

**EXHIBIT "1" TO JOINT MOTION FOR
PRELIMINARY APPROVAL-PROPOSED CONSENT
DECREE**

1 René L. Barge, State Bar No. 182317
2 rlbarga@adelphia.net
3 Katherine J. Odenbreit, State Bar No. 184619
4 kjodenbreit@yahoo.com
5 **CLASS ACTION LITIGATION GROUP**
6 4911 Warner Avenue, Suite 201
7 Huntington Beach, California 92649
8 Telephone: (714) 881-4922
9 Facsimile: (714) 908-0306

6 Gregory G. Petersen, State Bar No. 77744
7 gpetersen@petersenlawfirm.com
8 **THE PETERSEN LAW FIRM**
9 23611 Newport Coast Drive, #581
10 Newport Coast, CA 92657
11 Telephone: (949) 706-6532
12 Facsimile: (949) 640-8983

10 Attorneys for Plaintiffs

11 Dan Chammas, State Bar No. 204825
12 dchammas@mwe.com
13 Noah B. Steinsapir, State Bar No. 252715
14 nsteinsapir@venable.com
15 **VENABLE LLP**
16 2049 Century Park East, Suite 2100
17 Los Angeles, California 90067
18 Telephone: (310) 229-9900
19 Facsimile: (310) 226-9901

16 Attorneys for Defendants

17 **UNITED STATES DISTRICT COURT**
18 **SOUTHERN DISTRICT OF CALIFORNIA**

19 CONNIE DIBEL, BELINDA HAGEN and)
20 VANESSA BROWN, individually and on)
21 behalf of others similarly situated,)
22 Plaintiff,)
23 vs.)
24 JENNY CRAIG, INC., JENNY CRAIG)
25 WEIGHT LOSS CENTRES, INC.;)
26 JENNY CRAIG PRODUCTS; JENNY)
27 CRAIG OPERATIONS, and DOES 1)
28 through 50,)
Defendants.)

CASE NO: 06-CV-2533 JLS (AJB)]

CLASS ACTION

[PROPOSED] CONSENT DECREE FOR
SETTLEMENT OF FLSA COLLECTIVE
ACTION AND RULE 23 CLASS
ACTION

Date: October 22, 2009
Place: Courtroom 3
Time: 10:00 a.m.
Judge: Janis L. Sammartino

1 Jenny Craig denies each of the allegations asserted in the Litigation and contends that it is
2 not liable to Named Plaintiffs, the FLSA Class or the State Class. Nonetheless, Jenny
3 Craig believes that fully and finally settling this Litigation is in its best interests and
4 therefore agrees to pay the following settlement consideration, as more particularly
5 described herein:
6

- 7 • Jenny Craig will stipulate to certification of an FLSA Class and State Class
8 (defined herein), for purposes of this settlement only;
- 9 • Jenny Craig will pay \$1 million (one million dollars) into an FLSA Settlement
10 Fund for FLSA Class Members;
- 11 • Jenny Craig will pay \$650,000 (six hundred fifty thousand dollars) into a State
12 Settlement Fund for State Class Members;
- 13 • FLSA Class Members will be compensated according to the number of Work
14 Weeks they actually worked at a Jenny Craig Weight Loss Centre in the United
15 States for a period of up to two years prior to the filing date of a Consent to Join in
16 this Action through December 31, 2008.
- 17 • State Class Members will be paid on a claims made basis, with each State Class
18 Member compensated according to the number of Work Weeks he or she actually
19 worked at a Jenny Craig Weight Loss Centre in California during the State Class
20 Period at any time between October 6, 2002 through December 31, 2007² and who
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27 ¹ "Net Settlement Value" is the total amount of the Settlement Fund, minus amounts for Service Payments, costs of
28 administration, attorneys' fees and costs, as approved by the Court at the Final Fairness Hearing.

² Through December 31, 2007, State Class Members will be paid based on the actual Work Weeks they worked for Jenny Craig in a qualifying position. State Class Members who worked for Jenny Craig in a qualifying position from January 1, 2008 through December 31, 2008, State Class Members will receive a flat payment.

1 requested exclusion from the settlement in *Cleaves et al. v. Jenny Craig, et al.*,
2 Los Angeles Superior Court Case No. BC354904 (“Cleaves Litigation”) and any
3 individual who did not request to be excluded from the Cleaves Litigation and
4 who worked at a Jenny Craig Weight Loss Centre in a position described above at
5 any time between July 10, 2007 and December 31, 2008. From January 1, 2008
6 through December 31, 2008, all State Class Members will each receive a flat
7 payment.
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- 10 • FLSA Class Settlement Administrative Costs will be paid from the FLSA
11 Settlement Fund;
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- 13 • State Class Administrative Costs will be paid from the State Settlement Fund;
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- 15 • All State Employer Taxes will be paid by Jenny Craig;
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- 17 • All FLSA Employer Taxes will be paid by Jenny Craig;
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- 19 • FLSA Class Counsel Attorneys’ Fees and Costs will be paid from the FLSA
20 Settlement Fund;
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- 22 • State Class Counsel Attorneys’ Fees and Costs will be paid from the State
23 Settlement Fund;
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- 25 • Jenny Craig will not oppose the application for a Service Payment of \$10,000 (ten
26 thousand dollars) for each Named Plaintiff, which shall be paid from the FLSA
27 Settlement Fund;
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- 1 • Jenny Craig will not oppose the application for a Service Payment of \$5,000 (five
2 thousand dollars) for each Named Plaintiff, which shall be paid from the State
3 Settlement Fund
- 4
- 5 • Jenny Craig will support FLSA Class Counsel’s application for fees of up to
6 \$333,300 (three hundred thirty-three thousand three hundred dollars), which is
7 33.33% of the FLSA Settlement Fund and costs of approximately \$26,467.64
8 (twenty-six thousand four hundred sixty-seven dollars and sixty-four cents) and;
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- 10 • Jenny Craig will support State Class Counsel’s application for fees of up to
11 \$216,645 (two hundred sixteen thousand six hundred forty-five dollars), which is
12 33.33% of the State Settlement Fund and costs of approximately \$14,251.81
13 (fourteen thousand two hundred fifty-one dollars and eighty-one cents).
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15 **II.**

16 **DEFINITIONS**

17
18 Unless otherwise defined herein, capitalized terms used in this Agreement shall
19 have the meanings set forth below:
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21 1. “Action” and/or “Complaint” means the complaint filed against Jenny
22 Craig on or about October 6, 2006 in the San Diego Superior Court entitled Connie Dibel
23 and Barbara Schiavo v. Jenny Craig, Inc. et al., Case No. GIC 873564, as amended on
24 November 15, 2006³, and subsequently removed to the United States District Court for
25 the Southern District of California on November 11, 2006, USDC Case No. 06CV2533.
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³ The Amended Complaint added Named Plaintiffs Belinda Hagen and Vanessa Davis (aka Brown) and removed Named Plaintiff Barbara Schiavo.

1 2. “Counsel for Jenny Craig” means McDermott, Will & Emery LLP, counsel
2 of record for Jenny Craig.

3 3. “FLSA” means the Fair Labor Standards Act of 1938, as amended, codified
4 29 U.S.C. §201, et seq.

5 4. “FLSA Class” or “FLSA Class Members” means any Jenny Craig
6 employee who worked at any Jenny Craig Weight Loss Centre as a Weight Loss
7 Counselor, Program Director, Program Director Float, Program Consultant and/or Jenny
8 Craig Consultant at any time two years prior to filing a Consent to Join in this Action
9 through December 31, 2008.

10 5. “FLSA Authorized Claimants” means those FLSA Class Members who
11 filed a valid Consent to Join form with this Court on or before December 31, 2008 and
12 who do not request to be excluded from this Settlement.

13 6. “FLSA Class Counsel” means Gregory G. Petersen of The Petersen Law
14 Firm and René L. Barge and Katherine J. Odenbreit of Class Action Litigation Group,
15 APC, attorneys for the FLSA class.

16 7. “FLSA Class Counsel Attorneys’ Fees and Costs” means the amount to be
17 paid to FLSA Class Counsel for attorneys’ fees and costs as defined herein in paragraph
18 IV.BB.

19 8. “FLSA Class Period” means up to two years prior to an FLSA Class
20 Member filing a Consent to Join with this Court through December 31, 2008.

21 9. “FLSA Released Claims” means any and all claims, demands, rights,
22 liabilities, and/or causes of action of any nature and description whatsoever, known or
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1 unknown, suspected or unsuspected, accrued or unaccrued, asserted or that might have
2 been asserted based on the same facts alleged in the Complaint by Named Plaintiffs for
3 alleged violations of Section 216 of Title 29 of the United States Code, including but not
4 limited to, failure to pay overtime wages, failure to pay minimum wages, and any other
5 claims which could have been brought under the FLSA. (*See Reyn's Pasta Bella, LLC v*
6 *Visa USA, Inc.* 442 F.3d 741 (9thCir.2006) ["The weight of authority holds that a federal
7 court may release not only those claims alleged in the complaint, but also a claim 'based
8 on the identical factual predicate as that underlying the claims in the settled class
9 action...'" [citing *Class Plaintiffs v City of Seattle*, 955 F.2d 1268, 1287-89 (9th
10 Cir.1992); *TBK Partners, Ltd. V Western Union Corp.* 675 F.2d 456, 460 (2nd Cir.1982)])
11 The FLSA Class Released Claims also include all claims for interest and/or liquidated
12 damages of any kind or nature whatsoever arising out of or relating to the FLSA Class
13 Released Claims, and further extend to and include damages, liquidated damages,
14 restitution, injunctive relief, declaratory relief, punitive damages, and any other form of
15 relief or remedy available under the FLSA. This release is not meant to preclude claims
16 for Workers' Compensation, unemployment insurance, discrimination claims, state wage
17 claims outside the State of California, indemnification pursuant to Labor Code section
18 2802 or any other claims unrelated to the FLSA and the allegations in the Complaint. In
19 addition, nothing in this release precludes the Class Members from filing a charge with a
20 government agency such as the Equal Employment Opportunity Commission to the
21 extent prohibiting the filing of such a charge would violate public policy.
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1 In addition to the FLSA Released Claims stated above the Named Plaintiffs hereby
2 expressly waive all benefits under Section 1542 of the California Civil Code, as well as
3 under any statutes or common law principles of other states or of federal law of similar
4 effect.
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6 10. “FLSA Employee Taxes” refers to any and all federal, state and local taxes
7 required to be withheld from the portion of the FLSA Settlement Payments designated as
8 “wages” as described herein.
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10 11. “FLSA Employer Taxes” refers to all federal, state and local employer
11 taxes and contributions imposed on the FLSA Settlement Payments required to be paid
12 by Jenny Craig.
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14 12. “FLSA Escrow Agent” shall refer to Phoenix Case Administration
15 Services, LLC.
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17 13. “FLSA Settlement Administrative Costs” means the usual and customary
18 fees and costs incurred or charged by the FLSA Settlement Administrator in connection
19 with the execution of its duties under this Agreement, including but not limited to: (i) fees
20 and costs associated with preparing, issuing, and/or monitoring reports, filings and
21 notices (including the cost of printing and mailing all notices and other documents to the
22 FLSA Class) required to be prepared in the course of administering the FLSA Settlement
23 Fund; (ii) computing the amount of the individual FLSA Settlement Payments and any
24 other payments to be made out of the FLSA Settlement Fund under this Agreement; (iii)
25 handling inquiries about the settlement from FLSA Class Members; (iv) establishing and
26 operating a settlement payment center address and phone number to receive FLSA Class
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1 Members' inquiries about the settlement; (v) preparing and filing all tax returns and
2 information returns and any other filings required by any governmental taxing authority
3 or other governmental agency; and (vi) establishing and maintaining the FLSA and State
4 Escrow Accounts, including, but not limited to, preparing and filing all required returns
5 and necessary paperwork.

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8 14. "FLSA Settlement Administrator" refers to Phoenix Case Administration
9 Services, LLC, the entity that FLSA Class Counsel and Counsel for Jenny Craig have
10 selected to administer this settlement.

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12 15. "FLSA Settlement Fund" means the interest-bearing account to be
13 established in accordance with Section IV.P from which the FLSA Settlement Payments,
14 FLSA Class Counsels' Attorneys' Fees and Costs and FLSA Settlement Administrator
15 Costs shall be paid.

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17 16. "FLSA Settlement Payment" means the amount of monies to be paid to
18 each FLSA Class Member who does not object to or exclude himself or herself from the
19 FLSA Settlement calculated in accordance with the formula set forth herein.

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21 17. "FLSA Taxes" refers collectively to all FLSA Employee Taxes, FLSA
22 Employer Taxes, FLSA Settlement Fund Taxes and any other taxes incurred as a result of
23 this Agreement.

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25 18. "FLSA Settlement Fund Taxes" refers to any and all federal, state and local
26 income taxes, excise taxes, gross receipt taxes, or any other taxes upon the income and/or
27 operations of the FLSA Settlement Fund.

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1 19. “Litigation” means the lawsuit filed by Named Plaintiffs Connie Dibel and
2 Barbara Schiavo on October 6, 2006 in the San Diego Superior Court, subsequently
3 amended to add Belinda Hagen, Vanessa Davis (aka Brown) and remove Barbara
4 Schiavo. The action was subsequently removed to the United States District Court
5 Southern District of California, entitled Dibel et al. v. Jenny Craig, Inc. et al. Case No.
6 06CCV2533 JLS.
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9 20. “Named Plaintiffs” means Connie Dibel, Belinda Hagen, and Vanessa
10 Davis (aka Brown), who are the named plaintiffs and class representatives (for purposes
11 of settlement only) in the Litigation.
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13 21. “Released Parties” means Jenny Craig, Inc., its affiliate companies
14 including, but not limited to, Jenny Craig Weight Loss Centres, Inc., Jenny Craig
15 Operations, Inc., and Jenny Craig Products, Inc., its subsidiaries, parent, and joint
16 venturers, and each of their respective present and former officers, directors, members,
17 managers, shareholders, agents, employees, insurers, co-insurers, reinsurers, attorneys,
18 accountants, auditors, advisors, representatives, consultants, pension and welfare benefit
19 plans, fiduciaries, administrators, trustees, general and limited partners, predecessors,
20 successors and assigns.
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23 22. “Service Payment” or “Service Payments” mean the payments to Named
24 Plaintiffs, which is in addition to whatever payment each is entitled to as an FLSA
25 Settlement Payment and/or State Settlement Payment. The Service Payments requested
26 are subject to Court approval.
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1 23. “State Class” or “State Class Members” means any Jenny Craig employee
2 who worked at any Jenny Craig Weight Loss Centre as a Weight Loss Counselor,
3 Program Director, Program Director Float, Program Consultant and/or Jenny Craig
4 Consultant in California during the State Class Period at any time between October 6,
5 2002 through December 31, 2007, and who requested exclusion from the settlement in
6 *Cleaves et al. v. Jenny Craig, et al.*, Los Angeles Superior Court Case No. BC354904
7 (“Cleaves Litigation”), and any individual who did not request to be excluded from the
8 Cleaves Litigation and who worked at a Jenny Craig Weight Loss Centre in California in
9 a position described above at any time between July 10, 2007 and December 31, 2008.

10 24. “State Authorized Claimants” means those State Class Members who file a
11 valid and timely State Claim Form with the State Settlement Administrator pursuant to
12 Section VI.I to register their claim for a State Settlement Fund Payment under this
13 Agreement.

14 25. “State Claim Form” means the form, attached hereto as Exhibit “C”, which
15 will be mailed to State Class Members by which State Class Members are able to submit
16 claims to the State Settlement Administrator.

17 26. “State Class Counsel” means Gregory G. Petersen of The Petersen Law
18 Firm and René L. Barge and Katherine J. Odenbreit of Class Action Litigation Group,
19 APC, attorneys for the State Class.

20 27. “State Class Counsel Attorneys’ Fees and Costs” means the amount to be
21 paid to State Class Counsel for attorneys’ fees and costs pursuant to Section VI.CC.

1 28. “State Class Period” means October 6, 2002 through December 31, 2008
2 for those State Class Members who requested exclusion from the settlement in the
3 Cleaves Litigation, and for all others from July 10, 2007 through, and including,
4 December 31, 2008.
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6 29. “State Class Released Claims” means any and all claims, demands, rights,
7 liabilities, and/or causes of action of any nature and description whatsoever, known or
8 unknown, suspected or unsuspected, accrued or unaccrued, whether premised on statute,
9 contract, tort or other theory of liability, in law or in equity, asserted or that might have
10 been asserted based on the facts alleged in the Complaint by Named Plaintiffs for alleged
11 violations of California Labor Code §§203, 226, 226.7, 510, 1194, and 1198, California
12 Business & Professions Code §17200, and any applicable labor laws and/or unfair
13 competition laws recognized by and state or federal law, including without limitation,
14 failure to pay overtime wages, failure to provide meal and rest breaks, failure to provide
15 required information on pay checks and pay stubs, failure to pay wages within the
16 applicable statutory period, and any other claims which arise out of or relate to the claims
17 made and facts alleged in the Litigation. (*See Reyn’s Pasta Bella, LLC v Visa USA, Inc.*
18 *442 F.3d 741 (9thCir.2006)* [“The weight of authority holds that a federal court may
19 release not only those claims alleged in the complaint, but also a claim ‘based on the
20 identical factual predicate as that underlying the claims in the settled class action...’”
21 [citing *Class Plaintiffs v City of Seattle*, 955 F.2d 1268, 1287-89 (9th Cir.1992); *TBK*
22 *Partners, Ltd. V Western Union Corp.* 675 F.2d 456, 460 (2nd Cir.1982)]). The State
23 Class Released Claims also include all claims for interest and/or penalties of any kind or
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1 nature whatsoever arising out of or relating to the State Class Released Claims, and
2 further extends to include claims for damages, civil penalties, restitution, injunctive
3 relief, declaratory relief, punitive damages, and any other form of relief or remedy
4 available under the allegations in the Complaint. This release is not meant to preclude
5 claims for Workers' Compensation, unemployment insurance, discrimination claims,
6 indemnification pursuant to Labor Code section 2802 and any other claims unrelated to
7 the allegations in the Complaint. In addition, nothing in this release precludes the Class
8 Members from filing a charge with a government agency such as the Equal Employment
9 Opportunity Commission to the extent prohibiting the filing of such a charge would
10 violate public policy.
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14 In addition to the State Released Claims, Named Plaintiffs hereby expressly waive
15 all benefits under Section 1542 of the California Civil Code, as well as under any other
16 statutes or common law principles of law of similar effect.
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18 It is the intent of Named Plaintiffs, the State Class, and Jenny Craig that the
19 judgment entered by the Court upon final approval of the settlement shall have res
20 judicata effect and be final and binding upon Named Plaintiffs and all State Class
21 Members who do not request exclusion from this settlement, regarding the State Class
22 Released Claims, whether or not they submit State Claim Forms or receive State
23 Settlement Payments.
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26 30. "State Employee Taxes" refers to any and all federal, state and local taxes
27 required to be withheld from the individual State Settlement Payments.
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1 31. “State Employer Taxes” refers to all federal, state and local employer taxes
2 and contributions imposed on the State Settlement Payments required to be paid by Jenny
3 Craig.
4

5 32. “State Escrow Agent” shall refer to Phoenix Case Administration Service,
6 LLC.
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8 33. “State Settlement Administrative Costs” means the usual and customary
9 fees and costs incurred or charged by the State Settlement Administrator in connection
10 with the execution of its duties under this Agreement, including but not limited to: (i) fees
11 and costs associated with preparing, issuing, and/or monitoring reports, filings and
12 notices (including the cost of printing and mailing all notices and other documents to the
13 State Class) required to be prepared in the course of administering the State Settlement
14 Fund; (ii) computing the amount of the individual State Settlement Payments and any
15 other payments to be made out of the State Settlement Fund under this Agreement; (iii)
16 handling inquiries about the settlement from State Class Members; (iv) establishing and
17 operating a settlement payment center address and phone number to receive State Class
18 Members’ inquiries about the settlement; (v) preparing and filing all tax returns and
19 information returns and any other filings required by any governmental taxing authority
20 or other governmental agency; and (vi) establishing and maintaining the Qualified
21 Settlement Account, including, but not limited to, preparing and filing all required returns
22 and necessary paperwork.
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1 34. “State Settlement Administrator” refers to Phoenix Case Administration
2 Services LLC, the entity that State Class Counsel and Counsel for Jenny Craig have
3 selected to administer this settlement.
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5 35. “State Settlement Fund” means the interest-bearing account to be
6 established in accordance with Section IV.Q from which the State Settlement Payments,
7 State Class Counsel Attorneys’ Fees and Costs and State Administrative Costs shall be
8 paid.
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10 36. “State Settlement Fund Taxes” refers to any and all federal, state and local
11 income taxes, excise taxes, gross receipt taxes, or any other taxes upon the income and/or
12 operation of the State Settlement Fund.
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14 37. “State Settlement Payment” means the amount of monies to be paid to each
15 State Class Member who timely and effectively completes the claims procedures set forth
16 herein calculated in accordance with the formula set forth herein.
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18 38. “State Taxes” refers collectively to all State Employee Taxes, State
19 Employer Taxes, State Settlement Fund Taxes and any other taxes incurred as a result of
20 this Agreement.
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22 39. “Work Weeks” means any seven day period, or portion thereof, as defined
23 by Jenny Craig by their standard practices, in which an FLSA Class Member or State
24 Class Member actually worked in a Jenny Craig Weight Loss Centre during the FLSA
25 Class Period or the State Class Period as applicable. For purposes of this Agreement,
26 Work Weeks were determined by the time actually worked between the hire date and
27 termination date (or the settlement cut-off date of December 31, 2008).
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1 **III.**

2 **BACKGROUND**

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4 1. The Complaint was filed on or about October 6, 2006 in the Superior Court
5 for the County of San Diego, State of California entitled Connie Dibel and Barbara
6 Schiavo v. Jenny Craig, Inc. et al., Case No. GIC 873564. A First Amended Complaint
7 was filed on November 15, 2006 adding Named Plaintiffs Belinda Hagen and Vanessa
8 Davis (formerly Brown). Jenny Craig filed a Notice of Removal on November 17, 2006,
9 and the case was subsequently litigated in the United States District Court, Southern
10 District of California, Case No. 06CV2533. Through the Litigation, Named Plaintiffs,
11 the FLSA Class and the State Class seek restitution, damages, pre- and post-judgment
12 interest, costs, attorneys' fees and any further relief deemed appropriate by the Court on
13 the basis of their allegations, *inter alia*, that Jenny Craig failed to pay overtime wages
14 worked, failed to pay minimum wage for all hours worked, failed to provide meal and
15 rest break periods, failed to provide required information on pay checks and pay stubs,
16 failed to pay wages within the applicable statutory period, failed to pay all wages due
17 upon termination of employment and engaged in unfair business practices. Jenny Craig
18 denies each of the allegations asserted in the Litigation and asserts that it has no liability
19 for the claims of Named Plaintiffs, the FLSA Class or the State Class.
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25 2. The Litigation had been set for both conditional certification pursuant to 29
26 U.S.C. §216(b) and class certification pursuant to Federal Rule of Civil Procedure Rule
27 23. Both Named Plaintiffs and Jenny Craig have engaged in extensive written discovery,
28 informal discovery, and motions relating to discovery issues. Named Plaintiffs sent an

1 extensive questionnaire to all Jenny Craig Weight Loss Centres and to the individual
2 FLSA and State Class Members requesting detailed information relating to their potential
3 individual claims followed by telephonic interviews with most Class Members.⁴ The
4 results of these surveys were analyzed by Class Counsel to determine the potential value
5 of the collective class claims in this case. Named Plaintiffs further received and analyzed
6 pay records, paycheck stubs, personnel files and other documents from Jenny Craig for
7 the Named Plaintiffs, FLSA Class Members and State Class Members. Named Plaintiffs
8 analyzed these documents thoroughly to determine not only that the Classes are similarly
9 situated to the Named Plaintiffs, but to further Class Counsel's analysis of the potential
10 judgment value of the case. Additionally, Jenny Craig has taken the depositions of
11 Named Plaintiffs Connie Dibel, Belinda Hagen and Vanessa Davis (formerly Brown).
12 Named Plaintiffs have also taken several depositions including the deposition of Jenny
13 Craig's Vice President of Operations, Dana Fiser, Kim Mueller, Jenny Craig's AP
14 Payroll Director, and other persons most knowledgeable as designated by Jenny Craig.
15 The parties engaged in extensive motion practice. Named Plaintiffs filed a motion for
16 conditional certification of an FLSA class on June 25, 2007.⁵ Subsequently, the case was
17 re-assigned to this Court and the Named Plaintiffs were directed to re-file their motion for
18 class certification.

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25 3. Named Plaintiffs and Jenny Craig have engaged in extensive settlement
26 efforts. Named Plaintiffs were provided with detailed spreadsheets listing each

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28 ⁴ Plaintiffs maintain that this information is protected by the attorney-client and work product privileges.

1 individual FLSA and State Class Member, the number of workweeks each individual
2 worked for Jenny Craig, the dates of employment, and the date each FLSA Class Member
3 filed his/her consent to join this action.⁶ The parties have engaged in multiple in-person
4 meetings and the voluntary exchange of voluminous and detailed information relating to
5 FLSA Class and State Class claims. Named Plaintiffs were provided with and reviewed
6 the results of an anonymous survey conducted by Jenny Craig of approximately 2,684
7 current employees in July, 2008. The results showed that of the seventy-one percent
8 (71%) of the employees surveyed ninety-three percent (93%) confirmed that they had
9 been paid for all time worked for the past six months, a time period from February 2008
10 through July 2008. In addition the survey asked the employees to contact the Human
11 Resources department at Jenny Craig if they had not been paid properly. (Matthews Decl.
12 at 5). Jenny Craig also conducted random time audits and disciplined persons who failed
13 to comply with meal and rest break rules. Jenny Craig compensated employees where
14 errors were detected. (Matthews Decl. at 6).

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19 4. The parties have extensively discussed other efforts taken by Jenny Craig in
20 an effort to eliminate off-the-clock work and ensure meal breaks are taken. In March of
21 2008 Jenny Craig also surveyed the Centre Directors (“CDs”), the hourly employees who
22 manage non-exempt staff at the individual centres. In that survey the centre directors
23 were asked if meal and rest breaks were scheduled in each centre. Nearly one hundred
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27 ⁵ A hearing for Named Plaintiffs’ Motion for Conditional Certification was conducted on July 12, 2007. Judge
28 Benitez took the matter under submission due a settlement in a related state case, Cleaves et al. v Jenny Craig et al.
Los Angeles Superior Court Case No. BC354904.

⁶ This voluntary exchange of information has been ongoing for over ten months and was integral to the parties settling this case.

1 percent (100%) of the Centre Directors (including Centre Director Floats) responded.
2 Ninety-six percent (96%) reported that appropriate meal breaks were scheduled for their
3 centre hourly employees. (Matthews Decl. at 5). In addition, Jenny Craig ensured that
4 each centre received information on meal and rest break policies and directed the CDs to
5 post such information in the centre. (Matthews Decl. at 4.) Jenny Craig also has
6 implemented Market Director (“MD”) and Area Market Director Training (“AMD”).
7 The MDs and AMDs are responsible for the Centre Directors. (Matthews Decl at 8).
8 Jenny Craig has contracted with a third party vendor to implement a web-based
9 complaint process that allows employees to file a complaint via the Internet or a toll-free
10 number. (Matthews Decl. at 7). In January 2009, Jenny Craig implemented an E-Time
11 verification process whereby all hourly employees verify their time every two pay
12 periods. Where an employee believes there is a mistake on his or her time card the
13 employee may notify HR. As of May 27, 2009, the response rate has averaged ninety-
14 nine percent (99%) with less than two percent (2%) of the employees reporting errors.
15 All errors are investigated by HR and Jenny Craig Operations and where warranted
16 corrective actions are taken. (Matthews Decl. at 9).

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22 5. Named Plaintiffs and FLSA Class Counsel concluded, after taking into
23 account the sharply disputed factual and legal issues involved in this Litigation, Jenny
24 Craig’s efforts to eliminate future violations, the risks of continuing the litigation in this
25 case and the substantial benefits to be received pursuant to the compromise and
26 settlement of the Litigation as set forth in this Agreement, that settlement on the terms set
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1 forth herein is in the best interest of the Named Plaintiffs and the FLSA Class and is fair
2 and reasonable. This settlement is the result of extensive, arms-length negotiations.

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4 6. Named Plaintiffs and State Class Counsel concluded, after taking into
5 account the sharply disputed factual and legal issues involved in this Litigation, the
6 potential recovery at trial, Jenny Craig’s efforts to eliminate future violations, the risks of
7 continuing the litigation in this case and the substantial benefits to be received pursuant to
8 the compromise and settlement of the Litigation as set forth in this Agreement, that
9 settlement on the terms set forth herein is in the best interest of the Named Plaintiffs and
10 the State Class and is fair and reasonable.
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13 7. Similarly, Jenny Craig concluded, after taking into account the sharply
14 disputed factual and legal issues involved in this Litigation, the risks of continued
15 litigation and class certification, and its desire to put the controversy to rest, Jenny Craig
16 believes that the settlement terms set forth in this Agreement are in its best interest and is
17 fair and reasonable, that there were benefits associated with settling the Litigation. This
18 settlement is the result of extensive, arms-length negotiations.
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21 8. This settlement contemplates (i) entry of an Order preliminarily approving
22 the settlement and approving certification of an FLSA and State Settlement class,
23 contingent on final approval of the settlement; (ii) entry of an Order granting final
24 approval of the settlement in the Litigation (“Settlement Approval Order”); (iii) entry of
25 an Order dismissing the Litigation with prejudice (“Dismissal Order”); and (iv) discharge
26 of the Released Parties from liability for the Release Claims as set forth herein.
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IV.

1 **SETTLEMENT APPROVAL AND IMPLEMENTATION PROCEDURE**

2 **A. Prerequisites to Establishing the FLSA Settlement Fund**

3
4 Prior to Jenny Craig’s deposit of monies into the FLSA Settlement Fund, Named
5 Plaintiffs, FLSA Class Members and FLSA Class Counsel agree that the following
6 conditions must be satisfied:

7 1. Delivery to Jenny Craig of an original and/or counterparts of this
8 Agreement fully executed by Named Plaintiffs, FLSA Class Counsel, Jenny Craig, and
9 Counsel for Jenny Craig;

10 2. Final Court approval of the Settlement Approval Order;

11 3. Entry of the Dismissal Order.

12 **B. Prerequisites to Establishing the State Settlement Fund**

13
14 Prior to Jenny Craig’s deposit of monies into the State Settlement Fund, Named
15 Plaintiffs, State Class Members and State Class Counsel agree that the following
16 conditions must be satisfied:

17 1. Delivery to Jenny Craig of an original and/or counterparts of this
18 Agreement fully executed by Named Plaintiffs, State Class Counsel, Jenny Craig and
19 Counsel for Jenny Craig;

20 2. Final Court approval of the Settlement Approval Order;

21 3. Entry of the Dismissal Order.

22 **C. Preliminary Approval of the Settlement**

23 As soon as practicable, FLSA Class Counsel, State Class Counsel and Counsel for
24 Jenny Craig will jointly submit this Agreement to the Court for its preliminary approval.
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1 Such submission will include such motions, pleadings and evidence as may be required
2 for the Court to determine that the Agreement is fair, adequate and reasonable, as
3 required by Rule 23 of the Federal Rules of Civil Procedure and applicable case law.
4

5 Such submission will also include a proposed order granting preliminary approval of the
6 settlement, in the form submitted via email to the Court’s chambers, and a Consent
7 Decree (“Settlement Agreement”) and proposed order regarding certification of an FLSA
8 Class and State Class for settlement purposes only.
9

10 **D. Notice to FLSA Class Members**

11 Upon the Court granting preliminary approval of this Agreement, the FLSA
12 Settlement Administrator shall disseminate the Notice of Proposed Class Action
13 Settlement and Final Fairness and Approval Hearing (“Class Notice of Settlement”) as
14 described in this Agreement, which the Named Plaintiffs, FLSA Class Counsel and Jenny
15 Craig will ask the Court to approve in the form attached hereto as Exhibit “A”.
16
17

18 **E. Notice to State Class Members**

19 Upon the Court granting preliminary approval of this Agreement, the State
20 Settlement Administrator shall disseminate the Notice of Proposed Class Action
21 Settlement and Final Fairness and Approval Hearing (“Class Notice of Settlement”) and
22 Claim Form as described in this Agreement, which the Named Plaintiffs, State Class
23 Counsel and Jenny Craig will ask the Court to approve in the form attached hereto as
24 Exhibit “B” and “C”, respectively.
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27 **F. FLSA Class Notice of Settlement By Mail to FLSA Class Members**
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1 1. Jenny Craig will provide as soon as practicable, but no later than seven (7)
2 calendar days after the Court granting preliminary approval of this Agreement to the
3 FLSA Settlement Administrator a list in Excel format containing the names, last known
4 addresses, dates of employment, number of Work Weeks each FLSA Class Member
5 actually worked during the FLSA Class Period, and the amount of the FLSA Settlement
6 Payment for each FLSA Class Member which will be used to send the FLSA Class
7 Notice of Settlement to FLSA Class Members. Using this list, along with any updated
8 information obtained from FLSA Class Counsel concerning FLSA Class Members'
9 addresses, and any updated information obtained from the National Change of Address
10 database ("NCOA"), which the FLSA Settlement Administrator shall use to confirm
11 mailing information, the FLSA Settlement Administrator shall, within seven (7) calendar
12 days from receipt of the list, mail the FLSA Class Notice of Settlement by First-Class
13 United States mail to the most recent address known for each FLSA Class Member.
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18 2. The FLSA Class Notice of Settlement, or attachment thereto, provided to
19 each FLSA Class Member shall set forth the number of Work Weeks such person
20 actually worked in a Jenny Craig Weight Loss Centre during the FLSA Class Period as
21 indicated in the list of FLSA Class Members provided by Jenny Craig to the FLSA
22 Settlement Administrator.
23

24 **G. FLSA Exclusion (Opt-Outs)**

25
26 1. Any FLSA Class Member who wishes to be excluded from the Settlement
27 must mail to the FLSA Settlement Administrator and serve on FLSA Class Counsel and
28 Counsel for Jenny Craig a written statement expressing his or her desire to be excluded

1 from the Settlement, and any such statement shall include the name (and former names, if
2 any), current address, telephone number and Social Security number of the FLSA Class
3 Member. Any requests for exclusion must be mailed to the FLSA Settlement
4 Administrator, FLSA Class Counsel and Counsel for Jenny Craig no later than forty-five
5 (45) days after the original date of the FLSA Settlement Administrator's mailing of the
6 FLSA Class Notice of Settlement (the "FLSA Opt-Out Period"). Any FLSA Class
7 Member who submits a valid and timely request to be excluded from the Settlement shall
8 no longer be a member of the FLSA Class, shall be barred from participating in this
9 Settlement, shall be barred from objecting to this Settlement, and shall receive no benefit
10 from this Settlement.
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14 **H. State Class Notice of Settlement By Mail to State Class Members**

15 1. Jenny Craig will provide as soon as practicable, but no later than seven (7)
16 calendar days after the Court granting preliminary approval of this Agreement to the
17 State Settlement Administrator a list in Excel format containing the names, last known
18 addresses, dates of employment, and number of Work Weeks each State Class Member
19 actually worked during the State Class Period, and the amount of the State Settlement
20 Payment for each State Class Member which will be used to send the State Class Notice
21 of Settlement and State Claim Form to State Class Members. Using this list, along with
22 any updated information obtained from State Class Counsel concerning State Class
23 Members' addresses, and any updated information obtained from the National Change of
24 Address database ("NCOA"), which the State Settlement Administrator shall use to
25 confirm mailing information, the State Settlement Administrator shall, within seven (7)
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1 calendar days from receipt of the list, mail the State Class Notice of Settlement and State
2 Claim Form by First-Class United States mail to the most recent address known for each
3 State Class Member.
4

5 **I. State Claim Form**

6 1. The State Settlement Administrator shall mail with the State Class Notice
7 of Settlement the State Claim Form to any State Authorized Claimant who actually
8 worked at a Jenny Craig Weight Loss Centre at any time during the State Class Period.
9

10 2. The State Claim Form provided to each State Class Member shall set forth
11 the number of Work Weeks such person actually worked in a Jenny Craig Weight Loss
12 Centre in California during the State Class Period as indicated in the list of State Class
13 Members provided by Jenny Craig to the State Settlement Administrator.
14

15 3. The State Claim Form must be signed by the State Class Member or his or
16 her authorized representative, without deletion or amendment of the release language,
17 and returned to the State Settlement Administrator postmarked no later than forty-five
18 (45) days after the original date of mailing of the State Class Notice of Settlement. The
19 State Settlement Administrator shall have the right to contact any claimant to request
20 additional information for purposes of determining the validity of any claim and may
21 respond to requests from claimants for assistance in completing the State Claim Form.
22 Any person who fails to submit a valid and timely State Claim Form shall be barred from
23 receiving any payment from the State Settlement Fund. Any completed State Claim
24 Form that is returned to the State Settlement Administrator postmarked more than forty-
25 five (45) days after the date of mailing of the State Claim Form and Notice of Settlement
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1 to the State Class Members shall be deemed, in the sole discretion of the State Settlement
2 Administrator, untimely and invalid, except as provided below.

3
4 **J. State Exclusions (Opt-Outs)**

5 1. Any State Class Member who wishes to be excluded from the Settlement
6 must mail to the State Settlement Administrator and serve on State Class Counsel and
7 Counsel for Jenny Craig a written statement expressing his or her desire to be excluded
8 from the Settlement, and any such statement shall include the name (and former names, if
9 any), current address, telephone number and Social Security number of the State Class
10 Member. Any requests for exclusion must be mailed to the State Settlement
11 Administrator, State Class Counsel and Counsel for Jenny Craig no later than forty-five
12 (45) days after the original date of the State Settlement Administrator's mailing of the
13 State Class Notice of Settlement (the "State Opt-Out Period). Any State Class Member
14 who submits a valid and timely request to be excluded from the Settlement shall no
15 longer be a member of the State Class, shall be barred from participating in this
16 Settlement, shall be barred from objecting to this Settlement, and shall receive no benefit
17 from this Settlement.

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19 2. If a State Class Member submits to the State Settlement Administrator a
20 timely State Claim Form and a timely request to be excluded from the Settlement, the
21 request for exclusion shall govern and the State Claim Form will be null and void.

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25 **K. Right to Withdraw**

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27 1. If more than 10% of the combined FLSA Class and State Class submit
28 valid and timely requests to be excluded from the Settlement, Named Plaintiffs, FLSA

1 Class Counsel, State Class Counsel and Jenny Craig shall each have the option, in their
2 discretion, notwithstanding any other provisions in this Agreement, to withdraw from this
3 Agreement (“Right to Withdraw”), whereupon this Agreement shall be null and void for
4 any and all purposes and may not be used or introduced in the Litigation or any other
5 proceeding. The FLSA Settlement Administrator and the State Settlement Administrator
6 shall notify FLSA Class Counsel, State Class Counsel and Jenny Craig of the number of
7 timely opt-outs within seven (7) calendar days following the close of the FLSA Opt-Out
8 Period and State Opt-Out Period. If Named Plaintiffs, FLSA Class Counsel, State Class
9 Counsel or Jenny Craig elect to exercise their Right to Withdraw under this provision, the
10 person or entity exercising the Right to Withdraw will so notify the other parties to this
11 Agreement and the Court no later than ten (10) days after receiving notice of the number
12 of opt-outs from the FLSA Settlement Administrator and the State Settlement
13 Administrator following the expiration of the FLSA Opt-Out and State Opt-Out Period.

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18 **L. Declaration of Compliance**

19 1. As soon as practicable following the close of the forty-five (45) day period
20 to return State Claim Forms to the State Settlement Administrator, but no later than
21 fifteen (15) days, the State Settlement Administrator shall provide to State Class Counsel
22 and Counsel for Jenny Craig with a declaration attesting to completion of the notice
23 process set forth in this IV(I), including an explanation of efforts to resend undeliverable
24 notices returned with forwarding addresses and reasonable attempts to locate individuals
25 for whom a forwarding address was not available. This declaration shall be filed with the
26 Court by State Class Counsel with a Motion for Final Approval of Settlement.
27
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1 2. As soon as practicable following the close of the FLSA Opt-Out Period and
2 State Opt-Out Period, but no later than fifteen (15) days, the FLSA Settlement
3 Administrator and State Settlement Administrator shall provide to FLSA Class Counsel,
4 State Class Counsel and Counsel for Jenny Craig with a declaration attesting to the
5 completion of the notice process set forth in this Section IV(F-J), including the total
6 number, identities of each individual who filed a request to be excluded from the
7 Settlement and attach as Exhibits each individual's written request for exclusion.
8
9

10 **M. Sufficient Notice**

11 1. Compliance with the procedures described in this Section IV shall
12 constitute due and sufficient notice to FLSA Class Members and State Class Members of
13 this Settlement and the Final Fairness and Approval Hearing, shall satisfy the
14 requirements of due process, and nothing else shall be required of the Named Plaintiffs,
15 FLSA Class Counsel, State Class Counsel, Jenny Craig, Counsel for Jenny Craig, the
16 FLSA Settlement Administrator or the State Settlement Administrator to provide notice
17 of the Settlement and the Final Fairness and Approval Hearing.
18
19

20 **N. Objections to Settlement**

21 1. Deadline for Objections

22 Any FLSA Class Member wishing to object to the approval of this Settlement
23 shall inform the Court, FLSA Class Counsel, and Counsel for Jenny Craig in writing of
24 his or her intent to object by the following procedure set forth in the FLSA Class Notice
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1 of Settlement at least twenty-eight (28) days⁷ (or such other number of days as the Court
2 shall specify) before the date of the Final Fairness and Approval Hearing described
3 herein. Any objection submitted by an FLSA Class Member must expressly state the
4 reasons for the objection. Any FLSA Class Member who files a request for exclusion
5 from the Settlement shall not have standing to object to the settlement.
6

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8 2. Any State Class Member wishing to object to the approval of the State Class
9 Settlement shall inform the Court, State Class Counsel, and Counsel for Jenny Craig in
10 writing of his or her intent to object by the following procedure set forth in the State
11 Class Notice of Settlement at least twenty-eight (28) days⁸ (or such other number of days
12 as the Court shall specify) before the date of the Final Fairness and Approval Hearing
13 described herein. Any objection submitted by a State Class Member must expressly state
14 the reasons for the objection. Any State Class Member who fails to submit a timely State
15 Claim Form or who submits a timely and valid request to be excluded from the
16 Settlement shall not have standing to object to the Settlement.
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19 3. Failure to Object:

20 Any FLSA Class Member or State Class Member who fails to file a timely written
21 objection shall be foreclosed from objecting to this Settlement, unless otherwise ordered
22 by the Court.
23

24 4. Responses to Objections:

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28 ⁷ Pursuant to Local Rule 7.1(e)(1) unless the Court shortens time notice of any matter requiring a ruling by the Court, plus all supporting documents, will require a minimum filing date of 28 calendar days prior to the Monday for which the matter is noticed.

⁸ See L.R. 7.1(e)(1).

1 FLSA Class Counsel and Counsel for Jenny Craig shall file any responses to
2 written objections submitted to the Court by FLSA Class Members in accordance with
3 this Agreement at least fourteen (14) days⁹ before the Final Fairness and Approval
4 Hearing.
5

6 State Class Counsel and Counsel for Jenny Craig shall file any responses to
7 written objections submitted to the Court by State Class Members in accordance with this
8 Agreement at least fourteen (14) days¹⁰ before the Final Fairness and Approval Hearing.
9

10 **O. Final Fairness and Approval Hearing**

11 On the date set forth for the final fairness hearing in the Order granting
12 preliminary approval of the settlement, which shall be approximately ninety (90) days
13 after the Court grants preliminary approval of this settlement, a Final Fairness and
14 Approval Hearing shall be held before the Court in order to consider and determine
15 whether (i) the Court should give this Agreement final approval; (ii) FLSA Class
16 Counsel's application for attorneys' fees and costs should be granted; (iii) State Class
17 Counsel's application for attorneys' fees and costs should be granted; (iv) request for
18 Named Plaintiffs' Service Payments should be granted; and (v) any timely objections
19 made pursuant to Section IV(N) and all responses by FLSA Class Counsel, State Class
20 Counsel and Counsel for Jenny Craig to such objections. At the Final Fairness and
21 Approval Hearing, Named Plaintiffs, FLSA Class Counsel, State Class Counsel and
22 Counsel for Jenny Craig shall ask the Court to give final approval of this Agreement.
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28 ⁹ Pursuant to L.R. 7.1(e)(2) Class Counsel and Defendants must file any opposition to an objection not later than 14 days prior to the noticed hearing date.

¹⁰ Id.

1 Simultaneous to the Court’s entry of an Order granting final approval of this
2 Settlement, Named Plaintiffs, FLSA Class Counsel, and State Class Counsel shall request
3 the Court dismiss the Litigation with prejudice (“Dismissal Order”).
4

5 FLSA Class Counsel and State Class Counsel shall furnish the FLSA and State
6 Settlement Administrator with copies of the Settlement Approval Order and Dismissal
7 Order within two (2) business days of receiving it through the Court’s ECF system.
8

9 **P. FLSA Settlement Payment Procedures.**

10 1. FLSA Settlement Fund

11 The FLSA Escrow Agent shall cause an escrow account to be created (“FLSA
12 Escrow Account”) into which the FLSA Settlement Fund will be deposited by Jenny
13 Craig and from which the FLSA Settlement Administrator shall make disbursements in
14 accordance with this Agreement. The FLSA Escrow Agent shall be an interest-bearing
15 account at a national bank chosen by the FLSA Escrow Agent, with the interest accruing
16 to the benefit of the FLSA Class. The FLSA Escrow Agent shall be the sole signatory to
17 the account. This Agreement will serve as the escrow instructions pursuant to which the
18 FLSA Escrow Agent will hold and instruct the FLSA Settlement Administrator to
19 disburse the monies in the FLSA Settlement Fund.
20
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23 2. The FLSA Escrow Agent

24 a. The FLSA Escrow Agent acknowledges that it has fiduciary obligations to
25 the Named Plaintiffs and FLSA Class Members and attests that it will not allow any
26 disbursements to be made from the FLSA Settlement Fund except as expressly authorized
27 by this Agreement or as Ordered by the Court. The FLSA Escrow Agent is authorized to
28

1 instruct the FLSA Settlement Administrator to execute such transactions on behalf of the
2 Named Plaintiffs and FLSA Class Members as are consistent with the terms of this
3 Agreement.
4

5 b. The FLSA Escrow Agent agrees that it will receive no fees or other
6 payments from the FLSA Settlement Fund for actions undertaken or expenses incurred in
7 its role as FLSA Escrow Agent other than those approved by the Court for payment of the
8 FLSA Settlement Administrator Costs. In the event that the settlement (i) does not
9 receive final approval of the Court, (ii) is modified or reversed on appeal, or (iii) is
10 otherwise rendered null and void, the FLSA Escrow Agent shall return the entire FLSA
11 Settlement Fund to Jenny Craig, along with any accrued interest. This obligation of the
12 FLSA Escrow Agent is released upon all funds being disbursed by the FLSA Settlement
13 Administrator pursuant to this Agreement, a court order, or upon return of the entire
14 FLSA Settlement Fund to Jenny Craig as described above.
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18 c. The FLSA Escrow Agent shall bear all risks related to investment of the
19 FLSA Settlement Fund and shall indemnify and hold harmless the Released Parties from
20 any claim, cause of action or demand relating to or arising out of said investment and/or
21 the FLSA Escrow Agent.
22

23 3. Provision of Account Number; Deposit of FLSA Settlement Fund
24

25 Within five (5) days after entry of the Dismissal Order, the FLSA Escrow Agent
26 shall forward to Counsel for Jenny Craig the account number of the FLSA Escrow
27 Account and any administrative instructions for the deposit of the FLSA Settlement Fund
28 into the FLSA Escrow Account. Within ten (10) days after entry of the Dismissal Order,

1 Jenny Craig shall deposit \$1,000,000 (one million dollars) into the FLSA Escrow
2 Account.

3
4 4. Disbursement of FLSA Settlement Fund

5 Subject to such further orders as may be made by the Court, the FLSA Escrow
6 Agent shall not instruct the FLSA Settlement Administrator to disburse the FLSA
7 Settlement Fund except as provided by this Agreement. In no event shall the FLSA
8 Escrow Agent permit the FLSA Settlement Administrator to disburse any portion of the
9 FLSA Settlement Fund before the Settlement Approval Order and Dismissal Order are
10 entered by the Court. In the event an FLSA Class Member files an objection and such
11 objection is sustained, the FLSA Settlement Administrator shall not disburse any portion
12 of the FLSA Settlement Fund until the Settlement Approval Order and Dismissal Order
13 become final and non-appealable. Absent a Court order directing otherwise, the FLSA
14 Settlement Fund shall be allocated as provided below.

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18 **Q. State Settlement Payment Procedures**

19 1. State Settlement Fund

20 The State Escrow Agent shall cause an escrow account to be created (“State
21 Escrow Account”) into which the State Settlement Fund will be deposited by Jenny Craig
22 and from which the State Settlement Administrator shall make disbursements in
23 accordance with this Agreement. The State Escrow Agent shall be an interest-bearing
24 account at a national bank chose by the State Escrow Agent, with the interest accruing to
25 the benefit of the State Class. The State Escrow Agent shall be the sole signatory to the
26 account. This Agreement will serve as the escrow instructions pursuant to which the
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1 State Escrow Agent will hold and instruct the State Settlement Administrator to disburse
2 the monies in the State Settlement Fund.

3
4 2. The State Escrow Agent

5 a. The State Escrow Agent acknowledges that it has fiduciary obligations to
6 the Named Plaintiffs and State Class Members and attests that it will not allow any
7 disbursements to be made from the State Settlement Fund except as expressly authorized
8 by this Agreement or as Ordered by the Court. The State Escrow Agent is authorized to
9 instruct the State Settlement Administrator to execute such transactions on behalf of the
10 Named Plaintiffs and State Class Members as are consistent with the terms of this
11 Agreement.
12

13
14 b. The State Escrow Agent agrees that it will receive no fees or other
15 payments from the State Settlement Fund for actions undertaken or expenses incurred in
16 its role as State Escrow Agent other than those approved by the Court for payment of the
17 State Settlement Administrator Costs. In the event that the settlement (i) does not receive
18 final approval of the Court, (ii) is modified or reversed on appeal, or (iii) is otherwise
19 rendered null and void, the State Escrow Agent shall return the entire State Settlement
20 Fund to Jenny Craig, along with any accrued interest. This obligation of the State
21 Escrow Agent is released upon all funds being disbursed by the State Settlement
22 Administrator pursuant to this Agreement, a court order, or upon return of the entire State
23 Settlement Fund to Jenny Craig as described above.
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26 c. The State Escrow Agent shall bear all risks related to investment of the
27 State Settlement Fund and shall indemnify and hold harmless the Released Parties from
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1 any claim, cause of action or demand relating to or arising out of said investment and/or
2 the State Escrow Agent.

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4 3. Provision of Account Number; Deposit of State Settlement Fund

5 Within five (5) days after entry of the Dismissal Order, the State Escrow Agent
6 shall forward to Counsel for Jenny Craig the account number of the State Escrow
7 Account and any administrative instructions for the deposit of the State Settlement Fund
8 into the State Escrow Account. Within ten (10) days after entry of the Dismissal Order,
9 Jenny Craig shall deposit \$650,000 (six hundred fifty thousand dollars) into the State
10 Escrow Account.
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13 4. Disbursement of State Settlement Fund

14 Subject to such further orders as may be made by the Court, the State Escrow
15 Agent shall not instruct the State Settlement Administrator to disburse the State
16 Settlement Fund except as provided by this Agreement. In no event shall the State
17 Escrow Agent permit the State Settlement Administrator to disburse any portion of the
18 State Settlement Fund before the Settlement Approval Order and Dismissal Order are
19 entered by the Court. In the event an State Class Member files an objection and such
20 objection is sustained, the State Settlement Administrator shall not disburse any portion
21 of the State Settlement Fund until the Settlement Approval Order and Dismissal Order
22 become final and non-appealable. Absent a Court order directing otherwise, the State
23 Settlement Fund shall be allocated as provided below.
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27 5. Designation of State Settlement Payments As Wages And Interest And
28 Liquidated Damages

1 Except for the Service Payments to Named Plaintiffs described herein, twenty five
2 percent (25%) of all State Settlement Payments to the State Authorized Claimants shall
3 be considered wages and shall be subject to the withholding of all applicable local, state
4 and federal taxes. Each State Authorized Claimant will receive from the State Settlement
5 Administrator a W-2 for the payment and taxes that will be withheld at the rate required
6 by law. The remaining seventy five percent (75%) of each State Settlement Payment
7 shall be considered interest and liquidated damages. Each State Authorized Claimant
8 will also receive from the State Settlement Administrator an IRS Form 1099 for these
9 payments and each State Authorized Claimant will be responsible for correctly
10 characterizing this compensation for tax purposes and to pay any taxes owing. As to the
11 portion of the State Settlement Payments that shall be considered wages, Jenny Craig will
12 pay all amounts required by law to the State Settlement Administrator who will pay any
13 federal, state or local tax authority.
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18 **R. Court Retains Jurisdiction Over FLSA Settlement Fund and State**
19 **Settlement Fund**

20 All funds held by the FLSA Escrow Agent and the State Escrow Agent shall be
21 deemed to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of
22 the Court until such funds are disbursed pursuant to this Agreement and/or further
23 order(s) of the Court.
24

25 **S. Distribution of FLSA Settlement Funds**
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1 Distribution of the FLSA Settlement Funds to FLSA Class Members shall be made
2 by the FLSA Settlement Administrator upon the FLSA Escrow Agent's instruction and
3 shall take the following form:
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5 1. The form of distribution shall consist of cash FLSA Settlement Payments to
6 FLSA Authorized Claimants. All costs relating to FLSA Taxes shall be paid by Jenny
7 Craig exclusive of the FLSA Settlement Fund. All costs relating to FLSA Class
8 Counsel's Attorneys' Fees and Costs, FLSA Service Payments, and FLSA Settlement
9 Administrator Costs shall be deducted from the FLSA Settlement Fund prior to the
10 determination of any FLSA Settlement Payments or the distribution of any proceeds from
11 the FLSA Settlement Fund to FLSA Authorized Claimants, subject to the Court's
12 approval. ("Net FLSA Settlement Fund").
13
14

15 2. FLSA Authorized Claimants shall be paid from the balance of the Net
16 FLSA Settlement Fund, subject to the Court's approval. The value of an FLSA
17 Authorized Claimant's FLSA Settlement Payment shall be determined by the number of
18 Work Weeks worked by the FLSA Authorized Claimant in a Jenny Craig Weight Loss
19 Centre up to two (2) years prior to the date the FLSA Authorized Claimant filed a consent
20 to join this action through December 31, 2008 as follows:
21
22

23 a. Consent to Join Filed Prior to January 1, 2008:

24 For those individuals who filed a Consent to Join this action prior to January 1,
25 2008, FLSA Authorized Claimants will receive \$43.75 per Work Week for the two years
26 preceding the filing of a consent to join this action through December 31, 2007, subject to
27 the Court's approval. It was determined through an independent investigation of FLSA
28

1 Class Counsel that once FLSA Class Members became aware of their lawsuit and filed a
2 Consent to Join, they tended to complain about missed meal breaks and unpaid time
3 worked. (Odenbreit Dec.) The additional practices implemented by Jenny Craig created
4 a vehicle for their complaints to be investigated and resolved. (Matthews Dec.) For the
5 foregoing reasons, FLSA Class Members who filed their Consent to Join prior to January
6 1, 2008 will receive \$9 per Work Week for time worked through December 31, 2008,
7
8 subject to the Court's approval.
9

10 The parties agree that the average hourly rate of pay for FLSA Class Members,
11 including commissions, is approximately \$12. \$43.75 per Work Week equates to over
12 two hours of overtime. During FLSA Class Counsel's investigation and discovery in this
13 action, FLSA Class Counsel conducted a survey of approximately 153 Class Members
14 who on average, reported approximately 6.78 times per month FLSA Class Members
15 worked through their entire meal breaks but were not paid, which averages out to 1.27
16 hours per Work Week of unpaid wages.¹¹ FLSA Class Members reported that on
17 average, they worked 2.395 hours per week that were not recorded on their time records
18 and for which they were not paid.¹² Most, if not all of the unpaid wages for the FLSA
19 Class would not be overtime because FLSA Class Members were typically scheduled
20 between 32-35 hours per Work Week. Therefore, the average FLSA Class Member
21 would be entitled to 4.22 hours at minimum wage per Work Week, or \$24.69 per Work
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27 ¹¹ See Declaration of Katherine J. Odenbreit, filed concurrently herewith, for a summary of survey results.

28 ¹² Not all of this time would be overtime as some FLSA Class Members were only scheduled on average 32-35 hours per week, however, FLSA Class Counsel considered the fact some FLSA Class Members reported they worked in excess of 40 hours per week of which some time was not recorded. Therefore, FLSA Class Counsel calculated that of the unpaid wages at the average minimum wage from 2007-2008, or \$5.85 per hour.

1 Week. Considering liquidated damages of an equal amount of wages owed, the total
2 average actual damages per FLSA Class Member per Work Week would be \$49.38. In
3 this case, FLSA Class Members will receive over 85% of their actual damages.
4

5 b. January 1, 2008 To The Time The FLSA Class Member Filed A Consent to
6 Join This Action:

7 To ensure that FLSA Class Members were being paid for all hours worked,
8 receiving full, uninterrupted meal breaks or being paid for all time worked during meal
9 breaks, and were not performing work off-the-clock, in 2007 Jenny Craig took more pro-
10 active measures.¹³ In consideration for the pro-active measures implemented by Jenny
11 Craig in 2007, FLSA Authorized Claimants will receive \$18 per Work Week, equal to
12 one hour of overtime, up to the time they filed a consent to join this action in 2008,
13 subject to the Court's approval. Thereafter, FLSA Authorized Claimants will receive \$9
14 per Work Week from the date their Consent to Join was filed with the Court through
15 December 31, 2008¹⁴, subject to the Court's approval.
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19 c. Designation of FLSA Settlement Payments As Wages And Interest And
20 Liquidated Damages

21 Subject to the Court's approval, except for the Service Payments to Named
22 Plaintiffs described herein, twenty five percent (25%) of all FLSA Settlement Payments
23 to the FLSA Authorized Claimants shall be considered wages and shall be subject to the
24 withholding of all applicable local, state and federal taxes. Each FLSA Authorized
25

26 _____
27 ¹³ For a full description of the pro-active measures taken by Jenny Craig from mid-2007 to the present, see
28 Declaration of Kimberly Matthews, General Counsel for Jenny Craig, Inc., filed with the Joint Motion for
Preliminary Approval filed concurrently herewith.

¹⁴ On December 4, 2008, this Court issued an Order pursuant to a Joint Motion filed by the Parties deeming prior
Notices sent to FLSA Class Members were adequate for purposes of informing FLSA Class Members of their right
to join this action as a plaintiff and establish a deadline for FLSA Class Members to do so. See Docket No. 180

1 Claimant will receive from the FLSA Settlement Administrator a W-2 for the payment
2 and taxes that will be withheld at the rate required by law. The remaining seventy five
3 percent (75%) of each FLSA Settlement Payment shall be considered interest and
4 liquidated damages. Each FLSA Authorized Claimant will also receive from the FLSA
5 Settlement Administrator an IRS Form 1099 for these payments and each FLSA
6 Authorized Claimant will be responsible for correctly characterizing this compensation
7 for tax purposes and to pay any taxes owing. As to the portion of the FLSA Settlement
8 Payments that shall be considered wages, Jenny Craig will pay all amounts required by
9 law to the FLSA Settlement Administrator who will pay any federal, state or local tax
10 authority.
11
12
13

14 3. The back of each check sent to each FLSA Authorized Claimant shall
15 contain the following release language:
16

17 “By signing this check, I indicate that I have read and understand the FLSA Release Claims provided to
18 me in the FLSA Notice of Class Settlement and hereby release any and all claims as described therein. I
19 further hereby expressly waive all benefits under Section 1542 of the California Civil Code, as well as
20 under any statutes or common law principles of other states or of federal law of similar effect.”

21 The signature of an FLSA Authorized Claimant on the back of the FLSA
22 Settlement Check is intended to act as a full release of the FLSA Released Claims against
23 Jenny Craig.
24

25 4. The check containing each FLSA Settlement Payment shall clearly indicate
26 on its face that the check will be negotiable for ninety (90) days and thereafter will be
27 void.
28

5. FLSA Settlement Payments collectively paid to all FLSA Authorized
Claimants shall not exceed the balance of the Net FLSA Settlement Fund.

1 **T. Distribution of State Settlement Funds**

2 Distribution of the State Settlement Funds to State Class Members shall be made
3
4 by the State Settlement Administrator upon the State Escrow Agent’s instructions and
5 shall take the following form:

6 1. The form of distribution shall consist of cash State Settlement Payments to
7
8 the State Authorized Claimants. All costs relating State Taxes shall be paid by Jenny
9 Craig exclusive of the State Settlement Fund. All costs relating to State Class Counsel’s
10 Attorneys’ fees and Costs, State Service Payments, and State Settlement Administrator
11 Costs shall be deducted from the State Settlement Fund prior to the determination of any
12 State Settlement Payments or the distribution of any proceeds from the State Settlement
13 Fund to State Authorized Claimants, subject the Court’s approval and except as otherwise
14 ordered by the Court. (“Net State Settlement Fund”).
15

16
17 2. State Authorized Claimants shall be paid from the balance of the Net State
18 Settlement Fund subject to the Court's approval at the Final Fairness Hearing. The value
19 of a State Authorized Claimant’s Settlement Payment shall be determined as follows:

20
21 a. State Class Members Who Were Excluded From The Settlement In The
22 Cleaves Litigation: October 6, 2002 through December 31, 2007

23 Subject to the Court’s approval, State Class Members who requested exclusion
24 from the settlement in the Cleaves Litigation are entitled to receive State Settlement
25 Payments for time worked at a Jenny Craig Weight Loss Centre in California at any time
26 between October 6, 2002 and December 31, 2007. These individuals will receive \$37.00
27 per Work Week, subject to the Court’s approval. The parties agree that the average
28

1 hourly rate of pay for State Class Members, including commissions, is approximately
 2 \$12. \$37 per Work Week equates to approximately 2 hours of overtime. During State
 3 Class Counsel's investigation and discovery in this action, State Class Counsel conducted
 4 a survey of approximately 100¹⁵ State Class Members who on average, reported they did
 5 not receive a full, uninterrupted meal break 2-3 times per week.¹⁶ State Class Members
 6 reported that on average, they worked 2.395 hours per week that were not recorded on
 7 their time records and for which they were not paid.¹⁷ Therefore, the average State Class
 8 Member would be entitled to 2.08 hours per Work Week at their regular rate of pay in
 9 meal period premiums for uninterrupted 30 minute meal breaks, or \$24.96 per Work
 10 Week. In this case, State Class Members will receive over 54% of their actual lost
 11 wages.
 12

13
 14
 15 b. Class Members Who Participated in Cleaves Settlement and Worked for
 16 Jenny Craig At Any Time Between July 10, 2007 and December 31, 2007:

17 Subject to the Court's approval, State Class Members who received payment from
 18 the settlement in the Cleaves Litigation are entitled to receive State Settlement Payments
 19 for time worked at a Jenny Craig Weight Loss Centre in California at any time between
 20 July 10, 2007 and December 31, 2007. These individuals will receive \$9.00 per Work
 21 Week, subject to the Court's approval. These individuals received approximately \$27.77
 22
 23

24
 25 ¹⁵ Once the *Cleaves* case received preliminary approval and Class Counsel was appointed in that matter, attorneys
 26 for the Plaintiffs in this case were prevented by the Rules of Professional Conduct from communicating with those
 27 class members who participated in the *Cleaves* settlement unless the individual worked for Jenny Craig after July
 28 10, 2007. (Odenbreit Decl, ¶ 13, fn 3.)

¹⁶ See Declaration of Katherine J. Odenbreit, filed concurrently herewith, for a summary of survey results.

¹⁷ Not all of this time would be overtime as some State Class Members were only scheduled on average 32-35 hours
 per week, however, State Class Counsel considered the fact some of the time worked off-the-clock by State Class
 Members would be considered overtime if they worked in excess of 8 hours in a work day. Therefore, State Class

1 per workweek under the Cleaves Litigation for time worked for Jenny Craig prior to July
2 10, 2007, subject to approval of the Court.

3
4 c. State Settlement Payments Between January 1, 2008 and December 31, 2008:

5
6 Subject to the Court's approval, State Class Members who worked at a Jenny
7 Craig Weight Loss Centre in California at any time between January 1, 2008 and
8 December 31, 2008 will receive a flat payment of \$57.00, subject to approval of the
9 Court. As described above, this payment is reasonable because of the changes
10 implemented by Jenny Craig in 2007 to reduce and/or eliminate any of the alleged
11 violations. In addition, Jenny Craig ensured that employees who either missed meal
12 periods and rest periods or who worked time for which they were not compensated could
13 report these issues and receive payment.¹⁸

14
15
16 3. The check containing each State Settlement Payment shall clearly indicate
17 on its face that the check will be negotiable for ninety (90) days.

18
19 4. State Settlement Payments collectively paid to all State Authorized
20 Claimants shall not exceed the balance of the Net State Settlement Fund.

21 **U. No Additional Contribution to the FLSA Settlement Fund and/or the**
22 **State Settlement Fund**

23 1. Jenny Craig's monetary obligation under this Agreement, exclusive of
24 FLSA Taxes and State Taxes, is limited to contributing \$1 million (one million dollars) to
25 the FLSA Settlement Fund and \$650,000 (six hundred fifty thousand dollars) to the State
26

27
28 Counsel calculated that the 2.895 hours per work week worked off-the-clock were due at the overtime rate, or \$18 per hour totaling \$43.11 per Work Week.

¹⁸ See Dec. of Kimberly Matthews in Support of Joint Motion for Preliminary Approval filed concurrently herewith.

1 Settlement Fund. Under no circumstances shall Jenny Craig be required to contribute
2 more monies into the FLSA Settlement Fund, FLSA Escrow Account, State Settlement
3 Fund, State Escrow Account, or toward FLSA Class Counsel's Attorneys' Fees and Costs
4 and State Class Counsel's Attorneys' Fees and Costs. To the extent that any fees and
5 costs incurred or charged by the FLSA Settlement Administrator and/or the State
6 Settlement Administrator that are not customary and usual, or arise from circumstances
7 outside the control of the FLSA Settlement Administrator and/or the State Settlement
8 Administrator, FLSA Class Counsel, State Class Counsel and Counsel for Jenny Craig
9 shall meet and confer to decide how such costs should be allocated and paid. Any
10 allocation and payment of extraordinary costs and charges incurred by the Settlement
11 Administrator are subject to the Court's approval.

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15 2. In the event that this Agreement is canceled, rescinded, terminated, voided
16 or nullified, however that may occur, or the settlement of the Litigation is barred by
17 operation of law, invalidated, or ordered not to be carried out by a court of competent
18 jurisdiction, the FLSA Escrow Agent shall immediately return to Jenny Craig the entire
19 balance in the FLSA Escrow Account plus any accrued interest, and the State Escrow
20 Agent shall immediately return to Jenny Craig the entire balance in the State Escrow
21 Account plus any accrued interest upon receipt of an Order by the Court.

22
23
24 **V. The FLSA Settlement Administrator**

25
26 1. Named Plaintiffs, FLSA Class Counsel and Jenny Craig have chosen
27 Phoenix Case Administration Services, LLC as the FLSA Settlement Administrator. The
28 FLSA Settlement Administrator will administer the FLSA Settlement Fund, including but

1 not limited to, distributing the FLSA Class Notice of Settlement, calculating and directing
2 the disbursements from the FLSA Settlement Fund, and handling inquiries about the
3 calculation of individual FLSA Settlement Payments upon receipt of and pursuant to the
4 Order of the Court. The FLSA Settlement Administrator shall establish a settlement
5 payment center address and telephone number to receive FLSA Class Members' inquiries
6 about the FLSA Class Notice of Settlement, requests to be excluded from the settlement
7 and FLSA Settlement Payments.
8
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10 2. The FLSA Settlement Administrator shall not begin disbursing any
11 payments to FLSA Class Members from the FLSA Settlement Fund unless and until this
12 Agreement receives final approval by the Court and receive a conformed copy of the
13 Settlement Approval Order and Dismissal Order. The parties agree, subject to the
14 Court's approval, that the FLSA Settlement Administrator shall conduct all
15 administration of the FLSA Settlement Fund, and that FLSA Class Counsel and Counsel
16 for Jenny Craig shall receive no fees or payments from the FLSA Settlement Fund
17 relating to the administration of the FLSA Settlement Fund. Under no circumstances
18 shall the FLSA Settlement Administrator make any disbursements to FLSA Class
19 Members from the FLSA Settlement Fund until all FLSA Settlement Payments have been
20 considered, calculated and accounted for and the obligations set forth herein have been
21 satisfied.
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26 **W. The State Settlement Administrator**

27 1. Named Plaintiffs, State Class Counsel and Jenny Craig have chosen
28 Phoenix Case Administration Services, LLC as the State Settlement Administrator. The

1 State Settlement Administrator will administer the State Settlement Fund including, but
2 not limited to, distributing the State Class Notice of Settlement and State Claim Form,
3 calculating and directing the disbursements for claims against and payments from the
4 State Settlement Fund, and handling inquiries about the calculation of individual State
5 Settlement Payments upon receipt of and pursuant to the Order of the Court.. The State
6 Settlement Administrator shall establish a settlement payment center address and
7 telephone number to receive State Class Members' inquiries about the State Class Notice
8 of Settlement, State Claim Form, requests to be excluded from the settlement and State
9 Settlement Payments.

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13 2. The State Settlement Administrator shall not begin processing any claims
14 by State Class Members unless and until this Agreement receives final approval by the
15 Court and shall not begin directing the disbursement of any monies from the State
16 Settlement Fund until the State Settlement Administrator is provided a conformed copy
17 of the Settlement Approval Order and Dismissal Order. The parties agree that the State
18 Settlement Administrator shall conduct all administration of the State Settlement Fund,
19 and that State Class Counsel and Counsel for Jenny Craig shall receive no fees or
20 payments from the State Settlement Fund relating to the administration of the State
21 Settlement Fund. Under no circumstances shall the State Settlement Administrator make
22 any disbursements to State Class Members from the State Settlement Fund until all State
23 Settlement Payments have been considered, calculated and accounted for and the
24 obligations set forth herein have been satisfied.

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28 **X. Resolution of Disputes Over FLSA Settlement Payment Calculations.**

1 Any FLSA Class Member who disagrees with the number of his or her Work
2 Weeks worked during the FLSA Class Period, as indicate on his or her FLSA Class
3 Notice of Settlement, shall be allowed to indicate and explain such disagreement to the
4 FLSA Settlement Administrator. The FLSA Settlement Administrator shall attempt to
5 resolve the disagreement with the FLSA Class Member and may request any information
6 or assistance from Jenny Craig or FLSA Class Counsel that the FLSA Settlement
7 Administrator, in its sole discretion, believes may assist in resolving the disagreement. In
8 the event of a dispute or discrepancy between a claim of an FLSA Class Member and the
9 number of Work Weeks provided by Jenny Craig to the FLSA Settlement Administrator,
10 the FLSA Settlement Administrator may request Jenny Craig to review its personnel
11 records regarding an FLSA Class Member's Work Weeks during the FLSA Class Period.
12 FLSA Class Members may appeal the Settlement Administrator's decision as to the
13 number of Work Weeks to the Court. The Court's decision as to the number of Work
14 Weeks during the FLSA Class period that any FLSA Class Member actually worked will
15 be final, binding and non-appealable.
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21 **Y. Resolution of Disputes Over State Settlement Payment Calculations.**

22 Any State Class Member who disagrees with the number of his or her Work
23 Weeks worked during the State Class Period, as indicate on his or her State Class Notice
24 of Settlement, shall be allowed to indicate and explain such disagreement to the State
25 Settlement Administrator. The State Settlement Administrator shall attempt to resolve
26 the disagreement with the State Class Member and may request any information or
27 assistance from Jenny Craig or State Class Counsel that the State Settlement
28

1 Administrator, in its sole discretion, believes may assist in resolving the disagreement. In
2 the event of a dispute or discrepancy between a claim of a State Class Member and the
3 number of Work Weeks provided by Jenny Craig to the State Settlement Administrator,
4 the State Settlement Administrator may request Jenny Craig to review its personnel
5 records regarding an State Class Member's Work Weeks during the State Class Period.
6 State Class Members may appeal the Settlement Administrator's decision as to the
7 number of Work Weeks to the Court. The Court's decision as to the number of Work
8 Weeks during the State Class period that any State Class Member actually worked will be
9 final, binding and non-appealable.
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13 **Z. Time For Disbursement Of FLSA Settlement Payments; Handling Of**
14 **Unclaimed Funds.**

15 1. The FLSA Settlement Administrator shall commence directing
16 disbursement of the FLSA Settlement Payments to each FLSA Authorized Claimant by
17 First Class U.S. mail as soon as practicable after receipt of a conformed copy of the
18 Settlement Approval Order and the Dismissal Order. The FLSA Settlement
19 Administrator shall make every effort to assure the completion of such disbursement
20 within ninety (90) days of commencing disbursement efforts. Promptly after the
21 disbursement of all FLSA Settlement Payments and the time for cashing outstanding
22 FLSA Settlement Payments has expired, the FLSA Settlement Administrator shall
23 provide to FLSA Class Counsel and Counsel for Jenny Craig with a declaration reflecting
24 the names of (i) all members of the FLSA Class who were sent the FLSA Class Notice of
25 Settlement, (ii) all FLSA Authorized Claimants and the amount of any FLSA Settlement
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1 Payment to each, and (iii) all FLSA Authorized Claimants who failed to timely cash their
2 FLSA settlement checks and the amount of any FLSA Settlement Payment to each, which
3 declaration FLSA Class Counsel shall file with the Court. Under no circumstances shall
4 the FLSA Settlement Administrator direct any disbursements to FLSA Class Members
5 from the FLSA Settlement Fund until all FLSA Settlement Payments have been
6 considered, calculated and accounted for and the obligations set forth herein have been
7 satisfied. In addition, prior to directing any disbursement to FLSA Class Members, the
8 FLSA Settlement Administrator shall provide FLSA Class Counsel and Counsel for
9 Jenny Craig with a register listing all FLSA Authorized Claimants and the proposed
10 FLSA Settlement Payment for each for verification.
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14 2. Approximately 60 (sixty) days after mailing the FLSA Settlement
15 Payments to FLSA Authorized Claimants, the FLSA Settlement Administrator shall send
16 each FLSA Authorized Claimant who has not yet cashed the settlement check a written
17 reminder of the ninety (90) day limit on negotiability and offer to replace any checks
18 reported within such ninety (90) days as either lost or stolen. Any settlement checks
19 remaining uncashed after ninety (90) days shall become void and the funds associated
20 with such checks shall be deemed unclaimed settlement funds (“FLSA Unclaimed
21 Settlement Funds”).
22
23

24 3. The FLSA Settlement Administrator shall inform FLSA Class Counsel and
25 Counsel for Jenny Craig of the total value of FLSA Unclaimed Settlement Funds. All
26 FLSA Unclaimed Settlement Funds shall remain in the FLSA Settlement Fund Account
27 for a period of sixty (60) days after providing FLSA Class Counsel and Counsel for
28

1 Jenny Craig with the total remaining in the FLSA Settlement Fund Account. Any FLSA
2 Authorized Claimant who contacts the FLSA Settlement Administrator to claim their
3 FLSA Settlement Payment from the FLSA Unclaimed Settlement Funds will be sent such
4 payment upon the FLSA Settlement Administrator's confirmation that the FLSA Class
5 Member (i) was entitled to an FLSA Settlement Payment, (ii) was sent a check for the
6 FLSA Settlement Payment and (iii) the settlement check was not cashed and is accounted
7 for in the FLSA Unclaimed Settlement Funds. Any monies remaining in the FLSA
8 Unclaimed Settlement Funds after sixty (60) days from the date of the expiration of the
9 negotiability of the settlement checks shall be disbursed by the FLSA Settlement
10 Administrator equally to all FLSA Class Members who cashed their settlement checks,
11 including a pro rata share of any interest accrued in the FLSA Settlement Fund Account.
12

13 **AA. Time For Disbursement of State Settlement Payments, Handling Of**
14 **Unclaimed Funds.**

15
16 1. The State Settlement Administrator shall commence directing
17 disbursements of the State Settlement Payments to each State Authorized Claimant by
18 First Class U.S. mail as soon as practicable after receipt of a conformed copy of the
19 Settlement Approval Order and the Dismissal Order issued by the Court. The State
20 Settlement Administrator shall make every effort to assure the completion of such
21 disbursement within ninety (90) days of commencing disbursement efforts. Promptly
22 after the disbursement of all State Settlement Payments and the time for cashing
23 outstanding State Settlement Payments has expired, the State Settlement Administrator
24 shall provide to State Class Counsel and Counsel for Jenny Craig with a declaration
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1 reflecting the names of (i) all State Authorized Claimants who were eligible to be part of
2 the State Class who were sent the State Class Notice of Settlement, (ii) all individuals
3 who were eligible to be part of the State Class who returned timely and valid Requests for
4 Exclusion to the State Settlement Administrator, (iii) all State Authorized Claimants and
5 the amount of any State Settlement Payment to each, and (iv) all State Authorized
6 Claimants who failed to timely cash their State settlement checks and the amount of any
7 State Settlement Payment to each, which declaration State Class Counsel shall file with
8 the Court. Under no circumstances shall the State Settlement Administrator direct any
9 disbursements to State Class Members from the State Settlement Fund until all State
10 Settlement Payments have been considered, calculated and accounted for and the
11 obligations set forth herein have been satisfied. In addition, prior to directing any
12 disbursement to State Class Members, the State Settlement Administrator shall provide
13 State Class Counsel and Counsel for Jenny Craig with a register listing all State
14 Authorized Claimants and the proposed State Settlement Payment for each for
15 verification.
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21 2. Approximately sixty (60) days after mailing the State Settlement Payments
22 to State Authorized Claimants, the State Settlement Administrator shall send each State
23 Authorized Claimant who has not yet cashed the settlement check a written reminder of
24 the ninety (90) day limit on negotiability and offer to replace any checks reported within
25 such ninety (90) days as either lost or stolen. Any settlement checks remaining uncashed
26 after ninety (90) days shall become void and the funds associated with such checks shall
27 be deemed unclaimed settlement funds (“State Unclaimed Settlement Funds”).
28

1 3. The State Settlement Administrator shall inform State Class Counsel and
2 Counsel for Jenny Craig of the total value of State Unclaimed Settlement Funds. All
3 State Unclaimed Settlement Funds shall remain in the State Settlement Fund Account for
4 a period of sixty (60) days after providing State Class Counsel and Counsel for Jenny
5 Craig with the total remaining in the State Settlement Fund Account. Any State
6 Authorized Claimant who contacts the State Settlement Administrator to claim their State
7 Settlement Payment from the State Unclaimed Settlement Funds will be sent such
8 payment upon the State Settlement Administrator's confirmation that the State Class
9 Member (i) was entitled to an State Settlement Payment, (ii) was sent a check for the
10 State Settlement Payment and (iii) the settlement check was not cashed and is accounted
11 for in the State Unclaimed Settlement Funds. Any monies remaining in the State
12 Unclaimed Settlement Funds after sixty (60) days from the date of the expiration of the
13 negotiability of the settlement checks shall be disbursed by the State Settlement
14 Administrator equally to all State Class Members who cashed their settlement checks,
15 including a pro rata share of any interest accrued in the State Settlement Fund Account.
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21 **BB. Payment Of FLSA Class Counsel Attorneys' Fees and Costs**

22 1. Jenny Craig supports FLSA Class Counsel's application for an award of
23 attorneys' fees of up to \$333,300 (three hundred thirty-three thousand three hundred
24 dollars) and costs of approximately \$26,467.64 (twenty-six thousand four hundred sixty-
25 seven dollars and sixty-four cents). Jenny Craig believes that such an award of attorneys'
26 fees and costs is reasonable. Named Plaintiffs, FLSA Class Members and FLSA Class
27
28

1 Counsel agree that any award of attorneys' fees and costs awarded by the Court shall be
2 paid solely from the FLSA Settlement Fund.

3
4 2. Five (5) days after the Court's entry of the Dismissal Order and the Court's
5 award of FLSA Class Counsel Attorneys' Fees, the FLSA Escrow Agent shall instruct the
6 FLSA Settlement Administrator to pay to FLSA Class Counsel from the FLSA
7 Settlement Fund the amount of attorneys' fees and costs awarded to FLSA Class Counsel
8 by the Court. The attorneys' fees and costs will be distributed as follows:
9

10 The FLSA Settlement Administrator shall disburse the FLSA Class Counsel
11 Attorney Fees and Costs as indicated above via wire transfer pursuant to instructions
12 provided by FLSA Class Counsel.
13

14 3. The allowance, disallowance, or modification by the Court of the
15 application of FLSA Class Counsel for an award of attorneys' fees and costs is not part of
16 this Agreement and is to be considered by the Court separately from the Court's
17 consideration of the fairness, reasonableness, and adequacy of the settlement. Any order
18 or proceeding relating to the attorneys' fee and costs application by FLSA Class Counsel,
19 or any appeal from any order relating thereto or modification or reversal thereof, shall not
20 operate to terminate or cancel the Agreement, or affect or delay the finality of the
21 Dismissal Order and settlement of this Litigation.
22
23

24 **CC. Payment of State Class Counsel Attorneys' Fees and Costs**

25
26 1. Jenny Craig supports State Class Counsel's application for an award of
27 attorneys' fees of up to \$216,645 (two hundred sixteen thousand six hundred forty-five
28 dollars) and costs of approximately \$14,251.81 (fourteen thousand two hundred fifty-one

1 dollars and eighty-one cents). Jenny Craig believes that such an award of attorneys' fees
2 and costs is reasonable. Named Plaintiffs, State Class Members and State Class Counsel
3 agree that any award of attorneys' fees and costs awarded by the Court shall be paid
4 solely from the State Settlement Fund.
5

6 2. Five (5) days after the Court's entry of the Dismissal Order and the Court's
7 award of State Class Counsel Attorneys' Fees, the State Escrow Agent shall instruct the
8 State Settlement Administrator to pay to State Class Counsel from the State Settlement
9 Fund the amount of attorneys' fees and costs awarded to State Class Counsel by the
10 Court. The attorneys' fees and costs will be distributed as follows:
11

12 The State Settlement Administrator shall disburse the State Class Counsel
13 Attorney Fees and Costs as indicated above via wire transfer pursuant to instructions
14 provided by FLSA Class Counsel.
15

16 3. The allowance, disallowance, or modification by the Court of the
17 application of State Class Counsel for an award of attorneys' fees and costs is not part of
18 this Agreement and is to be considered by the Court separately from the Court's
19 consideration of the fairness, reasonableness, and adequacy of the settlement. Any order
20 or proceeding relating to the attorneys' fee and costs application by State Class Counsel,
21 or any appeal from any order relating thereto or modification or reversal thereof, shall not
22 operate to terminate or cancel the Agreement, or affect or delay the finality of the
23 Dismissal Order and settlement of this Litigation.
24
25

26 **DD. Retention of Status As FLSA Class Counsel and State Class Counsel**
27 **To Provide Ongoing Assistance To Class Members**
28

1 1. The parties agree that, in the interest of ensuring compliance with this
2 Consent Decree, FLSA Class Counsel and State Class Counsel (collectively “Class
3 Counsel”) will remain as counsel of record until July 2010 for all Jenny Craig non-
4 exempt employees classified above. In the event any non-exempt employee has a wage
5 and hour complaint that he or she believes has not been addressed adequately by Jenny
6 Craig, that person may notify Class Counsel of the dispute and Class Counsel will notify
7 Jenny Craig. Once notified, Jenny Craig shall have 45 days to resolve the matter. If the
8 matter is not resolved in 45 days, Class Counsel may initiate a formal proceeding.
9
10

11 2. The goal of this provision is to act as a safety net for any employee who
12 feels that his or her wage and hour issues are not being addressed and /or resolved, to
13 provide ongoing assistance to Class Members, and to provide additional incentive for
14 Jenny Craig to ensure compliance with meal and rest break rules and wage and hour laws.
15 This clause adds another layer of protection both for the employee and Jenny Craig in that
16 the employee may proceed through regular dispute resolution channels in addition to the
17 added protection of Class Counsel. Jenny Craig, on the other hand, would have an
18 opportunity to resolve matters amicably and quickly to the extent such matters may not
19 have been addressed through Jenny Craig’s dispute resolution process. The outcome is
20 timely resolution and the ability to avoid unnecessary litigation which leads to a much
21 longer and costly resolution process.
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26 3. Class Counsel will receive no additional compensation at this time in for
27 providing these services, however, Class Counsel retains the right to seek attorneys’ fees,
28 costs and expenses in connection with any further proceeding brought to enforce Class

1 Member rights under this provision subsequent to the Court’s final approval of this
2 Consent Decree. In the event Class Counsel seeks to withdraw, they first must seek
3 permission of this Court.
4

5 **EE. FLSA Taxes**

6 1. Withholding and Reporting Requirements

7 Jenny Craig shall be responsible for ensuring that all FLSA Employer Taxes
8 associated with the FLSA Settlement Payments are timely paid to the appropriate tax
9 authorities. The FLSA Settlement Administrator shall be responsible for ensuring all
10 remaining FLSA Taxes associated with the Agreement are timely paid to the appropriate
11 tax authorities. The FLSA Settlement Administrator’s responsibilities include the
12 following: (i) filing all Federal, state and local employment tax returns, income tax
13 returns and any other tax returns associated with the FLSA Taxes, (ii) timely and
14 properly filing all required Federal, state and local information returns (e.g., 1099s, W-2s,
15 etc.) with the appropriate taxing authorities of FLSA Authorized Claimants, and (iii)
16 completion of any other steps necessary for compliance with any tax obligations of the
17 FLSA Settlement Fund under Federal, state and/or local law. To verify the FLSA
18 Settlement Administrator’s compliance with the foregoing withholding and reporting
19 requirements, as soon as administratively practicable, the FLSA Settlement Administrator
20 shall furnish FLSA Class Counsel and Jenny Craig with copies of all tax returns and
21 information returns filed by the FLSA Settlement Administrator (including all 1099 and
22 W-2 information returns) and a final accounting adequate to demonstrate full compliance
23 with all tax withholding, payment and reporting obligations. In addition, the FLSA
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1 Settlement Administrator shall timely make such elections as necessary or advisable to
2 carry out the provisions of this Section IV. It shall be the responsibility of the FLSA
3 Settlement Administrator to timely and properly prepare and deliver all necessary
4 documentation for signature as may be required, and thereafter to cause the appropriate
5 filing of such documentation to occur.
6

7
8 2. Payment of FLSA Settlement Fund Tax Expenses

9 All taxes (including any interest and penalties) arising with respect to income
10 earned by the FLSA Settlement Fund shall be paid from the FLSA Settlement Fund.
11

12 3. Determination and Payment of FLSA Taxes

13 Consistent with the calculation of the FLSA Settlement Payments owed to FLSA
14 Authorized Claimants, all FLSA Settlement Payments shall consist of alleged back
15 overtime wages purportedly owed to FLSA Class Members and interest and liquidated
16 damages. For the portion of each FLSA Settlement Payment considered to be wages, the
17 FLSA Settlement Administrator shall determine the amount of FLSA Employee Taxes to
18 be withheld from each FLSA Authorized FLSA Claimant's FLSA Settlement Payment.
19 FLSA Employee Taxes shall be incurred on and withheld from the FLSA Settlement
20 Payment paid to each FLSA Authorized Claimant prior to disbursement and remitted by
21 the FLSA Settlement Administrator to the proper governmental taxing authorities.
22
23

24 4. As soon as practicable, the FLSA Settlement Administrator shall determine
25 the amount of FLSA Employer Taxes imposed on the FLSA Settlement Payments and
26 provide this information in a report to Jenny Craig detailing each individual FLSA
27 Settlement Payment, the amount of FLSA Employer Taxes for each individual FLSA
28

1 Settlement Payment and a the total of FLSA Employer Taxes due. All FLSA Employer
2 Taxes shall be timely filed and paid by Jenny Craig exclusive of the FLSA Settlement
3 Fund.
4

5 **FF. State Taxes**

6 1. Withholding and Reporting Requirements

7
8 Jenny Craig shall be responsible for ensuring that all State Employer Taxes
9 associated with the State Settlement Payments are timely paid to the appropriate tax
10 authorities. The State Settlement Administrator shall be responsible for ensuring all
11 remaining State Taxes associated with the Agreement are timely paid to the appropriate
12 tax authorities. The State Settlement Administrator's responsibilities include the
13 following: (i) filing all Federal, state and local employment tax returns, income tax
14 returns and any other tax returns associated with the State Taxes, (ii) timely and properly
15 filing all required Federal, state and local information returns (e.g., 1099s, W-2s, etc.)
16 with the appropriate taxing authorities of State Authorized Claimants, and (iii)
17 completion of any other steps necessary for compliance with any tax obligations of the
18 State Settlement Fund under Federal, state and/or local law. To verify the State
19 Settlement Administrator's compliance with the foregoing withholding and reporting
20 requirements, as soon as administratively practicable, the State Settlement Administrator
21 shall furnish State Class Counsel and Jenny Craig with copies of all tax returns and
22 information returns filed by the State Settlement Administrator (including all 1099 and
23 W-2 information returns) and a final accounting adequate to demonstrate full compliance
24 with all tax withholding, payment and reporting obligations. In addition, the State
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1 Settlement Administrator shall timely make such elections as necessary or advisable to
2 carry out the provisions of this Section IV. It shall be the responsibility of the State
3 Settlement Administrator to timely and properly prepare and deliver all necessary
4 documentation for signature as may be required, and thereafter to cause the appropriate
5 filing of such documentation to occur.
6

7
8 2. Payment of State Settlement Fund Tax Expenses

9 All taxes (including any interest and penalties) arising with respect to income
10 earned by the State Settlement Fund shall be paid from the State Settlement Fund.
11

12 3. Determination and Payment of State Taxes

13 Consistent with the calculation of the State Settlement Payments owed to State
14 Authorized Claimants, all State Settlement Payments shall consist of alleged back
15 overtime wages purportedly owed to State Class Members and interest and liquidated
16 damages. For the portion of each State Settlement Payment considered to be wages, the
17 State Settlement Administrator shall determine the amount of State Employee Taxes to be
18 withheld from each State Authorized State Claimant's FLSA Settlement Payment. State
19 Employee Taxes shall be incurred on and withheld from the State Settlement Payment
20 paid to each State Authorized Claimant prior to disbursement and remitted by the State
21 Settlement Administrator to the proper governmental taxing authorities.
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25 4. As soon as practicable, the State Settlement Administrator shall determine
26 the amount of State Employer Taxes imposed on the State Settlement Payments and
27 provide this information in a report to Jenny Craig detailing each individual State
28 Settlement Payment, the amount of State Employer Taxes for each individual State

1 Settlement Payment and a the total of State Employer Taxes due. All State Employer
2 Taxes shall be timely filed and paid by Jenny Craig exclusive of the State Settlement
3 Fund.
4

5 **GG. No Liability For Disbursements Related To FLSA Settlement Fund**

6 1. Jenny Craig and FLSA Class Counsel shall have no responsibility or
7 liability whatsoever and the FLSA Settlement Administrator shall indemnify and hold
8 Jenny Craig and FLSA Class Counsel harmless with respect to the distribution of the
9 FLSA Settlement Fund, the determination, administration, calculation or payment of
10 claims, the payment, withholding, reporting and filing of any FLSA Taxes as indicated
11 herein, the payment of any FLSA Taxes as indicated herein, or any losses incurred with
12 the foregoing.
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15 2. No person shall have any claim against FLSA Class Counsel, the FLSA
16 Settlement Administrator, any agent designed by FLSA Class Counsel, Jenny Craig,
17 Counsel for Jenny Craig or any agent designated by Jenny Craig or Counsel for Jenny
18 Craig based upon the distributions made substantially in accordance with this Agreement,
19 the allocation of the FLSA Settlement Fund among FLSA Class Members thereunder,
20 and/or further orders of the Court.
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23 **HH. No Liability For Disbursements Related to State Settlement Fund.**

24 1. Jenny Craig and State Class Counsel shall have no responsibility or liability
25 whatsoever and the State Settlement Administrator shall indemnify and hold Jenny Craig
26 and State Class Counsel harmless with respect to the distribution of the State Settlement
27 Fund, the determination, administration, calculation or payment of claims, the payment,
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1 withholding, reporting and filing of any State Taxes as indicated herein, the payment of
2 any State Taxes as indicated herein, or any losses incurred with the foregoing.

3
4 2. No person shall have any claim against State Class Counsel, the State
5 Settlement Administrator, any agent designed by State Class Counsel, Jenny Craig,
6 Counsel for Jenny Craig or any agent designated by Jenny Craig or Counsel for Jenny
7 Craig based upon the distributions made substantially in accordance with this Agreement,
8 the allocation of the State Settlement Fund among State Class Members thereunder,
9 and/or further orders of the Court.

11 **II. Public Statements**

12
13 Named Plaintiffs, FLSA Class Counsel, State Class Counsel and Jenny Craig
14 agree to the following release of information in response to any third party media inquiry:
15 (1) the case was resolved to the parties' mutual satisfaction, and (2) the settlement is fully
16 set forth on the public record and was subject of an approval hearing before U.S. District
17 Court Judge Janis Sammartino. The parties will refer any other third party inquiries to
18 that public record. If any inquiries are made by any FLSA Class Member or State Class
19 Member regarding the settlement itself, or the administration thereof, the FLSA Class
20 Member or State Class Member will be provided with the name and telephone number of
21 the FLSA Settlement Administrator or State Settlement Administrator, and referred to the
22 administrator, except FLSA Class Counsel and State Class Counsel shall not be
23 precluded from responding to FLSA Class Members and State Class Members inquiries
24 over legal issues/implications of the settlement and any other matters to which FLSA
25 Class Counsel and State Class Counsel have a fiduciary duty to respond.
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1 Notwithstanding the foregoing, Jenny Craig shall be permitted to make disclosures
2 related to this Agreement that are required by law, by rule or regulation, by any rule of
3 any stock exchange, or by any governmental or judicial process, as reasonably
4 determined by Jenny Craig or its subsidiaries. Notwithstanding the foregoing, FLSA
5 Class Counsel and State Class Counsel shall be permitted to make disclosures related to
6 this Agreement that are required by law, by rule or regulation, by any governmental or
7 judicial process, as reasonably determined by FLSA Class Counsel and State Class
8 Counsel.
9
10

11 **V.**

12 **LIMITATIONS ON USE OF THIS SETTLEMENT**

13 **A. No Admission**

14 Neither the acceptance nor the performance by Jenny Craig of the terms of this
15 Agreement nor any of the related negotiations or proceedings is or shall be claimed to be,
16 construed as, or deemed a precedent or an admission by Jenny Craig of the truth of any
17 allegations in the Complaint, the claimed representative nature of the Litigation, the
18 validity of any claims that were or could have been asserted by Named Plaintiffs, any
19 FLSA Class Member and any State Class Member (including any individual who
20 requested to be excluded from the settlement) or of any liability of Jenny Craig in the
21 Litigation.
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26 **B. Non-Evidentiary Use**

27 Neither this Agreement nor any of its terms, nor any statement or conduct in the
28 negotiation or drafting of it, shall be offered or used as evidence by Named Plaintiffs, any

1 FLSA Class Member, any State Class Member (including any individual who requested
2 to be excluded from the settlement), Jenny Craig, or their respective counsel, in the
3 Litigation, or in any other action or proceeding. Nothing contained in this Section VB
4 shall prevent this Agreement from being used, offered or received in evidence in any
5 proceeding to enforce, construe or finalize this Agreement.
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8 **C. No Collateral Attack**

9 This Agreement shall not be subject to collateral attack by any FLSA Class
10 member, any State Class Member or any recipient of the FLSA Class Notice of
11 Settlement and State Class Notice of Settlement after the Dismissal Order described in
12 Section IV is entered. Such prohibited collateral attacks shall include, but not be limited
13 to, claims under Section IV that an FLSA Class Member's FLSA Settlement Payment
14 was improperly calculated or adjusted, that a State Class Member's State Settlement
15 Payment was improperly calculated or adjusted, that an FLSA Class Member failed to
16 receive timely notice of the procedure for disputing the calculation of individual FLSA
17 Settlement Payments or failed to submit a timely dispute for any reason, or that a State
18 Class Member failed to receive timely notice of the procedure for disputing the
19 calculation of individual State Settlement Payments or failed to submit a timely dispute
20 for any reason.
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24 **D. Nullification**

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26 1. If (a) the Court should for any reason fail to approve this settlement in the
27 form agreed to by Named Plaintiffs, FLSA Class Counsel, State Class Counsel and
28 Counsel for Jenny Craig; (b) the Court should for any reason fail to enter the Settlement

1 Approval Order; (c) the Court should for any reason fail to enter the Dismissal Order; (d)
2 the Settlement Approval Order or the Dismissal Order are reversed, modified or declared
3 or rendered void; or (e) the United States District Court for the Southern District of
4 California should for any reason fail to enter an order dismissing with prejudice this
5 Litigation, then (i) this settlement shall be considered null and void; (ii) neither this
6 settlement nor any of the related negotiations or proceedings shall be of any force or
7 effect, (iii) all parties to this settlement shall stand in the same position, without
8 prejudice, as if the settlement had been neither entered into nor filed with the Court, and
9 (iv) the FLSA Class, the State Class, FLSA Class Counsel and State Class Counsel shall
10 not receive any benefit but will not suffer any detriment from this settlement.
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14 **VI.**

15 **RELEASES**

16 **A. Scope Of FLSA Class Members' Release**

17
18 1. It is the desire of Named Plaintiffs, FLSA Class Members and Jenny Craig
19 to fully, finally and forever settle, compromise, and discharge disputes and claims arising
20 from or related to the Litigation. Upon entry of the Dismissal Order in the Litigation,
21 Named Plaintiffs and each FLSA Class Member who has cashed their FLSA Settlement
22 Payment shall be bound by this Agreement as to the FLSA Released Claims and shall
23 have recourse exclusively to the benefits, rights and remedies provided hereunder. This
24 release is not meant to preclude claims for Workers' Compensation, unemployment
25 insurance, or indemnification pursuant to Labor Code section 2802. In addition, nothing
26 in this release precludes the Class Members from filing a charge with a government
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28

1 agency such as the Equal Employment Opportunity Commission to the extent prohibiting
2 the filing of such a charge would violate public policy. In exchange for the consideration
3 provided pursuant to this Agreement, Named Plaintiffs and each FLSA Class Member
4 shall be deemed to have, and by operation of the Dismissal Order shall have, fully, finally
5 and forever released, relinquished and discharged each and all of the Released Parties
6 from the FLSA Released Claims.
7

8
9 2. As to the Released Claims, Named Plaintiffs and each FLSA Class Member
10 waive all rights and benefits afforded by Section 1542 of the Civil Code of the State of
11 California, and do so understanding the significance of that waiver. Section 1542
12 provides:
13

14 **“A general release does not extend to claims which the creditor does not know**
15 **or suspect to exist in his favor at the time of executing the release, which if known by**
16 **him must have materially affected his settlement with the debtor.”**
17

18 Named Plaintiffs, the FLSA Class and each FLSA Class Member shall be deemed
19 to have acknowledged that this Agreement is intended to include in its effect any and all
20 FLSA Released Claims known or suspected to exist in their favor at the time of final
21 approval of this Agreement. Each FLSA Class Member shall be deemed to have made
22 the foregoing release upon signature on the FLSA Settlement Payment check.
23

24 **B. Scope Of State Class Members’ Release**
25

26 1. It is the desire of Named Plaintiffs, State Class Members and Jenny Craig
27 to fully, finally and forever settle, compromise, and discharge disputes and claims arising
28 from or related to the Litigation. Upon entry of the Dismissal Order in the Litigation,

1 Named Plaintiffs and each State Class Member shall be bound by this Agreement as to
2 the State Released Claims and shall have recourse exclusively to the benefits, rights and
3 remedies provided hereunder. This release is not meant to preclude claims for Workers'
4 Compensation, unemployment insurance, or indemnification pursuant to Labor Code
5 section 2802. In addition, nothing in this release precludes the Class Members from
6 filing a charge with a government agency such as the Equal Employment Opportunity
7 Commission to the extent prohibiting the filing of such a charge would violate public
8 policy. In exchange for the consideration provided pursuant to this Agreement, Named
9 Plaintiffs and each State Class Member shall be deemed to have, and by operation of the
10 Dismissal Order shall have, fully, finally and forever released, relinquished and
11 discharged each and all of the Released Parties from the State Released Claims.
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14
15 2. As to the Released Claims, Named Plaintiffs and each State Class Member
16 waive all rights and benefits afforded by Section 1542 of the Civil Code of the State of
17 California, and do so understanding the significance of that waiver. Section 1542
18 provides:
19

20
21 **“A general release does not extend to claims which the creditor does not know**
22 **or suspect to exist in his favor at the time of executing the release, which if known by**
23 **him must have materially affected his settlement with the debtor.”**
24

25 Named Plaintiffs, the State Class and each State Class Member shall be deemed to
26 have acknowledged that this Agreement is intended to include in its effect any and all
27 State Released Claims known or suspected to exist in their favor at the time of final
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1 approval of this Agreement. Each State Class Member shall be deemed to have made the
2 foregoing release as if by manually signing it.

3
4 **VII.**

5 **MISCELLANEOUS PROVISIONS**

6 **A. Amendments**

7 The terms and provisions of this Agreement may be amended only by a written
8 agreement which is both (1) signed by Named Plaintiffs, FLSA Class Counsel, State
9 Class Counsel, Jenny Craig and the undersigned Counsel for Jenny Craig and (2)
10 approved by the Court.
11

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13 **B. No Inducements**

14 Named Plaintiffs, FLSA Class Counsel and State Class Counsel acknowledge that
15 they are entering into this Agreement as a free and voluntary act without duress or undue
16 pressure or influence of any kind or nature whatsoever and that Named Plaintiffs, FLSA
17 Class Counsel and State Class Counsel each has not relied on any promises,
18 representations or warranties regarding the subject matter hereof other than as set forth in
19 this Agreement.
20

21
22 **C. No Assignment**

23 None of the rights, commitments, or obligations recognized under this Agreement
24 may be assigned by Named Plaintiffs, FLSA Class Members, FLSA Class Counsel, State
25 Class Counsel or Jenny Craig without the express written consent of the other and their or
26 its respective counsel. The representations, warranties, covenants, and agreements by
27 Jenny Craig contained in this Agreement are for the sole benefit of Named Plaintiffs, the
28

1 FLSA Class Members and the State Class Members under this Agreement, and shall not
2 be construed to confer any right or to avail any remedy to any other person.

3
4 **D. Governing Law**

5 This Agreement shall be governed, construed, and interpreted, and the rights of
6 Named Plaintiffs, FLSA Class Members, State Class Members, FLSA Class Counsel,
7 State Class Counsel and Jenny Craig and the Released Parties shall be determined in
8 accordance with California law without regard to its conflicts of laws principles and shall
9 be subject to the continuing jurisdiction of the United States District Court for the
10 Southern District of California.
11

12
13 **E. Entire Agreement**

14 This Agreement, including the Exhibits referred to herein which form an integral
15 part hereof, contains the entire understanding of Named Plaintiffs, FLSA Class Members,
16 State Class Members, FLSA Class Counsel, State Class Counsel, Counsel for Jenny
17 Craig and Jenny Craig in respect to the subject matter contained herein. This Agreement
18 has been drafted jointly and is not to be construed against any party for purposes of
19 construction and interpretation. In case of any conflict between text contained in
20 Sections I through VII of this Agreement and text contained in Exhibits to this
21 Agreement, the former shall be controlling. There are no restrictions, promises,
22 representations, warranties, covenants or undertakings governing the subject matter of
23 this Agreement other than those expressly set forth or referred to herein. This Agreement
24 supersedes all prior agreements and understandings among Named Plaintiffs, The FLSA
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1 Class, the State Class, FLSA Class Counsel, State Class Counsel and Jenny Craig with
2 respect to the settlement of the Litigation.

3
4 **F. Counterparts**

5 This Agreement, and any amendments hereto, may be executed in any number of
6 counterparts, each of which when executed and delivered shall be deemed to be an
7 original and all of which taken together shall constitute but one and the same instrument.

8
9 **G. Attorneys' Fees and Costs**

10 In the event that one or more of the parties to this Agreement institutes any legal
11 action or other proceeding against any other party or parties to enforce this Agreement,
12 the successful party or parties shall be entitled to recover from the unsuccessful party or
13 parties reasonable attorneys' fees and costs, including expert witness fees incurred, in
14 addition to any other award.
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17 **H. Construction**

18 The terms and conditions of this Agreement are the result of lengthy, intensive
19 arms-length negotiations between the parties, and this Agreement shall not be construed
20 in favor of or against any party by reason of the extent to which any party or his, her or
21 its counsel participated in its drafting.
22

23 **I. Captions and Interpretations**

24 Paragraph titles or captions contained herein are inserted as a matter of
25 convenience and for reference, and in no way define, limit, extend, or describe the scope
26 of this Agreement or any provision hereof. Each term of this Agreement is contractual
27 and not merely a recital.
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J. Binding on Assigns

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective spouses, heirs, trustees, and executors, administrators, successors and assigns.

K. Corporate Signatories

Any person executing this Agreement or any such related document on behalf of a corporate signatory hereby warrants and promises for the benefit of all parties hereto that such person has been duly authorized by such corporation to execute this Agreement or any such related document.

L. Stay Of Litigation

All discovery, motions, and other litigation, other than that necessary to obtain the Court's final approval of the settlement, shall be stayed pending such final approval.

Respectfully submitted,

Dated: October 5, 2009

_____/s/ Gregory G. Petersen_____
Gregory G. Petersen, Esq.
The Petersen Law Firm
Attorneys for Plaintiffs CONNIE DIBEL, BELINDA HAGEN and VANESSA BROWN, on behalf of themselves and others similarly situated

Dated: October 5, 2009

_____/s/ Katherine J. Odenbreit_____
René L. Barge, Esq.
Katherine J. Odenbreit, Esq.
Class Action Litigation Group APC
Attorneys for Plaintiffs CONNIE DIBEL, BELINDA

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HAGEN and VANESSA BROWN, on behalf of
themselves and others similarly situated

Dated: October 5, 2009

_____/s/ Dan Chammas_____
Dan Chammas, Esq.
Venable LLP
Attorneys for Defendants JENNY CRAIG, INC.,
JENNY CRAIG WEIGHT LOSS CENTRES, INC.;
JENNY CRAIG PRODUCTS; JENNY CRAIG
OPERATIONS