve and implement the terms of this Settlement.

13. "Individual Pay Periods" shall mean the number of Pay Periods for an individual PAGA Group Member.

14. "Individual Workweeks" shall mean the number of Workweeks for an individual Class Member.

15. "Judgment" shall mean the Order of Final Judgment entered by the Superior Court that the Parties anticipate will be entered following a Final Approval Hearing on the Settlement in this Action.

16. "LWDA Payment" shall mean the payment to the California Labor and Workforce Development Agency ("LWDA") constituting seventy-five percent (75%) of the value assigned to the claim for penalties under the California Labor Code Private Attorneys General Act, California Labor Code Section 2698, *et seq.* ("PAGA"). Specifically, Eighteen Thousand Seven Hundred Fifty Dollars and No Cents (\$18,750.00), which shall constitute the LWDA's seventy-five percent (75%) share of Twenty-Five Thousand Dollars and No Cents (\$25,000.00) in civil penalties paid

1 under this Settlement. The remaining Six Thousand Two Hundred Fifty Dollars and No Cents
2 (\$6,250.00) in civil penalties shall be distributed on a *pro rata* basis based upon the number of pay
3 periods worked by each PAGA Group Member (“PAGA Payment”).

4 17. “Maximum Settlement Amount” shall mean the maximum settlement amount of
5 Three Hundred Fifty Thousand Dollars and No Cents (\$350,000.00) payable by Defendant as
6 provided by this Agreement, unless that amount is increased pursuant to Paragraph 18 below,
7 exclusive of the normal employer’s share of any payroll taxes attributable to the Settlement Share
8 payments allocated to wages. Defendant’s payment of the normal employer’s share of payroll taxes
9 will be made separately, according to each Defendant’s agreed upon proportionate share of the
10 Maximum Settlement Amount and shall not come from the Maximum Settlement Amount.

11 18. Defendant represents that as of August 30, 2024, the number of workweeks
12 worked by Class Members during the Class Period is approximately 9,566. If it is determined
13 that the workweeks through October 22, 2024 exceed 10,523 (9,566 plus 10% of 9,566), then
14 Defendant shall have the option of either (i) increasing the Net Settlement Amount by an
15 amount determined by the following formula: $[(\text{Actual Number of Workweeks} - 10,523) \div$
16 $10,523) \times \text{Net Settlement Amount}]$; or (ii) changing the end date of the Class Period (and PAGA
17 Period) to a date for which there are no more than 10,523 workweeks.

18 19. “Net Settlement Amount” shall mean the Maximum Settlement Amount, less (i) the
19 Class Representative Payment approved by the Superior Court; (ii) the Class Counsel Fees Payment
20 approved by the Superior Court; (iii) the Class Counsel Litigation Expenses Payment approved by
21 the Superior Court; (iv) the LWDA Payment approved by the Superior Court; (v) the PAGA
22 Payment approved by the Superior Court; (vi) the Settlement Administrator Payment approved by
23 the Superior Court; and (vii) any other fees or expenses (other than Class Counsel Fees Payment
24 and Class Counsel Litigation Expenses Payment) incurred in implementing the terms and conditions
25 of this Agreement as approved by the Superior Court.

26 20. “Non-Participating Class Member” shall mean a Class Member who submits a
27 complete, valid, and timely request to be excluded from the Settlement pursuant to the instructions
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1 provided in the Class Notice.

2 21. "PAGA Group" mean all hourly-paid, non-exempt employees who, during the
3 PAGA Period, have previously been or currently are employed in California by Defendant. "PAGA
4 Group Member" shall mean an individual who is a member of the PAGA Group (or if any such
5 person is incompetent, deceased, or unavailable due to military service, the person's legal
6 representative or successor in interest evidenced by reasonable verification).

7 22. "PAGA Payment Share" shall mean the value of each PAGA Group Member's share
8 of the PAGA Payment as provided by this Agreement.

9 23. "PAGA Period" shall mean the period of time from September 28, 2022 through the
10 earlier of the preliminary approval of the PAGA settlement or 60 days from the date of mediation.

11 24. "Participating Class Member" shall mean all Class Members who have not submitted
12 a complete, valid, and timely request to be excluded from the Settlement pursuant to the instructions
13 provided in the Class Notice.

14 25. "Pay Period" shall mean any pay period in which a Class Member actually received
15 payment from Defendant as an hourly-paid, non-exempt employee.

16 26. "Preliminary Approval" shall mean the Superior Court's preliminary approval of the
17 Settlement without material change that the Parties anticipate will be made following submission of
18 this Agreement to the Court.

19 27. "Settlement Administrator" shall mean Apex Class Action Administration (Apex), as
20 proposed by the Parties and appointed by the Superior Court to administer the Settlement.

21 28. "Settlement Administrator Payment" shall mean the payment to the Settlement
22 Administrator for its fees and expenses in administering this Settlement.

23 29. "Settlement Share" shall mean the value of each Participating Class Member's share
24 of the Net Settlement Amount as provided by this Agreement.

25 30. "Superior Court" shall mean the Superior Court of California for the County of San
26 Luis Obispo.

27 31. "Workweek" shall mean any week in which a Class Member actually performed paid
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work for Defendant during the Class Period as an hourly-paid, non-exempt employee.

II. RECITALS

32. On September 28, 2023, Class Counsel, on behalf of Plaintiff and the PAGA Group, gave written notice to the Labor Workforce and Development Agency (“LWDA”) of the Labor Code violations Defendant is alleged to have violated (“LWDA Exhaustion Letter”).

33. On Defendant 5, 2023, Plaintiff filed a Class and Representative Action Complaint against Defendant in the San Luis Obispo County Superior Court, Case No. 23CV-0712. In his Complaint, Plaintiff pled causes of action for: (1) Failure to Provide Meal Periods in Violation of Labor Code §§ 226.7, 512 and 558; (2) Failure to Provide Rest Periods in Violation of Labor Code §§ 226.7, 512 and 558; (3) Failure to Pay All Wages in Violation of Labor Code §§ 510 1194, 1194.2; (4) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Labor Code §§ 226(a), (c), 1174(d); (5) Failure to Timely Pay Wages Due at Termination (Labor Code §§ 201-203); (6) Failure to Timely Pay Employees in Violation of Labor Code §§ 204(a)(b); (7) Failure to Reimburse for Business Expenses in Violation of Labor Code § 2802; (8) Failure to Pay for All Hours Worked, Including Overtime Hours Worked in Violation of Labor Code §§ 210, 218; (9) Failure to Provide Place of Employment that Is Safe and Healthful in Violation of Labor Code §§ 6400, 6401, 6403, 6404, 6407, 8 CCR 3202; (10) Violation of Business and Professions Code § 17200; and (11) Penalties pursuant to Labor Code § 2699(f) for Violations of Labor Code §§ 226.7, 512, 558, 510, 1194, 1194.2, 226(a), 226(e), 1174(d), 201-203, 204(a)(b), 2802, 210, 218, 6400, 6401, 6403, 6404, 6407, 8 CCR 3202.

34. Defendant denies and continues to deny all of Plaintiff’s material allegations. Specifically, Defendant contends (1) it did not fail to provide meal periods; (2) it did not fail to provide rest periods; (3) it paid the Class all wages due; (4) it did not knowingly and intentionally fail to comply with itemized employee wage statement provisions; (5) it did not fail to timely pay wages due at termination; (6) it did not fail to timely pay employees in violation of Labor Code § 204(a)(b); (7) it did not fail to reimburse employees for business expenses; (8) it paid employees for all hours worked, including overtime; (9) it provided employees a place of employment that was

1 safe and healthful; (10) it did not violate Business and Professions Code § 17200; (11) the PAGA
2 Group is not entitled to penalties under PAGA; and (11) Defendant is not liable for damages,
3 including unpaid wages, liquidated damages, statutory penalties, attorneys' fees, or costs of
4 litigation to the Class.

5 35. In connection with the Action, and in order to work toward a mediated resolution
6 without the time and expense of formal discovery, the Parties produced voluminous documents and
7 data (including, by Defendant, human resources documents and policies, time records, and payroll
8 data during the Class Period) which were reviewed, investigated, and analyzed by Class Counsel.

9 36. On August 30, 2024, the Parties in Action participated in a full day of mediation
10 before an experienced employment and class action mediator Scott Radovich (the "Mediation") and
11 the Parties reached a settlement at the Maximum Settlement Amount.

12 37. The Settlement described in this Agreement represents a compromise and settlement
13 of highly disputed claims. Nothing in this Settlement is intended or will be construed as an
14 admission by Defendant that Plaintiff's claims in the Action have any merit or that it has any
15 liability to Plaintiff, the Class, the PAGA Group or the State on those claims, or as an admission by
16 Plaintiff that Defendant's defenses in Action have any merit. This Settlement is intended to fully,
17 finally, and forever compromise, release, resolve, discharge, and settle the released claims subject to
18 the terms and conditions set forth in this Settlement.

19 38. Based on its own thorough, independent investigation and evaluation of this case,
20 Class Counsel is of the opinion that the Settlement of this Action with Defendant for the
21 consideration and on the terms set forth in this Settlement is fair, reasonable, adequate, and in the
22 best interest of the Class in light of all known facts and circumstances, including the risk of
23 significant costs and delay, the risk of non-certification of the Class, the defenses asserted by
24 Defendant, including the risks of adverse determinations on the merits and numerous potential
25 appellate issues. Although Defendant contends that it has no liability in the Action, Defense
26 Counsel shares Class Counsel's belief that the Settlement represents a fair and adequate settlement,
27 given the respective risks associated with the case.

39. Based on the foregoing Recitals, the Parties agree as follows:

III. PROCEDURE FOR APPROVING SETTLEMENT

40. **Motion for Preliminary Approval of Settlement by the Superior Court.** Plaintiff will move the Superior Court for an order granting Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing no earlier than 120 days from the date of the order granting Preliminary Approval of the Settlement, and approving the Class Notice (attached as Exhibit “A” to this Stipulation) (“Motion for Preliminary Approval”). Any unresolved disagreement among the Parties concerning the Class Notice or other documents necessary to implement the Settlement will be referred first to Steve Rottman, Esq., and if no resolution is reached, then to the Superior Court.

41. At the hearing on the Motion for Preliminary Approval, the Parties anticipate that they will jointly appear, support the granting of the Motion for Preliminary Approval, and obtain an order granting Preliminary Approval, granting approval of the Class Notice, and setting a date for the Final Approval Hearing no earlier than 120 days from the date of the order granting Preliminary Approval.

42. Should the Superior Court require any amendments to this Agreement or the Motion for Preliminary Approval, the Parties agree to work jointly to resolve any issues in order to secure the Superior Court’s Preliminary Approval.

43. Should the Superior Court decline to preliminarily approve any material aspects of the Settlement, the Settlement will be null and void and the Parties will have no further obligations under it. In such event, the Parties shall be returned to their respective positions as of the date and time immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects as if this Agreement had not been executed.

44. **Class Notice.** After the Superior Court enters its order granting Preliminary Approval, every Class Member will be provided with the Class Notice (in English and Spanish) which will include the Class Notice completed to reflect the order granting Preliminary Approval of the Settlement and the Class Member’s information as follows:

(a) Within fourteen (14) days after the Motion for Preliminary Approval is

1 granted, Defendant will provide to the Settlement Administrator the “Class Members’ Data,” which
2 shall consist of an electronic database containing (i) each Class Member’s first and last name, (ii)
3 last known mailing address, (iii) the Class Member’s Social Security number or Tax ID, (iv) the
4 Class Member’s total number of Individual Workweeks, and (v) the Class/PAGA Group Members’
5 total number of Individual Pay Periods, if applicable. If any or all of the Class Members’ Data are
6 unavailable to Defendant, Defendant will so inform Class Counsel prior to the date on which
7 Defendant is required to submit the Class Members’ Data to the Settlement Administrator and the
8 Parties will make their best efforts to reconstruct or otherwise agree upon the Class Members’ Data
9 prior to when it must be submitted to the Settlement Administrator. If the Parties are unable to
10 agree, the dispute will be resolved by the Settlement Administrator as provided in Paragraph 48.
11 This information will otherwise remain confidential and will not be disclosed to anyone, except as
12 required to applicable taxing authorities, as required to carry out the reasonable efforts to identify
13 Class Member information as described in Paragraph 45(c), pursuant to Defendant’s express written
14 authorization, or by order of the Superior Court.

15 (b) Within seven (7) days after receiving the Class Members’ Data, or as soon
16 thereafter as it is able to do so, the Settlement Administrator will mail the Class Notice to all
17 identified Class Members via first-class U.S. Mail using the mailing address information provided
18 by Defendant, unless modified by any updated address information that the Settlement
19 Administrator obtains in the course of administration of the Settlement.

20 (c) If a Class Notice is returned by the U.S. Postal Service because of an
21 incorrect address, the Settlement Administrator will promptly, and not later than five (5) days from
22 receipt of the returned packet, search for a more current address for the Class Member and re-mail
23 the Class Notice to the Class Member. The Settlement Administrator will use the Class Members’
24 Data and otherwise work with Defense Counsel or utilize its own resources, such as skip traces, to
25 find a more current address. The Settlement Administrator will be responsible for taking reasonable
26 steps, consistent with its agreed-upon job parameters, court orders, and fee, to trace the mailing
27 address of any Class Member for whom a Class Notice is returned by the U.S. Postal Service.

1 These reasonable steps shall include the tracking of all undelivered mail; performing address
2 searches for all mail returned without a forwarding address; and promptly re-mailing to Class
3 Members for whom new addresses are found. Any such Class Members who failed to receive a
4 Class Notice, or who were subject to a re-mailing of the Class Notice as described herein shall be
5 given an additional fourteen (14) days to opt out or object to the Settlement.

6 (d) The Settlement Administrator will inform Class Counsel and Defense
7 Counsel of the number of returned Class Notices it receives and Class Notices re-mailed in a
8 weekly status report.

9 (e) Not later than sixteen (16) court days prior to the Final Approval Hearing, the
10 Settlement Administrator will serve on the Parties a declaration of due diligence setting forth its
11 compliance with its obligations under this Settlement. The declaration will be filed with the papers
12 submitted with the Motion for Final Approval. Prior to the Final Approval Hearing, the Settlement
13 Administrator will supplement its declaration of due diligence if any material changes occur from
14 the date of the filing of its prior declaration.

15 45. **Participating Class Members; Requests for Exclusion from Class Settlement;**
16 **and Objections to Settlement.** Class Members may submit requests to be excluded from the effect
17 of the Settlement; or objections to the Settlement, pursuant to the following procedures:

18 (a) **Participating Class Members.** Each Class Member shall be deemed to be a
19 Participating Class Member unless they submit a complete, timely, and valid request to be excluded
20 from the effect of the Settlement as provided below. All Participating Class Members shall be
21 bound by the provisions and releases contained in this Settlement.

22 (b) **Request for Exclusion from Settlement.** Class Members who wish to
23 exclude themselves from the Settlement (“opt out” of the Settlement) must submit to the Settlement
24 Administrator, not later than forty-five (45) days after the date that the Settlement Administrator
25 first mails the Class Notices, an Exclusion Request (“the Exclusion Period”). Exclusion Requests
26 may be submitted to the Settlement Administrator via U.S. Mail (or similar method), fax, or e-mail.
27 Class Members must complete, sign, date, and timely return an Exclusion Request to the Settlement
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1 Administrator to exclude themselves from the Settlement, setting forth their (i) name, (ii) address,
2 and (iii) the following statement or a similar statement: “I wish to exclude myself from the
3 settlement reached in the matter of *Gil Palos v. Gibson & Sons Golf Management LLC*. I
4 understand that by excluding myself, I will not receive any money from the settlement reached in
5 this matter.” A Class Member who does not complete and submit a valid and timely Exclusion
6 Request in the manner and by the conclusion of the Exclusion Period will remain a Participating
7 Class Member and, if the Court approves the Settlement, will be bound by all terms and conditions
8 of the Settlement and by the Judgment. A Class Member who timely submits a valid Exclusion
9 Request will not participate in, or be bound by, the Settlement of the Judgment and will not receive
10 any payment pursuant to the Settlement except for a payment from the portion of the PAGA
11 Payment to the PAGA Group if the Class Member is a PAGA Group Member, and will not be
12 bound by the terms of the Settlement, except for the release of the PAGA Group Released Claims if
13 the Class Member is a PAGA Group Member, and will not have any right to object, appeal, or
14 comment thereon. To be valid, Exclusion Requests must be completed in full, signed, and returned
15 to the Settlement Administrator before the expiration of the Exclusion Period. Non-Participating
16 Class Members will not be permitted to file objections to the Settlement and/or appear at the Final
17 Approval Hearing to voice any objections to the Settlement. Members of the PAGA Group cannot
18 seek to exclude themselves from the Settlement of the PAGA claim, but retain all rights to exclude
19 themselves from the Class Settlement as delineated herein. The Settlement Administrator will
20 provide Class Counsel, Defense Counsel, and the Superior Court with only the names of the Non-
21 Participating Class Members.

22 (c) **Objections to Settlement.** The Class Notice will provide that any Class
23 Member who does not request exclusion from the Settlement and who wishes to object to the
24 Settlement must serve on the Settlement Administrator, not later than forty-five (45) days after the
25 Settlement Administrator initially mails the Class Notice, a written objection to the Settlement,
26 which sets forth the grounds for the objection and the other information required by Paragraph
27 46(d). The objection must be served as follows:

Gil Palos v. Gibson & Sons Golf Management LLC

c/o _____

(d) The written objection must state the Class Member's (i) name, (ii) address, (iii) the dates of the Class Member's employment with Defendant, (iv) the basis for each objection in clear and concise terms, and (v) whether the Class Member intends to appear and object at the Final Approval Hearing. A Class Member who does not serve a written objection in the manner and by the deadline specified may appear at the Final Approval Hearing to state their objection to the Settlement. If a Class Member fails to submit a written objection or to appear at the Final Approval hearing to make an oral objection, the Class Member will be deemed to have waived all objections and will be foreclosed from making any objections – whether by appeal or otherwise – to the Settlement.

(e) If a Class Member submits both a Request for Exclusion and a written objection, the Settlement Administrator shall attempt to contact and determine whether the Class Member would like to withdraw either the Request for Exclusion or the objection. If the Class Member does not withdraw the Request for Exclusion or if the Settlement Administrator cannot contact a Class Member who submits both a Request for Exclusion and an objection, the Request for Exclusion shall be valid and it shall be presumed that the Class Member does not wish to participate in the Settlement.

(f) If the Superior Court rejects the Class Member's objection, or if the Superior Court approves the settlement despite any objections, the Class Member will be deemed to be a Participating Class Member and will be bound by the terms of this Settlement.

(g) A Class Member who timely submits a valid Exclusion Request will not participate in, or be bound by, the Settlement of the Judgment and will not receive any payment pursuant to the Settlement except for a payment from the portion of the PAGA Payment to the

1 PAGA Group if the Class Member is a PAGA Group Member, and will not be bound by the terms
2 of the Settlement and Judgment, except for the release of the PAGA Group Released Claims if the
3 Class Member is a PAGA Group Member, and will not have any right to object, appeal, or
4 comment thereon.

5 46. **Report.** Not later than seven (7) days after the deadline for submission of requests
6 to be excluded and/or objections, the Settlement Administrator will provide each Defendant,
7 through its respective Defense Counsel, with a complete and accurate list of names for all
8 Participating Class Members, all Non-Participating Class Members, all PAGA Group Members, and
9 all Class Members who objected to the settlement. The report shall also be accompanied by an
10 itemized calculation of the Settlement Shares for each Participating Class Member. The Settlement
11 Administrator shall also provide both Parties with a report identifying the number of Participating
12 Class Members, the number of Non-Participating Class Members, the number of PAGA Group
13 Members, and the number of Class Members who submitted a valid, timely, and complete
14 objection. Class Counsel shall also receive a list of Class Members who object to the Settlement.

15 47. **Resolution of Class Member and PAGA Group Member Disputes.** If a Class
16 Member and/or PAGA Group Member disputes the number of his or her Individual Workweeks
17 and/or Individual Pay Periods stated in their Class Notice, the Class Member and/or PAGA Group
18 Member must, within forty-five (45) days after the Settlement Administrator initially mails the
19 Class Notice, ask the Settlement Administrator to resolve the matter by returning the Class Notice
20 with a statement of the number of Workweeks and/or Pay Periods that he or she contends were
21 worked and include any documentation the Class Member and/or PAGA Group Member has to
22 support their contention. The Settlement Administrator shall notify Defendant of the dispute and
23 provide them with a copy of the Class Notice and any documentation received in support of the
24 dispute within three (3) court days of receipt thereof. Defendant shall review their payroll and
25 personnel records and verify the correct number of Workweeks and/or Pay Periods within five (5)
26 court days of the Settlement Administrator's notification. Defendant's records will have a
27 rebuttable presumption of accuracy. After consultation with Class Counsel, Defense Counsel, and
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1 the applicable Class Member and/or PAGA Group Member, the Settlement Administrator will,
2 within three (3) court days of Defendant's verification, make a determination of the Class Member's
3 and/or PAGA Group Member's number of Workweeks and/or Pay Periods and that determination
4 will be final, binding on the Parties and the Class Member and/or PAGA Group Member, and is not
5 appealable.

6 48. **No Solicitation of Objection; Right to Void.** Neither the Parties, nor their
7 respective counsel, will directly or indirectly solicit or otherwise encourage any Class Member to
8 exclude him or herself from the Settlement, object to the Settlement, and/or appeal from the
9 Judgment. If ten percent (10%) or more of the Class Members submit a complete, valid, and timely
10 request to be excluded from the Settlement and are deemed to be Non-Participating Class Members,
11 then Defendant shall have the unilateral right to void this Settlement. Defendant may do so by
12 giving notice to Plaintiff and the Court of its election to void the Settlement not later than fourteen
13 (14) days after the Settlement Administrator issues its report identifying the number of Participating
14 Class Members, the number of Non-Participating Class Members, and the number of Class
15 Members who objected to the settlement as described in Paragraph 46(c). Notwithstanding any
16 other provisions in this Settlement, no sums shall be payable by Defendant in the event that this
17 Settlement is voided as provided for herein.

18 49. **Additional Briefing and Final Approval.**

19 (a) Not later than sixteen (16) court days before the Final Approval Hearing, the
20 Plaintiff will prepare and file with the Superior Court a Motion for Final Approval of the
21 Settlement, including payment of the Class Representative Payment, Class Counsel Fees Payment,
22 Class Counsel Litigation Expenses Payment, the Settlement Administrator's Payment, and a
23 memorandum in support of their motion ("Motion for Final Approval"). Absent the escalator
24 provisions outlined in Paragraph 18, if applicable, Plaintiff will not seek additional fees from
25 Defendant or an increase in the Maximum Settlement Amount as part of the Motion for awards of
26 the Class Representative Payment, Class Counsel Fees Payment, and the Class Counsel Litigation
27 Expenses Payment.

1 (b) Not later than five (5) court days before the Final Approval Hearing, the
2 Parties shall be entitled to file and serve a response to any Class Member's objection to the
3 Settlement and/or reply in support of their Motion for Final Approval, to the extent that any
4 opposition to said Motion is filed.

5 (c) If the Superior Court ultimately does not grant final approval of the
6 Settlement or grants final approval conditioned on any material change to the Settlement that is not
7 agreed to by one of the Parties, then any Party will have the right to void the Settlement. If the
8 Settlement is voided in this manner, the Parties will have no further obligations under the
9 Settlement, including any obligation by Defendant to pay any amounts that otherwise would have
10 been payable under this Settlement, except that the voiding Party will pay the Settlement
11 Administrator's reasonable fees and expenses incurred as of the date that the Party exercises the
12 right to void the Settlement under this Paragraph. An award by the Superior Court of a lesser
13 amount than that sought by Plaintiff and Class Counsel for the Class Representative Payment, the
14 Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and/or the
15 Settlement Administrator's Payment, will not constitute a material change to the Settlement within
16 the meaning of this Paragraph.

17 (d) Upon final approval of the Settlement by the Superior Court at or after the
18 Final Approval Hearing, the Parties will present for the Superior Court's approval and entry a
19 Proposed Final Order and Judgment. The entry of the Final Order and Judgment shall permanently
20 bar all Participating Class Members from prosecuting against Defendant any claims or causes of
21 action of any kind up through the date of Final Approval, which were or could have been brought in
22 this Action, whether known or unknown, as well as all claims as set forth in the Release contained
23 in Section V of this Agreement.

24 (e) After entry of the Judgment, the Superior Court will have continuing
25 jurisdiction over the Action and the Settlement solely for purposes of (i) enforcing this Settlement,
26 (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as
27 may be appropriate under court rules or applicable law.

1 **50. Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms
2 and conditions of this Settlement, Plaintiff, Participating Class Members, Defendant, and their
3 respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights
4 to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, a
5 motion for new trial, a motion under Code of Civil Procedure Section 473, and any extraordinary
6 writ, and the Judgment therefore will become non-appealable by them at the time it is entered. The
7 waiver of appeal does not include any waiver of the right to oppose any appeal, appellate
8 proceedings, or post-judgment proceedings. If an appeal is taken from the Judgment, the time for
9 consummation of the Settlement (including making payments under the Settlement) will be
10 suspended until such time as the appeal is finally resolved and the Judgment, consistent with the
11 terms of this Settlement, becomes Final.

12 **51. Vacating, Reversal, or Material Modification of Judgment on Appeal or**
13 **Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other
14 motion, petition, writ, or application, the reviewing court vacates, reverses, or modifies the
15 Judgment such that there is a material modification to the Settlement, and that court's decision is
16 not completely reversed and the Judgment is not fully affirmed on review by a higher court, then
17 either Party will have the right to void the Settlement, which the Party must do by giving written
18 notice to the other Parties, the reviewing court, and the Superior Court, not later than fourteen (14)
19 days after the reviewing court's decision vacating, reversing, or materially modifying the Judgment
20 becomes final. A vacation, reversal, or modification of the Superior Court's award of the Class
21 Representative Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
22 Payment, and/or the Settlement Administrator's Payment will not constitute a vacation, reversal, or
23 material modification of the Judgment within the meaning of this Paragraph.

24 **52. Establishment of Settlement Account.** The Settlement Administrator shall
25 establish a Settlement Account within ten (10) days of the Effective Date and notify the Parties
26 when the Settlement Account has been established. The Settlement Administrator shall also
27 provide Defendant with an itemized statement for the total amount to be deposited into the
28

1 Settlement Account, which shall equal the Maximum Settlement Amount (“Settlement Account
2 Deposit”). Within ten (10) days after receiving notification of the Settlement Account and
3 statement for the Settlement Account Deposit, Defendant shall pay into the Settlement Account an
4 amount equal to the Settlement Account Deposit. Defendant shall have no obligation to pay any
5 additional funds into the Settlement Account.

6 **53. Payment of Settlement Shares.** The Settlement Administrator shall pay to each
7 Participating Class Member his or her Settlement Share from the Settlement Account. The
8 Settlement Administrator shall pay each Settlement Share by sending a check in the appropriate
9 amount after withholdings to the Participating Class Member at the address indicated in the Class
10 Member’s Data. Such payment shall be sent by the Settlement Administrator via U.S. Mail within
11 fourteen (14) days of its receipt of the Settlement Account Deposit from Defendant.

12 **54. Payment of PAGA Payment Shares.** The Settlement Administrator shall pay to
13 each PAGA Group Member his or her PAGA Payment Share from the Settlement Account. The
14 Settlement Administrator shall pay each PAGA Payment Share by sending a check in the
15 appropriate amount to the PAGA Group Member at the address indicated in the PAGA Group
16 Member’s Data. Such payment shall be sent by the Settlement Administrator via U.S. Mail within
17 fourteen (14) days of its receipt of the Settlement Account Deposit from Defendant.

18 **55. Uncashed Settlement Share and PAGA Payment Share Checks.** Any checks
19 paid to Participating Class Members and/or PAGA Group Members shall be negotiable for one
20 hundred and eighty (180) calendar days from the date of their issuance. A Participating Class
21 Member must cash his or her Settlement Share check within one hundred and eighty (180) calendar
22 days after it is mailed to him or her. A PAGA Group Member must cash his or her PAGA Payment
23 Share check within one hundred and eighty (180) calendar days after it is mailed to him or her. If a
24 check remains uncashed after one hundred and eighty (180) calendar days from the initial mailing,
25 or if a check is returned to the Settlement Administrator as undeliverable during the one hundred
26 eighty-day period, the Settlement Administrator shall take all reasonable efforts to identify the
27 Participating Class Member’s and/or PAGA Group Member’s correct address, including the
28

1 performance of a “skip-trace.” If an updated address can be identified, the Settlement
2 Administrator shall issue another check to the Participating Class Member and/or PAGA Group
3 Member and mail it to the Participating Class Member and/or PAGA Group Member at his or her
4 updated address. If an updated address for the Participating Class Member and/or PAGA Group
5 Member cannot be identified, if a reissued check is once again returned to the Settlement
6 Administrator as undeliverable, or if the reissued check remains uncashed after one hundred eighty
7 (180) calendar days, the Settlement Administrator will keep an accounting of such funds and shall
8 give notice to the Parties of the total balance of uncashed Settlement Shares and/or PAGA Payment
9 Shares. A Participating Class Member who fails to negotiate or receive their Settlement Share
10 check despite the procedures described above shall nevertheless remain bound by the Settlement
11 and the releases contained herein. A PAGA Group Member who fails to negotiate or receive their
12 PAGA Payment Share check despite the procedures described above shall nevertheless remain
13 bound by the Settlement and the releases contained herein.

14 56. The funds represented by Settlement Share and/or PAGA Payment Share checks
15 remaining uncashed for more than one hundred and eighty (180) calendar days after issuance shall
16 be voided and then shall be transmitted to the Controller of the State of California to be held
17 pursuant to the Unclaimed Property Law, California Civil Code Section 1500, *et seq.*, in the names
18 of those Participating Class Members and/or PAGA Group Members who did not cash their checks
19 until such time they claim their property. The Parties agree that this disposition results in no “unpaid
20 residue” under California Civil Procedure Code § 384, as the entire Net Settlement Amount will be
21 paid out to Participating Class Members, whether or not they all cash their settlement checks.
22 Therefore, Defendant will not be required to pay any interest on such amounts.

23 57. **Final Report by Settlement Administrator to Superior Court.** Within ten (10)
24 days after final disbursement of all funds from the Settlement Account, the Settlement
25 Administrator will serve on the Parties and file with the Superior Court a declaration providing a
26 final summary report on the disbursements of all funds from the Settlement Account. Within ten
27 (10) days after transmission of any remaining unclaimed funds to the Controller of the State of
28

1 California, the Settlement Administrator will serve on the Parties and file with the Superior Court a
2 declaration providing a final summary report on the transmission of any remaining unclaimed funds
3 to the Controller of the State of California as outlined Paragraph 57.

4 **IV. SETTLEMENT TERMS AND CONDITIONS**

5 **58. Conditional Certification for Settlement Purposes.** Solely for the purposes of
6 effectuating this Settlement, and subject to Court approval, the Parties hereby stipulate to the
7 conditional certification of the following Settlement Class: “all hourly-paid, non-exempt employees
8 who, during the Class Period, have previously been or currently are employed in California by
9 Defendant, as an hourly-paid, non-exempt employee.” The Parties agree that if for any reason the
10 Settlement is not preliminarily and/or finally approved, the conditional certification of the
11 Settlement Class will be of no force or effect, does not constitute an admission by Defendant that
12 class certification is proper, and will not be deemed admissible in this or any other proceeding, and
13 that the Parties will litigate the issue of class certification.

14 **59. Settlement Shares.** Subject to the terms and conditions of this Settlement, the
15 Settlement Administrator will calculate the Settlement Shares for each Class Member within ten
16 (10) days after Defendant provides the Settlement Administrator with the Class Members’ Data.
17 The Settlement Share for each Class Member will be calculated as follows, understanding that the
18 formulas below do not constitute an admission by either Party, and are intended only to provide a
19 practical means to simplify and administer the claims process:

20 **(a) Number of Class Members and Workweeks.** Defendant shall determine
21 the total number of Class Members and the aggregate number of Workweeks for those Class
22 Members as of the time of Preliminary Approval. This information shall be provided to the
23 Settlement Administrator along with the Class Members’ Data as described in Paragraph 45(a)
24 above.

25 **(b) Calculation of the Workweek Value.** The Settlement Administrator shall
26 determine the value of a Workweek (“Workweek Value”) by taking the Net Settlement Amount and
27 dividing it by the sum of all Class Members’ Workweeks who do not opt out of the Settlement.

1 (c) **Calculation of Settlement Shares.** The Settlement Administrator shall
2 assign to each Participating Class Member a Settlement Share which shall be equal to the
3 Workweek Value multiplied by each Participating Class Member's Individual Workweeks. Upon
4 calculation of the Participating Class Members' Settlement Shares, the Settlement Administrator
5 shall furnish to Class Counsel and Defense Counsel a worksheet containing a list of employee
6 identification numbers for the Class Members with their corresponding Individual Workweeks and
7 Settlement Shares.

8 60. **PAGA Payment Shares.** Subject to the terms and conditions of this Settlement, the
9 Settlement Administrator will calculate the PAGA Payment Shares for each PAGA Group Member
10 within ten (10) days after Defendant provides the Settlement Administrator with the PAGA Group
11 Members' Data. The PAGA Payment Share for each PAGA Group Member will be calculated as
12 follows, understanding that the formulas below do not constitute an admission by either Party, and
13 are intended only to provide a practical means to simplify and administer the claims process:

14 (a) **Number of PAGA Group Members and Pay Periods.** Defendant shall
15 determine the total number of PAGA Group Members and the aggregate number of Pay Periods for
16 those PAGA Group Members as of the time of Preliminary Approval. This information shall be
17 provided to the Settlement Administrator along with the Class Members' Data as described in
18 Paragraph 45(a) above.

19 (b) **Calculation of the Pay Period Value.** The Settlement Administrator shall
20 determine the value of a Pay Period ("Pay Period Value") by taking the PAGA Payment amount
21 and dividing it by the sum of all PAGA Group Members' Pay Periods.

22 (c) **Calculation of PAGA Payment Shares.** The Settlement Administrator shall
23 assign to each PAGA Group Member a PAGA Payment Share which shall be equal to the Pay
24 Period Value multiplied by each PAGA Group Member's Individual Pay Periods. Upon calculation
25 of the PAGA Group Members' PAGA Payment Shares, the Settlement Administrator shall furnish
26 to Class Counsel and Defense Counsel a worksheet containing a list of employee identification
27 numbers for the PAGA Group Members with their corresponding Individual Pay Periods and
28

1 PAGA Payment Shares.

2 61. **Taxes and Withholdings.** Each Settlement Share is intended to settle the Class
3 Members' claims for unpaid wages and penalties. Accordingly, ten percent (10%) of each
4 Settlement Share shall represent unpaid wages and the remaining ninety percent (90%) of each
5 Settlement Share shall represent penalties and interest. The portion of the Settlement Share
6 representing unpaid wages shall be paid to each Participating Class Member subject to any
7 applicable employee-side tax withholdings and deductions, and the Settlement Administrator shall
8 issue an IRS Form W-2 to each Participating Class Member for that amount. The portion of the
9 Settlement Share representing penalties shall be paid to the Participating Class Member in full
10 without deductions or withholdings, and the Settlement Administrator shall issue an IRS Form 1099
11 to each Participating Class Member for that amount. Each Participating Class Member shall be
12 individually responsible for their own share of applicable income tax withholdings and deductions
13 from the Settlement Share attributable to the portion of the settlement for which an IRS Form 1099
14 will be issued. Defendant's payment of the Employer Payroll Tax attributable to the Settlement
15 Share payments constituting wages will be made separately and shall not come from the Maximum
16 Settlement Amount. The Parties agree and understand that Defendant has not made any
17 representations regarding the tax obligations or consequences, if any, related to this Settlement. The
18 Parties agree that Defendant and each Participating Class Member are solely responsible for
19 determining the tax consequences of payments made pursuant to this Settlement and for paying
20 taxes, if any, which are determined to be owed by each of them on such payments (including
21 penalties and interest related thereto) by any taxing authority, whether state, local, or federal.

22 62. Each PAGA Payment Share is intended to settle the PAGA Group Members' claims
23 for civil penalties. Accordingly, one hundred percent (100%) of each PAGA Payment Share shall
24 represent civil penalties. The PAGA Payment Share shall be paid to the PAGA Group Member in
25 full without deductions or withholdings, and the Settlement Administrator shall issue an IRS Form
26 1099 to each PAGA Group Member for that amount. Each PAGA Group Member shall be
27 individually responsible for their own share of applicable income tax withholdings and deductions
28

1 for his or her PAGA Payment Share.

2 **63. Total Payment Amount.** In no event will Defendant be required to pay more than
3 the Maximum Settlement Amount (unless that amount is increased pursuant to Paragraph 18 above)
4 for distribution to the Plaintiff, Class Counsel, Participating Class Members, PAGA Group
5 Members, LWDA, Settlement Administrator, or for any other costs or expenses not otherwise
6 enumerated. However, Defendant's payment of the Employer Payroll Tax attributable to the
7 Settlement Share payments constituting wages will be made separately and shall not come from the
8 Maximum Settlement Amount.

9 **64. Payments to Plaintiff and Class Counsel and Others.** Subject to the terms and
10 conditions of this Settlement, the Settlement Administrator will make the following payments out of
11 the Maximum Settlement Amount as follows:

12 **(a) To Plaintiff:** In addition to their respective Settlement Shares, Plaintiff will
13 apply to the Superior Court for a Class Representative Payment in an amount not to exceed Fifteen
14 Thousand Dollars and No Cents (\$15,000.00). Defendant will not oppose this Class Representative
15 Payment. The Settlement Administrator will pay the Class Representative Payment approved by
16 the Superior Court out of the Maximum Settlement Amount. Payroll tax withholding and
17 deductions will not be taken from the Class Representative Payment and an IRS Form 1099 will be
18 issued to Plaintiff for this payment.

19 **(b) To Class Counsel:** Class Counsel will apply to the Superior Court for the
20 Class Counsel Fees Payment in an amount not to exceed 33.33% of the Maximum Settlement
21 Amount (currently estimated to be One Hundred Sixteen Thousand Six Hundred Fifty-Five Dollars
22 and No Cents (\$116,655.00). Class Counsel will also submit to the Superior Court a memorandum
23 of costs for the Class Counsel Litigation Expenses Payment in an amount not to exceed Twenty
24 Thousand Dollars and No Cents (\$20,000.00) as request for reasonable costs of suit to be paid from
25 the Maximum Settlement Amount. Defendant will not oppose these requests. The Settlement
26 Administrator will pay the amounts approved by the Superior Court out of the Maximum Settlement
27 Amount. Withholding and deductions will not be taken from the Class Counsel Fees Payment or
28

1 Class Counsel Litigation Expenses Payment and one or more IRS Forms 1099 will be issued to
2 Class Counsel with respect to those payments.

3 (c) **To the LWDA:** As part of its Motions for Preliminary and Final Approval,
4 the Plaintiff will apply to the Superior Court for approval of the LWDA Payment in the amount of
5 Eighteen Thousand Seven Hundred Fifty Dollars and No Cents (\$18,750.00), which shall
6 constitute the LWDA's seventy-five percent (75%) share of Twenty-Five Thousand Dollars and No
7 Cents (\$25,000.00) in civil penalties paid under this Settlement. The remaining Six Thousand
8 Two-Hundred Fifty Dollars and No Cents (\$6,250.00) in civil penalties shall be distributed on a
9 *pro rata* basis based upon the number of pay periods worked by each PAGA Group Member
10 ("PAGA Payment").

11 (d) **To the Settlement Administrator:** The Settlement Administrator will be
12 paid from the Maximum Settlement Amount its reasonable fees and expenses as approved by the
13 Superior Court, which are estimated not to exceed Six Thousand Five Hundred Dollars (\$6,500.00).

14 65. **Appointment of Settlement Administrator.** The Parties will ask the Superior
15 Court to appoint Apex Class Action Administration ("Apex") a qualified and experienced
16 administrator based in California where the Action is venued, to serve as the Settlement
17 Administrator, which, as a condition of appointment, will agree to be bound by this Agreement with
18 respect to the performance of its duties and its compensation. The Settlement Administrator's
19 duties will include (i) calculating Settlement Shares and PAGA Payment Shares; (ii) preparing,
20 printing, and mailing the Class Notice to all Class Members; (iii) using reasonable measures to
21 contact all Class Members, including conducting a National Change of Address search on all Class
22 Members before mailing the Class Notice to each Class Member's address; (iv) re-mailing the Class
23 Notice to the Class Member's new address for those Class Members whose address had changed;
24 (v) setting up a toll-free telephone number to receive calls from Class Members; (vi) receiving
25 requests for exclusion and objections to the Settlement; (vii) providing the Parties with weekly
26 status reports about the delivery of Class Notices and any requests for exclusion and objections;
27 (viii) issuing the checks to effectuate the payments due under the Settlement; (ix) using reasonable
28

1 measures to deliver issued checks to Participating Class Members, including use of a “skip-trace”
2 for undeliverable checks; and (x) otherwise administering the Settlement pursuant to this
3 Agreement including paying and reporting the employer’s share of the payroll taxes to the
4 appropriate taxing agency. The Settlement Administrator will have the final authority to resolve all
5 disputes concerning the calculation of a Participating Class Member’s Settlement Share and/or
6 PAGA Group Member’s PAGA Payment Share, subject to the terms set forth in this Agreement.
7 The Settlement Administrator’s reasonable fees and expenses are estimated to not exceed Six
8 Thousand Five Hundred Dollars (\$ 6,500.00) and will be paid out of the Maximum Settlement
9 Amount, as set forth herein, subject to Court approval.

10 **V. RELEASE OF CLAIMS**

11 66. **Plaintiff’s Released Claims.** Plaintiff, individually and on behalf of Plaintiff’s
12 heirs, executors, administrators, representatives, attorneys, successors and assigns knowingly and
13 voluntarily releases and forever discharges Defendant, including any and all parent corporation,
14 affiliates, subsidiaries, managers, divisions, predecessors, insurers, franchisors, successors and
15 assigns, including but not limited to each of their current and former employees, attorneys, officers,
16 directors and agents thereof, both individually and in their business capacities, and their employee
17 benefit plans and programs and the trustees, administrators, fiduciaries and insurers of such plans
18 and programs (collectively, “Plaintiff’s Released Parties”), to the fullest extent permitted by law, of
19 and from any and all claims, known and unknown, asserted and unasserted, which Plaintiff has or
20 may have against the Plaintiff’s Released Parties as of the date of execution of this Settlement
21 Agreement. Plaintiff is not waiving any rights Plaintiff may have to: (i) Plaintiff’s own vested
22 accrued employee benefits under the Defendant’s health, welfare or retirement benefits plans, if
23 any, as of the date of execution of this Settlement Agreement; (ii) benefits or rights to seek benefits
24 under applicable workers’ compensation (except as to claims under Labor Code §§ 132a and 4553
25 which are expressly released herein) or unemployment insurance or indemnification statutes; (iii)
26 pursue claims which by law cannot be waived by signing this Settlement Agreement; and (iv)
27 enforce this Settlement Agreement.

1 67. To affect a full and complete general release as described above, Plaintiff expressly
2 waives and relinquishes all rights and benefits of § 1542 of the Civil Code of the State of California
3 and does so understanding and acknowledging the significance and consequence of specifically
4 waiving § 1542. Thus, notwithstanding the provisions of § 1542, and to implement a full and
5 complete release and discharge of all parties, Plaintiff expressly acknowledges this Settlement
6 Agreement is intended to include in its effect, without limitation, all claims Plaintiff does not know
7 or suspect to exist in Plaintiff's favor at the time of signing this Settlement Agreement, and that this
8 Settlement Agreement contemplates the extinguishment of any such claims. Plaintiff warrants
9 Plaintiff has read this Settlement Agreement, including this waiver of California Civil Code § 1542,
10 and that Plaintiff has consulted with or had the opportunity to consult with counsel of Plaintiff's
11 choosing about this Settlement Agreement and specifically about the waiver of § 1542, and that
12 Plaintiff understands this Settlement Agreement and the § 1542 waiver, and so Plaintiff freely and
13 knowingly enters into this Settlement Agreement. Plaintiff further acknowledges that Plaintiff later
14 may discover facts different from or in addition to those Plaintiff now knows or believes to be true
15 regarding the matters released or described in this Settlement Agreement, and even so Plaintiff
16 agrees that the releases and agreements contained in this Settlement Agreement shall remain
17 effective in all respects notwithstanding any later discovery of any different or additional facts.
18 Plaintiff expressly assume any and all risk of any mistake in connection with the true facts involved
19 in the matters, disputes or controversies released or described in this Settlement Agreement or with
20 regard to any facts now unknown to Plaintiff relating thereto.

21 68. **Participating Class Members Released Claims.** As of the date of the Judgment,
22 each Participating Class Member, and without the need to manually sign a release document, shall
23 release the Released Parties from all causes of action and claims that were alleged in the Action or
24 reasonably could have been alleged based on the facts and legal theories contained in the Action,
25 including all of the following claims for relief: (1) Failure to Provide Meal Periods in Violation of
26 Labor Code §§ 226.7, 512 and 558; (2) Failure to Provide Rest Periods in Violation of Labor Code
27 §§ 226.7, 512 and 558; (3) Failure to Pay All Wages in Violation of Labor Code §§ 510 1194,
28

1 1194.2; (4) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement
2 Provisions (Labor Code §§ 226(a), (c), 1174(d); (5) Failure to Timely Pay Wages Due at
3 Termination (Labor Code §§ 201-203); (6) Failure to Timely Pay Employees in Violation of Labor
4 Code §§ 204(a)(b); (7) Failure to Reimburse for Business Expenses in Violation of Labor Code §
5 2802; (8) Failure to Pay for All Hours Worked, Including Overtime Hours Worked in Violation of
6 Labor Code §§ 210, 218; (9) Failure to Provide Place of Employment that Is Safe and Healthful in
7 Violation of Labor Code §§ 6400, 6401, 6403, 6404, 6407, 8 CCR 3202; (10) Violation of Business
8 and Professions Code § 17200; and (11) Penalties pursuant to Labor Code § 2699(f) for Violations
9 of Labor Code §§ 226.7, 512, 558, 510, 1194, 1194.2, 226(a), 226(e), 1174(d), 201-203, 204(a)(b),
10 2802, 210, 218, 6400, 6401, 6403, 6404, 6407, 8 CCR 3202, which could have been premised on
11 the claims, causes of action or legal theories of relief described above or any of the claims, causes
12 of action or legal theories of relief pleaded in the operative complaint; (12) any claim for costs and
13 attorneys' fees and expenses; and (13) any claim arising from the claims described above under
14 applicable federal, state, local or territorial law as well as applicable regulations and Wage Orders
15 (collectively, the "Released Claims"). Participating Class Members who cash their checks are
16 deemed to have waived all Released Claims inclusive of claims under the Fair Labor Standards Act.
17 Participating Class Members who do not cash their checks shall be deemed to waive all Released
18 Claims except for a claim under the Fair Labor Standards Act. Released Claims for Class Members
19 who worked for Defendant in California during the Class Period shall have their claims released
20 during the Class Period.

21 **69. PAGA Group Released Claims.** As of the date of the Judgment, each PAGA Group
22 Member, and without the need to manually sign a release document, shall release the Released
23 Parties for claims for civil penalties pursuant to PAGA based upon all causes of action and claims
24 that were alleged in the Action or reasonably could have been alleged based on the facts and legal
25 theories contained in the Action, and/or the LWDA Exhaustion Letter including all of the following
26 claims for relief: (1) Failure to Provide Meal Periods in Violation of Labor Code §§ 226.7, 512 and
27 558; (2) Failure to Provide Rest Periods in Violation of Labor Code §§ 226.7, 512 and 558; (3)
28

1 Failure to Pay All Wages in Violation of Labor Code §§ 510 1194, 1194.2; (4) Knowing and
2 Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Labor Code §§
3 226(a), (c), 1174(d); (5) Failure to Timely Pay Wages Due at Termination (Labor Code §§ 201-
4 203); (6) Failure to Timely Pay Employees in Violation of Labor Code §§ 204(a)(b); (7) Failure to
5 Reimburse for Business Expenses in Violation of Labor Code § 2802; (8) Failure to Pay for All
6 Hours Worked, Including Overtime Hours Worked in Violation of Labor Code §§ 210, 218; (9)
7 Failure to Provide Place of Employment that Is Safe and Healthful in Violation of Labor Code §§
8 6400, 6401, 6403, 6404, 6407, 8 CCR 3202; (10) Violation of Business and Professions Code §
9 17200; and (11) Penalties pursuant to Labor Code § 2699(f) for Violations of Labor Code §§ 226.7,
10 512, 558, 510, 1194, 1194.2, 226(a), 226(e), 1174(d), 201-203, 204(a)(b), 2802, 210, 218, 6400,
11 6401, 6403, 6404, 6407, 8 CCR 3202; (12) all claims under the California Labor Code Private
12 Attorneys General Act of 2004 that could have been premised on the claims, causes of action or
13 legal theories described above or any of the claims, causes of action or legal theories of relief
14 pleaded in the Action; (x) any claim for costs and attorneys' fees and expenses; and (13) any claim
15 arising from the claims described above under applicable federal, state, local or territorial law as
16 well as applicable regulations and Wage Orders (collectively, the "PAGA Released Claims").
17 PAGA Released Claims for PAGA Group Members who worked for Defendant in California during
18 the PAGA Period shall have their claims released during the PAGA Period.

19 70. Released Parties includes Defendant and their past, present and/or future, direct
20 and/or indirect, officers, directors, members, managers, employees, agents, representatives,
21 attorneys, including but not limited to O'Hagan Meyer, insurers, partners, investors, shareholders,
22 administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors,
23 assigns, and joint venturers.

24 71. In light of the binding nature of a PAGA judgment on non-party employees pursuant
25 to *Arias v. Sup. Ct. (Angelo Dairy)* (2009) 46 Cal.4th 969 and *Cardenas v. McLane Foodservice,*
26 *Inc.* (2011) 796 F.Supp.2d 1246, individuals otherwise meeting the definition of a Class Member
27 who exclude themselves from the Settlement shall nonetheless receive a payment for the amount of
28

each such individual's estimated share of the PAGA Payment and shall have released PAGA claims, as outlined in Paragraph 70.

72. The Released Claims and PAGA Released Claims described in Paragraphs 69 and 70 expressly exclude all claims made by a Participating Class Member and/or PAGA Group Member for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, claims while classified as exempt, and claims outside of the Class Period and/or PAGA Period.

73. **Class Counsel.** As of the Effective Date, and except as otherwise provided by this Settlement, Class Counsel and any counsel associated with Class Counsel waive any further claims to costs and attorneys' fees and expenses against Defendant or the Released Parties arising from or related to the Action, including but not limited to claims based on the Labor Code, the Code of Civil Procedure, PAGA, the Fair Labor and Standards Act, the Business and Professions Code, or any other contract, statute or law ("Class Counsel Released Claims").

74. **No Effect on Other Benefits.** The payment of Settlement Shares and/or PAGA Payment Shares will not result in any additional employee benefit payments (such as 401(k), vacation, or bonus) and shall not have any effect on the eligibility for, or calculation of, any employee benefit.

VI. DUTIES OF THE PARTIES

75. **Mutual Full Cooperation.** The Parties agree to cooperate fully with one another to accomplish and implement the terms of this Stipulation. Such cooperation shall include, but not be limited to, execution of such other documents and the taking of such other actions as may reasonably be necessary to fulfill the terms of this Settlement unless the Court denies the Settlement with prejudice. The Parties shall use their best efforts, including all efforts contemplated by this Stipulation and any other efforts that may become necessary by court order or otherwise, to effectuate this Stipulation and the terms set forth herein. As soon as practicable after execution of this Stipulation, Class Counsel, with the cooperation of Defendant and Defense Counsel, shall take all necessary and reasonable steps to secure the Court's approval of this Stipulation. The Parties will

work together to make any non-material modifications of the Settlement requested by the Court to obtain approval of the Parties' Settlement.

76. **Duty to Support and Defend the Class Settlement.** The Parties agree to abide by all of the terms of the Settlement in good faith and to support the Settlement fully and to use their best efforts to defend this Settlement from any legal challenge, whether by appeal or collateral attack.

77. **Duties Prior to Court Approval.** Class Counsel shall promptly submit this Stipulation to the Court for preliminary approval and determination by the Court as to its fairness, adequacy, and reasonableness. Promptly upon execution of this Stipulation, Class Counsel shall apply to the Court for the entry of a preliminary order, scheduling a hearing on the question of whether the proposed Class Settlement should be approved as fair, reasonable, and adequate as to the Class Members, approving as to form and content the proposed Class Notice attached hereto as Exhibit "A", respectively, and directing the mailing of the Class Notice to Settlement Class Members.

78. **Non-Monetary Relief and Catalyzation of Policy Change.** Although Defendant denies any liability of any kind associated with the claims alleged in the Lawsuit, denies any liability or intentional wrongdoing, Defendant revised and updated their wage and hour policies and practices, including but not limited to their timekeeping and meal period and rest break policies and procedures.

VII. MISCELLANEOUS TERMS

79. **No Admission of Liability.** Defendant denies that it has engaged in any unlawful activity, has failed to comply with the law in any respect, or has any liability to anyone under the claims asserted in the Action. This Settlement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Settlement is intended or will be construed as an admission of liability or wrongdoing by Defendant, an admission by Plaintiff that any of his claims were non-meritorious, or any defense asserted by Defendant was meritorious. This Settlement and the fact that Plaintiff and Defendant were willing to settle the Action will have no

bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with the Settlement).

80. The Parties also agree that this release constitutes a resolution of a good faith dispute concerning wages and complies with Labor Code Section 206.5, which reads in part:

“Execution of release of claim or right on account of wages due.

No employer shall require the execution of any release of any

claim or right on account of wages due, or to become due, or made,

or made as an advance on wages to be earned, unless payment of

those wages has been made.”

81. Whether or not the Judgment becomes Final, neither the Settlement, any document, statement, proceeding or conduct related to the Settlement, nor any reports or accounting of those matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendant or any of the Released Parties, including, but not limited to, evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any of the Released Parties, or any other civil, criminal or administrative action or proceeding except for purposes of effectuating this Settlement.

82. Notwithstanding Paragraph 82 of this Settlement, any and all provisions of this Settlement may be admitted in evidence and otherwise used in any and all proceedings to enforce any or all terms of this Settlement, or in defense of any claims released or barred by this Settlement.

83. **Non-Disparagement.** Plaintiff and Class Counsel agree not to make any untruthful, malicious, disparaging or defamatory statements, allegations, comments or communications, regardless of form (whether written, oral, electronic, including but not limited to Glassdoor, Yelp, or otherwise), regarding the Released Parties. Plaintiff and Class Counsel further agree not to encourage authorize or permit any such statements, allegations, comments or communications to be

1 made by others on their behalf. To the extent Plaintiff and/or Class Counsel have posted any
2 negative comments about the Released Parties on Glassdoor, Yelp, or other websites, Plaintiff
3 and/or Class Counsel agree to request that these comments be removed and to provide a copy of
4 such request to Defense Counsel within 30 days of the execution of this Agreement.

5 84. **Waiver of Reemployment.** Plaintiff acknowledges that she has no intent to apply
6 for employment and/or re-employment with Defendant. Plaintiff further acknowledges that
7 Defendant or any related, successor, parent, or subsidiary companies has the right to refuse rehiring
8 Plaintiff for non-discriminatory and non-retaliatory reasons and Plaintiff acknowledges that
9 Defendant's position is that such legitimate non-discriminatory and non-retaliatory reasons exist.

10 85. **Integrated Agreement.** After this Settlement is signed and delivered by all Parties
11 and their counsel, this Settlement and its exhibits will constitute the entire agreement between the
12 Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties,
13 covenants, or inducements have been made to any Party concerning this Settlement or its exhibits
14 other than the representations, warranties, covenants, and inducements expressly stated in this
15 Settlement and its exhibits.

16 86. **Attorney Authorization.** Class Counsel and Defense Counsel warrant and represent
17 that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action
18 required or permitted to be taken by such Parties pursuant to this Settlement to effectuate its terms,
19 and to execute any other documents required to effectuate the terms of this Settlement. The Parties
20 and their counsel will cooperate with each other and use their best efforts to affect the
21 implementation of the Settlement. In the event the Parties are unable to reach agreement on the
22 form or content of any document needed to implement the Settlement, or on any supplemental
23 provisions that may become necessary to effectuate the terms of this Settlement, the Parties will
24 seek the assistance of mediator Steve Rottman, Esq., and if no resolution is reached the Superior
25 Court, and in all cases all such documents, supplemental provisions and assistance of the court will
26 be consistent with this Settlement.

27 87. **Modification of Agreement.** This Agreement, and any and all parts of it, may be
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1 amended, modified, changed, or waived only by an express written instrument signed by all Parties,
2 their successors-in-interest, and/or the Parties' respective counsel, as authorized.

3 88. **Settlement Binding on Successors.** This Settlement Agreement will be binding
4 upon, and inure to the benefit of, the successors of each of the Parties.

5 89. **Applicable Law.** All terms and conditions of this Settlement and its exhibits will be
6 governed by and interpreted according to the laws of the State of California, without giving effect to
7 any conflict of law principles or choice of law principles.

8 90. **Cooperation in Drafting.** The Parties have cooperated in the drafting and
9 preparation of this Settlement. This Settlement will not be construed against any Party on the basis
10 that the Party was the drafter or participated in the drafting.

11 91. **Fair Settlement.** The Parties and their respective counsel believe and warrant that
12 this Settlement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at
13 this Settlement through arms-length negotiations, taking into account all relevant factors, current
14 and potential.

15 92. **Headings.** The descriptive heading of any section or Paragraph of this Settlement is
16 inserted for convenience of reference only and does not constitute a part of this Settlement.

17 93. **Notice.** All notices, demands or other communications given under this Settlement
18 will be in writing and deemed to have been duly given as of the third business day after mailing by
19 U.S. Mail, addressed as follows:

20 *To Class Counsel:*

Roman Otkupman, Esq.
OTKUPMAN LAW FIRM
5743 Corsa Ave., Suite 123
Westlake Village, California 91362

22 *To the Defendant's Counsel:*

23 Matthew C. Sgnilek, Esq.
24 Carla Vasques dos Santos-Moore, Esq.
O'HAGAN MEYER
3200 Park Center Drive, Suite 700
25 Costa Mesa, California 92626

26 94. **Execution in Counterpart.** This Settlement may be executed in one or more
27 counterparts. All executed counterparts and each of them will be deemed to be one and the same
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instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile signatures, scanned PDF signatures, and electronic signatures will be presumptive evidence of execution of the original, which shall be produced on reasonable request. Any executed counterpart will be admissible to prove the existence and contents of this Settlement.

DATED: 12 / 02 / 2024

VICTOR MANUEL GIL PALOS



DATED: 12/09/2024

GIBSON & SONS GOLF MANAGEMENT
LLC

By:

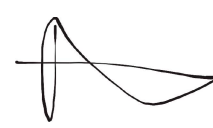
Its:

Member

DATED: 12 / 02 / 2024

OTKUPMAN LAW FIRM

By:


Roman Otkupman, Esq.

Attorney for Plaintiff
VICTOR MANUEL GIL PALOS

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DATED: _12/12/2024_____

O'HAGAN MEYER

By: 
Matthew C. Sgnilek, Esq.
Carla Vasques dos Santos-Moore, Esq.

Attorneys for Defendant
GIBSON & SONS GOLF MANAGEMENT LLC