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Attorneys for Defendant
GEORGE CHIALA FARMS, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

MARTIN CHAVEZ an individual, on
behalf of himself and others similarly
situated,

PLAINTIFF,

v.

GEORGE CHIALA FARMS, INC.; and
DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 16CV299769
[Case Assigned for All Purposes to Hon. Brian
C. Walsh, Dept. 1, Complex]

**JOINT STIPULATION OF SETTLEMENT
AND RELEASE TO SETTLE CLASS
ACTION**

It is hereby stipulated and agreed by and among the undersigned Parties, subject to the approval of the Court, that the full and final Settlement of this Action shall be effectuated upon and subject to the following terms and conditions. Terms defined in Article I shall have the meanings set

1 forth in Article I or as defined elsewhere in this Joint Stipulation of Settlement and Release to Settle
2 Class Action (hereinafter the “AGREEMENT”).

3 This Agreement is made and entered into by and between PLAINTIFF MARTIN CHAVEZ,
4 on behalf of the members of the CLASS to be certified by the California Superior Court, County of
5 Santa Clara, on the one hand, and DEFENDANT GEORGE CHIALA FARMS, INC., on the other
6 hand. Plaintiff and Defendant collectively are referred to in the AGREEMENT as the “PARTIES.”

7 The PARTIES agree that the ACTION shall be, and hereby is, ended, settled, resolved, and
8 concluded by agreement of DEFENDANT to pay no more than the settlement sum of One Million
9 and Thirty Thousand Dollars (\$1,030,000.00) as provided in ¶37 below, (“GROSS SETTLEMENT
10 AMOUNT”), upon the terms and conditions of the AGREEMENT and for the consideration set forth
11 herein, including, but not limited to a release of claims by PLAINTIFF MARTIN CHAVEZ and the
12 release of the CLASS MEMBERS’ claims as set forth in this AGREEMENT.

13 **ARTICLE I**
14 **DEFINITIONS**

15 1. “ACTION” shall mean the action entitled *Martin Chavez v. George Chiala Farms,*
16 *Inc.*, Case No. 16CV299769, the First Amended Complaint filed November 18, 2016, pending
17 before the Superior Court of the State of California for the County of Santa Clara.

18 2. “ADMINISTRATION COSTS” shall mean the actual and direct fees and costs
19 reasonably charged by the SETTLEMENT ADMINISTRATOR for its services in administering the
20 SETTLEMENT, including the issuance of the CLASS NOTICE and the calculation and payment of
21 SETTLEMENT AWARDS, currently projected by the PARTIES not to exceed \$17,000.

22 3. “AGREEMENT” shall mean this this Joint Stipulation of Settlement and Release to
23 Settle Class Action, including all of the Attachments hereto. Each such Attachment is
24 incorporated into this document by reference as though fully set forth herein.
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26 4. “CLASS” shall mean the aggregate group of CLASS MEMBERS.
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1 5. “CLASS DISTRIBUTION FUND” shall mean the SETTLEMENT FUND after
2 deducting the amount of the (A) the PAGA AWARD (except for that \$3,750 portion of the PAGA
3 AWARD that shall be included in the CLASS DISTRIBUTION FUND); (B) the FEE AND
4 EXPENSE AWARD; (C) the ADMINISTRATION COSTS; (D) the SERVICE FEE; and (E) TAX
5 EXPENSES.

6 6. “CLASS MEMBERS” shall mean all current and former non-exempt hourly
7 employees who were employed by DEFENDANT in California during the CLASS PERIOD.

8 7. “CLASS NOTICE” shall mean the Court-approved form of notice to CLASS
9 MEMBERS, substantially in the form of Attachment 1 hereto, which will notify CLASS
10 MEMBERS of the following: the conditional certification of the CLASS for settlement purposes,
11 PRELIMINARY APPROVAL of the SETTLEMENT, the procedures for objecting to the
12 SETTLEMENT and requesting exclusion from the CLASS, and the scheduling of the FINAL
13 APPROVAL HEARING.

14 8. “CLASS PERIOD” shall mean the period between September 9, 2012 through
15 preliminary approval or October 30, 2017, whichever occurs first.

16 9. “COURT” shall mean the Superior Court of the State of California, County of Santa
17 Clara.

18 10. “DEFENDANT” means George Chiala Farms, Inc.

19 11. “DEFENDANT’S COUNSEL” means:

20
21 GORDON & REES SCULLY MANSUKHANI LLP
22 Mollie M. Burks
23 Nicholas A. Deming
24 275 Battery Street, Suite 2000
25 San Francisco, CA 94111
26 Telephone: (415) 986-5900
27 Facsimile: (415) 986-8054
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1 12. “EFFECTIVE DATE” shall mean the later of the date on which the FINAL
2 JUDGMENT has been entered following FINAL APPROVAL by the COURT, if no objection to the
3 settlement has been made; or (B) the date on which any appeal or request for appellate review of the
4 FINAL JUDGMENT has finally concluded.

5 13. “EMPLOYEE NUMBER” and “EMPLOYEE NUMBERS” shall mean the employee-
6 specific numbers DEFENDANT has assigned to its employees for purposes of identification.

7 14. “EMPLOYEE TAXES” shall mean PARTICIPATING CLASS MEMBERS’ share of
8 all applicable federal, state and local income and employment taxes.

9 15. “FEE AND EXPENSE AWARD” shall mean such award of attorneys’ fees and costs
10 and expenses as the COURT authorizes to be paid to PLAINTIFF’S COUNSEL for the services they
11 have rendered to PLAINTIFF and the CLASS in the ACTION from the SETTLEMENT FUND, but
12 in no event shall exceed \$343,333.33 (three hundred and forty-three thousand, three hundred and
13 thirty-three dollars; one-third of the GROSS SETTLEMENT AMOUNT) in attorneys’ fees, and
14 \$15,000 (fifteen thousand dollars) of reasonable costs and expenses.

15 16. “FINAL APPROVAL” shall mean that the COURT has entered an order finally
16 approving the terms and conditions of this AGREEMENT and awarding attorneys’ fees and
17 expenses.

18 17. “FINAL APPROVAL HEARING” shall mean the hearing at which the Court enters a
19 judgment of FINAL APPROVAL of the SETTLEMENT, the FEE AND EXPENSE AWARD,
20 CLASS certification, whether and in what amount a SERVICE FEE should be awarded to
21 PLAINTIFF, and the merits of any objections to this AGREEMENT and the SETTLEMENT set
22 forth therein or any of its terms.
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1 18. “FINAL JUDGMENT” shall mean a judgment issued by the COURT at or after the
2 FINAL APPROVAL HEARING, in substantially the form of Attachment 2 hereto, in accordance
3 with the terms herein approving this AGREEMENT as binding upon the PARTIES. The FINAL
4 JUDGMENT shall constitute a judgment respecting the PARTIES, within the meaning and for
5 purposes of California Code of Civil Procedure sections 577, 581d, and 904.1(a).
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7 19. “GROSS SETTLEMENT AMOUNT” shall mean the maximum settlement sum of
8 One Million and Thirty Thousand Dollars (\$1,030,000.00), which is to be paid by DEFENDANT
9 under the terms and conditions of this AGREEMENT.

10 20. “LENGTH OF EMPLOYMENT” or “TOTAL WEEKS EMPLOYED” shall mean
11 the number of weeks each CLASS MEMBERS was employed by DEFENDANT during the CLASS
12 PERIOD, and shall be the length of time (measured in weeks) between each CLASS MEMBERS’
13 date of hire or the start of the CLASS PERIOD, whichever is later, and the CLASS MEMBER’S last
14 day of work, or the end of the CLASS PERIOD, whichever is earlier. For any CLASS MEMBER
15 terminated and re-hired within the CLASS PERIOD, the time the CLASS MEMBER was not
16 employed shall be excluded from the calculation of their LENGTH OF EMPLOYMENT.
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18 21. “LEXIS DATABASE” shall refer to a database of names, residential addresses, and
19 portions of Social Security numbers maintained by LexisNexis, including, without limitation, the
20 "Accurint" system maintained by LexisNexis.
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22 22. “MEDIATOR” shall refer to Lisa Klerman, Esq.
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24 23. “NATIONAL CHANGE OF ADDRESS SYSTEM” shall mean a database containing
25 a history of known residential addresses, including most recent addresses, for U.S. residents
26 nationally.
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1 24. “NOTICE OF FINAL APPROVAL” or “Notice of Final Approval of Settlement And
2 Entry of Judgment” means a postcard or similar notice entitled “Notice of Final Approval of
3 Settlement And Entry of Judgment” to be approved by the Court, substantially in the form attached
4 hereto as Attachment 4. This Notice of Final Approval shall constitute notice of the Judgment
5 pursuant to California Rule of Court 3.771.
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7 25. “OBJECTION/EXCLUSION DEADLINE” shall mean the date forty-five (45) days
8 after the date on which the SETTLEMENT ADMINISTRATOR first mails the CLASS NOTICE to
9 the CLASS MEMBERS.

10 26. “PAGA AWARD” shall mean the PARTIES’ agreement and stipulation to settle the
11 disputed claims of PLAINTIFF and the CLASS for penalties under the Labor Code Private Attorney
12 General Act ("PAGA") in the amount of \$15,000 (fifteen thousand dollars), \$11,250 of which shall
13 be remitted to the California Labor Workforce and Development Agency, and \$3,750 of which shall
14 be included in the CLASS DISTRIBUTION FUND.
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16 27. “PARTICIPATING CLASS MEMBERS” shall mean all CLASS MEMBERS who
17 have not excluded themselves from the SETTLEMENT by submitting a timely request for exclusion
18 by the OBJECTION/EXCLUSION DEADLINE in accordance with the requirements set forth in the
19 CLASS NOTICE.
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21 28. “PARTIES” shall mean PLAINTIFF, the CLASS, and DEFENDANT; and the term
22 "PARTY" shall mean either PLAINTIFF and the CLASS, or DEFENDANT.

23 29. “PLAINTIFF” shall mean Martin Chavez, the named Plaintiff in the ACTION.

24 30. “PLAINTIFF’S COUNSEL” shall mean Eric B. Kingsley and Liane Katzenstein Ly
25 of the law firm Kingsley & Kingsley and Sahag Majarian from the Law Offices of Sahag Majarian.
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1 31. “PRELIMINARY APPROVAL” shall mean that the COURT has entered an order
2 substantially in the form of Attachment 3 hereto, preliminarily approving the terms and conditions of
3 this AGREEMENT, including the manner of providing notice to CLASS MEMBERS, appointing
4 PLAINTIFF’S COUNSEL as Class Counsel, and conditionally certifying the CLASS for settlement
5 purposes.

6 32. “RELEASED CLAIMS” shall mean all known and unknown claims, charges,
7 complaints, obligations, promises, agreements, suits, rights, costs, losses, liens, penalties, fines,
8 wages, liquidated damages, restitutionary amounts, interest, punitive damages, controversies,
9 liabilities, debts, obligations, money owed, interest, guarantees, costs, expenses (including, without
10 limitation, back wages, penalties, liquidated damages, and attorneys’ fees and costs actually
11 incurred), attorneys’ fees and costs, damages, actions or causes of action of any nature, known or
12 unknown, suspected or unsuspected, which were raised, or could have been raised, based upon the
13 facts any of the facts, circumstances, transactions, events, occurrences, acts, disclosures, statements,
14 omissions or failures to act that (a) were asserted in the operative Complaint filed in the ACTION, or
15 (b) which might have been asserted in the operative Complaint filed in the ACTION (whether in tort,
16 contract, or otherwise) and which arise from the facts, circumstances, or legal theories alleged in the
17 operative Complaint filed in the ACTION, under state, federal, or local laws or regulations. The
18 RELEASED CLAIMS include, without limitation (A) any alleged failure to pay all wages owed to
19 CLASS MEMBERS; (B) any alleged failure to pay "premiums" for missed, late, or interrupted meal
20 or rest breaks, or to provide such breaks; (C) any alleged failure to pay overtime wages to CLASS
21 MEMBERS and/or to ensure that overtime compensation was properly calculated; (D) any alleged
22 failure to pay all wages due upon separation of employment, (E) any alleged failure to pay wages on
23 a timely basis during employment; (F) any alleged failure to issue accurate paystubs; (G) any alleged
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1 failure to keep required payroll records; and (H) any alleged violation of California Business and
2 Professions Code section 17200. They include claims for unpaid wages, economic damages, non-
3 economic damages, amounts due under California's Private Attorney General Act ("PAGA"),
4 restitution, statutory penalties, civil penalties, interest, attorneys' fees and costs, and/or any other
5 monetary losses or obligations of any kind to the extent they arise from or relate to the facts,
6 circumstances, and legal theories alleged in the operative Complaint filed in the ACTION.
7

8 33. "SERVICE FEE" shall mean such award as the COURT authorizes to be paid to the
9 PLAINTIFF in recognition of his efforts in obtaining the benefits of the SETTLEMENT for the
10 CLASS, but in no event shall exceed \$7,500 (seven thousand five hundred dollars).
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12 34. "SETTLEMENT" shall mean the terms and conditions set forth in this
13 AGREEMENT.

14 35. "SETTLEMENT ADMINISTRATOR" shall mean CPT Group, Inc.

15 36. "SETTLEMENT AWARD" shall mean each PARTICIPATING CLASS MEMBER's
16 percentage share of the amount of the CLASS DISTRIBUTION FUND.
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18 37. "SETTLEMENT FUND" shall mean the GROSS SETTLEMENT AMOUNT, plus
19 all interest accruing on such amount after it is delivered to the SETTLEMENT ADMINISTRATOR.
20 The SETTLEMENT FUND is the total amount of the FEE AND EXPENSE AWARD, the PAGA
21 AWARD, the SERVICE FEE, the ADMINISTRATION COSTS, TAX EXPENSES, and the CLASS
22 DISTRIBUTION FUND.
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24 38. "SETTLEMENT FUND TAXES" shall mean all taxes (including any interest or
25 penalties) arising with respect to the income earned by the SETTLEMENT FUND, including any
26 taxes or tax detriments that may be imposed upon or the SETTLEMENT FUND with respect to any
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1 income earned by the SETTLEMENT FUND for any period during which the SETTLEMENT
2 FUND does not qualify as a "qualified settlement fund" for federal or state income tax purposes.

3 39. "TAX EXPENSES" shall mean the funds needed to pay SETTLEMENT FUND
4 TAXES and expenses of tax attorneys and/or accountants, mailing and distribution costs, and
5 expenses relating to filing (or failing to file) the informational and other tax returns, including the
6 establishment of adequate reserves for such amounts (as well as any amounts that may be required to
7 be withheld under Treas. Reg. section 1.468B-2(1)(2)). Nothing herein is intended to relieve
8 PARTICIPATING CLASS MEMBERS of their own obligations to pay EMPLOYEE TAXES on
9 any amounts received from the SETTLEMENT FUND.
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11 **ARTICLE II**

12 **RECITALS**

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14 40. **BACKGROUND OF MATTER.** On September 9, 2016, PLAINTIFF, on behalf of
15 a putative class of all hourly employees currently or formerly employed by DEFENDANT in
16 California during the previous four years, filed the original complaint in the ACTION. PLAINTIFF
17 alleged that DEFENDANT failed to pay all wages and overtime, provide legally-compliant meal and
18 rest breaks, failed to pay premium pay for missed, late, or interrupted meal and rest breaks, failed to
19 pay final wages in a timely manner, failed to issue legally compliant wage statements, failed to keep
20 required payroll records, and violated California Business and Professions Code section 17200. On
21 November 18, 2016, PLAINTIFF filed an Amended Complaint adding an additional claim for
22 PAGA penalties under Section 2699 of the Labor Code. The parties subsequently engaged in
23 substantial discovery and investigation of the underlying factual premises of the claims, including
24 the production of detailed payroll records, employment policies, and time clock records for a sample
25 of Class Members. DEFENDANT has denied all allegations.
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1 41. **MEDIATION.** The PARTIES attended a mediation session before the MEDIATOR
2 on July 21, 2017. The case did not settle at the mediation, but the MEDIATOR continued
3 facilitating settlement negotiations. By way of a mediator's proposal, the PARTIES reached the
4 SETTLEMENT memorialized in this AGREEMENT in August 2017.

5 42. **PLAINTIFF'S CLAIMS.** PLAINTIFF claimed, and continues to claim, that his
6 contentions have merit and give rise to liability, both to him and to the CLASS. Nothing in this
7 AGREEMENT, the documents referenced in this AGREEMENT, nor any action taken to carry out
8 this AGREEMENT is, or may be construed as or may be used as, an admission by or against the
9 PLAINTIFF as to the merits or lack thereof of the claims he asserted.

10 43. **DENIAL OF WRONGDOING.** DEFENDANT denies all of the claims,
11 contentions, and each and every allegation made by the PLAINTIFF and in his complaint, including,
12 without limitation, and that any such conduct was willful on the part of DEFENDANT. In addition,
13 nothing herein shall be deemed to waive DEFENDANT'S objections and defenses to class
14 certification or any other issue relating to or arising from the allegations set forth in PLAINTIFF'S
15 pleadings filed in the ACTION. Nothing in this AGREEMENT, the documents referenced in this
16 AGREEMENT, nor any action taken to carry out this AGREEMENT is, or may be construed as, or
17 may be used as, an admission, concession or indication by or against DEFENDANT of any fault,
18 wrongdoing or liability whatsoever.

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

22 45. **INADMISSIBILITY OF THIS AGREEMENT.** Whether or not the
23 SETTLEMENT is finally approved, and except as may be necessary to enforce any term of this
24 AGREEMENT, or to assert the defenses of release and/or res judicata, neither the SETTLEMENT,
25 nor any of its terms, nor any document, statement, proceeding or conduct related to this
26 AGREEMENT, nor any reports or accounts thereof, shall in any event be:
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1 (A) Construed as, offered or admitted in evidence as, received as, or deemed to be
2 evidence for any purpose adverse to the PARTIES, including, but not limited to, evidence of a
3 presumption, concession, indication or admission by any of the PARTIES of any liability, fault,
4 wrongdoing, omission, concession or damage; or

5 (B) Disclosed, referred to or offered or received in evidence against any of the
6 PARTIES, in any further proceeding in the ACTION, or any other civil, criminal or administrative
7 action or proceeding except for purposes of settling the ACTION pursuant to the terms of this
8 AGREEMENT.
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10 46. **INVESTIGATION, DISCOVERY, AND RESEARCH.** The PARTIES conducted
11 a lengthy and detailed investigation of the facts and law both before and after the ACTION was
12 filed, and engaged in substantial discovery prior to the mediation. Discovery and investigation
13 included, *inter alia*, the exchange and analysis of voluminous information regarding hours worked,
14 scheduling of hourly shifts, personnel policies, payroll information, and CLASS composition and
15 membership. Counsel for the PARTIES have further investigated the applicable law as applied to
16 the facts discovered regarding PLAINTIFF'S claims, the defenses thereto, and the damages claimed
17 by PLAINTIFF.
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20 47. **PLAINTIFF'S REASONS FOR SETTLEMENT.** PLAINTIFF has considered the
21 expense and length of continued proceedings necessary to continue the ACTION against
22 DEFENDANT through trial and likely appeals, to demonstrate that certification of his proposed
23 class would be appropriate in a non-settlement context, and that the class is ascertainable in a non-
24 settlement context. PLAINTIFF has also taken into account the uncertainty and risk of the outcome
25 of further litigation, and the difficulties and delays inherent in such litigation, including those
26 involved in proving individual entitlements to damage awards under evolving legal standards.
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1 PLAINTIFF is also aware of the burdens of proof necessary to establish liability for the claims
2 asserted in the ACTION, DEFENDANT'S defenses thereto, and the difficulties in establishing
3 damages. In addition, PLAINTIFF has considered the settlement negotiations conducted by the
4 PARTIES and the recommendations of the MEDIATOR, who is highly experienced in employment
5 litigation and in wage and hour class action employment litigation specifically. Based on the
6 foregoing and on the advice of PLAINTIFF'S COUNSEL, Plaintiff has determined that the
7 SETTLEMENT set forth in this AGREEMENT is fair, adequate, and reasonable, and is in the best
8 interests of the CLASS.
9

10 48. **DEFENDANT'S REASONS FOR SETTLEMENT.** DEFENDANT has concluded
11 that further litigation would be protracted and expensive and that settlement is desirable. It is
12 DEFENDANT'S position that it would prevail in the ACTION because: (A) it has legally-compliant
13 policies; (B) PLAINTIFF and CLASS MEMBERS were provided the rest and meal breaks required
14 to be provided by law; (C) PLAINTIFF and CLASS MEMBERS were properly compensated for
15 missed breaks; (D) all wages due to PLAINTIFF and CLASS MEMBERS were paid in a timely
16 manner; (E) the wage stubs received by PLAINTIFF and the CLASS MEMBERS complied with
17 California and federal law requirements; (F) DEFENDANT complied with its record-keeping
18 obligations; (G) class-wide trial of the claims asserted in the ACTION would be improper and
19 unmanageable because, among other reasons, variations among the CLASS MEMBERS in terms of
20 the different facilities where they work, work schedules, job duties, and the amount of actual time
21 they worked; and (H) other substantive and procedural defects in the claims. DEFENDANT has
22 nevertheless considered the settlement recommendations of the MEDIATOR, who is highly
23 experienced in employment litigation, and desires to avoid the expense and distraction of further
24 litigation, including the cost of resolving individualized claims regarding the amount of time worked
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1 on engagements by individual employees, and the risks presented by evolving and uncertain legal
2 standards. DEFENDANT deems it desirable and beneficial that the ACTION be settled in a manner
3 and upon the terms and conditions set forth herein.

4 NOW, THEREFORE, it is agreed by and between the undersigned that the ACTION be
5 settled and compromised, conditioned upon approval by the COURT, as between PLAINTIFF, on
6 behalf of himself and the putative CLASS he seeks to represent, and DEFENDANT, on the
7 following terms and conditions:
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9 **ARTICLE III**

10 **AGREEMENT OF THE PARTIES**

11 **STIPULATION FOR CONDITIONAL CERTIFICATION OF THE CLASS.** Solely for
12 purposes of consummation and fulfillment of this AGREEMENT, the PARTIES each agree to the
13 conditional certification of the CLASS. Should, for whatever reason, the SETTLEMENT not
14 become final, the PARTIES' stipulation to conditional class certification shall be deemed null and
15 void *ab initio* and shall have no bearing on, and shall not be admissible in connection with, the issue
16 of whether or not certification would be appropriate in a non-settlement context.
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18 49. **APPLICATION FOR PRELIMINARY APPROVAL.** Counsel for PLAINTIFF
19 shall request a hearing before the COURT to seek PRELIMINARY APPROVAL of the
20 SETTLEMENT on the earliest practical date. In conjunction with such hearing, the PARTIES will
21 submit this AGREEMENT, together with the Attachments hereto, and any other documents
22 necessary to implement the SETTLEMENT. Simultaneously with the filing of this AGREEMENT
23 and solely for purposes of this SETTLEMENT, counsel for the PARTIES will request that the
24 COURT enter a Preliminary Approval Order under section 382 of the California Code of Civil
25 Procedure and Rules 3.760 *et seq.* of the California Rules of Court as a class action for purposes of
26 settlement only, substantially in the form of Attachment 3 hereto, preliminarily approving the
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1 proposed SETTLEMENT, conditionally certifying the CLASS for settlement purposes, preliminarily
2 approving PLAINTIFF'S COUNSEL'S FEE AND EXPENSE AWARD subject to final review by
3 the COURT; preliminarily approving estimated costs of administration payable to the
4 SETTLEMENT ADMINISTRATOR; preliminarily approving PLAINTIFF'S SERVICE FEE, and
5 setting a date for the FINAL APPROVAL HEARING. The Preliminary Approval Order shall also
6 provide for notice of the SETTLEMENT and related matters to be disseminated to CLASS
7 MEMBERS as specified herein.

9 50. **PROCEDURES FOR CLASS NOTICE.** The PARTIES agree to the following
10 procedures for giving notice of this SETTLEMENT to the conditionally-certified CLASS:

11 (A) Within twenty-one (21) days following entry of the Preliminary Approval
12 Order, DEFENDANT shall provide the SETTLEMENT ADMINISTRATOR with the following
13 information with respect to each CLASS MEMBER: the CLASS MEMBER'S name, EMPLOYEE
14 NUMBER, Social Security Number, the total weeks employed during the CLASS PERIOD, and the
15 CLASS MEMBER'S most current address and telephone number as contained in DEFENDANT'S
16 personnel records. The class list will be provided in good faith. The inadvertent exclusion of any
17 Class Member(s) shall not comprise a breach of this Agreement.

18 (B) After receiving such information, the SETTLEMENT ADMINISTRATOR
19 shall update the CLASS MEMBERS' addresses using the LEXIS DATABASE system as well as the
20 NATIONAL CHANGE OF ADDRESS SYSTEM.

21 (C) The SETTLEMENT ADMINISTRATOR shall be responsible for:

22 (i) Printing and mailing to the CLASS MEMBERS the CLASS NOTICE
23 attached hereto as Attachment 1 as directed by the COURT;
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- 1 (ii) Consulting with counsel for PLAINTIFF and DEFENDANT
2 concerning any relevant issue, including without limitation, the
3 amounts of SETTLEMENT AWARDS to be paid to
4 PARTICIPATING CLASS MEMBERS;
5 (iii) Keeping track of timely and proper requests for exclusion;
6 (iv) Calculating SETTLEMENT AWARDS;
7 (v) Tax withholding from the “wage-replacement” portions of
8 SETTLEMENT AWARDS;
9 (vi) Distributing and paying SETTLEMENT AWARDS, the PAGA
10 AWARD, the SERVICE FEE, the FEE AND EXPENSE AWARD,
11 ADMINISTRATION COSTS, and TAX EXPENSES as may be
12 ordered by the COURT or as are otherwise necessary;
13 (vii) Providing sworn declaration testimony regarding its dissemination of
14 notice to the CLASS MEMBERS, receipt of exclusions and
15 objections, disbursement of the settlement funds, and administration of
16 the settlement, generally, as necessary; and
17 (viii) Such other tasks as the PARTIES mutually agree or the COURT
18 orders the SETTLEMENT ADMINISTRATOR to perform.
19

20 (D) The PARTIES each represent they do not have any financial interest in the
21 SETTLEMENT ADMINISTRATOR or otherwise have a relationship with the SETTLEMENT
22 ADMINISTRATOR that could create a conflict of interest.
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24 51. Within fourteen (14) days after receipt from DEFENDANT of the information
25 described in Paragraph 52 above, the SETTLEMENT ADMINISTRATOR shall send a copy of the
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1 CLASS NOTICE in the form approved by the COURT in its Preliminary Approval Order to all
2 persons shown by DEFENDANT'S records to be CLASS MEMBERS, via First Class U.S. mail,
3 using the most current mailing address as determined pursuant to Paragraph 52. The CLASS
4 NOTICE shall also include instructions on how to request exclusion from and /or object to the
5 SETTLEMENT. The CLASS NOTICE shall further explain how each PARTICIPATING CLASS
6 MEMBER'S SETTLEMENT AWARD will be calculated.

8 52. Any CLASS NOTICES returned to the SETTLEMENT ADMINISTRATOR as
9 undelivered and bearing a forwarding address shall be re-mailed by the SETTLEMENT
10 ADMINISTRATOR within three (3) days following receipt of the returned mail. For any CLASS
11 NOTICES returned to the SETTLEMENT ADMINISTRATOR without a forwarding address, the
12 SETTLEMENT ADMINISTRATOR shall conduct one address search using the LexisNexis
13 Accurint system, and shall promptly re-mail the CLASS NOTICES to any newly-found address or
14 addresses. In the event that an intended recipient of a CLASS NOTICE does not receive the CLASS
15 NOTICE, the intended recipient shall nevertheless remain a PARTICIPATING CLASS MEMBER.

17 53. **COMPLIANCE WITH NOTICE PROCESS.** Compliance with the procedures
18 described in Article III shall constitute due and sufficient notice to CLASS MEMBERS of this
19 proposed SETTLEMENT and the FINAL APPROVAL HEARING, and shall satisfy the
20 requirements of due process. Nothing else shall be required of, or done by, the PARTIES,
21 PLAINTIFF'S COUNSEL, DEFENDANT'S COUNSEL, or the SETTLEMENT
22 ADMINISTRATOR to provide notice of the proposed SETTLEMENT and the FINAL APPROVAL
23 HEARING.

24 54. **PROCEDURE FOR OBJECTING TO OR REQUESTING EXCLUSION**
25 **FROM THE SETTLEMENT.** CLASS MEMBERS and persons purporting to act on behalf of
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1 CLASS MEMBERS who wish to object to the SETTLEMENT and/or to final certification of the
2 CLASS, or who wish to be excluded from the CLASS, shall submit objections and/or requests for
3 exclusion, using the following procedures:

4 (A) The CLASS NOTICE shall provide that CLASS MEMBERS and persons
5 purporting to act on behalf of CLASS MEMBERS who wish to object to any aspect of the
6 SETTLEMENT, including final certification of the CLASS, must submit to the SETTLEMENT
7 ADMINISTRATOR a written statement objecting to the SETTLEMENT describing the nature of the
8 objection and the legal grounds for the objection. Such written statement and all supporting briefs or
9 other materials must be submitted to the SETTLEMENT ADMINISTRATOR and postmarked no
10 later than the OBJECTION/EXCLUSION DEADLINE.
11

12 (B) No CLASS MEMBER or person purporting to act on behalf of any CLASS
13 MEMBER shall be entitled to be heard at the FINAL APPROVAL HEARING (whether individually
14 or through counsel) or to object to any aspect of the SETTLEMENT, including final certification of
15 the CLASS, and no written objections or briefs submitted by any CLASS MEMBER or person
16 purporting to act on behalf of any CLASS MEMBER shall be received or considered by the COURT
17 at the FINAL APPROVAL HEARING, unless the CLASS MEMBER'S written statement of
18 objections and supporting materials have been timely submitted as set forth above. CLASS
19 MEMBERS who fail to submit timely written objections in the manner specified above shall be
20 deemed to have waived any objections and shall be foreclosed from making any objection (whether
21 by appeal or otherwise) to the SETTLEMENT.
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23 (C) The CLASS NOTICE shall also inform CLASS MEMBERS that the Court
24 has conditionally certified the CLASS for settlement purposes, and provide that CLASS MEMBERS
25 who wish to exclude themselves from the CLASS must no later than the
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1 OBJECTION/EXCLUSION DEADLINE submit to the SETTLEMENT ADMINISTRATOR a
2 written statement requesting exclusion from the CLASS. Such written request for exclusion must
3 contain the name, address, and telephone number of the person requesting exclusion, must be
4 returned by certified mail to the SETTLEMENT ADMINISTRATOR at the specified address, and
5 must be postmarked on or before the OBJECTION/EXCLUSION DEADLINE. CLASS
6 MEMBERS who fail to submit a valid and timely request for exclusion in the manner described in
7 this paragraph shall be bound by all terms of the SETTLEMENT and the FINAL JUDGMENT if the
8 SETTLEMENT is approved by the COURT.

10 (D) No later than ten (10) days after the OBJECTION/EXCLUSION DEADLINE,
11 the SETTLEMENT ADMINISTRATOR shall provide to counsel for the PARTIES the names and
12 EMPLOYEE NUMBERS of those CLASS MEMBERS who have requested exclusion. Counsel for
13 the PARTIES shall also be advised of the estimated amount of the SETTLEMENT AWARD
14 payable to each PARTICIPATING CLASS MEMBER.

16 (E) Any CLASS MEMBER who fails to timely submit a written statement of his
17 or her intention to object to the SETTLEMENT and AGREEMENT shall be foreclosed from
18 making any objection to this SETTLEMENT and AGREEMENT, unless otherwise permitted by the
19 COURT.

21 55. **“REQUEST FOR EXCLUSION” REJECTION OPTION.** If the total number of
22 CLASS MEMBERS who request to be excluded from the SETTLEMENT and/or from the CLASS
23 is more than five percent (5%) of the number of CLASS MEMBERS to whom a CLASS NOTICE
24 was mailed, DEFENDANT will have the option, at its sole discretion, of revoking the
25 SETTLEMENT in its entirety; provided, however, that such option must be exercised within ten (10)
26 days before the FINAL APPROVAL HEARING. If this option is exercised by DEFENDANT, the
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1 SETTLEMENT will be void and unenforceable in its entirety, any ADMINISTRATION COSTS
2 and TAX EXPENSES incurred up to that date shall be paid from the SETTLEMENT FUND by the
3 SETTLEMENT ADMINISTRATOR, the order conditionally certifying the CLASS shall be vacated
4 and be deemed void *ab initio*, and any amounts remaining in the SETTLEMENT FUND and
5 residing with the SETTLEMENT ADMINISTRATOR shall be returned to DEFENDANT.
6

7 56. **NOTICE TO THE CALIFORNIA LABOR AND WORKFORCE**
8 **DEVELOPMENT AGENCY.** Pursuant to Labor Code Section 2699(k)(2), PLAINTIFF'S
9 COUNSEL shall submit this SETTLEMENT AGREEMENT to the Labor and Workforce
10 Development Agency at the same time it submits the SETTLEMENT AGREEMENT to the Court.
11

12 57. **BEST EFFORTS.** The PARTIES agree to use their best efforts to obtain approval
13 from the court and otherwise to carry out the terms of this SETTLEMENT. Neither of the PARTIES
14 nor counsel will contact CLASS MEMBERS or respond to Class Members inquiries solely for the
15 purpose of attempting to influence them to exclude themselves from the CLASS or object to the
16 SETTLEMENT. If contacted by a CLASS MEMBER, PLAINTIFF'S COUNSEL may provide
17 advice or assistance regarding any aspect of the SETTLEMENT requested by the CLASS
18 MEMBER. Nothing in this SETTLEMENT AGREEMENT shall preclude DEFENDANT from
19 communicating or speaking to its own employees, or providing a truthful response to any inquiries
20 from current or former employees, including that the settlement is of disputed claims and with no
21 admission of liability by DEFENDANT, and that they or it specifically dispute that it has ever
22 underpaid employees, denied them meal or rest breaks, or otherwise violated federal or state
23 employment law in any manner, and nothing in this SETTLEMENT AGREEMENT shall subject
24 DEFENDANT to any claims by virtue of its communications with its own employees. Nothing
25 herein shall prevent PLAINTIFF'S COUNSEL from providing CLASS MEMBERS with access to
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1 copies of any documents filed in the court in support of approval of the settlement, including a copy
2 of the SETTLEMENT AGREEMENT, provided that such publication contains no unilateral
3 characterization of the SETTLEMENT or its terms.

4 58. **FINAL APPROVAL HEARING.** A FINAL APPROVAL HEARING shall be
5 noticed for a date set by the COURT at the Preliminary Approval Hearing, but no earlier than eighty-
6 seven (87) days following the Preliminary Approval Hearing, such as to allow for the provision of
7 CLASS NOTICE and the expiration of the OBJECTION/EXCLUSION DEADLINE. In connection
8 with the FINAL APPROVAL HEARING, the PARTIES shall file such papers with the COURT as
9 either their counsel or the COURT may determine to be necessary. Before the FINAL APPROVAL
10 HEARING, the SETTLEMENT ADMINISTRATOR shall file proof that it complied with its
11 obligations under this AGREEMENT. The PARTIES will also at this time seek approval of the
12 NOTICE OF FINAL APPROVAL per C.R.C. 3.771.
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15 59. **FINAL JUDGMENT.** After and assuming FINAL APPROVAL of the
16 SETTLEMENT and of this AGREEMENT, and after and assuming final certification of the CLASS,
17 the PARTIES shall obtain entry of a FINAL JUDGMENT. It is expressly agreed by the PARTIES
18 that the COURT will retain jurisdiction to enforce the terms of this AGREEMENT and the FINAL
19 JUDGMENT, pursuant to California Code of Civil Procedure section 664.6 and C.R.C. 3.769(h).
20

21 Provided that the FINAL JUDGMENT is consistent with the terms and conditions of this
22 AGREEMENT, PLAINTIFF, as well as any CLASS MEMBERS who did not timely submit an
23 objection to the SETTLEMENT and appear at the FINAL APPROVAL HEARING, hereby waive
24 any and all rights to appeal from the FINAL JUDGMENT, including all rights to any post-judgment
25 proceeding and appellate proceeding, such as a motion to vacate or set aside judgment, a motion for
26 new trial, and any extraordinary writ, and the FINAL JUDGMENT therefore will become final and
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1 non-appealable at the time it is entered. This waiver does not include any waiver of the right to
2 oppose any appeal, appellate proceedings, or post-judgment proceedings.

3 60. **NULLIFICATION OF AGREEMENT.** The PARTIES expressly agree that either
4 of them may terminate the SETTLEMENT in the event:

5 (A) The COURT does not enter any order specified herein, including the proposed
6 Preliminary Approval Order substantially in the form of Attachment 3 hereof;

7 (B) The COURT does not finally approve this AGREEMENT and the
8 SETTLEMENT it embodies;

9 (C) The COURT does not enter the FINAL JUDGMENT as provided herein, or
10 the FINAL JUDGMENT is reversed, vacated, modified, or overturned on appeal;

11 (D) The EFFECTIVE DATE does not occur;

12 (E) more than five percent (5%) of the CLASS MEMBERS submit a written
13 request to be excluded from the CLASS and DEFENDANT elects to void this AGREEMENT; or

14 (E) The SETTLEMENT does not become final for any other reason. In such
15 event, this AGREEMENT shall be null and void *ab initio* and any order or judgment entered by the
16 COURT in furtherance of this SETTLEMENT shall be treated as withdrawn or vacated by
17 stipulation of the PARTIES. In such case, the PARTIES shall be returned to their respective statuses
18 as of the date immediately prior to the execution of this AGREEMENT, and the PARTIES shall
19 proceed in all respects as if this AGREEMENT had not been executed.

20 Notwithstanding the foregoing, none of the following shall constitute grounds for
21 cancellation and termination of the SETTLEMENT: the COURT's determination that the amount of
22 the FEE AND EXPENSE AWARD or SERVICE FEE should be less than that requested by
23 PLAINTIFF'S COUNSEL OR PLAINTIFF; any appeal of, modification of, or reversal on appeal of
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1 any amount of attorneys' fees or costs that have been awarded by the COURT to PLAINTIFF'S
2 COUNSEL, or of the SERVICE FEE to PLAINTIFF; any fact discovered by either PARTY that
3 relates to any claim proposed to be released by this settlement, or any rulings by any California
4 appellate court which appear to alter, modify, or affect any claim asserted by PLAINTIFF or any
5 defense asserted by DEFENDANTS.

7 **ARTICLE IV**

8 **THE SETTLEMENT FUND**

9 61. **MONETARY CONSIDERATION FROM DEFENDANT.** In full settlement of
10 the claims asserted herein, DEFENDANT will pay the GROSS SETTLEMENT PAYMENT into the
11 SETTLEMENT FUND, which is a "non-reversionary" amount, and which will be administered by
12 the SETTLEMENT ADMINISTRATOR. Further, in addition, DEFENDANT will pay the
13 employer's share of payroll taxes arising from the SETTLEMENT AWARDS. Under no
14 circumstances shall DEFENDANT be required to pay any other amounts as a consequence of this
15 SETTLEMENT.
16

17 62. **COMPONENTS OF THE SETTLEMENT FUND.** The SETTLEMENT FUND in
18 this ACTION has six components: (A) the SERVICE FEE; (B) the FEE AND EXPENSE AWARD;
19 (C) the ADMINISTRATION COSTS; (D) TAX EXPENSES; (E) the PAGA AWARD; and (E) the
20 CLASS DISTRIBUTION FUND.
21

22 63. **FUNDING OF THE SETTLEMENT FUND.**
23 (A) No later than thirty (30) days following the entry of FINAL JUDGMENT,
24 DEFENDANT shall deliver to the SETTLEMENT ADMINISTRATOR a first payment of
25 \$515,000.00 ("FIRST PAYMENT"). No later than twelve (12) months thereafter, DEFENDANT
26 shall deliver to the SETTLEMENT ADMINISTRATOR a second payment of \$515,000.00
27 ("SECOND PAYMENT"). Nothing in this SETTLEMENT shall preclude DEFENDANT from
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1 making the FIRST PAYMENT or SECOND PAYMENT earlier than required by this provision and
2 this AGREEMENT. If the EFFECTIVE DATE does not occur for any reason, the FIRST
3 PAYMENT and SECOND PAYMENT shall be returned to DEFENDANT by the
4 ADMINISTRATOR. The FIRST PAYMENT and SECOND PAYMENT, shall comprise the
5 GROSS SETTLEMENT AMOUNT.
6

7 (C) The PARTIES agree and contemplate that the SETTLEMENT
8 ADMINISTRATOR shall calculate the amounts due to PARTICIPATING CLASS MEMBERS or
9 others (e.g. PLAINTIFF'S COUNSEL or the SETTLEMENT ADMINISTRATOR for its
10 ADMINISTRATION COSTS), and promptly distribute, per the terms of this Agreement, such
11 payable amounts from the interest-bearing bank account maintained by the SETTLEMENT
12 ADMINISTRATOR for that purpose.
13

14 64. **ESCROW OF THE SETTLEMENT FUND.** Should the SETTLEMENT
15 ADMINISTRATOR determine that funds it receives pursuant to paragraph 62, above, cannot or
16 should not be promptly distributed, the SETTLEMENT ADMINISTRATOR will place such funds
17 in escrow in an interest bearing account and/or in instruments backed by the full faith and credit of
18 the United States Government, in interest-bearing accounts fully insured by the United States
19 Government or an agency thereof, or in money market funds investing solely in short term United
20 States Government obligations, and shall so reinvest the proceeds of these instruments as they
21 mature.
22

23 65. **JURISDICTION OVER THE SETTLEMENT FUND.** All funds held in the
24 SETTLEMENT FUND shall be deemed to be *in custodia legis* and shall remain subject to the
25 jurisdiction of the COURT until such time as the funds have been distributed pursuant to this
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1 AGREEMENT and the order of the COURT. No withdrawals shall be made from the
2 SETTLEMENT FUND without prior COURT approval.

3 ARTICLE V

4 THE PAGA AWARD

5 66. PAYMENT OF PAGA AWARD. As consideration for and in settlement of the
6 Labor Code Private Attorney General Act claims asserted in the ACTION, within thirty (30) days
7 after the EFFECTIVE DATE, the SETTLEMENT ADMINISTRATOR will distribute the PAGA
8 AWARD, by sending \$11,250 to the Labor Workforce Development Agency (“LWDA”), and
9 including the balance of the PAGA AWARD in the CLASS DISTRIBUTION FUND. Notice to the
10 LWDA of the SETTLEMENT and of the FINAL APPROVAL of the SETTLEMENT, including a
11 copy of the FINAL JUDGMENT, shall be provided by the SETTLEMENT ADMINISTRATOR.
12

13 ARTICLE VI

14 THE SETTLEMENT AWARDS

15 67. SETTLEMENT AWARDS AS CONSIDERATION. For purposes of resolving the
16 RELEASED CLAIMS, the PARTIES agree that each PARTICIPATING CLASS MEMBER will
17 receive a SETTLEMENT AWARD calculated using a numerical formula based on the TOTAL
18 WEEKS EMPLOYED by each PARTICIPATING CLASS MEMBER during the CLASS PERIOD
19 to derive a percentage entitlement for each PARTICIPATING CLASS MEMBER from the CLASS
20 DISTRIBUTION FUND. The total of all individual SETTLEMENT AWARDS will be equivalent
21 to the CLASS DISTRIBUTION FUND.
22

23 68. DIFFICULTY OF DETERMINING CLAIMS. The PARTIES agree that a precise
24 calculation of the amount of alleged unpaid compensation allegedly earned by individual CLASS
25 MEMBERS is impracticable, due to fact that the timekeeping and payroll records that would need to
26 be analyzed is voluminous, and the necessary analysis would be very time-consuming and costly.
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1 The PARTIES agree to use the TOTAL WEEKS EMPLOYED as a fair and reasonable proxy of
2 determining the PARTICIPATING CLASS MEMBERS' pro rata share of the SETTLEMENT
3 FUND. The PARTIES further agree that the method for allocating the SETTLEMENT AWARDS to
4 the PLAINTIFF and PARTICIPATING CLASS MEMBERS as described herein is fair and
5 reasonable in light of all of the circumstances and that the payments provided herein are designed to
6 provide a fair settlement to all such persons.
7

8 69. **ELIGIBILITY FOR THE SETTLEMENT AWARDS.**

9 (A) CLASS MEMBERS who submit valid and timely requests for exclusion from
10 the CLASS are not entitled to any SETTLEMENT AWARD and will not be bound by this
11 SETTLEMENT or any order or judgment entered by the COURT approving this SETTLEMENT.
12

13 (B) CLASS MEMBERS who do not timely exclude themselves from the CLASS
14 shall be PARTICIPATING CLASS MEMBERS and shall receive a SETTLEMENT AWARD.
15 PARTICIPATING CLASS MEMBERS will not be requested to submit claim forms or proof of
16 eligibility to the SETTLEMENT ADMINISTRATOR to receive a SETTLEMENT AWARD.
17

18 70. **CALCULATION OF SETTLEMENT AWARDS.** In order to determine the
19 SETTLEMENT AWARD for each PARTICIPATING CLASS MEMBER, the SETTLEMENT
20 ADMINISTRATOR shall use the information provided by DEFENDANT about each CLASS
21 MEMBER'S TOTAL WEEKS EMPLOYED. The SETTLEMENT ADMINISTRATOR will
22 determine the amount of the SETTLEMENT AWARD that each PARTICIPATING CLASS
23 MEMBER is entitled to receive, pursuant to the methodology set forth below.
24

25 (A) The SETTLEMENT ADMINISTRATOR shall add together all TOTAL
26 WEEKS EMPLOYED to determine the "Participating Class's Total Weeks Employed."
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1 (B) The SETTLEMENT ADMINISTRATOR shall then divide each
2 PARTICIPATING CLASS MEMBER'S TOTAL WEEKS EMPLOYED by the Participating
3 Class's TOTAL WEEKS EMPLOYED in order to determine the "Percentage Share" of each
4 PARTICIPATING CLASS MEMBER.

5 (C) Each PARTICIPATING CLASS MEMBER shall be entitled to receive a
6 SETTLEMENT AWARD equal to his or her Percentage Share of the CLASS DISTRIBUTION
7 FUND.
8

9 71. **HYPOTHETICAL.** Thus, if (hypothetically) CLASS MEMBER XX's Percentage
10 Share is 2%, and the CLASS DISTRIBUTION FUND is \$200,000.00, then CLASS MEMBER
11 XX's total gross SETTLEMENT AWARD will be \$4,000.00. If (hypothetically) CLASS
12 MEMBER YY's Percentage Share is .6%, then YY's total gross SETTLEMENT AWARD will be
13 \$1,200.00.
14

15 72. **WAGES, INTEREST AND PENALTIES.** The PARTIES agree that 33 1/3% of
16 each PARTICIPATING CLASS MEMBER'S SETTLEMENT AWARD shall be deemed wage
17 replacement subject to payroll tax. The PARTIES further agree that 66 2/3% of each such
18 PARTICIPATING CLASS MEMBER'S SETTLEMENT AWARD represents payments in
19 compromise of claims for non-wage monetary amounts, including non-wage penalties, pre-judgment
20 interest, and post-judgment interest. Only the wage replacement portion and not the interest/penalty
21 portion of each SETTLEMENT AWARD shall be subject to withholding for federal, state, and local
22 payroll-related taxes. Calculation of withholding amounts shall be performed by the
23 SETTLEMENT ADMINISTRATOR, which shall be exclusively responsible for the same.
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26 73. **DISTRIBUTION OF SETTLEMENT AWARDS AND NOTICE OF FINAL**
27 **APPROVAL.** Within fourteen (14) days of receipt of the SECOND PAYMENT, the
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1 SETTLEMENT ADMINISTRATOR shall mail checks representing the SETTLEMENT AWARDS
2 (minus any applicable withholdings due) to each PARTICIPATING CLASS MEMBER hereunder.

3 In no event shall any such mailings occur prior to the EFFECTIVE DATE.

4 Each PARTICIPATING CLASS MEMBER shall receive two checks: one for the “wage
5 replacement” portion of his or her SETTLEMENT AWARD, which shall be net of withholdings,
6 and one for the “non-wage replacement” portion of his SETTLEMENT AWARD.

7
8 The distribution and payment of SETTLEMENT AWARDS shall be the exclusive
9 responsibility of the SETTLEMENT ADMINISTRATOR. DEFENDANT shall not be required to
10 make such payment or supervise or conduct the distribution; its sole obligation shall be to pay the
11 GROSS SETTLEMENT AMOUNT to the SETTLEMENT FUND, in accordance with this
12 AGREEMENT.

13
14 74. After one hundred and eighty (180) days of the mailing of any check to any
15 PARTICIPATING CLASS MEMBER by the SETTLEMENT ADMINISTRATOR, funds
16 attributable to unclaimed, undeliverable, or expired SETTLEMENT AWARD checks shall be
17 transmitted to the recipients that the Court directs. Plaintiff will request that the Court approve
18 distribution to the following recipients: 25% to the Trial Court Improvement and Modernization
19 Fund, 25% to the Equal Access Fund of the Judicial Branch, and 50% to Bet Tzedek Legal
20 Services.

21
22 75. Within fourteen (14) days of receipt of the GROSS SETTLEMENT AMOUNT, and
23 only after the EFFECTIVE DATE, the SETTLEMENT ADMINISTRATOR will send to each
24 PARTICIPATING CLASS MEMBER the NOTICE OF FINAL APPROVAL along with their
25 settlement checks.
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76. **CERTIFICATION BY SETTLEMENT ADMINISTRATOR.** No later than ten (10) days following the OBJECTION/EXCLUSION DEADLINE, the SETTLEMENT ADMINISTRATOR shall provide counsel for the PARTIES a written report listing the estimated SETTLEMENT AWARDS payable to each PARTICIPATING CLASS MEMBER, identified by his or her relevant EMPLOYEE number. In addition, upon completion of administration of the SETTLEMENT, the SETTLEMENT ADMINISTRATOR shall provide written certification of such completion to PLAINTIFF'S COUNSEL and DEFENDANT.

77. **NO CLAIMS RESULTING FROM PAYMENTS.** No person shall have any claim of any kind whatsoever against any of the PARTIES, DEFENDANT’S COUNSEL, PLAINTIFF’S COUNSEL, any CLASS MEMBERS, or the SETTLEMENT ADMINISTRATOR, based on the distribution of a SETTLEMENT AWARD made in accordance with this AGREEMENT.

ARTICLE VII

OTHER FEES, EXPENSES AND COSTS

78. **FEE AND EXPENSE AWARD.** PLAINTIFF'S COUNSEL intends to request that the COURT award attorneys' fees in an amount not to exceed one-third of the GROSS SETTLEMENT AMOUNT, not to exceed \$343,333.33 and for the recovery of reasonable litigation costs and expenses in an amount not to exceed \$15,000. PLAINTIFF'S COUNSEL shall not petition the COURT for, or accept, any additional payments for fees or expenses. The FEE AND EXPENSE AWARD shall be for all claims for attorneys' fees past, present and future incurred in the ACTION or with respect to the RELEASED CLAIMS, and for any costs and expenses incurred by PLAINTIFF, the CLASS, and PLAINTIFF'S COUNSEL. DEFENDANT agrees that it will not oppose the application by PLAINTIFF'S COUNSEL for the payment of fees and expenses set forth in this paragraph, and PLAINTIFF'S COUNSEL agree that DEFENDANT shall have no burden or responsibility to support the request or characterization.

1 79. The FEE AND EXPENSE AWARD shall be paid to PLAINTIFF'S COUNSEL by
2 the SETTLEMENT ADMINISTRATOR from the SETTLEMENT FUND within fourteen (14) days
3 of receipt of the SECOND PAYMENT. DEFENDANT shall not be required to make such payment
4 other than as described herein; its sole obligation shall be to pay the GROSS SETTLEMENT
5 AMOUNT to the SETTLEMENT FUND, in accordance with this AGREEMENT.
6

7 80. The FEE AND EXPENSE AWARD to PLAINTIFF'S COUNSEL shall constitute
8 full satisfaction of any obligation to pay any amounts to any person, attorney or law firm for
9 attorneys' fees, expenses or costs incurred in the ACTION or with respect to the RELEASED
10 CLAIMS. PLAINTIFF'S COUNSEL, by their approval of this SETTLEMENT, will be deemed to
11 have released DEFENDANT and DEFENDANT'S COUNSEL from any and all claims arising from
12 or related to the ACTION, subject to court approval and actual satisfaction of the obligation.
13

14 81. **DEFENDANT'S LEGAL FEES AND COSTS.** DEFENDANT'S own legal fees,
15 costs and expenses incurred in the ACTION shall be borne by DEFENDANT.
16

17 82. **SERVICE FEE FOR PLAINTIFF.** PLAINTIFF'S COUNSEL intends to request
18 that the COURT approve a SERVICE FEE of \$7,500 for the named PLAINTIFF MARTIN
19 CHAVEZ. DEFENDANT will not object to PLAINTIFF'S COUNSEL'S request.
20

21 83. The SERVICE FEE shall be paid from the SETTLEMENT FUND by the
22 SETTLEMENT ADMINISTRATOR to PLAINTIFF within fourteen (14) days of receipt of the
23 SECOND PAYMENT. The SERVICE FEE paid under this AGREEMENT shall be reported on an
24 IRS Form 1099, and shall not be subject to payroll withholding. Payment of the SERVICE FEE shall
25 be the exclusive responsibility of the SETTLEMENT ADMINISTRATOR; DEFENDANT shall not
26 be required to make such payment; its sole obligation shall be to pay the GROSS SETTLEMENT
27 AMOUNT to the SETTLEMENT FUND, in accordance with this AGREEMENT.
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1 84. The payment of the SERVICE FEE shall not preclude PLAINTIFF’S receipt of a
2 SETTLEMENT AWARD. PLAINTIFF will receive a SETTLEMENT AWARD, as calculated by
3 the SETTLEMENT ADMINISTRATOR, in addition to the SERVICE FEE determined by the
4 COURT.

5 85. **ADMINISTRATION COSTS AND TAX EXPENSES.** The ADMINISTRATION
6 COSTS incurred by, or at the direction of, the SETTLEMENT ADMINISTRATOR in connection
7 with the operation and implementation of this AGREEMENT and TAX EXPENSES shall be paid
8 out of the SETTLEMENT FUND unless and until the total ADMINISTRATION COST exceeds
9 \$17,000.00, in which event payment of such costs must be specifically authorized by the Court.
10 DEFENDANT shall have no responsibility for the payment of any ADMINISTRATION COSTS, or;
11 for monitoring the propriety of any payment requests by, or payments to, the SETTLEMENT
12 ADMINISTRATOR from the SETTLEMENT FUND. The sole obligation of DEFENDANT shall
13 be to pay the GROSS SETTLEMENT AMOUNT to the SETTLEMENT FUND, in accordance with
14 this AGREEMENT.
15

16 86. The PARTIES agree to cooperate in the SETTLEMENT administration process and
17 to use reasonable efforts to control and minimize the ADMINISTRATION COSTS.
18

19 87. **EMPLOYER’S SHARE OF SOCIAL SECURITY, MEDICARE, AND**
20 **FEDERAL AND STATE UNEMPLOYMENT AMOUNTS.** In addition to the SETTLEMENT
21 FUND, DEFENDANT shall be responsible for paying its “employer’s share” of all Social Security,
22 Medicare, and Federal and State Unemployment amounts relating to any “wage replacement
23 payments.” Such amounts will be computed by the SETTLEMENT ADMINISTRATOR or its
24 designee based on the wage replacement portion of the SETTLEMENT AWARDS actually paid to
25 the PARTICIPATING CLASS MEMBERS from the SETTLEMENT FUND, and shall be paid by
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1 DEFENDANT to the SETTLEMENT ADMINISTRATOR. The SETTLEMENT
2 ADMINISTRATOR or its designee shall then be responsible for making all necessary filings in
3 connection with such payments. The SETTLEMENT ADMINISTRATOR's designee, as that term
4 is used in this Agreement, may include DEFENDANT.

5 88. **EMPLOYEE TAXES.** It shall be the responsibility of the SETTLEMENT
6 ADMINISTRATOR or its designee to timely and properly withhold from SETTLEMENT
7 AWARDS payable to PARTICIPATING CLASS MEMBERS all applicable EMPLOYEE TAXES
8 and to prepare and deliver any necessary tax withholding documentation for signature by all
9 necessary parties and, thereafter, to cause the appropriate deposits of withheld amounts and
10 informational and other tax return filings to occur. Payments to PARTICIPATING CLASS
11 MEMBERS and to PLAINTIFF'S COUNSEL pursuant to this AGREEMENT shall be reported on
12 IRS Forms W-2 and/or 1099, as appropriate, and provided to the respective PARTICIPATING
13 CLASS MEMBERS, PLAINTIFF'S COUNSEL, and applicable governmental authorities as
14 required by law. EMPLOYEE TAXES shall be withheld and deposited with the applicable
15 governmental authorities in accordance with this AGREEMENT, and shall be a part of, and paid out
16 of, the SETTLEMENT AWARD to each PARTICIPATING CLASS MEMBER.

17 89. Notwithstanding the SETTLEMENT ADMINISTRATOR'S or its designee's
18 withholding of EMPLOYEE TAXES, PLAINTIFF and each PARTICIPATING CLASS MEMBER
19 will retain responsibility for paying all applicable state, local, and federal income taxes on all
20 amounts the PLAINTIFF and PARTICIPATING CLASS MEMBER receive pursuant to this
21 AGREEMENT. Should any taxing authority or agency challenge the allocation of SETTLEMENT
22 AWARDS and/or EMPLOYEE TAXES, each PLAINTIFF and PARTICIPATING CLASS
23 MEMBER shall cooperate with DEFENDANT and provide documentation as requested to
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1 demonstrate such payment and the appropriateness of any withholding. PLAINTIFF and
2 PARTICIPATING CLASS MEMBERS, and not DEFENDANT, shall be exclusively responsible for
3 any taxes, penalties, or interest (with the sole exception of the employer's share of Social Security,
4 Medicare and Federal and State Unemployment-related amounts required to be paid by employers)
5 required by any taxing authority to be paid as a result of the successful challenge by any
6 governmental agency, including the Internal Revenue Service or California Franchise Tax Board, to
7 the allocation of SETTLEMENT AWARDS as between wage replacement payments and non-wage
8 replacement payments or based upon the non-payment of income or other taxes owed by the
9 PARTICIPATING CLASS MEMBER.
10

11 90. **TAXES ON SETTLEMENT FUND INTEREST.** For the purpose of Section 468B
12 of the Internal Revenue Code of 1986, as amended, the regulations promulgated thereunder, and this
13 AGREEMENT, the SETTLEMENT FUND shall at all times be treated as a "qualified settlement
14 fund." For the purpose of Treas. Reg. section 1.468B-2(k), the "administrator" of the
15 SETTLEMENT FUND shall be the SETTLEMENT ADMINISTRATOR. In addition, as required,
16 the PARTIES shall jointly and timely make such elections as necessary or advisable to carry out the
17 provisions of this AGREEMENT, including the "relation-back election" (as defined in Treas. Reg.
18 section 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance
19 with the procedures and requirements contained in such regulations. It shall be the responsibility of
20 the SETTLEMENT ADMINISTRATOR or its designee to timely and properly prepare and deliver
21 the necessary documentation for signature by any parties whose signatures are required under the
22 Internal Revenue Code, and, thereafter, to cause the appropriate filing to occur.
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26 91. The SETTLEMENT ADMINISTRATOR or its designee shall timely and properly
27 file all informational and other tax returns necessary or advisable with respect to the SETTLEMENT
28

1 FUND (including without limitation the returns described in Treas. Reg. section 1.468B-2(k)). Such
2 returns shall be consistent with this AGREEMENT and in all events shall reflect that all taxes
3 (including any interest or penalties) on the income earned by the SETTLEMENT FUND shall be
4 paid out of the SETTLEMENT FUND as provided in this AGREEMENT.

5 92. All SETTLEMENT FUND TAXES shall be paid out of the SETTLEMENT FUND,
6 and shall be treated as, and considered to be, a cost of administration of the AGREEMENT.
7

8 93. **NO EFFECT ON EMPLOYEE BENEFITS.** The SETTLEMENT AWARDS and
9 PAGA AWARDS to PARTICIPATING CLASS MEMBERS and the SERVICE FEE paid to
10 PLAINTIFF shall not be deemed to be “pensionable” earnings and shall not have any effect on the
11 eligibility for, or calculation of, any of the employee benefits (e.g. vacations, holiday pay, retirement
12 plans, etc.) of the PLAINTIFF or PARTICIPATING CLASS MEMBERS. The PARTIES agree that
13 any SETTLEMENT AWARD, PAGA AWARD, or SERVICE FEE paid under the terms of this
14 AGREEMENT does not represent any modification of PARTICIPATING CLASS MEMBERS’
15 previously credited hours of service or other eligibility criteria under any employee pension benefit
16 plan or employee welfare benefit plan sponsored by DEFENDANT. Further, any SETTLEMENT
17 AWARD, PAGA AWARD, or SERVICE FEE paid hereunder shall not be considered
18 “compensation” in any year for purposes of determining eligibility for, or benefit accrual within, an
19 employee pension benefit plan, employee welfare benefit plan, employee bonuses, or employee past,
20 current, or future compensation levels. Without limitation of the foregoing, the payment of any
21 SETTLEMENT AWARD, PAGA AWARD, or SERVICE FEE shall not entitle any current or
22 former employee of DEFENDANT to any matching contribution or profit-sharing contribution from
23 DEFENDANT, and no such payments shall be eligible for deferral under any retirement savings
24 plan of DEFENDANT.
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1 94. **WAIVER OF LIABILITY.** No person shall have any claim against DEFENDANT,
2 DEFENDANT’S COUNSEL, PLAINTIFF, the PARTICIPATING CLASS MEMBERS,
3 PLAINTIFF’S COUNSEL or the SETTLEMENT ADMINISTRATOR based on mailings,
4 distributions and payments made, or any other action taken, in accordance with or pursuant to this
5 AGREEMENT or any order of the COURT.
6

7 **ARTICLE VIII**

8 **RELEASES**

9 95. **RELEASE BY PLAINTIFF AND THE CLASS OF CLAIMS ASSERTED IN**
10 **THE ACTION.** As of the EFFECTIVE DATE, PLAINTIFF and all PARTICIPATING CLASS
11 MEMBERS hereby fully release and forever discharge DEFENDANT and past, present, and future
12 parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, officers,
13 directors, employees, agents, attorneys, insurers, investors, successors and assigns, owners, officials,
14 branches, partners, units, assigns, principals, heirs, representatives, accountants, auditors,
15 consultants, reinsurers, predecessors in interest, beneficiaries, subrogees, executors, members,
16 privies, administrators, fiduciaries, and trustees (the “RELEASED PARTIES”), and any individual
17 or entity which could be jointly liable with DEFENDANT, from the RELEASED CLAIMS and
18 from any and all injuries, demands, losses, damages, costs, loss of service, expenses, compensations,
19 claims, suits, causes of action, attorneys’ fees, obligations, or liabilities of any nature, type or
20 description, known or unknown, suspected or unsuspected, whether administrative, civil or criminal,
21 whether arising from statute, common law, regulation or other legal source, that relate to, are
22 connected to, or arise out of the RELEASED CLAIMS. Furthermore, PLAINTIFF and all
23 PARTICIPATING CLASS MEMBERS agree not to sue or otherwise make any claim against the
24 RELEASED PARTIES that in any way relates to, or arises out of, the RELEASED CLAIMS.
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 96. **GENERAL RELEASE BY PLAINTIFF.**

1 PLAINTIFF agrees to release all claims known or unknown, accrued or unaccrued, he has or
2 may have against DEFENDANT, including execution of a California Civil Code section 1542
3 release and waiver.

4 In consideration for, *inter alia*, DEFENDANT'S agreement to pay the SERVICE FEE,
5 PLAINTIFF hereby releases and discharges the RELEASED PARTIES for any and all actions,
6 causes of action, claims, charges, complaints, liabilities, obligations, promises, agreements,
7 controversies, damages, actions, suits, rights, demands, liens, costs, losses, debts, penalties, fines,
8 wages, liquidated damages, restitutionary amounts, attorneys' fees and costs, interest, punitive
9 damages and expenses (including, without limitation, back wages, penalties, liquidated damages, and
10 attorneys' fees and costs actually incurred) or liabilities of any kind which have been or could have
11 been asserted against the RELEASED PARTIES arising out of or relating to PLAINTIFF's
12 employment with DEFENDANT, and/or any other occurrence taking place on or before the
13 execution of this AGREEMENT, known or unknown, suspected or unsuspected, including but not
14 limited to claims arising out of, based upon, or relating to PLAINTIFF's employment with the
15 DEFENDANT.

16 PLAINTIFF further covenant not to initiate any court proceeding or administrative action, or
17 to make any claim whatsoever, against the RELEASED PARTIES relating in any manner to any
18 claims he releases herein, to the full extent such a covenant is enforceable at law. This covenant
19 shall not be deemed to apply or be construed to apply to any administrative proceeding or
20 government enforcement action the future participation in which is not waivable by an individual as
21 a matter of governing law.

22 PLAINTIFF expressly waives any right or claim of right to assert hereafter that any claim,
23 demand, obligation, and/or cause of action, existing at the time of the execution of this
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1 AGREEMENT, has, through ignorance, oversight, or error, been omitted from the terms of this
2 AGREEMENT. PLAINTIFF agrees there is a risk that each and every injury he may have suffered
3 by reason of the RELEASED PARTIES' relationship with him might not now be known, and there
4 is further risk that said injuries, whether known or unknown at the date of this AGREEMENT, might
5 possibly become progressively worse, and that as a result thereof further damages may be sustained
6 by him. Nevertheless, PLAINTIFF desires to forever and fully release and discharge the
7 RELEASED PARTIES, and each of them, and understands that by the execution of this
8 AGREEMENT no further claims for any such injuries that existed at the time of the execution of this
9 AGREEMENT may ever be asserted by him. PLAINTIFF expressly waives and relinquishes all
10 rights and benefits afforded by section 1542 of the Civil Code of the State of California and does so
11 understanding and acknowledging the significance of such specific waiver of section 1542.
12 Specifically, PLAINTIFF waives his rights under Section 1542 of the Civil Code, which states:
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14
15 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
16 **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT**
17 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF**
18 **EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM**
19 **OR HER MUST HAVE MATERIALLY AFFECTED HIS OR**
20 **HER SETTLEMENT WITH THE DEBTOR.**

21 PLAINTIFF makes this waiver with full knowledge of his rights and with the specific intent
22 to release all known and unknown claims arising on or before the effective date of this
23 AGREEMENT.

24 **ARTICLE IX**

25 **ADDITIONAL MATTERS**

26 97. **NO RETALIATION BY DEFENDANT**. DEFENDANT shall not take any
27 adverse employment action or otherwise target, retaliate or discriminate against any CLASS
28 MEMBER by reason of the facts that he or she (A) participated in the ACTION and/or (B) elected or

1 indicated an intention to participate or not to participate in the SETTLEMENT memorialized in this
2 AGREEMENT or any order entered by the COURT approving its terms.

3 98. **THE AGREEMENT AND ATTACHMENTS.** This AGREEMENT includes the
4 terms set forth herein and contained in Attachments 1- 4, which are incorporated by reference herein
5 and in the definition of “AGREEMENT” as though fully set forth. Any attachments to this
6 AGREEMENT are an integral part of the AGREEMENT.
7

8 99. **HEADINGS AND CAPTIONS.** The headings and captions contained in this
9 AGREEMENT are inserted for convenience and in no way define, limit, extend or describe the
10 scope of this AGREEMENT or the intent of any provision thereof.
11

12 100. **INTERIM STAY OF PROCEEDINGS.** Pending the FINAL APPROVAL
13 HEARING to be conducted by the COURT, the PARTIES agree to hold in abeyance all proceedings
14 in the ACTION, except such proceedings as are necessary to implement and complete the
15 SETTLEMENT, or to comply with any order of the COURT. The parties shall seek a formal interim
16 stay order from the COURT as part of their request for preliminary approval.
17

18 101. **AMENDMENT OR MODIFICATION.** The terms and provisions of this
19 AGREEMENT may be amended or modified only by an express written agreement that is signed by
20 all the PARTIES (or their successors-in-interest) and their counsel. In the event that the COURT
21 requires that certain non-material changes, as determined by the COURT, be made to this
22 AGREEMENT or to the CLASS NOTICE as a condition of preliminary approval, then a signed
23 stipulation by counsel for the PARTIES shall be sufficient to Amend or Modify this AGREEMENT
24 or the CLASS NOTICE without additional signatures from the PLAINTIFF or DEFENDANT.
25

26 102. **ENTIRE AGREEMENT.** This AGREEMENT and its Attachments constitute the
27 entire agreement of the PARTIES with respect to the matters discussed herein, and no oral or written
28

1 representations, warranties or inducements have been made to any PARTY concerning this
2 AGREEMENT or its Attachments other than the representations, warranties, and covenants
3 contained and memorialized in such documents. All prior or contemporaneous negotiations,
4 agreements, understandings, and representations, whether written or oral, are expressly superseded
5 hereby and are of no further force and effect. Each of the PARTIES acknowledges that it has not
6 relied on any promise, representation or warranty, express or implied, not contained in this
7 AGREEMENT.
8

9 103. **AUTHORIZATION TO ENTER INTO SETTLEMENT AGREEMENT**. Each
10 signatory to this AGREEMENT hereby warrants and represents that he or she has the authority to
11 execute this AGREEMENT, thereby binding the respective party to take all appropriate action
12 required or permitted to be taken by the PARTIES pursuant to this AGREEMENT to effectuate its
13 terms and to execute any other documents required to effectuate the terms of this AGREEMENT.
14

15 104. **BINDING EFFECT OF THE AGREEMENT**. This AGREEMENT shall be
16 binding upon, and inure to the benefit of, the PARTIES and their respective heirs, legal
17 representatives, executors, administrators, successors, and assigns.
18

19 105. **CHOICE OF LAW**. In determining the rights of the PARTIES hereto, this
20 AGREEMENT shall be governed by, construed, and interpreted in accordance with the internal laws
21 of the State of California, without regard to the conflict of laws principles thereof.
22

23 106. **COUNTERPARTS**. This AGREEMENT may be executed in one or more
24 counterparts, each of which shall be an original, provided that counsel for the PARTIES shall
25 exchange among themselves original signed counterparts. This AGREEMENT is effective upon
26 execution of at least one counterpart by each party to this AGREEMENT.
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107. **REPRESENTATION BY COUNSEL AND COOPERATION IN DRAFTING.**

All of the PARTIES acknowledge that they have been represented by counsel throughout all negotiations and in the execution of this AGREEMENT and that this AGREEMENT has been executed with the consent and advice of counsel. In addition, each of the PARTIES has cooperated in the drafting and preparation of this AGREEMENT. Hence, any rule which construes ambiguities against the drafter shall have no force or effect.

108. **INADMISSIBILITY OF SETTLEMENT AGREEMENT.** If this AGREEMENT

does not become effective or is cancelled or terminated for any reason, it shall be deemed negotiation for settlement purposes only and will not be admissible in evidence or usable for any purpose whatsoever in the ACTION or any proceedings between the PARTIES except in connection with enforcing its terms.

109. **TERMINOLOGY AND CONSTRUCTION.** All personal pronouns used in this

AGREEMENT, whether used in the masculine, feminine, or neutral gender, shall include all other genders, and the singular shall include the plural and *vice versa*.

110. **INVALIDITY OF ANY PROVISION.** Before declaring any provision of this

AGREEMENT invalid, the COURT shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this AGREEMENT valid and enforceable. The provisions of this AGREEMENT are severable. To the extent any provision is deemed unlawful, to the extent possible, such provision shall be severed and the remainder of the AGREEMENT shall remain valid and enforceable.

111. **ENFORCEMENT.** The PARTIES agree this AGREEMENT shall be enforceable

by the COURT and the COURT shall retain exclusive and continuing jurisdiction of this ACTION over all PARTIES and CLASS MEMBERS to interpret and enforce the terms, conditions, and

1 obligations of the SETTLEMENT. The PLAINTIFF and DEFENDANT hereby submit to the
2 personal and exclusive jurisdiction of the COURT for purposes of interpreting, implementing and
3 enforcing the SETTLEMENT embodied in this AGREEMENT and all orders and judgments entered
4 in connection therewith.

5 112. **NOTICES.** Any notices or other documents that must or may be transmitted to
6 PLAINTIFF'S COUNSEL, DEFENDANTS' COUNSEL, and/or the SETTLEMENT
7 ADMINISTRATOR, pursuant to any section of this AGREEMENT, shall be transmitted to each of
8 the following:

9
10 **FOR DOCUMENTS TO THE SETTLEMENT ADMINISTRATOR:**

11 CPT Group, Inc.

12
13 **FOR DOCUMENTS TO THE DEFENDANTS' COUNSEL:**

14 Mollie M. Burks (mburks@grsm.com)
15 Nicholas A. Deming (ndeming@grsm.com)
16 GORDON & REES SCULLY MANSUKHANI LLP
275 Battery Street, Suite 2000
San Francisco, CA 94111

17 **FOR DOCUMENTS TO PLAINTIFF'S COUNSEL:**

18 Eric B. Kingsley (eric@kingsleykingsley.com)
19 Liane Katzenstein Ly (liane@kingsleykingsley.com)
20 Kingsley & Kinsley, APC
16133 Ventura Blvd., Suite 1200
Encino, CA 91436

21 113. The PARTIES and all counsel acknowledge and agree that for the purposes of any
22 claims, actions, and/or proceedings arising out of this AGREEMENT, notice provided to
23 PLAINTIFF'S COUNSEL shall be deemed to be notice to the PLAINTIFF.

24
25 IN WITNESS WHEREOF, the parties, through counsel pursuant to ¶ 102 hereto knowingly
26 and voluntarily executed this Amended Joint Stipulation of Settlement and Release between
27 PLAINTIFF and DEFENDANT as of the date(s) set forth below:
28

1
2 DATED: September , 2017

MARTIN CHAVEZ

3 BY _____
4 Plaintiff Martin Chavez

5
6 DATED: September , 2017

GEORGE CHIALA FARMS, INC.

7 By _____
8 [NAME]
9 [TITLE]
GEORGE CHIALA FARMS, INC.

10
11 **APPROVED AS TO FORM**

12 DATED: September , 2017

KINGSLEY & KINGSLEY, APC

13
14 BY: _____
15 Eric B. Kingsley
16 Liane Katzenstein Ly
Ari J. Stiller
Attorneys for Plaintiff

17 DATED: September , 2017

GORDON & REES SCULLY MANSUKHANI LLP

18
19 BY: _____
20 Mollie Burks
21 Nicholas A. Deming
22 Attorneys for Defendant
GEORGE CHIALA FARMS, INC.

23
24 **ATTACHMENTS**

25 Attachment 1 [Proposed] Notice Of Class Action Settlement

26 Attachment 2 [Proposed] Final Judgment

27 Attachment 3 [Proposed] Preliminarily Approval Order
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Attachment 4 [Proposed] Notice of Final Approval

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