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14 Attorneys for Defendants ROY HONARYAR, BLOOMING DEALS, INC.,
15 CHIK ENTERPRISES, JRH ENTERPRISES, INC., and
EBI ENTERPRISES, INC.,

16
17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 COUNTY OF LOS ANGELES

19 LAURA CAMPA, individually, and on behalf of
all others similarly situated,

20 Plaintiff,

21 vs.
22

23 ROY HONARYAR, an individual; BLOOMING
24 DEALS, INC., a California corporation; CHIK
ENTERPRISES, a California corporation; JRH
25 ENTERPRISES, INC., a California corporation;
EBI ENTERPRISES, INC., a California
26 corporation; and DOES 1 through 10, inclusive,

27 Defendants.
28

Case No.: BC700336

CLASS ACTION

[Hon. Elihu M. Berle, Dept. SST-6]

**JOINT STIPULATION AND SECOND
AMENDED CLASS SETTLEMENT
AGREEMENT**

1 IT IS HEREBY STIPULATED AND AGREED by and between Defendants ROY
2 HONARYAR, BLOOMING DEALS, INC., CHIK ENTERPRISES, JRH ENTERPRISES, INC., and
3 EBI ENTERPRISES, INC. (hereinafter referred to as “Defendants”) on the one hand, and Plaintiff
4 LAURA CAMPA (hereinafter referred to as Plaintiffs) on their behalf and on behalf of the other
5 “Class Members” as defined herein, on the other hand (hereafter collectively referred to as the
6 “Parties”), subject to the approval of the Court pursuant to section 382 of the California *Code of Civil*
7 *Procedure* and Rule 3.769 of the California *Rules of Court*, that the settlement of the Action (as
8 defined herein) shall be effectuated and subject to the following terms and conditions:

9 I. **SUMMARY OF SETTLEMENT TERMS**

10 Under the terms of the Settlement, Defendants will pay the Maximum Settlement Amount
11 (“MSA”) of Seven Hundred Thousand Dollars (\$700,000.00), without reversion, in exchange for the
12 full and final settlement and release of any and all claims that were or could have been alleged in the
13 operative Complaint in this Action, based upon the claims and allegations in the operative Complaint,
14 and subject to the terms and conditions outlined in this Agreement (as defined herein). This settlement
15 does not require submission of a claim form as a condition of participation and will be administered
16 by CPT Group, a third-party administrator. Defendants conditionally agree to stipulate, solely for the
17 limited purpose of consummating the terms of the Settlement contained in this Agreement, to have
18 the Court certify a class of all current and former non-exempt employees of Defendants who worked
19 for Defendants in California during the Class Period (as defined herein).

20 In addition, Plaintiffs and Class Counsel will seek from the Maximum Settlement Amount:
21 (1) attorney’s fees in the amount of no more than two hundred thirty three thousand three hundred
22 thirty three dollars and thirty three cents (\$233,333.33), representing 33.33% of the MSA; (2) Class
23 Counsel Costs in the amount of no more than ten thousand dollars (\$10,000.00); and (3) Enhancement
24 Payment for Plaintiff Laura Campa in the amount of seven thousand five hundred dollars (\$7,500.00).
25 Furthermore, the Parties have agreed that forty thousand dollars (\$40,000.00) of the Maximum
26 Settlement Amount will be allocated as civil penalties under the California Labor Code Private
27 Attorneys General Act of 2004 (“PAGA”), with 75% of this amount, thirty thousand dollars
28 (\$30,000.00), to be paid to the California Labor & Workforce Development Agency (“LWDA”) in

1 satisfaction of any claim for civil penalties that may be owed to that agency under the PAGA. The
2 other 25%, or ten thousand dollars (\$10,000.00), will be distributed to the PAGA Employees (as
3 defined herein) on a pro-rata basis.

4 Finally, any and all Settlement Administration Fees, as defined herein, currently estimated to
5 be fifteen thousand dollars (\$15,000.00), will be paid from the Maximum Settlement Amount. Except
6 as provided in the Escalator Clause herein, and other than the employer's share of payroll taxes,
7 Defendants will not be responsible for anything more than the Maximum Settlement Amount.
8 Payment of employer's share of payroll taxes and other required withholdings, based on Settlement
9 Payment(s) to the Class Members shall be paid by the Defendants in addition to the Maximum
10 Settlement Amount. There will be no reversion of any funds to the Defendants.

11 II. DEFINITIONS

12 As used in this Stipulation and Settlement Agreement the following terms shall have the
13 meanings specified below:

14 1. "Action" means this lawsuit, and the operative Complaint in the matter entitled *Laura*
15 *Campa v Roy Honaryar et. al.*, Los Angeles County Superior Court, Case No. BC700336.

16 2. "Agreement," "Settlement," or "Settlement Agreement" means this Stipulation and
17 Settlement Agreement, including any attached exhibits.

18 3. "Authorized Claimant(s)" means those Class Members who do not timely file a valid
19 Request for Exclusion with the Settlement Administrator provided under this Agreement.

20 4. "Class," "Class Member," or "Class Members" means any current or former non-
21 exempt employee of Defendants in California who worked for Defendants at any time during the
22 Class Period.

23 5. "Class Counsel" means Kane Moon, Esq., H. Scott Leviant, Esq., and Lilit Ter-
24 Astvatsatryan, Esq. of MOON & YANG, APC, 1055 W. Seventh St., Suite 1880, Los Angeles,
25 California 90017.

26 6. "Class Counsel Costs" or "Attorneys' Costs" means the amounts to be paid, after
27 Court approval, to Class Counsel for costs incurred by Class Counsel in this Action.

28 7. "Class Counsel Fees" or "Attorneys' Fees" means the amount to be paid, after Court

1 approval, to Class Counsel for attorneys' fees.

2 8. "Class Notice" or "Notice of Settlement" means the form to be prepared by the Parties
3 and sent to the Class Members, after the Court preliminarily approves the terms contained in the
4 Agreement informing them of the material terms of the Agreement, why they are receiving the notice,
5 and what their options are to object, or be excluded from the Settlement. The Class Notice is attached
6 hereto as Exhibit 1. The Class Notice shall be in English and Spanish.

7 9. "Class Notice Period," "Notice Period," or "Response Period" means a period of sixty
8 (60) calendar days after the original date of the Settlement Administrator's mailing of the Notice of
9 Settlement.

10 10. "Class Pay Period Value" means the value of all Class Member pay periods which the
11 Settlement Administrator shall determine by dividing the Net Settlement Proceeds (less the PAGA
12 Payment to the PAGA Employees) by the Total Class Pay Periods.

13 11. "Class Period" means the time period from April 2, 2014, through September 1, 2019.

14 12. "Complaint" or "Operative Complaint" means the Second Amended Class Action and
15 Representative Complaint ("SAC") for: (1) Failure to Pay Minimum and Straight Time Wages [Cal.
16 Lab. Code §§ 204, 1194, 1194.2, and 1197]; (2) Failure to Pay Overtime Wages; (3) Failure to Provide
17 Meal Periods [Cal. Lab. Code §§ 226.7, 512]; (4) Failure to Authorize and Permit Rest Breaks [Cal.
18 Lab. Code § 226.7]; (5) Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-
19 203]; (6) Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226]; (7) Unfair
20 Business Practices [Cal. Bus. & Prof. Code §§ 17200, et seq.]; and (8) Civil Penalties Under PAGA
21 [Cal. Lab. Code § 2699, et seq.]. Pursuant to Section VII, Plaintiff will amend her First Amended
22 Complaint to add a claim for Failure to Pay Overtime Wages.

23 13. "Counsel for Defendants," "Defense Counsel," or "Defendants' Counsel" means
24 Alfred J. Landegger, Esq., Oscar E. Rivas, Esq., and Kristina Kourasis, Esq., of LANDEGGER
25 BARON LAW GROUP, ALC, 15760 Ventura Blvd., Suite 1200, Encino, California 91436,
26 Telephone No.: (818) 986-7561; Facsimile No.: (818) 986-5147.

27 14. "Court" means the Los Angeles Superior Court in which the Action is currently
28 pending, and located at 312 N. Spring Street, Los Angeles, California 90012. Court shall also mean

1 any other Court that acquires proper jurisdiction of this Action.

2 15. "Distributable Amount," "Net Settlement Proceeds," or "NSP" means the amount that
3 is distributable to the Authorized Claimants, and equals the Maximum Settlement Amount less Class
4 Counsel Fees, Class Counsel Costs, Enhancement Payment, PAGA Payment, and Settlement
5 Administration Fees.

6 16. "Effective Date" means the later of (a) the date of entry of Order granting final
7 approval of this Settlement, if no objection to the Settlement is filed, (b) the date on which the time
8 for all appeals from objections to the Settlement has expired, if one or more objections to the
9 Settlement are filed, and not withdrawn, and (c) if an appeal is taken, the date on which the appeal is
10 settled, withdrawn or dismissed, or any reviewing court issues a decision, the time for further appeal
11 has expired, and the trial court has regained jurisdiction.

12 17. "Enhancement Payment" or "Class Representative Enhancement" means the payment
13 to Representative Plaintiff Laura Campa, in addition to whatever payment she would otherwise be
14 entitled to as an Authorized Claimant.

15 18. "Final Approval Hearing" refers to the hearing during which the Parties will seek final
16 approval of this Agreement.

17 19. "Final Judgment" means the order and/or judgment entered by the Court pursuant to
18 the terms set forth in this Agreement finally and fully giving effect to the terms contained in this
19 Agreement as to the Representative Plaintiff and the Class, except those Class Members who timely
20 Opt-Out.

21 20. "Plaintiff" or "Representative Plaintiff" means Plaintiff Laura Campa (and her
22 representative(s), heir(s), assign(s), and attorney(s)).

23 21. "PAGA Employee" or "PAGA Employees" means the Class Members employed
24 during the PAGA Period.

25 22. "PAGA Payment" means the amount of forty thousand dollars (\$40,000.00) of the
26 Maximum Settlement Amount to be allocated as civil penalties under the California Labor Code
27 Private Attorneys General Act of 2004 ("PAGA"), with 75% of this amount, thirty thousand dollars
28 (\$30,000.00), to be paid to the LWDA in satisfaction of any claim for civil penalties that may be owed

1 to that agency under the PAGA. The other 25%, or ten thousand dollars (\$10,000.00), will be
2 distributed to the PAGA Employees based on the PAGA Pay Period Value.

3 23. "PAGA Period" means the time period from April 2, 2017, through September 1,
4 2019.

5 24. "PAGA Pay Period Value" means the value of all PAGA Employee pay periods that
6 the Settlement Administrator shall determine by dividing the PAGA Payment by Total PAGA Pay
7 Periods.

8 25. "Maximum Settlement Amount" or "MSA" means the total amount of seven hundred
9 thousand dollars (\$700,000.00) to be paid by Defendants pursuant to the terms of this Agreement.

10 26. "Notice Returns" means envelopes containing the Class Notice that were mailed by
11 the Settlement Administrator to Class Members but were undeliverable and returned to the Settlement
12 Administrator by the United States Postal Service.

13 27. "Objection to Class Settlement" means any written objection to this Settlement by
14 Class Members who do not choose to be excluded from the Class that is served on the Settlement
15 Administrator within the Opt-Out Period.

16 28. "Opt-Out Period" refers to the deadline of no later than sixty (60) calendar days after
17 the original date of the Settlement Administrator's mailing of the Notice of Settlement that any Class
18 Member, who wishes to be excluded from the Settlement, submits a Request for Exclusion.

19 29. "Personal Release" means Representative Plaintiff's irrevocable and unconditional
20 release, acquittal, and discharge of the Released Persons and all persons and/or corporate entities
21 acting by, through, under, or in concert with any of them, or any of them, from any and all complaints,
22 claims, penalties, liabilities, obligations, promises, agreements, controversies, damages, costs, losses,
23 debts and expenses (including attorneys' fees and costs actually incurred), of any nature whatsoever,
24 including but not limited to claims arising from the California Constitution; Title VII of the Civil
25 Rights Act of 1964 (42 U.S.C. §2000e); the California Fair Employment and Housing Act (Cal. Govt.
26 Code §12900 et seq.); the Americans with Disabilities Act; the Age Discrimination in Employment
27 Act (29 U.S.C. §§621-633a); the Older Workers' Benefit Protection Act; the Private Attorneys
28 General Act of 2004; and claims of intentional infliction of emotional distress; defamation and/or

1 libel, or any other damage to reputation claims; breach of implied contract or for claims of a breach
2 of the covenant of good faith and fair dealing, as well as any other express or implied covenant; or
3 any other statute or common law principle of similar effect, known or unknown, which the person
4 giving this release now has, owns, or holds, or claims to have, own or hold, or which said person at
5 any time heretofore had, owned, or held, or claimed to have, own, or hold or which said person at any
6 time hereinafter may have, own, or hold, or claim to have, own, or hold, against each or any of the
7 Released Persons, arising from acts, events, or circumstances occurring on or before the effective date
8 of this Agreement.

9 As to the foregoing claims, Representative Plaintiff expressly waives the benefits of
10 California *Civil Code* §1542. *Civil Code* §1542 provides:

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

15 The Personal Release is not intended to, nor does it cover, any claims that cannot be released
16 as a matter of law.

17 30. “Preliminary Approval Order” is the order preliminarily approving the settlement
18 terms contained in this Agreement.

19 31. “Preliminary Approval Date” is the date the Court grants preliminary approval of this
20 Settlement.

21 32. “Redirected Notice” means a re-mailing of the Class Notice mailed by the Settlement
22 Administrator to a new or different address to a Class Member that was obtained by the Settlement
23 Administrator as a result of a Notice Return.

24 33. “Released Class Claims” means any and all claims, debts, liabilities, demands,
25 obligations, guarantees, costs, expenses, attorneys’ fees, damages, or causes of action which relate to
26 any and all claims alleged or which could have been alleged based on the facts in the Operative
27 Complaint filed by Representative Plaintiff, both on her behalf and on behalf of the Class Members
28 in this Action during the Class Period, under any state or local law, and shall specifically include but

1 is not limited to claims for, Failure to Pay Minimum and Straight Time Wages [Cal. Lab. Code §§
2 204, 1194, 1194.2, and 1197], Failure to Pay Overtime Wages, Failure to Provide Meal Periods [Cal.
3 Lab. Code §§ 226.7, 512], Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code § 226.7],
4 Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203], Failure to Provide
5 Accurate Itemized Wage Statements [Cal. Lab. Code § 226], and Unfair Business Practices [Cal. Bus.
6 & Prof. Code §§ 17200, et seq.], and any other claims, including claims for statutory and/or civil
7 penalties, pertaining to the Class Members which were alleged or could have been alleged in operative
8 Complaint, based upon the allegations and claims contained in the Operative Complaint. In addition,
9 as to any Class Member who cashes the check representing their Settlement Payment, the signing and
10 negotiation of that check shall serve as the Class Member's consent to join the action for purposes of
11 releasing claims arising under the Fair Labor Standards Act ("FLSA") that are related to the claims
12 stated in the Action, implicitly or explicitly, and, for such persons, "Released Class Claims" shall
13 include all related claims arising under the FLSA. This release is limited in time to the Class Period
14 covering the Class Members who worked for the Released Persons in the State of California.

15 34. "Released PAGA Claims" means claims asserted by Representative Plaintiff for Civil
16 Penalties under PAGA [Cal. Lab. Code § 2699, et seq.], including all attorney's fees and costs related
17 thereto.

18 35. "Released Persons" means Defendants ROY HONARYAR, BLOOMING DEALS,
19 INC., CHIK ENTERPRISES, JRH ENTERPRISES, INC., and EBI ENTERPRISES, INC., and their
20 respective past, present, and/or future agents, attorneys, insurers, reinsurers, divisions, affiliates,
21 DBAs (if any), predecessors, successors, heirs, accountants, auditors, consultants, reinsurers,
22 shareholders, officers, directors, managers, employees, trustees, representatives, administrators,
23 fiduciaries, assigns, subrogees, executors, partners, parents, owners, subsidiaries, privies, and/or any
24 and all persons and/or corporate entities acting by, through, under or in concert with any of them.

25 36. "Request for Exclusion" or "Opt-Out" means a written request by a Class Member to
26 be excluded from the Class and the Settlement containing all the information necessary as detailed
27 herein.

28 37. "Settlement Administrator" refers to CPT Group (or "CPT"), the entity that Class

1 Counsel and Counsel for Defendants selected to administer this Settlement and to act as the Settlement
2 Administrator to process the Settlement under the terms of this Agreement.

3 38. "Settlement Administration Fees" means the fees and costs, currently estimated at
4 fifteen thousand dollars (\$15,000.00), incurred or charged by the Settlement Administrator in
5 connection with the execution of its duties under this Agreement including, but not limited to: (i) fees
6 and costs associated with preparing, issuing and/or monitoring reports, filings and notices (including
7 the cost of printing and mailing all notices and other documents to the Class) required to be prepared
8 in the course of administering the Settlement; (ii) computing the amount of the Settlement Payments,
9 taxes, and any other payments to be made under this Agreement; (iii) handling inquiries about the
10 calculation of individual Settlement Payments; (iv) establishing and operating a Settlement payment
11 center address, and phone number to receive Class Members' inquiries about the Settlement; and
12 (v) remitting any tax deductions or subtractions applicable under the law and/or pursuant to this
13 Agreement and preparing and submitting any filings required by any governmental taxing authority
14 or other governmental agency.

15 39. "Settlement Payment" or "Individual Settlement Payment" refers to the payment to
16 any Authorized Claimant pursuant to the terms of this Agreement.

17 40. "Total Class Pay Periods" means the total number of pay periods that all Class
18 Members were employed by Defendants during the Class Period.

19 41. "Total PAGA Pay Periods" means the total number of pay periods that all PAGA
20 Employees were employed by Defendants during the PAGA Period.

21 **III. BACKGROUND**

22 The original complaint in this Action was filed on April 2, 2018, in the Superior Court of the
23 State of California, County of Los Angeles. In her Operative Complaint, Plaintiff asserts the following
24 claims: (1) Failure to Pay Minimum and Straight Time Wages [Cal. Lab. Code §§ 204, 1194, 1194.2,
25 and 1197]; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods [Cal. Lab. Code
26 §§ 226.7, 512]; (4) Failure to Authorize and Permit Rest Breaks Cal. Lab. Code § 226.7]; (5) Failure
27 to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203]; (6) Failure to Provide
28 Accurate Itemized Wage Statements [Cal. Lab. Code § 226]; (7) Unfair Business Practices [Cal. Bus.

1 & Prof. Code §§ 17200, et seq.]; and (8) Civil Penalties Under PAGA [Cal. Lab. Code § 2699, et
2 seq.]. Defendants deny each and every one of the allegations asserted in the Operative Complaint and
3 asserts that it has no liability for the Plaintiff's claims or the Class.

4 The Parties have conducted a significant investigation of the facts and law during the
5 prosecution of this Action, which included informal discovery. The informal discovery included the
6 exchange of class information such as class size and composition, the production of Class Members'
7 time and payroll records, as well as Defendants' written wage and hour policies and practices. The
8 Parties conducted the aforementioned investigation and discovery in anticipation of, and prior to, the
9 private mediation of the Action. Counsel for the Parties investigated the law as applied to the
10 discovered facts regarding the alleged claims of the Representative Plaintiff and the potential defenses
11 thereto, and the potential damages claimed by the Representative Plaintiff.

12 Thereafter, the Parties participated in a full day mediation on June 28, 2019 before an
13 experienced and well-regarded mediator, Jeffrey L. Krivis, Esq. Through the efforts of all Parties and
14 their counsel, as well as the invaluable assistance of the mediator, the Parties were eventually able to
15 reach a mutual understanding of the material terms of settlement, which are memorialized in this
16 Agreement.

17 Representative Plaintiff and Class Counsel concluded, after taking into account the sharply
18 disputed factual and legal issues involved in the Action, the risks and substantial expenses involved
19 in the further prosecution of this case, and the substantial benefits to be received pursuant to the
20 compromise and settlement of the Action at this early stage, as set forth in this Agreement, that
21 settlement on the terms set forth herein is in the best interest of Representative Plaintiff and the Class,
22 and is fair and reasonable. In particular, Class Counsel and Representative Plaintiff understand the
23 risk of the class certification process, as well as the potential merits of affirmative defenses expected
24 to be raised by the Defendant. In light of the risks related to certifying a class, prevailing on an
25 anticipated motion for summary judgment and a potential trial, the recovery of seven hundred
26 thousand dollars (\$700,000.00) obtained in the Action is both reasonable and fair.

27 Similarly, Defendants concluded that there are benefits associated with settling the Action at
28 this early stage. After taking into account the sharply disputed factual and legal issues involved in

1 the Action, the expense and burden of protracted litigation, and its desire to put the controversy to
2 rest, Defendants believe that settlement on the terms set forth in this Agreement is in its best interest
3 and is fair and reasonable. Defendants in particular have concluded that the future costs and expenses
4 involved in continuing the Action are substantial and chose to eliminate any further expenses,
5 attorneys' fees, and risks via the Settlement. In particular, given the severely disputed nature of the
6 case, it is expected that substantial expenses will be incurred determining many issues dealing with
7 discovery, a class certification motion, a Summary Judgment motion, eventual trial, and possible
8 appeals.

9 This Agreement contemplates (i) entry of an Order preliminarily approving the Settlement
10 and approving certification of a provisional settlement class, contingent upon final approval of the
11 Settlement; (ii) the mailing of a Notice of Settlement to all Class Members; (iii) the processing of any
12 objections, and opt-outs by the Settlement Administrator, as well as payment to the Class Members
13 after final approval of this Agreement by the Court; and (iv) entry of Final Judgment granting final
14 approval of the Settlement.

15 **IV. SETTLEMENT APPROVAL & IMPLEMENTATION PROCEDURE**

16 **A. Preliminary Approval of the Settlement**

17 As soon as practicable, Class Counsel will also submit this Agreement to the Court for its
18 preliminary approval. Such submission will include such motions, pleadings, and evidence as may
19 be required for the Court to determine that this Agreement is fair, adequate, and reasonable, as
20 required by section 382 of the California *Code of Civil Procedure* and Rule 3.769 of the California
21 *Rules of Court*. Such submission will also include a Notice of Class Settlement and Notice of
22 Settlement Award ("Notice of Settlement") in substantially the form attached hereto as Exhibit 1.

23 **B. Conditional Certification of the Class**

24 Defendants hereby consent, solely for purposes of the Settlement set forth in this Agreement,
25 to the conditional certification of the Class, to the conditional appointment of Class Counsel, and to
26 the conditional approval of the Representative Plaintiff, provided however, that if the Settlement fails
27 to be approved or otherwise fails to be consummated for any reason whatsoever, including but not
28 limited to the Final Judgment not becoming final, then Defendants retain all rights previously

1 available to them, and any provisional certification of any class, or the adoption of any procedure
2 herein, shall be undone and the Parties restored to their pre-settlement status as if no settlement had
3 been reached and no decisions were made pursuant to it. In that event, nothing in this Agreement or
4 other papers or proceedings related to the Settlement shall be used as evidence or argument by any
5 party, including any Class Members who opt out, concerning whether or not the claims advanced in
6 the Complaint may properly be maintained as a class action, whether the purported class is
7 ascertainable, or whether Class Counsel or the Representative Plaintiff can adequately represent the
8 members of the class under applicable law.

9 **C. Cooperation**

10 The Parties agree to cooperate fully with each other to accomplish the terms and requirements
11 of this Agreement, including but not limited to, the execution of such documents and to take such
12 other action as may reasonably be necessary to implement the terms of this stipulated Settlement.

13 Except as otherwise provided herein, neither party nor any of their attorneys or agents shall
14 initiate any communication with any Class Members for the purpose of encouraging or discouraging
15 them to Opt-Out of the Class, or to object to the Settlement contained herein, unless agreed upon by
16 the other party in writing or if authorized by the Court. This provision in no way limits Class Counsel
17 from communicating with the Representative Plaintiff, nor does the provision limit Class Counsel
18 from responding to any inquiry initiated by any Class Members.

19 The Parties shall promptly submit this Agreement for preliminary approval and determination
20 by the Court as to its fairness, adequacy, and reasonableness. Promptly upon execution of this
21 Agreement, the Parties shall apply to the Court for the entry of a Preliminary Approval Order
22 scheduling a hearing to determine whether the proposed Class Settlement should be approved as fair,
23 reasonable, and adequate as to the Class Members, and approving as to form and content of the
24 proposed Notice of Settlement.

25 **D. Notice Of Settlement By Mail**

26 Defendants will provide as soon as practicable, but no later than ten (10) business days after
27 the Preliminary Approval Date, to the Settlement Administrator a list containing the Class Members'
28 names, last known addresses, dates of employment, and social security numbers, which will be used

1 to send the Notice of Settlement to the Class Members. Using this list, the Settlement Administrator
2 shall calculate the Class Pay Period Value, PAGA Pay Period Value, and the Individual Settlement
3 Payment which each Class Member is entitled to pursuant to the formula provided in Section IV(J)(2),
4 below, and mail the Notice of Settlement via First-Class mail using the United States Postal Service
5 to the most recent address known for each Class Member within twenty (20) calendar days of receipt
6 from Defendants of the Class Members' information. Before mailing the Notice of Settlement, the
7 Settlement Administrator shall review the National Change of Address registry for all Class Members
8 and/or skip trace to determine the most up-to-date addresses of all Class Members. If any Notices of
9 Settlement are returned with a forwarding address, the Settlement Administrator will re-mail the
10 Notice of Settlement to the Class Member whose notice was returned.

11 In the event that prior to the final date for any Class Member to Opt-Out, any Notice mailed
12 to the Class Member is returned as having been undelivered by the U.S. Postal Service ("Notice
13 Return"), the Settlement Administrator shall, via skip-tracing, seek an address correction from such
14 Class Member(s), and send a Redirected Notice to the new or different address within seven (7)
15 calendar days if such address is found. The Settlement Administrator may conduct any investigation
16 it deems economically reasonable and consistent with its role and industry practice to determine the
17 correct address of any Class Member.

18 The Notice of Settlement to Class Members shall notify the Class Members of the fact and
19 nature of this Settlement. Further, the Notice of Settlement shall inform the Class Members that they
20 are entitled to a Settlement Payment and shall indicate the number of Total Class Pay Periods and/or
21 Total PAGA Pay Periods calculated for the particular Class Member along with the estimated amount
22 of the Settlement Payment the particular Class Member will receive if the Settlement is approved.
23 The Notice of Settlement will also specifically inform Class Members that they do not have to submit
24 a claim form in order to receive Settlement Payment. Moreover, the Notice of Settlement shall outline
25 the procedures for submitting Opt-Outs and/or Objections to the Settlement and all deadlines
26 applicable thereto.

27 The Notice of Settlement to Class Members shall also inform Class Members of the deadline
28 by which the checks representing the Settlement Payments must be cashed/negotiated (180 calendar

1 days), and also that by cashing/negotiating the checks representing the Settlement Payments, it shall
2 constitute opting-in for a release of claims under the Fair Labor Standards Act to the extent such
3 claims fall within the definition of Released Class Claims as that phrase is defined and used in this
4 Agreement.

5 Class Members shall have sixty (60) calendars days from the date the Class Notice is first
6 mailed by the Settlement Administrator (“Class Notice Period” or “Notice Period”) to submit a
7 Request for Exclusion, or an Objection to Class Settlement, as further explained herein. In any
8 instance where a Notice is first returned to the Settlement Administrator within ten days of the end of
9 the original Notice Period, and a new address for that Class Member can be located via a first skip-
10 tracing, the Notice Period will be extended by 30 days for that Class Member. A letter prepared by
11 the Settlement Administrator will be included in the re-mailed Notice in that instance, stating the
12 extended Notice Period.

13 **E. Requests for Exclusion (“Opt-Outs”)**

14 Any Class Member who wishes to be excluded from the Settlement outlined herein must mail
15 to the Settlement Administrator a written statement expressing his or her desire to be excluded from
16 the Settlement (a “Request for Exclusion” or “Opt-Out”). For the Request for Exclusion to be
17 accepted it must be timely and valid. To be valid the Request for Exclusion must contain a statement
18 that the Class Member requests to be excluded from the class and must include the name (and former
19 names used during his/her employment with Defendants, if any), current address, telephone number,
20 and last 4 numbers of their social security number. In addition, the statement shall be signed and dated
21 by the Class Member.

22 To be timely, any Class Member who wishes to be excluded from the Settlement must submit
23 a Request for Exclusion to the Settlement Administrator postmarked no later than the end of the
24 Notice Period. Any Class Member who submits a valid and timely Request for Exclusion or Opt-Out
25 shall no longer be a member of the Class, shall be barred from participating in this Settlement, shall
26 not receive a Settlement Payment, shall be barred from objecting to this Settlement, and shall receive
27 no benefit from this Settlement and will not be bound by Settlement or release of claims.

28 Any Class Member who fails to submit a timely Request for Exclusion or Opt-Out within the

1 Notice Period shall be bound by all terms of this Agreement, regardless of whether that Class Member
2 receives and/or cashes his or her check for Settlement Payment.

3 In the event that the Court approves the terms of Settlement related to PAGA, PAGA
4 Employees will be bound by Settlement, regardless of whether they chose to Opt-Out of the
5 Settlement of Class claims.

6 **F. Declaration Of Compliance**

7 As soon as practicable, but no later than ten (10) calendar days following the Opt-Out-Period,
8 the Settlement Administrator shall provide Class Counsel and Counsel for Defendants with a
9 declaration attesting to completion of the notice process set forth in this Section (Section IV) of the
10 Agreement, including an explanation of efforts to resend undeliverable notices returned with
11 forwarding addresses, and a summary of disputed claims, and opt outs including the name of the class
12 members opting out, which declaration shall be filed with the Court by Class Counsel along with their
13 papers requesting Final Approval of the Settlement.

14 **G. Sufficient Notice**

15 Compliance with the procedures described in this Section shall constitute due and sufficient
16 notice to Class Members of this Settlement and the final approval hearing, shall satisfy the
17 requirements of due process, and nothing else shall be required of the Representative Plaintiff, Class
18 Counsel, Defendants, Counsel for Defendants, or the Settlement Administrator to provide additional
19 notice of the settlement and the Final Approval Hearing, unless expressly ordered by the Court.

20 **H. Objections To Settlement**

21 Any Class Member may object to the Settlement. To object, the Class Member may appear
22 in person at the Final Approval Hearing, have an attorney object for the Class Member, or submit a
23 written brief or statement of objection to the Settlement Administrator (an Objection to Class
24 Settlement). Upon receipt, the Settlement Administrator will transmit a copy of any Objection to
25 Class Settlement it receives to the attorneys for the Parties. If any Class Member chooses to submit
26 an Objection to Class Settlement, as set forth in the Notice, the written objection should contain
27 sufficient information to confirm the identity of the objector and the basis of the objection, including
28 (1) the full name of the Settlement Class Member; (2) the signature of the Settlement Class Member;

1 (3) the grounds for the objection; and (4) be postmarked within the Notice Period to permit adequate
2 time for processing and review by the Parties of the written statement or objection. As soon as
3 practicable, the Settlement Administrator shall forward any and all Objections to Class Settlement to
4 Class Counsel and Defense Counsel. Class Counsel shall ensure that any written objections are
5 transmitted to the Court for the Court's review (either as an attachment to a declaration from Class
6 Counsel or as an attachment to a declaration from the Settlement Administrator). The Court may, in
7 its sole discretion, permit any Settlement Class Member to state comments about the Settlement or
8 objections to the Settlement at the Final Approval hearing, regardless of whether the Settlement Class
9 Member has submitted an Objection to Class Settlement. Regardless of the form, an objection alone
10 will not satisfy the requirement that a Settlement Class Member must formally intervene and become
11 a party of record in the action to appeal a Judgment entered following an Order or Judgment finally
12 approving this Settlement, as is required under the California Supreme Court decision of *Hernandez*
13 *v. Restoration Hardware*, 4 Cal. 5th 260 (2018). A Class Member who does not object prior to or at
14 the Final Approval Hearing, will be deemed to have waived any objections and will be foreclosed
15 from making any objections (whether at the Final Approval Hearing, by appeal, or otherwise) to the
16 Settlement. If the objecting Class Member does not formally intervene in the action and/or the Court
17 rejects the Class Member's objection, the Class Member will still be bound by the terms of this
18 Agreement. Class Counsel and Defendant's Counsel may, at least five days (or some other number
19 of days as the Court shall specify) before the final approval hearing, file responses to any Objections
20 to Class Settlement received by the Settlement Administrator.

21 In order to object to the Class Settlement, the Class Member must not have submitted a
22 Request for Exclusion.

23 At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class
24 Members to object to the Settlement or appeal from the Final Judgment. Class Counsel shall not
25 represent any Class Members with respect to any such objections.

26 If a person submits an Objection to Class Settlement and a Request for Exclusion, the
27 Settlement Administrator shall take reasonable steps to contact the Class Member to determine
28 whether the Class Member wishes to object and remain in the Class or be excluded from the Class.

1 If the Settlement Administrator is unable to determine the Class Member's choice, the objection shall
2 be valid and the Request for Exclusion shall be null and void, and the Class Member shall be counted
3 as part of the Class and be bound by the terms and conditions of the Settlement.

4 **I. Final Approval Hearing**

5 At the Final Approval Hearing, the Representative Plaintiff, Class Counsel, and Counsel for
6 Defendants shall ask the Court to give final approval to this Agreement and the terms and conditions
7 contained herein. At this hearing, the Court will consider and rule upon any Objections to Settlement
8 submitted by any Class Member, whether timely or not. Upon granting final approval of the
9 Settlement contained herein, the Court shall also enter a Final Judgment which, among other things,
10 will implement the Releases contained in Section VI of the Agreement as to Representative Plaintiff,
11 and all Class Members who did not timely Opt-Out of the Settlement. The Release contained in
12 Section VI of this Agreement shall become effective only after Defendants have made all installment
13 payments to fully fund the Maximum Settlement Amount.

14 In compliance with the California Rules of Court, the Final Approval Order and/or Judgment
15 shall be posted on a website maintained by the Settlement Administrator for a period of not less than
16 90 days after entry of final judgment. The address of that website will be included in the Notice of
17 Class Action Settlement.

18 **J. Formulas to Determine Payment, Distribution of Funds and Payment of Funds**

19 **1. *General Terms of Settlement***

20 Defendants shall pay the Maximum Settlement Amount of Seven Hundred Thousand Dollars
21 (\$700,000.00), to settle this Action, under the terms described in this Agreement, in two installments.
22 Defendants shall pay the first installment within 10 days of the issuance of an Order granting
23 Preliminary Approval, in the amount of \$350,000. Defendants shall pay the second and final
24 installment within ten days after entry of an Order granting Final Approval, in the amount of
25 \$350,000.

26 From the Maximum Settlement Amount, Class Counsel will request, and Defendants will not
27 oppose, two hundred thirty-three thousand three hundred thirty-three dollars and thirty-three cents
28 (\$233,333.33) as Class Counsel Fees, and Class Counsel Costs not to exceed ten thousand dollars

1 (\$10,000.00). In addition, Class Counsel will request seven thousand five hundred dollars (\$7,500)
2 as an Enhancement Payment for Representative Plaintiff Laura Campa. Under no circumstances will
3 Defendants be required to pay more in Class Counsel Fees, Class Counsel Costs, and/or Enhancement
4 Payment than specified in this Section. Class Counsel Fees, Class Counsel Costs, and the
5 Enhancement Payment are subject to Court approval. The Court’s ruling on the request for Class
6 Counsel Fees, Class Counsel Costs, and Enhancement Payment shall not affect the enforceability of
7 this Agreement or the terms contained herein. In the event the Court reduces the amount requested in
8 Class Counsel Fees, Class Counsel Costs and/or Enhancement Payment, the difference shall be added
9 to the Distributable Amount to the Class Members.

10 In addition, the Parties have agreed that forty thousand dollars (\$40,000) of the Maximum
11 Settlement Amount will be allocated for PAGA penalties, with 75% of this amount (\$30,000) to be
12 paid to the LWDA in satisfaction of any claim for penalties that may be owed to that agency under
13 PAGA (Cal. Labor Code 2699, *et seq.*), and the remaining 25% (\$10,000) to be paid to the PAGA
14 Employees based on PAGA Pay Period Value (“PAGA Payment”).

15 Further, the Settlement Administration Fees, currently estimated at fifteen thousand dollars
16 (\$15,000.00) shall be made from the Maximum Settlement Amount. Any and all Settlement
17 Administration Fees shall be made from the Maximum Settlement Amount. Any amounts not used
18 by the Settlement Administrator for Settlement Administration shall be added to the Distributable
19 Amount to the Class Members.

20 Consequently, the amount from which the Class may be paid, also called the “Distributable
21 Amount,” is estimated to be:

22	Maximum Settlement Amount	\$700,000.00
23	Class Counsel Fees	-\$233,333.33
24	Class Counsel Costs	-\$10,000.00
25	Enhancement Payment	-\$7,500.00
26	PAGA Payment (LWDA Portion)	-\$30,000.00
27	Settlement Administrator Fees	-\$15,000.00
28	Distributable Amount	\$404,166.67

1
2 No funds will revert to the Defendants from the Maximum Settlement Amount.

3 **2. Formula for Determining the Value of the Claims for the Class and for Each**
4 **Class Member Who Does Not Opt Out**

5 In order to fairly distribute the Settlement Payments to Class Members, Class Counsel and
6 Defendants' Counsel have arrived at a formula designed to fairly determine each Authorized
7 Claimant's pro rata payment from the Distributable Amount based on their length of service. The
8 formula is based on the relative amount of the individual Authorized Claimant's Total Class Pay
9 Periods and Total PAGA Pay Periods (if applicable), as compared to the Total Class Pay Periods and
10 Total PAGA Pay periods worked by the Class Members as a whole. The specific calculations are as
11 follows:

12 **Class Calculations:** The Settlement Administrator will calculate the total number of pay
13 periods that all Class Members were employed by Defendants during the Class Period. The
14 value of each Pay Period shall be determined by the Settlement Administrator by dividing the
15 Net Settlement Proceeds (less the PAGA Payment(s)) by the total number of Pay Periods
16 available to the Class Members during the Class Period ("Class Pay Period Value").

17 **PAGA Calculations:** For PAGA Employees, the Settlement Administrator will calculate the
18 total number of pay periods that each PAGA Employee was employed by Defendants during
19 the applicable PAGA Period ("Total PAGA Pay Periods"). The value of each PAGA Pay
20 Period shall be determined by the Settlement Administrator by dividing the PAGA Payment
21 by the Total PAGA Pay Periods for all PAGA Employees ("PAGA Pay Period Value").

22 **Individual Settlement Payments:** To determine the Individual Settlement Payment for each
23 Class Member, the Settlement Administrator will multiply the Authorized Claimant's Total
24 Pay Periods by Class Pay Period Value and add the total to the product of the PAGA
25 Employee's Total PAGA Pay Periods multiplied by the PAGA Pay Period Value, if the Class
26 Member qualifies as a PAGA Employee. Not all Authorized Claimants will receive the PAGA
27 Payment. The Individual Settlement Payment will be reduced by any required legal tax
28 deduction, pursuant to Section IV(J)(2) herein.

1 Payments from the Distributable Amount shall be made only to Authorized Claimants and
2 PAGA Employees, pursuant to the manner provided in this Agreement and this section, in particular.
3 Within a reasonable time but no later than ten (10) business days after the Preliminary Approval Date,
4 Defendants shall provide to the Settlement Administrator a list containing the Class Members' names,
5 last known addresses, dates of employment, and social security numbers.

6 Defendants' employment records used to calculate each Class Members' Settlement Payment
7 shall be presumed to be correct. However, each Class Member shall be given an opportunity to dispute
8 the number of Total Class Pay Periods and/or Total PAGA Pay Periods as provided in their Notice of
9 Settlement Award. Any such dispute shall be sent in writing to the Settlement Administrator
10 postmarked on or before the Opt-Out Period deadline, and the Class Member shall provide any
11 information he/she deems proper to support his/her claim. The Settlement Administrator shall send
12 the dispute information to Defendants' Counsel and Class Counsel within five business days of
13 receiving the dispute. Defense and Class Counsel shall meet and confer to determine if they can agree
14 to a resolution regarding the Class Member's challenge. The Settlement Administrator will inform
15 the Class Member. Defense and Class Counsel will inform the Settlement Administrator to approve
16 payment to the Class Member, as revised by the evidence submitted by the Class Member. Any Party,
17 including the Class Member, may present the issue to the Court for resolution, if the dispute cannot
18 be resolved.

19 Payment to each Authorized Claimant shall be allocated as follows: Twenty Percent (20 %) of any settlement funds paid to any Class Member shall be attributed to wages, to be reported on an
20 IRS Form W-2 with legally required tax deductions; Eighty Percent (80%) of any settlement funds
21 paid to any Class Member shall be treated as statutory penalties and interest, to be reportable on IRS
22 Form 1099 with no withholding. Each Authorized Claimant shall be responsible for any tax
23 consequences of the Settlement or payment of funds pursuant to this Agreement, including the
24 payment of any applicable tax deductions or obligation as if paying through payroll. Any payroll tax
25 payable from the payment of any settlement funds to any Class Member pursuant to the terms of this
26 Agreement shall not be made from the Distributable Amount. However, Defendants will only be
27 responsible for employer side payroll taxes, separate and apart from the MSA.
28

1 **3. Class Counsel Fees, Costs, Enhancement Payment, PAGA Payment,**
2 **Settlement Administration Cost, and Payment of Maximum Settlement Amount**
3 **Funds**

4 Plaintiff and Class Counsel will request, and Defendants agree not to oppose, payment from
5 the Maximum Settlement Amount of seven thousand five hundred dollars (\$7,500.00) to
6 Representative Plaintiff Laura Campa as an Enhancement Payment. Class Counsel believes, and
7 Defendants do not challenge, that such award to the Representative Plaintiff as an Enhancement
8 Payment is reasonable. Plaintiff and Class Counsel will request, and Defendants agree not to oppose,
9 the payment from the Maximum Settlement Amount of two hundred thirty-three thousand three
10 hundred thirty-three dollars and thirty-three cents (\$233,333.33) to Class Counsel for Class Counsel
11 Fees. Class Counsel believes, and Defendants do not challenge, that such an award to Class Counsel
12 is reasonable. Plaintiff and Class Counsel will request, and Defendants agree not to oppose, a payment
13 from the Maximum Settlement Amount not to exceed ten thousand dollars (\$10,000.00) to Class
14 Counsel for Class Counsel Costs. Class Counsel believes, and Defendants does not challenge, that
15 such an award to Class Counsel is reasonable.

16 The Parties have agreed that forty thousand dollars (\$40,000.00) of the Maximum Settlement
17 Amount will be allocated as PAGA penalties, with 75% of this amount, (\$30,000) to be paid to the
18 LWDA in satisfaction of any claim for penalties that may be owed to that agency under PAGA. The
19 other 25%, or \$10,000.00, will be distributed to the PAGA Employees based on the PAGA Pay Period
20 Value.

21 Class Counsel Fees, Costs, and the Enhancement Payment, whether they are awarded as
22 requested or reduced by the Court at its discretion, shall be paid from the Maximum Settlement
23 Amount.

24 Moreover, all the Settlement Administration Fees shall be paid from the Maximum Settlement
25 Amount, which the Parties currently estimate will be about fifteen thousand dollars (\$15,000.00).

26 Class Counsel shall timely provide a completed IRS Form W-9 no later than five (5) calendar
27 days after the Effective Date and any other information needed for the Settlement Administrator to
28 make payments. Any payment obligation by any party shall be tolled until the correct information is

1 provided as required by any party. Settlement Administration Fees may be paid earlier if necessary
2 to effectuate the terms of this Agreement, except that the party paying shall be entitled to offset the
3 costs from the Maximum Settlement Amount. Under no circumstances shall Defendants be required
4 to pay more than the Maximum Settlement Amount.

5 The Settlement administrator shall pay the attorneys' fees and costs awarded to Class Counsel
6 and the incentive awards awarded to the Representative Plaintiff from the Maximum Settlement
7 Amount pursuant to the disbursement described in Section IV(L).

8 **4. *Cure Provision***

9 If Defendants fail to timely make either of the installment payments as set forth in Section
10 IV(J)(1), Defendants shall have thirty (30) calendar days from the last day the payment is due to cure
11 the untimely installment payment. Defendants shall make any payment under this provision pursuant
12 to the Settlement Administrator's electronic transfer instructions. The Parties expressly agree that the
13 Defendants' payment obligations with respect to any cure shall be met upon initiating the electronic
14 transfer of funds to the Settlement Administrator, pursuant to its instructions.

15 **K. The Settlement Administrator**

16 Class Counsel and Defense Counsel designate CPT, an experienced Settlement Administrator,
17 to process this Settlement. The Settlement Administrator will administer the Settlement including,
18 but not limited to, distributing the Class Notice of Settlement, calculating and directing the
19 disbursements for Settlement Payments from the Distributable Amount, and handling inquiries about
20 the calculation of individual settlement payments to the Class pursuant to the terms contained in this
21 Agreement. The Settlement Administrator shall establish a settlement payment center address,
22 telephone number, and facsimile number to receive and timely process Class Members' inquiries
23 about the Class Notice of Settlement, Requests for Exclusion and Objections, and process the
24 payments to the Class under the terms of this Agreement. Moreover, the Settlement Administrator
25 shall provide as soon as possible to Defense Counsel instructions for Defendants to tender the MSA
26 payment by electronic transfer to the Settlement Administrator. Defendants' payment of the MSA is
27 contingent upon receipt of the payment instructions. Defendants expressly agree to follow the
28 Settlement Administrator's payment instructions. The Parties agree that Defendants' payment

1 obligations under the Settlement shall be met upon initiating the electronic transfer of funds to the
2 Settlement Administrator, pursuant to its instructions.

3 The Settlement Administrator shall provide the parties with weekly reports commencing with
4 the date the Class Notice is first mailed and continuing to the Effective Date notifying the Parties of
5 Notices mailed, Notices returned to sender, Notice re-mailed and the number of valid Opt-Outs
6 submitted by Class Members, if any, the number of Objections and identity of Objectors, if any and
7 the amounts of all Settlement Payments due and payable.

8 The Settlement Administrator shall not disburse the settlement funds except as provided
9 herein, as ordered by the Court, or as agreed upon, in writing, by Defense Counsel and Class Counsel.
10 Subject to further orders and/or directions as may be made by the Court, the Settlement Administrator
11 is authorized to execute such transactions on behalf of the Class Members as are consistent with the
12 terms of this Agreement.

13 Moreover, the Parties expressly agree that, in the event CPT cannot perform the duties of
14 Settlement Administration, they will cooperate with each other to select a new, mutually agreed upon
15 Settlement Administrator.

16 **L. Time For Disbursement**

17 The MSA shall be disbursed as follows:

- 18 a. No part of the MSA shall be disbursed until the second and final installment
19 payment is received (that second payment is due ten (10) days after the Court
20 issues an Order granting Final Approval).
- 21 b. Within five (5) calendar days of receipt of Defendants' second and final
22 installment payment of the Maximum Settlement Amount, or within five (5)
23 calendar days after the Effective Date, whichever is later, the Settlement
24 Administrator shall cause to be paid the following amounts: (1) Settlement
25 Payments due to Authorized Claimants; (2) Class Counsel Fees; (3) Class
26 Counsel Costs; (4) Enhancement Payment; (5) PAGA Payment; and (6)
27 Settlement Administration Fees, which are currently estimated to be \$15,000.
28 Payment to any Authorized Claimant will be in the form a check issued for an

1 amount calculated using the formulas contained in this Agreement. Any funds
2 allocated to Class Members who ultimately submitted timely valid Opt-Outs
3 shall be proportionally redistributed to Authorized Claimants based on the
4 formulas provided in Section IV(J)(2) under this Agreement.

5 Class Members who do not timely Opt-Out will be bound by all the terms of this Agreement,
6 regardless of whether that Class Member receives and cashes his or her check for Settlement Payment.
7 Any checks issued by the Settlement Administrator to Authorized Claimants will be negotiable for
8 one hundred eighty (180) calendar days. After one hundred eighty (180) calendar days from the date
9 of mailing, the checks shall become null and void. Subject to Court approval, the Parties propose the
10 State Bar's Justice Gap Fund, one of three significant sources of funding for about 100 legal aid
11 organizations across the state, as the *cy pres* recipient. In the event that any un-cashed or abandoned
12 checks must be distributed to the *cy pres* recipient, the Settlement Administrator will cancel the tax
13 documents associated with those un-cashed or abandoned checks, and the Parties will submit to the
14 Court a revised Judgment that states the final disposition of all amounts under this Settlement, in
15 compliance with California Code of Civil Procedure § 384. The Settlement Administrator shall not
16 transmit any funds to the *cy pres* recipient until the Parties have provided to the Settlement
17 Administrator a revised Judgment approving the final distribution of all Settlement funds, including
18 the amount to be transmitted to the *cy pres* recipient.

19 **M. Taxes**

20 **1. *Withholding and Reporting Requirements***

21 The Settlement Administrator shall be responsible for ensuring that all taxes associated with
22 the Agreement are timely paid to the appropriate tax authorities. The Settlement Administrator's
23 responsibilities include the following: (i) filing all federal, state, and local tax deduction, (ii) to timely
24 and proper filing of all required federal, state, and local forms (e.g., 1099s, W-2s, etc.) with the
25 appropriate taxing authorities, and (iii) completion of any other steps necessary for compliance with
26 any tax obligations of the Settlement under federal, state, and/or local law, as applicable. To verify
27 the Settlement Administrator's compliance with the foregoing withholding and reporting
28 requirements, as soon as administratively practicable, the Settlement Administrator shall furnish

1 Class Counsel and Counsel for Defendants with copies of all forms detailing the payment of taxes
2 (including all 1099 forms and returns) sufficient to prove that such payments were properly remitted.
3 The Settlement Administrator shall provide a final accounting declaration adequate to demonstrate
4 full compliance with all duties set forth in this Agreement, including but not limited to tax
5 withholding, payment, and reporting obligations.

6 **2. *Determination and Payment of Taxes***

7 The Settlement Administrator shall determine the amount of any withholding or taxes to be
8 withheld from each Authorized Claimant's settlement payment and issue form W-2's to the Class
9 Members. All such withholdings shall be remitted by the Settlement Administrator to the proper
10 governmental taxing authorities. Each Authorized Claimant shall be responsible for any tax
11 consequences of any funds paid out to each Authorized Claimant pursuant to this Agreement.

12 **N. Circular 230 Disclaimer**

13 Each party to this Agreement (for purposes of this section, the "Acknowledging Party"; and
14 each party to this Agreement other than the Acknowledging Party, an "Other Party") acknowledges
15 and agrees that (1) no provision of this Agreement, and no written communication or disclosure
16 between or among the parties or their attorneys and other advisers, is or was intended to be, nor shall
17 any such communication or disclosure constitute or be construed or be relied upon as, tax advice
18 within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended);
19 (2) the Acknowledging Party (a) has relied exclusively upon his, her, or its own, independent legal
20 and tax advisers for advice (including tax advice) in connection with this Agreement, (b) has not
21 entered into this Agreement based upon the recommendation of any other party or any attorney or
22 advisor to any other party, and (c) is not entitled to rely upon any communication or disclosure by
23 any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the
24 Acknowledging Party; and (3) no attorney or adviser to any other party has imposed any limitation
25 that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of
26 whether such limitation is legally binding) upon disclosure by the Acknowledging Party of the tax
27 treatment or tax structure of any transaction, including any transaction contemplated by this
28 Agreement.

1 V. **LIMITATIONS ON USE OF THIS SETTLEMENT**

2 A. **No Admission**

3 Neither the acceptance nor the performance by Defendants of the terms contained in this
4 Agreement nor any of the related negotiations or proceedings is or shall be claimed to be, construed
5 as, or deemed a precedent or an admission by Defendants of the truth of any allegations in any version
6 of the Complaint. Defendants enter into this Settlement Agreement solely for the purposes of
7 compromising and settling the Action.

8 B. **Non-Evidentiary Use**

9 Neither this Agreement nor any of its terms, nor any statements or conduct in the negotiation
10 or drafting of it, shall be offered or used as evidence by Plaintiff, any Class Member (including any
11 individual who filed an Opt-Out), Defendants, or their respective counsel, in the Litigation or any
12 other proceeding, except as is reasonably necessary to effectuate its purpose and terms. This
13 Agreement may be used by Defendants and/or the Released Persons to prove or defend against any
14 claim released herein by any Class Member in any judicial, quasi-judicial, administrative, or
15 governmental proceeding.

16 C. **Nullification**

17 If the Court for any reason does not approve this Settlement, this Agreement shall be
18 considered null and void and all parties to this Settlement shall stand in the same position, without
19 prejudice, as if the Settlement had been neither entered into nor filed with the Court. Moreover, in the
20 event the Court does not approve this Settlement, Defendants will not be deemed to have waived,
21 limited, or affected in any way any of their objections, or defenses in this Action. Invalidation of any
22 material portion of this Settlement shall invalidate this Settlement in its entirety unless the Parties
23 agree in writing that the remaining provisions shall remain in full force and effect.

24 D. **Right to Withdraw**

25 Notwithstanding any other provision contained in this Agreement, if more than ten percent
26 (10%) of the Class Members submit timely and valid Requests for Exclusion from the Settlement
27 during the Opt-Out Period outlined herein, Defendants shall have the option, in their sole discretion,
28 to withdraw from this Agreement (“Right to Withdraw”), whereupon the Agreement shall be null and

1 void for any and all purposes and may not be used or introduced in the Action or any other proceeding.
2 The Parties will be restored to their respective positions in the litigation as if this Agreement was
3 never negotiated, drafted or agreed upon. However, if Defendants exercise their Right to Withdraw,
4 Defendants will be responsible for all Settlement Administration Fees incurred up to the date when
5 the Defendants exercised their Right to Withdraw. The Settlement Administrator shall notify Class
6 Counsel and Counsel for Defendants of the number of timely opt-outs within five (5) calendar days
7 after the period to file an Opt-Out has expired. If Defendants elect to exercise their Right to Withdraw
8 under this provision, Defendants will so notify Class Counsel and the Court no later than five (5)
9 calendar days after receiving notice of the number of opt-outs and/or value of the valid claims made
10 by the Authorized Claimants.

11 **VI. RELEASE OF THE CLASS AND REPRESENTED EMPLOYEES**

12 It is the desire of the Representative Plaintiff, Class Members, and Defendants to fully, finally,
13 and forever settle, compromise, and discharge disputes and claims arising from or related to this
14 Action. After Final Approval by the Court of this Agreement, after Defendants have made both
15 installment payments so as to fully fund the Maximum Settlement Amount, and by operation of the
16 Agreement's terms, and except as to such rights or claims as may be created by this Agreement, all
17 Authorized Claimants fully release and discharge the Released Persons from all Released Class
18 Claims, whether known or unknown during the Class Period. All PAGA Employees and the State
19 will fully release and discharge the Released Persons from all Released PAGA Claims upon approval
20 of the settlement of PAGA Claims in this Action. Plaintiff and Defendants stipulate and agree that
21 the consideration paid to the Class Members pursuant to this Agreement compensates the Class
22 Members for all wages and penalties due to them arising from the claims alleged in the operative
23 Complaint.

24 **VII. MISCELLANEOUS PROVISIONS**

25 **A. Amendments**

26 The terms and provisions of this Agreement may be amended only by a written agreement,
27 which is signed by Representative Plaintiff, Class Counsel, Defendants, and Counsel for Defendants.

28 **B. Jurisdiction of the Court to Enforce Terms of Agreement**

1 The Parties stipulate and agree that the Court will retain jurisdiction to enforce the terms of
2 this Agreement following the entry of the Judgment pursuant to California Code of Civil Procedure
3 section 664.6. The Parties agree to the exclusive jurisdiction of the Court to enforce the terms and
4 conditions contained herein.

5 **C. Enforcement Actions**

6 In the event one or more of the Parties to this Stipulation institutes and legal action or other
7 proceeding against any other party or parties to enforce the provisions of this Stipulation, or to declare
8 rights and/or obligations under this Stipulation, the successful party or parties shall be entitled to
9 recover from the unsuccessful party or parties reasonable attorneys' fees and costs in connection with
10 any enforcement actions.

11 **D. No Inducements**

12 Plaintiff and Defendants acknowledge that they are entering into this Agreement as a free and
13 voluntary act without duress or undue pressure or influence of any kind or nature whatsoever and that
14 neither Plaintiffs nor Defendants have relied on any promises, representations, or warranties regarding
15 the subject matter hereof other than as set forth in this Agreement.

16 **E. No Prior Assignment**

17 The Parties hereto represent, covenant, and warrant that they have not directly or indirectly,
18 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or
19 entity any portion of any liability, claim, demand, action, cause of action or rights herein released and
20 discharged except as set forth herein. If any claims are made by any Class Member between the start
21 of the Class Period and the date in which the Court approves the Settlement outlined in this Agreement
22 as final, such a claim will be deemed covered and released by the individual Class Member making
23 the claim unless such Class Member has timely exercised the right to be excluded from this
24 Agreement under the terms set forth herein. Any Class Member covered by this Agreement will be
25 barred from proceeding with any such claim.

26 **F. Amendment of Operative Complaint to Add Overtime Claim**

27 At the time of mediation, while the First Amended Complaint in the Action did not assert a
28 claim for failure to pay overtime wages, the Parties evaluated data related to that theory of recovery

1 and considered their valuation of that theory as part of the claims resolved at the mediation. In
2 connection with the Settlement Agreement, the Parties have agreed that Plaintiff will amend her First
3 Amended Complaint to add a cause of action for failure to pay overtime wages (the “Second Amended
4 Complaint” or “SAC”). The SAC shall serve as the Operative Complaint for purposes of this
5 Agreement. The rights and obligations contained in this Agreement are expressly contingent upon the
6 filing of the SAC. The Parties agree to cooperate concerning the filing of the SAC.

7 **G. Representative Plaintiff’s Personal Release**

8 As part of the Agreement, Representative Plaintiff Laura Campa grants the Release Persons
9 the Personal Release, as that term is defined in Section II herein.

10 With respect Representative Plaintiff’s release of any and all claims under the Older Workers
11 Benefit Protection Act/Age Discrimination in Employment Act (“ADEA”)(“ADEA Release”),
12 Representative Plaintiff specifically acknowledges that Defendants has advised her that under the
13 ADEA, she has twenty-one (21) days from receipt of this Agreement to consider the ADEA Release
14 before signing the Agreement. Representative Plaintiff may decide to sign the Agreement sooner and
15 voluntarily waive the 21-day period provided by the ADEA. Representative Plaintiff further
16 acknowledges that she has had the opportunity to make counter-proposals to the ADEA Release, and
17 has been advised that she has seven (7) days after signing this Agreement to revoke the ADEA
18 Release, and the ADEA Release shall not become effective or enforceable until the revocation period
19 has expired. In the event Representative Plaintiff exercises the right to revocation, as discussed above,
20 she must notify Defendants of such revocation in writing via facsimile and certified mail, return
21 receipt requested. Said notification will be considered timely if post-marked no later than the seventh
22 day after the Representative Plaintiff has signed this Agreement. The individual Representative
23 Plaintiff’s ADEA Release will be null and void if revoked by him or her during said revocation period.
24 The individual Representative Plaintiff’s revocation of the ADEA Release must be addressed to the
25 attention of Defense Counsel at the address stated herein. In the event the individual Representative
26 Plaintiff exercises revocation of the ADEA Release, said revocation shall have no effect on his or her
27 Personal Release of any and all claims unrelated to the ADEA. If Representative Plaintiff exercises
28 her right to revoke under this provision, she gives up the right to any Enhancement Payment under

1 this Agreement. However, Representative Plaintiff is still entitled to participate in the Settlement as
2 a Class Member.

3 **H. Escalator Clause**

4 At the June 28, 2019 mediation, Defendants disclosed that there were approximately 1,501
5 Class Members. Should the number of Class Members as of the June 28, 2019 mediation increase by
6 more than 20% (i.e., more than 300 Class Members), then Plaintiff has the discretionary option to
7 rescind this agreement by communicating that decisions to both the Settlement Administrator and
8 Defendants in writing. Defendants may preempt Plaintiff's right to rescind the agreement under this
9 provision by increasing the MSA on a pro rata basis which mirrors the increase in overall number of
10 Class Members added that exceed the 20%. This does not include the number of Class Members that
11 Defendants employ between the date of mediation and the end of the settlement Class Period.

12 **I. Destruction of Informal Discovery**

13 The Parties agree that in the event the Court does not approve the Settlement for any reason,
14 or if the Settlement cannot be consummated for any reason, Class Counsel expressly agrees to either:
15 (1) return all informally produced discovery by Defendants to Defendants or Defense Counsel; or (2)
16 immediately destroy all informal discovery, and provide sufficient proof (such as a declaration under
17 oath by Class Counsel) that the information was destroyed within 10 calendar days after becoming
18 aware that the Settlement has failed to become final. Retaining any copy of direct or derivative
19 information shall be a violation of this provision. Such informal discovery shall include, but is not
20 limited to: (1) the class list; (2) payroll and time records; (3) written policies and procedures; and (4)
21 information disclosed pursuant to the mediation and/or settlement privilege. If Class Counsel fails to
22 either destroy or return such information within a reasonable time, the Parties expressly agree that
23 Defense Counsel may apply to the Court to seek enforcement of this specific provision (including
24 any and all reasonable attorney's fees and costs in seeking such enforcement).

25 If the Court approves the settlement, Plaintiff and Class Counsel agree to maintain the
26 information provided by Defendants only for as long as it is necessary to consummate and finalize
27 the approval process of the Settlement by the Court, up to and including the Effective Date. After
28 such time, the Parties agree that Class Counsel will return the information to Defendants or Defense

1 Counsel, or destroy the information (including any derivative information) as provided herein, except
2 as provided in Plaintiff's personnel file.

3 Plaintiff and Class Counsel agree to treat and maintain the information disclosed
4 confidentially, protect it, and take any and all reasonable steps to maintain it confidentially and treat
5 it as a trade secret. However, the Parties expressly agree that Class Counsel may disclose such
6 information to the Court as is necessary to consummate and finalize the approval process of the
7 Settlement by the Court.

8 **J. Review of Noticed Motions And/Or Other Pleadings**

9 Class Counsel expressly agrees that prior to any filing concerning the terms herein, including
10 but not limited to the Motion for Preliminary Approval and the Motion for Final Approval, it shall e-
11 mail a draft of said motion and/or pleading to Defense Counsel at least 7 calendar days prior to its
12 filing, with comments due two days prior to filing, unless the Court provides less than 14 days to
13 effectuate the filing of any such document, in which case the draft of such document will be provided
14 3 calendar days prior to its filing, and Defense Counsel shall provide comments one day prior to
15 filing.

16 **K. Counterparts**

17 This Agreement, and any amendments hereto, may be executed in any number of counterparts,
18 each of which when executed and delivered shall be deemed to be an original and all of which taken
19 together shall constitute but one and the same instrument. This Agreement will become effective on
20 the date when the last person signs and dates it.

21 **L. Integration Clause**

22 This document, along with any exhibits attached hereto, constitutes the complete and entire
23 Agreement between the parties pertaining to the subject matter hereof, and the final, complete and
24 exclusive expression of the terms and conditions of their Agreement. Any and all prior agreements,
25 representations, negotiations, and understandings between the parties, oral or written, express or
26 implied, are hereby superseded and merged herein.

27 **IN WITNESS WHEREOF**, the parties hereto execute this Agreement and have caused this
28 Agreement to be executed by their duly authorized representatives.

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Date: 1/2/2020

**PLAINTIFF &
CLASS REPRESENTATIVE**

DocuSigned by:

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LAURA CAMPA
Personally and as Representative Plaintiff

ROY HONARYAR

Date: _____

ROY HONARYAR
In his individual capacity.

BLOOMING DEALS, INC.

Date: _____

By _____

Its Authorized Representative

CHIK ENTERPRISES

Date: _____

By _____

Its Authorized Representative

JRH ENTERPRISES, INC.

Date: _____

By _____

Its Authorized Representative

EBI ENTERPRISES, INC.

Date: _____

By _____

Its Authorized Representative

APPROVED AS TO FORM AND CONTENT

MOON & YANG, APC

Date: January 2, 2020



KANE MOON, ESQ.

H. SCOTT LEVIANT, ESQ.
LILIT TER-ASTVATSATRYAN, ESQ.
Attorneys for Plaintiff
LAURA CAMPA and the Proposed Class

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**PLAINTIFF &
CLASS REPRESENTATIVE**

Date: _____

LAURA CAMPA
Personally and as Representative Plaintiff

Date: 01-02-2020

ROY HONARYAR

ROY HONARYAR
In his individual capacity.

Date: 01-02-2020

By _____
BLOOMING DEALS, INC.

Its Authorized Representative

Date: 01-02-2020

By _____
CHIK ENTERPRISES

Its Authorized Representative

Date: 01-02-2020

By _____
JRH ENTERPRISES, INC.

Its Authorized Representative

Date: 01-02-2020

By _____
EBI ENTERPRISES, INC.

Its Authorized Representative

APPROVED AS TO FORM AND CONTENT

MOON & YANG, APC

Date: _____

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Attorneys for Plaintiff
LAURA CAMPA and the Proposed Class

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LANDEGGER BARON LAW GROUP

Date: January 2, 2020

Kristina Kourasis

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KRISTINA KOURASIS, ESQ.
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BLOOMING DEALS, INC., CHIK ENTERPRISES,
JRH ENTERPRISES, INC., and EBI ENTERPRISES,
INC.