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Attorneys for Plaintiffs JORGE FLORES, JOSE GUEVARA and MANUEL DE LA PAZ, as individuals and on behalf of all similarly situated employees

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

JORGE FLORES and JOSE GUEVARA,
as individuals and on behalf of all similarly
situated employees,

Plaintiffs,

v.

TUTTLE-CLICK FORD, INC., a
California Corporation; and DOES 1
through 50, inclusive,

Defendant.

Case No: 30-2016-00854534-CU-OE-CXC

**AMENDED JOINT STIPULATION OF
SETTLEMENT**

Assigned for all purposes to:
Hon: William Claster, Dept. CX-102

Complaint Filed: May 25, 2016
Trial Date: None Set

1 This Stipulation of Class Action Settlement and Release is entered into by PLAINTIFF
2 JORGE FLORES, PLAINTIFF JOSE GUEVARA, and PLAINTIFF MANUEL DE LA PAZ, on
3 the one hand, and Defendant TUTTLE-CLICK FORD, INC. on the other.

4 WHEREAS, Plaintiff JORGE FLORES is an employee of Defendant TUTTLE-CLICK
5 FORD, INC., and Plaintiff JOSE GUEVARA and Plaintiff MANUEL DE LA PAZ were
6 employees of Defendant TUTTLE-CLICK FORD, INC.;

7 WHEREAS, on or about May 25, 2016, Plaintiffs JORGE FLORES and JOSE GUEVARA
8 filed a "Class Action Complaint for Damages, Injunctive Relief and Restitution" in the Superior
9 Court of California, County of Orange, thereby initiating civil action No. 30-2016-00854534-CU-
10 OC-CXC in such Court;

11 WHEREAS, on or about December 13, 2016, Plaintiffs JORGE FLORES and JOSE
12 GUEVARA filed a "First Amended Collective Class Action Complaint" in such civil action, which
13 also added Plaintiff MANUEL DE LA PAZ as a Plaintiff;

14 WHEREAS, the claims of Plaintiff JOSE GUEVARA were compelled by the Court to
15 individual arbitration (currently pending before the Judicial Arbitration and Mediation Service,
16 Hon. William Claster presiding), except his claim pursuant to the California Labor Code Private
17 Attorneys General Act of 2004, which remains pending in the aforementioned civil action;

18 WHEREAS, the claims of Plaintiff JOSE GUEVARA are being resolved in a separate
19 agreement, which will be contingent upon the Court's final approval of this settlement, whereby
20 Plaintiff JOSE GUEVARA has agreed to dismiss, with prejudice, all claims in this action,
21 including his claims pursuant to the California Labor Code Private Attorneys General Act of 2004;

22 WHEREAS, the claims of Plaintiff JORGE FLORES were not compelled by the Court to
23 individual arbitration, and the Court's decision in such regard is currently the subject of an appeal
24 initiated by Defendant TUTTLE-CLICK FORD, INC., (currently pending in the Court of Appeal
25 of the State of California, Fourth Appellate District, Division Three, case no. G054456);

26 WHEREAS, to avoid the risks and costs inherent in further litigating the aforementioned

1 matters, the parties thereto desire to fully and completely settle all claims that were or could have
2 been brought in such proceedings;

3 NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the
4 undersigned Parties, subject to the approval of the Court, that the settlement of this civil action and
5 all related proceedings shall be effectuated upon and subject to the following terms and conditions.

6 **1. DEFINITIONS**

7 The following defined terms used in this Joint Stipulation of Settlement (and Exhibits
8 thereto) will have the meanings given them below.

9 1. Action. “Action” or “Lawsuit” shall mean the civil action currently pending in the
10 Superior Court of the State of California for the County of Orange, entitled *Jorge Flores, et al. v.*
11 *Tuttle-Click Ford, Inc.*, Case No. 30-2016-00854534-CU-OE-CXC, as well as the appellate
12 proceeding currently pending in the Court of Appeal of the State of California, Fourth Appellate
13 District, Division Three, Case No. G054456.

14 2. Agreement. “Agreement” or “Settlement” means this Joint Stipulation of
15 Settlement.

16 3. Class. “Class,” “Class Members,” “Settlement Class,” or “Settlement Class
17 Members” shall mean the class and/or classes of persons who were employed by Defendant in the
18 State of California during the time period from May 25, 2012 through the Date of Preliminary
19 Approval, and who Named Plaintiffs claimed in the Complaint should be certified as a class
20 pursuant to law and/or who the Named Plaintiffs should be permitted to represent pursuant to
21 PAGA. The Class shall include all persons so employed by Defendant in the following positions:
22 Technician, Hourly Technician, Lube Technician, Painter Helper, Detailer, Hourly Detailer,
23 Technician Helper, Collision Center Painter, Bodyshop Production, and Production Coordinator

24 4. Class Administrator. “Class Administrator” means Phoenix Settlement
25 Administrators, a third-party jointly selected by the Parties to provide notice to the Class and
26 perform other duties of Settlement administration as provided in this Agreement. “Class

Administrator” also means any subsequent such third party who the Parties may stipulate (subject to Court approval) shall assume such duties.

5. Class Administrator Declaration. “Class Administrator Declaration” shall mean a declaration attesting, in detail, to the steps taken through the date of such declaration in performing the Class Administration Duties, that the procedures contemplated in Sections 2.5 through 2.7 below are complete, and that the Class Administrator has all information needed to perform any remaining Class Administration Duties, including calculation of the amounts of each Eligible Class Member’s Eligible Class Member Shares, once the amounts of the other components of the Gross Settlement Fund are determined by the Court on Final Approval.

6. Class Administrator Declaration of Payment. “Class Administrator Declaration of Payment” shall mean the Class Administrator’s declaration made pursuant to Section 2.16 below.

7. Class Administration Costs. “Class Administration Costs” shall mean the fees and expenses reasonably and necessarily incurred by the Class Administrator as a result of performing the Class Administration Duties. Class Administration Costs shall be paid from the Gross Settlement Fund. Based on an estimate provided by the Class Administrator based on presently and reasonably available information, the Parties stipulate that Class Administration Costs shall not exceed \$6,000. Should any actual Class Administration Costs turn out to be less than the projected amount, the Parties agree that the savings will revert to the Net Settlement Fund, to be distributed to Eligible Class Members as part of their Eligible Class Member Shares. Should any actual reasonable and necessary Class Administration Costs be more than the above estimated amount, and the Parties stipulate that the Class Administrator should be paid such amounts, and the Parties will apply to the Court for an adjustment, with any additional Class Administration Costs to be paid from the Gross Settlement Fund, accompanied by a corresponding reduction in other another element or other elements of the Gross Settlement Fund (including, if necessary, the Net Settlement Fund), to be approved by the Court as part of Final Approval.

8. Class Administration Duties: “Class Administration Duties” shall mean the duties

of the Class Administrator as set forth in this Agreement and as may be ordered by the Court.

9. Class Certification. “Class Certification” shall mean certification of the Class pursuant to Cal. Code Civ. Proc. § 382, as well as certification pursuant to 29 U.S.C. § 216(b), for purposes of this Settlement only, without prejudice to Defendant’s ability to oppose or otherwise challenge such certification.

10. Class Counsel. “Class Counsel” or “Plaintiffs’ Counsel” refers to Kevin Mahoney, Esq. (State Bar No. 235367) and Treana L. Allen (State Bar No. 302922) of Mahoney Law Group, APC, 249 E. Ocean Blvd., Suite 814, Long Beach, California 90802, or any such further attorneys for the Class as may be appointed by the Court.

11. Class Counsel Fees and Costs. “Class Counsel Fees” shall mean an amount of up to One Hundred Ninety-One Thousand Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$191,666.66) (not to exceed one-third of the Gross Settlement Fund), subject to Court approval. “Class Counsel Costs” shall mean actual costs incurred by Counsel in the prosecution of this matter in an amount up to thirty thousand dollars and 00/100 (\$30,000.00). Class Counsel Fees and Costs shall be paid to Class Counsel from the Gross Settlement Fund by the Class Administrator. Such payment of Class Counsel Fees and Costs shall be deemed to be full satisfaction of any obligation by Defendant to pay any attorney fees, attorney costs and/or other fees or costs to Named Plaintiffs, Class Members, and/or any of their attorneys in relation to the Action. Any future adjustments to the amount of the Class Counsel Fees and Costs, including by the Court, shall not constitute a basis for this Settlement being unenforceable in any other respect, or Void *Ab Initio*, unless such adjustment shall have the effect of increasing the Gross Settlement Fund, whereupon this Settlement will be voidable by Defendant.

12. Class Notice. “Class Notice” shall mean a notice to Class Members pursuant to Rule 3.769(f) of the California Rules of Court, substantially in the form indicated in Exhibit “3” hereto, and distributed by the Class Administrator in accordance with Section 2.6 below.

13. Class Member Objection. “Class Member Objection” shall mean a Class Member’s

1 timely and valid written objection made in accordance with the provisions of Section 3.7 below.

2 14. Class Member Objector. “Class Member Objector” shall mean a Class Member
3 who submits a Class Member Objection.

4 15. Class Period. “Class Period” shall mean the time period from May 25, 2012 to the
5 date of Preliminary Approval.

6 16. Complaint. “Complaint” shall mean the “Class Action Complaint for Damages,
7 Injunctive Relief and Restitution” originally filed in the Action with the California Superior Court
8 (County of Orange) on or about May 25, 2016, as well as the “First Amended Collective Class
9 Action Complaint” filed in in this Action with the California Superior Court (County of Orange)
10 on or about November 9, 2016, and any other complaints, amended complaints or claims in
11 arbitration in the Action.

12 17. Court. “Court” refers to the Superior Court of the State of California in for the
13 County of Orange, or any such further courts, arbitrators, or other judicial bodies that may in the
14 future obtain valid jurisdiction over this Settlement.

15 18. Date of Preliminary Approval. The “Date of Preliminary Approval” means the day
16 on which the Court enters Preliminary Approval.

17 19. Defendant. “Defendant” shall mean Defendant TUTTLE-CLICK FORD, INC.

18 20. Defendant’s Counsel. “Defense Counsel” or “Counsel for Defendant” shall mean
19 Mark J. Jacobs and Christopher M. Ahearn of Fisher & Phillips, LLP, 2050 Main Street, Suite
20 1000, Irvine, California 92614, or such further counsel as may appear for Defendant in this action.

21 21. Effective Date. “Effective Date” shall mean the date on which all of the following
22 have occurred:

- 23 (a) All provisions of Rule 3.769 of the California Rules of Court have been complied
24 with;
25 (b) Entry by the Court of Preliminary Approval;
26 (c) Receipt by Defendant of written notice of such entry of Preliminary Approval

- pursuant to the California Code of Civil Procedure and the California Rules of Court, or Defendant's express waiver of such notice;
- (d) Completion of all Class Administration Procedures;
 - (e) Full execution of general releases as to each Named Plaintiff in the form attached hereto as Exhibit "2", and the expiration of all time periods referenced in paragraph 6 therein;
 - (f) The Court setting and conducting a Final Approval Hearing pursuant to Rule 3.769(g) of the California Rules of Court;
 - (g) Entry by the Court of an order of Final Approval of the Settlement and a Judgment;
 - (h) Receipt by Defendant of written notice of such entry of Final Approval and Judgment, or Defendant's express waiver of such notice; and
 - (i) Final Approval has become Final. For purposes of this provision, "Final" means:
 - (1) if no Class Member Objections are made and/or are made and withdrawn, the date the Court enters its order granting Final Approval of the settlement and its Judgment dismissing the Action with prejudice;
 - (2) if any Class Member Objections are made and not withdrawn, and if no appeal, review or writ is sought from the Judgment, the sixty-first (61st) day after entry of Judgment;
 - (3) if rehearing, reconsideration and/or appellate review of the Judgment is sought, the day after any and all avenues of rehearing, reconsideration and appellate review have been exhausted and no further rehearing, reconsideration or appellate review is permitted, and the time for seeking such review has expired, and the Judgment has not been modified, amended or reversed in any way; or
 - (4) if a Class Member Objector appeals from any ruling by the Court overruling such objection in whole or in part, the date when the Court's order of Final

Approval and final judgment of dismissal have been affirmed on appeal;
and

(j) The existence of a sufficient number of Eligible Class Members such that the number of Class Members who, as of the date of the completion of all Class Administration Procedures are not Eligible Class Members, does not exceed ten (10) percent of the total Class. If the number of Class Members who are not Eligible Class Members as of such date equals or exceeds ten (10) percent of the total Class, then Defendant shall have the exclusive and absolute right (but not the obligation) to deem this Settlement Void *Ab Initio* upon written notice to Class Counsel, the Court, and the Class Administrator.

22. Eligible Class Member. “Eligible Class Member” means a Class Member who is neither a Class Member Objector nor an Opt-Out.

23. Exempt Position. This Agreement is not intended to apply to exempt employees or service by Class Members in an Exempt Position. “Exempt Position” shall mean employment positions with Defendant that Defendant has determined meet neither the requirements of Subdivision (1) of Wage Order 7 of the California Industrial Welfare Commission, Cal. Code Regs, Tit. 8, § 11070, subd. 1 nor or of corresponding provisions of the Fair Labor Standards Act and regulations promulgated by the U.S. Department of Labor. The Parties stipulate for purposes of this Settlement that such Wage Order applies to Defendant and all of its employees. For purposes of this Settlement, no person, including Class Members, the Named Plaintiffs, Class Counsel, or the Class Administrator shall have the authority to challenge Defendant’s determinations as to whether, during any particular Class Member Work Week, a Class Member was serving in an Exempt position versus a Non-Exempt Position. Named Plaintiffs further stipulate that they are not presently aware of any factual or legal basis on which to challenge any classifications of Defendant’s employees as exempt pursuant to Subdivision (1) of Wage Order 7

of the California Industrial Welfare Commission, Cal. Code Regs, Tit. 8, § 11070, subd. 1, or of corresponding provisions of the Fair Labor Standards Act and regulations promulgated by the U.S. Department of Labor.

24. Final Approval. “Final Approval” shall mean an order of the Court finally approving this Settlement pursuant to Rule 3.769 of the California Rules of Court and granting Class Certification. In its Final Approval Order, the Court shall direct the Clerk of the Court to keep its file for the Action open until such time as the Class Administrator Declaration of Payment is filed, or shall make such other provision as is necessary for such declaration to be filed with the Court¹.

25. Final Approval Hearing. “Final Approval Hearing” shall mean the hearing on a motion for Final Approval, scheduled and conducted pursuant to Rule 3.769 of the California Rules of Court.

26. FLSA Claims. “FLSA Claims” shall mean the Ninth and Tenth Causes of Action in the First Amended Complaint.

27. FLSA Notice. “FLSA Notice” shall mean a document substantially in the form attached hereto as “Exhibit ,” and distributed to Eligible Class Members pursuant to the provisions of Section 3.16 below.

28. First Amended Complaint. “First Amended Complaint” shall mean the First Amended Complaint filed in the Action with the California Superior Court (County of Orange) on or about November 9, 2016.

29. Gross Settlement Amount. “Gross Settlement Amount” means the maximum possible amount Defendant shall pay as a consequence of this Settlement, which is Five Hundred Seventy Thousand Dollars (\$570,000.00). Defendant shall pay its own share of employment-related payroll taxes which shall not be deducted from the Gross Settlement Amount.

¹ This provision is intended with regard to compliance with 29 U.S.C. 216(b)’s requirement that Class Members’ written consent to “opt in” to the FLSA Claims be filed with the Court.

30. Gross Settlement Fund. “Gross Settlement Fund” means the Gross Settlement Amount, consisting of several elements including, without limitation: Class Administration Costs, the Named Plaintiffs’ Enhancements, the LWDA Fund, Class Counsel Fees and Costs, the Net Settlement Fund, and all Eligible Class Members’ portion of withholdings, contributions, deductions, taxes, fees and any other amounts due to government agencies and/or tax authorities in relation to any payments pursuant to this Agreement, including of Eligible Class Member Shares. Defendant shall pay its own share of employment-related payroll taxes which shall not be deducted from the Gross Settlement Amount.

31. Judgment. “Judgment” means a Judgement of the Court in accordance with Rule 3.769(h) of the California Rules of Court.

32. LWDA. The “LWDA” shall mean the California Labor and Workforce Development Agency.

33. LWDA Fund. “LWDA Fund” shall mean \$7,500.00 (75% of a \$10,000.00 penalty) of the Gross Settlement Fund which shall be paid out of the QSF to the LWDA in satisfaction of penalties payable to the LWDA pursuant to PAGA. Eligible Class Members shall be deemed to have waived their right to their statutory portion of the stipulated penalty amount.

34. Named Plaintiffs. “Named Plaintiffs” shall mean Plaintiffs JORGE FLORES, and MANUEL DE LA PAZ.

35. Named Plaintiffs’ Enhancements. “Named Plaintiffs’ Enhancements” shall mean the amount approved by the Court to be paid to each of the Named Plaintiffs in addition to their individual Class Member Amounts for their effort in coming forth as class representatives and in consideration for their general release of all claims against Defendant as set forth herein. The Parties agree that such amount shall be Five Thousand Dollars (\$5,000.00) each, per Named Plaintiff, subject to the Court’s approval.

36. Net Settlement Fund. “Net Settlement Fund” shall mean the Gross Settlement Fund minus (a) Class Administration Costs, (b) Class Counsel Fees and Costs; (c) the LWDA Fund, and

(d) the Named Plaintiffs' Enhancements.

37. Non-Exempt Position. "Non-Exempt Position" shall mean employment positions with Defendant that Defendant has determined neither meet the requirements of Subdivision (1) of Wage Order 7 of the California Industrial Welfare Commission, Cal. Code Regs, Tit. 8, § 11070, subd. 1, or of corresponding provisions of the Fair Labor Standards Act and regulations promulgated by the U.S. Department of Labor. The Parties stipulate for purposes of this Settlement that such Wage Order applies to Defendant and all of its employees. For purposes of this Settlement, no person, including Class Members, the Named Plaintiffs, Class Counsel, or the Class Administrator shall have the authority to challenge Defendant's determinations as to whether, during any particular Class Member Work Week, a Class Member was serving in a Non-Exempt position versus an Exempt Position.

38. Notice Packet: "Notice Packet" shall mean a packet mailed by the Class Administrator pursuant to Section 3.6 below, containing the Class Notice and any other accompanying documents required by this Settlement and/or Preliminary Approval.

39. Opt-Out(s). "Opt-Out(s)" refers to Class Members who have submitted an Opt-Out Request.

40. Opt-Out Request. "Opt-Out Request" means a timely and valid written request for exclusion from the Settlement by a Class Member, made in accordance with the provisions of Section 3.7 below.

41. PAGA. "PAGA" means the California Labor Code Private Attorneys General Act of 2004.

42. Parties. "Parties" shall mean, collectively, Defendant and the Named Plaintiffs.

43. Party. "Party" shall mean, individually, one of the Parties, and each of them.

44. Preliminary Approval. "Preliminary Approval" shall mean an order of the Court preliminarily approving this Settlement pursuant to Rule 3.769 of the California Rules of Court, granting conditional Class Certification for purposes of the Class Administration Procedures,

certifying Class Counsel, approving the form of Class Notice, establishing Class Administration Procedures, and scheduling a Final Approval Hearing.

45. QSF / Qualified Settlement Fund. “QSF” or “Qualified Settlement Fund” shall mean the Qualified Settlement Fund established by the Class Administrator in accordance with applicable tax laws, for the payment of Class Administration Costs, Class Counsel Fees and Costs, the LWDA Fund, Eligible Class Member Shares, and both Defendant’s and all Eligible Class Members’ portion of withholdings, contributions, deductions, taxes, fees and any other amounts due to government agencies and/or tax authorities in relation to any payments pursuant to this Agreement, including of Eligible Class Member Shares.

46. Released Claims. “Released Claims” shall have the same meaning as that term is defined in Exhibits 1 and 2 hereto.

47. Released Parties. “Released Parties” shall have the same meaning as that term is defined in Exhibits 1 and 2 hereto.

48. Settlement Checks. “Settlement Checks” shall mean payments to Eligible Class members distributed pursuant to the terms of Section 2.15 below.

49. Void Ab Initio. “Void Ab Initio” shall mean a circumstance in which this Agreement is null and void and the Parties shall be returned to conditions such that the Agreement had never been entered into. Such circumstance will be deemed to exist only if any of the following having occurred: (a) the Court has so ordered; (b) any of the Parties has materially breached this Agreement and either such breach cannot be cured, or after reasonable notice to the breaching Party and a reasonable opportunity to cure such breach to the satisfaction of the non-breaching Parties, the breaching Party has failed to do so, unless (i) the non-breaching Parties have stipulated in writing that such breach is non-material; or (ii) the Court has ruled that such un-cured or un-curable breach is non-material; (c) conditions have become such (including, for example, that the Court has refused to approve the Settlement) that the Effective Date has not occurred and cannot occur in the future; and/or (d) as otherwise specifically provided for in this Agreement.

In addition to the definitional elements set forth above, the terms and conditions of the class settlement shall be as follows:

2. Contentions and Defenses: Compromise. The Parties have determined that this Settlement represents a fair and reasonable compromise of disputed claims for wages and other monetary and non-monetary relief, following a reasonably thorough investigation. The Parties have entered into this Settlement to avoid the inherent risks and costs of further litigation. Named Plaintiffs do not stipulate that this Settlement represents the maximum extent of such relief to which they or the Class would be entitled if the Action were to be further litigated. Defendant does not stipulate that, should the Action be further litigated, Named Plaintiffs and/or the Class would be entitled to any relief whatsoever. Neither Named Plaintiffs nor Defendants admit to any unlawful conduct. The Parties hereby reserve all of their rights to litigate the Action and seek all available forms of relief should this Settlement not be given effect.

3. Confidentiality and Class Member Communications. Until Class Counsel files a motion for Preliminary Approval, the Parties will keep the existence and terms of Settlement strictly confidential. Until such time, Class Counsel may discuss the terms of this Settlement with Class Members other than the Named Plaintiffs only if such additional Class Members initiate contact with Class Counsel in such regard. Also until such time, no Party or their counsel may otherwise make any public statement or comment or make any disclosures of any kind about this Settlement to anyone, including without limitation, the public, or press, or on any public or semi-public forum on the internet (such as social media) without the express written permission of each of the other Parties. Such confidentiality provisions shall remain in force following Preliminary Approval as well, with the following exceptions: (a) the Class Administrator may take steps reasonably necessary to perform Class Administration Duties; (b) Class Counsel and Named

1 Plaintiffs may take reasonably necessary steps to perform their duties as such; and (c) Class
2 Counsel may list or disclose this Lawsuit and Settlement as among their handled cases in court
3 filings or motions only as well as on their website (without referencing Defendant's name or other
4 specific information identifying Defendant), but may not disclose the terms of the Settlement on
5 any firm publication or other public media. In the interest of permitting the Class Notice and
6 administration process to function on its own, Named Plaintiffs themselves agree not to discuss
7 this Settlement with any Class Members or any other individuals except for such Named Plaintiffs'
8 attorneys financial representatives, accountants and/or spouses. Defendant agrees not to
9 discourage Class Members from, or encouraging them to, exercise any of their rights or obligations
10 pursuant to this Agreement. Defendant will instruct its officers, directors, managers and
11 supervisors that that, should they be contacted by Class Members or persons who believe they may
12 be Class Members in relation to this Agreement, such officers, directors, managers and supervisors
13 should make no comment except by directing the employees to Defendant's Human Resources
14 department, who will be instructed to direct such Class Members to the Class Administrator and
15 to provide such Class Members with contact information for the Class Administrator.

16 4. Preliminary Approval. As soon as possible following execution of this Agreement,
17 Class Counsel shall move the Court for Preliminary Approval. Class Counsel will submit
18 therewith a proposed order, substantially in the proposed form of Exhibit "4" hereto. The Parties
19 shall give all reasonable cooperation necessary to obtain Preliminary Approval from the Court.
20 Defendant shall not oppose such motion for Preliminary Approval, except to the extent as it may
21 be inconsistent with this Settlement.

22 5. Class Administration Procedures – Class List. Within fifteen (15) days of
23 Defendant's receipt of notice of entry of Preliminary Approval, Defendant shall cause to be
24 delivered by email or otherwise to the Class Administrator a list of the Class Members that includes
25 their names, last known home address(es), full social security numbers, and dates of employment
26 with Defendant in a Non-Exempt Position during the Class Period, all of which information shall

1 be based upon Defendant's reasonably available business records and/or the best available
2 personal knowledge of Defendant's employees and agents.

3 6. Class Administration Procedures – Notice to Class. Within ten (10) days after
4 delivery of the information described in Section 2.5 above, the Class Administrator will mail a
5 Notice Packet to each Class Member via United States Mail and/or in accordance with Preliminary
6 Approval. Prior to such mailing, the Class Administrator will calculate the estimated Eligible
7 Class Member Shares of each respective Class Member, based upon an assumption that all Class
8 Members will become Eligible Class Members, that no Class Member Objections, Opt-Out
9 Requests, or other disputes pursuant to Section 3.7 below will be submitted, and that no Class
10 Members will be added to the Class. The amounts of such estimated Eligible Class Member Shares
11 will be disclosed on an individual basis in each Class Member's respective Class Notice, along
12 with the basis of the calculation of such shares in relation to the number of Class Member Work
13 Weeks for each such Class Member. If any mailed Notice Packets are returned as undeliverable,
14 then the Class Administrator shall promptly perform one "skip trace" or similar search and shall
15 promptly re-mail the same Notice Packet (or a true and correct copy thereof) to any new addresses
16 disclosed by such search. If the process set forth in this paragraph and any other procedures
17 ordered by the Court are followed, the Class Notice will be deemed to be adequately provided to
18 all Class Members. In the event the procedures in the Agreement are followed and a Class
19 Member, nonetheless, does not receive the Notice Packet, the intended recipient shall remain a
20 Class Member and will be deemed an Eligible Class Member unless such intended recipient
21 submits a Class Member Objection or Opt-Out Request.

22 7. Class Administration Procedures – Class Member Objections, Opt-Out Requests,
23 and Disputes Concerning Class Member Status and Number of Class Member Work Weeks.

24 (a) *Class Member Objections – Filing and Service:* Any member of the Settlement
25 Class who wishes to make a Class Member Objection must mail to the
26 Administrator his or her Objection no later than forty-five (45) days after the

1 Class Administrator's mailing of the Class Notice, a signed, original document.
2 The date of the postmark on such mailings shall be deemed to be the date of
3 such mailing. The Administrator must also, no later than five (5) days after
4 receipt of an Objection, send to each counsel a copy of the Class Member's
5 Objection. The Parties will cooperate to ensure that all Class Member
6 Objections are filed with the Court within five (5) days of receipt from the
7 Administrator.

8 (b) *Class Member Objections – Responses:* Upon receipt of any documents
9 purporting to be Class Member Objections, the Class Administrator shall
10 forthwith forward such documents to Class Counsel and Defendant's counsel
11 by e-mail and United States Mail. Following receipt of such documents, Class
12 Counsel and Defendant's counsel shall confer regarding such documents
13 purporting to be Class Member Objections. Class Counsel shall file with the
14 Court, in a separate document along with their motion for Final Approval, a
15 joint statement, not to exceed ten (10) pages, containing the Parties' points and
16 authorities in response to such documents purporting to be Class Member
17 Objections. The Parties shall submit joint responses if possible. However, if
18 the Parties' responses differ in any respect, the jointly-held positions shall be
19 set forth in a separately entitled section, and the differently-held positions shall
20 be set forth in further separately-entitled sections of the joint response. The
21 Parties may attach evidence to the joint response, which shall not count toward
22 the page limit. If the volume of documents purporting to be Class Member
23 Objections is sufficiently large such that ten (10) pages is insufficient for the
24 joint response, the Parties (or any of them) may apply to the Court for an
25 increase in the number of such pages. Should the Parties receive any untimely-
26 filed, received, or sent documents purporting to be Class Member Objections

(or should the Parties receive them less than ten (10) days prior to any due date for the motion for Final Approval), the parties may file a further such joint response at any time prior to the Final Approval Hearing, but in any event not later than ten (10) days after receiving such untimely documents. A Class Member Opt-Out Request shall only be deemed to be a Class Member Objection if it separately meets the requirements of this sub-Section.

(c) *Opt-Out Requests:* Any member of the Settlement Class who wishes to make an Opt-Out Request must, within forty-five (45) days of the Class Administrator's mailing of the Class Notice, mail, via United States Mail, to the Class Administrator at the address indicated in the Class Notice a document bearing the signature of such Settlement Class Member words to the effect of: "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT." The Class Administrator shall give Class Counsel and Defendant's counsel no less than weekly notice of the number of Class Members who have submitted Opt-Out Requests, as well as copies of any such Opt-Out Requests. Should any of the Parties wish to dispute the validity of any documents purporting to be Opt-Out Requests, they shall notify the Class Administrator and all other Parties via e-mail and U.S. Mail within ten (10) days of receiving such documents, and in so doing they shall state the factual and legal basis for such dispute. Prior to the deadline for submitting its declaration described in Section 2.8 below, the Class Administrator shall make a determination as to the validity of the disputed Opt-Out Requests, and shall set forth its determinations in such declaration. The Class Administrator's decisions in such regard shall be final and binding. A

Class Member Objection shall only be deemed to be an Opt-Out Request if it separately meets the requirements of this sub-Section.

(d) *Disputes Concerning Class Member Status:* Should any person who does not receive a Class Notice directed to him or her wish to come forward purporting to be a Class Member, such person shall notify the Class Administrator, no later than forty-five (45) days after the Class Administrator's mailing of the Class Notice Packets, via United States Mail. The Class Administrator shall forthwith send any such documents to Class Counsel and Defendant's counsel via email and United States Mail. Upon receipt of such notice, Defendant shall investigate the matter, including with reference to its business records, and shall determine whether the person is a Class Member. Then, within ten (10) days of receipt of such notice, Defendant shall notify the Class Administrator and Class Counsel as to its determination of the person's status as a Class Member. Defendant's determinations in such regard shall control. If the person is determined to be a Class Member, the Class Administrator shall mail that person a Notice Packet, whereupon the same procedures for submitting Class Member Objections, Opt-Out Requests, and Disputes Concerning Work Weeks set forth in this Agreement shall apply to such person.

(e) *Disputes Concerning Class Member Work Weeks:* The Class Notices sent to each Class Member shall separately set forth that person's estimated number of Class Member Work Weeks. If for any reason a Class Member disagrees such estimate, such Class Member shall mail (via United States Mail) to the Class Administrator at the address listed in the Class Notice and within forty-five (45) days of the Class Administrator's mailing of such Class Notice, a written notice setting forth the Class Member's basis for such disagreement, including any and all documents supporting such basis. Upon receipt of such notices, the

1 Class Administrator shall forthwith send it to Class Counsel and Defendant's
2 counsel, via e-mail and United States Mail. Defendant shall investigate the
3 matter, including by examining its business records, and shall, within ten (10)
4 days of receiving notice, advise Class Counsel and the Class Administrator as
5 to its determination regarding the Class Member's number of Class Member
6 Work Weeks. In the event that the Class Member does not provide any
7 supportive documentation, Defendant's determination shall control. In the
8 event that the Class Member does provide supportive documentation,
9 Defendant shall, within the same ten (10) day period, either notify the Class
10 Administrator and Class Counsel that it stipulates to the Class Member's
11 assertions regarding his or her number of Class Member Work Weeks, or shall
12 notify them that it disputes such assertions, and shall provide the Class
13 Administrator and Class Counsel with its proposed determination, and the
14 factual basis therefor, and any supporting documentation. The Class
15 Administrator shall then determine the Class Member's number of Eligible
16 Class Member Work Weeks, and its determinations shall control.

17 (f) Named Plaintiffs hereby agree that they will not submit Class Member
18 Objections or Opt-Out Requests on their own behalf. Any submissions by
19 either of the Named Plaintiffs purporting to be Class Member Objections or
20 Opt-Out Requests shall be null and void.

21 (g) No determinations by Defendant, the Class Administrator, the Court, or any
22 other person or entity pursuant to this Section 2.7 shall have the effect of
23 increasing the amount of the Gross Settlement Fund. Rather, any additional
24 amounts to be distributed to any Class Member as a result of the resolution of
25 such disputes shall be made in conjunction with and subject to a proportionate
26 reduction in other Eligible Class Members' Eligible Class Member Shares, with

specific amounts to be determined by the Class Administrator.

8. Class Administration Procedures – Class Administrator Declaration. Within ten (10) days of the expiration of all the time periods provided for in Sections 2.5 through 2.7 above, the Class Administrator shall provide Class Counsel and Defendant’s counsel with the Class Administrator Declaration. Should the Class Administrator be unable to provide the Class Administrator Declaration at such time, it shall forthwith notify Class Counsel and Defendant’s counsel, who shall cooperate with the Class Administrator to forthwith remedy any such inability.

9. Motion for Final Approval. By the later of (a) ten (10) days of Class Counsel’s receipt of the declaration required of the Class Administrator by Section 2.8 above; or (b) sixteen (16) court days prior to the Final Approval Hearing, Class Counsel shall file and serve upon Defendant and the Class Administrator a motion for Final Approval, and shall include the Class Administrator’s declaration with such filing. Should the date of Class Counsel’s receipt of the Class Administrator Declaration be less than ten (10) days prior to the court day that is sixteen (16) court days prior to the Final Approval Hearing, Class Counsel shall make reasonable efforts to file its motion for Final Approval not later than sixteen (16) court days prior. Should the Final Approval Hearing be changed, the Class Administrator shall mail a further notice at least to each Class Member stating words to the effect that “[t]his notification follows a notice that you were previously sent on [date] in the above-referenced action. The Final Approval Hearing date previously listed in such notice has changed. Such hearing will be held on [date], and [time and location].” Such notices shall be mailed by the Class Administrator at least fifteen (15) days in advance of such amended hearing date.

10. Adjustments to Components of Gross Settlement Fund. This Agreement contemplates that future adjustments to the amounts of components of the Gross Settlement Fund listed above may be necessary and/or may be ordered by the Court. Any such future adjustments shall be made only by written stipulation of the Parties or by an order of the Court. Such future adjustments shall not constitute a basis for this Settlement being Void *Ab Initio*, but rather shall be

1 accompanied by adjustments to other components of the Gross Settlement Fund, to avoid any
2 increase in the Gross Settlement Fund. Any adjustments having the effect of increasing the Gross
3 Settlement Fund shall, at Defendant's exclusive option, render this Settlement Void *Ab Initio*.

4 11. Release. The Settlement includes a release of Released Claims against the Released
5 Parties. Upon Final Approval, each Eligible Class Member shall be deemed to have provided a
6 release of Released Claims against the Released Parties pursuant to the terms set forth in Exhibit
7 "1" hereto. As consideration for their receipt of the Named Plaintiffs' Enhancement, Named
8 Plaintiffs additionally agree to execute a general release in favor of Defendant and the Released
9 Parties in the form attached hereto as Exhibit "2."

10 12. Enforcement. This Agreement is enforceable pursuant to California Rule of Court
11 3.769(h). If any Party is required to seek relief for an alleged breach of this Agreement, the
12 prevailing party shall be awarded its reasonable attorney's fees and costs including, if necessary,
13 attorney's fees in connection with collection efforts or enforcement of the confidentiality
14 provisions of this agreement; provided however, that the aggrieved Party shall be required to give
15 notice to the opposing Party and meet and confer regarding the alleged breach before filing any
16 motion, or application for enforcement of, this Agreement.

17 13. Net Settlement Fund. The Net Settlement Fund shall be the Gross Settlement Fund
18 amount, less the quantities approved by the Court as to Class Administration Costs, Class Counsel
19 Fees and Costs, the LWDA Fund, and the Named Plaintiffs' Enhancements. The Settlement will
20 be non-reversionary and will not be on a "claims made" bases. No portion of the Net Settlement
21 Fund shall revert to, or become due and payable to, Defendant, or any person or entity other than
22 Eligible Class Members. Each Eligible Class Member Share will be determined by the Class
23 Administrator according to the following method:

24 (a) To determine the distribution of the Net Settlement Fund, the total gross
25 wages will be divided into two main classifications: 1) Incentive -paid employees; and 2) hourly
26 employees. The total gross wages for each group will then be adjusted to account for the

1 respective “strength of case” for each classification group. Based on Plaintiff’s counsel’s
2 analysis, the strength of case for incentive-paid employees is 100%; and the strength of case for
3 hourly employees is 25%. When the “strength of case” percentage is applied, the formula results
4 either hold the earnings constant, as with the “incentive-paid group” or reduces earnings as is the
5 case for both the “hourly” employee group. For example, if the total earnings for the Class
6 Members during the Class Period equaled \$1,000,000, with \$500,000 of the earnings attributable
7 to incentive-paid employees; and \$500,000 attributable to hourly employees, then the strength of
8 case percentages will be applied to adjust the apportioned earnings as follows: 1) \$500,000 to
9 incentive-paid employees remains the same; and 2) the \$500,000 attributable to hourly
10 employees would be reduced to \$125,000 (25% of \$500,000). In this example, the adjusted
11 earnings are \$625,000 (incentive-paid employees \$500,000 + hourly employees \$125,000).
12 Based on the above example and strength of case adjustments, the final apportionment of the
13 settlement fund for this example would be approximately 80% (\$500,000 of the new \$625,000
14 total adjusted earnings) for incentive-paid employees; and approximately 20% (\$125,000 of the
15 new \$800,000 total adjusted earnings) for hourly employees. The example given in this section is
16 simply for illustrative purposes, however, the hourly employees, in no event will receive less
17 than 15% of the Net Settlement Fund.

18
19 (b) Once the total adjusted earnings are calculated for each group they will be
20 summed and used to determine the final NSF distribution. The percentage of adjusted earnings
21 for each employee group relative to the total adjusted earnings directly correlates to the
22 percentage that group shares in the NSF.

23
24 (c) Each Class Member’s Individual Gross Wages shall be adjusted and
25 calculated pursuant to the methodology described in subparagraphs a and b immediately above to
26

determine what percent of the Total Gross Wages was earned by each individual Class Member during the applicable Class Period (“Gross Wages Percentage Value”).

(d) Each Settlement Class Member will be allocated a percentage of the Net Settlement Fund that is equivalent to his/her Gross Wages Percentage Value (“Individual Settlement Allocation”). If the calculation described above results in a calculated payment to a Eligible Class Member of less than Fifty Dollars (\$50), that Eligible Class Member’s payment will be increased to Fifty Dollars (\$50). Eligible Class Members will receive a minimum payment of Fifty Dollars (\$50), so long as such payment will not increase the overall Net Settlement Fund. If payments pursuant to this paragraph would require an increase in the overall Net Settlement Fund, no increase will be made and each Eligible Class Member will receive an amount equal to the original result of his/her calculated payment, even if that result is less than Fifty Dollars (\$50).

14. Taxation and Withholding; Settlement Checks.

(a) *Allocation.* The Parties agree that 30% of the Net Settlement Fund shall be allocated to Form W-2 wages, and 70% to penalties, interest, and other non-wages subject to Form 1099 reporting, and that the same allocations shall apply to each of the Eligible Class Member Shares. This allocation is for purposes of Settlement only. The Class Administrator will pay from the Net Settlement Fund each Eligible Class Member Share both the Eligible Class Members’ and The payment of such taxes, deductions, contributions and other amounts shall be calculated based upon Defendant’s reasonably available records. The Class Administrator shall provide reasonable notice to Defendant’s Counsel of any records required for purposes of computing taxes, deductions, contributions and other amounts, and Defendant shall undertake reasonable efforts to provide the Class Administrator with same. The

Class Administrator shall provide, as appropriate, an IRS Form W-2 and Form 1099, and any other tax documentation required by law, to each Eligible Class Member payee.

(b) *Circular 230 Disclaimer.* Each of the Parties acknowledges and agrees that (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their counsel and other advisers is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Circular 230 (31 CFR part 10, as amended); (2) each Party (a) has relied exclusively upon his, her or its own, independent legal and tax advisors for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any other Party or any Counsel or advisor to any other Party, and (c) is not entitled to rely upon any communication or disclosure by any other Counsel or advisor to any other Party to avoid any tax penalty that may be imposed on that Party; and (3) no attorney or advisor to any other Party has imposed any limitation that protects the confidentiality of any such attorney's or advisor's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the Party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement. Neither Class Counsel nor Defendant or its Counsel will provide tax or financial advice, and Class Members are advised to seek independent professional advice as to the tax or financial consequences of any payment they receive, or may receive, as Class Members.

(c) *No Effect on Employee Benefits.* The Eligible Class Member Shares shall be deemed not to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any employee benefits (e.g., vacations, holiday pay,

retirement plans, etc.) of the Eligible Class Members. The Parties agree that any monetary settlement payments to such Eligible Class Members do not represent any modification of their previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by the Released Parties. Any amounts paid, pursuant to this Agreement, shall not be considered “compensation” in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan or employee welfare benefit plan sponsored by the Released Parties.

(d) *Check Expiration / Refunds.* The expiration date of any instruments of payment issued by the Class Administrator to Eligible Class Members for their Eligible Class member Shares will be one hundred eighty (180) days from the date the settlement checks are mailed. The amount of any settlement checks that are not cashed or otherwise negotiated by Eligible Class Members within one hundred eighty (180) calendar days of the date of mailing of the settlement checks, shall be treated pursuant to provisions of California law governing unclaimed wages and paid by the Class Administrator to the State of California Unclaimed Wages Fund.

15. Defendant’s Payment of the Gross Settlement Amount / Distribution to Eligible Class Members / Opt-In Process for FLSA Claims. Upon the Effective Date, the Claims Administrator shall forthwith establish all financial accounts necessary to establish the Qualified Settlement Fund, and shall promptly notify Defendant’s Counsel and Class Counsel by email and U.S. Mail that such accounts have been established and of the payment details necessary to fund the Qualified Settlement Fund. Within ten (10) days after the Defendant’s receipt of such notice, and provided that the Effective Date has occurred, Defendant shall make such payments, not to exceed, in aggregate, the Gross Settlement Fund amount. Within fifteen (15) days after all funds necessary to fully fund the Qualified Settlement Fund are in the accounts established by the Claims Administrator and are available for disbursement, the Class Administrator shall disburse the

1 corresponding Eligible Class Member Shares to each Eligible Class Member, as well as the LWDA
2 Fund, the Named Plaintiffs' Enhancements, the Class Administration Costs, and the Class Counsel
3 Fees and Costs. The Class Administrator shall make such payments by sending checks in the
4 amounts therefor by U.S. Mail to the last known address for each respective Eligible Class
5 Member, and shall include with such mailing the FLSA Notice. The Class Administrator shall
6 promptly notify Class Counsel and Defendant's counsel by email and U.S. Mail that such
7 disbursements have been made. Within two hundred ten (210) days after the date of mailing of
8 the Settlement Checks, the Class Administrator shall provide to Class Counsel and Defense
9 Counsel (by email and U.S. Mail) a declaration signed under penalty of perjury that it has mailed
10 the settlement checks and the FLSA Notice to Eligible Class Members, that it has caused the
11 amounts of any uncashed settlement checks to be treated pursuant to the laws of the State of
12 California relating to unclaimed wages. The Class Administrator shall attach thereto records
13 sufficient to show which Eligible Class Members in fact cashed, deposited, or otherwise negotiated
14 their Settlement Checks, and such Eligible Class Members shall be deemed to have "opted in" to
15 the FLSA Claims pursuant to 29 U.S.C. 216(b) for purposes of releasing such Claims pursuant to
16 Section 2.11 above. Either Class Counsel or Defense Counsel shall thereupon file such declaration
17 with the Court, and in so doing shall either file such declaration with redactions of personal
18 information pursuant to the California Rules of Court, or shall file the Class Administrator's
19 attached records under seal.

20 16. Cooperation and Reasonable Modifications. The Parties and their respective
21 counsel will cooperate reasonably and in good faith for the purpose of achieving occurrence of the
22 conditions set forth in this Agreement, including without limitation, timely filing of all motions,
23 papers and evidence necessary to do so, and refraining from causing or encouraging directly or
24 indirectly the submission of any objection to this Agreement, the submission of any Class Member
25 Objection or Opt-Out Request, or any appeal or petition for writ proceedings seeking review of
26 any order or judgment contemplated by the Settlement. This Agreement contemplates that the

Court and the Parties may make reasonable modifications to the Agreement in order to effect its essential terms and to obtain Preliminary Approval and Final Approval. Such modifications shall not render this Agreement Void *Ab Initio*, but rather the Parties shall stipulate to such reasonable modifications and take all necessary steps to give them effect. Any increase in the Gross Settlement Fund shall not be deemed to be a reasonable modification, and shall render this Agreement Void *Ab Initio* except upon signed, written agreement of Defendant.

17. Warranty of Authority. The undersigned each represent and warrant that each has authority to enter into this Settlement, and that by doing so they are not in breach or violation of any agreement with any third parties. The Parties further agree that the Action shall be stayed in all respects until the final payment called for by this Settlement is made pending the occurrence or failure of the Effective Date, except for the purpose of filing motions for Preliminary Approval and Final Approval.

18. Other Actions Enjoined. Defendant shall have the right to request, and Named Plaintiffs will not oppose, that the Court enter an order that pending Final Approval, Class Members who do not opt-out of the Settlement are barred from instituting or prosecuting any claims or actions against the Released Parties which fall within the definition of the Released Claims and that any pending actions against the Released Parties, whether in court or arbitration, are stayed on an interim basis only as to any claims which fall within the definition of the Released Claims.

19. Notices to Counsel. All notices, requests, demands and other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be delivered personally or mailed, postage prepaid, by first-class United States mail, to the undersigned persons at their respective addresses as set forth herein:

Counsel for Plaintiffs:	Counsel for Defendant:
<u>Kevin Mahoney & Treana L. Allen</u> MAHONEY LAW GROUP, APC	<u>Mark J. Jacobs & Christopher M. Ahearn</u>

249 E. Ocean Blvd., Suite 814
Long Beach, California 90802

FISHER & PHILLIPS LLP
2050 Main Street, Suite 1000
Irvine, California 92614

20. Entire Agreement. This Agreement embodies the entire agreement of all the Parties hereto who have executed it and supersedes any and all other agreements, understandings, negotiations, or discussions, either oral or in writing, express or implied, including the Memorandum of Understanding, between the Parties to this Agreement. The Parties to this Agreement each acknowledge that no representations, inducements, promises, agreements or warranties, oral or otherwise, have been made by them, or anyone acting on their behalf, which are not embodied in this Agreement; that they have not executed this Agreement in reliance on any representation, inducement, promise, agreements, warranty, fact or circumstances, not expressly set forth in this Agreement; and that no representation, inducement, promise, agreement or warranty not contained in this Agreement including, but not limited to, any purported settlements, modifications, waivers or terminations of this Agreement, shall be valid or binding, unless executed in writing by all of the Parties to this Agreement. This Agreement may be amended, and any provision herein waived, but only in writing, signed by the Party against whom such an amendment or waiver is sought to be enforced.

21. Counterparts. This Agreement may be executed in counterparts by way of true and correct copies (including pdf's or other electronic images) of signatures, each of which shall have the same force and effect as an original, and all of which together shall constitute one and the same instrument.

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1
2 DATE: _____

JORGE FLORES
PLAINTIFF AND CLASS REPRESENTATIVE

3
4
5 DATE: _____

JOSE GUEVARA
PLAINTIFF AND CLASS REPRESENTATIVE

6
7
8 DATE: _____

MANUEL DE LA PAZ
PLAINTIFF AND CLASS REPRESENTATIVE

9
10
11 DATE: 9/21/18


[NAME], [TITLE]

For Defendant TUTTLE-CLICK FORD, INC., in
his/her capacity as its PRESIDENT

12
13
14 APPROVED AS TO FORM AND CONTENT:

MAHONEY LAW GROUP, APC

15
16
17 DATE: 9/21/2018


KEVIN MAHONEY

TREANA L. ALLEN
Attorneys for Plaintiffs
JORGE FLORES, JOSE GUEVARA and
MANUEL DE LA PAZ, as individuals and on
behalf of all similarly situated employees

FISHER & PHILLIPS LLP

18
19
20
21
22 DATE: 9/21/2018


MARK J. JACOBS
✓ CHRISTOPHER M. AHEARN
Attorneys for Defendant TUTTLE-CLICK FORD,
INC

DATE:

9/21/18

JORGE FLORES

PLAINTIFF AND CLASS REPRESENTATIVE

DATE:

JOSE GUEVARA

PLAINTIFF AND CLASS REPRESENTATIVE

DATE:

MANUEL DE LA PAZ

PLAINTIFF AND CLASS REPRESENTATIVE

DATE:

[NAME], [TITLE]

For Defendant TUTTLE-CLICK FORD, INC., in
his/her capacity as its

APPROVED AS TO FORM AND CONTENT:

MAHONEY LAW GROUP, APC

DATE:

KEVIN MAHONEY

TREANA L. ALLEN

Attorneys for Plaintiffs

JORGE FLORES, JOSE GUEVARA and
MANUEL DE LA PAZ, as individuals and on
behalf of all similarly situated employees

FISHER & PHILLIPS LLP

DATE:

MARK J. JACOBS

CHRISTOPHER M. AHEARN

Attorneys for Defendant TUTTLE-CLICK FORD,
INC

EXHIBIT 1

RELEASE OF CLAIMS BY CLASS AGAINST DEFENDANT

In exchange for the consideration recited in this Settlement, Named Plaintiffs and all Eligible Class Members on behalf of themselves and on behalf of all who claim by or through them or in their stead, do hereby and forever release, acquit and discharge and covenant not to sue Defendant and its respective attorneys, past, present and future divisions, affiliates, predecessors, successors, shareholders, officers, directors, employees, agents, trustees, representatives, administrators, fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries, joint employers, insurers, related corporations, and privies, both individually and collectively, and any individual or entity which could be jointly liable with Defendant (referred to as the “Released Parties”) for all claims for wages, statutory and civil penalties, damages and liquidated damages, reimbursement, interest, attorney’s fees and costs that have been alleged or could have been alleged, and whether known or unknown under California law (Civil Code section 1542), arising out of the allegations of each cause of action in the First Amended Complaint during the applicable **Class Period**, including, but not limited to the claims for wages, benefits, and related penalties actually alleged in the **Action**, or those claims for wages, benefits, and related penalties that are derivative of the claims for wages, benefits, and related penalties actually alleged in the **Action**, by **Plaintiffs**, on behalf of themselves and the **Class Members**, based on the facts stated in the First Amended Complaint including, that **Defendant**: (1) failed to pay all earned wages, including minimum, regular and overtime wages (Labor Code §§ 510, 1194, 1194.2; IWC Wage Orders, Cal. Code Regs. Title 8, § 11000 et seq.); (2) failed to provide rest periods and meal periods or compensation in lieu thereof (Labor Code §§ 226.7, 512, IWC Wage Orders, Cal. Code Regs. Title 8, § 11000 et seq.); (3) failed to timely pay wages (Labor Code §§ 201-203); (4) knowingly and intentionally failed to comply with itemized employee wage statement provisions, payroll record keeping, and time record keeping (Labor Code §§ 226, 1174, 1174.5, 1175); (5) violations of the Unfair Competition Law (Business and Professions Code §§ 17200-17208); (6) Labor Code Private Attorney General Act (Labor Code §§ 2698-2699 et seq.); and

(7) any other claims for penalties, premium pay or liquidated damages of any nature whatsoever, arising out of claims alleged or based on the factual allegations in the operative complaint during the **Class Period** including without limitation, interest, attorneys' fees and costs. This Release by Plaintiffs and the Eligible Class Members is intended to settle any and all of the above Released Claims that any of them may have against the Released Parties as of the Effective Date of the Settlement

EXHIBIT 2

GENERAL RELEASE BY NAMED PLAINTIFFS AGAINST DEFENDANT

THIS GENERAL RELEASE AGREEMENT (hereinafter, the "Agreement") is made and entered into by and between Defendant TUTTLE-CLICK FORD, INC. (hereinafter, "DEFENDANT"), on the one hand, and Plaintiffs JORGE FLORES, JOSE GUEVARA, and MANUEL DE LA PAZ (hereinafter, "NAMED PLAINTIFFS") (hereinafter collectively, the "Parties"), on the other.

1. Release by Employee. NAMED PLAINTIFFS agree on behalf of themselves, and their respective heirs, executors, administrators, successors, assigns, and lawyers to release and discharge DEFENDANT and its respective attorneys, past, present and future divisions, affiliates, predecessors, successors, shareholders, officers, directors, employees, agents, trustees, representatives, administrators, fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries, joint employers, insurers, related corporations, and privies, both individually and collectively, and any individual or entity which could be jointly liable with Defendant (referred to as the "Released Parties") from any and all claims, debts, promises, agreements, demands, causes of action, attorneys' fees, losses and expenses of every nature whatsoever, known or unknown, suspected or unsuspected, filed or unfiled, arising prior to the date Employee executes this Agreement, or arising out of or in connection with Employee's employment or any affiliate of DEFENDANT, except as stated below. This total release includes, but is not limited to, all claims arising directly or indirectly from Employee's employment; or claims or demands related to Employee's performance of services, including but not limited to claims arising under federal, state or local law or cause of action, including, but not limited to, unpaid wages (straight time, overtime, bonuses, vacation, wage premiums; other wages); breach of contract; breach of the implied covenant of good faith and fair dealing; infliction of emotional harm; wrongful or retaliatory discharge; harassment, discrimination, or other violation of public policy; defamation and impairment of economic opportunity; violation of the California Fair Employment and Housing Act, the California Labor Code, the California Business and Professions Code, the

California Constitution; and any claims for violation of the Civil Rights Act of 1866, Title VII of the Civil Rights Act of 1964, and the Americans With Disabilities Act of 1990.

2. Waiver of Section 1542. NAMED PLAINTIFFS hereby state that it is their intention in executing this Agreement that the same shall be effective as a bar to each and every claim, demand, cause of action, obligation, damage, liability, charge, attorneys' fees and costs hereinabove released. NAMED PLAINTIFFS hereby expressly waive and relinquishes all rights and benefits, if any, arising under the provisions of Section 1542 of the Civil Code of the State of California which provides:

SECTION 1542. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

EXHIBIT 3

ORANGE COUNTY SUPERIOR COURT

Flores v. Tuttle-Click Ford, Inc.

Case No. 30-2016-00854534-CU-OE-CXC

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

To: ALL NON-EXEMPT HOURLY-PAID EMPLOYEES CURRENTLY AND/OR FORMERLY EMPLOYED AT TUTTLE-CLICK FORD., AT ANY TIME FROM MAY 25, 2012 THROUGH [Preliminary approval date]

PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS

WHY DID I GET THIS NOTICE?

You have received this Notice because Tuttle Click Ford, Inc.'s ("Tuttle-Click" or "Defendant") records reflect that you are or may be a class member in a pending class action entitled *Flores v. Tuttle-Click, Inc.*, Orange County Superior Court case number 30-2016-00854534-CU-OE-CXC (the "Action") and you may be entitled to money from the settlement of that Action.

This Notice is court approved and informs you of the terms of the agreement of the Parties to settle the claims as set forth and embodied in a Class Action Settlement Agreement ("Settlement"). This Notice explains what steps you may take to participate in, object to, or exclude yourself from the Settlement.

WHAT IS THIS ACTION ABOUT?

The Action was filed on May 25, 2016, on behalf of Plaintiffs, Jorge Flores and Manuel De La Paz ("Named Plaintiffs"), and other similarly situated current and former employees at Tuttle-Click Ford. The Action pled class allegation claims against Defendant for: (a) Failure to Pay Wages; (b) Failure to Comply with Wage Notice; (c) Failure to Provide Meal Periods; (d) Failure to Provide Rest Periods; (e) Failure to Provide Accurate Wage Statements; (f) Failure to Pay All Wages Upon Separation of Employment; (g) Unfair Competition; (h) Violation of Labor Code of Private Attorneys' General Act (i) Failure to Pay Minimum Wages in Violation of the Fair Labor Standards Act; and (j) Failure to Pay Overtime Wages in Violation of the Fair Labor Standards Act. Named Plaintiffs seek to recover various damages and costs and penalties, including unpaid wages, restitution (including under California Business and Professions Code section 17200 *et seq.*), interest, penalties (including under PAGA), and attorneys' fees and costs. A copy of the complaint is on file with the Court.

Tuttle-Click denies each and all of the claims and contentions alleged by Named Plaintiff. Tuttle-Click believes strongly that it has multiple valid defenses to the claims and that its employees have been properly paid and treated in accordance with the law. Absent the Settlement, Tuttle-Click would contest vigorously the lawsuit. By agreeing to this Settlement, Tuttle-Click is not admitting that it has any liability. Named Plaintiffs believe they would prevail on the claims that are subject to the Settlement.

After engaging in informal discovery and two (2) all-day mediations before an experienced mediator Steve Rottman, and follow up negotiations, the Parties agreed to the Settlement, which was preliminarily approved by the trial court in the Action (“Court”) on [Date]. Named Plaintiffs and Class Counsel support the Settlement.

Neither the Court nor any other fact finder has decided whether the claims brought by the Named Plaintiffs (or Tuttle-Click’s defenses) are meritorious. By approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case if it went to trial. Rather, the Court has determined only that there is sufficient evidence to suggest that the proposed Settlement might be fair, adequate, and reasonable and any final determination of those issues will be made at the final hearing. Tuttle-Click reserves the right, if for any reason the Settlement fails, to contest any factual or legal allegations in the Action and whether this Action should proceed as a class action.

WHAT IS A CLASS ACTION?

In a class action lawsuit, one or more persons sue on behalf of other people who have similar claims. Jorge Flores and Manuel De La Paz are the Class Representatives or Named Plaintiffs in the Action and have asserted claims on behalf of themselves and the class. Tuttle-Click is the Defendant. A class action allows one court to resolve all of the issues in a lawsuit for all the class members who choose not to exclude themselves from the class.

WHO IS INCLUDED IN THE SETTLEMENT CLASS?

The settlement class includes any and all non-exempt hourly-paid employees which includes Technician, Hourly Technician, Lube Technician, Painter Helper, Detailer, Hourly Detailer, Technician Helper, Collision Center Painter, Bodyshop Production, and Production Coordinator currently and/or formerly employed Tuttle-Click at any time during the Class Period from May 25, 2012 through [Preliminary approval date] (referred to as the “Class Period”), other than those who opt out (as discussed below). This group individually and collectively will be referred to as “Class Members.”

WHAT ARE THE TERMS OF THE CLASS SETTLEMENT?

Tuttle-Click will pay a maximum “Gross Settlement Amount” in the amount of Five Hundred Seventy Thousand Dollars (\$570,000.00) in exchange for: the release by Settlement Class Members of Settled Claims (defined below) against it and Released Parties (defined below); final judgment on the Action; and the other terms set forth in the Settlement. Subject to Court approval, the Gross Settlement Amount will be allocated as follows:

- Individual Settlement Allocation: \$ [redacted] shall be allocated to Eligible Class Members and referred to in this notice as the “Net Settlement Fund” or “NSF.” Eligible Class Members who do not request to be excluded from the Settlement will receive a pro-rata share of the Net

Settlement Fund automatically, which will be referred to in this notice as the “Individual Settlement Allocation.” The Individual Settlement Allocation will be calculated by dividing the Class Members into two main classifications: 1) Incentive-paid employees; and 2) hourly employees. Class Members are split into two groups, because incentive-paid employees received additional types of compensation that hourly employees did not receive, and Plaintiffs’ claims included some theories of liability related only to incentive compensation (namely, that for a period of time in the past, Tuttle-Click’s prior incentive compensation plans did not adequately cover certain types of “non-productive” time)...

- The total gross wages for each group will then be adjusted to account for the respective “strength of case” for each classification group. Based on Plaintiff’s counsel’s analysis, the strength of case for Incentive-paid employees is 100%; and the strength of case for hourly employees is 25%. When the “strength of case” percentage is applied, the formula results either hold the earnings constant, as with the “incentive-paid group” or reduces earnings as is the case for both the “hourly” employee group. Once the total adjusted earnings are calculated for each group they will be summed and used to determine the final NSF distribution. The percentage of adjusted earnings for each employee group relative to the total adjusted earnings directly correlates to the percentage that group shares in the NSF.
- The total number of workweeks worked by all Class members is _____.
- Your total number of workweeks is estimated to be _____.
- You are determined to be an Incentive-Paid Employee/ Hourly Employee. (Notice will include only one determination).
- Based on the above determinations, your estimated Individual Settlement Allocation is \$_____. Settlement Class Members who do not request to be excluded from the Settlement will be forever barred from pursuing the Settled Claims against Tuttle-Click or any other Released Parties.
- Enhancement Payment: Named Plaintiffs will each request an award not to exceed Five Thousand Dollars (\$5,000.00) in recognition of their work in this Action on behalf of the Class and a general release of all claims.
- Attorney’s Fees and Expenses Payment: Class Counsel (listed below) will seek a total amount of money not to exceed One Hundred Ninety Thousand Dollars (\$190,000.00) to be paid in accordance with the Settlement for any and all attorney’s fees and up to Thirty Thousand Dollars (\$30,000.00) in costs and expenses relating to the Action.
- Settlement Administration: The parties will ask the Court to approve the cost of settlement administration, which will not exceed approximately \$_____, which pays for tasks such as translating and mailing this Notice, mailing checks and tax forms, reporting to the parties and the Court, and tracking submitted Opt-Outs.
- PAGA Penalty Payment: The LWDA (the California state agency charged with enforcing laws regulating wages, hours, and certain other conditions of work) will receive \$7,500 under the California Labor Code’s Private Attorneys General Act of 2004 (“PAGA”), as amended, California Labor Code sections 2699 *et seq.*, which is 75% of the PAGA penalty payment of \$10,000. The remaining \$2,500 will be distributed to the Class.

WHAT AM I RELEASING UNDER THE SETTLEMENT?

Unless you timely exclude yourself from the class (as discussed below), you on behalf of yourself and your respective heirs, executors, administrators, personal representatives, successors and assigns irrevocably and unconditionally forever and fully release the claims as alleged in the First Amended Complaint against any and all Released Parties from any and all Released Claims.

“Released Parties” means Defendant and its respective attorneys, past, present and future divisions, affiliates, predecessors, successors, shareholders, officers, directors, employees, agents, trustees, representatives, administrators, fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries, joint employers, insurers, related corporations, and privies, both individually and collectively, and any individual or entity which could be jointly liable with Defendant

“Released Claims” means all claims for wages, statutory and civil penalties, damages and liquidated damages, reimbursement, interest, attorney’s fees and costs that have been alleged or could have been alleged, and whether known or unknown under California law (Civil Code section 1542), arising out of the allegations of each cause of action in the First Amended Complaint during the applicable **Class Period**, including, but not limited to the claims for wages, benefits, and related penalties actually alleged in the **Action**, or those claims for wages, benefits, and related penalties that are derivative of the claims for wages, benefits, and related penalties actually alleged in the **Action**, by **Plaintiffs**, on behalf of themselves and the **Class Members**, based on the facts stated in the First Amended Complaint including, that **Defendant**: (1) failed to pay all earned wages, including minimum, regular and overtime wages (Labor Code §§ 510, 1194, 1194.2; IWC Wage Orders, Cal. Code Regs. Title 8, § 11000 et seq.); (2) failed to provide rest periods and meal periods or compensation in lieu thereof (Labor Code §§ 226.7, 512, IWC Wage Orders, Cal. Code Regs. Title 8, § 11000 et seq.); (3) failed to timely pay wages (Labor Code §§ 201-203); (4) knowingly and intentionally failed to comply with itemized employee wage statement provisions, payroll record keeping, and time record keeping (Labor Code §§ 226, 1174, 1174.5, 1175); (5) violations of the Unfair Competition Law (Business and Professions Code §§ 17200-17208); (6) Labor Code Private Attorney General Act (Labor Code §§ 2698-2699 et seq.); and (7) any other claims for penalties, premium pay or liquidated damages of any nature whatsoever, arising out of claims alleged or based on the factual allegations in the operative complaint during the **Class Period** including without limitation, interest, attorneys’ fees and costs.

WHAT DO I NEED TO DO TO RECEIVE AN INDIVIDUAL SETTLEMENT ALLOCATION?

To receive your Individual Settlement Allocation, you do not need to do anything. You must, however, notify the Settlement Administrator of any change in your name, mailing address and/or telephone number. It is your responsibility to keep the Settlement Administrator informed of any such change, as your Individual Settlement Allocation will be mailed to the address on file.

Neither Defendant, nor any Released Party offers tax advice regarding this Settlement. You may consider contacting an accountant and/or tax attorney to determine the appropriate amount of taxes that should be paid on your Individual Settlement Allocation. Payments awarded to you will not form the basis for additional contributions to or benefits under any benefit plans, policies or bonus programs that

may exist and/or be offered to you through, by or in conjunction with Tuttle-Click or any other Released Party.

WHAT IF I WANT TO DISPUTE MY INDIVIDUAL SHARE OF THE SETTLEMENT?

To dispute your Individual Share, you must notify the Settlement Administrator in writing the basis for your disagreement with the estimated amount, including any and all documents supporting your basis within 45 days of the postmarked date on the Class Notice.

WHAT IF I DON'T WANT TO PARTICIPATE IN THIS SETTLEMENT?

You have the right to Opt-Out of the Settlement. To do so, you must a request in writing to Opt-Out to the Settlement Administrator at the following address: [REDACTED]. To be valid, the Request For Exclusion Formwritten request to Opt-Out (1) must state: "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT."; (2) must be signed by the Class Member; and (2) must be postmarked or fax stamped by [45 days after mailing date] and sent to the Settlement Administrator at the specified address or fax number. Unless you timely request to Opt-Out of the Settlement, you will be bound by the judgment upon final approval of the Settlement, and you will be barred from pursuing the Released Claims.

If you timely request to Opt-Out of the Settlement, you will not be entitled to receive any payment under the Settlement. Class Counsel will not represent your interests if you request to be excluded.

WHAT IF I WANT TO OBJECT TO THIS SETTLEMENT?

If you wish to object, you must submit a written objection to the Settlement Administrator at the following address: [REDACTED]. To be valid, the written objection must be signed by the Class Member and state: (1) the full name of the Class Member; (2) the dates of employment of the Settlement Class Member; (3) the basis for the objection; and (4) if the Class Member intends to appear at the Final Approval Hearing. A Class Member who wishes to object must submit his or her objection to the Settlement Administrator no later than [45 days after mailing date]. The Parties shall be permitted to file responses to the objection in addition to any motion for final approval documents.

Any Eligible Class Member (that is, Class Member who has not asked to be excluded from the Settlement) may object and appear at the hearing, but need not appear at the hearing if he or she submits an objection, where the Court will make a final decision whether or not to approve the Settlement ("Final Approval Hearing"). The Final Approval Hearing is scheduled to take place on [REDACTED], 2018, at [REDACTED] a.m. in Department CX104 of the Orange County Superior Court, located at the address below. The hearing may be continued (moved to another date) without further notice to you.

CLASS COUNSEL

KEVIN MAHONEY (SBN: 235367)
TREANA ALLEN (SBN: 302922)

DEFENDANT'S COUNSEL

MARK J. JACOBS, SBN 208945
mjacobs@fisherphillips.com

MAHONEY LAW GROUP, APC 249 E. Ocean Blvd., Ste. 814 Long Beach, CA 90802 Telephone: (562) 590-5550 Facsimile: (562) 590-8400	CHRISTOPHER M. AHEARN, SBN 239089 cahearn@fisherphillips.com FISHER & PHILLIPS LLP 2050 Main Street, Suite 1000 Irvine, California 92614 Telephone: (949) 851-2424 Facsimile: (949) 851-0152 Attorneys for Defendant, TUTTLE- CLICK FORD, INC. THE COURT CIVIL COMPLEX CENTER 751 West Santa Ana Blvd. Santa Ana, CA 92701
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The Court has decided that the law firms listed above under “CLASS COUNSEL” are qualified to represent the Settlement Class Members. However, you have the right to retain your own attorney, at your own expense, to submit an objection or appear on your behalf at the Final Approval Hearing.

Filing an objection will *not* exclude you from the Settlement. If the Court grants final approval of the Settlement, you will still have the right to receive an Individual Settlement Allocation and will be barred from pursuing the Released Claims. Do not file both an objection and request for exclusion. If you file both a request for exclusion and an objection, you will be excluded from the class and the objection will not be considered.

WHAT HAPPENS IF I DO NOT EXCLUDE MYSELF FROM THIS SETTLEMENT?

The Settlement, if finally approved by the Court, will bind all Eligible Class Members who do not request to be excluded from the Settlement whether or not they receive or timely cash their Individual Settlement Allocations. Final approval of the Settlement will bar any Eligible Class Member who does not request to be excluded from the Settlement from hereafter initiating a lawsuit or proceeding regarding any Released Claims. The Class Action Settlement Agreement and Stipulation on file with the Court contains additional details about the scope of the release.

FURTHER INFORMATION

The foregoing is only a summary of the Settlement. The Settlement, pleadings and all other records of this litigation may be examined and copied any time during regular office hours in the Clerk’s Office of the Orange County Superior Court listed above as “THE COURT”, or by going on the Court’s website: <https://www.occourts.org/online-services/case-access/>.

If you have any questions about the Settlement, you can contact Class Counsel, whose contact information is listed above in “CLASS COUNSEL” or the Settlement Administrator at:

[List claims administrator information].

You may seek the advice and guidance of your own attorney at your own expense.

***PLEASE DO NOT TELEPHONE OR CONTACT THE COURT FOR INFORMATION
REGARDING THIS SETTLEMENT.***

EXHIBIT 4

ORANGE COUNTY SUPERIOR COURT

Flores v. Tuttle-Click Ford, Inc.

Case No. 30-2016-00854534-CU-OE-CXC

To: ALL NON-EXEMPT HOURLY-PAID EMPLOYEES CURRENTLY AND/OR FORMERLY EMPLOYED AT TUTTLE-CLICK FORD., INC. AT ANY TIME FROM MAY 25, 2012 THROUGH [Preliminary approval date]

PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS

Enclosed is a check as payment on the settlement agreement, notice of which was previously mailed to you on [DATE] (the "Notice"). The amount of the check was determined as was set forth in such Notice.

By depositing, cashing, or otherwise negotiating this check, you further consent and agree as follows:

- To be bound by the settlement of claims pursuant to the Fair Labor Standards Act., 29 U.S.C. s. 203, et seq., (the "FLSA") as set forth the "Joint Stipulation of Settlement" referenced therein and the Court's orders preliminarily and finally approving such settlement;
- That you expressly agree to opt-in to such settlement for FLSA purposes and to release your FLSA claims against Tuttle-Click Ford, Inc. for the relevant time period referenced in the Notice;
- That you agree to a full and final release and discharge of Tuttle-Click Ford, Inc. and its attorneys, past, present and future divisions, affiliates, predecessors, successors, shareholders, officers, directors, employees, agents, trustees, representatives, administrators, fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries, joint employers, insurers, related corporations, and privies, both individually and collectively, and any individual or entity which could be jointly liable with Tuttle-Click Ford, Inc. (the "Released Parties") of any and all claims you may have under the FLSA, as described more fully in the Notice and the "Joint Stipulation of Settlement" referenced therein (the "FLSA Release"); and
- The FLSA Release includes your release of claims alleged in the lawsuit referenced in the Notice, as well as claims based on the same facts, transactions, events, occurrences, acts,

disclosures, statements, omissions, or failures to act as alleged in such lawsuit. Such released claims include, but are not necessarily limited to any claim for unpaid overtime, vacation or any other wages due under the FLSA.