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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

FARRAH FOWLER, individually, and on
behalf of other members of the general public
similarly situated and on behalf of other
aggrieved employees pursuant to the
California Private Attorneys General Act;

Plaintiff,

vs.

TOTAL MERCHANT SERVICES, LLC, an
unknown business entity; TOTAL
MERCHANT SERVICES, INC., an
unknown business entity; and DOES 1
through 100, inclusive,

Defendants.

Case No.: BC722782

Honorable William F. Highberger
Department SSC10

CLASS ACTION

**DECLARATION OF EDWIN AIWAZIAN
IN SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

[Plaintiff's Motion for Preliminary Approval of
Class Action Settlement; Declaration of
Proposed Class Representative (Farrah Fowler);
and [Proposed] Order filed concurrently
herewith]

Date: March 11, 2022
Time: 11:00 a.m.
Department: SSC10

Complaint Filed: September 27, 2018
FAC: January 10, 2022
Trial Date: None Set

DECLARATION OF EDWIN AIWAZIAN

I, Edwin Aiwarzian, hereby declare as follows:

1. I am an attorney licensed to practice law in the State of California. I am a member of Lawyers *for* Justice, PC, attorneys of record for Plaintiff Farrah Fowler. The facts set forth in this declaration are within my personal knowledge or based on information and belief, and if called as a witness, I could and would competently testify thereto.

EDUCATION

2. In May of 2004, I graduated from *Pepperdine University School of Law* with a Juris Doctor degree. I have extensive formal training in dispute resolution and negotiation from the Straus Institute for Dispute Resolution as part of its Masters in Dispute Resolution degree program. In addition, I have previously served as a *pro bono* mediator for the Los Angeles Superior Court. In October of 2000, I obtained a Litigation Paralegal Certificate from the *UCLA Extension Program*. During the summer of 2000, I studied Legal Writing at *Harvard University*. In April of 1999, I obtained a Bachelor of Arts degree in Communication with a concentration in Natural Sciences from *Pepperdine University*.

JUDICIAL EXTERNSHIPS

3. From approximately September 2002 to approximately December 2002, I served as a Judicial Extern to the Honorable Kim McLane Wardlaw of the *United States Court of Appeals for the Ninth Circuit*. From approximately June 2002 to approximately August 2002, I served as a Judicial Extern to the Honorable Earl Johnson, Jr. of the *California Court of Appeal for the Second Appellate District*.

LITIGATION AND CLASS ACTION EXPERIENCE

4. In December of 2004, I obtained a license to practice law from the California State Bar. From approximately December 2004 to approximately August 2008, I was employed by the law firm of *Girardi & Keese*.

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1 5. At *Girardi & Keese*, my practice focused on class actions and other complex cases
2 involving toxic torts and products liability. In addition, I gained substantial experience on cases
3 involving insurance bad faith, premises liability, and medical negligence. While employed by
4 *Girardi & Keese*, I argued approximately 100 motions, took or defended approximately 150
5 depositions, and prepared dozens of expert witnesses for deposition or trial.

6 6. Since its inception, in or around October of 2008, *Lawyers for Justice, PC* has almost
7 exclusively focused on the prosecution of consumer and employment class actions, involving
8 wage-and-hour claims, race discrimination, unfair business practices or consumer fraud.
9 Currently, we are the attorneys of record in over a dozen employment-related putative class actions
10 in both state and federal courts in the State of California. Our firm has successfully litigated cases
11 involving the executive, administrative, and other overtime exemptions to the State of California
12 and federal overtime compensation requirements. During this relatively short time, in association
13 with other law firms, we have recovered millions of dollars on behalf of thousands of individuals
14 in California.

15 **EXAMPLES OF CLASS ACTION RESULTS**

16 7. What follows are just a few examples of the type of results we have achieved on
17 behalf of our clients:

18 a) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
19 and-hour class and representative action against a major property management company involving
20 allegations of misclassification of various “manager” positions. On September 20, 2010, the court
21 granted final approval of the class and representative action settlement. The Los Angeles County
22 Superior Court Case Number is BC400414.

23 b) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
24 and-hour class action against a national retailer involving allegations of misclassification of the
25 “Assistant Store Manager” position. On October 28, 2010, the court granted final approval of the
26 class action settlement. The Los Angeles County Superior Court Case Number is BC413498.

27 c) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
28 and-hour class and representative action against a national property management company

1 involving allegations of misclassification of the “Property Manager” position. On May 23, 2012,
2 the court granted final approval of the class and representative action settlement. The Los Angeles
3 County Superior Court Case Number is BC430918.

4 d) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
5 and-hour class action against a national retailer involving allegations of misclassification of the
6 “Store Manager” position. On June 10, 2011, the court granted plaintiffs’ motion for class
7 certification. On August 26, 2013, the court granted final approval of the class action settlement.
8 The Los Angeles County Superior Court Case Number is BC424012.

9 e) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
10 and-hour class and representative action against a bank, involving allegations of misclassification
11 of the “Assistant Branch Manager” position. On August 27, 2013, the court granted final approval
12 of the class and representative action settlement. The Kern County Superior Court Case Number
13 is S-1500-CV-273194-LHB.

14 f) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
15 and-hour class and representative action against a national wholesale distributor of plumbing and
16 builder supplies, involving allegations of misclassification of multiple salaried “manager”
17 positions. On May 22, 2014, the court granted final approval of the class and representative action
18 settlement. The Sacramento County Superior Court Case Number is 34-2012-00136285.

19 g) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
20 and-hour class action involving allegations of misclassification of the “Operations Manager”
21 position. On September 16, 2014, the court granted plaintiffs’ motion for class certification. The
22 Los Angeles County Superior Court Case Number is BC478769.

23 h) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
24 and-hour class and representative action against a national retailer of household items, on behalf
25 of hourly-paid or non-exempt employees. On May 27, 2015, the court granted final approval of
26 the class and representative action settlement. The San Francisco County Superior Court Case
27 Number is CGC-13-532344.

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1 i) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
2 and-hour class action involving allegations of misclassification of the salaried residential
3 “Property Manager” position. On September 17, 2015, the court granted plaintiffs’ motion for
4 class certification. The Los Angeles County Superior Court Case Number is BC474784.

5 j) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
6 and-hour class and representative action against a national retailer of upscale hardware and home
7 furnishings, on behalf of non-exempt employees. On April 28, 2016, the court granted final
8 approval of the class and representative action settlement. The Los Angeles County Superior
9 Court Case Number is JCCP4794.

10 k) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
11 and-hour class and representative action against a national retailer of apparel and fashion
12 accessories, on behalf of non-exempt employees. On August 5, 2016, the court granted final
13 approval of the class and representative action settlement. The Los Angeles County Superior
14 Court Case Number is BC488069.

15 l) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
16 and-hour class action against a national retailer of apparel, accessories, and home products,
17 involving allegations of misclassification of the “Department Manager” position. On August 12,
18 2016, the court granted the plaintiffs’ motion for class certification in part and certified a
19 class. The Alameda County Superior Court Case Number is RG13680477.

20 m) Our firm represented the plaintiffs in a representative action under the
21 Private Attorneys General Act, against a real estate and property management company, on behalf
22 of non-exempt employees. On November 4, 2016, the court granted approval of the settlement.
23 The Orange County Superior Court Case Number is 30-2015-00775439-CU-OE-CXC.

24 n) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
25 and-hour class action against a full-service bank, on behalf of non-exempt employees. On
26 November 18, 2016, the court granted final approval of the class action settlement. The San
27 Francisco County Superior Court Case Number is CJC-13-004839.

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1 o) Our firm represented the plaintiffs in a wage-and-hour class and
2 representative action against a foodservice distributor, on behalf of non-exempt employees. On
3 January 26, 2017, the court granted final approval of the class and representative action settlement.
4 The San Bernardino County Superior Court Case Number is CIVDS1507260.

5 p) Our firm, on behalf of the plaintiff and respondent in a PAGA representative
6 action, successfully opposed in the trial court, and briefed and argued an appeal with respect to the
7 employer's motion to compel arbitration, which resulted in a published opinion by the California
8 Court of Appeal in favor of employees. Roberto Betancourt v. Prudential Overall Supply, 9
9 Cal.App.5th 439 (Cal. App. 4th Dist., Mar. 7, 2017), review denied, cert. denied (U.S. Supreme
10 Court Docket No. 17-254).

11 q) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
12 and-hour class and representative action against a consumer packaging company, on behalf of non-
13 exempt employees. On March 10, 2017, the court granted final approval of the class and
14 representative action settlement. The Los Angeles County Superior Court Case Number is
15 BC590429.

16 r) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
17 and-hour class and representative action against a manufacturer of food service industry supplies
18 on behalf of non-exempt employees. On April 14, 2017, the court granted final approval of the
19 class and representative action settlement. The Orange County Superior Court Case Number is 30-
20 2015-00810013-CU-OE-CXC.

21 s) Our firm represented the plaintiffs in a wage-and-hour class and
22 representative action against a food company on behalf of non-exempt employees. On June 30,
23 2017, the court granted final approval of the class action settlement. The Sacramento County
24 Superior Court Case Number is 34-2015-00175871.

25 t) Our firm represented the plaintiffs in a wage-and-hour class and
26 representative action against a chocolate company on behalf of non-exempt employees. On July
27 19, 2017, the court granted final approval of the class and representative action settlement. The
28 Alameda County Superior Court Case Number is RG15764300.

1 u) Our firm represented the plaintiffs in a wage-and-hour class and
2 representative action against a manufacturer of plastic containers on behalf of non-exempt
3 employees. On October 31, 2017, the court granted final approval of the class and representative
4 action settlement. The Los Angeles County Superior Court Case Number is BC577233.

5 v) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
6 and-hour class and representative action against a bank on behalf of non-exempt employees. On
7 December 11, 2017, the court entered an order granting final approval of class and representative
8 action settlement. The Los Angeles County Superior Court Case Number is BC569646.

9 w) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
10 and-hour class and representative action against a property management company on behalf of
11 hourly-paid and non-exempt employees. On January 4, 2018, the court entered an order granting
12 final approval of the class and representative action settlement. The Los Angeles County Superior
13 Court Case Number is JCCP4819.

14 x) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
15 and-hour class and representative action against a global provider of flexible office space
16 solutions. On February 15, 2018, the court entered an order granting final approval of the class
17 and representative action settlement. The Los Angeles County Superior Court Case Number is
18 BC498401.

19 y) Our firm represented the plaintiffs in a wage-and-hour class and
20 representative action against a behavioral health service provider on behalf of non-exempt
21 employees. On November 13, 2018, the court granted final approval of the class and
22 representative action settlement. The Alameda County Superior Court Case Number is
23 RG16811450.

24 z) Our firm, in association with co-counsel, represented the plaintiff in a
25 representative action under the Private Attorneys General Act, against a global provider of
26 products and services to the energy industry, on behalf of hourly-paid and non-exempt employees.
27 On November 19, 2018, the Court granted approval of the settlement. The Kern County Superior
28 Court Case Number is S-1500-CV-280215-SDC.

1 aa) Our firm represented the plaintiff in a wage-and-hour class action against a
2 parking company on behalf of non-exempt employees. On September 3, 2019, the court granted
3 the plaintiff's motion for class certification and certified a class. The Santa Clara County Superior
4 Court Case Number is 16CV292208 and the Judicial Council Coordination Proceeding Number is
5 JCCP 4886.

6 bb) Our firm, in association with other counsel, on behalf of the plaintiff and
7 respondent in a PAGA representative action, successfully opposed in the trial court, and briefed
8 and argued an appeal with respect to the employer's motion to compel arbitration, resulting in a
9 notable decision from the California Supreme Court clarifying the law and finding, in part, that
10 employer arbitration agreements are unenforceable where they block a PAGA claim from
11 proceeding, *ZB, N.A. v. Superior Court*, 8 Cal.5th175 (2019).

12 cc) Our firm represents the plaintiffs in a wage-and-hour class and representative
13 action against a bank on behalf of non-exempt employees. On September 27, 2019, the court
14 granted the plaintiffs' motion for class certification in part and certified a class. The Alameda
15 County Superior Court Case Number is RG15757606 and the Judicial Council Coordination
16 Proceeding Number is JCCP 4921.

17 dd) Our firm represented the plaintiffs in a wage-and-hour class and
18 representative action against a national retailer of apparel and fashion accessories, on behalf of
19 non-exempt employees. On October 9, 2019, the court granted the plaintiffs' motion for class
20 certification in part and certified a class. The Sacramento County Superior Court Case Number is
21 34-2015-00175330-CU-OE-GDS.

22 ee) Our firm represented the plaintiff in a wage-and-hour class and PAGA
23 representative action against a medical equipment supplier on behalf of non-exempt employees.
24 On February 13, 2020, the court granted the plaintiff's motion for class certification and certified
25 a class. The San Bernardino County Superior Court Case Number is CIVDS1505744.

26 ff) Our firm, in association with other counsel, represented the plaintiff in a
27 wage-and-hour class and PAGA representative action against a large national drug testing
28 laboratory on behalf of non-exempt employees. On February 21, 2020, the court granted the

1 plaintiff's motion for class certification and certified a class. The San Diego County Superior
2 Court Case Number is 37-2018-00019611-CU-OE-CTL.

3 gg) Our firm represented the plaintiffs in a wage-and-hour class and
4 representative action against a national retailer of sportswear, footwear, and camping equipment
5 on behalf of non-exempt employees. On March 16, 2020, the court granted in part the plaintiff's
6 motion for class certification and certified a class. The Riverside County Superior Court Case
7 Number is RICJCCP4930.

8 hh) Our firm represented the plaintiffs in a wage-and-hour class and PAGA
9 representative action against a plastic packaging company on behalf of non-exempt employees.
10 On June 8, 2020, the court granted in part the plaintiffs' motion for class certification and certified
11 a class. The San Bernardino County Superior Court Case Number is CIVDS1507361.

12 ii) Our firm, in association with co-counsel, represented the plaintiffs in a wage-
13 and-hour class action against manufacturer and supplier of power products and services on behalf
14 of non-exempt employees. On July 31, 2020, the court granted in part the plaintiffs' motion for
15 class certification and certified a class. The San Diego County Superior Court Case Number is
16 37-2015-00025968-CU-OE-CTL.

17 jj) Our firm represents the plaintiff in a wage-and-hour class action against a
18 nutritional products manufacturer on behalf of non-exempt production line employees. On
19 December 13, 2021, the court granted the plaintiff's motion for class certification in part and
20 certified a class. The Solano County Superior Court Case Number is FCS051001.

21 PRELIMINARY APPROVAL

22 8. Marked and attached hereto as "**EXHIBIT 1**" is the Joint Stipulation of Class Action
23 and PAGA Settlement ("Settlement," "Agreement," or "Settlement Agreement") entered into by
24 and between Plaintiff Farrah Fowler ("Plaintiff"), individually and on behalf of all others similarly
25 situated and other aggrieved employees, on the one hand, and Defendant Total Merchant Services,
26 LLC ("Defendant"), on the other hand (collectively, the "Parties"). The Parties and their counsel
27 have approved the proposed Notice of Class Action Settlement ("Class Notice"), which is attached
28 to the Settlement Agreement as "Exhibit A" and respectfully request that the Court approve it as

1 well.

2 9. Based on information provided by Defendant, through July 24, 2020 the Class is
3 estimated to consist of approximately four hundred seventy-two (472) individuals.

4 10. The effectiveness of Lawyers *for* Justice, PC (“Class Counsel”) in prosecuting this
5 matter has translated into tangible monetary benefits for the Class Members in the following
6 respects: (1) Class Members recover over a reasonably short period of time as opposed to waiting
7 additional years for the same, or possibly worse, result; (2) a guaranteed result that compares
8 favorably with other similar class action settlements of this type given the strengths and
9 weaknesses of the case; and (3) significant savings in Class Counsel’s fees and/or costs that would
10 have only increased significantly had the case progressed through certification, trial, and/or
11 appeals.

12 11. Class Counsel has litigated the case for over two years since it was commenced on
13 September 27, 2018 and was actively preparing the matter for class certification and trial. The
14 Parties have engaged in extensive settlement negotiations and participated in a formal, full-day
15 mediation September 16, 2020, conducted by Mark S. Rudy, Esq., a well-respected mediator
16 experienced in mediating complex labor and employment matters. Prior to and during the
17 mediation and settlement discussions, the Parties exchanged class information and engaged in an
18 extensive discussion regarding their evaluations of the case and various aspects of the case,
19 including but not limited to, the risks and delays of further litigation, the risks to the Parties of
20 proceeding with class certification and/or representative adjudication, the law relating to off-the-
21 clock theory, meal and rest periods, PAGA representative actions, and wage-and-hour
22 enforcement, as well as the evidence produced and analyzed, and the possibility of appeals, among
23 other things. During all settlement discussions, the Parties conducted their negotiations at arm’s
24 length in an adversarial position. Arriving at a settlement that was acceptable to all Parties was
25 not easy. Defendant and its counsel felt strongly about their ability to prevail on the merits and at
26 certification, and Plaintiff and Class Counsel believed that they would be able to obtain class
27 certification and prevail at trial. After conducting investigations, formal and informal discovery,
28 and exchange of information, extensive settlement negotiations, and with the aid of the mediator’s

1 evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal
2 issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that would
3 attend further litigation. The Settlement is a fair, reasonable, and adequate resolution of the
4 Released Claims of Plaintiff and Settlement Class Members, against the Released Parties.

5 12. The Parties used the pre-mediation time to investigate the veracity, strength, and
6 scope of the claims, and Class Counsel was preparing the action for class certification and trial.
7 Prior to engaging in mediation, Plaintiff conducted significant investigation and formal and
8 informal discovery regarding the facts of the case, including and not limited to, the exchange,
9 review, and analysis of thousands of pages of documents and data obtained from Defendant and
10 other sources. Class Counsel propounded multiple sets of formal written discovery requests onto
11 Defendant (specifically, Requests for Production of Documents, (Set One); Special
12 Interrogatories, (Sets One & Two); and Form Interrogatories, (Set One)) and noticed the
13 depositions of Defendant's Person Most Knowledgeable designees. The volume of data and
14 documents that Class Counsel reviewed and analyzed included and was not limited to Plaintiff and
15 other Class Members' employment records, a detailed sampling of Class Members' time and pay
16 data, multiple iterations of Defendant's Team Member Handbook, Employee Handbook and
17 Addenda thereto, company forms and acknowledgements (including but not limited to Second
18 Meal Period Waiver, Team Member Handbook Acknowledgement of Receipt, and Employee
19 Confidentiality Agreement), internal memoranda, Defendant's operations and employment
20 practices and procedures (including but not limited to Defendant's Rules of Conduct, Employment
21 Categories, and Department Performance Reviews), and policies (including but not limited to
22 Defendant's Meal and Rest Period Policy, Sick Leave Policy, and California-Specific Overtime
23 Policy), among other information and documents. Class Counsel interviewed Plaintiff and other
24 Class Members to gather facts and to identify potential witnesses. Counsel for the Parties also met
25 and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery,
26 and the production of documents and data prior to the mediation. Class Counsel also drafted
27 pleadings and the mediation brief and prepared for and attended court proceedings, mediation, and
28 settlement negotiations, among other tasks.

1 13. Counsel for the Parties have also invested time researching and investigating the
2 applicable law, which is constantly evolving as it relates to certification, representative PAGA
3 claims, off-the-clock theory, meal and rest periods, wage-and-hour enforcement, Plaintiff's claims
4 and damages, and Defendant's defenses thereto, as well as facts discovered. Based on our analysis,
5 I submit that the result achieved in this litigation is fair, adequate, and reasonable.

6 14. The Settlement provides for a Total Settlement Amount of three million dollars and
7 no cents (\$3,000,000.00). The Net Settlement Amount is the Total Settlement Amount less the
8 following amounts subject to approval by the Court: Attorneys' Fees and Costs to Class Counsel,
9 Enhancement Award to Plaintiff, Settlement Administration Costs to Settlement Administrator,
10 and LWDA Payment to the Labor and Workforce Development Agency ("LWDA"). Assuming
11 that the amounts allocated under the Settlement toward these payments are awarded by the Court,
12 the Net Settlement Amount that will be available for distribution to Settlement Class Members is
13 currently estimated to be one million, eight hundred forty-six thousand, seven hundred fifty dollars
14 and no cents (\$1,846,750.00). The Total Settlement Amount will be fully distributed in
15 accordance with the terms of the Settlement and there is no reversion to Defendant.

16 15. The Parties have agreed to retain Phoenix Settlement Administrators ("Phoenix" or
17 "Settlement Administrator") to handle the notice and settlement administration process. The
18 Parties respectfully request that the Court appoint Phoenix to handle these procedures and serve
19 as the Settlement Administrator. Defendant will provide Phoenix with a list of Class Members
20 that Defendant will compile from its records, which will include each Class Member's full name;
21 last known mailing address, Social Security Number, and number of Workweeks worked for Total
22 Merchant Services, LLC and/or Total Merchant Services, Inc. in California from September 27,
23 2014 through December 1, 2020 ("Class List"), and Phoenix will calculate each Settlement Class
24 Member's estimated share of the Net Settlement Amount ("Individual Settlement Payment").
25 Phoenix will also receive requests for exclusion from the Settlement, objections to the Settlement,
26 and disputes regarding Workweeks; provide necessary reports and declarations; calculate,
27 subtract, and transmit necessary taxes and withholdings; prepare and submit informational and
28 other tax filings and documents; issue and transmit all payments provided for by the Settlement,

1 including and not limited to, mailing Individual Settlement Payment checks to the Settlement Class
2 Members; and perform any other usual and customary duties for administering a class action
3 settlement. Settlement Administration Costs are currently estimated not to exceed nine thousand
4 dollars and no cents (\$9,000.00) and will be paid out of the Total Settlement Amount, subject to
5 approval of the Court.

6 16. Based on investigation and information discovered, Class Counsel believes that
7 there is sufficient evidence to support the allegations made in the lawsuit, including the allegations
8 that Defendant, with respect to Plaintiff and the Class Members, *inter alia*, failed to properly pay
9 overtime and minimum wages and associated premium pay, failed to provide compliant meal and
10 rest periods and to pay associated premium pay, failed to timely pay wages during employment
11 and upon termination of employment, failed to provide compliant wage statements, failed to
12 maintain requisite payroll records, and failed to reimburse necessary business expenses, and
13 thereby engaged in unfair business practices and conduct giving rise to penalties recoverable under
14 the Private Attorneys General Act of 2004 (California Labor Code sections 2698, et seq.). Plaintiff
15 also asserted that Class Members were expected to perform similar job duties and were subject to
16 the same or similar operations and employment policies, practices, and procedures. Additionally,
17 Plaintiff asserted that Defendant's recordkeeping practices with respect to Plaintiff and the Class
18 Members were substantially the same during the time period at issue. As a result, Plaintiff claims
19 that the Class Members, were uniformly not paid all of the compensation that was owed to them
20 by Defendant since September 27, 2014. Thus, in Class Counsel's view, it is clear that the outcome
21 of this litigation would be determined by Defendant's uniform operations and employment
22 practices, policies, and procedures that Plaintiff alleges applied across its hourly-paid or non-
23 exempt employees in California during the Class Period.

24 17. Class Counsel is aware of the defenses and position of Defendant, but believes that
25 Plaintiff could potentially obtain class certification despite many obstacles. Plaintiff has also taken
26 into account the uncertainty and risk of the outcome of further litigation, and the difficulties and
27 delays inherent in such litigation, including those involved in class certification and/or
28 representative adjudication. Plaintiff further recognizes the burdens of proof necessary to establish

1 liability for the claims asserted in the lawsuit, Defendant's defenses, and the difficulties in
2 establishing entitlement to monetary recovery. Plaintiff has also considered the Parties' settlement
3 discussions, as well as the evaluations of the mediator, who is experienced and well-regarded in
4 complex labor and employment matters.

5 18. Defendant, on the other hand, denied and continues to deny any liability and
6 wrongdoing of any kind associated with the claims alleged in the lawsuit, and further denies that
7 the lawsuit is appropriate for class treatment or representative adjudication for any purpose other
8 than this Settlement. Defendant believes that it would ultimately succeed in the matter. Both sides
9 have also had the opportunity to interview witnesses and review documents and information
10 relating to Plaintiff's and Class Members' employment with Defendant, and Defendant's
11 operations and employment policies, practices, and procedures. The Parties also reviewed and
12 analyzed thousands of pages of documents and data, including but not limited to a detailed
13 sampling of Class Members' time and pay information, to determine the potential value and
14 strength of the claims. The available information enabled Class Counsel to estimate the potential
15 claims of the Class and prepare damages/valuation models. Accordingly, the Parties have
16 conducted adequate investigation and discovery to be sufficiently informed of the nature and
17 extent of the Class Members' claims, and to enable both sides to fully evaluate the Settlement for
18 its fairness, adequacy, and reasonableness. The Parties have agreed that the matter is well-suited
19 for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and
20 risks to both sides that would attend further litigation. The Settlement takes into account the
21 strengths and weaknesses of each side's position and the uncertainty of how the case might have
22 concluded at certification, trial, and/or appeals.

23 19. The Settlement Agreement provides for Class Counsel to apply for attorneys' fees
24 in an amount of up to thirty-five percent (35%) of the Total Settlement Amount
25 (i.e., \$1,050,000.00) and expenses and costs in an amount not to exceed twenty-eight thousand
26 dollars and no cents (\$28,000.00), which will be paid out of the Total Settlement Amount, subject
27 to approval by the Court. It should be noted that Class Counsel has borne all of the risks and costs
28 of litigation and will not receive any compensation until recovery is obtained.

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20. The Settlement Agreement provides for payment of up to ten thousand dollars and no cents (\$10,000.00) to Plaintiff as an Enhancement Award, be paid out of the Total Settlement Amount subject to approval by the Court. Plaintiff spent considerable time and effort to produce relevant documents and past employment records and to provide the facts and evidence necessary to attempt to prove the allegations. Plaintiff was available whenever Class Counsel needed her and actively tried to obtain information that would benefit the Class. Accordingly, it is appropriate and just for Plaintiff to receive an Enhancement Award, in addition to her Individual Settlement Payment, for her services on behalf of the Class.

21. Class Counsel submits that the Settlement is fair, reasonable, and adequate, and is in the best interest of the Class and the State of California. Class Counsel further submits that the Settlement is within an acceptable range of recovery for this type of litigation given the strengths and weaknesses of the case, the inherent costs and risks of further litigation, and the costs and risks associated with class certification, representative adjudication, trial, and/or appeals.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 4th day of February 2022, at Glendale, California.



Edwin Aiwanian

EXHIBIT 1

1 **JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT**

2 This Joint Stipulation of Class Action and PAGA Settlement (“Agreement” or “Settlement
3 Agreement”) is made and entered into by and between Plaintiff Farrah Fowler (“Plaintiff” or “Class
4 Representative”), on behalf of all others similarly situated and aggrieved employees, and Defendant
5 Total Merchant Services, LLC (“Defendant”) (collectively with Plaintiff, the “Parties”).

6 This Settlement Agreement shall be binding on Plaintiff and Settlement Class Members (as
7 defined herein) and on Defendant, subject to the terms and conditions hereof and the approval of the
8 Court.

9 **RECITALS**

10 1. On September 27, 2018, Farrah Fowler filed a Class Action Complaint for Damages against
11 Defendant and Total Merchant Services, Inc. (together, “TMS”) in the Superior Court of California for
12 the County of Los Angeles, Case No. BC722782 (the “Action”), alleging ten causes of action for violation
13 of the California Labor Code and California Business & Professions Code §§ 17200, *et seq.* on behalf of
14 all current and former hourly paid or non-exempt employees who worked for TMS within the State of
15 California at any time since September 27, 2014 for failure to pay overtime wages, failure to provide meal
16 periods and premium payments in lieu thereof, failure to provide rest periods and premium payments in
17 lieu thereof, failure to pay minimum wages, failure to timely pay wages upon termination, failure to timely
18 pay wages during employment, failure to provide compliant wage statements, failure to maintain complete
19 and accurate payroll records, and failure to reimburse necessary business expenses. Although Total
20 Merchant Services, Inc. has been named in the Action, it no longer exists as an entity and was never served
21 in the Action. Total Merchant Services, Inc. was converted to Total Merchant Services, LLC as of June
22 29, 2017.

23 2. On September 21, 2021, Plaintiff submitted notice to the California Labor & Workforce
24 Development Agency (“LWDA”) of her intent to pursue civil penalties under the Private Attorneys
25 General Act, Cal. Labor Code § 2698, *Et Seq.*

26 3. The Parties agree that Plaintiff will seek leave to file a First Amended Class Action
27 Complaint for Damages & Enforcement Under the Private Attorneys General Act, Cal. Labor Code §
28 2698, *Et Seq.* (“First Amended Complaint” or “Operative Complaint”), to flesh out allegations that were

investigated, litigated, mediated, and resolved, and to effectuate the Settlement. The First Amended Complaint will, among other things, add a claim under the Private Attorneys General Act, California Labor Code section 2698, *et seq.* (“PAGA”).

4. TMS denies all material allegations set forth in the Action, defined below, and has asserted numerous affirmative defenses. Notwithstanding, in the interest of avoiding further litigation, Defendant desires to fully and finally settle the Action and Released Claims.

5. Class Counsel in the Action diligently investigated the proposed Class Members’ claims against TMS, including any and all applicable defenses and the applicable law. The investigation included, *inter alia*, the exchange of information, data, and documents, and review of numerous corporate policies and practices.

6. On September 16, 2020, the Parties participated in mediation with Mark S. Rudy, Esq. (the “Mediator”), a respected mediator of complex wage and hour actions, and eventually, after continued settlement negotiations and with the assistance of the Mediator’s evaluations, the Parties reached the settlement that is memorialized herein. The settlement discussions were conducted at arm’s length, and the settlement is the result of an informed and detailed analysis of TMS’ potential liability and exposure in relation to the costs and risks associated with continued litigation. Based on the documents produced, as well as Class Counsel’s own independent investigation and evaluation, Class Counsel believes that the settlement with Defendant for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation and various defenses asserted by TMS.

7. The Parties expressly acknowledge that this Settlement Agreement is entered into solely for the purpose of compromising significantly disputed claims and that nothing herein is an admission of liability or wrongdoing by TMS. If for any reason the Settlement Agreement is not approved, it will be of no force or effect, and the Parties shall be returned to their original respective positions as of September 16, 2020.

DEFINITIONS

8. The following definitions are applicable to this Settlement Agreement. Definitions

1 contained elsewhere in this Settlement Agreement will also be effective:

2 a. “Attorneys’ Fees and Costs” means attorneys’ fees approved by the Court for
3 Class Counsel’s litigation and resolution of this Action, and all actual costs incurred and to be incurred
4 by Class Counsel in the Action, as set forth in Paragraph 12, below.

5 b. “Class Counsel” or “Plaintiff’s Counsel” mean Edwin Aiwazian, and Arby
6 Aiwazian, Joanna Ghosh of Lawyers *for* Justice, PC, who will seek to be appointed counsel for the
7 Class.

8 c. “Class List” means a complete list of all Class Members that Defendant will
9 diligently and in good faith compile from its records and provide to the Settlement Administrator. The
10 Class List will be formatted in a readable Microsoft Office Excel spreadsheet and will include each
11 Class Member’s full name, last known mailing address, Social Security Number, the number of
12 Workweeks worked by the Class Member for TMS in California during the Class Period (as defined
13 below).

14 d. “Class Member(s)” or “Class” mean all current and former hourly paid, non-
15 exempt employees who worked for TMS in California at any time from September 27, 2014 through
16 December 1, 2020.

17 e. “Class Notice” means the Notice of Class Action Settlement, substantially in the
18 form attached as “**Exhibit A.**”

19 f. “Class Period” means the time period from September 27, 2014 through December
20 1, 2020.

21 g. “Class Representative” or “Plaintiff” mean Farrah Fowler.

22 h. “Court” means the Superior Court of the State of California for the County of Los
23 Angeles.

24 i. “Defendant” means Total Merchant Services, LLC.

25 j. “Defendant’s Counsel” means Betsy Johnson and Jennifer L. Katz of Ogletree,
26 Deakins, Nash, Smoak & Stewart, P.C.

27 k. “Effective Date” means the date when all of the following events have occurred:
28 (1) the Settlement Agreement has been executed by all Parties, Class Counsel, and Defendant’s Counsel;

(2) the Court has given preliminary approval to the Settlement; (3) the Class Notice has been mailed to the Class Members, providing them with an opportunity to object to the terms of the Settlement or opt out of the Settlement; (4) the Court has held a Final Approval Hearing and entered a Final Approval Order and Judgment; (5) sixty-five calendar days have passed since the Court entered a Final Approval Order and Judgment; and (6) in the event there are written objections filed prior to the Final Approval Hearing which are not later withdrawn or denied, the later of the following events: five business days after the period for filing any appeal, writ, or other appellate proceeding opposing the Court's Final Approval Order and Judgment has elapsed without any appeal, writ, or other appellate proceeding having been filed; or, if any appeal, writ, or other appellate proceeding opposing the Court's Final Approval Order and Judgment has been filed, five business days after any appeal, writ, or other appellate proceedings opposing the Settlement has finally and conclusively dismissed with no right to pursue further remedies or relief. If an appeal is filed from the Court's Final Approval Order and Judgment prior to the Effective Date, administration of the Settlement shall be immediately stayed pending final resolution of the appeal process.

l. "Enhancement Award" means the amount to be paid to Plaintiff Farrah Fowler in recognition of her effort and work in prosecuting the Action on behalf of Class Members and in exchange for a general release, as set forth in Paragraph 13, below.

m. "Final Approval" means the determination by the Court that the settlement is fair, reasonable, and adequate, and entry of the Final Approval Order and Judgment based thereon.

n. "Final Approval Hearing" means the hearing at which the Court will consider and determine whether the Settlement should be granted Final Approval.

o. "Individual Settlement Payment" means the net payment of each Settlement Class Member's Individual Settlement Share, after reduction for the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Share, as provided in Paragraph 27, below.

p. "Individual Settlement Share" means the *pro rata* share of the Net Settlement Amount that a Class Member may be eligible to receive under the Settlement Agreement, to be calculated in accordance with Paragraph 16, below.

1 q. “LWDA Payment” means the amount that the Parties have agreed to pay to the
2 California Labor and Workforce Development Agency (“LWDA”) for penalties pursuant to the Private
3 Attorneys General Act, as set forth in Paragraph 15, below.

4 r. “Net Settlement Amount” means the portion of the Total Settlement Amount that
5 is available for distribution to Settlement Class Members, which is the Total Settlement Amount less the
6 Court-approved Enhancement Award, Settlement Administration Costs, LWDA Payment, and Attorneys’
7 Fees and Costs.

8 s. “Notice of Objection” means a Class Member’s valid and timely written objection
9 to the Settlement Agreement, which must be in writing and include: (a) the case name and number of
10 the Action; (b) the objector’s full name, signature, address, and telephone number, and the last four
11 digits of his or her Social Security number; (c) a written statement of all grounds for the objection
12 accompanied by any legal support for such objection; and (d) copies of any papers, briefs, or other
13 documents upon which the objection is based.

14 t. “Operative Complaint” means the contemplated First Amended Class Action
15 Complaint for Damages & Enforcement Under the Private Attorneys General Act, Cal. Labor Code §
16 2698, *Et Seq.*

17 u. “Parties” means Plaintiff and Defendant, collectively, and “Party” means either
18 Plaintiff or Defendant.

19 v. “Preliminary Approval” means entry of the Court order granting preliminary
20 approval of the Settlement Agreement.

21 w. “Released Claims” means any and all claims, actions, demands, causes of action,
22 suits, debts, obligations, damages, rights or liabilities arising out of Plaintiff or Class Members’ work for
23 TMS in California during the Class Period, that were pled or could have been pled based on the factual
24 allegations in the Complaint, the proposed First Amended Complaint, or any amendments thereto by
25 Plaintiff or the Class Members or any of their respective heirs, executors, administrators, beneficiaries,
26 predecessors, successors, attorneys, assigns, agents, and/or representatives against Defendant and the
27 Released Parties based on the factual allegations contained in the Complaint, the proposed First Amended
28 Complaint, or any amendments thereto, including, but not limited to: claims under federal, state, or local

1 law for failure to pay overtime and minimum wages, provide meal and rest periods and associated
2 premium payments, timely pay wages during employment and upon termination, provide compliant
3 wage statements, maintain complete and accurate payroll records, and reimburse necessary business-
4 related expenses, interest, statutory and civil penalties (including waiting time penalties and late payment
5 penalties pursuant to Labor Code sections 203 and 204, wage statement and recordkeeping penalties
6 pursuant to Labor Code sections 226 and 1174, and civil penalties pursuant to the Labor Code Private
7 Attorneys General Act of 2004 (Labor Code sections 2698, *et seq.*) (“PAGA”)), claims pursuant to Labor
8 Code sections 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1,
9 1198, 2698, *et seq.*, 2800, and 2802, the Industrial Welfare Commission Wage Orders, and claims under
10 Business and Professions Code sections 17200, *et seq.*, claims for attorneys’ fees and costs, conversion,
11 fraud, common count, and unfair business practices. Released Claims include all claimed or unclaimed
12 compensatory, consequential, incidental, liquidated, punitive and exemplary damages, restitution, interest,
13 costs and fees, injunctive or equitable relief, and any other remedies available at law or equity allegedly
14 owed or available to the Class arising out of Plaintiff or Class Members’ work for TMS in California
15 during the Class Period that were pled or could have been pled based on the factual allegations in the
16 Complaint, the proposed First Amended Complaint, or any amendments thereto against the Released
17 Parties for the time period during the Class Period.

18 x. “Released Parties” means Total Merchant Services, LLC and Total Merchant
19 Services, Inc., and, with respect to each such entity, all of its current or former parent companies,
20 subsidiary companies, and/or related companies (including, but not limited to, NAB-TMS, LLC and
21 North American Bancard, LLC), partnerships, joint ventures, and/or staffing agencies, and, with respect
22 to each of them, all of their and/or such related entities’ predecessors, and, with respect to each such
23 entity, all of its past and present employees, officers, partners, principals, directors, stockholders,
24 owners, representatives, assigns, attorneys, agents, insurers (including, but not limited to, AIG Claims,
25 Inc. and AIG Specialty Insurance Company), employee benefit programs (and the trustees,
26 administrators, fiduciaries, and insurers of such programs), and any other persons acting by, through,
27 under, or in concert with any of the persons or entities listed in this subsection.

28 y. “Request for Exclusion” means a timely letter submitted by a Class Member

1 indicating a request to be excluded from the Settlement. The Request for Exclusion must: (a) contain
2 the case name and number of the Action; (b) be signed by the Class Member; (c) contain the full name,
3 address, telephone number, and the last four digits of the Social Security Number of the Class Member
4 requesting exclusion; (d) clearly state that the Class Member does not wish to be included in the
5 settlement; and (e) be returned by mail to the Settlement Administrator at the specified address,
6 postmarked on or before the Response Deadline. The date of the postmark on the return mailing
7 envelope on the submission will be the exclusive means to determine whether a Request for Exclusion
8 has been timely submitted. Any Class Member who does not request exclusion from the Settlement will
9 be deemed a Settlement Class Member and will be bound by all terms of the Settlement Agreement, if
10 the Settlement is granted Final Approval by the Court.

11 z. “Response Deadline” means the deadline by which Class Members must submit a
12 Request for Exclusion, objection, and/or dispute of the Workweeks credited to them, which shall be the
13 date that is forty-five (45) calendar days from the initial mailing of the Class Notice by the Settlement
14 Administrator, unless the 45th day falls on a Sunday or Federal holiday, in which case the Response
15 Deadline will be extended to the next day on which the U.S. Postal Service is open. The Response
16 Deadline may also be extended by express agreement between Class Counsel and Defendant’s Counsel;
17 under no circumstances, however, will the Settlement Administrator have the authority to extend the
18 Response Deadline without express agreement from both Class Counsel and Defendant’s Counsel.

19 aa. “Settlement Administrator” means Phoenix Settlement Administrators, or any
20 other third-party class action settlement administrator agreed to by the Parties and approved by the Court
21 for purposes of administering this Settlement. The Parties each represent that they do not have any
22 financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement
23 Administrator that could create a conflict of interest. The Parties shall have no responsibility for
24 validating or ensuring the accuracy of the Settlement Administrator’s work, but will exercise best
25 efforts, diligence, and assist the Settlement Administrator to perform its work accurately. Defendant
26 and Defendant’s Counsel shall not be bound by any contract or agreement entered into between the
27 Settlement Administrator and Class Counsel, if any. In addition, the Parties shall not bear any
28 responsibility any for errors or omissions by the Settlement Administrator in administering the

1 Settlement.

2 bb. "Settlement Administration Costs" means the costs payable from the Total
3 Settlement Amount, subject to Court approval, to the Settlement Administrator for administering this
4 settlement, as set forth in Paragraph 14, below.

5 cc. "Settlement Class Members" means all Class Members who do not submit a valid
6 and timely Request for Exclusion.

7 dd. "TMS" means, collectively, Total Merchant Services, LLC and Total Merchant
8 Services, Inc.

9 ee. "Total Settlement Amount" means the amount of three million dollars and zero
10 cents (\$3,000,000.00) to be paid by Defendant in full resolution of all Released Claims and the Action,
11 which includes all Attorneys' Fees and Costs, Enhancement Award, LWDA Payment, the Net Settlement
12 Amount to be paid to the Settlement Class Members (which includes the Settlement Class Members'
13 portion of the PAGA Penalties), and Settlement Administration Costs. The employer's share of taxes on
14 the wages portion of Individual Settlement Shares will be paid separately and in addition to the Total
15 Settlement Amount. With the sole exception of the employer's share of taxes on the wages portion of
16 the Individual Settlement Shares, and the possible impact of the Escalator Clause in Paragraph 38,
17 below, the Total Settlement Amount is the maximum possible amount that may be paid by Defendant
18 to resolve this Action.

19 ff. "Workweeks" means the number of weeks each Class Member worked for TMS
20 as an hourly paid, non-exempt employee during the Class Period, which will be calculated by Defendant
21 (and included in the Class List) by determining the number of weeks worked by each Class Member in
22 California in an hourly paid, non-exempt job position during the Class Period. The Workweeks for the
23 period from September 27, 2014 through July 24, 2020 are estimated to be approximately 42,388.

24 **CLASS CERTIFICATION**

25 9. For the purposes of this Settlement only, the Parties stipulate to the certification of the
26 following Class: All current and former hourly paid, non-exempt employees who worked for TMS in
27 California at any time during the Class Period.

28 10. The Parties agree that certification for the purpose of settlement is not an admission that

certification is proper under Section 382 of the California Code of Civil Procedure or any other applicable law, rule, or regulation. Should, for whatever reason, the Court not grant Final Approval of the Settlement, the Parties' stipulation to class certification shall become null and void *ab initio* and shall have no bearing on, and shall not be admissible in connection with, the issue of whether or not class certification in the Action would be inappropriate in a non-settlement context.

TERMS OF AGREEMENT

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

11. Funding of the Total Settlement Amount. Within fifteen (15) calendar days after the Effective Date, the Settlement Administrator will provide the Parties with an accounting of the amounts to be paid by Defendant pursuant to the terms of the Settlement Agreement. Within thirty (30) calendar days after the Effective Date, Defendant will make a one-time deposit of the Total Settlement Amount into a settlement account to be established by the Settlement Administrator. Within seven (7) calendar days after the funding of Total Settlement Amount, the Settlement Administrator will issue payments due under the Settlement and approved by the Court, as follows: (a) Individual Settlement Payments to Settlement Class Members; (b) the LWDA Payment to the LWDA; (c) the Enhancement Award to Plaintiff; and (d) Attorneys' Fees and Costs to Class Counsel. The Settlement Administrator will also issue a payment to itself for Court-approved services performed in connection with the Settlement.

12. Attorneys' Fees and Costs. Class Counsel will request Court approval for attorneys' fees of up to thirty-five percent (35%) of the Total Settlement Amount, as well as reimbursement of actual costs and expenses associated with Class Counsel's litigation and settlement of the Action, in an amount not to exceed Twenty Eight Thousand Dollars (\$28,000.00). The Attorneys' Fees and Costs shall be paid from, and not in addition to, the Total Settlement Amount. Defendant agrees not to oppose any such application that is consistent with this paragraph; however, the Settlement is not contingent on Plaintiff or Class Counsel recovering these or any particular amount as an Attorneys' Fees and Costs award. Even in the event that the Court reduces or does not approve the requested Attorneys' Fees and Costs award, Plaintiff and Class Counsel shall not have the right to revoke this Settlement, and it will remain binding. The Attorneys' Fees and Costs amounts will cover any and all work performed and

any and all costs incurred by Class Counsel in connection with the litigation of the Action, including without limitation all work performed and costs incurred to date, and all work to be performed and all costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel shall be solely and legally responsible for correctly characterizing this compensation for tax purposes and for paying any taxes on the amounts received. With respect to the Attorneys' Fees and Costs to Class Counsel, the Settlement Administrator may purchase an annuity to utilize United States Treasuries and bonds or other attorney fee deferral vehicles, for Class Counsel. Any additional expenses for the purchase of an annuity by the Settlement Administrator shall be paid separately by Class Counsel and shall not be included within the Settlement Administration Costs. Any portion of the Attorneys' Fees and Costs not awarded by the Court to Class Counsel shall be a part of the Net Settlement Amount for the benefit of Settlement Class Members.

13. Enhancement Award. In recognition of her efforts and work in prosecuting the Action, Plaintiff and Class Counsel may apply to the Court for an Enhancement Award in an amount up to ten thousand dollars (\$10,000.00) to Plaintiff Farrah Fowler. The enhancement award shall be paid from, and not in addition to, the Total Settlement Amount. Defendant agrees not to oppose or impede in any way any such application that is consistent with this paragraph; however, the Settlement is not contingent on Plaintiff recovering that or any particular amount as an Enhancement Award. Even in the event that the Court reduces or does not approve the requested Enhancement Award, Plaintiff and Class Counsel shall not have the right to revoke this Settlement, and it will remain binding. The Enhancement Award will be in addition to Plaintiff's Individual Settlement Payment that is to be paid pursuant to the Settlement. The Settlement Administrator will issue an IRS Form 1099 to Plaintiff for the Enhancement Award, and Plaintiff shall be solely and legally responsible for correctly characterizing this compensation for tax purposes and for paying any taxes on the amounts received. Plaintiff agrees to indemnify and hold TMS harmless from any claim or liability for taxes, penalties, or interest arising as a result of the Enhancement Award. Should the Court approve the Enhancement Award to Plaintiff in an amount that is less than that set forth above, the difference between the lesser amount approved by the Court and the amount allocated toward the Enhancement Award in this Settlement Agreement will

1 be part of the Net Settlement Amount for the benefit of Settlement Class Members.

2 14. Settlement Administration Costs. The Settlement Administrator will be paid for the
3 reasonable costs of administration of the Settlement and distribution of payments under the Settlement,
4 which is currently estimated not to exceed Nine Thousand Dollars (\$9,000). These costs, which will be
5 paid from, and not in addition to, the Total Settlement Amount, subject to Court approval, will include,
6 *inter alia*, printing, distributing, and tracking Class Notices and other documents for this Settlement;
7 calculating and distributing payments due under the Settlement; issuing of 1099 and W-2 IRS Forms
8 and all required tax reporting, filings, withholdings, and remittances; providing necessary reports and
9 declarations; and other duties and responsibilities set forth herein to process this Settlement, and as
10 requested by the Parties. To the extent actual Settlement Administration Costs are greater than the
11 estimated amount stated herein, such excess amount will be deducted from the Total Settlement Amount,
12 subject to approval by the Court; Defendant will not be required to pay any amount over the Total
13 Settlement Amount as a result of any amounts incurred by the Settlement Administrator in excess of the
14 estimated amount as stated herein, unless the additional amount incurred by the Settlement Administrator
15 is due to Defendant's error in providing information to the Settlement Administrator for purposes of
16 administration (*i.e.*, due to errors in the Class List). Any portion of the estimated, designated, and/or
17 awarded Settlement Administration Costs which are not in fact required to fulfill payment to the
18 Settlement Administrator to undertake the requirement settlement administration duties will become part
19 of the Net Settlement Amount for the benefit of Settlement Class Members.

20 15. Labor and Workforce Development Agency Payment. Subject to approval by the Court,
21 the Parties agree that the amount of seventy-five thousand dollars and zero cents (\$75,000.00) from the
22 Total Settlement Amount will be allocated toward penalties under the Private Attorneys General Act,
23 California Labor Code Section 2698, *et seq.* ("PAGA Penalties"), of which seventy-five percent (75%),
24 or \$56,250.00, will be paid to the LWDA (*i.e.*, the LWDA Payment) and twenty-five percent (25%) or,
25 \$18,750.00, will be distributed to Settlement Class Members as part of the Net Settlement Amount. The
26 entirety of the seventy-five thousand dollars and zero cents (\$75,000.00) allocated toward PAGA
27 Penalties pursuant to this paragraph shall be paid from, and not in addition to, the Total Settlement
28 Amount.

1 16. Individual Settlement Share Calculations. Individual Settlement Shares will be calculated
2 and apportioned from the Net Settlement Amount based on the Class Members' Workweeks, as follows:

3 a. After Preliminary Approval of the Settlement, the Settlement Administrator will
4 divide the estimated Net Settlement Amount by the Workweeks of all Class Members to yield the
5 "Estimated Workweeks Value," and will multiply each Class Member's individual Workweeks by the
6 Estimated Workweeks Value to yield each Class Member's estimated Individual Settlement Share that
7 he or she may be eligible to receive under the Settlement.

8 b. After Final Approval of the Settlement, the Settlement Administrator will divide
9 the final Net Settlement Amount by the Workweeks of all Settlement Class Members to yield the "Final
10 Workweeks Value," and will multiply each Settlement Class Member's individual Workweeks by the
11 Final Workweeks Value to yield each Settlement Class Member's Individual Settlement Share.

12 17. Settlement Awards Do Not Trigger Additional Benefits. All payments made under the
13 Settlement shall be deemed to be paid to the payee solely in the year in which such payments actually
14 are issued to the payee. It is expressly understood and agreed that payments made under this Settlement
15 shall not in any way entitle Plaintiff or any Settlement Class Member to any additional compensation or
16 benefits from Defendant or any of the Released Parties, or any bonus, contest, or other compensation or
17 benefit plan or agreement in place during the Class Period, nor will it entitle Plaintiff or any Settlement
18 Class Member to any increased retirement, 401K benefits or matching benefits, or deferred
19 compensation benefits (notwithstanding any contrary language or agreement in any benefit or
20 compensation plan document that might have been in effect during the Class Period).

21 18. Delivery of the Class List. Within twenty-one (21) calendar days after Preliminary
22 Approval, Defendant will provide the Class List to the Settlement Administrator. The Class List and all
23 information included therein is confidential and will not be disclosed to anyone other than the Settlement
24 Administrator.

25 19. Notice by First-Class U.S. Mail.

26 a. Within fourteen (14) calendar days after receiving the Class List from Defendant,
27 the Settlement Administrator will perform a search based on the National Change of Address Database
28 or any other similar services available, such as provided by Experian, for information to update and

correct for any known or identifiable address changes, and will mail a Class Notice (in the form attached as **Exhibit A** to this Settlement Agreement) to all Class Members via First-Class U.S. Mail, using the most current, known mailing addresses identified by the Settlement Administrator.

b. With respect to Class Notices that are returned as undeliverable on or before the Response Deadline, the Settlement Administrator will search for an alternate address by way of skip-trace and re-mail the Class Notice within five (5) calendar days.

20. Dispute Regarding Workweeks. Class Members will have an opportunity to dispute the number of Workweeks to which they have been credited, as reflected in their respective Class Notices. In order to dispute Workweeks, Class Members must submit a written letter to the Settlement Administrator that: (a) contains the case name and number of the Action; (b) is signed by the disputing Class Member; (c) contains the full name, address, telephone number, and the last four digits of the Social Security Number of the disputing Class Member; (d) clearly states that the Class Member disputes the number of Workweeks credited to him or her and what he or she contends is the correct number of Workweeks to be credited to him or her; (e) includes information and/or attaches documentation demonstrating that the number of Workweeks that he or she contends should be credited to him or her is correct; and (f) is returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline. The date of the postmark on the return mailing envelope on the dispute submission will be the exclusive means to determine whether a dispute has been timely submitted. Absent evidence rebutting the accuracy of TMS' records and data as they pertain to the number of Workweeks to be credited to a disputing Class Member, TMS' records will be presumed correct and determinative of the dispute. However, if a Class Member produces information and/or documents to the contrary, the Settlement Administrator will evaluate the materials submitted by the Class Member and the Settlement Administrator will resolve and determine the number of eligible Workweeks that the disputing Class Member should be credited with under the Settlement. The Settlement Administrator's decision on such disputes will be final and non-appealable. The Settlement Administrator will immediately notify the Parties when it receives a Workweeks dispute, and also inform the Parties of its decision regarding the dispute and whether or not it results in an increase of the Workweeks reflected in the Class List or in the Escalator Clause in Paragraph 38.

1 21. Settlement Checks. The Settlement Administrator will be responsible for undertaking
2 appropriate deductions, required tax reporting, and issuing the Individual Settlement Payments by way
3 of check to the Settlement Class Members in accordance with this Settlement Agreement. Each
4 Individual Settlement Payment check will be valid and negotiable for one hundred and eighty (180)
5 calendar days from the date the checks are issued, and, thereafter, shall be cancelled. All funds
6 associated with such cancelled checks will be transmitted to the State Controller's Office Unclaimed
7 Property Division in the names of the Settlement Class Members whose checks are cancelled. The
8 Settlement Administrator shall undertake amended and/or supplemental tax filings and reporting, required
9 under applicable local, state, and federal tax laws, that are necessitated due to the cancellation of any
10 Individual Settlement Payment checks. Settlement Class Members whose Individual Settlement Payment
11 checks are cancelled shall, nevertheless, be bound by this Settlement Agreement.

12 22. Procedure for Requesting Exclusion from the Settlement. Any Class Member wishing to
13 be excluded from the Settlement must submit a written Request for Exclusion to the Settlement
14 Administrator, by mail, postmarked on or before the Response Deadline. The date of the postmark on
15 the return mailing envelope will be the exclusive means to determine whether a Request for Exclusion
16 has been timely submitted. At no time will any of the Parties or their counsel seek to solicit or otherwise
17 encourage Class Members to opt out from the Settlement. The Settlement Administrator will certify
18 jointly to Class Counsel and Defendant's Counsel the Requests for Exclusion that were timely submitted,
19 and will also identify by name only the individuals who have submitted a timely and valid Request for
20 Exclusion in a declaration that is to be filed with the Court in advance of the Final Approval Hearing;
21 no contact information or other identifying information about those individuals who have submitted a
22 timely and valid Request for Exclusion will be provided by the Settlement Administrator to the Court,
23 Plaintiff, or Class Counsel, unless specifically ordered by the Court. Any Class Member who submits
24 a Request for Exclusion is prohibited from making any objection to the Settlement Agreement.

25 23. Settlement Terms Bind All Class Members Who Do Not Request Exclusion. Any Class
26 Member who does not affirmatively request exclusion from the Settlement by submitting a timely and
27 valid Request for Exclusion will be bound by all of the terms of the Settlement Agreement, including
28 and not limited to those pertaining to the Released Claims, as well as any judgment that may be entered

by the Court if it grants Final Approval to the Settlement.

24. Procedures for Objecting to the Settlement. To object to the settlement, Class Members who have not opted out of the Settlement (*i.e.*, Settlement Class Members) must submit a timely and complete Notice of Objection to the Settlement Administrator, by mail, postmarked on or before the Response Deadline. The Notice of Objection must be signed by the Settlement Class Member and contain all information required by this Settlement Agreement (as described in Paragraph 8(s), above). The postmark date will be deemed the exclusive means for determining that the Notice of Objection is timely. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class Members to object to the Settlement Agreement or appeal from the Final Approval Order and Judgment. Settlement Class Members may also present their objection at the Final Approval Hearing.

25. Reports by the Settlement Administrator Regarding Settlement Administration. The Settlement Administrator will provide Defendant's Counsel and Class Counsel a weekly report that certifies: (a) the number of Class Members who have submitted a dispute of Workweeks; (b) the number of Class Members who have submitted timely and valid Requests for Exclusion; (c) the number of Class Members who have submitted timely and complete Notices of Objection; and (d) the number of undeliverable and re-mailed Class Notices. Additionally, the Settlement Administrator will provide to counsel for both Parties any updated reports regarding the administration of the Settlement Agreement as needed or requested, and will immediately notify the Parties when it receives a request from an individual or any other entity regarding potential inclusion in the Class and/or Settlement.

26. Certification of Completion. Upon completion of administration of the Settlement, the Settlement Administrator will provide a written declaration under oath to certify such completion to the Court and counsel for all Parties.

27. Treatment of Individual Settlement Payments. Each Individual Settlement Share will be allocated as follows: one-third (1/3) wages, one-third (1/3) penalties, and one-third (1/3) interest. The portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated to interest and penalties will be reported on an IRS Form-1099 by the Settlement Administrator. The Settlement Administrator will withhold the employee's share of taxes and withholdings with respect to the wages

1 portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their
2 Individual Settlement Payments (*i.e.*, payment of their Individual Settlement Share net of these taxes and
3 withholdings). The employer's share of taxes and contributions on the wages portion of Individual
4 Settlement Shares will be paid separately and in addition to the Total Settlement Amount.

5 28. Administration of Taxes by the Settlement Administrator. The Settlement Administrator
6 will be responsible for issuing to Plaintiff, Settlement Class Members, and Class Counsel any W-2, 1099,
7 or other tax forms as may be required by law for all amounts paid pursuant to this Settlement Agreement.
8 The Settlement Administrator will also be responsible for forwarding all payroll taxes, contributions,
9 and withholdings to the appropriate government authorities.

10 29. Tax Liability. Plaintiff, Class Counsel, Defendant, and Defendant's Counsel do not
11 intend anything contained in this Settlement Agreement to constitute advice regarding taxes or
12 taxability, nor shall anything in this Settlement Agreement be relied on as such. Plaintiff and Settlement
13 Class Members understand and agree that Plaintiff and Settlement Class Members will be solely
14 responsible for correctly characterizing any compensation received under the settlement on their
15 personal income tax returns and paying any and all taxes due for any and all amounts paid to them under
16 the settlement.

17 30. Circular 230 Disclaimer. EACH PARTY TO THIS SETTLEMENT AGREEMENT (FOR
18 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS
19 SETTLEMENT AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER
20 PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS SETTLEMENT
21 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
22 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
23 INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE
24 OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF
25 UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS
26 AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS,
27 HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING
28 TAX ADVICE) IN CONNECTION WITH THIS SETTLEMENT AGREEMENT, (B) HAS NOT

1 ENTERED INTO THIS SETTLEMENT AGREEMENT BASED UPON THE RECOMMENDATION
2 OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND
3 (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
4 ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY
5 BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO
6 ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE
7 CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES
8 (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
9 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
10 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED
11 BY THIS SETTLEMENT AGREEMENT.

12 31. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant
13 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
14 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause
15 of action, or right herein released and discharged.

16 32. Release of Claims by Settlement Class Members. Upon the Effective Date and full
17 funding of the Total Settlement Amount by Defendant, Plaintiff and all Class Members who do not
18 submit a valid and timely Request for Exclusion (*i.e.*, Settlement Class Members) will be deemed to
19 have fully, finally, and forever released, settled, compromised, relinquished, and discharged the
20 Released Parties of all Released Claims he or she may have or had.

21 33. General Release of Claims by Plaintiff. In addition to the release set forth in Paragraph 32,
22 above, upon the Effective Date and full funding of the Total Settlement Amount by Defendant, Plaintiff
23 will be deemed to have fully released and discharged the Released Parties of and from all claims arising
24 from her employment with TMS, separation of employment from TMS, and any acts that have or could
25 have been asserted in any legal action or proceeding against TMS regardless of their nature, whether
26 known or unknown, arising under any federal, state, or local law, or statute, including, *inter alia*, those
27 arising under the California Labor Code, Fair Labor Standards Act, Americans with Disabilities Act, Title
28 VII of the Civil Rights Act of 1964, Employee Retirement Income Security Act, National Labor Relations

1 Act, California Corporations Code, California Business and Professions Code, California Fair
2 Employment and Housing Act, California Constitution (all as amended), and law of contract and tort, as
3 well as for discrimination, harassment, retaliation, wrongful termination, lost wages, benefits, other
4 employment compensation, emotional distress, medical expenses, other economic and non-economic
5 damages, attorneys' fees, and costs, arising at any time from the beginning of time up through the Effective
6 Date. With respect to those claims released by Plaintiff in an individual capacity, Plaintiff expressly and
7 fully acknowledges and waives any and all rights and benefits available under California Civil Code
8 Section 1542, which provides:

9 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR
10 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR
11 HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF
KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

12 Plaintiff understands and agrees that claims or facts in addition to or different from those which are now
13 known or believed by her to exist may hereafter be discovered. It is Plaintiff's intention to settle fully
14 and release all claims she now has against the Released Parties, whether known or unknown, suspected
15 or unsuspected. The Enhancement Award will be paid to Plaintiff specifically in exchange for the general
16 release of the Released Parties from all claims, including those specified in this paragraph and a covenant
17 not to sue the Released Parties. Notwithstanding the above, the general release by Plaintiff shall not
18 extend to claims for workers' compensation benefits, claims for unemployment benefits, or other claims
19 that may not be released by law.

20 34. Duties of the Parties with Respect to Obtaining Preliminary Approval of the Settlement.

21 Upon execution of this Settlement Agreement, Plaintiff shall promptly obtain a hearing date for
22 Plaintiff's Motion for Preliminary Approval of the Settlement. Plaintiff and Class Counsel will be
23 responsible for drafting the Motion for Preliminary Approval of the Settlement and submit this
24 Settlement Agreement to the Court in support of said motion. Class Counsel will provide Defendant's
25 Counsel a draft of the Preliminary Approval Motion for review and comment at least three (3) calendar
26 days before the filing deadline. Defendant agrees not to oppose the Motion for Preliminary Approval
27 of the Settlement to the extent it seeks relief that is consistent with, and not counter to, this Settlement
28 Agreement. Said motion shall apply to the Court for the entry of an order (the "Preliminary Approval

Order”), which shall be mutually agreed upon by the Parties, seeking the following:

- a. Conditionally certifying the Class for settlement purposes only;
- b. Granting Preliminary Approval of the Settlement;
- c. Preliminarily appointing Plaintiff as representative of the Class;
- d. Preliminarily appointing Plaintiff’s Counsel as counsel for the Class;
- e. Approving, as to form and content, the mutually agreed upon and proposed Class Notice and directing its mailing to the Class by first class mail;
- f. Approving the manner and method for Class Members to request exclusion from the Settlement as contained herein and within the Class Notice; and
- g. Scheduling a Final Approval Hearing at which the Court will determine whether the Settlement should be finally approved as fair, reasonable, and adequate as to the Settlement Class Members.

35. Duties of the Parties with Respect to Obtaining Final Approval of the Settlement. After the Response Deadline, and with the Court’s permission, a Final Approval Hearing will be conducted to determine whether Final Approval of the Settlement should be granted, along with the amounts properly payable for (a) Individual Settlement Payments; (b) the LWDA Payment; (c) Attorneys’ Fees and Costs; (d) the Enhancement Award; and (e) Settlement Administration Costs. The Final Approval Hearing will not be held earlier than thirty (30) calendar days after the Response Deadline. Plaintiff and Class Counsel will be responsible for drafting the motion seeking Final Approval of the Settlement. Class Counsel will provide Defendant’s Counsel a draft of the Final Approval Motion for review and comment at least three (3) calendar days before the filing deadline. Defendant agrees not to oppose the Motion for Final Approval of the Settlement to the extent it seeks relief that is consistent with, and not counter to, this Settlement Agreement. By way of said motion, Plaintiff will apply for the entry of the mutually agreed upon proposed order and judgment (the “Final Approval Order and Judgment”), which will provide for, in substantial part, the following:

- a. Approval of the Settlement as fair, reasonable, and adequate, and directing consummation of its terms and provisions;
- b. Certification of the settlement Class;

- 1 c. Approval of the application for Attorneys' Fees and Costs to Class Counsel;
2 d. Approval of the application for an Enhancement Award to Plaintiff;
3 e. Directing Defendant to fund all amounts due under the Settlement Agreement and
4 ordered by the Court; and
5 f. Entering judgment in this Action barring and enjoining all Settlement Class
6 Members from prosecuting the Released Claims against any of the Released Parties, while maintaining
7 continuing jurisdiction, in conformity with California Rules of Court 3.769 and the Settlement
8 Agreement.

9 36. Termination or Revocation of Settlement.

10 a. If three percent (3%) or more of the Class Members submit timely and valid
11 Requests for Exclusion, Defendant may, at its sole discretion, elect to rescind the Settlement Agreement.
12 Defendant must exercise this right of rescission in a writing that is provided to Class Counsel within
13 twenty-one (21) calendar days following the Response Deadline. If Defendant exercises this right of
14 rescission, this Settlement Agreement will not have any force and/or effect. If the Settlement is voided
15 pursuant to this paragraph, no payment will be made by Defendant to Plaintiff, any Class Member, or
16 Class Counsel in connection with this Settlement Agreement; however, in such an event, Defendant will
17 be responsible for the costs incurred to date by the Settlement Administrator.

18 b. If the Court finds the Total Settlement Amount to be insufficient to warrant
19 Preliminary Approval or Final Approval of the Settlement, Defendant may, in their sole discretion,
20 rescind the Settlement Agreement and all actions taken in furtherance of it will thereby be null and void.
21 If the Settlement is voided pursuant to this paragraph, no payment will be made by Defendant to Plaintiff,
22 any Class Member, or Class Counsel in connection with this Settlement Agreement; however, in such an
23 event, Parties will be jointly responsible for the costs incurred to date by the Settlement Administrator.

24 37. Effects of Termination of the Settlement. Termination of the Settlement Agreement shall
25 have the following effects:

26 a. The Settlement Agreement shall be void and shall have no force or effect, and no
27 Party shall be bound by any of its terms;

28 b. In the event the Settlement Agreement is terminated, Defendant shall have no

obligation to make any payments to any Party, Class Member, or attorney, except that the terminating Party shall pay the Settlement Administrator for services rendered up to the date the Settlement Administrator is notified that the settlement has been terminated (unless termination is in the manner provided in Paragraph 36(b), above, in which case the language in that Paragraph controls);

c. The Preliminary Approval Order, Final Approval Order, and Judgment, including any order certifying the Class, shall be vacated;

d. The Settlement Agreement and all negotiations, statements, and proceedings relating thereto shall be without prejudice to the rights of any of the Parties, all of whom shall be restored to their respective positions in the Action prior to the execution of the Settlement Agreement;

e. Neither this Settlement Agreement, nor any ancillary documents, actions, statements, or filings in furtherance of the Settlement (including all matters associated with the mediation) shall be admissible or offered into evidence in the Action or any other action for any purpose whatsoever; and

f. Any documents generated to bring the Settlement into effect will be null and void, and any order or judgment entered by the Court in furtherance of this Settlement Agreement will likewise be treated as void from the beginning.

38. Escalator Clause. Defendant represents that, for the period of September 27, 2014 to July 24, 2020, there were approximately 42,388 Workweeks. If it is determined that the total number of Workweeks through July 24, 2020 is actually five percent (5%) more than 42,388 (*i.e.*, 44,508), then the Total Settlement Amount will be increased on a proportional basis by the same number of percentage points above the 5% threshold (*i.e.*, a one percent (1%) increase in the Total Settlement Amount for every one percent (1%) increase in Workweeks for the period between September 27, 2014 to July 24, 2020 over the five percent (5%) threshold).

39. Stipulation to Add Additional Claims for Settlement Purposes Only. For the purpose of effectuating the Settlement, Defendant agrees to stipulate to allow Plaintiff to add a claim for civil penalties pursuant to PAGA. A First Amended Complaint will be filed by Plaintiff pursuant to a separate stipulation. If, for any reason, the Settlement is not finally approved and/or final approval is not granted as anticipated in this Settlement Agreement, Defendant's stipulation to amending the complaint as

provided in this paragraph will be void.

40. Continued Jurisdiction. After entry of judgment pursuant to the Settlement, the Court will have continuing jurisdiction pursuant to Rule 3.769 of the California Rules of Court and Section 664.6 of the California Code of Civil Procedure, for purposes of addressing: (a) the interpretation and enforcement of the terms of the Settlement, (b) settlement administration matters, and (c) such post-judgment matters as may be appropriate under court rules or as set forth in this Settlement Agreement.

41. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include the terms set forth in any attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Settlement Agreement are an integral part of the Settlement.

42. Entire Agreement. This Settlement Agreement and any attached exhibits constitute the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements may be deemed binding on the Parties. The Parties expressly recognize California Civil Code § 1625 and California Code of Civil Procedure § 1856(a), which provide that a written agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral or written representations or terms will modify, vary, or contradict the terms of this Settlement Agreement.

43. Interim Stay of Proceedings. The Parties agree to hold in abeyance all proceedings in the Action (including with respect to California Code of Civil Procedure section 583.310), except such proceedings necessary to implement and complete the Settlement Agreement, pending the Final Approval Hearing to be conducted by the Court.

44. Limitation on Publicity. Plaintiff and Class Counsel agree not to disclose or publicize the Settlement, including the fact of the Settlement, its terms or contents, and the negotiations underlying the Settlement, in any manner or form, directly or indirectly, to any person or entity, except to potential Class Members and as shall be contractually required to effectuate the terms of the Settlement. For the avoidance of doubt, this paragraph means Plaintiff and Class Counsel agree not to issue press releases; communicate with, or respond to, any media or publication entities; publish information in manner or form, whether printed or electronic, on any medium; or otherwise communicate, whether by print, video, recording, or any other medium, with any person or entity concerning the Settlement, including the fact

1 of the Settlement, its terms or contents, and the negotiations underlying the Settlement, except as shall
2 be contractually required to effectuate the terms of the Settlement. However, for the limited purpose of
3 allowing Class Counsel to prove adequacy as class counsel in other actions, Class Counsel may disclose
4 the name of the Parties in this action and the venue/case number of this action (but not any other
5 settlement details) for such purposes. Further, nothing herein will restrict Class Counsel from providing
6 factual information and/or submitting the Settlement Agreement (and any amendments thereto) to the
7 Court and/or the LWDA, in order to effectuate this Settlement in accordance with applicable laws and
8 Court orders.

9 45. Confidentiality of Mediation Documents and Data. All originals, copies, and summaries
10 of documents and data provided to Class Counsel by Defendant and/or Defendant's Counsel in connection
11 with the mediation or other settlement negotiations in this matter may be used only with respect to this
12 Settlement, and for no other purpose, and may not be used in any way that violates any existing contractual
13 agreement, statute, or rule.

14 46. Waiver and Amendment. The Parties may not waive, amend, or modify any provision of
15 this Settlement Agreement except by written agreement signed by counsel for all Parties, and subject to
16 any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement
17 will not constitute a waiver of any other provision.

18 47. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
19 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement
20 Agreement and to take all appropriate actions required or permitted to be taken by such Parties pursuant
21 to this Settlement Agreement to effectuate its terms and to execute any other documents required to
22 effectuate the terms of this Settlement Agreement. The Parties warrant that they understand and have
23 full authority to enter into this Settlement Agreement, and further intend that this Settlement Agreement
24 will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to
25 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality
26 provisions that otherwise might apply under state or federal law.

27 48. Signatories. It is agreed that because the members of the Class are so numerous, it is
28 impossible or impractical to have each Settlement Class Member execute this Settlement Agreement.

1 The Class Notice will advise all Class Members of the binding nature of the release as to the Settlement
2 Class Members, and the release shall have the same force and effect as if this Settlement Agreement
3 were executed by each Settlement Class Member.

4 49. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,
5 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

6 50. California Law Governs. All terms of this Settlement Agreement and attached exhibits
7 hereto will be governed by and interpreted according to the laws of the State of California.

8 51. Enforcement of Actions. In the event that any of the Parties to this Settlement Agreement
9 institutes any legal action, arbitration, or other proceeding against any of the other Parties to enforce the
10 provisions of this Settlement Agreement or to declare rights or obligations under this Settlement
11 Agreement, the successful Party shall be entitled to recover from the unsuccessful Party or Parties
12 reasonable attorneys' fees and costs, including expert witness fees, incurred in connection with any such
13 enforcement proceedings.

14 52. Execution and Counterparts. This Settlement Agreement is subject only to the execution
15 of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All
16 executed counterparts and each of them, including facsimile, electronic, and scanned copies of the
17 signature page, will be deemed to be one and the same instrument.

18 53. Acknowledgment that the Settlement is Fair and Reasonable. The Parties believe this
19 Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at
20 this settlement after arm's-length negotiations and in the context of adversarial litigation, taking into
21 account all relevant factors, present and potential. The Parties further acknowledge that they are each
22 represented by competent counsel and that they have had an opportunity to consult with their counsel
23 regarding the fairness and reasonableness of this Settlement Agreement. In addition, the Mediator may
24 execute a declaration supporting the Settlement and the reasonableness of the Settlement and the Court
25 may, in its discretion, contact the Mediator to discuss the Settlement and whether or not the Settlement
26 is objectively fair and reasonable.

27 54. Invalidity of Any Provision. Before declaring any provision of this Settlement
28 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent

possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

55. Plaintiff's Waiver of Right to Be Excluded. Plaintiff agrees to sign this Settlement Agreement and, by signing this Settlement Agreement, is hereby bound by the terms herein.

56. Non-Admission of Liability. The Parties enter into this Settlement Agreement to resolve the dispute that has arisen between them and to avoid the burden, expense, and risk of continued litigation. In entering into this Settlement Agreement, Defendant does not admit, and specifically denies, that it and/or any of the Released Parties have violated any state, federal, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations, or legal requirements; breached any contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to Defendant's employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by Defendant of any such violations or failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this Settlement Agreement, this Settlement Agreement and its terms and provisions shall not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendant or to establish the existence of any condition constituting a violation of, or a non-compliance with, state, federal, local, or other applicable law.

57. Captions. The captions and paragraph numbers in this Settlement Agreement are inserted for the reader's convenience, and in no way define, limit, construe, or describe the scope or intent of the provisions of this Settlement Agreement.

58. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one Party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed equally to the preparation of this Settlement Agreement.

59. Representation by Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that

1 this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in
2 full.

3 60. All Terms Subject to Final Court Approval. All amounts and procedures described in
4 this Settlement Agreement herein will be subject to final Court approval.

5 61. Notices. All notices, demands, and other communications to be provided concerning this
6 Settlement Agreement shall be in writing and delivered by overnight mail at the addresses set forth
7 below, or such other addresses as either Party may designate in writing from time to time:

8 To Plaintiff and Class Counsel:

9 Edwin Aiwanian, Esq.
10 **LAWYERS for JUSTICE, PC**
11 410 West Arden Avenue, Suite 203
12 Glendale, California 91203

To Defendant:

Betsy Johnson, Esq.
Jennifer L. Katz, Esq.
**OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.**
400 South Hope Street, Suite 1200
Los Angeles, California 90071

13 62. Final Judgment. The Parties shall provide the Settlement Administrator with a copy of
14 the Final Judgment once it is entered by the Court, and the Settlement Administrator shall post the Final
15 Judgment on its website within three (3) business days of receipt. No individualized notice to the Class
16 will be required.

17 63. Cooperation and Execution of Necessary Documents. All Parties and their counsel will
18 cooperate with each other in good faith and use their best efforts to implement the Settlement, including
19 and not limited to, executing all documents to the extent reasonably necessary to effectuate the terms of
20 this Settlement Agreement. If the Parties are unable to reach agreement on the form or content of any
21 document needed to implement the Settlement Agreement, or on any supplemental provisions that may
22 become necessary to effectuate the terms of this Settlement Agreement, the Parties may seek the
23 assistance of the Mediator and then the Court to resolve such disagreement.

24 64. Integration Clause. This Settlement Agreement contains the entire agreement between
25 the Parties relating to the settlement and transaction contemplated hereby, and all prior or
26 contemporaneous agreements, understandings, representations, and statements, whether oral or written
27 and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be
28 waived except in writing.

IT IS SO AGREED.

Dated: 01/05/2022, 2021

Electronically Signed:  2022-01-05 20:09:20 UTC - 107.127.14.1

AssureSign® 56aa85a5-2064-4e25-9f1d-ae140133a70b

**DEFENDANT TOTAL MERCHANT SERVICES,
LLC**

Dated: _____, 2021

Full Name:

Title:

On behalf of Total Merchant Services, LLC

APPROVED AS TO FORM

LAWYERS *for* JUSTICE, PC

Dated: January 5, 2022, 2021

Yusuf Deringin

Edwin Aiwarzian

Attorneys for Plaintiff Farrah Fowler and Proposed Class Counsel

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

Dated: _____, 2021

Betsy Johnson

Jennifer L. Katz

Attorneys for Defendant Total Merchant Services, LLC

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Action and PAGA Settlement between Plaintiff and Defendant:

IT IS SO AGREED.

PLAINTIFF FARRAH FOWLER

Dated: _____, 2021

Farrah Fowler, Plaintiff

**DEFENDANT TOTAL MERCHANT SERVICES,
LLC**

Dated: January 11, 2022

DocuSigned by:
David A. Greenberg
C7AEC5B618694ED

Full Name: David A. Greenberg

Title: Chief Administrative Officer
On behalf of Total Merchant Services, LLC

APPROVED AS TO FORM

LAWYERS *for* JUSTICE, PC

Dated: _____, 2021

Edwin Aiwanian
Attorneys for Plaintiff Farrah Fowler and Proposed Class
Counsel

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

Dated: January 12, 2022

2020

Betsy Johnson
Jennifer L. Katz
Attorneys for Defendant Total Merchant Services, LLC

EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT

Fowler v. Total Merchant Services, LLC, et al.
Superior Court of California for the County of Los Angeles, Case No. BC722782

PLEASE READ THIS NOTICE CAREFULLY.

You have received this Notice because Defendant's records indicate that you may be eligible to take part in the class action settlement reached in the above-referenced case.

You do not need to take any action to receive a settlement payment.

This Notice is designed to advise you of your rights and options with respect to the settlement, and how you can request to be excluded from the settlement, object to the settlement, and/or dispute the number of Workweeks that you are credited with, if you so choose.

YOU ARE NOTIFIED THAT: A class and representative action settlement has been reached between Plaintiff Farrah Fowler ("Plaintiff") and Defendant Total Merchant Services, LLC ("Defendant") (Plaintiff and Defendant are collectively referred to as the "Parties") in the case entitled *Fowler v. Total Merchant Services, LLC, et al.*, Los Angeles County Superior Court, Case No. BC722782 ("Action"), which may affect your legal rights. On [date of Preliminary Approval], the Court granted preliminary approval of the settlement and scheduled a hearing on [hearing date] at [hearing time] ("Final Approval Hearing") to determine whether or not the Court should grant final approval of the settlement.

I. IMPORTANT DEFINITIONS

"Class" means all current and former hourly paid, non-exempt employees who worked for Total Merchant Services, LLC and/or Total Merchant Services, Inc. (together, "TMS") at any time during the Class Period.

"Class Member" means a member of the Class.

"Class Period" means the time period from September 27, 2014 through December 1, 2020.

II. BACKGROUND OF THE LAWSUIT

On September 27, 2018, Farrah Fowler commenced a putative class action lawsuit by filing the Class Action Complaint for Damages in the Los Angeles County Superior Court, Case No. BC722782 (the "Action"). On January 10, 2022, Plaintiff filed a First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, Cal. Labor Code § 2698, *Et Seq.* ("Operative Complaint"). Plaintiff alleges that, with respect to its non-exempt California employees, TMS failed to properly pay minimum and overtime wages, provide compliant meal and rest breaks and associated premiums, timely pay wages during employment and upon termination of employment and associated waiting-time penalties, provide accurate wage statements, keep requisite payroll records, and reimburse business expenses, and thereby engaged in unfair business practices and conduct that gives rise to penalties under the Labor Code Private Attorneys General Act, Cal. Labor Code § 2698, *et seq.* ("PAGA"). Plaintiff seeks, among other things, recovery of unpaid wages and meal and rest period premiums, restitution, statutory civil penalties, interest, and attorneys' fees and costs.

TMS denies all of the allegations in the Action, and further denies that it has engaged in any of the conduct alleged or violations of any law.

The Parties participated in mediation with a respected class action mediator, and as a result, the Parties reached a settlement. The Parties have since entered into the Joint Stipulation of Class Action and PAGA Settlement ("Settlement" or "Settlement Agreement").

On [date of Preliminary Approval], the Court entered an order preliminarily approving the Settlement. The Court has appointed [redacted] as the administrator of the Settlement (“Settlement Administrator”), Plaintiff Farrah Fowler as representative of the Class (“Class Representative”), and the following Plaintiff’s attorneys as counsel for the Class (“Class Counsel”):

Edwin Aiwazian
Arby Aiwazian
Lawyers for Justice, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Telephone: (818) 265-1020 / Fax: (818) 265-1021

If you are a Class Member, you do not need to take any action to receive an Individual Settlement Payment, but you have the opportunity to request exclusion from the Settlement (in which case you will not receive an Individual Settlement Payment), object to the Settlement, and/or dispute the Workweeks credited to you, if you so choose, as explained more fully in Section III below.

The Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended or will be construed as an admission by TMS that the claims in the Action have merit or that TMS has any liability to Plaintiff or to Class Members. Plaintiff and Defendant, and their respective counsel, have concluded and agree that, in light of the risks and uncertainties to each side of continued litigation, the Settlement is fair, reasonable, and adequate, and is in the best interests of Class Members. The Court has made no ruling on the merits of Plaintiff’s or the Class Members’ claims and has determined only that certification of the Class is appropriate under California law for settlement purposes.

III. SUMMARY OF THE PROPOSED SETTLEMENT

A. Settlement Formula

The total gross settlement amount is three million dollars (\$3,000,000.00) (the “Total Settlement Amount”). The portion of the Total Settlement Amount that is available for payment to Class Members is referred to as the “Net Settlement Amount.” The Net Settlement Amount will be the Total Settlement Amount less the following payments which are subject to approval by the Court: (1) Attorneys’ Fees and Costs, consisting of attorneys’ fees in an amount not to exceed 35% of the Total Settlement Amount (*i.e.*, \$1,050,000.00) and reimbursement of litigation costs and expenses in an amount not to exceed twenty-eight thousand dollars (\$28,000.00) to Class Counsel; (2) Enhancement Award in an amount not to exceed ten thousand dollars (\$10,000.00) to Plaintiff for her services in the Action; (3) payment to the California Labor and Workforce Development Agency (“LWDA”) in the amount of fifty six thousand two hundred fifty dollars (\$56,250.00) for its 75% portion of the PAGA Penalties (“LWDA Payment”); and (4) Settlement Administration Costs in an amount currently estimated not to exceed nine thousand dollars (\$9,000.00) to the Settlement Administrator for the reasonable cost and expense of administering the Settlement. Note: a total of seventy-five thousand dollars (\$75,000.00) from the Total Settlement Amount has been allocated toward PAGA penalties, of which the LWDA will be paid 75% and the remaining 25% (*i.e.*, eighteen thousand seven hundred fifty dollars (\$18,750.00)) will be a part of the Net Settlement Amount for distribution to Settlement Class Members.

Class Members are eligible to receive payment under the Settlement of their *pro rata* share of the Net Settlement Amount (“Individual Settlement Share”) based on the number of weeks that each Class Member was credited to have worked for TMS as an hourly paid, non-exempt employee during the Class Period (“Workweeks”).

The Settlement Administrator has divided the Net Settlement Amount by the collective Workweeks of all Class Members to yield the “Estimated Workweeks Value,” and multiplied each Class Member’s individual Workweeks by the Estimated Workweeks Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Settlement (which is listed in Section III.C below). Class Members who do not submit a valid and timely Request for Exclusion (“Settlement Class Members”) will be

issued payment of their final Individual Settlement Share.

Each Individual Settlement Share will be allocated as one-third (1/3) wages, which will be reported on an IRS Form W-2; one-third (1/3) interest, which will be reported on an IRS Form 1099 (if applicable); and one-third (1/3) penalties, which will be reported on an IRS Form 1099 (if applicable). Each Individual Settlement Share will be subject to reduction for the employee's share of taxes and withholdings with respect to the wages portion of Individual Settlement Shares, resulting in a net payment to the Settlement Class Member ("Individual Settlement Payment").

If the Court grants final approval of the Settlement, Individual Settlement Payments will be mailed to Settlement Class Members at the address that is on file with the Settlement Administrator. **If the address to which this Notice was mailed is not correct, or if you move after you receive this Notice, you must provide your correct mailing address to the Settlement Administrator as soon as possible to ensure you receive any payment that you may be entitled to under the Settlement.**

B. Your Workweeks Based on Defendant's Records

According to Defendant's records:

From September 27, 2014 to December 1, 2020, you worked for TMS as an hourly-paid, non-exempt employee in California for [REDACTED] Workweeks.

If you wish to dispute the Workweeks credited to you, you must submit your dispute by way of written letter that is sent to the Settlement Administrator. The written letter must: (a) contain the case name and number of the Lawsuit (*Fowler v. Total Merchant Services, LLC, et al.*, Case No. BC722782); (b) be signed by you; (c) contain your full name, address, telephone number, and the last four digits of your Social Security Number; (d) clearly state that you dispute the number of Workweeks credited to you and what you contend is the correct number to be credited to you; (e) include information and/or attach documentation demonstrating that the number of Workweeks that you contend should be credited to you is correct; and (f) be returned by mail to the Settlement Administrator at the address specified in Section IV.B below, postmarked **no later than [the Response Deadline]**.

C. Your Estimated Individual Settlement Share

As explained above, your estimated Individual Settlement Share is based on the number of Workweeks credited to you.

Under the terms of the Settlement, your Individual Settlement Share is estimated to be \$[REDACTED]. The Individual Settlement Share is subject to reduction for the employee's share of taxes and withholding with respect to the wages portion of the Individual Settlement Share and will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.

The settlement approval process may take multiple months. Your Individual Settlement Share reflected in this Notice is only an estimate. Your actual Individual Settlement Payment may be higher or lower.

D. Release of Claims

Upon the Effective Date and full funding of the Total Settlement Amount, Plaintiff and all Class Members who do not submit a valid and timely Request for Exclusion (*i.e.*, Settlement Class Members) will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Claims he or she may have or had.

"Released Claims" means any and all claims, actions, demands, causes of action, suits, debts, obligations, damages, rights or liabilities arising out of Plaintiff or Class Members' work for TMS in California during the Class Period, that were pled or could have been pled any claims that were pled or could have been pled based on

the factual allegations in the Complaint, the proposed First Amended Complaint, or any amendments thereto by Plaintiff or the Class Members or any of their respective heirs, executors, administrators, beneficiaries, predecessors, successors, attorneys, assigns, agents, and/or representatives against Defendant and the Released Parties based on the factual allegations contained in the Complaint, the proposed First Amended Complaint, or any amendments thereto, including, but not limited to: claims under federal, state, or local law for failure to pay overtime and minimum wages, provide meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide compliant wage statements, maintain complete and accurate payroll records, and reimburse necessary business-related expenses, interest, statutory and civil penalties (including waiting time penalties and late payment penalties pursuant to Labor Code sections 203 and 204, wage statement and recordkeeping penalties pursuant to Labor Code sections 226 and 1174, and civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code sections 2698, *et seq.*) (“PAGA”)), claims pursuant to Labor Code sections 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698, *et seq.*, 2800, and 2802, the Industrial Welfare Commission Wage Orders, and claims under Business and Professions Code sections 17200, *et seq.*, claims for attorneys’ fees and costs, conversion, fraud, common count, and unfair business practices. Released Claims include all claimed or unclaimed compensatory, consequential, incidental, liquidated, punitive and exemplary damages, restitution, interest, costs and fees, injunctive or equitable relief, and any other remedies available at law or equity allegedly owed or available to the Class arising out of Plaintiff or Class Members’ work for TMS in California during the Class Period that were pled or could have been pled based on the factual allegations in the Complaint, the proposed First Amended Complaint, or any amendments thereto against the Released Parties for the time period during the Class Period.

“Released Parties” means Total Merchant Services, LLC and Total Merchant Services, Inc., and, with respect to each such entity, all of its current or former parent companies, subsidiary companies and/or related companies (including, but not limited to, NAB-TMS, LLC and North American Bancard, LLC), partnerships, joint ventures, and/or staffing agencies, and, with respect to each of them, all of their and/or such related entities’ predecessors, and, with respect to each such entity, all of its past and present employees, officers, partners, principals, directors, stockholders, owners, representatives, assigns, attorneys, agents, insurers (including, but not limited to, AIG Claims, Inc. and AIG Specialty Insurance Company), employee benefit programs (and the trustees, administrators, fiduciaries, and insurers of such programs), and any other persons acting by, through, under, or in concert with any of the persons or entities listed in this subsection.

E. Attorneys’ Fees and Costs to Class Counsel

Class Counsel will seek attorneys’ fees in an amount of up to thirty-five percent (35%) of the Total Settlement Amount (*i.e.*, an amount of up to \$1,050,000.00) and reimbursement of litigation costs and expenses in an amount of up to twenty-eight thousand dollars (\$28,000.00) (collectively, “Attorneys’ Fees and Costs”), subject to approval by the Court. All Attorneys’ Fees and Costs awarded by the Court will be paid from, and not in addition to, the Total Settlement Amount. Class Counsel has been prosecuting the Action on behalf of Plaintiff and Class Members on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs and expenses.

F. Enhancement Award to Plaintiff

Plaintiff will seek the amount of ten thousand dollars (\$10,000.00) to her (“Enhancement Award”), in recognition of her services in connection with the Action. The Enhancement Award will be paid from, and not in addition to, the Total Settlement Amount, subject to approval by the Court. If awarded, the Enhancement Award will be paid to Plaintiff in addition to her Individual Settlement Payment to which she is entitled under the Settlement.

G. Settlement Administration Costs to Settlement Administrator

Payment to the Settlement Administrator is estimated not to exceed nine thousand dollars (\$9,000.00) (“Settlement Administration Costs”) for the costs of the notice and settlement administration process, including and not limited to, the expense of notifying the Class Members of the Settlement; processing Requests for Exclusion, Notices of Objection, and disputes of Workweeks; calculating Individual Settlement Shares and Individual Settlement Payments; and distributing payments and tax forms under the Settlement. The Settlement Administration Costs shall be paid from, and not in addition to, the Total Settlement Amount, subject to approval by the Court.

IV. WHAT ARE YOUR RIGHTS AND OPTIONS AS A CLASS MEMBER?

A. Participate in the Settlement

If you want to participate in the Settlement and receive money from the Settlement, you do not have to do anything. You will automatically be included in the Settlement and issued your Individual Settlement Payment unless you decide to exclude yourself from the Settlement.

Unless you elect to exclude yourself from the Settlement, and timely do so, you will be bound by the terms of the Settlement and any judgment that may be entered by the Court based thereon, and you will release the claims described in Section III.D above. As a Class Member, you will not be separately responsible for the payment of attorneys’ fees or litigation costs and expenses, unless you retain your own counsel, in which event you will be responsible for your own attorneys’ fees and expenses.

B. Request Exclusion from the Settlement

If you do not wish to participate in the Settlement, you must seek exclusion from the Settlement by submitting a written request (“Request for Exclusion”) to the Settlement Administrator.

A Request for Exclusion must: (a) contain the case name and number of the Action (*Fowler v. Total Merchant Services, LLC, et al.*, Case No. BC722782); (b) be signed by you; (c) contain your full name, address, telephone number, and last four digits of your Social Security Number; (d) contain a statement clearly indicating that you do not wish to be included in the Settlement; and (e) be submitted to the Settlement Administrator by mail, postmarked **no later than [Response Deadline]**, at the following mailing address:

[Settlement Administrator]
[Mailing Address]

If the Court grants final approval of the Settlement, any Class Member who submits a valid and timely Request for Exclusion will not be entitled to receive any payment from the Settlement, will not be bound by the Settlement (and the release of claims described in Section III.D above), and will not have any right to object to, appeal, or comment on the Settlement. Any Class Members who do not submit a valid and timely Request for Exclusion will be deemed Settlement Class Members and will be bound by all terms of the Settlement, including those pertaining to the release of claims described in Section III.D above, as well as any judgment that may be entered by the Court based thereon.

C. Object to the Settlement

You can object to the terms of the Settlement as long as you have not submitted a Request for Exclusion, by submitting a written objection (“Notice of Objection”) to the Settlement Administrator or presenting your objection at the Final Approval Hearing.

A Notice of Objection must: (a) contain the case name and number of the Action (*Fowler v. Total Merchant Services, LLC, et al.*, Case No. BC722782); (b) contain your full name, signature, address, and telephone number; (c) contain a written statement of all grounds for the objection accompanied by any legal support for such objection; (d) contain copies of any papers, briefs, or other documents upon which the objection is based; and (e)

be mailed to the Settlement Administrator at the address listed in Section IV.B above, postmarked **no later than [Response Deadline]**.

V. FINAL APPROVAL HEARING

The Court will hold a Final Approval Hearing in Department SSC10 of the Los Angeles County Superior Court, located at Spring Street Courthouse, 312 N. Spring Street, Los Angeles, California 90012, on **[date]**, at **[time]**, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court also will be asked to approve and award Attorneys' Fees and Costs to Class Counsel, Enhancement Award to Plaintiff, and Settlement Administration Costs to the Settlement Administrator.

The hearing may be continued without further notice to Class Members. It is not necessary for you to appear at the Final Approval Hearing, although you may appear either in person or remotely if you wish to.

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement Agreement, you should review the detailed Settlement Agreement and other papers which are on file with the Court.

You may view the Settlement Agreement and other court records in the Action for a fee by visiting the civil clerk's office, located at Stanley Mosk Courthouse, 111 N. Hill Street, Los Angeles, California 90012, during business hours, or by online by visiting the following website: <http://www.lacourt.org/casesummary/ui/index.aspx?casetype=civil>.

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT.

IF YOU HAVE ANY QUESTIONS, YOU MAY CALL THE SETTLEMENT ADMINISTRATOR AT THE FOLLOWING TOLL-FREE NUMBER: **[INSERT], OR YOU MAY ALSO CONTACT CLASS COUNSEL.**