

**STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE
(SUPERSEDING)**

IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiffs Bahl Media, LLC (“Bahl”) and Wein Realty, LLC (“Wein”; collectively, “Plaintiffs” or “Class Representatives”), on behalf of themselves and the Class that they represent (defined below as “Class Members”), and Defendant California Franchise Tax Board (“FTB”) that the proceedings in the Superior Court of the State of California, City and County of San Francisco (“Court”) in the consolidated lawsuit Case No. CGC-16-554150, captioned *Bahl Media, LLC v. California Franchise Tax Board* (lead case), and in Case No. CGC-19-576007, captioned *Wein Realty, LLC v. California Franchise Tax Board* (collectively “Action”) is settled, fully and finally, on the terms and conditions set forth in this superseding Settlement Agreement, subject to and expressly conditioned upon the approval of the Court and the entry of Final Judgment. This Settlement Agreement supersedes an earlier agreement fully executed by the Parties on March 19, 2025, as well as an Addendum to that earlier agreement fully executed on May 14, 2025. The Parties have entered into this superseding Settlement Agreement following input and instructions from the Court, as well as further negotiations between the Parties.

The Action involves a dispute over whether certain out-of-state entities (as used herein “out-of-state entities” refer to entities domiciled outside California) are doing business in California and therefore subject to the \$800 minimum tax under Cal. Rev. & Tax. Code § 23153 (“Minimum Tax” or “Tax”) because their only connection to California is holding a passive interest in a limited liability company doing business in California.

I. THE PARTIES

A. FRANCHISE TAX BOARD. FTB is the agency responsible for administering state income tax for the State of California.

B. CLASS REPRESENTATIVES AND CLASS MEMBERS. Plaintiffs are out-of-state entities that invested in California LLCs (as defined below), paid the Minimum Tax, and filed timely claims for refund on the grounds that they were not “doing business” in California under Cal. Rev. & Tax. Code § 23101(a) and that California’s application of the Minimum Tax was unconstitutional.

On January 25, 2024, the Court certified a Class of taxpayers who:

- (i) paid the Minimum Tax and related interest and penalties, if any, to FTB;
- (ii) timely filed a refund claim of the foregoing amount;
- (iii) either had their refund claim denied after June 10, 2016 and before the date of Plaintiff’s motion for class certification [July 21, 2023] or have not had their refund claim approved or denied and filed it at least 6 months prior to the date of Plaintiff’s motion for class certification [July 21, 2023], and

- (iv) are not doing business in California because their only connection to California is holding a passive interest in a limited liability company doing business in California (including but not limited to within the meaning of *Swart*).

(Order Granting Plaintiffs' Motion for Class Certification (1/25/24).)

The Parties have agreed to seek the Court's approval to revise the class definition by adding subdivision (v), to the above:

- (v) for purposes of this Action, are entities holding a 50 percent or less interest in a limited liability company doing business in California.

The original Class List included approximately 495 Class Members, with claims relating to approximately 1,074 separate tax years, although the precise numbers were disputed. Removing entities that do not meet the class definition, including entities that held interests in limited partnerships rather than LLCs, there are now approximately 428 Class Members, with claims relating to approximately 969 separate tax years.

II. THE SETTLEMENT AGREEMENT

A. COMPROMISE. This Agreement reflects a compromise between the Parties and shall in no event be construed as an admission by any Party of the validity of any claim or defense.

B. NO ADMISSIONS. Plaintiffs assert a violation of their statutory and constitutional right to a refund of the Minimum Tax that they paid. The FTB denies any wrongdoing or liability in connection with any facts or claims that have been alleged in the Action. Nevertheless, Plaintiffs and FTB consider it desirable to resolve the Action on the terms stated herein.

C. BEST INTERESTS OF THE CLASS. Plaintiffs believe that their claims are valid. Based upon their review, investigation, and evaluation of the facts and law relating to the matters alleged in the Action, they, on behalf of the Class, have agreed to settle the Action pursuant to the provisions of this Agreement, after considering, among other things: (1) the benefits to the Class under the terms of this Agreement; (2) the risks, costs, and uncertainty of protracted litigation, especially in complex actions such as this, as well as the difficulties and inevitable delays inherent in such litigation, including appeals regardless of which side prevails at trial; and (3) the desirability of consummating this Agreement promptly to provide expeditious and effective relief to the Class, many of whom have already waited a number of years for resolution of this matter and have an immediate interest in securing the benefits of this Agreement as soon as possible.

D. THIS AGREEMENT IS THE PRODUCT OF A SETTLEMENT CONFERENCE, ARMS-LENGTH NEGOTIATIONS, AND INPUT FROM THE COURT. This Settlement was reached after arm's-length settlement negotiations among and between Class Counsel, Plaintiffs, FTB, and FTB's Counsel. On October 14, 2024, the parties engaged in mediation before the Honorable Charles "Tim" McCoy (Ret.), former Presiding

Judge of Los Angeles Superior Court; although the Parties did not reach a settlement that day, they engaged in significant arm's-length negotiations and exchanged settlement proposals. On December 11, 2024, a mandatory settlement conference was held by the Honorable Anne-Christine Massullo, Presiding Judge of the Superior Court, City and County of San Francisco, which involved further arm's-length negotiations facilitated by Judge Massullo and ultimately resulted in a proposed settlement agreement between the Parties subject to approval by the FTB Board. On that day, the Parties agreed to a term sheet and thereafter entered into a settlement agreement. Based on questions and concerns raised by the Court in its May 2, 2025 Order re Supplemental Briefing, the Parties entered into an Addendum to the original settlement agreement. Based on further instructions from the Court at the hearing on Plaintiffs' motion for preliminary approval of that original settlement agreement on May 15, 2025, and the Court's Order Continuing Preliminary Approval Hearing on May 19, 2025, as well as subsequent negotiations, the Parties drafted this new superseding Settlement Agreement. This Settlement Agreement is the final and controlling agreement between the Parties and supersedes all prior agreements.

III. DEFINITIONS AND CONVENTIONS

A. DEFINITIONS

As used in this Agreement, terms have the following meaning, unless specifically provided otherwise:

1. "Administration Cost" or "Administrative Costs" means the reasonable, actual and direct costs for carrying out and implementing the terms of this Settlement Agreement, including the fees and costs of the third-party settlement administrator. Administrative Costs do not include other fees, costs or expenses, including Attorneys' Fees and Costs.
2. "Agreement" or "Settlement Agreement" means this document.
3. "Attorneys' Fees and Costs" means such funds as may be awarded by the Court to Class Counsel to compensate Class Counsel in the Action for their fees and expenses incurred in connection with the Action. Plaintiffs' Attorneys' Fees and Costs are addressed in paragraph XIII of this Settlement Agreement.
4. "California LLC" means an LLC that is doing business in California, whether some or all of its business is in this State, and that elected to be taxed as a partnership for tax purposes.
5. "Claim" or "Refund Claim" means the administrative refund claim submitted by a Class Member or by its legal representative on its behalf to the FTB for refund of the Minimum Tax, as well as any interest or penalties.
6. "Class Counsel" refers collectively to the law firms listed below who

were appointed as Class Counsel:

Silverstein & Pomerantz
12 Gough Street, 2nd Floor
San Francisco, CA 94103
Tel: (415) 593-3502

Calvo Jacob & Pangelinan LLP
505 Montgomery Street, 10th Floor
San Francisco, CA 94111
Tel: (415) 374-8370

7. “Class” or “Class Member” or “Class Members” or “Settlement Class Member” means taxpayers who:

- (i) paid the Minimum Tax and related interest and penalties, if any, to FTB;
- (ii) timely filed a Refund Claim of the foregoing amount;
- (iii) either had their Refund Claim denied after June 10, 2016 and before the date of Plaintiff’s motion for class certification [on July 21, 2023] or have not had their refund claim approved or denied and filed it at least 6 months prior to the date of Plaintiff’s motion for class certification [on July 21, 2023],
- (iv) are not doing business in California because their only connection to California is holding a passive interest in a limited liability company doing business in California (including but not limited to within the meaning of *Swart*), and
- (v) For purposes of this Action, are limited to entities holding a 50 percent or less interest in a limited liability company doing business in California.

Excluded from the Class are any taxpayers who timely and properly opted out of the Class following notice ordered by the Court, which was mailed and published by FTB on or about May 26, 2024, any taxpayers who opt out of the Class pursuant to the opt-out procedures set forth in this Settlement Agreement, and those who were removed from the Class List by stipulation of the Parties, because those entities do not meet the class definition.

8. “Class List” means the list of Class Members, which shall contain their most recent contact information, including last known address per FTB’s records. A list of taxpayers who submitted Refund Claims to FTB citing *Swart Enterprises, Inc. v. Franchise Tax Board* (“*Swart*”), 7 Cal.App.5th 497 (2017) was provided by FTB to Class Counsel on or around September 19, 2024, marked as FTB02480-FTB02492, containing the names of 495 entities (“Original Class List”). This list has been modified by stipulation of the Parties to remove entities that do not meet the Class definition. The current list contains the names of approximately 428 entities. This list will remain confidential and its contents will not be publicly filed with the Court. If the FTB becomes aware of any taxpayers who fall within the Class definition but were omitted from the preliminary Class List, FTB shall add the entity to

the Class List. FTB shall notify Class Counsel of the identity of any taxpayers added to the Class List. If a taxpayer claims to be a Class Member and FTB determines that the taxpayer is not a Class Member, and denies its refund claim, the Parties shall follow the procedures set forth in paragraph V.A.4, below.

9. “Class Member Spreadsheet” means the confidential electronic spreadsheet containing the Class List and related information regarding the identity of the Class Members. The Class Member Spreadsheet will be created and maintained by FTB.

10. “Complaints” means the operative complaints in this Action, including the Fourth Amended Class Action Complaint for: Refund of Franchise Taxes Pursuant to Cal. Rev. & Tax. Code § 19382, Case No. CGC-16-554150, captioned *Bahl Media, LLC v. California Franchise Tax Board* (lead case), in the Superior Court of the State of California, City and County of San Francisco, and the Second Amended Class Action Complaint for: Refund of Franchise Taxes Pursuant to Cal. Rev. & Tax. Code § 19382, Case No. CGC-19-576007, captioned *Wein Realty, LLC v. California Franchise Tax Board*, in the Superior Court of the State of California, City and County of San Francisco.

11. “Effective Date” means the date on which the Settlement Agreement becomes effective.

(i) “Effective Date” shall be the later of the following:

a) The Court’s entry of a Final Order and Judgment following its final approval of the Settlement if no objection by a Class Member consistent with appellate standing under *Hernandez v. Restoration Hardware, Inc.*, 4 Cal.5th 260 (2018) (“*Hernandez*”) has been filed or if all objections that have been filed have been withdrawn;

b) The date on which the time of appeal has expired if an objection to this Settlement or a motion to intervene by a Class Member or third person consistent with appellate standing under *Hernandez* has been filed and not withdrawn but no appeal by said Class Member has been filed; or

c) The Court’s entry of a Final Order and Judgment following the final resolution of any appeal, including, but not limited to an appeal of any order(s) denying any motion(s) to intervene that has been filed and is consistent with appellate standing under *Hernandez* and exhaustion of any further appeals (whether available by right, petition, writ, or otherwise).

d) The Parties recognize that it is important to deliver the benefits of this Agreement to the Plaintiffs and Class Members as soon as possible, and therefore agree to work in good faith to expedite the resolution of any appeals that are filed in this Action.

12. “Execution Date” means the date upon which the last signature is placed on this Agreement.

13. “Final Approval Hearing” means a hearing held before the Court during or following which the Court will: (1) make a final decision regarding whether to finally approve this Agreement as fair, reasonable, and adequate; and (2) rule on the merits of any objections to this Agreement.

14. “Final Approval” or “Final Approval Order” means an order issued by the Court finally approving this Agreement as binding upon the Parties.

15. “Final Judgment,” which shall occur after the Court rules on the merits of any objections of this Agreement, means collectively the order and the judgment entered by the Court:

- (i) Giving final approval to the terms of this Agreement as fair, adequate, and reasonable;
- (ii) Providing for the orderly performance and enforcement of the terms and conditions of the Agreement;
- (iii) Granting Final Approval;
- (iv) Discharging the Released Parties of and from all further liability for the Released Claims;
- (v) Permanently barring and enjoining Releasing Parties from instituting, filing, commencing, prosecuting, maintaining, continuing to prosecute, directly or indirectly, as an individual single entity or collectively, representatively, derivatively, or on behalf of them, or in any other capacity of any kind whatsoever, any action in any state court, any federal court, any state administrative proceeding, any regulatory authority, or in any other tribunal, forum, or proceeding of any kind, against the Released Parties that asserts any Released Claims; and
- (vi) The actual form of the Final Order and Judgment entered by the Court may include additional provisions as the Court may direct that are not inconsistent with this Agreement.

16. “FTB’s Counsel” means the following:

Ryan Zick
Deputy Attorney General, California Department of Justice
Office of the Attorney General
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013
Office: (213) 269-6306
Fax: (916) 731-2144
Email: Ryan.Zick@doj.ca.gov

Angela Zugman
Deputy Attorney General, California Department of Justice
Office of the Attorney General
600 W. Broadway, Suite 1800
San Diego, CA 92101
Office: (619) 738-9553
Fax: (619) 645-2581
Email: Angela.Zugman@doj.ca.gov

17. “Class Member on the Class List” means, as of the Execution Date of this Settlement Agreement, a taxpayer that FTB identified as meeting the definition of “Class” or “Class Member” or “Class Members” or “Settlement Class Member” and included in the “Class List” as defined in paragraphs III.A.7 and III.A.8, above, as modified by stipulation of the parties, and subject to any further modification by the Parties.

18. “Refund Claims by Class Members on the Class List” means the Refund Claims submitted by the Class Members on the Class List that were included in the Class Member claim files that FTB transmitted to Class Counsel pursuant to Court Order between December 2024 and March 2025 (“Class Member Claim Files”).

19. “Notice of Proposed Settlement” means the notice that will be provided to the Class Members pursuant to California Rules of Court, Rule 3.769(f), the Preliminary Approval Order and this Agreement. The form of notice will at a minimum contain the information set forth in paragraph VI, below.

20. “Notice Date” is the date by which the Notice of Proposed Settlement shall be completed by the FTB. The Notice of Proposed Settlement shall be completed, mailed to the Class, and posted on the FTB’s website no later than forty-five (45) days after Preliminary Approval unless a different date is ordered by the Court.

21. “Opt-out Deadline” or “Exclusion Deadline” means sixty (60) days following the Notice Date unless a different date is ordered by the Court.

22. “Party” or “Parties” means individually or collectively the named Plaintiffs and FTB as defined herein.

23. “Preliminary Approval” or “Preliminary Approval Order” means an order entered by the Court preliminarily approving the terms and conditions of this Agreement and the Settlement.

24. “Released Claims” means, subject to the limitations in paragraph X, below, any and all judgments, liens, indebtedness, losses, claims, liabilities, actions, demands, rights, suits, and causes of action of whatever kind or nature that the Plaintiffs asserted in the Complaints, including damages, penalties, and interest; Plaintiffs’ attorneys’ fees and costs related to the Action are addressed in paragraph XIII of this Settlement and are included in Released Claims; subject to the foregoing, Released Claims includes all claims predicated on

the allegations in the Complaints against all Released Parties relating to the tax refunds sought in the Complaints and/or any related costs or expenses, as well as any claim (referred to herein as “FTB Released Claims”) by FTB that Plaintiffs or Class Members owe the Minimum Tax for any tax year covered by the Complaints as to which they have submitted a Valid Claim pursuant to this Agreement.

25. “Released Party” or “Released Parties” means the State of California, FTB, the Office of the California Attorney General, as well as any of their present or former employees, officers, members of its governing Board, agents, attorneys, affiliates, successors, assigns, and all other representatives.

26. “Releasing Parties” means Plaintiffs and each and every Class Member, for themselves and each of their respective beneficiaries, executors, conservators, personal representatives, wards, heirs, predecessors, successors, current and former employees, officers, agents, directors, attorneys, administrators, legal representatives, conservators, assigns, affiliates, and with respect to minors, parents, and guardians.

27. “Settlement” means the terms and conditions set forth in this Agreement.

28. “Settlement Administrator” means the third-party administrator retained to administer the Settlement, including making the final determination as to any disputed Other Refund Claims, as defined below, and performing other tasks that are provided for in this Agreement. The Parties have tentatively identified a potential Settlement Administrator and will seek a Court order to engage an entity as the Settlement Administrator within 90 days of the Execution Date of this Agreement.

29. “Other Claimant” means a taxpayer that is not a Class Member on the Class List as of the Execution Date of this Settlement Agreement and that submitted a refund claim for the Minimum Tax, as well as any interest or penalties.

30. “Other Refund Claims” means refund claims that are not Refund Claims by Class Members on the Class List, including any refund claims submitted by Other Claimants or any refund claims that were not included in the Class Member Claims Files transmitted to Class Counsel between December 2024 and March 2025.

31. “Written Objection Deadline” means sixty (60) days following the Notice Date unless a different date is ordered by the Court. After the Written Objection Deadline, Class Members can still make objections by appearing at the Final Approval Hearing.

B. CONVENTIONS

1. All personal pronouns used in this Agreement shall include all other genders and the singular shall include the plural and vice versa except where expressly provided to the contrary.

2. All references herein to sections, paragraphs, and exhibits refer to sections, paragraphs, and exhibits of and to this Agreement, unless otherwise expressly stated in the reference.

3. The headings and captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision thereof.

IV. THE UNDERLYING DISPUTE

1. Plaintiffs and Class Members are out-of-state entities who contend that their only connection to California is holding a passive interest in an LLC doing business in California. That is, they contend they were not registered to do business in California, never conducted business of their own in California, and never had offices, employees, property, or any other presence in California. At the time the Action was filed, FTB contended that Plaintiffs were “doing business” in California, as defined by Cal. Rev. & Tax. Code § 23101(a), based solely on their investments in the California LLCs, and therefore were subject to the Minimum Tax.

2. In 2014, FTB issued Legal Ruling 2014-01, which provided *inter alia* that an entity that is the non-managing member of a manager-managed LLC and that “has no activities or factor presence in California other than through its membership in [the] LLC,” is “doing business” in California, because the LLC’s “attribute of ‘doing business’ is attributed to its members under general principles of partnership law” and “[t]he distinction between ‘manager-managed’ LLCs and ‘member-managed’ LLCs is not relevant for purposes of determining whether members of an LLC classified as a partnership for tax purposes are ‘doing business’ in California within the meaning of Section 23101.”

3. Plaintiffs and Class Members filed Claims for refund on grounds that they were not subject to the Minimum Tax based on the Court of Appeal’s opinion in *Swart Enterprises, Inc. v. Franchise Tax Board* (“*Swart*”), 7 Cal.App.5th 497 (2017).

4. Following *Swart*, FTB issued FTB Notice 2017-01, which stated *inter alia*, “The Franchise Tax Board will follow the Court of Appeal decision in *Swart* in situations with the same facts.” FTB thereafter took the position that *Swart* only applied to entities with investment interests in manager-managed California LLCs of 0.2% or less (the ownership interest held by the *Swart* plaintiff).

5. FTB thereafter issued FTB Legal Ruling 2018-01, which modified Legal Ruling 2014-01, but maintained that the Minimum Tax still applied to the hypothetical out-of-state investor because:

the [LLC’s] attribute of “doing business” is attributed to its members under general principles of partnership law. A narrow exception may apply in limited circumstances. (See *Swart Enterprises, Inc. v. Franchise Tax Board* (Cal. App. 5th Dist. 2017) 7 Cal. App. 5th 497 (“*Swart*”); see also FTB Notice 2017-01,

Subject: Court of Appeal Decision in *Swart Enterprises, Inc. v. Franchise Tax Board*, February 28, 2017.) Please note that Member J's 15 percent membership interest in LLC I greatly exceeds the taxpayer's 0.2 percent membership interest in the *Swart* Court of Appeal decision.

6. FTB thereafter denied the Refund Claims of Plaintiffs and many Class Members for the sole reason that their ownership interests in California LLCs exceeded 0.2%.

7. On September 24, 2016, the original plaintiff, The Rasmussen Company ("Rasmussen"), filed a class action complaint. On May 14, 2019, Plaintiff Wein filed its own class action complaint. The Court designated both actions as complex and the lawsuits were consolidated. On June 13, 2022, Bahl was substituted for Rasmussen as a plaintiff.

8. In the Action, Plaintiffs contend that FTB is misapplying *Swart* and Cal. Rev. & Tax. Code § 23101(a), that FTB's 0.2% ownership benchmark is not supported by *Swart* or any other authority, and that the reasoning in *Swart* was not focused on a specific ownership percentage, but on the investor's inability to participate in the management and control of the manager-managed California LLC, among other factors. Plaintiffs also contend that FTB's misapplication of Cal. Rev. & Tax. Code § 23101(a) violates the California and United States Constitutions.

9. While the underlying case was being litigated, the Office of Tax Appeals addressed and rejected FTB's argument that *Swart* only applies to entities with investment interests in manager-managed California LLCs of 0.2% or less. *See Appeal of Satview Broadband, Ltd.* (Sept. 25, 2018) OTA Case No. 18010756, 2018 WL 6378072; *Appeal of Jali, LLC* (July 8, 2019) OTA Case No. 18073414, 2019 WL 4281995; *In the Matter of the Appeal of: MJK Real Estate Fund II, LLC* (May 26, 2022) OTA Case No. 19044718, 2022 WL 3722637.

10. In the underlying Action, the Court overruled multiple demurrers by FTB via Orders on January 18, 2017; June 26, 2019; and November 4, 2022.

11. On January 25, 2024, the Court granted Plaintiffs' motion for class certification.

12. On October 14, 2024, the Parties engaged in mediation before the Honorable Charles "Tim" McCoy (Ret.), without reaching a settlement.

13. On October 31, 2024, the Court denied the Parties' cross motions for summary judgment/summary adjudication.

14. On December 11, 2024, the Parties attended a mandatory settlement conference before the Honorable Anne-Christine Massullo, which resulted in the original settlement agreement.

15. Based on the Court's May 2, 2025 Order re Supplemental Briefing, the

Parties entered into an addendum to the original settlement agreement.

16. Based on further instructions from the Court at the hearing on Plaintiffs' motion for preliminary approval of the original settlement agreement on May 15, 2025, and the Court's Order Continuing Preliminary Approval Hearing on May 19, 2025, as well as subsequent negotiations, the Parties drafted this new superseding Settlement Agreement.

17. The Parties executed a stipulation where FTB agreed to pay all Refund Claims by Class Members on the Class List, as a compromise of those claims, and in furtherance of an economical and streamlined process for FTB to administer this Settlement Agreement.

V. CLASS RELIEF AND DISTRIBUTION OF SETTLEMENT BENEFITS

In full, complete, and final settlement and satisfaction of the Action and all Released Claims against the Released Parties, and subject to all the terms, conditions, and provisions of this Agreement, including Preliminary Approval and Final Approval, FTB shall provide the following:

A. MONETARY PAYMENTS FROM FTB AND REFUND PROCESS

1. **Payment of refunds.** FTB will pay full refunds of the Minimum Tax, penalties and interest, plus interest as required by law, for each Valid Claim (as defined below) by Class Members.

2. **Refund process.** The Refund Claims by Class Members on the Class List will be paid without any new, additional claim forms being required to be filed; rather, all Refund Claims by Class Members on the Class List will be deemed Valid Claims pursuant to the stipulation described in paragraph IV.17. As to all Other Refund Claims, the taxpayer must provide written notice to FTB within one year of the Effective Date, providing FTB with documentation that the Other Refund Claim satisfies the requirements for: (1) the Class Definition, as modified; and (2) a Valid Claim. Written notice shall be provided to:

Bahl Media/Wein Realty Class Action – MS F340
Franchise Tax Board
PO BOX 1998
Rancho Cordova, CA 95741-1998

FTB and the Settlement Administrator will review and process any Other Refund Claims under the procedure described in paragraph V.A.4.

3. **Valid Claim.** FTB will deem the following Refund Claims by Class Members as valid ("Valid Claims"):

- a. As to the named Plaintiffs, both Bahl and Wein.

- b. As to each Class Member that is a passive investor and has no connection with California other than its passive investment(s) in an LLC doing business in California:
 - i. A claimant will be deemed a “passive investor” if the claimant owned a 50% or less interest in an LLC doing business in California (based on documents in FTB’s files or documents submitted to FTB in connection with this Settlement); and,
 - ii. A claimant will be deemed to have “no connection with California other than their passive investment” if the claimant made a statement to that effect in connection with its original Refund Claim submitted to FTB and, if the claimant made no statement to that effect in its original Refund Claim, the claimant will be permitted to submit such a statement under penalty of perjury, subject to FTB’s right to verify the substance of any statement.

4. **Procedure for Resolving Other Refund Claims.** To resolve any Other Refund Claims under this Agreement, the following procedure will be followed:

- i. **Initial Review.** Within 30 days after FTB receives written notice from a taxpayer regarding any Other Refund Claim, FTB will perform an initial review of the Other Refund Claim and determine if it should be granted or denied (the “Initial Determination”). If FTB’s Initial Determination reflects that the Other Refund Claim lacks supporting documentation, FTB will contact the taxpayer in writing and will explain that the Other Refund Claim will be denied if they do not provide additional documentation as to the requirements for a Valid Claim set forth in paragraphs V.A.3.b.i and V.A.3.b.ii. The notice from FTB will request specific materials, such as “Documentation showing the percentage of ownership interest in the California LLC for year 2017” or “A signed statement providing that ‘under penalty of perjury under the laws of California I attest that I had no connection with California during 2018 except for an investment in the California LLC.’” The taxpayer will be given 30 days to respond to such notice before FTB completes its Initial Determination to grant or deny the claim;
- ii. **Disclosure to Class Counsel.** Within 30 days after FTB completes its Initial Determination to grant or deny any Other Refund Claim, FTB will disclose its Initial Determination to Class Counsel. If the Initial Determination is to grant the claim, the parties shall modify the Class List accordingly, and FTB shall process the Refund Claim within 60 days after the Class List has been modified. If the Initial Determination is to deny the Other Refund Claim, FTB will provide Class Counsel with the reason for the denial without disclosing the taxpayer’s confidential information within the meaning of Rev. & Tax. Code § 19542. Plaintiffs can ask the Court to order FTB to

- disclose the taxpayer's confidential information and FTB reserves the right to object to such disclosure;
- iii. Notice to Taxpayer of Initial Determination to Deny Other Refund Claim. Within 30 days after FTB completes its Initial Determination to deny an Other Refund Claim, FTB will inform the taxpayer of the reason for its Initial Determination, explain the options for responding to the initial denial, and provide that taxpayer with Plaintiffs' counsel's contact information;
 - iv. Process for Challenging Initial Determination to Deny Other Refund Claim. If the taxpayer on its own, or if Class Counsel/Plaintiffs on the taxpayer's behalf, want to challenge the FTB's Initial Determination of the validity of an Other Refund Claim, the taxpayer or Class Counsel shall meet and confer with FTB in an attempt to informally resolve the claim within 30 days after the Initial Determination notice is sent to the taxpayer or Class Counsel. If such meet and confer efforts are unsuccessful, the taxpayer or Class Counsel, as applicable, may ask the Settlement Administrator to review FTB's Initial Determination. Both FTB and the taxpayer (as well as Class Counsel) may provide the Settlement Administrator with additional information or documentation. Through this procedure, the Settlement Administrator will resolve any disputes as to whether the taxpayer is a Class Member and if so, whether the Other Refund Claim meets the criteria for a Valid Claim under the terms of this Settlement Agreement. The Settlement Administrator's resolution of any dispute over whether a taxpayer meets the Class Definition or if their Other Refund Claim meets the criteria for a Valid Claim under the terms of this Settlement Agreement is final for purposes of obtaining relief under this Settlement Agreement;
 - v. Denial of Other Refund Claims, and Notice. When FTB determines that an Other Refund Claim should be denied on grounds that the claimant is not a Class Member, and either no request to the Settlement Administrator is made to review the Initial Determination or the Settlement Administrator affirms that Initial Determination via the procedure in paragraph 4.iv, above, FTB will send a final claim denial letter notifying the claimant within 30 days after the deadline to challenge the Initial Determination or 30 days after any final denial of a claim under the procedures in paragraph 4.iv. above, of the following: (a) there has been a final determination to deny their refund claim on grounds they are not a Class Member in this Action and therefore cannot recover under this Settlement Agreement, and are not subject to the releases in the Settlement Agreement; (b) they retain all statutory rights afforded to taxpayers to appeal the denial of their claim for refund to the Office of Tax Appeals or to file a tax refund lawsuit in the Superior Court subject to the requirements of existing law; (c) they need to comply with the statutory deadlines for appealing a denial of a claim for refund to the Office of Tax Appeals or filing a tax refund lawsuit in the Superior Court; and (d) that said deadline will begin to run on the date that the notice of final determination

was sent. If such claimant thereafter pursues an appeal before the Office of Tax Appeals or files a lawsuit in the Superior Court, FTB will not assert the releases granted under this Settlement Agreement as a ground for denying the appeal or barring the lawsuit, nor will FTB assert a statute of limitations defense based on the time between the first filing of this Action (September 8, 2016) and the deadline stated in the notice for appealing the denial of the refund claim to the Office of Tax Appeals or filing a tax refund lawsuit in the Superior Court.

5. **Administration and Administrative Costs.** FTB will administer and pay for the claims process for the Settlement, including sending a Court-approved Notice of Proposed Settlement to the Class Members. FTB will pay the Administrative Costs of the Settlement Administrator.

6. **Timing of payments.** FTB will make a good-faith effort to process the tax refund for Valid Claims by Class Members on the Class List within six months of this Settlement Agreement becoming effective. Class Members' refunds shall be sent to their last known address in FTB's records. If the refund is returned as undeliverable, FTB will oversee reasonable efforts to ascertain a valid current mailing address for the Class Member. The parties shall work cooperatively to develop a procedure to ascertain a valid current mailing address for the Class Member. FTB will report any undeliverable checks to Class Counsel and the Court.

7. **Record of Claims paid and denied.** The number of claims paid and denied will be reported by FTB to the Court and Class Counsel. FTB will provide a preliminary report to Class Counsel seven (7) months after the Effective Date and will provide a final report to the Court and Class Counsel one year after the Effective Date.

8. **Service fee for Class Representatives.** With the approval of the Court, FTB will pay a service fee of \$15,000 to each of the named Plaintiffs/Class Representatives. FTB shall pay the service fee within 60 days following the Final Approval Order approving the settlement agreement, or as otherwise directed by the Court.

B. NON-MONETARY RELIEF: CLARIFICATION OF THE LAW.

FTB will correct and clarify its prior notices, including Legal Ruling 2014-01, Notice 2017-01, and Legal Ruling 2018-01, and will clarify that under *Swart* an entity is not "doing business" in California solely based on holding more than 0.2% interest in an LLC doing business in California. The clarification will address the FTB's position on "doing business" in California, consistent with *Swart* and the Office of Tax Appeals' precedential opinions interpreting *Swart*.

VI. NOTICE OF PROPOSED SETTLEMENT TO THE CLASS

A. AGREEMENT REGARDING NOTICE PROCEDURES

The content of the Notice of Proposed Settlement shall be jointly agreed to by the Parties

and approved by the Court. The Parties, subject to Court approval, agree to the following procedures for providing the Notice of Proposed Settlement to the Class, which the Parties agree is the best notice practicable.

B. NOTICE PROCEDURES

The Notice of Proposed Settlement shall be provided to the Class Members as follows:

1. By First Class Mail. FTB shall provide notice to the Class Members by mailing the Notice of Proposed Settlement, as described in paragraph iii below, to the Class Members within 45 days of the Court's issuance of the Preliminary Approval Order. The notice shall conform with the following:

(i) Class Member Spreadsheet. FTB shall use the most current mailing address in the Class Member Spreadsheet to mail the Notice of Proposed Settlement. If the Notice of Proposed Settlement is returned as undeliverable, FTB will oversee reasonable efforts to ascertain a valid current mailing address for the Class Member. The parties shall work cooperatively to develop a procedure to ascertain a valid current mailing address for the Class Member.

(ii) FTB's Website. Within 45 days of the Preliminary Approval Order, FTB shall post on its website information and documents regarding the Settlement including, in PDF format, the Court-approved Notice of Proposed Settlement, this Settlement Agreement, the Final Approval Order (after it is entered), and other case documents as agreed upon by the Parties and/or required by the Court.

(iii) Content of Notice of Proposed Settlement. The Notice of Proposed Settlement shall include the following:

a) a concise statement of the background of the Action, the certification of the Class for settlement purposes, and the Settlement;

b) a description of the nature and scope of the claims, causes of action, and facts referenced in the Settlement that will be subject to the release;

c) a description of the relief provided by the Settlement;

d) instructions to the Class Members of their right to object to the Settlement;

e) instructions to the Class Members of their right to opt out of the Settlement;

f) an explanation of the impact of the Settlement on participation in any existing and future litigation, arbitration, regulatory action, remediation, or other proceeding(s);

g) a statement that any relief to the Settlement Class is contingent on the Court's Final Approval;

h) a statement that Class Counsel's Attorneys' Fees and Costs will be addressed in paragraph XIII of this Settlement Agreement, that no fees will be awarded without approval of the Court, and that individual Class Members will not be responsible themselves for paying any attorneys' fees, costs, litigation expenses, administration expenses (unless they elect to retain their own attorney at their own expense);

i) the date, time, and place of the Final Approval Hearing, notice of Class Members' right to object to the Settlement, their right to appear in support of any timely and validly submitted objection, and their right to appear at the Final Approval Hearing as provided by this Settlement or ordered by the Court in the Preliminary Approval Order, on their own or through counsel of their own selection (at their own expense), and the procedures for doing so as further described below;

j) a statement that any Final Judgment entered in the Action will be binding on all Class Members; and

k) an explanation to Class Members on how to communicate with the FTB for purposes of ensuring that the FTB has the most current mailing address and contact information.

VII. OBJECTIONS TO SETTLEMENT

A. OBJECTION RIGHTS AND PROCEDURE

1. Right to Object. Any Class Member or person legally entitled to act on a Class Member's behalf, who does not opt out, may object to the fairness, reasonableness, or adequacy of the Settlement.

2. Form and Deadlines. To be valid, an objection can be made in person at the Final Approval Hearing or can be made in writing via mail or email to FTB at the addresses provided in the Notice of Proposed Settlement, postmarked no later than the Written Objection Deadline. In addition, any written objection must include the following: (i) the name of this Action; (ii) the Class Member's full name, address, and telephone number; (iii) if applicable, the name and address of any person claiming to be legally entitled to object on behalf of a Class Member and the basis of such legal entitlement; (iv) all grounds for the objection; (v) whether the Class Member or authorized objector is represented by counsel and, if so, the identity and contact information of such counsel; and (vi) the Class Member's signature or the signature of the objector's authorized representative (including counsel). Not later than thirty (30) calendar days after the Written Objection Deadline, FTB shall provide to Class Counsel all written

objections submitted by Class Members.

3. Right to Appear. Any Class Member who does not opt out may appear at the Final Approval Hearing and offer objections to the proposed Settlement (even if they have not previously submitted written objections), either in person or through personal counsel hired at the Class Member's own personal expense and also may be subject to discovery, subject to Court approval.

4. Failure to Object. Any Class Member who fails to make a timely objection shall waive and forfeit any and all rights the Class Member may have to object.

5. Objection is Not Forfeiture. Any Class Member with a Valid Claim who objects to the Settlement shall nevertheless be entitled to all benefits of the Settlement if it is approved and becomes final.

6. Submitting Written Objections. Not later than thirty (30) days after the Written Objection Deadline, FTB shall file with the Court any and all objections to the Settlement Agreement. In accordance with the Rules of Court and any applicable local rules, all sensitive personal identifying information shall be redacted before objections are filed with the Court.

VIII. OPT OUT RIGHTS

1. Any Class Member or person legally entitled to act on its behalf who wishes to be excluded from the Class must email or mail a written request for exclusion to the FTB at the email address or mailing address provided in the Notice of Proposed Settlement, postmarked no later than the Opt-out Deadline and specifying that they want to be excluded from the Class. Such written request for exclusion: (i) must contain the name and address of the Class Member to be excluded; (ii) if applicable, must contain the name and address of any person claiming to be legally entitled to submit an exclusion request on behalf of the Class Member and the basis for such legal entitlement; (iii) must be emailed or mailed by First Class U.S. Mail, proper postage prepaid, to FTB; (iv) must be submitted or postmarked on or before the Opt-out Deadline; and (v) must be personally signed and clearly indicate that the Class Member wants to be excluded from the Class. A representative who actually represents multiple Class Members may submit a single exclusion request naming all such Class Members, but a representative who actually represents only one Class Member may not submit a blanket request for exclusion on behalf of a class of similarly situated Class Members.

2. Any Class Member that does not submit a timely and valid written request for exclusion shall be bound by all subsequent proceedings, orders, and judgments in the Action, including, but not limited to, the Release, even if it has litigation pending or subsequently initiates litigation against FTB relating to the Released Claims.

3. Any Class Member who timely submits a request for exclusion as provided in above shall waive and forfeit any and all rights it may have to benefits of the Settlement if it is approved and becomes final, including monetary relief, and shall waive and forfeit any and all

rights to object to the fairness, reasonableness, or adequacy of the Settlement and/or the requested Service Awards.

4. Not later than thirty (30) days after the Opt-out Deadline, FTB shall provide to Class Counsel a complete and final list of Class Members who submitted requests to exclude themselves from the Class.

IX. GENERAL ADMINISTRATION

A. ADMINISTRATION OF SETTLEMENT

1. Duties. In addition to the other duties set forth in this Agreement, FTB shall be responsible for the following:

(i) Creating and maintaining a toll-free number that Class Members can call to request a copy of this Agreement, or any other information concerning this Settlement or this Agreement, as well as for Class Members to provide their current mailing address and contact information;

(ii) Consulting with Class Counsel concerning any relevant issues;

(iii) Receiving objections and opt-outs and providing them to Class Counsel in a timely manner;

(iv) FTB to maintain the Class Member Spreadsheet and update the information contained therein;

(v) Calculating and overseeing distribution of Settlement payments;

(vi) Protecting the confidentiality of any personal identifying information it received regarding the Class Members;

(vii) Providing any information or declarations to assist with seeking Preliminary Approval and Final Approval, including an affidavit about the Notice of Proposed Settlement;

(viii) Utilizing and hiring professionals, including a third-party settlement administrator if it becomes necessary to do so; and

(ix) Such other tasks as the Parties mutually agree or that the Court orders FTB to perform.

2. The Settlement Administrator shall be responsible for the following:

(i) Protecting the confidentiality of any personal identifying information it received regarding the Class Members;

(ii) Providing any information or declarations to assist with seeking Final Approval, including an affidavit about the claims resolution process;

(iii) Resolving any disputes over any Other Refund Claims, as set forth in Section V.A.4; and

(iv) Communicating in a timely manner with taxpayers that have Other Refund Claims about any questions or concerns they have regarding the review of their claims.

3. Costs of Settlement Administration. All fees and expenses associated with the implementation of the Settlement Agreement shall be borne by FTB.

4. Other Provisions Regarding Settlement Administration.

(i) Upon completion of the implementation and administration of the Settlement, FTB shall provide written certification of such completion to Class Counsel.

(ii) If a Class Member requests that FTB and/or its agent or employee refer the Class Member to Class Counsel, or if a Class Member requests advice beyond merely ministerial information, or other Settlement-related questions for which FTB does not have an approved response, then FTB and/or its agent or employee shall promptly refer the inquiry to Class Counsel.

X. RELEASES

A. As of the Effective Date, the Releasing Parties, in consideration of the benefit set forth in this Agreement, fully, finally, and forever release the Released Parties from all Released Claims.

B. As of the Effective Date, FTB, for itself, its predecessors and successors, in consideration of the benefits set forth in this Agreement, fully, finally, and forever releases the Plaintiffs, the Class Members, their attorneys, beneficiaries, successors and assigns, from the FTB Released Claims.

C. Notwithstanding any other provision of this Agreement (including, without limitation, this Section), nothing in this Agreement shall be deemed in any way to impair, limit, or preclude the Parties' rights to enforce any provision of this Agreement, or any court order implementing this Agreement, in a manner consistent with the terms of this Agreement.

D. The release of claims includes any claims related to Class Counsel's attorneys' fees or costs.

E. CIVIL CODE SECTION 1542 ACKNOWLEDGMENT

FTB and the Plaintiffs acknowledge that it is possible that unknown losses or claims exist. FTB and the named Plaintiffs are each hereby deemed to acknowledge and understand that they are familiar with principles of law such as and including California Civil Code § 1542, which provides:

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 and FTB are each hereby deemed to agree that Civil Code § 1542 and all similar federal or state laws, rules or legal principles of any other jurisdiction are knowingly and voluntarily waived by Plaintiffs in connection with the Released Claims, and Plaintiffs and FTB are deemed to agree that this is an essential term of this Settlement Agreement. Plaintiffs and FTB are also deemed to acknowledge and understand that they may later discover claims presently unknown or unsuspected, or facts in addition to or different from those which they now believe to be true with respect to the matters released in this Settlement Agreement. Nevertheless, it is the intention of the Plaintiffs and FTB to fully, finally, and forever settle and release any and all Released Claims that exist, or might have existed, in connection with the Action. This release shall not apply to other disputes between Plaintiffs or Class Members and FTB relative to the tax years at issue, regardless of whether those disputes are the subject of audit, administrative processes or formal court litigation, but is limited strictly to claims for refund submitted by or on behalf of Plaintiffs and/or Class Members with respect to Rev. & Tax. Code §§ 23101(a), 23153.

XI. DISPUTE RESOLUTION

A. Scope of Disputes and Court Jurisdiction. Any dispute arising out of or relating to, or involving the enforcement, implementation, application, or interpretation of this Settlement Agreement shall be enforceable only by FTB or its successors or representatives, or the Plaintiffs or Class Members through Class Counsel, or any third-party settlement administrator that is appointed, if ever. The Final Approval Order will provide that the Court will retain exclusive jurisdiction to resolve any such disputes.

B. Attempt at Resolution. Although the Court retains exclusive jurisdiction to resolve disputes arising out of or relating to the enforcement, implementation, application, or interpretation of this Settlement Agreement, the Parties agree that, except as provided otherwise in this Agreement, prior to seeking recourse to the Court, the Parties shall, in good faith, attempt informally to resolve any such dispute relating to this Agreement among themselves.

C. Prevailing Party. The Court shall have discretion to award the prevailing party in any dispute arising out of or relating to, or involving the enforcement, implementation, application, or interpretation of this Settlement Agreement its attorneys' fees and expenses

reasonably incurred, including, but not limited to, court costs, experts' fees, and mediation fees.

XII. PRELIMINARY APPROVAL, FINAL APPROVAL AND JUDGMENT

A. Proof of Notice. Proof that the Notice of Proposed Settlement procedures have been complied with shall be filed with the Court by FTB and/or Class Counsel no later than fifteen (15) calendar days following the Written Objection Deadline.

B. Preliminary Approval Order. Plaintiffs shall file with the Court a motion seeking Preliminary Approval of the Settlement and asking the Court to enter a Preliminary Approval Order.

C. Request for Final Approval or Fairness Hearing. In connection with the motion for Preliminary Approval, the Parties shall ask the Court to set a date for the Final Approval or Fairness Hearing as soon as practicable, but in no event earlier than 60 days after the Written Objection Deadline.

D. Final Approval Order. In connection with the Motion for Final Approval, the Parties shall ask that the Court enter the Final Approval Order and Final Judgment.

E. Continuing Jurisdiction. After entry of the Final Approval Order, the Parties agree that the Court shall retain jurisdiction to enforce the terms of this Settlement Agreement and the Final Approval Order and the Final Judgment.

XIII. ATTORNEYS' FEES AND COSTS

A. FTB will pay to Plaintiffs, or if properly authorized, to Silverstein & Pomerantz LLP on behalf of Plaintiffs, a total of \$2,929,877 in fees and costs (\$2,875,000 in attorneys' fees, and \$54,877 in costs). This payment will completely satisfy FTB's obligation to pay fees and costs to Plaintiffs in this matter. Plaintiffs are not entitled to any interest.

B. The \$2,929,877 payment is contingent upon certification of availability of funds, the approval of the Director of the Department of Finance, and the enactment by the Legislature and Governor for a "claims bill" that includes the agreed-upon amount. FTB anticipates that a "claims bill" including the settlement amount will be introduced in the Legislature no later than six months following the Effective Date. FTB agrees to keep Plaintiffs apprised of the bill's progress, and to act in good faith to facilitate its enactment as soon as practicable.

C. If the State fails to enact the claims bill, or FTB otherwise fails to pay the agreed upon amount within six months following the Effective Date, Plaintiffs retain the right to seek fees, costs, and interest by noticed motion, and the Court retains jurisdiction to decide such motion. The time for Plaintiffs to file any motion for costs and fees is extended until six months following the Effective Date, subject to extension by agreement of the Parties or Court order.

D. Pursuant to Code of Civil Procedure section 664.6, the Court retains jurisdiction over the parties to enforce this settlement until performance in full of its terms.

E. Under no circumstances shall Plaintiffs, Silverstein & Pomerantz, or any other attorney retained by Plaintiffs or Silverstein & Pomerantz LLP in connection with the Action seek further remuneration for attorneys' fees or costs which are in any way associated with the Action.

F. Neither Plaintiffs nor the Class shall be responsible for any portion of FTB's own legal fees, costs, and expenses incurred in the Action.

XIV. SERVICE AWARDS

A. Class Counsel intends to request that the Court approve a Service Award for each of the Class Representatives in an amount not to exceed Fifteen Thousand dollars (\$15,000) each. Any Service Awards approved by the Court will be paid by FTB. FTB shall not object to Class Counsel's request, provided that the Service Award payable to the Class Representatives does not exceed Fifteen Thousand Dollars (\$15,000) for each of the Class Representatives.

B. Within 60 days of the Settlement Agreement becoming effective, FTB shall deliver to Class Counsel, on behalf of the Class Representatives, any Service Award approved by the Court. FTB shall also provide an IRS Form 1099, and Class Representatives shall provide, upon request, any necessary State of California forms including but not limited to Form STD 204 (Payee Data Record) prior to receiving any payment of a Service Award.

XV. CONFIDENTIALITY

A. Protection of Confidential Information. The Parties acknowledge that private and confidential data, information, and documents have been produced in the course of the Action, and that on September 11, 2024 the Court issued a Protective Order recognizing that certain information and documents exchanged in the underlying case may be subject to confidentiality limitations on disclosure, including information and documents produced by FTB and pertaining to the Class Members, and that on September 13, 2024, the Court issued a further Order re Production of Confidential Documents. The Parties agree to cooperate and to work with one another to protect private and confidential data, information, and documents. If any private or confidential data, information, or documents are relevant and necessary to any dispute pertaining to this Action that may arise in the future, the Parties will meet and confer in good faith to find a means of protecting the data, materials, and/or documents from disclosure; and will cooperate in sealing such materials if filing with the Court is necessary.

XVI. MISCELLANEOUS

A. The Parties, their successors and assigns, and their attorneys, agree to use reasonable efforts to cooperate with one another in seeking Court approval of this Agreement and to effectuate this Agreement.

B. The Parties agree to cooperate in the settlement administration process and implementation of the Settlement and to make all reasonable efforts to control and minimize

the costs and expenses incurred in the administration and implementation of the Settlement.

C. Each signatory to this Agreement hereby warrants that the person signing has the authority to execute this Agreement and thereby bind the respective Party for which the person is signing. Each Class Representative warrants and represents that the Class Representative is the sole and lawful owner of all rights, title, and interest in and to all of the Released Claims and that the Class Representative has not heretofore voluntarily, by operation of law or otherwise, sold, assigned, or transferred or purported to sell, assign, or transfer to any other person or entity any Released Claims or any part or portion thereof.

D. Class Representatives represent and certify that: (1) they have agreed to serve as representatives of the Class; (2) they are willing, able, and ready to perform all of the duties and obligations of representatives of the Class; (3) they have read the operative complaint or have had the contents of such pleadings described to them; (4) they are generally familiar with the results of the fact-finding undertaken by Class Counsel; (5) they have read this Agreement or have received a detailed description of it from Class Counsel and they have agreed to its terms; (6) they have consulted with Class Counsel about the Action and this Settlement Agreement and the obligations imposed on them as representatives of the Class; and (7) they shall remain and serve as representatives of the Class until the terms of the Agreement are effectuated, this Agreement is terminated in accordance with its terms, or the Court at any time determines that said Class Representatives cannot represent the Class.

E. The terms of this Agreement shall inure to the benefit of, and be binding upon, the Parties and their respective heirs, legal representatives, executors, administrators, successors, and assigns upon the Effective Date.

F. This Agreement constitutes the entire agreement of the Parties with respect to the matters discussed herein and supersede all prior or contemporaneous oral or written understandings, negotiations, agreements, statements, or promises. In executing this Agreement, the Parties acknowledge that they have not relied upon any oral or written understandings, negotiations, agreements, statements, or promises that are not set forth in this Agreement. The Parties also acknowledge and agree that each has been represented by its own counsel with respect to the negotiating and drafting of this Settlement and this Agreement.

G. This Agreement may not be amended or modified in any respect except by a written instrument duly executed by all of the Parties to this Agreement. The Parties agree that nonmaterial amendments or modifications to this Agreement may be made in writing after Preliminary Approval without the need to seek the Court's approval.

H. Without further order of the Court, the Parties may agree in writing to reasonable extensions of time to carry out any of the provisions of this Agreement or the Preliminary Approval Order.

I. This Agreement may be executed in one or more counterparts, each of which shall be an original, and this Agreement is effective upon execution of at least one counterpart by each Party to this Agreement.

J. Nothing in this Agreement may be construed as, or may be used as, an admission by the Class Representatives that any of their claims are without merit.

K. Nothing in this Agreement may constitute, may be construed as, or may be used as an admission by FTB that 1) Class Members are not doing business in California per Cal. Rev. & Tax. Code § 23101(a) or § 23153 or 2) Cal. Rev. & Tax. Code § 23101(a) or § 23153 is unconstitutional on its face, or as applied to those Refund Claims addressed in the underlying Action, or of any fault, wrongdoing, or liability whatsoever in connection therewith, or that class certification is appropriate. FTB continues to deny all liability and all of the claims, contentions, and each and every allegation presented by or on behalf of Plaintiffs and the Class Members, as well as each and every theory of refund entitlement promulgated by or on behalf of the Class Members and the Class Representatives in the Action. This Settlement is the result of compromises made by both parties, compromises which are in no way binding upon the parties or Class Members in any matter other than this Action, regardless of whether the parties and/or Class Members should become involved in future disputes regarding issues and legal theories substantially similar to those raised in this dispute, including, but not limited to, matters involving Cal. Rev. & Tax. Code § 23101(a) or § 23153.

L. Neither Class Counsel nor FTB's Counsel intends anything contained herein to constitute legal advice regarding the tax consequences of any amount paid hereunder, nor shall it be relied upon as such. FTB shall have no liability or responsibility for any representations made by third parties regarding taxes related to the payments made herein, or for any tax consequences of the Settlement. Nor shall FTB have any liability or responsibility for any payments, taxes, fees, or costs under the Settlement aside from the amounts set forth in paragraphs V.A., XIII, and XIV of this Agreement.

M. In the event of a conflict between this Agreement and any other document prepared pursuant to the Settlement, the terms of this Agreement will supersede and control.

N. Any failure by any Party to insist upon the strict performance by any other Party of any provision of this Agreement shall not be deemed a waiver of any provision of this Agreement and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

O. This Agreement has been, and shall be construed to have been, drafted by all the Parties to it and the Parties agree that any rule which construes ambiguities against the drafter shall have no force or effect.

P. The Parties agree that the laws of the State of California shall govern the enforcement of this Agreement without regard to its choice of law principles. The Parties further agree that any action relating to or arising out of this Agreement, including an action to enforce or void any of its terms or to rescind it in its entirety shall be venued in the Superior Court of California, City and County of San Francisco. All Parties consent to personal jurisdiction in courts within the Superior Court of California, City and County of San Francisco.

XVII. CONDITIONS IMPACTING FINALITY OF SETTLEMENT

A. The Parties expressly agree that in the event of any of the following conditions, either of the Parties may invoke the right to withdraw from and terminate this Settlement:

1. The Court does not grant preliminary or final approval of the Settlement, or will not grant such approval unless changes are made, and after attempting in good faith to reach an agreement as to any such changes, the Parties are unable to do so;

2. The Court does not enter the Final Approval Order and Final Judgment;
or

3. This Settlement does not become final for any reason, including on subsequent review by any appellate court(s) in the Action, the Court ultimately rejects, modifies, or denies approval of any portion of this Agreement that either Class Representatives or FTB reasonably determines is material, including, without limitation, the terms of relief and/or the scope and terms of the Released Claims and Released Parties.

B. Method for Invoking Right to Terminate. FTB or Plaintiffs may exercise their right to terminate by a signed writing served on the Court and the other Party no later than fourteen (14) calendar days after receiving notice of the event prompting the termination. The Parties may reasonably extend this fourteen (14) calendar day period by written agreement if they are attempting in good faith to reach an agreement regarding changes proposed by the Court.

C. Effect of Termination. In the event that a terminating party exercises its option to withdraw from and terminate this Settlement Agreement pursuant to this section:

1. This Agreement and the Settlement proposed herein shall be null and void and shall have no force or effect and neither Party to this Agreement shall be bound by any of its terms, except as otherwise specifically provided for herein;

2. No Party will object to having the case tried at the earliest possible date;

3. Plaintiffs shall be prohibited from referring to or using as evidence this Settlement Agreement or any confidential mediation communications.

Plaintiffs and Class Representatives

Dated: _____

Penny Bailey,
on behalf of Plaintiff Bahl Media, LLC

Dated: _____

Max Wein,
on behalf of Plaintiff Wein Realty, LLC

FTB

Dated: _____

By: _____

Its Duly Authorized Representative

APPROVED AS TO FORM:

Silverstein & Pomerantz LLP

Amy L. Silverstein

Dated: _____

Calvo Jacob & Pangelinan LLP

Alexander M. Freeman

Dated: _____

Attorneys for Plaintiffs and the Class

XVII. CONDITIONS IMPACTING FINALITY OF SETTLEMENT

A. The Parties expressly agree that in the event of any of the following conditions, either of the Parties may invoke the right to withdraw from and terminate this Settlement:

1. The Court does not grant preliminary or final approval of the Settlement, or will not grant such approval unless changes are made, and after attempting in good faith to reach an agreement as to any such changes, the Parties are unable to do so;

2. The Court does not enter the Final Approval Order and Final Judgment;
or

3. This Settlement does not become final for any reason, including on subsequent review by any appellate court(s) in the Action, the Court ultimately rejects, modifies, or denies approval of any portion of this Agreement that either Class Representatives or FTB reasonably determines is material, including, without limitation, the terms of relief and/or the scope and terms of the Released Claims and Released Parties.

B. Method for Invoking Right to Terminate. FTB or Plaintiffs may exercise their right to terminate by a signed writing served on the Court and the other Party no later than fourteen (14) calendar days after receiving notice of the event prompting the termination. The Parties may reasonably extend this fourteen (14) calendar day period by written agreement if they are attempting in good faith to reach an agreement regarding changes proposed by the Court.

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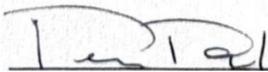
1. This Agreement and the Settlement proposed herein shall be null and void and shall have no force or effect and neither Party to this Agreement shall be bound by any of its terms, except as otherwise specifically provided for herein;

2. No Party will object to having the case tried at the earliest possible date;

3. Plaintiffs shall be prohibited from referring to or using as evidence this Settlement Agreement or any confidential mediation communications.

Plaintiffs and Class Representatives

Dated: 12.02.2025



Penny Bailey,
on behalf of Plaintiff Bahl Media, LLC

Dated: 12/1/2025



Max Wein,
on behalf of Plaintiff Wein Realty, LLC

FTB

Dated: _____

By: _____

Its Duly Authorized Representative

APPROVED AS TO FORM:

Silverstein & Pomerantz LLP

_____ Dated: _____
Amy L. Silverstein

Calvo Jacob & Pangelinan LLP

_____ Dated: _____
Alexander M. Freeman

Attorneys for Plaintiffs and the Class

Dated: _____

Max Wein,
on behalf of Plaintiff Wein Realty, LLC

FTB

Dated: 12/01/2025

By: *Selvi Stanislaus*
Selvi Stanislaus
Executive Officer
Franchise Tax Board

APPROVED AS TO FORM:

Silverstein & Pomerantz LLP

Amy L. Silverstein

Dated: _____

Calvo Jacob & Pangelinan LLP

Alexander M. Freeman

Dated: _____

Attorneys for Plaintiffs and the Class

Dated: _____

Max Wein,
on behalf of Plaintiff Wein Realty, LLC

FTB

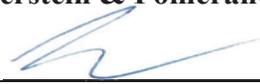
Dated: _____

By: _____

Its Duly Authorized Representative

APPROVED AS TO FORM:

Silverstein & Pomerantz LLP



Amy L. Silverstein

Dated: December 2, 2025

Calvo Jacob & Pangelinan LLP

Alexander M. Freeman

Dated: _____

Attorneys for Plaintiffs and the Class

Dated: _____

Max Wein,
on behalf of Plaintiff Wein Realty, LLC

FTB

Dated: _____

By: _____

Its Duly Authorized Representative

APPROVED AS TO FORM:

Silverstein & Pomerantz LLP

Amy L. Silverstein

Dated: _____

Calvo Jacob & Pangelinan LLP



Alexander M. Freeman

Dated: 12/2/25

Attorneys for Plaintiffs and the Class

ADDENDUM TO STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE (SUPERSEDING)

Whereas, Plaintiffs Bahl Media, LLC (“Bahl”) and Wein Realty, LLC (“Wein”; collectively, “Plaintiffs” or “Class Representatives”), on behalf of themselves and the Class that they represent (defined below as “Class Members”), on the one hand, and Defendant California Franchise Tax Board (“FTB”), on the other hand (collectively, the “Parties), agreed that the proceedings in the Superior Court of the State of California, City and County of San Francisco (“Court”) in the consolidated lawsuit Case No. CGC-16-554150, captioned *Bahl Media, LLC v. California Franchise Tax Board* (lead case), and in Case No. Case No. CGC-19-576007, captioned *Wein Realty, LLC v. California Franchise Tax Board* (collectively “Action”) were settled, fully and finally, on the terms and conditions set forth in the Stipulation of Class Action Settlement and Release Superseding, fully executed on December 2, 2025 (“December 2025 Proposed Settlement Agreement”), subject to and expressly conditioned upon the approval of the Court and the entry of Final Judgment;

Whereas, on December 17, 2025, the Court issued an Order After Preliminary Approval Hearing on December 15, 2025, directing the Parties *inter alia* to make certain revisions and clarifications to the December 2025 Proposed Settlement Agreement;

Whereas, the December 2025 Proposed Settlement Agreement provides, “This Agreement may not be amended or modified in any respect except by a written instrument duly executed by all of the Parties to this Agreement.” (December 2025 Proposed Settlement Agreement, Paragraph XVI(G));

Whereas, the Parties intend that the December 2025 Proposed Settlement Agreement and this Addendum shall constitute one unified agreement known as the Proposed “Settlement Agreement” and that any conflict between the December 2025 Proposed Settlement Agreement and this Addendum shall be resolved in favor of this Addendum;

Therefore, IT IS HEREBY STIPULATED AND AGREED by the Parties that the December 2025 Proposed Settlement Agreement shall be modified as follows, with deletions of the original language struck through and new language in both ***bold and italics***:

1. Paragraph I(B)

B. CLASS REPRESENTATIVES AND CLASS MEMBERS. Plaintiffs are out-of-state entities that invested in California LLCs (as defined below), paid the Minimum Tax, and filed timely claims for refund on the grounds that they were not “doing business” in California under Cal. Rev. & Tax. Code § 23101(a) and that California’s application of the Minimum Tax was unconstitutional.

On January 25, 2024, the Court certified a Class of taxpayers who:

- (i) paid the Minimum Tax and related interest and penalties, if any, to FTB;
- (ii) timely filed a refund claim of the foregoing amount;

- (iii) either had their refund claim denied after June 10, 2016 and before the date of Plaintiff's motion for class certification [July 21, 2023] or have not had their refund claim approved or denied and filed it at least 6 months prior to the date of Plaintiff's motion for class certification [July 21, 2023], and
- (iv) are not doing business in California because their only connection to California is holding a passive interest in a limited liability company doing business in California (including but not limited to within the meaning of *Swart*).

(Order Granting Plaintiffs' Motion for Class Certification (1/25/24).)

The Parties have agreed to seek the Court's approval to revise the class definition by adding subdivision (v), to the above:

- (v) for purposes of this Action, ~~are entities~~ ***a passive interest means*** holding a 50 percent or less interest in a limited liability company doing business in California.

2. Paragraph III(A)(7)

7. "Class" or "Class Member" or "Class Members" or "Settlement Class Member" means taxpayers who:

- (i) paid the Minimum Tax and related interest and penalties, if any, to FTB;
- (ii) timely filed a Refund Claim of the foregoing amount;
- (iii) either had their Refund Claim denied after June 10, 2016 and before the date of Plaintiff's motion for class certification [on July 21, 2023] or have not had their refund claim approved or denied and filed it at least 6 months prior to the date of Plaintiff's motion for class certification [on July 21, 2023],
- (iv) are not doing business in California because their only connection to California is holding a passive interest in a limited liability company doing business in California (including but not limited to within the meaning of *Swart*), and
- (v) For purposes of this Action, ~~are entities~~ ***a passive interest means*** holding a 50 percent or less interest in a limited liability company doing business in California.

3. Paragraph V(A)(6)

6. **Timing of payments.** FTB will make a good-faith effort to process the tax refund for Valid Claims by Class Members on the Class List within six months of this Settlement Agreement becoming effective. Class Members' refunds shall be sent to their last known address in FTB's records. If the refund is returned as undeliverable, FTB will oversee reasonable efforts to ascertain a valid current mailing address for the Class Member, as specified in subparagraphs a. through c. below, which sets forth a procedure for attempting to obtain a valid current mailing

address for the Class Member and FTB's reporting of any undeliverable checks to Class Counsel and the Court.

a. Procedure for attempting to obtain new addresses after mail returned as undeliverable. *FTB will communicate with Class Members using the last known addresses in FTB's records. When it receives undeliverable mail, FTB will research additional possible addresses using the Lexis public records research tool (akin to a "skip trace"), the California Secretary of State's website, other publicly available corporate records databases (e.g., the Secretary of State equivalent databases for non-California domesticated entities), and/or internet searches.*

b. Notification of any undeliverable addresses. *In response to FTB's mailing of the notice of the action to the putative Class Members on June 6, 2024, FTB received 47 notices that were "returned to sender" as undeliverable. If FTB is unable to find an updated address for any of the 47 entities whose prior notices were returned as undeliverable, it will notify Class Counsel at least 10 days before the Notice Date, which is the date by which the Notice of Proposed Settlement shall be completed by the FTB. When any of the Notices of Proposed Settlement are returned as undeliverable, FTB will inform Class Counsel within 7 days. FTB will re-send any returned Notices of Proposed Settlement to updated addresses within 14 days of having the Notice of Proposed Settlement returned (if an updated address is found), and FTB will inform Class Counsel if no updated address is found within the same 14-day period.*

c. Undeliverable checks and uncashed checks. *All checks mailed by FTB to Class Members will be valid for 180 days. If, after performing the procedures set forth above, FTB is unable to complete delivery of a check to a Class Member with a Valid Claim, FTB will inform both Class Counsel and the Court. If a Class Member later comes forward after FTB's unsuccessful attempts to deliver the settlement check to that Class Member, or if the Class Member is unable to cash a check because they waited more than 180 days to try to cash it, the Class Member must contact FTB through the MyFTB website (<https://www.ftb.ca.gov/myftb/index.asp>) or by calling 800-852-5711 (current number from FTB.ca.gov). FTB may require completion of verification procedures to confirm the Class Member's identity and entitlement to the settlement payment. Upon successful authentication, FTB shall process the settlement payment in accordance with its standard refund procedures.*

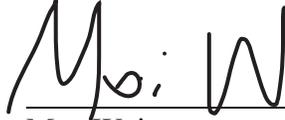
Plaintiffs and Class Representatives

Dated: _____

2/4/26

Dated: _____

Penny Bailey,
on behalf of Plaintiff Bahl Media, LLC



Max Wein,
on behalf of Plaintiff Wein Realty, LLC

FTB

Dated: _____

By: _____

Its Duly Authorized Representative

APPROVED AS TO FORM:

Silverstein & Pomerantz LLP

02/04/2026

Amy L. Silverstein

Dated: _____



Dated: 2.7.2026



Penny Bailey,
on behalf of Plaintiff Bahl Media, LLC

Dated: _____

Max Wein,
on behalf of Plaintiff Wein Realty, LLC

FTB

Dated: _____

By: _____

Its Duly Authorized Representative

APPROVED AS TO FORM:

Silverstein & Pomerantz LLP

Amy L. Silverstein

Dated: _____

Dated: _____

Penny Bailey,
on behalf of Plaintiff Bahl Media, LLC

Dated: _____

Max Wein,
on behalf of Plaintiff Wein Realty, LLC

FTB

Dated: 02/05/2026

By: 

Its Duly Authorized Representative

APPROVED AS TO FORM:

Silverstein & Pomerantz LLP

Amy L. Silverstein

Dated: _____