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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 16 COUNTY OF LOS ANGELES
 17

18 EVERETT KING, an individual, and on
 19 behalf of others similarly situated

20 Plaintiff,

21 vs.

22 RUSS BASSETT CORP., a California
 23 corporation and DOES 1 through 100,
 inclusive.

24 Defendant.

Case No. 19STCV20135

**THIRD AMENDED
 STIPULATION RE:
 SETTLEMENT OF CLASS AND
 COLLECTIVE ACTION**

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1 IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff
2 Everett King (as proposed Plaintiff and Class Representative) (“Class
3 Representative”) on behalf of himself and the proposed Class of similarly situated
4 individuals, on the one hand, and Defendant RUSS BASSETT CORP. (“Russ
5 Bassett” or “Defendant”), on the other hand, as set forth below:

6 **I. The Conditional Nature of This Stipulation.**

7 This Stipulation Re: Settlement of Class and Collective Actions is made for
8 the sole purpose of attempting to consummate settlement of this action on a class
9 and collective action basis. This Stipulation and the settlement it evidences is made
10 in compromise of disputed claims. Because this Stipulation purports to settle this
11 action on a class and collective action basis, this settlement must receive preliminary
12 and final approval from the Court. Accordingly, the Settling Parties enter into this
13 Stipulation and associated settlement on a conditional basis. In the event that the
14 Court does not execute and file the Order Granting Final Approval of Settlement, or
15 in the event that the associated Judgment does not become Final for any reason, this
16 Stipulation shall be deemed null and void *ab initio*, it shall be of no force or effect
17 whatsoever, it shall not be referred to or utilized for any purpose whatsoever, and
18 the negotiation, terms, and entry of the Stipulation shall remain subject to the
19 provisions of Federal Rule of Evidence 408 and California Evidence Code sections
20 1119 and 1152.

21 Defendant denies all of the allegations and claims, including as to liability,
22 damages, penalties, interest, fees, restitution and all other forms of relief as well as
23 the class and collective action allegations asserted in the Litigation. Defendant has
24 agreed to resolve the Litigation via this Stipulation, but to the extent this Stipulation
25 is disapproved by the Court, deemed void, or does not otherwise take effect,
26 Defendant has not waived, but rather expressly reserve, all rights to challenge all
27 such claims and allegations in the Litigation upon all procedural and factual
28 grounds, including without limitation the ability to challenge class and/or collective

1 action treatment on any grounds or assert any and all defenses or privileges. The
2 Class Representative and Class Counsel agree that Defendant retains and reserves
3 these rights, and agrees not to take positions to the contrary; specifically, the Class
4 Representative and Class Counsel agree not to argue or present any argument, and
5 hereby waive any argument, that this Stipulation estops or otherwise precludes from
6 Defendant contesting class and/or collective action certification on any grounds if
7 this Litigation were to proceed.

8 **II. The Parties to this Stipulation.**

9 This Stipulation (with the associated exhibits) is made and entered into by and
10 among the following Settling Parties: (i) Class Representative (on behalf of himself
11 and each of the Class Members), with the assistance and approval of Class Counsel;
12 and (ii) Defendant, with the assistance of its counsel of record in the Litigation.

13 This Stipulation is intended by the Settling Parties to fully, finally and forever
14 resolve, discharge and settle the Released Claims upon and subject to the terms and
15 conditions hereof. This Stipulation is also intended to result in the resolution of the
16 underlying Litigation. This Stipulation is intended to and will also result in the
17 General Release of all claims of any nature held by the Class Representative.

18 **III. The Litigation.**

19 An initial complaint was filed against Defendant and Insperity PEO Services,
20 L.P. (“Insperity”) in the United States District Court for the Central District of
21 California on February 17, 2017, alleging claims for: (1) Failure to Provide
22 Required Meal Periods; (2) Failure Authorize and Permit Rest Periods; (3) Failure to
23 Pay Minimum Wages; (4) Failure to Pay Overtime Wages; (5) Failure to Pay All
24 Wages Due to Discharged and Quitting Employees; (6) Failure to Furnish Accurate
25 Itemized Wage Statements; (7) Failure to Maintain Required Records; (8) Failure to
26 Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties;
27 (9) Unfair and Unlawful Business Practices; and (10) a representative action for
28 penalties under the Private Attorneys General Act (“PAGA”). Thereafter, the case

1 was dismissed without prejudice and was refiled on May 26, 2017 for the same
2 causes of action, save for the PAGA action, under case number 2:17-cv-03981. On
3 June 30, 2017 a First Amended Complaint (“FAC”), the then operative complaint,
4 was filed in that action adding a cause of action for a Failure to Pay all Wages and
5 Overtime Compensation in Violation of the Fair Labor Standards Act (“FLSA”).

6 Following the exchange of significant amounts of information, counsel for
7 Defendant and Class Counsel, both of whom are experienced in these types of cases,
8 began a series of arms-length negotiations which led to the scheduling of a
9 mediation session with a professional mediator, Steve Rottman, Esq. On May 4,
10 2018, the Settling Parties held an all-day mediation session with Mr. Rottman, but
11 were unable to reach an agreement that day. That mediation included the claims of
12 Plaintiff Everett King (“King” or “Plaintiff”) who alleges tolling off of the District
13 Court case number 2:17-cv-03981 filed May 26, 2017. On June 6, 2018 King
14 submitted a notice pursuant to California Labor Code § 2699.3 to the California
15 Labor & Workforce Development Agency (“LWDA”) which included allegations
16 and a draft complaint of claims. In the weeks that followed the mediation and
17 submissions by King, the Settling Parties continued to discuss settlement, until the
18 Settling Parties reached the agreement reflected herein.

19 This Stipulation is intended to result in the creation of a settlement class
20 comprised of all current and former non-exempt employees of Defendant Russ
21 Bassett in the State of California at any time within the period beginning May 26,
22 2013 through and including the date of the Preliminary Approval Order.

23 Solely for the purpose of settling this case, the parties stipulate and agree that
24 the requirements for establishing class and collective action certification with
25 respect to this class are met. If this Settlement is not approved by the Court for any
26 reason, Defendant reserves its rights to contest class and/or collective action
27 certification. This Stipulation, if approved by the Court, will result in a release of
28 claims upon the entry of the Judgment. The release will include the release of all

1 claims specified in paragraph 2.7.1 for all Class Members, the release of all claims
2 specified in paragraph 2.7.3 for Aggrieved Employees, and a General Release of all
3 claims by the Class Representative.

4 **IV. Defendant's Denial of Wrongdoing or Liability.**

5 Defendant denies all of the claims and contentions alleged in the Litigation.
6 Nonetheless, Defendant has concluded that further conduct of the Litigation would
7 be protracted and expensive, and that it is desirable that the Litigation be fully and
8 finally settled in the manner and upon the terms and conditions set forth in this
9 Stipulation. Defendant has also taken into account the uncertainty and risks inherent
10 in any litigation, and therefore determined that it is desirable and beneficial that the
11 Litigation be settled in the manner and upon the terms and conditions set forth in
12 this Stipulation.

13 **V. Claims of the Class Representatives and Benefits of Settlement.**

14 The Class Representative and Class Counsel believe that the claims presently
15 asserted in the Litigation have merit and that evidence developed to date supports
16 the claims. However, the Class Representative and Class Counsel recognize and
17 acknowledge the expense and length of the type of continued proceedings necessary
18 to prosecute the Litigation against Defendant through trial and through appeals. The
19 Class Representative and Class Counsel have also taken into account the uncertain
20 outcome and the risk of any litigation, as well as the difficulties and delays inherent
21 in such litigation. Based upon their evaluation, the Class Representative and Class
22 Counsel have determined that the settlement set forth in the Stipulation is in the best
23 interests of the Class Representative and the Class.

24 **VI. Terms of Stipulation and Agreement of Settlement.**

25 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by
26 and between the Class Representative (for himself, the Class Members, and the
27 Aggrieved Employees) and Defendant, with the assistance of their respective
28 attorneys of record, that, as among the Settling Parties, including all Class Members

1 and Aggrieved Employees, the Litigation and the release of claims specified in
2 Section 2.7 shall be finally and fully compromised, settled, and released, and the
3 Litigation shall be resolved, as to all Settling Parties, upon and subject to the terms
4 and conditions of the Stipulation and the Judgment.

5 1. Definitions.

6 As used in all parts of this Stipulation, the following terms have the
7 meanings specified below:

8 1.1 “Aggrieved Employees” means all current and former non-
9 exempt employees of Defendant in California at any time during the PAGA
10 Period. Aggrieved Employees shall not include any co-employees of Insperity
11 who were not also co-employed by Russ Bassett.

12 1.2 “Defendant” means Russ Bassett Corp., one of the defendants
13 in the Litigation along with Insperity. “Releasees” means Russ Bassett Corp. and
14 each of its parents and subsidiaries, officers, directors, shareholders, persons,
15 employees, servants, representatives, members, attorneys, insurers, re-insurers,
16 professional employer organizations, assigns, and affiliates and any and all other
17 entities with whom they have been, are now, or may hereafter be affiliated, and any
18 of their affiliated companies, predecessors, successors and assigns, as well as their
19 past or present officers, directors, agents, representatives, attorneys, insurers, re-
20 insurers, assigns, or employees.

21 1.3 “Claims Administrator” means the third-party claims
22 administration firm of CPT Group Class Action Administrators.

23 1.4 “Class” means the collective group of Persons who were
24 employed by Defendant as nonexempt employees of Russ Bassett in California at
25 any point during the Class Period. The Class shall not include any co-employees of
26 Insperity who were not also co-employed by Russ Bassett.

27 1.5 “Class Counsel” means Matern Law Group, PC.
28

1 1.6 “Class Member” or “Member of the Class” means a Person
2 who is a member of the Class.

3 1.7 “Class Notice” or “Notice” or “Notice to Class Members”
4 means the Notice of Class Action Settlement, substantially in the form attached as
5 **Exhibit 1**, including English and Spanish translations thereof, which shall be subject
6 to Court approval and which the Settlement Administrator shall mail to each Class
7 Member explaining the terms of this Stipulation and the Settlement. The Notice will
8 be posted on the website established by the Claims Administrator.

9 1.8 “Class Period” means the period from May 26, 2013 through
10 and including the date of the Preliminary Approval Order.

11 1.9 “Class Representative” means Everett King. Everett King
12 submitted a notice pursuant to California Labor Code § 2699.3 to the LWDA on
13 June 6, 2018 and is a named plaintiff in the proposed “Complaint” attached hereto
14 as **Exhibit 2**.

15 1.10 “Court” means the Superior Court of the State of California,
16 County of Los Angeles.

17 1.11 “Nonexempt employee” means any hourly or premium
18 overtime eligible position within California.

19 1.12 “Effective Date” means the date on which the Judgment
20 becomes Final.

21 1.13 “Final” means the point at which the Judgment has become
22 final and irreversible because the latest of the following dates has occurred: (i) the
23 date of final affirmance on an appeal of the Judgment; (ii) if no appeal is filed, the
24 expiration date of the time for the filing or noticing of any form of valid appeal from
25 the Judgment. Notwithstanding the foregoing, any proceeding or order, or any
26 appeal or petition for a writ pertaining solely to the award of attorneys’ fees or costs
27 shall not, by itself, in any way delay or preclude the Judgment from becoming Final.
28

1 1.14 “FLSA” means the Federal Labor Standards Act, 29 U.S.C. §
2 201 *et seq.*

3 1.15 “Information Sheet” sheet means the form that shall be
4 prepared by the Settlement Administrator and sent to each Class Member that sets
5 forth the total number of Qualifying Work Weeks worked by the Class Member and
6 the estimated individual Settlement Sum to be issued to that Class Member. The
7 Information Sheet shall be provided substantially in the form attached as **Exhibit 3**,
8 including English and Spanish translations, which (subject to Court approval) the
9 Settlement Administrator shall mail to each Class Member with the Notice.

10 1.16 “Judgment” means the final order and judgment—or any
11 similar order or minute order—to be entered by the Court upon granting final
12 approval of the Settlement and this Stipulation as binding.

13 1.17 “Last Known Address” or “Last Known Addresses” means the
14 most recently recorded mailing address for a Class Member as such information is
15 contained in employment or personnel records maintained by Defendant.

16 1.18 “Litigation” means the to be filed lawsuit captioned *Everett*
17 *King v. Russ Bassett Corp., et al*, to be pending before the Superior Court of the
18 State of California, County of Los Angeles, and its predecessor lawsuits on which it
19 tolls, previously pending before the United States District Court for the Central
20 District of California, Case No. 2:17-cv-01351-PA-KS and 2:17-cv-03981-PSG-SK.

21 1.19 “Maximum Settlement Amount” means the gross sum of
22 \$250,000.00 the Defendant shall pay under the terms of this Stipulation. This
23 amount shall cover all expenses associated with the settlement, including (a)
24 Maximum Settlement Portion for Payments to Settlement Class Members; (b) the
25 maximum gross amount for Class Counsel’s attorneys’ fees to be paid in accordance
26 with the terms set forth in Paragraph 2.8.1, which is \$83,333.33; (c) the maximum
27 gross amount for all of Class Counsel’s and the Class Representative’s litigation
28 costs and associated expenses of up to \$30,000; (d) the anticipated claims

1 administration costs of up to \$12,000; (e) enhancement payments to be made by
2 Defendant to the Class Representative, in accordance with the terms set forth herein,
3 which is a maximum of \$5,000 to Everett King; and (f) the maximum gross amount
4 for payment to the California Labor Workforce Development Agency as part of the
5 consideration for the release of all claims specified in Paragraph 2.7.3 under the
6 California Private Attorneys General Act of 2004, codified at California Labor Code
7 sections 2698 *et seq.*, which is \$15,000 (75% of the total PAGA penalties).
8 Defendant will not pay more than the Maximum Settlement Amount save for the
9 employer's share of withholding taxes which shall be paid separately by the
10 Defendant, any proportional escalation from previously undisclosed Qualifying
11 Work Weeks as further explained in Paragraph 2.10.3.

12 1.20 “Maximum Settlement Portion for Payments to Settlement
13 Class Members” means the maximum amount for payments to those Class Members
14 who are Settlement Class Members.

15 1.21 “Notice Mailing Deadline” means the date forty (40) days after
16 the Preliminary Approval Date.

17 1.22 “Notice Response Deadline” means the date sixty (60) days
18 after the date that the Claims Administrator mails the Notice to the Class. “Opt
19 Out” or “Opt Outs” means written requests by Class Members, in the form specified
20 in the Class Notice, to be excluded from the Settlement Class. Class Members shall
21 not be eligible to opt out of the settlement for the PAGA claims.

22 1.23 “Order of Final Approval” or “Order Granting Final Approval
23 of Settlement” means an order to be entered and filed by the Court, to be submitted
24 to the Court with the Motion for Final Approval of the Settlement.

25 1.24 “PAGA Period” means the period from March 22, 2016
26 through and including the date of the Preliminary Approval Order.

27 1.25 “Participating Claimant” means all Members of the Settlement
28 Class.

1 1.26 “Payroll Taxes” or “Employer’s Share of Payroll Taxes”
2 means Defendant’s portion of payroll taxes, including, but not limited to FICA and
3 FUTA, and associated payments that an employer is required to make when making
4 standard wage payments to employees.

5 1.27 “Person” means a natural person.

6 1.28 “Preliminary Approval Date” means the date on which the
7 Court enters the Preliminary Approval Order.

8 1.29 “Preliminary Approval Order” means an order executed and
9 filed by the Court, to be submitted to the Court with the Plaintiffs’ Motion for
10 Preliminary Approval of this Stipulation and Settlement.

11 1.30 A “Qualifying Work Week” is any calendar week in which a
12 Class Member was employed by Russ Bassett in California as a nonexempt
13 employee during the Class Period and worked at least one day. Defendant has
14 represented to the Class Representative and Class Counsel that the total number of
15 Qualifying Work Weeks in the Class Period for all Class Members is 18,510 Work
16 Weeks.

17 1.31 A “Reasonable Address Verification Measure” means the
18 utilization of the National Change of Address Database maintained by the United
19 States Postal Service to review the accuracy of and, if possible, update a mailing
20 address. In the event a mailing address comes back undeliverable the administrator
21 will attempt to locate a new address through a skip trace protocol.

22 1.32 “Settlement Class” or “Settlement Class Members” means the
23 group of all Class Members who do not opt out of the Class by submitting Opt Outs,
24 and thus means the collective group of all of the Class Members who will become
25 subject to and bound by the Judgment if the Effective Date occurs. This definition
26 also includes all Aggrieved Employees.

27 1.33 “Settlement Sum” means the total, gross amount due to an
28 individual Participating Claimant, which shall be the product of the Settlement Sum

1 Variable multiplied by the number of Qualifying Work Weeks worked by that
2 Participating Claimant.

3 1.34 “Settlement Sum Variable” means the number which is the
4 quotient of the Maximum Settlement Portion for Payments to Settlement Class
5 Members divided by the total number of Qualifying Work Weeks for all Settlement
6 Class Members.

7 1.35 “Settlement Hearing” means a final fairness hearing or similar
8 hearing set by the Court which the Settling Parties will seek to take place on or
9 about a date which is approximately sixty (60) days after the Notice Response
10 Deadline for the purpose of (i) determining the fairness, adequacy and
11 reasonableness of the Stipulation and associated settlement pursuant to class and
12 collective action procedures and requirements; (ii) determining the good faith of the
13 Stipulation and associated settlement; (iii) awarding attorneys’ fees, costs, and
14 enhancement awards; and (iv) entering Judgment.

15 1.36 “Settlement Hearing Motion Date” shall mean the date on
16 which the motion for final approval is filed pursuant to Paragraph 2.5.6, and the
17 Settling Parties will seek that this date occur approximately 28 days prior to the
18 Settlement Hearing.

19 1.37 “Settling Parties” means (a) Defendant, on the one hand; and
20 (b) the Class Representative on behalf of himself and all Members of the Settlement
21 Class, on the other hand.

22 1.38 “Stipulation” means this agreement and all of its attachments
23 and exhibits, which the Settling Parties understand and agree sets forth all material
24 terms and conditions of the settlement between them, and which is subject to Court
25 approval.

26 1.39 “Updated Address” means a mailing address that was updated
27 via a Reasonable Address Verification Measure or via an updated mailing address
28 provided by the United States Postal Service or a Class Member.

1 1.40 “Wage” or “Wages” Or “wage” or “wages” shall have the same
2 meaning as the term wages under California Labor Code section 200.

3 2. The Settlement.

4 2.1 *Consideration to Settlement Class Members and Aggrieved*
5 *Employees*

6 2.1.1 The Maximum Settlement Amount shall be paid by
7 Defendants in one lump sum payment within seven (7) calendar days after the
8 Effective Date. Within fifteen (15) days of the Effective Date, and only if the
9 Effective Date occurs, Defendant, through the Claims Administrator, and according
10 to the terms, conditions, and procedures set forth in this Stipulation, shall pay each
11 Participating Claimant his or her Settlement Sum. The Settlement Sums shall be
12 allocated for reporting reasons as follows: (a) twenty percent (20%) shall be deemed
13 payment in settlement of claims for unpaid wages; and (b) eighty percent (80%)
14 shall be deemed payment for penalties, liquidated damages, and interest. Payroll
15 Taxes on the wage portion of these payments will be paid separately by the
16 Defendant in addition to the Maximum Settlement Amount, or escalation thereof.

17 2.1.2 As further detailed in this Section 2, Defendant, itself or
18 through the Claims Administrator, will report each payment made pursuant to this
19 Stipulation to government authorities, including the Internal Revenue Service, as
20 required by law.

21 2.1.3 The only persons entitled to any payment under this
22 Stipulation and the associated Judgment are Settlement Class Members.

23 2.2 *Taxes*

24 2.2.1 Those payments (or portions thereof) allocated to the
25 settlement of claims for unpaid wages (a) shall be subject to required withholdings
26 and deductions with the employer’s share of withholding taxes paid separately by
27 the Defendant; and (b) shall be reported in the year of payment as wage income to
28 the Settlement Class Members on a Form W-2 or analogous form. Those payments

1 (or portions thereof) allocated to any other claims, including without limitations
2 claims for penalties, liquidated damages, and interest (a) shall not be subject to
3 withholdings and deductions; and (b) shall be reported in the year of payment as
4 non-wage income to the Settlement Class Members on a Form 1099 or analogous
5 form. Other than as set forth above, Defendant will not, unless otherwise required
6 by law, make any further deductions, withholdings or additional payments from the
7 Settlement Sum of any Participating Claimant, for medical or other insurance
8 payments or premiums, employee 401(k) contributions or matching employer
9 contributions, wage garnishments, or charity withholdings, and entry of the Order of
10 Final Approval by the Court shall be deemed authority not to make such deductions,
11 withholdings, or additional payments.

12 2.2.2 Other than the withholding and reporting requirements set
13 forth in Paragraphs 2.1.2 and 2.2.1 and the employer's standard share of liability for
14 Payroll Taxes on the portions of the payments characterized as wage payments, the
15 Settlement Class Members shall be solely responsible for the reporting and payment
16 of any federal, state and/or local income or other tax or any other withholdings, if
17 any, on any of the payments made pursuant to this Stipulation. Defendant, its
18 counsel and Class Counsel make no representations, and it is understood and agreed
19 that no representations have been made, as to the taxability of any portions of the
20 settlement payments to any Settlement Class Members, the payment of any costs or
21 attorneys' fee awards, any payments to the Class Representative, or any other
22 payments made pursuant to this Stipulation. The Notice will advise Class Members
23 to seek their own tax advice prior to acting in response to that notice.

24 2.3 *Approval of Notice to the Classes and Scheduling of a*
25 *Settlement Hearing.*

26 2.3.1 The Class Representative, through Class Counsel, shall file
27 this Stipulation with the Court and move for preliminary approval of this
28 Stipulation. (Class Counsel will provide an advance copy of this motion to counsel

1 for Defendant.) Via this submission, and a supporting motion, the Class
2 Representatives, through Class Counsel, will request that the Court enter the
3 Preliminary Approval Order thereby scheduling the Settlement Hearing for the
4 purposes of determining the good faith of this settlement, granting final approval of
5 the settlement, granting final approval of this Stipulation, and entering Judgment.
6 Via this same motion, the Class Representative, through Class Counsel shall advise
7 the Court of the agreements set forth in Paragraphs 2.8.1, 2.8.2 and 2.8.3 of this
8 Stipulation.

9 2.3.2 Subject to Court availability, the Class Representative shall
10 endeavor to notice the motion for entry of the Preliminary Approval Order described
11 in Paragraph 2.3.1 for a hearing before the Court as soon as possible. Failure of the
12 Court to enter the Preliminary Approval Order in its entirety or in a substantially
13 similar form following the best efforts of the Settling Parties to obtain such entry
14 will be grounds for the Settling Parties to terminate the settlement and the terms of
15 this Stipulation.

16 2.3.3 If the Court enters the Preliminary Approval Order more than
17 twenty (20) days after the hearing date for the motion for preliminary approval,
18 Class Counsel and counsel for Defendant shall meet and confer to reach agreement
19 on any necessary revisions of the deadlines and timetables set forth in this
20 Stipulation. In the event that the Settling Parties fail to reach such agreement, any
21 of the Settling Parties may apply to the Court via a noticed motion for modification
22 of the dates and deadlines in this Stipulation, provided that such a request to the
23 Court may seek only reasonable modifications of the dates and deadlines contained
24 in this Stipulation and no other changes.

25 2.3.4 If the Court enters the Preliminary Approval Order, then at
26 the resulting Settlement Hearing, the Class Representative and Defendant, through
27 their counsel of record, shall address any written objections from Class Members,
28 any concerns from Class Members who attend the hearing, and any concerns of the

1 Court. Unless the Stipulation is terminated or voided per its terms, the Settling
2 Parties and their counsel will seek approval of the Stipulation and entry of the
3 Judgment by the Court.

4 2.4 *Notice to Class Members.*

5 2.4.1 If, by entering the Preliminary Approval Order, the Court
6 provides authorization to send the Notice to Class Members, Defendant, through the
7 Claims Administrator, will facilitate the mailing of the Notice to all Class Members
8 at their Last Known Addresses. All the Notices shall be mailed via first class mail
9 through the United States Postal Service, postage pre-paid, and they will be posted
10 on a website established by the Claims Administrator as set forth in this Stipulation.
11 The Notice shall include instructions on how a Class Member can submit an Opt
12 Out. Information Sheets will be included with the mailings enclosing the Notices.

13 2.4.2 The Notice and their envelopes or coverings shall be marked
14 to denote the return address of the Claims Administrator as listed in the Notice.

15 2.4.3 No later than fifteen (15) business days after the Preliminary
16 Approval Order, Defendant shall compile information respecting the name, Last
17 Known Address, and number of Qualifying Work Weeks for each Class Member for
18 the Claims Administrator so that the Claims Administrator can state in the
19 Information Sheet each individual's Settlement Sum, engage in the processing and
20 mailing of each Notice, and carry out the associated claims and payment process.
21 By preliminarily approving this settlement, the Court will be deemed to have
22 authorized Defendant to provide the Claims Administrator with the Social Security
23 Number of each Class Member. The number of Qualifying Work Weeks and the
24 associated calculation of Settlement Sums will be determined by reference to
25 Defendant's records, which shall be presumed to be correct. In the event that a
26 Class Member disputes his or her Settlement Sum or number of Qualifying Work
27 Weeks, the Claims Administrator shall consult with Defendant and provide them the
28 opportunity to honor the dispute and make the increased payment. If Defendant

1 disputes the challenge, the Settling Parties shall meet and confer in an effort to
2 resolve the matter, and if they are unable to do so, they shall seek a determination
3 from the Claims Administrator as to the proper Settlement Sum for the individual in
4 question before raising any such issue with the Court. Unless the number of
5 Qualifying Work Weeks for all Class Members increases by more than ten percent,
6 as a result of this process, there shall be no increase in the Maximum Settlement
7 Amount.

8 2.4.4 Prior to mailing the Notice to each Class Member, the Claims
9 Administrator shall include in the space provided on each such notice the minimum,
10 gross Settlement Sum for the Class Member in question.

11 2.4.5 Prior to mailing the Notice to each Class Member, the Claims
12 Administrator shall undertake a Reasonable Address Verification Measure to
13 ascertain the current accuracy of the Last Known Address of each Class Member.
14 To the extent this process yields an Updated Address, that Updated Address shall
15 replace the Last Known Address and be treated as the new Last Known Address for
16 purposes of this Stipulation and for subsequent mailings in particular.

17 2.4.6 The Notice Mailing Deadline is the last date for the Claims
18 Administrator to mail the Notices to the Last Known Address of each Class Member
19 and post the Notices on the website established per this Stipulation.

20 2.4.7 All costs of the mailing described in Paragraph 2.4.1
21 (including, for example, the fees charged by the Claims Administrator, the cost of
22 the envelopes in which the Notice will be mailed, the cost of reproducing the Notice,
23 the cost of postage to send the Notice, the cost of return envelopes and pre-paid
24 postage for the return envelopes for Claim Forms, and the costs of maintaining the
25 website established per this Stipulation), shall be included in the portion of the
26 Maximum Settlement Amount allocated for claims administration costs.

27 2.4.8 Unless the Claims Administrator receives a Notice returned
28 from the United States Postal Service for reasons discussed below in this paragraph,

1 each Notice shall be deemed mailed and received by the Class Member upon
2 mailing. In the event that subsequent to the first mailing of a Notice, and prior to
3 the Notice Response Deadline, a Notice is returned to the Claims Administrator by
4 the United States Postal Service with a forwarding address for the recipient, the
5 Claims Administrator shall re-mail that Notice to the forwarding address, that
6 Notice will be deemed mailed and received at that point, and the forwarding address
7 shall be deemed the Updated Address for that Class Member. In the event that
8 subsequent to the first mailing of a Notice, and prior to the Notice Response
9 Deadline, a Notice is returned to the Claims Administrator by the United States
10 Postal Service because the address of the recipient is no longer valid, *e.g.*, the
11 envelope is marked “Return to Sender,” the Claims Administrator shall undertake
12 another Reasonable Address Verification Measure to attempt to ascertain the current
13 address of the particular Class Member in question and, if such an address is
14 ascertained, the Claims Administrator will re-send that Notice within five (5) days
15 of receiving such information. If no Updated Address is obtained for that Class
16 Member through this second effort, the Notice shall be sent again to the Last Known
17 Address, and in either event, the Notice shall be deemed received once it is mailed
18 for the second time. In the event that subsequent to the second mailing of a Notice,
19 and on or after the Notice Response Deadline, a Notice is returned to the Claims
20 Administrator by the United States Postal Service because the address of the
21 recipient is no longer valid, *i.e.*, the envelope is marked “Return to Sender,” the
22 Claims Administrator shall be required to take no further action with that Notice and
23 it shall be deemed to have been delivered. Nothing in this Paragraph 2.4.8 shall be
24 deemed to extend the Notice Response Deadline.

25 2.5 *Responses to the Notice; Motion for Final Approval.*

26 2.5.1 Class Members may elect to “opt out” of the Class and thus
27 exclude themselves from the Class. Class Members who wish to exercise this
28 option must mail to the Claims Administrator a timely, written Opt Out consistent

1 with the instructions contained in the Notice. If an Opt Out is not received by the
2 Claims Administrator from a Class Member postmarked on or before the Notice
3 Response Deadline, then that Class Member will be deemed to have forever waived
4 his or her right to opt out of the Settlement for the class claims. Class Members who
5 do not properly submit Opt Outs shall be deemed Members of the Settlement Class.
6 Class Members who properly submit Opt Outs will not be entitled to any benefit of
7 the settlement for the class claims. However, Class Members who are also
8 Aggrieved Employees shall not be eligible to opt out of the settlement for the
9 PAGA claims and will be bound to the Aggrieved Employee release. Should a
10 Class Member choose to opt-out of the Settlement, the Class Member shall still be
11 entitled to his or her share of the PAGA portion of the Maximum Settlement Portion
12 for Payments to Settlement Class Members. To the extent that any Class Members
13 properly submit Opt Outs, the funds that would have been allocated to them for
14 payment of the Settlement Sums shall, consistent with Paragraph 1.35, be allocated
15 to Settlement Class Members on a *pro rata* basis according to Qualifying Work
16 Weeks.

17 2.5.2 Class Members who have not filed a valid Opt Out are
18 Settlement Class Members and shall be deemed Members of the Settlement Class
19 and bound by all terms of the Judgment. Settlement Class Members' FLSA claims,
20 however, are only released should an individual Participating Class Member sign his
21 or her individual Settlement Sum check, assenting to opt in to the FLSA class, as
22 further described in this Stipulation.

23 2.5.3 Class Members who have not filed a valid Opt Out have the
24 option to participate in this Litigation at their own expense by obtaining their own
25 attorney(s). Class Members who choose this option will be responsible for any
26 attorneys' fees or costs incurred as a result of this election. The Notice will advise
27 Class Members of this option.

28

1 2.5.4 Class Members who have not filed a valid Opt Out may
2 object to the Stipulation by submitting written objections to the Claims
3 Administrator no later than the Notice Response Deadline. The Notice shall advise
4 Class Members of this option. The Claims Administrator shall immediately provide
5 any such objections to the Settling Parties, who shall subsequently provide them to
6 the Court during the final approval process. The Settling Parties agree to respond to
7 any objections at a hearing before the Court.

8 2.5.5 To the extent that a Class Member timely submits an
9 incomplete Opt Out (*i.e.*, not all necessary information is included), the Claims
10 Administrator shall promptly attempt to contact that person to advise him or her of
11 the deficiency and give him or her the opportunity to correct the deficiency no later
12 than the Notice Response Deadline or fifteen (15) days after contact is attempted,
13 whichever is later, provided that this paragraph shall in no way extend the Notice
14 Response Deadline for any Class Members to whom there was no deficiency. If
15 contact is not successful or no attempt to cure the deficiency is made by the Class
16 Member, the Settlement Parties shall meet and confer to determine if the original
17 Opt Out was indeed deficient, with the presumption that the Class Member be
18 deemed a Participating Claimant.

19 2.5.6 Prior to the Settlement Hearing and consistent with the rules
20 imposed by the Court, the Class Representatives shall move the Court for entry of
21 the Order of Final Approval and the associated entry of Judgment (Class Counsel
22 shall provide advance notice of this motion to Defendant via email to Defendant's
23 counsel). Defendant shall not oppose this motion. Through this motion, the Class
24 Representatives and Class Counsel shall be responsible for justifying the agreed
25 upon payments set forth in Paragraphs 2.8.1, 2.8.2, and 2.8.3 of this Stipulation.
26 The Settling Parties shall make all reasonable efforts to secure entry of the Order of
27 Final Approval. If the Court rejects the Stipulation, or fails to enter the Order of
28 Final Approval, or enter the Judgment, this Stipulation shall be void *ab initio*, and

1 Defendant shall have no obligations to make any payments under the Stipulation. In
2 the event that the Stipulation becomes void for this or any other reason, Defendant
3 agrees to pay the reasonable fees and costs already incurred by the Claims
4 Administrator and retain all rights to challenge all claims and allegations in the
5 Litigation upon all procedural and factual grounds, including without limitation the
6 ability to challenge class or collective action treatment on any grounds or assert any
7 and all defenses. Notice of the Final Judgment will be posted to the claims
8 administrator's website.

9 2.6 *Timing of Payment to Settlement Class Members.*

10 2.6.1 The Maximum Settlement Amount shall be paid by
11 Defendants in one lump sum payment within seven (7) calendar days after the
12 Effective Date. Within fifteen (15) days of, and only after, the Effective Date,
13 Defendant, through the Claims Administrator, shall pay to each Participating Class
14 Member his or her respective Settlement Sum, including any funds that are being
15 redistributed to such Participating Claimant on a *pro rata* basis according to
16 Qualifying Work Weeks, as provided in Paragraphs 2.5.1, 2.5.2, 2.8.1, and 2.8.2.

17 2.6.2 In accordance with the terms of Paragraphs 2.1.1 and 2.1.2,
18 Defendant, through the Claims Administrator, shall issue to each Participating
19 Claimant a check for his or her individual Settlement Sum from an account
20 administered by the Claims Administrator but funded by Defendant. Defendant,
21 through the Claims Administrator, shall mail these checks to each Participating
22 Claimant at his or her Last Known Address, or Updated Address if obtained, within
23 fifteen (15) days of the Effective Date. Checks issued to Settlement Class Members
24 will contain a release on the back that states: "My signature hereon constitutes my
25 declaration, under penalty of perjury, that I am the individual to whom this check
26 was made payable and serves as my full and complete release of all 'Released
27 Claims' as described more fully in the Stipulation and the Class Notice. I further
28 understand that by cashing this check I am electing to opt into an FLSA action and

1 to release any and all claims I may have under the FLSA related to the claims that
2 were made or arise out of the facts asserted in this Action.” Checks for individual
3 Settlement Sums issued by the Settlement Administrator to Settlement Class
4 Members must be cashed within one hundred and eighty (180) days of issuance. If a
5 check is returned to the Settlement Administrator as undeliverable, or remains
6 uncashed after one hundred and eighty (180) days from issuance, the Settlement
7 Administrator shall void any such checks. Thereafter, the funds represented by the
8 voided checks shall be paid to the *cy pres* Legal Aid at Work, non-profit
9 organization whose main purpose is to combat wage theft and educate workers
10 about their wage-and-hour rights. In the event that any un-cashed or abandoned
11 checks must be distributed to the *cy pres* recipient, the Settlement Administrator will
12 cancel the tax documents associated with those uncashed or abandoned checks, and
13 the Parties will submit to the Court a revised Judgment that states the final
14 disposition of all amounts under this Settlement, including that amount of all
15 uncashed checks and any accrued interest, in compliance with California Code of
16 Civil Procedure § 384. The Settlement Administrator shall not transmit any funds to
17 the *cy pres* recipient until the Parties have provided the Settlement Administrator a
18 revised Judgment approving the final distribution of all Settlement funds, including
19 the aggregate amount of unclaimed funds and accrued interests, if any, to be
20 transmitted to the *cy pres* recipient. Any revised Judgment shall require that all
21 unclaimed funds and any accrued interests shall be distributed to the *cy pres*
22 recipient so that no additional funds from this Settlement remain in the custody of
23 the Settlement Administrator.

24 2.6.3 Following the mailing of the payments pursuant to Paragraph
25 2.6.2, the Claims Administrator shall provide counsel for the Settling Parties with a
26 written confirmation that such payments have been made. Upon request of Class
27 Counsel the Claims Administrator shall provide any necessary declarations,
28

1 including but not limited to a final declaration regarding final distribution, to be
2 filed with the Court in the Litigation.

3 2.7 *Releases*

4 2.7.1 *Participating Class Members' Released Claims*: Upon the
5 date the Defendant fully funds the settlement, Class Representative and each of the
6 Class Members shall be deemed to have, and by operation of the Judgment shall
7 have, fully, finally, and forever released, relinquished, and discharged all claims
8 alleged or that could have been alleged based on the facts, allegations, and legal
9 theories raised in the proposed Complaint including all of the following claims,
10 actions, demands, causes of action, suits, debts, obligations, damages, rights or
11 liabilities: (a) failure to pay minimum wages, straight time wages, or overtime
12 wages; (b) failure to provide proper meal and rest periods, to properly provide
13 premium pay in lieu thereof, or to properly calculate premium pay in lieu of meal
14 and rest periods; (c) failure to maintain required records; (d) failure to provide
15 complete and/or accurate wage statements; (e) failure to timely pay wages due or
16 final wages due; (f) unfair business practices; (g) civil penalties under the Private
17 Attorneys General Act ("PAGA"); (h) any other claims or penalties under the wage
18 and hour laws pleaded in the Litigation; (k) any other claims or penalties under the
19 wage and hour laws pleaded in the Litigation or that could have been pleaded in the
20 operative complaint against the Releasees, and each of them, based on the facts
21 alleged in the operative complaint pursuant to the Labor Code, Business &
22 Professions Code section 17200 et seq., Code of Civil Procedure section 1021.5, the
23 Fair Labor Standards Act, applicable sections of the California Industrial Wage
24 Orders, and applicable sections of the California Code of Regulations, all claimed or
25 unclaimed compensatory, consequential, incidental, liquidated, punitive and
26 exemplary damages, penalties, restitution, interest, costs and attorneys' fees,
27 injunctive or equitable relief, and any other remedies available at law or equity, and
28 other amounts recoverable under said causes of action under California and federal

1 law, to the extent permissible (collectively, the “Class Member Released Claims”).
2 Only Settlement Class Members who timely cash their check for their individual
3 Settlement Sum will be deemed to have “opted in” to the release of the Released
4 Claims arising under the Fair Labor Standards Act of 1938, 29 U.S.C. § 216(b)
5 (“FLSA”).

6 2.7.2 *Class Representative Released Claims:* Additionally, upon the
7 date the Defendant fully funds the settlement the Class Representative (and only the
8 Class Representative) shall be deemed to have, and by operation of the Judgment
9 shall have, fully, finally, and forever released, relinquished, and discharged all
10 claims, demands, rights, liabilities, and/or causes, of any form whatsoever, whether
11 known or unknown, unforeseen, unanticipated, unsuspected or latent, that have been
12 or could have been asserted by the Class Representative as an individual, or his
13 heirs, successors and/or assigns, whether directly, indirectly, representatively,
14 derivatively or in any other capacity, against Defendant, and each of them, or any
15 Releasees, arising at any time prior to entry of the Final Order and Judgment. As
16 part of this “General Release,” Class Representative also expressly waives all rights
17 and benefits under the terms of section 1542 of the California Civil Code. Section
18 1542 reads as follows:

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

24 Notwithstanding the provisions of section 1542, and for the purpose of
25 implementing a full and complete release and discharge of all of his claims, the
26 Class Representative expressly acknowledges that this Settlement is intended to
27 include in its effect, without limitation, all claims which the Class Representative
28

1 does not know or suspects to exist in his favor at the time of execution hereof, and
2 that the Settlement contemplates the extinguishment of all such claims.

3 2.7.3 *Aggrieved Employees' Released Claims:* In addition to the
4 release set forth in Paragraph 2.7.1, this settlement shall result in the release by the
5 Aggrieved Employees of all any and all claims and/or causes of action arising under
6 the California Private Attorneys General Act of 2004 ("PAGA"), codified at
7 California Labor Code section 2698 *et seq*, which are based upon the factual
8 allegations set forth in the operative complaint and arising at any time during the
9 PAGA period. The total amount of the Maximum Settlement Amount allocated to
10 PAGA penalties is \$20,000.00. The Settling Parties agree that Defendant's payment
11 of \$15,000 (75% of the PAGA penalties), to the California Labor Workforce
12 Development Agency (as part of the Maximum Settlement Amount) to settle these
13 claims is appropriate and proper consideration. As part of this settlement, and
14 subject to Court approval, Defendant will pay through the Claims Administrator
15 \$15,000 out of the Maximum Settlement Amount to the California Labor and
16 Workforce Development Agency.

17 2.8 *Payment of Costs, Attorneys' Fees, and Class Representative*
18 *Enhancement.*

19 2.8.1 Subject to Court approval and the occurrence of the Effective
20 Date, within fifteen (15) days of the Effective Date, Defendant, through the Claims
21 Administrator, shall pay to Class Counsel, reasonable attorneys' fees and litigation
22 costs and associated expenses, not to exceed the amounts specified herein. Class
23 Counsel may seek up to, but not to exceed, \$83,333.33 for all attorneys' fees, and an
24 additional amount up to, but not to exceed, \$30,000 for all allowable litigation costs
25 and associated expenses. The Class Representative and Class Counsel agree that
26 they shall be responsible for justifying their requested fee, cost, and expense awards
27 to the Court, and they agree to submit the necessary materials to justify the
28 requested fee, cost and enhancement awards. Defendant agrees not to oppose any

1 submission regarding, or request for approval of, an award of attorneys' fees, costs,
2 and expenses, provided that it is consistent with this Paragraph. In the event that the
3 Court (or appellate court) awards less than the maximum gross amount for
4 attorneys' fees, costs and expenses, only the awarded amounts shall be paid and
5 shall constitute full satisfaction of any claims for attorneys' fees, costs and expenses
6 in the Litigation, and any remaining or unawarded portion of the maximum gross
7 amount for attorneys' fees, costs, or expenses shall be allocated to the Settlement
8 Class Members *pro rata* and included in the distributions to Settlement Class
9 Members pursuant to this Stipulation. Prior to Defendant making this payment,
10 Class Counsel shall provide counsel for Defendant and the Claims Administrator
11 with the pertinent taxpayer identification numbers for the payees and Form(s) W-9.
12 Other than any reporting of these payments as required by this Stipulation or law,
13 which Defendant shall make, Class Counsel, and the Class Representative, shall
14 alone be responsible for the reporting and payment of any federal, state and/or local
15 income or other form of tax on any payment made pursuant to this paragraph.
16 Payments awarded and made pursuant to this paragraph shall constitute full
17 satisfaction of any claim for attorneys' fees, costs, or expenses incurred in this
18 Litigation, and the Class Representative and Class Counsel, agree that they shall
19 neither seek nor be entitled to any additional attorneys' fees, costs, or expenses
20 under any theory, nor shall they seek amounts in excess of those specified herein.

21 2.8.2 Provided that the Effective Date occurs, and in exchange for
22 their service as Class Representative and his General Release, Defendant, through
23 the Claims Administrator, will forward a check payable to Everett King, via his
24 counsel of record, in the gross amount of five thousand dollars (\$5,000) within
25 fifteen (15) days of the Effective Date, however, should the Court approve a lesser
26 amount for the Class Representative, payment shall be in such amount(s) as the
27 Court orders. This payment shall be the total compensation and consideration for (i)
28 King's efforts as class representative in the Litigation; and (ii) his General Release

1 of all claims to the benefit of the Releasees. The enhancement award is separate
2 from and in addition to any payments from the Settlement Sum to which Everett
3 King is entitled to under this Stipulation. In the event that the Court (or appellate
4 court) awards less than the enhancement award stated above, the unawarded portion
5 shall be included in the distributions to Settlement Class Members pursuant to this
6 Stipulation.

7 2.9 *Claims Administrator.*

8 2.9.1 All fees and expenses reasonably incurred by the Claims
9 Administrator as a result of procedures and processes expressly required by this
10 Stipulation shall be paid by Defendant and taken from the Maximum Settlement
11 Amount. The Class Representative and Class Counsel shall have no responsibility
12 for such fees or expenses, whether or not the Effective Date occurs. The total
13 amount charged by the Claims Administrator shall not exceed \$12,000.00.

14 2.9.2 The actions of the Claims Administrator shall be governed by
15 the terms of this Stipulation. The Settling Parties shall work cooperatively to ensure
16 that the Claims Administrator receives information necessary to carrying out its
17 responsibilities. The Claims Administrator shall, on a reasonable basis, keep Class
18 Counsel and Defendant's Counsel apprised of its progress, its efforts, and of the
19 response from Class Members and of any other communications received by
20 members of the Class, concerning the settlement. The Claims Administrator shall
21 provide the Court, at least ten (10) days prior to the Final Approval Hearing, a
22 declaration of due diligence and proof of mailing with respect to (i) the mailing of
23 the Notice; (ii) attempts to locate Class members; (iii) the number of Class Members
24 for whom the Notice was ultimately undeliverable; (iv) participation, objection and
25 Opt Out rates; and (v) the average and highest payments to Class Members.

26 2.10 *Termination or Voidance of Settlement or Stipulation*

27 2.10.1 In the event that the Stipulation is not substantially approved
28 by the Court or the settlement set forth in the Stipulation is terminated, cancelled, or

1 declared void, or fails to become effective in accordance with its terms, or if the
2 Judgment does not become Final, the Settling Parties shall resume the Litigation at
3 that time as if no Stipulation had been entered, with each of the Settling Parties
4 bearing their own costs and fees with regard to the efforts to implement this
5 Stipulation and obtain Court approval, and no payments whatsoever being made by
6 Defendant to anyone in accordance with the terms of this Stipulation, except that
7 Defendant will be responsible for any reasonable costs incurred by the Claims
8 Administrator up to the point in time that the Stipulation is terminated, cancelled, or
9 declared void. In such event, any order entered by the Court in accordance with the
10 terms of the Stipulation shall be treated as vacated *nunc pro tunc*, and the
11 Stipulation shall have no further force and effect with respect to the Settling Parties,
12 and shall not be used in this Litigation or in any other proceeding for any purpose,
13 including in relation to issues of class or collective action certification.

14 2.10.2 Notwithstanding any other provision of this Stipulation, no
15 order of the Court or modification or reversal on appeal of any order of the Court
16 concerning the amount or allocation of any attorneys' fee or litigation cost or
17 expense awards or class representative enhancement award to be paid by Defendant
18 shall constitute grounds for cancellation or termination of the Stipulation or grounds
19 for limiting any other provision of the Judgment, provided that Defendant shall
20 never be required to pay in excess of the agreed to amounts for attorneys' fees and
21 litigation costs and expenses and enhancement awards specified in Paragraphs 2.8.1
22 and 2.8.2.

23 2.10.3 Defendant have represented that the total Qualifying Work
24 Weeks for the Class is 18,510 Work Weeks. Should the total Qualifying Work
25 Weeks for the Class increase by more than ten percent (10%) for a total of 20,361
26 Qualifying Work Weeks or more, the Maximum Settlement Amount shall increase a
27 proportional amount as percentage increase in Qualifying Work Weeks.

28 2.11 *Miscellaneous Provisions.*

1 2.11.1 No Person shall have any claim against Class Counsel, the
2 Claims Administrator, or counsel for Defendant based on the payments made or
3 other actions taken substantially in accordance with the Stipulation and the
4 settlement contained therein or further orders of the Court.

5 2.11.2 The Settling Parties (a) acknowledge that it is their intent to
6 consummate this agreement; and (b) agree to exercise their best efforts to obtain
7 Court approval, secure the effectiveness of the Judgment, and implement all terms
8 and conditions of the Stipulation.

9 2.11.3 The Stipulation compromises claims which are contested in
10 good faith, and it shall not be deemed an admission by any of the Settling Parties as
11 to the merits of any claim or defense. The Settling Parties agree that the amounts
12 paid in settlement and the other terms of the settlement were negotiated at arms-
13 length and in good faith by the Settling Parties, and reflect a settlement that was
14 reached voluntarily after consultation with competent legal counsel.

15 2.11.4 Neither the Stipulation nor the settlement, nor any act
16 performed or document executed pursuant to, or in furtherance of, the Stipulation or
17 the settlement: (a) is or may be deemed to be or may be used as an admission of, or
18 evidence of, the validity of any Released Claim, or of any wrongdoing or liability of
19 Defendant; or (b) is or may be deemed to be or may be used as an admission of, or
20 evidence of, any fault or omission of Defendant, in any civil, criminal or
21 administrative proceeding in any court, administrative agency, or other tribunal.

22 2.11.5 The Stipulation may be amended or modified only by a
23 written instrument signed by or on behalf of all Settling Parties, their respective
24 successors-in-interest, or as expressed in section 2.11.7.

25 2.11.6 The Stipulation constitutes the entire agreement among the
26 Settling Parties hereto and no representations, warranties, or inducements have been
27 made to any party concerning the Stipulation or its exhibits other than the
28 representations, warranties, and covenants contained and memorialized in such

1 documents. Except as otherwise provided herein, each party shall bear its own
2 costs.

3 2.11.7 Class Counsel are expressly authorized by the Class
4 Representatives to take all appropriate action required or permitted to be taken by
5 the Class pursuant to the Stipulation to effect its terms, and also are expressly
6 authorized to enter into any modifications or amendments to, any documents or
7 pleadings filed in support of the Stipulation on behalf of the Class which they deem
8 appropriate, including but not limited to modification of the Class Notice or any
9 other exhibit to this Stipulation.

10 2.11.8 Each counsel or other Person executing the Stipulation or any
11 of its exhibits on behalf of any party hereto hereby warrants that such Person has the
12 full authority to do so.

13 2.11.9 The Stipulation may be executed in one or more counterparts
14 by email or facsimile. All executed counterparts and each of them shall be deemed
15 to be one and the same instrument.

16 2.11.10 The Stipulation shall be binding upon, and inure to the benefit
17 of, the successors and assigns of the parties hereto; but this Stipulation is not
18 designed to and does not create any third party beneficiaries.

19 2.11.11 The Court shall retain jurisdiction with respect to
20 implementation and enforcement of the terms of the Stipulation, and all parties
21 hereto submit to the jurisdiction of the Court for purposes of implementing and
22 enforcing the settlement embodied in the Stipulation.

23 2.11.12 The Stipulation and the exhibits hereto shall be considered to
24 have been negotiated, executed, and delivered, and to have been wholly performed,
25 in the State of California, and the rights and obligations of the parties to the
26 Stipulation shall be construed and enforced in accordance with, and governed by,
27 the internal, substantive laws of the State of California without giving effect to that
28 State's choice of law principles.

1 2.11.13 The language of all parts of this Stipulation shall in all cases
2 be construed as a whole, according to its fair meaning, and not strictly for or against
3 either party. No party shall be deemed the drafter of this Stipulation. The parties
4 acknowledge that the terms of the Stipulation are contractual and are the product of
5 negotiations between the parties and their counsel. Each party and their counsel
6 cooperated in the drafting and preparation of the Stipulation. In any construction to
7 be made of the Stipulation, the Stipulation shall not be construed against any party
8 and the canon of contract interpretation set forth in California Civil Code § 1654 and
9 other similar statutory provisions shall not be applied.

10 2.11.14 Defendant will not retaliate against Class Members for any
11 actions taken or not taken with respect to this settlement.

12 2.11.15 Defendant will not assert any claims against Class Counsel
13 for their conduct in connection with the Litigation. Defendant’s counsel
14 acknowledge that Class Counsel, and Class Counsel acknowledge that Defendant’s
15 counsel, have complied with the requirements of Rule 11 of the Federal Rules of
16 Civil Procedure and California Code of Civil Procedure section 128.7 to this point in
17 the Litigation.

18 2.11.16 The parties to this agreement recognize and acknowledge that
19 at the time of the execution of this Stipulation, there are issues of law that may be
20 unresolved which could impact the claims at issue in the Litigation absent this
21 Stipulation. The parties further recognize that they are reaching this settlement in
22 light of the risks created by these and all other issues of unsettled law, and that all
23 parties will take all efforts to enforce this Stipulation and obtain Court approval for
24 this settlement regardless of any subsequent legal developments. The Settling
25 Parties and Class Counsel agree that the proposed classes are receiving benefit from
26 this settlement by obtaining a settlement (and associated consideration) prior to such
27 possible developments, and the Settling Parties and their counsel agree not to argue
28

1 otherwise or seek to void this settlement or prevent court approval on the basis of
2 any subsequent precedent.

3 2.11.17 Prior to the submission of this Stipulation and settlement
4 agreement for preliminary approval by the Court, neither the Class Representative
5 nor Class Counsel shall communicate any terms of this settlement to any third
6 parties. Following the submission for preliminary approval and thereafter, the Class
7 Representative and Class Counsel shall not publicize the settlement in this action or
8 the terms thereof via (a) press releases; (b) Internet postings except for simply
9 posting publicly filed court documents; or (c) any form of communications with the
10 media. This shall not prohibit Class Counsel from (1) discussing this case or any
11 aspect of this settlement with the Class Representative, any Class Member (absent
12 or otherwise) in this case, or any court or opposing counsel; (2) disclosing their
13 mere status as counsel in the case; or (3) posting on Class Counsel’s websites the
14 mere fact of a pending settlement and the relevant court documents.

15 2.11.18 The Claims Administrator shall establish a website for the
16 settlement and make it operational no later than the date on which the Notices are
17 mailed. The website shall contain, when available, the mailing address and
18 telephone number for the Claims Administrator, the operative complaint, this
19 Stipulation, the Notice, the Preliminary Approval Order, and the Final Approval
20 Order and Judgment, so that the relevant documents may be viewed and
21 downloaded by Class Members. The website shall remain operational until all
22 unclaimed checks are voided, at which point it shall be removed from the Internet
23 and not available for access.

24 IN WITNESS WHEREOF, the parties hereto have caused the Stipulation to
25 be executed.

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1 DATED: February ²³__, 2021

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EVERETT KING
Plaintiff and Class Representative

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6 DATED: February __, 2021

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LINN STEINBECK
EVP Operations for RUSS BASSETT CORP.

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10 APPROVED AS TO FORM:

11

12 DATED: February 23, 2021

MATERN LAW GROUP, PC



MATTHEW J. MATERN
Attorneys for Plaintiff EVERETT KING

14

15

16

17 DATED: February __, 2021

FISHER & PHILLIPS LLP

18

19

LONNIE D. GIAMELA
Attorneys for Defendant RUSS BASSETT
CORP.

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1 DATED: February __, 2021

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EVERETT KING
Plaintiff and Class Representative

DATED: February 25, 2021



LINN STEINBECK
EVP Operations for RUSS BASSETT CORP.

APPROVED AS TO FORM:


DATED: February __, 2021

MATERN LAW GROUP, PC

MATTHEW J. MATERN
Attorneys for Plaintiff EVERETT KING

DATED: February 25, 2021

FISHER & PHILLIPS LLP



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