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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF ALAMEDA**

17 JASON HUGHES and RYAN SCHUETZ, on
18 behalf of themselves and others similarly situated,

19 Plaintiffs,

20 vs.

21 MCDONALD'S CORP., a corporation,
MCDONALD'S U.S.A., LLC, a limited liability
22 company, MCDONALD'S RESTAURANTS OF
CALIFORNIA, INC., a corporation, FREMAK
23 ARCHES, INC. d/b/a MCDONALD'S, a
corporation, MARPENNY CORP., a corporation,
24 and DOES 1 through 100, inclusive,

25 Defendants.

CASE NO. RG14-717085

ASSIGNED FOR ALL PURPOSES TO
DEPT. 21, JUDGE WINIFRED Y. SMITH

**SETTLEMENT AGREEMENT
BETWEEN PLAINTIFFS AND
FREMAK ARCHES/MARPENNY CORP.**

Complex Civil Case

Action Filed: March 12, 2014
Trial Date: TBD

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1 **SETTLEMENT AGREEMENT**

2 This Settlement Agreement (“Agreement”) is made and entered into between Plaintiffs and
3 class representatives Jason Hughes and Ryan Schuetz (“Plaintiffs”), as individuals and on behalf of
4 all Class Members as set forth herein, and defendants Fremak Arches, Inc. and Marpenny
5 Corporation d/b/a/ McDonald’s (“Fremak/Marpenny”), subject to the terms and conditions of this
6 Agreement and to the approval of the Alameda County Superior Court in *Hughes et al. v.*
7 *McDonald’s Corp., et al.*, Case No. RG14-717085.

8 This Agreement is intended to fully, finally, and forever settle, release, resolve, and bar all
9 claims released herein as against Fremak/Marpenny and all other Released Parties as defined in the
10 Agreement.

11 **I. DEFINITIONS**

- 12 1. As used in this Agreement, the following terms shall have the following meanings:
- 13 a. Action. The “Action” means the civil action entitled *Hughes et al. v.*
14 *McDonald’s Corp., et al.*, filed and pending in the Superior Court of Alameda
15 County, California, Case No. RG14-717085, including without limitation
16 Plaintiffs’ First Amended Complaint (filed on January 16, 2015).
- 17 b. Agreement. The “Agreement” means this Settlement Agreement and all
18 exhibits attached hereto.
- 19 c. Claims Administrator. “Claims Administrator” means the claims
20 administrator to be selected by Class Counsel after soliciting bids from three
21 claims administrators, and approved by the Court.
- 22 d. Class Counsel. “Class Counsel” means Altshuler Berzon LLP and Cohen
23 Milstein Sellers & Toll PLLC.
- 24 e. Class Members. “Class Members” means all hourly, non-exempt employees
25 at one or more of the McDonald’s restaurants operated by Fremak/Marpenny
26 in California any time within the period beginning on March 12, 2010 and
27 ending on the date of preliminary approval of this settlement.

- 1 f. Class Notice. “Class Notice” means the Notice to Class Members that
2 explains the Agreement and the Class Members’ rights and obligations, which
3 shall be sent to all Class Members following preliminary approval of the
4 Settlement, and which shall, *inter alia*, explain the procedures for: obtaining
5 the Class Member’s settlement share, providing updated contact information,
6 challenging the Class Member’s share, filing an objection to the Settlement,
7 and opting out of the Settlement. The Class Notice shall be translated into
8 Spanish, and both the English and Spanish versions will be sent to all Class
9 Members. The English version of the proposed Class Notice is attached hereto
10 as Exhibit 1 and is subject to Court approval and revisions.
- 11 g. Class Period. “Class Period” means the period beginning on March 12, 2010
12 and ending on the date of preliminary approval of this settlement.
- 13 h. Class Representatives. “Class Representatives” means Plaintiffs Jason
14 Hughes and Ryan Schuetz.
- 15 i. Court. “Court” means the Superior Court of the State of California for the
16 County of Alameda.
- 17 j. Effective Date. The “Effective Date” of this Agreement is the date that the
18 Court’s final approval of the Settlement becomes “Final.” If no objections are
19 filed to the Settlement, the Effective Date shall be the date the Court enters the
20 final order approving the Settlement. If objections are filed and overruled and
21 no appeal is taken from the approval, the Effective Date shall be 30 days after
22 the Court enters an Order of Final Approval. If an appeal is taken from the
23 Court’s overruling of objections to the Settlement, the Effective Date is 30
24 days after the appeal is withdrawn or after all appellate review thereof is
25 exhausted and an appellate decision affirming the final approval decision
26 becomes final.
- 27 k. Final Settlement Hearing. “Final Settlement Hearing” means the hearing
28 following the Class Notice, at which Plaintiffs shall request that the Court

1 fully and finally approve the fairness, reasonableness, and adequacy of the
2 terms and conditions of the proposed Settlement, enter the Final Judgment and
3 Consent Decree, and take other appropriate or necessary action as set forth
4 herein.

5 l. Final Judgment and Consent Decree. “Final Judgment and Consent Decree”
6 means the order (or orders) entered and filed by the Court that provide(s) final
7 approval to this Agreement and the Settlement; order(s) the injunctive relief
8 agreed upon herein; dismiss(es) the claims against Fremak/Marpenny and
9 McDonald’s with prejudice; dispose(s) of all issues and claims in this Action
10 as provided in this Agreement; bar(s) Class Members who have not validly
11 opted out of this Settlement from asserting or reopening any claims settled or
12 released through the releases contained herein; and award(s) and order(s) the
13 payment of all required amounts pursuant to the terms of this Agreement (to
14 the extent approved by the Court), including Class Counsel’s attorneys’ fees
15 and costs, Class Representatives’ service payments, and the payments to
16 Settlement Class Members.

17 m. Gross Fund Amount. “Gross Fund Amount” means the total amount to be
18 paid by Fremak/Marpenny pursuant to this Settlement Agreement to fund the
19 payments to Plaintiffs and Class Members and other amounts to be approved
20 by the Court, comprising the Settlement Fund of One Million One Hundred
21 Fifty Thousand Dollars and No Cents (\$1,150,000.00), as defined in this
22 Agreement. As provided in this Agreement, if the Settlement receives final
23 approval from the Court, Fremak/Marpenny’s timely payment of the Gross
24 Settlement Amount, and its payment of applicable employer payroll taxes as
25 required by law, is intended to and shall settle all issues and claims
26 encompassed within this Action. Upon the Effective Date, payment of the
27 Gross Fund Amount, including all installment payments contemplated by this
28 Agreement, shall be non-reversionary.

- 1 n. Net Fund Amount. The “Net Fund Amount” means the Gross Fund Amount,
2 less all costs of administration, court-approved attorney’s fees and expenses,
3 service awards, and California Labor Code Private Attorneys General Act
4 (“PAGA”) payments to the California Labor and Workforce Development
5 Agency (“LWDA”).
- 6 o. PAGA Limitations Period. “PAGA Limitations Period” shall mean the period
7 beginning on March 12, 2013 and ending on the date of preliminary approval
8 of this Settlement.
- 9 p. Parties. “Parties” shall mean the parties to the Agreement, specifically the
10 Class Representatives, individually and on behalf of all Class Members, and
11 Fremak/Marpenny. In the event that a class is certified, Class Counsel is
12 authorized to represent the Class Members and to take positions in this matter
13 on their behalf.
- 14 q. Preliminary Approval Order. “Preliminary Approval Order” means the order
15 entered and filed by the Court that preliminarily approves the terms and
16 conditions of this Agreement, including without limitation the manner and
17 content of providing Notice to the Class.
- 18 r. Released Parties. “Released Parties” means Fremak Arches, Inc. and
19 Marpenny Corporation, as well as Fremak/Marpenny’s past and present
20 affiliated companies, parents, subsidiaries, related companies and business
21 concerns, and each of them, as well as each of their past and present insurers,
22 partners, trustees, directors, shareholders, officers, members, managers,
23 owners, agents, attorneys, servants, supervisors, vendors, payroll companies,
24 accountants, principals, any entity or individual alleged to be directly,
25 indirectly, or vicariously liable for any of the Settled Claims, and employees,
26 past and present, Mark Bernardin, and the spouses, children, and heirs of
27 Mark Bernardin.
28

1 s. Restaurants. “Restaurants” means the three restaurants in California owned
2 and/or operated by Fremak/Marpenny at any time during the Class Period,
3 including but not limited to those located at: 38860 Fremont Boulevard,
4 42800 Mission Boulevard, and 40708 Grimmer Boulevard in Fremont,
5 California.

6 t. Settled Claims. “Settled Claims” means any and all claims for relief,
7 demands, causes of action, and appeals of any kind whether known or
8 unknown, which a Settlement Class Member has had, now has, or may have in
9 the future against the Released Parties or any of them that arise out of or relate
10 to the facts alleged in the Action and that arose on or before the date of
11 preliminary approval of this Agreement. “Settled Claims” includes all types
12 of relief available for the claims described in the preceding sentence,
13 including without limitation any claims for unpaid wages, unpaid overtime,
14 unpaid premium pay, damages, reimbursement, restitution, losses, penalties,
15 fines, liens, attorneys’ fees, costs, expenses, debts, interest, injunctive or
16 declaratory relief, chargebacks, liquidated damages, or similar relief. The
17 Final Judgment and Consent Decree shall cover and bar each and every
18 Settlement Class Member from asserting any Settled Claims in the future
19 against any of the Released Parties.

20 u. Settlement. “Settlement” shall refer to this Agreement to settle the claims as
21 set forth and embodied herein.

22 v. Settlement Class/Settlement Class Member(s). “Settlement Class Member”
23 means and includes each Class Member who does not validly opt out of this
24 Settlement as set forth herein, and “Settlement Class” means the class of all
25 Settlement Class Members.

26 w. Settlement Payment. “Settlement Payment” means the total payment of One
27 Million One Hundred Fifty Thousand Dollars and No Cents (\$1,150,000.00)
28

1 to be paid by Fremak/Marpenny in the time and manner set forth in this
2 Agreement and which constitutes the Gross Fund Amount.

3 **II. RECITALS**

4 2. This class action was filed on March 12, 2014; a First Amended Complaint was filed
5 on January 16, 2015, and asserts 12 claims for relief in connection with Fremak/Marpenny's
6 restaurants, including *inter alia* claims for unpaid wages, minimum wages and overtime payments,
7 failure to provide legally required meal periods and rest breaks, failure to pay all wages due to
8 discharged and quitting employees, failure to maintain required records and provide accurate
9 itemized wage statements, negligence, unfair and unlawful business practices, PAGA penalties, and
10 declaratory judgment. Plaintiffs' First Amended Complaint named as defendants McDonald's
11 Corporation; McDonald's U.S.A., LLC; McDonald's Restaurants of California, Inc.; Fremak
12 Arches, Inc.; Marpenney Corporation; and Does 1 through 100, inclusive.

13 3. On April 4, 2014, this Action was removed from the Alameda County Superior Court
14 to the United States District Court for the Northern District of California. Plaintiffs moved to
15 remand this Action to the Alameda County Superior Court on May 28, 2014, and the motion was
16 granted by the district court on July 31, 2014. The Parties thereafter engaged in informal discovery
17 and began settlement discussions.

18 4. Without admitting or conceding any liability or damages, Fremak/Marpenny has
19 entered into this Settlement to fully, finally, and forever resolve this litigation.

20 5. After extensive investigation, formal and informal discovery, and arms-length
21 settlement negotiations, including a settlement conference with Magistrate Judge Corley of the
22 United States District Court for the Northern District of California, the Class Representatives and
23 Class Counsel have concluded that the terms of the Settlement are fair, reasonable, and adequate,
24 that the Settlement represents a good-faith settlement under California law, and that settlement on
25 these terms is in the best interest of the Class Members in light of all known facts and circumstances,
26 including the risks of continuing litigation and defenses asserted in the case.

27 6. This Agreement shall become enforceable in accordance with its terms upon its
28 execution by: (a) one or more Class Representatives; (b) Class Counsel on behalf of the Class

1 Representatives and the Class (approved as to form); (c) Fremak/Marpenny, by and through an
2 authorized representative; (d) Mark Bernardin as personal guarantor as provided herein; (e)
3 Fremak/Marpenny's counsel (approved as to form). The Parties intend this Agreement to be
4 admissible and binding, but fully understand that no settlement can be effectuated on behalf of the
5 Plaintiffs or the Class without final approval of the Court in this Action.

6 7. The Parties intend the Settlement to resolve all claims in this Action and to end the
7 litigation entirely and with prejudice as to all parties to the Action, including Fremak/Marpenny, as
8 well as defendants McDonald's Corporation, McDonald's U.S.A., LLC, and McDonald's
9 Restaurants of California, Inc. d/b/a/ McDonald's (collectively, "McDonald's").

10 NOW THEREFORE, in consideration of the recitals listed above and the promises, releases,
11 and warranties set forth below, and with the intent to be legally bound and to acknowledge the
12 sufficiency of the consideration and undertakings set forth herein, the Class Representatives,
13 individually and on behalf of the Class Members, and Fremak/Marpenny agree that the Action shall
14 be and is finally and fully compromised and settled as to all Parties on the terms and conditions set
15 forth herein:

16 **III. THE SETTLEMENT AND ADMINISTRATION PROCESS: PRELIMINARY**
17 **APPROVAL, CLASS NOTICE, CLAIMS PROCESS, FINAL SETTLEMENT**
18 **HEARING, AND EFFECTIVE DATE**

19 8. Procedures. As part of this Agreement, the Parties agree to the following procedures
20 for obtaining the Court's preliminary approval of the Settlement, certifying the Class for the
21 purposes of Settlement, notifying Class Members, obtaining final Court approval of the Settlement,
22 and administering the Settlement.

23 9. Stipulation to Class Certification for Settlement Purposes. For purposes of this
24 settlement only, the Parties stipulate that a class comprising all Class Members may be certified and
25 that all prerequisites for establishing class certification for this limited purpose have been met.

26 10. Request for Preliminary Approval Order. For purposes of implementing this
27 Agreement, the Parties shall request that the Court enter a Preliminary Approval Order, preliminarily
28 approving the proposed Settlement, certifying the Class for settlement purposes only, approving

1 Notice, and setting a date for the Final Settlement Hearing. The requested Preliminary Approval
2 order shall provide that Notice of the Settlement shall be sent to Class Members as specified herein.

3 11. Preliminary Approval of Settlement. Promptly after execution of this Agreement,
4 Class Representatives shall file a motion in the Action requesting that the Court enter a Preliminary
5 Approval Order. The requested Preliminary Approval Order shall:

- 6 a. Preliminarily approve the proposed Settlement and this Agreement;
- 7 b. Approve the plan for the provision of Notice to Class Members under this
8 Agreement, including the form of the Class Notice;
- 9 c. Approve the procedures for Class Members to opt out of the Settlement,
10 including by setting a deadline for Class Members to submit requests to opt
11 out;
- 12 d. Approve the procedures for Class Members to object to the Settlement,
13 including by setting a deadline for Class Members to submit such objections;
14 and
- 15 e. Schedule the Final Settlement Hearing for final approval of the Settlement and
16 entry of the Final Judgment and Consent Decree;

17 12. Motion for Preliminary Approval and Further Relief. Fremak/Marpenny shall not
18 oppose Class Counsel's motion for preliminary approval of the Settlement, provided that such
19 motion and supporting papers are consistent with the terms of this Agreement.

20 13. Class Notice. Notice of the Settlement shall be provided to Class Members. The
21 Parties believe and agree that the following procedures for such Notice provide the best practicable
22 notice to Class Members:

- 23 a. The Claims Administrator shall be responsible for preparing, printing, and
24 mailing to all Class Members an individualized version of the Class Notice
25 approved by the Court and any such other materials as may be required to be
26 distributed, as approved and directed by the Court.
- 27 b. Not later than ten (10) business days after the Court's entry of an Order of
28 Preliminary Approval, and to the greatest extent possible based on existing

1 and obtainable information, Fremak/Marpenny shall provide to the Claims
2 Administrator, in electronic form, a spreadsheet (the “Class List”) that
3 contains the name, telephone number, social security number, last known
4 mailing address and email address, and starting and ending employment dates
5 during the Class Period (including multiple starting and ending employment
6 dates if applicable) of every Class Member. Fremak/Marpenny shall meet and
7 confer with the Claims Administrator regarding the format of said spreadsheet
8 and shall cooperate to provide any additional information the Claims
9 Administrator may request that is reasonable and necessary for the purpose of
10 giving Class Notice, allocating and distributing the Gross Fund Amount, or
11 otherwise administering this Agreement. The Claims Administrator shall
12 provide Class Counsel with a copy of the Putative Class List, but shall delete
13 social security numbers before doing so. Prior to any class certification order,
14 the information in the Class List shall be treated as Highly Confidential
15 pursuant to the stipulated protective order entered in the Action and may not
16 be used for any purposes other than the administration of the Settlement as set
17 forth in this Agreement.

18 c. Based on the information provided in the Class List and the Plan of Allocation
19 set forth herein, the Claims Administrator shall promptly calculate an
20 Estimated Settlement Amount for every Class Member, to be included in the
21 individualized Class Notice to be sent to that Class Member, and shall prepare
22 and email a spreadsheet setting forth those calculations to Class Counsel and
23 Fremak/Marpenny’s counsel no fewer than two business days before mailing
24 the Class Notice to Class Members.

25 d. Not later than ten (10) business days after receipt of the information described
26 in subsection (b) above, the Claims Administrator shall mail the Class Notice
27 to every individual on the Class List whose address information is known.
28 This mailing shall be sent by first-class U.S. mail, postage pre-paid. Before

1 mailing the Class Notice, the Claims Administrator shall run the Putative
2 Class Member addresses through the U.S. Postal Service's Change of Address
3 Database and update any addresses accordingly. Any returned envelopes
4 from the initial mailing with forwarding addresses, or for which updated
5 addresses can be found, shall be re-mailed, as described below. Not later than
6 ten (10) business days after receipt of the Class List, the Claims Administrator
7 shall also email a copy of the Class Notice to all Class Members whose email
8 addresses are known. The Claims Administrator shall track and report all
9 "bounce back" emails, but will be under no obligation to search for different
10 email addresses.

11 e. Except as otherwise provided herein, the Class Notice:

- 12 i. Shall state that the deadline for submitting any objection to the
13 Settlement or for opting out of the Settlement shall be ninety (90)
14 calendar days after the postmark date of the initial mailing of Class
15 Notice;
- 16 ii. Shall state the recipient's Estimated Settlement Amount, as calculated
17 by the Claims Administrator;
- 18 iii. Shall provide the recipient with instructions for contesting the Claims
19 Administrator's calculations regarding the Estimated and/or actual
20 Settlement Amount to be paid to the individual Class Member.
- 21 iv. Shall inform the recipient of the need to provide updated contact
22 information to the Claims Administrator until such time as all
23 settlement funds have been distributed and shall provide instructions
24 for so doing;
- 25 v. Shall include a summary of the release and waiver of claims against
26 the Released Parties and shall inform the recipient that any Class
27 Member who does not opt out shall be deemed to have released all
28 covered claims against the Released Parties.

1 f. For any Class Notice that is returned by the Post Office with a forwarding
2 address, the Claims Administrator shall forward the Class Notice to that new
3 address within five (5) calendar days of receipt of the forwarding address. For
4 any Class Notice that is returned by the Post Office as undeliverable or
5 addressee unknown, the Claims Administrator shall perform a skip trace that
6 shall include: (1) processing the name and address through the United States
7 Postal Service’s National Change of Address database; (2) performing address
8 searches using such public and proprietary electronic resources as are
9 available to the Claims Administrator that lawfully collect address data from
10 various sources such as utility records, property tax records, motor vehicle
11 registration records and credit bureaus; and (3) calling last-known telephone
12 numbers (and telephone numbers updated through public and proprietary
13 databases) to obtain accurate contact information. If the Claims Administrator
14 is successful in locating an alternate subsequent address or addresses, the
15 Claims Administrator shall forward the Class Notice to the new address(es)
16 within ten (10) calendar days of receipt of the undeliverable notice.

17 g. The Parties intend that reasonable means be used to maximize the probability
18 that all Class Members shall receive the Class Notice.

19 h. In addition to the foregoing, the Parties may, but are not obligated to,
20 supplement the Class Notice with reasonable alternative forms of notice.

21 14. Opting Out of the Settlement. Class Members may opt out of the Settlement by
22 timely mailing a valid opt-out statement to the Claims Administrator.

23 a. To be valid, any opt-out statement must state the name, telephone number,
24 and current address of the Class Member, the dates the Class Member worked
25 for Fremak/Marpenny, and the address to which the Class Member’s Class
26 Notice was mailed (if known). The statement also must include the following
27 language: “I, [NAME], voluntarily choose not to participate in the settlement
28 of my claims against my current or former employer, Fremak Arches, Inc.

1 and/or Marpenny Corporation (“Fremak/Marpenny”), and I hereby waive any
2 rights I may have to participate in the settlement against Fremak/Marpenny in
3 the state court lawsuit entitled *Hughes, et al. v. McDonald’s Corp., et al.*,
4 Alameda County Superior Court, Case No. RG14-717085.” The opt-out
5 statement must be personally signed by the Class Member who seeks to opt
6 out. No opt-out request may be made on behalf of a group of Class Members.

7 b. Absent a showing of good cause and in accordance with the procedures set
8 forth in this Agreement, an opt-out statement will not be honored or valid if it
9 is postmarked more than ninety (90) calendar days after the postmark date of
10 the initial Class Notice mailing. Requests to opt out that do not include all
11 required information or that are not timely submitted shall be deemed null,
12 void, and ineffective.

13 c. Class Members who submit valid and timely requests to opt out of the
14 Settlement may not participate in any portion of the Settlement and shall not
15 receive any Settlement Payment, nor shall such Class Members be bound by
16 the terms of the Settlement.

17 d. A Class Member who does not timely opt out of the Settlement as described in
18 this Agreement shall be bound by the terms and conditions of this Agreement
19 and shall also be bound by the Court’s Order enjoining all Settlement Class
20 Members from pursuing or seeking to reopen any of the Settled Claims
21 against the Released Parties.

22 e. If an objection or opt-out form is timely submitted but is deficient in one or
23 more aspects, the Claims Administrator shall, within five (5) calendar days of
24 receipt of the deficient form, return the form to the Class Member with a letter
25 explaining the deficiencies and informing the Class Member that he or she
26 shall have fourteen (14) calendar days from the date of the deficiency notice
27 to correct the deficiencies and resubmit the objection or opt-out form. This
28 letter shall be provided in both English and Spanish.

1 15. Objecting to the Settlement. Any Class Member who does not timely opt out may
2 object to the Settlement. The Class Notice shall provide that Class Members who wish to object to
3 the Settlement must mail a written statement of objection subject to the provisions set forth below:

4 a. Any such objection must be filed with the Clerk of the Court and served on all
5 counsel identified in the Class Notice no later than ninety (90) calendar days
6 after the postmark date of the initial Class Notice mailing.

7 b. The postmark date of the mailing shall be the exclusive means for determining
8 whether an objection is timely.

9 c. The objection must state the basis for the objection.

10 d. Class Members who fail to make objections in the manner specified shall be
11 deemed to have waived any objections and shall be foreclosed from making
12 any objection (whether by appeal or otherwise) to the Settlement, and the
13 Settlement shall be fully binding upon them if approved by the Court.

14 16. Payments to Class Members. No claims process shall be required of Plaintiffs or
15 Settlement Class Members. Checks shall be mailed by first class mail to the last known address of
16 all Settlement Class Members after the expiration of the time period for opt-outs and objections. If
17 any check is returned or not cashed, the Claims Administrator shall engage in reasonable skip tracing
18 efforts as described in Paragraph 13(f) above, including calling Settlement Class Members who have
19 not cashed their checks, as described in Paragraph 32 below.

20 17. Non-Interference with Settlement. The Parties and their counsel agree that they shall
21 not seek to solicit or otherwise encourage Class Members to submit opt-out requests or objections to
22 the Settlement or to appeal from the Final Judgment and Consent Decree.

23 18. Interim Reports by the Claims Administrator. No later than twenty-one (21) business
24 days prior to the date of the Final Settlement Hearing, the Claims Administrator shall provide
25 counsel for the Parties with a declaration setting forth: (a) due diligence and proof of mailing (i) of
26 the Class Notice to Class Members; (b) the total number of individuals on the Putative Class List
27 who were sent a Class Notice; (c) the total number of individuals whose Class Notices were returned
28 as undeliverable or addressee unknown; (d) the total number of those individuals whose Class

1 Notices were subsequently sent a corrected address; (e) the total number of Class Members who
2 filed valid requests to opt out, including complete copies of all such requests and the postmark dates
3 for each; and (j) the total number of Class Members who filed timely objections to the Settlement,
4 along with complete copies of all objections received and the postmark dates for each. The Claims
5 Administrator shall provide an updated declaration on these matters three (3) business days prior to
6 the date of the Final Settlement Hearing if any changes or additions have occurred and again the
7 business day after the Effective Date of the Settlement or such other later date as the Court or the
8 Parties may agree upon.

9 19. Final Settlement Hearing. The Parties shall ask the Court to conduct a Final
10 Settlement Hearing, after expiration of the deadlines for opting out or submitting objections, to
11 determine final approval of the settlement, to enter the Final Judgment and Consent Decree, and to
12 order the amounts properly payable for attorneys' fees and expenses, service payments, and any
13 other matter as requested herein.

14 20. Final Judgment. Upon final approval by the Court at the Final Settlement Hearing,
15 Class Representatives shall request, and Fremak/Marpenny shall concur in such request, that the
16 Court enter the Final Judgment and Consent Decree finally approving this Agreement, which shall
17 be consistent with this Agreement and shall be subject to prior review and approval by the Parties.
18 Class Representatives shall request that the Court find and determine that this Settlement: is fair,
19 just, equitable, reasonable, and adequate; disposes of all issues and claims in this Action as provided
20 in this Agreement, dismissing the Action with prejudice; represents a good-faith settlement; is in the
21 best interests of the Class; and permanently enjoins all Settlement Class Members from pursuing or
22 seeking to reopen any Settled Claims against the Released Parties.

23 21. Appellate Review. In the event any appeal is filed concerning any of the Court's
24 Settlement orders, administration of the Settlement shall be stayed pending final resolution of such
25 appeal.

26 **IV. INJUNCTIVE RELIEF AND CONSENT DECREE**

27 22. Injunction. Unless otherwise provided herein, the injunctive relief and Consent
28 Decree provisions of this Settlement shall be binding on Fremak/Marpenny beginning ten (10)

1 calendar days after the entry of the Court's order granting final approval. Unless this Settlement is
2 mutually modified as permitted herein, the injunctive relief and Consent Decree provisions of this
3 Settlement shall remain in effect until the earlier of four years from the date upon which the
4 injunctive relief and Consent Decree provisions of this Settlement become binding on
5 Fremak/Marpenny or the last date Fremak/Marpenny, Mark Bernardin, or any entities under their
6 direction and control own, in whole or in part, the franchises of any of the three (3) Restaurants at
7 issue.

8 23. Terms of Injunction. As consideration for this Settlement, Fremak/Marpenny shall
9 enter into a Court-enforceable Consent Decree pursuant to which it agrees to be bound,
10 prospectively, to the following terms:

11 a. Fremak/Marpenny shall review all time and payroll records at least once at the
12 end of each pay period, either manually or through re-programming of their
13 timekeeping and payroll software. Fremak/Marpenny shall pay an additional
14 one hour's wages to each hourly, non-exempt employee for each day during
15 that pay period on which the time records (as may be adjusted only upon
16 signed approval of the affected employee) reflect that such hourly, non-
17 exempt employee was not provided all full and timely 30-minute meal periods
18 as required by California law as reflected in the applicable Wage Order.
19 Fremak/Marpenny are not required to make such one-hour premium payments
20 to a hourly, non-exempt employee who acknowledges in writing that, with
21 respect to that particular delayed or shortened meal period, he/she was
22 provided a full and timely meal period, but voluntarily elected to delay or
23 shorten the meal period.

24 b. Fremak/Marpenny shall review all time and payroll records at least once at the
25 end of each pay period, either manually or through re-programming of their
26 timekeeping and payroll software. Fremak/Marpenny shall pay an additional
27 one hour's wages to each hourly, non-exempt employee for each day during
28 that pay period on which the time records (as may be adjusted only upon

1 signed approval of the affected employee) reflect that such hourly, non-
2 exempt employee was not provided all full and timely rest break(s) as required
3 by California law as reflected in the applicable Wage Order.
4 Fremak/Marpenny are not required to make such one hour premium payments
5 to an hourly, non-exempt employee who acknowledges in writing that, with
6 respect to that particular delayed or shortened rest break, he/she was provided
7 a full and timely rest break, but voluntarily elected to delay or shorten the rest
8 break, or failed to properly record the rest break.

9 c. For the purposes of paragraphs (a) and (b), a first meal period of 30 minutes is
10 required for all shifts longer than five hours and is not timely if the records
11 reflect that it began more than five hours after the beginning of a shift, except
12 that no meal period is required on a shift of less than six hours if the employee
13 has executed a written waiver as described below and has not revoked that
14 waiver as described below; a second 30-minute meal period is required for all
15 shifts longer than 10 hours and is not timely if the records reflect that it began
16 more than 10 hours after the beginning of a shift; a first 10-minute rest break
17 is required for all shifts longer than 3.5 hours; a second 10-minute rest break
18 is required for all shifts longer than six hours; and a third 10-minute rest break
19 is required for all shifts longer than 10 hours.

20 d. Subject to the requirements of paragraph (c) and Fremak/Marpenny's
21 obligations under California law, Fremak/Marpenny may ask hourly, non-
22 exempt employees whether they wish to waive their right to take a meal
23 period on shifts between five and six hours in length. Any such waiver, to be
24 effective, shall be in writing, and shall be valid for a period not to exceed 13
25 months. When employees are asked whether they wish to waive their right to
26 take a meal period on shifts less than six hours, Fremak/Marpenny shall
27 provide the employees with an oral explanation (following a script to be
28 agreed upon by Plaintiffs and Fremak/Marpenny) that signing a waiver form

1 is voluntary and that the waiver may be revoked orally at the beginning of any
2 shift by informing the manager on duty at the beginning of the shift of the
3 decision to revoke. Employees shall be permitted to revoke any written
4 waiver either permanently or for a limited time (such as for a particular shift
5 or workweek).

6 e. Employees who revoke their written waivers orally may be asked to sign a
7 written confirmation of that revocation, but cannot be required to do so.

8 f. Fremak/Marpenny will not consider whether employees have executed a
9 written meal period waiver in determining the length of the employees' shifts
10 and will not schedule employees who have not executed such a waiver for
11 shifts of less than five hours for the purpose of avoiding any meal period
12 obligations.

13 g. Fremak/Marpenny shall provide wage statements to all hourly, non-exempt
14 employees that separately record all regular hours and overtime hours for each
15 pay period, the rate(s) of pay, any premium wages for missed, untimely, or
16 short meal periods and rest breaks, and any deductions taken from that pay.

17 h. At the time of hire and not less than once per year thereafter,
18 Fremak/Marpenny shall provide training to all employees in the restaurants
19 owned by Fremak/Marpenny on those employees' right under California law
20 to be provided meal periods and rest breaks, including the legally required
21 timing of those breaks, and their right to receive premium pay if
22 Fremak/Marpenny does not provide full or timely meal periods or rest breaks.
23 Fremak/Marpenny shall provide all employees in the restaurants with the
24 name of the designated contact person(s) charged with resolving disputes
25 involving meal periods, rest breaks, and premium pay, and whom employees
26 should contact if there are questions concerning whether they were provided
27 required meal periods, rest breaks, or premium pay.

1 i. Fremak/Marpenny shall conduct regular trainings for managers, at the time of
2 initial hire, promotion, and periodically thereafter, during which
3 Fremak/Marpenny shall inform managers of employees' legal rights regarding
4 meal periods and rest breaks and shall instruct managers that they must
5 provide employees with all legally required meal periods and rest breaks and
6 ensure that employees receive premium pay if all such breaks are not
7 provided; that they may not engage in any form of time shaving; that hourly
8 employees must be paid for all minutes worked; that any alterations to
9 employees' time records or time cards must be approved and signed by the
10 employee in question as well as a representative of Fremak/Marpenny; and
11 that managers must provide employees with their pay and other personnel
12 records upon request and may not retaliate against employees for requesting
13 such records or discourage employees from making such requests.

14 j. Plaintiffs' counsel shall be provided with copies of all proposed trainings.
15 Fremak/Marpenny shall complete the report attached hereto as Exhibit 2 every
16 six months following entry of the Court's order granting preliminary approval,
17 and shall maintain and provide to Class Counsel regular reports and
18 monitoring for four years from entry of the Court's order granting final
19 approval

20 24. Modification. Whenever possible, each provision and term of the Consent Decree
21 shall be interpreted in such a manner as to be valid and enforceable, provided, however, that if any
22 term or provision of the Consent Decree is determined to be or is rendered unenforceable after final
23 approval of the Settlement, all other terms and provisions of the Consent Decree shall remain
24 unaffected, to the extent permitted by law. If any application of any term or provision of the
25 Consent Decree to any specific person or circumstance should be determined to be invalid or
26 unenforceable, the application of such term or provision to other persons or circumstances shall
27 remain unaffected, to the extent permitted by law. Class Counsel and Fremak/Marpenny's Counsel
28 may jointly agree in writing to modify the terms of the Consent Decree, subject to Court approval. If

1 changed or other circumstances make a modification of the Consent Decree necessary to ensure that
2 its purposes are fully effectuated, but good faith negotiations seeking such modifications are
3 unsuccessful, any party to the Consent Decree shall have the right to move the Court to modify the
4 Consent Decree. Such motion shall be granted only upon the movant proving to the Court by clear
5 and convincing evidence that changed or other circumstances make such modification necessary.

6 **V. SETTLEMENT FUNDS, CLAIMS PROCESSING, AND SETTLEMENT PAYMENT**
7 **CALCULATION**

8 25. Settlement Fund. Fremak/Marpenny shall pay One Million One Hundred Fifty
9 Thousand dollars (\$1,150,000.00) (“Settlement Fund”) to settle all claims brought by Plaintiffs and
10 Class Members in this Action, subject to the terms and conditions set forth herein or as otherwise
11 directed by the Court.

12 26. Deposit of Gross Fund Amount into Qualified Settlement Fund. Within fourteen (14)
13 calendar days after the Court’s final approval of this Settlement, Fremak/Marpenny shall pay
14 \$383,334.00 into a Qualified Settlement Fund established by the court-appointed third-party Claims
15 Administrator for purposes of partially funding the Settlement Fund. In addition to
16 Fremak/Marpenny’s initial payment of \$383,334.00, Fremak/Marpenny shall pay an additional
17 \$383,333.00 into the Qualified Settlement Fund for purposes of partially funding the Settlement
18 Fund on or before one year after final approval of the Settlement, and shall pay the final \$383,333.00
19 into the Qualified Settlement Fund for purposes of completing its funding of the Settlement Fund
20 (for a total of \$1,150,000.00, the “Gross Fund Amount”) on or before two years after final approval
21 of the Settlement. Fremak/Marpenny shall also pay the Claims Administrator for the reasonable
22 costs of preparing and distributing the Class Notice and administering the Settlement, such payments
23 to be offset against Fremak/Marpenny’s obligation to pay \$383,334.00 as its initial payment.
24 Fremak/Marpenny may accelerate the date of any payments into the Qualified Settlement Fund.

25 27. Qualified Settlement Fund. The Claims Administrator shall establish a Qualified
26 Settlement Fund for this Settlement.

27 28. Interest on the Gross Fund Amount. All interest accruing on the Gross Fund Amount
28 shall accrue to the benefit of and be distributed as part of the Settlement Fund. If the Settlement

1 does not receive final approval from the Court, or if for any other reason the Effective Date does not
2 occur, the Settlement Payment amount, including all interest accruing thereon, and less any amounts
3 paid or owing to the Claims Administrator, shall be returned to Fremak/Marpenny.

4 29. Payment to the LWDA. The Parties agree that a total of Fifty Thousand Dollars
5 (\$50,000) of the Gross Fund Amount shall be designated as civil penalties under the California
6 Labor Code Private Attorneys General Act (“PAGA”), Thirty-Seven Thousand Five Hundred
7 Dollars (\$37,500) of which shall be paid to the LWDA, with the remaining Twelve Thousand Five
8 Hundred Dollars (\$12,500) being distributed to the Class as part of the Net Fund Amount.

9 30. Initial Distribution. The Claims Administrator shall make distributions from the
10 Gross Fund Amount in three installments (or fewer, if Fremak/Marpenny makes its Settlement
11 Payments on an accelerated schedule that permits the Gross Fund Amount to be fully distributed
12 earlier). Within thirty (30) calendar days after the Effective Date, the Claims Administrator shall
13 pay from the initial installment payment all court-approved service awards (in an amount not to
14 exceed \$1,500 to each of the Named Plaintiffs) and Class Counsel’s court-approved expenses (in an
15 amount not to exceed \$20,000). The remainder of the initial installment shall be distributed to
16 Settlement Class Members based on their respective shares of the Settlement as set forth in the Plan
17 of Allocation herein.

18 31. Subsequent Distributions. The Claims Administrator shall make additional
19 distributions once every twelve (12) months, beginning on the date twelve months after the initial
20 installment payment is distributed, until the Gross Fund Amount of One Million One Hundred Fifty
21 Thousand Dollars (\$1,150,000.00) has been distributed as set forth herein. All court-approved
22 attorneys’ fees to Class Counsel (in an amount not to exceed \$230,000) shall be paid no later than
23 the second installment. Payment to the LWDA pursuant to ¶29 shall be made no later than the third
24 installment.

25 32. Each check mailed to a Class Member shall plainly state on its face that the check
26 must be cashed within one-hundred twenty (120) calendar days and that any check uncashed after
27 one hundred twenty (120) calendar days will be invalid. If any check remains uncashed after forty-
28 five (45) calendar days, the Claims Administrator shall send a reminder postcard to the recipient.

1 The Claims Administrator shall also provide counsel for the Parties with a list of all Class Members
2 who have not cashed their checks within 45 days, and the amount of the uncashed check. If any
3 check remains uncashed after seventy-five (75) calendar days, the Claims Administrator shall call
4 the recipient to remind him or her to cash the check. The Claims Administrator shall use skip-trace
5 methods as necessary to obtain a working telephone number for any such individual.

6 33. Class Members who do not cash their settlement checks within one hundred twenty
7 (120) calendar days after mailing by the Claims Administrator shall be deemed to have waived
8 irrevocably any right in or claim to a settlement payment, but shall still be bound by the Settlement.
9 After all required distributions are made, the Claims Administrator may, in its discretion and without
10 appeal to or right of review by the Court, agree to make full or partial payment of the amount
11 calculated to be due to any such Class Member or Members if sufficient funds remain in the Gross
12 Fund Amount.

13 34. Application for Attorneys' Fees. Class Counsel shall request that the Court approve
14 an award of statutory attorneys' fees pursuant to California law in an amount not to exceed
15 \$230,000, plus payment of Class Counsel's incurred expenses in an amount not to exceed \$20,000.
16 To the extent the Court approves attorneys' fees in an amount less than Class Counsel's request, the
17 difference between the requested and awarded amounts shall be distributed to eligible Class
18 Members as part of the Net Fund Amount on a proportional basis as set forth in the Plan of
19 Allocation herein. Plaintiffs and their counsel reserve the right to appeal any denial or reduction in
20 the amount of requested attorneys' fees and costs awarded by the Court. The Parties agree that
21 regardless of any action taken by the Court with respect to attorneys' fees and expenses, the validity
22 of the underlying Settlement shall not be affected, nor shall any appeal of the attorneys' fees amount
23 delay distribution of payments to Settlement Class Members.

24 35. Service Payments to Class Representatives. Class Counsel shall request that the
25 Court approve service awards for distribution to named Plaintiffs Jason Hughes and Ryan Schuetz in
26 an amount not to exceed \$1,500 each. To the extent the Court approves service awards in an amount
27 less than the request, the difference between the requested and awarded amount shall be distributed
28 as part of the Net Fund Amount to eligible Class Members on a proportional basis as set forth in the

1 Plan of Allocation herein. The Parties agree that regardless of any action taken by the Court with
2 respect to such service awards, the validity of the underlying Settlement shall not be affected.

3 36. Named Plaintiffs' Individual General Release. In exchange for their receipt of a
4 service award as described in Paragraph 35, the Class Representatives agree to a general release of
5 all claims they might have against the Released Parties based on or arising from their employment
6 with Defendants Fremak/Marpenny. The Class Representatives waive all rights and benefits
7 afforded by California Civil Code section 1542 and do so understanding the significance of that
8 waiver. Section 1542 provides:

9 A general release does not extend to claims which the creditor does
10 not know or suspect to exist in his or her favor at the time of executing
11 the release, which if known by him or her must have materially affected
his or her settlement with the debtor.

12 In order to achieve a full and complete release of all claims arising from this lawsuit against
13 Released Parties, Class Representatives acknowledge that this Settlement Agreement is meant to
14 include in its effect all claims that were asserted in this action, including claims the Class
15 Representatives do not know or suspect to exist in their favor against Defendants Fremak/Marpenny.

16 37. Claims Administration Costs. All costs and fees of the Claims Administrator shall be
17 paid from the Settlement Fund, but Fremak/Marpenny shall pay the Claims Administrator for
18 expenses incurred prior to its initial payment to the Settlement Fund and reduce its initial payment to
19 the Settlement Fund by any amount so paid to the Claims Administrator. All disputes relating to the
20 Claims Administrator's performance of its duties shall be referred to the Court, if necessary, which
21 shall have continuing jurisdiction over the terms and conditions of the Settlement until all payments
22 and obligations contemplated by the Settlement have been fully satisfied and carried out.

23 38. Plan of Allocation. The portion of the Net Fund Amount to be distributed to each
24 Settlement Class Member shall be based on a fixed amount per week for every week worked during
25 the Class Period, except that funds designated as payment of PAGA penalties shall be based on a
26 fixed amount per week only for those weeks worked during the PAGA Limitations Period. The
27 Parties believe that distributing the Net Fund Amount in proportion to the number of weeks worked
28 by Settlement Class Members to be fair, reasonable, adequate, and the best practicable means for

1 allocating and distributing the Net Fund Amount to Class Members based on the Parties' evaluation
2 of the claims asserted in the Action.

3 39. Allocation of Each Settlement Payment and Tax Issues. Each payment of Settlement
4 Funds to a Settlement Class Member, other than a Service Payment to a Named Plaintiff, shall be
5 allocated as follows: (1) fifty percent (50%) shall be allocated to wages (inclusive of the employee's
6 share of payroll taxes, deductions, and contributions); (2) twenty-five percent (25%) shall be
7 allocated to interest; and (3) twenty-five percent (25%) shall be allocated to civil or statutory
8 penalties or liquidated damages. The portion of each payment attributed to wages shall be reported
9 by the Claims Administrator to government taxing authorities on a Form W-2 prepared by the
10 Claims Administrator, and applicable withholdings shall be taken. Fremak/Marpenny shall
11 separately pay the employer's share of taxes on amounts designated as wages, and shall remit the
12 appropriate amount to the Claims Administrator for transmission to taxing authorities within 14
13 calendar days of receipt of notification of the amount from the Claims Administrator. The portions
14 of each payment attributed to interest, penalties, and liquidated damages shall be reported by the
15 Claims Administrator to government taxing authorities as miscellaneous income on Form 1099 and
16 no withholdings shall be taken. The Parties agree that no taxes shall be withheld from service
17 payments or from Class Counsel's attorneys' fees and costs, which shall also be reported by the
18 Claims Administrator to government taxing authorities on Form 1099s issue to the Class
19 Representatives and Class Counsel, respectively. The Claims Administrator shall coordinate and
20 cooperate with Fremak/Marpenny to ensure that all tax withholdings and deductions made in
21 administering the Settlement are done in accordance with all applicable government regulatory
22 requirements.

23 40. Class Member Dates Worked and Challenges. The Class Notice shall be
24 individualized and shall include a statement of the dates worked by the Class Member receiving the
25 Notice, based on Fremak/Marpenny's available records.

- 26 a. If a Class Member does not challenge the information set forth in the Class
27 Notice, the Class Member need not do anything further and payment shall be
28

1 made to that Class Member based on the statements of the dates worked and
2 the Plan of Allocation set forth herein.

3 b. If a Class Member chooses to challenge the dates worked as set forth in the
4 Class Notice, that Class Member shall submit a written, signed challenge
5 along with any supporting documents to the Claims Administrator at the
6 address provided on the Class Notice within ninety (90) calendar days of the
7 initial Class Notice mailing. A challenge will not be timely if it is postmarked
8 more than ninety (90) calendar days after the initial Class Notice mailing.

9 c. Within five (5) calendar days from the date the Claims Administrator receives
10 the challenge, the Claims Administrator shall send to Class Counsel and
11 Fremak/Marpenny's counsel a copy of the documentation submitted in
12 connection with that challenge. Within five (5) calendar days from the date
13 counsel receive that documentation, Class Counsel and Fremak/Marpenny's
14 counsel shall meet and confer and make one or more recommendations to the
15 Claims Administrator, who shall thereafter make a final and binding
16 determination without hearing or right to appeal and communicate that
17 determination to the Class Member, Class Counsel, and Fremak/Marpenny's
18 counsel.

19 41. Non-Reversionary Settlement & Net Fund Amount Remainder. Fremak/Marpenny's
20 payment of the Gross Fund Amount shall be made on a non-reversionary basis.

21 a. The amounts designated for all Class Members who do not cash their first or
22 second checks and who cannot be located within 120 days after the date of
23 distribution shall be redistributed on a pro rata basis to all other Class
24 Members in future distributions. The amounts designated for all Class
25 Members who do not cash their third checks and cannot be located within 120
26 days after the date of the third distribution shall be redistributed on a pro rata
27 basis to all other Class Members if the Claims Administrator determines that it
28 is economically feasible to do so.

1 b. The funds remaining from uncashed checks after the third distribution (or
2 fourth distribution if economically feasible) will be donated *cy pres* to the East
3 Bay Community Law Center.

4 42. Settlement Class Member Releases and Mutual Releases by Class Representatives
5 and Defendants. Upon final settlement approval, the parties shall enter into mutual releases
6 encompassing any and all claims between Plaintiffs, Settlement Class Members, and
7 Fremak/Marpenny asserted in this Action, covering all Settlement Class Members who do not opt
8 out and all claims through the end of the Class Period. The claims covered in this Release include
9 any and all employment-related claims, actions, charges, complaints, grievances, and causes of
10 action of whatever nature, whether known or unknown, which exist or may have existed during the
11 Class Period on behalf of each Class Representative and Fremak/Marpenny based on the facts
12 alleged in the First Amended Complaint, including but not limited to any and all contract claims,
13 wage claims, wrongful termination claims, disability claims, benefit claims, public policy claims,
14 retaliation claims, statutory claims, emotional distress claims, invasion of privacy claims, defamation
15 claims, fraud claims, quantum meruit claims, and any and all other employment-related claims under
16 federal, state, or other governmental statute, law, regulation, or ordinance that lawfully may be
17 waived. This Release shall also cover Fremak/Marpenny's and Mark Bernardin's agents, heirs,
18 predecessors, successors, assigns, representatives, and attorneys.

19 43. Personal Guaranty. By signing this Agreement, Mark Bernardin (for purposes of this
20 section, "Guarantor") makes a Personal Guaranty ("Guaranty") to insure the punctual payments of
21 any and all indebtedness of Fremak/Marpenny (for purposes of this section, "Obligor") to Class
22 Counsel, Plaintiffs and Settlement Class Members (for purposes of this section, "Creditors") under
23 this Agreement. For valuable consideration, the Guarantor, including his successors and assigns,
24 unconditionally guarantees full payment of any and all indebtedness incurred in favor of the
25 Creditors by the Obligor under this Agreement. The Guarantor shall pay in full all such debts not
26 later than thirty (30) calendar days after the Creditors make a written demand upon the Guarantor.
27 Such demand may be made in a writing sent by facsimile, e-mail, or regular mail to Guarantor, care
28

1 of Fraser McAlpine, Jackson Lewis, 50 California Street, 9th Floor, San Francisco, CA 94111. The
2 Guarantor waives all notices of default, presentment, demand, or protest.

3 44. Construction of Guaranty. This Guaranty shall be construed as an absolute,
4 continuing, and unlimited guaranty of payment as described herein without regard to the regularity,
5 validity, or enforceability of any liability or obligation of the Obligor. Creditors shall not be required
6 to proceed first against the Obligor, against any other person or entity, or against any collateral
7 security held by the Obligor, before resorting to the Guarantor for payment. Until all indebtedness
8 under this Settlement has been paid in full, the Guarantor waives any and all rights of subrogation;
9 waives any right to enforce any remedy that the Creditors now have or may hereafter have against
10 the Obligor; and waives any benefit of, and right to participate in, any security now or hereafter held
11 by the Creditors. The Guarantor's liability shall not be affected by any change, exchange, or
12 alteration of any collateral or other security held by the Creditors for payment of the indebtedness
13 under this Settlement. The Guarantor's liability shall also not be affected by the surrender or release
14 of any such collateral or security, or the failure to realize thereon or to take any action with respect
15 thereto.

16 45. Legal Action. In the event of legal action to collect the Obligor's debt from the
17 Guarantor, the Guarantor shall reimburse the Creditors for any attorneys' fees and court costs they
18 may incur and legal interest on the unpaid debt from the date thirty (30) calendar days after Creditors
19 make a written demand for payment upon the Guarantor to the date the Creditors are paid in full.

20 **VI. TERMINATION OR OTHER FAILURE OF SETTLEMENT**

21 46. Automatic Voiding of Agreement if Settlement Not Finalized. In the event (i) the
22 Court does not enter a Preliminary Approval Order following a motion for preliminary approval; (ii)
23 the Court does not grant final approval to the proposed Settlement in accordance with its terms; (iii)
24 the Court does not enter the Final Judgment and Consent Decree submitted by the parties; or (iv) the
25 Effective Date does not occur or the Settlement does not become final for any other reason, the
26 Settlement shall be null and void, and the Parties agree that any order entered by the Court in
27 furtherance of this Settlement should be treated as void *ab initio*. In such case, the Parties shall take
28 all possible steps to return to the status quo as if the Parties had not entered into this Settlement. In

1 such event, this Agreement, all negotiations, Court orders, and proceedings relating thereto shall be
2 without prejudice to the rights of the Parties hereto, and all evidence relating to the Settlement and
3 settlement negotiations shall not be admissible or discoverable in the Action, in any other litigation,
4 or otherwise. Any funds (including the Gross Fund Amount) used or to be used for the Settlement
5 shall be returned to Fremak/Marpenny, with the exception of amounts already paid or owing to the
6 Claims Administrator for fees and costs actually incurred for the services already performed as part
7 of administering the Settlement as of the date the Settlement is denied approval, terminated, or
8 otherwise not effectuated. In the event the Settlement is denied approval, terminated, or otherwise
9 not effectuated, the Parties hereto shall, otherwise, be restored to their positions as though this
10 Agreement had never been executed.

11 **VII. MISCELLANEOUS**

12 47. No Admission of Liability or Wrongdoing. The Parties enter into this Agreement to
13 resolve the disputes that have arisen between them and to avoid the burden, expense, and risk of
14 continued litigation. In entering into this Agreement, Fremak/Marpenny does not admit and
15 specifically denies that it has: violated any federal, state, or local law; violated any regulations or
16 guidelines promulgated pursuant to any statute or any other applicable laws, regulations, or legal
17 requirements; or engaged in any other unlawful conduct with respect to its employees or operations.
18 Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected
19 with it, shall be construed as an admission or concession by Fremak/Marpenny of any such
20 violation(s) or failure(s) to comply with any applicable law. Except as necessary in a proceeding to
21 enforce the terms of this Agreement, this Agreement and its terms and provisions shall not be
22 offered or received as evidence in any action or proceeding to establish any liability or admission on
23 the part of Fremak/Marpenny or any other Released Party. The Parties intend this Settlement to be
24 contingent upon preliminary and final approval. The Parties do not waive and instead expressly
25 reserve their respective rights to prosecute and defend this Action as if this Agreement never existed
26 in the event the Settlement is not fully and finally approved as set forth herein.

27 48. Binding Effect of Agreement on Class Members. Upon the Effective Date, all
28 Settlement Class Members shall be bound by this Agreement, all Settlement Class Members'

1 released claims shall be dismissed with prejudice against Fremak/Marpenny and McDonald's Corp.,
2 McDonald's U.S.A., LLC, and McDonald's Restaurants of California, Inc., and all released claims
3 shall be released as against the Released Parties. In addition, unless a Class Member opts out of the
4 Settlement as described in this Agreement, he or she shall be bound by the Court's order enjoining
5 all Settlement Class Members from pursuing or seeking to reopen any released claims against the
6 Released Parties.

7 49. Binding Upon Successors and Assigns. Except as provided herein, this Agreement
8 shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto and
9 the Released Parties as defined herein.

10 50. Good Faith Settlement. This Settlement has been negotiated and entered into
11 between the Parties through arms-length negotiations and is made in good faith, including within the
12 meaning of California Code of Civil Procedure § 877 *et seq.* and any comparable provisions under
13 the laws of any state or territory of the United States, whether statutory or judicial decision, which is
14 equivalent or similar to such California code sections.

15 51. Date of Payment and Distribution. In no event shall there be any distributions or
16 payments from the Gross Fund Amount to Class Counsel, any Class Representative, and Class
17 Member, the LWDA, or any other person or entity except the Claims Administrator until after the
18 Effective Date.

19 52. Amendment or Waiver Only in Writing. This Agreement may be amended or
20 modified only by a written instrument signed by counsel for all Parties or their successors-in-
21 interest. No rights hereunder may be waived except in writing.

22 53. Entire Agreement. This Agreement and any attached exhibits constitute the entire
23 agreement between the Parties relating to the Settlement and the related transactions contemplated
24 herein. All prior or contemporaneous agreements, understandings, and statements, whether oral or
25 written, and whether by a party or its counsel, are merged herein. No oral or written representations,
26 warranties, or inducements have been made to any party concerning this Agreement or its exhibits
27 other than the representations, warranties, and covenants contained and memorialized in such
28 documents.

1 54. Authorization to Execute Agreement and Effectuate Settlement and Agreement to
2 Cooperate. Counsel for all Parties hereto warrant and represent that they are expressly authorized by
3 the Parties whom they represent to negotiate this Settlement and to take all appropriate action
4 required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms
5 and to execute any other documents required to effectuate the terms of this Agreement. The Parties
6 and their respective counsel shall cooperate with each other and use their best efforts to effect the
7 implementation of this Agreement. In the event the Parties are unable to reach agreement on the
8 form or content of any document needed to implement this Agreement or on any supplemental
9 provisions that may become necessary to effectuate the terms of this Agreement, the Parties may
10 seek the assistance of the Court to resolve such disagreement. The person or persons signing this
11 Agreement on behalf of Fremak/Marpenny represents and warrants that he or she is authorized to
12 sign this Agreement on behalf of Fremak/Marpenny.

13 55. No Prior Assignment. The Parties hereto represent, covenant, and warrant that they
14 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
15 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action,
16 or rights herein released and discharged except as set forth herein.

17 56. Governing Law. All terms of this Agreement and the exhibits hereto shall be
18 governed by and interpreted according to the laws of the State of California, except to the extent that
19 federal law requires federal law to govern.

20 57. Counterparts. This Agreement may be executed in one or more counterparts and by
21 facsimile. All executed copies of this Agreement and photocopies thereof (including facsimile
22 copies of signature pages) shall have the same force and effect and be as legally binding and
23 enforceable as the original.

24 58. Exhibits. The terms of this Agreement include the terms set forth in the attached
25 exhibits, which are incorporated by this reference as though fully set forth herein. The exhibits to
26 this Agreement are an integral part of the Agreement.

27 59. Construction. The Parties have reached this Agreement through extensive arms-
28 length negotiations, assisted in part by mediation conducted by a federal magistrate judge. This

1 Agreement has been drafted jointly by counsel for the Parties. In any construction or interpretation
2 of this Agreement, the Agreement shall not be construed against either party as the principal drafter
3 of the Agreement.

4 60. Retention of Jurisdiction. The Court shall retain jurisdiction with respect to the
5 interpretation, implementation, and enforcement of the terms of this Agreement and all orders and
6 judgments entered in connection therewith, and the Parties and counsel hereto submit to the
7 jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement
8 embodied in this Agreement and all orders and judgments entered in connection therewith. This
9 jurisdiction shall continue until all terms of the Settlement have been performed in full.

10 61. No Signature Required by Class Members. Because the Settlement Class Members
11 are so numerous, it is impossible or impracticable to have each one execute this Agreement. This
12 Class Notice shall advise such persons of the binding nature of the Releases contained herein, and
13 this Agreement shall have the same force and effect as if it were executed by each Settlement Class
14 Member.

15 62. Titles and Captions of No Force. Paragraph titles or captions contained herein are
16 inserted for convenience and ease of reference and do not define, limit, extend, or describe the scope
17 of the terms of the Agreement and its provisions.

18 63. Mutual Cooperation. The Parties hereto agree to cooperate with each other to
19 accomplish the terms of this Agreement, including but not limited to executing further documents
20 and taking such other action as may reasonably be necessary to implement and effectuate the terms
21 of this Agreement.

22 64. Invalid Without Court Approval. This Agreement is subject to approval by the Court.
23 In the event the Settlement is not approved, it shall be deemed null and void and of no force and
24 effect. The Parties represent, warrant, and covenant that in such event this Agreement shall not be
25 admitted in the Action as evidence or used as a basis for obtaining discovery in the Action.

26 65. Dismissal With Prejudice. Upon Final Approval, the Action shall be dismissed with
27 prejudice against all Defendants named in the Action.

1 **IT IS SO STIPULATED AND AGREED.**

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4 Dated: _____

By: _____
Jason Hughes

5
6 Dated: _____

By: _____
Ryan Schuetz

7
8 Dated: _____

By: _____
Altshuler Berzon LLP
Cohen Milstein Sellers & Toll PLLC
Counsel for Class Representatives
and the Class
(Approved as to form only)

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13 Dated: _____

By: _____
Fremak Arches, Inc.

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16 Dated: _____

By: _____
Marpenny Corporation

17
18 Dated: _____

By: _____
Mark Bernardin, Guarantor

19
20 Dated: _____

By: _____
Fraser McAlpine
Jackson Lewis
Counsel for Fremak Arches, Inc. and
Marpenny Corp. d/b/a McDonald's
(Approved as to form only)

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Dated: _____

By: _____
Jason Hughes


Dated: _____

By: _____
Ryan Schuetz


Dated: _____

By: _____
Altshuler Berzon LLP
Cohen Milstein Sellers & Toll PLLC
Counsel for Class Representatives
and the Class
(Approved as to form only)


Dated: 7/29/16

By: 
Fremak Arches, Inc.

Dated: 7/29/16

By: 
Marpenny Corporation

Dated: 7/29/16

By: 
Mark Bernardin, Guarantor

Dated: _____

By: _____
Fraser McAlpine
Jackson Lewis
Counsel for Fremak Arches, Inc. and
Marpenny Corp. d/b/a McDonald's
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By: _____
Jason Hughes

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Ryan Schuetz

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By: _____
Altshuler Berzon LLP
Cohen Milstein Sellers & Toll PLLC
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13 Dated: _____

By: _____
Fremak Arches, Inc.

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16 Dated: _____

By: _____
Marpenny Corporation

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18 Dated: _____

By: _____
Mark Bernardin, Guarantor

19
20 Dated: July 29, 2016

By: Fraser McAlpine
Fraser McAlpine
Jackson Lewis
Counsel for Fremak Arches, Inc. and
Marpenny Corp. d/b/a McDonald's
(Approved as to form only)

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Dated: 7/31/2016

By: 
Jason Hughes


Dated: 8/01/16

By: 
Ryan Schuetz

Dated: 8-02-16

By: 
Altshuler Berzon LLP
Cohen Milstein Sellers & Toll PLLC
Counsel for Class Representatives
and the Class
(Approved as to form only)

Dated: _____

By: _____
Fremak Arches, Inc. 

Dated: _____

By: _____
Marpenny Corporation

Dated: _____

By: _____
Mark Bernardin, Guarantor

Dated: _____

By: _____
Fraser McAlpine
Jackson Lewis
Counsel for Fremak Arches, Inc. and
Marpenny Corp. d/b/a McDonald's
(Approved as to form only)