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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

10 CORY WIGERSMA, individually  
and on behalf of all others similarly  
11 situated,

12 Plaintiff

13 v.

14 MOTION THEORY, INC., a  
California Corporation, and DOE  
15 ONE through and including DOE  
ONE HUNDRED,

16 Defendants.  
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Case No: BC 531180

**SETTLEMENT AGREEMENT**  
(JAMS REF. # 1210031625)

**NEUTRAL:** Joel Grossman, Esq.

**DATE:** July 31, 2014

**TIME:** 10 a.m. (8 hours)

**PLACE:** JAMS

1640 Cloverfield Blvd.  
Santa Monica, CA 90404

*[Class-Action and Collective-Action]*

1. Section 203 of the California Labor Code, Continuing Wages
2. Section 226 of the California Labor Code, Failure to Provide Information on Pay Stubs
3. Sections 510 and 1194 of the California Labor Code, Failure to Pay Minimum Wage and Overtime Compensation
4. 29 U.S.C. § 216(b), Fair Labor Standards Act, Failure to Pay Minimum Wage, Overtime, and Liquidated Damages
5. Civil Penalties pursuant to § 2698 *et seq.* of the California Labor Code

1 This Joint Stipulation For Settlement of Class Action (“Stipulation”) is made and entered  
2 into by and between Plaintiff Cory Wigersma (“Plaintiff”) and Defendant Motion Theory, Inc.  
3 (“Defendant”), collectively referred to as the “Parties.” The Parties hereby agree that this entire  
4 action shall be settled on the terms and conditions set forth in this Stipulation subject to the  
5 approval of the Court.

6 Following settlement negotiations between their respective counsel, the parties have agreed  
7 to settle the entire Lawsuit on the terms set forth in this Stipulation subject to approval by the  
8 Court.

9 The settlement set forth in this Stipulation shall include all of the claims asserted against  
10 Defendant in the Lawsuit, as well as all other claims encompassed by the release described in this  
11 Stipulation.

12 For purposes of the settlement set forth in this Stipulation, the parties agree that the Court  
13 shall certify two settlement classes:

14 a. The Final Wage Class: All employees tendered a final paycheck in  
15 California by or on behalf of Defendant in the State of California during the period of three years  
16 preceding the filing of this action to July 31, 2014.

17 b. The 226 Class: All non-exempt employees tendered a paycheck in California  
18 by or on behalf of Defendant in the State of California during the period from one year prior to the  
19 filing of the Complaint to the date July 31, 2014.

20 The members of the above classes are referred to in this Stipulation as the “Class  
21 Members.” Where appropriate, Class Members of the various classes set forth are distinguished by  
22 reference to the classes set forth above. Those Class Members who submit valid Claims are  
23 defined herein as “Participating Class Members.”

24 For purposes of the settlement set forth in this Stipulation only, Plaintiff contends and  
25 Defendant does not dispute that the requisites for certifying the Class are satisfied, specifically:

26 Each of the two classes set forth above contains sufficient members such that it is  
27 impracticable to join all Class Members;

28 Each settlement class is ascertainable;

1 Common questions of law and fact exist;

2 The claims of the named Plaintiff are typical of the claims of the Class Members  
3 and the named Plaintiff are adequate class representatives;

4 David Garrett and Alan Harris of Harris & Ruble (“Class Counsel”) are adequate to  
5 represent the Class;

6 The prosecution of separate actions by individual members of the settlement classes  
7 would create the risk of inconsistent or varying adjudications, which could establish  
8 incompatible standards of conduct; and

9 Questions of law and fact common to the members of the settlement class  
10 predominate over questions affecting individual members of the settlement class and  
11 a class action is superior to other available means for the fair and efficient  
12 adjudication of the controversy.

13 By entering into this Stipulation, Defendant admits no liability, and explicitly denies any  
14 liability or wrongdoing of any kind arising from any of the claims alleged in the Lawsuit. In  
15 particular, Defendant contends that it properly paid Class Members. Defendant has entered into  
16 this Stipulation solely to avoid the expense, risk, and nuisance of continued litigation.

17 Plaintiff and Class Counsel have conducted necessary discovery and performed a thorough  
18 analysis of the law and facts relating to the claims asserted in the Lawsuit. Based upon their  
19 investigation and discovery, and taking into account the sharply contested issues, the expense and  
20 time necessary to pursue the action through trial, the risks and costs of further prosecution of the  
21 Lawsuit, the uncertainties of complex litigation, the prior experience of Class Counsel in similar  
22 cases, and the substantial benefits to the Class Members, Plaintiff and Class Counsel believe that a  
23 settlement with Defendant on the terms set forth herein is fair, reasonable, adequate and in the best  
24 interests of the Class Members. Plaintiff, on his own behalf and on behalf of the Class Members,  
25 has agreed to settle the Lawsuit on the terms set forth herein.

26 The settlement set forth in this Stipulation requires Defendant to pay the total amount of  
27 \$1,000,000 (“Maximum Settlement Amount”). The Maximum Settlement Amount represents the  
28 absolute maximum amount Defendant shall be required to make toward the settlement of this

1 action. The Maximum Settlement Amount shall be used to cover all payments to Class Members  
2 and Class Counsel, including the employer and employee required payroll taxes, administration  
3 costs, attorneys' fees and costs, and Plaintiff's enhancement award payment. The Maximum  
4 Settlement Amount shall be deposited into an account from which the settlement payments,  
5 employer and employee required payroll taxes, enhancement payment to the Class Representatives,  
6 Class Counsel's attorneys' fees and costs, and the Class Administrator's expenses shall be paid.  
7 This amount may also be referred to herein as the "Settlement Fund." Payment of the Maximum  
8 Settlement Amount by Defendant is strictly for the purpose of compromising a disputed matter and  
9 shall not be construed as compensation for purposes of determining eligibility for any employee  
10 benefit provided by Defendant or by law, including but not limited to vacation, holiday, sick leave,  
11 or other health and welfare benefit.

12 The net amount of the Maximum Settlement Amount remaining after payment of  
13 administrative expenses, attorneys' fees and costs, the enhancement award payment (the "Net  
14 Settlement Amount" or "NSA") shall be paid to Class Members as penalties and interest in  
15 accordance with the terms of this Stipulation.

#### 16 **TERMS OF SETTLEMENT**

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

19 It is agreed by and among Plaintiff, Class Members and Defendant that the Lawsuit  
20 and any claims, damages, or causes of action arising out of the disputes which are  
21 the subject of the Lawsuit be settled and compromised as between the Class  
22 Members and Releasees, subject to the terms and conditions set forth in this  
23 Stipulation and the approval of the Court.

24 Effective Date: "Effective Date" means the date of the later of (a) entry by the Court  
25 of an order and judgment finally approving this Stipulation, along with an order  
26 granting final approval and judgment, or (b) if there are objections to the settlement  
27 which are not withdrawn prior to entry by the Court of an order and judgment  
28 finally approving this Stipulation, the later of: (i) expiration of all potential appeal

1 periods without a notice of appeal being filed of the final approval order or  
2 judgment; (ii) final affirmance of the final approval order and judgment by an  
3 appellate court as a result of any appeal(s), or final dismissal or denial of all such  
4 appeals (including any petitions for review, rehearing, certiorari, etc.); (iii) final  
5 disposition of any supplemental or subsequent proceedings resulting from any  
6 appeal(s) which affirm and make final the final approval order and judgment.

7 Settlement Payments to the Class Members:

8 (1) Payments to Participating Class Members: The Parties estimate the Net Settlement  
9 Amount will be approximately \$630,000. The NSA will be divided into two separate funds as  
10 follows: **(1) The Final Wage Class:** All employees tendered a final paycheck in California by or  
11 on behalf of Defendant in the State of California during the period of three years preceding the  
12 filing of this action to the date hereof and **(2) The 226 Class:** All non-exempt employees tendered a  
13 paycheck in California by or on behalf of Defendant in the State of California during the period  
14 from one year prior to the filing of the Complaint to the date hereof. Based on the assumption that  
15 the NSA will be approximately \$630,000, the Final Wage Class Pool will contain \$315,000 for  
16 distribution to the Final Wage Class and to those who opt in under the FLSA. Each Final Wage  
17 Class Member who files a claim form and does not opt-out will be deemed to have opted-in for  
18 purposes of the Fair Labor Standards Act settlement. Each Final Wage Class Member who does  
19 not opt-out and who submits a claim form will receive a share of the Final Wage Class Pool  
20 calculated as follows: each Final Wage Class Member shall receive a payment calculated as the  
21 Class Member's number of Eligible Work Weeks (as defined below) divided by the total number of  
22 Eligible Work Weeks for all Final Wage Class Members receiving a share of the Final Wage Class  
23 Pool, multiplied by the total amount remaining in the Final Wage Class Pool). **(2) The 226 Class**  
24 **Pool:** Based on the assumption that the NSA will be approximately \$630,000, the 226 Class Pool  
25 will contain \$315,000. Each 226 Class Member who does not opt-out and who submits a claim  
26 form will receive a pro rata share of the 226 Class Pool calculated by dividing the number of 226  
27 Class Members receiving a share of the 226 Class Pool by the total amount allocated to the 226  
28 Class Pool.

1 (2) For purposes of calculating an individual Class Member’s settlement payment,  
2 “Eligible Work Week” means any calendar week during the relevant Final Wage Class Period in  
3 which a Class Member worked any part of one or more days.

4 (3) Settlement checks mailed out to Class Members shall be valid for 120 days from the  
5 date of issuance. At the end of the 120 day period, the funds represented by any uncashed checks  
6 shall be distributed by the Claims Administrator to any later discovered Class Member based on the  
7 settlement formulas established herein. If there are no such later discovered Class Members or if  
8 any funds remain after such further distribution, all remaining amounts shall be paid to a cy pres  
9 recipient. The parties will jointly propose a cy pres recipient or, in the absence of agreement  
10 regarding a proposed cy pres recipient, each party will propose a cy pres recipient. .

11 (4) Tax Treatment of the Class Member Payments: The individual settlement payments  
12 to Class Members shall be apportioned as follows: Payments to Final Wage Class Members out of  
13 the Final Wage Class Pool will be treated as statutory penalties, not subject to income tax  
14 withholding, payroll taxes or any other tax required to be withheld by law. Payments to 226 Class  
15 Members out of the 226 Class Pool will be treated as statutory penalties not subject to income tax  
16 withholding and/or payroll taxes. The Parties each understand, agree and intend that the Settlement  
17 Fund will qualify and be characterized as a Qualified Settlement Fund (“QSF”), that the Settlement  
18 Fund will be taxed as a separate entity for purposes of all federal, state and local taxes, that they  
19 agree to treat the QSF on a basis consistent therewith, that the Settlement Fund will be  
20 characterized as the employer of all Class Members for purposes of determining all tax obligations  
21 associated with any and all payments out of the Settlement Fund, and the Settlement Fund will bear  
22 full responsibility for all taxes associated with the Settlement Fund and settlement payments to  
23 Class Members under the terms of this Stipulation. The Claims Administrator shall be responsible  
24 for ensuring that all taxes associated with the Stipulation are timely paid to the appropriate tax  
25 authorities and for the filing all Federal, state and local employment tax returns, income tax returns,  
26 and any other tax returns associated with employer and employee taxes associated with the  
27 payments to Class Members. As required by law, the Claims Administrator shall be solely  
28 responsible for timely issuing an appropriate IRS form to each Class Member for his or her

1 settlement payment, such as any required IRS form 1099 for the interest and penalty portion of his  
2 or her settlement payment, and complying with any tax obligations of the Settlement Fund under  
3 Federal, state and/or local law. To verify the Claims Administrator's compliance with the  
4 foregoing withholding and reporting requirements, as soon as administratively practicable, the  
5 Claims Administrator shall furnish Class Counsel and counsel for Defendant with copies of all tax  
6 returns and information returns filed by the Settlement Fund (including all 1099 and W-2  
7 information returns), and a final accounting adequate to demonstrate full compliance with all tax  
8 withholding, payment, and reporting obligations. In addition, the Claims Administrator shall  
9 timely make such elections as necessary or advisable to carry out the provisions of this sub-  
10 paragraph. Such elections shall be made in compliance with the procedures and requirements  
11 contained in applicable QSF regulations. It shall be the responsibility of the Claims Administrator  
12 to timely and properly prepare and deliver all necessary documentation for signature, as may be  
13 required, and thereafter to cause the appropriate filing of such documentation to occur. To the  
14 extent that, for any period of time, the Settlement Fund is not treated as QSF, the Claims  
15 Administrator shall promptly notify Class Counsel and counsel for Defendant of that fact.

16 (5) No liability for Disbursements Related to the Settlement Fund. Neither Defendant  
17 nor Class Counsel shall have any responsibility or liability whatsoever with respect to the  
18 distribution of the Settlement Fund, the determination, administration, calculation or payment of  
19 claims, the payment, withholding, reporting and/or filing of any taxes related to the Settlement  
20 Fund, the payment of any taxes, distribution of residual settlement funds, or any losses incurred in  
21 connection with the foregoing. No person shall have any claim against Class Counsel, the Claims  
22 Administrator, Defendant, or counsel for Defendant based upon the distributions made  
23 substantially in accordance with this Stipulation, the allocation of the Settlement Fund among Class  
24 Members hereunder, and/or further orders of the Court.

25 (6) Difficulty of Determining Class Claims: The Parties recognize and agree that the  
26 precise amount of each claim by individual Class Members would be extremely difficult to  
27 quantify with any certainty for any given time period, or at all. The Parties therefore agree that  
28 allocating the individual settlement payments to Class Members based on the number of Eligible

1 Work Weeks during the Class Period is fair and reasonable.

2 (7) Attorneys' Fees and Costs: In consideration for settling this matter and in exchange  
3 for the release by the Class Members, and subject to final approval by the Court, Defendant agrees  
4 not to object to or dispute a total award of attorneys' fees to all Class Counsel jointly ("Attorneys'  
5 Fees") in an amount not exceeding 30% of the Maximum Settlement Amount, to compensate and  
6 reimburse Class Counsel for all of the work already performed by Class Counsel in the Lawsuit and  
7 all of the work remaining to be performed by Class Counsel in documenting the settlement,  
8 securing approval of the settlement, making sure that the settlement is fairly administered and  
9 implemented, and obtaining dismissal of the action. Defendant further agrees that Class Counsel  
10 also may be awarded a a reasonable amount from the Maximum Settlement Amount to cover actual  
11 out-of-pocket costs as requested and supported as part of the final approval motion. Except as  
12 provided in this section, Plaintiff, Class Members and Defendant shall each bear his/her/its own  
13 attorneys' fees and costs. No attorneys' fees shall be paid or awarded to any Class Member who  
14 chooses to retain his or her own personal counsel. All amounts awarded as attorneys' fees or costs  
15 under this Stipulation shall be paid by the Claims Administrator out of the Maximum Settlement  
16 Amount. The allowance, disallowance, or modification by the Court of the application of Class  
17 Counsel for an award of attorneys' fees and costs is not part of this Stipulation and is intended to be  
18 considered by the Court separately from the Court's consideration of the fairness, reasonableness,  
19 and adequacy of the Settlement. Any order or proceedings relating to the attorneys' fee application  
20 by Class Counsel, or any appeal from any order relating thereto or modification or reversal thereof,  
21 shall not operate to terminate or cancel the Stipulation, or affect or delay the finality of any order of  
22 final approval and judgment entered by the Court.

23 (8) Class Representative Enhancement Award: Defendant shall not contest a request by  
24 Plaintiff that the Court award him an enhancement award of up to \$5,000 to be paid by the Claims  
25 Administrator from the Maximum Settlement Amount as consideration for the time and effort he  
26 expended in his role as class representative. Any order or proceedings relating to Class  
27 Representative Enhancement Award, or any appeal from any order relating thereto or modification  
28 or reversal thereof, shall not operate to terminate or cancel the Stipulation, or affect or delay the



1 finality of any order of final approval and judgment entered by the Court. Any amount requested  
2 for an enhancement award (and the individual release described below) that is not awarded by the  
3 Court shall be made part of the NSA. The enhancement award shall be reported on an IRS Form  
4 1099.

5 (9) Prior Released Claims: Specifically excluded from “Eligible Work Week” are  
6 calendar weeks worked by Class Members that cover the same period of time wherein Defendant  
7 has already obtained releases by Class Members.

8 (10) Costs of Claims Administrator: The parties will seek bids and select a firm to  
9 nominate to act as Claims Administrator in this action, providing the Court with their  
10 recommendation regarding the entity to serve, along with a draft contract with the proposed Claims  
11 Administrator, no later than November 17, 2014. The Claims Administrator shall acknowledge that  
12 it has fiduciary obligations to the Class Representatives, the Settlement Class, and Defendant. The  
13 Claims Administrator shall attest that it will not allow any disbursements to be made from the  
14 Settlement Fund, except as expressly authorized by this Stipulation or as ordered by the Court.  
15 The Claims Administrator will estimate the cost to perform all necessary class administration  
16 duties. . These administration duties shall include without limitation, mailing notices, performing  
17 address updates and verifications as necessary prior to the first mailing, performing a single address  
18 follow up on any returned mail, the calculation, processing, and mailing of all Class Member  
19 settlement checks and tax forms to the Class Members and tax authorities, and sending out  
20 reminder letters 30 days before the check void date. All administration costs approved by the  
21 Court shall be paid out of the Maximum Settlement Amount.

22 (11) No Tax Advice Provided by Class Counsel or Defendant’s counsel: Neither Class  
23 Counsel nor Defendant’s counsel intends anything contained herein (or in any other document  
24 pertaining to the Lawsuit) to constitute legal advice regarding the taxability of any amount paid  
25 hereunder, nor shall it be relied upon as such. The tax issues for each Class Member are unique,  
26 and each Class Member is advised to obtain tax advice from his or her own tax advisor with respect  
27 to any payments resulting from this settlement.

28 (12) Prerequisite to Establishing Settlement Fund. Prior to Defendant’s deposit of any

1 monies into the Settlement Fund, the Class Representatives and Class Counsel agree to deliver to  
2 counsel for Defendant an original and/or counterparts of this Stipulation fully executed by the Class  
3 Representatives and Class Counsel.

4 (13) Settlement Funding Deadline and Settlement Payout Timetable: By no later than  
5 twenty days after entry of the Order granting Preliminary Approval of the Settlement, but no earlier  
6 than January 30, 2015, Defendant will deposit the sum of \$150,000 with the Claims Administrator  
7 (the "Initial Deposit"). On December 1, 2015, Defendant will deposit the sum of \$200,000 with the  
8 Claims Administrator. On December 1, 2016, Defendant will deposit the sum of \$300,000 with  
9 the Claims Administrator. On December 1, 2017, Defendant will deposit the sum of \$350,000  
10 with the Claims Administrator. The Claims Administrator shall place the deposits in an account or  
11 accounts that is/are not market-dependent and that are federally guaranteed or federally insured to  
12 maintain the principal without any risk of loss whatsoever. All funds held by the Claims  
13 Administrator shall remain subject to the jurisdiction of the Court until such time as such funds  
14 shall be disbursed pursuant to this Stipulation and/or further order(s) of the Court. In no event shall  
15 the Claims Administrator disburse any portion of the Settlement Fund before the Effective Date.  
16 Under no circumstances shall the Claims Administrator make any disbursement to Class Members  
17 from the Settlement Fund until all timely claims have been considered, calculated and accounted  
18 for and the obligations set forth herein have been satisfied. The Claims Administrator shall make  
19 all required payments within 20 days of the Effective Date in accordance with the provisions of this  
20 Stipulation or as superseded by a Court order, provided, however, that 80% of the approved,  
21 anticipated total costs of Claims Administration, the entire \$20,000 minimum award to the LWDA,  
22 and such other amounts as the Court may approve shall be paid from the Initial Deposit.  
23 Thereafter, in December of 2015, the Claims Administrator shall make an initial distribution to the  
24 Participating Class Members, and, subject to approval by the Court, a part payment to Class  
25 Counsel and to the Class Representative of their awards. . In January of 2017, the Claims  
26 Administrator shall make a second distribution to the Participating Class Members and, subject to  
27 approval by the Court, a part payment to Class Counsel and to the Class Representative of their  
28 awards.. In December of 2017, the Claims Administrator shall make a final distribution to the

1 Participating Class Members as well as payment to Class Counsel and to the Class Representative  
2 of the balance of their awards.. Settlement Payments collectively paid to all Class Members shall  
3 not exceed the balance of the Net Settlement Amount.

4 (14) Resolution of Claim Disputes: If the amount claimed by a Class Member is  
5 inconsistent with Defendant's records as to the amount he or she is entitled to under this  
6 Stipulation, the Parties' Counsel will make a good faith effort to resolve the dispute informally. If  
7 they cannot agree, the dispute shall be submitted to the Claims Administrator, who shall examine  
8 Defendant's records and any submission by the Class Member in an attempt to resolve the dispute.  
9 In making this decision, in the absence of contrary evidence, Defendant's records shall be  
10 dispositive. No claimant may increase the size of his or her claim by arguing that the Company's  
11 records are incorrect without providing documentation corroborating his or her position. The  
12 decision of the Claims Administrator shall be final and non-appealable.

13 (15) Right to Rescission: Notwithstanding any other provision of this Stipulation,  
14 Defendant shall retain the right, in the exercise of its sole discretion, to nullify the settlement within  
15 10 calendar days of expiration of the opt-out deadline if 5% or more Final Wage Class Members or  
16 5% or more 226 Class Members opt out of the settlement. All signatories and their counsel must  
17 not encourage opt-outs. Class Counsel specifically agrees not to solicit opt-outs, directly or  
18 indirectly, through any means. The named Plaintiff stipulates and agrees not to opt-out. In the  
19 event of such a rescission, the fact that the Parties agreed to settle this case, the settlement  
20 documents, or any communications regarding settlement shall not be admissible in any proceeding.

21 (16) Non-Approval Of The Stipulation: If the Court should for any reason (a) not  
22 approve this Stipulation, or (b) not enter a final approval order and judgment on this Stipulation, or  
23 if (c) the final approval order and judgment is reversed, modified or declared or rendered void, then  
24 this Stipulation shall be considered null and void, and neither this Stipulation, nor any of the related  
25 negotiations or proceedings, shall be of any force or effect, and all parties to this of Settlement shall  
26 stand in the same position, without prejudice, as if the Settlement had been neither entered into nor  
27 filed with the Court.

28 (17) Invalidation: Invalidation of any material portion of this Stipulation shall invalidate

1 this Settlement in its entirety, unless the Parties shall subsequently agree in writing that the  
2 remaining provisions of the Stipulation are to remain in full force and effect.

3  
4 **NOTICE TO THE SETTLEMENT CLASS**

5 (18) Within 30 calendar days after preliminary approval of this Stipulation by the Court,  
6 Defendant will provide to the Claims Administrator all of the following information about each  
7 Class Member in a format requested by the Claims Administrator: (1) name, (2) last known mailing  
8 address, (3) social security number, and (4) for those Class Members who are Final Wage Class  
9 Members, the number of Eligible Work Weeks that each Final Wage Class Member worked during  
10 the relevant period and the date of the signing of this Stipulation (collectively the “Class List.”)  
11 The Claims Administrator will perform address updates and verifications as necessary prior to the  
12 first mailing. Within 10 calendar days after receipt of the Class List from Defendant, and subject to  
13 the approval of the Court, the Claims Administrator will send a Legal Notice and Claim Form  
14 (collectively “Notice Packet”), in the format approved by the Court, to each Class Member by first  
15 class mail.

16 **NOTICE PROCESS**

17 (19) Class Members will be permitted 60 calendar days from the date the Notice and  
18 Summary Sheet are first mailed by the Claims Administrator to postmark Claims, Objections  
19 and/or Requests For Exclusion (also referred to as “Opt-Outs”). The Claims Administrator will  
20 perform one address follow-up on returned mail, and will re-mail the Notice Packet to an updated  
21 address (if any) within seven calendar days of receipt of the returned mail. The Parties intend that  
22 reasonable, but not extraordinary, means be used to locate Class Members. The Claims  
23 Administrator will search for a more current address of the Class Member using the Class  
24 Member’s social security number if the Notice Packet is returned. If no address is found, no  
25 further action is required. Any Class Members with claims that may be pending outside the  
26 confines of this Class Action lawsuit are required to Opt-Out in order for their claims to not be  
27 released within this action.

28 (20) The Claims Administrator shall be responsible for issuing the settlement payments

1 and taking care of all required tax reporting. Upon completion of its calculation of payments, the  
2 Claims Administrator shall provide Class Counsel and Defense Counsel with a report listing the  
3 amount of all payments to be made to each Class Member but without the social security numbers  
4 of Class Members. If requested by any party or the Court, the Claims Administrator shall provide  
5 proof of payment to the Court. If the Claims Administrator receives an incomplete Claim Form or  
6 if the Claims Administrator finds any ambiguity with respect to a Claim Form, the Claims  
7 Administrator will attempt to contact the individual to ascertain that person's intent and to assist  
8 the individual in completing the Claim Form. In the event of any remaining ambiguity, the issue  
9 will be presented to the Court for determination at the hearing on final approval.

10 (21) Opt-Outs by Class Members must be postmarked to the Claims Administrator  
11 within 60 calendar days of the initial mailing by the Claims Administrator. A person wishing to  
12 opt out must state in writing his or her name, address and telephone number, and must state that he  
13 or she wishes to be excluded from the settlement. At least 15 calendar days prior to the final  
14 approval hearing, the Claims Administrator will apprise Class Counsel and Defendants' counsel of  
15 which Class Members have timely opted out. If the Claims Administrator receives a valid Claim  
16 Form and a valid Opt Out from the same individual, or if the Claims Administrator finds any  
17 ambiguity with respect to whether an individual wishes to opt out, the Claims Administrator will  
18 attempt to contact the individual to ascertain that person's intent. In the event of any remaining  
19 ambiguity, the issue will be presented to the Court for determination at the hearing on final  
20 approval.

21 (22) All objections to the settlement must be served and filed with the Claims  
22 Administrator within 60 calendar days after the initial mailing by the Claims Administrator. All  
23 objections must be served on Class Counsel and Defense Counsel and filed with the Court, along  
24 with a Notice of Intention to Appear. Class Members who fail to file and serve timely written  
25 objections in the manner specified above shall be deemed to have waived any objections and shall  
26 be foreclosed from making any objection (whether by appeal or otherwise) to the settlement, unless  
27 otherwise ordered by the Court. Only Class Members who do not opt out may file objections. Any  
28 Class Member who submits a timely objection shall be bound by the terms of the Stipulation.

1 Class Counsel and Defendant's counsel may, at least 10 calendar days (or such other number of  
2 days as the Court may specify) before the final approval hearing, file responses to any written  
3 objections filed with the Court.

4 (23) To state a valid objection, a Class Member must provide the following information  
5 in the objection: (a) the full name and address of the Class Member; (b) a written statement of all  
6 grounds for the objection accompanied by legal support for the objection; (c) a statement as to  
7 whether the Class Member intends to appear at the final approval hearing; and (d) the signature of  
8 the Class Member or his/her counsel. Any objection to the requested attorneys' fees and/or costs  
9 shall comply with this provision.

10 **RELEASE BY THE CLASS**

11 (24) Upon entry of the final approval order and judgment, each Class Member who has  
12 not submitted a valid request for exclusion releases Defendant and its present and former affiliates,  
13 parent companies, and subsidiaries, and their respective shareholders, officers, partners, directors,  
14 employees, agents, trustees, representatives, attorneys, accountants, insurers, predecessors,  
15 successors and assigns and each and all of their respective shareholders, officers, partners,  
16 directors, employees, agents, trustees, representatives, attorneys, accountants, insurers, past,  
17 present, and future, and all persons acting under, by, through or in concert with any of them (all of  
18 the foregoing are referred to as the "Releasees"), from any and all claims, causes of action,  
19 damages, penalties, interest, fines, debts, liens, liabilities, demands, obligations, attorneys' fees,  
20 costs, and any other form of relief or remedy in law or equity, whether known or unknown,  
21 suspected or unsuspected that existed or came into existence between four years prior to the filing  
22 of the Complaint through the date of Preliminary Approval of the Settlement, inclusive, that were  
23 or could have been asserted based on the facts and claims pleaded in the Lawsuit, including but not  
24 limited to (1) all statutes/ordinances referenced in the Lawsuit and corresponding provisions of the  
25 California Industrial Welfare Commission Wage Orders, including but not limited to (i) Labor  
26 Code Sections 203, 204, 226, 510, 558, 1194 and 2968 *et seq.*, as related to the above claims, (ii)  
27 all related provisions allegedly relating to the claims in the First Amended Complaint for  
28 continuing wages, failure to pay wages, minimum wages, overtime, failure to provide allegedly

1 required wage statements, civil penalties, interest, costs and attorneys' fees; (2) any of the facts,  
2 transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act were or  
3 could have been asserted based on the facts and claims pleaded in the Lawsuit; and (3) any cause of  
4 action or claim under Business and Professions Code Sections 17200, et seq. arising from items (1)  
5 and (2) above. In addition each Class Member who opts in to the case will extinguish any claims  
6 under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* The claims described above are  
7 referred to herein as the "Released Claims."

8 (25) In order to achieve a full and complete release of Defendant (and the Releasees as  
9 defined in paragraph 9 above), execution of this Stipulation by the Class Representatives is intended  
10 to effect a release by each Class Member (which includes any legal heirs and/or successors-in-  
11 interest of each Class Member) and is intended to include in its effect all Released Claims as  
12 defined in paragraph 9 above as to all Class Members.

13 (26) As to the Released Claims, Plaintiff, the Class, and each and every Class Member  
14 shall be deemed to have acknowledged and agreed that: (1) their claims for compensation and any  
15 other payments and/or interest in the Lawsuit are disputed; and (2) the payments under Settlement  
16 constitute full payment of any amounts allegedly due to them. In light of the payment by  
17 Defendant of all amounts due to them, the Plaintiff, the Class, and each Class Member shall be  
18 deemed to have acknowledged and agreed that such payment shall constitute full payment of all  
19 claims by Class Members for disputed wages allegedly owed by Defendant in this Litigation,  
20 which shall be deemed to have been paid in compliance with Labor Code section 206.5, which  
21 provides in pertinent part as follows:

22 "No employer shall require the execution of any release of any claim or right on  
23 account of wages due, or to become due, or made as an advance on wages to be  
24 earned, unless payment of such wages has been made."

25 (27) Reserved.

26  
27 **DUTIES OF THE PARTIES PRIOR TO PRELIMINARY APPROVAL**

28 (28) The Parties shall promptly submit this Stipulation to the Court and request

1 preliminary approval and determination by the Court as to its fairness, adequacy, and  
2 reasonableness. Promptly upon execution of this Stipulation, the Parties shall apply to the Court  
3 for the entry of a preliminary order seeking:

4 a. Certification of this action under California *Code of Civil Procedure* §382  
5 and applicable case law as a class action for purposes of settlement with respect to the proposed  
6 settlement class;

7 b. Approving the proposed Notice Packet and envelope as to form and content;

8 c. Directing the mailing of the Notice Packet to the Class Members;

9 d. Preliminarily approving the settlement subject only to the objections, if any,  
10 of Class Members and final review by the Court;

11 e. Preliminarily approving Class Counsel's request for attorneys' fees and costs  
12 subject to final review by the Court;

13 f. Preliminarily approving estimated costs of administration payable to the  
14 Claims Administrator; and

15 g. Preliminarily approving Plaintiff's individual enhancement award payment.

16 (29) Class Counsel will not file with the Court the papers requesting preliminary  
17 approval, including the proposed preliminary approval order, until Defendant's counsel has  
18 reviewed and approved them, which approval will not be unreasonably withheld.

19 **DUTIES OF THE PARTIES FOLLOWING PRELIMINARY APPROVAL**

20 (30) In seeking final approval of the settlement provided for in this Stipulation, Class  
21 Counsel will submit a proposed final approval order and judgment in a form approved by  
22 Defendant's counsel:

23 a. Approving the settlement, adjudging the terms thereof to be fair, reasonable  
24 and adequate, and directing consummation of its terms and provisions;

25 b. Approving an award of attorneys' fees and reimbursement of costs for Class  
26 Counsel;

27 c. Approving payment to the Claims Administrator;

28 d. Approving the enhancement award payment to Plaintiff;



1 e. Permanently barring all Class Members who have not validly opted out of  
2 the Class and this settlement and/or opted in this FLSA case from prosecuting against the Releasees  
3 any individual or class claims or representative actions covered by the definition of Released  
4 Claims;

5 f. Waiving all rights of appeal; and

6 g. Stating that the Court retains jurisdiction to the extent necessary over the  
7 subject matter of the Lawsuit and over the Parties and the Class Members pursuant to California  
8 *Code of Civil Procedure* §664.6.

9 **PARTIES' AUTHORITY**

10 (31) The signatories hereto hereby represent that they are fully authorized to enter into  
11 this Stipulation and bind the Parties to the terms and conditions hereof.

12 **MUTUAL FULL COOPERATION**

13 (32) The Parties agree to cooperate with each other fully to accomplish the terms of this  
14 Stipulation, including but not limited to: (a) executing such documents and taking such other  
15 actions as reasonably may be necessary to implement the terms of this Stipulation; and (b)  
16 continuing good faith efforts to effectuate settlement should the Court deny preliminary or any pre-  
17 final approval. The Parties to this Stipulation shall use their best efforts, including all efforts  
18 contemplated by this Stipulation and any other efforts that may become necessary by order of the  
19 Court, or otherwise, to effectuate this Stipulation and the terms set forth herein. As soon as  
20 practicable after execution of this Stipulation, Class Counsel shall, with the assistance and  
21 cooperation of Defendant and its counsel, take all necessary steps to secure the Court's preliminary  
22 and final approvals of this Stipulation.

23 **NO PRIOR ASSIGNMENTS**

24 (33) The Parties hereto represent, covenant, and warrant that they have not directly or  
25 indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any  
26 person or entity any portion of any liability, claim, demand, action, cause of action or rights herein  
27 released and discharged except as set forth herein.

28 (34) Any Class Member who has or may begin any action regarding any claims covered

1 by this agreement will be covered by this agreement, including the release, unless that Class  
2 Member timely opts out of the agreement pursuant to the process set forth herein.

3 **NO COLLATERAL ATTACK**

4 (35) This Stipulation shall not be subject to collateral attack by any Class Member or any  
5 recipient of the Notice Packet after entry of the final approval order and judgment. Such prohibited  
6 collateral attacks shall include but not be limited to claims that a Class Member's settlement  
7 payment was improperly determined, calculated or adjusted, or that the Class Member failed to  
8 receive timely notice of the procedure for disputing the calculation of individual Class Member  
9 settlement payments, or failed to submit a timely dispute for any reason.

10 (36) Plaintiff shall not make any statements to anyone other than Class Members or their  
11 respective immediate family members regarding this Stipulation except, if asked, to say that the  
12 matter was satisfactorily resolved and to refer the inquiring person to Class Counsel, the Claims  
13 Administrator or the public record. Class Counsel, Defendant, and counsel for Defendant each  
14 agree that they will not issue any press releases regarding this Stipulation, or otherwise initiate  
15 publicizing of the Settlement to the media. Notwithstanding the foregoing, either Party and their  
16 counsel shall be allowed to make disclosures related to this Stipulation that are required by law, by  
17 rule or regulation, or by any governmental or judicial process, as reasonably determined by legal  
18 counsel for either Party.

19 **TERMINATION OF SETTLEMENT**

20 (37) Subject to the obligation(s) of mutual full cooperation as set out herein, any Party  
21 may terminate this settlement if the Court declines to (1) enter the preliminary approval order, or  
22 (2) enter the final approval order and judgment in substantially the form submitted by the Parties,  
23 or (3) if the Stipulation does not become final because of appellate court action. The terminating  
24 Party shall give to all other parties (through counsel) written notice of its decision to terminate no  
25 later than 10 calendar days after receiving notice that one of the enumerated events has occurred.  
26 Termination shall have the following effects:

27 a. The Stipulation shall be terminated and shall have no force or effect and no  
28 Party shall be bound by any of its terms.



1 Harris & Ruble  
2 4771 Cromwell Avenue  
3 Los Angeles, CA 90027

4 To Counsel for Defendant:

5 Jennifer Raphael Komsky, Esq.  
6 Landegger Baron Law Group  
7 15760 Ventura Blvd., Suite 1200  
8 Encino, CA 91436

8 **CAPTIONS AND INTERPRETATIONS**

9 (40) Paragraph titles or captions contained herein are inserted as a matter of convenience  
10 and for reference and in no way define, limit, extend, or describe the scope of this Stipulation or  
11 any provision hereof. Each term of this is contractual and not merely a recital.

12 **MODIFICATION**

13 (41) This Stipulation may not be changed, altered, or modified, except in writing and  
14 signed by counsel for the Parties. All material changes, alterations, or modifications must be  
15 approved by the Court. This Stipulation may not be discharged except by performance in  
16 accordance with its terms or by a writing signed by the Parties hereto, and approved by the Court.

17 **INTEGRATION CLAUSE**

18 (42) This Stipulation contains the entire agreement between the Parties relating to the  
19 settlement and transaction contemplated hereby, and all prior or contemporaneous agreements,  
20 understandings, representations, and statements, whether oral or written and whether by a party or  
21 that party's legal counsel, are merged herein. In entering into this Stipulation, none of the Parties  
22 has relied on any representation or promise not expressly set forth in this Stipulation. No rights  
23 hereunder may be waived except in writing.

24 **BINDING ON ASSIGNS**

25 This Stipulation shall be binding upon and inure to the benefit of the Parties and their  
26 respective heirs, trustees, executors, administrators, successors and assigns.

27 **SIGNATORIES**

28 It is agreed that because of the large number of Class Members, it is impossible or

1 impractical to have each Class Member execute this Stipulation. The Notice Packets will advise all  
2 Class Members of the nature of the settlement and shall have the same force and effect as if this  
3 Stipulation were executed by each Class Member.

#### 4 **COUNTERPARTS**

5 This Stipulation may be executed in counterparts, and when each party has signed and  
6 delivered at least one such counterpart, each counterpart shall be deemed an original, and, when  
7 taken together with other signed counterparts, shall constitute one Stipulation, which shall be  
8 binding upon and effective as to all Parties.

#### 9 **ADMISSIBILITY**

10 Neither this Stipulation nor any of its terms, nor any statements or conduct in the  
11 negotiation or drafting of it, shall be offered or used as evidence by Plaintiff, any Class Member  
12 (including any individual who requested to be excluded from the Class), Defendant, or their  
13 respective counsel, in the Lawsuit, or in any other action or proceeding, provided, however, that  
14 nothing contained in this Section shall prevent this Stipulation from being used, offered, or  
15 received in evidence to enforce its terms.

#### 16 **ENFORCEMENT**

17 In the event that one or more of the Parties institutes any legal action or other proceeding  
18 against any other party or Parties to enforce the provisions of this Stipulation or to declare rights  
19 and/or obligations under this Stipulation, the successful party or parties shall be entitled to recover  
20 from the unsuccessful party or parties reasonable attorneys' fees and costs, including expert witness  
21 fees incurred in connection with any enforcement actions. The Parties jointly request and reserve  
22 the Court's continuing jurisdiction over the construction, interpretation, implementation, and  
23 enforcement of this Stipulation and the final approval order and judgment, and over the  
24 administration and distribution of the settlement funds. All terms of this Stipulation shall be  
25 governed by and interpreted according to the laws of the State of California, without giving effect  
26 to conflict of laws principles.

#### 27 **RIGHT OF APPEAL**

28 Class Members who do not timely object to the Settlement shall have no right to appeal the

