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10 of himself and all others similarly situated

11 **SUPERIOR COURT OF CALIFORNIA**  
12 **FOR THE COUNTY OF LOS ANGELES**

13 JOSE NIETO MARTINEZ, an	)	Case No.: BC645562
14 individual, appearing on behalf of	)	
15 himself and all others similarly	)	[Assigned for all purposes to the Hon. William
16 situated,	)	F. Highberger]
	)	
16 Plaintiff,	)	<b>STIPULATION FOR CLASS ACTION</b>
	)	<b>SETTLEMENT</b>
17 vs.	)	
	)	Filing Date: January 4, 2017
18 ROGERS POULTRY CO., a	)	Trial Date: None Set
19 California corporation; and DOES 1-	)	
20 25,	)	
	)	
21 Defendants.	)	
	)	
22	)	

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**CLASS ACTION SETTLEMENT AGREEMENT**

1 This Stipulated Class Action Settlement (“Stipulation” or “Settlement”) is entered  
2 into as of the last date signed by the Parties hereto and their counsel. It is entered into by  
3 and among plaintiff Joes Nieto Martinez (“Plaintiff” or “Class Representative”), on behalf of  
4 himself and all other similarly situated employees, as representative of the class, which is  
5 stipulated to for purposes of this Settlement only, by and through his attorneys, the Law  
6 Offices of Gregg A. Farley and the Law Offices of Sahag Majarian II (“Class Counsel”), and  
7 defendant Rogers Poultry Co. (hereinafter “Rogers Poultry” or “Defendant”), by and  
8 through its attorneys, Rodi Pollock Pettker Christian & Pramov, A Law Corporation. The  
9 Class Representative and Defendant are collectively referred to herein as “the Parties.”  
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**RECITALS**

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13 A. On January 4, 2017, Plaintiff filed a Complaint, initiating a class action  
14 lawsuit against Defendant in the Los Angeles County Superior Court, entitled *Jose Nieto*  
15 *Martinez v. Rogers Poultry Co.*, Case No. BC645562 (the “Lawsuit”). On July 31, 2017,  
16 Plaintiff filed a First Amended Complaint (“FAC”), adding a cause of action seeking  
17 allegedly unpaid overtime wages and penalties based thereon.  
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19 B. The FAC, filed on July 31, 2017, alleges causes of action for (1) the alleged  
20 failure to provide legally-compliant meal and rest breaks, (2) the alleged failure to pay all  
21 regular, overtime and minimum wages due, (3) the alleged failure to provide and keep  
22 legally-compliant wage statements, (4) waiting time penalties for the alleged failure to pay  
23 all final wages due on a timely basis, and (5) alleged unfair business practices based on the  
24 foregoing alleged Labor Code violations.  
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26 C. Plaintiff was formerly employed by Rogers Poultry as a non-exempt  
27 employee. The operative FAC alleges claims on behalf of a putative class comprised of all  
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1 current and former employees of Defendant who were employed as non-exempt employees  
2 at any of Defendant's locations anywhere in California, at any time from January 4, 2013, to  
3 the date this Lawsuit is certified as a class action.

4 D. On October 24, 2017, the Parties participated in a full-day mediation with  
5 the Honorable Carl J. West (Ret.), a private mediator and retired judge who formerly was  
6 assigned to the Court's complex department at the Central Civil West Courthouse. The  
7 Parties reached agreement on the essential terms of a settlement that day and that agreement  
8 is now set forth in complete and final form in this Stipulation. At all times, the Parties'  
9 negotiations were adversarial, non-collusive, and at arm's length.  
10

11 E. The Parties are sufficiently familiar with the facts of the Lawsuit and the  
12 applicable law, so as to warrant settlement at this time. Defendant has provided Class  
13 Counsel with electronic and physical copies of timekeeping, employment and payroll  
14 information for Defendant's hourly employees in California covering the period between  
15 January 4, 2013 and May, 2017. Defendant has also provided Class Counsel with  
16 documents setting forth its company-wide policies, procedures and practices for California  
17 hourly employees during that time period. Defendant has also produced its Person Most  
18 Qualified to testify at deposition regarding various topics identified by Class Counsel  
19 regarding Defendant's wage and hour practices. Class Counsel has retained consultants to  
20 analyze and calculate Defendant's potential liability, under various assumptions, for the  
21 claims asserted in this Lawsuit.  
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23 F. The Parties are represented by competent counsel, and have had the  
24 opportunity to consult with counsel prior to the submission of this Stipulation to the Court.  
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1 G. Nothing in this Stipulation, nor the fact of the Stipulation itself, shall be  
2 construed or deemed an admission of liability, culpability, negligence or wrongdoing of any  
3 kind on the part of Defendant with respect to the claims alleged in the Lawsuit.

4 H. Defendant denies all the claims and contentions alleged by the Class  
5 Representative in the Lawsuit. Nonetheless, Defendant has concluded that further litigation  
6 would be protracted and expensive and would also divert management and employee time.  
7 Defendant has taken into account the uncertainty and risks inherent in litigation, especially  
8 in multi-party cases. Defendant has therefore concluded that it is desirable that the Lawsuit  
9 be fully and finally settled in the manner and upon the terms and conditions set forth in this  
10 Stipulation.  
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12 I. The Class Representative and Class Counsel believe that the claims asserted  
13 in this Lawsuit have merit. Class Counsel, however, recognizes and acknowledges the  
14 significant expense and length of continued proceedings necessary to prosecute the litigation  
15 against Defendant through trials and through appeals. Class Counsel is also mindful of the  
16 inherent problems of proof and possible defenses to the claims asserted and to class  
17 certification. After careful consideration and mediation, Class Counsel has concluded that it  
18 is desirable that this class action lawsuit be fully and finally settled in the manner and upon  
19 the terms and conditions set forth in this Stipulation. Both Class Counsel and the Class  
20 Representative believe that the Settlement set forth in this Stipulation confers substantial  
21 benefits upon the Class and each of the Class Members.  
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23 J. Both Parties recognize the inherent risk in proceeding with wage and hour  
24 class action litigation. Both Parties agree that the Settlement set forth herein adequately  
25 balances the risk of proceeding with the Lawsuit against any potential recovery for the Class  
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1 Members, and therefore the Settlement represents a reasonable, fair, and just compromise of  
2 the claims asserted in the Lawsuit.

3 K. Pursuant to California Evidence Code sections 1152 and 1154, this  
4 Stipulation and any related documents filed or created in connection with it shall be  
5 inadmissible in evidence in any proceeding, except as necessary to approve, interpret or  
6 enforce this Stipulation, or as may specifically be permitted in Section 12.8 below.

7 **TERMS OF AGREEMENT**

8 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and  
9 between the Class Representative, for himself and for the Class (as defined hereafter), and  
10 Defendant that, subject to the conditions precedent set forth in Section 2 below, the Lawsuit  
11 and the Released Claims shall be finally and fully compromised, released, resolved,  
12 relinquished, discharged and settled and without any adverse findings or conclusions against  
13 Defendant or anyone else, upon and subject to the terms and conditions of this Stipulation,  
14 as follows:

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16 **1. DEFINITIONS**

17 As used in this Stipulation, the following terms shall have the meanings specified  
18 below:

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20 1.1 “Alleged Claims” shall mean, in the broadest sense possible, the claims that  
21 were or could have been alleged against any entity or person arising out of or related to the  
22 facts alleged in the FAC, or arising out of the same nucleus of operative facts. The Alleged  
23 Claims include, but are not limited to the following claims: (1) the alleged failure to provide  
24 legally-compliant meal and rest breaks, (2) the alleged failure to pay all regular, overtime  
25 and minimum wages due, (3) the alleged failure to provide and keep legally-compliant wage  
26 statements, (4) waiting time penalties for the alleged failure to pay all final wages due on a  
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1 timely basis, and (5) alleged unfair business practices based on the foregoing alleged Labor  
2 Code violations. The Alleged Claims include all claims to entitlement to damages,  
3 restitution, penalties, interest, attorneys' fees, costs, and declaratory or other equitable relief.

4 1.2 "Claims Administrator" means CPT Group, Inc., which shall act as an  
5 independent third party claims administrator.

6 1.3 "Claims Administration Costs" shall have the meaning set forth in Section  
7 9.3 of this Stipulation.

8 1.4 "Class" means the class certified for purposes of Settlement only, following  
9 the entry of an appropriate Order by the Court, consisting of all current and former  
10 employees of Defendant who were employed as non-exempt employees at any of  
11 Defendant's locations anywhere in California at any time during the Class Period.

12 1.5 "Class Counsel" means Gregg A. Farley of the Law Offices of Gregg A.  
13 Farley and Sahag Majarian, II, of the Law Offices of Sahag Majarian, II.

14 1.6 "Class Counsel Award" shall have the meaning set forth in Section 9.1 of this  
15 Stipulation.

16 1.7 "Class List" shall have the meaning set forth in Section 5.3 of this  
17 Stipulation.

18 1.8 "Class Members" and "Participating Class Member" mean all Putative Class  
19 Members who have not opted out of the Settlement after the Notice Period and who are  
20 therefore in the Class that is certified for purposes of Settlement only, following the entry of  
21 an appropriate Order by the Court.

22 1.9 "Class Period" means the period from January 4, 2013 through the Date of  
23 Preliminary Approval.

24 1.10 "Class Representative" means Jose Nieto Martinez.  
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1 1.11 “Class Settlement Amount” shall have the meaning set forth in Section 4.1 of  
2 this Stipulation.

3 1.12 “Company” means defendant Rogers Poultry Co. (hereinafter “Rogers  
4 Poultry” or “Defendant”).

5 1.13 “Court” means the Superior Court of the State of California for the County  
6 of Los Angeles, the Honorable William F. Highberger, presiding.

7 1.14 “Date of Final Approval” means the date the Court enters an order granting  
8 final approval of the Settlement.

9 1.15 “Date of Final Judgment” means the date the Court renders and enters the  
10 Judgment in the Lawsuit upon Final Approval of the Settlement.

11 1.16 “Date of Preliminary Approval” means the date the Court enters an order  
12 granting preliminary approval of the Settlement.

13 1.17 “Deemed Mailed” shall have the meaning set forth in Section 5.5 of this  
14 Stipulation.

15 1.18 “Defendant” means defendant Rogers Poultry Co. (“Defendant” or “Rogers  
16 Poultry”).

17 1.19 “Effective Date” means the Date of Final Judgment if an Objection has not  
18 been made to the Settlement before such date. However, if an Objection has been made to  
19 the Settlement prior to the Date of Final Judgment, the “Effective Date” shall be the date  
20 sixty (60) days after the Date of Final Judgment if no appeal from the Final Judgment has  
21 been filed in the interim, or, if any such appeal or appeals are filed in the interim, the date  
22 when any such appeal has been resolved in a way that does not alter the terms of the  
23 Settlement.  
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1           1.20   “Enhancement Award” shall have the meaning set forth in Section 9.2 of this  
2 Stipulation.

3           1.21   “Final Approval Hearing” means the hearing at which the Court considers  
4 whether to grant final approval of the Settlement.

5           1.22   “Final Judgment” and/or “Judgment” means the judgment or order to be  
6 rendered and entered by the Court in the Lawsuit upon Final Approval of the Settlement.

7           1.23   “Individual Class Member Payment” shall have the meaning set forth in  
8 Section 4.4 of this Stipulation.

9           1.24   “Last Known Address” or “Last Known E-Mail Address” means the most  
10 recently recorded mailing address (or personal e-mail address) for a Putative Class Member  
11 as such information is contained in the electronic employment or personnel records  
12 maintained by Defendant.

13           1.25   “Lawsuit” means the action styled *Jose Nieto Martinez v. Rogers Poultry*  
14 *Co.*, Case No. BC645562 pending in the Los Angeles County Superior Court, the Honorable  
15 William F. Highberger, presiding.

16           1.26   “Net Settlement Consideration” shall have the meaning set forth in Section  
17 4.3 of this Stipulation.

18           1.27   “Notice of Class Action Settlement” shall have the meaning set forth in  
19 Section 5.4 of this Stipulation.

20           1.28   “Notice Packets” shall have the meaning set forth in Section 5.4 of this  
21 Stipulation.

22           1.29   “Notice Period” shall have the meaning set forth in Section 5.6 of this  
23 Stipulation.

24           1.30   “Objection” shall have the meaning set forth in Section 6 of this Stipulation.  
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1 1.31 “Participating Class Member” and “Class Member” mean each Putative  
2 Class Member who does not submit a valid and timely Request for Exclusion.

3 1.32 The “Parties” means the Class Representative and the Defendant.

4 1.33 “Putative Class Members” shall mean all current and former employees of  
5 Defendant who were employed as non-exempt employees at any of Defendant’s locations  
6 anywhere in California at any time during the Class Period.

7 1.34 “Reasonable Address Verification Measure” means the utilization of the  
8 National Change of Address Database maintained by the United States Postal Service to  
9 review the accuracy of and, if possible, update a mailing address.

10 1.35 “Released Claims” shall have the meaning set forth in Section 10.2 of this  
11 Stipulation.

12 1.36 “Released Parties” means (i) Defendant and (ii) each and all of Defendant’s  
13 past and present parents, subsidiaries, affiliated companies and corporations, and each and  
14 all of their respective past and present owners, directors, officers, managers, employees,  
15 general partners, limited partners, principals, agents, insurers, reinsurers, shareholders,  
16 attorneys, advisors, representatives, predecessors, successors, divisions, joint venturers,  
17 assigns, or related entities, and each and all of their respective executors, successors, assigns  
18 and legal representatives.

19 1.37 “Request for Exclusion Form” shall have the meaning set forth in Section 5.4  
20 of this Stipulation.

21 1.38 “Settlement” means the terms and conditions set forth in this Stipulation.

22 1.39 “Settlement Allocation Form” shall have the meaning set forth in Section 5.4  
23 of this Stipulation.

24 1.40 “Stipulation” means this Stipulation for Class Action Settlement.

1.41 “Updated Address” means a mailing address that was updated via Reasonable  
1 Address Verification measures or via an updated mailing address provided by the United  
2 States Postal Service or a Putative Class Member.  
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4 **2. CONDITIONS PRECEDENT TO EFFECTIVENESS OF STIPULATION**

5 The Parties enter into this Stipulation and the Settlement on a conditional basis.

6 2.1 This Stipulation will become final and effective only upon the occurrence of  
7 all of the following events. Similarly, Defendant’s obligations under this Settlement will  
8 become final and effective only upon occurrence of all of the following events.  
9

- 10 (A) The Court enters an order granting preliminary approval of the  
11 Settlement;
- 12 (B) Defendant elects not to exercise its limited rights to terminate this  
13 Settlement pursuant to the grounds described in Sections 3 and 5.9 of  
14 this Stipulation;
- 15 (C) The Court certifies the Class for settlement purposes;
- 16 (D) The Court conducts a Final Approval Hearing;
- 17 (E) The Court enters a Final Judgment granting final approval of the  
18 Settlement and Stipulation and holding that all claims specifically  
19 covered by this Stipulation are released; and
- 20 (F) The Effective Date occurs, and any challenge to the Settlement,  
21 whether by objection or appeal, is resolved in favor of enforcement of  
22 the Settlement.  
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25 This Stipulation shall be deemed null and void *ab initio* upon the failure of any of  
26 these six conditions to occur. In such event, neither this Stipulation, nor any negotiations  
27 leading to this Settlement, nor any information exchanged solely for purposes of furthering  
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1 settlement negotiations, will be used or construed by or against any Party as a determination,  
2 admission or concession of any issue of law or fact; and the Parties hereto do not waive, and  
3 instead expressly reserve, their respective rights regarding the prosecution and defense of the  
4 Lawsuit, including all available defenses and affirmative defenses, and arguments that any  
5 claim in the Lawsuit could not be certified as a class action and/or managed as a  
6 representative action, as if this Settlement never existed.

7           2.2     The invalidation of any material term of this Settlement will invalidate this  
8 Agreement in its entirety unless the Parties subsequently agree in writing that the remaining  
9 provisions will remain in force and effect.

10           2.3     In the event of a timely appeal from a Final Judgment, the Judgment will be  
11 stayed and all payments required under this Settlement, other than payments to the Claims  
12 Administrator for services rendered, will not be paid pending the completion and final  
13 resolution of the appeal, and any payments thereafter will: (a) occur only if the Final  
14 Judgment is upheld after all appeals; and (b) be distributed in a manner that is provided for  
15 in this Settlement and in the Final Judgment.

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18 **3.     CONDITIONAL CLASS CERTIFICATION**

19           For settlement purposes only, the Parties stipulate to class certification of the Class.  
20 If the Court does not grant either/both preliminary and/or final approval of this Settlement,  
21 the Parties agree that this conditional class certification will automatically be deemed  
22 revoked. If, pursuant to Section 5.9, five percent (5%) or more of the Putative Class  
23 Members opt out of the Class or the Settlement, Defendant maintains the right, in its sole  
24 discretion, to revoke its stipulation to class certification. In the event of such revocation of  
25 the Settlement, Defendant shall pay the Claims Administrator for any Claims Administration  
26 Costs incurred prior to such revocation. If the court does not grant either/both preliminary  
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1 and/or final approval of this settlement, the Parties further stipulate that this and any future  
2 settlement agreement shall not affect Defendant's ability to maintain that class certification  
3 is inappropriate in this Lawsuit and/or that this Lawsuit cannot be managed as a  
4 representative action.

5 **4. SETTLEMENT CONSIDERATION**

6 4.1 Subject to the claims procedures set forth below, Defendant agrees to pay  
7 each Participating Class Member his or her Individual Class Member Payment as  
8 consideration for settlement of his or her other claims in the Lawsuit. The Class Settlement  
9 Amount shall be the aggregate sum of nine hundred fifty thousand dollars (\$950,000.00).  
10 Notwithstanding any other provision in this Stipulation, aside from the Company's tax  
11 liability for payments required by this Stipulation, in no event will Company be obligated to  
12 pay more than the Class Settlement Amount of nine hundred fifty thousand dollars  
13 (\$950,000.00) to cover all Individual Class Member Payments, Claims Administration  
14 Costs, Class Counsel Award, and Enhancement Award. The Parties understand and agree  
15 that, upon the Effective Date of the Settlement, no part of the Class Settlement Amount shall  
16 revert to Defendant under any circumstances. Instead, upon the Effective Date, the entirety  
17 of the Class Settlement Amount shall be distributed as set forth in this Stipulation. The  
18 Parties further understand and agree that Participating Class Members shall not be required  
19 to submit any claim form, including the Settlement Allocation Form, in order to receive an  
20 Individual Class Member Payment pursuant to this Stipulation.

23 4.2 Defendant agrees to pay an Enhancement Award of fifteen thousand dollars  
24 (\$15,000.00) from the Class Settlement Amount to the Class Representative upon Class  
25 Counsel's application and the Court's approval, pursuant to Section 9.2. The Class  
26 Representative shall be issued an IRS Form 1099 for any Enhancement Award.  
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1           4.3     The “Net Settlement Consideration” shall be the amount of the Class  
2 Settlement Amount available for distribution to the Participating Class Members after  
3 subtracting the Class Counsel Award, Enhancement Award, and Claims Administration  
4 Costs.

5           4.4     Each Participating Class Member shall receive an Individual Class Member  
6 Payment, less legally required withholdings, which is a pro-rata share of the Net Settlement  
7 Consideration based on the following formula: The Claims Administrator shall determine  
8 from information provided by Defendant the total number of work weeks worked by all  
9 Participating Class Members during the Class Period. The Claims Administrator shall then  
10 divide the amount of the Net Settlement Consideration by the total number of such work  
11 weeks. The product of this division will be an amount per work week to be paid to each  
12 Participating Class Member for each work week such Participating Class Member worked  
13 during the Class Period. Specifically, the Claims Administrator shall multiply the amount  
14 per work week by the number of work weeks worked by each Participating Class Member  
15 during the Class Period and pay the resulting sum to each Participating Class Member. For  
16 purposes of this formula, Defendant shall be entitled to estimate the number of work weeks  
17 worked by Participating Class Members, individually and collectively, during the Class  
18 Period by referring to Defendant’s payroll records. For the purpose of calculating applicable  
19 taxes under this formula, the Parties agree that seventy percent (70%) of the Net Settlement  
20 Consideration shall be allocated to the settlement of claims for unpaid wages, twenty percent  
21 (20%) of the Net Settlement Consideration shall be allocated to the settlement of claims for  
22 unpaid interest and the remaining ten percent (10%) of the Net Settlement Consideration  
23 shall be allocated to the settlement of claims that Participating Class Members suffered  
24 injury as a result of the wage statement violations.  
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4.5 **Tax Matters.**

(a) The Claims Administrator shall issue an IRS Form W-2 to each Participating Class Member for the portion of the payment that constitutes wages, and shall issue an IRS Form 1099 to each Participating Class Member for the portion of the payment that constitutes penalties and interest, and to the Class Representative for any Enhancement Award. The Claims Administrator shall also calculate all legally required withholdings from the Individual Class Member Payments and shall withhold and remit such amounts to the relevant taxing authorities. Defendant shall provide the Claims Administrator with the necessary information to calculate these required withholdings and any payroll taxes with respect to the Individual Class Member Payments.

(b) Defendant shall be responsible for paying the employer's portion of any tax liability with respect to payments required by this Stipulation separate and apart from, and in addition to, the Class Settlement Amount, and shall contribute additional funds as necessary to satisfy these obligations, as calculated by the Claims Administrator. Defendant shall not be responsible for making payroll tax payments on any portion of the Class Settlement Amount that is attributable to Claims Administration Costs, Class Counsel Award, penalties, interest or any Enhancement Award.

(c) The Class Representative and any Putative Class Member who receives any payment pursuant to this Stipulation shall be responsible for correctly characterizing such amounts for tax reporting purposes and shall be solely responsible for any and all tax obligations associated with such receipt, except as may be specifically set forth in this Section.

1 (d) The Claims Administrator shall issue a Form 1099 to Class Counsel for any  
2 Class Counsel Award from the Class Settlement Amount. Class Counsel shall be fully  
3 responsible for the payment of any taxes due on such award.

4 (e) Payments to Putative Class Members and/or Participating Class Members will  
5 not count as earnings or compensation for purposes of any benefit plans (e.g., 401(k) plans,  
6 retirement plans, etc.) sponsored by Defendant.

7 4.6 **Unclaimed Portion of the Net Settlement Consideration**

8 The Parties will comply with the requirements of Civil Procedure Code Section 384  
9 with respect to the handling and distribution of unpaid cash residue and unclaimed or  
10 abandoned funds in this Settlement. Pursuant to Subsection (b)(1) of Section 384, the  
11 Parties will request, upon a showing of good cause, that the Court order that all checks to  
12 Putative Class Members and Participating Class Members not cashed within 120 days of  
13 mailing escheat to the State of California Department of Industrial Relations Unclaimed  
14 Wages Fund to be held and administered for the benefit of such Class Members. If the  
15 Court declines to issue such an order, then the distribution of the proceeds of any and all un-  
16 cashed checks after the expiration of such 120-day period shall be in accordance with  
17 Subsection (b)(3) of Section 384.  
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20 4.7 The Individual Class Member Payments shall be paid according to Sections  
21 4.4 and 8 of this Stipulation.

22 **5. CLAIMS PROCEDURE**

23 5.1 The Parties designate CPT Group, Inc., as the Claims Administrator.

24 5.2. The Claims Administrator will be responsible for mailing the Notice Packets,  
25 searching for appropriate contact information for Putative Class Members, collecting  
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1 documents from Putative Class Members, responding to inquiries from Putative Class  
2 Members, and performing such other duties as the Parties may direct.

3           5.3     **Putative Class Member List.** Not later than ten (10) days following the  
4 Date of Preliminary Approval, Defendant will provide to the Claims Administrator, but not  
5 Class Counsel, a list (the “Class List”) identifying each Putative Class Member during the  
6 period on and after January 4, 2013, his or her social security number, his/her Last Known  
7 Address, his/her Last Known E-Mail Address (if any), and the estimated number of work  
8 weeks worked by each Putative Class Member during the Class Period. The Claims  
9 Administrator shall keep all information contained in the Class List completely confidential,  
10 shall not share such information with any other person or entity, and shall not use such  
11 information for any purpose other than those expressly described in this Stipulation.  
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13           5.4     **Notice to Putative Class Members**

14           (A)     Immediately upon receipt of the Class List, the Claims Administrator  
15 shall undertake a Reasonable Address Verification Measure to ascertain the  
16 accuracy of the Last Known Address for each Putative Class Member. To  
17 the extent that this process yields an Updated Address, that Updated Address  
18 shall replace the Last Known Address and be treated by the Claims  
19 Administrator as the new Last Known Address.  
20

21           (B)     Not later than fourteen (14) days following receipt of the Class List,  
22 the Claims Administrator shall send, via U.S. Mail and, if the Lists include a  
23 Last Known E-Mail Address for that Putative Class Member, via e-mail as  
24 well: (1) a Notice of Class Action Settlement substantially in the form of  
25 Exhibit “A” hereto; (2) a Settlement Allocation Form substantially in the  
26 form of Exhibit “B” hereto; and (3) a Request for Exclusion Form  
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1 substantially in the form of Exhibit "C" hereto. Collectively, the Notice of  
2 Class Action Settlement, Settlement Allocation Form and Request for  
3 Exclusion Form shall be referred to herein as the "Notice Packet." The  
4 Notice Packet shall be disseminated in both the English and Spanish  
5 languages. Each Settlement Allocation Form shall be pre-printed with (i) the  
6 estimated share of the Net Settlement Consideration payable to that Putative  
7 Class Member pursuant to the terms of this Stipulation, and (ii) any  
8 employment data pertaining to that Putative Class Member on which the  
9 Claims Administrator relied to calculate these estimated shares.  
10

11 **5.5 Date of Mailing and Re-Mailing**

12 (A) A Notice Packet shall be "Deemed Mailed" to the Putative Class  
13 Member to whom it was sent five (5) days after mailing, regardless of  
14 whether it is subsequently returned as undeliverable from the United States  
15 Postal Service. In the event that a Notice Packet is returned to the Claims  
16 Administrator with a forwarding address, the Claims Administrator will re-  
17 send the Notice Packet to the forwarding address affixed thereto, and the  
18 forwarding address will be deemed the Updated Address for that Putative  
19 Class Member. In the event that the first mailing of the Notice Packet is  
20 returned without a forwarding address within at least fourteen (14) days prior  
21 to the end of the Notice Period, the Claims Administrator will immediately  
22 conduct a standard skip trace in an effort to ascertain the current address for  
23 the particular Putative Class Member in question. If a more recent or  
24 accurate address is found by this method, the Claims Administrator will  
25 resend the Notice Packet to the new address within three (3) calendar days of  
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1 identifying the new address information. If no new information is  
2 ascertained by means of a skip trace, or if the Notice Packet is returned to the  
3 Claims Administrator after using an address obtained from a standard skip  
4 trace, the Claims Administrator will immediately perform a manual “in-depth  
5 skip trace” to locate a more recent or accurate address. If a more recent or  
6 accurate address is found by this method, the Claims Administrator will  
7 resend the Notice Packet to the new address within three (3) calendar days of  
8 identifying the new address information. All of the costs incurred relating to  
9 the skip traces described above shall fall within the definition of Claims  
10 Administration Costs.

11  
12 (B) In the event the procedures set forth herein are followed and the  
13 intended recipient of a Notice Packet still does not receive the Notice Packet,  
14 or any portion thereof, the intended recipient will nevertheless be deemed a  
15 Class Member and will be bound by all terms of the Settlement and the order  
16 of final approval entered by the Court.

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18 **5.6 Opt-Out and Claims Procedure.**

19 (A) Putative Class Members shall have forty-five (45) days from the date  
20 that the Notice Packet is Deemed Mailed to the Putative Class Members  
21 (referred to hereafter as the “Notice Period”) to return the Settlement  
22 Allocation and/or Request for Exclusion Form by mail to the Claims  
23 Administrator. A Participating Class Member who does not submit a timely  
24 and valid Request for Exclusion Form is not required to return a completed  
25 Settlement Allocation Form in order to receive an Individual Class Member  
26 Payment. A Participating Class Member is required to return a completed  
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1 Settlement Allocation Form only if the Participating Class Member disputes  
2 the number of work weeks or other information in the Settlement Allocation  
3 Form. The date of mailing of the Settlement Allocation Form or Request for  
4 Exclusion Form by a Putative Class Member is deemed to be the date the  
5 form is deposited in the U.S. Mail, postage prepaid, as evidenced by the post-  
6 mark. If the last day of the Notice Period falls on a Sunday or legal holiday,  
7 the Notice Period shall be deemed to extend through the next business day.

8 (B) Any Putative Class Member who submits a timely and valid Request  
9 for Exclusion Form shall not receive an Individual Class Member payment  
10 under this Stipulation, and shall not be bound by the Release of Claims set  
11 forth in Sections 10.2 and 10.3 of this Stipulation. All other Putative Class  
12 Members shall be deemed Class Members and shall be bound by all terms of  
13 this Stipulation and Settlement.  
14

15 5.7 **Disputes Regarding Individual Shares.** Putative Class Members will be  
16 entitled to dispute the data used to calculate their estimated shares of the Net Settlement  
17 Consideration pre-printed on the Settlement Allocation Form by: (1) signing the Settlement  
18 Allocation Form; (2) indicating in writing on the Settlement Allocation Form the proposed  
19 correction to the data used to calculate their estimated shares of the Net Settlement  
20 Consideration; and (3) submitting satisfactory evidence to support their contention. In the  
21 event of a dispute, the Parties shall meet and confer in good faith in an attempt to resolve  
22 that dispute. If the dispute cannot be resolved, it shall be submitted to the Claims  
23 Administrator for resolution and the decision of the Claims Administrator shall be final and  
24 binding. In the event a dispute is resolved in the Putative Class Member's favor, the  
25 calculation of that Putative Class Member's individual shares of the Net Settlement  
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1 Consideration will be revised accordingly. Before the Final Approval Hearing, the Claims  
2 Administrator will provide a written explanation to any Putative Class Member raising a  
3 dispute regarding the calculation of his or her individual shares of the Net Settlement  
4 Consideration entitled “Notice Regarding Disputed Calculations.” This document will  
5 inform the Class Member of any change to the calculation of his or her individual share of  
6 the Net Settlement Consideration, set forth the reasons why no change has been made, or  
7 explain that the matter will be resolved at the Final Approval Hearing.

8           5.8     Within seven (7) days after the expiration of the Notice Period the Claims  
9 Administrator shall notify Class Counsel and Defendant’s counsel of the Putative Class  
10 Members who have opted out of the Class. The Claims Administrator shall identify these  
11 Class Members by employee identification number only.

12           5.9     The Parties and their counsel shall not discourage any Putative Class Member  
13 from participating in the Settlement and shall not encourage or discourage any Putative  
14 Class Member with respect to objecting to or opting out of the Settlement. However, if five  
15 percent (5%) or more of the Putative Class Members opt out of the Class, then Defendant  
16 shall have the right, in its sole discretion, to void this Stipulation and to revoke class  
17 certification. Defendant has ten (10) business days following its notification by the Claims  
18 Administrator regarding the final number of Class Members who have opted out of the Class  
19 to notify Class Counsel of its intent to void the agreement and to revoke class certification.

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22 **6.     OBJECTIONS TO SETTLEMENT**

23           Any Putative Class Member who wishes to object to the Settlement must not “opt  
24 out” of the Settlement by returning a Request for Exclusion Form. Any Putative Class  
25 Member who wishes to object to the Settlement must also deliver a written objection (an  
26 “Objection”) to the Claims Administrator, no later than forty-five (45) days following the  
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1 date the Notice Packet is Deemed Mailed. The date of delivery of any written Objection is  
2 deemed to be the date the objection is deposited in the U.S. Mail, postage pre-paid, as  
3 evidenced by the postmark. The Objection must provide the full and complete Case  
4 Number, and in clear and concise terms, the legal and factual arguments supporting the  
5 objection. The Class Administrator will forward copies of any Objections received to Class  
6 Counsel and to counsel for Defendant, and will also attach copies of such Objections to the  
7 Class Administrator's declaration described in Section 11.4 of this Stipulation. The Parties,  
8 through their counsel, shall notify the Court of any Objections prior to the Final Approval  
9 Hearing. Any Class Member who fails to file and serve a timely written Objection in the  
10 manner described above will be deemed to have waived all objections and/or contests to the  
11 Settlement and will be foreclosed from contesting and/or attacking the validity of the  
12 Settlement and will be foreclosed from contesting and/or attacking the validity of the  
13 Settlement (whether by appeal or otherwise).

14 **7. ABSOLUTE DEADLINE FOR SETTLEMENT ALLOCATION FORMS,**  
15 **REQUESTS FOR EXCLUSION AND/OR OBJECTIONS**

16 7.1 Notwithstanding any other provision of this Stipulation, any Settlement  
17 Allocation Form, Request for Exclusion, or Objection by any Putative Class Member will be  
18 considered untimely submitted if it is postmarked more than forty-five (45) days from the  
19 date the Notice Packet was Deemed Mailed to that Putative Class Member or if it is received  
20 by the Parties and/or Claims Administrator less than fifteen (15) days prior to the Final  
21 Approval Hearing, unless the Parties agree otherwise.

22 7.2 Not later than seven (7) calendar days after the expiration of the Notice  
23 Period, the Claims Administrator shall notify Class Counsel and Defendant's counsel (by  
24 employee identification number only) of: (a) the Putative Class Members who have opted  
25 out of the Class; (b) the details of any corrections or objections to the data used to calculate  
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1 their estimated shares of the Net Settlement Consideration pre-printed on any Settlement  
2 Allocation Forms; and (c) the amount of each Individual Class Member Payment due to  
3 each Participating Class Member.

4 **8. PAYMENT PROCEDURE**

5 8.1 As a condition of receiving any Individual Class Member Payment under this  
6 Stipulation and Settlement, Putative Class Members must become a Participating Class  
7 Member by not opting out of the Class, and by releasing the Released Claims. Plaintiff will  
8 be issued his Individual Class Member Payment at the time the Claims Administrator issues  
9 payments to all Class Members.  
10

11 8.2 The Claims Administrator shall be responsible for mailing the Individual  
12 Class Member Payments to the Class Members. Not later than ten (10) days following the  
13 Effective Date, Defendant shall transfer the Class Settlement Amount to the Claims  
14 Administrator. The Claims Administrator shall mail to each Participating Class Member  
15 and/or Putative Class Member a check in the amount(s) calculated pursuant to Sections 4.4  
16 and 7.2 of this Stipulation no later than ten (10) days thereafter. All such checks will  
17 indicate on their face that they are void if not negotiated within ninety (90) days of issuance.  
18 The Class Administrator will determine the appropriate method to be used to calculate  
19 payroll tax withholdings. The expense of conducting such calculations shall be considered  
20 part of the Claims Administration Costs.  
21

22 8.3 In the event that a settlement check is returned to the Claims Administrator  
23 with a forwarding address, the settlement check will be forwarded to the forwarding address.  
24 In the event a settlement check is returned to the Claims Administrator without a forwarding  
25 address or is otherwise undeliverable, the Claims Administrator will conduct a skip trace  
26 and re-mail the returned check, and the expense of such search shall be part of the Claims  
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1 Administration Costs. If a Class Member contacts the Claims Administrator or counsel for  
2 either Party with a new address within 30 days of the date the settlement checks are initially  
3 mailed to the Class Members, the settlement check for that Class Member will be reissued  
4 and mailed to the new address provided no later than 5 days after receipt of the new address  
5 for that Class Member. Any such reissued check will indicate on its face that it is void if not  
6 negotiated within sixty (60) days of its issuance.

7 8.4 In the event that any interest is earned on any portion of the monies allocated  
8 to payments under this Stipulation to Participating Class Members, Putative Class Members,  
9 Class Counsel, the Class Representative, and/or the Claims Administrator, such interest shall  
10 be paid to The State Bar of California, Legal Services Trust Fund Program, Department 05-  
11 590, San Francisco, California 94139 and designated as a donation to the legal aid programs  
12 funded the State Bar of California.

14 **9. ATTORNEYS' FEES AND COSTS, CLASS REPRESENTATIVE**  
15 **ENHANCEMENT AWARD, AND COSTS OF NOTICE AND**  
16 **ADMINISTRATION**

17 9.1 **Attorneys' Fees and Costs.**

18 (A) Plaintiff will request, and Defendant will not object to a request, that the  
19 court approve: (a) an award of attorneys' fees in an amount equal to no more than three  
20 hundred sixteen thousand, six hundred sixty-six dollars and sixty-six cents (\$316,666.66);  
21 and (b) an award of reasonable litigation costs of up to twenty-five thousand dollars  
22 (\$25,000.00) to Class Counsel (collectively, the "Class Counsel Award"). In no event will  
23 the Company be obligated to pay more than three hundred sixteen thousand, six hundred  
24 sixty-six dollars and sixty-six cents (\$316,666.66) with respect to attorneys' fees and  
25 twenty-five thousand dollars (\$25,000.00) with respect to litigation costs.  
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1 (B) Defendant will not oppose Class Counsel’s request for the award of  
2 attorney’s fees and reasonable litigation costs described in this section, and agrees that the  
3 request is fair and reasonable under the circumstances of this case.

4 9.2 **Enhancement Award.** Class Counsel will submit an application for fifteen  
5 thousand dollars (\$15,000.00) as an “Enhancement Award” to Class Representative Jose  
6 Nieto Martinez for his time, effort and participation in this Lawsuit as Class Representative.  
7 Defendant will not oppose a motion for approval of such Enhancement Award and agrees  
8 that the request is fair and reasonable under the circumstances of this case.

9  
10 9.3 **Claims Administration Costs.** “Claims Administration Costs” shall include  
11 all costs and expenses due to the Claims Administrator in connection with its administration  
12 of the claims including, but not limited to, preparing and mailing Notice Packets, locating  
13 Class Members, processing Request for Exclusion Forms and Settlement Allocation Forms,  
14 calculating withholdings and taxes, and calculating, administering and distributing payments  
15 to Participating Class Members and/or Putative Class Members. All Claims Administration  
16 Costs shall be paid from the Class Settlement Amount. The Claims Administration Costs are  
17 estimated to be approximately eleven thousand, five hundred dollars (\$11,500.00).  
18

19 **10. RELEASE OF CLAIMS**

20 **A. Release of Class Claims.**

21 **10.1 Terms of Release.** In consideration of the mutual promises contained herein,  
22 the Class Representative and the Class Members, on behalf of themselves and on behalf of  
23 their current, former, and future heirs, executors, administrators, attorneys, agents, and  
24 assigns, do hereby and forever fully and finally release, waive, acquit and discharge the  
25 Released Parties from the Released Claims, as defined below.  
26

27 //



10.2 **Released Claims of Class Members and the Class Representative**

1  
2 Upon the Effective Date, all Class Members (other than those Putative Class  
3 Members who timely and properly exclude themselves from the Settlement) will be deemed  
4 to have, and by operation of the Judgment will have, expressly waived and relinquished, to  
5 the fullest extent permitted by law, all claims, charges, complaints, liens, demands, causes of  
6 action, obligations, damages and liabilities, whether known or unknown, that each Class  
7 Member had, now has, or may hereafter claim to have against the Released Parties, arising  
8 at any time during the Class Period, out of the facts, legal theories and alleged causes of  
9 action in the operative FAC for (1) the alleged failure to provide legally-compliant meal and  
10 rest breaks, (2) the alleged failure to pay all regular, overtime and minimum wages due, (3)  
11 the alleged failure to provide and keep legally-compliant wage statements, (4) waiting time  
12 penalties for the alleged failure to pay all final wages due on a timely basis, and (5) alleged  
13 unfair business practices based on the foregoing alleged Labor Code violations. At a  
14 minimum, the released claims include, to the maximum extent permitted by law: (a) any  
15 claims and causes of action, whether known or unknown, that were or could have been  
16 alleged or asserted based on the facts and allegations alleged in the FAC filed in the Lawsuit  
17 or arising out of the same nucleus of operative facts; which includes, but is not limited to,  
18 the following: claims brought under California Labor Code Sections 201, 202, 203, 204,  
19 226, 226.7, 510, 1194, 1194.2, 1197 and/or 1197.1, the applicable Industrial Welfare  
20 Commission Wage Order(s), and all implementing regulations and interpreting guidance; (b)  
21 any claims that were or could have been brought under California Business and Professions  
22 Code Section 17200 *et seq.* as unlawful, fraudulent or misleading based on the claims, facts  
23 and allegations alleged in the Lawsuit; (c) any other causes of action that are based on or  
24 relate to purported meal and/or rest period violations, failure to pay regular, overtime and/or  
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1 minimum wages as required by law, failure to pay premium wages for meal and/or rest  
2 periods not provided as required by law, failure to pay wages due at termination, failure to  
3 properly calculate wages and other benefits owed, failure to provide accurate itemized wage  
4 statements, or unfair business practices, including related premiums, penalties, interest,  
5 punitive damages, costs, attorneys' fees, injunctive relief, declaratory relief, or accounting,  
6 whether such causes of action are in tort, contract, or pursuant to a statutory remedy (the  
7 “Released Claims”). This release covers all such claims against any Released Party.

8  
9 With respect to any and all Released Claims enumerated above, the Class Members  
10 agree that, upon the Effective Date, the Class Members shall and have, by operation of the  
11 judgment, waived and relinquished, to the fullest extent permitted by law, the provisions,  
12 rights, and benefits of §1542 of the California Civil Code, which provides:

13 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH  
14 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS  
15 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,  
16 WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY  
17 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

18  
19 The Class Members may hereafter discover facts in addition to or different from  
20 those which they now know or believe to be true with respect to the subject matter of the  
21 Released Claims, but stipulate and agree that the Class Members, upon the Effective Date,  
22 fully, finally and forever settle and release any and all Released Claims, known or unknown,  
23 suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden,  
24 which now exist, or heretofore have existed upon any theory of law or equity based upon the  
25 factual allegations in the FAC filed in the Lawsuit or arising out of the same nucleus of  
26

1 operative facts, and without regard to the subsequent discovery or existence of such different  
2 or additional facts.

3 **10.3 California Labor Code Section 206.5.** In connection with the above  
4 Release, and in consideration of Defendant's payments of the sums provided herein, each  
5 and every Class Member will be deemed also to have acknowledged and agreed that  
6 California Labor Code Section 206.5 is not applicable to the Parties hereto or the Class  
7 Members because there is a good faith dispute as to whether any wages are due at all to any  
8 Class Member. Section 206.5 provides in pertinent part as follows:

9  
10 AN EMPLOYER SHALL NOT REQUIRE THE EXECUTION OF A  
11 RELEASE OF A CLAIM OR RIGHT ON ACCOUNT OF WAGES DUE,  
12 OR TO BECOME DUE, OR MADE AS AN ADVANCE ON WAGES  
13 TO BE EARNED, UNLESS PAYMENT OF THOSE WAGES HAS  
14 BEEN MADE.

15 **B. Mutual General Release by Plaintiff and Defendant.**

16 **10.4 Additional Released Claims.** In addition to the Released Claims, Plaintiff  
17 releases any and all claims, known or unknown, contingent or accrued, against the Released  
18 Parties arising out of any act or event that occurred prior to the date of execution of this  
19 Stipulation. Defendant releases any and all claims, known or unknown, contingent or  
20 accrued, against Plaintiff arising out of any act or event that occurred prior to the date of  
21 execution of this Stipulation.  
22

23 The Parties waive the protections of California Civil Code § 1542, which provides:

24 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH  
25 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS  
26 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,  
27  
28

1 WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY  
2 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

3 The Parties acknowledge that either may hereafter discover facts in addition to or  
4 different from those which it now knows or believes to be true, but each stipulates and  
5 agrees that, upon the Effective Date, it will fully, finally and forever settle and release any  
6 and all claims it may have against any Released Party (in the case of claims belonging to the  
7 Class Representative) or against the Class Representative (in the case of claims belonging to  
8 Defendant), whether known or unknown, suspected or unsuspected, contingent or non-  
9 contingent, concealed or hidden, which now exist, or heretofore have existed upon any  
10 theory of law or equity and without regard to the subsequent discovery or existence of such  
11 different or additional facts.

13 Plaintiff agrees not to seek re-employment with Defendant or any parent, subsidiary,  
14 affiliated or successor entities.

15 **10.5 Release of ADEA Claims.**

16 Plaintiff's general release of claims in Section 10.4 of this Stipulation includes a  
17 release of any claim Plaintiff may have under the federal Older Workers Benefit Protection  
18 Act ("OWBPA") and/or the federal Age Discrimination In Employment Act of 1967  
19 ("ADEA"). Plaintiff is hereby advised that: (a) this waiver and release do not apply to any  
20 rights or claims that may arise after the date he executes this Stipulation; (b) he may consult  
21 with an attorney prior to executing this Stipulation and is encouraged to do so; (c) he has at  
22 least twenty-one (21) days to consider this Stipulation (although he may by his own choice  
23 execute this agreement earlier); (d) he has seven (7) days following the execution of this  
24 Stipulation to revoke his agreement to Section 10.5, in which case Section 10.5 of this  
25 Stipulation shall be null and void, and the other provisions of this Stipulation shall remain in  
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1 full force and effect; and (e) Section 10.5 of this Stipulation shall not be effective until he  
2 has executed this Stipulation and the period to revoke his agreement to Section 10.5 has  
3 expired. To revoke Plaintiff's agreement to Section 10.5 of this Stipulation, Plaintiff (or his  
4 attorney) must notify Defendant's counsel in a writing received by Defendant's counsel no  
5 more than seven (7) days after Plaintiff executes this agreement.

6 **D. Other Releases.**

7 **10.6 Claims By Participating Class Members Based on Stipulation.** In  
8 addition to the terms of the Release outlined above, no Class Member will have any claim  
9 against any of the Released Parties, the Defendant's counsel, the Class Representative, any  
10 other Class Member, or Class Counsel, based on errors in administering claims or  
11 performing the mailing or skip-tracing requirements under this Stipulation.

12  
13 **11. MOTION FOR COURT APPROVAL**

14 11.1 Promptly after the execution of this Stipulation, Class Counsel shall submit to  
15 the Court: (a) a fully executed copy of this Stipulation; (b) a noticed motion seeking the  
16 Court's preliminary approval of this Settlement; (c) a proposed order granting such  
17 preliminary approval and setting hearing for final approval; and (d) any other documents  
18 consistent with the Settlement reasonably necessary to obtain the Court's approval of the  
19 Settlement. The Parties will ask the Court to maintain jurisdiction of this matter for the  
20 purpose of monitoring compliance with and performance under this Stipulation and any and  
21 all orders and judgments, including the Final Judgment, entered by the Court. The Parties  
22 will also ask the Court to stay the Lawsuit, including all pending litigation and discovery  
23 activity, all pending deadlines, and all Court proceedings in the Lawsuit, other than a Motion  
24 For Preliminary Approval of the Settlement, a Motion for Final Approval of the Settlement,  
25 a Motion for the Class Counsel Award and Enhancement Award or any other Order  
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1 necessary to enforce the terms of this Settlement, until the earlier of: (a) the date of Final  
2 Judgment; (b) the date upon which Defendant revokes certification; or (c) the date the Court  
3 denies a motion for preliminary approval with prejudice or a motion for final approval with  
4 prejudice.

5 11.2 The Parties shall request that a Final Approval Hearing be set within a  
6 reasonable time after the last day of the Notice Period.

7 11.3 Prior to the Final Approval Hearing, Class Counsel shall file with the Court  
8 its motion for the Class Counsel Award and the Enhancement Award.

9 11.4 No later than 21 court days before the Final Approval Hearing, the Claims  
10 Administrator shall provide Class Counsel and counsel for Defendant with a “declaration of  
11 compliance” with the terms of this Settlement to be filed with the Court by Class Counsel.  
12

13 11.5 Prior to the Final Approval Hearing, Class Counsel shall file a Motion for  
14 Final Approval, Memorandum of Points and Authorities in Support of the Settlement, and  
15 any other documents reasonably necessary to obtain the Court’s approval of the Settlement.  
16

17 11.6 Upon final approval of the Settlement by the Court at or after the Final  
18 Approval Hearing, the Parties shall present the Final Judgment to the Court for its approval.  
19 After entry of the Final Judgment, the Court shall have continuing jurisdiction solely for  
20 purposes of addressing: (i) the interpretation and enforcement of the terms of this  
21 Stipulation; (ii) Settlement administration matters; and (iii) such post-Final Judgment  
22 matters as may be appropriate under court rules or as set forth in this Stipulation.  
23

## 24 **12. MISCELLANEOUS PROVISIONS**

25 12.1 All of the Parties have been represented by counsel throughout all  
26 negotiations that preceded the execution of this Stipulation, and this Stipulation is made with  
27 the consent and advice of counsel.  
28

1           12.2    The Parties and Class Members waive their right to seek any form of  
2 appellate review over any order or judgment that is consistent with the terms of this  
3 Stipulation.

4           12.3    This Stipulation may not be modified or amended, except in a writing that is  
5 signed by the respective counsel of record for the Parties and approved by the Court.

6           12.4    This Stipulation and the exhibits attached hereto constitute the entire  
7 agreement between the Parties concerning the subject matter hereof, and supersede and  
8 replace all prior negotiations, understandings, memoranda of understanding and proposed  
9 agreements, written and oral, relating thereto. No extrinsic oral or written representations or  
10 terms shall modify, vary or contradict the terms of the Stipulation unless made in writing  
11 and signed by duly authorized representatives of all Parties and approved in writing by a  
12 final order of the Court. No waiver of any term, provision or condition of this Stipulation,  
13 whether by conduct or otherwise, in any one or more instance shall be deemed to be or  
14 construed as a further or continuing waiver of any such term, provision or condition. The  
15 Parties and their respective counsel all participated in the negotiation and drafting of this  
16 Stipulation and Settlement and had available to them the advice and assistance of  
17 independent counsel. Thus, no Class Member may claim that any ambiguity in this  
18 Stipulation or Settlement should be construed against Defendant.

19           12.5    This Stipulation shall be subject to, governed by, construed, enforced, and  
20 administered in accordance with the laws of the State of California, without giving effect to  
21 the principles of conflict of laws, and shall be subject to the continuing jurisdiction of the  
22 Court. This Stipulation shall be construed as a whole according to its fair meaning and  
23 intent, and not strictly for or against any Party, regardless of who drafted or who was  
24 principally responsible for drafting this Stipulation or any specific term or condition thereof.  
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1           12.6 This Stipulation may be executed in one or more counterparts, each of which  
2 shall be deemed an original and together shall constitute one and the same instrument.

3           When each of the Parties has signed at least one such counterpart, this Stipulation shall  
4 become effective and binding as to all of the Parties as of the day and year last written. Fax  
5 signatures and copies of signatures shall be deemed as effective as originals.

6           12.7 Except as specifically provided herein, the Parties hereto will bear  
7 responsibility for their own attorneys' fees and costs, taxable or otherwise, incurred by them  
8 or arising out of this Lawsuit, and will not seek reimbursement thereof from any Party to this  
9 Stipulation. In the event that legal action arises out of this Stipulation or is necessary to  
10 enforce any of the terms or provisions of this Stipulation, the prevailing party in the action  
11 shall be entitled to recover its reasonable attorneys' fees and costs.  
12

13           12.8 The Parties and their counsel agree that they will not issue any press releases  
14 or press statements, post any internet disclosures, have any communications with the press  
15 or media about the Lawsuit or this Stipulation, or otherwise publicize the terms of this  
16 Settlement. Notwithstanding the foregoing: (a) Class Counsel shall be allowed to refer to  
17 the Settlement in support of other court filings in other litigation, (b) counsel for the Parties  
18 shall be allowed to refer to the Settlement in communications with Class Members; (c) the  
19 Parties shall have the right to disclose the Settlement as may be required under federal or  
20 state tax and/or securities laws or under Generally Accepted Accounting Principles; and (d)  
21 the Parties shall have the right to disclose the Settlement to third parties without identifying  
22 the case name, case number, or the names of any parties or released persons or entities. The  
23 provisions of this paragraph do not apply to communications between a Party and a  
24 Released Party.  
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1           12.9 Each individual signing this Stipulation warrants that he or she has the  
2 authority and is expressly authorized to enter into this Stipulation on behalf of the party for  
3 which that individual signs.

4           12.10 The Settlement shall be binding upon and inure to the benefit of the Parties'  
5 respective successors, assigns, heirs, spouses, marital communities, executors,  
6 administrators and legal representatives.

7           12.11 This Stipulation, any and all proceedings or documents arising out of or  
8 relating thereto shall not be construed as an admission of the truth of any allegation or the  
9 validity of any claim asserted or of any liability, nor shall this Stipulation, the Settlement  
10 contained herein, nor any papers arising out of or relating thereto be offered or received in  
11 evidence or in any way referred to in any civil or administrative proceeding other than such  
12 proceedings as may be necessary to approve or enforce this Stipulation. The Class Members  
13 are deemed by operation of the order of final approval of the Settlement to represent,  
14 covenant and warrant that they have not directly or indirectly assigned, transferred,  
15 encumbered, or purported to assign, transfer, or encumber to any person or entity any  
16 portion of any liability, claim, demand, cause of action or rights herein released and  
17 discharged.  
18

19  
20           12.12 Even after the Final Judgment and notwithstanding it, this Court will have  
21 and retain continuing jurisdiction over the Lawsuit and over all Parties and Class Members,  
22 to the fullest extent necessary or convenient to enforce and effectuate the terms and intent of  
23 this Settlement and all matters provided for in it, and to interpret it.

24  
25           12.13 The absolute maximum amount of money to be paid by Defendant under this  
26 Settlement is, in the aggregate (irrespective of how or to whom such monies are distributed),  
27 \$950,000.00, plus Defendant's tax liability with respect to the payments described in this  
28

1 Stipulation. It is understood and agreed that, irrespective of any other circumstances, in no  
2 event will Defendant be obligated to pay more than \$950,000.00, plus Defendant's tax  
3 liability with respect to the payments described in this Stipulation.

4 **13. COOPERATION**

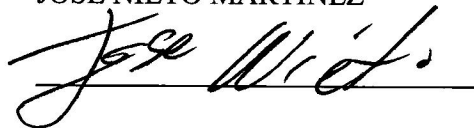
5 The Parties shall cooperate fully with one another in seeking Court approval of this  
6 Stipulation (including all exhibits thereto) and to use their respective best efforts to  
7 consummate the Settlement and cause the Judgment to be entered and to become final. No  
8 Party to this Stipulation shall seek to evade his, her or its good faith obligations to seek  
9 approval and implementation of this Settlement by virtue of any ruling, order, governmental  
10 report or other development, whether in the Lawsuit, in any other litigation or otherwise that  
11 hereafter might occur and might be deemed to alter the relative strengths of the Parties with  
12 respect to any claims or defenses or their relative bargaining power with respect to  
13 negotiating. The Parties and their respective counsel of record deem this Settlement to be  
14 fair and reasonable and have arrived at this Settlement in arms-length negotiations taking  
15 into account all relevant factors, present or potential.  
16

17  
18 IN WITNESS WHEREOF, each of the undersigned has agreed to and accepted the  
19 foregoing terms and conditions by executing this Stipulation as of the date indicated below.

20 IT IS SO AGREED.

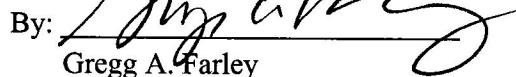
21 Dated: 12/2/17

22 JOSE NIETO MARTINEZ

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24 Dated: 12/2/17

25 LAW OFFICES OF GREGG A. FARLEY

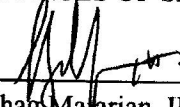
26 By:   
27 Gregg A. Farley

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Attorneys for Plaintiff JOSE NIETO  
MARTINEZ

Dated: 11/28/17

LAW OFFICES OF SAHAG MAJARIAN

By:   
Sahag Majarian, II

Attorneys for Plaintiff JOSE NIETO  
MARTINEZ

Dated: \_\_\_\_\_

ROGERS POULTRY CO.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

RODI POLLOCK PETTKER CHRISTIAN &  
PRAMOV, A Law Corporation

By: \_\_\_\_\_  
Patrick J. Cain

Attorneys for Defendant ROGERS POULTRY  
CO.

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Attorneys for Plaintiff JOSE NIETO  
MARTINEZ

Dated: \_\_\_\_\_


LAW OFFICES OF SAHAG MAJARIAN

By: \_\_\_\_\_  
Sahag Majarian, II

Attorneys for Plaintiff JOSE NIETO  
MARTINEZ

Dated: 12/5/17

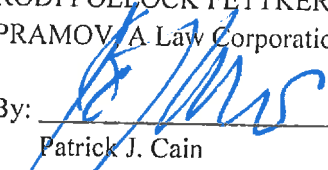
ROGERS POULTRY CO.

Name: 

Title: CEO

Dated: 12/9/17

RODI POLLOCK PETTKER CHRISTIAN &  
PRAMOV, A Law Corporation

By:   
Patrick J. Cain

Attorneys for Defendant ROGERS POULTRY  
CO.