

1 THE TIDRICK LAW FIRM LLP  
2 STEVEN G. TIDRICK, SBN 224760  
3 JOEL B. YOUNG, SBN 236662  
4 1300 Clay Street, Suite 600  
5 Oakland, California 94612  
6 Telephone: (510) 788-5100  
7 Facsimile: (510) 291-3226  
8 E-mail: sgt@tidricklaw.com  
9 E-mail: jby@tidricklaw.com

10 Attorneys for Individual and Representative  
11 Plaintiff VICTOR MUNOZ

12 IN THE UNITED STATES DISTRICT COURT

13 FOR THE NORTHERN DISTRICT OF CALIFORNIA

14 VICTOR MUNOZ, on behalf of himself and  
15 all others similarly situated,

16 Plaintiff,

17 v.

18 BIG BUS TOURS LIMITED; OPEN TOP  
19 SIGHTSEEING SAN FRANCISCO, LLC; and  
20 DOES 1-20,

21 Defendants.

Civil Case No. 3:18-cv-05761-SK

**NOTICE OF REVISED SETTLEMENT**

The Honorable Sallie Kim

Date: September 16, 2019

Time: 9:30 A.M.

Courtroom: Courtroom C, 15th Floor  
450 Golden Gate Avenue  
San Francisco, California

Judge: The Honorable Sallie Kim

22 TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

23 The fully executed revised Stipulation Re: Class Action Settlement & Release is  
24 attached hereto.  
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**STIPULATION RE: CLASS ACTION SETTLEMENT & RELEASE**

**VICTOR MUNOZ *et al.* v. BIG BUS TOURS LIMITED; OPEN TOP SIGHTSEEING  
SAN FRANCISCO, LLC**

It is hereby stipulated and agreed by and between Plaintiff Victor Munoz, as settlement class representative (“Class Representative”), on behalf of himself and all those similarly situated as defined below (collectively “Plaintiffs”), and Defendant Big Bus Tours Limited and Defendant Open Top Sightseeing San Francisco, LLC (collectively “Defendants”) (collectively referred to as the “Parties”), as set forth below:

**1. The Conditional Nature of This Stipulation**

(a) This Stipulation re: Class Action Settlement & Release (“Stipulation”), is made for the purposes of settlement of the lawsuit of *Victor Munoz et al. v. Big Bus Tours Limited; Open Top Sightseeing San Francisco, LLC* (Northern District of California Case No. 18-cv-05761-SK) (the “Litigation”) on a class-wide basis. This Stipulation and the settlement it evidences are made in compromise of disputed claims.

(b) Because this is a class action settlement, this settlement must receive preliminary and final approval from the Court. Accordingly, the Parties enter into this Stipulation and associated settlement on a conditional basis. In the event that the Court does not execute and file an Order Granting Final Approval of Settlement, or in the event that the Court does not enter an associated Judgment, or in the event that the associated Judgment does not become Final for any reason, this Stipulation shall be deemed null and void *ab initio*, it shall be of no force or effect whatsoever, it shall not be referred to or utilized for any substantive purpose whatsoever, and the negotiation, terms and entry of it shall remain subject to the provisions of California Evidence Code sections 1119 and 1152 and/or applicable Federal Rules of Evidence.

(c) This Stipulation is intended to fully and finally compromise, resolve, discharge, and settle the Released Claims, as defined herein, and on the terms set forth below, and to the fullest extent reflected herein, subject to the approval of the Court.

**2. Denial of Liability**

(a) A *bona fide* dispute exists as to whether any amount of wages are due from Defendants to Plaintiffs or any putative Class Member, and as to whether any penalties are due under California law. Defendants denies all of the claims as to liability, damages, wages, penalties, interest, fees, costs and restitution as well as the class and/or representative allegations asserted in the Litigation.

(b) Defendants have agreed to resolve the Litigation via this Stipulation, but to the extent this Stipulation is deemed void or does not take effect, Defendants do not waive, but rather expressly reserve, all rights to challenge all such claims and allegations in the Litigation upon all procedural and factual grounds, including without limitation the ability to challenge class or representative treatment on any grounds or to assert any and all defenses or privileges. The Class Representative and his counsel agree that Defendants retain and reserve these rights

and agree not to take a position to the contrary. In particular, the Class Representative and his counsel waive, and agree not to argue or present, any argument that Defendants would be estopped from contesting class certification because they have entered this Stipulation. In addition, the Parties recognize and agree that under California law and federal law (as applicable), courts impose a lesser burden for certification for settlement classes than they do for contested or litigated classes. Any motion for class certification made hereunder shall state that Class Members are properly certified as a class for settlement purposes only.

(c) The Parties also agree that in the event the Court does not approve this settlement, the Parties will not make any substantive reference to this proposed settlement when advocating their positions in the litigation of this matter.

### **3. Application for Court Approval**

Promptly upon the full execution of this Stipulation, Class Counsel shall apply to the Court for an order preliminarily approving the terms of the Parties' settlement as set forth in this Stipulation under the legal standards relating to the approval of class action settlements under California law and/or federal law (as applicable); certifying the Settlement Class for settlement purposes only; approving the Class Notice; and setting a final approval hearing and briefing schedule.

### **4. Effective Date of Settlement and Judgment**

(a) The "Effective Date" of this settlement shall be seven (7) days after which both of the following events have occurred: (i) this Court has entered an order finally approving this Stipulation and settlement ("the Final Approval Order"), and (ii) the Final Approval Order and Judgment thereon have become Final.

(b) "Final," when referring to the Judgment or to this settlement, means that: (i) the Judgment is a final, appealable judgment; and (ii) either (a) no appeal has been taken from the Judgment as of the date on which all times to appeal therefrom have expired, or (b) an appeal or other review proceeding of the Judgment having been commenced, such appeal or other review is finally concluded and no longer is subject to review by any court, whether by way of appeal, petitions for rehearing or re-argument, petitions for rehearing *en banc*, petitions for writ of certiorari, or otherwise, and such appeal or other review has been finally resolved in such manner that affirms the Judgment in its entirety.

(c) "Judgment" means the final judgment to be entered in the Litigation upon entry of the Final Approval Order.

### **5. Settlement Class**

(a) The "Class Period" for purposes of this Stipulation and settlement means the period from April 20, 2014, through the date the Court enters an order granting preliminary approval of the Parties' settlement pursuant to the terms of this Stipulation.

(b) The “Class” consists of all individuals who currently or formerly were employed as bus operators by Defendants who are listed on Exhibit A attached hereto. A “Class Member” is a member of the Class. There are forty (40) Class Members.

(c) “Settlement Class” means all Class Members who do not timely and properly exclude themselves from the terms of this Stipulation and settlement. A “Settlement Class Member” is a member of the Settlement Class.

(d) “Cash Pool Class” means all Settlement Class Members who sign, deposit, and/or cash a settlement check mailed pursuant to this settlement and who thereby consent to join as party plaintiffs in the claims asserted under the Federal Labor Standard Act, 29 U.S.C. §§ 201 *et seq.* (“FLSA Claims”) in this Litigation. A “Cash Pool Claimant” is a member of the Cash Pool Class.

(e) For settlement purposes only, Defendants will stipulate to the certification of all class claims in the Litigation that are subject to the certification requirements of Rule 23 of Federal Civil Procedure, with the understanding that, in the event the Court does not grant Final Approval of the settlement or the settlement does not become Final, such stipulation and certification shall be null and void *ab initio*.

(f) Also for settlement purposes only, Defendants will stipulate to the certification, for the purpose of transmitting notice, of all claims in the Litigation that are subject to the collective action requirements of 29 U.S.C. § 216(b), with the understanding that, in the event the Court does not grant Final Approval of the settlement or the settlement does not become Final, such stipulation and certification shall be null and void *ab initio*.

## **6. The Cash Pool**

(a) Subject to the Court’s approval and in consideration and satisfaction of the release of the Released Claims as defined below, Defendants shall pay a total amount of no more than \$70,000 into a Cash Pool in accordance with the terms of this Stipulation. The Cash Pool shall be used to pay:

- (i) Settlement Class members;
- (ii) Plaintiffs’ attorneys’ fees and costs as determined by the Court;

(iii) \$375 to the State of California’s Labor & Workforce Development Agency (“LWDA”) as its share for settlement of Plaintiffs’ claims under the Private Attorneys’ General Act, Labor Code §§ 2698 *et seq.* (“PAGA”) (other than Labor Code § 558 claims) (*i.e.*, 75% of the sum of \$500 paid out of the Cash Pool to resolve the PAGA Claims will be paid to the LWDA and \$125 will be distributed to the Class);<sup>1</sup>

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<sup>1</sup> “[A]n aggrieved employee acting as the LWDA’s proxy or agent by bringing a PAGA action may likewise recover underpaid wages as a civil penalty under section 558.” *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal. App. 4th 1112, 1148. Such underpaid wages “go[] entirely to the affected employee or employees as an express exception to the general rule that civil penalties recovered in a PAGA action are distributed 75 percent to the Labor and Workforce Development Agency (LWDA) and 25 percent to the aggrieved employees (§ 2699, subd. (i)).” *Id.* at

- (iv) Service award of up to \$5,000 to Class Representative Victor Munoz;
- (v) Administrative Costs; and
- (vi) Any *cy pres* payments.

Defendants shall pay the Cash Pool settlement funds to the Settlement Administrator within sixty (60) days after the Effective Date.

**7. Definition of “Net Settlement Amount”**

The Cash Pool (\$70,000) minus amounts paid to the LWDA (\$375), minus any service award paid to the Class Representative (up to a maximum of \$5,000), minus Administrative Costs (estimated at no more than \$5,000), minus any payment of Class Counsel’s attorneys’ fees and costs (up to a maximum of \$20,000), shall be referred to as the “Net Settlement Amount.” The Net Settlement Amount (approximately \$39,625) shall be divided among the Settlement Class members and will be distributed according to the distribution plan set forth below. If the Court declines to order such distribution, the Court in its discretion may order that the Net Settlement Amount be distributed amongst all Settlement Class Members as set forth below.

**8. Class Notice and Claims**

- (a) Settlement Administrator.

- (i) Plaintiffs’ counsel will obtain competitive bids from established and reputable settlement administrators, including CPT Group, Settlement Services, Inc., and Rust Consulting. The Settlement Administrator shall be selected and approved by the Court at the time of preliminary approval. Within five (5) days after the entry of this Court’s order preliminarily approving the Parties’ settlement pursuant to the terms of this Stipulation (the “Preliminary Approval Order”), Defendants shall deposit with the Settlement Administrator the sum of no more than \$5,000 (the “Notice and Administration Fund”) to cover the Settlement Administrator’s fees and costs (“Administrative Costs”).

- (ii) The Settlement Administrator or its authorized agents, in consultation with the Parties and subject to the supervision, direction, and approval of the Court, shall administer and calculate the allocation, and oversee the distribution, of funds to Settlement Class members.

- (iii) The Notice and Administration Fund and funds deposited with the Settlement Administrator shall be applied as follows:

- (1) to pay the Settlement Administrator for all costs and expenses incurred in connection with the preparation of and the providing of Class Notice to Class Members, processing any objections, challenges, and requests for exclusion, administering and distributing payments to the Settlement Class members;

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1145. The Parties understand and agree that Defendant’s payment of funds to the Cash Pool includes the consideration for resolution of the PAGA claims premised on Labor Code § 558.

- (2) to pay Cash Payment Claims;
- (3) subject to the approval and further order(s) of the Court, to pay a service award;
- (4) subject to the approval and further order(s) of the Court, to pay the LWDA pursuant to PAGA; and
- (5) subject to the approval and further order(s) of the Court, to pay Plaintiffs' attorneys' fees and costs, as ordered by the Court.

(iv) The Settlement Administrator shall be responsible for issuing copies of IRS Form 1099 to the Plaintiffs and all Settlement Class members for whom such form is required.

(v) The Settlement Administrator shall be responsible for reporting payment of enhancement payments and Cash Pool payments to all required taxing and other authorities.

(vi) Defendants shall bear no responsibility for the costs, fees, or expenses related to the administration and distribution of the Cash Pool beyond the funding of the Administrative Costs as set forth in this Stipulation. Neither Defendants nor its counsel shall have any responsibility for, interest in, or liability whatsoever, with respect to the providing of any notice, the receipt of any requests for exclusion from the Settlement, the calculations or disbursements of cash payments, or for any losses incurred in connection with any such matters.

(vii) In the event that the Administrative Costs exceed \$5,000, any additional monies for Administrative Costs shall be paid solely from the Cash Pool. In the event that the Administrative Costs do not reach \$5,000, the remaining amount of the Notice and Administration Fund shall revert to the Cash Pool. If for any reason the Settlement does not become Final or the Effective Date does not occur, the remaining money deposited into the Notice and Administration Fund, including all earned or accrued interest, shall be expeditiously returned to Defendant.

(b) List of Class Members. Within fourteen (14) days after entry of the Preliminary Approval Order, but subject to the Settlement Administrator providing adequate and contractual assurances with respect to confidentiality and data security, Defendants will provide the Settlement Administrator the names and last-known mailing addresses of Class Members that they are able to identify following a good-faith search. The data provided to the Settlement Administrator will remain confidential and will not be disclosed to anyone, except as required by applicable tax authorities, pursuant to the express written consent of Defendant, to enforce the terms of this Agreement, or by order of the Court. The data provided under this Section shall be used only for the purpose of administering this Settlement. All Class Members' names and postal mail addresses shall be protected as private and confidential and not used for purposes other than the providing of the Class Notice and administration of this Settlement.

(c) Form of Notice. Plaintiffs shall request that the Court approve a Class Notice consistent with the terms of this Agreement. The Class Notice shall be subject to modification by the Court in its discretion.

(d) Method of Notice.

(i) The Settlement Administrator shall send a copy of the Notice of Settlement of Class Action by mail to each Class Member, as well as to Class Counsel and Defense Counsel.

(ii) The Settlement Administrator will provide Class Notice by first-class mail (where available) and maintain and manage a content-neutral settlement website, approved by counsel for the Parties, which will contain further information about the settlement, including relevant pleadings.

(iii) The Class Notice shall inform Class Members that Cash Payments made pursuant to the terms of the settlement and this Stipulation will be made by check via first-class mail. The Settlement Administrator shall provide an opportunity for Class Members to submit updated postal mailing addresses.

(iv) If any Class Notice sent to any Class Member is undeliverable, the Settlement Administrator shall promptly log each such Class Notice and provide copies of the log to Class Counsel and Defense Counsel, as requested. If the postal mailing is returned with a forwarding address, the Settlement Administrator shall forward the postal mailing to that address. For any remaining returned postal mailings, the Settlement Administrator shall make a further search of the National Change of Address (“NCOA”) database, and postal mailings shall be forwarded to any new postal mailing address obtained through such a search. In the event that any Class Notice is returned as undeliverable after completing the steps specified herein, no further postal mailings shall be required.

(v) If any individual whose name does not appear on the list of Class Members that Defendants provide to the Settlement Administrator (and who has not previously opted out of the Settlement), believes that he/she is a Class Member, he/she shall have the opportunity to dispute his lack of inclusion in the Class. If an individual believes he/she is a Class Member, he/she must notify the Settlement Administrator within a reasonable amount of time after the first mailing of the Class Notice. The Parties shall then meet and confer regarding any such individuals in an attempt to reach an agreement as to whether any such individual should be regarded as a Class Member. If the Parties so agree, the Settlement Administrator shall mail a Class Notice to the individual, and treat the individual as a Class Member for all other purposes. Such an individual will have all of the same rights as any other Settlement Class Member under this Agreement.

(e) Due Diligence Declaration. At least twenty-one (21) days before the hearing on Plaintiffs’ motion for final approval of the settlement and this Stipulation, the Settlement Administrator shall prepare, and shall serve upon Class Counsel and Defense Counsel, a declaration of due diligence and proof of dissemination with regard to the mailing of the Class Notice, its attempts to locate Class Members, its receipt of valid Opt-Out requests, and its inability to deliver the Class Notice to certain Class Members due to invalid addresses (“Due Diligence Declaration”). Class Counsel shall be responsible for filing the Due Diligence Declaration with the Court.

**9. Plan of Allocation of Cash Pool**

(a) Cash Payments shall be distributed to Settlement Class members *pro-rata* based on the number of “work weeks” (defined as any week during the Class Period in which a Class Member had at least one (1) day of work—*i.e.*, a connected block of time that the Class Member operated a bus, regardless of the fact that the date extended over more than one calendar day) worked during the Class Period.

(b) Determination of Work Weeks. Within fourteen (14) days after entry of the Preliminary Approval Order, Defendants shall provide the Settlement Administrator with the number of Work Weeks accrued by each Settlement Class member during the Class Period.

**10. Distribution of Cash Pool Funds**

(a) Promptly following its receipt, the Settlement Administrator shall distribute the Cash Pool as follows:

(i) \$375 to the LWDA as payment for Plaintiffs’ PAGA claim.

(ii) \$125 (*i.e.*, the share of the PAGA payment payable to Class Members regardless of whether they opt out) shall be distributed to Class Members in proportion to their entitlement to Cash Pool funds as set forth in the Plan of Allocation.

(iii) A service award, to the extent that it is approved by the Court, shall be paid to the Class Representative.

(iv) To Class Counsel, the Class Counsel’s Court-approved costs.

(v) To Class Counsel, the Class Counsel’s Court-approved attorneys’ fees.

(vi) The remainder shall be distributed to Settlement Class members in proportion to their entitlement to Cash Pool funds as set forth in the Plan of Allocation.

(b) Settlement checks shall be mailed to each Settlement Class member at his or her most current address as determined by the Settlement Administrator.

(c) The distribution of payments is subject to modification by the Court in its discretion.

**11. Taxes and Other Withholdings**

All payments set forth herein, except for the payment to the LWDA in satisfaction of Plaintiffs’ PAGA claim, are payments for which the Settlement Administrator shall issue form 1099-MISC statements to Plaintiffs, Class members, and Class Counsel.

**12. Check Expiration Period**



Settlement checks shall expire one hundred twenty (120) days from the date of issuance by the Settlement Administrator. The value of any expired checks shall be paid to the *cy pres* recipient(s).

**13. Unclaimed Settlement Funds**

(a) The Settlement Administrator shall create a list of Settlement Class members who have not cashed their settlement checks ninety (90) days after the checks are mailed to Settlement Class members. Such list shall include the telephone numbers and e-mail addresses of such Settlement Class members. Class Counsel may contact such Settlement Class members by phone and/or e-mail to inquire as to the status of the Settlement Class members' uncashed checks. If Class Counsel is unable to reach Settlement Class members who have not cashed settlement checks, the Settlement Administrator shall use the NCOA Database to determine whether such Settlement Class members' addresses have changed. In the event an address is recorded as having changed, the Settlement Administrator shall send a letter to such Settlement Class member who has not cashed his or her check warning that the check was sent and that if it is not cashed by the expiration date of the check, the Settlement Class member may lose his or her right to receive payment.

(b) No sooner than one hundred eighty (180) days after the final Cash Pool Payments are distributed to the Settlement Class members, the value of any expired checks shall be distributed to The Impact Fund (a public interest law non-profit organization), or if that entity is not approved by the Court, the California Bar Foundation, or if that entity is not approved by the Court, another appropriate recipient that the Court may designate at the time of final approval. This paragraph regarding the disposition of expired checks may be modified by the Court in its discretion.

**14. Attorneys' Fees and Costs**

(a) Defendants agree not to oppose Plaintiff's counsel's application for fees of no more than twenty five percent (25%) of the Gross Settlement Value. Defendants agree not to oppose Plaintiffs' counsel's application for costs, which, if approved, are to be paid out from the Cash Pool. Subject to approval by the Court, the amount set forth in this section shall be the only compensation paid by Defendants for attorneys' fees and costs associated with the prosecution and administration of the Litigation. Neither Class Counsel, nor Named Plaintiffs, nor any Settlement Class Member, shall apply to the Court for any payment of attorneys' fees or costs that are in addition to the foregoing.

(b) Except as set forth in this Stipulation, the Parties agree that each of the Parties, including all Settlement Class Members, shall bear their own fees and costs associated with the Litigation.

(c) If Class Counsel appeals the Court's ruling on their application for attorneys' fees and costs, the ruling of the appellate court (regardless of its substance) shall not constitute a material alteration of a term of this Settlement Agreement. All claims for attorneys' fees and costs or expenses that Class Counsel and Plaintiffs may possess against Defendants or the

Released Parties have been compromised and resolved in this Stipulation and shall not be affected by any appeal that Class Counsel or Plaintiffs may file.

**15. Exclusion from Settlement**

(a) Opt Out. Any Class Member, with the exception of Plaintiffs, who wishes to opt out of the Class shall mail a written statement to the Settlement Administrator at the address provided in the Class Notice with the following, or substantially similar statement: “I request to be excluded from the Settlement.”

(b) To be effective, the opt-out request must be signed by the Class Member or the Class Member’s legally authorized representative and it must include the Class Member’s name, address, and telephone number.

(c) Opt-Out Period. The Opt-Out Period shall be sixty (60) days from the date the Court enters its order granting preliminary approval of the settlement. The date of postmark shall be the exclusive means used to determine whether a request for exclusion has been timely submitted. The Settlement Administrator, in its sole discretion, shall determine whether a request for exclusion from Settlement was timely submitted. The Settlement Administrator’s decision shall be final, binding, and non-appealable.

(d) Any Class Member who does not opt out during the Opt-Out Period is deemed to be a member of the Settlement Class and to have released all claims under the Settlement Class Members’ Release. Class Members who opt out will not receive any portion of the Net Settlement Amount and are no longer considered Class Members. Notwithstanding the submission of a timely opt-out request, Class Members will still be bound by the settlement and release of all PAGA Claims or remedies under the Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009).

(e) Opt-out requests must be exercised individually by a Class Member, not as or on behalf of a group, class, or subclass.

(f) Opt-Out List. The Settlement Administrator shall promptly log each request for exclusion from Settlement that it receives. No later than five (5) business days after the Opt-Out Period expires, the Settlement Administrator shall provide to Class Counsel and Defense Counsel a complete Opt-Out List together with copies of the opt-out requests. Before the hearing on Plaintiffs’ motion for final approval of the settlement, the Settlement Administrator shall submit a declaration to the Court attesting to the accuracy of the Opt-Out List.

(g) Class Members may object to or opt out of the settlement, but may not do both.

**16. Objections**

(a) Any Class Member who wishes to object to the fairness, reasonableness, or adequacy of the settlement or this Stipulation must file with the Court a timely statement of the objection as set forth below.

(b) To be timely, the objection must be mailed to the Settlement Administrator no later than sixty (60) days after the Settlement Administrator mails the Class Notice. The date of postmark shall be the exclusive means used to determine whether an objection has been timely submitted. Regardless of whether an objection is timely submitted, no Class Member will be prohibited from speaking at the hearing on Plaintiffs' motion for final approval of the settlement.

(c) The objection must contain at least the following: (i) the objector's full name; (ii) the objector's or the objector's legally authorized representative's signature; (iii) address and telephone number at which the objector or his legally authorized representative can be contacted; (iv) a clear reference to the Litigation; (v) the nature of the objection; and (vi) a statement whether the objector intends to appear at the hearing on Plaintiffs' motion for final approval, either in person or through counsel and, if through counsel, a statement identifying that counsel by name, bar number, address, and telephone number.

(d) The right to object to the proposed Settlement must be exercised individually by a Class Member or their attorney, and not as a member of a group, class, or subclass.

## 17. **Release**

(a) "Released Parties" means Defendants, together with each and every one of their respective current, former owners (either direct or indirect, including but not limited to partners, shareholders, members, parent companies, holding companies, trusts and/or trustees), officers, directors, managers, employees, agents, representatives, contractors (not including Plaintiffs or Class Members), insurers, reinsurers, attorneys, auditors, accountants, bookkeepers, subsidiaries, affiliates, divisions, licensees, licensors, consultants, predecessors and successors in interest, and assigns, and any benefit plans sponsored or administered by Defendant.

(b) "Settlement Class Members' Released Claims" means any and all claims against the Released Parties, or against any one or group of them, arising prior to entry of the Preliminary Approval Order that are based on or reasonably related to the claims asserted in the Litigation, including as is set forth in the First Amended Complaint, and specifically including, without limitation:

(i) Claims for unpaid wages (including without limitation claims for minimum wage, regular wages, overtime, final wages, calculation of the correct overtime or regular rate, and meal period and rest period premiums), expense reimbursements, interest, and penalties (including waiting time penalties pursuant to California Labor Code section 203, wage statement penalties pursuant to California Labor Code section 226, and civil penalties pursuant to PAGA (California Labor Code section 2698 et seq.));

(ii) Claims alleged in the First Amended Complaint, which include claims pursuant to California Labor Code sections 200-204, 206.5, 207, 208, 210-214, 216, 218, 218.5, 218.6, 221, 222.5, 223, 225.5, 226, 226.3, 226.7, 226.8, 227, 227.3, 245-249, 351, 353, 432.5, 450, 510, 512, 551-552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 2698 et seq., 2753, 2802, and 2804;

(iii) Claims pursuant to California Code of Civil Procedure section 1021.5;

- and 11040;
- (iv) Claims pursuant to California Code of Regulations, Title 8, sections 11010 and 11040;
  - (v) Claims pursuant to Industrial Welfare Commission Wage Orders;
  - (vi) Claims under California Business and Professions Code sections 17200, et seq. and 17500;
  - (vii) Claims under California common law to recover any alleged tip or expense;
  - (viii) Claims for penalties, including, but not limited to, PAGA penalties;
  - (ix) Claims for attorneys' fees and costs;
  - (x) Claims of unfair business practices; and
  - (xi) All claims, including common law or tort claims, arising out of or related to the statutory causes of action alleged in the First Amended Complaint.

(c) "Cash Pool Claimants' Released Claims" means all Settlement Class Members' Released Claims as well as any and all claims against the Released Parties, or against any one or group of them, based on putative violations of, or related to the claims asserted in the Litigation, or that could have been asserted in the Litigation, under the FLSA arising at any time prior to the Court's entry of the Preliminary Approval Order.

(d) Class Representative's General Release

(i) "Class Representative's Released Claims" means any and all of the Class Representative's claims against the Released Parties, or against any one or group of them, including unknown claims covered by California Civil Code § 1542, arising at any time prior to the Effective Date, for any type of relief that can be released as a matter of law, including, without limitation, claims for wages, damages, unpaid costs, penalties (including civil and waiting time penalties), liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief. California Civil Code § 1542 states:

**"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."**

(ii) Upon final approval by the Court of this Stipulation, and in consideration of his receipt of a service award as provided for in this Stipulation, Class Representative will generally release all known and unknown claims against the Released Parties, and waive the application of Civil Code § 1542. The Settlement Administrator will pay the Court-approved service award within eight (8) days of the Effective Date of this Stipulation. The claims released pursuant to the Class Representative's Released Claims, but are not limited to, the Cash Pool

Claimants' Released Claims, as well as any other claims under any provision of the FLSA, the California Labor Code or any applicable California Industrial Welfare Commission Wage Orders, and claims under all state or federal discrimination statutes, including, without limitation, the California Fair Employment and Housing Act, California Government Code section 12940 *et seq.*; the Unruh Civil Rights Act, California Civil Code section 51 *et seq.*; the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 *et seq.*; the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*; the Age Discrimination in Employment Act of 1967, as amended; the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*; and all of their implementing regulations and interpretive guidelines.

(e) As of the Effective Date, the Class Representative, all Settlement Class Members, and all Cash Pool Claimants, individually and on behalf of their heirs, estates, trustees, executors, administrators, representatives, agents, successors, and assigns, and anyone claiming through them, or acting or purporting to act on their behalf or for their benefit, agree to forever release, relinquish, acquit, discharge, hold harmless, and covenant not to sue, each and all of the Released Parties from each and all of the Class Representative's Released Claims (in the case of the Class Representative), the Settlement Class Members' Released Claims (in the case of the Settlement Class Members), and the Cash Pool Claimants' Released Claims (in the case of the Cash Pool Claimants), and by operation of the Judgment becoming Final shall have fully and finally released, relinquished, acquitted and discharged all such claims against each and all of the Released Parties.

**18. Effect of Disapproval, Cancellation, or Termination of this Stipulation or Settlement**

(a) If the Court does not approve the settlement, or does not enter the Final Approval Order and Judgment in forms that will be agreed upon by the Parties, or if the Court enters the Judgment and appellate review is sought, and on such review the entry of Judgment is vacated, modified in any way, or reversed, or if the Final Approval Order does not otherwise become Final, then this Stipulation shall be cancelled and terminated and the Parties are released from their obligations under the Agreement, unless all Parties, in their sole discretion within thirty (30) days from the date of such ruling, provide written notice to all other Parties hereto of their intent to proceed with the settlement under the terms of the Judgment as it may be modified by the Court or any appellate or reviewing court.

(b) Defendants shall also have the right to withdraw from the settlement if the number of Class Members who opt out equals or exceeds six percent (6%) of Class Members. If Defendants chooses, in its sole and absolute discretion, to exercise this right, it must do so within fourteen (14) days of receipt of the Settlement Administrator's Opt-Out List by filing written notice with the Court.

(c) In the event that (i) the settlement does not obtain Final Approval, or (ii) if the terms of this Stipulation are materially modified by the Court, or (iii) if Final Approval of this settlement and/or the Judgment is overturned, or is materially modified on appeal or by any other reviewing court, or (iv) if the Judgment does not become Final, or (v) if this Settlement Agreement is terminated, cancelled, or fails to become effective for any reason, the following apply:

(i) Within five (5) business days after written notice is sent by Class Counsel or Defense Counsel to all Parties hereto and the Settlement Administrator, the Notice and Administration Fund, less any funds paid or expenses incurred but not yet paid, and any other cash deposited by Defendants pursuant to this Stipulation shall be refunded to Defendant, including all interest earned or accrued;

(ii) This Stipulation shall be without force and effect upon the rights of the Parties hereto, and none of its terms shall be effective or enforceable, with the exception of this Section, and all of its subparagraphs, which shall remain effective and enforceable;

(iii) The Parties shall be deemed to have reverted *nunc pro tunc* to their respective status as of the date of the filing of this Stipulation, including with respect to any Court-imposed deadlines;

(iv) All orders entered in connection with this Stipulation and settlement shall be vacated without prejudice to any Party's position on the issue of consolidation, class certification, and the Parties shall be restored to their litigation positions existing on the date of execution of this Stipulation;

(v) The Parties shall proceed in all respects as if this Stipulation and related documentation and orders had not been executed, and without prejudice in any way from the negotiation or fact of this Stipulation or the terms of the settlement.

(d) For the purposes of this Section and all of its subparagraphs, "material modifications" to the Settlement include any changes that any Party deems to be unacceptable. However, decisions by the Court to issue a service award to Plaintiff below the maximum amount set forth in this Stipulation, or to decline to award any such payment, or to award Class Counsel fees and costs below the requested amounts for the same, shall not be considered to be a "material modification."

## **19. Enforceability**

Any provisions of California Evidence Code §§1115 - 1128 notwithstanding, this agreement may be enforced by any party hereto by a motion under Federal Rule of Civil Procedure 41(a), California Code of Civil Procedure §664.6, or by any other procedure permitted by law. Notwithstanding the finality of any judgment, the district court shall retain jurisdiction to enforce this settlement agreement.

## **20. Voluntary and Knowing Nature of Stipulation**

Class Representative warrants and represents that he is effectuating this settlement and executing this Stipulation after having received full legal advice as to his rights and having had the opportunity to obtain independent counsel to review this Stipulation.

## **21. Miscellaneous Provisions**

(a) Plaintiffs and Class Members shall be obligated to obtain their own independent tax advice concerning the proper income reporting and tax obligations regarding any and all

payments and/or other remuneration received or obtained pursuant to this Stipulation, and shall further assume the responsibility of remitting to the Internal Revenue Service and any other relevant taxing authorities any and all amounts required by law to be paid out of any monies received, or other remuneration obtained, under this Stipulation, without any contribution whatsoever from any of the Released Parties or Class Counsel. Nothing in this Stipulation shall be construed as Class Counsel, Defense Counsel, Defendant, or the Released Parties providing any advice regarding the payment of taxes for the tax consequences of participation in any portion of the settlement or this Stipulation.

(b) Contact information for the Parties' counsel is as follows:

Counsel for Plaintiffs and the Settlement Class:

The Tidrick Law Firm LLP  
Attn: Steven G. Tidrick, Esq.  
Attn: Joel B. Young, Esq.  
1300 Clay Street, Suite 600  
Oakland, CA 94612

Counsel for Defendants:

Antonio Valla, Esq.  
Valla & Associates, Inc., P.C.  
333 Bush Street, Suite 2020  
San Francisco, CA 94104

(c) The Parties agree that the recitals herein are contractual in nature and form a material part of this Stipulation.

(d) This Stipulation sets forth the entire understanding of the Parties as to its subject matter. No change or modification of this Stipulation shall be effective unless in writing and signed by Class Counsel and Defense Counsel, and, as necessary, approved by the Court. No extrinsic evidence or parole evidence shall be used to interpret this Stipulation.

(e) This Stipulation supersedes all prior negotiations, understandings and agreements, whether written or oral, among the Parties. The Parties expressly agree that the terms and conditions of this Settlement Agreement will control over any other written or oral agreements.

(f) The Plaintiffs and Class Counsel acknowledge that an adequate factual record has been established that supports the settlement and the terms of this Stipulation and hereby waive any right to conduct further discovery to assess or confirm this Stipulation. Notwithstanding the prior sentence, the Parties agree to reasonably cooperate with respect to limited confirmatory discovery to be agreed upon related to the last-known addresses of Class Members.

(g) Unless otherwise noted, all references to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or

Northern District of California court holiday, such date or deadline shall be on the first business day thereafter.

(h) The Parties reserve the right, subject to the Court's approval, to make any reasonable extensions of time that might be necessary to carry out any of the provisions of this Stipulation. Such extensions must be in writing to be enforceable.

(i) This Stipulation, the settlement, the fact of the settlement's existence, the terms of this Stipulation, any press release or other statement or report by the Parties or by others concerning this Stipulation or the Parties' settlement, and/or any negotiations, proceedings, acts performed, or documents executed pursuant to or in furtherance of this Stipulation or the settlement: (i) may not be deemed to be, may not be used as, and do not constitute, an admission or evidence of the validity of any of the Released Claims or of any liability, culpability, negligence or wrongdoing on the part of the Released Parties or any one or group of them; and (ii) may not be deemed to be, may not be used as, and do not constitute, an admission or evidence of any fault, wrongdoing, or omission by the Released Parties, or by any one or group of them, in any trial of the Litigation or in any other action or proceedings in any court (civil, criminal or otherwise), administrative agency, arbitration forum, or other tribunal.

(j) The Released Parties shall have the right to file this Stipulation, the Final Approval Order and the Judgment, and any other documents or evidence relating to the settlement, in any action or proceeding that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, payment, accord and satisfaction, release, good-faith settlement, judgment bar, reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

(k) The Parties to the Stipulation agree that the consideration to be paid hereby and the other terms of the Settlement were negotiated at arm's length and in good faith by the Parties, and reflect a settlement that was reached voluntarily based upon adequate information and after consultation with experienced legal counsel.

(l) The Plaintiffs and Class Counsel have concluded that the Settlement set forth herein constitutes a fair, reasonable, and adequate resolution of the claims and causes of action that the Plaintiffs asserted, and will assert pursuant to the Amended Complaint, against Defendant, including the claims and causes of action on behalf, and/or for the benefit, of the Settlement Class, and that it promotes the best interests of the Settlement Class.

(m) To the extent permitted by law, all agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive the execution and Final Approval of this Settlement Agreement.

(n) The Parties agree that the Plaintiffs and Class Counsel are not required to return any documents produced by Defendant.

(o) The waiver by one Party of any breach of this Stipulation by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation.



(p) This Stipulation constitutes the entire agreement among the Parties, and no representations, warranties, or inducements have been made to any Party concerning this Stipulation, other than the representations, warranties, and covenants contained and memorialized in this Stipulation.

(q) This Stipulation has been negotiated and drafted by Class Counsel and Defense Counsel. Plaintiff, Settlement Class Members, Cash Pool Claimants, and Defendants (including the Released Parties) shall not be deemed to be the drafters of this Stipulation or of any particular provision, nor shall they argue that any particular provision should be construed against its drafter or otherwise resort to the *contra proferentem* canon of construction. Accordingly, this Stipulation should not be construed in favor of or against one Party as to the drafter, and the Parties agree that the provisions of California Civil Code § 1654 and common law principles of construing ambiguities against the drafter shall have no application. All Parties agree that counsel for the Parties jointly drafted this Stipulation during extensive arm's-length negotiations. No parole or other evidence may be offered to explain, construe, contradict, or clarify its terms, the intent of the Parties or their counsel, or the circumstances under which this Agreement was made or executed.

(r) Except where this Stipulation itself provides otherwise, all terms and conditions are material and necessary to this Stipulation and have been relied upon by the Parties in entering into this Stipulation.

(s) This Stipulation shall be governed by the laws of the State of California, and, where applicable, federal law, without regard to choice of law principles.

(t) The Court shall retain continuing and exclusive jurisdiction over the Parties to this Stipulation for the purpose of the administration and enforcement of its terms.

(u) The headings used in this Stipulation are inserted merely for the convenience of the reader, and shall not affect the meaning or interpretation of this Stipulation.

(v) All of the Parties warrant and represent that they are agreeing to the terms of this Agreement based upon the legal advice of their respective attorneys, that they have been afforded the opportunity to discuss the contents of this Agreement with their attorneys, and that they fully understand and voluntarily accept the terms and conditions of this document.

## **22. Signatures**

This Stipulation may be executed in counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. The date of execution shall be the latest date on which any Party signs this Stipulation. This Stipulation may be signed with a facsimile or .PDF signature and in counterparts, each of which shall constitute a duplicate original.

[Remainder of Page Intentionally Left Blank]

PLAINTIFF'S SIGNATURES

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound hereby, have duly executed this Stipulation as of the date set forth below.

Dated: July \_\_, 2019  
7/31/2019

VICTOR MUNOZ

By:  Victor Munoz (Jul 31, 2019)

**APPROVED AS TO FORM AND CONTENT**

Dated: July \_\_, 2019  
7/31/2019

THE TIDRICK LAW FIRM LLP



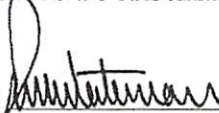
By: \_\_\_\_\_  
JOEL B. YOUNG  
Attorneys for Plaintiffs

DEFENDANTS' SIGNATURE

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound hereby, have duly executed this Stipulation as of the date set forth below.

Dated: August 5, 2019

BIG BUS TOURS LIMITED


By:  \_\_\_\_\_

Name: PATRICK WATERMAN

Title: DIRECTOR

Dated: August 7, 2019


OPEN TOP SIGHTSEEING SAN FRANCISCO, LLC

By:  \_\_\_\_\_  
Andrew Smith

APPROVED AS TO FORM

Dated: August 7, 2019

Valla & Associates, Inc., P.C

By:  \_\_\_\_\_  
ANTONIO VALLA  
Attorneys for Defendant

# **EXHIBIT A**

1. Yussef Breffe Rodriguez
2. Gary Brooks
3. James Brown
4. Jesse Cremeans
5. Reynard Davis
6. Andrew Domingues
7. Rosa Edwards
8. Martel Escobar Quiroz
9. Olaiha Fonua
10. Derek Gaines
11. Lysandra Griffith
12. Mary B. Grinner
13. Delfino Gonzales
14. Jarrod Hilliard
15. Bradley Laufer
16. Tony Lee
17. Artina Lewis
18. Guillermo Madrigal
19. Natividad Medina
20. Victor Munoz
21. Lawrence Muse
22. Daniel Nascimiento
23. Mwuepe Nguni
24. Alicia Nolan
25. Aaron Pomerantz
26. Jose Rodriguez
27. Elly Shu-Lee
28. Michael Sanford
29. James Silvis
30. Rigoberto Vallejo
31. Michael Williams
32. Calvin Worley
33. Keith Affolter
34. James Butler
35. Maurice Egan
36. Lance Fredrickson
37. Delfino Gomez
38. Kenneth Smalls
39. Roy Westry
40. Kirk Williams