

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO**

Thomas Pazo, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

Incredible Adventures, Inc., a California
Corporation, and DOES 1-10,

Defendant.

CASE NO. CGC -16 - 555971

**REVISED JOINT STIPULATION OF
SETTLEMENT AND RELEASE OF CLASS
ACTION**

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This Revised Joint Stipulation of Settlement and Release of Class Action (“Stipulation”) is made and entered into by Plaintiff Thomas Pazo (“Plaintiff”), individually and as a representative of the Settlement Class, as defined below, and Incredible Adventures, Inc. (“Defendant”) (collectively “the Parties”). This Stipulation is subject to the approval of the Court, pursuant to California Rules of Court, Rule 3.769(c), (d) and (e), and is made for the sole purpose of attempting to consummate settlement of the Action on a class-wide basis subject to the following terms and conditions. As detailed below, in the event the Court does not enter an order granting final approval of the Class Settlement, as defined below, or the conditions precedent are not met for any reason, this Stipulation is void and of no force or effect whatsoever.

I. DEFINITIONS

As used in this Stipulation, the following terms shall have the meanings specified below. To the extent terms or phrases used in this Stipulation are not specifically defined below, but are defined elsewhere in this Stipulation, they are incorporated by reference into this definition section.

1. Action. “Action” shall mean the following civil action: *Thomas Pazo v. Incredible Adventures, Inc.*, filed on December 16, 2016, Case No. CGC-16-555971, in the Superior Court of California for the County of San Francisco.

2. Administrative Expenses. “Administrative Expenses” shall include all costs and expenses associated with and paid to the Settlement Administrator, which should not exceed \$16,500.00.

3. Claims. “Claims” shall mean the claims asserted in the First Amended Complaint and causes of action based on Defendant’s alleged: (1) failure to provide paid rest periods and pay missed rest period premiums; (2) failure to provide complete/accurate wage statements; (3) failure to provide paid meal periods and pay missed meal period premiums; (4) failure to pay all wages due to former employees; (5) derivative UCL violations; and (6) PAGA and other penalties based on the foregoing.

4. Class or Settlement Class. “Class” or “Settlement Class” shall mean Plaintiff and all other individuals employed in California by Defendant in the positions of CEO (chief experience officers) and/or tour guides/drivers who provided transportation and guided tours in California from December 16, 2012 through preliminary approval. Defendant represents that the Class consists of 168 individuals.

1 **5. Class Counsel.** “Class Counsel” shall mean Craig Ackermann of Ackermann & Tilajef,
2 P.C. and Jonathan Melmed of Melmed Law Group P.C.

3 **6. Class Attorney Fees and Expenses.** “Class Attorney Fees and Expenses” shall mean
4 Class Counsel’s attorney fees and expenses as set forth in Section IV, Paragraph 6.

5 **7. Class Member or Settlement Class Member.** “Class Member” or “Settlement Class
6 Member” shall mean any person who is a member of the Settlement Class, or, if such person is
7 incompetent or deceased, the person's legal guardian, executor, heir or successor-in-interest.

8 **8. Class Notice.** “Class Notice” shall mean the Notice of Proposed Class Action
9 Settlement and Hearing Date for Court Approval, as set forth in the form of **Exhibit 1** attached hereto,
10 or as otherwise approved by the Court, which is to be mailed to Class Members along with the Share
11 Form.

12 **9. Share Form.** “Share Form” shall mean the Share Form, as set forth in the form of
13 **Exhibit 2** attached hereto, or as otherwise approved by the Court, which is to be mailed to Class
14 Members along with the Class Notice.

15 **10. Class Participants.** “Class Participants” shall mean any and all Class Members who do
16 not timely Opt-Out of the Class Settlement.

17 **11. Class Period.** “Class Period” shall mean the period from December 16, 2012 through
18 the date of preliminary approval of the Settlement.

19 **12. Class Representative.** “Class Representative” shall mean Plaintiff Thomas Pazo.

20 **13. Class Settlement.** “Class Settlement” shall mean the settlement embodied in this
21 Stipulation, which is subject to Court approval.

22 **14. Complaint.** “Complaint” shall mean the First Amended Complaint filed in San
23 Francisco County Superior Court on August 25, 2017.

24 **15. Court.** “Court” shall mean the Superior Court of San Francisco County.

25 **16. Defense Counsel.** “Defense Counsel” shall mean John H. Hyland, Esq. of Rukin Hyland
26 & Riggin, LLP, 1939 Harrison St., Suite 290; Oakland, CA 94612.

27 **17. Effective Date.** “Effective Date” shall be the date when all of the following events have
28 occurred: (a) this Stipulation has been executed by all Parties and by Class Counsel and Defense

Counsel; (b) the Court has given preliminary approval to the Settlement; (c) notice has been given to the Settlement Class Members providing them with an opportunity to Opt-Out of the Class Settlement; (d) the Court has held a Final Approval and Fairness Hearing and entered a final order and judgment certifying the Class and approving this Stipulation; and (e) the later of the following events: the expiration of the period for filing any appeal, writ, or other appellate proceeding opposing the Class Settlement has elapsed without any appeal, writ or other appellate proceeding having been filed; or the dismissal of any appeal, writ, or other appellate proceeding opposing the Class Settlement with no right to pursue further remedies or relief; or any appeal, writ, or the issuance of such other final appellate order upholding the Court's final order with no right to pursue further remedies or relief. In this regard, it is the intention of the Parties that the Class Settlement shall not become effective until the Court's order approving the Class Settlement is completely final and there is no further recourse by an appellant or objector who seeks to contest the Class Settlement. In the event no objections are filed, the Effective Date shall be after steps (a) through (d) are completed.

18. Employee's Taxes and Required Withholding. "Employee's Taxes and Required Withholding" shall mean the employee's share of any and all applicable federal, state or local payroll taxes, including those collected under authority of the Federal Insurance Contributions Act ("FICA"), FUTA and/or SUTA on the portion of any Class Participant's Individual Settlement Amount that constitutes wages as set forth in section IV, paragraph 4. The Employee's Taxes and Requirement Withholdings will be withheld from and paid out of the Net Settlement Amount.

19. Employer's Taxes. "Employer's Taxes" shall mean and refer to Defendant's share of payroll taxes (e.g. UI, ETT, Social Security and Medicare taxes) that is owed on the portion of any Class Participant's Individual Settlement Amount that constitutes wages as set forth in section IV, paragraph 4. The Employer's Taxes shall be separately paid by Defendant and shall not be paid from the Gross Settlement Amount or the Net Settlement Amount.

20. Final Approval and Fairness Hearing. "Final Approval and Fairness Hearing" shall mean the final hearing held to ascertain the fairness, reasonableness, and adequacy of the Class Settlement.

21. Defendant. "Defendant" shall mean Incredible Adventures, Inc.

1 **22. Hearing on Preliminary Approval.** “Hearing on Preliminary Approval” shall mean the
2 hearing held on the motion for preliminary approval of the Class Settlement.

3 **23. Individual Settlement Amount.** “Individual Settlement Amount” shall mean the
4 amount which is ultimately distributed to each Class Participant, net of any Employee’s Taxes and
5 Required Withholdings.

6 **24. Plaintiff.** “Plaintiff” shall mean the named Plaintiff Thomas Pazo.

7 **25. Net Settlement Amount.** “Net Settlement Amount” shall mean the Gross Settlement
8 Amount minus Administrative Expenses, Class Attorney Fees and Expenses, the PAGA Payment
9 payable to the California Labor and Workforce Development Agency (“LWDA”), and the Incentive
10 Award.

11 **26. Opt-Out(s).** “Opt-Out(s)” shall mean any and all persons who timely and validly
12 request exclusion from the Class Settlement in accordance with the terms of the Class Notice and no
13 later than the Response Deadline.

14 **27. Parties.** “Parties” shall mean Plaintiff and Defendant.

15 **28. Preliminary Approval Date.** “Preliminary Approval Date” shall mean the date upon
16 which the Court enters an order preliminarily approving this Stipulation.

17 **29. Released Claims.** “Released Claims” shall mean any and all claims alleged in the First
18 Amended Complaint, and all claims arising from the causes of actions, claims and facts alleged in the
19 FAC, specifically including claims under Labor Code sections 201-203, 226(a), 226.7, 512, 558, IWC
20 Wage Order No. 9, sections 11 and 12, and claims under Sections 17200-17204 of the California
21 Business and Professions Code and Labor Code sections 2698-99 for PAGA penalties based on the
22 foregoing alleged violations. In addition, the Class Representative agrees to a general release of all
23 claims against Defendant during the Class Period, and agrees to waive his rights under Civil Code
24 section 1542. The Release is not intended to extend to wage and hour claims under the laws of other
25 states for work performed outside of the state of California.

26 It is understood and agreed that this Stipulation will not release any person, party or entity from
27 claims, if any, by Class Members for workers compensation, unemployment, or disability benefits of
28 any nature, nor does it release any claims, actions, or causes of action which may be possessed by

1 Settlement Class Members under state or federal discrimination statutes, including, without limitation,
2 the Cal. Fair Employment and Housing Act, the Cal. Government Code § 12940, *et seq.*; the Unruh Civil
3 Rights Act, the Cal. Civil Code §51, *et seq.*; the California Constitution; Title VII of the Civil Rights Act
4 of 1964, 42 U.S.C. § 2000, *et seq.*; the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101,
5 *et seq.*; the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 *et seq.*;
6 and all of their implementing regulations and interpretive guidelines.

7 **30. Released Parties.** “Released Parties” shall mean Incredible Adventures, Inc., and all of
8 their affiliated entities, owners, managers, parents, shareholders, officers and subsidiaries.

9 **31. Response Deadline.** “Response Deadline” shall mean the date sixty (60) days following
10 the date on which the Settlement Administrator first mails Class Notice to the Settlement Class
11 Members.

12 **32. Incentive Award.** “Incentive Award” shall mean any additional monetary payment
13 provided to the Class Representative for his efforts and risks on behalf of the Settlement Class in this
14 Action.

15 **33. PAGA Payment.** “PAGA Payment” means the penalties pursuant to California Labor
16 Code sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”), that the
17 Parties have agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the
18 Action, which is \$2,000.00. PAGA Payment is to be approved by the Court pursuant to Labor Code
19 section 2699 and are to be distributed as follows: seventy-five percent (75%) to the LWDA and twenty-
20 five percent (25%) to the Class Members. Class Counsel shall give timely notice of the Class
21 Settlement to the LWDA under Labor Code section 2699(1)(2).

22 **34. Settlement.** “Settlement” shall mean the settlement between the Parties, which is
23 memorialized in this Stipulation and subject to approval by the Court.

24 **35. Settlement Administrator.** “Settlement Administrator” shall mean CPT Group, Inc.,
25 which the Parties have agreed will be responsible for administration of the Settlement and related
26 matters.

27 **36. Gross Settlement Amount.** “Gross Settlement Amount” is the agreed upon non-
28 reversionary settlement amount totaling \$150,000.00 to be paid by Defendant in full settlement of the

Released Claims asserted in this case, including the Administrative Expenses, Employee's Taxes and Required Withholdings, Class Attorney Fees and Expenses, Incentive Award, and PAGA Payment. Defendant shall separately pay its share of the Employer's Taxes in addition to the Gross Settlement Amount.

37. Stipulation. "Stipulation" shall mean this Revised Joint Stipulation of Settlement and Release of Class Action, including any attached exhibits.

38. Final Payment Date. The "Final Payment Date" shall be the date which Defendant make its third and final payment, pursuant to the "Payment Plan."

39. Payment Plan. The "Payment Plan" shall be Defendant's series of three payments to the Settlement Administrator encompassing the Gross Settlement Amount, as follows: the "First Payment" estimated to be approximately \$25,000.00 (i.e., 30% of the Net Settlement Amount, plus the employer's portion of the payroll taxes on the 30% of the Net Settlement Amount), shall be made by Defendant by the later of either November 1, 2018 or 35 calendar days of the court's granting final approval to the Settlement (the "First Payment"). The "Second Payment" estimated to be approximately \$62,500.00 (i.e., 70% of the Net Settlement Amount, plus the service award, plus the \$2,000 PAGA payment), shall be made by Defendant within 365 calendar days after payment of the First Payment and shall be for penalties, premiums, and interest. The "Third Payment" estimated to be \$62,500.00 (for fees, costs, and administration fees), shall be made by Defendant within 365 calendar days after payment of the Second Payment. The First, Second and Third Payment shall be collectively referred to as the "Payment Plan."

II. FACTUAL AND PROCEDURAL BACKGROUND OF ACTION

1. Plaintiff's Claims. On behalf of the Settlement Class, Plaintiff alleged the following causes of action: (1) failure to provide paid rest periods to drivers and pay missed rest period premiums (Cal. Labor Code §§ 226.7; IWC Wage Order No. 9); (2) failure to provide complete wage statements (Cal. Labor Code § 226(a)); (3) failure to provide meal periods to drivers and pay missed meal period premiums (Cal. Labor Code § 226.7, 512; IWC Wage Order No. 9); (4) failure to pay all wages due to former employees (Cal. Labor Code § 201 – 203); (5) derivative UCL violations based on the foregoing (Cal. Bus. & Prof. Code §§ 17200-17204); and (6) PAGA and other penalties (Cal. Labor Code § 2699, *et seq.*, and 558) based on the foregoing.

1 **2. Discovery, Investigation, Motion Practice and Research.** Class Counsel has
2 conducted significant discovery during the prosecution of the Action. This discovery, investigation, and
3 prosecution has included, among other things, (a) multiple telephonic conferences with Plaintiff; (b)
4 inspection and analysis of hundreds of pages of documents and other information produced by Plaintiff
5 and Defendant; (c) analysis of the legal positions taken by Defendant; (d) investigation into the viability
6 of class treatment of the claims asserted in the Action; (e) analysis of potential class-wide damages,
7 including information sufficient to understand Defendant's potential defense to the unpaid rest break and
8 non-driving time claims under Labor Code § 226.2; (f) research of the applicable law with respect to the
9 claims asserted in the Complaint and the potential defenses thereto; and (g) assembling and analyzing of
10 data for calculating damages. In addition, the Parties have determined that the estimated size of the
11 Settlement Class is no more than 168 Class Members.

12 The Class Representative has vigorously prosecuted this case, and Defendant has vigorously
13 contested it. The Parties have engaged in sufficient investigation and discovery to assess the relative
14 merits of the claims of the Class Representative and of Defendant's defenses to them.

15 **3. Allegations of the Class Representatives and Benefits of Class Settlement.** The
16 extensive discovery conducted in this matter, as well as discussions between counsel, have been
17 adequate to give the Class Representative and Class Counsel a sound understanding of the merits of their
18 positions and to evaluate the worth of the claims of the Settlement Class. The discovery conducted in
19 this Action and the information exchanged by the Parties through discovery and settlement discussions
20 are sufficient to reliably assess the merits of the Parties' respective positions and to compromise the
21 issues on a fair and equitable basis.

22 Plaintiff and Class Counsel believe that the claims, causes of action, allegations and contentions
23 asserted in the Action have merit. However, Plaintiff and Class Counsel recognize and acknowledge the
24 expense and delay of continued lengthy proceedings necessary to prosecute the Action against
25 Defendant through trial and through appeals. Class Counsel has taken into account the uncertain
26 outcome of the litigation, the risk of continued litigation in complex actions such as this, as well as the
27 difficulties and delays inherent in such litigation, and the potential difficulty of obtaining certification of
28 the Action as well as trying the claims of the class. Class Counsel is mindful of the potential problems of

proof under, and possible defenses to, the claims alleged in the Action. Class Counsel has also taken into account Defendant's low violation rate with respect to meal and rest breaks and the fact that Class Members regularly took off duty breaks that met the requirements of California law, the fact that Defendant's employees are seasonal workers undercutting damages, the fact that Plaintiff would have difficulty proving willfulness on the part of Defendant with respect to Labor Code § 203 waiting time penalties, that the California Labor Code may not apply extraterritorially to work performed outside of California and specifically that Labor Code § 226 wage statement violations may not be triggered, and the possibility of Congress retroactively preempting state meal and rest break laws which would render Plaintiff's claims worthless. Class Counsel is also mindful of Defendant's financial hardship and resulting inability to pay any large class wide settlement or award.

Class Counsel believes that the Settlement set forth in this Stipulation confers substantial benefits upon Plaintiff and the Settlement Class Members and that an independent review of this Stipulation by the Court in the approval process will confirm this conclusion. Based on their own independent investigation and evaluation, Class Counsel has determined that the Settlement set forth in the Stipulation is in the best interests of Plaintiffs and the Settlement Class Members.

4. Defendant's Denials of Wrongdoing and Liability. Defendant has denied and continues to deny each and all of the allegations, claims, and contentions alleged by Plaintiff in the Action. Defendant has expressly denied and continues to deny all charges of wrongdoing or liability against it arising out of any of the conduct, statements, acts or omissions alleged in the Action. Defendant contends that it complied in good faith with California and federal wage and hour laws and has dealt legally and fairly with Plaintiff and Settlement Class Members. Defendant further denies that, for any purpose other than settling this Action, these claims are appropriate for class or representative treatment. Nonetheless, Defendant has concluded that further proceedings in the Action would be protracted and expensive and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation in order to dispose of burdensome and protracted litigation, to permit the operation of Defendant's business without further expensive litigation and the distraction and diversion of its personnel with respect to matters at issue in the Action. Defendant has also taken into account the uncertainty and risks inherent in any litigation, especially in

complex cases such as the Action. Defendant has, therefore, determined that it is desirable and beneficial to it that the Action be settled in the manner and upon the terms and conditions set forth in this Stipulation.

5. Intent of the Class Settlement. The Class Settlement set forth herein intends to achieve the following: (1) entry of an order approving the Class Settlement; (2) entry of judgment of the Action; (3) discharge of Released Parties from liability for any and all of the Released Claims; and (4) discharge of Plaintiff from liability for any and all claims arising out of the Action.

III. CONDITIONAL CLASS CERTIFICATION AND APPOINTMENT OF CLASS COUNSEL

1. The Settlement Class. For the purposes of this Stipulation and the Class Settlement of this Action only, the Parties stipulate to conditional class certification of the Settlement Class.

2. Appointment of Class Counsel. For purposes of this Stipulation and subject to the Court's approval, the Parties hereby stipulate to the appointment of Class Counsel as counsel for the Class and the effectuation of the Class Settlement pursuant to this Stipulation.

IV. CLASS SETTLEMENT CONSIDERATION

1. Settlement Amount. The Parties agree to settle this Action for the Gross Settlement Amount of \$150,000.00. There shall be no reversion to Defendant. The Gross Settlement Amount and other actions and forbearances taken by Defendant shall constitute adequate consideration for the Class Settlement and will be made in full and final settlement of: (a) the Released Claims, (b) Class Attorney Fees and Expenses, (c) Administrative Expenses, (d) Incentive Awards, (e) PAGA Payment; and (f) any other obligation of Defendant under this Stipulation (other than the Employer's Taxes on the portion of the Net Settlement Amount allocated to the payment of wages). After the Court issues an order preliminarily approving this Class Settlement, the Settlement Administrator will distribute the Class Notice to the Settlement Class Members, which shall describe the terms of the Class Settlement and procedures to opt out, object or participate in the Class Settlement as well as the Share Form, which shall identify the Settlement Class Member, the wage statements issued to each Settlement Class Member, as well as the estimated amount of the Individual Settlement Amount the Settlement Class Member can expect to receive once the Class Settlement becomes effective. Settlement Class Members

shall be given the opportunity to challenge their wage statements issued information. The Gross Settlement Amount shall be paid to the Settlement Administrator pursuant to the "Payment Plan," which will be used to pay the following: (1) Class Attorney Fees, as approved by the Court, not to exceed twenty-five percent (25%) of the Gross Settlement Amount, (*i.e.*, \$37,500); (2) Class Attorney Expenses, as approved by the Court, not to exceed \$10,000.00; (3) Plaintiff's Incentive Award, as approved by the Court, not to exceed \$5,000.00; (4) PAGA Payment of \$2,000.00, of which \$1,500 shall be paid to the LWDA; and (5) Administrative Expenses to be paid to the Settlement Administrator, not to exceed \$16,500.00. In addition to the Gross Settlement Amount, Defendant shall pay or deposit with the Settlement Administrator before the distribution of the Individual Settlement Amounts to Class Participants the Employer's Taxes associated with the wage portion of the Individual Settlement Amounts. In no event shall Defendant pay more than the combined Gross Settlement Amount and Employer's Taxes.

2. Incentive Award for Class Representative. The Class Representative may petition the Court to approve an Incentive Award in an amount up to \$5,000.00 to the Class Representative, for his efforts on behalf of the Settlement Class in this Action, including assisting in the investigation and consulting with Class Counsel and providing crucial documents to Class Counsel. Defendant shall not oppose any request by Class Representative for an Incentive Award in such an amount. Any Incentive Award approved by the Court shall be paid to the Class Representative from the Gross Settlement Amount and shall be in addition to any distribution to which he may otherwise be entitled as a Settlement Class Member. The Incentive Award shall not be considered wages, and the Settlement Administrator shall issue Class Representative an IRS Form 1099 reflecting such payment. The Class Representative shall be responsible for the payment of any and all taxes with respect to his Incentive Award and shall hold Defendant harmless and indemnify Defendant from any and all liability with regard thereto.

3. Payment to Class Participants. Each Class Participant shall be eligible to receive payment of the Individual Settlement Amount, which is a share of the Net Settlement Amount based on the pro rata number of wage statements issued to the Settlement Class Members during the Class Period as a proportion of wage statements issued to all Settlement Class Members. The Individual Settlement

Amount for each Settlement Class Member shall be calculated in accordance with section VII, paragraph 2. Each Class Participant, including Plaintiff, shall be responsible for the payment of the Employee's Taxes and Required Withholding with respect to his or her Individual Settlement Amount and shall hold Defendant harmless from any and all liability with regard thereto. Payments to the Class Participants shall be included on the First Payment, Second Payment, and Third Payment (if necessary) under the Payment Plan.

4. Tax Treatment and Payment. For the purpose of calculating Employee's Taxes and Required Withholding for the Individual Settlement Amounts for Class Participants (including any payments to the Class Representative but exclusive of his Incentive Award), the Parties agree that 20% of each Individual Settlement Amount shall constitute wages in the form of back pay (and each Class Participant will be issued an IRS Form W-2 for such payment to him or her), and 80% of each Individual Settlement Amount shall constitute premiums, penalties, and interest (and each Class Participant will be issued an IRS Form 1099 for such payment to him or her). Prior to final distribution, the Settlement Administrator shall calculate the total Employee's Taxes and Required Withholding due as a result of the wage portion of Class Participants' anticipated Individual Settlement Amounts and such actual amount will be deducted from the Net Settlement Amount. Additionally, prior to the funding of the Gross Settlement Sum and final distribution, the Settlement Administrator shall calculate the total Employer's Taxes due on the wage portion of the Class Participants' Individual Settlement Amounts and issue instructions to Defendant to separately fund these tax obligations/withholdings. The Parties understand that Plaintiff and the Class Participants who receive any payment pursuant to this Stipulation shall be solely responsible for any and all other individual tax obligations associated with this Class Settlement.

5. No Effect on Employee Benefit Plans. Neither the Class Settlement nor any amounts paid under the Class Settlement will modify any previously credited hours, days, or weeks of service under any employee benefit plan, policy or bonus program sponsored by Defendant. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under Defendant's sponsored benefit plans, policies or bonus programs. The payments made under the terms of this Stipulation shall not be applied retroactively, currently, or on a going forward basis, as

1 salary, earnings, wages, or any other form of compensation for the purposes of any of Defendant's
2 benefit plan, policy or bonus program. Defendant retains the right to modify the language of its benefits
3 plans, policies and bonus programs to effect this intent and to make clear that any amounts paid pursuant
4 to this Stipulation are not for "weeks worked," "weeks paid," "weeks of service," or any similar
5 measuring term as defined by applicable plans, policies and bonus programs for purpose of eligibility,
6 vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not
7 required by this Stipulation. Defendant does not consider the Class Settlement payments
8 "compensation" for purposes of determining eligibility for, or benefit accrual within, any benefit plans,
9 policies, or bonus programs, or any other plan sponsored by Defendant.

10 **6. Class Attorney Fees and Expenses.** As part of the motion for final approval of the
11 Class Settlement, Class Counsel may submit an application for an award of Class Attorney Fees and
12 Expenses with the fee portion not to exceed twenty-five percent (25%) of the Gross Settlement Amount
13 (*i.e.*, \$37,500) and the award of costs and expenses of up to an additional \$10,000.00. Defendant agrees
14 not to object to any such fee, cost or expense application in those amounts. As a condition of this Class
15 Settlement, Class Counsel has agreed to pursue fees only in the manner reflected by this Section. Any
16 Class Attorney Fees and Expenses awarded by the Court shall be paid from the Gross Settlement
17 Amount in arriving at the Net Settlement Amount and shall not constitute payment to any Settlement
18 Class Members. If Class Counsel voluntarily reduces the request for Class Attorney Fees or Expenses or
19 the Court's award of Class Attorney Fees or Expenses is less than set forth above, the Net Settlement
20 Amount shall be recalculated to reflect the actual Class Attorney Fees and Expenses awarded.

21 The Class Attorney Fees and Expenses approved by the Court shall encompass: (a) all work
22 performed and costs and expenses incurred by, or at the direction of, any attorney purporting to
23 represent the Settlement Class through the date of this Stipulation; (b) all work to be performed and
24 costs to be incurred in connection with approval by the Court of the Class Settlement; (c) all work to be
25 performed and costs and expenses, if any, incurred in connection with administering the Class
26 Settlement through the Effective Date and dismissal of the Action, with prejudice; and (d) may be based
27 on the Catalyst Theory and/or Common Fund Doctrine.

28 **7. Payment of Class Attorney Fees and Expenses.** Class Attorney Fees and Expenses as

awarded by the Court shall be paid by the Settlement Administrator out of the Gross Settlement Amount from the Third Payment, pursuant to the Payment Plan.

V. CLAIMS ADMINISTRATION COSTS AND EXPENSES

1. The Settlement Administrator's Costs and Expenses. All costs and expenses due to the Settlement Administrator in connection with its administration of the Class Settlement, including, but not limited to, providing the Class Notice, locating Settlement Class Members, processing Opt-Out requests and objections, distributing the portion of the PAGA Payment payable to the LWDA, and calculating, administering and distributing Individual Settlement Amounts to the Class Participants and related tax forms, shall be paid from the Gross Settlement Amount, and shall not exceed \$16,500.00 (but anticipated not to exceed \$15,000).

2. Payment by Defendant. The Settlement Administrator will calculate the Employer's Taxes and inform Defendant of the total amount of such Employer's Taxes and inform Defendant of the total amount of such Employer's Taxes within five days after the Effective Date. Defendant shall pay those portions of the Gross Settlement Amount to the Settlement Administrator pursuant to the Payment Plan.

VI. NOTICE TO CLASS MEMBERS AND CLAIMS ADMINISTRATION PROCESS

1. The Settlement Administrator. The Settlement Administrator will be responsible for mailing the Class Notice and Share Form (**Exhibits 1 and 2**) to Settlement Class Members, handling inquiries from Settlement Class Members concerning the Class Notice, determination of Individual Settlement Amounts, maintaining the settlement funds in an appropriate interest bearing account, preparing, administering and distributing Individual Settlement Amounts to Class Participants, issuing a final report and performing such other duties as the Parties may direct.

On a weekly basis, the Settlement Administrator will provide reports to Class Counsel and Defense Counsel summary information updating them as to the number of validated and timely objections and Opt-Out Requests. The Settlement Administrator will serve on Class Counsel and Defense Counsel via e-mail date-stamped copies of the original Opt-Outs and objections no later than seven days after their receipt. The Settlement Administrator will provide Class Counsel with proof of mailing of the Class Notice, without listing individual Class Member names which the Settlement

Administrator will file with the Court at the time Class Counsel files its motion in support of the Court's Final Approval and Fairness Hearing. No later than seven days prior to the Final Approval and Fairness Hearing, the Settlement Administrator will compile and deliver to Class Counsel and Defense Counsel a report with summary information regarding (a) the total amount of final Individual Settlement Amounts of each Class Participant (b) the number of Class Participants to receive such payments, and (c) the final number of Opt-Outs and objections.

Administrative Expenses are not anticipated to exceed \$15,000.00. Prior to the calculation and distribution of the Individual Settlement Amounts, the Settlement Administrator shall calculate the total Administrative Expenses through the conclusion of their services and such actual amount will be deducted from the Gross Settlement Amount prior to the final calculation of the Individual Settlement Amounts.

2. Notice to Settlement Class Members. Notice shall be provided to Settlement Class Members in the following manner: Within 14 days after the Preliminary Approval Date, Defendant shall provide the Settlement Administrator with an updated list of Class Members containing names, social security numbers, dates of employment, last-known addresses and phone numbers (the "Database"). The Database shall be marked "Confidential –Settlement Administrator's Eyes Only." Class Counsel shall not receive a copy of this list.

On or before the date of mailing of the Class Notice, the Settlement Administrator shall publish a web page on which it shall make accessible copies of the operative Complaint in the Action, the Settlement Agreement, Class Notice, and Order Granting Preliminary Approval of the Settlement. The URL of the web page (www.cptgroup.com/incredibleadventures) at which Class Members can access these documents shall be indicated in the Class Notice and the documents filed in connection with preliminary approval, including all the Court's orders, shall be posted on the aforementioned URL. At least 1 week before the 60-day period has run, Plaintiff's Counsel shall cause drafts of their declarations in support of their motion for attorneys' fees and class representative incentive awards to be posted on the website in order to give Class Members an opportunity to object on the basis of those requests.

Within 28 days following the Preliminary Approval Date, the Settlement Administrator shall

determine the number of wage statements issued to each Settlement Class Member, populate the Settlement Class for each accordingly, and send each Settlement Class Member the Class Notice via first-class, United States mail. The Class Notice shall also contain an easily understood statement alerting the Class Members that, unless they elect to Opt-Out of the Class Settlement, the Settlement Class Member is releasing and waiving all Released Claims against the Released Parties.

The Class Notice will inform Settlement Class Members of his/her estimated share of the settlement and the number of wage statements he/she was issued during the Class Period. Class Members may dispute their wage statements issued if they believe they were issued more wage statements in the Class Period than Defendant's records show by submitting information to the Settlement Administrator no later than 60 days after being mailed the Class Notice and Share Form by the Settlement Administrator, which is the defined Response Deadline. The Settlement Administrator will jointly work with Plaintiff and Defendant to resolve the dispute in good faith. If Plaintiff and Defendant cannot agree over the wage statements to be credited, the Settlement Administrator shall make the final decision based on the information presented by the Settlement Class Member and Defendant.

3. Opt-Out Procedure. Settlement Class Members who do not timely Opt-Out of the Class Settlement will be deemed to participate in the Class Settlement and shall become a Class Participant without having to submit a claim form or take any other action. In order to Opt-Out of the Class Settlement, the Settlement Class Member must submit a letter or postcard to the Settlement Administrator by the Response Deadline indicating the Class Members intention not to participate in the Settlement. The written request should state the Settlement Class Member's name, address, telephone number, and signature. The Opt-Out request should state to the effect of: "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE PAZO V. INCREDIBLE ADVENTURES, INC. LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE CLASS SETTLEMENT OF THIS LAWSUIT AND WILL NOT BE RELEASING ANY CLAIMS I MIGHT HAVE." Any Opt-Out Requests received by the Settlement Administrator not conforming with the foregoing requirements will be considered valid Opt-Outs so long as they are signed and contain language unambiguously indicating

the Class Member's intention not to participate in the Settlement. If the Settlement Administrator receives a defective written request that does not unambiguously state Class Member's intentions to opt out of the Settlement, it shall make reasonable attempts to contact the Class Member and cure such defects. If the Settlement Administrator is unable to reach the Class Member within seven (7) business days after receipt of its ambiguous request, then such request shall not be deemed to be a valid Opt-Out or Objection. Any Opt-Out request that is not postmarked by the Response Deadline will be invalid.

In the event that, prior to the Response Deadline, any Class Notice mailed to a Settlement Class Member is returned as having been undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace search and seek an address correction for such Settlement Class Member(s), and a second Class Notice will be sent to any new or different address obtained within seven days of the Settlement Administrator receiving actual notice that the Notice Packet was undeliverable. Such Settlement Class Member(s) shall have an additional 14 days in which to Opt-Out, object, and/or dispute their wage statements issued.

It will be presumed that, if an envelope containing the Class Notice has not been returned within 28 days of the mailing, the Settlement Class Member received the Class Notice. At least 30 days prior to the Final Approval and Fairness Hearing, the Settlement Administrator shall provide Class Counsel and Defense Counsel with a Declaration of Due Diligence and Proof of Mailing with regard to the mailing of the Class Notice and its attempts to locate Class Members. The declaration shall specify the number of Settlement Class Members to whom Class Notices were sent and the number of Settlement Class Members to whom Class Notices were not delivered, as well as information relating to the number of Opt-Outs and objectors. Class Counsel shall file this declaration with the Court.

If the Settlement Administrator determines that an Opt-Out request returned by a Settlement Class Member before the Response Deadline is deficient, then the Settlement Administrator shall mail a deficiency letter to that Settlement Class Member identifying the problem. If a Settlement Class Member submits both a dispute and an Opt-Out request, the Settlement Administrator shall make reasonable attempts to clarify as if the Opt-Out request were deficient. If the Class Member fails to cure the deficiency, the Opt-Out request shall be disregarded and the claim will be paid, and the Class Member will become bound by the judgment.

Those Settlement Class Members who do not timely Opt-Out will be bound by the Release of Released Claims set forth in Section I, Paragraph 29 of this Stipulation.

4. Objections. The Class Notice shall inform the Settlement Class Members of their right to object to the Class Settlement. Any Settlement Class Member who wishes to object to the Class Settlement should submit a written objection to the Settlement Administrator no later than the Response Deadline. All Class Member objections should state the Class Member's name, address, telephone number, dates of employment with Defendant, reasonably identify the Action, provide each specific reason in support of the objection, and comply with the requirements of this section. Class Members need not include legal arguments for their written objections to be considered. If an objector also wishes to appear at the Final Approval and Fairness Hearing, in person or through an attorney, he or she need not file a notice of intention to appear at the same time as the objection is filed. Filing the notice of intention to appear is not necessary to preserve the right to appear at the Final Approval and Fairness Hearing. Absent Class Members need not file anything with the Court; the Settlement Administrator will promptly serve copies of any objection or notice of intention to appear on Class Counsel and Defense Counsel. The Class Notice shall advise Settlement Class Members that, while Settlement Class Members have a right to appear at the Final Approval and Fairness Hearing, the Court may, in its discretion, decline to consider oral objections from objectors who have not submitted timely written objection. Settlement Class Members may appear at the Final Approval Hearing, either in person or through a lawyer retained at their own expense.

VII. CLASS SETTLEMENT FUNDING AND DISTRIBUTION

1. Allocation of the Gross Settlement Amount. The claims of all Settlement Class Members are settled for the Gross Settlement Amount of \$150,000.00, which will be allocated as follows:

- a. The Administrative Expenses, not to exceed \$16,500.00;
- b. The Class Attorney Fees and Expenses not to exceed \$37,500.00 in fees and expenses not to exceed \$10,000.00;
- c. The Incentive Award, not to exceed \$5,000.00 to the Class Representative; and
- d. PAGA Payment of \$2,000.00, of which \$1,500.00 shall be paid to the LWDA.

For purposes of calculating the estimated Individual Settlement Amounts, the Settlement Administrator shall calculate the estimated Net Settlement Amount based on the estimated values in Section 1(a-d) prior to sending Notice to the Settlement Class Members. Prior to final distribution, the Settlement Administrator shall calculate the final Net Settlement Amount based on the actual values in Section 1 (a-d).

2. Calculation of the Individual Settlement Amounts. Individual Settlement Amounts to be paid to Class Participants shall be paid from the Net Settlement Amount. The portion of the Net Settlement Amount payable to each Class Participant will be calculated as follows:

The Settlement Administrator shall divide the Net Settlement Amount by the total number of wage statements Settlement Class Members were issued during the Class Period, in order to determine the amount each Settlement Class Member is entitled to for each wage statement s/he was issued by Defendant (the “Weekly Amount”). The Settlement Administrator will multiply the Weekly Amount by the total number of wage statements that each Settlement Class Member was issued and deduct all Employee’s Taxes and Required Withholding attributable to wages to arrive at the Individual Settlement Amount for that Class Member. Defendant will provide the Settlement Administrator with any information reasonably necessary to perform the calculation of number of wage statements issued for each Settlement Class Member, and any other reasonably required information the Settlement Administrator requests to perform the calculations required under this Settlement Agreement. Defendant shall have no responsibility for deciding the validity of the Individual Settlement Amounts or any other payments made pursuant to this Stipulation, shall have no involvement in or responsibility for the determination or payment of Employee’s Taxes and Required Withholding, and shall have no liability for any errors made with respect to such Employee’s Taxes and Required Withholding. Although the Settlement Administrator will calculate and pay the standard Employee’s Taxes and Required Withholding on the portion of the Individual Settlement Amounts constituting wages on their behalf, Plaintiff and Class Participants represent and understand that they shall be solely responsible for any and all tax obligation associated with their respective Individual Settlement Amounts and Incentive Awards.

3. Time for Payment of Attorney Fees and Expenses to Class Counsel. The Settlement Administrator shall distribute to Class Counsel any attorney fees and expenses approved by the Court to

Class Counsel no later than 5 days after the Third and Final Payment Date.

4. Time for Payment of Incentive Award to Class Representative. The Settlement Administrator shall distribute to Plaintiff the Incentive Award approved by the Court no later than 5 days after the Second Payment has been made.

5. Time for Payment of Taxes and Required Withholding and Individual Settlement Amounts. The Settlement Administrator shall make every effort to pay the Employee's Taxes and Required Withholding associated with each Class Participant's Individual Settlement Amount and mail the Individual Settlement Amount to each Class Participant, by first-class U.S. mail, to the last-known address no later than 5 days after the First Payment, Second Payment, and Third Payment (if necessary) in accord with the Payment Plan. If the Settlement Administrator is not able to do so within the time period set forth above, it shall so inform Class Counsel and Defense Counsel and provide an approximate date by which the Employee's Taxes and Required Withholding shall be paid and the Individual Settlement Amounts will be mailed. Under no circumstances shall the Settlement Administrator distribute checks to Class Participants until all Individual Settlement Amounts have been considered, calculated, and accounted for, and the all of the remaining monetary obligations have been calculated and accounted for. Within 120 days of the Final Payment Date, the Settlement Administrator shall file with the Court and provide to Class Counsel a declaration of payment.

In the event that any Class Participant is deceased, payment shall be made payable to the estate of that Settlement Class Member and delivered to the executor or administrator of that estate, unless the Settlement Administrator has received an affidavit or declaration pursuant to Cal. Probate Code § 13101, in which case payment shall be made to the affiant(s) or declarant(s).

6. Non-Cashed Settlement Checks. Class Participants shall have 90 days to cash their settlement checks. Non-cashed settlement checks issued to Class Participants as part of the First Payment after 90 days shall be redistributed to those Class Members that cashed their settlement checks as part of the First Payment so long as at least \$5,000 remains not cashed from those settlement checks from the First Payment. If less than \$5,000 remains from non-cashed checks from the First Payment, any funds associated with those checks shall be disbursed in accordance with Section 384 of the California Code of Civil Procedure, which governs unclaimed class member funds. The unclaimed funds, plus

interest on that sum at the legal rate of interest from the date of entry of the initial judgment, will be distributed to the *cy pres* beneficiary, Bet Tzedek Legal Services – The House of Justice.

Those Class Participants who fail to cash their settlement checks from the First Payment within 90 days will have the funds associated with their settlement checks from the Second Payment (and Third Payment if necessary) re-allocated to the Class Participants who have cashed their checks from the First Payment.

Residual funds from the Second Payment will be distributed pursuant to California Code of Civil Procedure Section 384 to the *cy pres* beneficiary identified above.

7. Time for Payment of PAGA Payment to the LWDA. The Settlement Administrator shall distribute to the LWDA the portion of the PAGA Payment due to it and approved by the Court no later than 5 days after the Second Payment pursuant to the Payment Plan.

VIII. NULLIFICATION OF THIS STIPULATION

1. Non-Approval of the Stipulation. If (a) the Court should for any reason fail to approve this Stipulation in the form agreed to by the Parties, or (b) the Court should for any reason fail to enter a judgment with prejudice of the Action, or (c) the approval of the Class Settlement and judgment is reversed, modified or declared or rendered void, then the Class Settlement and conditional class certification shall be considered null and void, and neither the Class Settlement, conditional class certification, nor any of the related negotiations or proceedings, shall be of any force or effect, and all Parties to the Class Settlement shall stand in the same position, without prejudice, as if the Class Settlement had been neither entered into nor filed with the Court. Notwithstanding the foregoing, the Parties may attempt in good faith to cure any perceived defects in the Stipulation to facilitate approval.

2. Parties' Rights to Void Class Settlement. In the event that 8 or more Class Members opt out of the settlement, Defendant has the right (but not the obligation to) void the settlement. In the event that the class list contains more than 168 Class Members, then Plaintiffs shall have the right to void this settlement. Should either party choose to void the Class Settlement under this paragraph, such party shall be responsible for all Settlement Administrator fees and costs actually incurred.

3. Invalidation. Invalidation of any material portion of the Class Settlement shall invalidate the Class Settlement in its entirety, unless the Parties shall subsequently agree in writing that

the remaining provisions of the Class Settlement are to remain in full force and effect.

4. Stay Upon Appeal. In the event of a timely appeal from the approval of the Class Settlement and judgment, the judgment shall be stayed, and Defendant shall not be obligated to fund the Gross Settlement Amount or take any other actions required by this Stipulation until all appeal rights have been exhausted by operation of law.

IX. MOTION FOR COURT APPROVAL

1. Preliminary Approval. Class Counsel will submit this Stipulation to the Court along with a Motion for Preliminary Approval of the Class Settlement. Each party shall cooperate to present the Class Settlement to the Court for preliminary approval in a timely fashion. The Court's preliminary approval of the Class Settlement shall be embodied in an order substantially in the form attached hereto as **Exhibit 3**.

2. Final Approval. The Final Approval and Fairness Hearing shall be held before the Court. At the Final Approval and Fairness Hearing, Plaintiff shall move the Court for the entry of the final order certifying the Class for settlement purposes only and approving the Class Settlement as being fair, reasonable and adequate to the Class Participants within the meaning of California Rules of Court, Rule 3.769(c), (d) and (e) and for the entry of a final judgment of the Action consistent with the terms of the Class Settlement and California Rule of Court 3.769(h). Class Counsel and Defense Counsel shall submit to the Court such pleadings and/or evidence as may be required for the Court's determination.

X. RELEASES AND WAIVERS

1. Release of Claims by Settlement Class. Upon the Effective Date, each Settlement Class Member who has not submitted a timely Opt-Out request, and Plaintiff, each releases the Released Parties, and each of them, of and from any and all Released Claims through the date of preliminary approval.

It is the desire of the Parties and the Settlement Class Members to fully, finally, and forever settle, compromise, and discharge the Released Claims.

Each Settlement Class Member, except those who timely Opt-Out, will be bound to the release of Released Claims as a result of the Class Settlement and to the terms of the final judgment and the satisfaction of such judgment.

1 Settlement Class Members who do not opt out will be deemed to have acknowledged and agreed
2 that their claims for wages and/or penalties in the Action are disputed, and that their Individual
3 Settlement Amount constitute payment of all sums allegedly due to them. Class Members will be
4 deemed to have acknowledged and agreed that California Labor Code Section 206.5 is not applicable to
5 the Individual Settlement Amount. That section provides in pertinent part as follows:

6 **“An employer shall not require the execution of a release of a claim or**
7 **right on account of wages due, or to become due, or made as an**
8 **advance on wages to be earned, unless payment of those wages has**
9 **been made.”**

10 **2. Release of Claims by Plaintiff.** Plaintiff, on behalf of himself and his heirs, executors,
11 administrators, and representatives, shall and does hereby forever release, discharge and agree to hold
12 harmless the Released Parties from any and all charges, complaints, claims, liabilities, obligations,
13 promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs,
14 losses, debts and expenses (including attorney fees and costs), known or unknown, at law or in equity,
15 which he may now have or may have after the signing of this Stipulation, arising out of or in any way
16 connected with his employment with Defendant including, the Released Claims, claims that were
17 asserted or could have been asserted in the Complaint, and any and all transactions, occurrences, or
18 matters between the Parties occurring during the Class Period. Without limiting the generality of the
19 foregoing, this release shall include, but not be limited to, any and all claims under the (a) Americans
20 With Disabilities Act, as amended; (b) Title VII of the Civil Rights Act of 1964, as amended; (c) the
21 Civil Rights Act of 1991; (d) 42 U.S.C. § 1981, as amended; (e) the Age Discrimination in Employment
22 Act, as amended; (f) the Fair Labor Standards Act, as amended; (g) the Equal Pay Act; (h) the Employee
23 Retirement Income Security Act, as amended; (i) the Consolidated Omnibus Budget Reconciliation Act;
24 (j) the Rehabilitation Act of 1973; (k) the Family and Medical Leave Act; (l) the Civil Rights Act of
25 1966; (m) the California Fair Employment and Housing Act; (n) the California Constitution; (o) the
26 California Labor Code; (p) the California Government Code; (q) the California Civil Code; and (r) any
27 and all other federal, state and local statutes, ordinances, regulations, rules and other laws, and any and
28 all claims based on constitutional, statutory, common law or regulatory grounds as well as any other
claims based on theories of wrongful or constructive discharge, breach of contract or implied contract,
fraud, misrepresentation, promissory estoppel or intentional and/or negligent infliction of emotional

distress, or damages under any other federal, state or local statutes, ordinances, regulations, rules or laws. This release is for any and all relief, no matter how denominated, including, but not limited to, back pay, front pay, vacation pay, bonuses, compensatory damages, tortious damages, liquidated damages, punitive damages, damages for pain and suffering, and attorney fees and costs, and Plaintiff hereby forever releases, discharges and agrees to hold harmless Defendant and the Released Parties from any and all claims for attorney fees and costs arising out of the matters released in this Stipulation.

Plaintiff specifically acknowledges that he is aware of and familiar with the provisions of Section 1542, which provides as follows:

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.

Plaintiff, being aware of Section 1542, hereby expressly waives and relinquishes all rights and benefits he may have under Section 1542 as well as any other statutes or common law principles of a similar effect. Plaintiff may hereafter discover facts in addition to or different from those which he now knows or believes to be true with respect to the subject matter of all the claims referenced herein, but stipulates and agrees that, upon the Effective Date, Plaintiff shall and hereby does fully, finally and forever settle and release any and all claims against the Released Parties, known or unknown, suspected or unsuspected, contingent or non-contingent, that were asserted or could have been asserted upon any theory of law or equity without regard to the subsequent discovery of existence of such different or additional facts.

XI. DUTIES OF THE PARTIES

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

Counsel, shall take all necessary and reasonable steps to secure the Court's final approval of this Stipulation.

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

3. Duties Prior to Court Approval. Class Counsel shall promptly submit this Stipulation to the Court for preliminary approval and determination by the Court as to its fairness, adequacy, and reasonableness. Promptly upon execution of this Stipulation, Class Counsel shall apply to the Court for the entry of a preliminary order substantially in the form filed concurrently herewith as **Exhibit 3**, scheduling a hearing on the question of whether the proposed Class Settlement should be approved as fair, reasonable, and adequate as to the Settlement Class Members, approving as to form and content the proposed Class Notice and Share Form attached hereto as **Exhibit 1** and **Exhibit 2**, respectively, and directing the mailing of the Class Notice to Settlement Class Members. Class Counsel shall provide Defendant's Counsel a draft of the preliminary and final approval motions no later than seven (7) calendar days in advance of filing any such motion. While Defendant can reserve its right to object to facts or assertions made in the moving papers, Defense Counsel shall file a notice of non-opposition to the granting of the motion for preliminary approval or join in the motion.

XII. MISCELLANEOUS PROVISIONS

1. Voiding the Stipulation. Pending Court approval and other than as provided in Section VIII herein, if any of the conditions set forth in this Stipulation are not met and satisfied, this Stipulation shall, at the option of either Plaintiff or Defendant, be ineffective, void, and of no further force and effect, and shall not be used or be admissible in any subsequent proceeding, either in this Court or in any other court or forum. If either Party decides to void the Settlement, then the Settlement and conditional class certification shall be considered void, and neither the Settlement Agreement, conditional class certification, nor any of the related negotiations or proceedings, shall be of any force or effect, and the Parties shall stand in the same position, without prejudice, as if this Stipulation had been neither entered into nor filed with the Court. Should either Party choose to void the Class Settlement under this

paragraph, such Party shall be responsible for all Settlement Administrator fees and costs actually incurred.

2. **Different Facts.** The Parties hereto, and each of them, acknowledge that, except for matters expressly represented herein, the facts in relation to the dispute and all claims released by the terms of this Stipulation may turn out to be other than or different from the facts now known by each party and/or its counsel, or believed by such Party or counsel to be true, and each Party therefore expressly assumes the risk of the existence of different or presently unknown facts, and agrees that this Stipulation shall be in all respects effective and binding despite such difference.

3. **No Prior Assignments.** The Parties represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right herein released and discharged except as set forth herein.

4. **Non-Admission.** Nothing in this Stipulation shall be construed as or deemed to be an admission by any Party of any liability, culpability, negligence, or wrongdoing toward any other Party, or any other person, and the Parties specifically disclaim any liability, culpability, negligence, or wrongdoing toward the each other or any other person. Each of the Parties has entered into this Stipulation with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and contingencies. Nothing herein shall constitute any admission by Defendant of wrongdoing or liability, or of the truth of any factual allegations in the Action. Nothing herein shall constitute any admission by Defendant regarding the merits of the Claims in this Action, including but not limited to claims for unpaid wages under California and/or federal law. Nothing herein shall constitute an admission by Defendant that the Action was properly brought as a class or representative action other than for settlement purposes. To the contrary, Defendant has denied and continues to deny each and every material factual allegation and all Claims. To this end, the Class Settlement of the Action, the negotiation and execution of this Stipulation, and all acts performed or documents executed pursuant to or in furtherance of this Stipulation or the Class Settlement are not, shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Defendant or of the truth of any of the factual allegations in the Complaint in the Action; and are not, shall not be

deemed to be, and may not be used as, an admission or evidence of any fault or omission on the part of Defendant in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal.

5. **Media Or Press.** Plaintiff and Defendant, and their respective counsel, recognize, and accept that the Parties to this Stipulation desire that the terms of this Stipulation, the fact of the Class Settlement embodied in this Stipulation, the disposition of the Action, the Action, and all matters relating to the litigation of the Action, including discovery proceedings therein, and evidence obtained during the course of the Action, shall not be discussed with or presented to the media or press.

6. **Non-Retaliation.** Defendant understands and acknowledge that it has a legal obligation not to retaliate against any Settlement Class Member who elects to participate in the Class Settlement or elects to Opt-Out of the Class Settlement. Defendant will refer any inquiries regarding this Class Settlement to the Settlement Administrator or Class Counsel and will not discourage Settlement Class Members who are employees, directly or indirectly, from making claims, opting out or objecting to the Class Settlement.

7. **Construction.** The Parties hereto agree that the terms and conditions of this Stipulation are the result of lengthy, intensive, arms-length non-collusive negotiations between the Parties and that this Stipulation is not to be construed in favor of or against any party by reason of the extent to which any party or its counsel participated in the drafting of this Stipulation. If any of the dates in the Stipulation fall on a weekend, bank or court holiday, the time to act shall be extended to the next business day.

8. **Governing Law.** This Stipulation is intended to and shall be governed by the laws of the State of California, without regard to conflict of law principles, in all respects, including execution, interpretation, performance, and enforcement.

9. **Notices.** Except for Settlement Class Member notices required to be made by the Settlement Administrator, any and all notices or other communications required or permitted under this Stipulation shall be in writing and shall be sufficiently given if delivered in person to the party or their counsel by U.S. certified mail, postage prepaid, e-mail, facsimile, or overnight delivery addressed to the address of the party appearing in this Stipulation.

1 **10. Captions and Interpretations.** Section titles or captions contained herein are inserted
2 as a matter of convenience and for reference only and in no way define, limit, extend, or describe the
3 scope of this Stipulation or any provision thereof.

4 **11. Modification.** This Stipulation may not be changed, altered, or modified, except in
5 writing signed by the Parties and approved by the Court. This Stipulation may not be discharged except
6 by performance in accordance with its terms or by a writing signed by the Parties.

7 **12. Integration Clause.** This Stipulation contains the entire agreement between the Parties
8 relating to the Class Settlement of the Action and the transactions contemplated thereby, and all prior or
9 contemporaneous agreements, understandings, representations, and statements, whether oral or written,
10 and whether by a party or such party's legal counsel, are hereby superseded. No rights under this
11 Stipulation may be waived except in writing as provided above.

12 **13. Successors and Assigns.** This Stipulation shall be binding upon and inure to the benefit
13 of the Parties and Settlement Class Members (excluding only persons who timely Opt-Out) and their
14 respective present and former heirs, trustees, executors, administrators, representatives, officers,
15 directors, shareholders, agents, employees, insurers, attorneys, accountants, auditors, advisors,
16 consultants, pension and welfare benefit plans, fiduciaries, parent companies, subsidiaries, affiliates,
17 related companies, joint ventures, predecessors, successors, and assigns.

18 **14. Corporate Signatories.** Any person executing this Stipulation or any such related
19 document on behalf of a corporate signatory or on behalf of a partnership hereby warrants and promises,
20 for the benefit of all Parties hereto, that such person has been duly authorized by such corporation or
21 partnership to execute this Stipulation or any such related document.

22 **15. Execution in Counterparts.** This Stipulation shall become effective upon its execution
23 by all of the undersigned. The Parties may execute this Stipulation in counterparts, and execution of
24 counterparts shall have the same force and effect as if all Settling Parties had signed the same
25 instrument.

26 **16. Attorney Fees, Costs and Expenses.** Except as otherwise specifically provided for
27 herein, each party shall bear his or its own attorney fees, costs and expenses, taxable or otherwise,
28 incurred by them in or arising out of the Action and shall not seek reimbursement thereof from any other

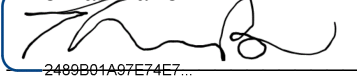
party to this Stipulation.

17. Action to Enforce Agreement. In any suit or court action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover his or its attorney fees and costs. This fee shifting provision is not intended to apply in suits brought by absent class members.

18. Enforcement of Release. The Release contained in this Settlement Agreement would not be in effect in the event that Defendant fails to make all the required payments under this Settlement Agreement and/or goes into bankruptcy before the Final Payment under this Settlement Agreement is made.

IN WITNESS WHEREOF, the Parties and their counsel have executed this Stipulation on the date below their signatures or the signature of their representatives. The date of the Stipulation shall be the date of the latest signature.

Thomas Dazo



Dated: 8/17/2018 3:53:13 PM PDT

Incredible Adventures, Inc.

Title: _____

Date: _____

APPROVED AS TO FORM AND CONTENT

ACKERMANN & TILAJEF, P.C

RUKIN HYLAND, LLP

By: 

Craig J. Ackermann, Esq.
Attorney for Plaintiffs and
the Putative Class

By: _____

John F. Hyland, Esq.
Attorney for Defendant, Incredible Adventures, Inc.

MELMED LAW GROUP P.C

By: 

Jonathan Melmed, Esq.
Attorney for Plaintiff and
the Putative Class

1 party to this Stipulation.

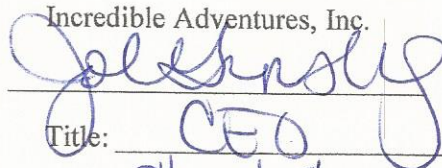
2 **17. Action to Enforce Agreement.** In any suit or court action to enforce the terms of this
3 Agreement, the prevailing party shall be entitled to recover his or its attorney fees and costs. This fee
4 shifting provision is not intended to apply in suits brought by absent class members.

5 **18. Enforcement of Release.** The Release contained in this Settlement Agreement would
6 not be in effect in the event that Defendant fails to make all the required payments under this Settlement
7 Agreement and/or goes into bankruptcy before the Final Payment under this Settlement Agreement is
8 made.

9 **IN WITNESS WHEREOF**, the Parties and their counsel have executed this Stipulation on the
10 date below their signatures or the signature of their representatives. The date of the Stipulation shall be
11 the date of the latest signature.

12 Thomas Pazo

Incredible Adventures, Inc.


Title: CEO
Date: 8/20/18

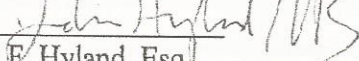
13 _____
14 Dated: _____

15
16
17 **APPROVED AS TO FORM AND CONTENT**

18 ACKERMANN & TILAJEF, P.C

RUKIN HYLAND, LLP

19
20 By: _____
21 Craig J. Ackermann, Esq.
22 Attorney for Plaintiffs and
23 the Putative Class

By: 
John F. Hyland, Esq.
Attorney for Defendant, Incredible Adventures, Inc.

24 MELMED LAW GROUP P.C

25 By: _____
26 Jonathan Melmed, Esq.
27 Attorney for Plaintiff and
28 the Putative Class