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7 Attorneys for Plaintiff REBECCA NISHIMOTO,
8 individually, and on behalf of all others similarly situated.

9 **SUPERIOR COURT OF CALIFORNIA**
10 **FOR THE COUNTY OF SACRAMEMNTO**

11 REBECCA NISHIMOTO, individually and on
behalf of all others similarly situated,

12 Plaintiff(s),

13 vs.

14 T&S BUSINESS CORPORATION, and DOES
15 1-10, inclusive,

16 Defendants.

Case No. 34-2017-00211426
[Assigned for All Purposes to the Hon. Alan G.
Perkins, Dept. 35]_

**DECLARATION OF ADRIAN BACON IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: January 14, 2020
Time: 9:30 a.m.
Department: 35
Judge: Hon. Alan G. Perkins

1 **DECLARATION OF ADRIAN BACON**

2 I, ADRIAN BACON, declare as follows:

3 1. I am an attorney in good standing duly admitted to the State Bar of California and an
4 attorney of record for Plaintiff Rebecca Nishimoto (“Plaintiff”) in this putative class action against
5 Defendant T&S Business Corporation, (“Defendant”). I am lead counsel on this matter for Plaintiff,
6 and a Partner at The Law Offices of Todd M. Friedman, P.C.

7 2. Except for those matters stated on information and belief, which I am informed and
8 believe are true and correct, I have personal knowledge of all matters set forth herein. If called as a
9 witness, I could and would competently testify thereto.

10 3. Attached hereto as Exhibit A is a true and correct copy of the fully executed Class
11 Action Settlement Agreement (the “Settlement”).

12 4. Defendant is a franchisee for IHOP, and operates several restaurant locations,
13 including a location in Dixon California where Plaintiff worked.

14 5. Plaintiff is a former employee of Defendant who worked as a non-exempt server for
15 Defendant. The Class Members in this case are other current and former non-exempt employees who
16 worked for Defendant in California during the Class Period.

17 6. The original complaint in this Action was filed by Plaintiff on April 14, 2017, in the
18 Superior Court of the State of California, County of Sacramento.

19 7. After the pleadings were resolved, and discovery was exchanged, including a
20 deposition of Plaintiff, and an exchange of policy and procedure documents as well as class
21 timekeeping data, the Parties agreed to pursue a class-wide resolution through mediation. On June 6,
22 2018, the Parties participated in a full day of mediation with Hon. Peter Lichtman of JAMS, a highly
23 regarded mediator who was the former chief judge of the LA Complex litigation panel, with
24 extensive experience in wage and hour and class action litigation as both a judge and a mediator.

25 8. In connection with the mediation, the Parties exchanged formal and informal
26 discovery which included, but was not limited to: (1) the size and composition of the Class; (2)
27 production of a sampling of Class Members’ records (including timesheets, and earnings
28 statements); and (3) production of Defendant’s written wage and hour policies and procedures.

9. Based on this information, Plaintiff prepared a detailed mediation brief and estimates
of Defendant’s potential liability exposure in this action.

10. Armed with this information, the Parties reached an agreement in principle for the
resolution of this lawsuit on a class-wide basis with Judge Lichtman’s assistance on June 8, 2018.
The Parties have finalized the settlement.

1 11. This Class is objectively ascertainable because its members may be identified by
2 reference to Defendant's records, which they have agreed to share the relevant information from to
3 facilitate the process.

4 12. This Class is also sufficiently numerous because would be impractical and
5 economically inefficient to require approximately 1,430 Class Members to separately maintain
6 individual actions or be joined as named plaintiffs in this action.

7 13. Commonality: Common questions of law and fact exist as to all members of the Class
8 and predominate over any questions affecting solely individual members of the Class. Among the
9 questions of law and fact, that are relevant to the adjudication of Class members' claims are the
10 following:

11 a. Whether Defendant, through their policy of not paying reporting time, thereby failed
12 to capture and pay for all compensable hours worked by Plaintiff and Class members;

13 b. Whether Defendant unlawfully and/or willfully failed to pay Plaintiff and members of
14 the Class for hours worked in violation of the applicable Industrial Welfare Commission Order and
15 Labor Code sections 200, 226, 1197, 1194 and 1198;

16 c. Whether Defendant had a standard policy and/or practice of denying Plaintiff and
17 members of the Plaintiff Class proper meal and rest breaks;

18 d. Whether Defendant had a standard policy and/or practice of failing to compensate
19 Plaintiff and members of the Plaintiff Class for meal periods that did not comply with California
20 law;

21 e. Whether Defendant's policy of not accurately tracking hours worked by Plaintiff and
22 Class members is an unlawful, unfair or fraudulent business act or practice in violation of UCL
23 section 17200, *et seq.*;

24 f. Whether Defendant's failed to provide Plaintiff and members of the Class with proper
25 itemized wage statements in violation of Labor Code section 226, and applicable Industrial Welfare
26 Commission Orders, and applicable State Regulations;

27 g. Whether Defendant unlawfully and/or willfully failed to promptly pay compensation
28 owing to members of the Subclass upon termination of their employment in violation of Labor Code
sections 201-203;

 h. Whether Plaintiff and members of the Class sustained damages, and if so, the proper
measure of such damages, as well as interest, penalties, costs, attorneys' fees, and equitable relief.

1 14. Plaintiff is typical of Class Members. Like Class Members, Plaintiff worked as a non-
2 exempt employee for Defendant in California during the Class Period and was subject to the same
3 general policies and practices with respect to timekeeping, payroll, and job duties.

4 15. In addition, Defendant would primarily assert the same defenses to Plaintiff's claims
5 as to those of Class Members – e.g., that Defendant paid her for all hours worked, that Class
6 Members were provided with compliant meal and rest periods, and that any pay stub
7 violations/incomplete final wage payments, if they occurred at all, resulted from good faith mistakes.

8 16. Attached hereto as Exhibit B is a true and correct copy of the proposed Class Notice,
9 which will be mailed to class members, following Preliminary Approval.

10 17. Attached as Exhibit C is a true and correct copy of the declaration of my client
11 Rebecca Nishimoto.

12 18. I have no known conflicts of interest with Plaintiff or any Class Member, and am
13 unaware of any conflicts of interest between Plaintiff and any Class Member.

14 CLASS COUNSEL'S EXPERIENCE

15 19. The Law Offices of Todd M. Friedman, P.C. seeks appointment as Class Counsel in
16 this Action. I am informed and believe that Class Counsel are qualified and able to conduct this
17 litigation as a class action.

18 20. I have extensive experience prosecuting wage and hour class actions. My firm, The
19 Law Offices of Todd M. Friedman, P.C., in which I am a partner, has litigated over 1000 individual
20 based consumer and employment cases and litigated over 200 consumer class actions, including
21 dozens of wage and hour class actions. These class actions were litigated in federal courts in
22 California, as well as California State Courts. Approximately 100% percent of my practice concerns
23 consumer litigation in general, with approximately 25% of my class action experience involving
24 wage and hour litigation.

25 21. My firm has numerously been approved by courts as adequate class counsel, and is
26 highly experienced in litigating wage and hour class actions. We have certified numerous class
27 action matters by contested motion as well as been approved as class counsel on dozens of class
28 actions through settlements.

 22. Therefore, my experience in litigating class actions and my years in practice allow
me to provide outstanding representation to the Settlement Class. I will continue to strive to fairly,
responsibly, vigorously and adequately represent the putative class members in this action.

 23. The Law Offices of Todd M. Friedman has served as plaintiff's counsel in at least
the following class action cases involving various class actions claims, where a settlement was

1 reached on a class-wide basis, and have achieved over \$160,000,000 in class-wide relief for
2 consumers and employees:

- 3 a. *Dancer v. L.A. Times*, BC472154 (L.A. Superior Court) (common fund class-wide
4 settlement of \$3 million to \$4 million granted final approval);
- 5 b. *Couser v. Comenity Bank*, 3:12-cv-02484-MMA-BGS (S.D. Cal.) (\$8.475 million
6 class-wide settlement achieved and granted final approval);
- 7 c. *Stemple v. QC Financial Services Group of California, Inc.*, 3:12-cv-01997-CAB-
8 WVG (S.D. Cal.) (certified class achieved by motion, and subsequent class-wide
9 settlement of \$1.5 million achieved, with final approval granted);
- 10 d. *Couser v. Apria Healthcare, Inc.* 8:13-cv-00035-JVS-RNB (C.D. Cal.) (common
11 fund class-wide settlement of \$400,000 to \$750,000, granted final approval);
- 12 e. *Abdeljalil v. General Electric Capital Corporation*, 12-CV-02078-IEG-RBB (S.D.
13 Cal.) (class-wide settlement with common fund of \$6.125 million achieved,
14 preliminary approval granted, final approval granted);
- 15 f. *Fox v. Asset Acceptance*, 3:13-CV-00922-DMS-BGS (S.D. Cal.) (common fund of
16 \$1 million in class-wide relief achieved, granted final approval);
- 17 g. *Friedman v. LAC Basketball Club, Inc.*, 2:13-cv-00818-CBM-AN (C.D. Cal.) (class-
18 wide settlement achieved and granted final approval);
- 19 h. *Gerich et al. v. Chase Bank USA et al.* Case No 1:12-cv-5510 (N.D. Ill.) (class-wide
20 settlement of \$34 million, granted final approval);
- 21 i. *Than Zaw v Nelnet, Inc.*, Penal Code § 632 class – (Achieved class-wide settlement
22 of \$1,188,110, granted final approval of court);
- 23 j. *Medeiros v HSBC*, (common fund settlement of between \$4.5 million and \$6.5
24 million achieved, final approval granted);
- 25 k. *Ann Fox v. Spectrum Club Holding Company et al.*, Case No. 2:14-CV-06766-PSG-
26 FFMx (class-wide settlement, final approval granted);
- 27 l. *Sayan Aboudi v. T-Mobile USA, Inc.*, Case No. 3:12-cv-02169-BTM-NLS (class-
28 wide settlement in TCPA case, with common fund of \$2.5 million to \$5 million,
with average per class member payment of \$500, final approval granted);
- m. *Andrew Roseman v. BGASC, LLC, et al.*, Case No. EDCV 15-1100-VAP (SPx)
(C.D. Cal.) (class-wide relief achieved, final approval granted);
- n. *Everado Gonzalez v The Scotts Company*, Case No. BC577875, Consolidated with
Case No: BC570350 (LASC) (class-wide settlement of \$925,000 in wage and hour

- 1 class action on behalf of approximately 603 employees achieved, final approval
2 granted);
- 3 o. *Payton v Luxe Valet*, Case No. BC588462 (LASC) (class-wide settlement in wage
4 and hour independent contractor misclassification class action, on behalf of 1,800
5 employees, settled for \$2.4 million, final approval granted);
- 6 p. *Shelby v Two Jinn, Inc.*, Case No. 2:15-cv-03794-AB-GJS (C.D. Cal.) (EFTA class
7 action involving no cognizable actual damages, with net worth of company of \$25
8 million, settled for non-reversionary common fund of \$457,000, despite liability
9 under 15 U.S. Code § 1693m(a) likely being only \$250,000; final approval granted,
10 zero objections);
- 11 q. *Couser v Dish One Satellite*, Case No. 5:15-cv-02218-CBM-DTB (C.D. Cal.)
12 (TCPA class action, final approval granted);
- 13 r. *Couser v Dish One Satellite*, Case No. RIC 1603185 (Riverside S.C.) (Penal Code
14 632 class action, preliminary approval granted);
- 15 s. *De La Paz v Accurate Courier NCA LLC*, Case No. 16CV00555 (Santa Cruz County
16 Superior Court) (PAGA and Labor Code class action, final approval granted);
- 17 t. *Ross v Zurixx LLC*, Case No. 34-2016-00190874 (Sacramento SC) (UCL, FAL and
18 CLRA class action alleging false advertising for real estate educational courses, non-
19 reversionary common fund settlement for over \$600 per class member, final
20 approval granted);
- 21 u. *Eubank v Terminix International, Inc.*, Case No. 3:15-cv-00145-WQH-JMA (PAGA
22 settlement reached in wage and hour action on behalf of pest control technicians,
23 final approval granted);
- 24 v. *Holland v Tenet Healthcare Corporation*, Case No. 15CVP0226 (Superior Court of
25 San Luis Obispo County) (PAGA settlement reached in wage and hour action on
26 behalf of nurses, final approval granted);
- 27 w. *Jonathan Weisberg, v. HD Supply, Inc.*, Case No. 15-cv-08248-FMO (MRWx)
28 (class-wide settlement in TCPA class action, settled for \$1.225 million, final
approval granted);
- x. *Miler v Pacific Auto Wash Partners*, Case No. 30-2015-00813013-CU-OE-CXC
(wage and hour class action, final approval granted);

- 1 y. *Sonia Barrientos v Law Office of Jeffrey H. Jordan*, Case No. 2:15-cv-06282-JAK-
2 GJS (FDCPA/RFDCPA letter class action, settled on class wide basis, final approval
3 granted);
- 4 z. *Tahmasian v Midway Rent A Car*, Case No. 30-2015-00813013-CU-OE-CXC
5 (LASC) (PAGA and Labor Code class action, final approval granted);
- 6 aa. *Craig Cunningham v Lexington Law Firm*, Case No. 1:17-cv-00087-EJF (N.D. UT)
7 (TCPA class action MDL involving solicitation prerecorded voice calls made by a
8 third party, vicarious liability alleged, preliminary approval pending).
- 9 bb. *Sheena Raffin v Medcredit, Inc.*, et al., Case No. 2:15-cv-04912-MWF-PJW (C.D.
10 Cal.) (Cal. Penal Code § 632.7 class action certified by Hon. George H. King Ret
11 under Rule 23(b)(2) and (b)(3) by contested motion on behalf of 11,000 class
12 members whose calls were recorded without knowledge or consent, settled for \$5
13 million, final approval granted);
- 14 cc. *Fernandez v Reliance Home Services, Inc.* Case No. BC607572 Los Angeles
15 Superior Court (wage and hour plus PAGA class action, final approval granted);
- 16 dd. *Anne Wolf v Hewlett Packard Company*, Case No. 5:15-cv-01221-TJH-GJS (C.D.
17 Cal.) (CLRA class action certified by contested motion on behalf of tens of
18 thousands of class members who purchased printer that was falsely advertised to
19 include Smart Install feature, settled on a wider multi-state, multi-product basis, final
20 approval granted);
- 21 ee. *Jaylinda Girardot et al v. Bail Hotline Bail Bonds, Inc.*, Case No. BC700131 Los
22 Angeles County Superior Court (wage and hour plus PAGA class action, final
23 approval granted);
- 24 ff. *Ryoo Dental, Inc. v OCO Biomedical, Inc.*, Case No. 8:16-cv-01626-DOC-KES
25 (TCPA fax blast class action, settled on class wide basis, final approval granted);
- 26 gg. *Wondra Curtis v The Anthem Companies, Inc.*, Case No. 8:16-cv-01654-DOC-JCG
27 (wage and hour class action for off the clock work, settled on class wide basis, final
28 approval granted);
- hh. *Weinberg v Clariant, Inc.* Case No. 56-2017-00494914-CU-NP-VTA Ventura
County Superior Court (Rosenthal Fair Debt Collection Practices Act class action
settled on behalf of 1,830 class members for privacy infringements through clear
envelope debt collection letters, final approval granted);

- 1 ii. *Aliav v Sunset Eats, LLC*, Case No. BC655401 Los Angeles Superior Court (false
2 advertising class action on behalf of approximately 10,000 class members, settled on
3 class wide basis; preliminary approval granted);
- 4 jj. *Mark Silva v. Olson and Co. Steel* Case No. 17CV001045 Contra Costa County
5 Superior Court (wage and hour class action settled on behalf of 563 class members,
6 final approval granted);
- 7 kk. *Richards v. CoreCivic of Tennessee, LLC*, Case No. 1:17-cv-01094-LJO-JLT (E.D.
8 Cal.) (wage and hour class action settled for approximately \$3 million, preliminary
9 approval pending);
- 10 ll. *Kim v Tinder, Inc. et al.*, Case No. 2-18-cv-03093 (C.D. Cal. (Unfair Competition
11 Law and Unruh Act class action alleging illegal price discrimination based on age,
12 settlement value of approximately \$24 million on behalf of approximately 240,000
13 class members, final approval granted);
- 14 mm. *Manopla v. Home Depot USA, Inc.* Case No. 15-1120 (D. N.J.) (TCPA class action,
15 preliminary approval granted);
- 16 nn. *Bonilla et al. v. Windsor Fashion, LLC* Case No. CIVDS1723088 (wage and hour
17 class action settled on behalf of over 5,000 employees, preliminary approval
18 pending);
- 19 oo. *Lizama v Medical Data Systems, Inc.* Case No. 34-2017-00210986-CU-NP-GDS
20 (Sacramento County Superior Court) (Penal Code 632.7 class action alleging illegal
21 call recording, settled for \$2.2 million on behalf of over 30,000 consumers,
22 preliminary approval granted);
- 23 pp. *Romano v SCI, Inc.* Case No. 2:17-cv-03537-ODW-JEM (wage and hour class
24 action for independent contractor misclassification, settled for \$2.5 million on behalf
25 of 230 employees, preliminary approval granted);
- 26 qq. *Alfred Zaklit, et. al. v. Nationstar Mortgage LLC*, Case No. 5:15-cv-02190-CAS-KK
27 (C.D. Cal.) (Cal. Penal Code § 632.7 class action certified by contested motion under
28 Rule 23(b)(2) and (b)(3) on behalf of over 40,000 class members whose calls were
recorded without knowledge or consent, final approval granted);
- rr. *Edward Makaron v. Enagic USA, Inc.*, Case No. 2:15-cv-05145-DDP-E (C.D. Cal.)
(TCPA class action certified on behalf of approximately 2,000,000 class members
under Rule 23(b)(2) and 23(b)(3), subsequently settled on a Rule 23(b)(2) and
23(b)(3) basis, preliminary approval granted);

- 1 ss. *Walsh v Fry's Electronics, Inc.* Case No. MSC18-01681 (Contra Costa County
2 Superior Court) (Gift Card Act, CLRA, UCL, FAL class action settled for class-wide
3 public injunctive relief, preliminary approval pending);
- 4 tt. *In RE HP Firmware Update Litigation*, Case No. 5:16-cv-05820-EJD (N.D. Cal.)
5 (co-lead class counsel in consolidated Unfair Competition class action alleging HP
6 pushed a firmware update on consumers' printers that blocked their ability to use
7 third party ink cartridges, preliminary approval granted, final approval granted);
- 8 uu. *Barron v Paragon Building Maintenance, Inc.* Case No. BC713754 (Los Angeles
9 County Superior Court) (wage and hour and PAGA class action on behalf of
10 janitorial workers, preliminary approval granted);
- 11 vv. *Rodriguez v. Experian Information Solutions, Inc. et. al.* Case No. 2:15-cv-01224-
12 RAJ (W.D. Wash.) (FCRA class action for improper credit pulls; certified under
13 Rule 23 by contested motion, and settled on class-wide basis, preliminary approval
14 granted);
- 15 ww. *Ahmed v HSBC Bank USA*, Case No. 5:15-cv-02057-FMO (SPx) (C.D. Cal.) (TCPA
16 class, preliminary approval granted);
- 17 xx. *Garcia et. al. v. HMS Host, Inc.*, Case Jo. 17-cv-03069-RS (N.D. Cal.) (wage and
18 hour class action settled for \$2.2 million, final approval granted);
- 19 yy. *Aiken v. Malcolm Cisneros, A Law Corporation*, Case No. 5:17-cv-02462-JLS-SP
20 (C.D. Cal.) (Fair Debt Collection Practices Act class action, settled on class wide
21 basis, preliminary approval granted);
- 22 zz. *Hale v Mana Pro Products, LLC*, Case No. 2:18-cv-00209-KJM-DB (E.D. Cal.)
23 (false advertising mislabeling class action for rabbit food, settled on class wide basis
24 for injunctive and monetary relief, preliminary approval pending); and
- 25 aaa. *Chavis v Three Group, Inc. DBA Crazy Girls*, Case No. 18STCV08737 (LA
26 Superior Court) (Wage and Hour PAGA action based on contractor
27 misclassification, approval pending).

28 24. My firm has also been appointed class counsel by contested motion for class
certification, in the following cases:

- a. *Anne Wolf v Hewlett Packard Company*, Case No. 5:15-cv-01221-TJH-GJS (C.D.
Cal.) (CLRA class action certified by contested motion on behalf of tens of thousands

1 of class members who purchased printer that was falsely advertised to include Smart
2 Install feature);

- 3 b. *Caldera v. American Medical Collection Association*, (C.D. Cal.) Case No. 2:16-cv-
4 00381-CBM-AJW (TCPA class action on behalf of over 100,000 class members,
5 certified by contested motion)
- 6 c. *D'Angelo Santana vs Rady Children's Hospital*, Case No. 37-2014-00022411-CU-
7 MT-CTL (San Diego Superior Court) Confidentiality of Medical Information Act,
8 Cal. Civ. Code § 56 *et seq.*);
- 9 d. *Edward Makaron v. Enagic USA, Inc.*, Case No. 2:15-cv-05145-DDP-E (C.D. Cal.)
10 (TCPA class action certified on behalf of approximately 2,000,000 class members
11 under Rule 23(b)(2) and 23(b)(3));
- 12 e. *Rodriguez v. Experian Information Solutions, Inc. et al.* Case No. 2:15-cv-01224-
13 RAJ (W.D. Wash.) (FCRA class action for improper credit pulls; certified under
14 Rule 23).
- 15 f. *Sheena Raffin v. Medcredit, Inc. et al.*, Case No. 2:15-cv-04912-MWF-PJW (C.D.
16 Cal.) (Cal. Penal Code § 632.7 class action certified by Hon. George H. King Ret.
17 under Rule 23(b)(2) and (b)(3) on behalf of 11,000 class members whose calls were
18 recorded without knowledge or consent);
- 19 g. *Stemple v. QC Financial Services Group of California, Inc.*, 3:12-cv-01997-CAB-
20 WVG (S.D. Cal.) (certified class achieved by motion, and subsequent class-wide
21 settlement);
- 22 h. *Alfred Zaklit, et al. v. Nationstar Mortgage LLC*, Case No. 5:15-cv-02190-CAS-KK
23 (C.D. Cal.) Cal. Penal Code § 632.7 class action certified under Rule 23(b)(2) and
24 (b)(3) on behalf of over 60,000 class members whose calls were recorded without
25 knowledge or consent);
- 26 i. *Abdeljalil v. General Electric Capital Corporation*, 12-CV-02078-IEG-RBB (S.D.
27 Cal.) (certified class achieved by motion, and subsequent class-wide settlement); and
- 28 j. *McCurley and Deforest v Royal Seas Cruises, Inc.* Case No. 17-cv-00986-BAS-AGS
(certified class achieved by motion in TCPA class action on behalf of over 2 million
class members);

1 k. *Aleksanian v Enrich Financial, Inc.* Case No. BC698829 (LA Superior Court) (UCL
2 class action, certified by contested motion).

3 25. I have no known conflicts of interest with Plaintiffs or any Class Member, and am
4 unaware of any conflicts of interest between Plaintiffs and any Class Member.

5 26. In addition to my firm's experience, I have separately been approved as class counsel
6 at my prior firm on several wage and hour class action matters, including the following:

7 a. *Miller v. Ikea California, LLC* , Case No.: 30-2009 00331682, California Superior
8 Court County of Orange (\$5.75M class settlement granted final approval);

9 b. *David Paiva et al v. Denny Corporation et al.*, Case No. 37-2010-00103831-CU-
10 OE-CTL, California Superior Court County of San Diego (wage and hour
11 misclassification class action on behalf of restaurant managers, granted final
12 approval); and

13 c. *Juan Martinez et al v. Valley Pride, Inc. et al.*, Case No. M108688, California
14 Superior Court County of Monterey (wage and hour class action on behalf of farm
15 laborers, final approval granted).

16 27. In addition to our experience, Mr. Friedman and I have both been recognized for our
17 work by being awarded the designation of Super Lawyer and Rising Star, respectively, for the past
18 four consecutive years running (2016 to 2019). The Super Lawyer award is reserved for the top 5%
19 of attorneys in California. The Rising Star award is given to the top 2.5% of attorneys in California
20 under 40 years of age.

21 28. Plaintiff is adequate to represent the Class. Plaintiff and Class Members have strong
22 and co-extensive interests in this litigation because they all worked for Defendant during the relevant
23 time period, suffered the same alleged injuries from the same alleged course of conduct, and there is
24 no evidence of any conflict of interest between Plaintiff and Class Members. Plaintiff has also
25 demonstrated his commitment to the Class by, among other things, retaining experienced counsel,
26 providing them with documents, extensively speaking with them to assist in identifying the claims
27 asserted in this case, participating in a full day of mediation, and exposing herself to the risk of costs
28 awards against her if this case had been unsuccessful.

DAMAGES ANALYSIS

29. The Settlement provides meaningful relief to Class Members.

1 30. Plaintiff negotiated a class-wide settlement of \$488,750.00 structured as a common
2 fund settlement on behalf of approximately 1,430 Class Members. Of this Total Settlement Amount,
3 Plaintiffs' counsel will request one third (33.33%) as their reasonable attorneys' fees (\$162,916.67)
4 plus reasonable costs of suit (estimated to be less than \$15,000). Plaintiff is requesting an
5 enhancement award of \$10,000. Plaintiffs also estimate administration costs to be approximately
6 \$20,000. The LWDA will also receive \$37,500 of this fund, due to the PAGA allotment.
7 Administration costs are estimated to be \$20,000. The Estimated Distributable Amount will thus be
8 estimated to be approximately \$243,333.33.¹

9 31. Authorized Claimants will be sent checks for their Settlement Awards, in the form of
10 monetary payments, with an average pre-tax estimated payment (assuming 100% participation) of
11 more than \$170.16. This amount was calculated by taking the current estimate of the Net Settlement
12 Sum inclusive (\$243,333.33), and dividing it equally between 1,430 Class Members
13 (\$243,333.33/1430 Class Members = \$170.16 per Class Member).

14 32. Plaintiff, through her counsel, estimated Defendants' potential exposure in this case
15 by using records provided by Defendants in discovery and in the course of the mediation.
16 Defendants provided copies of all policies and procedures documents relating to timekeeping,
17 payroll, breaks, as well as information about the timekeeping system used, and also provided a
18 sample of time and payroll records. These records were used to prepare the damages analysis used
19 at mediation.

20 33. In advance of the mediation, I personally conducted a damages analysis of the class
21 members. I prepared this analysis by interviewing my client extensively about her experiences, and
22 also by reviewing the records provided by Defendants. After reviewing the production, and
23 discussing the case with my client, there arose numerous theories of liability, each of which were
24 fully investigated and damage calculations were made for each of these avenues. Those theories
25 were as follows: 1) off the clock claims, 2) missed meal and rest breaks, 3) failure to pay reporting
26 time pay; 4) non-derivative wage statement penalties; and 5) penalties stemming therefrom.²

27 ¹ My office built an escalator clause into the MOU at mediation in this case in order to protect the
28 class from a potential inflation of the number of class members. The escalator clause was triggered
and the settlement fund increased as a result. But the number of class members was confirmed
through discovery before the settlement agreement was signed.

² Other theories were investigated but they either did not pan out factually or legally, or resulted in
such de minimis damages that they were not the subject of negotiations at mediation.

1 34. My client Ms. Nishimoto was familiar with the experiences of her co-workers, acting
2 as my eyes and ears, and providing trustworthy accounts and testimony regarding her experiences
3 and the experiences of her co-workers.

4 35. Defendant provided my office with information about the number of workweeks and
5 pay stubs issued during the Class Period, in the context of mediation discussions. Defendant also
6 provided information about the number of arbitration agreements that were signed by Class
7 Members.

8 36. Of great importance to the risk analysis of this case was the fact that virtually all of
9 the Class Members entered into arbitration agreements with class action waivers with Defendants,
10 making certification of any class much more difficult. It was my assessment that this reality
11 significantly affected most of the theories described above, as I will explain herein.

12 37. Based on my review of the time and payroll records, as well as the written policies
13 and procedures, I did not find a significant number of provable meal or rest break violations or off
14 the clock violations that would signal to me that the Class Members were entitled to any meaningful
15 relief for meal or rest break violations or unpaid off the clock time violations. That is not to say that
16 it did not happen, but rather, the problem was that there was no readily apparent methodology of
17 determining whether there were any damages for these claims that could be proven on a class-wide
18 basis, since individualized testimony would be required to prove any such instances for any
19 employees. Based on the nature of my client's testimony at deposition and description of her
20 experiences, these claims largely stemmed from working off the clock through breaks, which she
21 testified she did based on a misunderstanding from her supervisor. The testimony presented
22 individualized issues with respect to proving this claim that were readily apparent from Plaintiff's
23 experiences, and because the written policies were compliant, and the time records could not be used
24 to prove violations, I felt strongly that this would not be a claim for which significant damages for
25 the class members could be sustained through trial. Nonetheless, it was a claim we asserted in the
26 case and should be released in my opinion because it is part of the case. To the extent any class
27 members suffered extraordinary individual damages in these areas, they would be free to opt out of
28 the settlement and seek relief, but for purposes of mediation, these claims were not the primary
source of the damages analysis and negligible value was placed on their release.

 38. Regarding reporting time claims, Defendant did not have a written compliant
reporting time policy. I felt this was a strong claim on the merits, which stemmed from sending
employees home early without reporting time pay. I analyzed the time records to conduct a damages
analysis of this claim and determined maximum possible damages to be approximately \$500,000,

1 assuming every incident of violations in the records was unlawful and not a voluntary employee
2 choosing to be sent home early of their own accord.

3 39. I felt there was a 80% certification risk to this claim, due to the arbitration challenges
4 described previously. My assessment was that there was a relatively low risk to the merits of this
5 claim, as the claim was relatively strong on its merits. However, all claims have inherent risk, so I
6 assessed a 25% risk factor to the merits of this claim. Thus, for purposes of settlement I value this
claim at \$75,000 to the class

7 40. The wage statement claim in this case was different than many because it was not
8 based on a derivative violation alone, but also on violations premised on a failure to properly itemize
9 the overtime rates and hours as required under § 226(a)(9) 2, and failed to include an employee ID or
10 last four digits of the social security number and the employee's full name - § 226(a)(7). Because
11 this failure to properly notate the pay stubs was a common issue and a meritorious issue, I felt there
12 was very little risk to merits or certification issues, absent those present due to the arbitration clause.
13 That of course was a significant hurdle to the case, and so I placed an 80% risk factor to the claim.
14 My assessment was that there was a relatively low risk to the merits of this claim, as the claim was
15 relatively strong on its merits. However, all claims have inherent risk, so I assessed a 25% risk
16 factor to the merits of this claim. I determined that the maximum possible damages for the class
would be approximately \$2.4 million assuming every incident of violations in the records was
unlawful under § 226. Accordingly, I valued this claim at \$360,000 to the class.

17 41. Unpaid wage violations were premised on the reporting time claim primarily. Case
18 law is unclear on whether reporting time is sufficient in itself to trigger § 203 penalties, but my
19 assessment was that likely it was. Even so, we would have an additional hurdle of having to prove
20 willfulness, which in my experience is very difficult to substantiate on the facts. Accordingly, I
21 assessed a 50% risk factor to the merits and an 80% risk factor to certification. I determined that the
22 maximum possible damages for the class would be approximately \$1.6 million assuming every
23 incident of violations in the records was unlawful under § 226. Accordingly, I valued this claim at
\$160,000 to the class.

24 42. Regarding PAGA penalties, these too were derivative penalties. I was highly mindful
25 at mediation that the PAGA penalty would be subject to scrutiny of a court under the requirement
26 that penalties not be “unjust, arbitrary, oppressive, or confiscatory.” See Labor Code § 2699(e)(2).
27 The Court would ultimately have discretion to adjust the multiplier downward. Courts have taken
28

1 the liberty of doing so up to 98%, when there is substantial compliance with the statutes.³ In my
2 experience, the LWDA does not object to settlements where the case is resolved on a class wide
3 basis in favor of employees, and the PAGA apportionment is relatively low, because the LWDA
4 believes that providing remuneration to employees is more important than assessing penalties which
5 go largely to the State, and fulfills several of the purposes of PAGA – educating employers, holding
6 them accountable, and providing remuneration to employees.

7 43. My calculations suggested that the maximum possible damages for the PAGA claim
8 would be approximately \$1.15 million assuming every incident of violations in the records was
9 unlawful.

10 44. I believe that the LWDA settlement allotment of \$50,000 to PAGA is appropriate.
11 That amount represents two thirds of the valuation of the 226 penalties, which is an appropriate
12 allotment because of the calculation of both of these figures being based on similar statutes of
13 limitation, and calculations based on workweeks, with PAGA being a discretionary amount, that
14 seemed in my view to be likely to be reduced by the Court.

15 45. The risks in this case were quite high from a certification standpoint, because
16 Defendants insulated themselves with arbitration agreements for most of the class, which the
17 Supreme Court has recently upheld as permissible in the employment context, and which the Ninth
18 Circuit has recently used as a basis to reverse class certification in the employment context. It was
19 very important to me that the employees were able to recover compensation for what I and my client
20 believed were substantive violations of the Labor Code which cost employees money out of pocket.
21 I negotiated as much as I possibly could on this front, and used best efforts and judgment to weigh
22 the risks against the potential of recovery.

23 46. Ultimately, the risks that I perceived in the case during the analysis I conducted
24 leading up to mediation, based on my investigation, research, and review of the policies and
25 procedures, documents of Defendants, discussions with my client, and discussions with defense
26 counsel, placed my valuation of the case going in to mediation at \$645,000. This is a figure that I
27 would refer to as the Adjusted Risk Valuation of the case at bar. That was a figure that I felt would
28 have been a fair and reasonable result to the Class. Ultimately, the settlement achieved was about
three quarters of the Adjusted Risk Valuation, which I believe is nonetheless a fair proportion due to
concerns over uncertainty, and avoiding lengthy and protracted litigation for the Class.

³ *Carrington v. Starbucks Corporation*, (Ct. App. 4th Dist. Div. 1, Cal. Dec. 19, 2018) Case No. D072392, 2018 WL 6695970

1 47. For these reasons, the settlement reached is fair and reasonable. Class Members are
2 being compensated now, with no risk of prolonged litigation, and without the risk of getting nothing
3 based on Defendants' good faith legal and factual arguments and arbitration agreements, among
4 other defenses. Ultimately, Class Members will receive meaningful relief in the form of an average
5 of a \$170.16 payout each, which is in line with other wage and hour class action settlements that I
6 have been a part of, where final approval was granted.

7 48. It is fair and reasonable to allocate the Net Settlement Sum to Class Members based
8 on their respective Work Weeks. Class Members with more Work Weeks are more likely to have
9 been underpaid more overtime wages by Defendants and are also more likely to have been issued a
10 larger number of allegedly defective wage statements.

11 49. The proposed awards of attorneys' fees of \$162,916.67 (one third of the maximum
12 Settlement Fund) and costs of up to \$15,000.00 are well within the range of reasonableness and
13 warrant this Court's preliminary approval. This is especially so in view of Plaintiffs' attorneys'
14 efforts and risks in pursuing this case, and the results achieved (i.e., obtaining a favorable class-wide
15 resolution in the face of a highly uncertain, and ever-evolving, legal landscape as to core issues in
16 this case). Fee awards of thirty-three percent of the maximum Settlement Fund have been
17 consistently approved as reasonable based on my experience in numerous wage and hour class action
18 matters, which I will describe in greater detail at the Final Approval stage, should the Honorable
19 Court grant Preliminary Approval. I will also provide a lodestar cross check at the final approval
20 stage in support of our fee petition.

21 50. This Court should preliminarily approve the proposed Incentive Award of up to
22 \$10,000.00 to Plaintiff. Here, Plaintiff advanced the interests of the Class by, among other things,
23 speaking extensively with counsel on numerous occasions to help identify and develop the claims in
24 this case, providing documents pertinent to the claims of the Class Members, sitting for a deposition,
25 participating in formal discovery, participating in the mediation, providing documentation which
26 supported the class action, and carefully reviewing the Settlement and related documents. Plaintiff
27 also risked being required to pay Defendants' costs if this action had been unsuccessful. Further,
28 Plaintiffs took the personal risks of potentially facing intrusive discovery and disclosure to future
employers that they sued a former employer, making their future uncertain—especially for purposes
of finding future job positions. Finally, Plaintiff is agreeing to a much broader release of claims than
other Class Members.

 51. For these reasons, I believe the Settlement to be abundantly fair and reasonable.

1 I declare under the penalty of perjury of the laws of the State of California that the foregoing is true
2 and correct to the best of my knowledge.

3
4 Executed on November 14, 2019 at Orange, California.



6 ADRIAN BACON
7 Declarant

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EXHIBIT A

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21 Attorneys for Defendant
22 T&S BUSINESS CORPORATION

23 SUPERIOR COURT OF CALIFORNIA

24 COUNTY OF SACRAMENTO

25 REBECCA NISHIMOTO, individually
26 and on behalf of all others similarly
27 situated,

28 Plaintiff,

v.

T&S BUSINESS CORPORATION,

Defendant.

Case No. 34-2017-00211426

[Assigned for All Purposes to the Hon. Alan G. Perkins, Dept. 35]

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

TO THE COURT:

I. THE CONDITIONAL NATURE OF THIS STIPULATION

1.1 This Joint Stipulation of Class Action Settlement (“Settlement Agreement”), including all exhibits or attachments, is made and entered into by and between REBECCA

1 NISHIMOTO, individually and on behalf of the putative class (“Plaintiff”), and Defendant T&S
2 BUSINESS CORPORATION (“Defendant”) (collectively, the “Parties”), with respect to the
3 above-entitled action pending in the in Sacramento Superior Court styled as *Rebecca Nishimoto v.*
4 *T&S Business Corporation*, Case No. Case No. 34-2017-00211426. Because the Parties, as
5 defined below, desire to settle this Action, as defined below, on a class-wide basis pursuant to
6 Code of Civil Procedure §382, this Agreement must receive preliminary and final approval by the
7 Sacramento Superior Court. Accordingly, the Parties enter into this Agreement on a conditional
8 basis. The Parties expressly acknowledge that this Settlement Agreement is entered into solely for
9 the purpose of compromising significantly disputed claims and that nothing in this Settlement
10 Agreement is an admission of liability or wrongdoing by Defendant.

11 1.2 If for any reason the Court does not give preliminary or final approval of this
12 Settlement Agreement or this Settlement Agreement is terminated or canceled pursuant to its
13 terms, the Parties to this Settlement Agreement shall be deemed to have reverted to their respective
14 positions as of the date and time immediately prior to the execution of this Settlement Agreement.
15 In such an event: (a) the Settlement Agreement shall be void and have no force or effect; (b) any
16 Court orders preliminary or finally approving certification of any class contemplated by this
17 Settlement Agreement shall be null, void, and vacated, and shall not be used or cited thereafter by
18 any person or entity; and (c) the fact that the Agreement reflected in this Settlement Agreement,
19 the fact that Defendant did not oppose certification of a Class under this Settlement Agreement, or
20 that the Court preliminarily approved the certification of the Class, shall not be used or cited
21 thereafter by any person or entity, including without limitation, any contested proceeding relating
22 to the certification of any class. Solely for purposes of this Settlement Agreement, the Parties
23 stipulate and agree to class certification. In the event this Settlement Agreement is not approved,
24 it is understood and agreed that Defendant is not agreeing for any purpose that this Action is
25 appropriate for class certification and reserves all rights and defenses with respect to the
26 underlying wage and hour claims alleged in the Action.

27 1.3 Defendant denies all claims as to liability, damages, penalties, interest, fees,
28 ~~restitution, injunctive relief and all other forms of relief as well as the class allegations asserted in~~

1 the Action. Defendant has agreed to resolve the Action via this Settlement Agreement, but to the
2 extent this Settlement is deemed void or the Final Effective Date does not occur, Defendant does
3 not waive, but rather expressly reserves, all rights to challenge such claims and allegations in the
4 Action upon all procedural and factual grounds, including, without limitation, the ability to
5 challenge class treatment on any grounds, as well as asserting any and all other potential defenses
6 or privileges. The Class Representative and Class Counsel (as defined below) agree that
7 Defendant retains and reserves these rights, and agree not to argue or present any argument, and
8 hereby waive any argument that, based on this Settlement Agreement, Defendant cannot challenge
9 claims and allegations in the Action upon any procedural or factual grounds, including, without
10 limitation, challenging class or representative treatment or certification on any grounds, or
11 asserting any and all other potential defenses or privileges.

12 **II. DEFINITIONS**

13 In addition to terms defined elsewhere in the Settlement, as used in this Settlement the following
14 terms have the meanings indicated below:

15 2.1. “Action” means the civil action initiated on April 24, 2017 in Sacramento Superior
16 Court styled as *Rebecca Nishimoto v. T&S Business Corporation*, Case No. Case No. 34-2017-
17 00211426.

18 2.2. “Claims Administrator” means KCC, LLC or an administrator mutually agreed to by
19 the Parties that will perform the customary duties of a claims administrator including but not limited
20 to, the duties enumerated in this Agreement.

21 2.3 “Claims Administration Expenses” means the fees and expenses reasonably incurred
22 by the Claims Administrator as a result of the procedures and processes expressly required by this
23 settlement, and shall include all costs of administering this Settlement, including, but not limited to,
24 translating the Notice of Settlement into Spanish, all tax document preparation, custodial fees, and
25 accounting fees incurred by the Claims Administrator; all costs and fees associated with preparing,
26 issuing and mailing any and all notices of settlement and other settlement correspondence, in English
27 and Spanish, to Class Members; distributing (including with appropriate postage), and tracking
28 ~~documents for this Settlement in English and Spanish, any searches to locate any Class Members,~~

1 tax reporting, distributing the Individual Settlement Payments, Class Representative's Payment,
2 Class Counsel Fees and Costs, and providing necessary certification of completion of notice, reports
3 and declarations, establishing and administering a qualified settlement fund account and other
4 responsibilities set forth in this Settlement Agreement and as requested by the Parties. The Claims
5 Administration Expenses are currently estimated to be not more than Twenty Thousand Dollars
6 (\$20,000).

7 2.4 "Class" shall refer to the group of approximately 1430 non-exempt employees T&S
8 Business Services Inc. during the Covered Period (April 24, 2013 through September 1, 2018).

9 2.5 "Class Counsel" shall refer to Todd M. Friedman and Adrian R. Bacon of Law
10 Offices of Todd M. Friedman, P.C.

11 2.6 "Class Member" shall refer to an employee of Defendant who falls within the
12 definition of the Class.

13 2.7 "Class Notice" means the Notice which the Claims Administrator will mail to each
14 Class Member explaining the terms of the settlement contemplated by this Agreement, in a format
15 that is mutually acceptable to the parties. The form of the Class Notice to be used is attached hereto
16 as **Exhibit A**.

17 2.8 "Class Representative" shall refer to Plaintiff Rebecca Nishimoto.

18 2.9 "Class Representative Payment" means the Court-approved service payment to
19 Plaintiff Rebecca Nishimoto for her services as a Class Representative and for her execution of a
20 general release as described herein.

21 2.10 "Class Representative's Released Claims" means all claims arising from, could have
22 been asserted, or related in any way to the claims asserted in the Action against Defendant, under
23 federal, state, or local laws, and/or ordinances, or tort or contract theories, whether known or
24 unknown, and whether anticipated or unanticipated, including without limitation statutory,
25 constitutional, contractual or common law claims for wages, damages, unpaid costs, penalties,
26 liquidated damages, interest, attorneys' fees, litigation costs, restitution, equitable relief or other
27 relief under Business & Professions Code section 17200, et seq., including the following categories:

28 ~~(a) any and all claims involving any alleged failure to pay the minimum wages; (b) any and all~~

1 claims involving any alleged failure to pay employees for all hours worked, including but not limited
2 to any claim for minimum, straight time, or overtime wages; (c) any and all claims involving any
3 alleged failure to pay overtime wages, including but not limited to any claim involving “off the
4 clock” work; (d) any claim involving Defendant’s workday or workweek; (e) any claim involving
5 split-shift; (f) any claim involving reporting time; (g) any claim involving travel time; (h) any and all
6 claims involving any alleged failure to properly provide meal periods and/or authorize and permit
7 rest periods, to pay premiums for missed, late, short or interrupted meal and/or rest periods, or to pay
8 such premiums as required by Labor Code section 226.7; (i) any and all claims involving any alleged
9 failure to keep accurate records or to issue proper wage statements to employees; (j) any and all
10 claims involving any alleged failure to timely pay wages, including but not limited to any claim that
11 Defendants violated Labor Code sections 201 or 202, and any claim for waiting time penalties under
12 Labor Code section 203; (k) any and all claims for unfair business practices in violation of Business
13 and Professions Code sections 17200, et seq.; and (l) any and all penalties pursuant to the Private
14 Attorneys General Act (“PAGA”) of 2004 arising out of any or all of the aforementioned claims.
15 The Released Claims include all such claims arising under the California Labor Code (including, but
16 not limited to, sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 225.5, 226, 226.3, 226.7,
17 227.3, 246, 256, 450, 510, 511, 512, 516, 558, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1197.2,
18 1198, 1199, 2800, 2802, and 2698 et seq.); the Wage Orders of the California Industrial Welfare
19 Commission; California Business and Professions Code section 17200 et seq.; California Civil Code
20 section 3336; the California common law of contract. This release excludes the release of claims not
21 permitted by law. The Class Representative’s Released Claims exclude claims for workers’
22 compensation or unemployment insurance benefits, and shall not be construed to release any claims
23 brought by other Class Members except for the Class Representative.

24 2.11 “Compensable Weeks Employed” means the number of weeks of employment as a
25 Class Member during the appropriate Covered Period.

26 2.12 “Counsel for Defendant” or “Defense Counsel” means Beth A. Schroeder and Allison S.
27 Wallin of Raines Feldman, LLP.

28 2.13 “Covered Period” shall mean the period from April 24, 2013 through September 1,

1 2018.

2 2.14 “Defendant” means Defendant T&S Business Corporation.

3 2.15 “Defendant Released Parties” means Defendant T&S Business Corporation and all of
4 its past, present and future agents, employees, servants, officers, directors, partners, trustees,
5 representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, related
6 corporations, divisions, joint venturers, assigns, predecessors, successors, service providers, insurers,
7 consultants, subcontractors, joint employers, employee benefit plans and fiduciaries thereof,
8 affiliated organizations, and all persons acting under, by, through or in concert with them.

9 2.16 “Employer Payroll Taxes” refers to the amount of FICA, FUTA, and all other state
10 and federal payroll taxes on the Settlement Payments Defendant is required to pay by law when
11 paying wages to employees.

12 2.17 “Final Approval Hearing” means the hearing contemplated by the Parties, at which
13 the Court will approve, in final, the settlement and make such other final rulings as are contemplated
14 by this Settlement Agreement.

15 2.18 “Final Approval Order” means the Court’s order granting final approval of the
16 Settlement, which will constitute a “judgment” within the meaning of Code of Civil Procedure
17 section 577. The form of Final Approval Order to be submitted is attached hereto as **Exhibit C**.

18 2.19 “Final Effective Date” shall be the first date after all of the following events or
19 conditions have been met or have occurred:

- 20 (1) The Court has, by entry of a Preliminary Approval Order:
21 (a) Approved the certification of the Class for settlement
22 purposes;
23 (b) Preliminarily approved the settlement set forth in this
24 Settlement Agreement, and the method of providing the Court-
25 approved Class Notice to the certified class;

26 (2) The Court has entered a Final Approval Order approving this
27 settlement and the Court has entered the Final Judgment as provided in Paragraph 1.q. below;

28 (3) ~~No valid rescission of the Settlement Agreement has occurred~~

1 pursuant to Paragraph 64, below;

2 (4) The time to appeal from the Final Approval Order has expired
3 and no notice of appeal has been filed; and

4 (5) In the event that an appeal is actually filed, the latest of the
5 following, if applicable, has occurred:

6 (a) Any appeal from the Final Approval Order has been
7 finally dismissed;

8 (b) The Final Approval Order has been affirmed on appeal
9 in a form substantially identical to the form of the Final
10 Approval Order entered by the Court;

11 (c) The time to petition for review with respect to any
12 appellate decision affirming the Final Approval Order has
13 expired; or

14 (d) If a petition for review of an appellate decision is filed,
15 the petition has been denied or dismissed, or, if granted, has
16 resulted in affirmance of the Final Approval Order and the
17 Final Order and Judgment has not been materially modified,
18 amended, or reversed in any way.

19 2.20 “Final Judgment” means the judgment entered by the Court in conjunction with the
20 Final Approval Order. The Parties shall submit an order of Final Judgment setting forth the terms of
21 this Settlement Agreement, by incorporation or otherwise, for execution and entry by the Court at
22 the time of the Final Approval Hearing or at such other time as the Court deems appropriate. The
23 form of Final Judgment to be submitted is attached hereto as **Exhibit D**.

24 2.21 “Gross Individual Settlement Payment” means the gross amount of the Maximum
25 Settlement Distribution Amount each Class Member will be paid. The sum of these Gross
26 Individual Settlement Payments to individual Class Members shall constitute the “Class Settlement
27 Payment.”

28 ~~2.22 “Maximum Gross Settlement Amount” shall mean the maximum amount that~~

1 Defendant shall cause to be paid pursuant to this Settlement, which is Four Hundred and Eighty
2 Eight Thousand Seven Hundred and Fifty Dollars and No Cents (\$488,750.00). That sum is and
3 shall be inclusive of the following: (a) the Class Representative Payment to Rebecca Nishimoto in
4 the amount of up to Ten Thousand Dollars and Zero Cents (\$10,000.00); (b) Class Counsel’s
5 attorneys’ fees in an amount up to one third of the Gross Settlement Amount - One Hundred and
6 Sixty Two Thousand, Nine Hundred and Sixteen Dollars and Sixty Seven Cents (\$162,916.67),
7 incurred or to be incurred in this Action, including any appeals; (c) costs and expenses associated
8 with the Action in an amount of up to Fifteen Thousand Dollars and Zero Cents (\$15,000.00),
9 incurred or to be incurred in this Action, including any appeals; (d) the fees and expenses of the
10 Claims Administrator as set forth in Paragraph 7.11, estimated at Twenty Thousand Dollars
11 (\$20,000.00) and subject to reduction or increase to correspond with the actual fees and expenses
12 incurred, as further described below; (e) the employee portion of all applicable tax withholdings
13 including, but not limited to, FICA, SDI, and other employment- related taxes and withholding of
14 federal, state and local income taxes; (f) Fifty Thousand Dollars (\$50,000.00) in recognition of the
15 release of claims pursuant to the Private Attorney Generals Act (“PAGA”), 75% of which (\$37,500)
16 designated to go to the California Labor and Workforce Development Agency, and 25% of which
17 (\$12,500) to the Class Members, and (g) the remainder of approximately Two Hundred and Forty
18 Three Thousand Three Hundred and Thirty Three Dollars and Thirty Three Cents (**\$243,333.33**)
19 which is the estimated Maximum Settlement Distribution Amount to all Class Members.

20 2.23 “PAGA Payment” means the amount of Fifty Thousand Dollars and No Cents
21 (\$50,000.00), 75% of which (\$37,500) remitted to the California Labor and Workforce Development
22 Agency, and 25% of which (\$12,500) to the Class Members, for the resolution of all Class
23 Members’ claims under the PAGA, California Labor Code Section 2698, *et. seq.*

24 2.24 “Participating Class Members” means those members of the Class who have not
25 requested to be excluded from the class or opted out of the class.

26 2.25 “Participating Class Member’s Released Claims” means all claims arising from,
27 could have been asserted, or related in any way to the claims asserted in the Action against
28 ~~Defendant, under federal, state, or local laws, and/or ordinances, or tort or contract theories, whether~~

1 known or unknown, and whether anticipated or unanticipated, including without limitation statutory,
2 constitutional, contractual or common law claims for wages, damages, unpaid costs, penalties,
3 liquidated damages, interest, attorneys' fees, litigation costs, restitution, equitable relief or other
4 relief under Business & Professions Code section 17200, et seq., including the following categories:
5 (a) any and all claims involving any alleged failure to pay the minimum wages; (b) any and all
6 claims involving any alleged failure to pay employees for all hours worked, including but not limited
7 to any claim for minimum, straight time, or overtime wages; (c) any and all claims involving any
8 alleged failure to pay overtime wages, including but not limited to any claim involving "off the
9 clock" work; (d) any claim involving Defendant's workday or workweek; (e) any claim involving
10 split-shift; (f) any claim involving reporting time; (g) any claim involving travel time; (h) any and all
11 claims involving any alleged failure to properly provide meal periods and/or authorize and permit
12 rest periods, to pay premiums for missed, late, short or interrupted meal and/or rest periods, or to pay
13 such premiums as required by Labor Code section 226.7; (i) any and all claims involving any alleged
14 failure to keep accurate records or to issue proper wage statements to employees; (j) any and all
15 claims involving any alleged failure to timely pay wages, including but not limited to any claim that
16 Defendants violated Labor Code sections 201 or 202, and any claim for waiting time penalties under
17 Labor Code section 203; (k) any and all claims for unfair business practices in violation of Business
18 and Professions Code sections 17200, et seq.; and (l) any and all penalties pursuant to the Private
19 Attorneys General Act ("PAGA") of 2004 arising out of any or all of the aforementioned claims.
20 The Released Claims include all such claims arising under the California Labor Code (including, but
21 not limited to, sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 225.5, 226, 226.3, 226.7,
22 227.3, 246, 256, 450, 510, 511, 512, 516, 558, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1197.2,
23 1198, 1199, 2800, 2802, and 2698 et seq.); the Wage Orders of the California Industrial Welfare
24 Commission; California Business and Professions Code section 17200 et seq.; California Civil Code
25 section 3336; the California common law of contract. This release excludes the release of claims not
26 permitted by law. The Participating Class Members' Released Claims exclude claims for workers'
27 compensation or unemployment insurance benefits, as well as any claims for workplace
28 discrimination, retaliation, hostile work environment, sexual harassment, or wrongful termination.

1 This release will cover all Class Members who do not opt out.

2 2.25 "Preliminary Approval Order" means the order of the Court granting preliminary
3 approval of this Settlement Agreement on the terms provided herein or as the same may be modified
4 by subsequent mutual agreement of the Parties with, as appropriate, approval of the Court. The form
5 of Preliminary Approval Order to be submitted is attached hereto as **Exhibit B**.

6 **III. POSITION OF DEFENDANT.**

7 3.1 Neither this Agreement, nor any document referred to in it, nor any actions taken
8 pursuant to this Agreement, is or shall be claimed to be, construed as, or deemed to be, an admission
9 by Defendant of the truth of any of the allegations in the Action, the propriety of class treatment, the
10 validity of any of the claims that were or could have been asserted by the Class Representative
11 and/or any Class Members in the Action, or of any liability or guilt of the Defendant in the Action.
12 There has been no final determination by any court as to the merits of the claims asserted by Class
13 Representative/Plaintiff against the Defendant.

14 3.2 The Defendant specifically and generally denies any and all liability or wrongdoing
15 of any sort with regard to any of the claims alleged, makes no concessions or admissions of liability
16 of any sort, and contends that for any purpose other than settlement, the Action is not appropriate for
17 class action treatment. Nonetheless, the Defendant has concluded that further conduct of the Action
18 would be undesirable, and the Defendant wants the Action to be fully and finally settled in the
19 manner and upon the terms and conditions set forth in this Settlement. The Defendant has also taken
20 into account the uncertainty and risks inherent in any litigation. The Defendant therefore desires to
21 settle the Action in the manner and upon the terms and conditions set forth in this Agreement.

22 3.3 The Defendant will stipulate to the certification of the Class Claims for settlement
23 purposes only. The Defendant disputes that certification is proper for the purposes of litigating the
24 Class Claims proposed in or flowing from the Complaint.

25 **IV. BACKGROUND AND REASONS FOR SETTLEMENT**

26 4.1 On April 24, 2017, Plaintiff Rebecca Nishimoto filed a Complaint in the Superior
27 Court of the County of Sacramento, California against Defendant on behalf of herself and other non-
28 ~~exempt employees who worked for Defendant in California alleging that T&S, (1) failed to provide~~

1 meal periods in accordance with California law, (2) failed to provide accurate itemized wage
2 statements; (3) failed to pay all wages due at termination; (4) failed to provide rest breaks; (5)
3 violated the California Business and Professions Code §§ 17200, *et seq.* The Lawsuit seeks damages
4 and restitution for lost wages, interest, penalties, injunctive relief, attorneys' fees and expenses.
5 Defendant denies all of the allegations in Plaintiff's Complaint and maintains that the Court should
6 not certify the class action or representative action proposed by Plaintiff, other than for the sole
7 purpose of this Settlement, as set forth in its Answer and Affirmative Defenses.

8 4.2 To satisfy the statutory exhaustion requirements of Labor Code §2699, Private
9 Attorney General Act (PAGA), on June 5, 2017, Plaintiff submitted a letter to the Labor Workforce
10 Development Agency expressing his intent to file a PAGA claim based upon the following
11 allegations: (1) failure to provide duty-free meal and rest periods in violation of Cal. Lab. Code §§
12 226.7 and 512; (2) failure to pay all wages due at termination in violation of Cal. Lab. Code §§201-
13 203; (3) failure to provide accurate wage statements in violation of Cal. Lab. Code §§226; (4) failure
14 to pay proper wages and/or provide required working conditions and/or for violating applicable
15 Wage Order/ regulations in violation of Cal. Lab. Code §1199 and Wage Orders. After waiting the
16 appropriate time period for a response from the LWDA, Plaintiff filed a First Amended Complaint
17 claiming that Defendant is subject to penalties pursuant to section §2699(a) of the Private Attorneys
18 General Act, in addition to the claims alleged in the original Complaint. Defendant denies all of the
19 allegations in Plaintiff's First Amended Complaint and maintains that the Court should not certify
20 the class action or representative action proposed by Plaintiff, other than for the sole purpose of this
21 Settlement, as set forth in its Answer to First Amended Complaint and Affirmative Defenses.

22 4.3 On July 6, 2017, both parties filed a stipulation to stay the case pending binding
23 Arbitration.

24 4.4 After conducting voluminous discovery, including the deposition of Plaintiff, the
25 Parties agreed to attempt to resolve the matter through private mediation. In preparation for the
26 mediation, the Parties exchanged extensive data and documents, including personnel records for the
27 named Plaintiff, sample time and pay records for a percentage of the putative class, a redacted class
28 ~~list including the dates of employment of each putative class member, average rate of pay and~~

1 number of weeks worked during the Covered Period.

2 4.5 On June 6, 2018, the Parties attended a mediation session presided over by The Hon.
3 Peter D. Lichtman (Ret) of JAMS, a retired Judge mediator with significant experience in wage and
4 hour class actions. Each Party was represented by their respective counsel during the good-faith
5 negotiations facilitated by Judge Lichtman. Subsequent to mediation, the Parties signed a
6 Memorandum of Understanding outlining the key elements of the agreed-upon settlement.

7 4.6 Class Counsel represent that they have conducted a thorough investigation into the
8 facts of this case, and have diligently pursued an investigation of the Class Members' claims against
9 Defendant, including (1) interviewing Class Members and analyzing the results of Class Member
10 interviews; (2) reviewing relevant policy documents; (3) researching the applicable law and the
11 potential defenses; and (4) reviewing relevant data including time records and pay data. Based on
12 their own independent investigation and evaluation, Class Counsel are of the opinion that the
13 Settlement is fair, reasonable and adequate and is in the best interest of the Class in light of all
14 known facts and circumstances, including the risk of significant delay, defenses asserted by
15 Defendant, and potential appellate issues. Defendant agrees that the Settlement is fair, reasonable
16 and adequate.

17 4.7 Defendant shall provide Plaintiff with the number of pay periods during the Covered
18 Period in conjunction with the filing of the Preliminary Approval motion.

19 4.8 It is the mutual desire of the Parties to fully, finally, and forever settle, compromise,
20 and discharge all disputes and claims raised in or related in any way to the Action. Thus, the entry
21 of the Final Approval Order in this Action shall dismiss with prejudice all class claims which were
22 or which could have been alleged in Plaintiff's Complaint. The Parties agree to cooperate and take
23 all steps necessary and appropriate to obtain preliminary and final approval of this Settlement, to
24 effectuate its terms, and to dismiss these claims with prejudice.

25 **V. NO ADMISSION**

26 5.1 Nothing contained in this Joint Stipulation and the Settlement contemplated in the
27 Joint Stipulation shall be construed or deemed an admission of liability, culpability, negligence, or
28 ~~wrongdoing on the part of Defendant and Defendant denies liability therefor. While Defendant~~

1 believes that this Action meets the prerequisites for certification of a settlement class, the fact that
2 Defendant seeks approval of this Settlement in the form of a class action shall not be construed as an
3 admission that the underlying action was properly brought as a class action or a representative action
4 under California Business and Professions Code section 17200 or California Labor Code 2699 for
5 purposes other than settlement. Each of the Parties has entered into this Settlement with the
6 intention to avoid further disputes and litigation with the attendant inconvenience and expenses.
7 Settlement of the Action, the negotiation and execution of this Joint Stipulation, and all acts
8 performed or documents executed pursuant to or in furtherance of this Joint Stipulation or the
9 Settlement: (1) are not, shall not be deemed to be, and may not be used as, an admission or evidence
10 of any wrongdoing or liability on the part of Defendant, and each of them; (2) are not, shall not be
11 deemed to be, and may not be used as, an admission or evidence of any fault or omission on the part
12 of Defendant in any civil, criminal, administrative or arbitral proceeding in any court, administrative
13 agency or other tribunal; and (3) are not, shall not be deemed to be, and may not be used as, an
14 admission or evidence of the appropriateness of these or similar claims for class certification or
15 administration other than for purposes of administering this Joint Stipulation. This Joint Stipulation
16 is a settlement document and shall be inadmissible in evidence in any proceeding, except an action
17 or proceeding to approve, interpret, or enforce the terms of the Joint Stipulation.

18 **VI. CERTIFICATION OF A CODE OF CIVIL PROCEDURE SECTION 382 CLASS**

19 6.1 For Settlement purposes only, the Parties stipulate to conditional certification of the
20 Settlement Class (“Class”), an opt-out class under California Code of Civil Procedure 382, that is
21 defined as follows:

22 All non-exempt employees of T&S Business Services, Inc.
23 (“Defendant”) in California during the period of April 24, 2013
through September 1, 2018.

24 6.2 The Parties stipulate that Plaintiff Rebecca Nishimoto shall be appointed as the Class
25 Representative for the Settlement Class.

26 6.3 The Parties stipulate that the Law Offices of Todd M. Friedman, P.C. shall be
27 appointed Class Counsel for the Settlement Class.

1 6.4 The stipulations to certify the Settlement Class are completely contingent upon final
2 approval of this Agreement by the Court and are made for settlement purposes only. If the
3 Settlement is not approved by the Court, is overturned on appeal, or does not become final for any
4 other reason, the Parties agree that the certification of the Settlement Class is void ab initio and that,
5 if necessary, they shall stipulate to decertification of the Settlement Class without prejudice to the
6 propriety of class certification being adjudicated on the merits.

7 **VII. TERMS OF THE SETTLEMENT**

8 **A. Maximum Gross Settlement Amount**

9 7.1 The Maximum Gross Settlement Amount under this Settlement as defined above is
10 Four Hundred and Eighty Eight Thousand Seven Hundred Fifty Dollars (\$488,750.00).

11 7.2 Defendant will also pay all required Employer Payroll Taxes due on the wages paid to
12 Class Members as part of this Settlement.

13 7.3 The Settlement will be non-reversionary and will not require Class Members to
14 submit claim forms. Class members not requesting to be excluded will still be bound by the
15 Settlement.

16 7.4 This Settlement does not establish a fund for the payment of claims except as
17 expressly provided for herein. The Maximum Gross Settlement Amount shall remain in the
18 possession, custody, and control of Defendant until the settlement amounts are distributed as set
19 forth herein. In the event that this Settlement Agreement is canceled, rescinded, terminated, voided,
20 or nullified, however that may occur, or the settlement of the Action is barred by operation of law, is
21 invalidated, is not approved or otherwise is ordered not to be carried out by the Court or any court of
22 competent jurisdiction, Defendant will cease to have any obligation to pay or provide any portion of
23 the Maximum Gross Settlement Amount to anyone under the terms of this Settlement Agreement.

24 **B. Attorneys' Fees and Costs**

25 7.5 The Action alleges a potential claim for attorneys' fees and costs pursuant to, inter
26 alia, the California Labor Code. The Parties agree that any and all such claims for attorneys' fees
27 and costs have been settled in this Joint Stipulation subject only to approval by the Court.

1 7.6 Defendant understands that Class Counsel will apply to the Court for an award of
2 attorneys' fees and costs, which will be scheduled for determination at the final fairness and
3 approval hearing described in Paragraph 13.1 below. Class Counsel will apply for, and Defendant
4 will not oppose, an award of attorneys' fees in an amount up to, but not to exceed, one third (33.33)
5 percent of the Maximum Gross Settlement Amount (One Hundred and Sixty Two Thousand Nine
6 Hundred Sixteen Dollars and Sixty Seven Cents (\$162,916.67), and litigation costs and expenses in
7 the maximum amount of Fifteen Thousand Dollars and Zero Cents (\$15,000.00), all of which shall
8 be paid exclusively from the Maximum Gross Settlement Amount, and will compensate Class
9 Counsel for all of the work already performed in the Action and all work remaining to be performed
10 in documenting the Settlement, securing Court approval of the Settlement, administering the
11 Settlement, ensuring that the Settlement is fairly administered and implemented, obtaining dismissal
12 of the Action with prejudice, and defending against any appeals, as well as all associated expenses.
13 The litigation costs and expenses shall be those costs and expenses incurred by Plaintiff as set forth
14 on Class Counsel's billing statement, including but not limited to mediation fees, expert and
15 consultant fees, filing fees, attorney service charges, online research charges, travel expenses,
16 copying expenses, deposition expenses and delivery charges. Neither Rebecca Nishimoto, Class
17 Counsel, nor any other Class Member shall seek payment of attorneys' fees or reimbursement of
18 costs or expenses from Defendant except as expressly set forth in this Joint Stipulation.

19 7.7 The substance of Class Counsel's application for attorneys' fees and costs is not a
20 material part of this Joint Stipulation, and is to be considered separately from the consideration of
21 the fairness, reasonableness, adequacy, and good faith of the settlement of the Action. However, all
22 claims for attorneys' fees and costs or expenses that the Settlement Class may possess against
23 Defendant have been compromised and resolved in this Joint Stipulation. Any proceedings related
24 to Class Counsel's application for attorneys' fees and costs shall not terminate or cancel this Joint
25 Stipulation. If Class Counsel appeals an adverse ruling of the Court regarding its fee and cost
26 application, the ruling of the appellate court (regardless of its substance) shall not constitute a
27 material alteration of a term of this Joint Stipulation. Class Counsel waives and releases any claim
28 ~~for fees and costs in excess of that which are allowed by the Court or on appellate review of the~~

1 Court's fees and costs decision or otherwise. The amount, if any, by which the finally approved fees
2 and costs are less than the maximum amount which can be sought pursuant to this Agreement shall
3 be a part of the wages and non-wage income provided Class Members in equal proportions.

4 7.8 No later than fifteen (15) calendar days after the Court's approval of Class Counsel's
5 application for attorneys' fees and costs, Class Counsel shall deliver to the Claims Administrator
6 written instructions that describe the manner and mode of payment of such attorneys' fees and costs
7 (and, in the absence of such instructions, such attorneys' fees and costs shall be sent by U.S. mail as
8 set forth below), and fully-executed Form W-9s with respect to all persons or entities to whom some
9 or all of the attorneys' fees and costs shall be paid.

10 7.9 No later than thirty (30) calendar days after the Final Effective Date, Defendant shall
11 mail or wire transfer the Maximum Gross Settlement Amount to the Claims Administrator.
12 Assuming the conditions in Paragraph 14.1 have been met, no later than seven (7) calendar days
13 after the receipt of the Maximum Gross Settlement Amount from Defendant, the Claims
14 Administrator shall issue a payment to Class Counsel for the amount of attorneys' fees and costs
15 approved by the Court and in accordance with the instructions provided by Class Counsel.

16 7.10 The Claims Administrator will issue to Class Counsel IRS Form 1099s for the
17 amounts paid for attorneys' fees and costs under this Settlement.

18 **C. Payment to Claims Administrator**

19 7.11 The fees and expenses of the Claims Administrator are estimated at Thirteen
20 Thousand Eight Hundred Forty Five Dollars (\$13,845.00). To the extent that the costs of
21 administration exceed \$13,845.00, the shortfall will be taken from the Maximum Settlement
22 Distribution Amount and thereby reduce the amount of wages and penalties payable to the
23 Participating Class Members. To the extent the cost of administration is less than \$13,845.00, the
24 excess shall become part of the Maximum Settlement Distribution Amount and shall increase the
25 amount of wages and penalties payable to the Participating Class Members.

26 7.12 On or before the date of the Final Approval Hearing, the Claims Administrator shall
27 deliver to counsel for Defendant a fully-executed Form W-9.

1 7.13 No later than thirty (30) calendar days after the Final Effective Date, Defendant shall
2 mail or wire transfer the Maximum Gross Settlement Amount to the Claims Administrator. At the
3 time it receives the Maximum Gross Settlement, the Claims Administrator may issue a payment to
4 itself for the amount of fees approved by the Court.

5 7.14 Defendant will issue to the Claims Administrator an IRS Form 1099 for the sum paid
6 to it under this Settlement.

7 **D. Class Representative Payment to Class Representatives**

8 7.15 Defendant understands that Plaintiff and Class Counsel will apply to the Court for
9 Class Representative Payment, which will be scheduled for determination at the final fairness and
10 approval hearing. Plaintiff and Class Counsel will apply for Class Representative Payment in an
11 amount up to, but not to exceed, Ten Thousand Dollars and No Cents (\$10,000.00) to the Class
12 Representative, which shall be paid exclusively from the Maximum Gross Settlement Amount, and
13 will compensate Plaintiff for her services as the Class Representative. Defendant will not oppose
14 Plaintiff's application for the Class Representative Payment up to the stated amount. The amount, if
15 any, by which the Class Representative Payment is less than the maximum amount which can be
16 sought pursuant to this Agreement shall be part of the Maximum Settlement Distribution Amount.

17 7.16 As condition precedent to the payment of this Class Representative Payment, Plaintiff
18 releases any and all claims against Defendant as set forth in the Class Representative Release in
19 Paragraph 12.13.

20 7.17 Any Class Representative Payment awarded by the Court shall be in addition to the
21 payment, if any, Plaintiff may otherwise receive as a Participating Class Member and shall not be
22 subject to payroll tax withholding and deductions.

23 7.18 No later than seven (7) calendar days after the receipt of the Maximum Gross
24 Settlement Amount from Defendant, the Claims Administrator shall issue the Class Representative
25 Payment to Class Counsel on behalf of Plaintiff in the amount approved by the Court, subject to all
26 authorized and required deductions.

27 7.19 The Claims Administrator will issue IRS Form 1099-MISC to Plaintiff for the amount
28 of the Class Representative Payment.

1 7.23 Class Members may dispute the number of qualifying work weeks identified in the
2 Class Notice by way of proof that the Class Member worked more work weeks during the Covered
3 Period. Any dispute must be in writing and received by the Claims Administrator no later than
4 forty-five (45) days after the initial mailing of the Class Notice. If there is a dispute related to the
5 number of qualifying workweeks, the Claims Administrator will consult with Class Counsel and
6 Defendant’s Counsel to determine whether an adjustment is warranted. Upon a dispute being made,
7 Defendant shall provide the Claims Administrator within seven (7) days the records that Defendant
8 used to compute the number of eligible qualifying work weeks for the disputing Class Member, and
9 any other available evidence reasonably necessary to evaluate the dispute. The Claims Administrator
10 will make the final decision as to the number of eligible qualifying work weeks.

11 7.24 The Participating Class Members shall be paid their respective Individual Settlement
12 Payments as provided in this Agreement pursuant to sections 7.21 and 11.1.

13 **F. PAGA Payment**

14 7.25 The Parties have agreed to allocate Fifty Thousand Dollars and No Cents
15 (\$50,000.00) for the resolution of all Class Members’ claims under the California Private Attorney
16 General Act, California Labor Code Section 2698, et. seq. The PAGA Payment will be remitted as
17 follows: 75% (\$37,500) to go to the California Labor and Workforce Development Agency, and
18 25% (\$12,500) to the Class Members,

19 7.26 This amount is subject to review and approval by the Court as part of the settlement
20 process pursuant to Labor Code section 2699(1)(2). This Settlement is contingent on the Court
21 approving the PAGA release and payment.

22 7.27 Within ten (10) calendar days after the receipt of the Maximum Gross Settlement
23 Amount from Defendant, the Claims Administrator will remit the PAGA Payment to the California
24 Labor and Workforce Development Agency.

25 **VIII. APPOINTMENT AND DUTIES OF CLAIMS ADMINISTRATOR**

26 8.1 The Claims Administrator shall perform the following duties in connection with
27 administration of the Settlement: (1) using the data provided by Defendant to prepare the Class
28 ~~Notice, including translating the Class Notice into Spanish, for each Class Member, as described in~~

1 section VIII.A of this Settlement; (2) mailing the Class Notice to Class Members; (3) tracking non-
2 delivered Class Notices and taking reasonable steps to re-send them to Class Members' current
3 addresses; (4) sending out reminder postcards to Class Members; (5) setting up a settlement website
4 which contains copies of all papers and orders filed in connection with preliminary and final
5 approval, including the final Settlement Agreement, Complaint, and Final Judgment; (6) tracking
6 and timely reporting to Class Counsel and Counsel for Defendant about the received requests for
7 exclusion; (7) calculating and paying the amounts due to each Participating Class Member pursuant
8 to the Settlement; (8) calculating the amount of Employer Payroll Taxes and informing Defendant of
9 the amount to transmit to the Claims Administrator for payroll taxes which are not as a matter of law
10 deductible from wage payments; (9) paying the applicable employee and Employer Payroll Taxes
11 and deductions; (10) resolving disputes (if any) by Class Members regarding the number of
12 Compensable Weeks Employed or other matters, after timely notice to and consultation with Class
13 Counsel and counsel for Defendant; (11) transmitting funds as required by applicable garnishments
14 and liens; (12) contacting all Participating Class Members who have not cashed their Settlement
15 Checks to remind them to do so before the six-month deadline for doing so expires; (13) transmitting
16 funds to resolve the PAGA claim to the State of California as designated; (14) issuing payments to
17 Class Counsel and Class Representative and associated tax forms; (15) transferring the amount
18 represented by the uncashed settlement checks to the State of California Controller pursuant to the
19 Unclaimed Property Law, Code of Civil Procedure Section 1500, et seq..

20 8.2 All disputes relating to the Claims Administrator's performance of its duties will be
21 referred to the Court, if necessary, which will have continuing jurisdiction over this Settlement until
22 all payments and obligations contemplated by this Settlement have been fully carried out.

23 **IX. NOTICE TO THE CLASS OF THE SETTLEMENT**

24 **A. Mailing the Notice Packets to the Class Members**

25 9.1 Within fifteen (15) calendar days after the Court enters its Preliminary Approval
26 Order, Defendant will provide to the Claims Administrator a database that lists, for each Class
27 Member, the individual's name, Social Security Number, last known address and telephone number;
28 ~~and dates of employment with Defendant during the Covered Period. This database will be drawn~~

1 from Defendant's payroll and other business records and will be in a format acceptable to the Claims
2 Administrator and Defendant. Defendant will consult with the Claims Administrator prior to the
3 date for providing this information to ensure that the format will be acceptable to the Claims
4 Administrator. The data provided to the Claims Administrator and Class Counsel will remain
5 confidential and will not be disclosed to anyone, except as required to applicable tax authorities,
6 pursuant to Defendant's express written consent, or by order of the Court.

7 9.2 Within fifteen (15) calendar days after Defendant provides the Claims Administrator
8 the information stated pursuant to Paragraph 9.1, above, the Claims Administrator will mail, by first-
9 class mail, the Class Notice to all Class Members at their last known address, unless modified by any
10 updated address information that the Claims Administrator obtains in the course of administration of
11 the Settlement.

12 9.3 The Claims Administrator will use standard devices, including the National Change
13 of Address database or equivalent, to obtain forwarding addresses prior to mailing and will use
14 appropriate skip tracing to take appropriate steps to maximize the probability that the Notice
15 Materials will be received by all Class Members. Class Members to whom the Class Notice is resent
16 after having been returned undeliverable to the Claims Administrator shall have ten (10) calendar
17 days thereafter, or until the response deadline has expired, whichever is later, to mail, fax or email
18 the request for exclusion, or an objection. Class Notices that are resent shall inform the recipient of
19 this adjusted deadline. If a Class Member's Class Notice is returned to the Claims Administrator
20 more than once as non-deliverable, no additional Class Notice shall be sent.

21 9.4 The Claims Administrator shall provide regular reports to Class Counsel and
22 Defendant's counsel as to the mailings of Class Notice, and the receipt of requests for exclusion and
23 objections prior to the close of the period in which claims can be made. The Claims Administrator
24 shall also provide the report described in Paragraphs 9.17 below.

25 **B. Settlement Website**

26 9.5 The Claims Administrator will create a settlement website which contains copies of
27 all papers and orders filed in connection with preliminary and final approval, including the final
28 ~~Settlement Agreement and Complaint. These documents will be posted not later than the mailing of~~

1 the Class Notice and will remain posted until the date of final approval. The Claim Administrator
2 will also post on its website Notice of Final Judgement.

3 **C. Challenges to Work Week Data Contained In Class Notice**

4 9.6 The Class Notice mailed to the Class Members will include the Class Member's
5 estimated Gross Individual Settlement Payment and the dates of his or her employment during the
6 Covered Period.

7 9.7 Class Members will have the opportunity to challenge the information pre-printed on
8 their individualized Class Notice, including the dates of employment during the Covered Period, by
9 submitting a written challenge in connection with the Class Notice within the time period provided.
10 All challenges must be received no later than forty-five (45) calendar days after the initial date of
11 mailing of the Class Notice.

12 9.8 Timely challenges will be resolved without hearing by the Claims Administrator after
13 consultation with Class Counsel and Counsel for Defendant. Defendant's records will be presumed
14 correct, but the Claims Administrator will evaluate the evidence submitted by the Class Member and
15 will make a final determination based on its evaluation of all the evidence presented. All
16 determinations will be made no later than fifteen (15) calendar days within receipt of the challenge.

17 **E. Objections to Settlement**

18 9.9 The Class Members will have forty-five (45) calendar days after the date on which
19 the Claims Administrator mails the Class Notice to object to the Settlement by serving on the Claims
20 Administrator, by the forty-five (45)-day deadline, a written objection to the Settlement. Only
21 Participating Class Members may object to the Settlement.

22 9.10 Any Class Member who has elected not to participate in the Settlement (pursuant to
23 the procedure set forth in Paragraphs 19.13-19.15 below) may not submit an objection to the
24 Settlement.

25 9.11 A Class Member who does not serve a written objection in the manner and by the
26 deadline specified above will be deemed to have waived any objection and will be foreclosed from
27 making any objections to the Settlement (whether by appeal or otherwise).

28 9.12 The Claims Administrator shall provide the Parties a copy of any objections received

1 within one (1) day of receipt. Counsel for the Parties shall file any objections and any response
2 thereto at least seven (7) calendar days before the Final Approval Hearing.

3 **F. Election Not to Participate in the Class Settlement**

4 9.13 In order for a Class Member to validly and effectively request exclusion from, and
5 opt out of, this Settlement, the Class Member must submit to the Claims Administrator a request for
6 exclusion from the Settlement according to the procedures set forth in the Class Notice. Substantial
7 compliance with the requirements set forth in the Class Notice will in most cases be sufficient. To
8 the extent additional information is required the Claims Administrator will communicate with the
9 Class Member. In order to be valid, the request for exclusion must be postmarked for delivery to the
10 Claims Administrator no later than forty-five (45) calendar days after the date of mailing of the Class
11 Notice. No request for exclusion will be accepted if postmarked for delivery to the Claims
12 Administrator after the deadline indicated.

13 9.14 Any Class Member who does not properly and timely submit a request for exclusion
14 will automatically be bound by all terms and conditions of the Settlement, including its release of
15 claims, if the Settlement is approved by the Court, and be bound by the Final Approval Order,
16 regardless of whether he or she has objected to the Settlement.

17 9.15 A Class Member who properly and timely submits a request for exclusion will not be
18 bound by the Settlement, and will remain free to contest any claim brought by Plaintiff that would
19 have been barred by the Settlement, and nothing in this Settlement will constitute or be construed as
20 a waiver of any defense Defendant has or could assert against such a claim.

21 9.16 Plaintiff may not opt-out of the Settlement Class.

22 **G. Reports and Declaration by Claims Administrator**

23 9.17 By not later than fifteen (15) calendar days after expiration of the forty-five (45)-day
24 deadline for submission of written requests not to participate in the Class Settlement, the Claims
25 Administrator will submit to Class Counsel and Counsel for Defendant a report setting forth the
26 people (identified by name and the last four digits of their Social Security Number) who as of that
27 date have submitted (a) valid requests for exclusion, and (b) invalid requests to be excluded from the
28 Settlement (the "Opt-Out Report"). In the event that the Claims Administrator subsequently receives

1 a request not to participate in the Settlement, it will promptly distribute an updated Opt-Out Report.

2 9.18 By not later than the date when Plaintiff files his motion for final approval of the
3 Settlement, the Claims Administrator will prepare and submit for filing in support of the motion a
4 declaration attesting to its mailing of the Class Notice, its receipt of requests for exclusion and
5 objections, and its inability to deliver the Class Notice to potential Class Members due to invalid
6 addresses. As applicable, the Claims Administrator will prepare and submit for filing in support of
7 the motion for final approval, any supplemental declaration.

8 **X. RIGHT TO RESCIND**

9 10.1 In the event that two percent (2%) or more of the Class Members submit valid
10 requests not to participate in the Settlement, Defendant will have the exclusive right in its sole
11 discretion to rescind the Settlement, and all actions taken in its furtherance will be null and void.
12 Defendant must exercise this right within fifteen (15) days after the date on which the Claims
13 Administrator first informs Defendant that at least two percent (2%) of the potential Class Members
14 have made valid requests to be excluded from the Settlement.

15 **XI. DISTRIBUTION OF THE SETTLEMENT PAYMENTS**

16 11.1 Defendant or Class Counsel shall serve the Claims Administrator with notice of the
17 Final Effective Date as soon as possible. No later than fifteen (15) calendar days after the Final
18 Effective Date, the Claims Administrator will provide counsel for Defendant and Class Counsel with
19 a list of those members of the Class who did not submit timely requests for exclusion and the Gross
20 Individual Settlement Payment for each Participating Class Member on that list. The sum of the
21 Gross Individual Settlement Payments due to the individuals on that list shall constitute the “Class
22 Settlement Payment.” The Class Administrator shall also inform counsel for Defendant of the
23 amount of those Employer Payroll Taxes which are not deductible as a matter of law from wage
24 payments and other deductions due to be transmitted by Defendant to the Claims Administrator
25 based on the wage portion of the Gross Individual Settlement Payments for all of the individuals on
26 that list.

27 11.2 Defendant will cause the Maximum Gross Settlement Amount and its share of
28 ~~Employer Payroll Taxes to be wired to the Claims Administrator no later than thirty (30) calendar~~

1 days after the Final Effective Date. Within the same thirty (30) calendar days, Defendant also will
2 provide the Claims Administrator a list identifying all Participating Class Members who have
3 garnishments and liens, the amounts of each individual's garnishments and liens, and the name and
4 address of the person or entity that is entitled to receive payment of such garnishments and liens.

5 11.3 Within fifteen (15) calendar days after the receipt of the Maximum Gross Settlement
6 Amount and Employer Payroll Taxes from Defendant, the Claims Administrator will distribute to
7 every Participating Class Member his or her Net Wage Settlement Payment and Non-Wage Income
8 Settlement Payment. The Claims Administrator shall make appropriate tax reporting and
9 withholdings in accordance with this Agreement and applicable law and regulations.

10 11.4 The Claims Administrator will timely remit the employer's and employee's portion of
11 the payroll and other taxes associated with the settlement payments to the proper authorities, as
12 required by law. In addition, the Claims Administrator will timely issue IRS Form W-2 to each
13 Participating Class Member that reflects the wage portion of the settlement payment and an IRS
14 Form 1099-MISC to each Participating Class Member that reflects the non-wage income portion of
15 the settlement payment to the extent required by law.

16 11.5 Uncashed or Undeliverable Settlement Checks. Participating Class Members shall
17 have one hundred eighty (180) calendar days from the date of issuance of the Settlement Payments
18 to cash their checks. For any checks not cashed after one hundred eighty (180) calendar days, the
19 Claims Administrator shall transfer the amount represented by the checks to the State of California
20 Controller pursuant to the Unclaimed Property Law, Code of Civil Procedure Section 1500, et seq.
21 with the identity of the Participating Class Member to whom the funds belong, to be held for the
22 Participating Class Member pursuant to the California Unclaimed Property Law, in the interest of
23 justice. In that event, the Participating Class Member shall remain bound by the terms of the
24 Agreement and the Final Order and Judgment. The money transferred to the State of California
25 Controller shall remain the property of the Participating Class Member. This shall allow
26 Participating Class Members who did not cash their checks to collect their Settlement Payments at
27 any time in the future. Therefore, there shall be no unpaid residue or unclaimed or abandoned Class
28 ~~Member fund created by this Settlement and California Code of Civil Procedure Section 384 shall~~

1 not apply.

2 11.6 Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
3 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO
4 THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”)
5 ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND
6 NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES
7 OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR
8 SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE
9 CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF
10 UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS
11 AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON
12 HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE
13 (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT
14 ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY
15 OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS
16 NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
17 ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT
18 MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR
19 ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS
20 THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES
21 (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
22 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
23 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION
24 CONTEMPLATED BY THIS AGREEMENT.

25 11.7 The Individual Settlement Payments made to Participating Class Members under this
26 Agreement shall be deemed to be paid in the year in which payment is actually received by the
27 recipient and will not entitle the recipient to any additional compensation and/or benefits under any
28 ~~benefit plans to which any Participating Class Members may be eligible, including, but not limited~~

1 to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation, sick leave plans,
2 PTO plans and any other benefit plan.

3 11.8 No Prior Assignments. The Parties and their counsel represent, covenant, and
4 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to
5 assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand,
6 action, cause of action or right released and discharged in this Settlement Agreement.

7 **XII. RELEASE OF CLAIMS**

8 **A. Released Claims by Class Members Who Do Not Opt Out**

9 12.1 Release of Claims by Class Members. Upon the date the Court enters an order
10 granting final approval of the Settlement, all Class Members who do not timely submit a valid
11 Request for Exclusion do and will be deemed to have fully, finally and forever released, settled,
12 compromised, relinquished and discharged any and all of the Released Parties of and from any and
13 all Released Claims accruing during the Class Period. In addition, on the date the Court enters an
14 order granting final approval of the settlement, all Class Members who do not timely submit a valid
15 Request for Exclusion and all successors in interest will be permanently enjoined and forever barred
16 from prosecuting any and all Released Claims against the Released Parties.

17 12.2 The Gross Individual Settlement Payment to Participating Class Members will not
18 result in any additional benefit payments beyond those provided by this Agreement to Plaintiff and
19 Participating Class Members. Participating Class Members will be deemed to have waived all such
20 claims for benefits premised upon the Gross Individual Settlement Payments to them, whether
21 known or unknown by them, as part of their Released Claims under this Agreement.

22 **B. Released Claims by the Class Representative**

23 12.3 Release by Plaintiff. Upon the date the Court enters an order granting final approval
24 of the settlement, in addition to the claims being released by all Class Members, Plaintiff will
25 provide the following additional general release (“General Release”): Plaintiff, on her own behalf
26 and on behalf of her heirs, spouses, executors, administrators, attorneys, agents and assigns, fully
27 and finally releases the Released Parties from all claims, demands, rights, liabilities and causes of
28 ~~action of every nature and description whatsoever, known or unknown, asserted or that might have~~

1 been asserted, whether in tort, contract, or for violation of any state or federal statute, rule or
2 regulation arising out of, relating to, or in connection with any act or omission by or on the part of
3 any of the Released Parties committed or omitted prior to the execution of this Agreement. This
4 General Release includes any unknown claims Plaintiff does not know or suspect to exist in her
5 favor at the time of this General Release, which, if known by her, might have affected her settlement
6 with, and release of, the Released Parties or might have affected her decision not to object to this
7 Settlement or this Release. To the extent the foregoing releases are releases to which Section 1542
8 of the California Civil Code or similar provisions of other applicable law may apply, Plaintiff
9 expressly waives any and all rights and benefits conferred upon her by the provisions of Section
10 1542 of the California Civil Code or similar provisions of applicable law which are as follows:

11 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR
12 RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR
13 AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER,
14 WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
15 DEBTOR OR RELEASED PARTY.

16 The significance of this release and waiver of Civil Code Section 1542 has been explained to
17 Plaintiff by her counsel. Release by Plaintiff expressly excludes any claims for workers'
18 compensation against Defendant.

19 **XIII. DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL**

20 13.1 The Parties shall submit this Joint Stipulation to the Court in support of Plaintiff's
21 Motion for Preliminary Approval and determination by the Court as to its fairness, adequacy, and
22 reasonableness. As soon as reasonably possible upon execution of this Joint Stipulation, the Parties
23 shall apply to the Court for the entry of an Order Granting Preliminary Approval of the Settlement
24 and Notice which shall provide for, among other things, the following:

25 a. Scheduling a final fairness and approval hearing on the question of
26 whether the proposed Settlement should be finally approved as fair, reasonable and adequate as to
27 the Settlement Class.

28 b. Approving as to form and content the proposed Class Notice described

1 herein;

2 c. Directing the mailing of the Class Notice by first class mail to the
3 Class Members;

4 d. Preliminarily approving the Settlement;

5 e. Preliminary certifying the Class for settlement purposes only; and

6 f. Approving Todd M. Friedman and Adrian R. Bacon of Law Offices of
7 Todd M. Friedman, PC as Class Counsel, Rebecca Nishimoto as Class Representative, and KCC,
8 LLC, or an administrator mutually agreed to by the Parties, as Claims Administrator.

9 13.2 After the Preliminary Approval Order is entered by the Court, and prior to the
10 deadline for objections, Plaintiff shall file the motion for an award of attorneys' fees and costs to be
11 heard on the same hearing date as set by the Court for the final fairness and approval hearing.

12 **XIV. DUTIES OF THE PARTIES REGARDING FINAL COURT APPROVAL**

13 14.1 In connection with the final approval by the Court of the Settlement, the Parties will
14 submit a proposed Order Granting Final Approval of the Class Action Settlement and Final
15 Judgment in the form attached as **Exhibits C and D**, respectively, which shall provide, among other
16 things, as follows:

17 a. Approving the Settlement, adjudging the terms thereof to be fair,
18 reasonable and adequate, and directing consummation of its terms and provisions;

19 b. Approving Class Counsel's application for an award of attorneys' fees
20 and reimbursement of costs;

21 c. Approving the Class Representative's service payment;

22 d. Certifying the Settlement Class for purposes of this Settlement only;

23 and

24 e. Entering Judgment pursuant to California Rules of Court, rule 3.769(h)
25 which retains jurisdiction and permanently bars the Class Members who do not timely and validly
26 exclude themselves from the Settlement from prosecuting any and all Released Claims against the
27 Released Parties, and permanently bars the Class Representative from prosecuting any and all Class

28 ~~Representative's Released Claims against the Released Parties. Notice of the Final Judgment shall~~

1 be given by Plaintiff to Defendant as set forth in the Class Notice, which notice shall satisfy the
2 requirements of California Rules of Court, rule 3.771.

3 **XV. EFFECT OF NON-APPROVAL**

4 15.1 If this Agreement is not preliminarily or finally approved by the Court and/or if a
5 Final Approval Order is not entered or if Defendant exercise the option to rescind pursuant to
6 Paragraph 10.1, above (*e.g.*, because the Court does not approve the settlement, or the opt-outs from
7 the Class exceed two percent and Defendant revokes the Agreement), this Agreement shall be null
8 and void. In such event, (1) nothing in this Agreement shall be construed as a determination,
9 admission, or concession of any issue in the Action, and nothing in this Joint Stipulation may be
10 offered into evidence in any trial on the merits of the claims asserted in the Complaint filed in the
11 Action or in any subsequent pleading; (2) the Parties expressly reserve their rights with respect to the
12 prosecution and defense of the Action as if this Agreement never existed; and (3) Defendant shall be
13 responsible for any costs for Notice or claims administration incurred by the Claims Administrator
14 through that date. If there is any reduction in the attorneys' fees or costs awards or the Class
15 Representative Payment, such reduction may be appealed but is not a basis for rendering this
16 Agreement void, voidable and/or unenforceable.

17 **XVI. CONFIDENTIALITY PRECEDING MOTION FOR PRELIMINARY APPROVAL**

18 16.1 Except for disclosures authorized by Defendant or necessary to prepare the motion for
19 preliminary approval, the terms of this Settlement shall remain confidential until they are presented
20 to the superior court in connection with the motion for preliminary approval.

21 **XVII. MISCELLANEOUS PROVISIONS**

22 17.1 Mutual Full Cooperation. The Parties will fully cooperate with each other and use
23 their best efforts, including all efforts contemplated by this Settlement and any other efforts that may
24 become necessary or ordered by the Court, or otherwise, to accomplish the terms of this Settlement
25 in accordance with the terms of the parties' memorandum of understanding, including but not
26 limited to, executing such documents and taking such other action as may reasonably be necessary to
27 obtain preliminary and final approval of this Settlement and to implement its terms.

1 17.2 No Prior Assignments. The Parties represent, covenant, and warrant that they have not
2 directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or
3 encumber to any person or entity any portion of any claims, causes of action, demands, rights and
4 liabilities of every nature and description released under this Settlement.

5 17.3 Notices. Unless otherwise specifically provided by this Settlement, all notices, demands or
6 other communications given under this Settlement will be in writing and be deemed to have been
7 duly given as of the third business day after mailing by United States registered or certified mail,
8 return-receipt requested, addressed as follows:

9 **To Plaintiff and the Settlement Class:**

10 TODD M. FRIEDMAN
11 ADRIAN R. BACON
12 LAW OFFICES OF TODD M. FRIEDMAN, P.C.
21550 Oxnard St. Suite 780
13 Woodland Hills, CA 91367
Telephone: 877.206.4741

14 **To Defendant:**

15 BETH A. SCHROEDER, Bar No. 119504
16 ALLISON S. WALLIN, Bar No. 313185
RAINES FELDMAN, LLP
1800 Avenue of the Stars, 12th Floor
17 Los Angeles, CA 90067
Telephone: 310.440-4100
Fax No.: 310.691-1943

18 17.4 Construction. This Settlement is the result of lengthy, arms-length negotiations
19 between the Parties. This Settlement will not be construed in favor of or against any Party by reason
20 of the extent to which any Party or his or its counsel participated in the drafting of this Settlement.

21 17.5 Captions and Interpretations. Paragraph and section titles, headings, or captions
22 contained in this Settlement are inserted as a matter of convenience and for reference, and in no way
23 define, limit, extend, or describe the scope of this Settlement or any of its provisions. Each term of
24 this Settlement is contractual and not merely a recital, except for those set forth in Section I, above.

25 17.6 Modification. This Settlement may not be changed, altered, or modified, except in
26 writing and signed by counsel for all Parties or their successors-in-interest. This Settlement may not
27

1 be discharged except by performance in accordance with its terms or by a writing signed by the
2 Parties.

3 17.7 Applicable Law. All terms and conditions of this Agreement will be governed by and
4 interpreted according to the laws of the State of California, without giving effect to any conflict of
5 law or choice of law principles.

6 17.8 Integration Clause. This Settlement and all the attached Exhibits which by this
7 reference are incorporated into this Settlement constitutes the entire agreement between the Parties
8 relating to the Settlement and transactions contemplated by the Settlement. All prior or
9 contemporaneous agreements, understandings, representations, and statements, whether oral or
10 written and whether by a Party or a Party's counsel, are merged into this Settlement. No rights under
11 this Settlement may be waived except in writing.

12 17.9 Binding on Assigns. This Settlement will be binding upon and will inure to the benefit
13 of the Parties and their respective heirs, trustees, executors, administrators, successors and assigns.

14 17.10 Class Member Signatories. It is agreed that because the members of the Class are so
15 numerous, it is impossible or impractical to have each Class Member who does not timely and
16 validly opt-out execute this Settlement. The Class Notice will inform all Class Members of the
17 binding nature of the release contained herein will have the same force and effect as if this
18 Settlement were executed by each Class Member who does not timely and validly opt-out.

19 17.11 Counterparts. This Settlement may be executed in counterparts, and when each Party
20 has signed and delivered at least one such counterpart, each counterpart will be deemed an original,
21 and, when taken together with other signed counterparts, will constitute one Settlement, which will
22 be binding upon and effective as to all Parties.

23 17.12 Signatures. This Settlement may be signed by facsimile signature or digital signature,
24 each of which will have the same force and effect as an original signature.

25 17.13 Parties' Authority to Sign. The signatories to this Settlement hereby represent that
26 they are fully authorized to enter into this Settlement on behalf of themselves or their respective
27 principals.

1 17.14 Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this
2 Settlement Agreement is a fair, adequate and reasonable settlement of the Action and have arrived at
3 this Settlement Agreement after arm's-length negotiations and in the context of adversarial litigation,
4 taking into account all relevant factors, present and potential. The Parties further acknowledge that
5 they are each represented by competent counsel and that they have had an opportunity to consult
6 with their counsel regarding the fairness and reasonableness of this Settlement Agreement.
7

8 17.15 Invalidity of Any Provision. Before declaring any provision of this Settlement
9 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
10 possible consistent with applicable precedents so as to define all provisions of this Settlement
11 Agreement valid and enforceable.
12

13 17.16 Waiver of Compliance. Any failure of any Party, Defense Counsel, or Class Counsel
14 hereto to comply with any obligation, covenant, agreement, or condition herein may be expressly
15 waived in writing, to the extent permitted under applicable law, by the Party or Parties and their
16 respective counsel hereto entitled to the benefit of such obligation, covenant, agreement, or
17 condition. A waiver or failure to insist upon strict compliance with any representation, warranty,
18 covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any
19 subsequent or other failure.
20

21 17.17 Waiver of Certain Appeals. The Parties agree to waive appeals; except, however, that
22 Plaintiff or Class Counsel may appeal any reduction in the Class Counsel Fees and Costs below the
23 amount requested from the Court, and either party may appeal any court order that materially alters
24 the Settlement Agreement's terms. Plaintiffs and Class Counsel agree that they will not oppose
25 Final Approval in the event of appeal of reduction in the Class Counsel Fees and Costs below the
26 amount requested from the Court.
27

28 17.18 Captions. The captions and section numbers in this Agreement are inserted for the

1 reader's convenience, and in no way define, limit, construe or describe the scope or intent of the
2 provisions of this Agreement.

3 17.19 Waiver. No waiver of any condition or covenant contained in this Agreement or
4 failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
5 constitute a further waiver by such party of the same or any other condition, covenant, right or
6 remedy.
7

8 17.20 Enforcement Actions. In the event that one or more of the Parties institutes any legal
9 action or other proceeding against any other Party to enforce the provisions of this Settlement
10 Agreement or to declare rights and/or obligations under this Settlement Agreement, the successful
11 Party will be entitled to recover from the unsuccessful Party reasonable attorneys' fees and costs,
12 including expert witness fees incurred in connection with any enforcement actions.
13

14 17.21 Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
15 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be
16 construed more strictly against one party than another merely by virtue of the fact that it may have
17 been prepared by counsel for one of the Parties, it being recognized that, because of the arms-length
18 negotiations between the Parties, all Parties have contributed to the preparation of this Agreement.
19

20 17.22 Representation By Counsel. The Parties acknowledge that they have been represented
21 by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and
22 that this Settlement Agreement has been executed with the consent and advice of counsel.

23 17.23 All Terms Subject to Final Court Approval. All amounts and procedures described in
24 this Settlement Agreement will be subject to final Court approval.

25 17.24 Cooperation and Execution of Necessary Documents. All Parties will cooperate in
26 good faith and execute all documents to the extent reasonably necessary to effectuate the terms of
27 this Settlement Agreement.
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17.25 Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Agreement, and further intend that this Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this document to evidence their acceptance of and agreement to the Settlement.

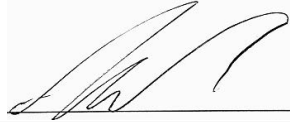
Dated: 9/5/2019, 2019

DocuSigned by:



REBECCA NISHIMOTO
Plaintiff

Dated: 09//05/2019, 2019



TODD M. FRIEDMAN
ADRIAN R. BACON
LAW OFFICES OF TODD M. FRIEDMAN, P.C.
Attorneys for Plaintiff and Settlement Class

Dated: _____, 2019

T&S BUSINESS CORPORATION, INC.
Defendant
By: _____

Dated: _____, 2019

BETH A. SCHROEDER, Bar No. 119504
ALLISON S. WALLIN, Bar No. 313185
RAINES FELDMAN, LLP
Attorneys for Defendant

EXHIBIT B

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO – CIVIL DIVISION

REBECCA NISHIMOTO, individually and on
behalf of all others similarly situated,

Plaintiff(s),

vs.

T&S BUSINESS CORPORATION, and DOES 1-
10, inclusive,

Defendants.

Case No. 34-2017-00211426

*[Assigned for All Purposes to the Hon. Alan G.
Perkins, Dept. 35]*

NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT

I. WHY DID I GET THIS NOTICE?

You are receiving this notice because our records indicate that you are or were an hourly-paid employee of T&S BUSINESS CORPORATION (“T&S BUSINESS CORPORATION”) between April 24, 2013 and September 1, 2018. This Notice explains that the Sacramento County Superior Court has granted preliminary approval of a class action settlement that may affect you. You have legal rights and options that you may exercise at this time, so please read this Notice carefully.

II. WHAT IS THIS CLASS ACTION LAWSUIT ABOUT?

Plaintiff REBECCA NISHIMOTO (“Plaintiff”) filed lawsuits against Defendant T&S BUSINESS CORPORATION in this Court alleging that they and other hourly-paid or non-exempt employees were (1) not provided proper meal and rest breaks. They also alleged that Defendants did not provide (1) proper wage statements; and (2) employee records. By doing so, Plaintiff claimed that Defendants engaged in unfair competition and that they were entitled to recover penalties under the California Labor Code Private Attorneys General Act (“PAGA”). Plaintiff alleged that they and other similar employees were entitled to damages, liquidated damages, penalties, attorneys’ fees, and costs of litigation, among other remedies.

Plaintiff REBECCA NISHIMOTO filed his lawsuit on April 24, 2017, in Sacramento County Superior Court, Case No. 34-2017-00211426.

Defendant T&S BUSINESS CORPORATION has denied and continues to deny all of Plaintiff’s allegations in the lawsuit and contends that it has paid its employees fairly and in full compliance with all California labor laws.

The Court has not determined whether Plaintiff’s allegations have any merit. However, after good faith negotiations and for the purpose of avoiding the time and expense of further litigation, the ultimate outcome of which is uncertain, and to provide a fair and reasonable resolution of this legal dispute, Plaintiff and Defendants have agreed to settle these lawsuits by paying a Gross Settlement Amount of \$488,750.00 to resolve all of the claims listed above.

Nothing in the Settlement is intended or will be construed as an admission by Defendants that Plaintiff's claims have any merit or that they have any liability to Plaintiff or the class. The parties and their counsel have determined that the Settlement is fair, reasonable, and adequate and is in the best interests of the members of the class.

III. WHO IS INCLUDED IN THE CLASS ACTION?

You are included in the Settlement Class if you fall within the following definition of Class Period: All persons who have previously been or currently are employed as an hourly-paid or non-exempt employee in California by T&S BUSINESS CORPORATION between April 24, 2013 and [date of Preliminary Approval].

IV. WHAT DOES THE PROPOSED SETTLEMENT PROVIDE?

Defendants have agreed to pay a Gross Settlement Amount of \$488,750.00. A Settlement Administrator has been appointed to administer the Settlement. The Settlement Administrator will pay from the \$488,750.00: That sum is and shall be inclusive of the following: (a) the Class Representative Payment to Rebecca Nishimoto in the amount of up to Ten Thousand Hundred Dollars and Zero Cents (\$10,000.00); (b) Class Counsel's attorneys' fees in an amount up to one third (33.33%) of the Gross Settlement Amount - One Hundred and Sixty Two Thousand, Nine Hundred and Sixteen Dollars and Fifty Cents (\$162,916.67), incurred or to be incurred in this Action, including any appeals; (c) costs and expenses associated with the Action in an amount of up to Fifteen Thousand Dollars and Zero Cents (\$15,000.00), incurred or to be incurred in this Action, including any appeals; (d) the fees and expenses of the Claims Administrator, estimated at Twenty Thousand Dollars (\$20,000) and subject to reduction or increase to correspond with the actual fees and expenses incurred; (e) the employee portion of all applicable tax withholdings including, but not limited to, FICA, SDI, and other employment-related taxes and withholding of federal, state and local income taxes; (f) Ten Thousand Dollars (\$50,000.00) in recognition of the release of claims pursuant to the Private Attorney Generals Act ("PAGA"), 75% of which (\$37,500) designated to go to the California Labor and Workforce Development Agency, and 25% of which (\$12,500) to the Class Members, and (g) the remainder of approximately Two Hundred Forty Three Thousand, Three Hundred and Thirty Three Dollars and Thirty Three Cents (\$243,333.33) which is the estimated Maximum Settlement Distribution Amount to all Class Members.

Any unclaimed settlement payments issued to class members, will be sent to the State of California Controller pursuant to the Unclaimed Property Law, Code of Civil Procedure Section 1500, et seq. with the identity of the Participating Class Member to whom the funds belong, to be held for the Participating Class Member pursuant to the California Unclaimed Property Law.

1. **Settlement Payments:** Your individual share of the Settlement will be based on the number of workweeks you worked for T&S BUSINESS CORPORATION, during the relevant Class Period. The amount of money you receive will be based on the size of your share in comparison to the size of all class members' shares combined. However, if T&S BUSINESS CORPORATION, previously paid you an individual settlement amount in exchange for signing a Wage Release Agreement after the lawsuit was filed, your class action settlement share will be reduced by the amount you already received.
2. **Release of Claims:** If you do not exclude yourself from the Settlement (according to the procedures explained below), you on behalf of your current, former, and future heirs, executors, administrators, attorneys, agents, and assigns, will fully and finally release T&S Business Corporation, and their parents, predecessors, successors, subsidiaries, affiliates, partners, assigns, and trusts, and all of its employees, officers, agents, attorneys, stockholders, fiduciaries, other

service providers, and assigns including, but not limited to, T&S Business Corporation. (collectively hereinafter the “Releasees”), from any and all claims, demands, rights, liabilities, and causes of action of any kind whatsoever, whether known or unknown, that have been, or could have been, asserted against the Releasees arising out of or relating to the claims, causes of action, facts, or allegations set forth in the Actions during the Class Periods (the “Released Claims”). The Released Claims expressly include, without limitation, all such claims for unpaid wages, claims for failure to timely pay wages, both during employment and after termination of employment, claims for failure to keep accurate and complete payroll records, claims for failure to provide accurate and complete wage statements, claims for missed meal periods, claims for missed rest breaks, claims for failing to pay wage premiums of any type, claims for statutory damages, penalties, and/or interest, including, but not limited to, recordkeeping penalties, wage statement penalties or damages, minimum-wage penalties, missed meal-period and rest-break penalties, waiting-time penalties, penalties under the Private Attorneys General Act; premiums or costs and attorneys’ fees and expenses, and any claim arising from the claims described above under applicable federal, state, local or territorial law. The Released Claims include all such claims arising under the California Labor Code (including, but not limited to, sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 225.5, 226, 226.3, 226.7, 227.3, 246, 256, 450, 510, 511, 512, 516, 558, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1197.2, 1198, 1199, 2800, 2802, and 2698); the wage orders of the California Industrial Welfare Commission; the Private Attorneys General Act, California Labor Code section 2698, *et seq.*; California Business and Professions Code section 17200 *et seq.*, California Civil Code section 3336; the California common law of contract

This means that if you participate in this Settlement, you cannot bring any claims against T&S BUSINESS CORPORATION, for wages or other payments described above for any period of time you worked for them during the Class Period.

V. WHAT ARE MY OPTIONS?

A. You May Accept Your Share of the Settlement

You will receive a Settlement Share and be bound by the terms of the Settlement and any final Judgment that may be entered by the Court, and you will be considered to have released the claims against Defendants and the other released parties described in the Settlement **unless you submit a timely request to be excluded as described below.**

If you wish to accept your settlement, but do not agree with the number of workweeks stated on the attached Information Sheet or wish to correct any information on the Information Sheet, you should provide the corrected information by completing and returning the attached Information Sheet. If you dispute the number of workweeks, be sure to write down the beginning and ending dates you worked for OLSON AND CO. STEEL, during the Class Period. Return the Information Sheet and any documents to support your position by mail to the Settlement Administrator, **Nishimoto v. T&S BUSINESS CORPORATION – Settlement Administrator, c/o KCC, [ADDRESS], [CITY], [STATE] [ZIP].** The Settlement Administrator will read the documents both you and Defendants provide and make the final determination of the amount of your settlement award.

Please note that it is your obligation to keep the Settlement Administrator informed of any changes in your mailing address until your Settlement Share is received, should final approval of the Settlement be granted. Changing your mailing address and not letting the Settlement Administrator know may prevent you from receiving your Settlement Share.

B. You May Exclude Yourself from the Settlement

Any Class Member who does not wish to participate in the Settlement and instead wishes to be excluded from the Settlement and any final judgment that may be entered by the Court, **must mail a letter to the Settlement Administrator postmarked on or before [REDACTED], 2020] to the following address:**

Nishimoto v. T&S BUSINESS CORPORATION – Settlement
Administrator
c/o KCC
[ADDRESS]

[CITY, STATE, ZIP]
1 (800) 000-0000

The letter must state that you are requesting to exclude yourself from the Settlement and must include your name, address, telephone number, and signature. A Class Member who properly submits a valid and timely request to be excluded from the Settlement: (1) will not receive any payment of any kind in connection with this Settlement; (2) will not be bound by or receive any benefit of this Settlement; (3) will have no right to object to the Settlement or be heard at any hearing scheduled for the Court's consideration of the Settlement; and (4) may at their own expense individually pursue any claims he or she may have against T&S BUSINESS CORPORATION.

C. You May Object to the Settlement

Any Class Member who does not request to be excluded from the Settlement may, if the person wishes, object to the terms of the Settlement before final Court approval by filing a written objection. If the Court rejects your objection, however, you will still be bound by the terms of the Settlement. To

object, you must file a written objection with the Court, send the objection to all counsel at the addresses listed below, and send the objection to the Settlement Administrator:

To Court

Clerk of Court
Sacramento County Superior Court
Re: Rebecca Nishimoto v T&S Business Corporation,
Case No. 34-2017-00211426

Rebecca Nishimoto v T&S Business Corporation.

To Settlement Administrator

Settlement Administrator
c/o KCC
[ADDRESS]
[CITY, STATE ZIP]

To Class Counsel:

Todd M. Friedman
Adrian Bacon
Law Offices of Todd M. Friedman, P.C.
21550 Oxnard St., Suite 780
Woodland Hills, CA 91367

To Defense Counsel:

BETH A. SCHROEDER
ALLISON S. WALLIN
RAINES FELDMAN, LLP
1800 Avenue of the Stars, 12th Floor
Los Angeles, CA 90067

Any written objection must state your full name, address, and the dates of your employment at T&S BUSINESS CORPORATION. Your written objection must also state the basis for your objection(s) and any legal support in clear and concise terms. The written objection must also state whether you intend to appear and object at the Final Approval Hearing. To be valid and effective, the Court and Counsel must receive any written objection along with any notice of intent to appear at the Final Approval Hearing no later than _____, 2020 [**thirty (30) days after KCC mails Class Notice**]. If the Court denies your objection, you will be bound by any Judgment with respect to the Settlement, and you will release the Defendants from legal claims as described above and in the Joint Stipulation of Class Action Settlement on file with the Court.

D. You Can Do Nothing

If you do nothing in response to this Notice, you will receive your Settlement Share for your portion of the Settlement, and you will be bound by any Judgment entered with respect to the Settlement, and you will release Defendants from legal claims as explained above and in the Joint Stipulation for Class Action Settlement on file with the Court.

VI. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a Final Approval Hearing on [date], 2020 at [time] in Dept. 35 of the Sacramento County Superior Court, Civil Division, located at 720 Ninth Street, Sacramento CA 95814, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The

Court will also be asked to approve the requests for payments to the California Labor and Workforce Development Agency (for PAGA), the Class Representatives' Payments, Class Counsel's Attorneys' Fees and Expenses Payment, the payment to the Settlement Administrator, and the payments to the Class.

The hearing may be continued without further notice to the Settlement Class. **It is not necessary for you to appear at this hearing, but you may appear and be heard at the hearing at your option.**

VII. ADDITIONAL INFORMATION

This Notice contains a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you should read the Joint Stipulation of Class Action Settlement which is on file with the Clerk of the Court. The pleadings and other records in this litigation, including the Joint Stipulation, may be examined during regular business hours at the Office of the Clerk of the Sacramento County Superior Court, Civil Division, located 720 Ninth Street, Sacramento CA 95814,

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS. ANY QUESTIONS SHOULD BE DIRECTED TO CLASS COUNSEL OR THE SETTLEMENT ADMINISTRATOR LISTED ABOVE.

APPROVED BY ORDER OF THE SUPERIOR COURT

4850-0306-8231.5

EXHIBIT C

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7 Attorneys for Plaintiff **REBECCA NISHIMOTO**,
individually, and on behalf of all others similarly situated.

8
9 **SUPERIOR COURT OF CALIFORNIA**
10 **FOR THE COUNTY OF SACRAMENTO**

11 **REBECCA NISHIMOTO**, individually and
12 on behalf of all others similarly situated,

13
14 Plaintiffs,
15 vs.

16
17 T&S BUSINESS CORPORATION, and
18 DOES 1-10, inclusive,
19 Defendants.

Case No. 34-2017-00211426
*[Assigned for All Purposes to the Hon. Alan G. Perkins, Dept. 35]*_

**DECLARATION OF REBECCA
NISHIMOTO IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

DECLARATION OF REBECCA NISHIMOTO

I, Rebecca Nishimoto, declare as follows:

1. I am the named plaintiff and class representative in this action against Defendant T&S Business Corporation (“Defendant”); and am represented by the Law Offices of Todd M. Friedman, P.C.

2. Except as otherwise indicated, I have personal knowledge of all matters set forth in this herein and, if called upon as a witness, could and would competently testify thereto if called upon to do so as a witness.

3. I understand that, as a class representative, I have certain duties and responsibilities to the class and believe that I have fairly represented the interests of all class members during the entire course of this case.

4. I worked for Defendant in both the Vacaville and Dixon restaurant locations in California from approximately August 2015 to November 2016.

5. When I first spoke with counsel, I believed that Defendant had not provided me with adequate wages. After counsel explained potential wage and hour violations to me, they provided me with information regarding class actions, how they work, and what my duties would be as a class representative. I agreed to serve as a class representative in this case so that I could seek to recover wages and penalties on behalf of myself and other employees like me.

6. I have considered the interests of the Class just as I would consider my own interests, have put the interests of the Class before my own interests by retaining experienced counsel and carefully considering the impact that the Settlement in this case would have on them, and understand that the Settlement in this case is subject to this Court’s approval to ensure that it is in the best interest of the Class as a whole. I have no conflicts with the Class.

7. Including travel time, I have spent more than 30-40 hours of my time in connection with this case to date. The activities I have performed have included, but have not been limited to: obtaining legal counsel, numerous telephone conversations with my attorneys, gathering documents from my employment with Defendant for my attorneys, reviewing documents with my attorneys and assisting them in developing the claims in this case, preparing for and appearing for my deposition, assisting my attorneys in preparing for mediation, participating telephonically in a full day mediation session, being actively involved in the settlement process to ensure a fair result for the Class as a whole, and spending time carefully reviewing the Settlement, and other case related documents on my

1 own and with my attorneys to make sure that Settlement and the other work my attorneys performed
2 are in the best interests of the Class.

3 8. I also understand that my attorneys are submitting an application to this Court for an
4 Incentive Award to compensate me for my unique contributions to the success of this action in the
5 amount of \$10,000. I believe this amount is fair and reasonable compensation for my efforts in this
6 case and the risks I have taken in pursuing a fair recovery for the Class. The payment to me of the
7 Incentive Award of \$10,000 is also not equal to the harm to my future career prospects that this case
8 may cause me. There is now a public record - this publicly filed lawsuit - that I served as a class
9 representative in a wage and hour case. My involvement in this case has also already been publicized
10 to my former co-workers, and will be publicized to them again if this Court approves the Settlement.
11 This may especially hurt my chances of getting a job with prospective employers. Further, before I
12 filed this case, my counsel also advised me of the possibility that, if the case was lost, I could have
13 been ordered to pay Defendant's costs, which easily could have totaled tens of thousands of dollars by
14 the end, if not even more.

15 9. Finally, I understand that the release of claims I have entered into by virtue of this
16 Settlement prevents me from bring any claims against Defendant in the future and that the release I
17 am entering into is much broader than that of the Class Members I represent.

18 I declare under the penalty of perjury of the laws of the State of California that the foregoing
19 is true and correct to the best of my knowledge.

20 Executed on September ___, 2019 at Dixon, California.

DocuSigned by:



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REBECCA NISHIMOTO

Declarant