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8 Restaurant Group, Inc.

9 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF ALAMEDA**
11

12 NANCY STOUT, on behalf of herself and
13 all others similarly situated,

14 Plaintiff,

15 vs.

16 EINSTEIN NOAH RESTAURANT
17 GROUP, INC., a Delaware corporation
doing business in California; and DOES 1
18 through 10, inclusive,

19 Defendants.
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21
22

Case No.: RG15786192

Assigned to Hon. George C. Hernandez,
Dept. 17

STIPULATION OF RESOLUTION

Complaint filed September 17, 2015

INTRODUCTION AND RECITALS

1. This Stipulation of Resolution ("Stipulation") is made by and between the plaintiff Nancy Stout ("Stout" and/or "Plaintiff"), on behalf of herself and all members of the Settlement Class, as defined below, on the one hand, and defendant Einstein Noah Restaurant Group, Inc. ("ENRGI" and/or "Defendant") on the other hand (collectively, the "Parties"), in the matter entitled *Nancy Stout v. Einstein Noah Restaurant Group, Inc.*, Alameda County Superior Court Case No. RG15786192.

2. This Stipulation of Resolution resolves wage and hour claims, including claims for interest and penalties on such claims, that Plaintiff, on behalf of herself and all others similarly situated, alleged against ENRGI for failure to pay wages, including minimum and overtime wages, as a result of alleged "off the clock" work and alleged failure to provide meal and rest periods or compensation in lieu thereof; failure to provide accurate wage statements; violation of Business & Professions Code § 17200, et seq; penalties under the California Private Attorneys General Act (PAGA), California Labor Code § 2698, et seq; and other penalties, including waiting time penalties, liquidated damages, interest and attorney's fees arising from such alleged violations ("Litigation").

3. This Stipulation of Resolution also is entered into by the Parties with knowledge and awareness of the settlement of the companion case of *Dees v. Einstein Noah Restaurant Group, Inc.* (Alameda County Superior Court Case No. RG14743453), in which Plaintiff Bobbi Dees, on behalf of herself and other allegedly aggrieved employees, sought penalties under the California Private Attorneys General Act (PAGA) for the alleged failure to pay wages, failure to provide meal and rest periods or compensation in lieu thereof; and failure to provide accurate wage statements. The Motion for Approval of the Dees settlement is set for hearing on September 6, 2016. Because the Dees settlement reflects all payments being made for PAGA penalties under the facts of the Dees case and the Stout case for the violations alleged therein, no portion of this Settlement has been allocated to PAGA penalties.

4. ENRGI has denied and continues to deny each of the claims and contentions alleged by Plaintiff in the Litigation, including but not limited to the allegations that: ENRGI

1 failed to pay wages; failed to provide meal and rest periods, or compensation in lieu thereof;
2 failed to provide accurate wage statements; failed to timely pay all wages earned at termination
3 or resignation; and engaged in any unlawful, unfair or fraudulent business practices or wrongful
4 conduct as alleged in the Litigation. ENRGI has repeatedly asserted and continues to assert
5 defenses to Plaintiff's claims and allegations, and expressly denies that it engaged in any
6 wrongdoing or has any legal liability whatsoever arising out of any of the facts or conduct
7 alleged in the Litigation.

8 5. For settlement purposes only, the Parties agree that the settlement class of "Class
9 Members" is defined as set forth in Paragraph 14(M) herein. By this Stipulation, the Parties
10 expressly state their desire to settle claims and allegations raised by Plaintiff and Class
11 Members in the Litigation. The effective date of the settlement is the "Settlement Effective
12 Date" as that term is defined in this Stipulation.

13 6. Plaintiff and Class Members contend that ENRGI violated California wage and
14 hour laws, as described herein, and that this case is appropriate for class certification. ENRGI
15 denies any liability or wrongdoing of any kind associated with the claims alleged in the
16 Litigation, and further denies that this action is appropriate for class treatment for any purpose
17 other than settling this Litigation. Defendant contends, among other things, that it complied at
18 all times with the Fair Labor Standards Act, the California Labor Code, applicable California
19 Wage Orders and the California Business and Professions Code.

20 7. Since the commencement of the Litigation, the Parties have engaged in an
21 extensive informal investigation and exchange of information and documents pertaining to the
22 Covered Claims (as that term is defined below). Class Counsel (as that term is defined in this
23 Stipulation) and ENRGI's counsel have diligently pursued a detailed investigation of Class
24 Member claims against ENRGI, including: (a) analysis of payroll records, time records,
25 employee handbooks and other related records and policies pertaining to the claims alleged in
26 the Litigation; (b) identification of potential 4,072 Class Members in the Litigation by ENRGI;
27 (c) review of the arbitration agreements with class action waivers entered into by almost 90% of
28 ENRGI's employees; (d) research of the applicable law and potential defenses; (e) consideration

1 and analysis of information obtained through voluntary disclosure; and (f) consideration of
2 information disclosed at Mediation. The Parties have performed a thorough study of the law
3 relating to the claims alleged in the Litigation and based on that investigation and discovery,
4 and taking into account the sharply contested issues, the expense and time necessary to pursue
5 prosecution and defense of the Litigation through trial, the risks and costs of further prosecution
6 of the Litigation, the uncertainties of complex litigation, the fairness and reasonableness of the
7 settlement agreed to by the Parties, and the best interests of the Class Members to whom
8 substantial benefits will accrue, have agreed to the settlement described in this Stipulation.

9 8. The Parties engaged in arm's-length negotiations, and participated in Mediation
10 before Steven J. Rottman, an experienced and well-respected wage and hour class action
11 Mediator, on June 27, 2016 ("Mediation"). During Mediation the Parties exchanged additional
12 information that proved helpful in evaluating a realistic settlement range which resulted in the
13 Parties settling the Litigation. The Parties recognize that absent settlement the issues presented
14 in the Litigation likely would have been resolved with extensive and costly pretrial and trial
15 proceedings, and that further litigation would cause inconvenience, distraction, disruption, delay
16 and expense disproportionate to the potential benefits of litigation.

17 9. Class Counsel has analyzed and evaluated the merits of the claims made against
18 Defendant in the Litigation, and the impact of this Settlement on Plaintiff and the Class and,
19 based upon an analysis and evaluation of a number of factors, and recognizing the substantial
20 risks of continued litigation, including the possibility that the Litigation, if not settled now,
21 might result in a recovery that is less favorable and that would not occur for several years, Class
22 Counsel is satisfied that the terms and conditions of this Settlement are fair, reasonable and
23 adequate and that this Settlement is in the best interest of Plaintiff and the Class.

24 10. Nothing contained in this Stipulation, including its existence, shall be construed
25 or deemed as an admission of liability, culpability, negligence or wrongdoing on the part of
26 ENRGI. Nothing in this Stipulation shall constitute an admission by ENRGI – except for
27 settlement purposes – that the Litigation was properly brought as a class or representative
28 action. Settlement of the Litigation, the negotiation and execution of this Stipulation, and all

1 acts performed or documents executed pursuant to or in furtherance of this agreement or the
2 settlement: (a) are not, shall not be deemed to be, and may not be used as, an admission or
3 evidence of any wrongdoing or liability on the part of ENRGI or of the truth of any of the
4 factual allegations in the Litigation; (b) are not, shall not be deemed to be, and may not be used
5 as, an admission or evidence of any fault or omission on the part of ENRGI in any civil,
6 criminal, or administrative proceeding in any court, administrative agency or other tribunal; and
7 (c) are not, shall not be deemed to be, and may not be used as, an admission or evidence of the
8 appropriateness of these or similar claims for class certification or administration other than for
9 purposes of administering this Stipulation.

10 11. Based on their own independent investigations and evaluations, counsel for the
11 Parties are of the opinion that the settlement for the consideration and on the terms set forth in
12 this Stipulation is fair, reasonable and adequate and is in the best interests of Plaintiff, Class
13 Members and ENRGI in light of all known facts, circumstances and risks inherent in litigation,
14 including potential appellate issues.

15 12. The purpose of this Stipulation is to settle and compromise the Covered Claims
16 alleged by Plaintiff and Class Members against ENRGI and the Released Parties (as defined
17 below), the claims described in Paragraphs 35 and 36 herein, and the wage and hour claims
18 which arise out of the factual allegations in the Litigation for the time period from September
19 17, 2011 up to and including the Preliminary Approval Date, as defined herein.

20 13. It is agreed by and among Plaintiff and ENRGI that this Litigation and the
21 damages, injunctions, remedies, penalties and interest arising out of the Litigation be settled and
22 compromised as between Plaintiff and Class Members and ENRGI, subject to the terms and
23 conditions set forth in this Stipulation of Resolution and the preliminary and final approval of
24 the Court, with judgment entered in accordance with such order of final approval.

25 DEFINITIONS

26 14. The terms below have the following meanings:

27 A. **Administrative Costs.** All administrative costs of settlement,
28 including cost of notice to the Settlement Class, claims administration, and any

1 fees and costs incurred or charged by the Settlement Administrator in connection
2 with the execution of its duties under this Stipulation.

3 **B. Agreement.** The terms "Agreement" or "Settlement Agreement"
4 are used synonymously herein to mean this Stipulation.

5 **C. Class Counsel.** The term "Class Counsel" as used herein means
6 Clark Law Group, and all its lawyers, specifically including but not limited to R.
7 Craig Clark, Esq. and Dawn M. Berry, Esq., who are collectively counsel for and
8 acting on behalf of Plaintiff and the Settlement Class. The term "Class Counsel"
9 shall be used synonymously with the term "Plaintiff's Counsel."

10 **D. Defendant.** The term "Defendant" as used herein means
11 defendant Einstein Noah Restaurant Group, Inc.

12 **E. "Employer Taxes" and "Employee Taxes."** "Employer Taxes"
13 are employer-funded taxes and contributions imposed on the wage portions of
14 the Net Settlement Payments, under the Federal Insurance Contributions Act, the
15 Federal Unemployment Tax Act, and any similar state taxes and contributions
16 required of employers, such as for unemployment insurance ("Employer Taxes").
17 "Employee Taxes" are state and federal income taxes, employee shares of FICA
18 contributions, and any other state and federal taxes on portions of Net Settlement
19 Payments which are allocated as wages ("Employee Taxes").

20 **F. Litigation.** The term "Litigation" as used herein means the
21 allegations set forth by Plaintiff against ENRGI for failure to pay wages,
22 including minimum and overtime wages, as a result of alleged "off the clock"
23 work and alleged failure to provide meal and rest periods or compensation in lieu
24 thereof; failure to provide accurate wage statements; violation of Business &
25 Professions Code § 17200, et seq; penalties under the California Private
26 Attorneys General Act (PAGA), California Labor Code § 2698, et seq; and other
27 penalties, including waiting time penalties, liquidated damages and interest for
28 such alleged violations.

1 **G. Plaintiff.** The term "Plaintiff" as used herein means the Plaintiff,
2 Nancy Stout.

3 **H. Net Settlement Amount.** The term "Net Settlement Amount" as
4 used herein means the Settlement Amount (as defined herein) minus any award
5 of attorneys' fees and costs to Class Counsel, fees and costs to the Settlement
6 Administrator, and enhancement award to Plaintiff as provided herein. From the
7 Net Settlement Amount, as described herein, Net Settlement Payments (as that
8 term is defined herein) will be distributed by the Settlement Administrator to
9 Class Members as more fully described below. The employer's share of taxes
10 will be paid in addition to the Gross Settlement Amount.

11 The below chart provides an estimated calculation of the Net Settlement
12 Amount to Participating Class Members:

13 <u>Gross Settlement Amount:</u>	\$ 500,000.00
14 Attorneys' Fees	-\$166,666.65
15 Litigation Costs	-\$ 18,000.00
16 Enhancement	-\$ 5,000.00
17 Administration Fees	<u>-\$ 45,500.00</u>
18 <u>Net Settlement Amount:</u>	\$ 264,833.35

19 **I. Net Settlement Payments.** The term "Net Settlement
20 Payment(s)" shall mean payments made to the Settlement Class from the Net
21 Settlement Amount as part of the Resolution, including wages, penalties and
22 interest.

23 **J. "Resolution" and "Settlement."** The terms "Resolution" and
24 "Settlement" mean this Agreement to resolve the Litigation.

25 **K. Settlement Administrator.** The terms "Settlement
26 Administrator" and "Administrator" mean CPT Group, Inc., which will be
27 responsible for the administration of the Settlement Payment, as defined below,
28 and all related matters, and will perform the following duties: (a) prepare Notices

1 with the number of Compensable Workweeks for each Class Member based on
2 data provided by ENRGI; (b) mail the Notice to Class Members; (c) track any
3 requests for exclusion or disputes regarding workweek data; (d) mail cure letters
4 and reminder notices, and make follow-up phone calls to Class Members as
5 necessary; (e) notify the Parties of timely and untimely requests for exclusions or
6 disputes regarding workweek data; (f) calculate the amounts due to each Class
7 Member pursuant to the Settlement; (g) notify the Parties of claims by the Class
8 Members and resolve any disputes resulting from same; (h) provide settlement
9 payments and IRS W-2 and 1099 Forms to eligible Class Members (those who
10 do not opt-out of the Settlement) and to the relevant taxing authorities; and (i)
11 perform such other duties as are described in this Stipulation.

12 **L. "Settlement Amount" and "Gross Settlement Amount."** The
13 terms "Settlement Amount" and "Gross Settlement Amount" as used herein
14 mean a non-reversionary settlement in the sum of \$500,000.00, inclusive of all
15 Net Settlement Payments to the Settlement Class, the enhancement award to
16 Plaintiff, fees and costs to the Settlement Administrator and attorneys' fees and
17 costs awarded to Class Counsel (as defined below). Based on ENRGI's records,
18 the class size is approximately 4,072 individuals. If, and only if, the class size
19 increases by more than ten percent (10%) (*i.e.*, by at least 407 individuals)
20 between June 28, 2016 and the Preliminary Approval Date, as defined herein –
21 excluding all employees newly hired on or after June 28, 2016 – the Gross
22 Settlement Amount shall be increased on a pro rata basis.

23 **M. "Settlement Class" and "Class Members."** For settlement
24 purposes only, the Parties agree to the certification of a class ("Class Members"
25 or "Settlement Class") pursuant to California Code of Civil Procedure § 382
26 defined as: All current and former non-exempt employees who worked for
27 ENRGI at one or more retail store locations in California between September 17,
28 2011 up to and including the Preliminary Approval Date, as defined herein.

1 ENRGI has identified that there are approximately 4,072 Class Members who
2 fall within this definition.

3 **N. Settlement Period.** The term “Settlement Period” as used herein
4 means the period from September 17, 2011 up to and including the Preliminary
5 Approval Date, as defined herein.

6 **O. Settlement Effective Date.** The settlement embodied in this
7 Stipulation shall become effective when all of the following events have
8 occurred: (a) the Stipulation has been executed by all Parties and their counsel;
9 (b) the Court has given preliminary approval to the Settlement; (c) the notice
10 packet has been sent to Class Members, providing them with an opportunity to
11 verify their estimated share of the Net Settlement Payments, opt-out of the
12 Settlement or object to the terms of the Settlement; (d) the claims process has
13 been completed; (e) the Court has held a final fairness hearing certifying the
14 class, approving the Settlement and entering a final order and judgment; and (f)
15 the period for filing any appeal has expired and there is no possibility of
16 subsequent appeal or other judicial review.

17 **P. Covered Claims.** Any and all wage and hour claims, demands,
18 rights and liabilities under California law arising out of the allegations in the
19 Litigation by Plaintiff against ENRGI for the alleged failure to pay wages,
20 including minimum and overtime wages, as a result of alleged “off the clock”
21 work and alleged failure to provide meal and rest periods or compensation in lieu
22 thereof; failure to provide accurate wage statements; violation of Business &
23 Professions Code § 17200, et seq; penalties under the California Private
24 Attorneys General Act (PAGA), California Labor Code § 2698, et seq; and other
25 penalties, including waiting time penalties, and liquidated damages for such
26 alleged violations, and for interest, penalties, costs and attorneys' fees, and claims
27 for restitution and other equitable relief for the period from September 17, 2011
28 up to and including the date the Court grants Preliminary Approval of the

1 Settlement.

2 **Q. Compensable or Eligible Workweek.** A workweek during
3 which a Class Member received pay for work performed while employed by
4 ENRGI during the period of September 17, 2011 up to and including the date the
5 Court grants Preliminary Approval of the Settlement.

6 **R. Notice.** The Notice of Pendency of Class Action Settlement
7 ("Notice") to be approved by the Court, which will be mailed by the Settlement
8 Administrator to each Class Member explaining the terms of the Settlement and
9 the claims process and the Class Member's right to request exclusion or object to
10 the settlement. A copy of the Notice is attached hereto as "Exhibit 1."

11 **JURISDICTION**

12 15. The Court has jurisdiction over the Parties and the subject matter of this
13 Litigation. The Litigation includes claims that, while ENRGI denies them in their entirety,
14 would, if proven, authorize the Court to grant relief pursuant to the applicable statutes. After
15 the Court gives final approval of the Settlement and after it has entered judgment and ordered
16 dismissal of the Litigation, the Court shall retain jurisdiction of this action pursuant to
17 California Code of Civil Procedure § 664.6 solely for the purpose of interpreting, implementing
18 and enforcing this Settlement consistent with the terms set forth herein.

19 **STIPULATION OF CLASS CERTIFICATION**

20 16. The Parties stipulate to the certification of this Settlement Class for purposes of
21 the Resolution only. This Stipulation is contingent upon the preliminary and final approval and
22 certification of the Settlement Class only for purposes of the Resolution. Should the Resolution
23 not become final, for whatever reason, the fact that the Parties were willing to stipulate
24 provisionally to class certification as part of the Resolution shall have no bearing on, and shall
25 not be admissible in connection with, the issue of whether a class should be certified in a non-
26 settlement context in the Litigation. ENRGI expressly reserves its right to oppose class
27 certification should this Resolution be modified or otherwise not become final.
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18. ENRGI denies any and all liability to Plaintiff and to the Settlement Class upon any claim or cause of action. This Agreement does not constitute, and is not intended to constitute, an admission by ENRGI as to the merits, validity or accuracy of any of the allegations made against it in the Litigation.

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18. ENRGI denies any and all liability to Plaintiff and to the Settlement Class upon any claim or cause of action. This Agreement does not constitute, and is not intended to constitute, an admission by ENRGI as to the merits, validity or accuracy of any of the allegations made against it in the Litigation.

19. Nothing in this Agreement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of the negotiations leading to this Agreement or the Resolution, is intended by the Parties to constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in this Litigation or any other judicial, arbitral, administrative, investigative or other forum or proceeding as evidence of any violation of any Federal, state, local or foreign law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. The Parties themselves agree not to introduce, use, or admit this Agreement, directly or indirectly, in this Litigation or any other judicial, arbitral, administrative, investigative or other forum or proceeding, or to any agency, as purported evidence of any violation of any Federal, state, local or foreign law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity, or for any other purpose. Notwithstanding the foregoing, this Agreement may be used in any proceeding before the Court that has as its purpose the interpretation, implementation, or enforcement of this Agreement or any orders or judgments of the Court entered in connection with the Resolution.

20. None of the documents produced or created by Plaintiff or the Settlement Class in connection with the claims procedures or claims resolution procedures constitute, and are not

1 intended to constitute, an admission by ENRGI of any violation of any Federal, state, local or
2 foreign law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at
3 law or in equity.

4 21. The Parties agree that class certification pursuant to California Code of Civil
5 Procedure § 382 under the terms of this Agreement is for settlement purposes only. Nothing in
6 this Agreement will be construed as an admission or acknowledgement of any kind that any
7 class should be certified or given collective treatment in the Litigation or in any other action or
8 proceeding. Further, this Agreement will not be admissible in any court or other tribunal
9 regarding the propriety of class certification or collective treatment. In the event that this
10 Agreement is not approved by the Court or is terminated, or otherwise fails to be enforceable,
11 Plaintiff will not be deemed to have waived, limited or affected in any way any claims, rights or
12 remedies in the Litigation, and ENRGI will not be deemed to have waived, limited, or affected
13 in any way any of its objections or defenses in the Litigation.

14 **CONFIDENTIALITY**

15 22. The parties, on behalf of themselves and their respective counsel,
16 representatives, and agents, hereby agree to keep the terms of this settlement confidential
17 through the preliminary approval date. At no time will either party, or any counsel,
18 representative or agent of such party, initiate or respond to public relations or media inquiries
19 about the settlement or otherwise take any steps to publicize the terms or existence of the
20 settlement. This includes the agreement that the parties and their counsel will not announce the
21 settlement on any web sites or any other social media networks.

22 **TERMS OF SETTLEMENT**

23 23. Class Certification. For settlement purposes only, the Parties stipulate that a
24 class may be certified, as described below. The Parties agree that certification for settlement
25 purposes under the lenient standard applied to settlements is in no way an admission that class
26 certification is proper under the more stringent standard applied for litigation purposes, and that
27 evidence of this limited stipulation for settlement purposes only will not be deemed admissible
28 in this or any other proceeding. It is ENRGI's position that if the Litigation were to be litigated,

1 class certification would be inappropriate because, among other things, individual issues
2 predominate and numerosity requirements are not met due to the arbitration agreements with
3 class action waivers entered into by most of ENRGI's employees during the Settlement Period.
4 Furthermore, ENRGI denies any liability or wrongdoing, and, by entering into this Settlement,
5 does not admit any violation of law.

6 24. ENRGI's maximum non-reversionary payment under the Settlement is
7 \$500,000.00, from which payments will be made as follows subject to the Court's approval: (a)
8 up to 33.33% (\$166,666.65) in attorneys' fees to Class Counsel, and Class Counsel's reasonable
9 litigation costs which are estimated to be \$18,000.00; (b) up to \$5,000.00 enhancement payment
10 to Plaintiff, (c) up to \$45,500.00 in reasonable costs incurred by the Settlement Administrator to
11 administer the Settlement; and (d) the Net Settlement Amount, including Net Settlement
12 Payments to Class Members.

13 25. Payment of Net Settlement Payments to Class Members. After the Net
14 Settlement Amount has been determined, Net Settlement Payments shall be made out of the Net
15 Settlement Amount to Class Members who have not opted-out. The value of each Class
16 Member's claim shall be based on his or her number of Compensable Workweeks.

17 26. Payments to Class Members. ENRGI will provide the Settlement Administrator
18 with the total number of Compensable Workweeks for Participating Class Members. After the
19 Net Settlement Amount is determined, the Settlement Administrator will divide the Net
20 Settlement Amount by the total number of Compensable Workweeks ("Work Week Rate
21 Amount") and then multiply this amount by each Class Member's total number of Compensable
22 Workweeks to yield that employee's Net Settlement Payment.

23
24 NET
25 SETTLEMENT
26 AMOUNT X

27 Total number of
28 Compensable
Workweeks for
all Class
Members

Participating
Class Member's
Compensable
Workweeks

1 27. The amount paid to each Class Member who has not opted-out of the Settlement
2 shall be allocated as follows: 60% shall be attributed to wages, 30% shall be attributed to
3 penalties, and 10% shall be attributed to interest. The parties agree that the wages claimed by
4 the Plaintiff and the Class Members in the Litigation are the subject of a genuine dispute
5 between the parties, and the amount being paid as wages pursuant to this Settlement represents a
6 compromise of those disputed claims, which are denied and contested by ENRGI. Accordingly,
7 the parties acknowledge that the provisions of California Labor Code § 206.5 do not apply to
8 this Settlement.

9 28. Plaintiff requests, and ENRGI does not oppose, an award of attorneys' fees not
10 to exceed \$166,666.65 of the Settlement Amount, which shall be paid out of the Gross
11 Settlement Amount and not from any additional payment by ENRGI, to compensate Class
12 Counsel for the work already performed in this case and all work remaining to be performed in
13 documenting the Settlement, securing the Court's approval of the Settlement, administering the
14 Settlement, ensuring that the Settlement is fairly administered and implemented, and obtaining
15 dismissal of the Litigation. The Parties agree that a reduction by the Court in the attorneys' fees
16 awarded to Class Counsel is not a basis for rendering the entire Settlement void or
17 unenforceable. The Parties further agree that any amount not approved as attorneys' fees inures
18 to the benefit of the class in terms of payment due each member of the class. The Settlement
19 Administrator will issue an IRS Form 1099 to Class Counsel with respect to fees and costs
20 (discussed below) awarded to them.

21 29. Plaintiff requests, and ENRGI does not oppose, payment to Class Counsel of
22 their reasonable litigation costs, in an amount not to exceed \$18,000.00, to be paid from the
23 Gross Settlement Amount and not from any additional payment by ENRGI, for costs and
24 expenses incurred by Class Counsel in prosecuting the Litigation and implementing the terms of
25 the Settlement. The Parties agree that a reduction by the Court in the litigation costs awarded to
26 Class Counsel is not a basis for rendering the entire Settlement voidable or unenforceable. The
27 Parties further agree that any amount not approved by the Court as costs inures to the benefit of
28 the class in terms of payment due each member of the class.

1 30. Subject to the Court's approval and the execution of a general release in favor of
2 ENRGI (as described more fully below), ENRGI agrees that Plaintiff may be paid out of the
3 Gross Settlement Amount an enhancement of \$5,000.00 as an enhancement for her service as
4 class representative, in addition to any payment she may otherwise receive as a Class Member.
5 ENRGI will not oppose Plaintiff's request for service payment in the amounts referenced herein.
6 The Parties agree that a reduction by the Court in the Plaintiff's requested enhancement is not a
7 basis for rendering the entire Settlement void or unenforceable, and any amount not approved
8 inures to the benefit of the class in terms of payment due each member of the class. The
9 Settlement Administrator will issue an IRS Form 1099 to Plaintiff for her enhancement
10 payment, and Plaintiff will be solely responsible for correctly characterizing this compensation
11 for tax purposes and for paying any taxes owing on said amount.

12 31. ENRGI agrees that the Settlement Administrator may be paid out of the Gross
13 Settlement Amount an amount to be approved by the Court but not to exceed \$45,500.00, for
14 the Settlement Administrator's duties. The Parties agree that a reduction by the Court in the
15 amount approved for payment to the Settlement Administrator is not a basis for rendering the
16 entire Settlement void or unenforceable, and any amount not approved inures to the benefit of
17 the class in terms of payment due each member of the class. An IRS Form 1099 will be issued
18 by ENRGI to Settlement Administrator for this payment.

19 32. Within seven (7) calendar days after the Court grants preliminary approval of the
20 Settlement, ENRGI will provide the Settlement Administrator with the dates of employment
21 and current contact information (*i.e.*, last known addresses, telephone numbers and Social
22 Security numbers) for all Class Members.

23 33. Sixty percent (60%) of the total amount of Net Settlement Payments to Class
24 Members will be treated as payments in settlement of wage claims, subject to W-2 reporting.
25 Applicable tax deductions and payroll withholdings for Employee Taxes will be taken from this
26 portion of the Settlement Amount. The Settlement Administrator will issue a Form W-2 to each
27 Class Member who has not opted-out of the Settlement reflecting this portion of individual Net
28 Settlement Payment. Of the remainder, ten percent (10%) will be treated as payment in

1 settlement of claims for interest and thirty percent (30%) will be treated as payments in
2 settlement of claims for penalties. The Settlement Administrator will report the latter portion of
3 the payments by means of an IRS Form 1099. Class Members shall each be responsible for
4 Employee Taxes and any other taxes (except for Employer Taxes) they may owe with respect to
5 such amounts, and shall defend, indemnify and hold ENRGI harmless from any and all such tax
6 liability. The Settlement Administrator is responsible for withholding on all sums paid out to
7 Class Members pursuant to and in accordance with the terms of this Stipulation, as well as for
8 the payment of all taxes on all amounts paid to the Settlement Administrator for its services in
9 administering this settlement.

10 34. Settlement Amount Funding and Settlement Payment Due Date. Within seven
11 (7) calendar days from the Final Approval of the Resolution by the Court and a determination
12 by the Settlement Administrator of the pro rata shares of the Settlement Amount to which each
13 member of the Settlement Class is entitled, ENRGI will deposit the Net Settlement Payments,
14 Court approved enhancement to Plaintiff, and Court approved attorneys' fees and costs into an
15 interest-bearing trust account for the benefit of Settlement Class members and Class Counsel,
16 through the Settlement Administrator, as described herein. Within three (3) calendar days after
17 the Settlement Effective Date, the Settlement Administrator shall mail the applicable Net
18 Settlement Payments to the Participating Class Members, the enhancement payment to the Class
19 Representative, and the Court-approved attorneys' fees and costs to Class Counsel.

20 **WAIVER, RELEASE, DISMISSAL**

21 35. Release By Class Members. Upon the date that the Court grants final approval
22 of the Settlement, Plaintiff and the Settlement Class, except those that make a valid and timely
23 request to be excluded from the Settlement Class, on their behalf generally hereby waive,
24 release and discharge Defendant, its respective subsidiaries, affiliates, predecessors or
25 successors in interest, officers, directors, shareholders, employees, attorneys, co-venturers,
26 benefit plans, independent contractors, agents, assigns, insurers, reinsurers of any of them, and
27 other related persons and entities ("Released Parties"), from any and all claims which were or
28 could have been asserted by Plaintiff and the Settlement Class in the Litigation based upon

1 alleged violations of California Labor Code §§ 201, 202, 203, 204, 218, 218.5, 226, 226.3,
2 226.7, 510, 512, 558, 1194, 1194.2, 1194.3, 1197, 1197.1 and 1198, the California Industrial
3 Welfare Commission Wage Orders, including but not limited to Wage Order No. 5, and from
4 any and all claims which were alleged or could have been alleged based on the factual
5 allegations pled in the Litigation of failure to pay wages, including minimum and overtime
6 wages, as a result of alleged “off the clock” work and alleged failure to provide meal and rest
7 periods or compensation in lieu thereof; failure to provide accurate wage statements; violation
8 of Business & Professions Code § 17200, et seq; penalties under the California Private
9 Attorneys General Act (PAGA), California Labor Code § 2698, et seq; and all other penalties,
10 including but not limited to waiting time penalties, liquidated damages, interest and attorney’s
11 fees arising from such alleged violations for the period September 17, 2011 up to and including
12 the Preliminary Approval Date, as defined herein.

13 36. Plaintiff’s Civil Code § 1542 Release. In addition to the Release made in
14 Paragraph 35, Plaintiff makes the additional following general release (“General Release”) of all
15 claims, known or unknown. Plaintiff, on behalf of herself and her respective heirs, spouses,
16 assigns, insurers, reinsurers, agents, attorneys, representatives and other related persons and
17 entities and others that may claim by, through or under them, in consideration for the amounts
18 paid to Plaintiff under this Stipulation, including any enhancement award that may be paid to
19 Plaintiff, upon the Court’s final approval of the Settlement, hereby fully and finally releases and
20 discharges the Released Parties from all known and unknown claims she may have against the
21 Released Parties, of every nature or description whatsoever. This General Release of claims
22 includes Covered Claims and claims released in this Stipulation, and any and all known or
23 unknown contract, tort, statutory, common law, constitutional, public policy, and other claims
24 of any type whatsoever, to the fullest extent such claims are releasable by law, arising out of the
25 Litigation, Plaintiff’s employment with ENRGI and her other dealings with ENRGI and the
26 Released Parties, through the Date of Final Approval. Plaintiff waives all rights under § 1542
27 of the California Civil Code, which section reads as follows:
28

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

6 Plaintiff acknowledges that the effect and import of this Section 1542 have been explained to
7 her by her own counsel. Plaintiff agrees and acknowledges that she is not required to settle at
8 this time, but voluntarily chooses to do so by entering into this Stipulation.

9 **SETTLEMENT ADMINISTRATOR**

10 37. CPT Group, Inc. will serve as the Settlement Administrator for this Settlement,
11 subject to the Court’s approval. All Settlement administration costs, not to exceed \$45,500.00,
12 shall be taken from the Gross Settlement Amount. The Parties further agree that to the extent
13 administration costs are below the \$45,500 limit, such amount will inure to the benefit of the
14 Class Members as explained herein.

15 38. Among its other duties as described in this Settlement, the Settlement
16 Administrator shall provide counsel for the Parties with a weekly report showing the number of
17 opt-outs and objections received.

18 39. Within seven (7) calendar days of Final Approval of the Resolution by the Court
19 and a determination by the Settlement Administrator of the pro rata shares of the Settlement
20 Amount to which each member of the Settlement Class is entitled, ENRGI shall deposit the Net
21 Settlement Payments, Court approved enhancement to Plaintiff, and Court approved attorneys’
22 fees and costs, and fees to Settlement Administrator into an interest-bearing qualified
23 settlement account created by the Settlement Administrator. Interest from the qualified
24 settlement fund account will be added to the initial settlement funds in the account created by
25 deposit of the Settlement Amount funds for distribution to the Class Members, on a pro rata
26 basis. Interest on the attorneys’ fees and costs will be distributed to Class Counsel. The
27 Settlement Administrator shall issue an IRS Form 1099 to the qualified settlement fund account
28

holder. Upon disbursement of the funds, the qualified settlement fund account holder shall issue an IRS Form 1099 to the respective recipients of the funds.

NOTICE, OBJECTIONS AND EXCLUSION RIGHTS

40. Notice. Plaintiff and ENRGI, through their respective attorneys, have jointly prepared a Notice, which in substance will be provided to the members of the Settlement Class as follows: Following Preliminary Approval of the Resolution, but no later than seven (7) calendar days after the Court's Preliminary Approval order, ENRGI will provide to the Settlement Administrator a class list based on its records which contains the following information about each Settlement Class member ("Class List"): (1) name; (2) last known home address and telephone number; (3) dates of employment with ENRGI; and (4) Social Security number. ENRGI further agrees to consult with the Settlement Administrator prior to the production date as to the format of the Class List.

41. The Settlement Administrator shall run all the addresses provided through the United States Postal Service NCOA database (which provides updated addresses for any individual who has moved in the previous four years who has notified the U.S. Postal Service of a forwarding address) to obtain current address information. The Settlement Administrator shall mail the Notice to the members of the Settlement Class via first-class regular U.S. Mail using the most current mailing address information available, within fourteen (14) calendar days of the Preliminary Approval date. The Notice shall provide the members of the Settlement Class forty-five (45) days' notice of all applicable dates and deadlines, with this period to begin running on mailing of the Notice by the Settlement Administrator.

42. The Notice will also include information regarding the nature of the Litigation, a summary of the terms of the Resolution, the definition of the Settlement Class, the procedure and time period for objecting to the Resolution, the date and location of the Final Approval hearing, a statement that the Court has preliminarily approved the Resolution, information regarding the opt-out procedure, and the number of workweeks that the member of the Settlement Class has worked as an employee of ENRGI in California at any time during the period from September 17, 2011 up to and including the Preliminary Approval Date, as defined

1 herein. The Notice will also inform Settlement Class members of their estimated share of the
2 Net Settlement Amount and their right to dispute the workweek data used to calculate their Net
3 Settlement Payment.

4 43. If a Notice is returned from the initial notice mailing, the Settlement
5 Administrator will submit the applicable and available information, including name, Social
6 Security Number, and original mailing address, to a company that specializes in address skip
7 tracing in an attempt to locate a more current address. If the Settlement Administrator is
8 successful in locating a new address, it will re-mail the Notice to the member of the Settlement
9 Class. Any Notices returned with a forwarding address to the Settlement Administrator, as non-
10 deliverable before the deadline date, shall be sent to the forwarding address affixed thereto.

11 44. Should any member of the Settlement Class timely dispute the workweek data
12 used to calculate their estimated share of the Net Settlement Amount, and the written dispute
13 contains a deficiency, the Settlement Administrator shall, within five (5) calendar days of
14 receipt by the Settlement Administrator of each timely submitted written dispute, send a
15 deficiency notice. The deficiency notice will provide the member of the Settlement Class no
16 more than fourteen (14) days from the mailing of the deficiency notice to postmark a written
17 response to cure all deficiencies. The failure of a member of the Settlement Class to timely
18 submit a written dispute or to timely respond to a notice of deficiency shall result in the Class
19 Member receiving the amount reflected in the Notice based on ENRGI's payroll records for that
20 Class Member.

21 45. No later than twenty-five (25) days prior to the Final Approval Hearing, the
22 Settlement Administrator shall provide counsel for ENRGI and Class Counsel with a
23 declaration attesting to the completion of the Notice process, including the number of attempts
24 to obtain valid mailing addresses for and re-sending of any returned Notices, as well as the
25 number of valid opt-outs and deficiencies which the Settlement Administrator received.

26 46. Objections. In order for any Settlement Class member to object to this
27 Resolution, or any term of it, the person making the objection must not submit a request for
28 exclusion (*i.e.*, must not opt-out) and must, by no later than forty-five (45) days after the Notice

1 was initially mailed to the Settlement Class members, file with the Court and serve on Class
2 Counsel and counsel for ENRGI a written statement of the grounds of objection, signed by the
3 objecting Settlement Class member or his or her attorney, along with all supporting papers. All
4 such objections and written notices of intention to appear must be signed and must contain the
5 Settlement Class member's current address and the address of counsel, if any. The objection
6 should clearly explain why the Settlement Class member objects to the Resolution and state
7 whether the Settlement Class member (or someone on his or her behalf) intends to appear at the
8 Final Approval Hearing. If a Settlement Class member submits a timely and complete objection
9 and written notice of intention to appear, the Settlement Class member may appear personally
10 or through an attorney, at his or her own expense, at the Final Approval Hearing to present his
11 or her objection directly to the Court. Any attorney who will represent an individual objecting
12 to this Resolution must file a notice of appearance with the Court and serve Class Counsel and
13 Defense Counsel no later than forty-five (45) days after the Notice was initially mailed to the
14 Settlement Class members. If a Settlement Class member objects to this Resolution, the
15 Settlement Class member will remain a member of the Settlement Class and if the Court
16 approves this Agreement, the Settlement Class member will be bound by the terms of the
17 Resolution and Final Approval in the same way and to the same extent as a Settlement Class
18 member who does not object. The date of mailing of the Notice of Proposed Class Action
19 Resolution to the objecting Settlement Class member shall be conclusively determined
20 according to the records of the Settlement Administrator. The Court retains final authority with
21 respect to the consideration and admissibility of any Settlement Class member objections.
22 Provided that the Settlement Administrator mailed the Notice to a member of the Settlement
23 Class, this deadline to file an objection shall apply notwithstanding assertion by any member of
24 the Settlement Class of non-receipt of the Notice. Plaintiff and ENRGI will be permitted to
25 respond in writing to such objections no later than seven (7) calendar days before the Final
26 Approval Hearing. Plaintiff waives any right to object to the Resolution, and hereby endorses
27 the Resolution as fair, reasonable and adequate and in the best interests of the Settlement Class.
28 A Class Member who does not file and serve an objection in the manner and by the deadline

1 specified above will be deemed to have waived all objections and will be foreclosed from
2 making any objection to the Settlement, whether by appeal or otherwise.

3 47. Claim Disputes. If the member of the Settlement Class does not dispute the
4 number of Eligible Workweeks set forth in the Notice, such person need not take further action
5 to participate in the Resolution. If the member of the Settlement Class disputes the number of
6 Eligible Workweeks set forth in the Notice, such person must follow the directions in the Notice
7 (a copy of which is attached hereto), including preparing a written statement setting forth the
8 number of Eligible Workweeks that such person believes in good faith is correct and stating that
9 the member of the Settlement Class authorizes the Settlement Administrator to review the
10 Settlement Class member's personnel file to determine such information and attaching any
11 relevant documentation in support thereof. The member of the Settlement Class must mail the
12 signed and completed statement no later than forty-five (45) days after the date of the mailing of
13 the Notice, or the number of Eligible Workweeks set forth in the Notice will govern the Net
14 Settlement Payments to the members of the Settlement Class.

15 48. Upon timely receipt of any such challenge, the Settlement Administrator, in
16 consultation with Class Counsel and counsel for ENRGI, will review the pertinent payroll
17 records showing the dates the Settlement Class member was employed and the pertinent
18 leave(s) taken, which records ENRGI agrees to make available to the Settlement Administrator.
19 After consulting with Class Counsel and counsel for ENRGI, the Settlement Administrator shall
20 compute the number of Eligible Workweeks to be used in computing the Settlement Class
21 member's pro rata share of the Net Settlement Amount. In the event there is a disparity
22 between the dates a Settlement Class member claims he or she worked during the Settlement
23 Period and the dates indicated by ENRGI's records, ENRGI's records will control unless
24 inconsistent with paycheck stub(s) (or bona fide copies thereof) provided by the Settlement
25 Class member, in which case the paycheck stub(s) will control. The Settlement Administrator's
26 decision as to the total number of Eligible Workweeks shall be final and non-appealable. The
27 Settlement Administrator shall send written notice of the decision on any such claim to the
28 Settlement Class member, to Class Counsel, and counsel for ENRGI within ten (10) calendar

1 days of receipt of the dispute.

2 49. The Settlement Administrator shall cause the Net Settlement Payments, Court
3 approved enhancement to Plaintiff, and Court approved attorney's fees and costs to be mailed
4 within three (3) days following the Settlement Effective Date. If a check is returned to the
5 Settlement Administrator as undeliverable, the Settlement Administrator shall promptly attempt
6 to obtain a valid mailing address by performing a skip trace search and, if another address is
7 identified, shall mail the check to the newly identified address. The residue, if any, including
8 (a) unclaimed funds, (b) funds from checks which were unable to be delivered due to the
9 Settlement Administrator's inability to obtain a valid mailing address as set forth in this
10 provision, and (c) funds from checks that remain uncashed after 180 days from the date of the
11 check will be delivered to the California Unclaimed Property Fund in the name of the
12 Settlement Class member.

13 50. Opportunity to be Excluded. In order for any Settlement Class member to validly
14 exclude himself or herself from the Settlement Class and this Resolution (*i.e.*, to validly opt-
15 out), the Settlement Class member or his or her authorized representative must mail a written
16 request for exclusion to the Settlement Administrator, postmarked by no later than forty-five
17 (45) days after the date the Settlement Administrator initially mails the Notice to the Settlement
18 Class members. The Notice (a copy of which is attached hereto as Exhibit 1) shall contain
19 instructions on how to opt-out. The date of the initial mailing of the Notice, and the date the
20 request for exclusion was postmarked, shall be conclusively determined according to the
21 records of the Settlement Administrator. Any Settlement Class member who timely and validly
22 requests exclusion from the Settlement Class and this Resolution will not be entitled to any
23 individual settlement payment, will not be bound by the terms and conditions of this Resolution,
24 and will not have any right to object, appeal, or comment thereon. Any member of the
25 Settlement Class who does not timely file and mail notice of his or her request to be excluded
26 from the Settlement Class will be deemed included in the Settlement Class in accordance with
27 this Resolution. Plaintiff waives any right to be excluded from the Settlement Class.

28 51. Neither Party will encourage any Class Member to opt-out of or object to this

1 Settlement. If a Settlement Class Member contacts Class Counsel, Class Counsel may discuss
2 the terms of the Resolution and the Settlement Class Member's options, as stated herein.

3 **ATTORNEY'S FEES AND COSTS**

4 52. ENRGI shall not oppose an application by Class Counsel for, and Class Counsel
5 shall not seek or receive an amount in excess of \$166,666.65, which represents 33.33% of the
6 Gross Settlement Amount for all past and future attorneys' fees necessary to prosecute, settle
7 and administer the Litigation and this Resolution, to be paid out of the Gross Settlement
8 Amount. Additionally, ENRGI shall not oppose an application by Class Counsel for, and Class
9 Counsel shall not seek or receive an amount in excess of \$18,000.00, which represents all past
10 and future attorneys' costs and expenses necessary to prosecute, settle and administer the
11 Litigation and this Resolution, to be paid out of the Gross Settlement Amount. Any attorneys'
12 fees or costs awarded to Class Counsel by the Court shall be deducted from the Gross
13 Settlement Amount for the purpose of determining the Net Settlement Amount. Should the
14 Court approve a lesser percentage or amount of fees and/or costs than the amount that Class
15 Counsel ultimately seeks, then the unapproved portion or portions shall be distributed to Class
16 Members on a pro rata basis.

17 **ENHANCEMENT TO PLAINTIFF**

18 53. ENRGI shall not oppose an application by Plaintiff, and Plaintiff shall not seek
19 or receive an amount in excess of \$5,000.00, to be paid out of the Gross Settlement Amount, for
20 her participation in and assistance with the Litigation, as set forth more fully in Paragraph 30
21 above. Any enhancement awarded to Plaintiff by the Court shall be deducted from the
22 Settlement Amount for the purpose of determining the Net Settlement Amount, and shall be
23 reported on IRS Form 1099. If the Court approves an enhancement of less than \$5,000.00 to
24 Plaintiff, the amount not awarded shall be distributed to Class Members on a pro rata basis.

25 **TAXATION AND ALLOCATION**

26 54. For withholding tax characterization purposes and payment of taxes, and
27 pursuant to the code sections and other claims described in Paragraph 35 above, the Net
28 Settlement Amount shall be deemed and is allocated by the Parties as follows:

- (1) 60% wages;
- (2) 10% interest; and
- (3) 30% penalties.

Applicable tax deductions and payroll withholdings for Employee Taxes will be taken from the portion of the Settlement Amount allocated to wages. The Settlement Administrator will issue the Form W-2s and Form 1099s to each Settlement Class Member reflecting the individual Net Settlement Payment. Class Members shall each be responsible for Employee Taxes and any other taxes (except for Employer Taxes) they may owe with respect to such amounts, and shall defend, indemnify and hold ENRGI harmless from any and all such tax liability.

COURT APPROVAL

55. This Agreement and the Resolution is contingent upon the Court granting Final Approval of the Resolution, entering judgment and dismissing the Litigation. Plaintiff and ENRGI agree to take all steps as may be reasonably necessary to secure both Preliminary Approval and Final Approval of the Resolution by the Court, to the extent not inconsistent with the terms of this Agreement, and will not take any action adverse to each other in obtaining the Court's Final Approval of the Resolution in all respects, regardless of new any legal developments which may occur during this process regarding the claims being resolved by this Settlement. Plaintiff and ENRGI expressly agree that they will not file any objection (as opposed to request for correction) to the terms of this Stipulation of Resolution or assist or encourage any person or entity to file any such objection.

MOTION FOR PRELIMINARY APPROVAL

56. Plaintiff shall prepare a motion for preliminary approval of the Settlement, and provide it to ENRGI for its review and approval. Promptly upon receiving such approval from ENRGI, Plaintiff shall file (and ENRGI shall not oppose) the motion for preliminary approval of the Settlement. Specifically, Plaintiff will apply to the Court for the entry of an Order:

- (a) That the proposed Settlement should be preliminarily approved as fair, reasonable and adequate as to the Class;

- 1 (b) Approving as to form and content the proposed Notice to the Class;
2 (c) Directing the mailing of the Notice by first-class mail to the Class
3 Members;
4 (d) Preliminarily certifying the Class for purposes of Settlement only; and
5 (e) Approving Class Counsel, the Class Representative, and the Claims
6 Administrator.

7 **DEFENDANT'S RIGHT TO VOID SETTLEMENT**

8 57. If the number of Class Members who elect to opt out of the Settlement exceeds
9 five percent (5%) of the total members of the Settlement Class, ENRGI may, at its election and
10 in its sole discretion, void this Settlement.

11 **MISCELLANEOUS PROVISIONS**

12 58. This Agreement constitutes the entire agreement between Plaintiff and ENRGI.
13 Except as expressly provided herein, this Agreement has not been executed in reliance upon any
14 other written or oral representations or terms, and no such extrinsic oral or written
15 representations or terms shall modify, vary or contradict its terms. In entering into this
16 Agreement, the parties agree that this Agreement is to be construed according to its terms and
17 may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and
18 enforced under the laws of the State of California, both in its procedural and substantive
19 aspects, without regard to its conflict of laws provisions. Any claim arising out of or relating to
20 the Agreement, or the subject matter hereof, will be resolved solely and exclusively in the
21 Superior Court of the State of California for the County of Alameda, and Plaintiff and ENRGI
22 hereby consent to the personal jurisdiction of the Court over them solely in connection
23 therewith. Plaintiff, on her own behalf and on behalf of the Settlement Class, and ENRGI
24 participated in the negotiation and drafting of this Agreement and had available to them the
25 advice and assistance of independent counsel. As such, neither Plaintiff nor ENRGI may claim
26 that any ambiguity in this Agreement should be construed against the other.

27 59. The terms and conditions of this Agreement constitute the exclusive and final
28 understanding and expression of all agreements between Plaintiff and ENRGI with respect to

1 the Resolution of the Litigation. The Agreement may be modified only by a writing signed by
2 the original signatories and approved by the Court.

3 60. Plaintiff and ENRGI and their respective attorneys shall proceed diligently to
4 prepare and execute all documents, to seek the necessary Court approvals, and to do all things
5 reasonably necessary or convenient to consummate the Agreement as expeditiously as possible.

6 61. The Agreement may be executed in one or more actual or non-original
7 counterparts, all of which will be considered one and the same instrument and all of which will
8 be considered duplicate originals.

9 62. Each individual signing below warrants that he or she has the authority to
10 execute this Agreement on behalf of the party for whom or which that individual signs.

11 63. Plaintiff, members of the Settlement Class, Class Counsel and ENRGI are direct
12 beneficiaries of this Agreement, but there are no third party beneficiaries.

13 64. To the extent that any deadline set forth in this Agreement falls on a Saturday,
14 Sunday, or legal holiday, that deadline shall be continued until the following business day.

15 65. In the event that any one or more of the provisions contained in this Agreement
16 shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity,
17 illegality, or unenforceability shall in no way effect any other provision if ENRGI and Class
18 Counsel, on behalf of the parties and the Settlement Class, mutually elect in writing to proceed
19 as if such invalid, illegal, or unenforceable provision had never been included in this
20 Agreement.

21 66. If the Court does not grant final approval of this Settlement, or if any part of the
22 Court's final approval of this Settlement is reversed, then this Settlement will become null and
23 void. In such case, the Settlement shall not be used or be admissible in any subsequent
24 proceedings in any Court or forum.

25 67. The settlement payments to Class Members under this Settlement shall not be
26 deemed "pensionable" earnings and shall not have any effect on the eligibility for, or calculation
27 of, any Plaintiff or Class Member employee benefits (including but not limited to retirement
28 plans, vacation and holiday pay). The Parties agree that the Settlement payments to

1 Participating Class Members do not represent any modification of any employee's previously-
2 credited hours of service or other eligibility criteria under any employee pension benefit plan,
3 employee welfare benefit plan, or other program or policy sponsored by Defendant or any of its
4 affiliates. Further, the Settlement payments shall not be considered wages, compensation, or
5 annual earnings for benefits in any year for purposes of determining eligibility for, or benefit
6 accrual within, an employee pension benefit plan, employee welfare benefit plan or other
7 program or policy sponsored by ENRGI or any of its affiliates.

8 68. The Parties represent, covenant, and warrant that they have not directly or
9 indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
10 any person or entity any portion of any liability, claim, demand, action, cause of action, or right
11 released and discharged in this Settlement.

12 69. Nothing contained in this Settlement shall be construed or deemed an admission
13 of liability, culpability, negligence, or wrongdoing on the part of ENRGI. Each of the Parties
14 has entered into this Settlement with the intention to avoid further disputes and litigation with
15 the attendant inconvenience and expense. This Settlement shall be inadmissible in evidence in
16 any proceeding, except an action or proceeding to approve, interpret, or enforce its terms. In
17 connection with any such proceeding to approve, interpret or enforce the Settlement, the Parties
18 agree that this Settlement shall be binding and enforceable between them, and admissible in a
19 Court of law, including for purposes of California Evidence Code § 1123.

20 70. In the event that one or more of the Parties institutes any legal action, or other
21 proceeding against any other Party or Parties to enforce the provisions of this Settlement, or to
22 declare rights or obligations under this Settlement, the successful Party or Parties shall be
23 entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs
24 incurred in connection with any enforcement actions.

25 71. The Parties agree that this Settlement shall not be construed in favor of or against
26 any Party by reason of the extent to which any Party or his or its counsel participated in its
27 drafting. Paragraph titles or captions contained in this Settlement are a matter of convenience
28 and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or

1 any provision.

2 72. This Settlement shall be binding upon and inure to the benefit of the Parties and
3 their respective heirs, trustees, executors, administrators, successors and assigns.

4 73. Neither Class Counsel nor defense counsel intend anything contained in this
5 Stipulation for Settlement to constitute legal advice regarding the taxability of any amount paid
6 hereunder, nor shall it be relied upon as such.

7 74. Waiver of Right to Appeal. ENRGI, Plaintiff and those Class Members who did
8 not timely file and serve an objection to the Settlement, hereby waive any and all rights to
9 appeal from the Final Order approving the settlement, including all rights to any post-judgment
10 proceeding and appellate proceeding, such as motion to vacate or set-aside judgment, a motion
11 for new trial, and any extraordinary writ, and the Final Order approving the settlement therefore
12 will become final and non-appealable at the time it is entered. This waiver does not include any
13 waiver of the right to oppose any appeal, appellate proceedings, or post-judgment proceedings.

14
15 Date: _____, 2016

By: _____
Nancy Stout

16
17 Date: Sept. 1, 2016

Einstein Noah Restaurant Group, Inc.

18
19 By: 
20 Name: Dan E. Lee
21 for Einstein Noah Restaurant Group, Inc.

22 APPROVED AS TO FORM:

23
24 Date: _____, 2016

CLARK LAW GROUP

25 By: _____
26 R. Craig Clark, Esq., Attorneys for
27 Plaintiff Nancy Stout
28

1 any provision.

2 72. This Settlement shall be binding upon and inure to the benefit of the Parties and
3 their respective heirs, trustees, executors, administrators, successors and assigns.

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8 not timely file and serve an objection to the Settlement, hereby waive any and all rights to
9 appeal from the Final Order approving the settlement, including all rights to any post-judgment
10 proceeding and appellate proceeding, such as motion to vacate or set-aside judgment, a motion
11 for new trial, and any extraordinary writ, and the Final Order approving the settlement therefore
12 will become final and non-appealable at the time it is entered. This waiver does not include any
13 waiver of the right to oppose any appeal, appellate proceedings, or post-judgment proceedings.

14
15 Date: 8/25, 2016

16 By: Nancy Stout
Nancy Stout

17 Date: _____, 2016

18 Einstein Noah Restaurant Group, Inc.

19
20 By: _____
21 Name:
for Einstein Noah Restaurant Group, Inc.

22 APPROVED AS TO FORM:

23
24 Date: 7/1, 2016

25 CLARK LAW GROUP

26 By: R. Craig Clark, Esq.
27 R. Craig Clark, Esq., Attorneys for
28 Plaintiff Nancy Stout

1 Date: 9/1, 2016

CARLTON FIELDS JORDEN BURT LLP

2
3 By: Mark A. Neubauer
4 Mark A. Neubauer, Esq., Attorneys for
5 Defendant EINSTEIN NOAH
6 RESTAURANT GROUP, INC.
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