

MATERN LAW GROUP, PC
MATTHEW J. MATERN (SBN 159798)
LAUNA ADOLPH (SBN 227743)
DEANNA S. LEIFER (SBN 265840)
1230 Rosecrans Avenue, Suite 200
Manhattan Beach, CA 90266
Tel: (310) 531-1900
Facsimile: (310) 531-1901

Attorneys for Plaintiff Bertha Presuel,
individually and on behalf of all others
similarly situated

**SHEPPARD, MULLIN, RICHTER &
HAMPTON LLP**
GREGG A. FISCH (SBN 214486)
MICHAEL T. CAMPBELL (SBN 293376)
1901 Avenue of the Stars, Suite 1600
Los Angeles, CA 90067-6055
Tel: (310) 228-3700
Facsimile: (310) 228-3701

Attorneys for Defendant
TUTTLE FAMILY ENTERPRISES, INC.
dba PEERLESS BUILDING
MAINTENANCE CO.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

BERTHA PRESUEL, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

TUTTLE FAMILY ENTERPRISES, INC.
dba PEERLESS BUILDING
MAINTENANCE CO., a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.: BC602416

[Assigned for all purposes to the
Hon. Maren E. Nelson, Dept. 307]

**STIPULATION OF CLASS ACTION
SETTLEMENT**

1 IT IS HEREBY STIPULATED, by and between plaintiff Bertha Presuel, individually and
2 on behalf of all others similarly situated, on the one hand, and defendant Tuttle Family
3 Enterprises, Inc. dba Peerless Building Maintenance Co., on the other hand, and subject to the
4 approval of the Court, that the Action is hereby compromised and settled pursuant to the terms
5 and conditions set forth in this Stipulation of Class Action Settlement (“Stipulation”) and that the
6 Court shall make and enter judgment, subject to the continuing jurisdiction of the Court as set
7 forth below, and subject to the definitions, recitals, and terms set forth herein which by this
8 reference become an integral part of this Stipulation.

9 DEFINITIONS

10 1. “Action” means the putative class action entitled *Bertha Presuel v. Tuttle Family*
11 *Enterprises, Inc., dba Peerless Building Maintenance Co.*, Los Angeles Superior Court Case
12 No. BC602416

13 2. “Class Counsel” means Matthew J. Matern, Launa Adolph, and Deanna S. Leifer
14 of Matern Law Group, PC.

15 3. “Class Counsel Award” means reasonable attorneys’ fees for Class Counsel’s
16 litigation and resolution of this Action (not to exceed 33 1/3% of the Maximum Settlement
17 Amount), and Class Counsel’s expenses and costs reasonably incurred in connection with this
18 Action.

19 4. “Class Information” means information regarding Class Members that Defendant
20 shall in good faith compile from its records and shall be authorized by the Court to transmit in a
21 secured manner to the Settlement Administrator. Class Information shall be transmitted in
22 electronic form and shall include each Class Member’s full name; last known address; Social
23 Security number; and total number of Compensable Workweeks.

24 5. “Class Members” means all persons employed by Defendant as non-exempt
25 employees in the position of janitor in the State of California at any time during the Class Period.

26 6. “Class Notice” means the Notice of Class Action Settlement, substantially in the
27 form attached as **Exhibit 1**, which shall be subject to Court approval and which the Settlement
28

1 Administrator shall mail to each Class Member explaining the terms of this Stipulation and the
2 Settlement.

3 7. "Class Period" means the period from November 25, 2011 through May 23, 2017.

4 8. "Class Representative Service Award" means the amount that the Court authorizes
5 to be paid to Plaintiff, in addition to Plaintiff's Individual Settlement Award, in recognition of
6 Plaintiff's efforts and risks in prosecuting the Action.

7 9. "Compensable Workweeks" means the total number of weeks during which a
8 Class Member performed work for Defendant in the position of janitor in California during the
9 Class Period based on Defendant's records and which shall be used to calculate Individual
10 Settlement Awards.

11 10. "Defendant" means defendant Tuttle Family Enterprises, Inc. dba Peerless
12 Building Maintenance Co.

13 11. "Defense Counsel" means Gregg A. Fisch and Michael T. Campbell of Sheppard,
14 Mullin, Richter & Hampton LLP.

15 12. "Effective Date" means the latter of: (a) if there are no objections to the
16 Settlement, the date upon which the Final Order and Judgment is entered by the Court; (b) if there
17 are objections to the Settlement, and if an appeal, review or writ is not sought from the Final
18 Order and Judgment, the sixty-first (61st) day after the date upon which the Final Order and
19 Judgment is entered; or (c) if an appeal, review or writ is sought from the Final Order and
20 Judgment, the date upon which all appellate and/or other proceedings resulting from the appeal,
21 review or writ have been finally terminated in such a manner as to permit the Final Order and
22 Judgment to take effect in substantially the form described herein.

23 13. "Employer's Share of Payroll Taxes" means Defendant's portion of payroll taxes,
24 including, but not limited to FICA and FUTA, on the portion of the Individual Settlement Awards
25 that constitutes wages. The Employer's Share of Payroll Taxes shall be submitted by Defendant
26 to the Settlement Administrator in addition to the Maximum Settlement Amount.

27 14. "Final Approval Hearing" means the hearing to be conducted by the Court after
28 the filing by Plaintiff of an appropriate motion and following appropriate notice to Class

Members giving Class Members an opportunity to request exclusion from the class and Settlement and to object to the Settlement, at which time Plaintiff shall request that the Court finally approve the Settlement, enter the Final Order and Judgment, and take other appropriate action.

15. "Final Order and Judgment" means the order and judgment to be entered by the Court upon granting final approval of the Settlement and this Stipulation as binding upon the Parties and Participating Class Members.

16. "Individual Settlement Award" means the amount payable from the Net Settlement Amount to each Participating Class Member.

17. "Information Sheet" means the form that shall be prepared by the Settlement Administrator and sent to each Class Member that sets forth the total number of Compensable Workweeks and the estimated Individual Settlement Award for the Class Member, substantially in the form attached as **Exhibit 2**.

18. "LWDA" means the California Labor and Workforce Development Agency.

19. "Maximum Settlement Amount" means the maximum amount (not including the Employer's Share of Payroll Taxes) Defendant shall have to pay in connection with this Settlement, by way of a common fund, which shall be inclusive of all Individual Settlement Awards to Participating Class Members, the Class Counsel Award, the Class Representative Service Award, Settlement Administration Costs, and the PAGA payment to the LWDA. Subject to Court approval and the terms of this Stipulation, the Maximum Settlement Amount Defendant shall be required to pay is Two Hundred Twenty Thousand Dollars (\$220,000.00).

20. "Net Settlement Amount" means the Maximum Settlement Amount, less the Class Counsel Award, the Class Representative Service Award, Settlement Administration Costs, and the PAGA payment to the LWDA.

21. "Notice of Objection" means a Class Member's written objection to the Settlement.

22. "Notice Packet" means the packet of documents which shall be mailed to all Class Members by the Settlement Administrator, including the Class Notice and Information Sheet.

1 23. “PAGA” means the Labor Code Private Attorneys General Act of 2004, California
2 Labor Code sections 2698, et seq.

3 24. “Participating Class Members” means Plaintiff and all other Class Members who
4 do not submit a valid and timely Request for Exclusion.

5 25. “Parties” means Plaintiff and Defendant.

6 26. “Plaintiff” means plaintiff Bertha Presuel.

7 27. “Preliminary Approval Order” means the order to be issued by the Court
8 approving and authorizing the mailing of the Notice Packet by the Settlement Administrator,
9 setting the date of the Final Approval Hearing and granting preliminary approval of the
10 Settlement set forth in this Stipulation, among other things.

11 28. “Released Claims” with respect to the Participating Class Members (other than
12 Plaintiff) means any and all claims, demands, rights, liabilities, and/or causes of action that were
13 pleaded or could have been pleaded based upon the factual allegations set forth in the Complaint
14 filed in this Action and arising at any time prior to the earlier of entry of the Preliminary
15 Approval Order or 90 days from the date of execution of this Stipulation, including claims for (1)
16 failure to provide required meal periods; (2) failure to provide required rest periods; (3) failure to
17 pay overtime wages; (4) failure to pay minimum wages; (5) failure to pay all wages due to
18 discharged and quitting employees; (6) failure to furnish accurate itemized wage statements; (7)
19 failure to maintain required records; (8) failure to indemnify employees for necessary
20 expenditures incurred in discharge of duties; (9) unfair and unlawful business practices; and (10)
21 penalties pursuant to PAGA.

22 29. “Released Claims” with respect to Plaintiff only means any and all claims,
23 demands, rights, liabilities, and/or causes of action, of any form whatsoever, arising under federal,
24 state or local laws, rules, or regulations, whether known or unknown, unforeseen, unanticipated,
25 unsuspected or latent, that have been or could have been asserted by Plaintiff, or Plaintiff’s heirs,
26 successors and/or assigns, whether directly, indirectly, representatively, derivatively or in any
27 other capacity, against Defendant or any of the other Released Parties, arising at any time prior to
28 entry of the Final Order and Judgment.

1 As to the Released Claims, Plaintiff expressly waives all rights and benefits under the
2 terms of section 1542 of the California Civil Code. Section 1542 reads as follows:

3 “A general release does not extend to claims which the creditor does not know or
4 suspect to exist in his or her favor at the time of executing the release, which if
5 known by him or her must have materially affected his or her settlement with the
6 debtor.”

7 Notwithstanding the provisions of section 1542, and for the purpose of implementing a full and
8 complete release and discharge of all of the Released Claims, Plaintiff expressly acknowledges
9 that this Settlement is intended to include in its effect, without limitation, all Released Claims
10 which Plaintiff does not know or suspect to exist in her favor at the time of execution hereof, and
11 that the Settlement contemplates the extinguishment of all such Released Claims.

12 30. “Released Parties” means Defendant and its present or former parents, subsidiaries
13 and affiliates, and officers, directors, employees, partners, shareholders, attorneys and agents, and
14 any other successors, assigns, or legal representatives.

15 31. “Request for Exclusion” means a written request by a Class Member to opt out of,
16 or exclude oneself from, the Settlement.

17 32. “Response Deadline” means the date forty-five (45) days after the Settlement
18 Administrator mails the Notice Packets to Class Members and the last date on which Class
19 Members may submit a Request for Exclusion or Notice of Objection.

20 33. “Settlement” means the final and complete disposition of the Action pursuant to
21 this Stipulation.

22 34. “Settlement Administration Costs” means the reasonable costs and fees of
23 administering the Settlement to be paid from the Maximum Settlement Amount, including, but
24 not limited to: (i) printing, mailing and re-mailing (if necessary) of Notice Packets to Class
25 Members; (ii) preparing and submitting to Participating Class Members and government entities
26 all appropriate tax filings and forms; (iii) computing the amount of and distributing Individual
27 Settlement Awards, the Class Representative Service Award, the Class Counsel Award, and the
28 PAGA payment to the LWDA; (iv) processing and validating Requests for Exclusion; (v)

1 establishing a Qualified Settlement Fund, as defined by the Internal Revenue Code; and (vi)
2 calculating and remitting to the appropriate government agencies all employer and employee
3 payroll tax obligations arising from the Settlement and preparing and submitting filings required
4 by law in connection with the payments required by the Settlement.

5 35. "Settlement Administrator" means Simpluris Inc.

6 **RECITALS**

7 36. Procedural History. On November 25, 2015, Plaintiff filed a putative class action
8 complaint in the Superior Court of the State of California, County of Los Angeles, on behalf of
9 herself and all others similarly situated, entitled *Bertha Presuel v. Tuttle Family Enterprises, Inc.,*
10 *dba Peerless Building Maintenance Co.*, Los Angeles Superior Court Case No. BC602416.
11 Plaintiff's complaint alleges causes of action for (1) failure to provide required meal periods;
12 (2) failure to provide required rest periods; (3) failure to pay overtime wages; (4) failure to pay
13 minimum wages; (5) failure to pay all wages due to discharged and quitting employees;
14 (6) failure to furnish accurate itemized wage statements; (7) failure to maintain required records;
15 (8) failure to indemnify employees for necessary expenditures incurred in discharge of duties;
16 (9) unfair and unlawful business practices; and (10) penalties pursuant to PAGA.

17 37. Defendant timely filed an answer to Plaintiff's complaint on July 7, 2016.

18 38. On May 23, 2017, the Parties participated in a private mediation session with
19 mediator Jeffrey Krivis, Esq., at which time the Parties reached agreement on the material terms
20 of a proposed class action settlement that would fully resolve the Action, which they
21 memorialized in a signed Memorandum of Understanding, made subject to the Parties entering
22 into a more comprehensive written settlement agreement.

23 39. Benefits of Settlement to Plaintiff and the Class Members. Plaintiff and Class
24 Counsel recognize the expense and length of continued proceedings necessary to litigate
25 Plaintiff's disputes in the Action through trial and through any possible appeals. Plaintiff also has
26 taken into account the uncertainty and risks of the outcome of further litigation, and the
27 difficulties and delays inherent in such litigation. Plaintiff and Class Counsel are also aware of
28 the burdens of proof necessary to establish liability for the claims asserted in the Action, both

1 generally and in response to Defendant's defenses thereto, and the difficulties in establishing
2 damages, penalties, restitution and other relief sought in the Action. Plaintiff and Class Counsel
3 also have taken into account Defendant's agreement to enter into a settlement that confers
4 substantial benefits upon the Class Members. Based on the foregoing, Plaintiff and Class
5 Counsel have determined that the Settlement set forth in this Stipulation is fair, adequate, and
6 reasonable and is in the best interests of all Class Members.

7 40. Defendant's Reasons for Settlement. Defendant has concluded that any further
8 defense of the Action would be protracted and expensive for all Parties. Substantial amounts of
9 Defendant's time, energy, and resources have been, and unless this Settlement is completed, shall
10 continue to be, devoted to the defense of the claims asserted by Plaintiff. Defendant has also
11 taken into account the risks of further litigation in reaching its decision to enter into this
12 Settlement. Even though Defendant contends it is not liable for any of the claims alleged by
13 Plaintiff in the Action, Defendant has agreed, nonetheless, to settle in the manner and upon the
14 terms set forth in this Stipulation and to put to rest the claims alleged in this Action. Defendant
15 has asserted and continues to assert that the claims alleged by Plaintiff have no merit and do not
16 give rise to any liability, damages, restitution, penalties or other payments. This Stipulation is a
17 compromise of disputed claims. Nothing contained in this Stipulation, no documents referred to
18 herein, and no action taken to carry out this Stipulation, shall be construed or used as an
19 admission by or against Defendant as to the merits or lack thereof of the claims asserted in the
20 Action. Defendant contends that it has complied with all applicable state, federal and local laws.

21 TERMS OF SETTLEMENT

22 NOW THEREFORE, in consideration of the mutual covenants, promises, and agreements
23 set forth herein, the Parties agree, subject to the Court's approval, as follows:

24 41. Binding Settlement. This Settlement shall bind the Parties and all Participating
25 Class Members, subject to the terms and conditions hereof and the Court's approval.

26 42. Tax Liability. The Parties make no representations as to the tax treatment or legal
27 effect of the payments specified herein, and Class Members are not relying on any statement or
28 representation by the Parties, Class Counsel or Defense Counsel in this regard. Participating

1 Class Members and Class Counsel understand and agree that they shall be responsible for the
2 payment of all taxes and penalties assessed on the payments specified herein, and shall hold the
3 Parties, Class Counsel and Defense Counsel free and harmless from and against any claims
4 resulting from treatment of such payments as non-taxable, including the treatment of such
5 payments as not subject to withholding or deduction for payroll and employment taxes.

6 43. Circular 230 Disclaimer. The Parties acknowledge and agree that (1) no provision
7 of this Stipulation, and no written communication or disclosure between or among the Parties,
8 Class Counsel or Defense Counsel and other advisers, is or was intended to be, nor shall any such
9 communication or disclosure constitute or be construed or be relied upon as, tax advice within the
10 meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended);
11 (2) the acknowledging party (a) has relied exclusively upon his, her, or its own, independent legal
12 and tax counsel for advice (including tax advice) in connection with this Stipulation, (b) has not
13 entered into this Stipulation based upon the recommendation of any other party or any attorney or
14 advisor to any other party, and (c) is not entitled to rely upon any communication or disclosure by
15 any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the
16 acknowledging party; and (3) no attorney or adviser to any other party has imposed any limitation
17 that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of
18 whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax
19 treatment or tax structure of any transaction, including any transaction contemplated by this
20 Stipulation.

21 44. Preliminary Approval of Settlement. Within fourteen (14) days of the full
22 execution of this Stipulation, Plaintiff shall move the Court to enter the Preliminary Approval
23 Order, thereby provisionally certifying the class for settlement purposes only and setting a Final
24 Approval Hearing date. The Parties agree to work diligently and cooperatively to have this
25 Settlement presented to the Court for preliminary approval. The Preliminary Approval Order
26 shall provide for, among other things, the Notice Packet to be sent to Class Members as specified
27 herein. The Parties agree that provisional certification of the class is for settlement purposes only
28

1 and is in no way an admission by Defendant in the Action or in any other proceeding that class
2 certification is proper.

3 In that regard, for purposes of settling the Action, and only for such purposes, the Parties
4 conditionally stipulate and agree that the requisites for establishing class certification with respect
5 to the class have been met and are met, and therefore, stipulate to class certification. More
6 specifically, the Parties conditionally stipulate and agree that, for the class:

7 a. The number of Class Members is so numerous as to make it impracticable
8 to join all Class Members.

9 b. There is an ascertainable class.

10 c. There are common questions of law and fact.

11 d. Plaintiff's claims are typical of the claims of the other Class Members.

12 e. Matern Law Group, PC, should be appointed "Class Counsel" and will
13 fairly and adequately protect the interests of the Class Members.

14 f. Plaintiff Bertha Presuel should be appointed as the representative of the
15 class and will fairly and adequately represent the interests of the Class Members.

16 g. The prosecution of separate actions by individual Class Members would
17 create the risk of inconsistent or varying adjudications, which would establish incompatible
18 standards of conduct.

19 h. Questions of law and fact common to the Class Members predominate over
20 questions affecting individual Class Members and a class action is superior to other available
21 means for the fair and efficient adjudication of the controversy.

22 45. Release by Plaintiff and Other Participating Class Members: Plaintiff and all other
23 Participating Class Members shall be deemed to have released their respective Released Claims
24 against the Released Parties upon the date on which the first installment payment of the
25 Maximum Settlement Amount is made by Defendant, as described in paragraph 47.

26 ///

27 ///

28 ///

1 46. Settlement Administration.

2 a. Within fourteen (14) days of entry of the Preliminary Approval Order,
3 Defendant shall provide the Settlement Administrator with the Class Information for purposes of
4 mailing the Notice Packets to Class Members.

5 i. Notice by First Class U.S. Mail. Upon receipt of the Class
6 Information, the Settlement Administrator shall perform a search based on the National Change
7 of Address Database maintained by the United States Postal Service to update and correct any
8 known or identifiable address changes. Within twenty (20) days after receiving the Class
9 Information from Defendant as provided herein, the Settlement Administrator shall mail copies of
10 the Notice Packet to all Class Members via regular First Class U.S. Mail. The Settlement
11 Administrator shall exercise its best judgment to determine the current mailing address for each
12 Class Member. The address identified by the Settlement Administrator as the current mailing
13 address shall be presumed to be the most current mailing address for each Class Member. The
14 Parties agree that this procedure for notice provides the best notice practicable to Class Members
15 and fully complies with due process.

16 ii. Undeliverable Notice Packets. Any Notice Packet returned to the
17 Settlement Administrator as non-deliverable on or before the Response Deadline shall be
18 re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the
19 Settlement Administrator promptly shall attempt to determine a correct address by the use of
20 skip-tracing, or other type of automated search, using the name, address and/or Social Security
21 number of the Class Member involved, and shall then perform a re-mailing to the Class Member
22 whose Notice Packet was returned as non-deliverable, assuming another mailing address is
23 identified by the Settlement Administrator. Class Members who are sent a re-mailed Notice
24 Packet shall have their Response Deadline extended by ten (10) days from the date the Settlement
25 Administrator re-mails the Notice Packet. If these procedures are followed, notice to Class
26 Members shall be deemed to have been fully satisfied, and if the intended recipient of the Notice
27 Packet does not receive the Notice Packet, the intended recipient shall nevertheless remain a
28

1 Class Member and shall be bound by all terms of the Settlement and the Final Order and
2 Judgment.

3 iii. Determination of Individual Settlement Awards. The Settlement
4 Administrator shall determine the eligibility for, and the amounts of, each Individual Settlement
5 Award under the terms of this Stipulation. The Settlement Administrator's determination of the
6 eligibility for and amount of each Individual Settlement Award shall be binding upon the Class
7 Member and the Parties, yet subject to review by Class Counsel, Defense Counsel and the Court.
8 In the absence of fraud or gross negligence, Defendant's records shall be presumed accurate.

9 iv. Disputes Regarding Administration of Settlement. Any dispute not
10 resolved by the Settlement Administrator concerning the administration of the Settlement shall be
11 resolved by the Court. Prior to any such involvement of the Court, counsel for the Parties shall
12 confer in good faith and make use of the services of mediator Jeffrey Krivis, if necessary, to
13 resolve the dispute without the necessity of involving the Court.

14 b. Exclusions. The Class Notice shall explain that Class Members who wish
15 to exclude themselves from the Class and Settlement must submit a Request for Exclusion to the
16 Settlement Administrator by the Response Deadline. The Request for Exclusion must:
17 (1) contain the name, address, and telephone number of the person requesting exclusion; (2) be
18 signed by the Class Member; and (3) be postmarked by the Response Deadline and returned to
19 the Settlement Administrator at the specified address. Subject to review by Class Counsel,
20 Defense Counsel, and the Court, the date of the postmark on the return mailing envelope on the
21 Request for Exclusion shall be the exclusive means used by the Settlement Administrator to
22 determine whether a Class Member has timely requested exclusion from the class and Settlement.
23 Any Class Member who timely and properly requests to be excluded from the class and
24 Settlement shall not be entitled to any benefits under the Settlement and shall not be bound by the
25 terms of the Settlement nor shall the Class Member have any right to object to the Settlement or
26 appeal from the entry of the Final Order and Judgment. Class Members who do not submit a
27 valid and timely Request for Exclusion on or before the Response Deadline shall be bound by all
28 terms of the Settlement and the Final Order and Judgment entered in this Action if the Settlement

1 is finally approved by the Court. At no time shall any of the Parties or their counsel seek to
2 solicit or otherwise encourage Class Members to submit Requests for Exclusion from the
3 Settlement.

4 No later than ten (10) days after the Response Deadline, the Settlement
5 Administrator shall provide counsel for the Parties a complete list of all Class Members who
6 submitted a timely and valid Request for Exclusion. Defendant, at its sole discretion, then shall
7 have the right, but not the obligation, to revoke the Settlement if ten percent (10%) or more of the
8 Class Members timely exclude themselves. Defendant shall exercise its revocation rights, if at
9 all, within fourteen (14) days of the Response Deadline by providing written notice to Class
10 Counsel.

11 c. Objections. The Class Notice shall state that Class Members who wish to
12 object to the Settlement shall submit to the Settlement Administrator a Notice of Objection by the
13 Response Deadline. The Notice of Objection must (1) state the full name of the Class Member;
14 (2) be signed by the Class Member; (3) state the grounds for the objection; and (4) be postmarked
15 by the Response Deadline and returned to the Settlement Administrator at the specified address.
16 Subject to review by Class Counsel, Defense Counsel, and the Court, the date of the postmark on
17 the return mailing envelope on the Notice of Objection shall be the exclusive means used by the
18 Settlement Administrator to determine whether a Class Member has timely objected to the
19 Settlement. Class Members who fail to timely object in the manner specified herein shall be
20 deemed to have waived any objections and shall be foreclosed from making any objections
21 (whether by appeal or otherwise) to the Settlement. At no time shall any of the Parties, Class
22 Counsel, or Defense Counsel seek to solicit or otherwise encourage or discourage Class Members
23 from submitting a Notice of Objection or filing an appeal from the Final Order and Judgment.

24 d. Monitoring and Reviewing Settlement Administration. The Parties have
25 the right to monitor and review the administration of the Settlement to verify that the monies
26 allocated under the Settlement are distributed in the correct amount, as provided for in this
27 Stipulation.
28

1 e. Best Efforts. The Parties agree to use their best efforts to carry out the
2 terms of this Settlement.

3 47. Funding and Allocation of Maximum Settlement Amount. The Maximum
4 Settlement Amount shall be paid by Defendant in three (3) installment payments. No later than
5 ten (10) days after the Effective Date, Defendant shall provide to the Settlement Administrator in
6 any feasible manner, including, but not limited to, by way of a wire transfer, the first installment
7 payment in the amount One Hundred Thousand Dollars (\$100,000.00). No later than six (6)
8 months after the first installment payment is made, Defendant shall provide to the Settlement
9 Administrator the second installment payment in the amount of Sixty Thousand Dollars
10 (\$60,000.00). No later than one (1) year after the first installment payment is made, Defendant
11 shall provide to the Settlement Administrator the final installment payment in the amount of Sixty
12 Thousand Dollars (\$60,000.00). If this Settlement is not finally approved by the Court in full, or
13 is terminated, rescinded, canceled or fails to become effective for any reason, or if the Effective
14 Date does not occur, then no portion of the Maximum Settlement Amount shall be paid.

15 a. Individual Settlement Awards. Class Members shall not be required to
16 submit a claim in order to receive a share of the Net Settlement Amount, and no portion of the
17 Maximum Settlement Amount shall revert to Defendant or result in an unpaid residue. Individual
18 Settlement Awards shall be paid by the Settlement Administrator from the Net Settlement
19 Amount pursuant to the formula set forth herein after the final installment payment is made by
20 Defendant. Individual Settlement Award payments shall be mailed by the Settlement
21 Administrator by regular First Class U.S. Mail to each Participating Class Member's last known
22 mailing address within fourteen (14) days after Defendant provides the Settlement Administrator
23 with the final installment payment of the Maximum Settlement Amount. Prior to mailing the
24 Individual Settlement Awards, the Settlement Administrator shall perform a search based on the
25 National Change of Address Database maintained by the United States Postal Service to update
26 and correct any known or identifiable address changes.

27 i. Each Participating Class Member's Individual Settlement Award
28 shall be calculated solely by the Settlement Administrator according to the following formula:

1 Defendant shall provide the Settlement Administrator with the Compensable Workweeks for each
2 Participating Class Member. The Settlement Administrator shall then divide the Net Settlement
3 Amount by the total number of Compensable Workweeks for all Participating Class Members
4 resulting in a value for each week worked by the Participating Class Members during the Class
5 Period ("Workweek Value"). The Settlement Administrator shall then multiply the number of
6 Compensable Workweeks for each Participating Class Member by the Workweek Value.

7 ii. Individual Settlement Award payments shall be made by check and
8 shall be made payable to each Participating Class Member as set forth in this Stipulation.

9 iii. Individual Settlement Awards shall be allocated as follows: twenty
10 percent (20%) as wages subject to all applicable tax withholdings and eighty percent (80%) as
11 non-wage penalties and interest not subject to payroll tax withholdings. The Settlement
12 Administrator shall issue an IRS Form W-2 to each Participating Class Member for the portion of
13 each Individual Settlement Award payment allocated as wages and subject to all applicable tax
14 withholdings. The Settlement Administrator shall issue an IRS Form 1099 to each Participating
15 Class Member for the portion of each Individual Settlement Award payment allocated as
16 non-wage penalties and interest and not subject to payroll tax withholdings. The Employer's
17 Share of Payroll Taxes shall be paid by Defendant separate from and in addition to the Maximum
18 Settlement Amount. The Settlement Administrator shall calculate the amount of the Employer's
19 Share of Payroll Taxes and shall remit and report the applicable portions of the payroll tax
20 payment to the appropriate taxing authorities in a timely manner.

21 iv. Individual Settlement Award checks shall remain negotiable for
22 180 days from the date of mailing. If an Individual Settlement Award check remains uncashed
23 after One Hundred Eighty (180) days from issuance, the Settlement Administrator shall pay over
24 the amount represented by the check, without the need to include interest, to the California
25 Department of Industrial Relations Unclaimed Wages Fund, with the identity of the Participating
26 Class Member to whom the funds belong. In such event, the Participating Class Member shall
27 nevertheless remain bound by the Settlement.
28

v. All monies received by Participating Class Members under the Settlement which are attributable to wages shall constitute income to such Participating Class Members solely in the year in which such monies actually are received by the Participating Class Members. It is expressly understood and agreed that the receipt of Individual Settlement Awards shall not entitle any Participating Class Member to additional compensation or benefits under any collective bargaining agreement or under any bonus, contest or other compensation or benefit plan or agreement in place during the period covered by the Settlement, nor shall it entitle any Participating Class Member to any increased pension and/or retirement, or other deferred compensation benefits. It is the intent of the Parties that Individual Settlement Awards provided for in this Stipulation are the sole payments to be made by Defendant to Participating Class Members in connection with this Settlement, with the exception of Plaintiff, and that the Participating Class Members are not entitled to any new or additional compensation or benefits as a result of having received the Individual Settlement Awards. Furthermore, the receipt of Individual Settlement Awards by Participating Class Members shall not, and does not, by itself establish any general, special, or joint employment relationship between and among the Participating Class Member(s) and Defendant.

b. Class Representative Service Award. Subject to Court approval, Plaintiff shall be paid a Class Representative Service Award not to exceed Five Thousand Dollars (\$5,000.00), or any lesser amount as awarded by the Court, for her time and effort in bringing and presenting the Action and for releasing her Released Claims. Defendant shall not oppose or object to Plaintiff's request for a Class Representative Service Award in an amount not to exceed Five Thousand Dollars (\$5,000.00). The Class Representative Service Award shall be paid to Plaintiff from the Maximum Settlement Amount no later than ten (10) days after Defendant provides the Settlement Administrator with the final installment payment of the Maximum Settlement Amount. The Settlement Administrator shall issue an IRS Form 1099 to Plaintiff for her Class Representative Service Award. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on her Class Representative Service Award and shall hold harmless Defendant, Class Counsel and Defense Counsel from any claim or liability for taxes, penalties, or

1 interest arising as a result of payment of the Class Representative Service Award. The Class
2 Representative Service Award shall be made in addition to Plaintiff's Individual Settlement
3 Award. Any amount requested by Plaintiff for the Class Representative Service Award and not
4 awarded by the Court shall become part of the Net Settlement Amount and shall be distributed to
5 Participating Class Members as part of their Individual Settlement Awards.

6 c. Class Counsel Award. Subject to Court approval, Class Counsel shall be
7 entitled to receive reasonable attorneys' fees in an amount not to exceed one-third (1/3) of the
8 Maximum Settlement Amount, which amounts to Seventy Three Thousand Three Hundred Thirty
9 Three Dollars and Thirty Three Cents (\$73,333.33). In addition, subject to Court approval, Class
10 Counsel shall be entitled to an award of reasonable costs associated with Class Counsel's
11 prosecution of the Action in an amount not to exceed Fifteen Thousand Dollars (\$15,000.00).
12 Class Counsel shall provide the Settlement Administrator with a properly completed and signed
13 IRS Form W-9 in order for the Settlement Administrator to process the Class Counsel Award
14 approved by the Court. Defendant shall not oppose or object to Plaintiffs' request for an award of
15 attorneys' fees in an amount not to exceed Seventy Three Thousand Three Hundred Thirty Three
16 Dollars and Thirty Three Cents (\$73,333.33) and request for an award of reasonable costs not to
17 exceed Fifteen Thousand Dollars (\$15,000.00). In the event the Court awards Class Counsel less
18 than Seventy Three Thousand Three Hundred Thirty Three Dollars and Thirty Three Cents
19 (\$73,333.33) in attorneys' fees and/or less than Fifteen Thousand Dollars (\$15,000.00) in costs,
20 the difference shall become part of the Net Settlement Amount and shall be distributed to
21 Participating Class Members as part of their Individual Settlement Awards. Class Counsel shall
22 be paid any Court-awarded attorneys' fees and costs no later than ten (10) days after Defendant
23 provides the Settlement Administrator with the final installment payment of the Maximum
24 Settlement Amount. Class Counsel shall be solely and legally responsible to pay all applicable
25 taxes on the Class Counsel Award. The Settlement Administrator shall issue an IRS Form 1099
26 to Class Counsel for the Class Counsel Award. This Settlement is not conditioned upon the Court
27 awarding Class Counsel any particular amount of attorneys' fees or costs, unless the amount
28 awarded is more than specified in this paragraph.

1 d. PAGA Payment to the LWDA. Five Thousand Dollars (\$5,000.00) from
2 the Maximum Settlement Amount shall be allocated as penalties under PAGA, of which Three
3 Thousand Seven Hundred Fifty Dollars (\$3,750.00) shall be paid by the Settlement Administrator
4 directly to the LWDA. The remaining One Thousand Two Hundred Fifty Dollars (\$1,250.00)
5 shall be part of the Net Settlement Amount and shall be distributed to Participating Class
6 Members as part of their Individual Settlement Awards.

7 e. Settlement Administration Costs. The Settlement Administration fees and
8 expenses, which are estimated not to exceed Seven Thousand Nine Hundred Dollars (\$7,900.00),
9 shall be paid from the Maximum Settlement Amount. Prior to Plaintiff filing a motion for final
10 approval of the Settlement, the Settlement Administrator shall provide the Parties with a
11 statement detailing the Settlement Administration Costs to date. The Parties agree to cooperate in
12 the Settlement Administration process and to make all reasonable efforts to control and minimize
13 Settlement Administration Costs.

14 i. The Parties each represent they do not have any financial interest in
15 the Settlement Administrator or otherwise have a relationship with the Settlement Administrator
16 that could create a conflict of interest.

17 ii. The Settlement Administrator shall keep the Parties timely apprised
18 of the performance of all Settlement Administrator responsibilities required by the Settlement.
19 The Settlement Administrator shall be authorized to establish a Qualified Settlement Fund
20 ("QSF") pursuant to IRS rules and regulations in which the Maximum Settlement Amount shall
21 be placed and from which payments required by the Settlement shall be made.

22 48. Final Settlement Approval Hearing and Entry of Final Order and Judgment.
23 Following expiration of the Response Deadline, a Final Approval Hearing shall be conducted by
24 the Court for it to determine whether to grant final approval of the Settlement, including
25 determining the amounts properly payable for: (i) the Class Counsel Award; (ii) the Class
26 Representative Service Award; and (iii) the PAGA payment. Prior to the Final Approval
27 Hearing, the Settlement Administrator shall provide a written report or declaration to the Parties
28 describing the process and results of the administration of the Settlement to date, which report or

1 declaration shall be filed by Plaintiff with the Court prior to the Final Approval Hearing. If the
2 Court grants final approval of the Settlement, the Settlement Administrator shall post notice of
3 final judgment on its website within seven (7) calendar days of entry of the Final Order and
4 Judgment.

5 49. Nullification of Settlement. In the event: (i) the Court does not enter the
6 Preliminary Approval Order; (ii) the Court does not grant final approval of the Settlement;
7 (iii) the Court does not enter the Final Order and Judgment; or (iv) the Settlement does not
8 become final for any other reason, this Stipulation shall be rendered null and void, any order or
9 judgment entered by the Court in furtherance of this Settlement shall be treated as void from the
10 beginning and this Stipulation and any documents related to it shall not be used by any Class
11 Member or Class Counsel to support any claim or request for class certification in the Action, and
12 shall not be used in any other civil, criminal or administrative action against Defendant or any of
13 the other Released Parties. If Defendant elects to revoke the Settlement, as specified in paragraph
14 46(b), the Parties and any monies required to be paid under this Settlement shall be returned to
15 their respective statuses as of the date and time immediately prior to the execution of this
16 Stipulation, and the Parties shall proceed in all respects as if this Stipulation had not been
17 executed, except that any Settlement Administration Costs already incurred by the Settlement
18 Administrator shall be paid to the Settlement Administrator by Defendant. In the event an appeal
19 is filed from the Court's Final Order and Judgment, or any other appellate review is sought,
20 administration of the Settlement shall be stayed pending final resolution of the appeal or other
21 appellate review.

22 50. Adjustment of Maximum Settlement Amount. The Maximum Settlement Amount
23 was calculated with, and is premised on, the understanding that there are approximately 214 Class
24 Members. In the event the number of Class Members stated in this paragraph increases by 5% or
25 more, the Maximum Settlement Amount shall be increased on a pro rata basis.

26 51. No Admission by Defendant. Defendant denies all claims alleged in this Action
27 and denies all wrongdoing whatsoever by Defendant. Neither this Stipulation, nor any of its
28 terms and conditions, nor any of the negotiations connected with it, is a concession or admission,

1 and none shall be used against Defendant as an admission or indication with respect to any claim
2 of any fault, concession, or omission by Defendant or that class certification is proper under the
3 standard applied to contested certification motions. The Parties stipulate and agree to the
4 certification of the proposed class for settlement purposes only. The Parties further agree that this
5 Stipulation will not be admissible in this or any other proceeding as evidence that either (i) a class
6 action should be certified or (ii) Defendant is liable to Plaintiff or any Class Member, other than
7 according to the terms of this Stipulation.

8 52. Publicity. Neither Plaintiff nor Class Counsel will publicize the Settlement in any
9 way prior to preliminary approval. After preliminary approval, neither Plaintiff nor Class
10 Counsel will issue any press release related in any way to the Settlement.

11 53. Exhibits and Headings. The terms of this Stipulation include the terms set forth in
12 any attached Exhibits, which are incorporated by this reference as though fully set forth herein.
13 The Exhibits to this Stipulation are an integral part of the Settlement. The descriptive headings of
14 any paragraphs or sections of this Stipulation are inserted for convenience of reference only.

15 54. Interim Stay of Action. The Parties agree to stay and to request that the Court stay
16 all proceedings in the Action, except such proceedings necessary to implement and complete the
17 Settlement and enter the Final Order and Judgment.

18 55. Amendment or Modification. This Stipulation may be amended or modified only
19 by a written instrument signed by counsel for all Parties or their successors-in-interest.

20 56. Entire Agreement. This Stipulation and any attached Exhibits constitute the entire
21 agreement between the Parties, and no oral or written representations, warranties, or inducements
22 have been made to Plaintiff or Defendant concerning this Stipulation or its Exhibits other than the
23 representations, warranties, and covenants contained and memorialized in this Stipulation and its
24 Exhibits. No other prior or contemporaneous written or oral agreements may be deemed binding
25 on the Parties.

26 57. Authorization to Enter Into Settlement Agreement. Class Counsel and Defense
27 Counsel warrant and represent they are expressly authorized by the Parties whom they represent
28 to negotiate this Stipulation and to take all appropriate actions required or permitted to be taken

1 by such Parties pursuant to this Stipulation to effectuate its terms, and to execute any other
2 documents required to effectuate the terms of this Stipulation. The Parties, Class Counsel and
3 Defense Counsel shall cooperate with each other and use their best efforts to effect the
4 implementation of the Settlement. In the event the Parties are unable to reach agreement on the
5 form or content of any document needed to implement the Settlement, or on any supplemental
6 provisions that may become necessary to effectuate the terms of this Settlement, the Parties may
7 seek the assistance of the Court and/or mediator Jeffrey Krivis to resolve such disagreement. The
8 person signing this Stipulation on behalf of Defendant represents and warrants that he/she is
9 authorized to sign this Stipulation on behalf of Defendant. Plaintiff represents and warrants that
10 she is authorized to sign this Stipulation and that she has not assigned any claim, or part of a
11 claim, covered by this Settlement to a third-party. The Parties have cooperated in the drafting and
12 preparation of this Stipulation. Hence, in any construction made of this Stipulation, the same
13 shall not be construed against any of the Parties.

14 58. Binding on Successors and Assigns. This Stipulation shall be binding upon, and
15 inure to the benefit of, the successors and assigns of the Parties.

16 59. California Law Governs. All terms of this Stipulation and the Exhibits hereto shall
17 be governed by and interpreted according to the laws of the State of California, without giving
18 effect to any law that would cause the laws of any jurisdiction other than the State of California to
19 be applied.

20 60. Counterparts. This Stipulation may be executed in one or more counterparts. All
21 executed counterparts and each of them shall be deemed to be one and the same instrument.

22 61. This Settlement is Fair, Adequate and Reasonable. Plaintiff represents that this
23 Settlement is a fair, adequate, and reasonable settlement of the Action and she has arrived at this
24 Settlement after extensive arm's-length negotiations, taking into account all relevant factors,
25 present and potential.

26 62. Jurisdiction of the Court. Following entry of the Final Order and Judgment, the
27 Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement
28 of the terms of this Stipulation and all orders and judgments entered in connection therewith, and

the Parties, Class Counsel and Defense Counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Stipulation and all orders and judgments entered in connection therewith.

63. Invalidity of Any Provision. Before declaring any term or provision of this Stipulation invalid, the Parties request that the Court first attempt to construe the terms or provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Stipulation as valid and enforceable.

64. Binding Nature of Notice of Class Action Settlement. It is agreed that, because the Class Members are so numerous, it is impossible or impractical to have each Class Member execute the Stipulation. The Class Notice shall advise all Class Members of the binding nature of the Settlement, and the release of Released Claims and shall have the same force and effect as if this Stipulation were executed by each Participating Class Member.

Dated: 7/25/, 2017

Bertha Presuel
Plaintiff Bertha Presuel

Dated: _____, 2017

Defendant Tuttle Family Enterprises, Inc. dba
Peerless Building Maintenance Co.

By: _____

Its: _____

Approved as to form and content:

Dated: 7/31/, 2017

MATERN LAW GROUP, PC

By: _____

MATTHEW J. MATERN
LAUNA ADOLPH
DEANNA S. LEIFER
Attorneys for Plaintiff BERTHA PRESUEL and
the Proposed Class Members

1 the Parties, Class Counsel and Defense Counsel submit to the jurisdiction of the Court for
2 purposes of interpreting, implementing, and enforcing the Settlement embodied in this Stipulation
3 and all orders and judgments entered in connection therewith.

4 63. Invalidity of Any Provision. Before declaring any term or provision of this
5 Stipulation invalid, the Parties request that the Court first attempt to construe the terms or
6 provisions valid to the fullest extent possible consistent with applicable precedents so as to define
7 all provisions of this Stipulation as valid and enforceable.

8 64. Binding Nature of Notice of Class Action Settlement. It is agreed that, because the
9 Class Members are so numerous, it is impossible or impractical to have each Class Member
10 execute the Stipulation. The Class Notice shall advise all Class Members of the binding nature of
11 the Settlement, and the release of Released Claims and shall have the same force and effect as if
12 this Stipulation were executed by each Participating Class Member.

13
14 Dated: _____, 2017

Plaintiff Bertha Presuel

15
16 Dated: July 26, 2017

Defendant Tuttle Family Enterprises, Inc. dba
Peerless Building Maintenance Co.

17
18
19 By: [Signature]

20 Its: PRESIDENT

21 Approved as to form and content:

22
23 Dated: _____, 2017

MATERN LAW GROUP, PC

24
25 By: _____

MATTHEW J. MATERN

LAUNA ADOLPH

DEANNA S. LEIFER

Attorneys for Plaintiff BERTHA PRESUEL and
the Proposed Class Members

1 Dated: 7/27, 2017

SHEPPARD, MULLIN, RICHTER & HAMPTON
LLP

By:


GREGG A. FISCH
MICHAEL T. CAMPBELL
Attorneys for Defendant TUTTLE FAMILY
ENTERPRISES, INC. DBA PEERLESS
BUILDING MAINTENANCE CO.

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28