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13 PARTNERS II, INC., MATTHEW JONES
and DAVID KOREN
14

15 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

16 **COUNTY OF LOS ANGELES**

17 LEVI MALDONADO, individually and
18 on behalf of all others similarly situated,

19 Plaintiff,

20 vs.

21 WINGMAN PARTNERS, INC., a
California corporation; WINGMAN
PARTNERS II, INC., a California
22 corporation; MATTHEW JONES, an
individual; DAVID KOREN, an
23 individual; and DOES 1 through 10,
24 inclusive,

25 Defendants.

Case No. 19STCV09210

*[Assigned for All Purposes to the Hon. Amy D.
Hogue, Dept. SSC7]*

CLASS ACTION

**JOINT STIPULATION OF CLASS ACTION
SETTLEMENT AND RELEASE**

Complaint Filed: March 18, 2019
Trial Date: None

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EXHIBIT LIST

- Exhibit 1:** Class Notice
- Exhibit 2:** [Proposed] Preliminary Approval Order
- Exhibit 3:** [Proposed] Final Order
- Exhibit 4:** [Proposed] Final Judgment

1 This Joint Stipulation of Class Action Settlement and Release (“Stipulation”) is made and
2 entered into by and between Plaintiff Levi Maldonado (“Plaintiff” or “Class Representative”), as an
3 individual and on behalf of the Class (as defined below), and Defendants Wingman Partners, Inc.
4 and Wingman Partners II, Inc. (“Defendants”).

5 **I. DEFINITIONS**

6 The following definitions are applicable to this Stipulation. Definitions contained elsewhere
7 in this Stipulation will also be effective.

8 1. “Action” means the action entitled *Levi Maldonado v. Wingman Partners, Inc., et*
9 *al.*, Los Angeles County Superior Court, Case No. 19STCV09210.

10 2. “Attorneys’ Fees and Costs” means attorneys’ fees agreed upon by the Parties and
11 approved by the Court for Class Counsel’s litigation and resolution of the Action, and all costs
12 incurred and to be incurred by Class Counsel in the Action, including, but not limited to, fees and
13 costs associated with court filings, documenting the Settlement, securing the Court’s approval of
14 the Settlement, and obtaining entry of the Judgment terminating the Action. Class Counsel will
15 request attorneys’ fees from the Court in an amount not to exceed 33.3% of the Maximum
16 Settlement Amount, or One Hundred and Sixty-Six Thousand and Five Hundred Dollars
17 (\$166,500.00). Class Counsel will also request reimbursement of costs incurred by Class Counsel’s
18 litigation and resolution of the Action in an amount up to Twelve Thousand Dollars (\$12,000.00),
19 subject to the Court’s approval.

20 3. “Class Counsel” means Custis Law, P.C. and its attorney Keith A. Custis.

21 4. “Class List” means a complete list of all Class Members that Defendants will
22 diligently and in good faith compile from their records and provide to the Settlement Administrator
23 within fourteen (14) calendar days after the Preliminary Approval Date. The Class List will be
24 formatted as a Microsoft Office Excel spreadsheet and will include each Class Member’s: (a) full
25 name, (b) last known address, (c) last known telephone number, (d) Social Security number, (e)
26 dates of employment; and (f) the respective number of Workweeks that each Class Member worked
27 as a non-exempt employee in California during the Class Period.

28 5. “Class Member” means any person who is a member of the Class, or, if such person

1 is incompetent or deceased, the person’s legal guardian, executor, heir or successor-in-interest.

2 6. “Class Notice” means the Notice of Proposed Class Action Settlement, substantially
3 in the form attached to this Stipulation as **Exhibit 1**, including any revisions required by the Court.
4 The Class Notice shall summarize the key terms and each Class Member’s rights under this
5 Settlement, and set forth (a) the total number of Workweeks the Settlement Administrator intends
6 to credit the Class Member; and (b) the estimated Individual Settlement Payment due to the Class
7 Member.

8 7. “Class Period” means the period of time beginning on March 18, 2015, and ending
9 on the Preliminary Approval Date.

10 8. “Class Representative” means Plaintiff Levi Maldonado. “Class Representative” is
11 synonymous with the term “Plaintiff.”

12 9. “Class Representative Service Award” means the Court-approved amount to be paid
13 to Plaintiff in recognition of his time and service to the Class in pursuing the Action and in
14 fulfilling his obligations as the Class Representative, and for his general release of claims. Class
15 Counsel will request that the Court approve a Class Representative Service Award in an amount
16 not to exceed Five Thousand Dollars (\$5,000.00).

17 10. “Class” means collectively all persons who worked for either or both Defendants as
18 hourly, non-exempt employees in the State of California at any time during the Class Period.

19 11. “Court” means the Superior Court of the State of California for the County of Los
20 Angeles or any other court taking jurisdiction of the Action.

21 12. “Defendants” means Wingman Partners, Inc. and Wingman Partners II, Inc.

22 13. “Defendants’ Counsel” means O’Hagan Meyer and its attorneys Matthew C.
23 Sgnilek and Andrea Rosenkranz.

24 14. “Effective Date” means the date on which the Final Judgment in the Action
25 becomes “Final.” The Judgment becomes “Final” when the later of the following events occurs: (i)
26 if Participating Class Members have not filed objections, or if they have filed objections that were
27 subsequently withdrawn, the date that the Court enters Final Judgment in the Action; or (ii) if
28 Participating Class Members have filed objections that have not been withdrawn, either (a) the date

1 that the time to appeal, object or attack the Court’s entry of Final Judgment has expired and there
2 has been no appeal, objection or attack or (b) the date that the court of last resort to which any
3 appeal is taken has affirmed the entry of Final Judgment in its entirety or the Participating Class
4 Member has presented a petition for review and the affirmance is no longer subject to further
5 appeal or review, and no further challenge to the entry of Final Judgment is possible. The
6 occurrence of the Effective Date is a prerequisite to any obligation of Defendants to pay any funds
7 into the Settlement Account.

8 15. “Employee’s Taxes and Required Withholding” means the employee’s share of all
9 applicable federal, state or local payroll taxes and customary withholdings on the portion of the
10 Individual Settlement Payment that constitutes wages. The Employee’s Taxes and Requirement
11 Withholdings will be withheld from and paid out of the Net Settlement Amount.

12 16. “Employer’s Share of Payroll Taxes” means Defendants’ share of all applicable
13 federal, state and local payroll taxes and customary withholdings, including the employer FICA,
14 FUTA, and SDI contributions, on the portion of the Individual Settlement Payment that constitutes
15 wages. The Employer’s Share of Payroll Taxes shall be separately paid by Defendants and shall not
16 be paid from the Maximum Settlement Amount or Net Settlement Amount.

17 17. “Final Approval Hearing” means the hearing held by the Court to rule on the Motion
18 for Final Approval of Class Action Settlement, to rule on Class Counsel’s motion for Attorney’s
19 Fees and Costs and the Class Representative’s Service Award, and to enter the Final Approval
20 Order and Final Judgment.

21 18. “Final Approval Order” means the Court’s order finally approving the Settlement,
22 substantially in the form attached hereto as **Exhibit 3**, including any revisions required by the
23 Court.

24 19. “Final Judgment” means the Court’s Judgment finally approving the Settlement,
25 substantially in the form attached hereto as **Exhibit 4**, including any revisions required by the
26 Court.

27 20. “Individual Settlement Payment” means the *pro rata* amount payable from the Net
28 Settlement Amount to each Participating Class Member.

1 21. “LWDA” means the California Labor and Workforce Development Agency.

2 22. “Maximum Settlement Amount” is the non-reversionary settlement amount of Five
3 Hundred Thousand Dollars (\$500,000.00) that Defendants shall pay to settle the Action, exclusive
4 of the Employer’s Share of Payroll Taxes. Defendants shall separately pay the Employer’s Share of
5 Payroll Taxes in addition to the Maximum Settlement Amount. The Maximum Settlement Amount
6 shall be used for the payment of Individual Settlement Payments to Participating Class Members
7 inclusive of Employee’s Taxes and Requirement Withholdings, Settlement Administration Costs,
8 the Payment of PAGA Penalties to LWDA, Class Counsel’s Attorneys’ Fees and Costs, and the
9 Class Representative’s Service Award.

10 23. “Net Settlement Amount” means the portion of the Maximum Settlement Amount
11 remaining after deduction of the Court-approved Class Counsel Attorneys’ Fees and Costs,
12 Settlement Administration Costs, Class Representative Service Award and the Payment of PAGA
13 Penalties to LWDA. The Net Settlement Amount will be distributed to Participating Class
14 Members.

15 24. “Notice Date” means the first date upon which the Class Notice is disseminated.

16 25. “Notice of Objection” means the written statement that a Class Member may
17 submit to the Settlement Administrator no later than the Response Deadline to object to this
18 Settlement Agreement.

19 26. “PAGA” means the Private Attorneys General Act of 2004, California Labor Code
20 §§ 2698, *et seq.*

21 27. “PAGA Penalties” means the portion of the Maximum Settlement Amount that is
22 allocated to the resolution of the Class Members’ claims arising under PAGA in the amount of
23 \$20,000.00. Pursuant to California Labor Code § 2699(i), Seventy-Five Percent (75%) of the
24 PAGA Penalties, or \$15,000.00, shall be paid to the LWDA (“Payment of PAGA Penalties to
25 LWDA”). Twenty-Five Percent (25%) of the PAGA Penalties, or \$5,000.00, shall remain a part of
26 the Net Settlement Amount, for distribution to Participating Class Member on a *pro rata* basis.

27 28. “Participating Class Member” means a Class Member who does not submit a valid
28 and timely Request for Exclusion.

1 29. “Parties” means the Plaintiff and Defendants collectively.

2 30. “Plaintiff” means Plaintiff Levi Maldonado. “Plaintiff” is synonymous with the term
3 “Class Representative.”

4 31. “Preliminary Approval Date” means the date the Court enters the Preliminary
5 Approval Order.

6 32. “Preliminary Approval Order” means the order preliminarily approving the
7 Settlement and proposed Class Notice, substantially in the form attached hereto as **Exhibit 2**,
8 including any revisions required by the Court.

9 33. “Released Claims” means all causes of action and claims that were alleged or could
10 have been alleged under the Labor Code, state or local wage and hour laws and Wage Orders,
11 whether known or unknown, based on the facts and legal theories contained in the First Amended
12 Complaint, including but not limited to: (i) claims for unpaid minimum wages (Cal. Lab. Code §§
13 1194, 1197, 1197.1); (ii) claims for unpaid overtime (Cal. Lab. Code §§ 510, 1198); (iii) claims for
14 non-compliant meal periods and/or associated premiums (Cal. Lab. Code §§ 226.7, 512(a)); (iv)
15 claims for paid sick leave wages (Cal. Lab. Code §§ 233, 245-249); (v) claims for failure to timely
16 pay wages upon termination of employment and associated waiting time penalties (Cal. Lab. Code
17 §§ 201-203); (vi) claims for the failure to timely pay wages during employment (Cal. Lab. Code §
18 204); (vii) claims for wage statement violations (Cal. Lab. Code § 226(a)); (viii) claims for failure
19 to maintain/keep requisite payroll records (Cal. Lab. Code § 1174); (ix) claims for unreimbursed
20 business expenses (Cal. Lab. Code §§ 2800); (x) claims for violations of California Business &
21 Professions Code, §§ 17200, *et seq.* arising out of the aforementioned claims; (xi) claims for civil
22 penalties arising under the Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698-2699.5)
23 (“PAGA”) arising out of the aforementioned claims; (xii) claims that the Class Member is an
24 “aggrieved employee” under PAGA with respect to any of the aforementioned claims released
25 herein; and (xiii) claims for attorneys’ fees, costs and expenses for all causes of action and claims
26 that were alleged in the Action or reasonably could have been alleged based on the facts and legal
27 theories contained in the First Amended Complaint. Other than for Plaintiff, claims of Class
28 Members, if any, for vested benefits, wrongful termination, unemployment insurance, disability

1 benefits, social security, workers' compensation, claims while classified as exempt, and claims
2 outside of the Class Period are not encompassed within the definition of "Released Claims."

3 34. "Released Parties" means Defendants and their parents, predecessors, successors,
4 subsidiaries, affiliates, partners, owners, assigns, trusts, employees, officers, agents, attorneys,
5 stockholders and franchisor Planet Fitness, Inc.

6 35. "Request for Exclusion" means the written notice a Class Member may submit to
7 the Settlement Administrator no later than the Response Deadline to request exclusion from the
8 Settlement Class.

9 36. "Response Deadline" means the deadline by which Class Members must mail and
10 postmark Requests for Exclusion, or Notices of Objection, to the Settlement Administrator. The
11 Response Deadline will be forty-five (45) calendar days from the initial mailing of the Class Notice
12 by the Settlement Administrator, unless the forty-fifth (45th) calendar day falls on a Sunday or
13 Federal holiday, in which case the Response Deadline will be extended to the next day on which
14 the U.S. Postal Service is open. The Response Deadline for Requests for Exclusion and Notices of
15 Objection will be extended by fifteen (15) calendar days for any Class Member who is re-mailed a
16 Class Notice by the Settlement Administrator, unless the fifteenth (15th) calendar day falls on a
17 Sunday or Federal holiday, in which case the Response Deadline will be extended to the next day
18 on which the U.S. Postal Service is open. The Response Deadline may also be extended by express
19 agreement between Class Counsel and Defendants. Under no circumstances, however, will the
20 Settlement Administrator have the authority to unilaterally extend the deadline for Class Members
21 to submit a Request for Exclusion, or Notice of Objection.

22 37. "Settlement Administration Costs" means the costs payable from the Maximum
23 Settlement Amount to the Settlement Administrator for administering this Settlement. The
24 Settlement Administration Costs are currently estimated to be no more than Four Thousand and
25 Eight Hundred Dollars (\$4,800.00).

26 38. "Settlement Administrator" means Simpluris, Inc. or any other settlement
27 administrator agreed to by the Parties and approved by the Court.

28 39. "Settlement Class Members" or "Settlement Class" means all Participating Class

1 Members.

2 40. “Settlement” shall mean the settlement between the Parties that is memorialized in
3 this Stipulation and subject to Court approval.

4 41. “Stipulation” means this Joint Stipulation of Class Action Settlement and Release,
5 and its Exhibits, attached hereto and incorporated herein, including all subsequent amendments
6 agreed to in writing by the Parties and any exhibits to such amendments.

7 42. “Workweek” means any week in which a Class Member actually performed paid
8 work for Defendants during the Class Period as an hourly-paid “non-exempt” employee. All Class
9 Members will be credited with at least one Workweek.

10 43. “Workweek Value” means the dollar amount payable to Participating Class
11 Members for each Workweek that results from dividing the Net Settlement Amount by the total
12 number of Workweeks credited to all Participating Class Members.

13 **II. RECITALS**

14 44. PAGA Notice Letters to LWDA. On October 18, 2018, Class Counsel filed a
15 “PAGA Notice” letter with the LWDA on behalf of a former employee of Defendant Wingman
16 Partners, Inc., advising the LWDA that the former employee intended to seek civil penalties
17 pursuant to PAGA as to both Wingman Partners, Inc. and Wingman Partners II, Inc. On December
18 4, 2018, Class Counsel sent a letter to the LWDA, adding Plaintiff as an “aggrieved employee,”
19 and advising the LWDA that Plaintiff intended to seek civil penalties pursuant to PAGA on behalf
20 of himself, other “aggrieved employees,” and the State of California.

21 45. Complaint Filed In Los Angeles County Superior Court. On March 18, 2019,
22 Plaintiff commenced the Action against Defendants by filing his initial class action complaint in
23 the Court. In the Complaint, on behalf of himself and all others similarly situated, Plaintiff alleged
24 causes of action for: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Wages; (3)
25 Failure to Provide Meal Periods; (4) Violations of California Labor Code §§ 233 and 234; (5)
26 Failure to Reimburse Business Expenses; (6) Failure to Provide Accurate Wage Statements; (7)
27 Failure to Pay Wages Timely at Separation; (8) Violations of the Unfair Competition Law; and (9)
28 Civil Penalties Pursuant to PAGA.

1 46. Mediation And Settlement. On April 18, 2019, the Parties and their counsel
2 participated in a full-day mediation with Lynn Frank, Esq., a well-respected mediator with
3 considerable experience mediating wage and hour class actions. At the conclusion of the April 18,
4 2019, mediation, the Parties reached an agreement to resolve the Action pursuant to terms set forth
5 in a Memorandum of Understanding. This Stipulation formalizes the Settlement agreement reached
6 by the Parties.

7 47. Investigation. The Parties have conducted a detailed and comprehensive
8 investigation of the claims asserted against the Defendants and of the applicable law. Although the
9 Action—including discovery—was stayed by the Court’s Initial Status Conference Order, the
10 Parties agreed to engage in informal discovery to prepare for mediation, which included: (a)
11 analysis by the Parties of Defendants’ timekeeping and compensation policies, meal and rest break
12 policies, call-in policies and practices, training documents, and timekeeping and payroll data; (b)
13 research of the law applicable to Plaintiff’s claims and Defendants’ affirmative defenses, as well as
14 the damages alleged by Plaintiff; (c) examination and analysis of information and documents; and
15 (d) consideration of information disclosed at and in connection with mediation. In addition, Class
16 Counsel’s investigation of the Action included (a) multiple telephonic conferences and in-person
17 meetings with Plaintiff; (b) interviews with several putative Class Members; (c) investigation into
18 the viability of class treatment of the claims asserted in the Action; and (d) assembling data for
19 calculating damages and analysis of potential class-wide damages. Additionally, the Parties have
20 determined that the estimated size of the Class is approximately 163 Class Members.

21 48. Benefits Of Settlement to Class Members. The Class Representative and Class
22 Counsel recognize the uncertainty and risk of the outcome of further litigation, and the difficulties
23 and delays inherent in such litigation. The Class Representative and Class Counsel also are aware
24 of the burdens of proof necessary to establish liability for the claims asserted in the Action, the
25 defenses to those claims, and the difficulties inherent in the Action. Based on the foregoing, the
26 Class Representative and Class Counsel have determined that the Settlement set forth in this
27 Stipulation is a fair, adequate, and reasonable settlement, and that it is in the best interest of the
28 Class Members. Based on their discovery and investigation, Class Counsel has determined that the

1 Settlement is well within the range of reasonableness. The Settlement embodied and documented in
2 this Stipulation is the product of extensive, arm's length negotiations.

3 49. Defendants' Reasons For Settling. Defendants have concluded that any further
4 defense of this Action would be protracted and expensive. Substantial amounts of time, energy, and
5 resources have been, and will continue to be, devoted to the defense of the Action unless this
6 Settlement is made. Therefore, Defendants have agreed to settle, in the manner and upon the terms
7 set forth in this Stipulation, in order to fully and finally resolve the claims asserted in the Action.

8 50. Denial Of Wrongdoing. Defendants have denied and continue to deny each of the
9 claims asserted by Plaintiff in this Action. Defendants have asserted and continue to assert defenses
10 to the Plaintiff's claims, and have expressly denied and continue to deny any wrongdoing
11 whatsoever.

12 **III. TERMS OF SETTLEMENT**

13 **A. First Amended Complaint**

14 51. Upon execution of this Settlement Agreement, Plaintiff will file a First Amended
15 Complaint ("FAC") in this Action to conform the pleadings with the scope and definitions of the
16 Settlement Class and Released Claims. The FAC will be deemed the operative Complaint for
17 purposes of defining the scope of the Settlement Class and Released Claims and for all other
18 purposes herein. If the Court fails to approve this Settlement, or if the Settlement is terminated,
19 cancelled, or fails to become effective for any reason whatsoever, the Parties agree that the FAC
20 will remain the operative Complaint and that Plaintiff shall retain all rights to amend the FAC that
21 he possessed prior to the execution of the Stipulation.

22 **B. Class Settlement Consideration and Distributions**

23 52. Maximum Settlement Amount. Defendants shall pay the Maximum Settlement
24 Amount of Five Hundred Thousand Dollars (\$500,000.00), exclusive of the Employer's Share of
25 Payroll Taxes, to settle this Action. Defendants shall pay the Employer's Share of Payroll Taxes in
26 addition to the Maximum Settlement Amount. After the Effective Date, the Maximum Settlement
27 Amount will be used to satisfy all of Defendants' liabilities arising from the Settlement other than
28 the Employer's Share of Payroll Taxes on the portion of the Net Settlement Amount allocated to

1 the payment of disputed wages, which shall be paid separately by Defendants. No portion of the
2 Maximum Settlement Amount shall revert to the Defendants or result in an unpaid residue.

3 53. Deductions from Settlement Amount. Deductions from the Maximum Settlement
4 Amount, all subject to Court Approval, shall be made for the following:

5 (a) Class Counsel’s Attorneys’ Fees and Costs. Class Counsel may apply for an award
6 of attorneys’ fees and costs, with the fee portion not to exceed 33.3% of the
7 Maximum Settlement Amount (i.e., up to One Hundred and Sixty-Six Thousand and
8 Five Hundred Dollars (\$166,500.00)), and the costs portion not to exceed Twelve
9 Thousand Dollars (\$12,000.00). The Attorneys’ Fees and Costs will be paid from
10 the Maximum Settlement Amount. Defendants agree not to oppose any motion that
11 is consistent with this paragraph. The amount of Attorneys’ Fees and Costs shall
12 include all past and future attorneys’ fees and costs to Class Counsel—including,
13 without limitations, all time and costs expended by Class Counsel in defending the
14 Settlement and securing final approval of the Settlement (including any appeals).
15 Any amounts not awarded by the Court under this provision shall be included in the
16 Net Settlement Amount.

17 (b) Class Representative Service Award. Class Counsel may apply for a Class
18 Representative Service Award in an amount up to Five Thousand Dollars
19 (\$5,000.00) for Plaintiff for his service to the Class and his general release of all
20 claims. The Class Representative Service Award will be paid from the Maximum
21 Settlement Amount, and will be paid in addition to any Individual Settlement
22 Payment to which the Class Representative may otherwise be entitled as a
23 Participating Class Member. Defendants agree not to oppose any motion that is
24 consistent with this paragraph. Any amounts not awarded by the Court under this
25 provision shall be included in the Net Settlement Amount.

26 (c) Payment of PAGA Penalties to LWDA. The Parties have agreed to allocate Twenty
27 Thousand Dollars (\$20,000.00) of the Maximum Settlement Amount to resolve the
28 Class Members’ claims arising under PAGA. California Labor Code § 2699(i)

1 requires the Parties to distribute any settlement of PAGA claims as follows: 75% to
2 the LWDA for enforcement of labor laws and education of employers; and 25% to
3 the “aggrieved employees.” Accordingly, 75% of the PAGA Penalties, or \$15,000,
4 shall be paid to the LWDA. The remaining 25% of the PAGA Penalties, or \$5,000,
5 shall be allocated to the Net Settlement Amount for distribution to Participating
6 Class Members.

7 (d) Settlement Administrative Costs. All Settlement Administration Costs shall be paid
8 from the Maximum Settlement Amount. The Settlement Administration Costs
9 include but are not limited to providing the Class Notice, locating Class Members,
10 processing Requests for Exclusion and Notices of Objection, and calculating,
11 administering and distributing Individual Settlement Payments to the Participating
12 Class Members and related tax forms. The amount of Settlement Administration
13 Costs is estimated not to exceed Four Thousand and Eight Hundred Dollars
14 (\$4,800). Defendants agree not to oppose any motion that is consistent with this
15 paragraph. If the actual Settlement Administrative Costs are less than Four
16 Thousand and Eight Hundred Dollars (\$4,800), those amounts shall be included in
17 the Net Settlement Amount.

18 (e) Individual Settlement Payments To Participating Class Members. After the Court-
19 approved amounts for Class Counsel’s Attorneys’ Fees and Costs, the Class
20 Representative Service Award, the Payment of PAGA Penalties to LWDA and
21 Settlement Administration Costs have been deducted from the Maximum Settlement
22 Amount, the remainder—the Net Settlement Amount—shall be distributed to
23 Participating Class Members pursuant to this Stipulation.

24 54. Net Settlement Amount. The Parties estimate the Net Settlement Amount as follows:

25	Maximum Settlement Amount:	\$500,000.00
26	PAGA Penalties to LWDA	-\$15,000.00
27	Class Representative Service Award (estimated)	-\$5,000.00
27	Settlement Administration Costs (estimated)	-\$4,800.00
28	Class Counsel’s Attorneys’ Fees (estimated)	-\$166,500.00
28	<u>Class Counsel Litigation Costs (estimated)</u>	<u>-\$12,000.00</u>

Net Settlement Amount (estimated) \$296,700.00

1
2 55. Calculation of Individual Settlement Payments. Individual Settlement Payments will
3 be calculated and apportioned from the Net Settlement Amount based on the number of
4 Workweeks a Class Member worked during the Class Period. Specific calculations of Individual
5 Settlement Payments will be made as follows:

6 (a) The Settlement Administrator will calculate the total number of Workweeks worked
7 by each Class Member during the Class Period and the aggregate total number of
8 Workweeks worked by all Class Members during the Class Period.

9 (b) The Settlement Administrator will use the following formula to calculate each Class
10 Member's Individual Settlement Payment: The Net Settlement Amount will be
11 divided by the aggregate total number of Workweeks of all Class Members,
12 resulting in the "Workweek Value." Each Class Member's Individual Settlement
13 Payment will be calculated by multiplying each individual Class Member's total
14 number of Workweeks by the Workweek Value.

15 (c) The Individual Settlement Payment will be reduced by the Employee's Share of
16 Payroll Taxes with respect to the wage portion of the Individual Settlement
17 Payment.

18 56. Tax Treatment of Individual Settlement Payments. For tax reporting purposes, all
19 Individual Settlement Payments shall be allocated as follows: (a) 20% as wages that will be subject
20 to deductions and withholdings for the Employee's Taxes and Required Withholding; and (b) 80%
21 as penalties and interest that will not be subject to deductions and withholdings. The Settlement
22 Administrator will issue each Participating Class Member an IRS Form W-2 with respect to the
23 portion of the Individual Settlement Payment allocated to wages, and an IRS Form-1099 with
24 respect to the portion allocated to penalties and interest. Prior to mailing Settlement checks, the
25 Settlement Administrator will calculate and deduct the Employee's Taxes and Required
26 Withholding from the "wage" portion of the Settlement payment. The Settlement Administrator
27 shall also pay the Employee's Taxes and Required Withholding and Employer's Share of Payroll
28 Taxes to the appropriate taxing authorities.

1 57. No Tax Advice. The Parties and Parties' Counsel make no representations and do
2 not offer any tax advice to each other, to Class Members, or to any other person concerning the
3 taxability, tax treatment or legal effect of any tax laws on the payments made pursuant to the
4 Settlement. Plaintiff and Class Counsel understand and agree that they, along with Participating
5 Class Members, shall be individually responsible for the payment of all applicable taxes on the
6 payments they respectively receive under the terms of this Settlement. The Class Notice shall
7 inform Class Members that the Parties and Parties' Counsel cannot make any representations or
8 offer any advice concerning the tax consequences of any payment made under this Settlement. The
9 Class Notice shall further state that Class Members should consult with their own tax advisors
10 concerning the tax consequences of any Settlement payment they receive. The Parties agree that
11 Defendants and each Participating Class Member are solely responsible for determining the tax
12 consequences of payments made pursuant to this Settlement and for paying taxes, if any, which are
13 determined to be owed by each of them on such payments (including penalties and interest related
14 thereto) by any taxing authority, whether state, local, or federal.

15 58. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
16 Participating Class Members under this Settlement, as well as any other payments made pursuant to
17 this Settlement, will not be utilized to calculate any additional benefits under any benefit plans to
18 which any Class Members may be eligible, including, but not limited to profit-sharing plans, bonus
19 plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any
20 other benefit plan. Rather, it is the Parties' intention that this Settlement will not affect any rights,
21 contributions, or amounts to which any Class Members may be entitled under any benefit plans.

22 **C. Conditional Certification of Settlement Class**

23 59. The Settlement Class. For purposes of this Stipulation and the Settlement of the
24 Action only, the Parties stipulate to the conditional certification of the Settlement Class, to the
25 appointment of Class Counsel, and to the approval of Plaintiff as a suitable Class Representative. If
26 the Court fails to approve this the Settlement, or if the Settlement is terminated, cancelled, or fails
27 to become effective for any reason, the Parties' stipulations in this paragraph will be void, and the
28 litigation of the Action shall revert to its status with respect to class certification and otherwise as it

1 existed prior to the date of this Stipulation.

2 **D. Releases and Waivers**

3 60. Participating Class Members' Release of Claims. As of the Effective Date, in
4 exchange for the consideration set forth in this Agreement, each Participating Class Member shall
5 release the Released Parties from the Released Claims for the Class Period. Other than for Plaintiff,
6 claims of Class Members, if any, for vested benefits, wrongful termination, unemployment
7 insurance, disability benefits, social security, workers' compensation, claims while classified as
8 exempt, and claims outside of the Class Period are not encompassed within the definition of
9 "Released Claims."

10 61. Plaintiff's General Release of Claims. As of the Effective Date, in exchange for the
11 consideration set forth in this Agreement, Plaintiff does hereby waive, release, acquit and forever
12 discharge the Released Parties, from any and all claims, actions, charges, complaints, grievances
13 and causes of action, of whatever nature, whether known or unknown, which exist or may exist on
14 Plaintiff's behalf as of the date of this Agreement, including, but not limited to, any and all tort
15 claims, contract claims, wage claims, wrongful termination claims, retaliation claims, disability
16 claims, benefit claims, public policy claims, retaliation claims, statutory claims, personal injury
17 claims, emotional distress claims, invasion of privacy claims, defamation claims, fraud claims,
18 *quantum meruit* claims, and any and all claims arising under any federal, state or other
19 governmental statute, law, regulation or ordinance, including, but not limited to, claims for
20 violation the California Labor Code, the Wage Orders of California's Industrial Welfare
21 Commission, the Americans with Disabilities Act, the Employee Retirement Income Security Act,
22 Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, the
23 California Family Rights Act, the Family Medical Leave Act, California's Whistleblower
24 Protection Act, California Business & Professions Code Section 17200, *et seq.*, and any and all
25 claims arising under any federal, state or other governmental statute, law, regulation or ordinance.
26 This release by Plaintiff is not intended to release any claims that cannot be waived or released as a
27 matter of law, including specifically, without limitation, any claim under the California workers'
28 compensation statute.

1 62. Plaintiff’s Waiver Of California Civil Code § 1542. As of the Effective Date, in
2 exchange for the consideration set forth in this Agreement, Plaintiff also agrees to expressly waive
3 the provisions of California Civil Code § 1542, which provides as follows:

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

11 63. The Plaintiff’s general release and waiver of California Civil Code § 1542 shall
12 cover the time period from the start of his employment with Defendants up to the Effective Date.

13 **E. Nullification of Settlement Agreement**

14 64. Non-Approval of this Stipulation. In the event that this Settlement is not
15 preliminarily or finally approved by the Court, fails to become effective, or is reversed or
16 withdrawn by the Court: (a) this Settlement shall be void *ab initio* and of no force or effect, and
17 shall not be admissible in any judicial, administrative, or arbitral proceeding for any purpose or
18 with respect to any issue, substantive or procedural; (b) the conditional class certification shall be
19 void *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative,
20 or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; and
21 (c) none of the Parties to this Settlement will be deemed to have waived any claims, objections,
22 defenses, or arguments in the Action, including with respect to the issue of class certification.

23 65. Option to Rescind the Settlement. Defendants may elect to rescind the Settlement if
24 ten percent (10%) or more of the Class Members submit timely Requests for Exclusion and do not
25 rescind them by the Response Deadline. If Defendants wish to exercise their conditional right to
26 rescind, Defendants shall: (a) provide written notice to Class Counsel within seven (7) calendar
27 days after the Response Deadline and (b) pay all Settlement Administration Costs incurred to the
28 date of rescission, and the Parties shall proceed in all respects as if this Agreement had not been
executed. Other than Settlement Administration Costs incurred to the date of rescission, no other
sums provided for in the within shall be due and payable by Defendants.

1 **IV. SETTLEMENT ADMINISTRATION**

2 **A. Settlement Administrator's Duties in General**

3 66. The Settlement Administrator shall be responsible for (a) processing the data
4 provided by Defendant to be used in calculating Individual Settlement Payments; (b) preparing,
5 printing, and mailing to Class Members the Class Notice (attached hereto as **Exhibit 1**), as well as
6 following up with reasonable skip tracing; (c) notifying the Parties of the identity of Class
7 Members who submit timely Requests for Exclusion and Notices of Objection; (d) calculating and
8 mailing Individual Settlement Awards to Class Members; (e) calculating and paying the
9 Employer's Share of Payroll Taxes and Employee's Taxes and Required Withholding; (f) filing
10 any required federal and state tax forms and related agency reporting; (g) filing any required reports
11 with the Court; and (h) all other tasks described in this Stipulation, as to which the Parties mutually
12 agree, and/or which the Court orders the Settlement Administrator to perform.

13 **B. Notice to Class Members**

14 67. Delivery of the Class List. Within fourteen (14) calendar days after the Preliminary
15 Approval Date, Defendants shall provide the Settlement Administrator with the Class List for
16 purposes of mailing the Class Notice to Class Members. Defendants shall also provide a modified
17 version of the Class List to Class Counsel containing each Class Member's (a) full name (e) dates
18 of employment; and (d) the respective number of Workweeks that each Class Member worked as a
19 non-exempt employee in California during the Class Period, according to Defendants' records.
20 Class Counsel shall maintain the modified version of the Class List as confidential.

21 68. Notice by First-Class U.S. Mail. Within fourteen (14) calendar days after receiving
22 the Class List, the Settlement Administrator shall determine the number of Workweeks for each
23 Class Member, shall populate the Class Notice for each Class Member accordingly and shall mail
24 the Class Notice to all Class Members via first-class U.S. Mail using the mailing address
25 information provided by Defendants, unless modified by any updated address information that the
26 Settlement Administrator obtains in the course of administration of the Settlement. For purposes of
27 calculating the estimated Individual Settlement Payments, the Settlement Administrator shall
28 calculate the estimated Net Settlement Amount based on the estimated values in Paragraph 53 prior

1 to providing the Class Notice to Class Members.

2 69. Re-Mailing Of Returned Notices. Any Class Notices returned to the Settlement
3 Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the
4 forwarding address affixed thereto. If no forwarding address is provided, the Settlement
5 Administrator shall promptly attempt to determine a correct address by lawful use of skip-tracing,
6 or other search using the name, address and/or Social Security number of the Class Member
7 involved, and shall then perform a re-mailing if another mailing address is identified by the
8 Settlement Administrator. Class Members who received a re-mailed Notice Packet shall have their
9 Response Deadline extended fifteen (15) days from the original Response Deadline.

10 70. The Class Notice. All Class Members will be mailed a Class Notice. Each Class
11 Notice will provide: (a) information regarding the nature of the Action; (b) a summary of the
12 Settlement’s principal terms; (c) the Settlement Class definition; (d) the total number of
13 Workweeks each respective Class Member worked for Defendants during the Class Period; (e)
14 each Class Member’s estimated Individual Settlement Payment and the formula for calculating
15 Individual Settlement Payments; (f) the dates which comprise the Class Period; (g) instructions on
16 how to submit valid Requests for Exclusion or Notices of Objection; (h) instructions on how to
17 dispute the number of Workweeks set forth in the Class Notice; (i) the deadlines by which the
18 Class Member must postmark Requests for Exclusions and Notices of Objection to the Settlement;
19 (j) a description of the Released Claims; and (k) the date for the Final Approval Hearing.

20 71. Disputed Information on Class Notices. Class Members will have an opportunity to
21 dispute the number of Workweeks credited to them, based on Defendants’ records, as reflected in
22 their Class Notice. To the extent Class Members dispute the number of Workweeks with which
23 they have been credited, Class Members may submit a written dispute along with credible,
24 supporting materials to the Settlement Administrator, postmarked on or before the Response
25 Deadline, which shows that such information is inaccurate. The written dispute must contain the
26 required information, as set forth in the Class Notice. The Settlement Administrator will decide the
27 dispute. Defendants’ records will be presumed correct, but the Settlement Administrator will
28 evaluate the dispute and supporting materials submitted by the Class Member and will make the

1 final decision as to the merits of the dispute. All disputes will be decided within ten (10) calendar
2 days of the Settlement Administrator’s receipt of the dispute from any Class Member.

3 72. Toll-Free Telephone Line. No later than the Notice Date, the Settlement
4 Administrator shall establish a toll-free telephone number, through which Class Members may
5 obtain information about the Action and the Settlement pursuant to the terms and conditions of this
6 Settlement.

7 73. Settlement Website. No later than the Notice Date, the Settlement Administrator
8 shall establish a static Internet website (“Settlement Website”) that will inform Class Members of
9 the terms of this Settlement, their rights, dates, and deadlines with respect to the Settlement and
10 related information. The Settlement Website shall include, in .pdf format, the following: (i) the
11 Class Notice; (ii) the Preliminary Approval Order; (iii) this Stipulation (including all of its
12 Exhibits); (iv) the First Amended Complaint (and any Answer to the First Amended Complaint);
13 and (v) any other materials and information agreed upon by the Parties and/or required by the
14 Court.

15 74. Declaration of Due Diligence and Proof of Mailing. No later than twenty (20)
16 calendar days after the Response Deadline, the Settlement Administrator shall provide Class
17 Counsel and Defendants’ Counsel with a Declaration of Due Diligence and Proof of Mailing with
18 regard to the mailing of the Class Notice and its attempts to locate Class Members. The Declaration
19 shall specify (a) the number of Class Members to whom Class Notices were sent; (b) the number of
20 Class Members to whom Class Notices were not delivered; (c) the final number of Requests for
21 Exclusions and Notices of Objection; (d) the average amount of Individual Settlement Payments to
22 Participating Class Members; (e) the lowest Individual Settlement Payment; (f) the highest
23 Individual Settlement Payment; and (g) the amount of the Class Representative’s Individual
24 Settlement Payment, based on the data then in the Settlement Administrator’s possession. Class
25 Counsel shall file this Declaration with the Court. Prior to the Final Approval Hearing, the
26 Settlement Administrator will provide the Parties with a supplemental declaration of due diligence
27 if any material changes occur from the date of the filing of its prior declaration, and Class Counsel
28 will promptly file the supplemental declaration with the Court.

1 **C. Class Members' Response to Class Notice**

2 75. Request for Exclusion Procedure. Any Class Member wishing to opt-out from the
3 Settlement must mail a written Request for Exclusion to the Settlement Administrator by the
4 Response Deadline. The Request for Exclusion must: (i) set forth the full name, address, telephone
5 number, and last four digits of the Social Security number of the Class Member requesting
6 exclusion; (ii) be signed by the Class Member; (iii) set forth the case name and number; (iv) be
7 returned to the Settlement Administrator; (v) include the a clear statement that the Class Member
8 wishes to opt out of, or be excluded from the Settlement; and (vi) be postmarked on or before the
9 Response Deadline. The postmark date will be the exclusive means to determine whether a Request
10 for Exclusion has been timely submitted. At no time will any of the Parties or their counsel seek to
11 solicit or otherwise encourage Class Members to opt-out from the Settlement.

12 76. Objections Procedure. To object to the Settlement Agreement, a Class Member must
13 either mail a valid written Notice of Objection to the Settlement Administrator by the Response
14 Deadline, or appear at the Final Approval Hearing to discuss the Class Member's objection with
15 the Court and the Parties at Class Member's own expense. For a written Notice of Objection to be
16 valid and timely, it must include: (i) the objector's full name, signature, address, telephone number,
17 the approximate dates of employment at Defendants in California, and last four digits of Class
18 Member's Social Security number; (ii) the case name and number; (iii) a written statement of all
19 grounds for the objection accompanied by any legal support for such objection; (iv) copies of any
20 papers, briefs, or other documents upon which the objection is based, if any; (v) a statement
21 describing whether the objector intends to appear at the Final Approval Hearing, either in person or
22 through counsel at the Class Member's expense; and (vi) be postmarked on or before the Response
23 Deadline. The date of the postmark of the Notice of Objection will be deemed the exclusive means
24 for determining that the Notice of Objection is timely. The Settlement Administrator shall promptly
25 provide copies of any Notices of Objection to Class Counsel and Defendants' Counsel, including
26 the postmark dates of each such objection. Only Class Members who do not submit valid Requests
27 for Exclusion may object, either in writing or in person at the Final Approval Hearing. To the
28 extent a timely written Notice of Objection is withdrawn before the Final Approval Hearing, such a

1 Notice of Objection shall be treated as though no objection has been made. At no time will any of
2 the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written
3 objections to the Settlement Agreement or to appeal from the Judgment. Class Counsel and
4 Defendants' Counsel shall file any responses to any written Notices of Objection at least sixteen
5 (16) calendar days before the Final Approval Hearing. If a Class Member fails to submit a written
6 objection or to appear at the Final Approval hearing to make an oral objection, the Class Member
7 will be deemed to have waived all objections and will be foreclosed from making any objections—
8 whether by appeal or otherwise—to the Settlement. If the Court rejects the Class Member's
9 objection, or if the Court approves the settlement despite any objections, the Class Member will be
10 deemed to be a Participating Class Member and will be bound by the terms of this Settlement.

11 77. Certification Reports Regarding Class Members' Responses. The Settlement
12 Administrator will provide Defendants' Counsel and Class Counsel a weekly report that certifies
13 the number of Requests for Exclusion and Notices of Objection that the Settlement Administrator
14 has received from Class Member. Additionally, the Settlement Administrator will inform
15 Defendants' Counsel and Class Counsel as to any dispute that it receives from Class Members
16 regarding the Workweeks credited to them. The Settlement Administrator shall also provide
17 Defendants' Counsel and Class Counsel with any updated reports regarding the administration of
18 the Settlement as needed or requested.

19 78. Access to Information. The Settlement Administrator will maintain all Requests for
20 Exclusion and Notices of Objection received from Class Members. The Settlement Administrator
21 will promptly provide copies of all timely and valid Notices of Objection submitted by any Class
22 Members to Class Counsel and Defendants' Counsel. The Settlement Administrator shall also
23 provide the identities of any Class Members who submit timely and valid Requests for Exclusion to
24 Class Counsel and Defendants' Counsel no later than thirty (30) calendar days before of the Final
25 Approval Hearing.

26 **D. Duties Prior to Preliminary Court Approval**

27 79. Preliminary Approval Motion. At the earliest practicable time, Plaintiff shall file
28 with the Court a Motion for Preliminary Approval of Class Action Settlement and supporting

1 papers, which shall include this Stipulation. The Motion for Preliminary Approval of Class Action
2 Settlement shall seek entry of the Preliminary Approval Order, attached hereto as **Exhibit 2**, unless
3 the Court's orders during the approval process require revisions to be made. Class Counsel will
4 provide an opportunity for Defendants' Counsel to review the Motion for Preliminary Approval of
5 The Parties and their counsel will cooperate with each other and use their best efforts to obtain the
6 Court's preliminary approval of the Settlement.

7 80. LWDA Notice. Pursuant to California Labor Code § 2699(1)(2), Class Counsel shall
8 file this Stipulation online with the LWDA using the authorized California Department of
9 Industrial Relation's website on the same day that Class Counsel files the Motion for Preliminary
10 Approval of Class Action Settlement.

11 81. Amendment Of This Stipulation To Conform To The Court's Order. To the extent
12 the Court does not approve this Stipulation, or any term contained herein, and instead allows the
13 Parties to amend this Stipulation, the Parties agree to cooperate in good faith to amend the
14 Stipulation in accordance with the Court's direction, and to retain all other terms of the Stipulation
15 that the Court approves.

16 **E. Duties Following Preliminary Court Approval**

17 82. Timely Approval Of Documents To Be Mailed By The Settlement Administrator.
18 Counsel for the Parties shall respond to requests by the Settlement Administrator to approve all
19 Settlement administration documents, including the Class Notice to be mailed to the Class, within
20 seven (7) calendar days of the Settlement Administrator's request for approval.

21 83. Disputes Arising From Settlement Administration. Any disputes concerning
22 Settlement administration arising during the Settlement administration process must be resolved
23 informally by counsel for the Parties and, if the Parties cannot agree, by the Settlement
24 Administrator, within ten (10) calendar days of the Response Deadline.

25 84. Final Approval Motion. Plaintiff shall file with the Court a Motion for Final
26 Approval of Class Action Settlement and any other documents required to effectuate this
27 Settlement including, but not limited to, any additional proposed orders requested by the Court.
28 The [Proposed] Final Approval Order and [Proposed] Final Judgment to be submitted are attached

1 hereto as **Exhibits 3 and 4**, unless the Court's orders during the approval process require revisions
2 to be made. Class Counsel will be responsible for drafting all documents necessary to obtain final
3 approval. Class Counsel will also be responsible for drafting the attorneys' fees and costs
4 application to be heard at the final approval hearing. Class Counsel will provide an opportunity for
5 Defendants' Counsel to review the Motion for Final Approval prior to filing with the Court. The
6 Parties and their counsel will cooperate with each other in good faith and use their best efforts to
7 effect the Court's final approval of the Settlement and entry of Judgment.

8 85. Final Approval Hearing. After the Response Deadline, and with the Court's
9 permission, a Final Approval Hearing will be conducted to determine the final approval of the
10 Settlement along with the amounts payable for: (a) Attorneys' Fees and Costs; (b) Claims
11 Administration Costs; (c) the Class Representative Service Award; and (d) the Payment of PAGA
12 Penalties to LWDA. The Final Approval Hearing will not be held earlier than forty-five (45)
13 calendar days after the Response Deadline.

14 **F. Duties Following Final Court Approval**

15 86. Provision Of Final Approval Order And Final Judgment To Settlement
16 Administrator. Within two (2) business days of final approval by the Court of the Settlement
17 provided for in this Stipulation, Class Counsel shall provide the Settlement Administrator with a
18 copy of the Final Approval Order and Final Judgment.

19 87. Determination of Defendants' Employer Taxes. Not later than seven (7) calendar
20 days after the Effective Date, the Settlement Administrator shall calculate the Employers' Share of
21 Payroll Taxes and notify Class Counsel and Defendants' Counsel of the total amount of the
22 Employers' Share of Payroll Taxes that Defendants shall pay to the Settlement Administrator in
23 addition to the Maximum Settlement Amount

24 88. Time for Funding of the Settlement. Not later than fourteen (14) calendar days
25 following the Effective Date, Defendants shall transfer the Maximum Settlement Amount to the
26 Settlement Administrator in any feasible manner including, but not limited to, wiring that amount
27 to an account established by the Settlement Administrator. Additionally, not later than fourteen
28 (14) calendar days following the Effective Date, Defendants shall transfer the total amount of the

1 Employer's Share of the Payroll Taxes in any feasible manner including, but not limited to, wiring
2 that amount to an account established by the Settlement Administrator. The Settlement
3 Administrator will retain authority over the deposited funds, which are to be used in accordance
4 with this Stipulation and any orders of the Court. Defendants shall have no further obligations over
5 the distribution of the Maximum Settlement Amount.

6 89. Time for Mailing Of Individual Settlement Awards. Within ten (10) calendar days
7 after Defendants' transfer of funds to the Settlement Administrator, the Settlement Administrator
8 shall mail all Class Members their Individual Settlement Payments by first-class U.S. Mail to
9 Participating Class Members' last known address. Each check issued to a Class Member shall
10 remain valid and negotiable for one hundred twenty (180) days from the date of issuance. In
11 addition, within ten (10) calendar days after the Defendants provide the Maximum Settlement
12 Amount to the Settlement Administrator, the Settlement Administrator shall pay the applicable
13 taxes and required withholdings, if any, associated with each Participating Class Member's
14 Individual Settlement Payment.

15 90. Time for the Payment of PAGA Penalties to LWDA. The Settlement Administrator
16 shall pay the Payment of PAGA Penalties to LWDA approved by the Court within ten (10)
17 calendar days after Defendants' transfer of the Maximum Settlement Amount to the Settlement
18 Administrator.

19 91. Time for Payment Of Attorneys' Fees and Costs. The Settlement Administrator shall
20 pay the Class Counsel Attorneys' Fee and Costs in the amounts approved by the Court within ten
21 (10) calendar days after Defendants' transfer the Maximum Settlement Amount to the Settlement
22 Administrator. The Settlement Administrator shall issue an IRS Form 1099-MISC to Class Counsel
23 for payments made pursuant to this Paragraph.

24 92. Time for Payment Of Class Representative Service Award. The Settlement
25 Administrator shall pay Class Representative Service Award approved by the Court within ten (10)
26 calendar days after Defendants' transfer the Maximum Settlement Amount to the Settlement
27 Administrator. The Settlement Administrator shall transmit the payment to Class Counsel for
28 delivery to the Class Representative. The Settlement Administrator shall issue an IRS Form 1099-

1 MISC to the Class Representative for the payment made pursuant to this Paragraph.

2 93. Procedures For Uncashed Checks. Any checks paid to Participating Class Members
3 shall be negotiable for one hundred eighty (180) calendar days from the date of their issuance. A
4 Participating Class Member must cash his or her settlement check within one hundred eighty days
5 (180) calendar days after it is mailed to him or her. If a check remains uncashed after one hundred
6 eighty (180) calendar days from the initial mailing, or if a check is returned to the Settlement
7 Administrator as undeliverable during the one hundred eighty-day period, the Settlement
8 Administrator shall take all reasonable efforts to identify the Participating Class Member’s correct
9 address, including the performance of a “skip-trace.” If an updated address can be identified, the
10 Settlement Administrator shall issue another check to the Participating Class Member and mail it to
11 the Participating Class Member at his or her updated address. If an updated address for the
12 Participating Class Member cannot be identified, if a reissued check is once again returned to the
13 Settlement Administrator as undeliverable, or if the reissued check remains uncashed after one
14 hundred eighty (180) calendar days, the Settlement Administrator will keep an accounting of such
15 funds and shall give notice to the Parties of the total balance of uncashed Settlement Shares. A
16 Participating Class Member who fails to negotiate or receive their Settlement Share check despite
17 the procedures described above shall nevertheless remain bound by the Settlement and the release
18 of the Released Claims contained herein.

19 94. The funds represented by Settlement checks remaining uncashed for more than 180
20 days after issuance (collectively, “Uncashed Settlement Checks”) shall be voided and then shall be
21 transmitted to the Controller of the State of California to be held pursuant to the Unclaimed
22 Property Law, California Code of Civil Procedure § 1500, *et seq.* in the names of those
23 Participating Class Members who did not cash their settlement checks until such time they claim
24 their property. After the expiration of the 180-calendar day check cashing period, as outlined
25 above, the Settlement Administrator shall begin the process of transferring the funds in accordance
26 with California Code of Civil Procedure §§ 1500-1582 and the timing requirements set forth by the
27 Office of the State Controller. The Parties agree that this disposition results in no “unpaid residue”
28 under California Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out

1 to Participating Class Members, whether or not they all cash their settlement checks.

2 95. Declaration of Payment. Within sixty (60) calendar days after the Effective Date, the
3 Settlement Administrator shall prepare a declaration of payment stating that all payments required
4 under the Settlement have been made. Class Counsel shall file the Settlement Administrator's
5 declaration with the Court.

6 96. Declaration Regarding Uncashed Settlement Check Funds. Within ten (10) calendar
7 days after the date the Settlement Administrator transfers the total amount of funds represented by
8 the Uncashed Settlement Checks consistent with the State's Unclaimed Property Law, the
9 Settlement Administrator will prepare a declaration stating the total amount of funds represented by
10 Uncashed Settlement Checks and confirming that the procedures for the treatment of Uncashed
11 Settlement Checks established by this Stipulation have been followed. Class Counsel shall file the
12 Settlement Administrator's declaration with the Court.

13 **G. Miscellaneous Provisions**

14 97. Mutual Cooperation. The Parties and their counsel will cooperate with each other
15 and use their best efforts to effect the implementation of the Settlement. Such cooperation shall
16 include, but not be limited to, execution of such other documents and the taking of such other
17 actions as may reasonably be necessary to fulfill the terms of this Settlement. The Parties shall use
18 their best efforts, including all efforts contemplated by this Stipulation of Settlement and any other
19 efforts that may become necessary by Court Order, or otherwise, to effectuate this Stipulation and
20 the terms set forth herein.

21 98. Acknowledgement that the Settlement is Fair, Adequate and Reasonable. The
22 Parties and their respective counsel believe that this Settlement is a fair, adequate, and reasonable
23 settlement of the Action, and they have arrived at this Settlement through arm's length
24 negotiations, taking into account all relevant factors, present and potential.

25 99. No Retaliation or Discouragement. Defendants understand and acknowledge that
26 they have a legal obligation not to retaliate against any Class Member who elects to participate in
27 the Settlement, or who opts out of or objects to the Settlement. Defendants will refer any inquiries
28 regarding this Settlement to the Settlement Administrator or Class Counsel and will not discourage

1 Class Members, directly or indirectly, from making claims, opting out or objecting to the
2 Settlement.

3 100. No Future Employment of Plaintiff. As of the Effective Date, in exchange for the
4 consideration set forth in this Agreement, Plaintiff agrees to not seek employment in the future with
5 Defendants or any entity owned by Defendants. Plaintiff also agrees that neither Defendants nor
6 any entity owned by Defendants is obligated to offer employment to him in the future. Plaintiff
7 further agrees that this is a negotiated clause of this Stipulation, and that the refusal of Defendants
8 or any entity owned by Defendants to employ him in the future is neither evidence of retaliation
9 and/or otherwise actionable in any respect.

10 101. No Admissions By The Parties. Plaintiff has claimed and continues to claim that the
11 Released Claims have merit and give rise to liability on the part of Defendants. Defendants claim
12 that the Released Claims have no merit and do not give rise to liability. This Agreement is a
13 compromise of disputed claims. Nothing contained in this Agreement and no documents referred to
14 herein and no action taken to carry out this Agreement may be construed or used as an admission
15 by or against the Defendants or Plaintiff or Class Counsel as to the merits or lack thereof of the
16 claims asserted.

17 102. Vacating, Reversal, or Material Modification of Judgment on Appeal or Review. If,
18 after a notice of appeal, a petition for review, or a petition for certiorari, or any other motion,
19 petition, writ, or application, the reviewing court vacates, reverses, or modifies the Judgment such
20 that there is a material modification to the Settlement, and that court's decision is not completely
21 reversed and the Judgment is not fully affirmed on review by a higher court, then either Party will
22 have the right to void the Settlement, which the Party must do by giving written notice to the other
23 Parties, the reviewing court, and the Court, not later than fourteen (14) days after the reviewing
24 court's decision vacating, reversing, or materially modifying the Judgment becomes final. For the
25 purposes of this paragraph, a "material change" is a change to the terms outlined in the
26 Memorandum of Understanding executed by the parties. A vacation, reversal, or modification of
27 the Court's award of the Class Representative Service Award, or the award of Class Counsel
28 Attorneys' Fees and Costs will not constitute a vacation, reversal, or material modification of the

1 Judgment within the meaning of this paragraph.

2 103. No Spanish-Language Notice Necessary. Defendants represent and warrant that it is
3 unnecessary to translate the Class Notice into Spanish because 100% of the Class Members
4 demonstrated the ability to speak, read, and understand English while employed by Defendants.

5 104. Amendment Or Modification. This Settlement may not be amended or modified
6 except in a writing signed by the Parties or their successors-in-interest.

7 105. Labor Code § 206.5 Inapplicable. The Parties agree that California Labor Code §
8 206.5 does not invalidate any provisions of this Agreement, because, among other things, the
9 Released Claims were contested, a good faith dispute exists as to the claims and the Settlement was
10 bargained-for at arm's length and shall be approved by the Court.

11 106. Mutual Drafting of Agreement. The Parties agree that the terms of this Stipulation
12 and the accompanying exhibits are the result of lengthy, arm's length negotiations, and that this
13 Stipulation shall not be construed in favor of or against any of the Parties by reason of the extent to
14 which any of the Parties or their respective counsel participated in the drafting of this Stipulation.

15 107. Attorney Authorization. Class Counsel and Defense Counsel warrant and represent
16 that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action
17 required or permitted to be taken by such Parties pursuant to this Settlement to effectuate its terms,
18 and to execute any other documents required to effectuate the terms of this Settlement. In the event
19 the Parties are unable to reach agreement on the form or content of any document needed to
20 implement the Settlement, or on any supplemental provisions that may become necessary to
21 effectuate the terms of this Settlement, the Parties will seek the assistance of mediator Lynn Frank,
22 Esq., and if no resolution is reached the Court, and in all cases all such documents, supplemental
23 provisions and assistance of the court will be consistent with this Settlement.

24 108. Modification of Agreement. This Agreement, and any and all parts of it, may be
25 amended, modified, changed, or waived only by an express written instrument signed by all Parties
26 or their successors-in-interest.

27 109. Binding on Successors and Assigns. This Stipulation is binding upon, and inures to
28 the benefit of, the Parties' successors and assigns.

1 110. Governing Law. This Stipulation shall be governed by and interpreted according to
2 the laws of the State of California.

3 111. Exhibits Incorporated By Reference. The terms of this Stipulation include the terms
4 set forth in any attached Exhibit, which are incorporated by this reference as though fully set forth
5 herein. Any Exhibit to this Stipulation is an integral part of the Settlement.

6 112. Invalidity Of Any Provision. Before declaring any provision of this Stipulation
7 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible
8 consistent with applicable precedents so as to define all provisions of this Settlement valid and
9 enforceable.

10 113. Notices. Whenever this Stipulation requires or contemplates that one of the Parties
11 shall or may give notice to the other, notice shall be provided by e-mail and/or next-day (excluding
12 Saturdays, Sundays and Legal Holidays) express delivery service addressed to the address of the
13 Party's counsel appearing in this Stipulation.

14 114. Attorneys' Fees and Costs. The Parties shall bear their own respective attorneys'
15 fees and costs incurred in and/or arising out of the Action, except as otherwise provided for in this
16 Stipulation and as later approved by the Court.

17 115. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction
18 with respect to the interpretation, implementation and enforcement of the terms of this Agreement
19 and all orders and judgments entered in connection therewith, and the Parties and their counsel
20 hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing and
21 enforcing the settlement embodied in this Agreement and all orders and judgments entered in
22 connection therewith.

23 116. Waiver of Certain Appeals. Provided that the Judgment is consistent with the terms
24 and conditions of this Settlement, Plaintiff, Participating Class Members, Defendants, and their
25 respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights
26 to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, a
27 motion for new trial, a motion under Code of Civil Procedure Section 473, and any extraordinary
28 writ, and the Judgment therefore will become non-appealable by them at the time it is entered. The

1 waiver of appeal does not include any waiver of the right to oppose any appeal, appellate
2 proceedings, or post-judgment proceedings. If an appeal is taken from the Judgment, the time for
3 consummation of the Settlement (including making payments under the Settlement) will be
4 suspended until such time as the appeal is finally resolved and the Judgment, consistent with the
5 terms of this Settlement, becomes Final. As an additional exception, Plaintiff or Class Counsel may
6 appeal and/or seek reconsideration of any reduction to the Attorneys' Fees and Attorneys' Costs
7 below the amount they request from the Court.

8 117. Binding Agreement. The Parties intend that this Settlement shall be fully
9 enforceable and binding on all Parties, and that it shall be admissible and subject to disclosure in
10 any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that
11 otherwise might apply under federal or state law. This Stipulation is also binding upon, and inures
12 to the benefit of, the Parties' successors and assigns.

13 118. Entire Agreement. This Stipulation and any attached Exhibits constitute the entirety
14 of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements may
15 be deemed binding on the Parties.

16 119. Counterparts. This Stipulation may be executed in one or more counterparts. All
17 executed counterparts and each of them, including facsimile and scanned copies of the signature
18 page, will be deemed to be one and the same instrument provided that counsel for the Parties to this
19 Agreement exchange among themselves copies or originals of the signed counterparts.

20 120. Parties' Authority. The signatories to this Stipulation, including any person
21 executing this Stipulation on behalf of a corporate signatory, warrant and represent that they are
22 fully authorized to enter into this Stipulation and to bind the Parties hereto to the terms and
23 conditions of the Stipulation.

24 //
25 //
26 //
27 //
28 //

1 **IN WITNESS WHEREOF**, the Parties and their counsel have executed this Stipulation on
2 the date below their signatures or the signature of their representatives. The date of the Stipulation
3 shall be the date of the latest signature.

4 PLAINTIFF

5 Dated: _____, 2019
6 8/22/2019

DocuSigned by:
Levi Maldonado
Levi Maldonado

7 DEFENDANTS

8 Dated: _____, 2019
9 8/24/2019

DocuSigned by:
Matthew Jones
Wingman Partners, Inc.

By: Matthew Jones
Its: President

12 Dated: _____, 2019
13 8/24/2019

DocuSigned by:
Matthew Jones
Wingman Partners II, Inc.

By: Matthew Jones
Its: President

16 ***Approved as to form and content:***

17 CUSTIS LAW, P.C.

18 Dated: _____, 2019
19 8/21/2019

DocuSigned by:
Keith Custis
Keith Custis

Attorneys for Plaintiff and the Class

21 O'HAGAN MEYER

23 Dated: _____, 2019
24 8/23/2019

DocuSigned by:
Matthew C. Sniilek
Andrea Rosenkranz

Attorneys for Defendants

1 **PROOF OF SERVICE**
2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the County of Los Angeles, State of California; I am over the age of 18
4 years and not a party to the within action; my business address is 1875 Century Park East, Suite
700, Los Angeles, California 90067.

5 On August 26, 2019, I served the foregoing document(s) described as:

6 **DECLARATION OF KEITH CUSTIS IN SUPPORT OF PLAINTIFF'S MOTION FOR**
7 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

8 on the interested parties in this action through the means identified below:

9 Matthew Sgnilek
10 Andrea Rosenkranz
11 O'Hagan Meyer
4695 MacArthur Court, Suite 210
Newport Beach, CA 92660

12 **BY PERSONAL SERVICE:** By causing to be delivered the document(s) listed above to
13 the person(s) at the address(es) set forth above.

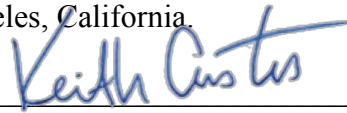
14 **BY ELECTRONIC TRANSMISSION THROUGH CASE ANYWHERE:** I caused the
15 foregoing document(s) to be sent to the parties listed on the Electronic Service List
maintained by Case Anywhere in the manner set forth in the Court's Order Authorizing
16 Electronic Service dated June 14, 2019.

17 **BY U.S. MAIL:** In accordance with the regular mailing collection and processing practices
18 of this office, with which I am readily familiar, by means of which mail is deposited with
the United States Postal Service at Los Angeles, California, that same day in the ordinary
19 course of business, I deposited such sealed envelope, with postage thereon fully prepaid, for
collection and mailing on this same date following ordinary business practices, addressed
as set forth below.

20 **BY EMAIL:** By electronically mailing a true and correct copy through Custis Law, P.C.'s
21 electronic mail system from kcustis@custislawpc.com to the email addresses set forth
below.

22 **BY OVERNIGHT DELIVERY:** I am readily familiar with the practice of Custis Law,
23 P.C. for collection and processing of correspondence for overnight delivery and know that
the document described herein will be deposited in a box or other facility regularly
24 maintained by Federal Express for overnight delivery.

25 I declare under penalty of perjury under the laws of the State of California that the above is
26 true and correct. Executed on August 26, 2019 in Los Angeles, California.

27 
28 _____
Keith Custis