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**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

29 STEVE TRACY, individually and on behalf of
30 all other similarly situated employees,

31 Plaintiff,

32 vs.

33 VON HOUSEN'S SACRAMENTO, INC., a
34 California Corporation; GEORGE
35 GRINZEWITSCH, JR., an individual; and
36 DOES 1 to 100, inclusive,
37 Defendant.

Case No.: 34-2020-00282778

**JOINT STIPULATION REGARDING CLASS
ACTION AND PAGA SETTLEMENT AND
RELEASE**

Filed: August 4, 2020
FAC Filed: November 20, 2020
Trial Date: None Set

This Joint Stipulation Regarding Class Action and PAGA Settlement and Release ("Settlement" or "Agreement") is made and entered into between the Plaintiff Steve Tracy ("Plaintiff") (on behalf of himself and the Settlement Class, as defined below), and Defendant Von Housen's Sacramento, Inc. ("Defendant") (collectively, the "Parties") to effect a full and final settlement of all claims brought against Defendant in *Steve Tracy, et al. v. Von Housen's of Sacramento, Inc., George Grinzewitsch, Jr., et al.*, Superior Court of California, County of Sacramento. This Agreement is subject to the terms and conditions set forth below and the approval of the Court.

1. DEFINITIONS

The following terms, when used in this Agreement, have the following meanings:

1.1 "Action" means the above stated lawsuit, *Steve Tracy, et al. v. Von Housen's of Sacramento, Inc., George Grinzewitsch, Jr., et al.*, filed on August 4, 2002 in the Superior Court for the State of California, County of Sacramento, , Case No. 34-2020-00282778

1.2 "Agreement" or "Settlement" or "Settlement Agreement" means this Joint Stipulation Regarding Class Action and PAGA Settlement and Release.

1.3 "Class" or "Class Member(s)" means all non-exempt employees who have or continue to work for Defendant in California during the Covered Period. The estimated number of Class Members is 268 (as of January 26, 2021).

1.4 "Class Counsel" means Galen T. Shimoda, Justin P. Rodriguez, and Brittany V. Berzin of the Shimoda Law Corp.

1.5 "Class Data" means information regarding Class Members that Defendant will, to the extent possible, compile from its existing electronic records and provide to the Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include: each Class Member's (1) full name; (2) employee number; (3) last known address; (4) last known home telephone number; (5) Social Security number; (6) start dates, rehire dates (if any) and end dates (if any) of employment with Defendant during the Covered Period; and (7) identification of position(s) held during the Covered Period (i.e., whether a position subject to a commission/bonus pay plan or a non-exempt position not subject to a commission/bonus pay plan).

1.6 "Class Representative" means Plaintiff Steve Tracy.

- 1 1.7 "Complaint" means the operative Complaint on file in the Action with the Court.
- 2 1.8 "Court" means the Sacramento County Superior Court.
- 3 1.9 "Covered Period" means August 4, 2016 through the earlier of either June 15, 2021 or the
- 4 Preliminary Approval Date.
- 5 1.10 "Defendant" means Von Housen's Sacramento, Inc.
- 6 1.11 "Defendant's Counsel" means Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
- 7 1.12 "Effective Date" means either (a) the 60th calendar day after a signed order granting final
- 8 approval of this Agreement has been filed provided no motion to vacate the judgment, appeal, writ or
- 9 other appellate proceeding having been filed; or (b) the seventh (7th) calendar day after any motion to
- 10 vacate the judgment, appeal, writ, or other appellate proceeding opposing the Agreement has been finally
- 11 dismissed with no material change to the terms of this Agreement and there is no right to pursue further
- 12 remedies or relief, whichever is later.
- 13 1.13 "Enhancement Payment" means the amount approved by the Court to be paid to the Class
- 14 Representative in recognition of the time and effort expended on behalf of Class Members for the benefit
- 15 of Class Members, which is in addition to any Individual Settlement Amount paid to the Class
- 16 Representative as a Settlement Class Member.
- 17 1.14 "Final Approval Date" means the date a signed order granting final approval of this
- 18 Agreement is filed with the Court.
- 19 1.15 "Individual Settlement Amount" or "Individual Settlement Payment" means the amount
- 20 payable from the Net Settlement Amount to each Settlement Class Member, as defined in Sections 1.18
- 21 and 1.33.
- 22 1.16 "LWDA" means the California Labor and Workforce Development Agency.
- 23 1.17 "Maximum Settlement Amount" is the sum of Seven Hundred Fifty Thousand Dollars and
- 24 No Cents (\$750,000.00).
- 25 1.18 "Net Settlement Amount" is the portion of the Maximum Settlement Amount available for
- 26 distribution to Settlement Class Members, as described in this Agreement, after deduction of Plaintiff's
- 27 attorneys' fees and litigation costs, Settlement Administrator Costs, employer tax contributions, the
- 28 LWDA's 75% share of the PAGA Payment, and Enhancement Payment to the Class Representative.

1.19 "Notice of Settlement" means the document substantially in the form attached hereto as Exhibit 1.

1.20 "Notice Period" means forty-five (45) calendar days from the initial mailing of the Notice of Settlement to Class Members.

1.21 "PAGA" means Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.*

1.22 "PAGA Payment" means the amount allocated from the Maximum Settlement Amount towards resolving claims under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.*

1.23 "Parties" means Defendant and Plaintiff.

1.24 "Payment Ratio" means the respective Qualifying Workweeks for each Class Member within their respective subclass during the Covered Period divided by the total Qualifying Workweeks for all Class Members in their respective subclass during the Covered Period.

1.25 "Preliminary Approval Date" means the date a signed order granting preliminary approval of this Agreement is filed with the Court.

1.26 "QSF" means a Qualified Settlement Fund set up by the Settlement Administrator for the benefit of the Settlement Class Member and from which the payments under this Agreement shall be made. Any amounts Defendant has agreed to pay under this Agreement shall remain the property of Defendant until the payments required under the Agreement are made.

1.27 "Qualifying Workweeks" means the number of weeks worked by Class Members during the Covered Period in California, which will be calculated by the Settlement Administrator using the start and end dates of employment contained in the Class Data (as aggregated for any multiple employment periods). For Class Members, workweeks shall be defined as the total length of service (in days) in California during the Covered Period divided by seven. The calculation of a Class Member's workweeks, a determination as to whether a Class Member was actively employed in California in a particular workweek, and/or what subclass a Class Members falls within shall be construed from Defendant's records.

1 1.28 "Released Claims" means all causes of action and factual or legal theories that were alleged
2 in the Complaint or reasonably could have been alleged based on the facts, causes of action, and legal
3 theories contained in the Complaint, including all of the following claims for relief: (a) failure to pay
4 overtime wages; (b) failure to pay minimum wages; (c) failure to provide proper meal periods, and to properly
5 provide premium pay in lieu thereof; (d) failure to provide proper rest breaks, and to properly provide
6 premium pay in lieu thereof; (e) waiting time penalties for untimely pay during employment and untimely
7 final pay; (f) improper and/or inaccurate wage statements; (g) failure to reimburse business expenses; (h)
8 failure to keep complete or accurate payroll records; (i) unfair business practices based thereon; (i) civil
9 penalties under the Labor Code Private Attorneys General Act ("PAGA") based thereon; (j) any other
10 claims or penalties under the wage and hour laws pleaded in the Action; and (k) all damages, penalties,
11 interest and other amounts recoverable under said causes of action under California and federal law, to the
12 extent permissible, including but not limited to the California Labor Code as to the facts alleged in the
13 Action, the applicable Wage Orders as to the facts alleged in the Action, and the California Unfair
14 Competition Law. The period of the Release shall extend to the limits of the Covered Period. The *res*
15 *judicata* effect of the Judgment will be the same as that of the Release.

16 1.29 "Released Parties" means Defendant and its past, present and/or future, direct and/or
17 indirect, officers, directors, members, managers, owners, employees, agents, representatives, attorneys,
18 insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates,
19 divisions, predecessors, successors, assigns, and joint venturers, and all persons acting under, by, though,
20 or in concert with any of them, and each of them.

21 1.30 "Response Deadline" means the date forty-five (45) days after the Settlement Administrator
22 mails the Notice of Settlement to Class Members and the last day on which Class Members may submit
23 requests for exclusion or objections to the Settlement.

24 1.31 "Settlement Administrator" means and refers to Simpluris, Inc., the third-party entity that
25 will administer the Agreement as outlined in Sections 7 and 8, or any other third-party class action
26 settlement administrator agreed to by the Parties and approved by the Court for the purposes of
27 administering this Agreement. The Parties each represent that they do not have any financial interest in
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the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

1.32 "Settlement Administrator Costs" means the fees and expenses reasonably incurred by the Settlement Administrator as a result of the procedures and processes expressly required by this Agreement, and shall include all costs of administering the Agreement, including, but not limited to, all tax document preparation, custodial fees, and accounting fees incurred by the Settlement Administrator; all costs and fees associated with preparing, issuing and mailing any and all notices and other correspondence to Class Members; all costs and fees associated with communicating with Class Members, Class Counsel, and Defendant's Counsel; all costs and fees associated with computing, processing, reviewing, and paying the Individual Settlement Payments, and resolving disputes; all costs and fees associated with calculating tax withholdings and payroll taxes, if any, making related payment to federal and state tax authorities, if any, and issuing tax forms relating to payments made under the Agreement; all costs and fees associated with preparing any tax returns and any other filings required by any governmental taxing authority or agency; all costs and fees associated with preparing any other notices, reports, or filings to be prepared in the course of administering Net Settlement Amounts; and any other costs and fees incurred and/or charged by the Settlement Administrator in connection with the execution of its duties under this Agreement.

1.33 "Settlement Class Members" or "Settlement Class" means all Class Members after excluding any person who submits a timely and valid request for exclusion as provided in this Agreement.

2. DESCRIPTION OF THE LITIGATION

2.1 On or about July 31, 2020, Plaintiff sent notice to the LWDA to exhaust administrative remedies under the PAGA for failure to pay overtime, failure to pay minimum wages, failure to provide meal periods, failure to provide rest periods, failure to provide accurate wage statements, failure to pay final wages, failure to pay reimbursement expenses, violation of Labor Code section 558, failure to maintain accurate records, and failure to pay wages in a timely manner. The LWDA did not respond to the notice within the statutorily required time frame and, as such, Plaintiff became authorized to act as a Private Attorney General on all alleged PAGA claims.

2.2 On or about August 4, 2020, Plaintiff filed a class action Complaint in Sacramento County Superior Court on behalf of himself and Class Members alleging claims for failure to pay overtime, failure

1 to pay minimum wages, failure to provide meal periods, failure to provide rest periods, failure to provide
2 accurate wage statements, failure to pay final wages, and failure to pay reimbursement expenses. Plaintiff
3 filed a First Amended Complaint on approximately November 20, 2020 to add a PAGA cause of action
4 based on the violations alleged in the July 31, 2020 notice to the LWDA on behalf of himself and similarly
5 situated employees.

6 2.3 Through informal discovery, Defendant and Defendant's Counsel provided Class Counsel
7 with copies of all applicable versions of its policies and procedures, employee handbooks, information
8 on Class Members including, but not limited to, Class Members' workweeks, dates of employment, total
9 number of Class Members, their rates of pay, as well as timecard data and payroll reports for a randomly
10 selected sample of Class Members.

11 2.4 On January 26, 2021, the Parties participated in a lengthy mediation with private mediator
12 Louis Marlin, Esq. At the conclusion of the mediation, the Parties were able to come to a resolution. At
13 all times, the Parties' settlement negotiations have been non-collusive, adversarial, and at arm's length.

14 2.5 Discussions between Plaintiff and Class Counsel, between counsel for the Parties, document
15 productions, extensive legal analysis, the provision of information by Defendant to Plaintiff and the
16 detailed analysis of the records, including expert analysis, have permitted each side to assess the relative
17 merits of the claims and the defenses to those claims.

18 2.6 In the Action, Plaintiff contends that Defendant violated California law by 1) failing to pay
19 for all hours worked, including overtime wages; 2) failing to authorize and permit putative class members
20 to take all meal and rest periods; and 3) failing to reimburse putative class members for the use of their
21 personal cellphones for work. Plaintiff also alleged derivative violations. Defendant has denied each of
22 Plaintiff's claims and Defendant has denied that this Action is appropriate for class certification for
23 anything other than settlement purposes. The agreed upon Maximum Settlement Amount was reached
24 after evaluation of the Parties' respective theories of potential exposure for the underlying claims and the
25 class data. The Parties, with the assistance of the mediator, also assessed appropriate discounts to the
26 potential liability based on Defendant's factual and legal contentions and defenses.

27 2.7 The Parties agree that the above-described investigation and evaluation, as well as discovery
28 and the information exchanged to date, are more than sufficient to assess the merits of the respective

1 Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiff, Class Counsel,
2 Defendant, and Defendant's Counsel have concluded that it is desirable that the Action be settled in a
3 manner and upon such terms and conditions set forth herein in order to avoid further expense,
4 inconvenience and distraction of further legal proceedings, and the risk of an adverse outcome each of the
5 Parties potentially face in the Action. Therefore, the Parties desire to resolve the claims in the Action.
6 Plaintiff, Class Counsel, Defendant, and Defendant's Counsel are of the opinion that the Agreement for
7 the consideration and terms set forth herein is fair, reasonable, and adequate in light of all known facts
8 and circumstances.

9 **3. THE CONDITIONAL NATURE OF THIS AGREEMENT**

10 3.1 This Agreement and Exhibit 1 are made for the sole purpose of settling the Action. This
11 Agreement and the settlement it evidences are made in compromise of disputed claims. Because the
12 Action was pled as a class action, this Agreement must receive preliminary and final approval by the
13 Court. Accordingly, the Parties enter into this Agreement and associated settlement on a conditional basis.
14 If the Court does not enter an order granting final approval of the Agreement, or if the Court's approval
15 of the settlement is reversed or materially modified on appellate review, this Agreement shall be deemed
16 null and void; it shall be of no force or effect whatsoever; it shall not be referred to or utilized for any
17 purpose whatsoever; and the negotiation, terms and entry of the Agreement shall remain subject to the
18 provisions of California Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any
19 other analogous rules of evidence that may be applicable.

20 3.2 Defendant has denied all claims as to liability, damages, liquidated damages, penalties,
21 interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action. Defendant
22 has agreed to resolve the Action via this Agreement, but to the extent this Agreement is deemed void or
23 the Final Approval Date does not occur, Defendant does not waive, but rather expressly reserves, all rights
24 to challenge all such claims and allegations in the Action upon all procedural and factual grounds,
25 including, without limitation, the ability to challenge class or collective treatment on any grounds, as well
26 as to assert any and all other potential defenses or privileges.

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1 **4. SCOPE OF THE CLASS**

2 4.1 The scope of the class of individuals encompassed under the Agreement, who are entitled
3 to all benefits as authorized under the Agreement and subject to all obligations and duties required under
4 the Agreement, shall include all Class Members as defined in Section 1.3. However, it shall not include
5 any Class Members who submit valid and timely requests to opt-out of the Settlement, as set forth in
6 Section 7.6.1.

7 4.2 Individuals entitled to recover under this Agreement will include only those individuals who
8 are identified as being within the scope of this Agreement under Section 4.1.

9 4.3 Any person who believes that he or she is a Class Member and wishes to participate in the
10 Agreement, but did not receive a Notice of Settlement because his or her name did not appear on the class
11 list provided to the Settlement Administrator prior to mailing, may submit a data request to the Settlement
12 Administrator. The data request must contain all of the following information: (a) the full name and, if
13 applicable, Social Security Number of the individual making the request; (b) the name used by such
14 employee as of the time his or her employment with Defendant ended; (c) the years during which such
15 employee was employed with Defendant; and (d) a return address to which a response may be sent. Every
16 data request must be postmarked on or before the conclusion of the Notice Period or otherwise submitted
17 to the Settlement Administrator such that it is received before the conclusion of the Notice Period. Upon
18 receipt of any data requests, the Settlement Administrator shall promptly (in no event more than two
19 business days) transmit the data requests to Defendant's Counsel and request that Defendant review their
20 records.

21 4.4 If Defendant does agree that the person listed in a data request is a Class Member, the
22 Settlement Administrator shall promptly mail a Notice of Settlement to the person who submitted the data
23 request, at the address designated for that purpose in the data request. All provisions of this Agreement
24 relating to the Notice of Settlements shall apply to Notice of Settlements sent in response to data requests,
25 and any person who submits a data request and is sent a Notice of Settlement in response shall be treated
26 by the Settlement Administrator as a Class Member for all other purposes.

27 4.5 If Defendant disagrees that the person listed in a data request is a Class Member, Defendant's
28 Counsel and Class Counsel shall attempt to resolve any such dispute in good faith within seven (7)

1 calendar days of Class Counsel being advised in writing of the data request dispute. Defendant's records
2 shall control unless the individual submitting the data request provides persuasive evidence to doubt the
3 accuracy of those records. Each data request dispute that Defendant's Counsel and Class Counsel cannot
4 timely resolve shall be resolved by the Settlement Administrator. The Settlement Administrator must
5 accept and weigh all the evidence provided in a good faith attempt to resolve the dispute. The Settlement
6 Administrator must resolve any dispute submitted to it within seven (7) calendar days after Defendant's
7 Counsel and Class Counsel submit the dispute to the Settlement Administrator. The decision by the
8 Settlement Administrator shall be final and there shall be no right of appeal.

9 **5. TERMS OF THE SETTLEMENT**

10 The Parties agree as follows:

11 5.1 Maximum Settlement Amount: In consideration and exchange for the releases described in
12 Section 6, Defendant shall pay the Maximum Settlement Amount (\$750,000.00). In no event shall
13 Defendant be liable for more than \$750,000.00 as a result of this Settlement except as set forth in the Escalator
14 Clause of Section 10.2. Funding of the Maximum Settlement Amount shall occur in two (2) installments
15 payable to the Settlement Administrator, which will be held in trust in a QSF. The first payment amount
16 of \$500,000.00 shall be made within ten (10) business days of the Final Approval Date. The second and
17 final payment of \$250,000.00 (or other additional amount as may be required by the Escalator Clause in
18 Section 10.2, below) shall be made ninety (90) calendar days after the first payment is made. The
19 Maximum Settlement Amount includes payments to Settlement Class Members, all attorneys' fees, costs
20 and litigation expenses related to the Action incurred to date, as well as all such fees and costs incurred in
21 documenting the Agreement, administering the Agreement (including Settlement Administrator Costs),
22 and obtaining final approval of the Agreement, the PAGA Payment, the Enhancement Payment to the
23 Class Representative, and any monies necessary to satisfy Defendant's tax obligations (e.g. employer
24 FICA, FUTA and SDI contributions on wage payments) on any monies distributed to Settlement Class
25 Members allocated as wages.

26 5.2 Conditions Precedent: This Settlement will become final and effective only upon the
27 occurrence of all of the following events:

28 a) The Court enters an order granting preliminary approval of the Settlement;

1 b) The Court enters a Final Approval Order and Judgment;

2 c) The Effective Date occurs; and

3 d) Defendant does not invoke its right to revoke the Settlement as described in paragraph 10.1 herein.

4 5.3 Nullification of Settlement Agreement. In the event that this Settlement Agreement is not
5 preliminarily or finally approved by the Court, or fails to become effective (as set forth in Paragraph 1.12):

6 a) This Settlement Agreement shall be void *ab initio* and of no force or effect, and shall not be
7 admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to
8 any issue, substantive or procedural;

9 b) The conditional class certification (obtained for any purpose) shall be void *ab initio* and of no force
10 or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any
11 purpose or with respect to any issue, substantive or procedural; and

12 c) None of the Parties to this Settlement will be deemed to have waived any claims, objections,
13 defenses or arguments in the Action, including with respect to the issue of class certification.

14 5.4 Attorneys' Fees and Costs: Class Counsel will apply to the Court for attorney's fees of
15 35% (\$262,500.00) of the Maximum Settlement Amount, which shall be paid from the Maximum
16 Settlement Amount. Defendant agrees not to oppose Class Counsel's application or motion for attorneys'
17 fees not to exceed thirty-five percent (35%) of the Maximum Settlement Amount (\$262,500.00 out of
18 \$750,000.00). Class Counsel will also be entitled to reimbursement for advanced litigation expenses not
19 to exceed \$17,500, which shall be paid from the Maximum Settlement Amount. Defendant agrees to not
20 oppose Class Counsel's request for reimbursement for advanced litigation expenses so long as they do not
21 exceed the \$17,500 threshold, supported by declaration. In the event that the Court reduces or does not
22 approve the requested attorney's fees and costs or advanced litigation expenses, Class Counsel shall not
23 have the right to revoke this Agreement, and it will remain binding. The Settlement Administrator will
24 issue Class Counsel an IRS Form 1099 for the attorneys' fees and costs paid under this Agreement. In the
25 event that the Court awards less than the requested attorney's fees and/or costs, the portion of the requested
26 amounts not awarded to Class Counsel shall be added to the Net Settlement Amount to be distributed to
27 Settlement Class Members on a pro rata basis as set forth in 5.10.

1 **5.5 Settlement Administrator Costs:** The Settlement Administrator Costs shall be paid from the
2 Maximum Settlement Amount and shall not exceed \$12,500.00. The difference between any actual costs
3 and the allocated \$12,500 shall be added to the Net Settlement Amount.

4 **5.6 Enhancement Payment:** Class Counsel, on behalf of Plaintiff, shall apply to the Court for
5 an Enhancement Payment to the Class Representative in an amount not to exceed Fifteen Thousand
6 Dollars and No Cents (\$15,000.00) to compensate for the risks, time, and expense of his involvement in
7 the Action and securing the benefits of this Agreement for Class Members. The Enhancement Payment
8 shall be in addition to Plaintiff's respective Individual Settlement Payment as a Settlement Class Member.
9 Defendant has agreed to not oppose Class Counsel's request for an Enhancement Payment to Plaintiff so
10 long as it does not exceed the amount stated herein. In the event that the Court reduces or does not
11 approve the requested Class Representative Enhancement Payment, Plaintiff shall not have the right to
12 revoke this Settlement, and it will remain binding. The Enhancement Payment will be designated as a
13 non-wage payment and reported on an IRS Form 1099. Plaintiff shall be solely and legally responsible to
14 pay any and all applicable taxes on his Enhancement Payment and shall hold harmless Defendant from
15 any claim or liability for taxes, penalties, or interest arising as a result of the Class Representative
16 Enhancement Payment. In the event that the Court awards less than the Enhancement Payment amount
17 requested, then any portion of the requested amount not awarded to the Class Representative shall be
18 added to the Net Settlement Amount to be distributed to Settlement Class Members on a pro rata basis as
19 set forth in 5.10.

20 **5.7 PAGA Payment:** Ten Thousand Dollars and No Cents (\$10,000.00) of the Maximum
21 Settlement Amount shall be allocated to resolving claims under the PAGA. Seventy-Five percent (75%)
22 of the PAGA Payment will be paid to the LWDA and Twenty-Five percent (25%) will be paid to
23 Settlement Class Members on a pro rata basis as described below in Section 5.10. Any amount not
24 approved by the Court for the allocated PAGA Payment shall be added to the Net Settlement Amount to
25 be distributed to Settlement Class Members on a pro rata basis.

26 **5.8 Treatment of Residue Pertaining to Uncashed Settlement Checks:** For any portion of the
27 Net Settlement Amount allocated to Settlement Class Members that were not claimed by cashing their
28 respective settlement checks before the deadline to do so, that remaining amount shall be tendered to the

1 Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil
2 Code section 1500, *et seq.*, for the benefit of the Settlement Class Members who did not cash their checks
3 until such time that they claim their property. No portion of the Maximum Settlement Amount will revert
4 to Defendant for any reason.

5 **5.9 No Additional Benefits Contributions:** All Individual Settlement Amounts paid to
6 Settlement Class Members shall be deemed to be income solely in the year in which such amounts were
7 actually received. It is expressly understood and agreed that the receipt of such Individual Amounts will
8 not entitle any Settlement Class Member to any new or additional compensation or benefits under any
9 company bonus or other compensation or benefit plan or agreement in place during the period covered by
10 the Agreement, nor will it entitle any Settlement Class Member to any increased retirement, 401(k) and/or
11 403(b) benefits or matching benefits, or deferred compensation benefits. It is the intent of this Agreement
12 that the Individual Settlement Amounts provided for in this Agreement are the sole payments to be made
13 by Defendant to the Settlement Class Members in connection with this Agreement (notwithstanding any
14 contrary language or agreement in any benefit or compensation plan document that might have been in
15 effect during the period covered by this Agreement).

16 **5.10 Pro Rata Distribution Formula:** Payment to Settlement Class Members of their Individual
17 Settlement Payments will not require the submission of a claim form. A Net Settlement Amount will be
18 determined by subtracting from the Maximum Settlement Amount any amounts for approved attorneys'
19 fees and costs, employer tax contributions, any Enhancement Payment to the Class Representative, the
20 Settlement Administrator Costs, and the LWDA's share of the PAGA Payment. For payment allocation
21 purposes only, Class Members will be divided into two subclasses: (1) Positions subject to a
22 commission/bonus pay plan; and (2) all Class Members not falling into Subclass 1, *i.e.*, hourly-paid non-
23 exempt positions not subject to a commission/bonus pay plan. Subclass 1 shall be allocated 70% of the
24 Net Settlement Amount and Subclass 2 shall be allocated 30% of the Net Settlement Amount. Each Class
25 Member's proportionate share will be determined by dividing their total Qualified Workweeks worked
26 within their respective subclass during the Covered Period by the total Qualified Workweeks worked by
27 all Class Members within the subclass during the Covered Period. A Class Member may be a part of both
28 subclasses if during the Covered Period they worked a portion of the time in a position subject to a

1 commission/bonus pay plan and in a different portion of time, they worked in a non-commission/bonus
2 pay plan position. That fraction will then be multiplied by the Net Settlement Amount to arrive at the
3 Class Member's individual share of the Net Settlement Amount. Payments shall be reduced as necessary
4 to account for mandatory payroll withholdings. Recipients of payments pursuant to this Agreement are
5 exclusively responsible for all other tax obligations.

6 **5.11 Tax Allocation:** The Parties recognize that the Individual Settlement Amounts to be paid to
7 Settlement Class Members reflect a settlement of a dispute over claimed penalties and wages. The
8 Settlement Administrator shall calculate the employer's share of payroll taxes on the amounts paid to
9 Settlement Class Members as wages as well as calculating all required withholdings and deductions from
10 said wage payments. The characterization of Individual Settlement Amounts to Settlement Class Members
11 are as follows:

12 **5.11.1** Twenty percent (20%) of each Settlement Class Member's Individual Settlement
13 Amount shall be allocated for payment of disputed wages and shall be subject to required employer taxes.
14 Settlement Class Members shall receive an IRS Form W-2 for reporting of this portion of their Individual
15 Settlement Amount, to be issued by the Settlement Administrator.

16 **5.11.2** Eighty percent (80%) of each Settlement Class Member's Individual Settlement
17 Amount shall be allocated for disputed statutory penalties, civil penalties, reimbursement, and interest,
18 and no amount shall be deducted for any taxes. This portion of the Individual Settlement Amount consists
19 of other income, not wages, for which the Settlement Class Members shall receive an IRS Form 1099-
20 MISC, to be issued by the Settlement Administrator.

21 **5.12** Settlement Class Members shall be solely responsible for the reporting and payment of their
22 share of any federal, state and/or municipal income or other taxes on payments made pursuant to this
23 Agreement, and shall hold the Parties, Class Counsel, and Defendant's Counsel free and harmless from
24 any claims resulting from treatment of such payments as non-taxable, including the treatment of such
25 payments as not subject to withholding or deduction for payroll and employment taxes. No party has
26 made any representation to any of the other Parties as to the taxability of any payments pursuant to this
27 Agreement, including the payments to Settlement Class Members, the payments to Class Counsel, the
28 payments to the Class Representative, the payroll tax liability of Defendant, or the allocation of the Net

1 Settlement Amount or PAGA Payment to wage and non-wage income as provided in this Section, or
2 otherwise as to tax implications of any provision of this Agreement.

3 **5.13 No Additional Contribution by Defendant:** Defendant's monetary obligation under this
4 Agreement is limited to the Maximum Settlement Amount and any additional funds that may become
5 necessary under the Escalator Clause set forth in 10.2. All other costs and expenses arising out of or in
6 connection with the performance of this Agreement shall be paid from the Maximum Settlement Amount,
7 unless expressly provided otherwise herein. However, in the event this agreement is deemed null and
8 void as described in Section 3 because the Court, in its independent determination, finds that the
9 Agreement does not meet the standards for settlement approval, then Defendant and Plaintiff shall be
10 equally responsible for the costs of the Settlement Administrator incurred between the date the Agreement
11 was executed and the date of such event.

12 **5.14 Certification For Settlement Purposes:** The Parties agree that, for purposes of settlement
13 only, certification of the class as defined in Section 1.3 and 4.1 is appropriate and the requisites for
14 establishing class certification have been met and are met.

15 **5.15 Adequacy of Class Counsel and Class Representatives:** The Parties agree that, for purposes
16 of settlement only, Class Counsel and Plaintiff are adequate representatives for Class Members.

17 **6. RELEASE**

18 **6.1 Limited Release of Claims by All Settlement Class Members:** As of the Effective Date, in
19 exchange for the consideration set forth in this Settlement Agreement, the Settlement Class Members will
20 be deemed to have, and by operation of the Final Approval Order and Judgment, will have, expressly
21 waived and released the Released Parties of the Released Claims (as defined above) to the fullest extent
22 permitted by law. Settlement Class Members will be bound by a release of all claims and causes of action
23 falling within the definition of "Released Claims" (above), whether known or unknown, and irrespective
24 of the factual or legal basis for such claims. However, to be clear, the scope of the release is limited to the
25 Released Claims. Plaintiff and the Settlement Class Members may hereafter discover facts or legal
26 arguments in addition to or different from those they know or currently believe to be true with respect to
27 the claims, causes of action and legal theories of recovery in this Action. Regardless, the discovery of new
28 facts or legal arguments shall in no way limit the scope or definition of the Released Claims, and by virtues

1 of this Agreement, Plaintiff and the Settlement Class Members shall be deemed to have, and by operation
2 of the final judgment approved by the Court, shall have, fully, finally, and forever settled and released all
3 of the Released Claims. The period of the release shall extend to the limit of the Coverer Period. The res
4 judicata effect of the Judgment will be the same as that of the release. The Parties understand and
5 specifically agree that the scope of the release described in this Paragraph is a material part of the
6 consideration for this Agreement; was critical in justifying the agreed upon economic value of this
7 settlement and without it Defendant would not have agreed to the consideration provided; and is narrowly
8 drafted and necessary to ensure that Defendant is obtaining peace of mind regarding the resolution of
9 claims that were or could have been alleged based on the facts, causes of cation, and legal theories
10 contained in Plaintiff's operative complaint. Settlement Claims Members specifically acknowledge that
11 they are aware of and familiar with the provisions of Section 1542 of the Civil Code, which provides as
12 follows: *A general release does not extend to claims that the creditor or releasing party does not know*
13 *or suspect to exist in his or her favor at the time of executing the release and that, if known by him or*
14 *her, would have materially affected his or her settlement with the debtor or released party.*

15 6.2 Upon the Final Approval Date, provided the Settlement is ultimately fully funded,
16 Settlement Class Members who do not opt out expressly waive and relinquish all rights and benefits each
17 may have under Section 1542 with respect to Settlement Class Members' Released Claims only, regardless
18 of whether they may hereafter discover facts in addition to or different from those which each now knows
19 and whether those claims are known or unknown, suspected or unsuspected, contingent or non-contingent,
20 that were asserted or could have been asserted upon any theory of law or equity without regard to the
21 subsequent discovery of existence of such different or additional facts. The *res judicata* effect of the
22 Judgment will be the same as that of the release.

23 6.3 General Release by Plaintiff Steve Tracy: As of the date on which full payment of the Class
24 Representative Enhancement Award has been made, in consideration for the consideration set forth in this
25 Agreement, Plaintiff, for himself and his heirs, successors and assigns, does hereby waive, release, acquit
26 and forever discharge the Released Parties from any and all claims, actions, charges, complaints,
27 grievances and causes of action, of whatever nature, whether known or unknown, which exist or may exist
28 on Plaintiff's behalf as of the date of this Agreement, including but not limited to any and all tort claims,

1 contract claims, wage claims, wrongful termination claims, disability claims, benefit claims, public policy
2 claims, retaliation claims, statutory claims, personal injury claims, emotional distress claims, invasion of
3 privacy claims, defamation claims, fraud claims, quantum meruit claims, and any and all claims arising
4 under any federal, state or other governmental statute, law, regulation or ordinance, including, but not
5 limited to claims for violation of the Fair Labor Standards Act, the California Labor Code, the Wage
6 Orders of California's Industrial Welfare Commission, other state wage and hour laws, the Americans
7 with Disabilities Act, the Age Discrimination in Employment Act, as amended ("ADEA"), the Employee
8 Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment
9 and Housing Act, the California Family Rights Act, the Family Medical Leave Act, California's
10 Whistleblower Protection Act, California Business & Professions Code Section 17200 *et seq.*, the
11 California Labor Code Private Attorneys General Act of 2004, California Labor Code Section 2699 *et*
12 *seq.*, and any and all claims arising under any federal, state or other governmental statute, law, regulation
13 or ordinance. Plaintiff hereby expressly waives and relinquishes any and all claims, rights or benefits that
14 he may have under California Civil Code § 1542, which provides as follows: *A general release does not*
15 *extend to claims which the creditor or releasing party does not know or suspect to exist in his or her*
16 *favor at the time of executing the release and that, if known by him or her, would have materially*
17 *affected his or her settlement with the debtor or released party.* Plaintiff may hereafter discover claims
18 or facts in addition to, or different from, those which he now knows or believes to exist, but he expressly
19 agrees to fully, finally and settle and release any and all claims against the Released Parties, known or
20 unknown, suspected or unsuspected, which exist or may exist on behalf of or against the other at the time
21 of execution of this Agreement, including, but not limited to, any and all claims relating to or arising from
22 Plaintiff's employment with Defendant. The Parties further acknowledge, understand and agree that this
23 representation and commitment is essential to the Agreement and that this Agreement would not have
24 been entered into were it not for this representation and commitment.

25 6.4 Without limiting the scope of this Agreement, Plaintiff Steve Tracy agrees that this
26 Agreement constitutes a knowing and voluntary waiver of any and all rights or claims that exist or that he
27 may claim to have under the ADEA, as amended by the Older Workers' Benefit Protection Act of 1990
28 (29 U.S.C. § 621 *et seq.*). Plaintiff Steve Tracy acknowledges all of the following:

- 1 1(a) The consideration provided pursuant to this Agreement, including the possibility of a service
2 award, is in addition to any consideration that he would otherwise be entitled to receive;
- 3 1(b) Plaintiff has been and is advised in writing to consult with an attorney prior to signing this
4 Agreement;
- 5 1(c) Plaintiff has been provided a full and ample opportunity to study this Agreement, including a
6 period of at least twenty-one (21) calendar days within which to consider it;
- 7 1(d) To the extent that Plaintiff takes fewer than twenty-one (21) calendar days to consider this
8 Agreement prior to signing it, he acknowledges that he had sufficient time to consider this
9 Agreement with legal counsel and that he expressly, voluntarily, and knowingly waives the full
10 twenty-one (21) calendar-day period;
- 11 1(e) Plaintiff agrees that any changes made to the Agreement during the twenty-one (21) day period
12 (whether material or immaterial) do not restart the running of the twenty-one (21) day period; and
- 13 1(f) Plaintiff is aware of his right to revoke this waiver of claims under the ADEA any time within the
14 seven (7) calendar-day period following the date of full execution of this Agreement and that the
15 waiver of claims under the ADEA shall not become effective or enforceable until the seven (7)
16 calendar-day revocation-period expires. Should Plaintiff revoke the waiver of claims under the
17 ADEA, he shall not request, and will not be entitled to receive, his Class Representative
18 Enhancement Payment referred to in paragraph 5.6, although the remainder of the terms of this
19 Agreement shall become effective and enforceable as of the date the Parties sign this Agreement.
- 20 1(g) To be effective, timely notice of revocation of the waiver of ADEA claims must be made in
21 writing and delivered to Defendant through its counsel, Gregory C. Cheng, Esq., at Ogletree
22 Deakins Nash Smoak & Stewart, P.C., One Embarcadero Center, Suite 900, San Francisco,
23 California 94111, before the eighth (8th) day after the date of Preliminary Approval ("Revocation
24 Period"). If mailed, the revocation must be properly addressed to the above addressee and
25 postmarked no later than the last day of the Revocation Period. If applicable, Plaintiff agrees to
26 keep written documentation proving that he revoked this Agreement as provided in this
27 paragraph, either by keeping the documents attesting to the delivery of the revocation, or
28

1 verification that the revocation was mailed. In the event Plaintiff revokes the waiver of ADEA
2 claims, he understands and agrees that he will not be entitled to a Class Representative
3 Enhancement Payment.

4 **7. SETTLEMENT ADMINISTRATION**

5 **7.1 Duties of Settlement Administrator:** The Settlement Administrator shall be responsible for:
6 1) receiving Class Member contact information and confirming addresses are valid; 2) calculating
7 estimated Individual Settlement Payments and any and all taxes associated with the Individual Settlement
8 Payments, including Employer taxes; 3) taking appropriate steps to trace and locate any individual Class
9 Members whose address or contact information as provided to the Settlement Administrator is inaccurate
10 or outdated and mailing the Notice of Settlement to Class Members; 4) providing notification to the
11 appropriate state and federal officials of this Agreement as required under the law; 5) receiving,
12 independently reviewing, and resolving any challenges (in consultation with Class Counsel and
13 Defendant's Counsel) from Class Members, including any associated documentation, regarding their
14 Qualified Workweek calculations; 6) receiving and serving on Class Counsel, Defendant's Counsel, and
15 the Court, copies of any written objections, and/or any opt out statements; 7) establishing a toll free
16 telephone line and responding to inquiries and requests for information or assistance from Class Members;
17 8) maintaining a QSF; 9) determining and paying the final amounts due to be paid under the Agreement
18 after resolution of all challenges, disputes, opt-outs, awarded attorneys' fees and costs, Settlement
19 Administrator Costs, PAGA Payment, taxes, any Enhancement Payments, and for funds that cannot be
20 distributed due to the inability to locate Class Members; 10) determining the validity of any disputes or
21 late opt-outs by previously unidentified Class Members; 11) paying any residual funds from uncashed
22 checks; 12) reporting to Class Counsel and Defendant's Counsel regarding the statistics of the
23 administration, including (a) the number of initial Notice of Settlements mailed; (b) the number of
24 forwarded Notice of Settlements; (c) the number of re-mailed Notice of Settlements; (d) the number of
25 total undeliverable Notice of Settlements; (e) the number of address traces performed for undeliverable
26 Notice of Settlements; (f) the number of Notice of Settlements undeliverable from traced addresses; (g)
27 the number of total objections received; (h) the number of opt-out requests received; (i) the number of
28 disputes received; (j) the number of disputes resolved; 13) providing a declaration to the Court regarding

1 the final statistics of the administration and compliance with all payment obligations under the Agreement;
2 14) completing all necessary tax reporting on the QSF and payment of the Individual Settlement Amounts
3 to Settlement Class Members; and 15) carrying out other related tasks as necessary to effectuate the terms
4 of this Agreement and any Order of the Court. Plaintiff, Class Counsel, Defendant and/or Defendant's
5 counsel shall bear no responsibility for errors or omissions in the calculation or distribution of the
6 settlement payments or development of this list of recipients of settlement payments by the Settlement
7 Administrator. All disputes relating to the Settlement Administrator's ability and need to perform its
8 duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms
9 and conditions of this Agreement, until all payments and obligations contemplated by the Agreement have
10 been fully executed. The Settlement Administrator shall keep the Parties timely apprised of the
11 performance of all Settlement Administrator responsibilities. Defendant and Defendant's Counsel shall
12 have no responsibility for validating and ensuring the accuracy of the Settlement Administrator's work.
13 Plaintiff, Class Counsel, Defendant and Defendant's Counsel shall not bear any responsibility for errors
14 and omissions in the calculation or distribution of the Individual Settlement Payments or any other
15 distribution of monies contemplated by this Agreement.

16 7.2 Notice to Class Members: The Notice of Settlement will provide Class Members with a
17 summary of the terms and conditions of the Agreement, how to participate in the settlement, how to object
18 to the Agreement, estimated Individual Settlement Payment, assigned subclass, how to dispute the
19 individual's Qualifying Workweeks and/or assigned subclass, and how to opt-out from the Agreement.
20 The Notice of Settlement will also inform Class Members of the Maximum Settlement Amount, Net
21 Settlement Amount, proposed attorneys' fees and costs allocations, any proposed Enhancement Payments,
22 proposed Settlement Administrator Cost allocations, proposed PAGA Payment allocations, the scope of
23 the class, the nature and extent of the released claims, dates set for a fairness hearing and hearing on Class
24 Counsel's motion for attorneys' fees and costs. The Notice of Settlement shall include information
25 regarding Class Member's estimated Individual Settlement Payment.

26 7.3 Class Data and Mailing: No later than fourteen (14) calendar days after the Preliminary
27 Approval Date, Defendant shall provide the Settlement Administrator with the Class Data for purposes of
28 preparing and mailing the Notice of Settlement, and any other information the Settlement Administrator

needs to effectuate notice to Class Members as outlined herein. The Settlement Administrator shall review the data to determine the number of Qualifying Workweeks for each Class Member and their assigned subclass. No later than fourteen (14) calendar days after receipt of such address information, the Settlement Administrator will perform a national change of address ("NCOA") search, update the addresses per the results of the NCOA search, and then mail the Notice of Settlement, substantially in the form attached as Exhibit 1, to each Class Member by first-class mail, postage prepaid. The Settlement Administrator shall maintain all information received from Defendant confidential to itself, and Defendant's Counsel. However, Class Counsel shall be able to review the breakdown of Qualified Workweeks, assigned subclass, and estimated Individual Settlement Amounts for Class Members prior to mailing for quality assurance provided the personal identifying information is redacted and/or omitted.

7.4 Individual Settlement Payments. Individual Settlement Payments shall be paid from the Net Settlement Amount and shall be paid pursuant to the formula set forth herein.

7.4.1 Calculation of Estimated Individual Settlement Payments. Using the Class Data, the Settlement Administrator will calculate the total Qualifying Workweeks for all Class Members in their respective subclass. The respective Qualifying Workweeks for each Class Member in their respective subclass will be divided by the total Qualifying Workweeks for all Class Members in their respective subclass, resulting in the Payment Ratio for each Class Member in their respective subclass. Each Class Member's Payment Ratio will then be multiplied by the estimated Net Settlement Amount as allocated to their respective subclass (with Subclass 1 allocated 70% of the Net Settlement Amount and Subclass 2 allocated 30% of the Net Settlement Amount).

7.4.2 Calculation of Individual Settlement Payments. Using the Class Data, or using the Qualifying Workweeks that were disputed and subsequently approved, the Settlement Administrator will calculate the total Qualifying Workweeks for all Settlement Class Members in each respective subclass. The respective Qualifying Workweeks for each Settlement Class Member in their respective subclass will be divided by the total Qualifying Workweeks for all Settlement Class Members in their respective subclass, resulting in the Payment Ratio for each Settlement Class Member in their respective subclass. Each Settlement Class Member's Payment Ratio will then be multiplied by the Net Settlement Amount as

1 allocated to their respective subclass (with Subclass 1 allocated 70% of the Net Settlement Amount and
2 Subclass 2 allocated 30% of the Net Settlement Amount).

3 **7.5 Returned and/or Re-mailed Notice of Settlements:** In the event that a Notice of Settlement
4 is returned to the Settlement Administrator as non-delivered on or before the conclusion of the Notice
5 Period, the Notice of Settlement shall be sent to the forwarding address affixed thereto within five (5)
6 calendar days. If no forwarding address is provided, then the Settlement Administrator shall promptly
7 attempt to determine a correct address using a single skip-trace, computer or other search using the name,
8 address and/or Social Security number of the individual involved, and shall then perform a single re-
9 mailing within five (5) calendar days. Following each search that does not result in a corrected address,
10 for those Class Members who appear to be current employees of Defendant at the time of the Preliminary
11 Approval Date, the Settlement Administrator shall contact Defendant's Counsel for assistance and
12 Defendant shall cooperate in good faith with the Settlement Administrator's reasonable efforts to obtain
13 valid mailing addresses for Class Members to the extent they are active employees of Defendant. In the
14 event the Notice of Settlement is forwarded to a new address and/or re-mailed to a Class Member, the
15 deadline for the Class Member to submit any request to opt-out, dispute, or objection shall be the end of
16 the Notice Period or 10 days from the date of the re-mailing, whichever is later. In the event the procedures
17 in this Section are followed and the Class Member does not timely and properly request to opt-out, the
18 Class Member shall be bound by all terms of the Agreement, including the releases contained in Section
19 6.

20 **7.6 Responses to Notice of Settlement:**

21 **7.6.1 Opt-Outs:** The Notice of Settlement shall provide that Class Members who wish to
22 exclude themselves from the Agreement must submit a request to opt-out as provided in this Section. The
23 request to opt-out must (a) state the Class Member's full name and date of birth; (b) a statement that he or
24 she does not want to be a Class Member, does not want to participate in the settlement, and/or wants to be
25 excluded from the settlement; (c) identify the case name and number (*i.e. Tracy v. Von Housen's*
26 *Sacramento, Inc., et al., 34-2020-00282778*); (d) be signed; and (e) be post-marked no later than the
27 conclusion of the Notice Period or the re-mailing timeline stated in Section 7.5. The Class Member must
28 personally sign the request to opt-out. No request to opt-out may be made on behalf of a group of Class

1 Members. The date of the postmark on the return-mailing envelope shall be the exclusive means used to
2 determine whether a request to opt-out has been timely submitted. Any Class Member who requests to
3 opt-out of the Agreement will not be entitled to any benefit of the Agreement or any portion of the Net
4 Settlement Amount, will not be bound by the Agreement, nor will they have any right to object, appeal or
5 comment thereon. Class Members who fail to submit a valid and timely request to opt-out shall be bound
6 by all terms of the Agreement and any order or final judgment thereon, regardless of whether they
7 otherwise have requested to opt-out of the Agreement.

8 **7.6.2 Objection Procedures:** Any Class Member who does not opt-out but who wishes
9 to object to this Agreement or otherwise to be heard concerning this Agreement shall send their written
10 objections to the Settlement Administrator and also serve copies of the objections on Class Counsel and
11 Defendant's Counsel. The Notice of Settlement shall make clear that the Court can only approve or deny
12 the Agreement, not change the terms of the Agreement. The objection must (a) state the Class Member's
13 full name and the last four digits of Class Member's Social Security number; (b) provide evidence that
14 the individual is, in fact, a Class Member; (c) state the reasons for the objection(s), including any legal
15 analysis and/or supporting documentation; (d) identify the case name and number (*i.e. Tracy v. Von*
16 *Housen's Sacramento, Inc., et al.*, 34-2020-00282778) (e) be signed; and (f) be post-marked no later than
17 the conclusion of the Notice Period or the re-mailing timeline stated in Section 7.5. The objecting Class
18 Member must also file a notice of intent to appear with the Court and serve the notice on Class Counsel
19 and Defendant's Counsel, if they intend to appear at the final approval hearing.

20 **7.6.3 Dispute Procedures:** Any Class Member who disputes the number of Qualifying
21 Workweeks, or assigned subclass(es) on the Notice of Settlement shall contact the Settlement
22 Administrator. The dispute must (a) identify the nature of the dispute; (b) provide any information or
23 documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than the conclusion
24 of the Notice Period or the re-mailing timeline stated in Section 7.5. The Settlement Administrator shall
25 promptly (in no event more than two business days) forward all such disputes to Defendant's Counsel and
26 request that Defendant review the dispute. Defendant's records shall presumptively control unless the
27 Class Member can produce documentation evidencing other periods of employment worked or being paid
28 under a commission/bonus pay plan. If Defendant does agree with submitted information, the Class

1 Member shall be credited or subtracted Qualifying Workweeks and/or reassigned to a different subclass
2 in accordance with their submitted dispute and that final number of Qualified Workweeks and subclass
3 shall govern the calculation of that Class Member's Individual Settlement Payment. If Defendant does
4 not agree with the submitted information, Defendant's Counsel will promptly advise Class Counsel of the
5 dispute, which includes turning over any documentation submitted by the Class Member as part of the
6 dispute. Defendant's Counsel and Class Counsel shall attempt in good faith to resolve any such dispute
7 within five (5) calendar days of Class Counsel being advised of the dispute. Each dispute that Defendant's
8 Counsel and Class Counsel cannot timely resolve shall be resolved by the Settlement Administrator or
9 Court. The Settlement Administrator's determination of the eligibility for and amount of any Individual
10 Settlement Payment shall be binding upon the Settlement Class Member and the Parties.

11 **7.6.4 Deficient Opt-Outs, Objections, or Disputes:** In the event that a deficient opt-out,
12 objection, or dispute is received on or before the conclusion of the Notice Period, the Settlement
13 Administrator shall mail a letter to the Class Member within five (5) calendar days informing them of the
14 deficiency. If a deficiency letter is mailed to a Class Member, the deadline for the Class Member to cure
15 the deficiency shall be the end of the Notice Period or 10 days from the date of the deficiency letter,
16 whichever is later.

17 **7.7 Due Process Acknowledgement:** Compliance with the procedures set forth in Sections 7.1
18 to 7.6.4 shall constitute due and sufficient notice to Class Members of the Action and the Agreement and
19 shall satisfy Class Members' due process rights. Nothing else shall be required of the Parties, Class
20 Counsel or Defendant's Counsel to provide notice of the proposed Agreement.

21 **7.8 Settlement Administrator Declaration Regarding Notice Period:** Within twenty-one (21)
22 days after the conclusion of the Notice Period, the Settlement Administrator shall provide Class Counsel
23 and Defendant's Counsel with a signed declaration under penalty of perjury providing a complete and
24 detailed report regarding the statistics and responses of settlement administration to date and all the
25 Settlement Administrators' obligations under Sections 5.8, 5.11 to 5.11.2, and 7.1 to 7.6.4.

26 **7.9 Settlement Administrator Payments to Settlement Class Members, Class Counsel and**
27 **Plaintiff:** Immediately after the Final Approval Date and the Court's determination of the amount of
28 attorneys' fees and costs payable to Class Counsel, the Enhancement Payment payable to Plaintiff, the

1 PAGA Payment, and Settlement Administrator Costs, the Settlement Administrator shall calculate the
2 final Net Settlement Amount, the final Individual Settlement Amounts for Settlement Class Members, any
3 applicable taxes thereon, and report the results of these calculations Class Counsel and Defendant's
4 Counsel. Defendant shall wire the Maximum Settlement Amount to the Settlement Administrator
5 according to the schedule described in Section 5.1. Payment of Settlement Administrator Costs, Attorneys
6 Fees and Costs, and any Enhancement Payment to the Class Representative may be made as sufficient
7 funds are received by the Settlement Administrator. Within seven (7) calendar days of receiving the full
8 Maximum Settlement Amount, the Settlement Administrator shall deliver payment of any remaining
9 amounts for Class Counsels' attorney's fees and costs, the Enhancement Payment payable to Plaintiff, and
10 Settlement Administrator Costs, as well as the 75% portion of the PAGA Payment payable to the LWDA,
11 and payment to Settlement Class Members as required under this Agreement and approved by Court.

12 7.9.1 The Settlement Administrator shall wire the Court-approved attorneys' fees and
13 costs to Class Counsel unless other method is requested by Class Counsel. Class Counsel shall provide
14 the Settlement Administrator with the pertinent taxpayer identification number and payment instructions
15 after the Final Approval Date.

16 7.9.2 The Settlement Administrator shall send a check by mail for the Court-approved
17 Enhancement Payment to the Class Representative, care of Class Counsel unless other method is requested
18 by Class Counsel.

19 7.9.3 Only Settlement Class Members will receive their Individual Settlement Payment.

20 7.9.4 The Settlement Administrator shall remit and report the applicable portions of the
21 payroll tax payment to the appropriate taxing authorities on a timely basis pursuant to its duties under this
22 Agreement. Defendant agree to reasonably cooperate with the Settlement Administrator to the extent
23 necessary to determine the amount of the payroll tax payment required.

24 7.10 Settlement Check Expiration and Uncashed Checks: The Settlement Administrator shall
25 issue Individual Settlement Amounts to Settlement Class Members in the form of a check, which shall
26 become null and void if not deposited within one hundred twenty (120) calendar days of issuance. After
27 one hundred twenty (120) calendar days of issuance, the checks shall be voided and funds from all
28

uncashed checks shall be transmitted in accordance with Section 5.8. The Settlement Administrator shall deliver these funds within fourteen (14) calendar days after the check cashing deadline.

7.11 Settlement Administrator Declaration Regarding Compliance and Settlement Administration: Within twenty-one (21) days after the last day for Settlement Class Members to cash their settlement checks, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel with a signed declaration under penalty of perjury providing a complete and detailed report regarding the settlement administration documenting that all payments under the Agreement have been made, that the Court's final approval order has been complied with, and that all the obligations of the Settlement Administrator have been completed.

8. PRELIMINARY SETTLEMENT ADMINISTRATION SCHEDULE

8.1 The schedule may be modified depending on whether and when the Court grants necessary approvals, orders notice to Class Members, and sets further hearings. The schedule may also be modified to correct clerical errors and to reflect the provisions in the Agreement as described above. In the event of such modification, the Parties shall cooperate to complete the settlement procedures as expeditiously as reasonably practicable. The preliminary schedule for notice, approval, and payment procedures carrying out the Agreement is as follows:

Last day for Defendant to provide Settlement Administrator with Class Member information	Within 14 calendar days after the Preliminary Approval Date
Last day for Settlement Administrator to complete NCOA search, update Class Member mailing information, and mail Notice of Settlement	Within 14 calendar days after the Settlement Administrators' receipt of Class Members' information from Defendant
Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	45 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
Last day for Settlement Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 21 calendar days after end of the Notice Period

1 2 3 4	Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, The LWDA's share of the PAGA Payment, Settlement Administrator Costs, and payment to Settlement Class Members.	Within seven (7) calendar days of the Settlement being fully funded
5 6 7	Last day for Settlement Class Members to cash settlement checks	120 days after issuance of checks to Settlement Class Members
8 9	Last day for Settlement Administrator to deliver value of uncashed settlement checks to the Controller of the State of California	Within 14 days after settlement check cashing deadline
10 11	Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 days after settlement check cashing deadline

9. DUTIES OF THE PARTIES

9.1 Preliminary Approval: The Parties will cooperate in obtaining, through an unopposed motion to be filed as soon as reasonably practicable, an order from the Court preliminarily approving this Agreement at the earliest possible date concurrently with the Court's certification of the Action as a class action for settlement purposes. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to the approval and implementation of this Agreement and shall otherwise use their respective best efforts to obtain certification for settlement purposes, approval of, and implementation of this Agreement. Plaintiff will submit this Agreement to the Court for preliminary approval of its terms and for approval of the steps to be taken to obtain its final approval. Within one week of signing this Agreement Class Counsel shall provide a draft of the Preliminary Approval Motion to Defendant's Counsel. Defendant's Counsel will provide comments and/or proposed revisions within one week after receipt of the draft Preliminary Approval Motion from Class Counsel. With regard to the final approval documents, a similar one-week maximum review and response time shall be observed by the Parties. Plaintiff will request that the Court's preliminary approval

1 of this Agreement be embodied in an Order Granting Preliminary Approval of Class Action and PAGA
2 Settlement.

3 9.1.1 Plaintiff's motion shall seek an order: 1) Preliminarily approving the Agreement; 2)
4 Approving as to form and content the proposed Notice of Settlement; 3) Directing the mailing of the
5 Notice of Settlement by first class mail to Class Members; 4) Preliminarily appointing Plaintiff and Class
6 Counsel as representatives of Class Members; 5) Preliminarily approving settlement administration
7 services to be provided by the Settlement Administrator; 6) Preliminarily approving the proposed
8 Enhancement Payment to Plaintiff; 7) Preliminarily approving the application for payment of reasonable
9 attorneys' fees and reimbursement of litigation-related expenses to Class Counsel; and 8) Scheduling a
10 fairness hearing on the question of whether the proposed Agreement should be finally approved as fair,
11 reasonable and adequate as to the Class Members.

12 9.1.2 Defendant shall not oppose Plaintiff's motion for approval of the proposed
13 Agreement.

14 9.1.3 The Parties shall cooperate with each other and the Settlement Administrator during
15 the process of giving Class Members notice and opportunity to object to the Agreement, as necessary and
16 appropriate to assure effective communication to individual Class Members of information about their
17 rights and obligations under this Agreement.

18 9.2 Final Approval and Fairness Hearing: On a date approved by the Court and set forth in the
19 Notice of Settlement, the Court shall hold the Final Approval and Fairness Hearing where objections, if
20 any, may be heard. Class Counsel shall provide the Court as part of the motion for final approval of the
21 Agreement, a declaration by the Settlement Administrator of due diligence and proof of mailing of the
22 Notice of Settlement required to be mailed to Class Members by this Agreement, and of the delivery
23 results of the Settlement Administrator's mailings including tracing and re-mailing efforts.

24 9.2.1 Class Counsel will submit a proposed order and judgment for final approval, which
25 shall include findings and orders: 1) Approving the Agreement, adjudging the terms thereof to be fair,
26 reasonable and adequate, and directing that its terms and provisions be carried out; 2) Approving the
27 payment of an Enhancement Payment to the Class Representative; 3) Approving Class Counsel's
28 application for an award of attorneys' fees and reimbursement of out-of-pocket litigation expenses; 4)

1 Approving the Settlement Administrator Costs; and 5) Providing that the Court will retain jurisdiction to
2 oversee administration and enforcement of the terms of the Agreement and the Court's orders.

3 9.2.2 Following entry of the Court's Order granting final approval of the Agreement, the
4 Parties will each act to ensure the fulfillment of all its provisions, including but not limited to the
5 following: 1) Should an appeal be taken from the final approval of the Agreement or motion to set aside
6 the judgement be filed, all parties will support the final approval order on appeal or otherwise; 2) Class
7 Counsel will assist the Settlement Administrator as needed or requested in the process of identifying and
8 locating Settlement Class Members entitled to payments under the Agreement and assuring delivery of
9 such payments; 3) Class Counsel and Defendant's Counsel will cooperate with each other and assist the
10 Settlement Administrator as needed or requested in completing the distribution of any uncashed or
11 unclaimed amounts for Settlement Class Members, as specified above; 4) Class Counsel, in conjunction
12 with the Settlement Administrator, will certify to the Court completion of all payments required to be
13 made by this Agreement.

14 9.3 Final Judgment: If the Court approves this Agreement at the final approval and fairness
15 hearing, the Parties will request that the Court enter an Order Granting Final Approval of Class Action
16 and PAGA Settlement and Final Judgment.

17 9.4 Notice to LWDA: Plaintiff agrees to provide notice to the Labor and Workforce
18 Development Agency ("LWDA") of this settlement in accordance with Labor Code § 2699(1)(2).

19 **10. MISCELLANEOUS TERMS**

20 10.1 Defendant's Right to Terminate Settlement Based on Opt-Outs: If, after the Response
21 Deadline and prior to the Final Approval Date, five percent (5%) or more of the Class Members have
22 submitted valid and timely written requests for exclusion from the Settlement, Defendant may, at its
23 election, rescind the Agreement and all actions taken in its furtherance will be thereby null and void.
24 Defendant must exercise this right of rescission, in writing, to Class Counsel, within ten (10) calendar
25 days after the Settlement Administrator notifies the Parties of the total number of opt-outs. If the option
26 to rescind is exercised, then any Settlement Administrator Costs incurred up to the date or as a result of
27 the termination shall be paid by Defendant and the Parties shall proceed in all respects as if this Agreement
28 had not been executed.

1 10.2 Escalator Clause: Defendant has represented that there are no more than 21,541 aggregate
2 workweeks during the Covered Period. In the event the number of workweeks during the Covered
3 Period is more than 23,685 (i.e., greater than 10% more than 21,541), then the Maximum Settlement
4 Amount shall increase by the same percentage increase. If the actual number of workweeks is 23,685
5 or less, then the Maximum Settlement Amount shall not be increased.

6 10.3 Circular 230 Disclaimer: EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF
7 THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT
8 OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND
9 AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN
10 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR
11 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
12 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON
13 AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT
14 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS
15 RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX
16 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
17 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
18 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY
19 OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR
20 DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY
21 TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
22 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
23 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX
24 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
25 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
26 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED
27 BY THIS AGREEMENT.

1 10.4 No Prior Assignments: The Parties represent, covenant, and warrant that they have not
2 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
3 any person or entity any portion of any liability, claim, demand, action, cause of action or right released
4 and discharged in this Agreement.

5 10.5 Waiver of Appeal and Ability to Opt Out: To the extent permitted by applicable law, by
6 signing this Agreement Defendant is waiving any rights to appeal from the Court's approval of the
7 settlement unless the Court materially modifies the settlement. Furthermore, by signing this Agreement
8 Plaintiff is waiving any right or ability to opt out of this Agreement during the Notice Period or otherwise.

9 10.6 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set
10 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this
11 Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

12 10.7 Judgment and Retention of Jurisdiction to Enforce: Upon the Final Approval Date,
13 judgment will be entered according to this Agreement, with the Court to retain jurisdiction over the parties
14 to enforce the terms therein pursuant to California Rule of Court 3.769(h).

15 10.8 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish
16 and implement the terms of this Agreement. Such cooperation shall include, but not be limited to,
17 execution of such other documents and the taking of such other action as may reasonably be necessary to
18 fulfill the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including
19 all efforts contemplated by this Agreement and any other efforts that may become necessary by Court
20 order, or otherwise, to effectuate this Agreement and the terms set forth herein.

21 10.9 No Admission of Liability: Neither the acceptance nor the performance by Defendant of
22 the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to
23 be, construed as, or deemed to be, an admission by Defendant of the truth of any of the allegations in the
24 Complaint, the representative character of the Action, the validity of any of the claims that were or could
25 have been asserted by Plaintiff and/or Class Members in the Action, or of any liability or guilt of
26 Defendant in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by
27 Defendant of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Class Members, or
28 any other person, and Defendant specifically disclaim any liability, culpability, negligence, or wrongdoing

1 toward Plaintiff, the Class Members, or any other person. Each of the Parties has entered into this
2 Stipulation with the intention to avoid further disputes and litigation.

3 **10.10 Notices:** Unless otherwise specifically provided herein, all notices, demands, or other
4 communications given hereunder shall be in writing and shall be deemed to have been duly given as of
5 the third business day after mailing by United States certified mail, return receipt requested, addressed as
6 follows:

7 To Plaintiff and the Class:

8 Galen T. Shimoda
9 Justin P. Rodriguez
10 Brittany V. Berzin
11 Shimoda Law Corp.
12 9401 East Stockton Blvd., Suite 120
13 Elk Grove, CA 95624

14 To Defendant:

15 Gregory C. Cheng
16 Carolyn B. Hall
17 Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
18 One Embarcadero Center, Suite 900
19 San Francisco, CA 94111
20 Telephone : (415) 442-4810
21 Facsimile: (415) 422-4870

22 **10.11 Mutual Drafting of Agreement:** The Parties hereto agree that the terms and conditions of
23 this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that
24 this Agreement shall not be construed in favor of or against any party by reason of the extent to which any
25 party or its counsel participated in the drafting of this Agreement.

26 **10.12 Binding Effect of Agreement:** The Parties, by signing this Agreement, are bound by the
27 terms herein. The Parties waive their rights to file an appeal, writ, or any challenge whatsoever to the
28 terms of this Agreement. This Stipulation shall be binding upon and inure to the benefit of the Parties
hereto and their respective heirs, trustees, executors, Settlement Administrators, successors, and assigns.

10.13 Attorneys' Fees and Costs Limitations: Neither Class Counsel nor any other attorneys
acting for, or purporting to act for, the Class, Class Members, or Plaintiff, may recover or seek to recover
any amounts for fees, costs, or disbursements from the Releasees or the Maximum Settlement Amount
except as expressly provided in this Agreement. The Parties stipulate and agree that the Sacramento

1 County Superior Court shall have continuing jurisdiction to enforce the terms of the Agreement pursuant
2 to Civil Procedure Code section 664.6 and that the prevailing party in any action necessary to enforce the
3 terms of the Agreement after default by the other party may recover reasonable attorney's fees and costs
4 related thereto.

5 **10.14 No Modifications:** This Agreement may be amended or modified only by a written
6 instrument signed by counsel for all Parties or their successors-in-interest. This Agreement may not be
7 discharged except by performance in accordance with its terms.

8 **10.15 Authorization to Enter Into Settlement Agreement:** Counsel for all Parties warrant and
9 represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement
10 and to take all appropriate action required or permitted to be taken by such Parties pursuant to this
11 Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of
12 this Agreement.

13 **10.16 Class Member Signatories:** Because the Action has not yet been certified, and the Class
14 Members are so numerous, the Parties agree that it is impossible or impractical to have each Class Member
15 sign this Agreement. It is agreed that, for purposes of seeking approval of the Agreement, this Agreement
16 may be executed on behalf of all Class Members by the Class Representative.

17 **10.17 Counterparts:** This Agreement shall become effective upon its execution by all of the
18 undersigned. Plaintiff, Class Counsel, Defendant and Defendant's Counsel may execute this Agreement
19 in counterparts, and execution of counterparts shall have the same force and effect as if each had signed
20 the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the same force
21 and effect of originals.

22 **10.18 Choice of Law:** The Agreement and any exhibits hereto shall be considered to have been
23 negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and
24 the rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance
25 with, and governed by, the substantive laws of the State of California without giving effect to that State's
26 choice of law principles.

1 **10.19 Headings and Captions:** Section titles or captions contained in the Agreement are inserted
2 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of
3 this Agreement, or any provision thereof.

4 **10.20 No Retaliation or Discouragement:** The Parties agree they will take no action that could be
5 construed as retaliation against any Class Members for participating or seeking to participate in this class
6 action settlement. The Parties will not discourage any class member from participating or seeking to
7 participate in this class action settlement. The Parties and their counsel will cooperate with each other
8 and use their best efforts to implement the Settlement.

9 **10.21 Integrated Agreement:** This Agreement sets forth the entire understanding between the
10 Parties and supersedes any and all prior agreements, oral or written, pertaining to the subject matter hereof.
11 Each party acknowledges that there is no representation, inducement, promise or agreement which has
12 been made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement,
13 which is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent
14 that the terms of this Agreement are fully understood and voluntarily accepted by the Parties.

15 **10.22 Binding on Successors and Assigns:** This Agreement will be binding upon, and inure to the
16 benefit of, the successors or assigns of the Parties to this Agreement, as previously defined.

17 **10.23 Invalidity of Any Provision:** Before declaring any provision of this Agreement invalid, the
18 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with
19 applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

20 **10.24 Waiver of Compliance:** No waiver of any condition or covenant contained in this
21 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply
22 or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

23 **10.25 No Further Claims:** Other than the instant Action, Plaintiff and Class Counsel represent that
24 they have no current intention of asserting any other claims against Defendant in any judicial or
25 administrative forum. Plaintiff and Plaintiff's Counsel represent that they do not currently know of or
26 represent any persons (other than the representation of putative Class Members in this Action) who have
27 expressed any interest in pursuing litigation or seeking any recovery against Defendant. The Parties
28

1 acknowledge, understand and agree that the representations described in this paragraph are essential to the
2 Agreement and that this Agreement would not have been entered into were it not for this representation.

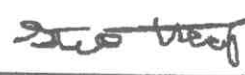
3 10.26 No Publicity: The Class Representative and Class Counsel agree not to disclose or publicize
4 the Settlement, including the fact of the Settlement, its terms or contents, and the negotiations underlying
5 the Settlement, in any manner or form, directly or indirectly, to any person or entity, except as required
6 by the Court and/or in connection with responding to class member inquiries about the settlement after
7 preliminary approval by the Court and notice to the Class Members has been disseminated. For the
8 avoidance of doubt, this section means the Class Representative and Class Counsel agree not to issue press
9 releases, communicate with, or respond to any media or publication entities, publish information in
10 manner or form, whether printed or electronic, on any medium or otherwise communicate, whether by
11 print, video, recording or any other medium, with any person or entity concerning the Settlement,
12 including the fact of the Settlement, its terms or contents and the negotiations underlying the Settlement,
13 except as shall be contractually required to effectuate the terms of the Settlement. However, nothing in
14 this Agreement shall be interpreted to prevent Plaintiff or Class Counsel from fulfilling their roles as Class
15 Representative and Class Counsel (once the Agreement receives preliminary approval), respectively,
16 including providing notice to the class and/or answering inquiries from Class Members regarding the
17 Settlement in connection with preliminary and/or final approval of the Settlement. Class Counsel may
18 disclose the name of the Parties in this action, and the venue/case number, and settlement details available
19 in the public record, for the limited purpose of allowing the Class Representative and/or Class Counsel to
20 respond to class member inquiries about the Settlement after preliminary approval by the Court and notice
21 to the Class Members has been disseminated, to prove adequacy as class counsel or class representative,
22 or for purposes of seeking approval of an unrelated settlement. Any breach of this provision shall subject
23 the Class Representation and/or Class Counsel to sanctions, as deemed appropriate by the Court via
24 motion. The prevailing party in any such dispute shall be entitled to reasonable attorneys' fees and costs.

25 *[Signatures follow on next page.]*
26
27
28

1 IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized
2 attorneys, as of the day and year herein set forth.

3 **For Plaintiff:**

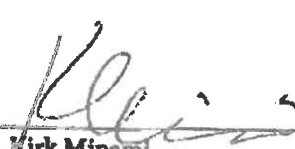
4 Date: 3/26/2021



Steve Tracy

6 **For Defendant:**

7 Date: 3/30/2021

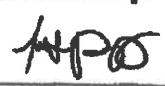


By: Kirk Minami
For Von Housen's Sacramento, Inc.

10 **APPROVED AS TO FORM**

Shimoda Law Corp.

12 Dated: 3/29/2021

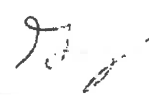
13 By: 

Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorney for Plaintiff and Class Members

14 **APPROVED AS TO FORM**

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

16 Dated: March 31, 2021

17 By: 

Gregory C. Cheng
Carolyn B. Hall
Attorneys for Defendant

48107835.5

EXHIBIT 1

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SACRAMENTO

STEVE TRACY, individually and on behalf of
all other similarly situated employees,

Plaintiff,

vs.

VON HOUSEN'S SACRAMENTO, INC., et al.,

Defendant.

Case No. 34-2020-00282778

CLASS ACTION

**NOTICE OF PROPOSED CLASS ACTION
AND PAGA SETTLEMENT, AND HEARING
DATE FOR FINAL COURT APPROVAL OF
SETTLEMENT**

ATTENTION: all non-exempt employees who have or continue to work for Defendant Von Housen's Sacramento, Inc. in California from August 4, 2016 through _____ (the "Class Members").

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU AND OTHER CLASS MEMBERS. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE OR TO OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

Pursuant to an order from the Sacramento County Superior Court ("Court") granting preliminary approval of this class action settlement, entered on _____, you are receiving notice of a proposed class action settlement between Plaintiff Steve Tracy ("Plaintiff" or "Class Representative"), and Defendant Von Housen's Sacramento, Inc. ("Defendant") on behalf of Class Members as defined above. You are receiving this notice because Defendant's records indicate you fall within the definition of "Class Member." Defendant's records also indicate that you worked _____ workweeks during the applicable Covered Period (as defined below) within [Subclass 1/Subclass 2], which means your share of the settlement proceeds is estimated to be _____. Based on Defendant's records, your dates of employment in a non-exempt position are _____. Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate and the resolution of any workweek disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court's order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

On August 4, 2020, Plaintiff, a former employee, filed a Complaint against Defendant in the California Superior Court for the County of Sacramento on behalf of himself and Class Members. The term "Action" means this putative class action pending in the Superior Court of California for the County of Sacramento, Case No. 34-2020-00282778. The Covered Period is August 4, 2016 through _____ (the "Covered Period").

In the Action, Plaintiff sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of himself and Class Members. Plaintiff alleged that Defendant violated California law by failing to pay overtime, failure to pay minimum wages, failure to provide meal periods, failure to provide rest periods, failure to provide accurate wage statements, failure to pay final wages, failure to pay reimbursement expenses, violation of Labor Code section 558, failure to maintain accurate records, and failure to pay wages in a timely manner. Defendant has denied all of Plaintiff's allegations. Specifically, Defendant alleges that some or all of the Class Members are subject to a mandatory arbitration agreement, and such agreement prohibits and/or does not expressly authorize Plaintiff and/or Class Members to maintain such an action against Defendant on a class, collective and/or representative basis in arbitration. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide Settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation

process. Despite agreeing to and supporting the Agreement, Defendant continues to deny the factual and legal allegations in the Action and believes it has valid defenses to all of Plaintiff's claims. By agreeing to settle, Defendant is not admitting liability on any of the factual allegations or claims in the class or that the case can or should proceed as a class action. Defendant has agreed to settle the case as part of a compromise with Plaintiff. The Settlement is not an admission of any wrongdoing by Von Housen's Sacramento, Inc. or any indication that any law was violated. Defendant has entered into this settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Parties have entered into a Joint Stipulation Regarding Class Action PAGA Settlement and Release ("Agreement"), which has been preliminarily approved by the Court. The Agreement applies to any and all Class Members as defined above. "Class Member" does not include persons who submit a timely and valid request to opt out (as explained below). If you are a Class Member, you have the opportunity to participate in the settlement or to exclude yourself ("opt out") from the settlement. This notice is to advise you of how you can either participate in the settlement or be excluded from the settlement.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendant agrees to pay a total sum of Seven Hundred Fifty Thousand Dollars and No Cents (\$750,000.00) ("Maximum Settlement Amount"). Deducted from this Maximum Settlement Amount will be sums approved by the Court for attorneys' fees not to exceed 35% of the Maximum Settlement Amount, which equals \$262,500, attorneys' costs not to exceed \$17,500, Settlement Administrator Costs estimated not to exceed \$12,500, employer tax contributions, Class Representative's Enhancement Payment of \$15,000, and \$7,500 for alleged PAGA penalties (the California Labor & Workforce Development Agency's 75% share of \$10,000 allocated for PAGA civil penalties), which will result in a "Net Settlement Amount" for distribution to all Class Members. As explained further below, the amount of each Class Member's share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Covered Period within their assigned subclass. The Settlement will be funded in two installments, one in the amount of \$500,000 payable within ten (10) business days of the Court granting final approval, and one within ninety (90) calendar days after the first installment is paid that covers all remaining amounts necessary to completely fund the settlement. Payments to Class Members will occur after the Settlement is fully funded.

The number of weeks you worked during the Covered Period, your assigned subclass, and your estimated share of the Net Settlement Amount ("Claim Amount") is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by participating Class Members, the resolution of any disputes regarding workweeks and/or subclass, and on the distributions finally approved and allocated by the Court.

B. Individual Settlement Amounts and Allocation Between Class Members

Defendant will pay Individual Settlement Amounts through the Settlement Administrator, as described below, to each Class Member who does not opt out of the settlement. All Individual Settlement Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Individual Settlement Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as 80% for disputed interest, statutory penalties, civil penalties, and other non-wage damages for which IRS Forms 1099-MISC will issue and 20% for disputed wages for which IRS Forms W-2 will issue.

Payment to Class Members who do not opt out will not require the submission of a claim form. For payment allocation purposes only, Class Members will be divided into two subclasses: Subclass 1: Class Members working in a position subject to a commission/bonus pay plan; and Subclass 2: all Class Members not falling into Subclass 1, i.e., hourly-paid non-exempt positions not subject to a commission/bonus pay plan. Subclass 1 shall be allocated 70% of the Net Settlement Amount and Subclass 2 shall be allocated 30% of the Net Settlement Amount. Each Class Member's proportionate share will be determined by dividing their total weeks worked within their respective subclass during the Covered Period by the total weeks worked by all Class Members within the subclass during the Covered Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount.

C. Calculations to Be Based on Defendant's Records and Resolution of Workweek/Subclass Disputes

For each Class Member, the amount payable will be calculated by the Settlement Administrator from Defendant's records. Defendant's records will be presumed correct unless evidence to the contrary is provided to the Settlement Administrator. Defendant's records and any additional evidence will be reviewed by the Settlement Administrator in the event of a dispute about the number of

workweeks worked by an individual Class Member or their assigned subclass. If a Class Member disputes the accuracy of Defendant's records, all supporting documents evidencing additional workweeks and/or subclass must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than _____. The dispute will be resolved by the Settlement Administrator based on the records and evidence provided. The Settlement Administrator's decision on all disputes will be final and binding.

D. Release of Claims

For those Class Members who do not opt out, the Agreement contains the following release:

Upon the Settlement receiving final approval by the Court, provided the Settlement is ultimately fully funded, all Class Members who do not opt out will be deemed to fully, finally and forever released Defendant and its past, present and/or future, direct and/or indirect, officers, directors, members, managers, owners, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers, and all persons acting under, by, through, or in concert with any of them, and each of them ("Released Parties") from all causes of action and factual or legal theories that were alleged in the Complaint or reasonably could have been alleged based on the facts, causes of action, and legal theories contained in the Complaint, including all of the following claims for relief: (a) failure to pay overtime wages; (b) failure to pay minimum wages; (c) failure to provide proper meal periods, and to properly provide premium pay in lieu thereof; (d) failure to provide proper rest breaks, and to properly provide premium pay in lieu thereof; (e) waiting time penalties for untimely pay during employment and untimely final pay; (f) improper and/or inaccurate wage statements; (g) failure to reimburse business expenses; (h) failure to keep complete or accurate payroll records; (i) unfair business practices based thereon; (j) civil penalties under the Labor Code Private Attorneys General Act ("PAGA") based thereon; (k) any other claims or penalties under the wage and hour laws pleaded in the Action; and (l) all damages, penalties, interest and other amounts recoverable under said causes of action under California and federal law, to the extent permissible, including but not limited to the California Labor Code as to the facts alleged in the Action, the applicable Wage Orders as to the facts alleged in the Action, and the California Unfair Competition Law ("Released Claims"). The period of the Release shall extend to the limits of the Covered Period. The *res judicata* effect of the Judgment will be the same as that of the Release.

Class Members will be bound by a release of all claims and causes of action falling within the definition of "Released Claims" (above), whether known or unknown, and irrespective of the factual or legal basis for such claims. However, to be clear, the scope of the release is limited to the Released Claims. Class Members may hereafter discover facts or legal arguments in addition to or different from those they know or currently believe to be true with respect to the claims, causes of action and legal theories of recovery in this Action. Regardless, the discovery of new facts or legal arguments shall in no way limit the scope or definition of the Released Claims, and by virtue of this Agreement, Class Members shall be deemed to have, and by operation of the final judgment approved by the Court, shall have, fully, finally, and forever settled and released all of the Released Claims. The period of the release shall extend to the limit of the Covered Period. The *res judicata* effect of the Judgment will be the same as that of the release. Class Members specifically acknowledge that they are aware of and familiar with the provisions of Section 1542 of the Civil Code, which provides as follows: 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.

Class Members can talk to one of the lawyers appointed as Class Counsel (listed below) for free or talk to their own lawyer if Class Members have questions about the released claims and what they mean.

E. Attorneys' Fees and Costs

Defendant has agreed to pay Class Counsel's attorneys' fees and costs to be approved by the Court, up to a maximum of 35% of the Maximum Settlement Amount which equals \$262,500, and attorneys' costs not to exceed \$17,500. Class Counsel's attorneys' fees and costs will be paid and deducted from the Maximum Settlement Amount.

F. Reasonableness of Settlement

All attorneys for the Parties to the Action believe the amounts payable to Class Members and amounts for attorneys' fees and costs requested are fair and reasonable. The Class Representative and Class Counsel support this Settlement. Among the reasons for support are the defenses to liability potentially available to Defendant, the inherent risk of trial on the merits, the risk of denial of class certification, and the delays associated with litigation.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement

If you wish to participate in the settlement and believe your workweek and assigned subclass information is accurate, you do not need to take any further action. Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the workweek calculation or your assigned subclass, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement. It is your responsibility to ensure that the Settlement Administrator has your current mailing address and telephone number on file. If the Court grants final approval of the Settlement, your Individual Settlement Amount will be mailed to the last known address that the Settlement Administrator has on file for you.

B. Excluding Yourself from the Settlement

If you do not wish to participate in the settlement, you may be excluded (i.e., "opt out") by submitting a timely written request to the Settlement Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the settlement, and/or wants to be excluded from this settlement; (c) identify the case name and number (i.e. *Tracy v. Von Housen's Sacramento, Inc.*, 34-2020-00282778); (d) be signed; and (e) be post-marked no later than _____. The request to opt out must be signed, dated and mailed by First Class U.S. Mail or the equivalent, to:

[admin info]

The request to opt out must be postmarked no later than _____. If you submit a request to opt out which is not postmarked by _____, your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. If the request to opt out is sent from within the United States it must be sent through the United States Postal Service by First Class Mail, or the equivalent. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Settlement Administrator, no longer be a Class Member and not received their share of the class settlement payment.

C. Objection to Settlement

If you do not opt out of the settlement, you can object to the terms of the Agreement. However, if the Court rejects your objection, you will still be bound by the terms of the Agreement. You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including any legal analysis and/or supporting documentation; (d) identify the case name and number (i.e. *Tracy v. Von Housen's Sacramento, Inc.*, 34-2020-00282778) (e) be signed; and (f) be post-marked no later than _____. The objection must be sent to the Settlement Administrator at the address identified in section III.B and to counsel for Plaintiff and Defendant at the addresses identified in section IV of this notice.

If you have submitted a written objection as outlined above, you may also appear at the Final Approval Hearing, either in person or through your own attorney, to state your objection. However, you must file a notice of intent to appear with the Court and serve the notice on counsel for Plaintiff and Defendant. If you appear through your own attorney, you are responsible for paying that attorney.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

After final approval of the settlement has been granted by the Court, and provided the Settlement is fully funded, each and every Class Member who does not opt out of the Settlement, will release the Released Parties from the Released Claims described above. In other words, if you were employed as a Class Member by Defendant and you do not exclude yourself from the settlement, you will be deemed to have entered into this release and to have released the above-described claims. In addition, you will be barred from ever suing Defendant and the Released Parties with respect to the claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

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NOTICE OF PROPOSED CLASS ACTION SETTLEMENT, AND HEARING DATE FOR FINAL COURT APPROVAL OF SETTLEMENT
Questions? Call the Settlement Administrator toll free at 1-***-***-***.

The Court will hold a hearing in Department 40, 813 6th St. Sacramento, CA 95814 on _____ at 9:00 a.m. to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs. The hearing may be continued without further notice to Class Members. It is not necessary for you to appear at this hearing, unless you wish to object to the settlement.

VI. ADDITIONAL INFORMATION

If you want additional information about this lawsuit and its proceedings, you can contact Class Counsel or Defendant's Counsel as follows:

Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Shimoda Law Corp.
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733
On behalf of Plaintiff

Gregory C. Cheng
Carolyn B. Hall
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
One Embarcadero Center, Suite 900
San Francisco, CA 94111
Telephone : (415) 442-4810
Facsimile: (415) 422-4870
On behalf of Defendant

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT. IF YOU HAVE ANY QUESTIONS, CALL [number]

BY ORDER OF THE COURT