

1 Farzad Rastegar (SBN 155555)
farzad@rastegarlawgroup.com
2 Joshua Lange (SBN 269016)
josh@rastegarlawgroup.com
3 RASTEGAR LAW GROUP, A.P.C.
22760 Hawthorne Blvd., Suite 200
4 Torrance, CA 90505
Tel: 310-961-9600
5 Fax: 310-961-9094

6 Attorneys for Plaintiff and the Class

7 Keith W. Carlson (SBN 193437)
keith@cjattorneys.com
8 Jamie D. Mayorga (SBN 234278)
jamie@cjattorneys.com
9 CARLSON & JAYAKUMAR LLP
2424 S. E. Bristol, Suite 300
10 Newport Beach, CA 92660
Tel: 949-222-2008
11 Fax: 949-222-2012

12 Attorneys for Defendant E.M.E., Inc.

13
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF LOS ANGELES-SPRING STREET**

16 JUAN RODRIGUEZ, individually; and on
behalf of all other similarly situated current
17 and former employees of E.M.E., Inc.

18 Plaintiffs,

19 v.

20 E.M.E., INC., a corporation of unknown
origin; and DOES 1 through 100, inclusive,

21 Defendant.

) Case No. BC518692

) [Assigned for All Purposes to the Hon. Yvette
M. Palazuelos, Dept. 9]

) **[REVISED] JOINT STIPULATION OF**
) **CLASS ACTION SETTLEMENT AND**
) **RELEASE**

1 It is stipulated and agreed by and among the undersigned Parties, subject to the approval of
2 the Court, that the full and final Settlement of this Action shall be effectuated upon and subject to
3 the following terms and conditions. Capitalized terms shall have the meanings set forth in Article I
4 or as defined elsewhere in this Joint Stipulation of Class Action Settlement and Release (hereinafter
5 "Agreement", "Settlement", or "Stipulation of Settlement").

6 This Agreement is made and entered into by and between Plaintiff Juan Rodriguez, on
7 behalf of himself and others similarly situated ("Plaintiff" or "Named Plaintiff"), on the one hand,
8 and Defendant E.M.E., Inc. ("Defendant"), on the other hand. Plaintiff and Defendant collectively
9 are referred to in the Agreement as "the Parties."

10 The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and
11 concluded by agreement of Defendant to pay no more than the settlement sum of Five Hundred
12 Fifty Thousand (\$550,000.00) as provided in Section 3.06(a) below ("Gross Settlement Fund" or
13 "GSF") upon the terms and conditions of the Agreement and for the consideration set forth herein,
14 including, but not limited to, a release of claims by Named Plaintiff Juan Rodriguez as described
15 herein, and the release of the Class Members' claims as set forth in this Agreement.

16 ARTICLE I

17 DEFINITIONS

18 Unless otherwise defined herein, the following terms used in this Agreement shall have the
19 meanings ascribed to them as set forth below:

20 a. "Action" means the Complaint filed in Los Angeles County Superior Court on or
21 about August 16, 2013 titled *Juan Rodriguez, individually, and on behalf of all other similarly*
22 *situated current and former employees of E.M.E., Inc. v. E.M.E., Inc., and DOES 1 through 100,*
23 *inclusive*, Los Angeles Superior Court Case No. BC518692.

24 b. "Agreement" means this Joint Stipulation of Class Action Settlement and Release,
25 including Exhibits "A" and "B" attached hereto.

26 c. "Class" means any and all of Defendant's hourly, non-exempt employees in
27 California from August 16, 2009 through December 7, 2017, and who did not opt out of the class.
28 Specifically, the number of Class Members is based on the class list produced by Phoenix

1 Settlement Administrators, comprised of 265 individuals, after the final date of the opt out period
2 on December 7, 2017. As defined below, the Class Period for these individuals ends on the date of
3 preliminary approval of the Settlement.

4 d. "Class Counsel" or "Plaintiff's Counsel" means the attorneys for the Settlement
5 Class, who are:

6 Farzad Rastegar (SBN 155555)
farzad@rastegarlawgroup.com

7 Douglas W. Perlman (SBN 167203)
douglassperlman@rastegarlawgroup.com
8 Ryan D. Aliman (SBN 315342)
ryan@rastegarlawgroup.com
9 **RASTEGAR LAW GROUP, APC**
10 22760 Hawthorne Boulevard, Suite 200
Torrance, California 90505
11 Tel. (310) 961-9600
Fax (310) 961-9094

12 e. "Class List" means a complete list of all Class Members that Defendant will
13 compile, based on its business records, and provide to the Settlement Administrator within twenty-
14 one (21) days after the Court grants preliminary approval of settlement. The Class List shall be
15 formatted in Microsoft Office Excel and shall include each Class Member's full name, his or her
16 last known home address, telephone number, Social Security number, and number of Workweeks
17 worked.

18 f. "Class Member(s)" mean(s) all members of the Class.

19 g. "Class Period" means August 16, 2009 through December 7, 2017.

20 h. "Court" means the Los Angeles County Superior Court in which the Action is
21 pending.

22 i. "Deed of Trust" means the first Deed of Trust as security for the obligation of
23 Defendant E.M.E., Inc. under the terms of the Settlement Agreement, to be secured by the property
24 located at 501 E. Oak Street, Compton, California 90221. A true and correct copy of the first Deed
25 of Trust is attached hereto as Exhibit "C."

26 j. "Defendant" means E.M.E., Inc.

27 k. "Defense Counsel" means:
28

1 Keith W. Carlson (SBN 193437)
keith@cjattorneys.com
2 Jamie D. Mayorga (SBN 234278)
jamie@cjattorneys.com
3 CARLSON & JAYAKUMAR LLP
2424 S. E. Bristol, Suite 300
4 Newport Beach, CA 92660
Tel: 949-222-2008
5 Fax: 949-222-2012

6 l. "Disposition" means the method by which the Court adopts the terms of the
7 Settlement Agreement, which may be by judgment or other final order, and retains jurisdiction over
8 the enforcement, implementation, construction, administration, and interpretation of the Settlement
9 and Agreement.

10 m. "Effective Date" shall be the later of the time when: (i) the judgment of the Court
11 granting final approval of the settlement is final and no longer subject to appeal, if there are
12 objections, or (ii) 21 days after the Court enters the order on final approval of the settlement, if
13 there are no objections.

14 n. "Enhancement Award" means a monetary amount of up to Ten Thousand Dollars
15 (\$10,000.00) for Plaintiff Juan Rodriguez which, subject to Court approval, will be paid pursuant to
16 Section 3.06(c) of this Agreement.

17 o. "Final Approval Hearing" means the hearing at which the Court enters a judgment
18 or other order approving the Settlement and Agreement and terminating the Action.

19 p. "Final Order Approving Settlement of Class Action" or "Final Order" means the
20 final formal court order signed by the Court at or after the Final Approval Hearing in accordance
21 with the terms herein approving this Agreement.

22 q. "Gross Settlement Fund" means the maximum settlement sum of Five Hundred
23 Fifty Thousand Dollars (\$550,000.00), which is non-reversionary, to be paid by Defendant under
24 the terms and conditions of this Agreement. Ten Thousand Dollars (\$10,000.00) of the Gross
25 Settlement Fund will be allocated to PAGA penalties, seventy-five percent (75%) of which, or
26 Seven Thousand Five Hundred Dollars (\$7,500.00), will be paid to the LWDA. The Gross
27 Settlement Fund excludes applicable employer-paid payroll taxes.

28 r. "Individual Settlement Payments" or "Verified Settlement Class Member Payments"

1 means the amounts of money from the Net Settlement Amount that shall be paid to the Verified
2 Settlement Class Members. Individual Settlement Payments will be each Verified Settlement Class
3 Member's share of the Net Settlement Amount (which share shall be determined by the
4 calculations provided in this Agreement), minus applicable authorized withholdings as set forth
5 herein in this Agreement.

6 s. "LWDA" means the California Labor and Workforce Development Agency.

7 t. "Named Plaintiff" or "Plaintiff" means Juan Rodriguez.

8 u. "Net Settlement Amount" means the Gross Settlement Fund of Five Hundred Fifty
9 Thousand Dollars (\$550,000.00) less all of the following: (a) all costs of settlement administration
10 performed by the mutually agreed upon settlement administrator, Phoenix Settlement
11 Administrators (not to exceed \$13,000.00); (b) Enhancement Award to Plaintiff (\$10,000.00); (c)
12 \$7,500.00 payment to the LWDA; (d) documented costs (not to exceed \$39,000.00) and (e)
13 attorneys' fees for Plaintiff's Counsel of 33.3% of the Gross Settlement Fund (up to \$183,150.00).

14 v. "Non-Participating Class Member(s)" means those Class Members who submit to
15 the Settlement Administrator a valid and timely Opt-Out Request pursuant to Section 3.04(b)
16 below.

17 w. "Notice Packet" means the Notice of Proposed Class Action Settlement substantially
18 in the form attached hereto as Exhibit "A," and the Request for Exclusion Form substantially in the
19 form attached hereto as Exhibit "B."

20 x. "Opt-Out Request" means a written request to be excluded from the Class pursuant
21 to Section 3.04(b) below, and as encapsulated in the Request for Exclusion Form.

22 y. "PAGA" means the Private Attorneys General Act of 2004, California Labor Code
23 sections 2698 *et seq.*

24 z. "Parties" means collectively Plaintiff and Defendant.

25 aa. "Preliminary Approval Date" means the date on which the Court preliminarily
26 approves the Settlement embodied in this Agreement, including, without limitation, the Notice of
27 Proposed Class Action Settlement, which is attached hereto as Exhibit "A," and the Request for
28 Exclusion Form substantially in the form attached hereto as Exhibit "B."

1 Complaint alleged the following eight causes of action, respectively: (1) Failure to Provide Meal
2 Periods; (2) Failure to Provide Rest Periods; (3) Failure to Pay Overtime Compensation; (4) Failure
3 to Pay Minimum Wage; (5) Failure to Pay All Wages Due; (6) Failure to Provide Accurate Wage
4 Statements and Maintain Required Records; and (7) Unfair Business Practices.

5 b. Defendant denies the allegations asserted in the Action, denies the violations of the
6 California Labor Code and California Business and Professions Code, denies any pendant or
7 related charges, denies violating any other law or right of Plaintiff or any Class Members, and
8 further denies liability to Plaintiff and Class Members.

9 c. On November 13, 2018, the Parties engaged in private mediation with mediator
10 Lynn Frank, an experienced class action mediator, who assisted the parties in reaching a settlement.
11 The settlement discussions were conducted at arm's-length. The settlement is the result of an
12 informed and detailed analysis of the risks facing both parties in litigating this case, including but
13 not limited to, careful consideration of the legal and factual obstacles to demonstrating Plaintiff's
14 merits at trial, and Defendant's defenses, as well as Defendant's potential exposure and the
15 additional costs of litigating the Action.

16 d. It is the desire of the parties to fully, finally, and forever settle, compromise and
17 discharge any and all known and unknown claims that were raised, or could have been raised
18 during the Class Period based upon the facts alleged in this Action. In order to achieve a full and
19 complete release of Defendant, each Class Member acknowledges that this Settlement Agreement
20 is intended to include in its effect all claims of any nature that were raised in the Action, or could
21 have been raised based upon the facts alleged in this Action on behalf of Class Members, including
22 (1) all statutory and common law causes of action referenced in the Action and corresponding
23 provisions of the applicable Industrial Welfare Commission Wage Orders, or (2) any of the facts,
24 transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act which
25 were or could have been asserted based on the facts and claims pleaded in the Action, or (3) any
26 cause of action or claim under the Business and Professions Code section 17200 *et seq.* arising
27 from items (1) or (2) above, or (4) any cause of action or claim under the Private Attorneys General
28 Act under Labor Code sections 2699 *et seq.* arising from items (1) or (2) above.

1 e. It is the intention of the parties that this Stipulation of Settlement shall constitute a
2 full and complete settlement and release of all claims arising from the allegations of the Action on
3 behalf of Class Members, which release is set forth in Section 5.01 below.

4 f. Class Counsel has conducted a thorough investigation into the facts of this class
5 action case. Prior to settlement, the parties conducted a substantial amount of discovery which
6 involved two Person Most Qualified depositions, the deposition of Plaintiff, approximately fifteen
7 (15) class member depositions, production and review of nearly eighty (80) class member
8 declarations, and production of hundreds of pages of Defendant's business records relating to the
9 claims in this litigation, including all relevant policy and payroll documents. Class Counsel
10 expended a significant amount of time and resources reviewing Defendant's policies and
11 documents, deposing key witnesses, opposing a summary judgment motion and successfully
12 moving for class certification. Plaintiff and Class Counsel also expended significant time on
13 appeal, reversing the trial court's order granting summary judgment as to the class claims and
14 initiating merits-based discovery up to within a few months of trial. The Parties also completed
15 two separate private mediations, the last of which resulted in settlement of all claims as set forth
16 herein. Based on their own independent investigation and evaluation, Class Counsel is of the
17 opinion that the Settlement with Defendant for the consideration and on the terms set forth in this
18 Stipulation of Settlement is fair, reasonable, and adequate and is in the best interest of the
19 Settlement Class in light of all known facts and circumstances, including the risk of significant
20 delay, the risk the Settlement Class will not be certified by the Court, defenses asserted by
21 Defendant, and numerous potential appellate issues.

22 g. The Parties agree to cooperate and take all steps necessary and appropriate to
23 consummate this Settlement through final approval and judgment.

24 h. The maximum total payment under the Settlement, including all attorneys' fees,
25 attorneys' costs, the Enhancement Award to the Named Plaintiff, Settlement Administration costs,
26 employee tax withholdings, payment to the LWDA, and any other payments provided by this
27 Settlement, is Five-Hundred Fifty Thousand Dollars (\$550,000.00). It is understood and agreed
28 that Defendant's maximum total liability under this Settlement, excluding Defendant's share of

1 payroll taxes, shall not exceed Five-Hundred Fifty Thousand Dollars (\$550,000.00), except as
2 provided in section 3.04(f) below.

3 i. It is understood that the Gross Settlement Fund of Five-Hundred Fifty Thousand
4 Dollars (\$550,000.00) is non-reversionary. To the extent that an Individual Settlement Payment
5 check is (1) undeliverable, or (2) uncashed 180 days after the date listed on the check, the Parties
6 shall comply with ¶ 3.06e., below.

7 j. It is understood that by entering into this Agreement, Named Plaintiff agrees that he
8 will not knowingly apply for employment with Defendant, or any parent, subsidiary, or affiliated
9 company of Defendant, at any time in the future, and waives and releases any right to be considered
10 for such employment. In the event that Named Plaintiff does seek to obtain employment with
11 Defendant or any person, subsidiary, or affiliate in any capacity after the date of the execution of
12 this Agreement, it is agreed and understood that this Agreement shall constitute good cause for the
13 refusal by such entities to offer employment to Named Plaintiff. In the event that Named Plaintiff
14 is hired by Defendant or any parent, subsidiary, or affiliate, it is agreed and understood that this
15 Agreement shall constitute good cause for termination.

16 k. It is further understood and agreed that Named Plaintiff and/or Class Counsel shall
17 not issue any press release or have any communications to the media, press, or otherwise
18 concerning this Action, and/or any business practice, procedure, or policy of Defendant. Class
19 Counsel shall not include any reference to or comment upon this Action in any mass mailing,
20 website, advertisement, or other public communication regarding any business practice, procedure,
21 or policy of Defendant.

22 l. The Settlement embodied in this Agreement contemplates the (a) entry of an order
23 approving certification of a Class for settlement purposes only, (b) entry of a Final Order
24 Approving Settlement of Class Action, (c) entry of Disposition enforcing the terms of the
25 Settlement and retaining jurisdiction, (d) discharge of Defendant from liability for any and all
26 Claims relating to this Action, (e) release, as set forth below in Section 5.01 below, by all Class
27 Members, including Named Plaintiff of all claims based on or arising from the alleged wrongdoing
28 set forth in this Action, and (f) a general release by Named Plaintiff of all known and unknown

1 claims against Defendant, its parents, subsidiaries, affiliates, agents, attorneys, officers, directors,
2 successors, and assigns pursuant to California Civil Code section 1542.

3 ARTICLE III.

4 PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF SETTLEMENT

5 Because the Parties have stipulated to the certification of the Class with respect to all causes
6 of action alleged in the Action for settlement purposes only, this Agreement requires preliminary
7 and final approval by the Court. Accordingly, the Parties enter into this Agreement on a
8 conditional basis. This Agreement is contingent upon the approval and certification of a settlement
9 Class by the Court. If the Effective Date does not occur, this Agreement shall be deemed null and
10 void, shall be of no force or effect whatsoever, and shall not be referred to or used for any purpose
11 whatsoever.

12 The Parties and their respective counsel shall take all reasonable steps that may be
13 requested by the Court relating to the approval and implementation of this Agreement and shall
14 otherwise use their respective best efforts to obtain Court approval and implement this Agreement.
15 If the Court does not grant the motion for Preliminary Approval and/or the motion for Final
16 Approval, the Parties agree to meet and confer to address the Court's concerns. If the Parties are
17 unable to agree upon a resolution, the Parties agree to seek the assistance of mediator Lynn Frank
18 to resolve the dispute.

19 The procedure for obtaining Court approval of and implementing this Agreement shall be as
20 follows:

21 **Section 3.01 Motion for Conditional Class Certification and Preliminary Approval**

22 Promptly upon execution of this Agreement, the Parties shall submit this Agreement to the
23 Court and request preliminary approval and determination by the Court as to its fairness, adequacy,
24 and reasonableness. Class Counsel will prepare and file the motion for preliminary approval of
25 settlement. Upon receipt of the motion for preliminary approval and all supporting documents,
26 Defendant shall have a minimum of three (3) business days to review the motion for preliminary
27 approval of settlement before Class Counsel files the motion for preliminary approval with the
28 Court.

1 Pursuant to Labor Code section 2699(1)(2), Plaintiff shall cause this Agreement to be filed
2 with the LWDA before or at the same time this Agreement is submitted to the Court, using the
3 appropriate website and intake forms located at: [https://www.dir.ca.gov/Private-Attorneys-General-](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html)
4 [Act/Private-Attorneys-General-Act.html](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html).

5 In seeking preliminary approval of this Agreement, the Parties shall apply to the Court for
6 the entry of a preliminary order seeking certification this Action under section 382 of the California
7 Code of Civil Procedure and Rules 3.760 *et seq.* of the California Rules of Court as a class action
8 for purposes of settlement only with respect to the Class; approving the proposed Notice as to form
9 and content; directing the mailing of the notice to the Class Members; preliminarily approving the
10 settlement subject only to the objections of Class Members and final review by the Court;
11 preliminarily approving Class Counsel's request for attorneys' fees and costs subject to final
12 review by the Court; preliminarily approving estimated costs of administration payable to the
13 Settlement Administrator; and preliminarily approving Named Plaintiff's Enhancement Award.

14 **Section 3.02 The Settlement Administrator**

15 The Parties have chosen Phoenix Settlement Administrators to administer this Settlement
16 and to act as the Settlement Administrator, including, but not limited to, distributing any notices
17 that must be provided to the Class, performing address updates and verifications as necessary prior
18 to the first mailing, performing a single address follow-up on any returned mail, responding to
19 inquiries about the Notice of Proposed Class Action Settlement, determining the validity of all Opt-
20 Out Requests, calculating the Net Settlement Amount and the Individual Settlement Payments,
21 calculating employer payroll taxes, preparing tax statements and/or reports and remitting the
22 necessary tax payments, providing necessary progress reports, preparing declarations required by
23 the Court, preparing a detailed declaration for Defendant that sets forth each of Class Members
24 who did not submit valid Opt-Out Requests, and, with notice and consent of the Parties, generating
25 and issuing the Individual Settlement Payment checks and distributing them to Verified Settlement
26 Class Members, and issuing the checks to Class Counsel for attorneys' fees and costs, the
27 Enhancement Award check to the Named Plaintiff, the PAGA payment to the LWDA, and any
28 other actions of the Settlement Administrator as set forth in this Agreement, all pursuant to the

1 terms of this Agreement.

2 The Settlement Administrator shall expressly agree to all of the terms and conditions of this
3 Agreement relating to the administration of the Settlement. The Parties each represent that they do
4 not have any financial interest in the Settlement Administrator or otherwise have a relationship
5 with the Settlement Administrator that could create a conflict of interest.

6 The Settlement Administrator shall provide Defense Counsel and Class Counsel a weekly
7 report that certifies: (i) the number of Class Members to whom the Settlement Administrator has
8 mailed the Notice Packet; (ii) the number of Notice Packets that were returned as undeliverable;
9 (iii) the number of Class Members who have submitted valid Opt Out Requests; (iv) the number of
10 Class Members who have submitted challenges or objections to any information contained in the
11 Notice Packet; and (v) the number of Settlement Class Members who have submitted objections to
12 the Settlement. Additionally, the Settlement Administrator will provide to Defense Counsel and
13 Class Counsel any updated reports regarding the administration of the Settlement Agreement.

14 The Settlement Administrator shall maintain throughout the administration of the
15 Settlement all of the Opt-Out Requests that it receives. At the conclusion of the administration of
16 the Settlement, the Settlement Administrator shall retain all Opt-Out Requests for an additional
17 four years. The Settlement Administrator shall provide to Defense Counsel all Opt-Out Requests.

18 All costs of administering the Settlement, including, but not limited to, all costs and fees
19 associated with preparing, issuing, and mailing any and all notices to Class Members and/or
20 Participating Class Members, all costs and fees associated with computing, processing, reviewing,
21 and mailing the Individual Settlement Payments, all costs and fees associated with preparing any
22 tax returns and any other filings required by any governmental taxing authority or agency, all costs
23 and fees associated with preparing any other checks, notices, reports, or filings to be prepared in
24 the course of administering disbursements from the Net Settlement Amount, and any other costs
25 and fees incurred and/or charged by the Settlement Administrator in connection with the carrying
26 out of its duties under this Agreement, shall be paid to the Settlement Administrator from the Gross
27 Settlement Fund. Class Counsel shall not receive any fees or disbursements from the Gross
28 Settlement Fund relating to the administration of disbursements from the Gross Settlement Fund.

1 The Parties agree that the Settlement Administrator's costs will not exceed Thirteen Thousand
2 Dollars (\$13,000.00).

3 The Settlement Administrator shall be required to acknowledge that in its role as Settlement
4 Administrator it owes fiduciary obligations to the Named Plaintiff and Class Members and will be
5 required to attest that it will make payments consistent only with the terms of this Agreement,
6 including the allocation instructions set forth in this Agreement, or as ordered by the Court. In no
7 event shall the Settlement Administrator permit the disbursement of any portion of the Gross
8 Settlement Fund before the Effective Date. The obligations of the Settlement Administrator are
9 released upon all funds being disbursed by the Settlement Administrator pursuant to this
10 Agreement and/or order(s) of the Court.

11 **Section 3.03 Notice to the Settlement Class**

12 Notice of the Settlement shall be provided to the Class Members, in both English and
13 Spanish, and the Class Members may submit objections to the Settlement and/or requests for
14 exclusion from the Class by using the following procedures:

15 Within twenty-one (21) days after the Court preliminarily approves the Settlement, Defense
16 Counsel will provide the Class List to the Settlement Administrator.

17 Within twenty-eight (28) days after the Preliminary Approval Date, the Settlement
18 Administrator shall update the addresses using the United States Postal Service's NCOALink
19 system and mail the Notice Packet by first-class United States mail to each Class Member. Notice
20 Packets returned to the Settlement Administrator as non-delivered during the forty-five (45)
21 calendar day period for Class Members to dispute, request exclusion from the Agreement, or
22 submit an objection, shall be re-sent within three (3) Business Days to the forwarding address, if
23 any, on the returned envelope. If no forwarding address appears on the returned envelope, then the
24 Settlement Administrator shall perform a skip trace using information provided by Defendant and,
25 also within three (3) Business Days after receiving the returned Notice Packets, shall re-mail the
26 Notice Packets to the addresses, if any, discovered through the skip trace. A returned Notice
27 Packet will be forwarded or re-mailed one time per Class Member by the Settlement Administrator.
28 Upon completion of these steps by the Settlement Administrator, the Settlement Administrator

1 shall be deemed to have satisfied its obligation to provide the Class Notice to the affected Class
2 Member. In any event, Class Members who receive Notice Packets upon a re-mailing by the
3 Settlement Administrator will not be permitted more than an additional fifteen (15) calendar days
4 from the initial 45-day deadline to dispute their share of the Net Settlement Amount, request
5 exclusion from the Settlement, or submit an objection, as according to those procedures set forth
6 below in Section 3.04.

7 No later than twenty-one (21) days prior to the Final Approval Hearing, the Settlement
8 Administrator shall provide Class Counsel and Defense Counsel with a declaration attesting to
9 completion of the notice process, including any attempts to obtain valid mailing addresses for Class
10 Members and re-sending any returned Notice Packets, as well as the number of Opt Out Requests
11 that the Settlement Administrator received and the dates that the Settlement Administrator received
12 those Opt Out Requests.

13 Compliance with the procedures described in this Section shall constitute due and sufficient
14 notice to Class Members of this proposed Settlement and the Final Approval Hearing, and shall
15 satisfy the requirements of due process. Nothing else shall be required of, or done by, the Parties,
16 Class Counsel, Defense Counsel, or the Settlement Administrator to provide notice of the proposed
17 Settlement and the Final Approval Hearing.

18 **Section 3.04 Responses to Notice**

19 **a. No Claim Forms.**

20 Settlement Class Members are not required to submit claim forms for their share of the Net
21 Settlement Amount.

22 Any Participating Class Member who disagrees with the data used to calculate his or her
23 claim as reflected on the Notice shall be allowed to indicate and explain such disagreement. Such
24 written dispute must be postmarked to the Settlement Administrator no later than forty-five (45)
25 days after the date the Notice is first mailed (the "Dispute Deadline Date"). The Settlement
26 Administrator shall resolve the disagreement with the Participating Class Member using the
27 employee records provided by Defendant and the Class Member. In the event of a dispute or
28 discrepancy between a Participating Class Member's records and the information reflected in

1 Defendant' records, the records of Defendant' will control. The date of the postmark on the return
2 envelope shall be the exclusive means used to determine whether a Class Member has "timely"
3 disputed the calculation or application of the formula for determining Settlement Awards. The
4 Settlement Administrator's decisions as to dates of employment and claim amounts will be final.

5 **b. Request for Exclusion from Class**

6 By entering into this Agreement, Named Plaintiff agrees that he is not requesting and will
7 not be requesting exclusion from the Class. The Notice shall provide that Class Members who
8 wish to exclude themselves from the Class must submit a written Opt-Out Request to the
9 Settlement Administrator requesting exclusion from the Class on or before forty-five (45) days
10 from the date the Notice is first mailed (the "Objection/Exclusion Deadline Date"). Such Opt-Out
11 Request must contain the name, address, telephone number, and last four digits of the Social
12 Security number of the person requesting exclusion, must be signed by the Class Member
13 requesting exclusion; must be returned by mail to the Settlement Administrator at a specified
14 address; and must be postmarked on or before the Objection/Exclusion Deadline Date, and must
15 contain any other language as set forth in the Notice. The date of the postmark on the return
16 mailing envelope shall be the exclusive means used to determine whether an Opt-Out Request has
17 been timely submitted. Any Class Member who opts out of the Class will not be entitled to any
18 recovery under the Settlement and will not be bound by the Settlement or have any right to object,
19 appeal, or comment on the Settlement. Class Members who fail to submit a valid and timely Opt-
20 Out Request on or before the Objection/Exclusion Deadline Date shall be bound by all terms of the
21 Settlement and any Final Judgment entered in this Class Action if the Settlement is approved by the
22 Court, including a full and final release of all claims set forth in the Action, regardless of whether
23 they have requested exclusion from the Settlement. No later than five (5) days after the exclusion
24 deadline, the Settlement Administrator shall provide Defendant' Counsel with a complete list of all
25 Class Members who have timely and properly requested exclusion from the Class.

26 **c. Objections to Settlement**

27 By entering into this Agreement, Named Plaintiff agrees that he is not objecting to and will
28 not object to the Settlement or this Agreement. The Notice shall provide that Class Members who

1 wish to object to the Settlement must submit a written statement to the Settlement Administrator
2 objecting to the Settlement. Such written statement must be submitted to the Settlement
3 Administrator no later than forty-five (45) days after the date the Notice is first mailed (the
4 "Objection/Exclusion Deadline Date"). All objections must be in writing, must include the Class
5 Member's name, address, telephone number, and last four digits of his or her Social Security
6 number, and must state the basis on which the objections are asserted. The Parties will be
7 permitted to respond in writing to such objections within the time period set by the Court.
8 Objecting Class Members may still be heard at the final approval hearing even if they have not
9 strictly complied with the foregoing objection procedures.

10 **d. No Solicitation of Settlement Objections or Exclusions**

11 The Parties agree to use their best efforts to carry out the terms of this Settlement. At no
12 time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members
13 to submit written objections to the Settlement or Opt-Out Requests, or appeal from the Court's
14 Final Judgment. Further, at no time shall any of the Parties or their counsel discourage any Class
15 Members from participating in the Settlement.

16 **e. Right of Defendant to Void Agreement**

17 The number of Class Members is based on the class list produced by Phoenix Settlement
18 Administrators, comprised of 265 individuals, after the final date of the opt out period on
19 December 7, 2017, notifying Class Members at that time of the existence of the certified class
20 action. The Settlement Class shall consist of these individuals only. If more than ten percent
21 (10%) of the members of the Class submit timely and valid Opt-Out Requests as described in
22 Section 3.04(b) above and thus become Non-Participating Class Members, Defendant will have the
23 right, but not the obligation, to revoke and void this Agreement at its discretion. Defendant must
24 exercise its right to revoke this Agreement within twenty-one (21) days of being informed by the
25 Settlement Administrator that more than ten percent (10%) of the Class Members opted out of this
26 Agreement. If Defendant exercises this right to void the Agreement, then the Parties will have no
27 further obligations under the Agreement, including, without limitation, any obligation by
28 Defendant to pay the Gross Settlement Fund, or any amounts that otherwise would have been owed

1 under this Agreement.

2 **Section 3.05 Final Approval Hearing**

3 A Final Approval Hearing shall be held before the Court on the date set forth in the Order
4 for Preliminary Approval and Notice of Proposed Class Action Settlement, which shall be
5 approximately ninety (90) days after the initial mailing of the Notice of Proposed Class Action
6 Settlement. At the Final Approval Hearing, the Court shall (1) review this Agreement and
7 determine whether the Court should give it final approval, and (2) consider any timely objections
8 made pursuant to Section 3.04(c) above and all responses by the Parties to such objections. At the
9 Final Approval Hearing, the Parties shall ask the Court to give final approval to this Settlement and
10 Agreement and shall submit to the Court a Proposed Final Order Approving Settlement of Class
11 Action, which the Parties shall jointly agree upon in advance and which shall be entered in the
12 Action. Also at the Final Approval Hearing, the Court shall determine the total amount that will be
13 payable to all Class Members if all Class Members are paid the amount to which they are entitled
14 pursuant to the terms of the Settlement.

15 After entry of the Final Judgment, the Court shall have continuing jurisdiction with respect
16 to the interpretation, implementation, and enforcement of the terms of this Agreement and all
17 orders and judgments entered in connection with this Agreement, and the Parties and their counsel
18 submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the
19 settlement embodied in this Agreement, and all orders and judgments entered in connection with
20 this Agreement.

21 **a. Waiver of Right to Appeal**

22 Provided that the Final Order is consistent with the terms and conditions of this Agreement,
23 Named Plaintiff, as well as any Class Members who did not timely submit an objection to the
24 Settlement and appear at the Final Approval Hearing, hereby waive any and all rights to appeal
25 from the Final Order, including all rights to any post-judgment proceeding and appellate
26 proceeding, such as a motion to vacate or set aside judgment, a motion for new trial, and any
27 extraordinary writ, and the Final Order therefore will become final and non-appealable at the time
28 it is entered. This waiver does not include any waiver of the right to oppose any appeal, appellate

1 proceedings, or post-judgment proceedings.

2 **b. Vacating, Reversal, or Material Modification on Appeal or Review**

3 If, after a notice of appeal or a petition for a writ of *certiorari* or any other motion, petition,
4 or application, the reviewing court vacates, reverses, or modifies the Final Order such that there is a
5 material modification to the Settlement and Agreement, and that court's decision is not completely
6 reversed and the Final Order is not fully affirmed on review by a higher court, then Named Plaintiff
7 and Defendant will each have the right to void the Settlement and Agreement, which the Parties
8 must do by giving written notice to the other Parties, the reviewing court, and the Court not later
9 than fourteen (14) days after the reviewing court's decision vacating, reversing, or materially
10 modifying the Final Order becomes final. A vacation, reversal, or modification of the Court's
11 award of an Enhancement or Class Counsel's fees or costs will not constitute a vacation, reversal,
12 or material modification of the Final Order within the meaning of this paragraph, provided that
13 Defendant's obligation to make payments remains limited as set forth in this Agreement.

14 **c. Rendering the Settlement Null and Void**

15 In the event: (i) more than 10% of the Class Members submit valid Opt-Out Requests and
16 Defendant elect to void this Agreement; (ii) the Court does not enter any order specified in this
17 Agreement; (iii) the Court does not finally approve the Settlement as provided in this Agreement;
18 (iv) the Court does not enter a Final Judgment as provided in this Agreement which becomes final
19 as a result of the occurrence of the Effective Date; or (v) the Settlement does not become final for
20 any other reason, this Settlement Agreement shall be null and void and any order or judgment
21 entered by the Court in furtherance of this Settlement shall be treated as void, the Parties and any
22 funds to be awarded under this Settlement shall be returned to their respective positions at the time
23 of the execution of the Memorandum of Settlement, and the Parties shall proceed in all respects as
24 if this Settlement Agreement had not been executed, except that any fees already incurred by the
25 Settlement Administrator shall be split between the Parties.

26 **d. Administration of the Settlement with Appeal Pending**

27 In the event an appeal is filed from the Court's Final Judgment, or any other appellate
28 review is sought prior to the Date of Finality, administration of the Settlement shall be stayed

1 pending final resolution of the appeal or other appellate review.

2 **Section 3.06 Settlement Payment Procedures**

3 **a. Settlement Sum**

4 The Gross Settlement Fund ("Gross Settlement Fund" or "GSF") of Five-Hundred Fifty
5 Thousand Dollars (\$550,000.00) includes the following: (a) the Individual Settlement Payments to
6 the Participating Class Members; (b) the fees award to Class Counsel in an amount not to exceed
7 33.3% of the Gross Settlement Fund (or One-Hundred Eighty-Three Thousand One-Hundred Fifty
8 Dollars (\$183,150.00)); (c) reimbursement of actual documented costs incurred by Class Counsel
9 in an amount not to exceed Thirty-Nine Thousand Dollars (\$39,000.00); (d) the Enhancement
10 Award to Named Plaintiff, in a total amount not to exceed Ten-Thousand Dollars (\$10,000.00);
11 (e) Settlement Administration expenses, not to exceed Thirteen Thousand Dollars (\$13,000.00); (f)
12 payment to the LWDA in the amount of Seven-Thousand Five-Hundred Dollars (\$7,500.00) as the
13 LWDA's share of the settlement of the PAGA penalties. The Gross Settlement Fund has a
14 maximum value of Five-Hundred Fifty Thousand Dollars (\$550,000.00), excluding employer-paid
15 payroll taxes. Under no circumstances will Defendant be required to pay more than Five -Hundred
16 Fifty Thousand Dollars (\$550,000.00) pursuant to the terms set forth in this Agreement, except as
17 provided in Section 3.04(f) above. The parties agree that the GSF shall be paid into a Qualified
18 Settlement Account, established by Phoenix Settlement Administrators as follows: (1) a
19 \$150,000.00 initial payment by Defendant within sixty-five (65) calendars days after the Court
20 enters an order granting final approval of the Settlement Agreement; and (2) the remaining
21 \$400,000.00, made payable in fifty-four (54) monthly installments of \$7,407.41, beginning thirty
22 (30) days after the initial \$150,000.00 payment by Defendant, and paid monthly until the GSF is
23 paid in full. Defendant's payment obligations shall be secured by a Deed of Trust as security for
24 the obligation of Defendant under the terms of the Settlement Agreement, to be secured by the
25 property located at 501 E. Oak Street, Compton, California 90221. Defendant agrees to cooperate
26 by providing financial information and/or a corporate representative declaration as needed in order
27 to support approval of the Settlement. A true and correct copy of the first Deed of Trust is attached
28 hereto as **Exhibit C**. Moreover, the parties agree to disburse two payments to Class Members who

1 do not opt out of the Settlement Class ("Participating Class Members"). The first payment shall
2 occur within thirty (30) days after Defendant deposits the initial \$150,000.00 payment into the
3 Qualified Settlement Account. Named Plaintiff shall also receive his Enhancement award of
4 \$10,000.00 (or the amount approved by the Court) within thirty days after Defendant deposits the
5 initial \$150,000.00 payment into the Qualified Settlement Account. The second payment of the
6 remaining balance owed to Class Members shall be paid within thirty (30) days after a sufficient
7 number of payments have been made to satisfy the Net Settlement Amount.

8 **b. Payment of Attorneys' Fees and Costs**

9 Class Counsel may request, and Defendant will not oppose, an award of attorney's fees and
10 reimbursement of incurred litigation costs ("Fees and Costs Award") of up to thirty-three and one-
11 third percent (33.3%), or One-Hundred Eighty-Three Thousand One-Hundred Fifty Dollars
12 (\$183,150.00) in fees and up to Thirty-Nine Thousand Dollars (\$39,000.00) in documented
13 litigation costs per Class Counsel's billing records. The Fees and Costs Award will cover: all work
14 performed and all fees and costs incurred to date and all work to be performed and all fees and
15 costs to be incurred in connection with the approval by the Court of this Settlement, the
16 administration of the Settlement, and obtaining final approval of this Settlement and entry of
17 judgment. Plaintiff's Counsel shall not be permitted to petition the Court for, or accept, any
18 additional payments for attorneys' fees or costs. Plaintiff's Counsel will be issued an IRS Form
19 1099 by the Settlement Administrator for the Fees and Costs Award. If the Court awards
20 attorneys' fees and costs in an amount less than specified above, the residual shall be distributed to
21 the Participating Class Members on a pro rata basis, using the formula laid out in Section 3.06(e).
22 The Settlement shall not be contingent upon the Court awarding Class Counsel any particular
23 amount for attorneys' fees and costs. Class Counsel and Named Plaintiff shall have no right or
24 ability to nullify the Settlement in the event that the Court awards an amount less than the Fees and
25 Costs Award described in this Agreement. The Fees and Costs Award shall be paid by the
26 Settlement Administrator to Class Counsel no later than twenty-one (21) calendar days after the
27 GSF has been fully funded by Defendant under the terms set forth in section 3.06a., above.

28 The Settlement Administrator's payment of the Fees and Costs Award to Class Counsel

1 shall constitute full satisfaction of the obligation to pay any amounts to any person, attorney, or law
2 firm for attorneys' fees or costs in the Action incurred by any attorney on behalf of the Named
3 Plaintiff, and Class Members, and shall relieve Defendant, the Settlement Administrator, and
4 Defense Counsel of any other claims or liability to any other attorney or law firm for any attorneys'
5 fees or costs to which any of them may claim to be entitled on behalf of the Named Plaintiff and
6 Class Members.

7 **c. Payment of Enhancement Award to Named Plaintiff**

8 Plaintiff's Counsel may request, and Defendant will not oppose, an Enhancement Award to
9 the Named Plaintiff in an amount not to exceed Ten-Thousand Dollars (\$10,000.00) to be paid to
10 the Named Plaintiff for his time and effort spent pursuing the Action. Defendant agrees not to
11 oppose such an application, so long as it is consistent with the provisions of this Agreement. The
12 Settlement Administrator shall deliver any Enhancement Award to the Named Plaintiff within
13 thirty (30) days after Defendant deposits the initial \$150,000.00 payment into the Qualified
14 Settlement Amount. The Named Plaintiff will also be entitled to receive an Individual Settlement
15 Payment pursuant to this Agreement in addition to this Enhancement Award. If the Court awards
16 an Enhancement Award in an amount less than specified above, the residual shall be distributed to
17 the Participating Class Members on a pro rata basis using the formula laid out in Section 3.06(e).
18 The Settlement shall not be contingent upon the Court awarding Named Plaintiff any particular
19 amount for the enhancement award or service award. Class Counsel and Named Plaintiff shall
20 have no right or ability to nullify the Settlement in the event that the Court awards an amount less
21 than the Enhancement Award described in this Agreement.

22 Because it is the intent of the Parties that the Enhancement Award represents payment to
23 the Named Plaintiff for his services to the Class Members, and not wages, the Settlement
24 Administrator will not withhold any taxes from the Enhancement Award. The Enhancement
25 Award will be reported on a Form 1099 to Named Plaintiff. Although it is the contemplation of the
26 Parties that the Enhancement Award does not represent wages, the Internal Revenue Service, the
27 California Franchise Tax Board, or some other taxing authority may take the position that some or
28 all of the Enhancement Awards constitute compensation for income tax and withholding purposes.

1 Named Plaintiff agrees to assume the responsibility of remitting to the Internal Revenue Service,
2 the California Franchise Tax Board, and any other relevant taxing authority the amounts required
3 by law, if any, to be withheld by Defendant from the Enhancement Awards paid under this
4 Agreement. In addition, Named Plaintiff shall hold Defendant harmless and indemnify Defendant
5 for all taxes, interest, penalties, and costs, excluding attorneys' fees, incurred by Defendant by
6 reason of any claims relating to the non-withholding of taxes from the Enhancement Award. Class
7 Counsel will issue a Form 1099 to the Named Plaintiff with regard to the Enhancement Award
8 payment. Class Counsel will provide a copy of these Form 1099s issued to counsel for Defendant.

9 **d. Payment of Settlement Administration Costs**

10 The Settlement Administration Costs shall be paid out of the Gross Settlement Fund
11 ("GSF") and shall not constitute payment to any Participating Class Member(s). The amount of the
12 Settlement Administration Costs shall be disclosed to the Court, Class Counsel, and Defense
13 Counsel prior to the Final Approval Hearing. The Settlement Administrator Settlement
14 Administration Costs shall be paid out of the GSF no later than twenty-one (21) calendar days after
15 the GSF has been fully funded by Defendant under the terms set forth in section 3.06a., above. The
16 Parties agree that the Administrator Costs not exceed Thirteen Thousand Dollars (\$13,000.00),
17 subject to Section 3.05(c) above. If the Settlement Administrator's costs do not amount to the
18 Thirteen Thousand Dollars (\$13,000.00) maximum amount allocated to those costs, any residual
19 amount shall be distributed to the Participating Class Members using the formula laid out in
20 Section 3.06(e).

21 **e. Payment of Individual Settlement Payments to Verified Settlement Class**
22 **Members**

23 The Parties agree that the Net Settlement Amount shall be used to fund Individual
24 Settlement Payments. The Parties agree that the Net Settlement Amount shall be divided between
25 all Verified Settlement Class Members based on the number of Workweeks for which they were
26 employed by Defendant and assigned to work as a non-exempt employee in California during the
27 Class Period.

28 The maximum amount that each Verified Settlement Class Member is entitled to receive is

determined by multiplying Net Settlement Amount by a ratio that is determined by dividing a Verified Settlement Class Member's total Workweeks worked during the Class Period in California by the total number of Workweeks worked during the Class Period by all Class Members as expressed in the following formula:

$$\begin{array}{rcccl} \text{Individual} & & \text{Net} & & \text{Verified Settlement Class Member's} \\ \text{Settlement} & = & \text{Settlement} & \times & \text{Total Number of Workweeks} \\ \text{Payment} & & \text{Amount} & & \text{Total Number of Workweeks of} \\ & & & & \text{Settlement Class} \end{array}$$

If a Participating Class Member worked any day during a Workweek, it will be counted as a Workweek for purposes of calculating the Individual Settlement Payment.

It is the intent of the Parties that the Net Settlement Amount shall be sufficient to pay all valid claims of Participating Class Members in accordance with the formula set forth above. Accordingly, if for any reason the total value of all claims made by Participating Class Members exceeds the Net Settlement Amount, then the Individual Settlement Payments will be adjusted on a pro-rata basis so that the total payout to Participating Class Members does not exceed the Net Settlement Amount. Furthermore, should any Class Members submit timely and valid opt out request, that money shall be redistributed to the Participating Class Members on a pro rata basis according to the formula in this Paragraph.

Each Individual Settlement Award will be allocated as twenty percent (20%) to wages, forty percent (40%) to penalties, and forty percent (40%) to interest. The Settlement Administrator shall calculate, withhold, and remit to applicable governmental agencies sufficient amounts as may be owed for Verified Settlement Class Members' taxes due on the portion of the Settlement Awards allocated to wages that will be reported on an IRS Form W2 basis. These amounts shall be paid from the Net Settlement Amount.

The Settlement Administrator shall also report those portions of the individual Settlement Awards allocated to penalties on an IRS Form 1099 basis.

As set out fully in Section 3.06a., above, the Parties agree that the GSF shall be paid into a Qualified Settlement Account, established by Phoenix Settlement Administrators as follows: (1) a \$150,000.00 initial payment by Defendant within sixty-five (65) calendars days after the Court

1 enters an order granting final approval of the Settlement Agreement; and (2) the remaining
2 \$400,000.00, made payable in fifty-four (54) monthly installments of \$7,407.41, paid monthly until
3 the GSF is paid in full. The Parties agree to disburse two payments to Participating Class
4 Members, the first of which shall occur within thirty (30) days after Defendant deposits the initial
5 \$150,000.00 payment into the Qualified Settlement Account. Named Plaintiff shall also receive his
6 Enhancement award of \$10,000.00 (or the amount approved by the Court) within thirty days after
7 Defendant deposits the initial \$150,000.00 payment into the Qualified Settlement Account, thus the
8 initial payment to Participating Class Members shall be based on the amount after first deducting
9 the Named Plaintiff's Enhancement Award from Defendant's initial \$150,000.00 payment to the
10 Qualified Settlement Account. The second payment of the remaining balance owed to Participating
11 Class Members shall be paid within thirty (30) days after a sufficient number of payments have
12 been made into the Qualified Settlement Account to satisfy the Net Settlement Amount.

13 To the extent that an Individual Settlement Payment check is (1) undeliverable, or (2)
14 uncashed 180 days after the date listed on the check, the Settlement Administrator shall track all
15 such unclaimed funds in the name of the Participating Class Member and then send such funds to
16 the State Controller's Office Unclaimed Property Fund in that Participating Class Member's name.

17 **f. Payment to the LWDA**

18 The Settlement Administrator, within twenty-one (21) calendar days after the GSF has been
19 fully funded by Defendant under the terms set forth in section 3.06a., above, shall deliver to the
20 LWDA a payment in the amount of Seven-Thousand Five-Hundred Dollars (\$7,500.00) as the
21 LWDA's share of the settlement of the PAGA penalties, which the Parties believe in good faith is a
22 fair and reasonable apportionment.

23 **g. No Additional Contribution by Defendant**

24 Defendant's monetary obligation under this Settlement and Agreement is limited to the
25 Gross Settlement Fund, excluding employer-paid payroll taxes. Defendant shall not be called upon
26 or required to contribute additional monies above the Gross Settlement Fund under any
27 circumstances whatsoever, except as provided in Section 3.04(f). All costs, fees, and expenses
28 arising out of or in connection with the performance of this Agreement shall be paid from the Gross

1 Settlement Fund.

2 If, for whatever reason and however it may occur, this Agreement is canceled, rescinded,
3 terminated, voided, or nullified or the Settlement of the Action is barred by operation of law, or
4 invalidated, or ordered not to be carried out by a court of competent jurisdiction, Defendant shall
5 cease to have any obligation to pay any portion of the Gross Settlement Fund to anyone under the
6 terms of this Agreement, and all previous disbursements from the Gross Settlement Fund will
7 immediately be paid back to Defendant by the person or entity who received such disbursement.
8 Any unpaid costs already incurred by the Settlement Administrator shall be split by the Parties.

9 **h. No Claims Resulting from Payments**

10 No person shall have any claim of any kind whatsoever against any of the Parties, Defense
11 Counsel, Class Counsel, any Class Member, or the Settlement Administrator, based on the
12 distribution of Individual Settlement Payments made in accordance with this Agreement.

13 **i. No Effect on Employee Benefit Plans**

14 The payment to any Class Member as provided for in this Agreement (including, without
15 limitation, any Individual Settlement Payment and any Enhancement Awards paid to Named
16 Plaintiff) is not and shall not be deemed to constitute an addition to, a modification of, or a change
17 in any previously credited hours of service, compensation and/or wages under any collective
18 bargaining agreement, employee benefit plan, employment policy, or stock option plan of or
19 sponsored by Defendant or any of their present or former parent corporations or affiliates or any
20 jointly trusted benefit plans. Any such payment to any Class Member shall not form the basis for
21 additional contributions to, additional benefits under, or any other additional entitlements under any
22 collective bargaining agreement, employee benefit plan, employment policy, or stock option plan
23 of or sponsored by Defendant or any of their present or former parent corporations or affiliates or
24 any jointly trusted benefit plans. Defendant and each of their present and former parent
25 corporations and affiliates retain the right to modify and/or amend the language of their employee
26 benefit plans, employment policies, and stock option plans, and to seek to have modified and/or
27 amended the language of any collective bargaining agreement, jointly trusted benefit plans, to
28 make clear that any amounts paid as a result of this Agreement are not compensation or wages, or

1 payments for “hours worked,” as defined by the applicable agreement(s), plans and policies, and
2 that no additional contributions or benefits are required by reason of the Settlement and this
3 Agreement.

4 **j. Notice of the Order and Judgment Granting Final Approval**

5 Notice of the final Order and Judgment granting final approval of this Settlement will be
6 mailed by the Settlement Administrator with the first round of settlement checks to Participating
7 Class Members as set out in Sections 3.06a. and 3.06e., above.

8 **ARTICLE IV**

9 **LIMITATIONS ON USE OF THIS SETTLEMENT**

10 **Section 4.01: No Admission**

11 Defendant vigorously disputes the allegations in the Action. This Agreement is entered into
12 solely for the purpose of compromising claims that are highly disputed by the Parties. Nothing in
13 this Agreement is intended to be or will be construed as an admission of liability or wrongdoing by
14 Defendant.

15 **Section 4.02: Non-Evidentiary Use**

16 Whether or not the Effective Date occurs, neither this Agreement nor any of its terms will
17 be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for
18 any purpose adverse to Defendant or any other of the Released Parties, including, but not limited
19 to, evidence of a presumption, concession, indication, or admission by any of the Defendant or
20 Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or
21 (b) disclosed, referred to, or offered in evidence against any of the Defendant or Released Parties in
22 any further proceeding in the Action, or any other civil, criminal, or administrative action or
23 proceeding except for the purposes of effectuating the Settlement pursuant to this Agreement or for
24 Defendant to establish that a Class Member has resolved any of his/her claims released through this
25 Agreement.

26 **Section 4.03: Nullification**

27 The Parties have agreed to the certification of the Class encompassing all causes of action
28 pled in the Action for the sole purpose of effectuating this Agreement. If (a) the Court should for

1 any reason fail to certify the Class for settlement, or (b) the Court should for any reason fail to
2 approve this Settlement in the form agreed to by the Parties, or (c) the Court should for any reason
3 fail to enter the Final Order, or (d) the Final Order is reversed, modified, or declared or rendered
4 void, or (e) the Court should for any reason fail to dispose of the Action in its entirety, then (i) this
5 Agreement shall be considered null and void; (ii) neither this Agreement nor any of the related
6 negotiations or proceedings shall be of any force or effect; (iii) all Parties to this Agreement shall
7 stand in the same position, without prejudice, as they were at the time immediately prior to the
8 execution of the Memorandum of Settlement and if the Agreement had been neither entered into
9 nor filed with the Court; and (iv) the fact that the Parties were willing to stipulate to class
10 certification of all causes of action pled in the Action as part of the Settlement for settlement
11 purposes only will not have any bearing whatsoever on the remainder of the litigation of the
12 Action.

13 Invalidation of any material portion of this Agreement shall invalidate this Agreement in its
14 entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall
15 remain in full force and effect.

16 In the event of a timely appeal from the Final Order, the Final Order shall be stayed and the
17 Gross Settlement Fund shall not be distributed pending the completion and results of the appeal.

18 ARTICLE V

19 RELEASES

20 Section 5.01: Release of Claims As To All Class Members.

21 Any Verified Settlement Class Member, including Named Plaintiff, who does not timely
22 opt out of the settlement as described in Section 3.04(b) shall be bound by this Agreement and shall
23 be deemed to have fully released all claims that were set forth, or could have been set forth based
24 on the facts alleged, in the Complaint. If a Non-Participating Class Member receives an Individual
25 Settlement Payment check notwithstanding his or her submission of an Opt-Out Request, such
26 person shall be deemed a Participating Class Members and shall be bound by the terms of this
27 Agreement if such person cashes the Individual Settlement Payment check.

28 On the date on which the settlement is fully funded, and except as to such rights or claims

1 as may be created by this Agreement, the Participating Class Members, comprised of each member
2 of the Class who has not submitted a valid Opt Out Request, fully releases and discharges
3 Defendant, its past, present, and future parent companies, subsidiaries, divisions, related or
4 affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers,
5 investors, successors and assigns, owners, officials, branches, partners, units, assigns, principals,
6 heirs, representatives, accountants, auditors, consultants, reinsurers, predecessors in interest,
7 beneficiaries, subrogees, executors, members, privies, administrators, fiduciaries, and trustees and
8 any individual or entity which could be jointly liable with Defendant ("Released Parties"), from
9 any and all claims, charges, complaints, obligations, promises, agreements, suits, rights, costs,
10 losses, liens, penalties, fines, wages, liquidated damages, restitutionary amounts, interest, punitive
11 damages, controversies, liabilities, debts, demands, obligations, money owed, interest, guarantees,
12 costs, expenses (including, without limitation, back wages, penalties, liquidated damages, and
13 attorneys' fees and costs actually incurred), attorneys' fees and costs, damages, actions or causes of
14 action of any nature for, known or unknown, suspected or unsuspected, which were raised, or could
15 have been raised based upon the facts alleged, in the Action during the Class Period, including
16 claims under California Labor Code §§ 201, 202, 203, 204, 226, 510, 2698, 2699, applicable IWC
17 Wage Order provisions, and claims under Section 17200 of the California Business and Professions
18 Code, failure to pay appropriate overtime wages, failure to pay all wages earned each pay period
19 (including earned and unused vacation wages), failure to provide proper meal periods, failure to
20 pay missed meal period premiums, failure to provide paid rest periods and pay missed rest break
21 premiums, unfair/unlawful/fraudulent business practices, failure to pay wages upon cessation of
22 employment, failure to provide accurate itemized wage statements and maintain accurate records,
23 any claims under California Labor Code § 2699 *et seq.* (PAGA) based on the facts alleged in the
24 Action, and all other claims and allegations made in the Action, August 16, 2009 through the end
25 of the Class Period ("Released Claims"). Excluded from the Released Claims are unrelated claims,
26 including but not limited to, claims that are outside the Class Period, unemployment, Workers'
27 Compensation, disability, discrimination, sexual harassment, claims brought pursuant to the
28 California Fair Employment and Housing Act (California Government Code 12940 *et seq.*) and

1 retaliation. The Class Members may later discover facts in addition to or different from those they
2 now know or believe to be true with respect to the subject matter of this Release, but the Class
3 Members upon the Effective Date, shall be deemed to have, and by operation of the Final Order
4 shall have, fully, finally, and forever settled and released any all of the claims released pursuant to
5 this Release.

6 It is agreed that because the Class Members are so numerous, it is impossible or impractical
7 to have each Class Member execute this Agreement. The Notice of Proposed Class Action
8 Settlement will advise all Class Members of the binding nature of the releases. Excepting only the
9 Class Members who timely submit a valid Opt-Out Request, the Notice of Proposed Class Action
10 Settlement shall have the same force and effect as if this Settlement and Agreement were executed
11 by each Class Member with regard to the claims that he or she is releasing pursuant to the
12 Settlement and Agreement.

13 **Section 5.02: General Release by Named Plaintiff.**

14 Named Plaintiff agrees to release all claims known or unknown, accrued or unaccrued, he
15 has or may have against Defendant, including execution of a California Civil Code section 1542
16 release and waiver.

17 In consideration of the monetary sum provided to him by Defendant, Named Plaintiff
18 hereby fully releases and forever discharges the Released Parties from any and all actions, causes
19 of action, claims, charges, complaints, liabilities, obligations, promises, agreements, controversies,
20 damages, actions, suits, rights, demands, liens, costs, losses, debts, penalties, fines, wages,
21 liquidated damages, restitutionary amounts, attorneys' fees and costs, interest, punitive damages
22 and expenses (including, without limitation, back wages, penalties, liquidated damages, and
23 attorneys' fees and costs actually incurred) or liabilities of any kind which have been or could have
24 been asserted against the Released Parties arising out of or relating to Named Plaintiff's
25 employment with Defendant, and/or any other occurrence taking place on or before the effective
26 date of this Agreement, known or unknown, suspected or unsuspected, including but not limited to
27 claims arising out of, based upon, or relating to Named Plaintiff's employment with the Defendant,
28 or the remuneration for such employment, and the matters referred to herein, whether or not known

1 or suspected to exist, and whether or not specifically or particularly described herein. Without
2 limiting the generality of the foregoing, Named Plaintiff expressly releases all claims or rights that
3 exist at the time of the execution of this Agreement arising out of alleged violations of any
4 contracts, express or implied (including but not limited to any contract of employment); any
5 contract or covenant of good faith or fair dealing (express or implied); any tort, including, without
6 limitation, negligence, fraud, misrepresentation under California Labor Code § 970, negligent
7 infliction of emotional distress, intentional infliction of emotional distress, and defamation; any
8 “retaliation” claims; any claims relating to any breach of public policy; any legal restrictions on
9 Defendant’ right to discharge employees or refuse to hire applicants; and any federal, state, or other
10 governmental statute, regulation, order or ordinance, including, without limitation: (1) Title VII of
11 the Civil Rights Act of 1964 (race, color, religion, sex, and national origin discrimination or
12 harassment, including retaliation for reporting discrimination or harassment); (2) 42 U.S.C. § 1981
13 (discrimination); (3) sections 503 and 504 of the Rehabilitation Act of 1973 (handicap
14 discrimination); (4) Equal Pay Act, 29 U.S.C. § 209(4)(1) (equal pay); (5) Americans with
15 Disabilities Act, 42 U.S.C. § 12100 *et seq.* (disability discrimination); (6) Family and Medical
16 Leave Act, 29 U.S.C. § 2601 *et seq.* (family/medical leave); (7) California Fair Employment and
17 Housing Act, Cal. Gov’t Code § 12900 *et seq.* (discrimination or harassment in employment and/or
18 housing, including discrimination or harassment based on race, religious creed, color, national
19 origin, ancestry, disability, marital status, sex (including pregnancy), sexual orientation, or age,
20 including, without limitation, retaliation for reporting discrimination or harassment); (8) California
21 Family Rights Act, Cal. Gov’t Code § 12945.1 *et seq.* (family/medical leave); (9) California Labor
22 Code, including but not limited to California Labor Code § 2698 *et seq.* (PAGA), or any Industrial
23 Welfare Commission Wage Order; (10) the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*; (11)
24 Executive Order 11246 (race, color, religion, sex, and national origin discrimination or
25 harassment); (12) Executive Order 11141 (age discrimination); and (13) Employee Retirement
26 Income Security Act, 29 U.S.C. § 1000 *et seq.* (employee benefits).

27 **Section 5.03: Named Plaintiff’s Release of Unknown Claims**

28 Named Plaintiff expressly waives any right or claim of right to assert hereafter that any

1 claim, demand, obligation, and/or cause of action, existing at the time of the execution of this
2 Agreement, has, through ignorance, oversight, or error, been omitted from the terms of this
3 Agreement. Named Plaintiff agrees there is a risk that each and every injury he may have suffered
4 by reason of the Released Parties' relationship with him might not now be known, and there is
5 further risk that said injuries, whether known or unknown at the date of this Agreement, might
6 possibly become progressively worse, and that as a result thereof further damages may be sustained
7 by him. Nevertheless, Named Plaintiff desires to forever and fully release and discharge the
8 Released Parties, and each of them, and understands that by the execution of this Agreement no
9 further claims for any such injuries that existed at the time of the execution of this Agreement may
10 ever be asserted by him. Named Plaintiff expressly waives and relinquishes all rights and benefits
11 afforded by section 1542 of the Civil Code of the State of California and does so understanding and
12 acknowledging the significance of such specific waiver of section 1542. Specifically, Named
13 Plaintiff waives his rights under Section 1542 of the Civil Code, which states:

14 **A general release does not extend to claims that the creditor or**
15 **releasing party does not know or suspect to exist in his or her**
16 **favor at the time of executing the release and that, if known by**
17 **him or her would have materially affected his or her settlement**
18 **with the debtor or released party.**

19 Named Plaintiff makes this waiver with full knowledge of his rights and with the specific
20 intent to release all known and unknown claims arising on or before the effective date of this
21 Agreement, and therefore specifically waive the provisions of any statute in any state of the United
22 States which prevents release of unknown claims. Thus, subject to and in accordance with this
23 Agreement, even if Named Plaintiff may hereafter discover facts in addition to or different from
24 those he now knows or believes to be true, Named Plaintiff, upon the Effective Date, shall be
25 deemed to have fully, finally, and forever settled and released any and all claims against the
26 Released Parties that were alleged or could have been alleged in the Action, as well as any other
27 claims, whether known or unknown, suspected or unsuspected, contingent or non-contingent, that
28 now exist, upon any theory of law or equity, including, without limitation, conduct that is

1 negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard
2 to the subsequent discovery or existence of such different or additional facts.

3 **Section 5.04: No Future Employment For Named Plaintiff**

4 Named Plaintiff agrees that he will not apply for future employment with Defendant or their
5 subsidiaries, divisions, affiliates, successors, parent, or sibling entities. Moreover, should Named
6 Plaintiff apply for employment with Defendant or their subsidiaries, divisions, affiliates,
7 successors, parent, or sibling entities, Named Plaintiff hereby agrees that Defendant, their
8 subsidiaries, divisions, affiliates, successors, parent, or sibling entities shall have the absolute right
9 to refuse Named Plaintiff employment for any reason or for no reason, or to terminate him should
10 Named Plaintiff mistakenly be hired.

11 **Section 5.05: Inapplicability of California Labor Code Section 206.5**

12 The Verified Settlement Class Members, including, without limitation, Named Plaintiff,
13 shall be deemed to have acknowledged and agreed that their claims for wages and/or penalties
14 and/or any other recovery solely in connection with this Action are disputed, and that the payments
15 to them set forth in this Agreement constitute payment of all sums allegedly due to them solely
16 from the claims alleged in the Action. The Verified Settlement Class Members, including, without
17 limitation, Named Plaintiff, shall be deemed to have acknowledged and agreed that California
18 Labor Code section 206.5 does not apply to any such payments. That section provides in pertinent
19 part as follows: “**No employer shall require the execution of any release of any claim or right**
20 **on account of wages due, or to become due, or made as an advance on wages to be earned,**
21 **unless payment of such wages has been made.”** Each Verified Settlement Class Member shall be
22 deemed to have made the foregoing Release as if by manually signing it. This section in no way
23 limits the releases set forth above in Sections 5.01 through 5.03, inclusive.

24 **Section 5.06: No Additional Attorneys’ Fees or Costs**

25 Except for the attorneys’ fees and costs set forth in this Agreement, the Parties agree to bear
26 their own attorneys’ fees and costs related to this Action.

ARTICLE VI
MISCELLANEOUS

Section 6.01: Amendments or Modification

The terms and provisions of this Agreement may be amended or modified only by an express written agreement that is signed by all the Parties (or their successors-in-interest) and their counsel. In the event that the Court requires that certain changes be made to this Agreement or to the Class Notice as a condition of preliminary approval, then a signed stipulation by counsel for the Parties shall be sufficient to Amend or Modify this Agreement or the Class Notice without additional signatures from the Named Plaintiff or Defendant.

Section 6.02: Representations and Warranties

Class Counsel and Named Plaintiff jointly and severally represent and warrant to Defendant that they are not aware of any attorneys beyond those named as Class Counsel who have claims for fees or costs arising out of the Action or the Settlement contemplated hereby.

This Agreement is contingent upon Defendant paying a maximum of Five-Hundred Fifty Thousand Dollars (\$550,000.00) for a complete resolution of the claims at issue in the Action, including, without limitation, attorneys' fees and costs, except as provided in Section 3.04(f), above.

Class Counsel and Named Plaintiff agree to return all hardcopies of any and all documents, records, evidence, and other information of any kind produced or provided by Defendant in this Action to Defense Counsel (or confirm that they have been destroyed upon written request for such confirmation) except any documents filed with the Court in this matter within ten (10) days after entry of the Final Order Approving Settlement of Action or any Final Order approving the settlement in this case, however titled. Class Counsel and Named Plaintiff further agree to destroy, delete and purge any and all electronic copies, records, or softcopies and reproductions of any and all documents, records, evidence, and other information of any kind produced or provided by Defendant in this Action except any documents filed with the Court in this matter. Class Counsel also agrees to provide written confirmation of compliance with the above requirements to return and/or destroy any materials produced or provided by Defendant within ten (10) days after entry of

1 the Final Order Approving Settlement of Action or any Final Order approving the settlement in this
2 case, however titled.

3 **Section 6.03: Assignment**

4 None of the rights, commitments, or obligations recognized under this Agreement may be
5 assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express
6 written consent of each other Party and its or their respective counsel. The representations,
7 warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the
8 Parties, the Class Members, and the Released Parties, and shall not be construed to confer any right
9 or to avail any remedy to any other person or entity.

10 **Section 6.04: Entire Agreement**

11 This Agreement, including, without limitation, the Exhibits referred to herein, which form
12 an integral part hereof, contains the entire understanding of the Parties hereto with respect to the
13 subject matter contained herein. In case of any conflict between text contained in Articles I
14 through VI of this Agreement and text contained in the Exhibits to this Agreement, the former (*i.e.*,
15 Articles I through VI) shall be controlling. There are no restrictions, promises, representations,
16 warranties, covenants, or undertakings governing the subject matter of this Agreement other than
17 those expressly set forth or referred to herein. Upon its full execution, this Agreement supersedes
18 all prior agreements and understandings among the Parties hereto with respect to the settlement of
19 the Action, including, without limitation, correspondence between Class Counsel and Defense
20 Counsel, the Parties' Memorandum of Settlement, and drafts of prior agreements or proposals.

21 **Section 6.05: Waiver of Compliance**

22 Any failure of any Party, Defense Counsel, or Class Counsel hereto to comply with any
23 obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the
24 extent permitted under applicable law, by the Party or Parties and their respective counsel hereto
25 entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to
26 insist upon strict compliance with any representation, warranty, covenant, agreement, or condition
27 shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

1 **Section 6.06: Counterparts and Fax/PDF Signatures**

2 This Agreement, and any amendments hereto, may be executed in any number of
3 counterparts and any Party and/or their respective counsel hereto may execute any such
4 counterpart, each of which when executed and delivered shall be deemed to be an original and all
5 of which counterparts taken together shall constitute one instrument. A fax or PDF signature on
6 this Agreement shall be as valid as an original signature.

7 **Section 6.07: Attorneys' Fees and Costs**

8 No Class Member or Class Counsel or any other attorney acting for any Class Member may
9 recover or seek to recover any amounts for fees, costs, or disbursements from the Defendant and/or
10 the Released Parties or the Gross Settlement Fund except as expressly provided herein.

11 **Section 6.08: Meet and Confer Regarding Disputes**

12 If any dispute arises among the Parties or their respective counsel regarding the
13 implementation or interpretation of this Agreement, Class Counsel, and Defendant' counsel shall
14 meet and confer in an attempt to resolve such dispute prior to submitting it to the mediator or the
15 Court.

16 **Section 6.09: Administration Costs.**

17 The Parties agree to cooperate in the Settlement administration process and to make all
18 reasonable efforts to control and minimize the costs and expenses incurred in administration of the
19 Settlement.

20 **Section 6.10: Circular 230 Disclaimer.**

21 EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE
22 "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT OTHER THAN
23 THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND
24 AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN
25 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR
26 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY
27 SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
28 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES

1 TREASURY DEPARTMENT CIRCULAR 230 (31 C.F.R. PART 10, AS AMENDED); (2) THE
2 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS
3 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
4 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
5 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY,
6 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED
7 TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR
8 ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE
9 IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER
10 TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE
11 CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES
12 (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
13 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
14 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION
15 CONTEMPLATED BY THIS AGREEMENT.

16 **Section 6.11: Privacy of Documents and Information.**

17 The Named Plaintiff and Class Counsel agree that none of the documents and information
18 provided to them by Defendant shall be used for any purpose other than prosecution of this Action.

19 **Section 6.12: No Admission by the Parties.**

20 Defendant and the Released Parties deny any and all claims alleged in this Action and deny
21 all wrongdoing whatsoever. The Parties have stipulated to class certification as set forth herein for
22 settlement purposes only. This Agreement is not a concession or admission, and shall not be used
23 against Defendant or any of the Released Parties as an admission or indication with respect to any
24 claim of any fault, concession, or omission by Defendant or any of the Released Parties. Whether
25 the Settlement is finally approved, the Settlement, any document, statement, proceeding or conduct
26 related to this Agreement, and/or any reports or accounts of this Agreement, shall not in any event
27 be:

28 A. construed as, offered, or admitted in evidence as, received as, or deemed to be

1 evidence for any purpose adverse to the Released Parties, including, but not limited to, evidence of
2 a presumption, concession, indication, or admission by any of the Released Parties of any liability,
3 fault, wrongdoing, omission, concession, or damage; or,

4 B. disclosed, referred to, or offered or received in evidence against any of the Released
5 Parties, in any further proceeding in the Action, or any other civil, criminal, or administrative
6 action or proceeding except for purposes of settling this Action pursuant to this Agreement.

7 **Section 6.13: Exhibits and Headings.**

8 The terms of this Agreement include the terms set forth in any attached Exhibits, which are
9 incorporated by this reference as though fully set forth in this Agreement. Any Exhibits to this
10 Agreement are an integral part of the Settlement. The descriptive headings of any paragraphs or
11 sections of this Agreement are inserted for convenience of reference only and do not constitute a
12 part of this Agreement.

13 **Section 6.14: Interim Stay of Proceedings.**

14 The Parties agree to hold all proceedings in the Action, except such proceedings necessary
15 to implement and complete the Settlement, in abeyance pending the Settlement Hearing to be
16 conducted by the Court.

17 **Section 6.15: Amendment or Modification.**

18 Except as otherwise stated herein, this Agreement may be amended or modified only by a
19 written instrument signed by the Parties and counsel for all Parties or their successors-in-interest.

20 **Section 6.16: Entire Agreement.**

21 Upon its full execution, this Agreement and any attached Exhibits constitute the entire
22 agreement among these Parties, and no oral or written representations, warranties or inducements
23 have been made to any Party concerning this Agreement or its Exhibits other than the
24 representations, warranties, and covenants contained and memorialized in such documents.

25 **Section 6.17: Authorization to Enter Into Settlement Agreement.**

26 Counsel for all Parties warrant and represent they are expressly authorized by the Parties
27 whom they represent to negotiate this Agreement and to take all appropriate action required or
28 permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to

1 execute any other documents required to effectuate the terms of this Agreement. The Parties and
2 their counsel will cooperate with each other and use their best efforts to effect the implementation
3 of the Settlement. In the event the Parties are unable to reach agreement on the form or content of
4 any document needed to implement the Settlement, or on any supplemental provisions that may
5 become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of
6 the Court to resolve such disagreement. The person signing this Agreement on behalf of Defendant
7 represents and warrants that he/she is authorized to sign this Agreement on behalf of Defendant.

8 **Section 6.18: Binding on Successors and Assigns.**

9 This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns
10 of the Parties, as previously defined.

11 **Section 6.19: California Law Governs.**

12 All terms of this Agreement and the Exhibits shall be governed by and interpreted
13 according to the laws of the State of California and the procedures of the Court.

14 **Section 6.20: This Settlement is Fair, Adequate, and Reasonable.**

15 The Parties believe this Settlement is a fair, adequate, and reasonable settlement of this
16 Action and have arrived at this Settlement in arm's length negotiations, taking into account all
17 relevant factors, present and potential. This Settlement was reached after extensive negotiations,
18 including an arms'-length negotiation at mediation before respected mediators Steven Pearl, Esq.
19 and Lynn Frank, Esq.

20 **Section 6.21: Cooperation and Drafting.**

21 Each of the parties has cooperated in the drafting and preparation of this Agreement.
22 Hence, in any construction made to this Agreement, the same shall not be construed against any of
23 the Parties.

24 **Section 6.22: Invalidity of Any Provision.**

25 Before declaring any provision of this Agreement invalid, the Court shall first attempt to
26 construe the provisions valid to the fullest extent possible consistent with applicable precedents so
27 as to define all provisions of this Agreement valid and enforceable. The provisions of this
28 Agreement are severable. To the extent any provision is deemed unlawful, to the extent possible,

1 such provision shall be severed and the remainder of the Agreement shall remain valid and
2 enforceable.

3 **Section 6.23: Defense.**

4 To the extent permitted by law, this Agreement may be pleaded as a full and complete
5 defense to, and may be used as the basis for an injunction against, any action, suit, or other
6 proceedings that may be instituted, prosecuted, or attempted with respect to the Released Claims in
7 breach of or contrary to this Settlement.

8 **Section 6.24: Named Plaintiff's Waiver of Right to be Excluded.**

9 The Named Plaintiff agrees to sign this Agreement and, by signing this Agreement, he
10 agrees: (1) to be bound by its terms, (2) not to request to be excluded from the Class, and (3)
11 represents that he has no objection to any of the terms of this Agreement. Non-compliance by the
12 Named Plaintiff with this paragraph shall be void and of no force or effect. Any such request for
13 exclusion or objection shall therefore be void and of no force or effect.

14 **Section 6.25: Public Statements.**

15 Named Plaintiff, Defendant, Defense Counsel, and Class Counsel agree to limit public
16 comment on this Settlement and Agreement, the Action, and the claims asserted in the Action, to
17 stating that the matter has been resolved to the satisfaction of the Parties. Named Plaintiff,
18 Defendant, Defense Counsel, and Class Counsel shall not initiate public comment on this
19 Settlement and Agreement, the Action and the claims asserted in the Action.

20 **Section 6.26: Enforcement.**

21 The Parties agree this Agreement shall be enforceable by the Court and the Court shall
22 retain exclusive and continuing jurisdiction of this Action over all Parties and Class Members,
23 under California Code of Civil Procedure section 664.6, to interpret and enforce the terms,
24 conditions, and obligations of the Settlement. The Named Plaintiff, Class Members, and Defendant
25 hereby submit to the personal and exclusive jurisdiction of the Court for purposes of interpreting,
26 implementing and enforcing the Settlement embodied in this Agreement and all orders and
27 judgments entered in connection therewith. The prevailing party in any action or proceeding to
28 enforce this Agreement or otherwise concerning the terms of the settlement of the Action shall be

1 awarded his, her, or its costs and attorneys' fees.

2 IN WITNESS WHEREOF, the parties hereto knowingly and voluntarily executed this Joint
3 Stipulation of Settlement and Release between Plaintiff and Defendant as of the date(s) set forth
4 below:

5
6 Dated: 09-30, 2020

JuanCR

Plaintiff Juan Rodriguez
On behalf of himself and all others similarly situated

7
8
9
10 Dated: , 2020

Farzad Rastegar, Esq.
Douglas W. Perlman
Ryan D. Aliman
Counsel for Plaintiff and the Class

11
12
13
14
15 Dated: , 2020

Wesley Turnbow
CEO of E.M.E., Inc., on behalf of Defendant
E.M.E., Inc.

16
17
18
19 Dated: , 2020

Keith Carlson, Esq.
Counsel for Defendant E.M.E., Inc.

20
21
22
23
24
25
26
27
28

1 awarded his, her, or its costs and attorneys' fees.

2 IN WITNESS WHEREOF, the parties hereto knowingly and voluntarily executed this Joint
3 Stipulation of Settlement and Release between Plaintiff and Defendant as of the date(s) set forth
4 below:

5
6 Dated: _____, 2020

Plaintiff Juan Rodriguez
On behalf of himself and all others similarly situated

7
8
9
10 Dated: 1/29/2021, ~~2020~~



Farzad Rastegar, Esq.
Douglas W. Perlman
Ryan D. Aliman
Counsel for Plaintiff and the Class

11
12
13
14 Dated: Sept. 30, 2020



Wesley Turnbow
CEO of E.M.E., Inc., on behalf of Defendant
E.M.E., Inc.

15
16
17
18 Dated: Sept. 30, 2020



Keith Carlson, Esq.
Counsel for Defendant E.M.E., Inc.