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10 individually and on behalf of all others
11 similarly situated

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20 VOLAR, LLC

21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
22 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

23 QINGYUN LI and GOU WEI ZHEN,
24 individually and on behalf of all others
25 similarly situated,

26 Plaintiffs,

27 v.

28 VOLAR, LLC, and DOES 1 through 20,
29 inclusive,

30 Defendants.

Case No. CGC-17-556832

**AMENDED STIPULATION FOR CLASS
ACTION SETTLEMENT AND RELEASE**

Attachments:

Exhibit 1- Class List
Exhibit 2 – Notice of Class Action Settlement
Exhibit 3- Memorandum of Understanding

1 This Stipulation of Settlement is intended to resolve all class action and individual claims set
2 forth in the above-entitled actions.

3 **1. DEFINITIONS.**

4 **1.1 “Action” or “Litigation”** means and refers to this class action lawsuit.

5 **1.2 “Agreement,” “Settlement” or “Settlement Agreement”** means the instant
6 Stipulation of Settlement to settle the Class Actions.

7 **1.3 “Class Members”** means the employees identified in the Class List, attached as
8 Exhibit 1 to this Agreement (and which will also be attached as Attachment A to the Class Notice),
9 who were employed by Volar, LLC d/b/a Sakesan Sushi and Bistro in San Francisco, California
10 between April 24, 2013 and April 24, 2017, and who did not previously sign a Settlement
11 Agreement and Release of All Claims with Volar, LLC. There are 39 Class Members.

12 **1.4 “Class Period”** means the period from April 24, 2013 through April 24, 2017.

13 **1.5 “Class Representative Enhancement Award” or “Service Award”** means the sum
14 to be paid to plaintiffs QINGYUN LI and GOU WEI ZHEN as an enhancement for their work
15 associated with their roles and participations as the class representatives and for the risks attendant to
16 such role and participation.

17 **1.6 “Court”** means the Superior Court in and for the County of San Francisco.

18 **1.7 “Final Approval”** means the date on which the Court’s Judgment becomes final,
19 which shall be deemed to be the last to occur of the following:

20 **1.7.1** if there are no objections to the settlement, then the date of final approval by
21 the Court;

22 **1.7.2** if there are objections to the settlement, the day immediately following the
23 expiration of the time period for filing an appeal, request for review or writ; or

24 **1.7.3** if an appeal, review or writ is sought from the Judgment, the day after the
25 Judgment is affirmed or the appeal, review or writ is dismissed or denied, and
26 the Judgment is no longer subject to further judicial review.

1 **1.8 “First Mailing Date”** means the date on which the Settlement Administrator sends
2 the Notice of Class Action Settlement to Class Members.

3 **1.9 “Judgment”** means the entry of judgment of final approval for the settlement.

4 **1.10 “Net Settlement Amount”** means the Settlement Amount minus Plaintiffs’
5 Counsel’s fees and costs, the charges and expenses of the Settlement Administrator, and the Class
6 Representatives’ Enhancement Awards, as set forth in Section 7 below.

7 **1.11 “Notice of Class Action Settlement”** means the notice sent to Class Members upon
8 the Court’s Preliminary Approval in the form attached to this Stipulation of Settlement as Exhibit
9 “2”.

10 **1.12 “Plaintiffs”** shall mean QINGYUN LI and GOU WEI ZHEN.

11 **1.13 “Plaintiffs’ Counsel”** means Michael H. Kim, Esq. and Adam K. Tanouey, Esq. of
12 Michael H. Kim, P.C.

13 **1.14 “Volar”** means Volar, LLC d/b/a Sakesan Sushi and Bistro.

14 **1.15 “Preliminary Approval”** means the Court’s Order preliminarily approving the
15 Settlement.

16 **1.16 “Settlement Administrator”** means the firm of CPT Group, Inc. or another mutually
17 agreed upon third-party administrator.

18 **1.17 “Settlement Amount” or “Settlement Payment”** means the total consideration of
19 Two Hundred Thousand Dollars (\$200,000.00) from which all Class Member payments, Plaintiffs’
20 Counsel’s fees and costs, Class Representative’s Enhancement Awards, and costs and expenses of
21 administration of the Settlement shall be paid. The employer’s share of the payroll taxes is not
22 included in this Settlement Amount.

23 **1.18 “Settlement Class” or “Settlement Class Members”** means all persons who are
24 Class Members who do not validly request exclusion (or “opt out”) from the Settlement in the
25 manner provided by this Agreement and the Class Notice.

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1 **1.19 “Timely Written Objection”** means a written objection to the Settlement, that
2 complies with Section 6.2, and that is submitted to the Settlement Administrator no later than 60
3 days after the Settlement Administrator mails the Notice of Class Action Settlement.

4 **1.20 “Timely Written Request To Opt-Out”** means a written request to opt-out of the
5 Settlement, that complies with Section 6.3, and that is post-marked no later than 60 days after the
6 Settlement Administrator mails the Notice of Class Action Settlement.

7 **1.21 “Workday”** means any day in which Class Members performed work for Volar in
8 California during the Class Period.

9 **2. SCOPE, PURPOSE AND BENEFITS OF THE SETTLEMENT.**

10 **2.1** This Agreement is intended to and does effectuate the full, final, and complete
11 resolution of all allegations and claims that were asserted in the Litigation by Plaintiffs and the Class
12 Members.

13 **2.2** Although neither Plaintiffs nor Volar abandon their positions taken in the Litigation,
14 the parties believe that continued litigation would be protracted, expensive, uncertain, and contrary
15 to their best interests. In light of these realities, the parties believe that this Settlement is the best
16 way to resolve the disputes between them at this time.

17 **3. JURISDICTION.**

18 **3.1** The Parties agree that the Superior Court of California for the County of San
19 Francisco shall retain jurisdiction over the Action, and also that venue is proper in that Court. The
20 Court has jurisdiction over the Parties and the subject matter of this Action and following final
21 approval of the Settlement will continue to retain jurisdiction over the Parties and the Action under
22 California Code of Civil Procedure Section 664 to enforce the terms of the Settlement Agreement.

23 **4. STATEMENT OF NO ADMISSION.**

24 **4.1 Denial of Liability.** Volar denies any and all liability for Plaintiffs’ claims and/or
25 causes of action stated in the Litigation. This Agreement does not constitute, and is not intended to
26 constitute, and will not be deemed to constitute, an admission by Volar as to the merits, validity, or
27 accuracy of any of the allegations or claims made against it in the Litigation.

1 **4.5 No Preclusive Effect.** Neither Plaintiffs nor Volar concede the merits of the other’s
2 contentions regarding the suitability of the Litigation for class certification under the Code of Civil
3 Procedure, but have agreed to resolve this action through this Settlement in recognition of the
4 expense and risk of continuing with the action and in the belief that the settlement is fair, adequate
5 and reasonable. Therefore, in entering into this Agreement, it is the parties’ mutual intention and
6 agreement that if the Settlement does not become final as a consequence of any appeal taken from
7 the Court’s grant of Final Approval, the class certification will be vacated, Plaintiffs and Volar will
8 retain all rights to support or oppose certification for the purposes of litigation, and any certification
9 arising from the Court’s Final Approval of this Settlement may not be used by Plaintiffs or Volar in
10 support of any argument for or against certification of any class. Neither the provisional certification
11 nor, if ultimately approved, the certification of the Class to consummate this Settlement constitutes a
12 determination by the Court that a plaintiff class should be certified for purposes of trial. Thus, if any
13 appeal is successful in the Court of Appeal, the Court’s certification of the class for settlement
14 purposes shall be deemed void *nunc pro tunc*. This Agreement is explicitly conditioned on the
15 Court’s confirmation that its approval of class certification for settlement purposes pursuant to this
16 Agreement shall not be accorded *res judicata*, judicial estoppel, collateral estoppel, or any other
17 form of preclusive effect concerning the suitability of the Litigation for certification under California
18 Code of Civil Procedure in the event that the Settlement does not become final as a consequence of
19 any appeal from the Court’s Order of Final Approval. In the event that the Court fails to adopt the
20 foregoing acknowledgement in its orders, Volar shall be entitled, in its sole discretion, to withdraw
21 from this Settlement and the Parties shall return to the *status quo ante* as though they had not entered
22 into this Agreement.

23 **5. WAIVER AND RELEASE.**

24 **5.1 Release and Waiver of Claims.** Plaintiffs, on behalf of themselves and all Class
25 Members (except any Class Members who timely “opt-out” pursuant to Section 6.3 below), hereby
26 waive, release, and promise never to assert in any forum any and all claims, rights, demands or
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1 causes of action known and unknown, against Volar, that were asserted on a class basis in the
2 Litigation based upon any of the conduct alleged in the Litigation, as follows:

3 (a) Any and all claims for the payment of unpaid wages, including but not limited to
4 overtime wages, “off-the-clock” wages, and compensation associated with non-compliant meal or
5 rest periods, penalties (including penalties for alleged violations of California Labor Code sections
6 201, 202, 203, 204, and 226), interest, costs, attorneys’ fees, restitution, conversion, common count,
7 fraud, breach of contract, unjust enrichment, compensatory damages, liquidated damages, punitive
8 damages, injunctive relief, and any other remedies available at law or equity for wages allegedly
9 owed to Plaintiffs and with respect to the Class Members only to the extent that such claims were
10 asserted or could have been asserted in the Litigation based upon any of the conduct alleged in the
11 Litigation and which arose from their employment with Volar in California during the relevant Class
12 Period. Subject to the foregoing, the claims being waived include any and all claims, rights,
13 demands or causes of action, that were brought or could have been brought in the Litigation on
14 behalf of the Plaintiffs and all members of the Settlement Class under any state or local statutory or
15 common law, including, but not limited to claims for Volar’s (i) alleged failed to pay all overtime
16 wages (Cal. Lab. Code §§ 510 and 1194); (ii) alleged failure to provide meal periods (Cal. Lab.
17 Code §§ 226.7 and 512); (iii) alleged failure to authorize and permit rest periods (Cal. Lab. Code §
18 226.7; (iv) alleged failure to furnish complete and accurate wage statements (Cal. Lab. Code §
19 226(a)); (v) alleged failure to timely pay wages upon termination or resignation (Cal. Lab. Code §§
20 201, 202, and 203); (vi) alleged failure to maintain required records (Cal. Lab. Code §§ 226, 1174);
21 (vii) Unfair Business Practices (Cal. Bus. & Prof. Code § 17200 *et seq.*), and the laws of contract,
22 torts and equity that relate to the claims asserted in the Litigation. Except as to Plaintiffs, who
23 release any and all claims, known or unknown, that they may have against Volar, this release does
24 not release any claims other than those described above or claims held by Class Members for
25 unlawful employment discrimination under Title VII of the Civil Rights Act of 1964 (Title VII, as
26 amended), 42 U.S.C. § 2000e, *et seq.*, the Americans with Disabilities Act (the “ADA”), 42 U.S.C. §
27 12101 *et seq.*, the Age Discrimination in Employment Act (the “ADEA”), 29 U.S.C. § 621 *et seq.*, or

1 the California Fair Employment and Housing Act (the “FEHA”), California Government Code §
2 12940 *et seq.* or any other claims for wrongful termination based on state or federal law.

3 (b) Subject to the foregoing (*i.e.*, as to the Class Members, only to the extent that such
4 claims were or could have been asserted in the Litigation) this waiver and release encompasses both
5 known and unknown claims as described above. Specifically, Plaintiffs are deemed to waive the
6 provisions of Section 1542 of the California Civil Code, which provides as follows:

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8 **A general release does not extend to claims that the**
9 **creditor or releasing party does not know or suspect**
10 **to exist in his or her favor at the time of executing**
11 **the release and that, if known by him or her, would**
12 **have materially affected his or her settlement with**
13 **the debtor or released party.**

14 Accordingly, if the facts relating in any manner to this Settlement are found to be other than
15 or different from the facts now believed to be true, the release of claims contained herein shall
16 remain effective.

17 (c) Upon Final Approval of the Settlement, this waiver and release of claims shall be
18 binding on Plaintiffs and all Class Members who have not exercised the right to “opt-out” pursuant
19 to Section 6.3, including each of their respective agents, spouses, registered domestic partners,
20 executors, representatives, guardians ad litem, heirs, successors, and assigns. Further, this waiver
21 and release of claims shall inure to the benefit of Volar and its predecessors and successors, as well
22 as all of its current, former and future subsidiaries, affiliates, parent companies, fiduciaries, insurers,
23 agents, partners, employees, assigns, subrogees, privies, officers, officials, directors, shareholders,
24 attorneys, benefit plans, administrators and trustees.

25 (d) Plaintiffs and all Class Members (except those who file a Timely Written Request To
26 Opt Out) agree not to sue or otherwise make any individual claims against Volar for any claims or
27 causes of action released under Section 5.1(a) of this Agreement.

1 **6. NOTICE, OBJECTIONS, AND OPPORTUNITY TO OPT-OUT.**

2 **6.1 Notice.** Within ten (10) business days after entry of the Preliminary Approval Order,
3 Volar shall submit to the Settlement Administrator, in electronic form, a list which sets forth: 1) each
4 Class Member’s name; 2) last known address; 3) social security number or employee identification
5 number, and 4) Workday data, including inclusive dates of employment. Within thirty (30) days of
6 Preliminary Approval of this Settlement, the Settlement Administrator shall send Class Members by
7 first-class mail the Court-approved Notice of Class Action Settlement in the form attached as Exhibit
8 “2”, which shall be provided to Class Members in English, Chinese and Spanish. This notice
9 includes, among other things, a summary of the claims, the settlement, a calculation of the Class
10 Member’s estimated share of the Net Settlement Amount, the right to object, opt-out and/or not
11 participate. Prior to mailing, the Settlement Administrator will perform a search based on the
12 National Change of Address Database information to update the Class Members’ addresses and
13 correct for any known or identifiable address changes. The Notice will be mailed to the best
14 available address available- either the last known address provided by Defendant or an updated
15 address obtained from the database. The Settlement Administrator will use reasonable efforts,
16 including skip-tracing, to identify the correct address and re-mail all returned, undelivered mail
17 within five (5) days of receiving notice that a Notice of Class Action Settlement was undeliverable.
18 The parties agree to cooperate with the Settlement Administrator to locate Class Members, if
19 necessary.

20 **6.2 Objections.** All objections to the Settlement must be sent to the Settlement
21 Administrator no later than ninety (90) days after the First Mailing Date of the Notice of Class
22 Action Settlement. A Class Member can object by mailing, emailing, or faxing a written objection.
23 If a Class Member mails the objection, it must be postmarked no later than ninety days after the
24 notice is initially mailed. If a Class Member emails or faxes the objection, it must be emailed or
25 faxed no later than ninety days after the notice is initially mailed. If a Class Member objects in
26 writing, the objecting Class Member should provide: (1) his/her name, home address, telephone
27 number, and/or the last four digits of the Class Member’s social security number or employee

1 identification number for purposes of verifying the objecting person's identification; and (2)
2 evidence and legal argument in support of their objection. A Class Member may also object without
3 submitting a written objection by appearing at the final approval hearing, including by appearing
4 through counsel. In any event, all timely submitted objections shall be submitted to the Court for
5 consideration.

6 The Settlement Administrator shall promptly forward all objections to counsel for the Parties,
7 and counsel for the Parties shall file said objections with the Court for final approval hearing. If the
8 Settlement Administrator performs the duties that it is required to perform pursuant to the terms of
9 this Settlement, the deadline to file objections shall be enforced notwithstanding any assertion that
10 the Notice of Class Action Settlement was not received. Submitting an objection is not the
11 equivalent of opting out.

12 **6.3 Opportunity to Opt-Out.** To opt-out of the Settlement Class, a Class Member must
13 provide the Settlement Administrator with a timely written request to opt out (or to exclude from the
14 Settlement) no later than ninety (90) days after the First Mailing Date of the Notice of Class Action
15 Settlement. A Class Member may request exclusion by mailing, emailing, or faxing a written
16 request. If a Class Member mails the request, it must be postmarked no later than ninety days after
17 the notice is initially mailed. If a Class Member emails or faxes the request, it must be emailed or
18 faxed no later than ninety days after the notice is initially mailed. The written request for exclusion
19 should contain the Class Member's name, home address, telephone number, and/or the last four
20 digits of the Class Member's social security number or employee identification number so that the
21 person's identity can be verified, and a statement to the effect that the person wishes to be excluded
22 from this Settlement. Notwithstanding the above, any request for exclusion that conveys enough
23 information to verify a person's identity and their intention to be excluded from this Settlement will
24 be credited.

25 Within ten (10) days following the last day to opt out, the Settlement Administrator shall
26 provide by facsimile or email to counsel for the Parties the names and addresses of those Class
27 Members who have submitted opt-out requests. All Class Members shall be bound by the terms of

1 the Settlement Agreement and Final Judgment unless a timely request for exclusion is received by
2 the Settlement Administrator.

3 **6.4 Timeliness.** Opt-outs or objections submitted after the response deadline set forth in
4 Sections 6.2 and 6.3 are conclusively untimely and invalid.

5 **6.5 Solicitations.** At no time shall any of the Parties or their counsel seek to solicit or
6 otherwise encourage Settlement Class Members to submit objections to the settlement, to opt out
7 from the settlement, and/or to appeal from the Order and Final Judgment.

8 **7. RESCISSION.**

9 **7.1 Opportunity to Withdraw From the Settlement.** If the number of individuals
10 opting out of the Settlement Class exceeds ten percent (10%) of the Class Members combined, then
11 Volar will have the right and option to unilaterally withdraw from and rescind the Settlement. To
12 withdraw from the Settlement, Volar must first provide written notice to Plaintiffs' Counsel within
13 ten (10) calendar days after receipt of the above-described facsimile or email notice from the
14 Settlement Administrator that identifies the Class Members who have requested to be excluded from
15 the Settlement Class.

16 **8. ADMINISTRATION.**

17 Class Members are not required to file claims to be paid the payments provided by this
18 Settlement Agreement. All Class Members shall be paid the amount calculated pursuant to Section 9
19 below from the Net Settlement Amount unless they timely submit a request for exclusion in
20 accordance with Section 6.3 above.

21 **8.1 Settlement Administrator.** The Settlement Administrator will mail the Notice of
22 Class Action Settlement (in English, Chinese, and Spanish) to the Class Members. The Settlement
23 Administrator will perform a search on the National Change of Address database to update the Class
24 Members' addresses and perform skip-tracing for undeliverable notices. The Settlement
25 Administrator will date stamp all incoming written communications from the Class Members,
26 including but not limited to objections and opt-outs. The Settlement Administrator will also disburse
27 and calculate claims to be paid from the Net Settlement Amount. All charges assessed by the

1 Settlement Administrator for the administration of this case shall be paid from the Settlement
2 Amount. The Settlement Administrator will also set up and maintain a static website where Class
3 Members can download and/or view a copy of the Settlement Agreement, the Court's Preliminary
4 Approval Order, the operative complaint filed in the Action, and other pertinent orders and filings
5 related to this Settlement. The website will be publicly available on or before the date when notice
6 is mailed.

7 **8.2 Determination of Settlement Class Awards.** Payments from the Net Settlement
8 Amount to Class Members shall be determined from Volar's records (*e.g.*, identification of Class
9 Members and number of Workdays during the Class Period for each Class Member) and calculated
10 pursuant to Section 9 below. The information that Volar is required to provide shall be provided to
11 the Settlement Administrator in electronic form. The Settlement Administrator shall perform the
12 required calculations pursuant to Section 9 below and shall provide Plaintiffs' Counsel and Volar, in
13 electronic form, the proposed payments that were calculated pursuant to Section 9 below.

14 **8.3 Class Members' Individual Settlement Payments.**

15 Class Members' Individual Settlement Payments will be handled according to the following
16 procedures:

- 17 (a) Individual Settlement Payments to Class Members for whom the parties have valid
18 mailing addresses will be mailed to them by United States Mail, first class, postage
19 prepaid. The Individual Settlement Payment checks will be mailed to the Class
20 Members' last known addresses or updated addresses using National Change of
21 Address database and/or skip-tracing. Checks issued to these Class Members shall
22 contain a legend that they are in accord and satisfaction of all claims alleged in the
23 Litigation and shall be valid for 120 days. Settlement checks may be negotiated in
24 any lawful manner subject to applicable law and the requirements of the institution
25 that is negotiating such checks. Any checks that were mailed but not cashed will be
26 reallocated in accordance with Subsection (c).

1 (b) If a valid address could not be obtained for a Class Member by the Settlement
2 Administrator, using the National Change of Address database and/or skip-tracing,
3 the parties will not mail a check to that Class Member. Instead, the Individual
4 Settlement Check for that Class Member will be held by the Settlement Administrator
5 until the 120-day valid check period has expired. After the expiration of the 120-day
6 valid check period, if the check still has not been claimed by the Class Member, then
7 that amount will be allocated in accordance with Subsection (c).

8 (c) The funds represented by any checks that were not issued because a current address
9 could not be obtained for a Class Member by the Settlement Administrator, or checks
10 that were mailed but not cashed, shall be reallocated on a pro-rat basis to those Class
11 Members who cashed their Individual Settlement Payment checks. These
12 reallocation checks will be valid for 30 days. Any checks that remain uncashed after
13 the 30-day period will be promptly distributed to Bay Area Legal Aid as the cy pres
14 recipient. .

15 .
16 **9. COMPUTATION AND DISTRIBUTION OF PAYMENTS.**

17 **9.1 Distribution Formulas.** Each Class Member will receive as compensation for the
18 claims alleged in the Litigation and for the waiver and release of claims set forth above in Section 5,
19 an amount determined by the Settlement Administrator in accordance with the following formulas:

20 **9.1.1 Calculation of Individual Settlement Payment.** The Parties recognize that
21 the damages and penalty claims in this action are difficult to determine with any certainty for
22 any given employee or time period, and are subject to myriad different methods of potential
23 calculation and formulas. The Parties have agreed that from the Net Settlement Amount, the
24 Settlement Administrator will calculate the amount of Individual Settlement Payments based
25 on the Workdays of Settlement Class Members during the Class Period, as reflected by
26 Volar's payroll data. Specifically, each Settlement Class Member's Individual Settlement
27 Payment will be calculated by multiplying the fraction x/y by the total of the Net Settlement

1 Amount, where “x” equals the total number of Workdays for that individual Class Member,
2 and “y” equals the total number of Workdays for all Eligible Class Members. The Parties
3 agree that this formula is reasonable and that the payments provided for herein are designed
4 to provide a fair settlement to all Settlement Class Members, in light of the uncertainties
5 concerning the compensation claimed to be owed to Settlement Class Members and the
6 calculation of such amounts. All Individual Settlement Payments shall be deemed 1/3 back
7 wages, subject to normal payroll withholding, 1/3 interest and 1/3 penalties, the latter two
8 categories to be reported via Form 1099.

9 **9.2** Twenty-one (21) days prior to the hearing set for final approval of the settlement, the
10 Settlement Administrator shall file with the Court a declaration stating the number of notices mailed,
11 undeliverable notices, notices forwarded, address traces performed, notices re-mailed, opt-out
12 requests and/or objections. By no later than ten (10) business days after the date of entry of the Final
13 Approval Order, Volar shall fund the settlement by wiring the Settlement Amount into an account
14 established by the Settlement Administrator. Within five (5) business days after the wiring of the
15 funds, the Settlement Administrator will distribute the settlement to the Settlement Class Members,
16 Plaintiffs, Plaintiffs’ Counsel, and the Settlement Administrator.

17 **9.3 Maintenance of Records.** The Settlement Administrator shall maintain complete,
18 accurate, and detailed records regarding the administration of the Settlement Amount, including but
19 not limited to, any and all receipts by and disbursements from the Settlement Amount. The
20 Settlement Administrator shall make such records available to Counsel for the Parties or to their
21 designee upon reasonable request and at reasonable times. The documentation maintained by the
22 Settlement Administrator shall be sufficient to audit the administration of the settlement including,
23 without limitation, the addresses to which claims packages and/or checks were sent and a list of
24 checks which were sent to Settlement Class Members, but not cashed. Upon request, the Settlement
25 Administrator shall provide such records to Counsel for the Parties in electronic form. The
26 Settlement Administrator shall also provide counsel for the Parties with periodic reports of the
27 number of requests for exclusion received from Settlement Class Members. The Settlement

1 Administrator shall maintain all records for a period of not less than four years after the date of Final
2 Approval.

3 **9.4 Claim Disputes.** Class Members will have the opportunity, should they disagree
4 with Defendant's records regarding the Compensable Workdays stated in the Notice, to provide
5 documentation and/or an explanation to show different Workdays. If there is a dispute, the
6 Settlement Administrator will consult with the Parties to determine whether an adjustment is
7 warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any
8 Individual Settlement Payments under the terms of this Agreement. The Settlement Administrator's
9 determination of the eligibility for and amount of any Individual Settlement Payment shall be
10 binding upon the Class Member and the Parties. Any Settlement Class Member who disagrees with
11 the calculated Compensable Workdays shall submit his or her dispute as to the calculated
12 Compensable Workdays within sixty (60) days of the mailing of the Notice Packets to Settlement
13 Class Members. The Settlement Administrator will give significant weight to Defendant's records,
14 but will evaluate the records submitted by the disputing Class Member and will make the final
15 decision as to the merits of the dispute. The Settlement Administrator shall determine the final
16 number of Compensable Workdays for that Class Member and shall send notice of its determination
17 to the disputing Settlement Class Member by no later than fifteen (15) days prior to the deadline for
18 objecting to or opting out of the Settlement. If the disputing Settlement Class Member believes that
19 the calculated number of Compensable Workdays is still too low, he or she may still choose to opt
20 out of this Settlement or to object to the Settlement as a whole before the deadline.

21 **10. CLASS REPRESENTATIVE ENHANCEMENT**

22 **10.1 Amount of Payments.** The Parties agree that Plaintiffs will each receive an
23 enhanced award (also known as a service award) of Seven Thousand Five Hundred Dollars
24 (\$7,500.00) to be deducted from the Settlement Amount for their time and efforts in prosecuting the
25 Litigation on behalf of the Class Members and for assuming the risk of paying Volar's costs in the
26 event of an unsuccessful outcome, as well as in consideration for their execution of a separate full
27 and complete waiver and release of all known and unknown claims against Volar.

1 **10.2 Tax Treatment.** An IRS 1099 Form will be issued to Plaintiffs for their Class
2 Representative Enhancement payments. Plaintiffs hereby agree that they are solely responsible for
3 the payment of all taxes and other related contributions, if any, due as a result of the Class
4 Representative Enhancement paid pursuant to this Agreement, and agrees to defend, indemnify and
5 hold Volar harmless against any and all claims which may be asserted by any taxing or other
6 government authority against Volar for taxes, withholding taxes, penalties, and any other assessment
7 that may be asserted or levied by any tax or other government authority arising from or relating to
8 the payment of the Class Representative Enhancement due to the failure of the Plaintiffs to pay any
9 taxes which they are responsible for paying.

10 **11. FEES AND COSTS.**

11 The Settlement Administrator shall pay from the Settlement Amount the following fees and
12 costs:

13 **11.1 Attorneys' Fees.** In connection with the motion for final approval, Plaintiffs'
14 Counsel shall file a motion with the Court seeking approval of an award of attorneys' fees for all
15 past and future work necessary to prosecute, settle and administer the Litigation in an amount not
16 greater than Sixty Six thousand Dollars (\$66,000.00), representing 33% of the Settlement Amount.
17 The "future" aspect of this amount includes, without limitation, all time expended by Plaintiffs'
18 Counsel in defending the Settlement and securing Final Approval (including any appeals thereof)
19 and assisting in the administration of this Settlement as necessary. Any and all such future work
20 shall be performed at no additional charge to either the Class Members or Volar. Volar agrees not to
21 oppose such motion.

22 **11.2 Costs.** In connection with the motion for final approval, Plaintiffs' Counsel also shall
23 file a motion with the Court seeking approval of an award of actual and reasonable costs in an
24 aggregate amount not to exceed the sum of Fifteen Thousand Dollars (\$15,000). Volar agrees not to
25 oppose such motion and, subject to Court approval, such sums shall be paid from the Settlement
26 Amount as approved by the Court.

1 **11.3** Class Counsel shall be solely and legally responsible to pay all applicable taxes on the
2 payment made pursuant to Section 11. The Settlement Administrator shall issue an IRS Form 1099–
3 MISC to Class Counsel for the payments made pursuant to this Section. This Settlement is not
4 contingent upon the Court awarding Class Counsel any particular amount in attorney’s fees and
5 costs. In the event the Court reduces or does not approve the requested Class Counsel Fees and/or
6 Class Counsel Costs, the Settlement shall remain binding on the Parties. Any amount requested by
7 Class Counsel for the Class Counsel Fees and Class Counsel Costs and not granted by the Court
8 shall return to the Net Settlement Amount and be distributed as provided in this Agreement.

9 **11.4** The Settlement Administrator shall be paid for the costs of administration of the
10 Settlement from the Settlement Amount. The current estimate of administration costs is not more
11 than \$11,000. No fewer than twenty-one (21) days prior to the Final Approval Hearing, the
12 Settlement Administrator shall provide the Parties with a statement detailing the costs of
13 administration, showing the estimated Individual Settlement Payments to be made to Class Members
14 who have not opted out, and listing the names and number of Class Members who have objected to
15 or requested exclusion from the Settlement. The Settlement Administrator, on Defendant’s behalf,
16 shall have the authority and obligation to make payments, credits and disbursements, including
17 payments and credits in the manner set forth herein, to Class Members calculated in accordance with
18 the methodology set out in this Agreement and orders of the Court. The Parties agree to cooperate in
19 the Settlement Administration process and to make all reasonable efforts to control and minimize the
20 cost and expenses incurred in administration of the Settlement. The Parties each represent they do
21 not have any financial interest in the Settlement Administrator or otherwise have a relationship with
22 the Settlement Administrator that could create a conflict of interest. The Settlement Administrator
23 shall be responsible for: processing and mailing payments to the Class Representative, Class
24 Counsel, and Class Members; preparing, printing and mailing the Notice Packets to the Class
25 Members as directed by the Court; skip-tracing and updating addresses; receiving and reporting the
26 Requests for Exclusion and Objection Forms submitted by Class Members; providing declaration(s)
27 as necessary in support of preliminary and/or final approval of this Settlement; development and

1 maintenance of a settlement website to post key documents, dates, and deadlines regarding the
2 Settlement and Final Judgment; and other tasks as the Parties mutually agree or the Court orders the
3 Settlement Administrator to perform. The Settlement Administrator shall keep the Parties timely
4 apprised of the performance of all Settlement Administrator responsibilities. Any legally-mandated
5 tax reports, tax forms, tax filings, or other tax documents required by administration of this
6 Agreement shall be prepared by the Settlement Administrator. Any expenses incurred in connection
7 with such preparation shall be a cost of administration of the Settlement.

8 **12. TAXATION.**

9 **12.1** The parties agree that appropriate withholding of federal, state, and local income
10 taxes, and each Class Member's share of FICA and Medicare taxes will be made from payments to
11 the Class Members, including Plaintiffs, except for the Class Representative Enhancement and the
12 settlement amounts attributed to penalties and interest, and that said withholdings will be deducted
13 from the Settlement Amount. The amounts paid as the Class Representative Enhancement,
14 penalties, and interest shall be reported via 1099 Forms.

15 **12.2** The amount of federal income tax withholdings will be based upon a flat withholding
16 rate for supplemental wage payments of 28 percent (pursuant to Treas. Reg. §31.3402(g)-I(a)(2)).
17 Income tax withholdings will also be made pursuant to applicable state and/or local withholding
18 codes or regulations.

19 **12.3** W-2 Forms and/or 1099 Forms will be distributed at times and in the manner required
20 by the Internal Revenue Code of 1986, as amended (the "Code") and consistent with this Agreement
21 with respect to payments made to the Class Members.

22 **12.4** If the Code, the regulations promulgated thereunder, or other applicable tax law
23 changes after the date of this Agreement, the processes set forth in this section may be modified with
24 the approval of the Court in a manner to bring Volar into compliance with any such changes.

25 **12.5** The Parties warrant, represent and agree that no one has provided tax advice to the
26 other and that any responsibility or liability for any tax matters relating to any payments made under
27 this Agreement including, but not limited to, the withholding of, or reporting of taxes, belongs to the

1 individual Class Member. Each Class Member is advised to consult with his or her own tax advisor
2 concerning the tax consequences of the Settlement to him or her.

3 **13. COURT APPROVAL.**

4 **13.1** This Agreement is contingent upon Preliminary and Final Approval of this
5 Stipulation of Settlement (including any appeals thereof) and the non-withdrawal of Volar from the
6 Settlement in accordance with Section 7.1 above.

7 **13.2** The parties agree to take all steps as may be reasonably necessary to secure approval
8 of the Agreement, to the extent not inconsistent with the terms of this Agreement, and will not take
9 any action adverse to each other in obtaining Court approval, and, if necessary, appellate approval,
10 of the Agreement in all respects. Plaintiffs and their counsel expressly agree that they will not file
11 any objection (as opposed to request for correction) to the terms of this Stipulation of Settlement or
12 assist or encourage any person or entity to file any such objection or to opt-out of the Settlement
13 Class.

14 **14. FINAL ACCOUNTING.**

15 **14.1 Final Accounting.** No later than 180 calendar days after the distribution of all
16 payments to be paid pursuant to the terms of this Agreement, the Settlement Administrator shall
17 submit to the Parties and file with the Court a final accounting of all monies paid and distributed
18 from the Settlement Amount.

19 **14.2 No Further Obligations.** Upon receipt of the final accounting referenced in Section
20 14.1 and the payment of the monies required to be paid from the Settlement Amount, Volar shall
21 have no obligation to provide further funding pursuant to this Agreement.

22 **15. NOTICES.**

23 **15.1 Designated Recipients.** Unless otherwise specified in this Agreement or agreed to in
24 writing by the Party receiving such communication, all notices, requests, or other required
25 communications hereunder shall be in writing and shall be sent by one of the following methods: (a)
26 first class mail, postage prepaid; (b) by facsimile, with the original by first class mail, postage
27 prepaid; or (c) by personal delivery (including by Federal Express or other courier service). All such

1 communications shall be sent to the undersigned persons at their respective addresses as set forth
2 herein.

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4 **Plaintiffs' Counsel**

5 **Michael H. Kim, Esq.**
6 **Adam K. Tanouye, Esq.**
7 **475 El Camino Real, Ste. 309**
8 **Millbrae, CA 94030**
9 **Telephone: 650-697-8899**
10 **Facsimile: 650-697-8896**

11 **Volar's Counsel**

12 **Philip A. Segal, Esq.**
13 **Cassady Toles, Esq.**
14 **KERN SEGAL & MURRAY**
15 **1388 Sutter Street, Suite 600**
16 **San Francisco, CA 94109**
17 **Tel: (415) 474-1900**
18 **Fax: (415) 474-0302**

19 **15.2 Changes in Designated Recipients.** Any Party may re-designate the Person to
20 receive notices, requests, demands, or other communications required or permitted by this
21 Agreement by providing written notice to the other Parties and the Settlement Administrator.

22 **16. MISCELLANEOUS PROVISIONS.**

23 **16.1 Stay of Litigation.** The parties agree to a stay of the Litigation, pending Final
24 Approval of the Agreement.

25 **16.2 Interpretation of the Agreement/Continuing Jurisdiction.** The Agreement will be
26 interpreted and enforced under the laws of the State of California. The Court shall retain jurisdiction
27 with respect to the interpretation, implementation and enforcement of the terms of this Agreement
28 and all orders and judgments entered in connection therewith, and the Parties and their counsel
submit to the exclusive jurisdiction of the Court and consent to the personal jurisdiction of this Court
over each of them for the purpose of interpreting, implementing and enforcing the settlement
embodied in this Agreement and all orders and judgments entered in connection therewith.

1 **16.3 Final Agreement.** The terms and conditions of this Agreement, along with the
2 Parties' Memorandum of Understanding signed on April 29, 2019, a true and correct copy of which
3 is attached hereto as Exhibit "3" and incorporated by reference as though fully set forth herein,
4 constitute the exclusive and final understanding and expression of all agreements between the parties
5 with respect to the resolution of the Litigation. Plaintiffs, on their own behalf and on behalf of the
6 classes they represent, and Volar, have agreed to enter into this Agreement based solely upon its
7 terms and not in reliance upon any representations or promises other than those contained in this
8 Agreement. Notwithstanding the foregoing, this Agreement may be amended or modified by a
9 written instrument signed by counsel for all Parties or their successors-in-interest, subject to
10 approval by the Court.

11 **16.4 Counterparts.** This Agreement may be executed in counterparts, each of which shall
12 be deemed an original, and all of which together shall constitute one and the same instrument.
13 Photocopies of such signed counterparts may be used in lieu of the originals. The signing of a facsimile
14 copy or a PDF file copy attached to an email exchanged by the parties' attorneys shall have the same
15 force and effect as the signing of an original, and any such facsimile or PDF file email signature
16 shall be deemed an original and valid signature.

17 **16.5 Authority.** Counsel for the Parties warrant and represent that they are expressly
18 authorized by the Parties whom they represent to negotiate this Agreement and to take all
19 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to
20 effectuate its terms, and to execute any other documents required to effectuate the terms of this
21 Agreement. Each individual signing below warrants that she or he has the authority to execute this
22 Agreement on behalf of the party for whom or which that individual signs.

23 **16.6 No Third Party Beneficiaries.** The individual Plaintiffs, Class Members and
24 attorneys for Plaintiffs, and Volar, are direct beneficiaries of this Agreement, but there are no third
25 party beneficiaries.

26 **16.7 Costs of Administration.** The Class Members and Plaintiffs' Counsel shall not have
27 any responsibility or liability with respect to any administrative costs incurred in connection with the
28

1 administration of this settlement. All charges for administration shall be paid from the Settlement
2 Amount as required by this Agreement.

3 **16.8 Lapse.** If this Agreement is not approved, or is terminated, rescinded, canceled, or
4 fails to become effective for any reason, and Final Approval does not occur, then no funds shall be
5 paid from the Settlement Amount and any previously paid monies, except costs of administration,
6 shall be returned to Volar.

7 **16.9 Exhibits.** The terms of this Agreement include the terms set forth in Exhibits “1”
8 through “3”, which are incorporated by this reference as though fully set forth herein. The Exhibits
9 to this Agreement are an integral part of the Agreement. In the event of any conflict between the
10 Agreement and the Exhibits, the terms of the Agreement shall control.

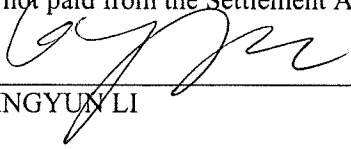
11 **16.10 Further Acts.** The Parties and their respective counsel will cooperate with each
12 other and use their best efforts to implement the Agreement. In the event the Parties are unable to
13 reach agreement on the form or content of any document needed to implement the Agreement, or on
14 any supplemental provisions that may become necessary to effectuate the terms of this Agreement,
15 the Parties may seek the assistance of the Court to resolve such disagreement.

16 **16.11 Construction.** Both Parties cooperated in the drafting and preparation of this
17 Agreement. Hence, any construction of this Agreement shall not be construed against any of the
18 Parties and before declaring any provision of this Agreement invalid, the Court shall first attempt to
19 construe the provisions valid to the fullest extent possible consistent with applicable precedents so as
20 to render all provisions of this Agreement valid and enforceable.

21 **16.12 Confidentiality.** Between the execution of this Agreement and the filing of the
22 Motion for Preliminary Approval, Plaintiffs and Plaintiffs’ Counsel may not publicize or disclose the
23 specific terms of this Agreement to non-Class Members unless required by law or if necessary to
24 effectuate the terms of this Agreement. In all other cases, whether oral, written or electronic
25 (including the world wide web), the Plaintiffs and Plaintiffs’ Counsel agree to limit their statements
26 regarding the terms of this Settlement Agreement to say that the Action has been settled and that the
27 Plaintiff and Plaintiff’s Counsel are satisfied with the settlement terms.


1 **16.13 Volar's Costs.** All of Volar's attorney's fees and costs incurred in this Action shall
2 be borne by Volar from Volar's separate funds and not paid from the Settlement Amount.

3 Dated: 07-16-2020



QINGYUN LI

6 Dated: 07-16-2020



GOU WEI ZHEN

8 Dated:

VOLAR, LLC

9
10 _____
By: _____
11 Title: _____

13 Dated:

KERN SEGAL & MURRAY

14 By: _____
15 Philip A. Segal, Esq.
16 Cassady Toles, Esq.
17 Attorneys for Defendant
VOLAR, LLC

18 Dated:

MICHAEL H. KIM, P.C.

19 By: _____
20 Michael H. Kim, Esq.
21 Adam K. Tanouye, Esq.
22 Attorneys for Plaintiffs
QINGYUN LI and GOU WEI ZHEN, individually
23 and on behalf of all others similarly situated

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16.13 Volar's Costs. All of Volar's attorney's fees and costs incurred in this Action shall be borne by Volar from Volar's separate funds and not paid from the Settlement Amount.


Dated: _____
QINGYUN LI

Dated: _____
GOU WEI ZHEN

Dated: _____
VOLAR, LLC

By: _____
Title: _____


Dated: _____
KERN SEGAL & MURRAY
By: _____
Philip A. Segal, Esq.
Cassady Toles, Esq.
Attorneys for Defendant
VOLAR, LLC


Dated: 07/16/2020
MICHAEL H. KIM, P.C.
By: 
Michael H. Kim, Esq.
Adam K. Tanouye, Esq.
Attorneys for Plaintiffs
QINGYUN LI and GOU WEI ZHEN, individually
and on behalf of all others similarly situated

1 **16.13 Volar's Costs.** All of Volar's attorney's fees and costs incurred in this Action shall
2 be borne by Volar from Volar's separate funds and not paid from the Settlement Amount.

3 Dated: _____
4 QINGYUN LI

6 Dated: _____
7 GOU WEI ZHEN

8 Dated: July 16, 2020 VOLAR, LLC
9
10 By:  _____
11 Title: Owner

13 Dated: July 21, 2020 KERN SEGAL & MURRAY
14 By:  _____
15 Philip A. Segal, Esq.
16 Cassady Toles, Esq. Michael G. Thomas, Esq.
17 Attorneys for Defendant
18 VOLAR, LLC

18 Dated: _____
19 MICHAEL H. KIM, P.C.
20 By: _____
21 Michael H. Kim, Esq.
22 Adam K. Tanouye, Esq.
23 Attorneys for Plaintiffs
24 QINGYUN LI and GOU WEI ZHEN, individually
25 and on behalf of all others similarly situated