

1 DAVID YEREMIAN & ASSOCIATES, INC.
David Yeremian (SBN 226337)
2 david@yeremianlaw.com
David Keledjian (SBN 309135)
3 davidk@yeremianlaw.com
535 N. Brand Blvd., Suite 705
4 Glendale, California 91203
Telephone: (818) 230-8380
5 Facsimile: (818) 230-0308

6 Attorneys for Plaintiff ADAM MITCHELL,
on behalf of himself and others similarly situated
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN JOAQUIN
10

11 ADAM MITCHELL, an individual, on behalf
of himself and others similarly situated,
12

13 Plaintiffs,
14

15 vs.
16

17 NUSHAKE, INC. a California corporation;
and DOES 1 through 50, inclusive,
18

19 Defendants.
20

21 FRANCISCO SANCHEZ, an individual, on
behalf of himself and others similarly
22 situated,
23

24 Plaintiffs,
25

26 vs.
27

28 NUSHAKE, INC. a California corporation;
and DOES 1 through 50, inclusive,
29

30 Defendants.

Case No. STK-CV-UOE-2013-0011503

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT**

1 Subject to the approval of the Court, this Joint Stipulation of Class Settlement and Release
2 (“Settlement”) is made and entered into by and between Plaintiffs Adam Mitchell and Francisco
3 Sanchez (hereinafter “Plaintiffs”), individually and as class representatives of the Class Members,
4 as defined below, on the one hand, and Defendants Nushake, Inc., Doug Heath, and Elizabeth
5 Heath, (hereinafter and collectively “Defendant”) on the other hand. The Class Members and
6 Defendant are jointly referred to in this Settlement as the “Settling Parties.”

7 **I. DEFINITIONS**

8 In addition to the other terms defined elsewhere in this Settlement, the terms below have the
9 following meanings in this Settlement:

10 **A. “Action”**

11 “Action” means the consolidated civil action entitled *Mitchell v. Nushake, Inc., Inc.* , San
12 Joaquin County Case No. STK-CV-UOE-2013-0011503, Superior Court of the State of California,
13 County of San Joaquin (hereinafter the “Action”), which was first commenced on November 15,
14 2013, by Plaintiff Adam Mitchell, in the Superior Court of California, County of San Joaquin,
15 (hereinafter the “Court”).

16 **B. “Claims Administration Costs”**

17 “Claims Administration Costs” means all fees and costs owed to the Claims Administrator
18 in connection with administering the class settlement in this Action under the terms of this
19 Settlement.

20 **C. “Claims Administrator”**

21 “Claims Administrator” means the third-party administrator appointed by the Court to
22 administer the class action settlement of this Action under the terms of this Settlement. CPT Group,
23 Inc., shall serve as the Claims Administrator, subject to the Court’s approval.

24 **D. “Class Counsel”**

25 “Class Counsel” means David Yeremian and the law firm of David Yeremian & Associates,
26 Inc.

1 **E. “Class Counsel Fees and Expenses”**

2 “Class Counsel Fees and Expenses” means the total amount of attorneys’ fees, litigation
3 costs, and expenses awarded to Class Counsel by the Court to compensate Class Counsel for their
4 representation of the Class Members in this Action, including their pre-filing investigation, their
5 filing of the Action, all related litigation activities including discovery, the motion for class
6 certification and summary judgment, this Settlement, and all post-Settlement compliance
7 procedures.

8 **F. “Class Members”**

9 “Class Members” means all roofers and gutters employed by Defendant, within the state of
10 California during the Class Period, defined below.

11 **G. “Class Period”**

12 “Class Period” shall mean the period of time from November 15, 2009, through March 9,
13 2017.
14

15 **H. “Class Representative Incentive Awards”**

16 “Class Representative Incentive Award” means the amount awarded by the Court to
17 Plaintiffs Adam Mitchell and Francisco Sanchez.
18

19 **I. “Court”**

20 “Court” means the Superior Court of California, County of San Joaquin.

21 **J. “Defendant’s Counsel”**

22 “Defendant’s Counsel” means Raquel A. Hatfield and the law firm Arata, Swingle, Van
23 Egmond & Goodwin.
24

25 **K. “Effective Date”**

26 “Effective Date” means the later of: (a) if any timely objections are filed, the 60th day after
27 the Court enters an order granting final approval of the Settlement; (b) if any timely appeals are
28 filed, the resolution of any such appeals in a way that does not alter the terms of the Settlement; or

(c) if no timely objections are filed, October 1, 2019, unless Defendant prepays the Gross Settlement Amount, then the Effective Date shall be the date on which the balance of the Gross Settlement Amount is paid.

L. “Final Approval Hearing”

“Final Approval Hearing” means the hearing to be conducted by the Court to determine whether to finally approve and implement the terms of this Settlement.

M. “Gross Maximum Settlement Amount”

“Gross Maximum Settlement Amount” is the total maximum potential monetary value of the settlement payable by Defendant as provided herein, which is One Hundred Seventy Five Thousand Dollars (\$175,000.00). The Gross Maximum Settlement Amount is inclusive of all payments to Participating Class Members under the terms of this Settlement, Class Counsel Fees (up to and not to exceed one-third of the Gross Settlement Amount) and Expenses awarded by the Court, the Class Representative Incentive Awards (\$5,000 to each Class Representative, totaling \$10,000.00) approved by the Court, Claims Administration Costs (not to exceed \$15,000.00), the LWDA Payment (\$1,875.00 total) defined below. The Gross Maximum Settlement Amount is exclusive of the employer’s share of any taxes on Settlement Shares.

N. “Judgment”

“Judgment” means the judgment entered by the Court after it grants final approval of this Settlement.

O. “Net Settlement Amount”

“Net Settlement Amount” means the Gross Maximum Settlement Amount less Class Counsel Fees (up to and not to exceed one-third of the Gross Settlement Amount) and Expenses approved by the Court, the Class Representatives’ Incentive Award (\$5,000 to each Class Representative, totaling \$10,000.00) approved by the Court, the LWDA Payment (\$1,875.00) defined below, the Claims Administration Costs (not to exceed \$15,000.00).

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1 **P. “Non-Participating Class Member”**

2 “Non-Participating Class Member” means a Class Member who submits a valid and timely
3 written request to be excluded from the Settlement, as defined herein.

4 **Q. “Participating Class Members”**

5 “Participating Class Members” means Class Members who submit valid and timely written
6 Claim Forms.

7 **R. “Settlement Share”**

8 “Settlement Share” means each Participating Class Members’ share of the Net Settlement
9 Amount, as determined in accordance with the terms of this Settlement.
10

11 **S. “Payout Ratio”**

12 “Payout Ratio” means, and is calculated by taking the total workweeks worked by each
13 Participating Class Member during the Class Period and dividing it by the total workweeks worked
14 by all Participating Class Members during the applicable Class Period. That will determine the
15 percentage of the Net Settlement Amount paid to the Participating Class Member.
16

17 **II. RECITALS**

18 **A. Background and Procedural History**

19 Plaintiff Adam Mitchell filed his Complaint on behalf of himself and others similarly
20 situated, on or about November 15, 2013. The Complaint included the following causes of action:
21 1) Failure to Pay Minimum Wage; 2) Failure to Pay Wages and Overtime Under Labor Code § 510;
22 3) Meal-Period Liability Under Labor Code § 226.7; 4) Rest-Break Liability Under Labor Code §
23 226.7; 5) Violation of Labor Code § 226(a); 6) Violation of Labor Code § 203; 7) Violation of
24 Labor Code § 2802; and 8) Violation of California Business & Professions Code § 17200 et seq.
25 Thereafter, Plaintiff Adam Mitchell, filed a First Amended Complaint on or about December 17,
26 2013 adding a Ninth cause of action for Penalties Pursuant to Labor Code § 2699, *et seq.* On or
27 about May 1, 2014, Plaintiff Francisco Sanchez filed a class action complaint with similar causes of
28 action. On or about June 9, 2014, Plaintiff Francisco Sanchez filed a First Amended Complaint. On

1 or about July 15, 2014, a Joint Stipulation Regarding Transfer and Consolidation of Cases and
2 Appointment of Lead Counsel was filed with the court to consolidate the two actions. The
3 consolidated matter is referred to as the “Action.”

4 **B. Mediation**

5 The Settling Parties entered into good faith arms-length mediation on March 9, 2017, before
6 Jeffrey Ross, a respected mediatory with experience in class wage and hour claims under California
7 Labor Code. After lengthy negotiation during which the Class Members, represented by Class
8 Counsel and Defendant represented by its counsel, recognized the burdens and risks of continuing
9 with the litigation and reached an understanding as to the settlement of all of the asserted claims at
10 issue in the Action, subject to final approval of the Court. This Settlement represents the terms of
11 the Settling Parties’ understanding, and supersedes all prior or contemporaneous communications
12 between the settling parties, who will be bound by the terms set forth herein once signed by the
13 Settling Parties.

14 This Settlement represents a compromise and settlement of highly disputed claims. Nothing
15 in the Settlement is intended, or may be construed, as an admission by Defendant that any of the
16 claims alleged in the Action have merit, or that Defendant bears any liability to the Class Members
17 on those claims, nor as an admission by the Class Members that Defendant’s defenses in the Action
18 have merit.

19 **C. Investigation and Discovery**

20 The Settling Parties have, in good faith, exchanged information and documents regarding
21 their respective positions and contentions regarding the claims alleged in this Action. Defendant has
22 also produced vital information including payroll and wage data pertaining to the putative class, its
23 relevant policies and procedures, as well as Plaintiffs’ personnel file. This allowed the parties to
24 accurately assess Defendant’s alleged exposure as well as the risks of Defendant succeeding at trial.
25

26 **III. SETTLEMENT TERMS AND CONDITIONS**

27 Based on the foregoing Recitals, the Settling Parties hereby agree as follows:

28 ///

1 **A. Certification for Settlement Purposes Only**

2 **1. Classes to be Certified for Settlement Purposes**

3 Solely for the purposes of this Settlement and for no other purpose whatsoever, the Settling
4 Parties stipulate and agree to class certification. The Settling Parties further stipulate and agree that
5 in order for this Settlement to occur, the Court must certify the Class as follows: “all roofers and
6 gutters who were employed by Defendant within the state of California from November 15, 2009
7 through March 9, 2017.”
8

9 **2. Appointment of Class Representatives and Class Counsel**

10 Solely for the purposes of this Settlement, Named Plaintiffs Adam Mitchell and Francisco
11 Sanchez shall be appointed as representatives for the certified Class. Solely for the purposes of this
12 Settlement, David Yeremian of David Yeremian & Associates, Inc., shall be appointed as Class
13 Counsel for the certified Class.

14 **3. Appointment of Claims Administrator**

15 The Settling Parties agree that CPT Group, Inc., (“CPT”) will act as the Claims
16 Administrator in this matter. The Claims Administrator shall be responsible for preparing, printing
17 and mailing the Class Notice (“Class Notice”) and Claim Form as directed by the Court; processing
18 Claim Forms; determining the amount of payments due to each Participating Class Member in
19 accordance with this Settlement, along with the amount of all payroll tax deductions to be withheld;
20 keeping track of opt outs; providing weekly status reports to Defendant’s Counsel and Class
21 Counsel; providing a due diligence declaration for submission to the Court prior to Court hearings
22 regarding this Settlement and its approval; receiving Defendant’s installment payments; drafting
23 and mailing monetary settlement award checks; printing and providing W-2s and 1099 forms as
24 required under this Settlement and applicable law; and for such other tasks as the parties mutually
25 agree. The Settling Parties each represent they do not have any financial interest in CPT or
26 otherwise have a relationship with CPT that could create a conflict of interest.

27 ///

28 ///

1 **4. Conditional Nature of Stipulation for Certification**

2 The Settling Parties stipulate and agree to the certification of the Action for purposes of this
3 Settlement only. If, for whatever reason, the Settlement does not become final, the fact that the
4 Settling Parties were willing to stipulate to class certification as part of the Settlement shall have no
5 bearing on, and shall not be admissible in connection with, the issue of whether a class, or classes,
6 should be certified in a non-settlement context in this Action, and shall have no bearing on, and
7 shall not be admissible in connection with, the issue of whether a class, or classes, should be
8 certified in this or any other lawsuit. Defendant expressly reserves its right to oppose class
9 certification in this or any other action should this Settlement not become final. Further, the Settling
10 Parties make no concession that any of the putative class members' claims have merit.

11 **B. Gross Maximum Settlement Amount**

12 In order to settle the claims in this Action, Defendant agrees to pay a Gross Maximum
13 Settlement Amount of One Hundred Seventy-Five Thousand Dollars (\$175,000.00). The Gross
14 Maximum Settlement Amount is inclusive of all payments to Class Members under the terms of
15 this Settlement, Class Counsel Fees (one-third of the Gross Settlement Amount) and Expenses
16 awarded by the Court, the Class Representative Incentive Awards(\$5,000 to each Class
17 Representative, totaling \$10,000.00) approved by the Court, Claims Administration Costs (not to
18 exceed \$15,000.00), the LWDA Payment (\$1,875.00) defined below, and all federal, state, and
19 local taxes owed by Participating Class Members as employees. Defendant's share of any taxes on
20 the Settlement is exclusive of the Gross Maximum Settlement Amount.

21
22 **C. Class Counsel Fees And Expenses**

23 Defendant and Defendant's Counsel will not oppose the application to the Court for an
24 award of Class Counsel Fees and Expenses consisting of: (1) up to one-third of the Gross Maximum
25 Settlement Amount for attorneys' fees; and (2) reimbursement of actual litigation costs and
26 expenses. Class Members and Class Counsel shall not seek payment of attorneys' fees or
27 reimbursement of costs or expenses except as set forth herein. The award of such Class Counsel
28 Fees and Expenses will be paid from the Gross Maximum Settlement Amount. Defendant (or the

1 Claims Administrator) will issue an IRS Form 1099 to Class Counsel with respect to the Class
2 Counsel Fees and Expenses awarded to them.

3 Defendant's agreement not to oppose a motion for Class Counsel Fees and Expenses for the
4 aforementioned amounts should not be construed as approval or endorsement by Defendant of the
5 amount sought. Whatever Class Counsel Fees and Expenses the Court approves shall be paid from
6 the Gross Maximum Settlement Amount. In the event the Court approves less than the Class
7 Counsel Fees and Expenses requested by Class Counsel the difference shall be included in the Net
8 Settlement Amount distributed to Participating Class Members.

9
10 **D. PAGA Penalties and LWDA Payment**

11 Of the Gross Maximum Settlement Amount, the Settling Parties allocate Two-Thousand
12 Five-Hundred Dollars (\$2,500.00) to PAGA penalties. The payment of the PAGA penalties shall be
13 made from the Gross Maximum Settlement Amount as follows: (1) \$625.00 of the PAGA penalties
14 (which represents 25% of the amount allocated to PAGA penalties) will be included in the Net
15 Settlement Amount to be paid to the PAGA Claims Class Members; and (2) the remaining
16 \$1,875.00 of the PAGA penalties (which represents 75% of the amount allocated to PAGA
17 penalties) will be paid from the Gross Maximum Settlement Amount to the Labor Workforce
18 Development Agency ("LWDA"). Class Counsel shall provide written notice to the LWDA during
19 the class administration period of this Settlement and the amount allocated to the LWDA Payment.

20 **E. Class Representative Incentive Awards**

21 Class Counsel will request, and Defendant and Defendant's Counsel will not oppose,
22 payment of a Class Representative Incentive Award to each of the Named Plaintiffs in the Action,
23 Adam Mitchell and Francisco Sanchez, in the amount of Five Thousand Dollars (\$5,000.00) (for a
24 total of \$10,000.00) as reasonable additional compensation for the time and effort expended by
25 them in connection with the initiation and maintenance of this Action. The Class Representative
26 Incentive Awards will be paid from the Gross Maximum Settlement Amount, and are in addition to
27 whatever Settlement Share the Named Plaintiffs are otherwise entitled to receive under this
28 Settlement as Participating Class Members. In exchange for receiving a Class Representative

1 Incentive Award, the class representatives will provide a full, general release of all claims.

2 The Class Representative Incentive Awards will be reported to the taxing authorities by
3 means of an IRS Form 1099. The amounts of the Class Representative Incentive Awards are left to
4 and within the Court's sole discretion. Defendant's agreement not to oppose an application for
5 Class Representative Incentive Awards should not be construed as approval or endorsement by
6 Defendant of the amount sought. The Class Representative Incentive Award the Court orders shall
7 be paid from the Gross Maximum Settlement Amount. In the event the Court approves less than the
8 amount of the Class Representative Incentive Awards requested and the Named Plaintiffs choose
9 not to appeal that decision, the difference shall be included in the Net Settlement Amount to be
10 distributed to Participating Class Members. However, if the Named Plaintiffs file a timely appeal
11 regarding the amount of the Class Representative Incentive Awards approved by the Court,
12 Defendant shall not be required to fund any portion of the Gross Maximum Settlement Amount, and
13 the Claims Administrator shall not distribute or pay any monies until such appeal has been finally
14 resolved or dismissed with prejudice.

15 The Named Plaintiffs acknowledge and agrees that Defendant and Defendant's Counsel
16 have made no representations or warranties regarding the tax consequences of payment of the Class
17 Representative Incentive Awards and Named Plaintiffs have not relied on any such representations
18 or warranties. Named Plaintiffs further agree to pay and bear sole responsibility for all taxes, liens,
19 levies, encumbrances, interest, and penalties that may be due or payable to any taxing authority as a
20 result of payment of the Class Representative Incentive Awards. Named Plaintiffs also agree to
21 defend and indemnify Defendant in connection with any taxes, fines interest or penalties incurred as
22 a result of any failure by Named Plaintiffs to pay taxes due, if any, on the Class Representative
23 Incentive Awards paid pursuant to this Settlement.

24
25 **F. Claims Administration Costs**

26 Class Counsel will obtain a "not to exceed" quote from the Claims Administrator. The
27 Claims Administrator's not to exceed quote will represent the Claims Administrator's agreement
28 that, based on the class size, installments paid, and distributions under the terms of this Settlement,

1 the costs for administration of the terms of this Settlement will not exceed a specified monetary
2 amount. All of the Claims Administration Costs shall be paid from the Gross Maximum Settlement
3 Amount upon completion of all duties required to be performed by the Claims Administrator under
4 the terms of this Settlement, or as otherwise required by the Court, subject to the not to exceed
5 quote from the Claims Administrator. In the event the Court approves less than the note to exceed
6 amount for claims administration costs or the actual costs are less than the not to exceed amount,
7 the difference shall be included in the Net Settlement Amount. The Claims Administration Costs
8 are not to exceed \$15,000.00.

9
10 **G. Calculation of Settlement Share Amounts**

11 The Class Counsel Fees and Expenses, the Class Representative Incentive Award, the
12 payment to the LWDA, and the Claims Administration Expenses, all of which are subject to
13 approval by the Court, shall be deducted from the Gross Maximum Settlement Amount to
14 determine the Net Settlement Amount. The Net Settlement Amount will be divided and distributed
15 to Participating Class Members as follows: For each Participating Class Member, their individual
16 Settlement Shares shall be calculated by multiplying each individual Participating Class Member's
17 Payout Ratio by the Net Settlement Amount. The data for the total workweeks worked during the
18 Class Period by each Participating Class Member will come from payroll and time-card data in
19 Defendant's records.

20 **1. Deductions from Gross Settlement Share Amount to Determine Net**
21 **Settlement Share Amount**

22 Each Participating Class Member's gross Settlement Share will be apportioned as follows:
23 (1) one-third as wages; (2) one-third as interest; and (3) one-third as penalties. The amounts paid as
24 wages shall be subject to all tax withholdings customarily made from employee's wages and all
25 other authorized and required withholdings and shall be reported by W-2 forms. Payment of all
26 amounts will be made subject to backup withholding unless a duly executed W-9 form is received
27 from the payee(s). The amounts paid as penalties and interest shall be subject to all authorized and
28 required withholdings other than the tax withholdings customarily made from employees' wages

1 and shall be reported by IRS 1099 forms.

2 **H. Funding of the Settlement**

3 Defendant shall pay an initial installment of \$50,000.00 of the Gross Maximum Settlement
4 Amount on or before April 9, 2017. The remaining \$125,000.00 shall be paid in equal monthly
5 installments over the period of 30 months with the first installment due on May 1, 2017 (or if the
6 first of the month falls on a weekend or holiday, the next business day thereafter). Defendant shall
7 deposit the foregoing amounts into the client-trust account of its counsel until such time as the court
8 preliminarily approves the Settlement. Once the Court grants preliminary approval, the payments
9 made up to that point shall be transferred by counsel for Defendant to the Claims Administrator.
10 Thereafter, all future installments shall be made by Defendant directly to the Claims Administrator
11 who shall hold the funds in trust, in an interest bearing account, for the benefit of the Participating
12 Class Members. Defendant may increase the monthly payments or pay off the remaining balance at
13 any time without any prepayment penalty of any kind.
14

15 **1. Default**

16 In the event that Defendant fails to make any individual payment as agreed upon in
17 paragraph H above, Class Counsel will give written notice of default to counsel for Defendant.
18 Written notice of default will be provided by email to Raquel A. Hatfield, Esq. at [rahatfield@arata-](mailto:rahatfield@arata-law.com)
19 [law.com](mailto:rahatfield@arata-law.com). In the event Defendant fails to cure the breach within five (5) business days of the date of
20 the written notice of default, time being of the essence, Plaintiff may file the Stipulated Judgment
21 attached hereto as Exhibit C. Defendant shall pay the entire amount set forth in the Stipulated
22 Judgment, less all payments made prior to the filing of the Stipulated Judgment. The Stipulated
23 Judgment shall be immediately due and payable from Defendant, less any and all credits for
24 payment(s) previously made pursuant to the terms of this Joint Stipulation for Class Action
25 Settlement, as consideration for the damages that Class Members will suffer as a result of
26 Defendant's default.

27 Defendant waives any defense, whether in law or in equity with regard to the obligations set
28 forth herein. Acceptance of a late payment by the Claims Administrator shall not constitute a

1 waiver nor in any way prejudice Plaintiffs' or the Rights of the Certified Class to receive and
2 demand full remaining balance thereafter. Plaintiffs and the Certified Class shall have the right to
3 declare a default under the terms herein regardless of the number of times they have not declared a
4 default although they were entitled to do so. THE SETTLING PARTIES UNDERSTAND AND
5 EXPRESSLY AGREE THAT NOTHING IN THIS SETTLEMENT, INCLUDING
6 ACCELERATED OBLIGATIONS UNDER THIS PARAGRAPH AND THE STIPULATED
7 JUDGMENT ATTACHED HERETO, SHALL BE CONSTRUED AS A PENALTY OR
8 LIQUIDATED DAMAGES FOR BREACH, BY ANY PARTY, TO ANY PROVISION OF THIS
9 AGREEMENT.

10 **I. Distributions Under the Settlement**

11 **1. Deadlines for Distribution of All Amounts**

12 Within five (5) business days of the Effective Date, the Claims Administrator will distribute
13 checks to Participating Class Members (for their Settlement Shares), to the LWDA (for PAGA
14 penalties), to the Named Plaintiffs Adam Mitchell and Francisco Sanchez (for the Class
15 Representative Incentive Awards), and to Class Counsel (for the Class Counsel Fees and Expenses)
16 all approved by the Court.

17 **2. Expiration of Settlement Share Checks**

18 Settlement checks issued to Participating Class Members will expire one hundred twenty
19 (120) days from the date they are issued by the Claims Administrator. Any check not cashed within
20 one hundred twenty (120) days will become void. Any checks that, after an appropriate skip trace,
21 are undeliverable, shall become void. Any settlement shares for which checks remain un-cashed and
22 become void shall be reverted back to the California Department of Industrial Relations in the name
23 of the respective Participating Class Member.
24

25 **J. Taxes On Settlement Share Amounts**

26 The Claims Administrator will issue an IRS W-2 Form to each Participating Class Member
27 for the wage component of each Participating Class Member's Settlement Share, an IRS 1099 form
28

1 to each Participating Class Member for the non-wage component of each Participating Class
2 Member's Settlement Share, a 1099 Form to the Named Plaintiff for the Class Representative
3 Incentive Award, a 1099 Form to Class Counsel for the Class Counsel Fees and Costs, and a 1099
4 Form to the Claims Administrator for all Claims Administration Costs. All Participating Class
5 Members covered by this Settlement agree that they are not relying on any representations
6 regarding the tax allocation or treatment of any amounts paid to them under the terms of this
7 Settlement and agree to hold Defendant harmless for any and all tax consequences relating to the
8 allocation of the payments made under this Settlement.

9
10 **K. Motion For Preliminary Approval of Settlement**

11 Class Counsel will promptly draft and file a motion with the Court (the "Motion for
12 Preliminary Approval") seeking an order preliminarily approving the Settlement; setting a date for
13 the Final Approval Hearing; and approving the Notice of Settlement to the Class, Preliminary
14 Approval of the Class Settlement, and Final Approval Hearing (attached hereto as "Exhibit A"), and
15 Claim Form (attached hereto as "Exhibit B"). Defendant's Counsel will file a notice of no
16 opposition to the motion.

17 At the hearing on the Motion for Preliminary Approval, the Settling Parties will jointly
18 appear, support the granting of the motion, and submit a Proposed Order Approving the Settlement,
19 Approving Notice to Class, and Setting Hearing for Final Approval of Settlement (the "Proposed
20 Order").

21 If the Court declines to grant preliminary approval of the Settlement as proposed by the
22 Settling Parties, the Settlement shall be considered void *ab initio* and shall be of no force or effect
23 whatsoever, and shall not be referred to or utilized for any purpose whatsoever.

24 **L. Mailing Of Notice To Class Members.**

25 After the Court enters its order granting preliminary approval of the Settlement, all Class
26 Members will be provided with the Class Notice (completed to reflect the order granting
27 preliminary approval of the Settlement) and Claim Form (together the Class Notice and Claim Form
28 are the "Notice Packet") by the Claims Administrator as follows:

1 **1. Defendant’s Provision of Class List and Class Information**

2 Within ten (10) calendar days after the Court grants preliminary approval of the Settlement,
3 Defendant will provide to the Claims Administrator an updated list of Class Members, including the
4 names, last known addresses and telephone numbers (if available in Defendant’s database), Social
5 Security numbers, the dates of hire and, if applicable, termination date for each Class Member (the
6 “Class List”). The data and the Class List provided to the Claims Administrator will be treated as
7 confidential and will not be disclosed to anyone, except as may be required to applicable tax
8 authorities, pursuant to Defendant’s express written consent, by order of the Court, or to carry out
9 the reasonable steps described in this Settlement to locate missing Class Members.

10 **2. Mailing of Notice Packet**

11 Within ten (10) business days after receiving the Class List from Defendant, the Claims
12 Administrator will mail the Notice Packet to all identified Class Members via first-class regular
13 U.S. Mail, using the last known address information provided by Defendant, unless such address is
14 modified by any updated address information that the Claims Administrator obtains in the course of
15 administration of the Settlement. Prior to completing this mailing, the Claims Administrator will
16 perform a National Change of Address (“NCOA”) search to confirm the validity of each listed
17 Class Member’s address.

18 **3. Undeliverable Notices**

19 If any Notice Packets are returned as undeliverable within thirty (30) calendar days of the
20 mailing of the Class Notice with a forwarding address, the Claims Administrator shall have five (5)
21 calendar days to re-mail a Class Notice to the forwarding address. If any Class Notices are returned
22 as undeliverable within thirty (30) calendar days of the mailing of the Notice without a forwarding
23 address, the Settlement Administrator will have five (5) calendar days from receipt of the returned
24 Class Notice to search for a more current address for the Class Member and to re-mail a Class
25 Notice to the Class Member. This inquiry shall include a skip-trace search. The Claims
26 Administrator will be responsible for taking all reasonable steps, consistent with its agreed upon job
27 parameters, Court orders and fee, as agreed to with Class Counsel and according to the deadlines set
28

1 forth in this Settlement, to trace the mailing address of any Class Member for whom a Notice
2 Packet is returned by the U.S. Postal Service as undeliverable. These reasonable steps will include,
3 at a minimum, the tracking of all undelivered mail, performing an address search for all mail
4 returned without a forwarding address, and promptly re-mailing the Notice Packet to Class
5 Members for whom new addresses are found. If the Notice Packet is re-mailed, the Claims
6 Administrator will note for its own records the date and address of each such re-mailing and so
7 notify Class Counsel and Defendant's Counsel. The obligation to trace and resend returned Notices
8 Packet shall cease after two (2) mailings to the Class Member or thirty (30) calendar days after the
9 initial mailing, whichever occurs first. The time period to respond may not be extended on account
10 of a returned or undeliverable mailing.

11 **4. Mailing of Response Reminders**

12 Fifteen (15) days prior to the deadline for Class Members to file a claim form, object to the
13 Settlement or opt-out of the Settlement, the Claims Administrator shall send each Class Member
14 from whom no response has yet been received a postcard reminder of the upcoming deadline and
15 need to respond.

16 **5. Claims Administrator's Weekly Status Reports**

17 The Claims Administrator shall provide weekly status reports to counsel for the Settling
18 Parties, including: (a) the number of Notices Packets mailed; (b) the number of claim forms
19 received; (c) the number of objections received; and (d) the number of Requests for Exclusion filed.

20 No later than thirty (30) calendar days before the Final Approval Hearing, the Claims
21 Administrator will serve on Class Counsel and Defendant's counsel, for filing with the Court in
22 support of Plaintiff's motion for final approval of the Settlement, a declaration of due diligence
23 setting forth its compliance with its obligations under this Settlement.
24

25 **M. Submission of Claim Forms by Class Members**

26 Class Members are required to submit Claim Forms to be eligible to participate in the
27 Settlement. Class Members who do not timely submit a Claim Form or mail a timely Request for
28 Exclusion shall be bound by the release herein but shall not receive any Settlement Share.

1 **N. Objections To Settlement and Requests To Be Excluded From The Settlement**

2 Class Members may submit objections to the Settlement or a request to be excluded from
3 the Settlement pursuant to the following procedures:

4 **1. Objections To The Settlement**

5 The Class Notice will provide that Class Members, other than Non-Participating Class
6 Members, who wish to object to the Settlement must serve on the Claims Administrator not later
7 than forty-five (45) calendar days after the date that the Claims Administrator first mails the Class
8 Notice (“Objection Deadline”), a written statement objecting to the Settlement and setting forth the
9 grounds for the objection. A Class Member may also appear at the final approval hearing in order to
10 object.

11 A Class Member who does not timely serve an objection in the manner and by the Objection
12 Deadline specified above, or if they do not appear at the final approval hearing to make an
13 objection, will be deemed to have waived all objections and will be foreclosed from making any
14 objections to the Settlement, whether by appeal or otherwise. Non-Participating Class Members
15 (i.e., individuals validly seeking exclusion from the Settlement) may **not** object to the Settlement.

16 If a Class Member who has timely filed an objection to the Settlement files a Notice of
17 Appeal of the judgment within the time period prescribed by law, the Claims Administrator shall
18 not distribute or pay any monies until the appeal(s) are finally resolved in favor of the Settlement or
19 dismissed with prejudice. Any objections received by the Claims Administrator will be promptly
20 forwarded to Class Counsel.

21
22 **O. Requests To Be Excluded From Settlement**

23 The Class Notice will provide that Class Members who wish to exclude themselves from the
24 Settlement (i.e., “opt out” of the Settlement) must mail to the Claims Administrator, not later than
25 forty-five (45) calendar days after the date that the Claims Administrator first mails the Notice
26 Packet (“Exclusion Deadline”), a signed written request to be excluded from the Settlement
27 (“Request for Exclusion”). The Request for Exclusion must include the Class Member’s name, last
28 four digits of their social security number, current contact information and affirmatively state that

1 the Class Member does not want to participate in the Settlement.

2 Class Members who do not mail a timely Request for Exclusion in the manner and by the
3 Exclusion Deadline specified hereinabove will, if the Court approves the Settlement, will be
4 considered Class Members and be bound by all terms and conditions of this Settlement, including
5 the releases set forth in this Settlement, and by the Final Judgment, but will not receive any portion
6 of the Settlement Share (unless they submit a Claim Form).

7 Eligible Class Members who timely submit a Request for Exclusion in the manner and by
8 the Exclusion Deadline specified above will be considered Non-Participating Class Members and
9 will not participate in, or be bound by, the Settlement or the Final Judgment in any respect, and will
10 not be permitted to file objections to the Settlement or appear at the final approval hearing to voice
11 any objections to the Settlement.

12 No later than ten (10) calendar days after the deadline for submission of Requests for
13 Exclusion from the Settlement, the Claims Administrator will provide counsel for the Settling
14 Parties with a complete and accurate list of all Non-Participating Class Members.

15 **P. No Solicitation of Objections or Requests for Exclusion**

16 Neither the Settling Parties nor their respective counsel will solicit or otherwise encourage
17 any Class Member, directly or indirectly, to request exclusion from the Settlement, object to the
18 Settlement, or appeal from the Judgment.

19 **Q. Defendant's Option to Terminate Settlement**

20 Defendant, in its sole discretion, shall have the right, but not the obligation, to cancel and
21 void this Settlement if the number of Non-Participating Class Members submitting valid and timely
22 Requests for Exclusion from the Settlement is greater than ten percent (10%) of the Class Members.
23 Defendant must exercise this right, if at all, within ten (10) calendar days after receipt of the Claims
24 Administrator's report regarding Requests for Exclusion. In this event, the Settlement shall be
25 considered void *ab initio* and shall be of no force or effect whatsoever, and shall not be referred to
26 or utilized for any purpose whatsoever. If Defendant exercises its right to terminate the settlement
27 as described in this paragraph, it shall solely be responsible for all costs of administration incurred,
28

1 to date.

2 **R. Resolution of Class Member Disputes Regarding Total Wages**

3 If a Class Member disputes the total wages stated for that Class Member in the Notice, the
4 Class Member must ask the Claims Administrator to resolve the matter by submitting in writing
5 under penalty of perjury the total wages that the Class Member claims to have actually earned while
6 working for Defendant during the Class Period. The Class Member must submit all supporting
7 documentation they have. If such a dispute arises, Defendant will manually review its payroll and
8 personnel records to verify the correct amount of wages earned. Defendant's records shall have a
9 rebuttable presumption of correctness.

10 After consultation with Class Counsel and Defendant's Counsel, the Claims Administrator
11 will make a determination of the Class Member's total wages. This determination shall be final and
12 binding on the Settling Parties and the Class Member unless a request for review thereof is
13 submitted by Class Counsel (on behalf of the affected Class Member) or Defendant's Counsel to
14 the Court, which will make a final decision at the Final Approval Hearing, and is non-appealable.

15 **S. Number of Class Members and Workweeks**

16 Defendant represents that the number of Class Members shall not exceed 218 individuals
17 who worked 12,395 work weeks during the Class Period. In the event it is determined that the
18 actual number of class members or work weeks exceeds these stated amounts by more than 10%,
19 the Net Settlement Amount (i.e., the amount available for distribution to the Class Members) shall
20 be increased by the same number of percentage points above 10%, by which the actual number of
21 class members or work weeks exceed the stated amounts. For example, if the actual number of class
22 members is determined to be 12% higher than 218, the Net Settlement Amount shall be increased
23 by 2%.

24 **T. Motion for Final Approval**

25 As soon as practicable following the deadline for Class Members to exclude themselves or
26 file objections, Class Counsel will file with the Court a motion for final approval of the Settlement
27 and a memorandum in support of the motion, which Defendant agrees it will not oppose, so long as
28

1 the motion is in all respects consistent with the terms of this Settlement and counsel for Defendant
2 has an opportunity to review the motion prior to filing. While the notice period is pending, the Class
3 Members and Class Counsel will also move for an award of the Class Representative Incentive
4 Award and Class Counsel Fees and Costs pursuant to and in accordance with the terms of this
5 Settlement, with a memorandum in support of their motion, which Defendant agrees it will not
6 oppose, so long as the motion is in all respects consistent with the terms of this Settlement and
7 counsel for Defendant has an opportunity to review the motion prior to filing

8 Not later than five (5) court days before the Final Approval Hearing, the Settling Parties
9 may file, jointly or separately, a reply in support of the motion for final approval of the Settlement
10 if any opposition or objection to the motion has been filed. In addition, the Settling Parties and
11 Class Counsel may file replies in support of the motions for the Class Representative Incentive
12 Award and the Class Counsel Fees and Costs if any opposition or objection to the motion has been
13 filed.

14 **U. Termination of Settlement**

15 Either Settling Party may terminate this Settlement by giving written notice to the other
16 Settling Party (through its counsel) no later than twenty (20) calendar days after receiving notice
17 that one of the following has occurred: (i) the Court declines to enter the Preliminary Approval
18 Order, the Final Approval Order or final judgment in substantially the form submitted by the
19 Settling Parties; (ii) the Settlement does not become final because of any appellate court action; or
20 (iii) the Court's final approval of the Settlement is reversed or materially modified on appellate
21 review.

22 In the event notice of termination of this Settlement is provided in accordance with the
23 foregoing, this Settlement will become and shall be considered null and void, and it will have the
24 following effects: (i) the Settling Parties will have no further obligations under the Settlement; (ii)
25 Defendant shall have no obligation to make any payments to any person, party, Class Member or
26 attorney that otherwise would have been owed under this Settlement; (iii) each party will pay 50%
27 of the Claims Administrator's reasonable fees and expenses incurred as of the date that the
28 Settlement is terminated; (iv) the Preliminary Approval Order, Final Approval Order and Judgment,

1 including any order of class certification, shall be vacated; (v) the Settlement and all negotiations,
2 statements and proceedings relating thereto shall be without prejudice to the rights of any of the
3 Settling Parties, all of whom shall be restored to their respective positions in the Action prior to the
4 Settlement; and (vi) neither this Settlement nor any ancillary documents, actions, statements or
5 filings in furtherance of settlement (including all matters associated with the mediation) shall be
6 admissible or offered into evidence in the Action or any other case or proceeding for any purpose
7 whatsoever.

8 **V. Final Approval and Entry of Final Judgment**

9 Upon final approval of the Settlement by the Court at or after the Final Approval Hearing,
10 the Settling Parties will present a final judgment for the Court's approval and entry. A copy of the
11 Proposed Final Judgment is attached hereto as "Exhibit C." After entry of the final judgment, the
12 Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of:
13 (i) enforcing this Settlement, (ii) addressing any claims administration matters that may arise; and
14 (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable
15 law.

16 **W. Dispute Resolution**

17 Any disputes not resolved by the Claims Administrator or the Settling Parties will be
18 resolved by the Court. Before any such resort to the Court, counsel for the Settling Parties will
19 confer in good faith in an attempt to resolve the dispute.
20

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

22 The Settling Parties agree to waive all appeals from the Court's Final Approval of this
23 Settlement, except that the Class Members may appeal any reduction in the Class Counsel Fees and
24 Costs and/or the Class Representative Incentive Award. However, any reduction in the Class
25 Counsel Fees and Costs and/or the Class Representative Incentive Awards does **not** constitute
26 grounds to terminate or void the Settlement.

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Y. Release of Claims

1. Release of Claims By Class Members

As of the Effective Date, in exchange for the consideration, undertakings, and covenants undertaken by Defendant in this Settlement, the Class Members who do not opt out of the Settlement, including Named Plaintiffs, release Defendant Nushake, Inc., Douglas Heath, Elizabeth Heath and its subsidiaries, affiliates, parents and attorneys and each of their company-sponsored employee benefit plans, and their respective successors and predecessors in interest, all of their respective officers, directors, employees, administrators, fiduciaries, trustees and agents, and each of their past, present and future officers, directors shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and any individual or entity which could be jointly liable with Defendant (all of whom are herein referred to as “Released Parties”), from any and all claims, debts, liabilities, demands, obligations, guarantees costs, expenses, attorneys’ fees, damages, causes of action and allegations of any nature, that were alleged or that could have been alleged in the Action based on the facts pled in the operative complaint, for the period of November 15, 2009 through the date Preliminary Approval is granted or June 9, 2017, whichever is sooner, including:

(1) claims for minimum wages under and in accordance with California Labor Code, or the Industrial Welfare Commission (“IWC”) Wage Orders;

(2) claims for the payment of wages and overtime under and in accordance with California Labor Code, or the Industrial Welfare Commission (“IWC”) Wage Orders;

(3) claims for meal period liability under and in accordance to Labor Code §§ 512 and 226.7;

(4) claims for rest-break liability under and in accordance to Labor Code §§ 512 and 226.7;

(5) claims for violation of Labor Code Section 226(a) or the failure to provide accurate itemized wage statements;

(6) claims for unfair or unlawful business practices in violation of Business and Professions Code Sections 17200 *et seq.*;

(7) claims for waiting time penalties pursuant to Labor Code Sections 201-203;

1 (8) claims for the reimbursement of necessary business expenditures under and in
2 accordance with Labor Code § 2802; and

3 (9) claims for penalties pursuant to the PAGA, Labor Code Sections 2698 *et seq.*, including
4 but not limited to claims for such penalties based on alleged violations of the following California
5 Labor Code Sections (and/or arising out of the same facts and circumstances as the allegations in
6 the Action): 201, 202, 203, 226, 226.7, 2802, and 512 and the applicable wage orders.

7 The foregoing Released Claims are released by the Class Members as to the Released
8 Parties as of the Effective Date for the applicable Class Period.

9
10 **2. Claims Not Released by Class Members**

11 The Released Claims exclude claims for workers' compensation, discrimination, retaliation,
12 wrongful termination in violation of public policy, defamation, and invasion of privacy.

13 **3. General Release from Named Class Representatives**

14 In addition to the foregoing release, which is expressly incorporated herein by reference,
15 Plaintiffs release the Released Parties from all claims, demands, rights, liabilities and causes of
16 action of every nature and description whatsoever, known or unknown, asserted or that might have
17 been asserted, whether in tort, contract, or for violation of any state or federal statute, rule or
18 regulation arising out of, relating to, or in connection with any act or omission by or on the part of
19 any of the Released Parties committed or omitted prior to the execution hereof. Plaintiffs agree that
20 they have expressly waived and relinquished, to the fullest extent permitted by law, the provisions,
21 rights and benefits of Section 1542 of the California Civil Code, or any other provision under
22 federal or state law, which provides:

23 A general release does not extend to claims which the creditor does not know or
24 suspect to exist in his or her favor at the time of executing the release, which if
25 known by him or her must have materially affected his or her settlement with the
26 debtor.

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1 **Z. Employment of Named Plaintiffs**

2 Named Plaintiffs Adam Mitchell and Francisco Sanchez shall not reapply for employment
3 with Defendant.

4 **AA. No Publicity**

5 Named Plaintiffs and Class Counsel agree not to issue a press release or otherwise notify the
6 media about the terms of the Settlement or advertise or market any of the terms of the Settlement
7 through written, recorded, social media or electronic communications. Named Plaintiffs and Class
8 Counsel further agree that if contacted regarding this case, they will state only that the lawsuit
9 exists and has been resolved. This provision does not prohibit Class Counsel from communicating
10 with Class Members.

11 Nothing herein shall be interpreted as preventing any good-faith communications among
12 any Class Counsel, Defendant's Counsel, and/or the Settling Parties with the Court, the Class
13 Members, or the Claims Administrator.

14 **BB. Fair, Adequate And Reasonable Settlement**

15 This Settlement was reached after extensive good faith negotiations. The Settling Parties
16 believe and agree that this Settlement is a fair, adequate, and reasonable resolution of the Action
17 and have arrived at this Settlement in arms-length negotiations, taking into account all relevant
18 factors, present and potential, and will so represent it to the Court.

19 **CC. No Admission Of Liability**

20 Defendant denies any and all alleged wrongdoing or the violation of any rights of the
21 Named Plaintiffs and/or Class Members. By entering into this Settlement, Defendant does not
22 admit, and in fact specifically disclaims, the violation of any law or regulation. This Settlement is
23 entered into solely for the purpose of compromising highly disputed claims. Nothing in this
24 Settlement is intended or will be construed as an admission of any liability or wrongdoing by
25 Defendant, or as an admission by the Class Members that any of their claims were non-meritorious
26 or that any defense asserted by Defendant was meritorious. This Settlement and the fact that the
27 Settling Parties were willing to settle the Action and have entered into this Settlement will have no
28

bearing on, and will not be admissible in connection with, any litigation, other than as is necessary to enforce the terms of this Settlement.

DD. Joint and Several Liability

Each named Defendant, Nushake, Inc., Doug Heath, and Elizabeth Heath, and released parties agree that they are jointly and severally liable for all covenants, obligations, liabilities, and agreements to indemnify under this Settlement.

EE. Miscellaneous Terms

1. Integrated Agreement

After it is signed and delivered by all Settling Parties and their counsel, this Settlement and its exhibits, including the Stipulation of Judgment attached hereto as Exhibit “C,” will constitute the entire agreement between the Settling Parties relating to the terms of Settlement, and will supersede any prior or contemporaneous oral representations, warranties, covenants, or inducements made to any Settling Party concerning this Settlement or its exhibits.

2. Execution in Counterparts

This Settlement may be executed in one or more counterparts and by facsimile. All executed counterparts, and each of them, will be deemed to be one and the same instrument, provided that counsel for the Settling Parties will exchange between themselves original signed counterparts. Facsimile signatures will be accepted if the original signature is provided within seven days. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Settlement.

3. Modification of Settlement

This Settlement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Settling Parties or their successors-in-interest.

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1 **4. Settlement Binding on Successors**

2 This Settlement will be binding upon, and inure to the benefit of, the successors of each of
3 the Settling Parties.

4 **5. Applicable Law**

5 All terms and conditions of this Settlement and its exhibits will be governed by and
6 interpreted according to the laws of the State of California, without giving effect to any conflict of
7 law or choice of law principles.

8 **6. Notices to Settling Parties**

9 Unless otherwise specifically provided herein, all notices, demands or other
10 communications given hereunder shall be in writing and shall be deemed to have been duly given as
11 of the third business day after mailing by United States registered or certified mail, return receipt
12 requested, addressed as follows:

13 To Class Counsel:

14 David H. Yeremian, Esq.

15 DAVID YEREMIAN & ASSOCIATES, INC.

16 535 N. Brand Blvd., Suite 705

17 Glendale, California 92103

18 Telephone: (818) 230-8380

19 Facsimile: (818) 230-0308

20 To Defendant's Counsel:

21 Bradley J. Swingle, Esq.

22 Raquel A. Hatfield, Esq.

23 ARATA, SWINGLE, VAN EGMOND & GOODWIN

24 912 11th Street, First Floor

25 Post Office Box 3287

26 Modesto, California 95353

27 Telephone: (209) 522-2211

Facsimile: (209) 522-2980

7. Cooperation in Drafting

The Settling Parties have cooperated in the drafting and preparation of this Settlement. This Settlement will not be construed against any Settling Party on the basis that the Settling Party was the drafter or participated in the drafting.

IT IS SO AGREED:

PLAINTIFF AND THE CLASS

DATED: October 18, 2017

DocuSigned by:


2920683A709C4F7

ADAM MITCHELL

PLAINTIFF AND THE CLASS

DATED: January 2, 2018

DocuSigned by:



5B0AC8979B1A433

FRANCISCO SANCHEZ

NUSHAKE, INC.

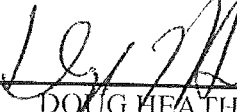
DATED: December 29, 2017



Doug Heath,
on Behalf of NUSHAKE INC.

DOUG HEATH

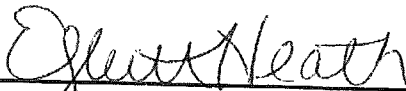
DATED: December 29, 2017



DOUG HEATH,
on behalf of himself

ELIZABETH HEATH

1
2 DATED: December 29, 2017
3


ELIZABETH HEATH,
on behalf of herself

4
5
6
7 APPROVED AS TO FORM
8
9

10 DAVID YEREMIAN & ASSOCIATES, INC.

11
12 DATED: October 18, 2017
13


DAVID YEREMIAN,
attorneys for Plaintiffs and the Class

14
15 ARATA, SWINGLE, VAN EGMOND &
16 GOODWIN

17
18 DATED: December 29, 2017
19


BRADLEY SWINGLE
RAQUEL HATFIELD
Attorneys for Defendants