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*Attorneys for Plaintiffs and the Settlement Class*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

CHARLES WANG, MARILEE  
BOGAERT, AARON ASELTINE,  
ROBERT ALLAN PERKINS, JR.,  
CARISSA RECCO, CHRISTINE BAK,  
DENISE SZNITKO, and JESSE STOUT, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

GRUBHUB, INC., and DOES 1-50,  
inclusive,

Defendant.

Case No. 23STCV24118

Assigned to: Hon. Kenneth R. Freeman  
Dept. 14

CLASS ACTION

**PLAINTIFFS' MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF UNOPPOSED MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT AND  
CERTIFICATION OF THE CLASS FOR  
SETTLEMENT PURPOSES**

**[Notice of Unopposed Motion for Preliminary  
Approval of Class Action Settlement;  
Declaration of Jeffrey D. Kaliei; [Proposed]  
Order filed concurrently herewith]**

**Hearing Date: October 10, 2024**

**Time: 10:00 a.m.**

**Department: 14**

**Complaint Filed: October 3, 2023**

**Trial Date: None**

# **EXHIBIT 1**

## **I. SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (the “Settlement” or the “Agreement”) is made and entered into by and between Plaintiffs Charles Wang, Marilee Bogaert, Robert Allan Perkins, Jr., Carissa Recco, Christine Bak, Denise Sznitko and Jesse Stout, individually and on behalf of the Settlement Class (“Plaintiffs” or “Class Representatives”), on the one hand, and Defendant Grubhub Inc. (“Grubhub” or “Defendant”), on the other hand.

## **II. DEFINITIONS**

As used in this Agreement and all related documents, the following terms have the following meanings:

A. “Action” means the lawsuit filed on October 3, 2023 in Los Angeles Superior Court styled *Wang et al. v. Grubhub* bearing case no. 23STCV24118.

B. “Class Counsel” means KaliefGold PLLC.

C. “Class Period” means January 24, 2019 to the Preliminary Approval Date.

D. “Claim(s)” or “Claim Form(s)” means the claim form submitted by a Settlement Class Member, in the form attached hereto as “**Exhibit 1**,” to receive a Settlement Award pursuant to Sections IV.D and E.

E. “Claim Deadline” is the period ending sixty (60) days after the Notice Date.

F. “Claim Period” means the time period beginning on the Notice Date and ending on the Claim Deadline, in which the Settlement Class may submit a Claim Form.

G. “Claims Process” means the process for Settlement Class Members to submit Claims, as described in Sections III.D. and E.

H. “Class Action Settlement Administrator” means the third-party agent or administrator agreed to by the Parties and appointed by the Court.

I. “Days” means calendar days except as expressly noted otherwise. If a deadline falls on a weekend or holiday it will move to the next non-weekend or non-holiday Day.

J. “Effective Date” means (a) if no objection is raised, including with respect to Class Counsel’s attorneys’ fees and any incentive awards, the date on which the Final Approval Order and Judgment is entered; or (b) if any objections are raised, including with respect to Class Counsel’s attorneys’ fees and any incentive awards, the latest of: (i) the expiration date of the time for filing or notice of any appeal from the Final Approval Order and Judgment with no appeal(s) having been filed or noticed, (ii) if such appeal is filed, the termination of all appeal(s) on terms that affirm the Final Approval or dismiss the appeal(s) with no material modification to the Final Approval. As used in this paragraph, the phrase “termination of all appeal(s)” means the date on which the relevant appellate court issues its remittitur.

K. “Fairness Hearing” means the hearing(s) at or after which the Court will make a final decision whether to approve this Agreement and the Settlement set forth herein as fair, reasonable, and adequate and entry by the Court of the Final Approval Order.

L. “Final Approval” means the date the Court finally approves the Settlement of this Action, including but not limited to, the terms and conditions of this Agreement, and enters judgment in the Action.

M. “Final Approval Order and Judgment” means the order and judgment that the Court enters upon Final Approval of the Settlement in connection with the Fairness Hearing, the proposed form of which is attached hereto as “**Exhibit 2**”.

N. “Grubhub Platform” means grubhub.com, seamless.com, and the Grubhub and Seamless (Powered by Grubhub) applications that allow Consumers to place orders for food items from restaurants.

O. “Long Form Notice” means notice of the proposed Settlement to be provided to Settlement Class Members substantially in the form attached hereto as “**Exhibit 3**”.

P. “Notice Costs” means (a) costs of the Class Action Settlement Administrator for providing notice to persons in the Settlement Class (including, but not limited to electronic delivery of the Long Form Notice and creation of the Settlement Website); (b) costs of the Class Action Settlement Administrator for administering the Settlement, including, but not limited to, the cost of providing Settlement Awards, and the cost of processing Claim Forms; and (c) the fees, expenses and all other costs of the Class Action Settlement Administrator incurred in connection with this Settlement.

Q. “Notice Deadline” or “Notice Date” means the date on which the notice described in Section V of the Agreement is first issued, which shall be no later than thirty (30) days following entry of Preliminary Approval.

R. “Objection/Exclusion Deadline” means the date forty-five (45) days after the Notice Deadline.

S. “Parties” mean the Class Representatives and Defendant.

T. “Preliminary Approval” means the date the Court enters an order preliminarily approving the Settlement of the Action, including but not limited to, the terms and conditions of this Agreement.

U. “Preliminary Approval Order” means the order entered by the Court in connection with the preliminary approval hearing on the Settlement, the proposed form of which is attached hereto as “**Exhibit 4**”.

V. “Released Claims” means all claims to be released pursuant to Section IV.C of this Agreement.

W. “Settlement Class” means all natural persons who ordered and paid for food for delivery by Grubhub independent contractors to an address in California through the Grubhub Platform during the Class Period (“Settlement Member”). Excluded from the Settlement Class are governmental entities; counsel of record (and their respective law firms) for the Parties; Defendant and any of its parents, affiliates, subsidiaries, independent service providers and all of its respective employees, officers, and directors; the presiding judge in the Action or judicial officer presiding over the matter, and all of their immediate families and judicial staff; and any natural person or entity that entered into a release with Defendant prior to the Effective Date concerning Defendant’s pricing or advertisements when ordering food delivery through Defendant’s App or Website.

X. “Settlement Award” means a \$10 site credit for use on the Grubhub App or website pursuant to Section IV.E. No sales taxes shall be assessed on the value on the credit.

Y. “Settlement Class List” means the list generated by Grubhub containing the last known available contact information for persons that fall under the definition of the Settlement Class, which Grubhub will provide to the Class Action Settlement Administrator within ten (10) business days of the Preliminary Approval Order.

Z. “Settlement Class Member” means any member of the Settlement Class who does not submit a valid request for exclusion prior to the expiration of the Objection/Exclusion Deadline.

AA. “Settlement Website” means the website to be established by the Class Action Settlement Administrator for purpose of providing notice, Claim Forms, the electronic submission of Claim Forms, and other information regarding this Agreement, as described in Section V.B.

BB. “Valid Claim” means a claim submitted in compliance with this Agreement and determined to be valid, timely and non-duplicative by the Class Action Settlement Administrator.

### **III. LITIGATION BACKGROUND**

A. Plaintiffs allege that they purchased food products for delivery through Defendant's App and Website during the Class Period. Plaintiffs further allege that Defendant's representations regarding its delivery fees, service fees, "CA Driver Benefits Fee" and menu prices on its delivery orders during the Class Period were false or misleading. Before the Action, Plaintiffs asserted claims against Grubhub based on these allegations as described below ("Prior Litigation").

B. Plaintiff Stout first filed a complaint against Grubhub in San Francisco Superior Court on May 3, 2021. The case was removed and Grubhub moved to compel arbitration. On December 14, 2021, Stout filed a Demand for Arbitration.

C. On February 9, 2021, Sznitko filed a putative class action complaint in Los Angeles Superior Court. Thereafter, Grubhub removed the action to the Central District of California and moved to compel arbitration. Sznitko made a Demand for Arbitration and on December 30, 2021, the Arbitrator denied the relief requested in the Demand (the "Sznitko Final Award"). On August 11, 2022, the Superior Court vacated the Sznitko Final Award. Sznitko filed another Complaint on August 29, 2022. Grubhub removed the case to federal court and moved to compel arbitration.

D. Plaintiffs Charles Wang, Marilee Bogaert, Robert Allan Perkins, Jr., Carissa Recco, Christine Bak filed a case in Alameda County Superior Court on November 21, 2022. Grubhub removed the case to federal court and filed a motion to compel arbitration.

E. For settlement purposes, the Parties agreed that Plaintiffs would dismiss all Prior Litigation and file the Action.

F. Defendant expressly denies any liability or wrongdoing of any kind associated with the claims alleged in the Action or Prior Litigation, and further contends that, for any purpose other than Settlement, the Action is not appropriate for class treatment. Defendant does not admit or

concede any actual or potential fault, wrongdoing, or liability against it in the Action or Prior Litigation. Defendant maintained during the entire pendency of the Action, and continues to maintain, that the challenged representations are, in fact, true, and are therefore not deceptive or misleading as a matter of law.

G. The Parties engaged in two separate arms-length mediation sessions before Clay Cogman, Esq. of Phillips ADR Enterprises, as well as many meetings, discussions, and conference calls thereafter with Mr. Cogman. Before and during these settlement discussions and mediation, the Parties had exchanged sufficient information to permit Plaintiffs and their counsel to evaluate the claims and potential defenses and to meaningfully conduct informed settlement discussions.

H. Based on the above, the current state of the law, the expense, burden and time necessary to prosecute the Action through trial and possible appeals, the risks and uncertainty of further prosecution of the Action considering the defenses at issue, the sharply contested legal and factual issues involved, and the relative benefits to be conferred upon Plaintiffs and the Settlement Class Members pursuant to this Agreement, Class Counsel has concluded that a Settlement with Defendant on the terms set forth herein is fair, reasonable, adequate, and in the best interests of the Settlement Class in light of all known facts and circumstances.

I. While Defendant denies any wrongdoing or liability arising out of any of the facts or conduct alleged in the Action and believes that it has valid defenses to Plaintiffs' claims, in order to avoid further expense, inconvenience, and interference with business operations and to dispose of litigation, Defendant has determined that the Settlement is in their best interests.

J. Based on the foregoing, which the Parties expressly incorporate as material terms of the Agreement, it is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all disputes and claims arising from or related to the Action which exist between the

Plaintiffs and the Settlement Class on the one hand, and Defendant, on the other hand. Therefore, it is the intention of Plaintiffs and the Settlement Class that this Agreement shall constitute a full and complete Settlement and release of the Released Claims against Defendant.

#### **IV. TERMS OF SETTLEMENT**

In consideration of the mutual covenants and promises set forth herein, and subject to Court approval, the Parties agree as follows:

A. Contingent on Court Approval. This Agreement is contingent upon the issuance by the Court of both Preliminary Approval and Final Approval. Should the Court not issue Preliminary Approval and Final Approval, Defendants do not waive, and instead expressly reserve, all rights to defend the Action. This Agreement is made for Settlement purposes only, and without any finding or admission of any wrongdoing or fault by Defendant.

B. Consent to Certification is Conditional. Defendant hereby consents, solely for the purposes of the Settlement set forth herein, to the certification of the Settlement Class, and appointment of Plaintiffs' Counsel as counsel for the Settlement Class and Plaintiffs as a representative of the Settlement Class; provided, however, that if this Agreement fails to receive a Final Approval Order and Judgment, then Defendants retain all rights they had immediately preceding the execution of this Agreement to object to the propriety of class certification in all other contexts and for all other purposes. The fact that Defendants conditionally consented herein to certification of the Settlement Class shall not be used against Defendants by any Party or non-party for any purpose in the Action or any other action, lawsuit, or proceeding of any kind whatsoever. In the event the Court does not approve all terms of the Agreement, or if the Agreement is voluntarily or involuntarily terminated for any reason, then Defendant's consent to certification of the Settlement Class shall be void and this Agreement and all orders entered in

connection therewith, including but not limited to any order conditionally certifying the Settlement Class, shall become null and void and shall be of no further force and effect and shall not be used or referred to for any purposes whatsoever in the Action or in any other case or controversy. And, in such an event, this Agreement and all negotiations and proceedings related thereto shall be deemed to be without prejudice to the rights of any and all parties hereto, who shall be restored to their respective positions as of the date of this Agreement, and Defendant shall not be deemed to have waived any opposition or defenses it has to any aspect of the claims asserted herein or to whether those claims are amenable to class-based treatment.

C. Releases and Limitations of Liability.

1. Release of Grubhub. Upon the Effective Date, and except as to such rights or claims as may be created by this Agreement, and in consideration for the Settlement benefits described in this Agreement, Plaintiffs and the Settlement Class shall fully release and discharge Defendant and all its present and former parent companies, subsidiaries, shareholders, officers, directors, employees, agents, servants, registered representatives, attorneys, insurers, affiliates, successors, personal representatives, heirs and assigns, endorsers, consultants, and any and all other entities or persons upstream and downstream in their sales and delivery channels (together, the “Discharged Parties”) from all claims, demands, actions, and causes of action of any kind or nature whatsoever, whether at law or equity, known or unknown, direct, indirect, or consequential, liquidated or unliquidated, foreseen or unforeseen, developed or undeveloped, arising under common law, regulatory law, statutory law, or otherwise, whether based on federal, state or local law, statute, ordinance, regulation, code, contract, common law, or any other source, or any claim that Plaintiffs or Settlement Class Members ever had, now have, may have, or hereafter can, shall or may ever have against the Discharged Parties in any other court, tribunal, arbitration panel,

commission, agency, or before any governmental and/or administrative body, or any other adjudicatory body, on the basis of, connected with, arising from, or in any way whatsoever relating to Defendant's marketing and charges for delivery orders through Defendant's App or Website during the Class Period and the claims alleged in the operative complaint in the Action, and, more particularly, but without in any way limiting the generality of the foregoing, arising from, directly or indirectly, or in any way whatsoever pertaining or relating to the claims alleged in the complaint in the Action, including, but not limited to, communications, disclosures, nondisclosures, representations, statements, claims, omissions, messaging, marketing, labeling, advertising, promotion, packaging, displays, brochures, studies, manufacture, distribution, operation, performance, functionality, notification, providing, offering, dissemination, replacement, any claims for rescission, restitution or unjust enrichment for all damages of any kind, violations of any state's deceptive, unlawful and/or unfair business and/or trade practices, false, misleading or fraudulent advertising, consumer fraud and/or consumer protection statutes, any violation of the Uniform Commercial Code, any breaches of express, implied and/or any other warranties, any similar federal, state or local statutes, codes, damages, costs, expenses, extracontractual damages, compensatory damages, exemplary damages, special damages, penalties, punitive damages and/or damage multipliers, disgorgement, declaratory relief, expenses, interest, and/or attorneys' fees and costs against the Discharged Parties pertaining to or relating to the claims alleged in the operative complaint in the Action ("Released Claims"), notwithstanding that Plaintiffs and the Settlement Class acknowledge that they may hereafter discover facts in addition to or different from those that they now know or believe to be true concerning the subject matter of the Action and/or the Released Claims herein.

Plaintiffs expressly understand and acknowledge that certain principles of law, including but not limited to Section 1542 of the Civil Code of the State of California, provide that:

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

Plaintiffs hereby agree that the provisions of all such principles of law or similar federal or state laws, rights, rules or legal principles, to the extent they are found to be applicable herein are hereby knowingly and voluntarily waived, relinquished and released by Plaintiffs.

2. Release of Class Representatives and Class Counsel. Upon the Effective Date, and except as to such rights or claims as may be created by this Agreement, and in consideration for the Settlement benefits described in this Agreement, Defendant shall fully release and discharge Class Representatives and Class Counsel from all claims, demands, actions, and causes of action of any kind or nature whatsoever, whether at law or equity, known or unknown, direct, indirect, or consequential, liquidated or unliquidated, foreseen or unforeseen, developed or undeveloped, arising under common law, regulatory law, statutory law, or otherwise, whether based on federal, state or local law, statute, ordinance, regulation, code, contract, common law, or any other source, or any claim that Defendant ever had, now has, may have, or hereafter can, shall or may ever have against Class Representatives, and Class Counsel in any other court, tribunal, arbitration panel, commission, agency, or before any governmental and/or administrative body, or any other adjudicatory body, on the basis of, connected with, arising from, or in any way whatsoever relating to the institution or prosecution of the Action, notwithstanding that Defendant

acknowledges that it may hereafter discover facts in addition to or different from those that it now knows or believes to be true concerning the subject matter of the Action and/or the Released Claims herein.

Defendant expressly understands and acknowledges that certain principles of law, including but not limited to Section 1542 of the Civil Code of the State of California, provide that:

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

D. Defendant hereby agrees that the provisions of all such principles of law or similar federal or state laws, rights, rules or legal principles, to the extent they are found to be applicable herein are hereby knowingly and voluntarily waived, relinquished and released by Defendant.

E. Compensation and Relief to the Settlement Class and Claims Administration. In consideration for the complete and final settlement of the Action, the Prior Litigation and the Released Claims Defendant shall issue Settlement Awards to Settlement Class Members who submit a Valid Claim, subject to the following provisions:

1. Claim Process. Settlement Class Members may make a Claim for a Settlement Award by submitting a Claim Form to the Class Action Settlement Administrator via a web form on the Settlement Website (a link to which shall be provided in the notice sent to Settlement Class Members, as provided for herein) during the Claim Period. A claim shall be a Valid Claim only if submitted on the Claim Form and pursuant to and in compliance with the procedures set forth in this Agreement. Submission of a claim, regardless of whether it is

determined to be a Valid Claim, shall confer no rights or obligations on any Party, any Settlement Class Member, or any other person, except as expressly provided herein.

2. Claim Forms must be submitted online no later than the Claim Deadline. Claim Forms submitted after the Claim Deadline will not be Valid Claims. On the Claim Form, the Settlement Class Member, or a Person with authority to sign and bind the Settlement Class Member, must provide and certify the truth and accuracy of the following information under penalty of perjury, including by signing the Claim Form by e-signature, or the claim will not be considered a Valid Claim by the Class Action Settlement Administrator: (a) The Settlement Class Member's full name and mailing address; (b) The Settlement Class Member's valid email address.

3. The Class Action Settlement Administrator shall be responsible for, among other things, providing notice as set forth herein, processing Claim Forms and administering the Settlement Website and Toll-free phone number, exclusion process, and Settlement Award process described herein (including receiving and maintaining on behalf of the Court and the Parties any Settlement Class correspondence regarding requests for exclusion from the Settlement Class). The Class Action Settlement Administrator will use adequate and customary procedures and standards to prevent compensation on fraudulent claims and to compensate only Valid Claims. The Class Action Settlement Administrator and Parties shall have the right to audit claims, and the Class Action Settlement Administrator may request additional information from claimants. If any fraud is detected or reasonably suspected, the Class Action Settlement Administrator and Parties can require further information from the claimant (including by cross-examination) or deny claims, subject to the supervision of the Parties and ultimate oversight by the Court.

4. The Class Action Settlement Administrator will provide Settlement Class Members who submit a Valid Claim a unique code via email, within sixty (60) days of the Effective Date, that can be entered on the Grubhub app or website to apply the Settlement Award. No further purchase shall be required to apply the Settlement Award.

No deductions for taxes will be taken from any Settlement Award at the time of distribution. Settlement Class Members are responsible for paying any taxes due on such Settlement Award. All Settlement Awards shall be deemed to be distributed solely in the year in which such payments are actually issued. Counsel and the Parties do not purport to provide legal advice on tax matters to each other or Settlement Class Members. To the extent this Agreement, or any of its exhibits or related materials, is interpreted to contain or constitute advice regarding any U.S. Federal or any state tax issue, such advice is not intended or written to be used, and cannot be used, by any Person or Business for the purpose of avoiding penalties under the Internal Revenue Code or any state's tax laws.

5. Maximum Settlement Award. The total value of the Settlement Award(s) issued to Settlement Class Members shall not exceed Five Million Dollars (\$5,000,000 USD). If necessary, based on the total tally of Valid Claims by the Class Action Settlement Administrator, the value of the Settlement Award issued to each Settlement Class Member who submits a Valid Claim may be decreased pro rata such that the total value of all Settlement Awards paid to all Settlement Class Members who submit a Valid Claim does not exceed Five Million Dollars (\$5,000,000 USD).

F. Final Tally. Within thirty (30) days after the close of the Claim Period, the Class Action Settlement Administrator shall provide the Parties with the number of Valid Claims received.

The Class Action Settlement Administrator shall approve or deny all claims, and its decision shall be final and binding, except that Plaintiffs' Counsel and Defendant (through counsel) shall have the right to audit claims and to challenge the Class Action Settlement Administrator's decision by motion to the Court. Plaintiffs' Counsel's or Defendant's choice not to audit the validity of any one or more Claim Forms shall not constitute or be construed as a waiver or relinquishment of any audit or other rights as to any other Claim Forms, individually or as a group, and similarly shall not be construed as a waiver or relinquishment by the Party as to any of its audit and other rights under this Agreement. No person shall have any claim against Plaintiffs, Defendants, Plaintiffs' Counsel, Defendant's counsel or the Class Action Settlement Administrator based on any determination of a Valid Claim, distributions or awards made in accordance with this Agreement and the Exhibits hereto. Neither Plaintiffs nor Defendant, nor their counsel, shall have any liability whatsoever for any act or omission of the Class Action Settlement Administrator.

Within thirty (30) days after the Effective Date, the Class Action Settlement Administrator shall notify by email all Settlement Class Members whose claims are denied the reason(s) for denial, using the email address (if any) provided by the Settlement Class Member on the Claim Form. If no valid email address is provided by the Settlement Class Member on the Claim Form, the Class Action Settlement Administrator shall not have an obligation to provide the Settlement Class Member any notification of the denial of the claim or the reasons for denial.

G. Injunctive Relief. Following the start of the Prior Litigations and Action, Grubhub has agreed as follows: (i) Grubhub will display fees and taxes as separate line items or otherwise ensure they are prominently disclosed, and (ii) Grubhub will not advertise “free delivery” for Grubhub+ members (but may advertise “\$0 delivery” and similar alternatives for Grubhub+) on Grubhub+ orders where other fees apply and in these instances will, space permitting, note that other fees may apply. These provisions will sunset seven years after the Effective Date.

H. Notice and Claims Administration Costs. The Parties will pay the Class Action Settlement Administrator for the costs incurred by it performing its duties under this Agreement as follows: Grubhub shall pay the Class Action Settlement Administrator no more than \$200,000 in Notice and Claims Administration Costs. Epiq has agreed to serve as settlement administrator and perform its duties under this Agreement for a capped cost of no more than \$200,000.

I. Attorneys’ Fees/Costs and Class Representative Enhancement.

1. Plaintiffs intend to move the Court for an award of attorneys’ fees and costs (inclusive of Notice and Claims Administration Costs paid, if any), to be paid to Class Counsel, which shall be noticed for the same date as the Fairness Hearing. Defendant shall not object to such a motion so long as the total amount requested for attorneys’ fees and costs is less than or equal to 20% of the Maximum Settlement Award. For clarity and notwithstanding anything to the contrary herein, Court approval of attorneys’ fees and costs, including the amount, is not a condition of this Settlement, which Settlement will remain in full force and effect irrespective of the Court’s ruling thereon. Grubhub shall pay attorneys’ fees and costs ordered by the Court separately and in addition to the relief provided to the Settlement Class herein, and shall do so within 30 days of the Effective Date.

2. Class Counsel further agrees that it will apply to the Court for an incentive award to each Class Representative in an amount not to exceed One Thousand Dollars (\$1,000 USD) each, for their participation as Class Representatives, for taking on the risks of litigation, and for Settlement of their individual claims as Settlement Class Members in this Action. Defendant shall not object to such a motion. For clarity and notwithstanding anything to the contrary herein, Court approval of the incentive awards, including the amount, is not a condition of this Settlement, which Settlement will remain in full force and effect irrespective of the Court's ruling thereon. Grubhub shall pay incentive awards ordered by the Court separately to Plaintiffs' Counsel for distribution to Plaintiffs (which is the sole and exclusive obligation of Plaintiffs' Counsel) and in addition to the relief provided to the Settlement Class herein, and shall do so within 30 days of the Effective Date.

3. Except for the fees and costs to be paid to Class Counsel and Plaintiffs as specifically provided in this subsection H, Defendant does not agree to pay and shall not be responsible or liable for the payment of any attorneys' fees and expenses of Class Counsel, Plaintiffs, the Settlement Class, and Settlement Class Members, any person or entity that may object to the Agreement, or any attorney who may represent any person or entity that may object to the Agreement, in connection with the Action or in connection with any claim that was or could have been alleged in the Action.

**V. NOTICE TO THE SETTLEMENT CLASS**

The Class Action Settlement Administrator shall provide the Long Form Notice in the form approved by the Court, as detailed below, and publish the Settlement Website no later than the Notice Deadline.

A. Electronic Mail Notice. Using the Settlement Class List, the Class Action Settlement Administrator shall send the Settlement Class by electronic mail a link to the Settlement Website, the Long Form Notice, and the Claim Form , in the proposed form attached hereto as “Exhibit 5”.

B. Website Notice. The Class Action Settlement Administrator will establish and maintain the Settlement Website (e.g. [www.GHdeliveryfeesettlement.com](http://www.GHdeliveryfeesettlement.com)). The Settlement Website will be dedicated to the Settlement. On the Settlement Website will be posted the Long Form Notice, the Claim Form, a copy of this Agreement, the Preliminary Approval Order, and any other materials the Parties agree to include. The Settlement Website shall also provide for online submission of Claim Forms, and instructions on how to access the case docket via PACER or in person at any of the court’s locations. The Settlement Website shall also state the date of the Fairness Hearing, that the date may change without further notice, and that Settlement Class Members should be advised to check the Settlement Website or the Court’s website to confirm that the date has not been changed. These documents and information shall be available on the Settlement Website no later than the Notice Deadline and remain at least until Final Approval. The Settlement Website shall not include any advertising and shall not bear or include Grubhub’s logo or trademarks.

C. Toll-Free Number. The Class Action Settlement Administrator shall establish and host a case specific toll-free number to allow the Settlement Class to learn more information.

D. The Parties shall supervise the Class Action Settlement Administrator in the performance of the notice functions set forth in this section.

E. Prior to the Fairness Hearing and in accordance with the Courts' regular notice requirements, the Class Action Settlement Administrator shall certify to the Court that they have complied with the notice requirements set forth in this section.

**VI. PROCEDURES FOR OBJECTING TO OR REQUESTING EXCLUSION FROM SETTLEMENT**

A. Objections. Only Settlement Class Members may object to the Settlement. A Settlement Class Member who wishes to object to the Settlement must do so in writing by the Objection/Exclusion Deadline. All written objections and supporting papers must (a) clearly identify the case name and number; and (b) be submitted to the Class Action Settlement Administrator at the addresses listed in the Long Form Notice and on the Settlement Website. Written objections must also contain: (1) the full name, address and telephone number of the Settlement Class Member; (2) a written statement of all grounds for the objection accompanied by any legal support for the objection (if any); (3) copies of any papers, briefs or other documents upon which the objection is based; (4) a list of all persons who will be called to testify in support of the objection (if any); (5) a statement of whether the Settlement Class Member intends to appear at the Fairness Hearing; (6) proof of membership in the Settlement Class; (7) a list of all objections filed by the objector and his or her counsel to class action settlements in the last ten years; and (8) the signature of the Settlement Class Member and her or his counsel, if any. No Settlement Class Member shall be entitled to be heard at the Fairness Hearing (whether individually or through separate counsel) unless written notice of the Settlement Class Member's intention to appear at the Fairness Hearing, and copies of any written objections or briefs, have been timely submitted to the Court. The date of the postmark on the mailing envelope or a legal proof of service accompanied by a file-stamped copy of the submission shall be the exclusive means used to determine whether

an objection and/or notice of intention to appear has been timely filed and served. In the event that the postmark is illegible, the objection and/or notice to appear shall be deemed untimely unless it is received by the Court within two (2) business days of the Objection/Exclusion Deadline. Settlement Class Members who fail to timely submit a written objection in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.

If any objection is received by the Class Action Settlement Administrator, the Class Action Settlement Administrator shall promptly forward the objection and all supporting documentation to counsel for the Parties. Prior to the Fairness Hearing and in accordance with the Courts' regular notice requirements, Plaintiffs' counsel shall file objections and supporting documentation with the Court and any responses to the objections or any written objections submitted to the Court by Settlement Class Members in accordance with this Agreement.

A Settlement Class Member who objects to the Settlement may also submit a Claim Form on or before the Claim Deadline, which shall be processed in the same way as all other Claim Forms. A Settlement Class Member shall not be entitled to an extension to the Claim Deadline merely because the Settlement Class Member has also submitted an objection.

B. Procedure for Requesting Exclusion. Anyone in the Settlement Class who wishes to opt out of this Settlement must submit a written statement to the Class Action Settlement Administrator by the Objection/Exclusion Deadline. To be valid, each request for exclusion must: (a) state the Settlement Class Member's name, address, email address, and phone number; (b) be personally signed by the Settlement Class Member and not the Settlement Class Member's attorney or anyone acting on the Settlement Class Member's behalf; and (c) include the statement

“I/we request to be excluded from the class settlement in *Wang v. Grubhub, Inc.*” Requests to opt-out that do not include all required information and/or that are not submitted on a timely basis, will be deemed null, void, and ineffective. The date of the postmark on the mailing envelope shall be the exclusive means used to determine whether a Settlement Class Member’s opt-out/exclusion request has been timely submitted. In the event that the postmark is illegible, the opt-out/exclusion request shall be deemed untimely unless it is received by the Class Action Settlement Administrator within two (2) business days of the Objection/Exclusion Deadline. Any Settlement Class Member who properly opts out of the Settlement Class using this procedure will not be entitled to any Settlement Award, will not be bound by the Settlement, and will not have any right to object, appeal or comment thereon. Anyone in the Settlement Class who fails to submit a valid and timely request for exclusion on or before the Objection/Exclusion Deadline shall be bound by all terms of the Settlement and any final judgment entered in this litigation if the Settlement is approved by the Court, regardless of whether they ineffectively or untimely requested exclusion from the Settlement.

Not later than ten (10) days after the Objection/Exclusion Deadline, the Class Action Settlement Administrator shall provide to Class Counsel and counsel for Defendant a complete list of the names of the persons who have excluded themselves from the Settlement Class in a valid and timely manner with copies of the exclusion requests. Plaintiffs’ Counsel shall inform the Court of the number of persons who have timely and validly excluded themselves prior to the Fairness Hearing in accordance with the Courts’ regular notice requirements. If a Settlement Class Member submits both a Claim Form and an exclusion request, the Claim Form shall take precedence and be considered valid and binding, and the exclusion request shall be deemed to have been sent by mistake and rejected.

C. Termination Right. In its sole discretion and at its sole option, Defendant has the unconditional right, but not the obligation, to terminate this Agreement if the total number of opt-outs exceeds 10,000 persons in the Settlement Class.

D. No Solicitation of Settlement Objections or Exclusions. The Parties agree to use their best efforts to carry out the terms of this Settlement. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage anyone in the Settlement Class to object to the Settlement or request exclusion from participating as a Settlement Class Member, or encourage any Settlement Class Member to appeal from the final judgment.

## **VII. PRELIMINARY APPROVAL OF SETTLEMENT**

Following full execution of this Agreement, Plaintiffs will move the Court for entry of the Preliminary Approval Order, which shall specifically include provisions that: (a) preliminarily approve the Settlement as fair, adequate and reasonable to the Settlement Class, and within the reasonable range of possible final approval; (b) conditionally certify the Settlement Class for Settlement purposes only and appoint Class Counsel as counsel for the Settlement Class for Settlement purposes only; (c) approve the Long Form Notice and find that the direct notice provided for herein constitutes the best notice practicable under the circumstances, provides due and sufficient notice to the Settlement Class and fully satisfies the requirements of due process and the Rules of Civil Procedure; (d) direct that notice be provided to the Settlement Class, in accordance with this Agreement, by the Notice Deadline; (e) establish a procedure for persons in the Settlement Class to object to the Settlement or exclude themselves from being a Settlement Class Member by the Objection/Exclusion Deadline, after which no one shall be allowed to object to the Settlement or exclude himself or herself from being a Settlement Class Member or seek to intervene; (f) approve the Claim Form and the Claims Process described herein, and set a deadline

for timely submission of claims; (g) pending final determination of whether the Settlement should be approved, bar all persons in the Settlement Class, directly, on a representative basis or in any other capacity, from commencing or prosecuting against any of the Discharged Parties any action, arbitration, or proceeding in any court, arbitration forum or tribunal asserting any of the Released Claims; (h) pending final determination of whether the Settlement should be approved, stay all proceedings in the Action except those related to effectuation of the Settlement; (i) schedule the Fairness Hearing on Final Approval of the Settlement, which shall be no sooner than one hundred and forty-five (145) days after Preliminary Approval (or such other date ordered by the Court); and (j) providing that, in the event the proposed Settlement set forth in this Agreement is not approved by the Court, or in the event that this Agreement becomes null and void pursuant to its terms, this Agreement and all orders entered in connection therewith, including but not limited to any order conditionally certifying the Settlement Class, shall become null and void and shall be of no further force and effect and shall not be used or referred to for any purposes whatsoever in the Action or in any other case or controversy; and that in such an event, this Agreement and all negotiations and proceedings related thereto shall be deemed to be without prejudice to the rights of any and all parties hereto, who shall be restored to their respective positions as of the date of this Agreement, (k) deeming the class definition in the operative complaint to be amended to conform to the Settlement Class definition herein. In the event the Court does not enter the Preliminary Approval order described herein, or decides to do so only with modifications, then this entire Agreement shall become null and void, unless the Parties hereto agree in writing to proceed with this Agreement as modified.

### **VIII. FINAL APPROVAL OF SETTLEMENT**

Before the Fairness Hearing and in accordance with the Court's regular notice requirements, Class Counsel shall file a Motion for Final Approval of the Settlement. Plaintiffs shall request that the Court enter the Final Approval Order, which shall specifically include provisions that: (a) finally approve the Settlement as fair, reasonable and adequate to the Settlement Class Members; (b) find that the notice as given was the best notice practicable under the circumstances, is due and sufficient notice to the Settlement Class and fully satisfies the requirements of due process and the Rules of Civil Procedure; (c) approve the plan of distribution of the compensation to the Settlement Class Members; (d) finally certify the Settlement Class; (e) confirm that Plaintiffs and the Settlement Class Members have released all Released Claims and are permanently barred and enjoined from asserting, commencing, prosecuting or continuing any of the Released Claims against the Discharged Parties; and (f) dismiss the Action with prejudice, without costs to any Party, except as provided in this Agreement, and subject to the Court's retaining continuing jurisdiction over the Parties and the Settlement Award for the purpose of enforcement of the terms of this Agreement.

### **IX. PARTIES' AUTHORITY**

The signatories represent that they are fully authorized to enter into this Agreement and bind the Parties to its terms and conditions.

### **X. MUTUAL FULL COOPERATION**

A. The Parties agree to cooperate fully with each other to accomplish the terms of this Agreement, including but not limited to, execution of such documents and the taking of such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts contemplated by this Agreement

and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Agreement. As soon as practicable after execution of this Agreement, Class Counsel, with the assistance and cooperation of Defendant and its counsel, shall take all necessary steps to secure the Court's final approval of this Agreement. However, Defendants shall have no obligation to make separate filings. Defendant agrees that it will not attempt to discourage Settlement Class Members from filing claims.

#### **XI. NO ADMISSION**

This Agreement is not to be construed or deemed as an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant. Defendant denies all liability for claims asserted in the Action. Each of the Parties has entered into this Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses. This Agreement is a Settlement document and shall, pursuant to Cal. Evid. Code 1152 and related or corresponding state and federal evidence laws, be inadmissible in evidence in any proceeding in order to establish liability. The preceding sentence shall not apply to an action or proceeding to approve or enforce this Agreement.

#### **XII. NOTICES**

Unless otherwise specifically provided, all notices, demands or other communications in connection with this Agreement shall be in writing and shall be deemed served on the date of mailing by United States registered or certified mail, return receipt requested, addressed as follows:

| <b><u>For The Class</u></b>                                                                               | <b><u>For Defendant</u></b>                                                              |
|-----------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------|
| Jeffrey Kaliel<br>KALIELGOLD PLLC<br>1100 15 <sup>th</sup> Street NW, 4th Floor<br>Washington, D.C. 20005 | Grubhub Legal Department<br>111 West Washington Street, Ste<br>2100<br>Chicago, IL 60602 |

### **XIII. CONSTRUCTION**

The Parties agree that the terms and conditions of this Agreement are the result of lengthy, intensive arms-length negotiations between the Parties, and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his or its counsel participated in the drafting of this Agreement.

### **XIV. MATERIAL TERMS; CAPTIONS**

Each term of this Agreement is a material term of the Agreement not merely a recital, and reflects not only the intent and objectives of the Parties but also the consideration to be exchanged by the Parties hereunder.

Paragraph titles or captions are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any of its provisions.

### **XV. INTEGRATION CLAUSE**

This Agreement contains the entire agreement between the Parties relating to the Settlement, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such party's legal counsel, are extinguished.

### **XVI. PUBLIC STATEMENTS**

The Parties and their counsel shall issue no public statements and shall make no comments to media or press with respect to the Action or the Agreement at any time (including but not limited to press releases via PR Newswire), except as required by law. In addition, the Parties and their counsel shall not make, publish, circulate or cause to be made, published or circulated any

statements that represent or suggest any wrongdoing by Defendant, or that this Agreement or any order by the Court regarding the Settlement or this Agreement represents or implies any wrongdoing by, or any admission of liability by, Defendant, or a finding by the Court of liability or wrongdoing.

**XVII. NON-EVIDENTIARY USE**

Neither this Agreement nor any of its terms shall be offered or received into evidence in the Action, or in any other action or proceeding; provided, however, that nothing contained in this section “non-evidentiary use” shall prevent this Agreement from being used, offered, or received in any proceeding to enforce, construe, or finalize this Agreement.

**XVIII. NO COLLATERAL ATTACK**

This Agreement shall not be subject to collateral attack by any Settlement Class Member or any recipient of the notices to the Settlement Class after the judgment and dismissal is entered. Such prohibited collateral attacks shall include claims that a Settlement Class Member’s Settlement Award was improperly calculated or adjusted or that the Settlement Class Member failed to receive timely notice of the procedure for disputing the calculation of the individual Settlement Award or failed to submit a timely dispute letter for any reason.

**XIX. AMENDMENTS**

The terms and provisions of this Agreement may be amended only by a written agreement, which is both (1) signed by the Parties who have executed this Agreement and (2) approved by the Court.

**XX. ASSIGNMENTS**

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any party or Settlement Class Member without the express written consent of each

other Party hereto. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties and Settlement Class Members under this Agreement, and shall not be construed to confer any right or to avail any remedy to any other person.

**XXI. GOVERNING LAW**

This Agreement shall be governed by, construed, and interpreted and the rights of the Parties determined in accordance with the laws of the State of California, irrespective of the State of California's choice of law principles.

**XXII. BINDING ASSIGNS**

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.

**XXIII. CONFIDENTIALITY**

Class Counsel and Plaintiffs' counsel of record in the Action warrant and represent that they have not shared any information regarding this Settlement or confidential information learned in the Action with any third-party, beyond what was permitted under the stipulated protective order in the Action. Class Counsel and Plaintiffs' counsel of record in the Action warrant and represent that they will not in the future share any confidential information learned in the Action with any third parties.

**XXIV. CLASS COUNSEL SIGNATORIES**

It is agreed that because the Settlement Class appears to be so numerous, it is impossible or impractical to have each member of the class execute this Agreement. The notice plan set forth

herein will advise Settlement Class Members of all material terms of this Agreement, including the binding nature of the releases and such shall have the same force and effect as if this Agreement were executed by each Settlement Class Member.

## **XXV. SETTLEMENT TIMELINE**

For the Court's and the Parties' convenience, the pertinent deadlines contained in this Agreement are listed below.

| <b><u>Item</u></b>                                                                                    | <b><u>Deadline</u></b>                                                                |
|-------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|
| Notice Deadline/Notice Date                                                                           | 30 days after Preliminary Approval                                                    |
| Objection/Exclusion Deadline                                                                          | 45 days after Notice Deadline/Notice Date                                             |
| Responses to Objections/Motions                                                                       | On regular notice before the Fairness Hearing                                         |
| Claim Deadline                                                                                        | 90 days after Notice Deadline/Notice Date                                             |
| Final Tally                                                                                           | 30 days after the Claim Period                                                        |
| Briefing on Plaintiffs' Motion for Final Approval and Motion for Attorneys' Fees and Incentive Awards | On regular notice before the Fairness Hearing                                         |
| Fairness Hearing                                                                                      | At least 145 days after Preliminary Approval<br>(or such other date set by the Court) |
| Effective Date                                                                                        | Date of Final Approval (assuming no objections)                                       |
| Payment of Attorneys' Fees and Incentive Awards                                                       | 30 days after Effective Date                                                          |
| Distribution of Settlement Awards                                                                     | 60 days after Effective Date                                                          |

**XXVI. COUNTERPARTS**

This Agreement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all Parties and the Settlement Class.

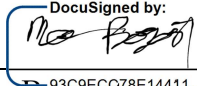
**IN WITNESS WHEREOF**, the Parties have duly executed this Agreement as of the dates indicated below:

**CLASS REPRESENTATIVES AND CLASS COUNSEL:**

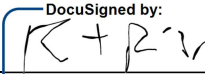
11/10/2023  
Dated: \_\_\_\_\_, 2023

By:    
 Charles Wang, individually and on  
behalf of the Settlement Class

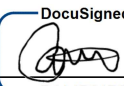
11/11/2023  
Dated: \_\_\_\_\_, 2023

By:    
 Marilee Bogach, individually and on  
behalf of the Settlement Class

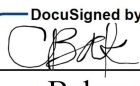
11/11/2023  
Dated: \_\_\_\_\_, 2023

By:    
 Robert Allan Perkins Jr., individually and on  
behalf of the Settlement Class

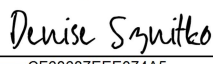
11/11/2023  
Dated: \_\_\_\_\_, 2023

By:    
 Carissa Recco, individually and on  
behalf of the Settlement Class

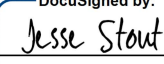
11/13/2023  
Dated: \_\_\_\_\_, 2023

By:    
 Christine Baker, individually and on  
behalf of the Settlement Class

11/13/2023  
Dated: \_\_\_\_\_, 2023

DocuSigned by:  
  
CF68687EE074A5...  
By: \_\_\_\_\_  
Denise Sznitko, individually and on  
behalf of the Settlement Class

11/14/2023  
Dated: \_\_\_\_\_, 2023

DocuSigned by:  
  
B9CB8748...  
By: \_\_\_\_\_  
Jesse Stout, individually and on  
behalf of the Settlement Class

Dated: November 9, 2023

KALIEL GOLD PLLC  
  
By: \_\_\_\_\_  
Jeffrey Kalien  
Attorneys for Plaintiffs and the Settlement Class

**DEFENDANT AND COUNSEL FOR DEFENDANT:**

Dated: \_\_\_\_\_, 2023

GRUBHUB INC.  
By: \_\_\_\_\_  
Authorized Signatory  
Grubhub Inc.

Dated: \_\_\_\_\_, 2023

SIDLEY AUSTIN LLP (US)  
By: \_\_\_\_\_  
Amy Lally  
Attorneys for Defendant Grubhub Inc.

Dated: \_\_\_\_\_, 2023

By: \_\_\_\_\_  
Denise Sznitko, individually and on  
behalf of the Settlement Class

Dated: \_\_\_\_\_, 2023

By: \_\_\_\_\_  
Jesse Stout, individually and on  
behalf of the Settlement Class

Dated: \_\_\_\_\_, 2023

KALIEL GOLD PLLC  
  
By: \_\_\_\_\_  
Jeffrey Kaliel  
Attorneys for Plaintiffs and the Settlement Class

**DEFENDANT AND COUNSEL FOR DEFENDANT:**

11 / 07 / 2023  
Dated: \_\_\_\_\_, 2023

GRUBHUB INC.  
  
By: Adam Patnaude  
Authorized Signatory  
Grubhub Inc.

11/14  
Dated: \_\_\_\_\_, 2023

SIDLEY AUSTIN LLP (US)  
  
By: Amy Lally  
Amy Lally  
Attorneys for Defendant Grubhub Inc.