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12 AURIA THAOHO

13 SUPERIOR COURT OF CALIFORNIA
14 COUNTY OF SACRAMENTO

15 AURIA THAOHO, on behalf of herself
16 and all others similarly situated,
aggrieved employees, and the State of
17 California,
18 Plaintiff,
19 vs.
20 CAPITOL CASINO, INC., and DOES 1
through 25, inclusive,
21 Defendant.

Case No. 34-2018-00228073-CU-OE-GDS
CLASS AND REPRESENTATIVE ACTION
**CLASS ACTION SETTLEMENT
AGREEMENT AND RELEASE**
Complaint Filed: February 28, 2018

22
23
24 This Class Action Settlement Agreement and Release (“Settlement Agreement” or
25 “Agreement”), is made and entered into by, between, and among Plaintiff AURIA THAOHO
26 (“Plaintiff”) on behalf of herself and the Settlement Class (as defined below) and on behalf of
27 the State of California Labor and Workforce Development Agency (“LWDA”), on the one
28 hand, and Defendant CAPITOL CASINO, INC. (“Defendant” or “Capitol Casino”) on the other

1 hand. Plaintiff and Defendant (collectively, the “Parties”) enter into this Agreement to effect
2 a full and final settlement and preclusive judgment resolving all claims brought or that could
3 have been brought against Capitol Casino in *Auria Thaoho v. Capitol Casino, Inc.*,
4 Sacramento County Sup. Ct. Case No. 34-2018-00228073-CU-OE-GDS (the “Action”) based
5 on the facts alleged in the Action. This Agreement is intended to fully and finally compromise,
6 resolve, discharge, and settle the Released Claims, as defined and on the terms set forth
7 below, and to the full extent reflected herein.

8 **1. RECITALS**

9 This Agreement is made in consideration of the following facts:

10 1.1 WHEREAS, on February 28, 2018, Plaintiff Auria Thaoho filed a putative class
11 action complaint against Capitol Casino in Sacramento Superior Court, Case No. 34-2018-
12 00228073-CU-OE-GDS asserting various Labor Code claims against Capitol Casino arising
13 from its alleged failure to provide compliant meal periods to its employees and its alleged
14 violation of California’s laws related to gratuities and tip-pooling, on behalf of herself and a
15 proposed class consisting of former and current Capitol Casino employees, and ultimately
16 filed her complaint alleging the following seven causes of action (1) failure provide meal
17 periods, (2) failure to pay straight time wages; (3) failure to pay overtime, (4) failure to provide
18 accurate wage statements, (5) waiting time penalties, (6) gratuity violations, and (7) unfair
19 and unlawful business practices. On May 10, 2018, Plaintiff filed a First Amended Complaint,
20 which added a cause of action for (8) violation of the Private Attorneys General Act (“PAGA”).
21 On March 22, 2019, Plaintiff filed a Second Amended Complaint expanding the class from
22 solely Poker Dealers to include all Cardroom Dealers.

23 1.2 WHEREAS, Capitol Casino denies the allegations in the Action; denies that it
24 has engaged in any wrongdoing; denies that any Settlement Class Members were ever
25 denied meal periods or required to contribute to an unlawful tip pool; denies that Plaintiff’s
26 allegations state valid claims; denies that a litigation class could properly be certified in the
27 Action; denies that Plaintiff’s claims could properly be maintained as a PAGA representative
28 action; and states that it is entering into this Settlement Agreement solely to eliminate the

1 burden, expense, and delay of further litigation, and on the express conditions that (a) if for
2 any reason the Settlement is not finalized according to the terms of this Agreement, the
3 Settlement and the documents generated as a result of the Settlement shall not be usable
4 for any purpose in the Action or any arbitration, and (b) this Settlement and the documents
5 generated as a result of the Settlement are not admissible or usable in any other civil or
6 administrative proceeding or arbitration, except to the extent necessary to enforce this
7 Settlement and the orders, judgment and agreements arising from this Settlement;

8 1.3 WHEREAS, a bona fide dispute exists as to whether any amount of wages or
9 penalties are due from Capitol Casino to any Settlement Class Members or to the Labor &
10 Workforce Development Agency (“LWDA”);

11 1.4 WHEREAS, while litigating the Action, the Parties engaged in substantial
12 discovery, including document requests and interrogatories propounded by Plaintiff and to
13 which Capitol Casino responded; and document requests and interrogatories propounded by
14 Capitol Casino to which Plaintiff responded;

15 1.5 WHEREAS, in preparation for mediation, the Parties also engaged in informal
16 discovery, exchanging information and reviewing and analyzing extensive data made
17 available by Capitol Casino, which enabled Plaintiff and the mediator to thoroughly evaluate
18 Plaintiff’s claims and the claims of the putative class, and the likely outcomes, risks and
19 expense of pursuing litigation;

20 1.6 WHEREAS, the Parties attended an in-person mediation session with
21 professional mediator Michael Loeb, where the Parties discussed settlement terms at length
22 with the mediator, before agreeing to the terms of this arm’s-length Settlement;

23 1.7 WHEREAS, as a result of the mediation, Plaintiff and Class Counsel believe
24 that the Settlement provides a favorable recovery for the Settlement Class, based on the
25 claims asserted, the evidence developed, and the damages that might be proven against
26 Capitol Casino in the Action. Plaintiff and Class Counsel further recognize and acknowledge
27 the expense and length of continued proceedings necessary to prosecute the Action against
28 Capitol Casino through trial and appeals. They also have considered the uncertain outcome

1 and the risk of any litigation, especially in complex litigation such as the Action, as well as
2 the difficulties and delays inherent in any such litigation. They are also mindful of the inherent
3 challenges of proof and the strength of the defenses to the alleged claims, and therefore
4 believe that it is desirable that the Released Claims be fully and finally compromised, settled,
5 and resolved with prejudice as set forth herein, subject to the approval of the Court;

6 1.8 WHEREAS, Plaintiff and Class Counsel, based on their own independent
7 investigations and evaluations, have examined the benefits to be obtained under the terms
8 of this Settlement Agreement, have considered the claims of the Plaintiff, the claims of the
9 average Settlement Class Member, the risks associated with the continued prosecution of
10 the Action, and the likelihood of success on the merits of the Action, and believe that, after
11 considering all the circumstances, including the uncertainties surrounding the risk of further
12 litigation and the defenses that Capitol Casino has asserted and could assert, the proposed
13 Settlement set forth in this Agreement is fair, reasonable, adequate, in the best interests of
14 Plaintiff and the Settlement Class, and confers substantial benefits upon the Settlement
15 Class;

16 1.9 WHEREAS, Plaintiff warrants and represents that she is effecting this
17 Settlement and executing this Agreement after having received full legal advice as to her
18 rights and has had the opportunity to obtain independent counsel to review this Agreement;

19 1.10 WHEREAS, the Parties further agree that the Agreement, the fact of this
20 Settlement, and any of the terms of this Agreement, and any documents filed in connection
21 with the Settlement shall not constitute, or be offered, received, claimed, construed, or
22 deemed as, an admission, finding, or evidence of: (i) any wrongdoing, (ii) any violation of any
23 statute or law, (iii) any liability on the claims or allegations in the Action on the part of any
24 Released Parties, or (iv) the propriety of certifying a litigation class or pursuing representative
25 relief under the PAGA in the Action or any other proceeding; and shall not be used by any
26 person for any purpose whatsoever in any legal proceeding, including but not limited to
27 arbitrations, and/or other civil and/or administrative proceedings, other than a proceeding to
28 enforce the terms of the Agreement. There has been no final determination by any court as

1 to the merits of the claims asserted by Plaintiff against Capitol Casino, nor has there been
2 any final determination as to whether a class should be certified or whether PAGA
3 representative claims may properly be pursued, other than for settlement purposes only;

4 1.11 WHEREAS, for settlement purposes only, Capitol Casino will stipulate to the
5 certification of class claims that are subject to the certification requirements of California
6 Code of Civil Procedure Section 382. Capitol Casino disputes that certification is proper for
7 the purposes of litigating the class claims proposed in or flowing from the claims asserted in
8 the Action;

9 1.12 WHEREAS, the Parties desire to compromise and settle all issues and claims
10 that have been, could have been, or should have been brought against Capitol Casino or
11 related persons in the Action, including all claims brought on a putative class and PAGA
12 representative basis in the Action;

13 1.13 NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND
14 AGREED, by the Plaintiff for herself and on behalf of the Settlement Class, and by Capitol
15 Casino that, subject to the approval of the Court, the Action shall be settled, compromised,
16 and dismissed, on the merits and with prejudice, and the Released Claims shall be finally
17 and fully compromised, settled and dismissed as to the Released Parties, in the manner and
18 upon the terms and conditions hereafter set forth in this Agreement.

19 **2. DEFINITIONS**

20 Unless otherwise defined herein, capitalized terms used in this Agreement shall have
21 the meanings set forth below:

22 2.1 "Class Counsel" means Hoyer & Hicks, including individual attorneys Richard
23 A. Hoyer and Ryan L. Hicks, and United Employees Law Group, P.C., including individual
24 attorney Walter Haines.

25 2.2 "Class Counsel Award" means (i) the attorneys' fees for Class Counsel's
26 litigation and resolution of the Action, and all claims resolved by this Settlement, as awarded
27 by the Court, which may not exceed one-third (1/3) of the Total Settlement Amount plus (ii)
28 all actual expenses and costs incurred by Class Counsel in litigation and resolution of the

1 Action, and all claims resolved by this Settlement, as awarded by the Court, not to exceed
2 twenty-thousand dollars (\$20,000.00).

3 2.3 "Class Information" means information regarding Settlement Class Members
4 that Capitol Casino will in good faith compile from its records and provide to the Settlement
5 Administrator. Class Information shall be provided in a Microsoft Excel spreadsheet and shall
6 include, if possible, for each Settlement Class Member: full name, phone number, last four
7 digits of Social Security Number, employment start and end dates, and last known address.
8 Because Settlement Class Members' private information is included in the Class Information,
9 Class Counsel and the Settlement Administrator shall maintain the Class Information in
10 confidence and shall use and disclose Class Information only for purposes of this Settlement
11 and for no other purpose; access shall be limited to the Settlement Administrator personnel
12 with a need to use the Class Information as part of the administration of the Settlement.

13 2.4 "Class Notice" means the notice of class action settlement to be provided to
14 Settlement Class Members, without material variation from the relevant portion of Exhibit 1,
15 to be translated into Vietnamese and Chinese (Simplified).

16 2.5 "Court" means Sacramento County Superior Court.

17 2.6 "Effective Date" means the first court day after the latter of: (a) in the event of
18 an timely appeal filed by a Settlement Class Member who has moved to intervene in the
19 State Action and/or moved to set aside the Final Judgment, the date of final affirmance of an
20 appeal of the Final Order and Final Judgment; (b) in the event of an timely appeal filed by a
21 Settlement Class Member who has moved to intervene in the State Action and/or moved to
22 set aside the Final Judgment, the date of final dismissal of any appeal from the Final Order
23 and Final Judgment or the final dismissal of any proceeding on certiorari to review the Final
24 Order and Final Judgment; (c) in the event of an timely appeal filed by a Settlement Class
25 Member who has moved to intervene in the State Action and/or moved to set aside the Final
26 Judgment, five days after the expiration date of the time for the filing or noticing of any appeal
27 from the Final Order and Final Judgment if any timely Objections are served on the
28

1 Administrator; or (d) if no Settlement Class Member has moved to intervene or moved to set
2 aside the Judgment, the date of the Final Judgment.

3 2.7 “Exclusion/Objection Deadline” means the final date by which a Settlement
4 Class Member may either (i) submit an objection to any aspect of the Settlement, or (ii)
5 request to be excluded from the Settlement (also known as “opting out” of the Settlement).
6 The Exclusion/Objection Deadline shall be forty-five (45) days after the Notice Date, and shall
7 be specifically identified and set forth in the Preliminary Approval Order and the Class Notice.

8 2.8 “Final Approval” means the Court’s entry of a Final Approval order finally
9 approving this Settlement.

10 2.9 “Final Approval Hearing” means the hearing at or after which the Court will
11 make a final decision as to whether the Settlement is fair, reasonable, and adequate, and
12 therefore, finally approved by the Court.

13 2.10 “First Payment” means the payment by Capitol Casino of half of the Total
14 Settlement Amount made to the Settlement Administrator within seven (7) calendar days
15 from the Court’s grant of final approval.

16 2.11 “Individual Settlement Payment” means the amount payable from the Total
17 Settlement Amount to each Settlement Class Member who does not opt out. The Individual
18 Settlement Payment shall be calculated pursuant to Section V herein.

19 2.12 “Judgment” means the judgment to be entered in the Action on Final Approval
20 of this Settlement.

21 2.13 “Legally Authorized Representatives” means an administrator/administratrix,
22 personal representative, or executor/executrix of a deceased Settlement Class Member’s
23 estate; a guardian, conservator, or next friend of an incapacitated Settlement Class Member;
24 or any other legally appointed person responsible for handling the business affairs of a
25 Settlement Class Member.

26 2.14 “Named Plaintiff’s General Released Claims” means any and all past, present,
27 and future claims, actions, demands, causes of action, suits, debts, obligations, damages,
28 rights or liabilities, of any nature and description whatsoever, known or unknown, existing or

1 potential, recognized now or hereafter, expected or unexpected, pursuant to any theory of
2 recovery (including but not limited to those based in contract or tort, common law or equity,
3 federal, state, or local law, statute, ordinance, or regulation), and for claims for compensatory,
4 consequential, punitive or exemplary damages, statutory damages, penalties, interest,
5 attorneys' fees, costs or disbursements, against the Released Parties, including unknown
6 claims covered by California Civil Code section 1542, as quoted below in Paragraph 9.4, by
7 the Plaintiff, arising during the period from the beginning of the Plaintiff's first interaction with
8 Capitol Casino to the date on which the Court enters the order of Final Approval of this
9 Settlement, for any type of relief that can be released as a matter of law, including, without
10 limitation, claims for wages, damages, unpaid costs, penalties (including civil and waiting
11 time penalties), liquidated damages, punitive damages, interest, attorneys' fees, litigation
12 costs, restitution, or injunctive, declaratory or equitable relief with the exception of any claims
13 which cannot be released as a matter of law. Plaintiff will generally release all known and
14 unknown claims against Capitol Casino, and waive the application of section 1542 of the
15 California Civil Code. The claims released pursuant to this paragraph include but are not
16 limited to the Settlement Class Members' Released Claims, as well as any other claims under
17 any provision of the Fair Labor Standards Act, the California Labor Code, the California Code
18 of Regulations, or any applicable California Industrial Welfare Commission Wage Order(s),
19 and claims under state or federal discrimination statutes, including, without limitation the
20 California Fair Employment and Housing Act, California Government Code section 12940 et
21 seq.; the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 et
22 seq.; the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.; the Age Discrimination
23 in Employment Act of 1967, as amended; the Employee Retirement Income Security Act of
24 1974, 29 U.S.C. § 1001 et seq.; and all of their implementing regulations and interpretive
25 guidelines.

26 2.15 "Net Settlement Fund" means the portion of the Total Settlement Amount to be
27 distributed to Settlement Class members after the payment by the Settlement Administrator
28

1 of the Class Counsel award, Settlement Administrator Expenses, PAGA Payment, and
2 Service Awards.

3 2.16 "Notice Date" means the date of the initial distribution of the Class Notice to
4 Settlement Class Members, as set forth in Section VI.

5 2.17 "Opt Out List" means the Court-approved list of all persons who timely and
6 properly request exclusion from the Settlement Class.

7 2.18 "PAGA Claims" means the Plaintiff' representative claims seeking penalties
8 pursuant to PAGA, as alleged in the Complaint to the fullest extent permitted by law.

9 2.19 "PAGA Payment" means a total payment of \$10,000 to settle all claims under
10 the PAGA. From this amount, 75% will be paid to the LWDA for civil penalties pursuant to
11 the PAGA and 25% will be distributed to Settlement Class Members and considered
12 penalties for tax reporting purposes.

13 2.20 "Plaintiff" means Auria Thaoho.

14 2.21 "Plan of Allocation" means the plan for allocating the Total Settlement Amount
15 between and among Settlement Class Members as approved by the Court.

16 2.22 "Preliminary Approval Date" means the date that the Court enters the
17 Preliminary Approval Order and thus: (i) preliminarily approves the Settlement, and the
18 exhibit thereto, and (ii) enters an order providing for notice to the Settlement Class, an
19 opportunity to opt out of the Settlement Class, an opportunity to submit timely and proper
20 objections to the Settlement, and setting a hearing on the fairness of the terms of Settlement,
21 including approval of the Class Counsel Award.

22 2.23 "Preliminary Approval Order" means the order that Plaintiff and Capitol Casino
23 will seek from the Court granting preliminary approval to the Settlement Agreement. Entry of
24 the Preliminary Approval Order shall constitute preliminary approval of the Settlement
25 Agreement.

26 2.24 "Qualifying Workweek" is any calendar week in which the employee performed
27 work.

1 2.25 “Released Claims” means (i) Settlement Class Members’ Released Claims and
2 (ii) Named Plaintiff’s General Released Claims.

3 2.26 “Released Parties” means Capitol Casino, Inc. and its past, present, and future
4 parents, subsidiaries, affiliates, divisions, joint ventures, licensees, franchisees, and any
5 other legal entities, whether foreign or domestic, that are owned or controlled by Capitol
6 Casino.

7 2.27 “Second Payment” means the payment by Capitol Casino to the Settlement
8 Administrator of the second half of the Total Settlement Amount made within ninety (90)
9 calendar days of the First Payment.

10 2.28 “Service Award” means the amount approved by the Court to be paid to Plaintiff
11 Auria Thaoho, in addition to her Individual Settlement Payment, in recognition of her efforts
12 in coming forward as named Plaintiff and as consideration for a full, general, and
13 comprehensive release of the Named Plaintiff’s General Released Claims. The Service
14 Award amount payable to Plaintiff is not to exceed \$10,000.

15 2.29 “Settlement” means the settlement of the Action between and among Plaintiff
16 and Capitol Casino, as set forth in this Settlement Agreement.

17 2.30 “Settlement Administrator” means the administrator approved and/or
18 designated by the Court.

19 2.31 “Settlement Administrator Expenses” means the amount to be paid to the
20 Settlement Administrator exclusively from the Total Settlement Amount, including the total
21 costs, expenses, and fees of the Settlement Administrator. The amount is not to exceed
22 \$15,000. If the Settlement Administrator’s expenses are less than \$15,000, the balance of
23 such funds shall be included in the amount to be distributed to the Settlement Class pursuant
24 to paragraph 10.2.5.

25 2.32 “Settlement Class” means all individuals in California who have worked for
26 Capitol Casino as Cardroom Dealers from February 28, 2014 through Preliminary Approval.

27 2.33 “Settlement Class Member” means any member of the Settlement Class.
28

1 2.34 “Settlement Class Members’ Released Claims” means any and all past and
2 present claims, actions, demands, causes of action, suits, debts, obligations, damages, rights
3 or liabilities, of any nature and description whatsoever, known or unknown, existing or
4 potential, recognized now or hereafter, expected or unexpected, pursuant to any theory of
5 recovery (including but not limited to those based in common law or equity, federal, state, or
6 local law, statute, ordinance, or regulation), and for claims for compensatory, consequential,
7 punitive or exemplary damages, statutory damages, declaratory relief, injunctive relief,
8 equitable relief, penalties, interest, attorneys’ fees, costs or disbursements, including but not
9 limited to those incurred by Class Counsel or any other counsel representing the Plaintiff or
10 any Settlement Class Members (other than those expressly awarded by the Court in the
11 Class Counsel Award authorized by this Agreement), that arise from or are reasonably based
12 on or related to Capitol Casino’s alleged failure to provide meal periods to and/or its alleged
13 unlawful tip-pooling policy as applied to Settlement Class Members by other entities or
14 individuals, and specifically including the following claims arising from, based on, or
15 reasonably relating to the claims asserted and the facts alleged in the Action: including claims
16 (based on the facts alleged in the Action) for unpaid wages (including claims for minimum
17 wage, regular wages, overtime, final wages, calculation of the correct overtime or regular
18 rate, and/or meal period premiums based on the alleged meal period violations), liquidated
19 damages, expense reimbursements, interest, penalties (including waiting time penalties
20 pursuant to Labor Code Section 203, wage statement penalties pursuant to Labor Code
21 Section 226, restitution, and civil penalties pursuant to the PAGA based on any provision of
22 the Labor Code, Wage Orders or any other statute or regulation to the fullest extent permitted
23 by law), claims pursuant to the California Labor Code, Code of Civil Procedure Section
24 1021.5, the California Code of Regulations, Title 8, Sections 11010 and 11040, the Industrial
25 Welfare Commission Wage Orders, claims under Business and Professions Code Section
26 17200, et seq., claims under the federal Fair Labor Standards Act, claims for attorneys’ fees
27 and costs, and unfair business practices. “Settlement Class Members’ Released Claims” do
28 not include claims that, as a matter of law cannot be released and do not include claims for

1 retaliation, discrimination, wrongful termination, or individual claims filed with the appropriate
2 agency for the recovery of workers' compensation benefits. "Settlement Class Members'
3 Released Claims" are released through the Preliminary Approval Date.

4 2.35 "Settlement Class Period" means February 28, 2014, through the Preliminary
5 Approval Date.

6 2.36 "Total Settlement Amount" means Eight-hundred Thousand (\$800,000) for
7 payment of all claims, which is the maximum amount that Capitol Casino is obligated to pay
8 under this Settlement Agreement under any circumstances (subject to §§ 7.9 and 11.2 below)
9 in order to resolve and settle the Action, subject to Court approval. The Total Settlement
10 Amount includes all costs and fees, including, but not limited to, the Class Counsel Award,
11 Settlement Administrator Expenses, escrow costs and expenses, Service Award, interest,
12 and taxes and tax expenses.

13 2.37 "Void Date" means the date by which any checks issued to Settlement Class
14 Members shall become void, i.e. on the 60th day after mailing.

15 **3. SUBMISSION OF THE SETTLEMENT AGREEMENT TO THE COURT FOR**
16 **PRELIMINARY AND FINAL APPROVAL**

17 3.1 Upon execution of this Settlement Agreement, the Plaintiff shall submit to the
18 Court a motion for preliminary approval of the Settlement. The motion for preliminary
19 approval shall include a proposed plan for sending of the Class Notice to Settlement Class
20 Members within twenty-one (21) days after the Preliminary Approval Date (the Notice Date),
21 and establishing a period of forty-five (45) days from the Notice Date within which any
22 Settlement Class Member may (i) request exclusion from the Settlement Class, (ii) object to
23 the proposed Settlement, or (iii) object to Class Counsel's request for the Class Counsel
24 Award and for the Service Award to the Plaintiff (the Exclusion/Objection Deadline).

25 3.2 The Parties stipulate to certification under California Code of Civil Procedure
26 Section 382, for settlement purposes only, of the Settlement Class, excluding the Settlement
27 Class's PAGA Claims. The Parties agree that this stipulation shall not be admissible in, and
28 may not be used by any person for any purpose whatsoever in any legal proceeding,

1 including but not limited to any arbitrations and/or any civil and/or administrative proceedings,
2 other than a proceeding to enforce the terms of the Agreement, as further set forth in this
3 Agreement.

4 3.3 The Parties stipulate to the form of, and agree to submit to the Court for its
5 consideration this Settlement Agreement, and the following Exhibit(s) to this Settlement
6 Agreement: Class Notice (Exhibit 1); Notice of Final Approval of Settlement (Exhibit 2).

7 3.4 Solely for purposes of implementing this Agreement and effectuating the
8 proposed Settlement, the Parties agree and stipulate that: The Court may enter the
9 Preliminary Approval Order, preliminarily approving the Settlement and this Agreement.
10 Among other things, the Preliminary Approval Order shall grant leave to preliminarily certify
11 the Settlement Class for settlement purposes only; approve the Plaintiff as class
12 representative, appoint Class Counsel to represent the Settlement Class, and appoint the
13 Settlement Administrator; approve the Class Notice, and the class notice plan embodied in
14 the Settlement Agreement, and approve them as consistent with California Rules of Court
15 3.766(d) and 3.769(f) and due process; set out the requirements for disputing the information
16 upon which Settlement Class Members' share of the Settlement will be calculated, objecting
17 to the Settlement, excluding Settlement Class Members who timely and properly request to
18 be excluded from the Settlement Class, all as provided in this Agreement; and provide that
19 certification and all actions associated with certification are undertaken on the condition that
20 the certification and other actions shall be automatically vacated and of no force or
21 evidentiary effect if this Agreement is terminated or disapproved, as provided in this
22 Agreement.

23 3.5 Class Counsel will submit to the LWDA all papers filed by Plaintiff relating to
24 the preliminary approval of this Agreement within two (2) days of the filing of that motion.

25 3.6 At the Final Approval Hearing, the Plaintiff shall request entry of a Final
26 Approval order and Judgment, to be agreed upon by the Parties, the entry of which is a
27 material condition of this Settlement and that, among other things:
28

1 3.6.1 Finally approves the Settlement as fair, reasonable, and adequate and
2 directs its consummation pursuant to the terms of the Settlement Agreement;

3 3.6.2 Finds that Class Counsel and Plaintiff adequately represented the
4 Settlement Class for the purpose of entering into and implementing the Agreement;

5 3.6.3 Re-confirms the appointment of the Settlement Administrator and finds
6 that the Settlement Administrator has fulfilled its duties under the Settlement to date;

7 3.6.4 Finds that the Class Notice (i) constituted the best practicable notice; (ii)
8 constituted notice that was reasonably calculated, under the circumstances, to apprise
9 Settlement Class Members of the pendency of the Action, and their right to exclude
10 themselves from or object to the proposed settlement and to appear at the Final
11 Approval Hearing; (iii) was reasonable and constituted due, adequate, and sufficient
12 notice to all persons entitled to receive notice; and (iv) met all applicable requirements
13 of California Rules of Court 3.766(d) and 3.769(f), due process, and any other
14 applicable rules or law;

15 3.6.5 Approves the Opt-Out List and determines that the Opt-Out List is a
16 complete list of all Settlement Class Members who have timely and properly requested
17 exclusion from the Settlement Class and, accordingly, shall neither share in nor be
18 bound by the Final Approval order and Judgment;

19 3.6.6 Directs that the Final Approval order and Judgment of dismissal shall be
20 final and entered forthwith;

21 3.6.7 Without affecting the finality of the Final Approval order and Judgment,
22 directs that the Court retains continuing jurisdiction over the Plaintiff, the Settlement
23 Class, and Capitol Casino as to all matters concerning the administration,
24 consummation, and enforcement of this Settlement Agreement;

25 3.6.8 Adjudges that, as of the Final Approval Date, the Plaintiff, and all
26 Settlement Class Members who have not been excluded from the Settlement Class
27 as provided in the Opt-Out List approved by the Court, and their Legally Authorized
28 Representatives, heirs, estates, trustees, executors, administrators, principals,

1 beneficiaries, representatives, agents, assigns, and successors, and/or anyone
2 claiming through them or acting or purporting to act for them or on their behalf,
3 regardless of whether they have received actual notice of the proposed Settlement,
4 have conclusively compromised, settled, discharged, and released the Named
5 Plaintiff's General Released Claims (in the case of the Plaintiff) and Settlement Class
6 Members' Released Claims (in the case of the Settlement Class Members) against
7 Capitol Casino and the Released Parties, and are bound by the provisions of this
8 Agreement;

9 3.6.9 Affirms that, notwithstanding the submission of a timely and proper
10 request for exclusion, Settlement Class Members will still be bound by the settlement
11 and release of the PAGA Claims or remedies under the Final Judgment pursuant to
12 *Arias v. Superior Court* (2009) 46 Cal. 4th 969 as requests for exclusion do not apply
13 to the PAGA Claims, and further affirms that the LWDA's claims for civil penalties
14 pursuant to PAGA for violations of the Released Claims are also extinguished;

15 3.6.10 Declares this Agreement and the Final Approval order and Judgment to
16 be binding on, and have *res judicata* and preclusive effect as to all pending and future
17 lawsuits or other proceedings: (i) that encompass the Named Plaintiff's General
18 Released Claims and that are maintained by or on behalf of the Plaintiff's and/or their
19 Legally Authorized Representatives, heirs, estates, trustees, executors,
20 administrators, principals, beneficiaries, representatives, agents, assigns, and
21 successors, and/or anyone claiming through them or acting or purporting to act for
22 them or on their behalf, and (ii) that encompass the Settlement Class Members'
23 Released Claims and that are maintained by or on behalf of any Settlement Class
24 Member who has not been excluded from the Settlement Class as provided in the
25 Opt-Out List approved by the Court and/or his or her Legally Authorized
26 Representatives, heirs, estates, trustees, executors, administrators, principals,
27 beneficiaries, representatives, agents, assigns, and successors, and/or anyone
28 claiming through them or acting or purporting to act for them or on their behalf,

1 regardless of whether the Settlement Class Member previously initiated or
2 subsequently initiates individual litigation or other proceedings encompassed by the
3 Settlement Class Members' Released Claims, and even if such Settlement Class
4 Member never received actual notice of the Action or this proposed Settlement;

5 3.6.11 Determines that the Agreement and the Settlement provided for herein,
6 and any proceedings taken pursuant thereto, are not, and should not in any event be
7 offered, received, or construed as evidence of, a presumption, concession, or an
8 admission by any party of liability or non-liability or of the certifiability or non-
9 certifiability of a litigation class, or that PAGA representative claims may validly be
10 pursued, or of any misrepresentation or omission in any statement or written
11 document approved or made by any Party; provided, however, that reference may be
12 made to this Agreement and the Settlement provided for herein in such proceedings
13 as may be necessary to effectuate the provisions of this Agreement, as further set
14 forth in this Agreement;

15 3.6.12 Orders that the preliminary approval of the Settlement, certification of
16 the Settlement Class and final approval of the proposed Settlement, and all actions
17 associated with them, are undertaken on the condition that they shall be vacated if the
18 Settlement Agreement is terminated or disapproved in whole or in part by the Court,
19 or any appellate court and/or other court of review, in which event the Agreement and
20 the fact that it was entered into shall not be offered, received, or construed as an
21 admission or as evidence for any purpose, including but not limited to an admission
22 by any Party of liability or non-liability or of any misrepresentation or omission in any
23 statement or written document approved or made by any Party, or of the certifiability
24 of a litigation class or the appropriateness of maintaining a PAGA representative
25 action, as further provided in this Settlement Agreement;

26 3.6.13 Authorizes the Parties, without further approval from the Court, to agree
27 to and adopt such amendments, modifications, and expansions of this Agreement,
28

1 including all Exhibits hereto, as (i) shall be consistent in all material respects with the
2 Final Approval order and (ii) do not limit the rights of Settlement Class Members; and

3 3.6.14 Contains such other and further provisions consistent with the terms of
4 this Settlement Agreement to which the Parties expressly consent in writing.

5 3.7 At the Final Approval Hearing and as a part of the final approval of this
6 Settlement, Class Counsel will also request approval of the Plan of Allocation set forth in
7 Section V. Any modification to the Plan of Allocation by the Court shall not (i) affect the
8 enforceability of the Settlement Agreement, (ii) provide any of the Parties with the right to
9 terminate the Settlement Agreement, or (iii) impose any obligation on the Defendant or any
10 Released Party to increase the consideration paid in connection with the Settlement.

11 3.8 At the Final Approval Hearing, Class Counsel may also request entry of an
12 Order approving the Class Counsel Award and the Service Award to the Plaintiff, which shall
13 be paid exclusively from the Total Settlement Amount and in accordance with the distribution
14 plan described in Section V. In no event shall any Released Party otherwise be obligated to
15 pay for any attorneys' fees and expenses or Service Award. The disposition of Class
16 Counsel's application for a Class Counsel Award, and for the Service Award, is within the
17 sound discretion of the Court and is not a material term of this Settlement Agreement, and it
18 is not a condition of this Settlement Agreement that such application be granted. Any
19 disapproval or modification of such application by the Court shall not (i) affect the
20 enforceability of the Settlement Agreement, (ii) provide any of the Parties with the right to
21 terminate the Settlement Agreement, or (iii) increase the consideration Defendant or any
22 Released Party pays in connection with the Settlement. Released Parties shall have no
23 liability to Class Counsel arising from any claim regarding the division of the Class Counsel
24 Award between and among Class Counsel or any other counsel representing Plaintiff or the
25 Settlement Class Members.

26 3.9 In no event shall Capitol Casino or any Released Party be obligated to pay
27 Settlement Administration Expenses beyond those provided for in this Agreement.
28

1 3.10 Within 10 days after entry of Judgment, Class Counsel will submit a copy of the
2 Judgment to the LWDA.

3 **4. SETTLEMENT CONSIDERATION**

4 4.1 The total consideration for the Settlement from Capitol Casino is the Total
5 Settlement Amount (\$800,000.00), made in two installments, which are separated by ninety
6 (90) calendar days. This is an “all in” number that includes, without limitation, all monetary
7 benefits and payments to the Settlement Class, Service Award, Class Counsel Award,
8 Settlement Administrator Expenses and the PAGA Payment, and all claims for interest, fees,
9 and costs. Under no circumstances shall Capitol Casino be required to pay anything more
10 than the Total Settlement Amount (with the exception of §§7.9 and 11.2 below). In no event
11 shall Capitol Casino be liable for making any payments under this Settlement, or for providing
12 any relief to Settlement Class Members, before the deadlines set forth in this Agreement.
13 The Parties agree that the entire amount of the Net Settlement Fund, less the employee’s
14 share of applicable payroll taxes, shall be distributed to Participating Class Members.
15 Defendant will be responsible for the employer’s share of payroll taxes, which will not be
16 deducted from the Total Settlement Amount.

17 4.2 The Plaintiff and all Settlement Class Members who receive a payment of any
18 kind from the Total Settlement Amount (including, in the case of the Plaintiff, the Service
19 Award) expressly acknowledge that two-thirds (2/3) of such payments shall be considered
20 non-wages for which an IRS Form 1099 will be issued, if required, and one-third (1/3) shall
21 be considered wages for which an IRS Form W-2 shall be issued. The Plaintiff and all
22 Settlement Class Members who receive a payment of any kind from the Total Settlement
23 Amount agree to timely pay in full all of the federal, state, and municipal income taxes owed
24 on such payments.

25 4.3 Capitol Casino agrees not to oppose a request for the Service Award for
26 Plaintiff, as awarded by the Court, up to a maximum of \$10,000. The Plaintiff and Class
27 Counsel agree not to seek a Service Award in excess of the above amount.
28

1 4.4 Class Counsel agrees not to seek an award of attorneys' fees, costs and
2 expenses from the Court in excess of one-third (1/3) of the Total Settlement Amount plus
3 reasonable costs incurred not to exceed \$20,000. Capitol Casino agrees not to oppose a
4 request for attorneys' fees, costs and expenses up to one third (1/3) of the Total Settlement
5 Amount. Any amount awarded as the Class Counsel Award shall be inclusive of any and all
6 amounts due to or claimed by any and all counsel representing Plaintiff. Released Parties
7 and Settlement Class Members shall have no obligation regarding or liability for allocation or
8 payment of the Class Counsel Award.

9 4.5 Class Counsel shall provide the Settlement Administrator notice of receipt of
10 the Class Counsel Award. Released Parties shall have no liability to Class Counsel or any
11 other counsel for Plaintiff or any Settlement Class Member arising from any claim regarding
12 the division of the Class Counsel Award.

13 **5. FUNDING AND ALLOCATION OF THE SETTLEMENT**

14 5.1 The funding of this settlement will be completed in two parts. Within seven (7)
15 calendar days of Final Approval, Capitol Casino shall provide half the Total Settlement
16 Amount (\$400,000) as the First Payment to the Settlement Administrator. Within ninety (90)
17 calendar days from the First Payment, Capitol Casino shall provide the other half of the Total
18 Settlement Amount (\$400,000) as the Second Payment to the administrator. After each
19 payment, the Settlement Administrator shall thereafter distribute the funds in the manner and
20 at the times set forth in this Agreement.

21 5.2 Within seven (7) days of the First Payment, the payment of the Class Counsel
22 Award, the Service Award approved by the Court, the LWDA Payment will be distributed by
23 the Settlement Administrator, and thereafter the remainder of the First Payment will be made
24 to the Participating Class Members on a pro rata basis based upon the calculation described
25 in § 5.4 below. Within seven (7) calendar days of the Second Payment, the Settlement
26 Administrator will distribute to itself the Settlement Administrator Expenses (actual costs
27 incurred up to \$15,000), and the remainder of the Second Payment to the Participating Class
28 Members on a pro rata basis based upon the calculation described in § 5.4 below.

1 5.3 To receive a payment from the Settlement, a Settlement Class Member must
2 not have submitted a request for exclusion from the Settlement. Settlement Class Members
3 are not eligible to receive any compensation from the Settlement other than the Individual
4 Settlement Payment.

5 5.4 The amount of each Settlement Class Member's Individual Settlement
6 Payment will be distributed from the Total Settlement Amount and calculated in proportion to
7 Capitol Casino's best estimate of each Settlement Class Member's total weeks worked
8 during the Settlement Class Period (see Paragraph 2.35 above), as determined from the
9 Class Information provided to the Settlement Administrator by Capitol Casino. Class Counsel
10 will be permitted to review and approve the calculation of settlement funds to be distributed.
11 If under the Plan of Allocation a Settlement Class Member will be distributed \$10 or more,
12 then he or she will receive the entitled amount. If, however, the Settlement Class Member is
13 due less than \$10, then his or her Individual Settlement Payment will be for \$10.

14 5.5 The distribution of the Individual Settlement Payments to Settlement Class
15 Members will be accomplished in two parts. The first distribution will occur after the First
16 Payment. The Settlement Administrator shall make Individual Settlement Payments to the
17 Settlement class members from the available funds remaining after distributing the Class
18 Counsel Award, the Service Award approved by the Court, and the LWDA Payment. The
19 second distribution will occur after the second payment from the available funds remaining
20 after distributing the Settlement Administration Expenses. The distributions to Participating
21 Class Members will be divided proportionally based on the pro rata calculation method
22 discussed in § 5.4 above.

23 5.6 Following the distribution of the Individual Settlement Payments to Settlement
24 Class Members, all funds not claimed prior to the Void Date (i.e. all funds from uncashed
25 checks) after the distribution will be distributed to the *cy pres* beneficiary of the Settlement
26 as described in paragraph 10.4.

27 5.7 As described in Section VI, each Settlement Class Member will have the
28 opportunity, should he or she disagrees with Capitol Casino's calculation of his or her work

1 weeks, to provide documentation to establish the appropriate number. There will be a
2 presumption that Capitol Casino's records are correct, absent evidence produced by a
3 Settlement Class Member to the contrary.

4 5.8 The Settlement Administrator shall issue the Individual Settlement Payments
5 from the Total Settlement Amount to each Settlement Class Member who does not opt out.
6 The Individual Settlement Payments shall be reported by the Settlement Administrator to the
7 applicable governmental authorities on IRS Forms 1099 and W-4. The portions allocated to
8 Plaintiff's Service Award shall likewise be reported on IRS Form W-4 and 1099 by the
9 Settlement Administrator. The Settlement Administrator shall be responsible for issuing
10 copies of IRS Form W-4 and 1099 for the Plaintiff and Settlement Class Members.

11 **6. CLASS NOTICE PROCEDURES**

12 6.1 No more than ten (10) calendar days after entry of the Preliminary Approval
13 Order, Defendant shall provide the Settlement Administrator with the Class Information for
14 purposes of sending the Class Notice to Settlement Class Members.

15 6.2 The Class Notice will include a statement to each Settlement Class Member
16 containing his or her total workweeks being used to calculate the amount of his or her
17 Settlement Payment as described in Paragraph 5.4, and inform Settlement Class Members
18 of their right to request exclusion from the Settlement, of their right to object to the Settlement,
19 of their right to dispute the information upon which their share of the Settlement will be
20 calculated, and the claims to be released.

21 6.3 As set forth in the Class Notice, Settlement Class Members will be provided
22 forty-five (45) days after their receipt of the Class Notice and accompanying statement to
23 disagree with Capitol Casino's calculation of his or her total workweeks by providing
24 documentation to the Settlement Administrator to show contrary information. The Settlement
25 Administrator shall review any documentation submitted by a Settlement Class Member and
26 consult with the Parties to determine whether an adjustment is warranted. The Settlement
27 Administrator's determination of the amount of any Settlement Class Member's Qualifying
28 Workweeks shall be binding upon the Settlement Class Member and the Parties, and the

1 Settlement Class Members Individual Settlement Payment will be calculated according to the
2 Settlement Administrator's determination. There will be a presumption that Capitol Casino's
3 records are correct, absent evidence produced by a Settlement Class Member to the
4 contrary.

5 6.4 No more than twenty-one (21) days after entry of the Preliminary Approval
6 Order, provided Capitol Casino timely complied with its obligation in Paragraph 6.1, the
7 Settlement Administrator shall send a copy of the Class Notice by first-class mail to each
8 potential Settlement Class Member (the Notice Date).

9 6.5 If any Class Notice sent to any potential Settlement Class Member via first-
10 class mail is returned to the Settlement Administrator with a forwarding address, the
11 Settlement Administrator shall forward the postal mailing to that address. For any remaining
12 returned postal mailings, the Settlement Administrator shall make a good-faith search of an
13 appropriate database, as described in Paragraph 6.6, and postal mailings shall be forwarded
14 to any new postal mail address obtained through such a search. In the event that any Class
15 Notice is returned as undeliverable a second time, no further postal mailing shall be required.
16 The Settlement Administrator shall maintain a log detailing the instances Class Notices are
17 returned as undeliverable.

18 6.6 Before any mailing, the Settlement Administrator shall make a good-faith
19 attempt to obtain the most-current names and postal mail addresses for all potential
20 Settlement Class Members to receive such postal mail, including cross-checking the names
21 and/or postal mail addresses it received from Capitol Casino, as well as any other sources,
22 with appropriate databases and "skip tracing" (e.g., the National Change of Address
23 Database) and performing further reasonable searches (e.g., through Lexis/Nexis) for more-
24 current names and/or postal mail addresses for Settlement Class Members. All Settlement
25 Class Members' names and postal mail addresses obtained through these sources shall be
26 protected as confidential and not used for purposes other than the notice and administration
27 of this Settlement. The Settlement Administrator shall exercise its best judgment to determine
28 the current mailing address for each Settlement Class Member. The address determined by

1 the Settlement Administrator as the current mailing address shall be presumed to be the best
2 mailing address for each Settlement Class Member.

3 6.7 The number and manner of any reminder to be sent to the Settlement Class
4 Members, beyond that described in Paragraph 6.4, following the initial Class Notice mailing
5 is to be determined by Class Counsel and the Settlement Administrator.

6 6.8 The Parties agree that the procedures set forth in this Section constitute
7 reasonable and the best practicable notice under the circumstances and an appropriate and
8 sufficient effort to locate current addresses for Settlement Class Members such that no
9 additional efforts to do so shall be required.

10 6.9 The Settlement Administrator will provide Class Notice by, at a minimum, (i)
11 first-class mail notice without material variation from the form attached as the relevant portion
12 of Exhibit 1. The Class Notice shall comply with California Rules of Court 3.766(d), 3.769(f)
13 and due process.

14 6.10 At least twenty-one (21) days before the Final Approval Hearing, the Settlement
15 Administrator shall prepare a declaration of due diligence and proof of dissemination with
16 regard to the mailing of the Class Notice, and any attempts by the Settlement Administrator
17 to locate Settlement Class Members, its receipt of valid requests for exclusion, and its inability
18 to deliver the Class Notice to Settlement Class Members due to invalid addresses (“Due
19 Diligence Declaration”), to Class Counsel and counsel for Capitol Casino for presentation to
20 the Court. Class Counsel shall be responsible for filing the Due Diligence Declaration with
21 the Court. The Settlement Administrator will provide an updated and/or Supplemental
22 Declaration thereafter if appropriate.

23 6.11 If any individual whose name does not appear in the Class Information that
24 Capitol Casino provides the Settlement Administrator (and who has not previously opted out
25 of the Settlement Class), believes that he or she is a Settlement Class Member, he or she
26 shall have the opportunity to dispute his or her exclusion from the Settlement Class. If an
27 individual believes he or she is a Settlement Class Member, he or she must notify the
28 Settlement Administrator within 45 days of the Notice Date. The Parties will meet and confer

1 regarding any such individuals in an attempt to reach an agreement as to whether any such
2 individual should be regarded as a Settlement Class Member. If the Parties so agree, the
3 Settlement Administrator will mail a Class Notice to the individual, and treat the individual as
4 a Settlement Class Member for all other purposes. Such an individual will have all of the
5 same rights as any other Settlement Class Member under this Agreement. In the event that
6 the disbursement of the Individual Settlement Payments has begun (in accordance with this
7 Settlement Agreement) at the time that the Parties agree that such individual should be
8 regarded as a Settlement Class Member and that such individual does not exercise his or
9 her right to opt out of the Settlement, the Individual Settlement Payment to such individual
10 shall be disbursed from funds remitted back to the Total Settlement Amount (i.e. from
11 settlement checks that remain uncashed beyond the Void Date).

12 6.12 Capitol Casino shall not retaliate in any manner against any Settlement Class
13 Member who participates in the settlement or challenges their Class Member status.

14 **7. PROCEDURES FOR REQUESTS FOR EXCLUSION**

15 7.1 Settlement Class Members (with the exception of the Plaintiff) may opt out of
16 the Settlement. Those who wish to exclude themselves (or “opt out”) from the Settlement
17 Class must submit timely, written requests for exclusion. To be effective, such a request must
18 include the Settlement Class Member’s name, address, last four digits of Social Security
19 Number, and telephone number; a clear and unequivocal statement that the Settlement
20 Class Member wishes to be excluded from the Settlement Class; and the signature of the
21 Settlement Class Member or the Legally Authorized Representative of the Settlement Class
22 Member. The request must be mailed to the Settlement Administrator at the address provided
23 in the Class Notice and must be postmarked no later than the Exclusion/Objection Deadline.
24 The date of the postmark shall be the exclusive means used to determine whether a request
25 for exclusion has been timely submitted. Requests for exclusion must be exercised
26 individually by the Settlement Class Member. Attempted collective group, class, or subclass
27 requests for exclusions shall be ineffective and disregarded by the Settlement Administrator.
28

1 Individual exclusion requests may be submitted by a Settlement Class Member's Legally
2 Authorized Representative.

3 7.2 The Settlement Administrator shall promptly log each request for exclusion that
4 it receives and provide copies of the log and all such requests for exclusion to Class Counsel
5 and counsel for Capitol Casino, as requested. If a Settlement Class Member submits both
6 an objection and a valid and timely Request for Exclusion, the Request for Exclusion will be
7 accepted and the objection will be rejected. If a Settlement Class Member submits both a
8 Claim and a Request for Exclusion from the Settlement, the Settlement Class Member will
9 be given an opportunity to clarify his or her response.

10 7.3 The Settlement Administrator shall prepare a list of all persons who timely and
11 properly requested exclusion from the Settlement Class (the Opt-Out List) and shall, before
12 the Final Approval Hearing, provide a declaration to Class Counsel attesting to the accuracy
13 of the list. Class Counsel shall submit the declaration to the Court.

14 7.4 All Settlement Class Members who are not included in the Opt-Out List
15 approved by the Court shall be bound by this Agreement, and all their claims shall be
16 dismissed with prejudice and released as provided for herein, even if they never received
17 actual notice of the Action or this proposed Settlement.

18 7.5 The Settlement Administrator, in its sole discretion, shall determine whether a
19 request for exclusion was timely and properly submitted. The Settlement Administrator's
20 decision shall be final, binding, and non-appealable.

21 7.6 The Plaintiff agrees not to request exclusion from the Settlement Class.

22 7.7 Settlement Class Members may object to or opt out of the Settlement, but may
23 not do both. Any Settlement Class Member who submits a timely and proper request for
24 exclusion may not file an objection to the Settlement or receive a Settlement Payment, and
25 shall be deemed to have waived any rights or benefits under the Settlement Agreement. If a
26 Settlement Class Member files both an objection and a valid and timely request for exclusion,
27 the request for exclusion will override the objection, and the objection shall therefore be
28 ignored.

1 7.8 Notwithstanding the submission of a timely request for exclusion, Class
2 Members will still be bound by the settlement and release of the PAGA Claims or remedies
3 under the Final Judgment pursuant to *Arias v. Superior Court* (2009) 46 Cal. 4th 969 (2009).
4 Requests for exclusion do not apply to the PAGA Claims, and will not be effective to preclude
5 the release of the PAGA Claims.

6 7.9 No later than ten (10) business days after the Exclusion/Objection Deadline,
7 the Settlement Administrator shall provide to Class Counsel and counsel for Capitol Casino
8 the Opt-Out List together with copies of the opt-out requests. Notwithstanding any other
9 provision of this Settlement Agreement, if more than fifteen percent (15%) of the total number
10 of Settlement Class Members exercise their right to opt out of the Settlement, Capitol Casino
11 at its sole and absolute discretion may elect to rescind and revoke the entire Settlement
12 Agreement by sending written notice that it revokes the Settlement pursuant to this paragraph
13 to Class Counsel within ten (10) business days following receipt of the Opt-Out List. The
14 Total Settlement Amount was calculated with, and is premised on, the understanding that
15 there are approximately 137 Settlement Class Members eligible to participate in the
16 Settlement. If the number of Settlement Class Members stated in this paragraph increases
17 by more than Fifteen Percent (15%), then the Total Settlement Amount to be paid by
18 Defendant will be increased by the same proportion.

19 7.10 Capitol Casino shall not retaliate in any manner against any Settlement Class
20 Member who excludes himself or herself from the Settlement.

21 **8. PROCEDURES FOR OBJECTIONS**

22 8.1 Any Settlement Class Member that wishes to object to the fairness,
23 reasonableness, or adequacy of this Agreement or the proposed Settlement must provide to
24 the Settlement Administrator (who shall forward it to Class Counsel and counsel for Capitol
25 Casino), a timely statement of the objection.

26 8.2 To be timely, an objection must be mailed to the Settlement Administrator, and
27 postmarked no later than the Exclusion/Objection Deadline. The date of the postmark on the
28

1 return-mailing envelope shall be the exclusive means used to determine whether objection
2 has been timely submitted.

3 8.3 An objection must contain at least the following: (i) the objector's full name,
4 address, telephone, last four digits of Social Security Number, and signature; (ii) a clear
5 reference to the Action; (iii) a statement of the specific legal and factual basis for each
6 objection argument; and (iv) a statement whether the objecting person or entity intends to
7 appear at the Final Approval Hearing, either in person or through counsel and, if through
8 counsel, a statement identifying that counsel by name, bar number, address, and telephone
9 number. All objections shall be signed by the objecting Settlement Class Member (or his
10 Legally Authorized Representative), even if the Settlement Class Member is represented by
11 counsel.

12 8.4 The right to object to the proposed Settlement must be exercised individually
13 by a Settlement Class Member or his or her attorney. Attempted collective, group, class, or
14 subclass objections shall be ineffective and disregarded. Individual objections may be
15 submitted by a Settlement Class Member's Legally Authorized Representative.

16 8.5 Any Settlement Class Member who does not file a timely objection in
17 accordance with this Section shall waive the right to object or to be heard at the Final
18 Approval Hearing and shall be forever barred from making any objection to the proposed
19 Settlement, the Plan of Allocation, the Class Counsel Award and the Service Award.
20 Settlement Class Members who object to the proposed Settlement shall remain Settlement
21 Class Members, and shall be deemed to have voluntarily waived their right to pursue an
22 independent remedy against Capitol Casino and the Released Parties.

23 8.6 To the extent any Settlement Class Member objects to the proposed
24 Settlement, and such objection is overruled in whole or in part, such Settlement Class
25 Member will be forever bound by the Final Approval order and Judgment.

26 8.7 It shall be Class Counsel's sole responsibility to respond to any objections
27 made with respect to any application for the Class Counsel Award and Service Award.
28

1 8.8 Capitol Casino shall not retaliate in any manner against any Settlement Class
2 Member who objects to the settlement.

3 **9. RELEASES**

4 9.1 The Released Claims against each and all of the Released Parties shall be
5 released and dismissed with prejudice and on the merits (without an award of costs to any
6 party other than as provided in this Agreement) upon entry of the Final Approval order and
7 Judgment.

8 9.2 As of the Final Approval Date, the Plaintiff, and all Settlement Class Members
9 who have not been excluded from the Settlement Class as provided in the Opt-Out List,
10 individually and on behalf of their Legally Authorized Representatives, heirs, estates,
11 trustees, executors, administrators, representatives, agents, successors, and assigns, and
12 anyone claiming through them or acting or purporting to act on their behalf, agree to forever
13 release, discharge, hold harmless, and covenant not to sue each and all of the Released
14 Parties from each and all of the Named Plaintiff's General Released Claims (in the case of
15 the Plaintiff) and the Settlement Class Members' Released Claims (in the case of the
16 Settlement Class Members who have not been excluded from the Settlement Class as
17 provided in the Opt-Out List), and by operation of the Final Judgment shall have fully and
18 finally released, relinquished, and discharged all such claims against each and all of the
19 Released Parties; and they further agree that they shall not now or hereafter initiate, maintain,
20 or assert any Named Plaintiff's General Released Claims (in the case of Plaintiff) and any
21 Settlement Class Members' Released Claims (in the case of the Settlement Class Members
22 who have not been excluded from the Settlement Class as provided in the Opt-Out List),
23 against the Released Parties in any other court action or before any administrative body,
24 tribunal, arbitration panel, or other adjudicating body. Without in any way limiting the scope
25 of the release described in Paragraphs 2.14 and 2.34, as well as the remainder of this
26 Section, this release covers, without limitation, any and all claims for attorneys' fees, costs
27 or disbursements incurred by Class Counsel or any other counsel representing the Plaintiff
28 or Settlement Class Members, or by the Plaintiff or Settlement Class Members, or any of

1 them, in connection with or related in any manner to the Action, the Settlement of the Action,
2 the administration of such Settlement, and/or the Released Claims, except to the extent
3 otherwise specified in the Agreement.

4 9.3 As of the Final Approval Date, the Plaintiff, and all Settlement Class Members
5 who have not been excluded from the Settlement Class as provided in the Opt-Out List, shall
6 be permanently barred and enjoined from initiating, asserting, or prosecuting against the
7 Released Parties in any federal or state court or tribunal any and all Named Plaintiff's General
8 Released Claims (in the case of Plaintiff) and any Settlement Class Members' Released
9 Claims (in the case of the Settlement Class Members who have not been excluded from the
10 Settlement Class as provided in the Opt-Out List), as further provided in Paragraphs 2.14
11 and 2.34, as well as this Section.

12 9.4 The Named Plaintiff expressly acknowledges that she is familiar with principles
13 of law such as Section 1542 of the California Civil Code, which provides:

14 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR
15 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
16 FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM
17 OR HER, MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
18 DEBTOR OR RELEASED PARTY.

19 9.5 With respect to the Named Plaintiff's General Released Claims, as described
20 in Paragraph 2.14, Plaintiff shall be deemed to have expressly, knowingly, and voluntarily
21 waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and
22 benefits she may otherwise have had pursuant to Section 1542 of the California Civil Code
23 and all similar federal or state laws, rights, rules, or legal principles of any other jurisdiction
24 that may be applicable herein. In connection with the release, the Plaintiff's acknowledges
25 that she is aware that she may hereafter discover claims presently unknown and
26 unsuspected or facts in addition to or different from those which she now knows or believes
27 to be true with respect to matters released herein. Nevertheless, the Plaintiff acknowledges
28 that a portion of the consideration received herein is for a release with respect to unknown

1 damages and complaints, whether resulting from known injuries and consequences or from
2 unknown injuries or unknown consequences of known or unknown injuries, and states that it
3 is the intention of the Plaintiff in agreeing to this release to fully, finally, and forever to settle
4 and release all matters and all claims that exist, hereafter may exist, or might have existed
5 (whether or not previously or currently asserted in any action), constituting Named Plaintiff's
6 General Released Claims.

7 9.6 Plaintiff further acknowledges, agrees, and understands that: (i) she has read
8 and understand the terms of this Agreement; (ii) she has been advised in writing to consult
9 with an attorney before executing this Agreement; and (iii) she has obtained and considered
10 such legal counsel as she deems necessary.

11 9.7 Subject to Court approval, the Plaintiff, and all Settlement Class Members to
12 the extent they have not been excluded from the Settlement Class as provided in the Opt-
13 Out List, shall be bound by this Settlement Agreement, and all of their claims shall be
14 dismissed with prejudice and released, even if they never received actual notice of the Action
15 or this Settlement

16 **10. ADMINISTRATION OF THE SETTLEMENT FUND**

17 10.1 The Settlement Administrator or its authorized agents in consultation with the
18 Parties and subject to the supervision, direction, and approval of the Court, shall calculate
19 the allocation of and oversee the distribution of the Total Settlement Amount.

20 10.2 The Total Settlement Amount shall be applied as follows:

21 10.2.1 To pay the total costs, expenses, and fees of the Settlement
22 Administrator incurred in connection with providing Class Notice to potential
23 Settlement Class Members, and the management and distribution of the Total
24 Settlement Amount to Settlement Class Members, not to exceed \$15,000 (if the
25 Settlement Administrator's expenses are less than \$15,000, the balance of such funds
26 shall be included in the amount to be distributed to the Settlement Class pursuant to
27 paragraph 10.2.5).

1 10.2.2 Subject to the approval and further order(s) of the Court, to pay Plaintiff's
2 Service Award based on contributions and time expended assisting in the litigation,
3 up to a maximum of \$10,000;

4 10.2.3 Subject to the approval and further order(s) of the Court, to pay the Class
5 Counsel Award (one-third of the Total Settlement Amount, or Two Hundred Sixty-six
6 Thousand Six Hundred Sixty-six Dollars and Sixty-seven cents (\$266,666.67)), plus
7 reasonable costs incurred as ordered by the Court;

8 10.2.4 Subject to the approval and further order(s) of the Court, to distribute
9 75% of the PAGA Payment to the LWDA and 25% of the PAGA Payment to the
10 Settlement Class Members as part of each Settlement Class Members' Individual
11 Settlement Payment, with the amount to be distributed to each Settlement Class
12 Member determined proportionately to their Individual Settlement Payment;

13 10.2.5 After the Effective Date and subject to the approval and further order(s)
14 of the Court, to distribute the Individual Settlement Payment from the Total Settlement
15 Amount for the benefit of the Settlement Class pursuant to the Plan of Allocation, or
16 as otherwise ordered by the Court.

17 10.3 If after the distribution any portion of the Total Settlement Amount is not
18 successfully distributed to Participating Settlement Class Members after the Void Date (i.e.
19 checks are not cashed or checks are returned as undeliverable after the distribution), then
20 after the Void Date for distributed checks, the Settlement Administrator shall void the check
21 and shall direct such unclaimed funds to be paid to the cy pres beneficiary of the Settlement
22 as approved by the Court, subject to the requirements of Cal. Code Civ. P. § 384. The parties
23 propose that the Court approve Legal Aid at Work as the cy pres beneficiary of this
24 settlement.

25 10.4 Settlement Class Members who are not on the Opt-Out List approved by the
26 Court shall be subject to and bound by the provisions of the Settlement Agreement, the
27 releases contained herein, and the Judgment with respect to all Settlement Class Members'
28

1 Released Claims, regardless of whether they obtain any distribution from the Total
2 Settlement Amount.

3 10.5 Payment from the Total Settlement Amount made pursuant to and in the
4 manner set forth herein shall be deemed conclusive of compliance with this Settlement
5 Agreement as to all Settlement Class Members.

6 10.6 No Settlement Class Member shall have any claim against the Plaintiff, Class
7 Counsel, or the Settlement Administrator based on distributions made substantially in
8 accordance with this Settlement Agreement and/or orders of the Court. No Settlement Class
9 Member shall have any claim against any Released Party or its counsel relating to
10 distributions made under this Settlement.

11 **11. EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION OF**
12 **SETTLEMENT AGREEMENT**

13 11.1 If the Court does not approve the Settlement as set forth in this Settlement
14 Agreement, or does not enter the Final Approval order and Judgment on the terms described
15 herein, or if the Court enters the Judgment and appellate review is sought, and on such
16 review, the entry of Judgment is vacated, modified in any way, or reversed, or if the Final
17 Approval order does not otherwise become Final, then this Settlement Agreement shall be
18 cancelled and terminated, unless all Parties, in their sole discretion no later than thirty (30)
19 days from the date such ruling becomes Final, provide written notice to all other Parties
20 hereto of their intent to proceed with the Settlement under the terms of the Judgment as it
21 may be modified by the Court or any appellate court.

22 11.2 Capitol Casino shall have the right to withdraw from the Settlement if the
23 number of Settlement Class Members who attempt to exclude themselves from the
24 Settlement Class equals or exceeds fifteen percent (15%) of the total number of Settlement
25 Class Members. If Capitol Casino chooses, pursuant to its sole and absolute discretion, to
26 exercise this right, it must do so within ten (10) days of receipt of the Opt-Out List as provided
27 in Paragraph 7.3, by providing written notice to Class Counsel. The Settlement Amount was
28 calculated with, and is premised on, the understanding that there are approximately 137

1 Class Members eligible to participate in the Settlement. If the number of Class Members
2 stated in this paragraph increases by more than Fifteen Percent (15%), then the Total
3 Settlement Amount will be increased by the same proportion.

4 11.3 In the event that: (i) the Settlement is not approved, is overturned, or is modified
5 by the Court or on appeal, (ii) the Judgment does not become Final, or (iii) this Settlement
6 Agreement is terminated, cancelled, or fails to become effective for any reason, then: (a) the
7 Parties stipulate and agree the Settlement, this Agreement, the Class Information, the Opt-
8 Out List, and all documents exchanged and filed in connection with the Settlement shall be
9 treated as privileged mediation communications under Cal. Evid. Code §§ 1115 et seq.; (b)
10 the Settlement shall be without force and effect upon the rights of the Parties hereto, and
11 none of its terms shall be effective or enforceable, with the exception of this paragraph, which
12 shall remain effective and enforceable; (c) the Parties shall be deemed to have reverted nunc
13 pro tunc to their respective status prior to execution of this Agreement, and will agree to
14 request a status conference to discuss the status of the case and its schedule; (d) all Orders
15 entered in connection with the Settlement, including the certification of the Settlement Class,
16 shall be vacated without prejudice to any Party's position on the issue of class certification,
17 the issue of amending the complaint, or any other issue, in the Action or any other action,
18 and the Parties shall be restored to their litigation positions existing on the date of execution
19 of this Agreement; and (e) the Parties shall proceed in all respects as if the Settlement
20 Agreement and related documentation and orders had not been executed, and without
21 prejudice in any way from the negotiation or fact of the Settlement or the terms of the
22 Settlement Agreement. The Settlement Agreement, the Settlement, all documents, orders,
23 and evidence relating to the Settlement, the fact of their existence, any of their terms, any
24 press release or other statement or report by the Parties or by others concerning the
25 Settlement Agreement, the Settlement, their existence, or their terms, any negotiations,
26 proceedings, acts performed, or documents executed pursuant to or in furtherance of the
27 Settlement Agreement or the Settlement shall not be admissible in any proceeding, and shall
28 not be offered, received, or construed as evidence of a presumption, concession, or an

1 admission of liability, of unenforceability of any arbitration agreement, of the certifiability of a
2 litigation class, or of any misrepresentation or omission in any statement or written document
3 approved or made, or otherwise used by any Person for any purpose whatsoever, in any trial
4 of the Action or any other action or proceedings. Plaintiff, Class Counsel and the Settlement
5 Administrator shall return to counsel for Capitol Casino all copies of Class Information and
6 Opt-Out Lists and shall not use or disclose the Class Information or Opt-Out List for any
7 purpose or in any proceeding.

8 11.4 Capitol Casino does not agree or consent to certification of the Settlement
9 Class for any purpose other than to effectuate the Settlement of the Action. Further, Capitol
10 Casino does not agree or consent that the Action could properly be maintained as a PAGA
11 representative action for any purpose other than to effectuate the Settlement of the Action. If
12 this Settlement Agreement is terminated pursuant to its terms, or the Effective Date for any
13 reason does not occur, all Orders certifying the Settlement Class or establishing the Action
14 as a PAGA representative action for purposes of effecting this Settlement Agreement, and
15 all preliminary and/or final findings regarding the Settlement Class certification order, shall
16 be automatically vacated upon notice to the Court, the Action shall proceed as though the
17 Settlement Class had never been certified pursuant to this Settlement Agreement, had never
18 been maintained as a PAGA representative action, and such findings had never been made,
19 and the Action shall revert nunc pro tunc to the procedural status quo as of the date and time
20 immediately before the execution of the Settlement Agreement, in accordance with this
21 Settlement Agreement.

22 **12. ADDITIONAL PROVISIONS**

23 12.1 All of the Exhibits to this Agreement are an integral part of the Settlement and
24 are incorporated by reference as though fully set forth herein.

25 12.2 The Plaintiff and Class Counsel acknowledge that an adequate factual record
26 has been established that supports the Settlement and, apart from the limited discovery
27 described in the next sentence, hereby waive any right to conduct further discovery to assess
28 or confirm the Settlement. Notwithstanding the prior sentence, the Parties agree to

1 reasonably cooperate with respect to limited confirmatory discovery to be agreed upon
2 related to the last-known addresses of Settlement Class Members or other matters as may
3 be required by the Court in connection with preliminary and/or final approval.

4 12.3 Unless otherwise noted, all references to “days” in this Agreement shall be to
5 calendar days. In the event any date or deadline set forth in this Agreement falls on a
6 weekend or federal legal holiday, such date or deadline shall be on the first business day
7 thereafter.

8 12.4 This Agreement constitutes the full and complete agreement of the Parties
9 hereto, and supersedes all prior negotiations and agreements, whether oral, written or
10 otherwise, and may be amended or modified only by a written instrument signed by counsel
11 for all Parties or the Parties’ successors-in-interest.

12 12.5 The Parties reserve the right, subject to the Court’s approval, to make any
13 reasonable extensions of time that might be necessary to carry out any of the provisions of
14 this Agreement. Such extensions must be in writing to be enforceable.

15 12.6 The Settlement Agreement, the Settlement, the fact of the Settlement’s
16 existence, any of terms of the Settlement Agreement, any press release or other statement
17 or report by the Parties or by others concerning the Settlement Agreement or the Settlement,
18 and any negotiations, proceedings, acts performed, or documents executed pursuant to or
19 in furtherance of the Settlement Agreement or the Settlement: (i) may not be deemed to be,
20 may not be used as, and do not constitute an admission or evidence of the validity of any
21 Released Claims or of any wrongdoing or liability of Capitol Casino; (ii) may not be deemed
22 to be, may not be used as, and do not constitute an admission or evidence of any fault,
23 wrongdoing, or omission by Capitol Casino in any trial, civil, arbitration, criminal, or
24 administrative proceeding of the Action or any other action or proceedings in any court,
25 administrative agency, arbitration or other tribunal; (iii) may not be used as evidence of any
26 waiver of, unenforceability of, or as a defense to any Capitol Casino arbitration agreement;
27 and (iv) may not be used as evidence on any class certification proceeding.
28

1 12.7 The Released Parties shall have the right to file the Settlement Agreement, the
2 Final Approval order and Judgment, and any other documents or evidence relating to the
3 Settlement in any action that may be brought against them in order to support a defense or
4 counterclaim based on principles of res judicata, collateral estoppel, release, good-faith
5 settlement, judgment bar, reduction, or any other theory of claim preclusion or issue
6 preclusion or similar defense or counterclaim.

7 12.8 The Parties to the Settlement Agreement agree that the Total Settlement
8 Amount and the other terms of the Settlement were negotiated at arm's length and in good
9 faith by the Parties, assisted by an arm's-length mediation session facilitated by Michael
10 Loeb, and reflect a settlement that was reached voluntarily based upon adequate information
11 and sufficient discovery and after consultation with experienced legal counsel.

12 12.9 The Plaintiff and Class Counsel have concluded that the Settlement set forth
13 herein constitutes a fair, reasonable, and adequate resolution of the claims that the Plaintiff
14 asserted against Capitol Casino, including the claims on behalf of the Settlement Class, and
15 that it promotes the best interests of the Settlement Class.

16 12.10 To the extent permitted by law, all agreements made and orders entered during
17 the course of the Action relating to the confidentiality of information shall survive this
18 Settlement Agreement.

19 12.11 The waiver by one Party of any breach of this Settlement Agreement by any
20 other Party shall not be deemed a waiver of any other prior or subsequent breach of this
21 Settlement Agreement.

22 12.12 This Settlement Agreement, including its Exhibit, constitutes the entire
23 agreement among the Parties, and no representations, warranties, or inducements have
24 been made to any Party concerning this Settlement Agreement or its Exhibit, other than the
25 representations, warranties, and covenants contained and memorialized in this Settlement
26 Agreement and its Exhibit.

27 12.13 This Settlement Agreement may be executed in one or more counterparts. All
28 executed counterparts and each of them shall be deemed to be one and the same instrument

1 provided that counsel for the Parties to this Settlement Agreement shall exchange among
2 themselves original signed counterparts.

3 12.14 The Parties hereto and their respective counsel agree that they will use their
4 best efforts to obtain all necessary approvals of the Court required by this Settlement
5 Agreement.

6 12.15 This Settlement Agreement shall be binding upon and shall inure to the benefit
7 of the successors and assigns of the Parties hereto, including any and all Released Parties
8 and any corporation, partnership, or other entity into or with which any Released Party hereto
9 may merge, consolidate, or reorganize.

10 12.16 This Settlement Agreement shall not be construed more strictly against one
11 Party than another merely because of the fact that it may have been prepared by counsel for
12 one of the Parties, it being recognized that because of the arm's-length negotiations resulting
13 in the Settlement Agreement, all Parties hereto have contributed substantially and materially
14 to the preparation of the Settlement Agreement.

15 12.17 Except where this Settlement Agreement itself provides otherwise, all terms,
16 conditions, and Exhibit are material and necessary to this Settlement Agreement and have
17 been relied upon by the Parties in entering into this Settlement Agreement.

18 12.18 This Settlement Agreement shall be governed by California law. Any action
19 based on this Settlement Agreement, or to enforce any of its terms, shall be venued in
20 Sacramento County Superior Court, which shall retain jurisdiction over all such disputes. All
21 Parties to this Settlement Agreement shall be subject to the jurisdiction of Sacramento
22 County Superior Court for all purposes related to this Settlement Agreement. This paragraph
23 relates solely to the law governing this Settlement Agreement and any action based thereon,
24 and nothing in this paragraph shall be construed as an admission or finding that California
25 law applies to the Released Claims of any Plaintiff or Settlement Class Members who reside
26 outside of the state.

1 12.19 The Court shall retain continuing and exclusive jurisdiction over the Parties to
2 this Settlement Agreement for the purpose of the administration and enforcement of this
3 Settlement Agreement.

4 12.20 The headings used in this Settlement Agreement are for the convenience of
5 the reader only, and shall not affect the meaning or interpretation of this Settlement
6 Agreement.

7 12.21 In construing this Settlement Agreement, the use of the singular includes the
8 plural (and vice-versa) and the use of the masculine includes the feminine (and vice-versa).

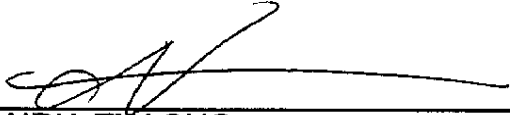
9 12.22 Each Party to this Settlement Agreement warrants that he, she, or it is acting
10 upon his or its independent judgment and upon the advice of his or its counsel, and not in
11 reliance upon any warranty or representation, express or implied, of any nature of any kind
12 by any other Party, other than the warranties and representations expressly made in this
13 Settlement Agreement.

14 12.23 Each counsel signing this Settlement Agreement on behalf of his/her clients
15 who are unable to sign the Agreement on the date that it is executed by other Parties
16 represents that such counsel is fully authorized to sign this Settlement Agreement on behalf
17 of his/her clients; provided, however, that all Parties who have not executed this Agreement
18 on the date that it is executed by the other Parties shall promptly thereafter execute this
19 Agreement and in any event no later than one (1) week after the Agreement has been
20 executed by counsel.

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22 (SIGNATURES ON NEXT PAGE)
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June
Dated: May 20, 2019



AURIA THAOHO
PLAINTIFF

Dated: May __, 2019

CLARKE ROSA, on behalf of
CAPITOL CASINO, INC.

Dated: May __, 2019

CHRISTINA C. TILLMAN
MCCORMICK BARSTOW, LLP
Attorneys for Defendant
CAPITOL CASINO, INC.

Dated: May __, 2019

RICHARD A. HOYER
RYAN L. HICKS
HOYER & HICKS
Attorneys for Plaintiff AURIA THAOHO

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Dated: May __, 2019

AURIA THAOHO
PLAINTIFF

June 19
Dated: ~~May~~ __, 2019
CR

Clarke Rosa

CLARKE ROSA, on behalf of
CAPITOL CASINO, INC.

June 19, 2019

~~Dated: May __, 2019~~

Christina C. Tillman

CHRISTINA C. TILLMAN
MCCORMICK BARSTOW, LLP
Attorneys for Defendant
CAPITOL CASINO, INC.

Dated: May __, 2019

RICHARD A. HOYER
RYAN L. HICKS
HOYER & HICKS
Attorneys for Plaintiff AURIA THAOHO

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Dated: May __, 2019

AURIA THAOHO
PLAINTIFF

Dated: May __, 2019

CLARKE ROSA, on behalf of
CAPITOL CASINO, INC.

Dated: May __, 2019

CHRISTINA C. TILLMAN
MCCORMICK BARSTOW, LLP
Attorneys for Defendant
CAPITOL CASINO, INC.

June 19
Dated: May __, 2019



RICHARD A. HOYER
RYAN L. HICKS
HOYER & HICKS
Attorneys for Plaintiff AURIA THAOHO

EXHIBIT 1

<<Class Member Name>>
<<Street Address>>
<<City, State Zip>>

NOTICE OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT

This is a Notice of Settlement for the Class and Representative Action Titled:
Thaoho v. Capitol Casino, Inc.
Superior Court of California, County of Sacramento
Case No. 34-2018-00228073-CU-OE-GDS

Please Read This Entire Notice Carefully. This Notice Involves Your Legal Rights.

A state court authorized this notice. This is not a solicitation from a lawyer.

You are receiving this notice because **CAPITOL CASINO, INC.** (“Defendant” or “Capitol Casino”) has agreed to settle a proposed class and representative action brought against it by former employee **Auria Thaoha** (“Plaintiff”) on behalf of current and former employees who worked as dealers for Defendant during a certain period of time (the “Settlement”). You have been identified as part of the settlement class and are entitled to compensation. The lawsuit alleges that Defendant violated California Labor Code provisions regarding meal periods, tip pooling, minimum wage, overtime, and wage statements. The lawsuit seeks to recover wages as well as statutory and civil penalties, attorneys’ fees and costs of litigation. Defendant disputes the allegations, but has agreed to enter into a settlement to avoid the time, expense and uncertainty of litigation. The Court has preliminarily approved this settlement, subject to a further hearing to consider any objections by those settlement class members who do not opt out of the settlement. This Notice describes your rights and potential benefits under the settlement.

Where Can I Get More Information About the Lawsuit? The lawsuit was filed in the Superior Court of California, County of Sacramento (Thaoho v. Capitol Casino, Inc., Superior Court of California, County of Sacramento Case No. 34-2018-00228073-CU-OE-GDS).

This Notice only summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, you can review the settlement agreement available by visiting Class Counsel’s website at [**insert URL**]. If you want more information, you can also contact class counsel (whose contact information is at the end of this Notice).

The pleadings and other records in this litigation may be examined online on the Sacramento County Superior Court’s website at:

<https://services.saccourt.ca.gov/PublicCaseAccess/Civil/SearchByCaseNumber>

After arriving at the website, click the 'Search By Case' link under “Civil” in the navigation bar, then select “2018” from the year dropdown and enter 00228073 as the case number and click 'SEARCH.' Images of every document filed in the case may be viewed through the 'Register of Actions' at a minimal charge. You may also view images of every document filed in the case free of charge by using one of the computer terminal kiosks available at each court location that has a facility for civil filings.

Copies of the filings and documents related to the settlement are also available for download and review at Class Counsel’s website [insert URL].

You are receiving this Notice because you are in the Class. You are in the Class because you worked for Capitol Casino as a Cardroom Dealer on or after February 28, 2014 through [insert date of Preliminary Approval] (the “Class Period”). This Notice describes your rights and potential benefits from a class and representative action settlement. You have the right to opt-out of the settlement, as described below.

The Court authorized this Notice because you have a right to know about the proposed Settlement and your options before the Court decides whether to approve the proposed Settlement. Because your rights will be affected by this Settlement, it is extremely important that you read this Notice.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING / RECEIVE TWO CHECKS	If you do not exclude yourself, as described below, you will receive two settlement checks, roughly 90 days apart. You will have sixty (60) days from the date on each of your individual settlement checks to cash each check. If you receive a settlement check, you <u>will release all claims asserted in the lawsuit</u> through the date the Court enters preliminary approval of the Settlement. If you receive and do not cash a settlement check within 60 days, your share of the settlement contained in any uncashed settlement check will be provided to Legal Aid at Work (http://www.legalaidatwork.org).
OBJECT TO THE SETTLEMENT	You may object to the proposed Settlement by writing to the “Settlement Administrator” at the address listed below explaining why you disapprove of the proposed Settlement. If you object, you may also ask to speak in Court about the fairness of the settlement at the Settlement Hearing. If you wish to appear at the Settlement Hearing, you must mail the Settlement Administrator at the address listed below a Notice of

	<p>Intention to Appear. You may only object and appear in Court to speak about the fairness of the settlement if you mail a timely written objection to the settlement. If your objection is overruled at the hearing, you will still be bound by the Settlement and receive a payment from the Settlement Fund.</p>
<p>OPT OUT OF THE SETTLEMENT</p>	<p>Alternatively, you may exclude yourself from the Settlement by requesting exclusion from the settlement. If you exclude yourself from the settlement, you will receive no payment, but will preserve whatever right you might otherwise have, if any, to pursue your claims in a separate lawsuit. This option could allow you to bring your own lawsuit or claim, or to be a part of another lawsuit against the Defendants for the same or similar claims brought in this lawsuit during the Class Period, including claims for unpaid wages, improper tip pooling, and missed meal and rest breaks. To unconditionally exclude yourself from the Settlement, you must send a letter by mail to the “Settlement Administrator” address listed below that states that you wish to opt out of the class and representative action and the settlement of the case. This process is explained further below.</p> <p><i>If you exclude yourself from the settlement, you will not be entitled to receive any payment from the settlement fund.</i></p>

What is this lawsuit about? A former Poker Dealer brought this lawsuit alleging that Defendant failed to provide Cardroom Dealers with compliant meal breaks, and as a result failed to pay them all wages due, including minimum wages, overtime wages, and premium wages for non-compliant meal periods, failed to provide accurate wage statements, and failed to timely pay final wages. Plaintiff also alleged that Defendant’s Tip Pooling policy as applied to Cardroom Dealers was unlawful in that it required the dealers to pay some of their tips to their supervisors. Plaintiff also alleges that the Class is entitled to penalties under the Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.* (“PAGA”) for these underlying violations. Defendant strenuously disputes the allegations, but has agreed to settle the lawsuit.

What are the terms of the Settlement? To settle the lawsuit, Defendants have agreed to pay a Gross Settlement Amount of eight hundred thousand dollars (\$800,000) to be divided between the --- Class Members (including you) who do not opt out of the settlement (“Settlement Class Members”). The \$800,000 less deductions for (1) Class Counsel’s fees (of up to one-third of the Total Settlement Amount) and their litigation expenses, (2) the payment to Plaintiff for being the class representative and prosecuting this lawsuit on behalf of all Cardroom Dealers, (3) all costs of administering the settlement up to a maximum of \$15,000, and (4) the \$7,500 payment to the California Labor and Workforce Development Agency (“LWDA”). The remaining money in the Settlement Fund (“Net Settlement Fund”) will be split up between the Settlement Class Members proportionally, based on the number of weeks each Settlement Class Member worked as indicated by the personnel records that Capitol Casino maintains. This calculation method is explained in more detail below.

Payments. Class Members who do not opt out of the Settlement (*i.e.*, Settlement Class Members) will receive a payment that will be calculated based on the number of weeks the Settlement Class Member worked for Capitol Casino as a Cardroom Dealer during the Class Period. The number of weeks worked will be calculated through the personnel records that Capitol Casino maintains. Each Settlement Class Member's share of the settlement proceeds will go up or down depending upon the number of weeks that Settlement Class Member worked when compared to the other Settlement Class Members. Per these calculations, the amount you are estimated to receive, if you do not exclude yourself from the Settlement, is set forth in the box marked "Estimated Settlement Payment." Note, the Estimated Settlement Payment is a preliminary calculation. If one or more Settlement Class Members successfully challenge the Defendant's records, the Estimated Settlement Payment for the other Settlement Class Members, including you, shall be modified accordingly. To accept this payment from the proposed Settlement, you do not need to do anything other than cash the checks that will be sent after the Court finally approves the settlement.

How do I challenge the number of weeks I worked during the Class Period? You may challenge the number of weeks worked identified in this Class Notice by submitting a written letter (postmarked by [insert end of Opt-Out Period]) to the Settlement Administrator stating you wish to challenge the number of days worked on your Class Notice and providing the basis for and documentation in support of your challenge. You will bear the burden of proof and must submit documentary evidence sufficient to prove the number of weeks you claim you worked as a Cardroom Dealer during the Class Period. This means that if you fail to provide written documentation supporting a different amount than your Estimated Settlement Payment, your challenge will be denied. Defendant shall have the right to respond to your challenge. The Settlement Administrator will resolve the challenge and make a final and binding determination without hearing or right of appeal. The personnel records, including payroll records, of Defendant shall be considered by the Settlement Administrator as the presumptive best evidence of the number of days worked.

How much is my settlement payment? Under the settlement allocation formula you have worked [redacted] weeks and are projected to receive approximately the following amount (before tax withholdings):

Estimated Settlement Payment (split into two payments 90 days apart): \$ [redacted]

The amount above will be reduced for any requested or required withholdings, including state and federal taxes, income withholding orders, garnishments, or levies. Thirty-three percent (33%) of the above payment will be treated as wages, subject to payroll taxes, and reported on a W-2. Thirty-three percent (33%) of the above payment will be treated as interest and thirty-four percent (34%) will be treated as non-wage damages, including penalties. Payroll tax withholdings will not be withheld from the non-wage portion of any payment, which portion will be reported on a Form 1099 if required by law. Neither Class Counsel nor the Defendant make any representations concerning the tax consequences of this settlement or participation in it, and you are advised to seek your own personal tax advice prior to acting in response to this Notice.

Who is included in the Settlement? You are included in the Settlement because you worked at least one day as a Cardroom Dealer for Defendant during the Class Period.

HOW YOU GET A PAYMENT

How do I get my payments? To receive your settlement payments, you do not need to do anything other than cash the checks that will be promptly sent after the Court finally approves the settlement. If you choose to exclude yourself, follow the procedure set forth below.

EXCLUDING YOURSELF FROM THE SETTLEMENT

How do I exclude myself? If you don't want to be included in the Settlement, you must exclude yourself from this Settlement. To exclude yourself from the Settlement, you must send a letter by mail that says that you wish to opt out of the class action and the settlement of the case. You must sign the letter and include your full name, address, and last four digits of your Social Security/Tax Identification Number. The letter must be dated and signed, postmarked on or before [insert end of Opt-Out Period], and sent to and received at the following address:

Settlement Administrator
[insert name and address]

If you properly request to be opt out of the settlement, you will not be legally bound by anything that happens in this lawsuit. You also will not be eligible to receive any settlement payment, and you will not be allowed to object to the settlement.

If you do not opt out of the settlement yourself, you will be sent your individual settlement payment in the form of two settlement checks roughly 90 days apart. You will have sixty (60) days from the date on each individual settlement check to cash the checks. That means you will have 60 days from the date that the first check is issued to cash the first check, and sixty days from the date of issuance of the second check to cash that second check. If you do not cash one or both checks within the 60 day period for that check, your settlement payment(s) from the uncashed check(s) will be transmitted to Legal Aid at Work (<https://legalaidatwork.org/>), a non-profit the parties have proposed as the cy pres beneficiary of any funds from uncashed checks. If you do not opt out of the settlement, you **will release all claims asserted in the lawsuit** through [DATE OF PRELIMINARY APPROVAL], whether or not you cash the check. If there is ever any subsequent dispute over whether you actually received the check, the burden shall be on Defendant to prove that you received it. Defendant shall further be entitled to a presumption that you can challenge that you received the check if Defendant show it was sent to an address provided by you as correct.

THE LAWYERS REPRESENTING YOU

Do I have a lawyer in this case? The Court has decided that the lawyers at the law firms of HOYER & HICKS and UNITED EMPLOYEES LAW GROUP are qualified to represent you and the other

Settlement Class Members. These lawyers are called “Class Counsel.” The contact information for Class Counsel is:

Ryan L. Hicks
rhicks@hoyerlaw.com
HOYER & HICKS
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
Tel.: (415) 766-3539
Fax: (415) 276-1738

Walter Haines
walter@whaines.com
UNITED EMPLOYEES LAW GROUP
5500 Bolsa Ave., Suite 201
Huntington Beach, CA 92649
Tel: (310) 234-5678
Fax: (310) 652-2242

How will the lawyers be paid? Class Counsel have pursued the lawsuit on a contingent fee basis and have not yet received any payment of fees or any reimbursement of their out-of-pocket expenses related to the recovery on behalf of the Settlement Class Members. As part of the settlement, subject to Court approval, Class Counsel will ask the Court to award payment of their fees and costs, based on the number of hours they invested into the case and other factors. The fees or costs that Class Counsel seek or that the Court awards will come from the Total Settlement Amount. In other words, the \$800,000 Total Settlement Amount will be reduced depending on the amount of attorneys’ fees and costs that the Court awards. Court-approved fees will compensate Class Counsel for investigating the law and facts, litigating the case, and negotiating the settlement. Class Counsel will request one-third of the Total Settlement Amount as attorneys’ fees (\$266,666.67), plus reimbursement of the costs they incurred in litigating the case.

Class Counsel will also ask the Court to approve “service payments” of up to \$10,000 to Ms. Thaoho for her active participation in the lawsuit before the settlement and in recognition of the risks she took and their service to the Class. This also will also come from the Total Settlement Amount. Other costs incidental to the Settlement, including but not limited to a maximum of \$15,000 for settlement administration, will also come from the Total Settlement Amount. A \$7,500 payment will also be made from the Total Settlement Amount to the California Labor Workforce and Development Agency for penalties that Plaintiff sought on behalf of the State against Defendant for the Claims alleged in the case.

Class Counsel’s motion for attorneys’ fees and service payment will be filed with the Court by [insert date] and will be available for your review. You may obtain a copy by contacting class counsel (whose contact information is at the end of this Notice, or at their website at [insert URL]), or by accessing the Court’s website or visiting the office of the Clerk of the Superior Court, County of Sacramento as described on page 2 above.

OBJECTING TO THE SETTLEMENT

How do I object to the Settlement? As a Settlement Class Member, you may object to the proposed settlement, but must do so in writing. You may also appear at the Settlement Hearing, either in person or through an attorney at your own expense, provided you notify the Court of your intent to do so. All written objections, supporting papers and/or notices of intent to appear at the Final Approval Hearing must (a) clearly identify the case name and number (Thaoho v. Capitol Casino,

Inc., Case Number 34-2018-00228073-CU-OE-GDS), (b) be mailed to the Settlement Administrator identified at the address below, and (c) be postmarked on or before [Opt-Out Deadline]. You must give all reasons why you think the Court should not approve it. The Court will consider your views. You must sign the objection and include your full name, address, last four digits of your Social Security, and telephone number(s).

Settlement Administrator
[insert name and address]

If your objection is overruled at the Settlement Hearing, you will still receive a settlement check and be bound by the Settlement.

THE COURT'S SETTLEMENT HEARING

What is the Settlement Hearing? The Court will hold a Settlement Hearing to decide whether to approve the Settlement. You are not required to attend the Settlement Hearing, and will still receive a payment even if you do not attend the Settlement Hearing. If you wish, you may attend and you may ask to speak. If you wish to bring anything to the Court's attention about the Settlement, you must provide it in writing in your objection letter mentioned above, which must be mailed to the "Settlement Administrator" at the address above by [insert end of Opt-Out Period].

When and where will the Court decide whether to approve the settlement? The Court will hold a Settlement Hearing on [insert date] at [insert time], at the Superior Court, County of Sacramento, [INSERT ADDRESS], Department [DEPARTMENT], Sacramento, California 95814.

At this hearing the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are challenges or objections, the Court will consider them. The Court will listen to any people who have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

Do I have to come to the hearing? No, but if you plan to object to the settlement you may want to appear. Class Counsel will answer questions the Court may have. But you are welcome to come at your own expense. However, if you submit an objection, you may come to Court to talk about it. However, as long as you submitted a timely, valid written objection to the Settlement Administrator, the Court will consider it. You may also pay another lawyer to attend, but it is not necessary.

May I speak at the hearing? If you submit a timely, valid objection to the Settlement and Notice of Intention to Appear, you may ask the Court for permission to speak at the Settlement Hearing. Your testimony at the Fairness Hearing will be limited to those reasons that are included in your written objection. You cannot speak at the hearing if you opt out of the settlement.

GETTING MORE INFORMATION

Are there more details about the settlement? This Notice summarizes the proposed terms of the Settlement. More details are contained in the parties' Settlement Agreement. You can get a copy of the Settlement Agreement by sending a request, in writing, to:

Ryan L. Hicks
rhicks@hoyerlaw.com
HOYER & HICKS
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
Tel.: (415) 766-3539
Fax: (415) 276-1738

Class Counsel have also posted documents related to the case and the Settlement on their website for download, at [\[insert URL\]](#).

How can I get more information about the Settlement? If you have other questions about the Settlement, you can contact Class Counsel at the addresses and/or telephone numbers above.

DATED: [\[Insert Date of Mailing\]](#), 2019

EXHIBIT 2

<<Class Member Name>>

<<Street Address>>

<<City, State Zip>>

**NOTICE OF FINAL APPROVAL OF CLASS AND REPRESENTATIVE ACTION
SETTLEMENT AND ENTRY OF JUDGMENT**

This is a Notice of Settlement for the Class and Representative Action Titled:

Thaoho v. Capitol Casino, Inc.

Superior Court of California, County of Sacramento

Case No. 34-2018-00228073-CU-OE-GDS

This notice is being mailed to all Settlement Class Members, including you, pursuant to California Rule of Court 3.771(b) to advise you that the Court has approved the settlement of this matter and entered judgment accordingly. Because you, the addressee of this notice, are a Member of the Settlement Class, and because you did not opt out of the Settlement Class, you are receiving this notice and no further action from you is required under the Judgment.