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Attorneys for Plaintiff Anthony Barahona and the Putative Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA

ANTHONY BARAHONA, an individual, for
himself and those similarly situated,

Plaintiff,

v.

RABOBANK, N.A.,
a national banking association; and
MECHANICS BANK, N.A.,
an unknown business entity;
and DOES 1 through 100, inclusive,

Defendants.

Case No. 56-2019-00534788-CU-OE-VTA

PUTATIVE CLASS ACTION

**DECLARATION OF ARIS E.
KARAKALOS IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT AND
RELEASE**

Hearing Date: January 20, 2021
Time: 8:30 a.m.
Department: 41

Reservation No. 2542211

I, ARIS E. KARAKALOS, declare and state as follows:

1. I am an attorney at law duly licensed to practice in the State of California, before all state and federal courts, and the United States Supreme Court.

2. I am an employee of Strauss & Strauss, APC, attorneys of record for Plaintiff Anthony Barahona and the Putative Class.

3. I am one of the attorneys responsible for the handling of this matter and make this Declaration based upon my own personal knowledge. I am experienced and knowledgeable in wage-and-hour litigation and class action litigation, as it is my primary practice area and has been for roughly nine years.

FACTUAL BACKGROUND

7. Plaintiff Anthony Barahona worked as an hourly employee of Defendant during the applicable statutory period and was terminated from his position in May 2019.

8. Plaintiff Barahona worked as a Banking Service Representative for Defendants.

9. As such, he received non-discretionary bonuses, commissions, incentives or other similar non-discretionary remunerations, for example, and not limited to, when he opened a new credit card account for a customer, or when he would achieve certain pre-set metrics relating to performance.

10. These non-discretionary amounts were paid out to him as a separate line item on his paystubs but were not included in his overtime or double-time rates for the applicable pay period.

11. Plaintiff was denied overtime compensation owed to him because of Defendants' failure to include the value of these above-mentioned non-discretionary bonuses, commissions, incentives or other non-discretionary remuneration into the calculation of his overtime and double-time rates.

12. As a result of not receiving all overtime pay due, Plaintiff Barahona was also denied accurate paycheck stubs, which lacked, among other things required under California law, the requisite rates of overtime and double-time each pay period.

13. In bringing this lawsuit, Plaintiff Barahona alleged that Defendants had not paid him the correct overtime wage, as they failed to include the value of my non-discretionary bonuses into his base

1 rate when calculating his overtime rate. He purports to represent the entire putative class herein,
2 including: “All individuals who are currently or were formerly employed by Defendant as an hourly-
3 paid employee in California during the Class Period and earned non-discretionary bonuses,
4 commissions, incentives, or other non-discretionary remuneration which was not included in the
5 calculation of their overtime or double-time rates of pay, and who have not otherwise released their
6 claims for unpaid wages and associated penalties in the *Hernandez v. Rabobank* lawsuit.”

7 14. Plaintiff Barahona was based in Ventura, but ion having conducted my own investigation
8 of other hourly employees in similar positions who fall within the definition of the putative class, it is
9 my belief that Plaintiff Barahona and the remainder of the putative class were treated substantially
10 similar with respect to the claims at issue.

11 15. Based on my further review of corporate policies and discussions with other putative
12 class members, I believe the above conditions were identical for everyone in this putative class. It is my
13 understanding that every single hourly employee who worked overtime during periods they were given
14 a non-discretionary bonus was treated the same way with respect to the claims for purposes of
15 certification.

16 PROCEDURAL BACKGROUND

17 16. On October 15, 2019, Plaintiff filed this action against Defendants asserting claims for:
18 (1) Failure to Pay Overtime Wages; (2) Failure to Provide Accurate Paycheck Stubs; (3) Failure to Pay
19 Wages Due at Termination; and (4) Unfair Competition.

20 17. On November 22, 2020, Defendants filed their Answer.

21 18. In January 2020, Plaintiffs propounded written discovery on Defendants in the form of
22 form interrogatories (employment and general), special interrogatories, and requests for production.

23 19. On or around April 2020, Defendants provided responses to the above discovery and
24 substantive documentation to support those responses.

25 20. After several weeks of discussions about possible resolution, the parties agreed to
26 mediate, and in May 2020, agreed to stay litigation and schedule a mediation with esteemed and highly
27 recommended mediator Tripper Ortman.

21. The Class Period applicable to the Settlement (dating back four years) is October 15, 2015 through the date of preliminary approval of the Settlement.

MEDIATION AND SETTLEMENT ON ZOOM

22. On June 29, 2020, the parties attended a mediation online through Zoom with mediator Tripper Ortman of Ortman Mediation (www.ortmanmediation.com).

23. Defendants shared documents and data for all class members in advance of the mediation.

24. Defendants provided an abundance of data bearing on the number of hours worked, rates of pay, total number of individuals in each statutory period, etc. Using this comprehensive payroll record data provided by Defendant, Plaintiff was able to accurately calculate Defendants' total alleged exposure herein. I even created an extensive damages model that it shared with Defendant's counsel prior to the mediation, and I discussed the model in a pre-mediation conference call.

25. Defendant also substantiated that Rabobank had voluntarily remediated a large portion of the miscalculated overtime; that Rabobank already paid some potential class members in settlement of another lawsuit (*Hernandez v. Rabobank*, Kern County Superior Court, Case No. S-1500-cv-284159 LHB); and, once Mechanics Bank took over, it corrected and discontinued the calculation errors.

26. Following a full-day mediation, the parties were able to reach an agreement on the basic terms of the Settlement, including the Maximum Settlement Amount proposed by Mediator Ortman, but were not able to agree on the specific language to be included in the Settlement, a process which took several more months.

27. A long-form agreement was finally penned on October 23, 2020 by Defendants and November 9, 2020 by Plaintiff. When the Settlement was finalized, the total Settlement Class Members equaled 96.

28. I believe the Gross Settlement Amount of \$250,000 is an excellent outcome for the estimated 96 Settlement Class Members, which are estimated to receive an average Gross Settlement Payout of \$2,604.17 and average Net Settlement Payout of \$1,291.67.

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29. The amount of information produced by Defendants through formal and informal discovery allowed the parties to conduct a thorough investigation pre-mediation. As of the time of our second mediation, the Parties had a detailed and nuanced understanding of the factual and legal scenarios involved in this case.

31. Defendants produced hundreds of pages of handbooks, personnel files, pay records, company policies, and other relevant documents in response to formal discovery and informally. Defendants also produced data needed to assess the value of the claims on behalf of the entire class, as described above. With all this information, Class Counsel were able to rigorously evaluate Defendant's liability for unpaid wages and derivative penalties.

33. I believe that the claims, allegations and contentions asserted in this case have merit. I also recognize and acknowledge the expense and delay of the lengthy proceedings necessary to prosecute the matter against Defendants through trial and potentially further appeals. Given the stakes, I recognize that follow up appeals would be a virtual certainty in the action.

35. In negotiating the Settlement, I was also mindful of the inherent problems of proof under, and possible defenses to, the claims alleged in the case. After all, at the time of negotiations, there was some level of uncertainty as to whether waiting-time penalties would have been granted for failure to calculate what amounted to relatively small overtime violations.

5

36. More specifically, I considered that Defendants – having already remediated much of the overtime claim through past payouts – would likely owe only a small amount of unpaid overtime for each Class Member. This could theoretically result in a similarly small amount of waiting time penalties, or no waiting time penalties at all, depending on whether there was a good-faith dispute warranting such penalties. I also acknowledge the argument raised by Defendant that in an overtime case, that there is no itemized wage statement violation where the hours worked are accurate, but the wages earned are not: “only the absence of the hours worked will give rise to an inference of injury; the absence of accurate wages earned will be remedied by the violated wage and hour law itself.” (*Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, 1336-1337.)

37. Also, the parties disagreed substantially on (1) whether at this juncture class certification was proper on each of the claims pursued by Plaintiffs; (4) whether Defendant had defenses to any or all of Plaintiff’s claims; (5) whether the Class Members worked overtime hours; (6) whether the imposition of penalties or equitable relief under Business and Professions Code section 17200 (the Unfair Competition Law or “UCL”) was warranted given Defendant’s possible good faith practices; and (7) whether the use of statistical evidence to establish liability and/or damages would preclude the maintenance of class certification through trial.

38. Considering these potential risks, I believe that the terms set forth in the Settlement confer substantial benefits upon Plaintiff and each of the other members of the Settlement Class, and that an independent review of the Settlement by the Court in the approval process will confirm this conclusion. Based on our own independent investigation and evaluation, I have determined that the terms set forth in the Settlement are in the best interests of Plaintiff and the other members of the Settlement Class.

39. At all times, the parties’ extensive settlement negotiations have been non-collusive, adversarial, and at arms’-length. Each side has been represented by competent and experienced counsel with experience in wage and hour class-action litigation.

40. Also, counsel for Defendants have vigorously defended, and will likely continue to defend Defendants, throughout the Action. Thus, proceeding with litigation would impose ongoing,

1 substantial additional expenditures of time and resources, including substantial additional preparation
2 and discovery, such as depositions of experts, the presentation of percipient and expert witnesses at trial,
3 voluminous documentary evidence and the preparation and analysis of expert reports. Further, the
4 Settlement was agreed to considering Plaintiff's recognition that, should he surmount the various hurdles
5 of prosecuting his case, Defendants could appeal orders relating to class certification and/or the
6 substantive merits of the case.

7 41. Finally, a large discount was given based on the discretionary nature of waiting-time
8 penalties under Labor Code Section 203, which can in certain circumstances, such as these, be reduced
9 to zero.

10 42. Resolving the case by early settlement has yielded a prompt, certain, and substantial
11 recovery for the Settlement Class Members. Such a result will benefit the parties and the court system.
12 It was and is my belief that this Settlement is a fair resolution of highly disputed claims and is a
13 significant achievement in obtaining class-wide relief, especially given the minimal value of some of
14 their claims at this juncture.

15 TERMS OF THE SETTLEMENT

16 43. Although this Court has preliminarily deemed the Settlement to be fair, reasonable, and
17 adequate already, it is worth noting once again the nuances of the deal for final approval. Defendants
18 agree to pay a Gross Settlement Amount of no more than \$250,000. (Settlement at § I(EE)).

19 44. The Settlement is fully non-reversionary. (Settlement at § V(D)(2).)

20 45. This Net Settlement Amount (Settlement at §§ I(R) and V(F)) is the Gross Settlement
21 Amount less the deduction of the following:

- 22 a. Class Counsel Fees up to and not to exceed 30% of the Gross Settlement Amount or
23 \$100,000;
- 24 b. Class Counsel Expenses up to \$11,000;
- 25 c. Class Representative Service Fee up to \$7,500;
- 26 d. Claims Administration Costs for CPT Group, Inc. (CPT) not to exceed \$7,500; and

27 46. The estimated Net Settlement Amount equals \$124,000.

1 47. The Settlement provides for the Net Settlement Amount to be allocated to the 96
2 Settlement Class Members and two Subclasses including:

- 3 a. Overtime/Paystub Subclass: including those members of the Class who are still
4 employed by Defendants.
- 5 b. Section 203 Subclass: including those members of the Class who, during late 2018
6 or early 2019, received remedial payments from Defendants for failure to include
7 non-discretionary bonuses into their overtime rates while employed; but who did not
8 receive a Section 203 penalty in conjunction with this remedial payment despite
9 being former employees at the time of remedial payment.

10 48. The Net Settlement Amount will be divided by 96 putative class members.

11 49. 73 Class Members are members of the Overtime/Paystub Subclass and 42 Class Members
12 in the Section 203 Subclass.

13 50. 19 Class Members are members of both Subclasses, 54 Class Members are members of
14 only the Overtime/Paystub Subclass and 23 Class Members are members of only the Section 203
15 Subclass.

16 51. Since the gravamen of the case is for waiting-time penalties under Labor Code 203, 80%
17 of the NSA is allocated pro rata based on their final rates of pay to those individuals who were entitled
18 to waiting-time penalties (only former employees), and the remaining 20% allocated based on a flat
19 average to those who are still with the company and are only entitled to the unpaid wages and
20 corresponding paystub penalties.

21 52. The 96 individuals fall into one of 3 groups:

- 22 a. **Group 1 (members of both Subclasses):** Those receiving waiting-time penalties as well
23 as unpaid wages and associated paystub penalties (former employees) – 19 putative class
24 members will receive an average share of \$2,701.63, or a pro-rata share based in part on
25 their final rate of pay plus a flat sum average split between the total number of final
26 participants from the Overtime/Paystub Subclass;

27 //

- b. **Group 2 (members of only the Overtime/Paystub Subclass):** Those receiving only unpaid wages and associated paystub penalties but who do not receive waiting-time penalties because they are still employed by Defendants – 54 putative class members will receive an average share of \$339.72, or a flat sum average split between the total number of final participants; and
- c. **Group 3 (members of only the Section 203 Subclass):** Those only receiving waiting-time penalties but no unpaid wages or paystub penalties (this is because they were previously given payouts pursuant to a prior agreement for unpaid overtime and paystubs, but those payments did not include waiting-time penalties) – 23 putative class members will receive an average share of \$2,361.91, or a pro-rata share based on their final rate of pay.

CLAIMS VALUATION, DISCOUNTS AND FAIRNESS

53. The proposed Settlement is the product of literally days, weeks and months of preparation and arm's-length negotiations between the parties. In fact, Defendants initially shared the data that I used to calculate total exposure well-before the parties' mediation. These numbers were updated again on the eve of mediation which allowed the parties to meaningfully weigh the potential damages and engage in good faith settlement discussions.

54. The bargained-for amount of \$250,000 represents a reasonable portion (or is within the reasonable range) of the total potential damages that the class may have recovered through litigation. At the time of mediation, and based on the data that had been shared by Defendant's counsel, I valued the claim for unpaid overtime at approximately \$750 per aggrieved employee, the waiting-time penalties at \$4,300 per aggrieved employee (based on an average hourly rate of just under \$18)), and the paystub penalties at about \$550 per employee (based on an average of 6 pay periods with underpayment of overtime – where the first violation is worth \$50 with subsequent violations worth \$100).

55. Based on these figures, I estimated that the 96 Class Members were cumulatively owed the following in total damages:

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- a. **Group 1 (under both Subclasses):** 19 putative class members entitled to \$4,300 in waiting time penalties plus \$750 for unpaid wages plus \$550 for paystub penalties each, amounting to \$106,400;
- b. **Group 2 (only under Overtime/Paystub Subclass):** 54 putative class members entitled to \$750 for unpaid wages plus \$550 for paystub penalties each, amount to \$70,200; and
- c. **Group 3 (only under Section 203 Subclass):** 23 putative class members entitled to \$4,300 for waiting time penalties each, amount to \$98,900.
- d. In total, without fees, interest and costs, the damages were estimated at **\$275,500**. The fact that the final settlement amount is just barely below this figure is a testament to the successful negotiations engaged in by Class Counsel. The maximum settlement amount of \$250,000 achieved herein includes the fees, interests and costs that are statutorily recoverable – those were the primary amounts discounted by Class Counsel at mediation.

56. In discounting these values during the settlement conference, I considered the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. More specifically, I considered the following:

- a. The above valuations included a substantial component of waiting-time penalties. These penalties are awarded only where the failure to pay is willful. It is unclear whether Defendants' alleged behavior warranted the imposition of these penalties because its actions may not have met the willfulness required under section 203.
- b. Defendants vigorously dispute all Plaintiff's contentions and maintain that several factual and legal defenses are available to it. Defendants contend that Plaintiff and the settlement class were paid proper overtime rates, and to the extent these overtime rates should have been adjusted for benefits received, that principle does not always apply to in-kind benefits such as the fair market value of end-of-year award trips.
- c. Defendants contend that class certification is not warranted in the litigation context, claiming that the hourly employees who were not paid proper rates for their overtime were paid differently throughout California.

1 BENEFITS TO THE CLASS

2 57. The terms of the Settlement provide substantial monetary benefits to Settlement Class
3 Members and strongly support final approval. It creates a significant average net settlement payment of
4 \$1,291.67 for 96 Settlement Class Members. This payout average assumes a fee award of the maximum
5 40% of the Gross Settlement Amount (\$100,000), a maximum award for expenses of \$11,000, an
6 approval of administrative costs of \$7,500, an award of a Service Payment of \$7,500. In other words,
7 this average will increase because the costs ultimately sought by Class Counsel are believed to be less
8 than those allocated in the Settlement.

9 58. By no means are these *de minimis* “post-card” payouts for the Settlement Class Members
10 who will receive an average Gross Settlement Payout of \$2,604.17 and average Net Settlement Payout
11 of \$1,291.67. Approximately half will receive the lesser amount of \$339.72, with the other half receiving
12 somewhere around \$2,361.91 – \$2,701.63.

13 59. Only the amounts allocated to Overtime/Paystub Subclass payments (approximately
14 \$339.72) will be subject to IRS Form W-2 reporting. All amounts allocated to Section 203 Subclass
15 payments will not be subject to W-2 reporting but will be accompanied by an IRS Form 1099.

16 60. Employer’s share of taxes and contributions, required under applicable state and federal
17 law, with respect the wage-portion of payments under this Settlement shall be paid separately and in
18 addition to the Maximum Settlement Amount, by Defendant, except as otherwise provided in Section
19 V.F herein. (Settlement at § I(J).)

20 MY QUALIFICATIONS AND EXPERIENCE

21 61. I have been an attorney since 2005. I practiced appellate law for the first six years of my
22 career with a boutique appellate firm, Lascher & Lascher, APC, in Ventura, California, handling dozens
23 of my own appeals.

24 62. From 2010 through 2012, I practiced general civil litigation for a year and half with the firm of
25 Ferguson Case Orr & Patterson, LLP, also in Ventura, California – the largest firm in Ventura County.

26 63. I joined Strauss & Strauss in 2012, where I have been practicing employment law ever since.

27 64. I have been a member of California Employment Lawyers Association (CELA) since 2016.

1 65. Strauss & Strauss, APC (previously Strauss & Palay, APC, and Palay Law Firm, and
2 McTague & Palay) has a strong emphasis in employee-related litigation on a class-wide basis.

3 66. Since joining the firm, I have been assigned as the primary attorney, and affirmed as much by
4 the court, in several wage-and-hour class action cases, including *Cooper v. Ecolab*, Los Angeles County
5 Superior Court, Case No. BC486875 (settled); *Van Den Hende v. DPI Specialty Foods, Inc.*, San Bernardino
6 County Superior Court, Case No. CIVRS1304516 (settled); *Roberts v. Zales*, Los Angeles County Superior
7 Court, Case No. BC523610 (settled); *Cory Marino v. Ultimate Installz, Inc.*, Los Angeles County Superior
8 Court, Case No. BC624510; *Sonia Vivar v. Tallgrass Talent Group, LLC, et al.*, Los Angeles County Superior
9 Court, Case No. BC562517; *Carl Curtis, et al. v. Irwin Industries*, U.S. District Court for Central District of
10 California, Case No. 2:15-cv-02480; *Andre Jefferson v. Beta Operating Company, LLC*, U.S. District Court
11 for Central District of California, Case No. 2:15-cv-04966; *Gabriel Guimary v. ExxonMobil*, C.D. Cal. Case
12 No. 2:18-cv-02430 SVW (JCx); *Iafeta Mauia v. Petrochem Insulation*, N.D. Cal. Case No. 3:18-cv-
13 01815-TSH; *Richard Hockison v. Baker Hughes, Santa Barbara County Superior Court Case No.*,
14 CORD4982 (settled and dismissed); *Marlin McClure v. Waveland Services, Inc.*, E.D. Cal. Case No.
15 2:18-cv-01726-KJM-AC; *Kyle Jensen v. Safety Equipment Corporation*, C.D. Cal. Case No. 2:18-cv-
16 02890-RGK-GJS; *Edgar Orozco v. Ardent Companies, Inc., et al.*, C.D. Cal. Case No. 2:18-cv-02763-
17 GW (Judge Wu expressly approving my hourly rate of \$650); *David Garcia v. Freeport McMoRan Oil*
18 *& Gas, LLC*, C.D. Cal. Case No. 2:16-cv-04320-DMG-AJW; and *Robert North v. Superior Hauling*
19 *and Fast Transit, Inc.*, C.D. Cal. Case No. 5:18-cv-02564-JGB-KK (Judge Bernal expressly approving
20 my hourly rate of \$650).

21 67. Strauss & Strauss has resolved numerous class action matters and continues to represent
22 present certified class actions and pending certification matters. All these class action cases have
23 involved employee-related wage claims, including those similar to the causes of action as presented in
24 this matter insofar as they are wage and hour claims. Examples in which our law firm has represented
25 or currently represents class members include: Alameda County Superior Court case *Britto v. Alliance*
26 *Environmental Group*, VG-10553718; Kern County Superior Court cases *Calvillo v. Diamond Well*
27 *Service*, S-1500-CV 259751; *Candete v. Cummings Transportation Service*, S-1500-CV 264301; *Carter*

1 v. *B&L Tongs, LLC*, S-1500-CV-258154 SPC; and *Gutierrez v. Halliburton Energy Services, Inc.*, S-
2 1500-CV-257557 SPC; Los Angeles County Superior Court case *Henson v. Searles Valley Minerals*
3 *Operations, Inc.*, BC404330; San Francisco Superior Court case *Icard v. Ecolab, Inc.*, CGC-09-495344
4 (removed as N.D. Case No. 13-cv-05097-PJH); Solano County Superior Court case *Kenton v. PGD*,
5 FCS 029221; and Ventura County Superior Court cases *Bautista v. Alliance Environmental Group*, 56-
6 2009-00357772-CU-OE-VTA; *Barragan v. Republic Drilling Co.*, 56-2007-00286959-CU-OE-VTA;
7 *Cortez v. Pool California Energy Services, Inc.*, CIV 222363; *Gonzalez v. Key Energy Services, Inc.*,
8 CIV 236497; *Hemosillo v. Kenai Drilling, Ltd.*, CIV 237210; *Hiriarte v. Weatherford U.S., L.P.*, CIV
9 247425; *Howe v. BTC Laboratories, Inc.*, CIV 233988; *Roe v. Ecolab, Inc.*, CIV 233936; *Vasquez v.*
10 *DCH (Oxnard) Inc.*, CIV 243055; *Ladore v. Ecolab, Inc.*, Case No. 2:11-cv- 09386 (FMO); *Sean Pagel*
11 *v. Dairy Farmers of America, Inc.*, C.D. Cal. Case No. 13-cv-02382-SVW-VBK; *Zavala v. Resource*
12 *Staffing, Inc. et al*, Kern County Case No. S-1500-CV-278358 LHB.

13 68. I have argued on two different occasions in the Ninth Circuit, and dozens of times in the
14 California Courts of Appeal.

15 69. I also have experience in the Ninth Circuit and even as high as the U.S. Supreme Court
16 in wage and hour litigation. Although neither myself nor Mr. Strauss personally argued, we sat at
17 counsel's table at the U.S. Supreme Court with esteemed appellate attorney David C. Frederick on a
18 case that we initiated in 2015, asserting novel wage-and-hour claims against an employer operating on
19 oil platforms located off California's coast – *Parker Drilling Management Services, Ltd. v. Newton*,
20 USSC Case No. 18-389 – the docket can be accessed here: [https://www.scotusblog.com/case-](https://www.scotusblog.com/case-files/cases/parker-drilling-management-services-ltd-v-newton/)
21 [files/cases/parker-drilling-management-services-ltd-v-newton/](https://www.scotusblog.com/case-files/cases/parker-drilling-management-services-ltd-v-newton/)

22 70. Although comprised of only a handful of attorneys (currently three, previously six),
23 Strauss & Strauss has secured over \$100,000,000 in settlement monies for its clients over the past nine
24 years. I have had an active role in securing a large portion of those funds, in excess of \$20,000,000.

25 71. My personal involvement in this case, including my evaluation of both the law and the
26 evidence, leads to the conclusion that our firm has achieved a significant victory for the Class.

27 //

73. I am qualified and prepared to prosecute this class action competently and vigorously, and will fairly, vigorously, and tenaciously represent the settlement class in this matter. The record will show that I, and Plaintiff Barahona, have already devoted many hours to this case.

7 CONTINGENT NATURE OF FEE AGREEMENT

8 74. Along with my co-counsel, Strauss & Strauss is representing the Plaintiff Anthony
9 Barahona on a contingency-fee basis (and has been advancing costs along the way while the Plaintiff
10 has not had to pay any portion thereof, regardless of the outcome).

75. Under this model, our firm has risked losing significant costs incurred, which typically increase substantially by the time of trial. Here, our retainer agreement provides for 40% as attorney's fees where the matter proceeds to mediation. That is the amount our firm now seeks in the motion for preliminary approval of the Settlement.

15 76. Under the circumstances and given the excellent result we achieved for the Settlement
16 Class Members, I believe this amount of fees is appropriate and reasonable, especially considering the
17 plethora of courts that have awarded a similar level of fees for less impressive results. We will provide
18 further discussion of this issue in our motion for final approval.

19 OPPOSING COUNSEL

77. I know Defendants' counsel to be knowledgeable about California employment law and class action law and procedure. Though our relations are professional, I know the opposing lawyers in this case to be tenacious and firm. They have also shown themselves to be competent and professional.

23 CLASS REPRESENTATIVE QUALIFICATIONS

78. From the beginning, Plaintiff Anthony Barahona has shown himself to be dedicated to the prosecution of this case. He has worked closely with me every step of the way, including preparing for and attending telephonically our full-day mediation.

27 || //

1 81. Plaintiff has agreed to a general release of claims against Defendant which is much
2 broader than the release by other Class Members.

6	CLASS ACTION ADMINISTRATOR
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DISTRIBUTION OF UNCLAIMED FUNDS

28 15

3 86. I do not do any work for VCLA or accept or expect any pecuniary benefit from VCLA.
4 I have no role in the governance of VCLA.

5 87. VCLA is an ideal candidate for receipt of these funds as its stated mission is to provide
6 “[e]qual Access to justice for income-qualified residents of Ventura County ... through the private
7 donations of the Ventura County Bar Members, private foundations, and Ventura County community
8 members at large.” (see <https://vclegalaid.org/>)

9 I declare under penalty of perjury under the laws of the State of California that the foregoing is
10 true and correct.

11 Executed this 18th day of December 2020, in Ventura, California.


Aris E. Karakalos

Exhibit 1

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

2 This Stipulation of Class Action Settlement and Release (“Settlement”) is made by and
3 among plaintiff Anthony Barahona (“Plaintiff”), individually and on behalf of the Class (as
4 defined below), on the one hand, and defendants Mechanics Bank and Rabobank, N.A.
5 (“Defendant”), on the other hand, subject to the approval of the Court pursuant to California Code
6 of Civil Procedure §382, and provides that the settlement of this action shall be effectuated upon
7 and subject to the following terms and conditions:

8 **I. DEFINITIONS**

9 As used in this Settlement, the following terms shall have the meanings specified below.
10 To the extent terms or phrases used in this Settlement are not specifically defined below, but are
11 defined elsewhere in the Settlement, they are incorporated by reference into this definition section.

12 **A.** “Action” or “Lawsuit” shall mean, the action *Anthony Barahona v. Rabobank,*
13 *N.A., et al.*, Ventura County Superior Court Case No. 56-2019-00534788-CU-OE-VTA.

14 **B.** “Settlement” shall mean this Stipulation of Class Action Settlement and Release,
15 including any attached Exhibits.

16 **C.** “Estimate Payment Form” shall mean the Estimate Payment Form, as set forth in
17 the form of **Exhibit B** attached hereto, or as otherwise approved by the Court, which is to be
18 mailed to Class Members as part of the Notice Packet.

19 **D.** “Class” or “Class Member(s)” shall mean all individuals who are currently or were
20 formerly employed by Defendant as an hourly-paid employee in California during the Class
21 Period and earned non-discretionary bonuses, commissions, incentives, or other non-discretionary
22 remuneration which was not included in the calculation of their overtime or double-time rates of
23 pay. As of the date of execution of this Settlement, there were a total of 96 Class Members.

24 i. “Overtime/Paystub Subclass” –those members of the Class who are still
25 employed by Defendants.

26 ii. “Section 203 Subclass” – those members of the Class who, during late 2018
27 or early 2019, received remedial payments from Defendants for failure to
28 include non-discretionary bonuses into their overtime rates while employed;

1 but who did not receive a Section 203 penalty in conjunction with this
2 remedial payment despite being former employees at the time of remedial
3 payment.

4 E. "Class Counsel" shall refer to the attorneys of record for the Class Representative,
5 *i.e.*, Michael A. Strauss and Aris E. Karakalos of Strauss & Strauss, APC, 121 N. Fir St., Suite F,
6 Ventura, California 93001.

7 F. "Class Notice" shall mean the Notice of Class Action Settlement, as set forth in the
8 form of Exhibit A attached hereto, or as otherwise approved by the Court, which is to be mailed
9 to Class Members, and "Notice Packet" shall refer to the mailing of the Class Notice to Class
10 Members.

11 G. "Class Representative" and "Plaintiff" shall mean Anthony Barahona.

12 H. "Class Period" shall mean the time period from October 15, 2015 through the
13 hearing date of Plaintiff's Motion for Preliminary Approval of Class Action Settlement.

14 I. "Complaint" shall mean the last operative complaint filed in this Action, and any
15 amendments thereto.

16 J. "Corporate Payroll Taxes" shall mean the employer's share of taxes and
17 contributions, required under applicable state and federal law, with respect the wage-portion of
18 payments under this Settlement. These taxes shall be paid separately and in addition to the Total
19 Settlement Amount, by Defendant, except as otherwise provided in Section V.F herein.

20 K. "Court" shall mean the Superior Court of the County of Ventura, State of
21 California.

22 L. "Defendant" shall mean defendant Mechanics Bank and defendant Rabobank, N.A.
23 Rabobank, N.A. no longer exists, but Mechanics Bank is successor-by-merger to Rabobank, N.A.
24 "Defense Counsel" or "Counsel for Defendant" shall mean Meagan Bainbridge and Zack
25 Thompson of Weintraub Tobin Chediak Coleman Grodin Law Corporation, 400 Capitol Mall,
26 11th Floor, Sacramento, California 95814.

27 M. "Effective Date" shall mean the later of: (a) the date of entry of the Order granting
28 final approval of Settlement, if no objection to the Settlement is filed or if an objection is filed but

1 withdrawn, (b) the date on which the time for all appeals from objections to the Settlement has
2 passed, if one or more objections to the Settlement are filed, and (c) if an appeal is taken, the date
3 on which any reviewing court issues a decision, the time for further appeal has expired, the final
4 judgment of such appellate court or courts is no longer subject to any further appellate challenge
5 or procedure, and the trial court re-acquires jurisdiction and renders any decision approving the
6 Settlement as final.

7 **N.** “Final Approval Date” shall mean the date upon which the Court enters an Order
8 approving the Settlement, after having determined that the Settlement is fair, adequate, and
9 reasonable to the Class as a whole, following: (i) notice to the Class; (ii) an opportunity to submit
10 timely objections and/or opt out of the settlement; and (iii) a hearing on the fairness of the terms of
11 the settlement.

12 **O.** “Final Approval Hearing” shall mean the final hearing held to determine the
13 fairness, reasonableness, and adequacy of the Settlement, at which time the Court will enter its
14 Order approving the Settlement.

15 **P.** “Individual Settlement Payment” shall mean the amount to be, and which is,
16 distributed to any and each Class Member, based the formula outlined in Section V.F of this
17 Agreement. A portion of this resulting amount will be subject to the Class Member’s share of
18 taxes and withholdings with respect to the wage-portion of the Individual Settlement Share, as
19 described below.

20 **Q.** “Final Rate” shall mean the rate of pay at termination of a Class Member as an
21 hourly-paid employee employed by Defendant in California during the Class Period.

22 **R.** “Net Settlement Amount” means the Total Settlement Amount less Class
23 Representative Service Payments; Class Counsel Fee and Cost Award; and the Settlement
24 Administration Costs.

25 **S.** “Notice Packet” shall mean the Class Notice (**Exhibit A**), Estimate Payment Form
26 (**Exhibit B**), and Exclusion Form (**Exhibit C**), collectively.

27 **T.** “Opt-Out(s)” shall mean any and all persons who timely and validly request
28 exclusion from the Settlement in accordance with the terms set forth herein and in the Class Notice

1 by executing and returning the Exclusion Form attached as **Exhibit C**.

2 U. "Parties" shall mean Defendant and the Class Representative.

3 V. "Preliminary Approval Order Date" means the date upon which the Court enters an
4 Order preliminarily approving this Settlement, Notice Packet, an opportunity to submit objections,
5 and a fairness hearing thereon.

6 W. "Preliminary Approval Hearing" shall mean the hearing held on the motion for
7 preliminary approval of the Class Settlement.

8 X. "Released Claims" means any and all disputes, claims, and/or causes of action,
9 including all claims for statutory, constitutional, contractual and common law claims for wages,
10 damages, punitive damages, restitution, equitable relief, liquidated damages, restitution,
11 disgorgement, conversion, unjust enrichment, penalties, interest, and attorneys' fees and costs,
12 contingent or accrued, against the Released Parties, that have been pled or could have been pled in
13 and arising from the factual allegations in the Complaint, including but not limited to claims for
14 unpaid overtime due to alleged failure to properly calculate the rate of pay, failure to pay
15 minimum wage, failure to provide meal or rest breaks or pay one hour's wages in lieu thereof,
16 failure to indemnify for all work related expenditures and losses, failure to pay wages upon
17 termination of employment in a timely manner, failure to provide accurate itemized pay stubs,
18 failure to keep requisite payroll records, violations of Business and Professions Code Section
19 17000 and 17200 et seq. for Unfair Business Practices limited to the aforementioned Labor Code
20 violations and the relevant Wage Orders issued by the Industrial Welfare Commission, arising
21 during the Class Period.

22 Y. "Released Parties" shall mean Defendant and any of its former or present
23 subsidiaries, parent companies and affiliated companies, and its or their officers, directors,
24 employees, partners (both current and former), shareholders, and any other successors, assigns,
25 legal representatives, or any individual or entity that could be jointly liable for any of the Released
26 Claims who are not Class Members..

27 Z. "Response Deadline" shall mean the date that is forty-five (45) calendar days after
28 the Notice Packet was first mailed to Class Members, which is the deadline for Class Members to

1 submit Estimate Payment Forms, Opt-Out requests, and/or objections. In the case of a re-mailed
2 Notice Packet, this deadline shall be extended to the date that is fifteen (15) calendar days after the
3 re-mailing of the Notice Packet or the Response Deadline (as calculated based on the date on
4 which the Notice Packet was first mailed), whichever is later.

5 **AA.** "Settlement" shall mean the settlement embodied in this Settlement, which is
6 subject to Court approval.

7 **BB.** "Settlement Administrator" shall mean CPT Group, Inc., who will be responsible
8 for administration of the Settlement and related matters. Parties currently estimate that the
9 Settlement Administrator's fees and expenses to handle the administration of the Settlement and
10 related matters will not exceed \$7,500("Settlement Administration Cost").

11 **CC.** "Settlement Fund Account" shall mean the bank account established pursuant to the
12 terms of this Settlement from which all monies payable under the terms of this Settlement shall be
13 paid, as set forth herein.

14 **DD.** "Settling Parties" shall mean Plaintiff, the Class, and Defendant.

15 **EE.** "Total Settlement Amount" or "Maximum Settlement Amount" shall mean Two
16 Hundred and Fifty Thousand Dollars (\$250,000). It is agreed that pursuant to the terms of this
17 Settlement, Defendant will not pay less than the Total Settlement Amount if fewer than all Class
18 Members receive Individual Settlement Payments, subject to the provisions of Section I.GG, VI.B,
19 and other related provisions herein. This Maximum Settlement Amount is inclusive of Individual
20 Settlement Payments, Class Representative Payments, Class Counsel Fee and Cost Award, and the
21 Settlement Administration Cost, but not Corporate Payroll Taxes.

22 **FF.** "Stale Checks" or "Stale Payments" or "Uncashed Checks" shall mean checks issued to
23 Class Members pursuant to this Settlement that are not cashed or deposited within one
24 hundred and eighty (180) days from the date of issuance. The funds associated with these
25 checks will be transmitted to the Ventura County Legal Aid, Inc.("VCLA"), located at
26 4475 Market Street, Suite B, Ventura, California 93003.

1 **II. PRE-TRIAL PROCEEDINGS AND NEGOTIATIONS**

2 **A. Discovery, Investigation and Research**

3 Class Counsel has conducted extensive discovery and investigation during the prosecution
4 of the Action. This discovery and investigation has included, among other things: (a) inspection
5 and analysis of a variety of documents and data, including personnel files, time and payroll
6 records, employee manuals, corporate policies and contracts, promotional materials, and other
7 relevant documents; (b) analysis of the legal positions taken by Defendant; (c) analysis of potential
8 class-wide damages; and (d) research of the applicable law with respect to the claims and the
9 potential defenses thereto.

10 The Class Representative has vigorously prosecuted this case, and Defendant has
11 vigorously contested it. The Parties have engaged in sufficient formal and informal discovery and
12 investigation to assess the relative merits of the claims and contentions alleged by the Class
13 Representative in the Action and of Defendant's defenses to them.

14 **B. Allegations of the Class Representative and Benefits of Settlement**

15 The Class Representative and Class Counsel believe that the causes of action, allegations
16 and contentions asserted in the Action have merit. However, the Class Representative and Class
17 Counsel recognize and acknowledge the expense and delay of continued lengthy proceedings
18 necessary to prosecute the Action against Defendant through trial and through appeals. Class
19 Counsel has taken into account the uncertain outcome and the risk of any litigation, the risk of
20 continued litigation in complex actions such as this, as well as the difficulties and delays inherent
21 in such litigation. Class Counsel is also mindful of the inherent problems of proof under, and
22 possible defenses to, the claims alleged in the Action. Class Counsel believes that the Settlement
23 set forth in this Settlement confers substantial benefits upon the Class and each of the members of
24 the Class, and that an independent review of this Settlement by the Court in the approval process
25 will confirm this conclusion. Based on their own independent investigation and evaluation, Class
26 Counsel has determined that the Settlement set forth in this Settlement is in the best interests of the
27 Class Representative and the members of the Class.

1 **C. Defendant's Denial of Wrongdoing and Liability.**

2 Defendant has denied and continues to deny generally each and all of the claims and
3 contentions alleged by the Class Representative in the Action. Defendant has expressly denied
4 and continues to deny all charges of wrongdoing or liability against them arising out of any of the
5 conduct, statements, acts or omissions alleged, or that could have been alleged, in the Action.
6 Defendant contends that it complied in good faith with California and federal wage and hour laws
7 and has dealt legally and fairly with Plaintiff and Class Members. Defendant further denies that,
8 for any purpose other than settling the Action, these claims are appropriate for class or
9 representative treatment. Nonetheless, Defendant has concluded that the further conduct of the
10 Action would be protracted and expensive, and determined that it is desirable that the Action be
11 fully and finally settled in the manner and upon the terms and conditions set forth in this
12 Settlement in order to limit further expense, inconvenience and distraction, to dispose of
13 burdensome and protracted litigation, to permit the operation of Defendant's business without
14 further expensive litigation and the distraction and diversion of their personnel with respect to
15 matters in issue in the Action. Defendant has also taken into account the uncertainty and risks
16 inherent in any litigation, especially in a complex case such as the Action. Defendant has,
17 therefore, determined that it is desirable and beneficial to it that the Action be settled in the
18 manner and upon the terms and conditions set forth in this Settlement.

19 **D. No Admissions.**

20 The Parties understand and agree that this Settlement is the result of a good faith
21 compromise of disputed claims and allegations, and Defendant is entering into this Agreement
22 solely to resolve doubtful and disputed matters. No part of this Settlement or any conduct or
23 written or oral statements made in connection with this Settlement and this Settlement, whether or
24 not the Settlement is finally approved and/or consummated, may be offered as or construed to be
25 an admission or concession of any kind by either of the Parties or any of the Released Parties or
26 anyone else. In particular, but without limiting the generality of the foregoing, nothing about this
27 Settlement shall be offered or construed as an admission that Defendant has violated any of their
28 obligations under the California Labor Code, or of liability in general, or any wrongdoing,

1 impropriety, responsibility, or fault whatsoever on the part of Defendant and/or the Released
2 Parties. Similarly, nothing about this Settlement shall be construed as or deemed to be evidence
3 of, or an admission or concession by any Class Representative or any Class Member with respect
4 to the merits, damages, or certifiability. In addition, this Settlement shall not be offered or be
5 admissible in evidence against any of the Parties or any of the Released Parties, except in any
6 action or proceeding brought by or against Plaintiff, the Class, Class Members, or Defendant to
7 enforce its terms, or by Defendant in defense of any claims brought by Plaintiff, the Class, Class
8 Members, or any member of the general public, including any and all individuals who opted out of
9 the Class. The provisions of this paragraph shall become effective when this Settlement is signed
10 and shall be binding on the Settling Parties and their counsel regardless of whether the Settlement
11 is preliminarily and/or finally approved or terminated for any reason, or rendered null and void.

12 **E. Intent of the Settlement**

13 The Class Settlement set forth herein intends to achieve the following: (1) entry of an
14 Order fully and finally approving the Class Settlement and granting the monetary relief set forth in
15 this Settlement to the Class Members; (2) entry of Judgment in the Action; and (3) discharge and
16 release of Released Parties from liability for any and all of the Released Claims.

17 **III. PROCEDURAL ISSUES**

18 **A. Preliminary Approval**

19 Class Counsel will promptly submit this Settlement to the Court and move for its
20 preliminary approval. Promptly upon execution of this Settlement, Class Counsel shall apply to
21 the Court for the entry of a preliminary approval order, scheduling a hearing on the question of
22 whether the proposed Class Settlement should be approved as fair, reasonable, and adequate as to
23 the Class Members, approving as to form and content the proposed Class Notice, and directing the
24 mailing of the Class Notice to Class Members.

25 **IV. NOTICE TO CLASS MEMBERS AND CLAIMS ADMINISTRATION PROCESS**

26 **A. The Settlement Administrator**

27 The Settlement Administrator will mail the Notice Packet to Class Members, receive and
28 process Estimated Payment Forms, disputes regarding Final Rates, Opt-Out requests, and

1 objections, administer the Settlement, calculate claims against the Settlement, handle inquiries
2 from Class Members concerning the Notice Packet and determination of Individual Settlement
3 Payments or any other issue, resolve any differences between Defendant's payroll records and
4 information provided by a Class Member, administer and distribute Individual Settlement
5 Payments, issue a final report and perform such other duties as the Parties may direct.
6 Additionally, the Settlement Administrator will handle all tax document preparation and filing,
7 including state and federal tax forms if any, in conformity with this Settlement.

8 On a weekly basis, the Settlement Administrator will provide reports to Class Counsel and
9 Defense Counsel updating them as to the number of timely received Estimated Payment Forms,
10 Opt-Out requests, as well as any disputes or objections submitted by Class Members. The
11 Settlement Administrator will serve on Class Counsel and Defense Counsel via e-mail date-
12 stamped copies of the original Opt-Out requests, challenges, and objections no later than five (5)
13 calendar days after their receipt. The Settlement Administrator will provide Class Counsel with a
14 declaration of due diligence and proof of mailing of the Notice Packet, which Class Counsel will
15 file with the Court no later than ten (10) business days after the deadline for Class Members to
16 submit objections. No later than ten (10) business days prior to the Final Approval Hearing, the
17 Settlement Administrator will compile and deliver to Defense Counsel and Class Counsel a final
18 report with information regarding (a) the number of Class Members who timely returned valid
19 Estimated Payment Forms, (b) the number of Class Members who submitted disputes regarding
20 their Final Rates and the status of said disputes; (c) the final number of Opt-Outs; (d) the final
21 number of objectors; and (e) total amount of final Individual Settlement Payments of each Class
22 Participant.

23 All fees and costs of the Settlement Administrator for administration of the Settlement
24 shall be paid from the Total Settlement Amount, and are currently estimated not exceed \$7,500.
25 Prior to the calculation and distribution of the Individual Settlement Payments, the Settlement
26 Administrator shall calculate the total Administrative Expenses through the conclusion of their
27 services and such actual amount will be deducted from the Total Settlement Amount prior to the
28 final calculation of the Individual Settlement Payments.

B. Notice to Class Members

1. Within fourteen (14) calendar days following Preliminary Approval Order Date, Defendant shall provide the Settlement Administrator with the Class Members' names, last known mailing address and telephone number, social security number, start and end dates of employment, and the Final Rates in a readable MS Excel spreadsheet (collectively "Class List and Data"). The Class List and Data shall be marked "Confidential – Settlement Administrator's Eyes Only." Class Counsel shall not receive a copy of this Class List and Data.

2. Within fourteen (14) calendar days after receipt of the Class List and Data, the Settlement Administrator shall mail the Notice Packet to the Class Members via first-class regular U.S. mail. Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database information to update and correct for any known or identifiable address changes.

3. If Defendant and the Settlement Administrator determine, based upon further review of available data, that a person previously identified as being a Class Member should not be so included or identify a person who should have been included as a Class Member but was not so included, Defendant and the Settlement Administrator shall promptly delete or add such person as appropriate and notify Class Counsel prior to such deletions or additions (and the reasons therefore), and if added to the Class, to provide the rate of pay at termination ("Final Rate") for said person

4. If a new address is obtained by a way of a returned Notice Packet, then the Settlement Administrator shall promptly forward the original Notice Packet to the updated address via first-class regular U.S. Mail indicating on the original Notice Packet the date of such re-mailing. Where a Notice Packet is returned as undeliverable, without a forwarding address, the Settlement Administrator will perform a computer/SSN and "skiptrace" search to obtain an updated address. The Parties agree to cooperate with the Settlement Administrator to locate a more recent address for Class Members, where necessary.

5. The Class Notice will include, but shall not be limited to, information regarding the nature of the Lawsuit; a summary of the substance of the Settlement; the definition

of the Class; the claims, dispute, opt-out, and objection procedure and pertinent deadlines; the date for the Final Approval Hearing; and the formula used to calculate Individual Settlement Payments. The Notice Packet will include, among other things, the Final Rate (according to Defendant's records) and his or her estimated Individual Settlement Share based thereon, and shall afford the Class Member the opportunity to challenge the Final Rate reflected in Defendant's payroll records and provide evidence supporting any such challenge.

6. In addition to the Notice Packet, the Settlement Administrator will also mail a reminder postcard to all Class Members who have not responded as of the date that is twenty (20) calendar days after the mailing of the Notice Packet. This reminder postcard shall be mailed twenty-five (25) calendar days after the mailing of the Notice Packet.

7. Compliance with the procedures described in this Settlement shall constitute due and sufficient notice to Class Members of this Settlement and the Final Fairness and Approval Hearing, shall satisfy the requirements of due process, and nothing else shall be required of the Plaintiff, Class Counsel, Defendant, Counsel for Defendant, or the Settlement Administrator to provide notice of the Settlement and the Final Fairness and Approval Hearing to Class Members.

C. Response to Notice Packets

1. Dispute Final Rates

To the extent a Class Member disputes Final Rate listed on his/her Notice Packet, the Class Member may submit, by mail, a written challenge and produce evidence to the Settlement Administrator of the Final Rate that he or she contends is correct. The dispute must be postmarked on or before the Response Deadline and meet the following requirements: (1) it must contain the name, address, telephone number and the last four digits of the Social Security number of the Class Member; (2) must be signed by the Class Member; (3) must contain an explanation of the Final Rate that he or she contends is correct along with supporting evidence, and (4) must state the case number of the Action. The Estimated Payment Form shall provide a mechanism for Class Members to challenge Final Rate allocated to them, within the otherwise applicable deadline for submitting such a challenge. Defendant's records will be presumed determinative, but the Parties and the Settlement Administrator will meet and confer to evaluate and if necessary reconcile the

evidence submitted by the Class Member. The Settlement Administrator shall make the final decision as to the Final Rate for the Class Member.

2. Opt-Out of the Settlement

To avoid being bound by the Settlement, a Class Member or his/her authorized representative must submit an Opt-Out request that is postmarked on or before the Response Deadline, and meet the following requirements: (1) it must contain the name, address, telephone number and the last four digits of the Social Security number of the person requesting exclusion; (2) it must be signed by the Class Member; (3) it must state the case number of the Action; and (4) contain the typewritten or handwritten statement: "I wish to be excluded from the class action settlement, and I understand that I will receive no money from the settlement because of my request to be excluded." The date of the postmark on the mailing envelope shall be the exclusive means used to determine whether a request for exclusion has been timely submitted. Any Class Member who is validly excluded from this Settlement as provided in this paragraph shall not receive any payment pursuant to this Settlement, shall have no right to object to this Settlement, and shall not be bound by any release provided for in this Settlement or have any right to object or comment thereon. Class Members who fail to submit a valid and timely request for exclusion on or before the Response Deadline shall be bound by all terms of the Settlement, the release set forth herein, and the Order and Final Judgment. Except for those Class Members who exclude themselves in compliance with the procedures set forth above, all Class Members will be deemed to be bound by the terms and conditions of this Settlement, the Final Approval Order, the judgment, and the releases set forth herein, and will be deemed to have waived all objections and opposition to the fairness, reasonableness, and adequacy of the Settlement.

3. Object to the Settlement

Except as set forth above, any Class Member who has not opted-out may object to the proposed Settlement, or any portion thereof, by mailing a written objection, and supporting papers, if any, to the Settlement Administrator at the address that is set forth in the Class Notice. To be timely, all objections must be postmarked on or before the Response Deadline. A written objection must contain (1) the objecting person's full name, address, telephone number and the

1 last four digits of the person's Social Security number (2) the person's reasons for objecting, (3)
2 any and all supporting papers (including, without limitation, all briefs, written evidence, and
3 declarations, (4) whether the person has a legal representative and provide said legal
4 representative's contact information, (5) whether the person intends to appear at the Fairness
5 Hearing, and (6) it must be signed by the Class Member. A Class Member who desires to object
6 but who fails to comply with the objection procedure set forth herein shall be deemed to have not
7 objected. The Settlement Administrator shall promptly send all objections by .pdf to counsel for
8 Defendants and Class Counsel, and shall submit all timely objections to the Court by way of
9 declaration. Any Class Member who files an objection remains eligible to receive monetary
10 compensation from the Settlement. Class Counsel and Counsel for Defendants shall have the
11 option to file a response to any written objections submitted in accordance with this Settlement, at
12 least five (5) calendar days before the Fairness Hearing. Unless otherwise ordered by the Court,
13 Class Members shall not be entitled to appear and or object at the Final Approval Hearing unless
14 they have submitted a timely written objection and notice of intention to appear pursuant to this
15 Section. Class Members who have properly and timely submitted objections may appear at the
16 Final Approval Hearing, either in person or through a lawyer retained at their own expense. An
17 individual who opts-out of the Settlement shall not have the right to object to the Settlement.

18 **D. Submission and Review of Claims**

19 1. Any Class Member who wishes to disclose a change of address or challenge
20 their Final Rate must complete the Estimated Payment Form in full, and return the Estimated
21 Payment Form to the Settlement Administrator via U.S. Mail or Facsimile, either post-marked or
22 fax-stamped by the Response Deadline.

23 2. The Settlement Administrator shall determine if each Estimated Payment
24 Form has been signed and completed in full, or is somehow materially deficient. If any Class
25 Member files a defective Estimated Payment Form post-marked or fax-stamped before the
26 submission deadline, then the Settlement Administrator shall mail a Cure Letter to such Class
27 Member advising that the claim is defective and must be cured to become valid. The Settlement
28 Administrator must mail the Cure Letter within five (5) calendar days of receiving a defective

1 claim. The Cure Letter shall state that the Class Member has ten (10) calendar days from the date
2 of the Cure Letter or the Response Deadline, whichever date is later, to postmark a revised claim.
3 If a Class Member responds to a Cure Letter by filing a defective claim, then the Settlement
4 Administrator shall have no further obligation to give notice of a need to cure. Such defective
5 claims will be considered invalid and, if received after the submission deadline, Class Members
6 will have no right to cure them, although Parties may mutually agree to accept the Estimated
7 Payment Form.

8 **3.** Only Class Members who do not Opt Out may receive a monetary
9 distribution from the Settlement. Any Class Member who submits and Opt-Out request shall
10 receive no monetary distribution from the Settlement. If a Class Member submits both a timely
11 and valid Estimate Payment Form and an Opt-Out request, the Opt-Out request shall be deemed
12 null and void.

13 **V. SETTLEMENT TERMS**

14 **A. The Settlement Class**

15 **1.** For settlement purposes only, the Parties stipulate to conditional class
16 certification of the following class:

17 All individuals who are currently or were formerly employed by Defendant
18 as an hourly-paid employee in California during the Class Period and
19 earned non-discretionary bonuses, commissions, incentives, or other non-
20 discretionary remuneration which was not included in the calculation of
21 their overtime or double-time rates of pay, and who have not otherwise
22 released their claims for unpaid wages and associated penalties in the
23 *Hernandez v. Rabobank* lawsuit.

24 **2.** Defendant's counsel believes this conditional certification is appropriate
25 because the Released Claims are being compromised without the need to establish the elements of
26 those claims on which liability turns. The Parties agree that certification for settlement purposes
27 under the lenient standard applied to settlements is in no way an admission that class certification
28 is proper under the more stringent standard applied for litigation purposes, and that evidence of

1 this limited stipulation for settlement purposes only will not be admissible in or considered in
2 connection with, the issue of whether a class should be certified in a non-settlement context in this
3 Action or any other proceeding and shall have no bearing on, and shall not be admissible or
4 considered in connection with the issue of whether a class should be certified in any other
5 proceeding. The Parties further agree that if, for any reason, the Settlement is not approved, the
6 certification for settlement purposes will have no force or effect and will be immediately revoked
7 and decertified. Furthermore, Defendant denies any and all wrongdoing and by entering into this
8 Settlement, Defendant does not admit any violation of the law or any liability to Plaintiff or the
9 Class.

10 **B. Class Representative Service Payments**

11 Class Counsel will request on behalf of Plaintiff, and Defendant will not oppose, payment
12 of a service payment of \$7,500 for Plaintiff (“Class Representative Service Payment” or “Service
13 Payment”), to be paid out of the Total Settlement Amount. Defendant shall submit a statement of
14 non-opposition to the request for payment in conformity with this section. The Settlement
15 Administrator will issue to the Plaintiff a Form 1099 with respect to the Class Representative
16 Service Payments. The Class Representative Service Payments, if awarded by the Court, will be
17 paid to Plaintiff in addition to their shares of the settlement as Class Members, and Plaintiff shall
18 be deemed Class Members, without the necessity of submitting an Estimated Payment Form, and
19 shall have no right to opt-out of the Settlement.

20 **C. Class Counsel’s Fees and Costs Award**

21 Class Counsel will request, and Defendant will not oppose said application, that the Court
22 award an amount not to exceed 40% of the Total Settlement Amount (or \$100,000) for attorneys’
23 fees and the amount not to exceed \$11,000 for reimbursement of reasonable litigation costs and
24 expenses. The fees, costs, and expenses that are awarded by the Court to Class Counsel (“Class
25 Counsel Fee and Cost Award”) are included in the Total Settlement Amount. Class Counsel’s
26 Motion for Fees and Costs and Class Representative Enhancement shall be filed at least 40
27 calendar days in advance of the hearing on Final Approval so as to allow Class Members to object
28 to the requests. Defendant shall submit a statement of non-opposition to the request for Class

1 Counsel Fee and Cost Award in conformity with this section. The Settlement Administrator will
2 issue to Class Counsel a Form 1099 with respect to the Class Counsel Fee and Cost Award.
3 Plaintiff and/or Class Counsel may appeal any reduction in the attorneys' fee and litigation costs
4 and expenses provided for by the Settlement. The Class Attorney Fees and Expenses approved by
5 the Court shall encompass all work performed and costs and expenses incurred, and all work to be
6 performed and costs and expenses to be incurred, by Class Counsel in connection with the
7 litigation of this matter, approval by the Court of the Class Settlement, and in connection with
8 administering the Class Settlement through dismissal of the Action, with prejudice.

9 **D. Class Member Distribution Formula**

10 **1.** The entire amount of each Individual Settlement Share allocated to
11 Overtime/Paystub Subclass will be treated as payment of wages and will be subject to IRS Form
12 W-2 reporting. Class Members (who do not Opt Out) shall be paid their Individual Settlement
13 Share, subject to reduction for applicable employee's share of taxes and withholdings with respect
14 to the wage-portion of his or her Individual Settlement Share. The entire amounts of each
15 Individual Settlement Share allocated to the Section 203 Subclass will not be treated as payment
16 of wages and will not be subject to IRS Form W-2 reporting. Class Members will be issued an
17 IRS Form 1099 for these portions of the Individual Settlement Payments, and no taxes will be
18 withheld taken from these portions. The Settlement Administrator shall be responsible for
19 calculating and withholding all employee's share of required state and federal taxes. The Class
20 Members will be responsible for correctly characterizing their respective settlement payments for
21 tax purposes and paying any taxes owing on said amounts (including without limitation, any
22 interest or penalties required by law), other than the employers' share of FICA and other payroll
23 contributions.

24 **2. No Reversion.** This settlement is non-reversionary. No portions of the
25 Gross Settlement Amount shall revert to Defendants under any circumstances.

26 ///

27 ///

28 ///

1 **E. Distributions to Class Members, Plaintiff, and Class Counsel**

2 The amount of the Individual Settlement Payments, Class Representative Service
3 Payments, Class Counsel Fee and Cost Award, and any other amounts due under this Settlement,
4 will be provided by Defendant to the Settlement Administrator (which funds shall be placed into
5 an interest-bearing account), according to the following schedule. Defendant will pay the Total
6 Settlement Amount within ten (10) calendar days of the Final Approval Date. The Settlement
7 Administrator shall distribute Individual Settlement Payments, Class Representative Service
8 Payments, Class Counsel Fee and Cost Award, and any other amounts due under this Settlement,
9 within fourteen (14) calendar days after the Effective Date.

10 **F. Treatment of Settlement Payments**

11 The Parties recognize that a portion of the Individual Settlement Payment to be paid to
12 Class Members (other than the service payment to the Plaintiff) is for wages allegedly owed. All
13 Individual Settlement Payments will be allocated as follows: 20% as unpaid overtime wages to be
14 divided equally (same amount) among an anticipated 73 Class Members in the Overtime/Paystub
15 Subclass (based on de minimis level of damages), and 80% as waiting-time penalties under Labor
16 Code Section 203 to be prorated among an anticipated 42 Class Members in the Section 203
17 Subclass (only available to former employees) based on their Final Rate while employed by
18 Defendants. The Final Rates for all Class Members eligible for this allocation will be added
19 together and used as a baseline for determining the prorate share of the Section 203 allocation.
20 For example, if the sum of Final Rates for 42 Class Members equaled \$840 (an average of \$20 per
21 hour per Class Member), and the amount allocated to the Section 203 group was \$99,200 (per
22 estimates articulated in Settlement), a Class Member having a Final Rate of \$14, would have a
23 prorated percentage of the total allocation of 1.67% or \$1,653.33; whereas a Class Member
24 with a Final Rate of \$27 would have a prorated percentage of the total allocation of 3.21% or
25 \$3,188.57. Assuming the Requested fees, costs, administrative costs and class representative
26 enhancement are all granted as agreed herein, the division of the Net Settlement amount of
27 approximately \$124,000 will be divided as follows:

28 ///

	Amount	Percentage		
GROSS SETTLEMENT	\$250,000.00			
Attorneys' Fees	\$100,000.00	40.00%		
Costs	\$11,000.00			
Admin Costs to CPT Group	\$7,500.00			
Class Rep Enhancement	\$7,500.00			
NET SETTLEMENT	\$124,000.00		Class Members	Avg. Share per Class Member
Allocation for OT Owed (flat amount per person)	\$24,800.00	20.00%	73	\$339.72
Allocation for 203 Penalty (prorated based on rate of pay)	\$99,200.00	80.00%	42	\$2,361.91
THERE ARE 96 CLASS MEMBERS OF WHICH:	Avg Shares			
19 will receive Paystub Penalty, OT Owed and 203 Penalty	\$2,701.63	<i>equaling</i>	\$51,330.97	
54 will receive only Paystub Penalty and OT Owed	\$339.72	<i>equaling</i>	\$18,344.88	
23 will receive only 203 Penalty	\$2,361.91	<i>equaling</i>	\$54,323.93	
NET SETTLEMENT			\$124,000.00	

The Parties agree that only the Class Member's share of taxes and withholdings that are due under state and federal law will be deducted with respect to the portion of the Individual Settlement Share that is designated as wages, and will be subject to W-2 reporting. The Parties further agree that the Settlement amounts for penalties shall not be subject to withholdings or reduced for taxes, and will be reported on an IRS Form 1099. Prior to final distribution, the Settlement Administrator shall calculate the total Corporate Payroll Taxes due as a result of the wage portion of Class Participants' anticipated Individual Settlement Payments. Additionally, within five (5) calendar days of the Effective Date and prior to the funding of the Class Settlement and final distribution, the Settlement Administrator shall calculate the total Corporate Payroll Taxes due on the wage portion of the Class Participants' Individual Settlement Payments and issue instructions to Defendant to separately fund these tax obligations/withholdings (if necessary). If the total submitted claims are less than the Net Settlement Amount, Defendant may use the

1 remaining Net Settlement Amount to satisfy the Corporate Payroll Taxes, in conformity with the
2 minimum payout provisions set forth in Section V.F. In no event shall Defendant pay more than
3 the combined Total Settlement Amount and Corporate Payroll Taxes.

4 **G. Release of Claims by Settlement Class.**

5 Upon the Effective Date, each Class Member, except those who have validly excluded
6 themselves by a timely and valid submission of an Opt-Out request, shall release and discharge the
7 Released Parties from all Released Claims. Class Members who do not submit valid and timely
8 Opt-Out requests, and thus are bound by the released of Released Claims are "Settlement Class
9 Members" or, collectively, the "Settlement Class."

10 Class Members who do not opt out will be deemed to have acknowledged and agreed that
11 their claims for wages and/or penalties in the Lawsuit are disputed, and that the Settlement
12 payments constitute payment of all sums allegedly due to them. Class Members will be deemed to
13 have acknowledged and agreed that California Labor Code Section 206.5 is not applicable to the
14 Settlement payments. That section provides in pertinent part as follows:

15 "An employer shall not require the execution of a release of a
16 claim or right on account of wages due, or to become due, or made
17 as an advance on wages to be earned, unless payment of those
18 wages has been made."

19 **H. Release of Claims by Plaintiff**

20 Upon the Effective Date, each Plaintiff, shall release and discharge the Released Parties
21 from all Released Claims and shall also release and discharge all known and unknown claims,
22 charges, complaints, liens, demands, causes of action, obligations, damages and liabilities, known
23 or unknown, suspected or unsuspected, that he had, now has, or may hereafter claim to have
24 against Defendant arising out of, or relating in any way to, the Plaintiff's hiring by, employment
25 with, separation of employment with, or otherwise relating to the Defendant arising or accruing
26 from the beginning of time up through the Preliminary Approval Order Date, and with respect to
27 Plaintiff's release of claims, Plaintiff waives all rights and benefits afforded by California Civil
28 Code section 1542, which provides:

1 “A general release does not extend to claims that the creditor or releasing party
2 does not know or suspect to exist in his or her favor at the time of executing the
3 release and that, if known by him or her, would have materially affected his or her
4 settlement with the debtor or released party.”

5 Plaintiff, being aware of Section 1542, hereby expressly waives and relinquishes all rights
6 and benefits he may have under Section 1542 as well as any other statutes or common law
7 principles of a similar effect. Plaintiff may hereafter discover facts in addition to or different from
8 those which he now knows or believes to be true with respect to the subject matter of all the claims
9 referenced herein, but stipulates and agrees that, upon the Effective Date, Plaintiff shall and hereby
10 does fully, finally and forever settle and release any and all claims against the Released Parties,
11 known or unknown, suspected or unsuspected, contingent or non-contingent, that were asserted or
12 could have been asserted upon any theory of law or equity without regard to the subsequent
13 discovery of existence of such different or additional facts.

14 **I. Entry of Judgment**

15 The Parties agree that, upon final approval of the Settlement by the Court, a judgment shall
16 be entered, including a provision for the retention of the Court’s jurisdiction over the Parties to
17 enforce the terms of the Judgment, in accordance with Cal. Rule of Court 3.769(h).

18 **J. Stale Checks**

19 Individual Settlement Payment checks that are not cashed or deposited within one hundred
20 and eighty (180) calendar days after their issuance and mailing to Class Members will become
21 void (“stale”), and the funds associated with such stale checks will be transmitted to VCLA in
22 conformity with California Civil Code 384(a), as VCLA is an organization focused on providing
23 equal access to justice for those living in poverty across Ventura County. In such event, those
24 Class Members will nevertheless be bound by the Settlement.

25 **VI. NULLIFICATION OF THE SETTLEMENT**

26 **A.** If the Court does not grant final approval of the Settlement without material
27 modification, or the Court should for any reason fail to enter judgment with prejudice of the
28 Action, or if the Court’s final approval of the Settlement is reversed or materially modified on

1 appellate review (“materially modified” is limited to meaning changes to the amount of the Total
2 Settlement Amount), then this Settlement and the releases herein will be null and void, and the
3 Parties shall be restored to their respective positions existing prior to the execution of this
4 Agreement, and the Action shall proceed as though the Class had never been certified for
5 settlement purposes and such findings had never been made.

6 **B.** If 9 more of the Class Members validly exclude themselves from the Settlement
7 Class, Defendant will have the right to rescind the Settlement and all actions taken in its
8 furtherance will be null and void. Defendant must exercise this right in writing to Class Counsel
9 within seven (7) calendar days after the Settlement Administrator has notified the Parties in
10 writing of the valid exclusions received, with the ten percent (10%) threshold having been met.

11 **C.** As reflected in the chart in Section V.F above, at the time of the execution of this
12 agreement, there are three groups of Class Members: Group 1: 17 Class Members who will receive
13 overtime owed, paystub penalty, and section 203 penalty; Group 2: 56 class members who will
14 receive overtime owed and paystub penalty; and Group 3: 23 class members who will receive only
15 section 203 penalty.

16 **1.** If more than 3 people who were not previously Class Members are added to
17 Group 1 by the time the Settlement Administrator finalizes the Class List,
18 the Net Settlement Amount shall increase by \$2,701.63 [the average share
19 for Group 1] for each such additional Class Member. If more than 7 Class
20 Members move from Group 2 to Group 1 by the time the Settlement
21 Administrator finalizes the Class List, the Net Settlement Amount shall
22 increase by \$2,361.91 [the average share for Group 3, which is the 203
23 penalty] for each such additional Class Member.

24 **2.** If more than 3 people who were not previously Class Members are added to
25 Group 2 by the time the Settlement Administrator finalizes the Class List,
26 the Net Settlement Amount shall increase by \$339.72 [the average share for
27 Group 2] for each such additional Class Member.

28 **3.** If more than 3 people who were not previously Class Members are added to

Group 3 by the time the Settlement Administrator finalizes the Class List, the Net Settlement Amount shall increase by \$2,361.91 [the average share for Group 3] for each such additional Class Member.

D. If the Settlement is nullified, then Defendant shall be solely responsible for the costs of the settlement administration.

E. The Parties understand and agree that the scope of the release contained in this Agreement is a material aspect of the consideration underlying this Agreement and any modification of the scope of the release or exclusion of claims therefrom constitutes a material modification of this Agreement.

VII. FINAL APPROVAL HEARING.

Plaintiff and Class Counsel will move the Court for final approval of the Settlement, and will move for an award of Class Representative Service Payments and Class Counsel Fee and Cost Award pursuant to the Settlement, which Defendant will not oppose on the conditions set forth herein.

VIII. DUTIES OF THE PARTIES

A. Mutual Full Cooperation

The Parties agree to cooperate fully with each another to accomplish and implement the terms of this Settlement through completion of final approval by the Court. Such cooperation shall include, but not be limited to, execution of such other documents and the taking of such other actions as may reasonably be necessary to fulfill the terms of this Settlement, as well as any recommended adjustments to this Settlement assuming those adjustments do not alter the total Gross Settlement Amount agreed to under this Agreement. The Parties shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by Court Order, or otherwise, to effectuate this Settlement and the terms set forth herein. As soon as practicable after execution of this Settlement, Class Counsel with the cooperation of Defendant and its Counsel, shall take all necessary and reasonable steps to secure the Court's Preliminary Approval and Final Approval of this Settlement. No party, nor any of its attorneys or agents, shall solicit or encourage any Class Members to exclude themselves from the Settlement or

1 object to the Settlement.

2 **B. Duty to Support and Defend the Settlement.**

3 The Parties agree that the Settlement is fair and reasonable and will so represent to the
4 Court. The Parties hereto agree to abide by all of the terms of the Settlement in good faith and to
5 support the Settlement fully, and to use their best efforts to defend this Settlement from any legal
6 challenge, whether by appeal or collateral attack.

7 **IX. MISCELLANEOUS PROVISIONS**

8 **A. Non-Retaliation**

9 Defendant agrees that it will not retaliate against any Class Member for participating in the
10 Settlement, and further agrees to disseminate reasonable written notices or memoranda to that
11 effect (on company letterhead) during the notice and settlement process as necessary, if requested
12 by Class Counsel.

13 **B. No Effect on Employee Benefit Plans**

14 Neither the Class Settlement nor any amounts paid under the Class Settlement will modify
15 any previously credited hours, days, or weeks of service under any employee benefit plan, policy
16 or bonus program sponsored by Defendant. Such amounts will not form the basis for additional
17 contributions to, benefits under, or any other monetary entitlement under Defendant's sponsored
18 benefit plans, policies or bonus programs. The payments made under the terms of this Settlement
19 shall not be applied retroactively, currently, or on a going forward basis, as salary, earnings,
20 wages, or any other form of compensation for the purposes of any of Defendant's benefit plan,
21 policy or bonus program. Defendant retains the right to modify the language of its benefits plans,
22 policies and bonus programs to effect this intent and to make clear that any amounts paid pursuant
23 to this Settlement are not for "weeks worked," "weeks paid," "weeks of service," or any similar
24 measuring term as defined by applicable plans, policies and bonus programs for purpose of
25 eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or
26 benefits are not required by this Settlement. Defendant does not consider the Class Settlement
27 payments "compensation" for purposes of determining eligibility for, or benefit accrual within,
28 any benefit plans, policies, or bonus programs, or any other plan sponsored by Defendant.

1 **C. Tax Liability**

2 The Parties make no representations as to the tax treatment or legal effect of the payments
3 called for hereunder, and Settlement Class Members are not relying on any statement or
4 representation by the Parties or by the Settlement Administrator in this regard. Participating Class
5 Members understand and agree that withholdings, including, but not limited to Participating Class
6 Members' FICA and FUTA contributions, will be taken from that portion of the Settlement
7 designated as wages, and that they will be responsible for the payment of any employee taxes and
8 penalties assessed on the payments described herein and will hold the Parties free and harmless
9 from and against any claims, liabilities, costs and expenses, including attorney's fees, resulting in
10 any way from personal tax treatment of the payments made pursuant to this Agreement, including
11 the treatment of such payments as not subject to withholding or deduction for payroll and
12 employment taxes.

13 **D. Circular 230 Disclaimer**

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

1 transaction contemplated by this Agreement.

2 **E. Construction**

3 The Parties hereto agree that the terms and conditions of this Settlement are the result of
4 lengthy, intensive, arm's-length negotiations between the Parties and with the assistance of
5 Mediator Tripper Ortman, and that this Settlement is not to be construed in favor of or against any
6 party by reason of the extent to which any party or its counsel participated in the drafting of this
7 Settlement.

8 **F. Choice of Law**

9 This Settlement is intended to and shall be governed by the laws of the State of California,
10 without regard to conflicts of law principles.

11 **G. Captions and Interpretations**

12 Paragraph titles or captions contained herein are inserted as a matter of convenience and
13 for reference only, and in no way define, limit, extend, or describe the scope of this Settlement or
14 any provision thereof.

15 **H. Modification**

16 This Settlement may not be changed, altered, or modified, except in writing signed by
17 counsel for the Parties hereto and approved by the Court. This Settlement may not be discharged
18 except by performance in accordance with its terms or by a writing signed by counsel for the
19 Parties hereto.

20 **I. Integration Clause**

21 This Settlement contains the entire agreement between the Parties relating to the settlement
22 of the Action and the transactions contemplated thereby, and all prior or contemporaneous
23 agreements, understandings, representations, and statements, whether oral or written, and whether
24 by a party or such party's legal counsel, are merged herein. No rights under this Settlement may
25 be waived except in writing.

26 **J. Successors and Assigns**

27 This Settlement shall be binding upon and inure to the benefit of the Parties hereto and
28 Class Members (excluding only persons who timely Opt-Out) and their respective heirs, trustees,

1 executors, administrators, successors, and assigns.

2 **K. Class Counsel Signatories**

3 Because the Members of the Class are so numerous, the Parties agree that it is impossible
4 or impractical to have each Class Member sign this Settlement. It is agreed that, for purposes of
5 seeking approval of the Class Settlement, this Settlement may be executed on behalf of the Class
6 by Class Counsel and the Class Representative.

7 **L. Corporate Signatories**

8 Any person executing this Settlement or any such related document on behalf of a
9 corporate signatory hereby warrants and promises, for the benefit of all Parties hereto, that such
10 person has been duly authorized by such corporation to execute this Settlement or any such related
11 document.

12 **M. Execution in Counterparts**

13 This Settlement shall become effective upon its execution by all of the undersigned. The
14 Parties may execute this Settlement in counterparts, and execution of counterparts shall have the
15 same force and effect as if all Parties had signed the same instrument. A signature transmitted by
16 electronic mail or facsimile shall be considered valid for all purposes.

17 **N. Severability.**

18 In the event that any one or more of the provisions contained in this Settlement shall for
19 any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
20 unenforceability shall in no way affect any other provision if Defendant's Counsel and Class
21 Counsel, on behalf of the Settling Parties and the Class, mutually elect in writing to proceed as if
22 such invalid, illegal, or unenforceable provision had never been included in this Settlement. If the
23 provisions releasing the claims against Defendant, particularly as described in section V.G of this
24 Agreement, are determined to be invalid, illegal, or unenforceable in any respect, this Settlement
25 shall be deemed void. Any Class Members who chooses to Opt Out shall not receive or be entitled
26 to an Individual Settlement Payment.

27 **O. Attorney Fees, Costs and Expenses.**

28 Except as otherwise specifically provided for herein, each party shall bear his or its own

1 attorney fees, costs and expenses, taxable or otherwise, incurred by them in or arising out of the
2 Action and shall not seek reimbursement thereof from any other party to this Settlement.


3 **P. Action to Enforce Agreement.**

4 In any suit or court action to enforce the terms of this Agreement, the prevailing party shall
5 be entitled to recover his or its attorney fees and costs.

6 **IT IS SO AGREED:**

7 Dated: October 23, 2020

MECHANICS BANK

9 
10 Name: _____
11 Title _____
12 On Behalf of Defendant Mechanics Bank, successor-
13 in-interest to Rabobank, N.A.

14 Dated: November 9, 2020

15 ANTHONY BARAHONA

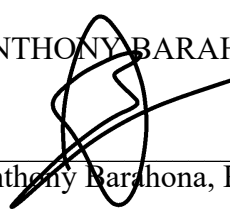
16 
17 _____
18 Anthony Barahona, Plaintiff
19
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28

EXHIBIT A

CLASS NOTICE

Anthony Barahona v. Rabobank, N.A., et al.

Ventura County Superior Court Case No. 56-2019-00534788-CU-OE-VTA

[CLASS MEMBER NAME]

If you are a current or former employee of Rabobank, N.A. or Mechanics Bank, N.A. (“Defendant”), a class action lawsuit may affect your rights and you may be entitled to benefits under the settlement.

You are not being sued. A court authorized this notice. This is not a solicitation from a lawyer.

PLEASE READ THIS NOTICE CAREFULLY. IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS.

- This lawsuit involves a class defined as:

All persons who are currently or were formerly employed by Defendant as an hourly-paid employee in California and earned non-discretionary bonuses, commissions, incentives, or other non-discretionary remuneration which was not included in the calculation of their overtime or double-time rates of pay from October 15, 2015 through **[preliminary approval hearing date]**. There are two subclasses: the “Overtime/Paystub Subclass,” consisting of those members of the Class who are still employed by Defendants, and the “Section 203 Subclass,” consisting of those members of the Class who, during late 2018 or early 2019, received remedial payments from Defendants for failure to include non-discretionary bonuses into their overtime rates while employed; but who did not receive a Section 203 penalty in conjunction with this remedial payment despite being former employees at the time of remedial payment

- You are receiving this Notice because the records reflect that you may be one of the above Class Members.
- Plaintiff Anthony Barahona in this class action alleges that Defendant failed to pay all overtime and double time due, failed to provide accurate wage statements, failed to pay all wages owed upon termination, and engaged in unfair competition prohibited by California Business and Professions Code section 17200 et seq. Defendant denies Barahona’s claims and asserts that it has complied with all its legal obligations to its employees.
- There has been a settlement that affects your rights. Although the Court has authorized the Parties to provide this notice of the proposed settlement, the Court has expressed no opinion on the merits of Plaintiff’s claims or Defendant’s defenses.
- You will not be penalized or retaliated against by Defendant for participating in this class action settlement. If you are currently employed by Defendant, your employment will not be affected in any way.

- You have several options available to you:

DO NOTHING	By doing nothing, you <u>will</u> receive a share of the settlement proceeds, and you will give up any rights to sue Defendant for claims asserted in the Complaint or which could have been asserted based on the facts alleged in the Complaint, which are or could be the basis of claims for failure to pay timely wages pursuant to Labor Code § 204; penalties pursuant to Labor Code §§ 201-203; wage statement violations pursuant to Labor Code § 226(a); and violation of Business & Professions Code § 17200.
ASK TO BE EXCLUDED (OPT OUT)	Exclude yourself from this lawsuit. Keep your right to file a separate claim against Defendant. If you ask to be excluded, you <u>will not</u> receive a share of the settlement proceeds, but you keep any rights you may have to bring your own suit against Defendant for the same legal claims in this lawsuit.
OBJECT	Object to the terms of this Settlement.

**Your options are explained in this notice.
To opt out or object, you must act by [date].**

1. Why did I get this notice?

A proposed settlement has been reached in a class action lawsuit that was brought on behalf of Defendant's employees. You have received this notice because Defendant's records indicate that you are a member of this class.

2. What is this lawsuit about?

This lawsuit was filed on October 15, 2019 on behalf of all persons who are currently or were formerly employed by Defendant as an hourly-paid employee in California and earned non-discretionary bonuses, commissions, incentives, or other non-discretionary remuneration which was not included in the calculation of their overtime or double-time rates of pay. The operative complaint alleges class-wide causes of action against Defendant for failure to pay timely wages pursuant to Labor Code § 204; penalties pursuant to Labor Code §§ 201-203; wage statement violations pursuant to Labor Code § 226(a); and violation of Business & Professions Code § 17200.

3. Has the Court decided who is right?

No. The Court has made no decision regarding the merits of Plaintiff's allegations or Defendant's defenses.

4. Why did this case settle?

The Parties reached a settlement to avoid the risk, inconvenience and expense of further litigation. Plaintiff and his attorneys believe the proposed settlement is fair, adequate and in the best interest of the class members given the outcome of their investigation, the consumption of time and resources required in connection with further litigation, and the uncertainty in the law governing some of the claims presented. Although Defendant disputes Plaintiff's claims and asserts that it has complied with all of its legal obligations toward its employees, Defendant has also concluded that further litigation would be protracted and expensive and would also divert management and employee time.

5. What are the terms of the settlement and how much will I receive?

The Gross Settlement Fund is \$250,000.00. Under the proposed settlement, the following amounts will be deducted before any payments are made to employees, subject to final approval by the Court:

- Attorneys' fees: \$100,000.00
- Litigation Costs: \$11,000.00
- Claims Administration Costs: \$7,500.00
- Enhancement Payment to Class Representative: \$7,500.00

After these deductions, \$124,000.00 will be available for payment to the Settlement Class members receiving this notice ("Net Settlement Fund").

All Individual Settlement Payments will be allocated as follows: 20% as unpaid overtime wages to be divided equally (same amount) among an anticipated 59 Class Members in the Overtime/Paystub Subclass (based on a minimal level of damages), and 80% as waiting-time penalties under Labor Code Section 203 to be prorated among an anticipated 38 Class Members in the Section 203 Subclass (only available to former employees) based on their Final Rate while employed by Defendants. The Final Rates for all Class Members eligible for this allocation will be added together and used as a baseline for determining the prorate share of the Section 203 allocation. For example, if the sum of Final Rates for 42 Class Members equaled \$840 (an average of \$20 per hour per Class Member), and the amount allocated to the Section 203 group was \$99,200 (per estimates articulated in Settlement), a Class Member having a Final Rate of \$14, would have a prorated percentage of the total allocation of 1.67% or \$1,653.33; whereas a Class Member with a Final Rate of \$27 would have a prorated percentage of the total allocation of 3.21% or \$3,188.57.

According to Defendant's records, you [are currently employed by Defendant] [were a former employee at the time you received remedial payments from Defendant]. Your [current/final] rate of pay [is/was] [rate of pay]. If you disagree with this information and would like someone to look into the matter, please follow the procedure below. Based on this classification, your estimated

settlement amount is [amount] (See below)

You are allocated the following for the Overtime/Paystub Damages:

You are allocated the following for the Section 203 Penalties (only for former employees):

Your total estimated allocation amount is:

6. What if I disagree with the employment status or rate of pay shown above?

If you believe the information in the notice is incorrect regarding your employment status or rate of pay, please write a letter with any relevant supporting documentation to:

[Settlement Administrator]
c/o CPT Group, Inc.
[address]

You must submit such information by [date]. Class Counsel and the Settlement Administrator will work together in good faith and do their best to promptly resolve the dispute based on available records. In the event they are unable to resolve any dispute under this Section, the Settlement Administrator shall review all information, material, and documents and make a decision regarding the dispute.

7. What do I have to do to receive a share of the settlement?

If you wish to receive an award under the terms of this settlement, **you do not have to do anything.** However, it is advisable to confirm your current mailing address with the Settlement Administrator to ensure you receive your settlement share. You will be covered by the release summarized in Section 8, below.

8. What rights am I giving up?

The claims you will Release by doing nothing are: any and all claims that are asserted in the Complaint or which could have been asserted based on the facts alleged in the Complaint, which are or could be the basis of claims for failure to pay timely wages pursuant to Labor Code § 204; penalties pursuant to Labor Code §§ 201-203; wage statement violations pursuant to Labor Code § 226(a); and violation of Business & Professions Code § 17200.

9. What if I do not wish to be involved?

Anyone not wishing to participate in the settlement may exclude himself or herself (“opt out”) by completing, signing, and mailing a letter indicating that they do not want to participate in the settlement to the [Settlement Administrator], c/o CPT Group, Inc., [address], by [date].

[Settlement Administrator]
c/o CPT Group, Inc.
[address]

If your Request for Exclusion is postmarked after [date], it will be rejected, and you will be a Participating Class Member and be bound by the settlement terms and release. Anyone who submits a timely and valid Request for Exclusion shall not be deemed a Participating Class Member and will not receive any payment as part of this settlement. Such persons will keep any rights to sue Defendant separately about the claims made in this lawsuit.

10. What if I have an objection?

A class member may object to the settlement in writing and/or in person. Written objections and all supporting briefs or other materials must be submitted to the Settlement Administrator no later than [date].

Any class member may make an objection at the Final Approval Hearing with or without filing or serving any written objection. The Class Member may appear personally or through an attorney, at his or her own expense, at the Final Approval hearing to present his or her objection directly to the Court. Any attorney who will represent an individual objecting to this Settlement who has not filed a written objection must file a notice of appearance and serve Class Counsel and Defense Counsel no later than [date]. The Final Approval and Fairness Hearing will be held in Dept. 22B of the Ventura County Superior Court, 800 South Victoria Avenue, Ventura, CA 93009 on [date], 2020, at [time] (Pacific Time).

<u>Class Counsel:</u> Michael A. Strauss Aris E. Karakalos STRAUSS & STRAUSS, APC 121 N. Fir St., Suite F Ventura, California 93001 Telephone: (805) 641.6600 Facsimile: (805) 641.6607 mike@strausslawyers.com aris@strausslawyers.com	<u>Counsel for Defendant</u> Charles L. Post, Esq. Meagan D. Bainbridge, Esq. Zack Thompson, Esq. Weintraub, Tobin, Chediak, Coleman, Grodin Law Corporation 400 Capitol Mall, 11th Floor Sacramento, CA 95814 Telephone: (916) 558-6000 Facsimile: (916) 446-1611
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11. Do I need a lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. However, if you want your own lawyer, you are free to hire one at your own expense.

12. What happens next in the case?

The Settlement has only been preliminarily approved. The Court will hold a hearing in Dept. 22B of the Ventura County Superior Court, 800 South Victoria Avenue, Ventura, CA 93009 on [date], 2020, at [time] (Pacific Time), to consider any objections and determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to

approve Class Counsel's request for attorneys' fees and costs, Plaintiff's Enhancement Payment, and the costs of claims administration. The hearing may be continued without further notice to you. It is not necessary for you to appear at this hearing.

13. How can I receive more information?

This notice is a summary of the basic terms of the settlement. For further information, you may also telephone the Settlement Administrator, CPT Group, Inc. (listed above), or Class Counsel (listed above).

Please do not telephone the Court, the Office of the Clerk, or Defendant's counsel for information regarding this settlement.

EXHIBIT B

ESTIMATED PAYMENT FORM

Anthony Barahona v. Rabobank, N.A., et al.

Ventura County Superior Court Case No. 56-2019-00534788-CU-OE-VTA

YOUR ESTIMATED INDIVIDUAL SETTLEMENT PAYMENT: \$_____.

This estimate is based on corporate and business records maintained by Mechanics Bank (as successor in interest to Rabobank, N.A.), which show your rate of pay as an hourly-paid employee employed by Rabobank, N.A. and/or Mechanics Bank in California between October 15, 2015 and the date of Preliminary Approval [**DATE OF PRELIMINARY APPROVAL**]. If you are no longer employed by Mechanics Bank, this rate is your rate of pay at the time of your termination/resignation as an hourly-paid employee employed by Rabobank, N.A. and/or Mechanics Bank in California during the time period above.

Your Final Rate of pay:_____.

Information regarding the Class, Settlement, and the Lawsuit is contained in the accompanying Notice of Class Action Settlement.

I. CLAIMANT IDENTIFICATION

Please Make any Name/Address Corrections Below:

«First» «Last» _____
«Address1» _____
«Address2» _____
«City» _____
«State» _____
«Zip» _____
«Phone Number» _____

II. IF YOU DISPUTE YOUR FINAL RATE

If you believe the Final Rate listed above is incorrect, check the box below, and send this Estimated Payment Form, a letter, and supporting documentation to the Settlement Administrator indicating what you believe is the correct Final Rate of pay you earned at the time of termination/resignation as an hourly-paid employee employed by Rabobank, N.A. and/or Mechanics Bank in California between October 15, 2015 and [**DATE OF PRELIMINARY APPROVAL**].

The Settlement Administrator will resolve any dispute based upon Mechanics Bank's records and any documents and information you provide. Please be advised that the Final Rate is presumed to be correct unless the documents you submit are company records from Mechanics Bank or Rabobank, N.A.

☐ I disagree with the information listed above and have submitted supporting documentation.

EXHIBIT C

EXCLUSION LETTER

Anthony Barahona v. Rabobank, N.A., et al.

Ventura County Superior Court Case No. 56-2019-00534788-CU-OE-VTA

«First» «Last» _____
«Address1» _____
«Address2» _____
«City» _____
«State» _____
«Zip» _____
«Phone Number» _____

SUBMIT THIS FORM POSTMARKED NO LATER THAN [INSERT DATE] TO OPT-OUT AND EXCLUDE YOURSELF FROM ANY JUDGMENT UNDER CALIFORNIA LAW THAT MAY BE ENTERED IN THIS CASE. YOU WILL NOT RECEIVE MONEY FROM THE SETTLEMENT.

I have reviewed the accompanying Notice of Class Action Settlement (“Notice”) and understand that I was employed as an hourly-paid employee employed by Rabobank, N.A. and/or Mechanics Bank in California between October 15, 2015 and the date of Preliminary Approval [DATE OF PRELIMINARY APPROVAL].and during this time I earned either a non-discretionary bonus, commission, incentive, or other non-discretionary remuneration which was not included in the calculation of my overtime or double-time rates of pay.. I understand that I am a potential Class Member in the Lawsuit. I understand that this settlement is intended to compensate such Class Members.

I understand that by timely submitting this form, I am excluding myself from the settlement as a member of the Class and will not receive a payment from the settlement if the settlement is approved by the Court. I understand that, by timely submitting this form, I will be choosing not to release the claims that are described in the accompanying Notice or be bound by any judgment under California law that the court may enter in this Lawsuit. No one has coerced or forced me to opt out; it is my own decision.

Printed Name

Signature

Date (mm/dd/yyyy)

Telephone

Mailing Address (including City, State, and Zip Code)

Last Four Digits of Social Security Number (For Identity Verification Purposes Only)

THIS FORM MUST BE POSTMARKED BY [INSERT DATE] AND SENT TO ADDRESS:

By U.S. Mail:
[ADDRESS]

NOTE THAT YOUR SOCIAL SECURITY NUMBER WILL BE REDACTED BEFORE THIS DOCUMENT IS FILED ON THE PUBLIC DOCKET AND WILL REMAIN PRIVATE.

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is STRAUSS & STRAUSS, APC, 121 N. Fir Street, Suite F, Ventura, California 93001. On December 18, 2020, I served the within documents:

DECLARATION OF ARIS E. KARAKALOS IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND RELEASE

- _____ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- _____ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Ventura, California addressed as set forth below.
- X by electronically mailing the document(s) listed above to the e-mail address(es) set forth above, or as stated on the attached service list per agreement in accordance with the Code of Civil Procedure §1010.6.

SEE ATTACHED MAILING LIST

- _____ by placing the document(s) listed above in a sealed envelope and depositing for pick-up in a designated FedEx box via **FedEx Overnight** delivery at Ventura, California addressed as set forth below.
- _____ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

- X (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- _____ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on December 18, 2020, at Ventura, California.


JACQUELINE VILLARREAL

1 **Re: *Barahona v. Rabobank, N.A., et al.***

2 **Ventura Superior Court Case No.: 56-2019-00534788-CU-OE-VTA**

3
4 **MAILING LIST**

5 Charles L. Post, Esq.

6 Meagan D. Bainbridge, Esq.

7 Zack Thompson, Esq.

8 WEINTRAUB TOBIN CHEDIAK

9 COLEMAN GRODIN

10 400 Capitol Mall, 11th Fl.

11 Sacramento, CA 95814

12 Telephone: (916) 558-6000

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14 Email: mbainbridge@weintraub.com; zthompson@weintraub.com;
15 cpost@weintraub.com

16 ***Attorneys for Defendant Mechanics Bank, a California banking***
17 ***corporation, successor in interest to***
18 ***Rabobank, N.A.***