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

14 LUIS ARELLANO, on behalf of himself, all
15 others similarly situated,

16 *Plaintiff,*

17 vs.

18 ELECTRONIC DOCUMENT PROCESSING,
19 INC., DBA ONE TOUCH LEGAL SERVICES.,
20 a California corporation; and DOES 1-50,
21 inclusive,

22 *Defendants.*

Case No. BC540315

23 **NOTICE OF MOTION AND MOTION**
24 **FOR FINAL APPROVAL OF CLASS**
25 **ACTION SETTLEMENT; AWARD OF**
26 **ATTORNEY FEES AND LITIGATION**
27 **EXPENSES; SETTLEMENT**
28 **ADMINISTRATOR EXPENSES AND**
INCENTIVE AWARD

Hearing Information

Date: September 12, 2017
Time: 11:00am
Department: 308
Judge: Hon. Ann I. Jones

Submitted Under Separate Cover

1. Declaration of Shaun Setareh;
2. [Proposed] Order

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NOTICE OF MOTION AND MOTION

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 12, 2017 at 11:00am in Department 308 of the Superior Court of the State of California, County of Los Angeles, located at 600 Commonwealth Avenue, Los Angeles, California 90005, Plaintiff Luis Arellano ("Plaintiff") will, and hereby does, move this Court for an order:

- (1) Finally granting certification of the Settlement Class for settlement purposes pursuant to California Code of Civil Procedure § 382;
- (2) Finally approving the proposed settlement;
- (3) Approving attorney fees in the amount of \$30,000;
- (4) Approving litigation expenses in the amount of \$7,339.65;
- (5) Approving a class representative service payment in the amount of \$5,000;
- (6) Approving settlement administration costs to CPT Group in the amount of \$8,000;
- (7) Approving settlement of the Private Attorney General Act claims for \$4,000.

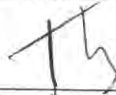
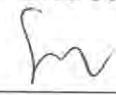
This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the Declaration of Shaun Setareh and all exhibits thereto, all papers and pleadings on file with the Court in this action, all matters judicially noticeable, and on such oral and documentary evidence as may be presented at the hearing.

Dated: August 18, 2017

Respectfully submitted,

SETAREH LAW GROUP

BY

Shaun Setareh
Thomas Segal
Attorneys for Plaintiff
LUIS ARELLANO

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Cases

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On April 27, 2017 the Court granted preliminary approval of this settlement of a wage and hour class action on behalf of a class of process servers. The settlement provides for a \$90,000 non-reversionary common fund (for a class of approximately 80 class members). No class members have objected to the settlement and only one class member has requested exclusion. 79 of 80 class members will be mailed checks directly. The funds from any uncashed checks will not revert to the Defendant but instead will be sent to California's Unclaimed Property Fund. Plaintiff requests that the Court now finally approve the settlement and award the requested attorney fees, expenses, settlement administrator expenses, and class representative service award.

Plaintiff has alleged that Defendant's policies and practices fail to adequately notify employees about their rights to take meal and rest periods under California law and other derivative claims. Specifically, Plaintiff's Complaint alleges the following causes of action: (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to pay hourly wages; (4) failure to indemnify; (5) failure to provide accurate written wage statements; (6) failure to timely pay all final wages; (7) unfair competition; (8) failure to pay employees for all hours worked and (9) civil penalties under Lab. Code §§ 2698 *et seq.*, the Private Attorneys' General Act of 2004 ("PAGA").

Plaintiff pursues these claims on behalf of a Class ("Settlement Class Members") defined in the Settlement to include:

"All process servers employed by Defendant in California at any time from March 24, 2010, through the Preliminary Approval Order Date."

Defendant has mounted several defenses to Plaintiff's claims, both on the merits and with regard to class certification. Thus, although Plaintiff was prepared to litigate this case through class certification and, ultimately, to trial, there were risks in going forward with

1 litigation. In addition to the risks of proceeding on the merits; Defendant provided corporate tax
2 returns; and the owner of the business provided personal tax returns and other relevant financial
3 documents which demonstrated that due to Defendant's financial condition, Defendant could
4 not afford to pay any additional sums.

5
6 The Settlement provides for a Gross Settlement Amount ("GSA") of \$90,000 to be paid
7 by Defendant in compromise of the disputed wage and hour claims asserted on behalf of
8 approximately 80 class members.¹ The settlement was reached after an unsuccessful private
9 mediation at a mandatory settlement conference before the Honorable Judge Helen Bendix. As
10 explained more fully herein, the Settlement is a fair, adequate and reasonable compromise of the
11 disputed claims asserted in this action, and this Court accordingly should finally approve the
12 Settlement.

13 **II. OVERVIEW OF THE LITIGATION**

14 Plaintiff Luis Arellano was employed by Defendant Electronic Document Processing,
15 Inc. as a Process server in California from approximately 2004 to January 2013.

16 On March 24, 2014, Plaintiff filed his Complaint in this action in Los Angeles County
17 Superior Court. The Complaint alleged causes of action against Defendant for: (1) failure to
18 provide meal periods; (2) failure to provide rest periods; (3) failure to pay hourly wages; (4)
19 failure to indemnify; (5) failure to provide accurate written wage statements; (6) failure to
20 timely pay all final wages; (7) unfair competition; and (8) failure to pay employees for all hours
21 worked.

22 Defendant answered the Complaint. The Answers denied all allegations and asserted
23 various affirmative defenses.

24 On January 26, 2016, the parties filed a stipulation and order to allow Plaintiff to file his
25

26
27 ¹ The settlement amount is a fraction of the potential exposure because after reviewing the tax
28 returns of Defendant and the personal tax returns of the owner of Defendant, Plaintiff believes
that Defendant does not have additional funds to pay a larger settlement amount. (See Setareh
Preliminary Approval Declaration ¶ 31.)

1 First Amended Complaint to add a cause of action for penalties under The Private Attorneys
2 General Act ("PAGA").

3 **A. Summary of Plaintiff's Claims**

4 **1. Defective Piece Rate Plan**

5 Defendant maintains a defective piece rate plan that fails to compensate Plaintiff and
6 Class members for all hours worked. Defendant's attempt to average wages to meet the
7 minimum wage requirement does not comply with California's requirement that all hours
8 worked are to be compensated. *Armenta v. Osmose* (2005) 135 Cal.App.4th 314; *Gonzalez v.*
9 *DTLA Motors* (2013) 215 Cal.App.4th 36. Process Servers are paid a set amount for each
10 successful "serve." Defendant's piece rate pay plan does not separately compensate Process
11 Servers for any activity other than actual serves. Thus, the class is not paid for time performing
12 tasks such as travelling to and from the site location to serve documents, filling out proofs of
13 service and "calling in" orders to the office and filling out paperwork.

14 Pursuant to the relevant case law, including *Armenta* and *Gonzalez*, Defendant's piece
15 rate plan is defective because it does not pay for many of the required work-related activities
16 and therefore it does not compensate Process Servers at least the minimum wage for "all hours
17 worked," as required under the Labor Code and the Wage Orders. Accordingly, class members
18 are entitled to compensation at least the minimum wage (plus liquidated damages under Lab.
19 Code § 1194.2) for each hour of pay that was not compensated under Defendant's defective
20 piece rate pay plan.

21 Additionally, the piece rate plan does not separately compensate for paid rest periods, in
22 violation of California minimum wage law. *Bluford v. Safeway Stores* (2013) 216 Cal.App.4th
23 864; *see also* Cal. Code Regs. tit. 8, §§ 11040(12). Defendant's piece rate pay plan does not
24 separately pay Process Servers for rest periods. Pursuant to *Bluford*, "a piece-rate compensation
25 formula that does not compensate separately for rest periods does not comply with California
26 minimum wage law." *Bluford, supra*, 216 Cal.App.4th at 864. In *Armenta*, the court held that
27 rest periods are considered hours worked and must be compensated. 135 Cal.App.4th at 323.
28

1 Averaging an employee's pay based upon activities in the plan does not include compensation
2 for rest periods, because it does not pay an employee for all hours worked. Rather, the plan's
3 goal to meet the minimum wage "is akin to averaging pay to comply with the minimum wage
4 law instead of separately compensating employees for their rest periods at the minimum or
5 contractual hourly rate, which is not allowed under California labor law." *Bluford* at 872. Thus,
6 Defendant is liable on a class-wide basis not only for work activities that are unpaid under the
7 piece rate pay plan, but also for unpaid wages derived from uncompensated rest periods.

9 **2. Defective Meal & Rest Period Policies**

10 Defendant fails to provide meal periods by failing to have a meal or rest break policy for
11 the class and in fact encourages Process Servers to skip meal and rest periods. Pursuant to
12 *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004 and its progeny (e.g., *Bradley v.*
13 *Networkers International, LLC* (2012) 211 Cal.App.4th 1129), this is a substantive violation of
14 Defendant's affirmative obligation to provide meal and rest periods.

15 Plaintiff alleges that Defendant did not have meal and rest period policies. Plaintiff was
16 never informed by his superiors that he had the right to meal periods or rest periods. Indeed, he
17 and other Process Servers were consistently told nearly the opposite: they were encouraged to
18 work as much as possible in order to make as much money as possible, since they only get paid
19 for successful serves. Defendant never informed Plaintiff or his fellow Process Servers of their
20 rights to take meal and rest periods.

21 Consequently, Plaintiff contends that Defendant failed to provide compliant meal and
22 periods, and therefore owe class members premium wages for missed meal and rest periods.
23 (See Lab. Code § 226.7; IWC Wage Order 4-2001, §§ 11-12; see also *Bradley v. Networkers*
24 *Int'l, LLC* (2012) 211 Cal.App.4th 1129; *Benton v. Telecom Network Specialists, Inc.* (2013)
25 220 Cal.App.4th 701). In sum, the evidence is clear that Defendant failed to comply with the
26 standards set forth in *Brinker* and its progeny, which require an employer, at minimum, to have
27 compliant meal and rest period policies.

28 ///

1 **3. Claims Under Lab. Code §§ 203 and 226, the UCL, and PAGA**

2 Plaintiff's claims under Labor Code §§ 203 and 226, the UCL, and PAGA are also
3 derivative of the foregoing claims for meal periods and rest periods.

4 **a. Defendant's Violations Were Willful, Knowing and/or Intentional**

5 For purposes of the claim for waiting time penalties under section 203, Plaintiff would
6 establish that there were wages due at the time of termination, including the incurred business
7 expenses and the premium wages for missed meal and rest breaks under Lab. Code § 226.7 (*see*
8 *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal. 4th 1094, 1102-14 (holding that the
9 "additional hour of pay" in § 226.7 for meal and rest period premiums, like minimum and
10 overtime wages, "is a wage to compensate employees for the work").)

11 Failure to provide meal and rest breaks also gives rise to penalties under § 226, as the
12 Court of Appeal stated in *Brewer v. Premier Golf Properties, LP* (2008) 168 Cal.App.4th 1243,
13 1254: "To the extent section 226.7 imposes a requirement to compensate the employee with
14 'premium wage[s] intended to compensate employees' for the missed meal or rest breaks, and
15 the employer failed to pay the employee the additional compensation required by section 226.7,
16 the additional penalties application for 'pay stub' violations or other defaults in the payment of
17 wages due (such as the 'waiting time' penalties under § 203) are arguably triggered."

18 Additionally, Lab. Code § 203 requires that the employer's conduct is willful, i.e., when
19 it has "intentionally failed or refused to perform an act which was required to be done."
20 (*Amaral v. Cintas Corp.* (2008) 153 Cal.App.4th 1157.) Notably, evil motive is not required.
21 (*Davis v. Morris* (1940) 37 Cal.App.2d 269.) Here, Plaintiff contends that Defendant failed to
22 pay wages as a result of not paying its employees premium wages in lieu of missed rest and
23 meal breaks. And because Defendant had the ability to comply with the Labor Code and pay
24 wages in accordance therewith, but did not do so, its failure to pay said wages is willful under §
25 203.
26

27 Penalties pursuant to Lab. Code § 226 require that the employee's injury resulted from a
28 knowing and intentional failure to provide an accurate written wage statement. (*Jaimez v.*

1 *Daiohs USA, Inc.* (2010) 181 Cal. App. 4th 1286, 1306.) Before the 2013 amendment,
2 employees could establish “injury” with proof that the wage statement did not accurately state
3 the total hours worked or the correct hourly wage rate. As of January 1, 2013, § 226(2)(B)
4 deems an injury suffered when (1) the employer fails to provide the employee a wage statement
5 that includes all of the information required by Lab. Code § 226(a), and (2) the employee cannot
6 “promptly and easily” determine *from the wage statement alone*, among other things, the
7 amount of the gross wages, net wages, or the inclusive dates of the pay period. Here, Class
8 Members suffered injuries as a result of Defendant providing them with inaccurate wage
9 statements because the lack of required information rendered them confused over whether they
10 received all their wages, and it is too difficult and expensive for them to reconstruct the pay
11 records. (*See Jaimez, surpa*, 181 Cal. App. 4th at 1036.) Plaintiff asserts that Defendant is
12 liable for § 226 penalties because they knowingly and intentionally issued inaccurate wage
13 statements by deliberately failing to accurately record the wages due to Class Members and
14 failing to include the inclusive dates of the pay period.
15

16 ***b. PAGA***

17 In contrast, no scienter is necessary for recovery of civil penalties under PAGA. But
18 these penalties are admittedly discretionary and the Court could choose to award a very low
19 amount in PAGA penalties or no amount at all. (*See* Lab. Code § 2699(e)(2).)
20

21 **B. Summary of Defendant’s Defenses**

22 **1. Defective Piece Rate Plan**

23 Defendant contends that their policies and practices complied with California Piece Rate
24 laws. Defendant contends that Plaintiff and putative class members were paid for all time
25 worked and are not owed any minimum and/or overtime wages as a result of their pay practices.

26 **2. Meal and Rest Period Claims**

27 In *Brinker v. Superior Court* (2012) 53 Cal.4th 1004, 1040-1041, the California
28 Supreme Court held an employer need only provide its non-exempt employees the opportunity

1 to take meal periods, but is not required to ensure that the employees take them. *Brinker, supra*,
2 53 Cal.4th at 1040–1041. Defendant contends that their policies and practices regarding meal
3 periods meet the requirements set forth in *Brinker*. Defendant alleges that they had meal break
4 policies in place, in the form of the posted wage order. Defendant further contends that Plaintiff
5 and co-workers were provided meal breaks in compliance with California law.

6 Defendant likewise contends that it authorized and permitted rest periods as required
7 under California law. The standard for rest period compliance is contained in the Wage Orders.
8 Wage Order 4-2001 requires “(A) Every employer shall authorize and permit all employees to
9 take rest periods, which insofar as practicable shall be in the middle of each work period. The
10 authorized rest period time shall be based on the total hours worked daily at the rate of ten (10)
11 minutes net rest time per four (4) hours or major fraction thereof ... Authorized rest period time
12 shall be counted as hours worked for which there shall be no deduction from wages.”
13 Defendant contends that their policies and practices comply with this standard.

14 **3. Claims Under Lab. Code §§ 203 and 226, and the UCL**

15 Lab. Code § 203 authorizes courts to award waiting time penalties only where there is
16 evidence that the employer “willfully” failed to pay an employee’s wages. “A willful failure to
17 pay wages within the meaning of . . . Section 203 occurs when an employer intentionally fails to
18 pay wages to an employee when those wages are due.” Cal. Code Regs. tit. 8 § 13520. An
19 employer does not act “willfully” within the meaning of Section 203 where the employer has a
20 good faith belief (even if mistaken) that the employee is not owed any wages. *Road Sprinkler*
21 *Fitters Local Union No. 669 v. G & G Fire Sprinklers, Inc.* (2002) 102 Cal. App. 4th 765, 782.
22 Indeed, “a good faith dispute that any wages are due will preclude imposition of waiting time
23 penalties under Section 203.” Cal. Code Regs. tit. 8 § 13520. Defendant contends this is not a
24 case where they willfully withheld wages from Plaintiff or class members. Defendant further
25 contends there is no evidence that its defenses in this case are presented in bad faith.

26 Regarding Lab. Code § 226, Defendant contends that neither Plaintiff nor the putative
27
28

1 class may recover any penalty because they have not been injured by Defendant's alleged
2 failure to provide them with accurate itemized wage statements, and inadvertent errors do not
3 give rise to penalties. (Lab. Code § 226(e)(3).)

4 In addition, with respect to both sections 203 and 226, Defendant contends that meal and
5 rest period violations do not support derivative wage statement claim under § 226 or derivative
6 waiting time penalty claim under § 203. Some courts have taken the position that after the
7 California Supreme Court's decision in *Kirby v. Immoos Fire Protection* (2012) 54 Cal.4th
8 1244—which held that Lab. Code § 226.7 claims are for the non-provision of *breaks*, rather
9 than for non-payment of wages—an alleged failure to provide meal or rest periods cannot
10 support a claim for penalties under Lab. Code §§ 203 or 226, which are both predicated upon a
11 failure to pay “wages.” (Compare, *Jones v. Spherion Staffing LLC*, 2011 WL 3264081 at *8-9
12 (C.D. Cal. 2011) (penalties not available) with *Bellinghausen v. Tractor Supply Company*, 2014
13 WL 465907 at *8-9 (N.D. Cal 2014) (penalties may be available).)

14
15 Finally, Plaintiff's UCL claim derives from the rest and meal period claims, and is
16 subject to the defenses discussed above.

17 **4. PAGA Claim**

18 PAGA penalties are discretionary. (See Lab. Code § 2699(e)(2) (“a court may award a
19 lesser amount than the maximum civil penalty amount specified by this part...”).) Accordingly,
20 even if Plaintiff were to establish some underlying violation of the Labor Code, Defendant
21 contends that a court would not assess the full amount of penalties against Defendant, especially
22 in light of Defendant's good faith defenses to Plaintiff's claims.

23 **5. Class Certification**

24 Defendant also contends that Plaintiff would not be able to obtain class certification of
25 his claims in a non-settlement context. Defendant contends this case would not be certified
26 since, among other things, their policies comply with California law and the various locations in
27 which Defendant staffs its employees are diverse. Accordingly, given the differences among
28 putative class members, Defendant contends that Plaintiff would not be able to obtain class

1 certification.

2 Thus, although Plaintiff was prepared to litigate this case through class certification and,
3 ultimately, to trial, Plaintiff also recognized that there were significant risks in going forward
4 with litigation, both on the merits and in terms of class certification.

5 **C. Mediation, Mandatory Settlement Conference and Settlement Discussions**

6 On January 13, 2015, the parties participated in a mediation session with Robert J.
7 Kaplan, a highly respected mediator with extensive experience resolving wage-and-hour class
8 actions. In connection with the prosecution of this Action and with mediation, Plaintiff
9 obtained discovery including, among other things, class information, Defendant's relevant
10 policies, Plaintiff's personnel records, and data concerning putative class members including
11 sample time and pay records. (See Setareh Preliminary Approval Declaration ¶ 7.) Before
12 mediation, the parties each investigated the claims asserted, the legal authorities supporting and
13 challenging them, and prepared detailed mediation briefs. (*Id.*, ¶¶ 7-8.)

14 At mediation, the parties engaged in extensive, adversarial, arm's-length negotiations.
15 The parties were not able to come to an agreement at mediation. (*Id.*, ¶ 9.)

16 The parties were ordered to participate in a mandatory settlement conference on August
17 25, 2015. (*Id.*, ¶ 10.) The parties prepared detailed briefs in advance of the mandatory settlement
18 conference. The parties ultimately approved Judge Helen Bendix's settlement proposal made at
19 the mandatory settlement conference (*Id.*) This Court granted preliminary approval on April 27,
20 2017.

21 **III. OVERVIEW OF THE SETTLEMENT**

22 The complete terms of the Settlement are set forth in Exhibit 1 hereto. The Settlement
23 provides for a Gross Settlement Amount ("GSA") of \$90,000 paid by Defendant on behalf of
24 the defined Settlement Class. The essential terms are summarized below.

25 **A. Settlement Class Definition**

26 The "Settlement Class" refers to "All process servers employed by Defendant in
27 California at any time from March 24, 2010, through the Preliminary Approval Order Date."
28

(Settlement, ¶ 1.2.) There are approximately 80 individuals in the Settlement Class (Settlement, ¶ 13.2; Setareh Preliminary Approval Decl., ¶ 13).

B. Allocation of Settlement Funds

The Net Settlement Amount (“NSA”) is defined as the amount remaining in the GSA after the following deductions are made: (1) attorneys’ fees to Class Counsel (up to 33.33% of the GSA, or \$30,000); (2) up to \$10,000 in actual litigations costs and expenses to Class Counsel; (iii) up to \$1,000 as an enhancement award to Plaintiff and \$4,000 to Plaintiff in exchange for a general release; (iv) \$3,000 to be paid to the LWDA as civil penalties under PAGA; and (v) reasonable settlement administration costs to be paid to the Administrator, estimated not to exceed \$5,000. (Settlement, ¶¶ 2.1, 3.1-3.4, 3.6) The NSA will be disbursed as follows:

Each class Member is entitled to a *pro rata* portion of the NSA according to the number of workweeks he or she worked during the class period. The Claims Administrator will calculate each Class Member’s Estimated Settlement Payment by multiplying the number of Workweeks worked by the Participating Class Member by the Workweek Rate. The Workweek Rate refers to the per workweek payout that shall be made to Class Members who do not opt out. The Workweek Rate will be determined by dividing the NSA by the total number of workweeks worked by Class Members during the period from March 24, 2010, through the Preliminary Approval Order Date. (Settlement, ¶¶ 1.27, 2.2.)

The individual settlement payments are allocated as follows: 33.3% wages, 33.3% penalties (including civil and statutory penalties), and 33.3% interest. (*Id.*, ¶ 8.2.) Any employer payroll taxes owing on any payments subject to payroll taxes will be paid from the GSF. (*Id.*, ¶ 8.3.)

The settlement administrator will issue each participating Class Member any necessary tax reporting documents. (*Id.*, ¶ 8.3.) Form 1099 will be issued to Plaintiff regarding the class representative payment of \$1,000. (*Id.*, ¶ 3.3.)

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1 **C. Release of Claims**

2 All Class Members who do not timely opt-out of the Settlement will release all claims
3 alleged in the Complaint as well as all claims related to the claims set forth in the Complaint.
4 (Settlement, ¶ 5.2.) In addition, Plaintiff individually will execute a general release of all claims
5 he may have against Defendant (not just the wage and hour claims stemming from this action).
6 (Settlement, ¶ 3.3.)

7 **D. Notice and Claims Procedures**

8 On May 9, 2017 the Settlement Administrator CPT Group received a data file from
9 Defendant with names, addresses, phone numbers, Social Security numbers, and dates of
10 employment for the Class Members. (Declaration of Carole Thompson ¶ 5 “Thompson Decl.”)
11 The class list had 80 Class Members. (*Id.*) On May 24, 2017 CPT Group conducted a National
12 Change of Address (NCOA) search to update addresses which resulted in 10 new addresses. (*Id.*
13 ¶ 6.) On May 26, 2017 CPT Group mailed Notice Packets to the Class. (*Id.* ¶ 7.) 4 Notice
14 Packets were returned as undeliverable, but CPT Group was able to find new addresses for 3 by
15 using the Accurint skip tracing database. (*Id.* ¶ 8.) 1 Notice Packet remains undeliverable. (*Id.*)
16 CPT Group has received no objections to the Settlement and only one request for exclusion. (*Id.*
17 ¶¶ 8-9.)

18
19 **IV. ARGUMENT**

20 **A. This Court Should Reaffirm Its Conditional Certification of the Settlement Class**
21 **Because It Meets All the Requirements for Class Certification for Settlement**
22 **Purposes Only Under Code of Civil Procedure § 382.**

23 Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable
24 and its members are too numerous for joinder to be practical; (2) the representative and absent
25 class members share a community of interest and questions of law and fact common to the class
26 predominate over questions unique to individual class members; (3) the representative’s claims
27 are typical of the claims of the class; and (4) the representative will fairly and adequately
28

1 represent the interests of the class. (*See, e.g., Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d
2 462, 470.)

3 This Court found that the Settlement Class meets all the requirements for class
4 certification for settlement purposes when it granted preliminary approval on April 27, 2017.
5 No subsequent events have cast doubt on this determination. Accordingly, this Court should
6 reaffirm its conditional grant of class certification for settlement purposes.

7 **B. This Court Should Finally Approve the Settlement Because It Is a Fair,**
8 **Adequate, and Reasonable Compromise of the Disputed Claims in This Case in**
9 **View of Defendant's Potential Liability Exposure and the Risks of Continued**
10 **Litigation.**
11

12 California courts favor settlement. (*See, e.g., Stambaugh v. Sup. Ct.* (1976) 62
13 Cal.App.3d 231, 236.). Unlike most settlements, class action settlements involve a court
14 approval process that exists to prevent fraud, collusion, and unfairness to class members.
15 (*Malibu Outrigger Bd. of Governors v. Sup. Ct.* (1980) 103 Cal.App.3d 573, 578-79.). This
16 approval process consists of preliminary settlement approval, notice being given to class
17 members, and a final fairness and approval hearing at which class members may be heard with
18 respect to the settlement. (*Id.*) For the reasons discussed herein, this Court should finally
19 approve the Settlement and enter the [Proposed] Order Granting Final Approval of Class Action
20 Settlement and Judgment submitted herewith.

21 **1. The Settlement Is Reasonable**
22

23 The Settlement results in a substantial benefit to the Settlement Class. Courts often
24 approve settlements where class members receive only pennies or even just coupons or
25 vouchers. (*See, e.g., Nordstrom Commission Cases* (2010) 186 Cal.App.4th 576, 590 [affirming
26 final approval of wage-and-hour class action settlement where 20% of the fund allocated to the
27 class was merchandise vouchers].) Here, each Class Member who did not request exclusion will
28 be sent a check for his or her Settlement share, in the form of a monetary payment. The

1 settlement amount is 17.2 % of what the Class could have received at trial. (Setareh Preliminary
2 Approval Declaration ¶ 24.) Here, a critical factor in Class Counsel's decision to enter into the
3 Settlement was that Class Counsel reviewed tax returns of Defendant and its owner and
4 concluded that Defendant would not be able to pay a judgment at trial. (*Id.* ¶ 31.) Thus, the
5 Settlement provides significant, meaningful relief for hotly disputed wage-and-hour violations,
6 making it reasonable and in the best interests of the Class.

7
8 **2. The Settlement Was Reached at Arm's Length Through Experienced**
9 **Counsel with Sufficient Information to Intelligently Negotiate a Fair**
10 **Settlement in View of the Claims Asserted and Risks of Continued**
11 **Litigation**

12 A settlement is presumptively fair where it is reached through arm's length bargaining,
13 is based on sufficient discovery and investigation to allow counsel and the court to act
14 intelligently, counsel involved is experienced in similar litigation, and the percentage of
15 objectors is small. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802 ("*Dunk*").). In
16 deciding whether to approve a proposed settlement, a trial court has broad powers to determine
17 if the proposed settlement is fair under the circumstances of the case. (*Mallick v. Sup. Ct.* (1979)
18 89 Cal.App.3d 434, 438.). In exercising these powers, the overriding concern is to ensure that a
19 proposed settlement is "fair, adequate, and reasonable." (*Dunk*, 48 Cal.App.4th at p. 1801
20 [internal quotations omitted].). Relevant factors for that determination include, but are not
21 limited to:

22 [T]he complexity and likely duration of further litigation, the risk of
23 maintaining class action status through trial, the amount offered in
24 settlement, the extent of discovery completed and the state of the
25 proceedings, the experience and views of counsel, the presence of a
26 governmental participant, and the reaction of the class members to the
27 proposed settlement.

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1 (*Id.*) These factors require balancing, are non-exhaustive, and, as such, trial courts should tailor
2 the factors considered to each case and give due regard to “what is otherwise a private
3 consensual agreement between the parties.” (*Id.*)

4 “In the context of a settlement agreement, the test is not the maximum amount plaintiffs
5 might have obtained at trial on the complaint, but rather whether the settlement is reasonable
6 under all of the circumstances.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
7 250.). Because settlements inherently involve compromise, even settlements providing for
8 substantially narrower relief than likely would be obtained if the suit were successfully litigated
9 can be reasonable because “the public interest may indeed be served by a voluntary settlement
10 in which each side gives ground in the interest of avoiding litigation.” (*Id.* [quoting *Air Line*
11 *Stewards, etc., Local 550 v. Am. Airlines, Inc.* (7th Cir. 1972) 455 F.2d 101, 109].). In addition,
12 courts review the discovery process and information received through it to aid them in assessing
13 whether the parties sufficiently developed the claims and their supporting factual bases before
14 reaching settlement. (*See Kullar v. Foot Locker Retail Inc.* (2008) 168 Cal.App.4th 116, 129-
15 131 (“*Kullar*”).). Information is sufficient where it allows the parties and the court to form “an
16 understanding of the amount that is in controversy and the realistic range of outcomes of the
17 litigation.” (*Clark v. Am. Residential Servs. LLC* (2009) 175 Cal.App.4th 785, 801.). This
18 requirement exists so that the parties can provide the court with “a meaningful and substantiated
19 explanation of the manner in which the factual and legal issues have been evaluated.” (*Kullar*,
20 168 Cal.App.4th at p. 132-33.).

21
22 Here, while Plaintiff has estimated Defendant’s *potential* liability exposure in this case
23 to be as high as \$522,901.50 if Plaintiff prevailed on all of his claims (*see* Setareh Declaration
24 in Support of Preliminary Approval, filed March 15, 2017, at ¶ 24), as discussed below, the
25 tremendous risks that continued litigation would entail show that the Settlement is a fair,
26 adequate, and reasonable compromise of the disputed claims at issue and resulted from
27 extensive arm’s length negotiations with the assistance of an experienced mediator.
28

1 First, there are risks with respect to obtaining, and maintaining, class certification for trial
2 purposes that support the fairness of the Settlement. For example, Defendant would argue that
3 potential distinction among the job sites in California where the various employees worked
4 should cause class certification to be denied. Moreover, the California Supreme Court's decision
5 in *Duran v. U.S. Bank* (2014) 59 Cal.4th 1 makes class certification even less certain given its
6 antipathy towards using "sampling" as a basis for ascertaining class-wide liability and/or
7 damages. Accordingly, Plaintiff would likely encounter difficulty in certifying many of the
8 claims in this case because, while they present substantial common liability issues, they also give
9 rise to individual damages issues. (Setareh Preliminary Approval Decl., ¶ 28). Thus, there is a
10 significant risk that this case could not proceed to its completion as a class action absent the
11 Settlement.
12

13 Second, there are substantial risks with respect to establishing the merits of Plaintiff's
14 claims. As explained in the Motion for Preliminary Approval, Defendant vigorously disputed
15 Plaintiff's meal and rest break claims and damages analysis. Defendant maintained that its meal
16 and rest period policies were lawful and that it properly provided Class Members with meal and
17 rest periods.
18

19 Third, Defendant contended that the underlying alleged wage-and-hour violations
20 here—failure to provide meal and rest periods in violation of Lab. Code § 226.7 and failure to
21 reimburse expenses under Lab. Code § 2802—do not give rise to penalties under Lab. Code §§
22 203 or 226. Section 203 applies to the willful failure to pay "wages" at termination, and Section
23 226 similarly applies to the failure to include all "wages" earned on an employee's wage
24 statement. "Wages" are defined in Lab. Code § 200 as "all amounts for labor performed by
25 employees of every description, whether the amount is fixed or ascertained by the standard of
26 time, task, piece, commission basis, or other method of calculation." Business expense
27 reimbursements may not be considered "wages" for purposes of Cal. Lab. Code § 200. (See
28 DLSE Policies and Interpretations Manual § 49, *et seq.*; Desai, Dixon, et al, *California Wage
and Hour Law and Litigation* at §1.24. Thus, Defendant contends, Class Members would not be

1 able to recover penalties under Lab. Code §§ 203 or 226 based on an alleged failure to
2 reimburse the cost of uniforms.

3 Similarly, some courts have taken the position that after the California Supreme Court's
4 decision in *Kirby v. Immoos Fire Protection* (2012) 54 Cal.4th 1244—which held that Lab.
5 Code § 226.7 claims are for the non-provision of breaks, rather than for the non-payment of
6 wages—an alleged failure to provide meal or rest periods under Lab. Code § 226.7 cannot
7 support a claim for penalties under Lab. Code §§ 203 or 226, which, as explained above, are
8 both predicated upon a failure to pay “wages.” (Compare, *Jones v. Spherion Staffing LLC*, 2012
9 WL 3264081, at *8-9 (C.D. Cal. 2012) (penalties not available) with *Bellinghausen v. Tractor*
10 *Supply Company*, 2014 WL 465907 at *8-9 (N.D. Cal 2014) (penalties available).) Thus, while
11 Plaintiff believes that these defenses could be overcome, there were significant risks that
12 Plaintiff would not prevail on the merits of his claims if settlement was not reached. (Setareh
13 Preliminary Approval Decl., ¶¶ 26-31.)

14
15 Finally, Defendant's affirmative defenses and the uncertainty surrounding the merits of
16 Plaintiff's underlying claims could potentially preclude most of the penalties sought in this case.
17 Labor Code §§ 203 and 226(a) require proof of “willful” or “knowing and intentional” Labor
18 Code violations for liability to be imposed. Thus, the existence of a good faith dispute that could
19 preclude any recovery of wages (even if the plaintiff ultimately prevails) can preclude these
20 penalties from being awarded. 8 Cal. Code Regs. § 13520(a); *Road Sprinkler Fitters Local*
21 *Union No. 669 v. G&G Fire Sprinklers, Inc.* (2002) 102 Cal.App.4th 765, 782; *see also Choate*
22 *v. Celite Corp.* (2013) 215 Cal.App.4th 1460 (reversing award of waiting time penalties based
23 on employer's good faith defense notwithstanding that the plaintiffs prevailed on the underlying
24 wage claims). (Setareh Preliminary Approval Decl., ¶ 29.)

25 Further, Plaintiff's counsel reviewed the corporate tax returns of Defendant and the
26 personal tax returns of its owner, and concluded that Defendant would be unable to pay a
27 judgment if the class prevailed at trial. (Setareh Preliminary Approval Decl. ¶ 31.)
28

Each of these factors bore heavily on the negotiations leading to the Settlement. (Setareh Preliminary Approval Decl., ¶ 32.) In view of these and other risks, the Settlement reflects a fair, adequate, and reasonable compromise amount for these claims and warrants final approval of the Settlement.

3. The Settlement Fairly, Reasonably, and Adequately Compensates Settlement Class Members Based on the Potential Extent of Each of Their Claims in Comparison to One Another

Class members who did not request exclusion will be paid based upon their total number of qualifying work weeks during the class period. (Setareh Preliminary Approval Declaration ¶ 33.) This compensates class members fairly based on their duration of employment.

4. The, Low Number of Exclusions, and Absence of Objections Also Show That the Settlement Is Fair, Adequate, and Reasonable

The low number of requests for exclusion, and the absence of objections, support the presumption of fairness and final approval of the Settlement. (*See 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152-1153 [finding 9 objections, and 80 opt-outs, from a class of 5,454, showed a positive response from class members supporting settlement approval].). Here, after being given Notice of the Settlement, zero Class Members have objected to the Settlement, and one Class Members (just 1.25% of the Class) has requested exclusion. (Thompson Decl., ¶¶ 9-10.). Accordingly, these statistics confirm that Class Members view the Settlement as fair and reasonable and the Settlement warrants final approval.

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1 **C. The Court Should Finally Approve the Requested Attorneys' Fees Because the**
2 **Amount Sought Is Fair, Adequate, and Reasonable**

3 **1. As the prevailing parties in Settlement, Plaintiff and the Settlement**
4 **Class are entitled to recover their attorneys' fees from the Gross**
5 **Settlement Amount per the terms of the Settlement Agreement**

6 Plaintiff and the Settlement Class, as the prevailing party plaintiffs in settlement, are
7 entitled to recover their attorneys' fees and costs for their wage claims, and the associated
8 interest and penalties. (*See* Lab. Code §§ 218.5, 226(e), 1194(a), C.C.P. § 1021.5(a).) A fee
9 award is justified where the legal action has produced its benefits by way of a voluntary
10 settlement. (*See, e.g., Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1290-1291; *Westside Cmty. for*
11 *Indep. Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, 352-353.)

12 Here, the Settlement Agreement provides that Class Counsel may seek a fee award of up
13 to \$90,000 (one-third of the GSA) from the gross Settlement fund. (Settlement, ¶ 3.1.)
14 Accordingly, the amount of Class Counsel's fee request is authorized under the Settlement.

15 **2. The reasonableness of Class Counsel's requested fee award of one-**
16 **third of the settlement fund is supported by the relevant case law, and by**
17 **the experience of Class Counsel**

18 When determining an attorneys' fee award, "the primary basis of the fee award remains
19 the percentage method..." *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002).
20 Moreover, "[e]mpirical studies have shown that, regardless whether the percentage method or
21 the lodestar method is used, fee awards in class actions average around one-third of the
22 recovery." (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn.11; *In re Pacific*
23 *Enterprises Securities Litigation*, 47 F.3d 373, 379 (9th Cir. 1995) [affirming 33% fee award];
24 *Williams v. MGM-Pathe Comm. Co.* 129 F.3d 1026, 1027 (9th Cir. 1997) [awarding 33% of
25 total fund amount].) This is also consistent with Class Counsel's experience in wage-and-hour
26 class action matters, in that Class Counsel is routinely awarded fees amounting to one-third of
27 28

1 the settlement fund. (Setareh Final Approval Decl., ¶ 20.)

2 Indeed, it is an accepted practice in wage-and-hour class action settlements to award
3 attorneys' fees to Class Counsel based on a percentage of the total settlement value agreed upon
4 by the parties. California courts have long recognized that an appropriate method for awarding
5 attorneys' fees in class actions is to award a percentage of the fund. (*Serrano v. Priest (Serrano*
6 *III)* (1977) 20 Cal.3d 25, 48-49 ["when a number of persons are entitled in common to a specific
7 fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation
8 or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the
9 fund"]; *Wershba, supra*, 91 Cal.App.4th at p. 254; *Lealao v. Beneficial California, Inc.* (2000)
10 82 Cal.App.4th 19, 26-30.)

11 Further, California courts regularly approve attorneys' fees equaling one-third of the
12 common fund or higher. *See, e.g., Chavez v. Netflix, Inc., supra*, 162 Cal.App.4th at 66, n.11;
13 *Weber v. Einstein Noah Restaurant Group, Inc.*, No. 37-2008-00077680 (San Diego Super. Ct.)
14 (40% award); *Chalmers v. Elecs. Boutique*, No. BC306571 (L.A. Super. Ct.) (33% award);
15 *Boncore v. Four Points Hotel ITT Sheraton*, No. GIC807456 (San Diego Super. Ct.) (33%
16 award); *Vivens, et al. v. Wackenhut Corp.*, No. BC290071 (L.A. Super. Ct.) (31% award);
17 *Crandall v. U-Haul Intl., Inc.*, No. BC178775 (L.A. Super. Ct.) (40% award); *Albrecht v. Rite*
18 *Aid Corp.*, No. 729219 (San Diego Super. Ct.) (35% award); *Marroquin v. Bed Bath & Beyond*,
19 No. RG04145918 (Alameda Super. Ct.) (33% award); *In re Milk Antitrust Litig.*, No. BC070061
20 (L.A. Super. Ct.) (33% award); *Sandoval v. Nissho of California, Inc.*, No. 37-2009-00097861
21 (San Diego Super. Ct.) (33% award); *In re Liquid Carbon Dioxide Cases*, No. J.C.C.P. 3012
22 (San Diego Super. Ct.) (33% award); *In re California Indirect-Purchaser Plasticware Antitrust*
23 *Litigation*, Nos. 961814, 963201, and 963590 (San Francisco Super. Ct.) (33% award); *Bright v.*
24 *Kanzaki Specialty Papers*, No. CGC-94-963598 (San Francisco Super. Ct.) (33% award); *Parker*
25 *v. City of L.A.*, 44 Cal. App. 3d 556, 567-68 (1974) (33% award); *Kritz v. Fluid Components,*
26 *Inc.*, No. GIN057142 (San Diego Super. Ct.) (35% award); *Benitez, et al. v. Wilbur*, No. 08-
27 01122 (E.D. Cal.) (33% award); *Chavez, et al. v. Petrissans, et al.*, No. 08-00122 (E.D. Cal.)
28

(33% award); and *Leal v. Wyndham Worldwide Corp.*, No. 37-2009-00084708 (San Diego Super. Ct.) (38% award).

Additionally, Class Counsel's lodestar is \$60,700.00. (Setareh Final Approval Decl. ¶ 23.) This lodestar exceeds the attorney's fees requested in this case. This should be accepted, considering that courts often except multipliers of lodestars. *Steiner v. American Broad. Co.*, 248 Fed. Appx. 780, 783 (9th Cir. 2007) (affirming fee award where the lodestar multiplier was 3.65); *McKenzie v. Federal Express Corp.*, No. 10-02420-GAF, 2012 U.S. Dist. LEXIS 103666 (C.D. Cal. July 2, 2012) (approving a multiplier of 3.2 on a lodestar cross-check in awarding percentage-based fees in wage and hour class action); *Bond v. Ferguson Enters., Inc.*, No. 1:09-cv-1662-OWW, 2011 U.S. Dist. LEXIS 80390 (E.D. Cal. June 30, 2011) (1.75 multiplier); *Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52 multiplier on a lodestar cross-check).

Accordingly, based upon the relevant case law, Class Counsel's own experience in other class actions, and similar results in California courts, Class Counsel's request for a fee award equaling to one-third of the GSA is fair, adequate, and reasonable.

3. The results achieved, especially when weighed against the magnitude of the contingent risks in this case, also support the fairness, adequacy, and reasonableness of the fee request

Class Counsel obtained a substantial recovery for the Settlement Class in a case fraught with risk. As discussed above and in the Motion for Preliminary Approval of Class Action Settlement previously filed with this Court, this case was fraught with risk both on the merits and with regard to class certification.

Indeed, the wage-and-hour issues here are a developing area of case law with conflicting authorities (and ever-increasing uncertainty) with respect to merits issues, and recent class action practice has shown that obtaining class certification is often quite difficult. In addition, even where class certification is granted, a plaintiff still needs to prevail on the underlying wage

1 and hour claims (e.g., show that the employer failed to provide meal or rest periods or failed to
2 reimburse reasonable business expenses) and overcome the employer's defenses and possible
3 motion(s) for summary judgment.

4 Further, Class Counsel should be compensated for undertaking these risks on a pure
5 contingency basis. (Setareh Final Approval Decl., ¶ 24.) Class Counsel have borne all the costs
6 of litigation without receiving any compensation to date. (*Id.*) During this time, they have
7 expended \$7,339.65 in costs, and devoted substantial time to this litigation. (*Id.* ¶18.) Their
8 efforts have included, among other things: conducting the initial investigation of the case and
9 developing the facts and theories regarding the meal and rest break claims, conducting informal
10 and formal discovery to obtain the applicable meal and rest break policies and class data,
11 drafting a detailed mediation brief and damages analysis and working with Defendant to prepare
12 the Settlement Agreement, related forms and approval motions. (*Id.* ¶ 21.)

14 Given the considerable potential for adverse outcomes in this case (as discussed above
15 and in the Motion for Preliminary Approval of Class Action Settlement), the contingent risk was
16 great. The quality of Class Counsel's work, and the efficiency with which it was performed,
17 should be compensated. (*See, e.g., J.N. Futia Co. v. Phelps Dodge Indus., Inc.* (S.D.N.Y. 1982)
18 1982 U.S. Dist. LEXIS 15261.)

19 **4. Class Counsel's experience in employment litigation further supports**
20 **the fairness, adequacy, and reasonableness of the fee request**

21 Class Counsel's previous experience in litigating wage and hour class actions also
22 supports the reasonableness of the fee request. (Setareh Final Approval Decl., ¶ 25.) Class
23 Counsel's experience in similar matters was integral in evaluating the strengths and weaknesses
24 of the case against Defendant and the reasonableness of the Settlement. (*Id.*) Practice in the
25 narrow field of wage and hour litigation requires particular attention to nuances concerning
26 ever-evolving procedural and substantive issues. (*Id.*) This is especially so given recent changes
27 in the legal landscape surrounding class certification. Indeed, both the U.S. Supreme Court and
28

1 the California Supreme Court have recently been less receptive to class certification in
2 employment cases, and wage-and-hour cases in particular. (*See, e.g., Duran v. U.S. Bank* (2014)
3 59 Cal.4th 1). Because it is reasonable to compensate Class Counsel commensurate with their
4 skill, reputation, and experience, the requested fee award warrants this Court's final approval.

5
6 **5. The absence of objections and low number of requests for exclusion**
7 **support the fairness, adequacy, and reasonableness of the fee request**

8 The absence of objections to, and low number of exclusions from, the Settlement also
9 demonstrates the fairness and reasonableness of the fee request. (*See Garner v. State Farm Mut.*
10 *Auto Ins. Co.* (N.D. Cal. 2010) 2010 U.S. Dist. LEXIS 49482, at *5 ["a single objection out of a
11 sizeable class, after notice, further demonstrates the reasonableness and fairness of Class
12 Counsels' request"]; *In re Rite Aid Sec. Litig.* (3d Cir. 2005) 396 F.3d 294, 305 [low level of
13 objections is "rare phenomenon"]).

14 Here, notices of the Settlement were mailed to all Class Members. (Thompson Decl., ¶
15 7.) The notices informed them that Class Counsel would apply for attorneys' fees of up to
16 \$90,000 and reimbursement of costs of up to \$10,000, and Class Members were advised of their
17 right to object to such requests. To date, zero objections and one request for exclusion have
18 been submitted. (*Id.*, ¶¶ 9-10.) Thus, the absence of objections and the low number of requests
19 for exclusion speak to the fairness of the requested fee award.

20
21 **D. The Requested Award of Costs is Also Fair, Adequate, and Reasonable and**
22 **Warrants This Court's Final Approval**

23 Plaintiff's request for actual litigation costs of \$7,339.65 (plus travel and filing costs
24 incurred in connection with the final approval hearing) is also fair and reasonable. As the
25 evidence submitted herewith shows, all of these costs are documented and reasonably incurred.
26 (Setareh Final Approval Decl., ¶ 18 & Exh. B). Thus, Plaintiff's request for his attorneys' costs
27 should be granted.

1 Indeed, the expenditure of costs by Class Counsel conferred a significant benefit to the
2 Class, in that Class Counsel completely financed this risky litigation. Among other costs, Class
3 Counsel fronted thousands of dollars in filing fees, service of process fees, mediator's fees, and
4 other expenses. Each of these expenditures increased the value of the case significantly, since
5 without expending these costs the case could not have moved forward to a favorable resolution.

6 Furthermore, actual litigation costs are not traditionally considered an "award" as they
7 are costs that were actually expended by Plaintiff's counsel in the course of litigation.
8 Plaintiff's counsel does not seek any additional benefit by requesting to be paid for these costs,
9 since they are simply a dollar-for-dollar reimbursement. Indeed, given the time value of money,
10 Class Counsel will actually *lose* money by being reimbursed only for actual costs, many of
11 which were incurred months or years ago. Accordingly, Class Counsel's request for litigation
12 costs is reasonable, and Plaintiff respectfully requests that it be finally approved.

13
14 **E. The Requested Award of Administration Costs to CPT Group Is Fair, Adequate,**
15 **and Reasonable and Warrants This Court's Final Approval.**

16 The request for \$8,000 in administration costs to the Settlement Administrator, CPT
17 Group, is also fair and reasonable. As documented in the Declaration of Carole Thompson, all of
18 these costs were necessary in administering the Settlement. More-over, the administration costs
19 benefit the class in a very significant way. Without administration of the Settlement, Class
20 Members could not be paid their share of the Settlement. They also would not receive proper
21 notice of the Settlement or of their ability to opt out or object to the Settlement.

22
23 **F. Plaintiff's Requested Service Award Should be Finally Approved Because It Is**
24 **Fair, Adequate, and Reasonable in View of the Efforts That Plaintiff Made, and**
25 **the Risks That He Assumed, in This Litigation on Behalf of the Settlement Class.**

26 Courts routinely approve incentive awards to compensate named plaintiffs for the
27 services they provide and the risks they incur during class action litigation, often in much higher
28 amounts than that sought here. (*See, e.g., Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th

1 715, 726 [upholding incentive awards to named plaintiffs for their efforts in bringing the case];
2 *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294 [approving \$50,000
3 incentive award].)

4 Here, pursuant to the Settlement Agreement, Plaintiff Luis Arellano seeks an
5 enhancement award of \$5,000. Plaintiff spent a considerable amount of time on this case.
6 (Declaration of Luis Arellano ("Arellano Decl."), ¶ 7.) Among other things, Mr. Arellano
7 spent this time providing counsel with information about the case, assisting counsel in preparing
8 for the mediation, traveling to, attending, and participating in the full-day mediation and
9 mandatory settlement conference, and being actively involved in the settlement process. (*Id.*)

10 In addition, Plaintiff took the personal risks of disclosure to future employers that he
11 sued a former employer, making his future career prospects uncertain. (*Id.* at ¶ 8.) There is now
12 a public record of this lawsuit and the fact that Plaintiff filed this lawsuit has now been
13 publicized to all of his former co-workers through the notice process. Furthermore, in pursuing
14 relief on behalf of the Settlement Class, Plaintiff risked being ordered to pay Defendant's costs
15 and/or attorneys' fees if this action had been unsuccessful. (*Id.*) Such costs could have exceeded
16 any individual recovery for Plaintiff in this case, including the amount of the Incentive Award.

17 Additionally, and as set forth in Settlement Agreement, \$4,000 of the \$5,000 is
18 earmarked as consideration for Plaintiff executing a general release. (Settlement Agreement ¶
19 3.3.)

20 Accordingly, this modest enhancement award to Plaintiff is appropriate and justified as
21 part of the Settlement, and warrants final approval.

22 **V. CONCLUSION**

23 For the reasons set forth herein, this Court should grant final approval, and award the
24 request attorney fees, expenses, administrator expenses, and service award.

25 ///

26 ///

Respectfully submitted,
SETAREH LAW GROUP

Dated: August 18, 2017

BY  
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EXHIBIT “1”

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

LUIS ARELLANO, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

ELECTRONIC DOCUMENT PROCESSING,
INC., DBA ONE TOUCH LEGAL
SERVICES, a California corporation; and
DOES 1-50, inclusive,

Defendants.

Case No. BC540315

**STIPULATION AND AGREEMENT OF
COMPROMISE AND SETTLEMENT**

Judge:	Hon. Jane L. Johnson
Complaint Filed:	March 24, 2014
Trial Date:	None

STIPULATION AND AGREEMENT
OF COMPROMISE AND SETTLEMENT

This Stipulation and Agreement of Compromise and Settlement ("Settlement Agreement") is made and entered into between the Class Representative and Plaintiff Luis Arellano ("Plaintiff" or "Class Representative"), individually and on behalf of the Class (as defined below), by and through his

counsel of record, Setareh Law Group ("Class Counsel"), on the one hand, and Defendant Electronic Document Processing, Inc., dba One Touch Legal Services, ("Defendant"), by and through their counsel of record, Soltman, Levitt, Flaherty & Wattles LLP ("Defense Counsel") on the other hand, and is subject to the approval of the Court, as provided below. This Settlement Agreement is intended by Plaintiff and Defendant to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined below), upon and subject to the terms and conditions hereof, as follows:

1. Definitions. As used herein, for the purposes of this Settlement Agreement only, the following terms shall be defined as set forth below:

1.1 "Action" means the above-captioned matter entitled *Arellano v. Electronic Document Processing, Inc., dba One Touch Legal Services, et al* filed in the Superior Court for the State of California, County of Los Angeles, Case No. BC540315.

1.2 The "Class" refers to all process servers employed by Defendant in California at any time from March 24, 2010, through the Preliminary Approval Order Date. Defendant represents that there are currently no more than 80 individuals in the Class.

1.3 "Class Counsel" refers to the attorneys of record for the Class Representative *i.e.*, Setareh Law Group.

1.4 "Class Member" refers to any member of the Class, as that term is defined herein.

1.5 "Class Notice" refers to the form of direct-mail notice to Class Members, substantially in the form attached hereto as "Exhibit A." as may be modified by the Court.

1.6 "Class Period" refers to the period beginning March 24, 2010 and ending on the Preliminary Approval Order Date.

1.7 "Class Representative" refers to Plaintiff Luis Arellano.

1.8 "Court" refers to Department 308 of the California Superior Court, Los Angeles County, the Honorable Jane L. Johnson, Superior Court Judge, presiding, or the Department to which this case may later be assigned.

1.9 **"Defendant"** refers to Electronic Documents Processing, Inc., and any fictitious name under which it has done business, including but not limited to, "One Touch Legal Services."

1.10 **"Final Fairness Hearing"** refers to the hearing at which the Court will make a final determination whether the terms of the Settlement Agreement are fair, reasonable, and adequate for the Class and meet all applicable requirements for approval, and, if the Settlement is so approved, whether a judgment should be entered thereon, whether the Class Representative's application for enhancements should be granted, and whether an application by Class Counsel for an award of reasonable attorneys' fees and reimbursement of their reasonable costs and expenses should be granted.

1.11 **"Final Approval Order"** refers to the final order by the Court approving the Settlement Agreement following the Final Fairness Hearing.

1.12 **"Final Effective Date"** refers to the date by which the last of the following has occurred: (1) the Settlement Agreement has been executed by all Parties, Class Counsel and Defense Counsel; (2) the Court has given preliminary approval to the Settlement Agreement; (3) the Notice of Class Action Settlement has been given to the putative members of the Settlement Class, providing them with an opportunity to object to the terms of this Settlement Agreement or to opt out of the Settlement Agreement; (4) the Court has held a formal Final Fairness Hearing and entered a final Order and Judgment certifying the Settlement Class, and approving the Settlement Agreement; and (5) in the event there are written objections filed prior to the Final Fairness Hearing which are not later withdrawn or denied, the later of the following events: five (5) business days after the period for filing any appeal, writ or other appellate proceeding opposing the Court's final Order approving the Settlement Agreement 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 Order approving the Settlement Agreement has been filed, five (5) business days after any appeal, writ or other

1 appellate proceedings opposing the Settlement Agreement has been finally and
2 conclusively dismissed with no right to pursue further remedies or relief. For
3 purposes of determining the Final Effective Date, the Settling Parties agree that
4 only California Courts have jurisdiction over any such appeals, except for any
5 appellate procedure over which the United States Supreme Court may exercise
6 jurisdiction.

7 **1.13 "Gross Settlement Amount"** or "GSA" refers to the maximum settlement
8 amount Defendant may be required to pay, Ninety Thousand Dollars
9 (\$90,000.00). The GSA includes all payments of any kind which Defendant shall
10 be obligated to pay.

11 **1.14 "Judgment"** refers to the final order and judgment by the Court approving the
12 settlement consistent with the California Rules of Court, Rule 3.769(h).

13 **1.15 "Net Settlement Amount"** or "NSA" shall be defined as the GSA, less the
14 amounts awarded by the Court for attorneys' fees, litigation costs, settlement
15 administration expenses, and service payment to the Class Representative as
16 provided for in Paragraphs 3.1 – 3.6. The NSA is the maximum amount that shall
17 be made available to Class Members.

18 **1.16 "Notice Date"** refers to the date ordered by the Court for the dissemination of the
19 Class Notice, by direct mail, a date that the Parties agree to request to be 30
20 calendar days after the Preliminary Approval Order Date.

21 **1.17 "Opt Out Deadline"** refers to a date that is sixty (60) days after the Notice Date,
22 as such date may be modified by the Court.

23 **1.18 "Participating Class Member"** refers to a Class Member who does not opt out
24 of the settlement.

25 **1.19 "Parties"** refers to Plaintiff and Defendant.

26 **1.20 "Preliminary Approval Order"** refers to the order by the Court granting
27 preliminary approval to the Settlement Agreement and directing the parties to
28 disseminate the Class Notice to the Class.

1.21 **"Preliminary Approval Order Date"** refers to the date on which the Court enters the Preliminary Approval Order.

1.22 **"Settlement Administrator"** refers to CPT Group Class Action Administrators, an independent third party that will be engaged by the Parties and paid out of the GSA, with the approval of the Court, to perform the notice, claims administration, distribution and tax-reporting functions further described in this Settlement Agreement.

1.23 **"Settlement Agreement"** refers to this Stipulation and Agreement of Compromise and Settlement and exhibits, and any permitted and executed amendments hereto.

1.24 **"Settlement Sum"** refers to the amount that shall be payable to each Class Member as determined in accordance with the provisions of Paragraph 2.2.

1.25 **"Settling Parties"** refers to Plaintiff, the Class Members, and Defendant.

1.26 **"Workweek"** refers to a calendar week (Monday thru Sunday) in which a Class Member performed work for Defendant on at least one day in the calendar week.

1.27 **"Workweek Rate"** refers to the per workweek payout that shall be made to Class Members who do not opt out. The Workweek Rate will be determined by dividing the NSA by the total number of workweeks worked by Class Members during the period from March 24, 2010, through the Preliminary Approval Order Date.

2. **Payments to Class Members.**

2.1 Defendant shall make available to the Settlement Administrator for payment to Class Members who have not opted out, the Net Settlement Amount as defined in Paragraph 1.15. Defendant agrees to pay the Gross Settlement Amount described in Paragraph 1.13, which includes the sum of the attorneys' fees awarded under Paragraph 3.1, the litigation expenses awarded under Paragraph 3.2, the notice and administration costs described in Paragraph 3.4, and the service payments to the Class Representatives awarded under Paragraph 3.3. This is an all-in settlement. Under no circumstances will Defendant be required to pay any amount

1 in excess of the GSA and all parties shall pay their own fees and costs unless
2 expressly listed herein.

3 2.2 The Net Settlement Amount shall be available to pay Participating Class
4 Members based on each Participating Class Member's number of Workweeks
5 worked during the Class Period. The Participating Class Members' individual
6 Settlement awards will be determined by multiplying the number of Workweeks
7 worked by the Participating Class Member by the Workweek Rate as defined in
8 paragraph 1.27. The Class Notice sent to each Class Member shall be
9 individualized and include information upon which his or her payment is
10 calculated, *i.e.*, the number of Workweeks worked during the Class Period, and
11 the estimated amount to be paid to that Class Member based on this calculation.

12 **3. Additional Benefits to the Class.**

13 3.1 **Attorneys' Fees.** Defendant will pay any attorneys' fees awarded to Class
14 Counsel out of the Gross Settlement Amount. Class Counsel shall apply to the
15 Court for approval of an award of attorneys' fees in an amount that will not
16 exceed 33.33% (one-third) of the Gross Settlement Amount, or \$30,000.00, in
17 accordance with the applicable legal precedents therefor, and conditioned upon
18 the Settlement reaching its Final Effective Date. As long as the total amount
19 requested or awarded does not exceed 33.33% (one-third) of the Gross Settlement
20 Amount, Defendant agrees not to oppose the application for attorneys' fees and to
21 pay such amounts as requested by Class Counsel and awarded by the Court, up to
22 \$30,000.00. Payment shall be made to Setareh Law Group in accordance with the
23 schedule set forth in paragraph 7.5 below. Class Counsel shall not apply to the
24 Court for an award of attorneys' fees that is greater than the amounts set forth in
25 this Settlement Agreement, and, in no event shall Defendant be required to pay
26 Class Counsel attorneys' fees of more than one-third of the Gross Settlement
27 Amount, or \$30,000.00. Any reduction by the Court in attorneys' fees awarded to
28 Class Counsel will revert to the Net Settlement Amount and be available to pay
Participating Class Members in accordance with paragraph 2.2. Attorneys' fees

1 were not negotiated until a settlement was reached as to all major issues
2 pertaining to the claims of the Class.

3 **3.2 Litigation Expenses.** Defendant will pay litigation expenses awarded to Class
4 Counsel out of the Gross Settlement Amount so long as those expenses do not
5 exceed Ten Thousand Dollars (\$10,000.00). Class Counsel shall apply to the
6 Court for approval of an award of expenses in an amount not to exceed
7 \$10,000.00 in accordance with the applicable legal precedents therefore, and
8 conditioned upon the Settlement reaching its Final Effective Date. Should Class
9 Counsel's litigation expenses be less than \$10,000.00, the difference will revert to
10 the Net Settlement Amount and be available to pay Participating Class Members
11 in accordance with paragraph 2.2. Defendant agrees not to oppose the application
12 for expenses and to pay such amounts as requested by Class Counsel and awarded
13 by the Court, up to \$10,000.00. Payment shall be made to the Setareh Law Group
14 in accordance with the schedule set forth in paragraph 7.5 below. Expenses were
15 not negotiated until a settlement was reached as to all major issues pertaining to
the claims of the Class.

16 **3.3 Additional Compensation to Class Representative.** Class Counsel will petition
17 the Court for a service payment to the Class Representative to compensate him for
18 his initiation and prosecution of the above-captioned Action, work performed,
19 risks undertaken for the payment of attorneys' fees and costs had this matter not
20 resolved favorably, and his time and energy devoted to serving as Class
21 Representative, as well as giving general releases of all claims against the
22 Released Parties. Class Counsel's application for service payment to the Class
23 Representative will not exceed \$5,000.00 to the Class Representative. The
24 services payment is described as \$1,000 as an enhancement payment and \$4,000
25 as a general release payment. As long as the total amount requested does not
26 exceed \$5,000.00, Defendant agrees not to oppose the application for the service
27 payment. Defendant shall pay the amount awarded by the Court out of the Gross
28 Settlement Amount. Defendant shall provide an IRS Form 1099 for any amount

1 paid as the Class Representative service payment. The service payment shall be
2 independent of any other benefits to which the Class Representative may be
3 entitled as a Class Member pursuant to this Settlement Agreement and plan of
4 allocation. The service payment to the Class Representative will be paid in
5 accordance with the schedule set forth in paragraph 7.5 below. Any reduction by
6 the Court in the service payment awarded to the Class Representative will revert
7 to the Net Settlement Amount and be available to pay Participating Class
8 Members in accordance with paragraph 2.2.

9 **3.4 Notice and Administration Costs.** Administration costs will be paid to CPT
10 Group Class Action Administrators as ordered by the Court, from the Gross
11 Settlement Amount in accordance with the schedule set forth in paragraph 7.5
12 below. Class Counsel will apply for payment to the Settlement Administrator for
13 all work performed in administering the Settlement described in this Settlement
14 Agreement, and as customarily performed by Settlement Administrators. The
15 administration costs are estimated to be approximately \$5,000.00 which amount is
16 subject to certain fluctuations based on the response of Class Members. In the
17 event administration costs exceed \$5,000, the additional administration costs over
18 and above \$5,000 shall be deducted from the GSA.

19 **3.5 Limitation on Litigation Costs and Attorneys' Fees.** Except as provided in this
20 Settlement Agreement, Defendant shall not be required to pay any other expenses,
21 litigation costs, damages or fees incurred by the Class Representative, by any
22 Class Member, or by any of their attorneys, experts, advisors, agents or
23 representatives. Any award of attorneys' fees, litigation costs and expenses
24 payable hereunder to Class Counsel shall be in complete satisfaction of any and
25 all claims for such attorneys' fees, costs and expenses, under state or federal law,
26 which the Class Representative, the Class, Class Counsel, or any other attorneys
27 have or may have against Defendant arising out of or in connection with the
28 Action and its Settlement, including, but not limited to, any claims for attorneys'
fees, costs and expenses involved in litigating the Action and in negotiating and

1 implementing this Settlement Agreement, as well as attorneys' fees, costs and
2 expenses incurred through and after the final disposition and termination of the
3 Action and including any and all appeals.

4 **3.6 PAGA Payment.** Four Thousand Dollars (\$4,000.00) from the GSA will be
5 allocated as penalties under the PAGA, and pursuant to Cal. Lab. Code § 2699(i),
6 75% of that amount, or \$3,000.00, will be paid to the Labor Workforce
7 Development Agency ("LWDA"). The remaining 25%, or \$1,000.00, will be
8 allocated to the NSA and paid to Participating Class Members.

9 **3.7 Persons Objecting to the Settlement.** Neither Defendant nor the Class shall be
10 responsible for fees, costs or expenses related to any Class Members who submit
11 objections to the Settlement Agreement or any appeal by an objector arising from
12 the Action for attorneys' fees, costs, or expenses of any kind.

13 **4. No Admissions.** The Settling Parties understand and agree that this Settlement
14 Agreement is the result of a good faith compromise settlement of disputed claims, and Defendant is
15 entering into this Settlement Agreement solely to resolve doubtful and disputed matters. No part of this
16 Settlement Agreement or any conduct or written or oral statements made in connection with this
17 Settlement and this Settlement Agreement, whether or not the Settlement is finally approved and/or
18 consummated, may be offered as or construed to be an admission or concession of any kind by
19 Defendant or any of the Releasing or Released Parties or anyone else. In particular, but without limiting
20 the generality of the foregoing, nothing about this Settlement Agreement shall be offered or construed as
21 an admission that Defendant has failed to pay any Class Member in accordance with the obligations set
22 forth in the California Labor Code, or of liability in general, or any wrongdoing, impropriety,
23 responsibility, or fault whatsoever on the part of Defendant and/or the Released Parties, as alleged in the
24 operative Complaint in this matter. Similarly, nothing about this Settlement Agreement shall be
25 construed as or deemed to be evidence of, or an admission or concession that the Class Representative or
26 any Class Member has suffered any damage. In addition, this Settlement Agreement shall not be offered
27 or be admissible in evidence against Defendant or any Released Party, except in any action or
28 proceeding brought by or against the Class Representative, the Class, Class Members, or Defendant to
enforce its terms, or by Defendant in defense of any claims brought by the Class Representative, the

1 Class, Class Members, or any member of the general public, including any and all individuals who opted
2 out of the Class. The provisions of this Paragraph shall become effective when this Settlement
3 Agreement is signed and shall be binding on the Settling Parties and their counsel regardless of whether
4 the Settlement Agreement is preliminarily and/or finally approved or terminated for any reason, or
5 rendered null and void.

6 **5. Final Order, Judgment and Release of Claims.** In exchange for the consideration set
7 forth in this Settlement Agreement, the Class Representative and the Class Members agree to enter a
8 judgment against Defendant and to release all claims as set forth herein.

9 **5.1 Judgment.** Upon Final Approval of this Settlement Agreement, judgment shall
10 be entered by the Court and the Action shall be resolved in its entirety.

11 **5.2 Released Claims by Class Members.** Upon Final Approval of this Settlement
12 Agreement, the claims to be released by the Class Members who do not seek
13 Exclusion from this Settlement, pursuant to the procedure set forth in Paragraph
14 6.8, will include all claims under state, federal or local law arising from their
15 employment with Defendant that were or otherwise could have been brought
16 under the facts pleaded in the operative Complaint in this Action against
17 Defendant, its respective successors, current and former parents, members,
18 subsidiaries, affiliated corporations, business concerns, past and present, and each
19 of them, and entities, and each of their respective officers, directors, agents,
20 insurers, partners, trustees, shareholders, attorneys and employees and any other
21 person or entity that could be jointly liable with them for the claims, past and
22 present, and each of them, including, without limitation, John Collins, Diane
23 Collins, Craig Collins and Sasha Graves (collectively, the "Released Parties"),
24 arising out of or relating to work performed during the Class Period, including but
25 not limited to the following:

- 26 (a) any and all claims regarding unpaid wages, interest, or penalties for off-
27 the-clock work, commissions, piece-rate payments, discretionary or non-
28 discretionary bonuses, premium pay, unpaid straight time wages, unpaid
overtime wages, unpaid minimum wages, inaccurate payroll and/or time

1 record-keeping records, inaccurate, incomplete or incorrect pay
2 instruments/stubs and/or wage/earnings statements, payment of wages,
3 unfair competition, and PAGA penalties,¹ related to the alleged Labor
4 Code violations asserted in the operative Complaint; any claim for failure
5 to properly pay all wages upon termination; any claim for failure to
6 indemnify or otherwise failure to reimburse business expenses; any claim
7 for failure to pay minimum wage; any claim for failure to keep or maintain
8 accurate records; unlawful deductions; failure to timely pay wages owed;

9 (b) any and all claims regarding meal and rest period premiums under Labor
10 Code sections 226.7 and 512 and the applicable Wage Order related to the
11 alleged Labor Code violations asserted in the operative Complaint;

12 (c) any and all claims regarding waiting time penalties under Labor Code
13 sections 201, 203 *et seq.* and the applicable Wage Order related to the
14 alleged Labor Code violations asserted in the operative Complaint;

15 (d) any and all claims for injunctive relief, restitution, breach of contract or
16 company policy, fraudulent business practices brought pursuant to the
17 California Business & Professions Code and related to the above alleged
18 Labor Code violations asserted in the operative Complaint;

19 (e) any and all claims or causes of action for penalties, interest and/or
20 attorneys' fees and costs related to the above alleged Labor Code
21 violations asserted in the operative Complaint; and

22 (f) by cashing their Settlement Payments, Class Members will also release
23 any and all claims under the federal Fair Labor Standards Act ("FLSA")
24 that could have been asserted based upon the allegations in the operative
25 Complaint. Such cashing of Settlement Payments shall be deemed an "opt
26 in" for purposes of releasing claims under the FLSA, and Class Members
27 shall be apprised of same in the Class Notice.

28 ¹ The parties have agreed to stipulate to Plaintiff's filing an Amended Complaint which will include a claim for penalties under the PAGA. Said Stipulation and proposed order, along with the Amended Complaint, will be filed on or before the same date as Plaintiff's Motion for Preliminary Approval of Class Action Settlement.

Each Class Member will also acknowledge that he/she has read Section 1542 of the Civil Code of the State of California, which provides as follows:

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

Each Class Member shall further warrant that he/she understands that Section 1542 gives him/her the right not to release existing claims of which he/she is not now aware, unless he/she voluntarily chooses to waive this right. Having been so apprised, each Class Member shall nevertheless voluntarily waive the rights described in Section 1542 only as related to the Released Claims, and elect to assume all risks as to the Released Claims set forth in paragraph 5.2 herein that now exist in his/her favor, known or unknown.

5.3 Released Claims. The claims set forth in all of paragraph 5.2 hereinabove and subparts thereto shall be referred to as the "Released Claims".

5.4 Effective Dates of Release. The Release set forth in paragraph 5.2 shall cover all claims held by the Releasing Parties from March 24, 2010, through the Preliminary Approval Order Date.

5.5 Released Claims by the Class Representative. The Class Representative hereby fully and finally releases and discharges the Released Parties (defined in Section 5.2, above) from any and all of the Released Claims (defined in Section 5.3, above) and from any and all claims, charges, complaints, liens, demands, causes of action, obligations, damages and liabilities, known or unknown, suspected or unsuspected, that the Class Representative had, now has, or may hereafter claim to have against the Released Parties arising out of, or relating in any way to, the Class Representative's hiring by, employment with, separation of employment with, or otherwise relating to the Released Parties ("Class Representative's Released Claims"), arising or accruing from the beginning of time up through the Preliminary Approval Order Date ("Class Representative's Released Period").

1 The Class Representative's Released Claims include, but are not limited to,
2 claims arising from or dependent on the California Labor Code; the Wage Orders
3 of the California Industrial Welfare Commission; California Business and
4 Professions Code section 17200 *et seq.*; the California Fair Employment and
5 Housing Act, Cal. Gov't Code § 12900 *et seq.*; the California common law of
6 contract and tort; Title VII of the Civil Rights Act of 1964; the Americans with
7 Disabilities Act, 42 U.S.C. § 12101 *et seq.*; the Employee Retirement Income
8 Security Act of 1974, 29 U.S.C. § 1001 *et seq.*; the Fair Labor Standards Act, 29
9 U.S.C. § 201 *et seq.* and the Portal to Portal Act, 29 U.S.C. § 251 *et seq.*

10 **5.6 No Other Liability.** The Settlement Agreement shall be in full settlement,
11 compromise, release and discharge of the Released Claims and each of them, and
12 the Released Claims by the Class Representative, and the Released Parties shall
13 have no further or other liability or obligation to any Class Member, the Class
14 Representative or any other Releasing Party with respect to the Released Claims,
15 except as expressly provided herein.

16 **6. Class Notice and Claims Administration.**

17 **6.1 Engagement of Settlement Administrator.** The Parties have agreed to retain
18 CPT Group Class Action Administrators as the "Settlement Administrator" to
19 perform the notice and other claims administration functions necessary for the
20 parties to fulfill their Settlement obligations, and shall request its appointment as
21 the Settlement Administrator.

22 **6.1.1** The Settlement Administrator shall perform the customary duties of a
23 Settlement Administrator including, but not limited to the following: (a)
24 preparing, printing and disseminating the Class Notice; (b) promptly
25 furnishing to Class Counsel and Defense Counsel copies of all objections
26 and request for exclusions received; (c) administering the Settlement
27 Payments, including determining each putative Class Member's status as a
28 member of the Class and calculating each Class Member's Settlement
Payment based on information provided by Defendant; (d) distributing a

1 Settlement Sum to each Class Member who does not opt out; (e) working
2 with the Parties to resolve any disputed claims; (f) handling all tax
3 document preparation and reporting, including state and federal tax forms
4 if any; and (g) providing a sworn declaration prior to final approval
5 detailing the work performed by the Settlement Administrator and the
6 reaction of Class Members to the Class Notice.

7 **6.1.2** Also, on a weekly basis after the Notice Date, the Settlement
8 Administrator shall provide Defense Counsel and Class Counsel with a
9 summary report, including but not limited to the total number of Class
10 Notices that were returned as undeliverable and the total number of
11 requests for exclusion and objections received. The Settlement
12 Administrator shall maintain records of its work, which shall be available
13 for inspection upon request by Defendant's counsel or Class Counsel.

14 **6.2 Identification of Class Members.**

15 **6.2.1** Defendant will complete a review of its records to identify the Class
16 Members.

17 **6.2.2** Within seven (7) calendar days of the entry of the Preliminary Approval
18 Order, Defendant shall provide the Settlement Administrator with the
19 following information:

20 **6.2.2.1** the names, last known addresses, telephone numbers, and social
21 security numbers of each Class Member;

22 **6.2.2.2** the total number of Workweeks worked by each Class Member
23 during the Class Period; and

24 **6.2.2.3** such other information that the Settlement Administrator requires
25 to identify Class Members.

26 **6.2.2.4** The information described in subparagraphs 6.2.2.1 through
27 6.2.2.3 shall be collectively referred to as the "Class Data List".

28 **6.2.3** Within three (3) workdays of its receipt of the Class Data List, the
Settlement Administrator shall access the National Change of Address

1 ("NCOA") Database, and update the addresses maintained by Defendant
2 before mailing the Class Notices.

3 **6.2.4** On or before the Notice Date, the Settlement Administrator shall send the
4 Class Notice by first class mail, forwarding requested, to all members of
5 the Class at the addresses identified through the process described above.

6 **6.2.5** As to any Class Notices returned by the U.S. Post Office as undeliverable
7 or where the NCOA Database indicates that the last known address of any
8 Class Member is invalid or otherwise undeliverable or not appropriate for
9 receipt of the Class Notice, the Settlement Administrator shall perform a
10 skip-trace procedure. Such skip-trace procedure shall be performed upon
11 receipt of the notice thereof. If this procedure reveals a new address, the
12 Settlement Administrator shall re-mail the Class Notice as soon as
13 possible to the new address, and no later than three (3) business days after
14 receipt of the undelivered Class Notice. Those Class Members who
15 receive a re-mailed Class Notice shall have until the latter of (i) fifteen
16 (15) days from the date of re-mailing, or (ii) the Opt Out Deadline to
17 postmark a Request for Exclusion pursuant to Paragraph 6.8.

18 **6.2.6** If Defendant, Class Counsel, and the Settlement Administrator determine,
19 based upon further review of available data, that a person previously
20 identified as being a Class Member should not be so included, or identify a
21 person who should have been included as a Class Member but was not so
22 included, Defendant and the Settlement Administrator shall promptly
23 delete or add such person as appropriate and notify Class Counsel prior to
24 such deletions or additions (and the reasons therefore), and if added to the
25 Class, to provide the number of Workweeks worked by that person during
26 the Class Period.

27 **6.2.7** The time periods and methodologies set forth herein reflect Defendant's
28 best current belief as to its ability to make such identifications and it is
understood that Defendant, in undertaking the tasks set forth herein, shall

1 use reasonable efforts to identify all Class Members and to determine their
2 last known addresses and social security numbers, as provided in
3 Paragraphs 6.2.1 and 6.2.2, and to do so within the stated time periods.

4 **6.2.8** Other than the obligations set forth in this Settlement Agreement,
5 Defendant shall have no additional obligation to identify or locate any
6 Class Member.

7 **6.3 Intentionally Left Blank**

8 **6.4 Final Fairness Hearing.** The Settling Parties will, at the time of hearing on
9 Preliminary Approval, request a date and time to be set for the Final Fairness
10 Hearing and will include that Final Fairness Hearing date in the Class Notice, as
11 approved by the Court.

12 **6.5 Objections to the Settlement.** Any Class Member may object to the proposed
13 Settlement, or any portion thereof, by mailing a written objection, and supporting
14 papers, if any, to the Settlement Administrator at the address established by the
15 Settlement Administrator and set forth in the Class Notice and filing such
16 objection with the Court. To be timely, all objections must be postmarked and
17 filed no later than thirty (30) days after the Notice Date ("Objection Deadline").
18 A written objection must contain the objecting person's full name, current
19 address, and telephone number. The written objection must state all objections,
20 the legal and factual basis thereof, and the reasons therefore, and include any and
21 all supporting papers (including, without limitation, all briefs, written evidence,
22 and declarations). A Class Member who desires to object but who fails to comply
23 with the objection procedure set forth herein and the Class Notice shall be deemed
24 to have not objected. The Settlement Administrator shall send all objections by
25 email in .pdf format to Defense Counsel and Class Counsel immediately, and in
26 no event later than 24 hours after receiving same. If a Class Member wishes to
27 appear at the Final Fairness Hearing and present his or her objection to the Court
28 orally, the objector's written statement must also include a statement indicating
his/her intent to appear at the Final Fairness Hearing. Only Class Members who

1 submit together with their written objections a statement indicating their intention
2 to appear at the Final Fairness hearing shall have the right to present their
3 objections orally at the Final Fairness Hearing. Class Members who do not timely
4 mail and file written objections and a notice of intent to appear shall not be
5 permitted to present their objections at the Final Fairness Hearing. Class Members
6 who file an objection remain eligible to receive monetary compensation from the
7 Settlement. A Class Member who files a request for exclusion is not eligible to
8 file an objection to the Settlement.

9 **6.6. All Class Members Settling Parties.** All Class Members, except those Class
10 Members who have timely submitted proper requests for exclusion pursuant to the
11 procedure set forth in paragraph 6.8, shall be deemed to be within the Class for all
12 purposes under this Settlement Agreement, and shall be bound by the terms and
13 conditions of this Settlement Agreement, including all orders issued pursuant
14 thereto, and shall be deemed to have waived all unstated objections and
15 opposition to the fairness, reasonableness, and adequacy of this Settlement
16 Agreement, and any of its terms.

17 **6.7 Effect of Settlement Agreement.** If the Settlement Agreement is given final
18 approval, it shall operate as a full, complete, and final release of all the Released
19 Claims of the Class Representative, all the Released Claims of the Class
20 Members, as to all Releasing Parties.

21 **6.8 Exclusion.** In order for a Class Member to validly and effectively request
22 exclusion from, and opt out of, this Settlement, the Class Member must submit a
23 signed request to be excluded from this Settlement to the Settlement
24 Administrator, in the manner described in the Notice, that is postmarked,
25 physically delivered or faxed to the Settlement Administrator by no later than
26 sixty (60) calendar days after the Notice Date ("Opt out Deadline"). Any Class
27 Member who requests to be excluded from this Settlement as provided in this
28 paragraph shall not receive any payment pursuant to this Settlement, shall have no

right to object to this Settlement, and shall not be bound by any release provided for in this Settlement Agreement or judgment.

7. Notice and Payment Process and Administrator Duties.

7.1 Intentionally Left Blank

7.2 Intentionally Left Blank

7.3 The Settlement Administrator shall be responsible for calculation of the Settlement Sums, issuance of checks, as well as withholding and remitting all required state and federal taxes, and for communicating this information to Defense Counsel. Upon completion of its calculation of payments, the Settlement Administrator shall provide Class Counsel and Defense Counsel with a report listing the amount of all payments to be made to each participating Class Member in which the names of such claimants will be coded. Following distribution of the amounts awarded by the Court, proof of payment will be filed with the Court and provided to the Parties' counsel.

7.4 Analysis and Reporting. The Settlement Administrator shall compile aggregate statistics on a weekly basis regarding the number of exclusions or objections, any other responses from Class Members, and any undeliverable Class Notices, and shall create weekly reports based on such statistics. The Settlement Administrator shall disseminate the reports in a .pdf file or an Excel spreadsheet to Class Counsel and to Defense Counsel on a weekly basis.

7.5 Payment. Defendant's provision of payments, as provided in Paragraph 2.1, shall be transmitted to the Settlement Administrator pursuant to the following schedule:

7.5.1 Beginning thirty (30) days after the Final Effective Date, Defendant shall deposit Five Thousand Dollars (\$5,000.00) and shall continue to deposit installment payments of Five Thousand Dollars (\$5,000.00) each 30 days thereafter, for a total of eighteen (18) installment payments, to fund the entire amount of the GSA. Thus, Defendant shall completely fund the Settlement within 18 months after the Final Effective Date. If Defendant defaults on two (2) consecutive installment payments, Plaintiff shall have

1 the option to withdraw from the Settlement. However, Plaintiff must meet
2 and confer with Defense Counsel prior to withdrawing from the
3 Settlement, and Plaintiff must notify Defense Counsel in writing within
4 ten (10) days of Defendant's failure to fund the Settlement in order to
5 properly withdraw. If Plaintiff withdraws from the Settlement, any funds
6 deposited by Defendant shall be refunded and returned to Defendant, the
7 Settlement and any Judgment pursuant thereto shall become null and void,
8 and the Parties shall revert to their respective positions prior to entering
9 into this Settlement.

10 **7.5.2** The Settlement Administrator shall mail payments to participating Class
11 Members, and shall cause Class Counsel's attorneys' fees and litigation
12 costs as well as Plaintiff's service award and the payment to the LWDA,
13 to be paid, within five (5) business days of receiving the final installment
14 payment from Defendant. However, the deadlines for the provision of
15 Settlement Sums to particular Class Members may be extended to provide
16 for the resolution of any disputes regarding the validity or amount of any
17 claims. Checks shall be mailed to the addresses pre-printed on the Class
18 Notices, unless the Class Member provides the Settlement Administrator
19 with a different address prior to mailing. Defendant shall have the option
20 of including a claim form with the settlement, acknowledging settlement
21 of any claims under the Fair Labor Standards Act (FLSA). Those
22 individuals who sign the claim form and acknowledge their opt in status
23 and the release of their FLSA claims will have their workweeks weighted
24 20% greater (and will thus get a proportionately 20% greater payout per
25 workweek from the available NSA) than those who do not sign the claim
26 form and do not acknowledge their opt in status and the release of their
27 FLSA claims. At Defendant's option, checks in payment of amounts due
28 to Class Members under the Settlement may contain a brief statement of
waiver of Settled Claims as part of the endorsement language.

1 7.6 If a Settlement Sum check sent to a Class Member is returned with a forwarding
2 address provided by the U.S. Post Office, it shall be re-mailed to the forwarding
3 address provided. If a Settlement Sum check is returned as undeliverable by the
4 U.S. Post Office or is otherwise designated by the U.S. Post Office as having been
5 sent to an invalid address, and the Class Member did not provide the Settlement
6 Administrator with additional address information after the mailing of said check,
7 the Settlement Administrator shall call the Class Member at the number provided
8 by Defendant in the Class Data List or as provided by the Class Member, and if
9 unsuccessful in contacting the Class Member, shall provide such information to
10 Class Counsel to locate such Class Member(s).

11 7.7 **Discharge of Obligations.** Defendant shall fully discharge its obligations to
12 those Class Members to whom they will pay a Settlement Sum through the
13 mailing of a check as set forth in Paragraphs 7.5 and 7.6, above, regardless of
14 whether such checks are actually received and/or negotiated by Class Members.
15 Any check that is not negotiated within 150 days of mailing to a Class Member,
16 or that is undeliverable following unsuccessful efforts described in Paragraph 7.6,
17 above, shall not be re-issued and will be remitted to the California Unclaimed
18 Property Fund, in the name of the Class Member, subject to Court approval. For
19 purposes of determining whether Defendant has met its financial obligation to pay
20 the Settlement, Defendant will be deemed to have paid each Class Member upon
21 the mailing of the check to the Class Member, regardless of whether such Class
22 Member subsequently negotiates the check.

23 7.8 Any Class Member who does not timely submit an exclusion request shall be
24 bound by the release provided for hereinabove, and shall be barred from bringing
25 any action against the Released Parties concerning the Released Claims.

26 7.9 **Dispute Resolution Procedure.** In the event of any disagreement between an
27 actual or potential Class Member and Defendant regarding the right to receive a
28 Settlement Sum or the amount of the Settlement Sum, the following dispute
 resolution procedure shall be used: The actual or potential Class Member shall

1 provide sufficient documentation such that Defendant and the Settlement
2 Administrator are able to thoroughly investigate the Class Member's eligibility to
3 participate in the Settlement and/or the sum that the Class Member claims is due
4 to him or her. The Settlement Administrator will determine all such disputes
5 after consultation with the parties regarding number of workweeks or other
6 specific issues raised by Class Members. The administrator's determination will
7 be final, binding and non-appealable.

8 **8. Taxes.**

9 **8.1** The Settling Parties agree that one-third (1/3) of the Settlement payments to Class
10 Members shall be considered payment of wages and subject to the withholding of
11 all applicable local, state and federal taxes including payroll taxes, and for which
12 the Settlement Administrator will issue an IRS W-2 Form.

13 **8.2** The Settling Parties further agree that one-third (1/3) of the Settlement payments
14 to Class Members shall be considered payment of penalties associated with
15 unpaid wages and other claims asserted, and one-third (1/3) of the Settlement
16 payments to Class Members shall be considered payment of interest, neither of
17 which shall be subject to any withholdings and all of which shall be reflected on
18 IRS Forms 1099 issued to Class Members.

19 **8.3** The Settlement Administrator shall withhold appropriate federal, state, and local
20 income taxes and Class Members' share of FICA and Medicare taxes in
21 accordance with the Settlement Agreement. The Settlement Administrator shall
22 pay the employer's share of payroll taxes and withholdings on that portion of
23 Settlement Sum payment to Class Members that is allocated to wages to the
24 relevant state and federal taxing agencies in accordance with applicable law and
25 regulations on behalf of Defendant. The Settlement Administrator will also be
26 responsible for issuing any required state and federal reporting documents (such
27 as IRS Forms W-2s and 1099s) to Class Members, Class Counsel, and the Class
28 Representative on behalf of Defendant.

1 8.4 Any employee contributions and deductions required by any and all applicable
2 federal, state, and local tax regulations shall be paid from/deducted from the
3 participating Class Member's Settlement Sum.

4 8.5 For all purposes, payments shall be deemed compensation to the Class Member,
5 whether a current or former relationship to Defendant exists, in the year the
6 payment is actually made. It is expressly understood and agreed that the receipt of
7 any payments made to a Class Member will not entitle any Class Member to
8 additional compensation or benefits under any bonus, contest or other
9 compensation or benefit plan or agreement in place with Defendant during the
10 period covered by the Settlement, nor will it entitle any Class Member to any
11 increased retirement, 401(k) benefits or matching benefits, or deferred
12 compensation benefits. It is the intent of this Settlement that settlement payments
13 are the sole payments to be made by Defendant to the Class Member, and that
14 Class Members are not entitled to any new or additional compensation or benefits
15 as a result of having received the individual Settlement awards (notwithstanding
16 any contrary language or agreement in any benefit or compensation plan
17 document that might have been in effect during the period covered by this
18 Settlement).

19 8.6 Defendant makes no representation as to the tax treatment or legal effect of the
20 payments called for hereunder, and the Class Representative and Class Members
21 are not relying on any statement, representation, or calculation by Defendant or by
22 the Settlement Administrator in this regard. The Class Representative and Class
23 Members understand and agree that except for Defendant's payment of the
24 employer's portion of any payroll taxes, they will be solely responsible for the
25 payment of any taxes and penalties assessed on the payments described herein.

26 **9. Application for Preliminary Approval Order.** Class Counsel will file a Motion for
27 Preliminary Approval of the proposed Settlement, pursuant to California Rule of Court 3.769, and shall
28 apply for a Preliminary Approval Order that contains the following provisions:

- 9.1 preliminarily approving the Settlement Agreement under the legal standards relating to the preliminary approval of class action settlements;
- 9.2 approving the form of the Class Notice, and finding that the proposed method of disseminating the Class Notice meets the requirements of California Rule of Court 3.766 and of due process and is the best notice practicable under the circumstances;
- 9.3 appointing Luis Arellano as Class Representative and Setareh Law Group as Class Counsel;
- 9.4 approving CPT Group Class Action Administrators as the Settlement Administrator;
- 9.5 establishing the procedures and the deadline by which Class Members may exclude themselves or assert objections to the Settlement;
- 9.6 setting a date for the Final Fairness Hearing;
- 9.7 setting a date that is approximately seven (7) days before the date of the Final Fairness Hearing by which the Settling Parties must file their respective responses to timely objections, if any, to the Settlement filed by Class Members; and
- 9.8 providing that, pending the Court's final determination of whether the proposed Settlement will be approved, and in aid of the Court's jurisdiction and to prevent a multiplicity of lawsuits, the Class Representative and all members of the Class, and anyone acting on their behalf (including, but not limited to, attorneys, representatives, and agents of any Class Member), who have actual knowledge of this stipulation, and who have not requested to be excluded from the Settlement, are barred and enjoined from instituting, commencing, or continuing to prosecute, directly or indirectly, as an individual or collectively, representatively, derivatively, or on behalf of himself or herself, or in any other capacity of any kind whatsoever, any action in this Court, any other state court, or any arbitration or mediation proceeding or any other similar proceeding, against any Released Party that asserts any claims that are Released Claims that would be released and

1 discharged upon final approval of the Settlement, except as the Court may further
2 order upon application of a Class Member and notice to all parties.

3 **10. Final Fairness Hearing.** At the Final Fairness Hearing, Plaintiff and Defendant shall
4 use their best efforts to urge the Court to grant final approval of the Settlement in its entirety (including
5 any modification made thereto with the consent of the Settling Parties as provided herein), and to enter a
6 Final Approval Order and Judgment as set forth in Paragraph 11. The Court may allocate less to
7 Plaintiff, Class Counsel, and/or the LWDA than indicated herein without impacting the validity and
8 enforceability of the Agreement. The Court may allocate less to the Settlement Administrator than
9 indicated provided the actual amount spent by the Settlement Administrator is less than the maximum
10 set forth herein. Except for the provisions set forth in the preceding two sentences, in the event that any
11 of the terms or conditions set forth in this Agreement are not fully and completely approved the Court
12 and satisfied, this Agreement shall terminate at the option of either Party, or both, and all terms of the
13 Agreement including, any payments by Defendant, shall be null and void.

14 **11. Final Approval Order and Judgment.** If the Settlement (including any modification
15 made thereto with the consent of the Settling Parties as provided herein) is finally approved by the Court
16 following the Final Fairness Hearing, the Settling Parties hereto shall jointly request that the Court enter
17 a Final Approval Order and Judgment as follows:

18 **11.1** The Final Approval Order shall include the following provisions:

19 **11.1.1** finding that the dissemination of the Class Notice in the form and manner
20 ordered by the Court was accomplished as directed, met the requirements
21 of due process, was the best notice practicable under the circumstances,
22 and constituted due and sufficient notice to all persons entitled thereto;

23 **11.1.2** finding that the Class Representative and Class Counsel herein have fairly
24 and adequately represented and protected the interests of the Class at all
25 times in the Action;

26 **11.1.3** finally approving the Settlement Agreement and the Settlement as fair,
27 reasonable and adequate and directing consummation of the Settlement in
28 accordance with its terms and provisions;

11.2 The Judgment shall include the following provisions:

1 11.2.1 directing the Settling Parties to implement the terms of the Settlement
2 Agreement, including without limitation the provisions regarding the
3 payment of the Settlement Sum to each Class Member as set forth in this
4 Settlement Agreement;

5 11.2.2 defining the Class;

6 11.2.3 releasing and discharging the Released Parties from any and all liability
7 with respect to the Released Claims as hereinabove provided;

8 11.2.4 permanently barring and enjoining all Class Members who did not timely
9 opt out from prosecuting against any of the Released Parties, any
10 individual, class or collective claims based on any of the Released Claims
11 released herein;

12 11.2.5 awarding reasonable attorneys' fees, costs, and expenses to Class Counsel
13 as provided in Paragraphs 3.1 and 3.2, and subject to the limitations set
14 forth in Paragraph 3.5, or reserving jurisdiction with respect thereto;

15 11.2.6 awarding service payment to the Class Representative as provided in
16 Paragraph 3.3, and subject to the limitations set forth therein, or reserving
17 jurisdiction with respect thereto; and

18 11.2.7 reserving continuing and exclusive jurisdiction over all matters related to
19 the administration and consummation of the terms of this Settlement, over
20 the enforcement, construction and interpretation of this Settlement
21 Agreement, over the enforcement, construction, and interpretation of the
22 Judgment, including, but not limited to, the provisions therein enjoining
23 any further litigation of Released Claims, and over Plaintiff and all Class
24 Members (and their attorneys and law firms) in connection therewith.

25 **12. Finality; Effect of the Settlement Not Being Final.**

26 **12.1 Finality.** The approval of the Settlement shall be considered Final on the Final
27 Effective Date. Except as expressly stated herein, none of the obligations of
28 Defendant pursuant to the Settlement Agreement shall become effective until the
Settlement becomes Final, but Defendant may waive this condition in writing.

12.2 In the event that the Settlement as provided for in this Settlement Agreement does not become Final, or does not become effective for any reason other than the failure of any party to perform such party's obligations hereunder (except as to the Settlement not becoming Final because of any appeal, which circumstance can be waived by Defendant), then the Settlement Agreement shall become null and void and of no further force and effect, and its terms and all documents setting out its terms shall be inadmissible in further litigation of this case or any other case, and all negotiations, proceedings, and statements relating thereto shall be without prejudice as to the rights of any and all parties hereto and their respective predecessors and successors, and all parties and their respective predecessors and successors shall be deemed to have reverted to their respective positions in the Action as of the date and time immediately prior to the execution of this Settlement Agreement, and except as otherwise expressly provided, the effect shall be the same as if the Settlement Agreement was terminated pursuant to Paragraph 13. The Parties agree that the settlement does not include injunctive relief. Subject to the preliminary approval, Plaintiff waives his right to appeal the settlement.

13. Settlement Termination.

13.1 In the event that more than seven (7) Class Members elect to exclude themselves from this Settlement, Defendant will have the unilateral right to void this Settlement within seven (7) calendar days of the Opt Out Deadline. If Defendant exercises its rights under this Paragraph: (a) this Settlement Agreement and the Settlement (with the exception of Paragraph 4) shall be terminated and become void and of no effect; (b) any actions taken or to be taken in connection with this Settlement Agreement and the Settlement shall become null and void and of no effect; (c) this Settlement Agreement and the Settlement and any hearings or proceedings thereunder shall not be referred to or used as evidence for or against any party or Class Member in this or any other action or proceeding; and (d) all

1 pretrial proceedings, including discovery, shall resume 30 days thereafter as if this
2 Settlement had not been submitted for approval of the Court.

3 **13.2** This Settlement is entered into based upon Defendant's representation that the
4 number of Class Members is eighty (80) or less. In the event that the number of
5 Class Members exceeds eighty-eight (88), Plaintiff will have the unilateral right to
6 void this Settlement on or before the later of: (a) the Notice Date or (b) within
7 seven (7) days of the date that Defendant informs Class Counsel that the number
8 of Class Members exceeds 88. If Plaintiff exercises his rights under this
9 Paragraph: (a) this Settlement Agreement and the Settlement (with the exception
10 of Paragraph 4) shall be terminated and become void and of no effect.; (b) any
11 actions taken or to be taken in connection with this Settlement Agreement and the
12 Settlement shall become null and void and of no effect; (c) this Settlement
13 Agreement and the Settlement and any hearings or proceedings thereunder shall
14 not be referred to or used as evidence for or against any party or Class Member in
15 this or any other action or proceeding; and (d) all pretrial proceedings, including
16 discovery, shall resume 30 days thereafter as if this Settlement had not been
17 submitted for approval of the Court.

18 **13.3** Moreover, in the event that (a) the Court declines to enter Preliminary Approval
19 of the Settlement Agreement or declines to enter the Final Approval and/or
20 Judgment or any part thereof as provided for herein, or the Settling Parties hereto
21 fail to consent to the entry of alternative forms of Judgment, in lieu thereof, or
22 after such consent the Court declines to enter such alternate form of Judgment; (b)
23 any other conditions to the Settlement are not satisfied; (c) the Court disapproves
24 this Settlement, or any term contained in this Settlement Agreement, including
25 any amendments hereto, and such disapproval becomes final by reason of its
26 affirmance on appeal or lapse of time or otherwise; or (d) the Court approves this
27 Settlement, including any amendments hereto, but any such judgment and
28 approval is finally reversed on appeal, then, in any such event, this Settlement
29 shall be void, and the Preliminary Approval Order and the Final Approval Order

1 and Judgment shall be vacated upon application to the Court. In such event, (a)
2 this Settlement Agreement and the Settlement (with the exception of Paragraph 4)
3 shall be terminated and become void and of no effect, except for the obligation of
4 Class Counsel and Defendant or Defense Counsel to equally pay for any and all
5 expenses incurred in connection with the Notice and administration of the
6 Settlement on or before the date on which the Settlement is terminated; (b) any
7 actions taken or to be taken in connection with this Settlement Agreement and the
8 Settlement shall become null and void and of no effect; (c) this Settlement
9 Agreement and the Settlement and any hearings or proceedings thereunder shall
10 not be referred to or used as evidence for or against any party or Class Member in
11 this or any other action or proceeding; and (d) all pretrial proceedings, including
12 discovery, shall resume 30 days thereafter as if this Settlement had not been
13 submitted for approval of the Court.

14 **14. Extensions of Time.** Without further order of the Court, the Settling Parties hereto may
15 agree in writing to reasonable extensions of time to carry out any of the provisions of the Settlement.

16 **15. Construction.** This Settlement Agreement was entered into after substantial good faith,
17 arms-length negotiations between the Settling Parties' counsels. This Settlement Agreement is entered
18 into freely and voluntarily only after each party had carefully read and reviewed it with counsel, and it
19 reflects the conclusion of each party that this Settlement Agreement and the Judgment and the releases,
20 waivers, and covenants contemplated hereby are in the best interest of said party. This Settlement
21 Agreement has been entered into without any coercion and under no duress. The Settling Parties
22 acknowledge and agree that all parties had an equal hand in drafting this Settlement Agreement so that it
23 shall not be deemed to have been prepared or drafted by one party or another. All parties waive the
24 provisions of California Civil Code Section 1654, which provides, in pertinent part, that "the language
25 of a contract should be interpreted most strongly against the party who causes the uncertainty to exist."
26 Except as expressly provided herein, this Settlement Agreement is not intended to confer any rights or
27 remedies upon any person other than the Settling Parties.

28 **16. Due Authority of Attorneys.** Each of the attorneys executing this Settlement
Agreement, on behalf of one or more parties, hereto warrants and represents that he or she has been duly

1 authorized and empowered to execute this Settlement Agreement on behalf of each such respective party
2 and to bind them to the terms hereof.

3 **17. Entire Agreement.** This Settlement Agreement (including all Exhibits annexed hereto,
4 and as subsequently revised pursuant to the Court's direction) sets forth the entire agreement of the
5 Settling Parties with respect to its subject matter and supersedes any and all other prior agreements and
6 all negotiations leading up to the execution of this Settlement Agreement, whether oral or written,
7 regarding the subjects covered herein. The Settling Parties acknowledge that no representations,
8 inducements, warranties, promises, or statements relating to the subjects covered herein, oral or
9 otherwise, have been made by any of the Settling Parties or by anyone acting on behalf of the Settling
10 Parties which are not embodied or incorporated by reference herein, and further agree that no other
11 agreement, covenant, representation, inducement, promise or statement relating to the subjects covered
12 herein not set forth in writing in this Settlement Agreement, shall be valid or binding.

13 **18. Modification or Amendment.** This Settlement Agreement may not be modified or
14 amended except in a writing signed by all signatories hereto or their successors in interest.

15 **19. Deadlines Falling on Weekends or Holidays.** To the extent that any deadline set forth
16 in this Settlement Agreement falls on a Saturday, Sunday, or legal holiday, that deadline shall be
17 continued until the following business day.

18 **20. Successors.** This Settlement Agreement shall be binding upon and inure to the benefit of
19 the Settling Parties hereto (including Class Members) and their respective heirs, executors,
20 administrators, successors and assigns, and upon any corporation, partnership or other entity into or with
21 which any Settling Party hereto may merge, combine or consolidate.

22 **21. Severability.** In the event that any one or more of the provisions contained in this
23 Settlement Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such
24 invalidity, illegality, or unenforceability shall in no way affect any other provision if Defense Counsel
25 and Class Counsel, on behalf of the Settling Parties and the Class, mutually elect in writing to proceed as
26 if such invalid, illegal, or unenforceable provision had never been included in this Settlement
27 Agreement.

28 **22. Counterparts.** This Settlement Agreement may be executed in counterparts, each of
which shall be deemed an original, and all of which together shall constitute one and the same

instrument. Facsimile transmission of the signatures of the Settling Parties or their representatives shall be binding on the Settling Parties.

23. Waivers. The waiver by any party of any breach of this Settlement Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.

24. No Re-Hire. The Class Representative agrees that due to irreconcilable differences he will not knowingly seek or maintain employment, independent contractor status, or any other business relationship in the future with the Released Parties in any position or capacity whatsoever and that the Released Parties are entitled to reject (and will be deemed to have rejected) with or without cause, any application for employment or agreement for independent contractor status or any other business relationship with the Released Parties made by the Class Representative. The Class Representative further agrees that any rejection of any application or offer made to by the Class Representative is not for retaliatory, discriminatory or any other illegal purpose and he will not seek any redress, legally or otherwise, for such a rejection.

25. Governing Law. This Settlement Agreement shall be governed by and construed, enforced, and administered in accordance with the laws of the State of California, without regard for the law of the State regarding conflicts of laws or choice of law. Any orders or judgments entered by the Court in conjunction with the proceedings relating to or arising out of this Settlement Agreement shall be construed and enforced under, and all issues relating to the preclusive effect of such orders or judgments shall be determined by, the laws of the State of California relating to the construction, enforcement, and preclusive effect of orders and judgments entered by state courts.

26. Continuing Jurisdiction. The Court will have continuing jurisdiction over the Action for the purpose of implementing the Settlement Agreement, the Final Approval of the Settlement, entry of Judgment, and post-judgment issues, until all related matters are fully resolved. Except as provided in Paragraph 7.9, above, any dispute regarding the Settling Parties' obligations pursuant to this Settlement Agreement and/or interpretation of the terms of this Settlement Agreement will be presented by written motion to, and resolved by, the Court.

27. Regulation. In the event that any provision in this Settlement Agreement shall be affected by any rule, regulation, ordinance, order, directive, or statute by any unit of government,

whether state, federal, or local, such rule, regulation, ordinance, order, directive, or statute shall supersede and take precedence over any such provision of this Settlement Agreement to the contrary and in no event shall Defendant be in violation of this Settlement Agreement nor shall this Settlement Agreement be in any way affected should Defendant take any action or change any of its business practices to comply with such state, federal, or local rules, regulations, ordinances, or statutes currently in force or enacted in the future.

28. Headings. The headings contained in this Settlement Agreement are for convenience and reference purposes only, and shall not be given weight in its construction.

29. Notices. Any notices, requests, demands, or other communications required or permitted to be given pursuant to this Settlement Agreement, other than notice to the Class or Class Members, shall be in writing and, except as provided elsewhere in this Settlement Agreement or in any communication to the Class, shall be delivered personally, via overnight delivery or via postage pre-paid first class mail, as follows: (1) to Plaintiff, the Class, and Class Counsel to the attention of:

SHAUN SETAREH, ESQ.
SETAREH LAW GROUP
9454 WILSHIRE BLVD., SUITE 907
BEVERLY HILLS, CA 90212

and (2) to Defendant and Defense Counsel to the attention of:

KEVIN WATTLES, ESQ.
SOLTMAN, LEVITT, FLAHERTY & WATTLES LLP
2535 TOWNSGATE ROAD, SUITE 307
WESTLAKE VILLAGE, CALIFORNIA 91361

By written notice given in accordance herewith, each party may modify or change the addressee and/or address of any person identified above or pursuant hereto as the person or persons to whom all future notices shall be sent.

30. Signatures of the Class Representative and Counsel for the Settling Parties. The Class Representative and counsel for the Settling Parties indicate by signing below their approval of the form of this Settlement Agreement (and exhibits thereto), and, in the case of counsel for the Class Representative and the Class, their representation and warranty of authority to bind the Class as certified and the Class described herein (subject to the final approval of the Court) and their acceptance of the provisions regarding attorneys' fees.

1 **31. Disputes.** All disputes arising out of or related to this Settlement Agreement (except
2 disputes as to Claims of Class Members which are governed by the provisions of Paragraph 7.9) shall be
3 resolved by the Court, as set forth in Paragraph 25, above.

4 **32. Confidentiality.** The Parties, Class Counsel, and Defense Counsel shall keep the
5 Settlement confidential through preliminary approval. Thereafter, the Parties will agree to make no
6 comments to the media or otherwise publicize the terms of the Settlement on any social media or
7 websites, except that Class Counsel may post on its firm website: "The Firm settled an employment
8 class action with a services company for \$90,000." This shall not restrict Class Counsel from responding
9 to inquiries posed by Class Members.

10 **SO STIPULATED.**

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12
13 Dated: 08262016, 2016

LUIS ARELLANO

DocuSigned by:

Luis Arellano

5CA57B885A344D1...

LUIS ARELLANO

On behalf of himself, as Plaintiff, and as Class
Representative for the Class

ELECTRONIC DOCUMENT PROCESSING,
INC., dba ONE TOUCH LEGAL SERVICES

16
17
18
19 Dated: _____, 2016

JOHN COLLINS
Its President

22 **APPROVED AS TO FORM**

23
24 Dated: *0/6*, 2016

SETAREH LAW GROUP

26
27
28
SHAUN SETAREH
Attorneys for Plaintiff LUIS ARELLANO

1 Dated: _____, 2016

SOLTMAN, LEVITT, FLAHERTY & WATTLES
LLP

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4 KEVIN S. WATTLES
Attorneys for Defendant ELECTRONIC
5 DOCUMENT PROCESSING, INC., dba ONE
TOUCH LEGAL SERVICES
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SO STIPULATED.

LUIS ARELLANO

Dated: _____, 2016

LUIS ARELLANO
On behalf of himself, as Plaintiff, and as Class
Representative for the Class

ELECTRONIC DOCUMENT PROCESSING,
INC., dba ONE TOUCH LEGAL SERVICES

Dated: _____, 2016


JOHN COLLINS
Its President

APPROVED AS TO FORM

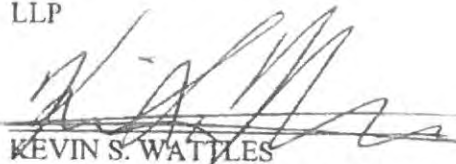
Dated: _____, 2016

SETAREH LAW GROUP

SHAUN SETAREH
Attorneys for Plaintiff LUIS ARELLANO

1 Dated: May 27, 2016
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SOLTMAN, LEVITT, FLAHERTY & WATTLES
LLP


KEVIN S. WATTLES

Attorneys for Defendant ELECTRONIC
DOCUMENT PROCESSING, INC., dba ONE
TOUCH LEGAL SERVICES

EXHIBIT A

LEGAL NOTICE:

If you worked for Electronic Document Processing, Inc., dba One Touch Legal Services, in California as a process server during some or all of the period from March 24, 2010 through <<Class Period End Date>>, a class action settlement will affect your rights

A court authorized this Notice. Arellano v. Electronic Document Processing, Inc., Case No. BC540315

- A former employee ("Class Representative" or "Plaintiff") sued Electronic Document Processing, Inc. dba One Touch Legal Services ("One Touch" or "Defendant") on behalf of himself and others similarly situated, and has alleged various California Labor Code violations, including but not limited to unpaid meal and rest premiums, failure to pay all minimum and overtime wages, waiting time penalties, and failure to provide and maintain accurate paystubs.
- The claims of the Class Representative and the Class have been settled. The Court has preliminarily approved the settlement.
- Your legal rights are affected whether you act or don't act. Read this Class Notice carefully.
- If you qualify as a Class Member, **you could receive money from the settlement.**

YOUR ESTIMATED PAYMENT FROM THE SETTLEMENT IS: \$ _____

This amount was calculated based upon One Touch's records which show that you worked _____ workweeks for One Touch during the Class Period.

TO GET MONEY FROM THE SETTLEMENT, YOU DO NOT NEED TO DO ANYTHING. Below is a summary of your options:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	You will receive a portion of the Settlement fund and you will give up any rights to sue for the same claims that were part of this settlement.
EXCLUDE YOURSELF	Give up all benefits, including money, from the settlement. Retain all rights you may have against One Touch, explained below.
OBJECT	Write to the Court about why you don't agree with the settlement. The Court may or may not agree with your objection.

HOW MUCH CAN I GET?	See above.
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- Your rights and options – and the deadlines to exercise them – are explained in this Notice.
- The Court in charge of this case still has to decide whether to grant final approval of the settlement. Payments will be made if the Court approves the settlement, and after any appeals are resolved, to Class Members who do not exclude themselves from the Settlement.

1. Why Did I Get This Notice Package?

You are not being sued. Plaintiff sued One Touch in a class action on behalf of himself and similarly situated employees like you.

One Touch's records show that you are a current or former process server for One Touch who worked in California and during some or all of the period from March 24, 2010 through <<Class Period End Date>>.

Questions? Call <<CLAIM ADMIN PH NO>>

You received this Notice because you have a right to know about a proposed settlement of a class action lawsuit and about your options before the Court decides whether to grant final approval of the settlement. If the Court approves it, and after any objections and appeals are resolved, a Settlement Administrator appointed by the Court will make the payments that the settlement allows.

This Notice explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

2. What Is This Lawsuit About?

The Class Representative claims, on behalf of himself and the Class of process servers in California who performed any work during the Class Period, that One Touch: (1) failed to provide meal and rest periods; (2) failed to pay all meal and rest premiums in violation of California labor laws; (3) failed to pay all wages, including minimum and overtime wages; (4) failed to maintain accurate records; (5) failed to pay penalties, including waiting time and recordkeeping penalties; and (6) violated California's Unfair Competition Law.

3. Do I Need to Hire an Attorney?

You do not need to hire your own attorney. You are already represented by Class Counsel (see Section 15 for their contact information). However, you may hire your own attorney at your own expense if you choose to do so.

4. What is One Touch's Position?

One Touch denies all of the Class Representative's allegations, or that it violated any law, and contends that at all times it complied with federal, state and local laws. Specifically, One Touch denies that the Class Representative or Class Members are owed any additional compensation for the hours they worked, have been denied meal periods and rest periods, have received inaccurate or deficient wage statements, or have not been timely paid wages upon termination.

5. Why Is There A Settlement?

The Court did not decide in favor of Plaintiff or Defendant. Instead of going to trial, after a thorough investigation into the facts of this lawsuit, both sides agreed to a settlement after a mediation using a neutral third-party mediator. The class claims were settled because Class Counsel and the Class Representative believe that the terms of the settlement are fair and reasonable in light of the strengths and weaknesses of the claims and other factors.

6. How Do I Know If I Am Part Of The Settlement?

"Class Members" are all of Defendant One Touch's current and former process servers in California during the period from March 24, 2010 through <<Class Period End Date>>.

7. What Does The Settlement Provide?

Questions? Call <<CLAIM ADMIN PH NO>>

Class Members who do not exclude themselves from the Settlement will receive Settlement payments from the Net Settlement Amount. The Net Settlement Amount is the portion of the Gross Settlement Amount of \$90,000.00 available for distribution to Class Members after deduction of Court approved Class Counsel's attorneys' fees and costs, Settlement Administration Costs, the Class Representatives' Service Payments, and the Employer's Share of Payroll Taxes.

Deductions for Class Counsel's Attorneys' Fees and Costs, Class Representative's Service Payments, and Settlement Administration Costs. Class Counsel will ask the Court to award attorneys' fees in the amount of \$30,000.00, which represents one-third (33.33%) of the Gross Settlement Amount and litigation costs of up to \$10,000.00 from the Gross Settlement Amount. In addition, Class Counsel will ask the Court to authorize a Service Payment, from the Gross Settlement Amount, of \$5,000 to Class Representative Luis Arellano to compensate him for the risks, time, and expense of his involvement in this Action. This payment is in addition to whatever payment the Class Representative is otherwise entitled to as a Class Member.

The Settlement Administrator will also be reimbursed for the expense of notifying the Class Members of the Settlement, processing any requests for exclusions submitted by Class Members, and distributing Settlement payments. Settlement Administration Costs are estimated at \$7,000 but may be higher or lower depending on the results of the notice process.

8. What Can I Get From the Settlement?

Class Members will be paid out of the Net Settlement Amount. One-third (33.33%) of each Settlement payment will be designated for alleged unpaid wages and other damages, for which IRS Form W-2 shall be issued, and two-thirds (66.67%) will be designated for alleged interest and penalties, for which IRS Form 1099 shall be issued, as appropriate.

If you do not exclude yourself from the Settlement, you will receive your share of the Net Settlement Amount after the Court approves the Settlement. Your estimated share, after employer payroll taxes have been deducted, is listed on page 1 of this Notice.

9. How Was My Share Calculated?

Each Class Member's settlement share shall be determined by taking the total number of workweeks for the individual Class Member and dividing that by the total number of workweeks for all Class Members and multiplying that fraction by the Net Settlement Amount. These calculations shall be constructed from One Touch's records.

The number of workweeks you worked according to One Touch's records is listed on page 1 of this Notice. If you disagree with the number of workweeks listed, you must, on or before _____, 2016, submit documentation to the Settlement Administrator (see Section 13 for their contact information) supporting your claim for how many workweeks you claim you worked during the Class Period. The Settlement Administrator will provide your documentation to Class Counsel and Defendant's Counsel, who will work to resolve the dispute. If they cannot resolve the dispute, then the Court will resolve the dispute. The Court's decision will be final and non-appealable.

10. How Can I Get Payment?

To qualify for payment, you do not need to do anything.

Questions? Call <<CLAIM ADMIN PH NO>>

11. When Would I Get My Payment?

The Court will hold the Final Approval Hearing on or about <<Final Fairness Hearing Date>> at _____ in Department 308 of the Los Angeles County Superior Court, 600 S. Commonwealth Avenue, Los Angeles, California 90005, to decide whether to approve the settlement. If the Court approves the settlement, One Touch will begin paying the Settlement amount in installments, and those installments will be completed approximately 18 months after Final Approval. The Settlement Administrator will then mail your payment approximately five (5) business days after the final installment is made. If, however, there are objections and/or appeals, then the settlement payments may be delayed. It is always uncertain when these issues can be resolved, and resolving them can take time. If your contact information changes you have the obligation to contact the Settlement Administrator to update your contact information.

12. What Rights Do I Give Up If I Participate in the Settlement?

Unless you exclude yourself, you will remain a Class Member, and you will be bound by the terms of the settlement, including the Released Claims described below. That means that you will be unable to sue, or to continue to sue, or be part of any other lawsuit about the Released Claims. It also means that all of the Court's orders will apply to you and legally bind you.

Released Claims

Upon Final Approval of this Settlement Agreement, the claims to be released by Class Members will include all claims under California law arising from their employment with One Touch that were or otherwise could have been brought under the facts pleaded in the operative Complaint in this Action against One Touch, its respective successors, current and former parents, subsidiaries, affiliated corporations and entities, and each of their respective officers, directors, agents, and employees and any other person or entity that could be jointly liable with them for the claims (collectively, the "Released Parties"), arising out of or relating to work performed from March 24, 2010 to <<Date of Preliminary Approval>>, including but not limited to the following:

- (a) any and all claims regarding unpaid wages, interest, or penalties for unpaid straight time wages, unpaid overtime wages, unpaid minimum wages, inaccurate payroll and/or time record-keeping records, inaccurate, incomplete or incorrect pay instruments/stubs and/or wage/earnings statements, payment of wages, and unfair competition, related to the alleged Labor Code violations asserted in the operative Second Amended Complaint;
- (b) any and all claims regarding meal and rest period premiums under Labor Code sections 226.7 and 512 and the applicable Wage Order related to the alleged Labor Code violations asserted in the operative Complaint;
- (c) any and all claims regarding waiting time penalties under Labor Code sections 201, 203 *et seq.* and the applicable Wage Order related to the alleged Labor Code violations asserted in the operative Complaint;
- (d) any and all claims for injunctive relief, restitution, breach of contract or company policy, fraudulent business practices brought pursuant to the California Business & Professions Code and related to the above alleged Labor Code violations asserted in the operative Complaint; and
- (e) any and all claims or causes of action for penalties, interest and/or attorneys' fees and costs related to the above alleged Labor Code violations asserted in the operative Complaint, including but not limited to claims for penalties under the Private Attorneys General Act of 2004 ("PAGA"), Labor Code § 2698, *et seq.*

Questions? Call <<CLAIM ADMIN PH NO>>

In addition to any claims that could have been raised under California law, in order to receive money from the Settlement you must also agree to release any and all claims that could have been raised under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.*, based on the facts alleged in the operative Complaint. **Note that, by cashing your Settlement check, you are affirmatively opting into the case for purposes of accepting the Settlement and are agreeing to release any claims that arise under the FLSA.** If you do not wish to release any claims you may have under the FLSA, you may not cash the settlement check and must return it.

Each Class Member will also acknowledge, **only as to the Released Claims**, that he/she has read Section 1542 of the Civil Code of the State of California, which provides as follows:

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

All other claims (except for attorneys' fees and costs) will not be released as part of this settlement. The Released Claims do not include any claims related to work performed while not a Class Member (e.g., for work performed outside California, or outside the Class Period, etc.)

13. How Do I Exclude Myself From The Settlement?

If you do not wish to participate in the settlement, you may exclude yourself (generally called "opting out") by submitting a written opt-out request to the Settlement Administrator. Your request to opt-out must: (a) state your name and the last four digits of your Social Security number; (b) include a statement that you wish to be excluded from the Class in *Arellano v. Electronic Document Processing, Inc.*; (c) be signed; and (d) be post-marked no later than <<60 days from Prelim Approval>>.

You must sign the opt-out request personally and may not have someone sign for you, nor may you submit an opt-out request on behalf of a group. Your opt-out request must be signed and returned via United States first class mail postmarked no later than <<60 days from Prelim Approval>> to:

Settlement Administrator
Address
Phone: (***) ***-****
Facsimile: (***) ***-****

If you submit a timely opt-out request, then upon its receipt you shall no longer be a member of the Class, you shall be barred from participating in any portion of the settlement, you may not object to the settlement, and you shall receive no benefits, including no money, from the settlement. If you wish, you may pursue, at your own expense, any claims you may have against One Touch. If you do not submit a complete and timely written opt-out request, you will be included in the Class, and be bound by the terms of the settlement (including the Released Claims described in Section 12 herein), whether or not you objected to the settlement.

14. When Is The Final Approval Hearing?

The Court will hold a Final Approval Hearing in Department 308 of the Los Angeles County Superior Court, 600 S. Commonwealth Avenue, Los Angeles, California 90005, on <<Final Fairness Hearing Date

Questions? Call <<CLAIM ADMIN PH NO>>

and Time>> or such other, later date as the Court may authorize, to determine whether the settlement is fair, reasonable, and adequate; and if there are objections, the Court will consider them. The Court will also be asked to approve Class Counsel's request for attorneys' fees and litigation costs, the Class Representative's Service Payments, the PAGA Payment and the Settlement Administration Costs.

The hearing may be continued without further notice to Class Members. It is not necessary for you to appear at this hearing unless you have timely filed an objection and notice of intention to appear with the Court.

15. How Do I Object To The Settlement And Appear At The Final Approval Hearing?

You may object to the terms of the settlement before the Final Approval Hearing. However, if the Court rejects your objection, you will still be bound by the terms of the settlement. To object, you must file a written objection with the Clerk of the Los Angeles County Superior Court, 600 S. Commonwealth Avenue, Los Angeles, California 90005, and send copies via U.S. mail to the Settlement Administrator (see contact information in section 13, above).

Any written objection shall state each specific reason in support of your objection and any legal support for each objection. Your objection must also state your full name, address, telephone number, and the approximate dates of your employment at One Touch. To be valid and effective, any objections to approval of the settlement must be filed with the Court and mailed by U.S. mail to the Settlement Administrator, postmarked no later than <<30 days from Prelim Approval>>. DO NOT TELEPHONE THE COURT.

You do not have to attend the hearing, but you may do so at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you filed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

If you want to speak at the Final Approval Hearing, you must ask the Court for permission. The Court will decide whether you are permitted to do so. To request permission to appear at the hearing, you must file a request titled "Notice of Intention to Appear in *Arellano v. Electronic Document Processing, Inc.*, Case No. BC540315" with the Los Angeles County Superior Court, and deliver copies to the Settlement Administrator at the address listed in section 13 above. Include your name, address, telephone number, signature, and if you have not filed an objection, a brief statement of the position that you wish to put before the Court at the Final Approval Hearing and the basis for that position. Your Notice of Intention to Appear must be filed with the Court and mailed to the Settlement Administrator by U.S. mail postmarked no later than <<30 days from Prelim Approval>>.

You cannot both object and opt-out. If you submit both an opt-out request and objection, the opt-out request will be valid, and you will be excluded in from the settlement class.

16. How Do I Get Additional Information?

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you should consult the detailed Stipulation and Agreement of Compromise and Settlement between Plaintiff and Defendant, which is on file with the Clerk of the Court.

Questions? Call <<CLAIM ADMIN PH NO>>

The pleadings and all other records from this litigation may be examined by visiting the Los Angeles County Superior Court at 600 S. Commonwealth Avenue, Los Angeles, CA 90005 during regular office hours (Mon. – Fri., 8:30 a.m. to 4:30 p.m.)

If you have any questions, you can call the Settlement Administrator at (800) _____ or Class Counsel:

CLASS COUNSEL

Shaun Setareh, Esq.

SETAREH LAW GROUP

9454 Wilshire Boulevard, Suite 907

Beverly Hills, California 90212

Phone: (310) 888-7771

Fax: (310) 888-0109

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

BY ORDER OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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On August 18, 2017, I served the foregoing documents described as:

in this action by transmitting a true copy thereof enclosed in a sealed envelope addressed as follows:

[X] BY MAIL

☒ BY E-MAIL OR ELECTRONIC TRANSMISSION

[1] BY FEDERAL EXPRESS

I am readily familiar with the practice of Setareh Law Group for the collection and processing of correspondence for deposit with Federal Express. It is the practice that correspondence is deposited with Federal Express the same day it is submitted for mailing with fees thereon fully prepaid at Beverly Hills, California. I am aware that on motion of the party served, service is presumed invalid if date of receipt of the document by Federal Express is more than one day after date of deposit for mailing in affidavit.

1 **[] BY FACSIMILE MACHINE**

2 I transmitted from a facsimile transmission machine whose telephone number is (310)
3 888-0109 to the above-identified recipient and fax telephone number. The above-described
4 transmission was reported as complete without error by a transmission report issued by the
5 facsimile transmission machine upon which the said transmission was made immediately
6 following the transmission.

6 **[] PERSONAL SERVICE**

7 I delivered the foregoing document by hand delivery to the addressee named above.

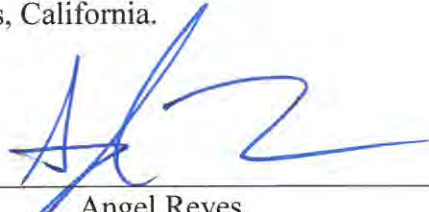
8 **[] BY CERTIFIED MAIL/RETURN RECEIPT REQUESTED**

9 I deposited such envelope in the mail at Beverly Hills, California. The envelope was
10 mailed Certified/Return Receipt Requested with postage thereon fully prepaid. I am readily
11 familiar with the practice of Setareh Law Group for collection and processing of
12 correspondence for mailing with the United States Postal Service. It is the practice that
13 correspondence is deposited with United States Postal Service the same day it is submitted for
14 mailing with postage thereon fully prepaid at Beverly Hills, California. I am aware that on
15 motion of the party served, service is presumed invalid if postal cancellation date or postage
16 meter date is more than one day after date of deposit for mailing in affidavit.

14 **[X] STATE** I declare under penalty of perjury under the laws of the State of California that
15 the above is true and correct.

16 **[] FEDERAL** I declare under penalty of perjury under the laws of the United States of
17 America that I am employed in the office of a member of the bar of this court at whose direction
18 the service was made.

18 Executed on August 18, 2017, at Beverly Hills, California.

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22 _____
23 Angel Reyes
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