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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

JAMESHA BOOTHE, ALEXZANDER  
ROBERTS and JEANPAUL MEDELLIN,  
individuals, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

v.

LEMONADE RESTAURANT GROUP, LLC,  
a Delaware limited liability company; JESSE  
VARELA, an individual; and DOES 1  
through 100, inclusive,

Defendants.

CASE NO.: 22STCV38302

**CLASS AND PAGA SETTLEMENT  
AGREEMENT**

Action Filed: December 8, 2022

Trial Date: None Set

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiffs Jamesha Boothe (“Plaintiff Boothe”), Alexzander Roberts (“Plaintiff Roberts”) and JeanPaul Medellin (Plaintiff Medellin) (collectively, “Plaintiffs”), on the one hand, and defendant Lemonade Restaurant Group, LLC (“Defendant”), on the other hand. The Agreement refers to Plaintiffs and Defendant collectively as “Parties,” or individually as “Party.”

## 1. DEFINITIONS

1.1. “Action” means *Jamesha Boothe, et al. v. Lemonade Restaurant Group, LLC., et al.*, filed in Los Angeles County Superior Court, Case No. 22STCV38302.

1.2. “Administrator” means ILYM Group, Inc. the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.

1.4. “Aggrieved Employees” means all persons who currently or formerly worked for Defendant (irrespective of any change in ownership), either directly or through any subsidiary, staffing agency, or professional employer organization, as non-exempt, hourly-paid employees in the State of California during the PAGA Period.

1.5. “Class” means all persons who currently or formerly worked for Defendant (irrespective of any change in ownership), either directly or through any subsidiary, staffing agency, or professional employer organization, as non-exempt, hourly-paid employees in the State of California during the Class Period.

1.6. “Class Counsel” means David D. Bibiyan, Vedang J. Patel and Jeffrey D. Klein of Bibiyan Law Group, P.C.; and Jonathan M. Genish, Miriam L. Schimmel, Joana Fang, and Alexandra Rose of Blackstone Law, APC. Class Counsel represents that no other counsel has been involved in or has any claim for fees or costs associated with the Action, or has represented Plaintiffs in connection with this Action or any other contemplated action against Defendant

concerning the subject matter of this Action.

1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts authorized by the Court to be paid to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.

1.8. “Class Data” means Class Member identifying information in Defendant’s custody, possession, or control, including the Class Member’s (1) name; (2) last known address; (3) last known telephone number; (4) last known Social Security Number; (5) number of Workweeks worked during the Class Period; and (6) the number of PAGA Pay Periods (if any) worked during the PAGA period.

1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non- Participating Class Member who qualifies as an Aggrieved Employee).

1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS AND PAGA ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English and Spanish in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

1.12. “Class Period” means the period from December 8, 2018 through February 2, 2024.

1.13. “Class Representative” means the named Plaintiffs in the operative complaint in the Action seeking Court approval to serve as Class Representatives.

1.14. “Class Representative Service Payments” means the payments to the Class Representatives for initiating the Action and providing services in support of the Action.

1.15. “Court” means the Superior Court of California, County of Los Angeles.

1.16. “Defendant” means named defendant Lemonade Restaurant Group, LLC.

1.17. “Defense Counsel” means Ryan C. Bykerk and Oscar Peralta of Greenberg Traurig, LLP.

1.18. “Effective Date” means the later of: (a) the 61st day (unless the last such date is a weekend or holiday, in which case the next business day shall be used) after the Court enters an order granting final approval of the Settlement, as long as no timely appeal is taken by a Class Member of the order of final approval; (b) if an objection is filed and not withdrawn, the date for filing an appeal and no such appeal being filed; or (c) if any timely appeals are filed, the date of the resolution and entry of remittitur (or withdrawal) of any such appeal in a way that does not alter the terms of the Settlement.

1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.

1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.

1.21. “Gross Settlement Amount” means \$2,050,000.00 (Two Million Fifty Thousand Dollars and Zero Cents) which is the total amount Defendant agrees to pay under the Settlement, except as provided in Paragraph 8.1 below and any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, and Administration Expenses Payment.

1.22. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.

1.23. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period.

1.24. “Judgment” means the Judgment entered by the Court based upon Final Approval.

1.25. “LWDA” means the California Labor and Workforce Development Agency.

1.26. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA.

1.27. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA



1 Payment, Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel  
2 Litigation Expenses Payment, and Administration Expenses Payment. The remainder is to be  
3 paid to Participating Class Members as Individual Class Payments.

4 1.28. “Non-Participating Class Member” means any Class Member who opts out of the  
5 Settlement by sending the Administrator a valid and timely Request for Exclusion.

6 1.29. “PAGA Pay Period” means any pay period during which an Aggrieved Employee worked  
7 for Defendant for at least one day during the PAGA Period. The Aggrieved Employees’ PAGA  
8 Pay Periods shall be determined by referencing the Aggrieved Employee’s timekeeping records,  
9 payroll records, hire dates, termination dates (if applicable), and re-hire dates (if applicable).

10 1.30. “PAGA Period” means the period from December 8, 2021 through February 2, 2024.

11 1.31. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).

12 1.32. “PAGA Notices” means Plaintiff Boothe’s December 8, 2022 letter and Plaintiff  
13 Medellin’s August 25, 2023 letter to Defendant and the LWDA, providing notice pursuant to  
14 Labor Code section 2699.3 subd. (a).

15 1.33. “PAGA Penalties” means the total amount of \$250,000.00 (Two Hundred Fifty Thousand  
16 Dollars and Zero Cents) allocated to PAGA civil penalties and to be paid from the Gross  
17 Settlement Amount, allocated 25% to the Aggrieved Employees (\$62,500.00) and the 75% to the  
18 LWDA (\$187,500.00) in settlement of PAGA claims.

19 1.34. “Participating Class Member” means a Class Member who does not submit a valid and  
20 timely Request for Exclusion from the Settlement.

21 1.35. “Plaintiffs” means Jamesha Boothe, Alexzander Roberts and JeanPaul Medellin, the  
22 named plaintiffs in the Action.

23 1.36. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the  
24 Settlement.

25 1.37. “Released Class Claims” means the claims being released as described in Paragraph 5.2  
26 below.

27 1.38. “Released PAGA Claims” means the claims being released as described in Paragraph 5.4  
28 below.

1.39. “Released Parties” means: Defendant, its current and former owners of any kind and anywhere in the corporate chain of ownership (including but not limited to Elite Restaurant Group, Inc., Modern Restaurant Concepts, Holdings, LLC, and LRG Parent, LLC) and any of Defendant’s respective owners, members, investors, shareholders, parents, subsidiaries, affiliates, representatives, successors, assigns, and any of their respective directors, officers, agents, or employees, including Jesse Varela.

1.40. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.

1.41. “Response Deadline” means forty-five (45) days after the Administrator mails the Class Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) mail Requests for Exclusion from the Settlement, (b) mail an objection to the Settlement; or (c) mail challenges to Workweeks and/or PAGA Pay Periods reflected on the Class Notice. Class Members to whom Class Notices are resent after having been returned undeliverable to the Administrator shall have an additional 15 days beyond the Response Deadline has expired.

1.42. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

1.43. “Workweek” means any week during which a Class Member worked for Defendant for at least one day during the Class Period. The Class Members’ Workweeks shall be determined by referencing the Class Members’ timekeeping records, payroll records, hire dates, termination dates (if applicable), and re-hire dates (if applicable).

## **2. RECITALS**

2.1. On December 8, 2022, Plaintiff Boothe commenced the Action by filing a complaint against Defendant alleging: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods or compensation in lieu thereof; (4) failure to provide rest periods or compensation in lieu thereof; (5) wage statement violations; (6) waiting time penalties; (7) failure to indemnify; and (8) unfair competition.

1 2.2. On December 8, 2022, Plaintiff Boothe submitted a notice with the LWDA against  
2 Defendant seeking to represent other employees for various violations of the Labor Code  
3 (“Boothe PAGA Notice”). On February 10, 2023, after sixty-five (65) days had passed without  
4 any communication from the LWDA, Plaintiff Boothe filed an amended complaint in the Action  
5 adding a cause of action under PAGA seeking civil penalties for the Labor Code violations  
6 asserted in the Boothe PAGA Notice.

7 2.3. Thereafter, on October 27, 2023, Plaintiff Boothe filed a second amended complaint in  
8 the Action clarifying her allegations against Defendant.

9 2.4. Separately, on August 10, 2023, Plaintiff Roberts filed a complaint against Defendant in  
10 the action titled *Alexzander Roberts v. Lemonade Restaurant Group, LLC*, Los Angeles County  
11 Superior Court, Case No. 23STCV19173 (“Roberts Action”), alleging various Labor Code  
12 violations.

13 2.5. Additionally, on August 25, 2023, Plaintiff Medellin submitted a notice with the LWDA  
14 against Defendant seeking to represent other employees for various violations of the Labor Code  
15 (“Medellin PAGA Notice”). On October 30, 2023, after sixty-five (65) days had passed without  
16 any communication from the LWDA, Plaintiff Medellin filed a complaint against Defendant in  
17 the action titled *JeanPaul Medellin v. Lemonade Restaurant Group, LLC*, Orange County  
18 Superior Court, Case No. 30-2023-01360645-CU-OE-CXC (“Medellin Action”), alleging a  
19 cause of action under PAGA seeking civil penalties for the Labor Code violations asserted in the  
20 Medellin PAGA Notice.

21 2.6. Thereafter, the Parties agreed to exchange informal discovery and attend mediation.

22 2.7. Prior to mediation Plaintiffs obtained, through informal discovery: (a) time and payroll  
23 records for 15% of the estimated 2,377 Class Members through mediation; (b) a list of Class  
24 Members and their contact information; (c) policies of Defendant on relevant topics, including  
25 timekeeping, overtime, and meal and rest periods; (d) the entire personnel and payroll files for  
26 Plaintiffs.

27 2.8. Plaintiffs believe their investigation was sufficient to satisfy the criteria for court approval  
28 set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v.*

1 *Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

2 2.9. On February 2, 2024, the Parties participated in an all-day mediation presided over by  
3 Michael Dickstein, Esq., an experienced wage and hour class action mediator. After further  
4 subsequent negotiations and with the help of the mediator, the Parties agreed to globally resolve  
5 all class and PAGA claims in the Action.

6 2.10. The Parties stipulate to class certification for purposes of settlement only. If the Court  
7 does not grant preliminary or final approval of the Settlement, the Parties will not stipulate to  
8 class certification.

9 2.11. The Parties, Class Counsel, and Defense Counsel represent that they are not aware of any  
10 other pending matter or action asserting claims that will be extinguished or affected by the  
11 Settlement.

12 2.12. As part of the Settlement, the Parties have agreed to file a third amended complaint  
13 (“Operative Complaint”) in the Action such that: (i) Plaintiff Roberts and Plaintiff Medellin will  
14 be identified as named plaintiffs in the Action; (ii) the class definitions shall be amended to  
15 include classes and subclasses as necessary to include all Class Members; (iii) the PAGA Letters  
16 filed by Plaintiff Boothe and Plaintiff Medellin shall be incorporated by reference in the  
17 Operative Complaint. The Settlement is expressly conditioned upon: (i) the approval by  
18 Defendant of the Operative Complaint, and (ii) an order by the Court granting Plaintiffs leave to  
19 the file the Operative Complaint and their filing of the same, accompanied by a stipulation and  
20 proposed order staying any responsive pleading deadline pending approval of the Settlement.

### 21 **3. MONETARY TERMS**

22 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8.1 below,  
23 Defendant promises to pay \$2,050,000.00 as the Gross Settlement Amount, unless increased  
24 pursuant to Paragraph 8.1 of this Agreement, and to separately pay any and all employer payroll  
25 taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation  
26 to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in  
27 Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement  
28

Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1. To Plaintiffs: Class Representative Service Payments to Plaintiffs of not more than \$7,500.00 each or a total of \$22,500.00 in addition to any Individual Class Payment and any Individual PAGA Payment that Plaintiffs are entitled to receive as Participating Class Members and/or Aggrieved Employees. Defendant will not oppose Plaintiffs' request for Class Representative Service Payments that do not exceed these amounts. As part of the motion for the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, Plaintiffs will seek Court approval for any Class Representative Service Payments prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Parties agree that a decision by the Court to award Plaintiff an amount less than the requested Class Representative Service Payments shall not be a basis for Plaintiffs to void this Agreement. The Administrator will pay the Class Representative Service Payments using IRS Form 1099. Plaintiffs assume full responsibility and liability for employee taxes owed on the Class Representative Service Payments.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 35% of the Gross Settlement Amount, which, unless escalated pursuant to Paragraph 8.1 of this Agreement, is currently estimated to be \$717,500.00 and a Class Counsel Litigation Expenses Payment of not more than \$50,000.00. Defendant will not oppose requests for these payments provided they do not exceed these amounts. Plaintiffs and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment prior to the Final Approval Hearing. If the Court approves a Class

Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Parties agree that a decision by the Court to award Class Counsel an amount less than the requested Class Counsel Fees Payment or Class Counsel Litigation Expenses Payment shall not be a basis for Plaintiffs to void this Agreement. Released Parties shall have no liability to Class Counsel or any other Plaintiffs' counsel arising from any claim to any portion any Class Counsel Fees Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment using one or more IRS 1099 Forms. Class Counsel assume full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these payments. There will be no additional charge of any kind to either the Settlement Class Members or request for additional consideration from Defendant for such work unless, Defendant materially breaches this Agreement, including any term regarding funding, and further efforts are necessary from Class Counsel to remedy said breach, including, without limitation, moving the Court to enforce the Agreement. Should the Court approve the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment in amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.

3.2.3. To the Administrator: An Administration Expenses Payment not to exceed \$16,000.00, except for a showing of good cause and as approved by the Court. To the extent the Administrator's expenses are less or the Court approves payment less than \$16,000.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result

by each Participating Class Member's Workweeks.

3.2.4.1. Tax Allocation of Individual Class Payments. 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$250,000.00 to be paid from the Gross Settlement Amount, with 75% (\$187,500.00) allocated to the LWDA PAGA Payment and 25% (\$62,500.00) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$62,500.00) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net

Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

#### **4. SETTLEMENT FUNDING AND PAYMENTS**

4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records, Defendant estimates there are 2,377 Class Members who collectively worked a total of 97,000 Workweeks, and no more than 1,361 of Aggrieved Employees who worked a total of no more than 21,516 PAGA Pay Periods.

4.2. Class Data. Not later than 10 days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. Defense counsel will provide a declaration from its data analyst stating that, to the best of the analyst's knowledge, the pay period and workweek totals are an accurate summary of the time and pay records of the Class Members and Aggrieved Employees that were received from Defendant at the time the Class Data is transferred to the administrator. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of the Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted Class Member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than 10 days after the Effective Date.

4.4. Payments from the Gross Settlement Amount. Within 7 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses



1 Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and  
2 the Class Representative Service Payments. Disbursement of the Class Counsel Fees Payment,  
3 the Class Counsel Litigation Expenses Payment and the Class Representative Service Payments  
4 shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

5 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or  
6 Individual PAGA Payments and send them to the Class Members via First Class U.S.  
7 Mail, postage prepaid. The face of each check shall prominently state the date (not less  
8 than 180 days after the date of mailing) when the check will be voided. The  
9 Administrator will cancel all checks not cashed by the void date. The Administrator will  
10 send checks for Individual PAGA Payments to all Aggrieved Employees including Non-  
11 Participating Class Members who qualify as Aggrieved Employees (including those for  
12 whom Class Notice was returned undelivered). The Administrator may send  
13 Participating Class Members a single check combining the Individual Class Payment  
14 and the Individual PAGA Payment. Before mailing any checks, the Settlement  
15 Administrator must update the recipients' mailing addresses using the National Change  
16 of Address Database.

17 4.4.2. The Administrator must conduct a Class Member Address Search for all other  
18 Class Members whose checks are returned undelivered without USPS forwarding  
19 address. Within 7 days of receiving a returned check the Administrator must re-mail  
20 checks to the USPS forwarding address provided or to an address ascertained through  
21 the Class Member Address Search. The Administrator need not take further steps to  
22 deliver checks to Class Members whose re-mailed checks are returned as undelivered.  
23 The Administrator shall promptly send a replacement check to any Class Member whose  
24 original check was lost or misplaced, requested by the Class Member prior to the void  
25 date.

26 4.4.3. For any Class Member whose Individual Class Payment check or Individual  
27 PAGA Payment check is uncashed and cancelled after the void date, the Administrator  
28

1 shall transmit the funds represented by such checks to the California Controller's Office  
2 Unclaimed Property Fund.

3 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall  
4 not obligate Defendant to confer any additional benefits or make any additional  
5 payments to Class Members (such as 401(k) contributions or bonuses) beyond those  
6 specified in this Agreement.

7 **5. RELEASE OF CLAIMS**

8 Effective upon entry of Judgment, Final Approval, and on the date when Defendant fully  
9 funds the entire Gross Settlement Amount and all employer payroll taxes owed on the Wage  
10 Portion of the Individual Class Payments, Plaintiffs and Class Members will release claims  
11 against all Released Parties as follows:

12 5.1. Plaintiffs' Release. Plaintiffs and their respective former and present representatives,  
13 agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge  
14 Released Parties from: (a) all claims that were, or reasonably could have been or still could be,  
15 alleged, based on or in any way related to the facts contained, in the Operative Complaint; (b) all  
16 PAGA claims that were, or reasonably could have been or still could be, alleged based on or in  
17 any way related to the facts contained in the Operative Complaint and the PAGA Notices; and  
18 (c) any and all known or unknown liabilities, claims, demands for damages, costs, attorneys'  
19 fees, indemnification, contribution, or any other thing for which Plaintiffs have or may have,  
20 including known or unknown causes of action, claims, or demands for damages, costs, attorneys'  
21 fees, indemnification, or contribution, whether certain or speculative, class or individualized,  
22 which may have come into existence at any time prior to the time of execution of this Agreement,  
23 or that may be brought in the future in connection with any acts or omissions that have arisen at  
24 any time prior to execution of this Agreement, including, but not limited to, any and all claims  
25 that Plaintiffs have actually alleged or could have alleged to date, any and all claims arising out  
26 of Plaintiffs' work for Defendant and/or employment status, any claims related to FMLA or  
27 CFRA leave, any claims that Plaintiffs were wrongfully terminated or have been discriminated  
28 against or retaliated against in any way, or that Plaintiffs' privacy rights have been violated in

any way, any and all claims arising under a “whistleblower” statute (including any claims arising under Labor Code §§ 6310, 1102.5), any and all claims for wage and hour violations, any and all claims for tortious conduct resulting in personal injuries or intentional infliction of emotional distress, any and all claims for violations under the California Business and Professions Code Section 17200, and any and all claims for or related to harassment, discrimination or retaliation on the basis of race, color, national origin, religion, gender, age, sexual orientation, ancestry, medical condition, marital status, pregnancy, physical or mental disability, associational disability, or other protected class, discharge in violation of public policy and/or violation of any state and federal laws, regulations, or constitutions, including without limitation, the *Age Discrimination in Employment Act* (“ADEA”) and its amendment, the *Older Workers Benefit Protection Act* (“OWBPA”), the *California Fair Employment and Housing Act* (“FEHA”), the *Americans with Disabilities Act*, *Title VII of the Civil Rights Act of 1964*, as amended, Secs. 503 and 504 of the *Rehabilitation Act of 1973*, as amended, *The Fair Labor Standards Act*, as amended, *the National Labor Relations Act*, as amended, *the Labor – Management Relations Act*, as amended, *the Worker Adjustment and Retraining Notification Act of 1988*, as amended, *the Pregnancy Discrimination Act*, *the Employee Retirement Income Security Act of 1974*, as amended, *the Family Medical Leave Act of 1993*, as amended, *the California Family Rights Act*, as amended, and *the California Labor Code*, including divisible individual claims under the Private Attorneys General Act, Labor Code § 2698, et seq, and *the California Wage Orders* (“Plaintiffs’ Release”).

5.2. Plaintiffs’ Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers’ compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiffs acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believe to be true but agree, nonetheless, that Plaintiffs’ Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs discovery of them.

5.2.1. Plaintiffs’ Waiver of Rights Under California Civil Code Section 1542. For

1 purposes of Plaintiffs' Release only, Plaintiffs expressly waive and relinquish the  
2 provisions, rights, and benefits, if any, of section 1542 of the California Civil Code,  
3 which reads:

4 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**  
5 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**  
6 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**  
7 **RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**  
8 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE**  
9 **DEBTOR OR RELEASED PARTY.**

10 5.3. Release by Participating Class Members: All Participating Class Members release the  
11 Released Parties, for the duration of the Class Period, the claims pled in the Operative Complaint  
12 and any claims that were, or reasonably could have been pled based on facts alleged in the  
13 Operative Complaint, including all claims for failure to pay for all hours worked, unpaid wages  
14 (including minimum wage, straight time, overtime and double time), meal period violations  
15 (including meal premiums), rest break violations (including rest premiums), failure to pay  
16 premium wages at the correct regular rate, failure to pay final wages, failure to provide accurate  
17 wage statements, failure to reimburse business expenses, and unlawful business practices under  
18 the California Labor Code and/or the California Business and Professions Code, and any other  
19 claims for restitution or equitable relief, statutory penalties available for any of the foregoing, and  
20 attorneys' fees and costs.

21 5.4. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not  
22 release any other claims, including claims for vested benefits, wrongful termination, violation of  
23 the Fair Employment and Housing Act, unemployment insurance, disability, social security,  
24 workers' compensation, or claims based on facts occurring outside the Class Period.

25 5.5. Release by Aggrieved Employees: All Aggrieved Employees release the Released Parties,  
26 for the duration of the PAGA Period, civil penalties under the Private Attorneys General Act of  
27 2004, Cal. Labor Code §§ 2699 *et seq*, and all claims pled in the Operative Complaint, and the  
28 PAGA Notices, and any claims that were, or reasonably could have been pled based on facts

1 alleged in the Operative Complaint and PAGA Notices, including, all claims for civil penalties  
2 under PAGA for failure to pay for all hours worked, unpaid wages (including minimum wage,  
3 straight time, overtime and double time), meal period violations (including meal premiums), rest  
4 break violations (including rest premiums), failure to pay premium wages at the correct regular  
5 rate, failure to pay final wages, failure to provide accurate wage statements, failure to provide  
6 personnel records, failure to pay vacation wages, failure to reimburse business expenses, failure  
7 to pay split shift premiums, failure to pay reporting time pay, failure to provide wage theft  
8 notices, failure to provide sick leave, failure to timely pay wages during employment, unlawful  
9 noncompete practices, violation of whistleblower protections, unlawful restrictions on organizing  
10 activity, failure to keep requisite payroll records, and unlawful business practices under the  
11 California Labor Code and/or the California Business and Professions Code, including all claims  
12 for restitution or equitable relief, civil penalties, statutory penalties of any nature whatsoever, and  
13 attorneys' fees and costs.

#### 14 **6. MOTION FOR PRELIMINARY APPROVAL**

15 Class Counsel will be responsible for filing a motion for preliminary approval ("Motion  
16 for Preliminary Approval") that complies with the Court's current checklist for preliminary  
17 approvals. Class Counsel shall provide drafts of Plaintiffs' Motion for Preliminary Approval to  
18 Defense Counsel with reasonably sufficient time to review prior to its filing.

19 6.1. Plaintiffs' Responsibilities. Plaintiffs will prepare and deliver to Defense Counsel all  
20 documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and  
21 memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the  
22 Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor  
23 Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval; (iii)  
24 a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not  
25 to exceed" bid for administering the Settlement and attesting to its willingness to serve;  
26 competency; operative procedures for protecting the security of Class Data; amounts of insurance  
27 coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any  
28 actual or potential conflicts of interest with Class Members; and the nature and extent of any

1 financial relationship with Plaintiffs, Class Counsel or Defense Counsel; (v) a signed declaration  
2 from Plaintiffs confirming willingness and competency to serve and disclosing all facts relevant  
3 to any actual or potential conflicts of interest with Class Members; (v) a signed declaration from  
4 each Class Counsel firm attesting to its competency to represent the Class Members; its timely  
5 transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor  
6 Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (1)(1)),  
7 this Agreement (Labor Code section 2699, subd. (1)(2)); and (vi) all facts relevant to any actual  
8 or potential conflict of interest with Class Members and the Administrator. The Parties agree that  
9 Defense Counsel must approve the proposed Class Notice and Order Granting Preliminary  
10 Approval before it is submitted to the Court.

11 6.2. Responsibilities of Counsel. Class Counsel is responsible for expeditiously finalizing and  
12 filing the Motion for Preliminary Approval after the full execution of this Agreement; obtaining  
13 a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to  
14 advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for  
15 delivering the Court's Preliminary Approval to the Administrator.

16 6.3. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for  
17 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and  
18 Defense Counsel will expeditiously work together on behalf of the Parties by meeting and  
19 conferring, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary  
20 Approval or conditions Preliminary Approval on any material change to this Agreement, Class  
21 Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by  
22 meeting and conferring, and in good faith, to modify the Agreement and otherwise satisfy the  
23 Court's concerns.

## 24 7. SETTLEMENT ADMINISTRATION

25 7.1. Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to serve  
26 as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc. agrees  
27 to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this  
28

1 Agreement in exchange for payment of Administration Expenses Payment. The Parties and their  
2 Counsel represent that they have no interest or relationship, financial or otherwise, with the  
3 Administrator other than a professional relationship arising out of prior experiences  
4 administering settlements.

5 7.2. Employer Identification Number. The Administrator shall have and use its own Employer  
6 Identification Number for purposes of calculating payroll tax withholdings and providing reports  
7 state and federal tax authorities.

8 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets  
9 the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section  
10 468B-1.

11 7.4. Notice to Class Members.

12 7.4.1. No later than three (3) business days after receipt of the Class Data, the  
13 Administrator shall notify Class Counsel that the list has been received and state the  
14 number of Class Members, PAGA Members, Workweeks, and PAGA Pay Periods in  
15 the Class Data.

16 7.4.2. Using best efforts to perform as soon as possible, and in no event later than 14  
17 days after receiving the Class Data, the Administrator will send to all Class Members  
18 identified in the Class Data, via first-class United States Postal Service (“USPS”) mail,  
19 the Class Notice with Spanish translation, substantially in the form attached to this  
20 Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate  
21 the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment  
22 payable to the Class Member, and the number of Workweeks and PAGA Pay Periods  
23 (if applicable) used to calculate these amounts. Before mailing Class Notices, the  
24 Administrator shall update Class Member addresses using the National Change of  
25 Address database.

26 7.4.3. Not later than 3 business days after the Administrator’s receipt of any Class Notice  
27 returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice  
28 using any forwarding address provided by the USPS. If the USPS does not provide a

forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

7.4.4. The deadlines for Class Members' written objections, challenges to Workweeks and/or PAGA Pay Periods, and Requests for Exclusion will be extended an additional 15 days beyond the 45 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

7.4.5. If the Administrator, Defendant or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer, and in good faith in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 15 days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

7.5. Requests for Exclusion (Opt-Outs).

7.5.1. Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by mail, a signed written Request for Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an additional 15 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Class Settlement and includes the Class Member's name, address and email address or telephone number. A Request for Exclusion must be timely postmarked by the Response Deadline.

7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it



1 fails to contain all the information specified in the Class Notice. The Administrator  
2 shall accept any Request for Exclusion as valid if the Administrator can reasonably  
3 ascertain the identity of the person as a Class Member and the Class Member's desire  
4 to be excluded. If the Administrator has reason to question the authenticity of a Request  
5 for Exclusion, the Administrator may demand additional proof of the Class Member's  
6 identity.

7 7.5.3. Every Class Member who does not submit a timely and valid Request for  
8 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled  
9 to all benefits and bound by all terms and conditions of the Settlement, including the  
10 Participating Class Members' Release under Paragraph 5.2 of this Agreement,  
11 regardless whether the Participating Class Member actually receives the Class Notice  
12 or objects to the Class Settlement.

13 7.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a  
14 Non-Participating Class Member and shall not receive an Individual Class Payment or  
15 have the right to object to the class action components of the Settlement. Requests for  
16 Exclusion do not apply to Aggrieved Employees; Aggrieved Employees will be bound  
17 by the Released PAGA Claims irrespective of whether they made a Request for  
18 Exclusion. For the avoidance of doubt, no Aggrieved Employee may opt out of the  
19 Settlement with respect to the Released PAGA Claims.

20 7.6. Challenges to Calculation of Workweeks and PAGA Pay Periods. Each Class Member  
21 shall have 45 days after the Administrator mails the Class Notice (plus an additional 15 days for  
22 Class Members whose Class Notice is re-mailed) to challenge the number of Workweeks and  
23 PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class  
24 Member may challenge the allocation by communicating with the Administrator via mail. The  
25 Administrator must encourage the challenging Class Member to submit supporting  
26 documentation. In the absence of any contrary documentation, the Administrator is entitled to  
27 presume that the Workweeks and/or PAGA Pay Periods contained in the Class Notice are correct  
28 so long as they are consistent with the Class Data. The Administrator shall promptly provide

copies of all challenges to calculation of Workweeks and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

7.7. Objections to Settlement.

7.7.1. Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payments.

7.7.2. Participating Class Members may send written objections to the Administrator, by mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 45 days after the Administrator's mailing of the Class Notice (plus an additional 15 days for Class Members whose Class Notice was re-mailed).

7.7.3. Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

7.8.1. Website, Email Address and Toll-Free Number. The Administrator will maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payments, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls and emails.

7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will

promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion submitted (whether valid or invalid).

7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or PAGA Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

7.8.4. Administrator’s Declaration. Before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.

7.8.5. Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide

Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 7 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

## **8. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE**

Based on its records, Defendant estimates that, as of the date of this Settlement Agreement, (1) there are 2,377 Class Members and 97,000 Total Workweeks during the Class Period and (2) there are no more than 1,361 Aggrieved Employees who worked no more than 21,516 Pay Periods during the PAGA Period.

8.1. Increase in Workweeks. Defendant represents that there are no more than 97,000 Workweeks worked during the Class Period. In the event the number of Workweeks during the Class Period increases by more than 10%, or 9,700 Workweeks, then: (1) the Gross Settlement Amount shall be increased proportionally by the Workweeks in excess of 106,700 multiplied by the workweek value; or (2) at Defendant's election, the Class Period and PAGA Period shall end on the date the number of Workweeks reaches 106,700. The workweek value shall be calculated by dividing the Gross Settlement Amount by 97,000. The Parties agree that the workweek value amounts to \$21.13 per Workweek (\$2,050,000/ 97,000 Workweeks). Thus, for example, should there be 107,000 Workweeks in the Class Period, and Defendant elects option (1) above, then the Gross Settlement Amount shall be increased by \$6,339.00 [(107,000 Workweeks – 106,700 Workweeks) x \$21.13/Workweek].

## **9. RIGHT TO WITHDRAW**

Defendant will have, in its sole discretion, the right to void and withdraw from the settlement if five percent (5%) or more of the Class Members exercise their right to opt out. Defendant must exercise its right of rescission, in writing, to counsel for Plaintiff Boothe within fifteen (15) calendar days of receipt of the final report from the Administrator indicating the number of Class Members who opted out from the Settlement. If the option to rescind is

exercised, then Defendant will be solely responsible for all settlement administration costs incurred to that point.

#### **10. MOTION FOR FINAL APPROVAL**

Prior to the calendared Final Approval Hearing, Plaintiffs will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiffs shall provide drafts of these documents to Defense Counsel with reasonably sufficient time to review prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

10.1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The Court’s decision to award less than the amounts requested for the Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Administration Expenses Payment and/or individual claims of Plaintiffs for alleged wrongful termination, shall not constitute a material modification to the Agreement within the meaning of this Paragraph.

10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in the Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administrator's expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payments or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this Paragraph, as long as the Gross Settlement Amount remains unchanged

## **11. AMENDED JUDGMENT**

If any amended Judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended Judgment.

## **12. ADDITIONAL PROVISIONS**

12.1. No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that

1 any of the allegations in the Operative Complaint have merit or that Defendant has any liability  
2 for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that  
3 Defendant's defenses in the Action have merit. The Parties agree that class certification and  
4 representative treatment is for purposes of this Settlement only. If, for any reason the Court does  
5 grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to  
6 contest certification of any class for any reasons, and Defendant reserves all available defenses  
7 to the claims in the Action, and Plaintiffs reserve the right to move for class certification on any  
8 grounds available and to contest Defendant's defenses. The Settlement, this Agreement and the  
9 Parties' willingness to settle the Action will have no bearing on, and will not be admissible in  
10 connection with, any litigation (except for proceedings to enforce or effectuate the Settlement  
11 and this Agreement).

12 12.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant and  
13 Defense Counsel separately agree that each of them will not disclose, disseminate and/or  
14 publicize, or cause or permit another person to disclose, disseminate or publicize, any of the  
15 terms of the Agreement directly or indirectly, specifically or generally, to any person,  
16 corporation, association, government agency, or other entity except: (1) to the Parties' attorneys,  
17 accountants, or spouses, all of whom will be instructed to keep this Agreement confidential;  
18 (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing  
19 authorities; (4) in response to a court order or subpoena; (5) in response to an inquiry or subpoena  
20 issued by a state or federal government agency; or (6) as necessary to obtain approval of this  
21 settlement or enforce the terms of this settlement. Each Party agrees to immediately notify each  
22 other of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiffs,  
23 Class Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly,  
24 initiate any conversation or other communication, before the filing of the Motion for Preliminary  
25 Approval with any with third party regarding this Agreement or the matters giving rise to this  
26 Agreement except to respond only that "the matter was resolved," or words to that effect. This  
27 Paragraph does not restrict Class Counsel's communications with Class Members in accordance  
28 with Class Counsel's ethical obligations owed to Class Members.

1 12.3. No Solicitation. The Parties separately agree that they and their respective counsel and  
2 employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal  
3 from the Judgment. Nothing in this Paragraph shall be construed to restrict Class Counsel's  
4 ability to communicate with Class Members in accordance with Class Counsel's ethical  
5 obligations owed to Class Members.

6 12.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement  
7 together with its attached exhibits shall constitute the entire agreement between the Parties  
8 relating to the Settlement, superseding any and all oral representations, warranties, covenants, or  
9 inducements made to or by any Party.

10 12.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and  
11 represent that they are authorized by Plaintiffs and Defendant, respectively, to take all appropriate  
12 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate  
13 its terms, and to execute any other documents reasonably required to effectuate the terms of this  
14 Agreement including any amendments to this Agreement.

15 12.6. Cooperation. The Parties and their counsel will cooperate with each other and use their  
16 best efforts, in good faith, to implement the Settlement by, among other things, modifying the  
17 Settlement Agreement, submitting supplemental evidence and supplementing points and  
18 authorities as requested by the Court. In the event the Parties are unable to agree upon the form  
19 or content of any document necessary to implement the Settlement, or on any modification of the  
20 Agreement that may become necessary to implement the Settlement, the Parties will seek the  
21 assistance of the mediator and/or the Court for resolution.

22 12.7. No Prior Assignments. The Parties separately represent and warrant that they have not  
23 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or  
24 encumber to any person or entity and portion of any liability, claim, demand, action, cause of  
25 action, or right released and discharged by the Party in the Settlement.

26 12.8. No Tax Advice. Neither Plaintiffs, Class Counsel, Defendant nor Defense Counsel are  
27 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied  
28 upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR



Part 10, as amended) or otherwise.

12.9. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.

12.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

12.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

12.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting

12.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement

12.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court.

12.15. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

12.16. Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

12.17. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall

be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12.18. Stay of Litigation. The Parties agree that upon the execution of this Agreement all litigation in the Plaintiffs' pending actions shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

12.19. Severability. In the event that one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way effect any other provision if Defense Counsel and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

**IT IS SO AGREED:**

  
Jamesha Boothe (Oct 16, 2024 08:53 PDT)

Plaintiff Jamesha Boothe

Name: \_\_\_\_\_

Plaintiff Alexzander Roberts

Title: \_\_\_\_\_  
On behalf of Defendant Lemonade Restaurant  
Group, LLC

Plaintiff JeanPaul Medellin

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1 **AGREED AS TO FORM ONLY:**

2  
3 Vedang J. Patel  
4 David D. Bibblyan  
5 Vedang J. Patel  
6 Counsel for Plaintiff Jamesha Boothe

Ryan C. Bykerk  
Counsel for Defendant Lemonade  
Restaurant Group, LLC

6  
7 Jonathan M. Genish  
8 Miriam L. Schimmel  
9 Counsel for Plaintiffs Alexzander Roberts  
10 and JeanPaul Medellin  
11  
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14 proceed as if such invalid, illegal, or unenforceable provision had never been included in this  
15 Agreement.

16  
17 **IT IS SO AGREED:**

18  
19 \_\_\_\_\_  
Plaintiff Jamesha Boothe

\_\_\_\_\_  
Name: \_\_\_\_\_

20  
21   
22 \_\_\_\_\_  
Plaintiff Alexzander Roberts

Title: \_\_\_\_\_  
On behalf of Defendant Lemonade Restaurant  
Group, LLC

23  
24 \_\_\_\_\_  
Plaintiff JeanPaul Medellin

25 ///

26 ///

27 ///

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9 entire period of this settlement process.

10 12.19. Severability. In the event that one or more of the provisions contained in this Agreement  
11 shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity,  
12 illegality, or unenforceability shall in no way effect any other provision if Defense Counsel and  
13 Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to  
14 proceed as if such invalid, illegal, or unenforceable provision had never been included in this  
15 Agreement.


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17 **IT IS SO AGREED:**

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19 \_\_\_\_\_  
Plaintiff Jamesha Boothe

\_\_\_\_\_  
Name: \_\_\_\_\_

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21 \_\_\_\_\_  
Plaintiff Alexzander Roberts

\_\_\_\_\_  
Title: \_\_\_\_\_  
On behalf of Defendant Lemonade Restaurant  
Group, LLC

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23   
\_\_\_\_\_  
Plaintiff JeanPaul Medellin

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1 **AGREED AS TO FORM ONLY:**

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3  
4 David D. Bibiyan  
5 Vedang J. Patel  
6 Counsel for Plaintiff Jamesha Boothe

7 Ryan C. Bykerk  
8 Counsel for Defendant Lemonade  
9 Restaurant Group, LLC

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Jonathan M. Genish  
Miriam L. Schimmel  
Counsel for Plaintiffs Alexzander Roberts  
and JeanPaul Medellin

1 be accepted as an original. All executed counterparts and each of them will be deemed to be one  
2 and the same instrument if counsel for the Parties will exchange between themselves signed  
3 counterparts. Any executed counterpart will be admissible in evidence to prove the existence  
4 and contents of this Agreement.

5 12.18. Stay of Litigation. The Parties agree that upon the execution of this Agreement all  
6 litigation in the Plaintiffs' pending actions shall be stayed, except to effectuate the terms of this  
7 Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to  
8 CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the  
9 entire period of this settlement process.

10 12.19. Severability. In the event that one or more of the provisions contained in this Agreement  
11 shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity,  
12 illegality, or unenforceability shall in no way effect any other provision if Defense Counsel and  
13 Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to  
14 proceed as if such invalid, illegal, or unenforceable provision had never been included in this  
15 Agreement.

16  
17 **IT IS SO AGREED:**

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19 \_\_\_\_\_  
Plaintiff Jamesha Boothe

Marina Daniels

Name: Marina Daniels

21 \_\_\_\_\_  
Plaintiff Alexzander Roberts

Title: Vice President

On behalf of Defendant Lemonade Restaurant  
Group, LLC

23 \_\_\_\_\_  
24 Plaintiff JeanPaul Medellin

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1 **AGREED AS TO FORM ONLY:**

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3 \_\_\_\_\_  
4 David D. Bibiyan  
5 Vedang J. Patel  
6 Counsel for Plaintiff Jamesha Boothe

\_\_\_\_\_ Ryan C. Bykerk  
Counsel for Defendant Lemonade  
Restaurant Group, LLC

6 \_\_\_\_\_  
7 Jonathan M. Genish  
8 Miriam L. Schimmel  
9 Counsel for Plaintiffs Alexzander Roberts  
10 and JeanPaul Medellin  
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