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16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA
18

19 SALLIE CWIK, individually and on
behalf of others similarly situated,

20 Plaintiff,

21 vs.

22 HARVEST MANAGEMENT SUB
23 LLC; and Does 1 through 50, inclusive,

24 Defendants.
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Case No. CV12-08309 DMG (JC)

**STIPULATION RE: SETTLEMENT
OF COLLECTIVE ACTION;**

**EXHIBIT 1 – [PROPOSED] ORDER
GRANTING PRELIMINARY
APPROVAL OF SETTLEMENT;
EXHIBIT 2 – [PROPOSED]
NOTICE TO CLASS MEMBERS;
EXHIBIT 3 – [PROPOSED] ORDER
GRANTING FINAL APPROVAL
OF SETTLEMENT; AND
EXHIBIT 4 – [PROPOSED]
JUDGMENT**

Judge: The Honorable Dolly M. Gee

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1 IT IS HEREBY STIPULATED AND AGREED by and between
2 Plaintiff Sallie Cwik (“Plaintiff”) on behalf of herself and the proposed Class of
3 similarly situated individuals, on the one hand, and Defendant Harvest Management
4 Sub LLC dba Holiday Retirement (“Holiday”) on the other hand (collectively
5 “Settling Parties”), as set forth below:

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

7 This Stipulation Re: Settlement of Collective Action and all associated
8 exhibits or attachments (herein “Stipulation”) is made for the sole purpose of
9 attempting to consummate settlement of this action on a collective basis. This
10 Stipulation and the settlement it evidences is made in compromise of disputed
11 claims. Because this action was pled as a collective action and because this
12 settlement will result in the release of claims under the Fair Labor Standards Act (as
13 well as other laws and theories), this settlement must receive approval from the
14 Court. Accordingly, the Settling Parties enter into this Stipulation and associated
15 settlement on a conditional basis. In the event that the Court does not execute and
16 file the Order Granting Final Approval of Settlement, or in the event that the
17 associated Judgment does not become final for any reason, this Stipulation shall be
18 deemed null and void *ab initio*, it shall be of no force or effect whatsoever, it shall
19 not be referred to or utilized for any purpose whatsoever, and the negotiation, terms,
20 and entry of the Stipulation shall remain subject to the provisions of Federal Rule of
21 Evidence 408 and California Evidence Code Sections 1119 and 1152.

22 Holiday denies all of the claims as to liability, damages, penalties,
23 interest, fees, restitution and all other forms of relief as well as the allegations that
24 Plaintiff have asserted against it in *Cwik v. Harvest Management Sub LLC* (C.D.
25 Cal. Case No. 12-08309 DMG (JC)) (the “Litigation”). Holiday has agreed to
26 resolve the Litigation via this Stipulation, but to the extent this Stipulation is
27 disapproved by the Court, deemed void, or does not otherwise take effect, Holiday
28 does not waive, but rather expressly reserves, all rights to challenge all such claims

1 and allegations in the Litigation upon all procedural and factual grounds, including
2 without limitation the ability to (a) challenge class or collective action treatment on
3 any grounds; (b) seek to transfer the Litigation to the United States District Court for
4 the District of Oregon; and (c) assert any and all defenses or privileges. Plaintiff
5 and Class Counsel agree that Holiday retains and reserves these rights, and agree not
6 to take positions to the contrary; specifically, Plaintiff and Class Counsel agree not
7 to argue or present any argument, and hereby waive any argument, that Holiday
8 could not contest class or collective action certification or seek transfer on any
9 grounds if this Litigation were to proceed.

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

11 This Stipulation (with the associated exhibits) is made and entered into
12 by and among the following Settling Parties: (i) Plaintiff Sallie Cwik (on behalf of
13 herself and each of the plaintiffs who have opted into the Litigation and each of the
14 Settlement Class Members), with the assistance and approval of Class Counsel; and
15 (ii) Holiday, with the assistance of its counsel. This Stipulation is intended by the
16 Settling Parties to fully, finally and forever resolve, discharge and settle the
17 Released Claims upon and subject to the terms and conditions hereof. This
18 Stipulation is also intended to result in the dismissal with prejudice of the
19 underlying Litigation as set forth herein. This Stipulation is intended to and will
20 also result in the execution of a general release of all claims of any nature held by
21 Plaintiff Sallie Cwik.

22 **III. The Litigation**

23 On September 26, 2012, Plaintiff filed a putative collective action
24 against Holiday (entitled *Sallie Cwik v. Harvest Management Sub LLC*, C.D. Cal.
25 Case No. 12-08309 DMG (JC)), alleging that Holiday violated the federal Fair
26 Labor Standards Act (“FLSA”) by purportedly misclassifying its Community
27 Managers and Community Co-Managers (“Resident Managers” or “Managers”) as
28 exempt employees and, from this, Plaintiff alleges, among other things, that Holiday

1 thus failed to pay her and the other Managers all wages due and failed to properly
2 record their hours worked.

3 Holiday denies Plaintiff's allegations and contends that it properly
4 classified the Resident Managers as exempt and compensated these Managers
5 lawfully and fairly. On November 14, 2012, Holiday filed its answer denying all
6 material allegations in the Litigation. On December 6, 2012, Plaintiff filed a Motion
7 for Conditional FLSA Collective Action Certification, seeking conditional
8 certification. On December 14, 2012, Holiday filed a Motion to Transfer Venue,
9 seeking an order transferring venue in the Litigation to the United States District
10 Court for the District of Oregon pursuant to 28 U.S.C. § 1404(a). Neither motion
11 was heard, however, because the parties agreed to take their respective motions off
12 calendar pending completion of the parties' mediation.

13 Following the filing of Plaintiff's motion for conditional certification
14 and Holiday's motion to transfer, the Settling Parties engaged in an extensive arms-
15 length negotiation facilitated by a professional mediator who specializes in wage
16 and hour law, David Rotman, Esq. As part of this process, the Settling Parties
17 exchanged a significant amount of information. These negotiations included a full-
18 day mediation session with Mr. Rotman, which took place on March 14, 2013. At
19 the conclusion of the mediation session, the parties reached the agreement reflected
20 herein.

21 This Stipulation is intended to result in the creation of a collective
22 action class of all Persons in the Class as defined below. This Stipulation, if
23 approved by the Court, will result in the dismissal with prejudice of the Litigation,
24 and the waiver and release of all Released Claims for all Settlement Class Members.

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

26 Holiday denies all of the claims and contentions alleged by the Plaintiff
27 in this case. Nonetheless, Holiday has concluded that further conduct of the
28 Litigation would be protracted and expensive, and that it is desirable that the

1 Litigation be fully and finally settled in the manner and upon the terms and
2 conditions set forth in this Stipulation. Holiday has also taken into account the
3 uncertainty and risks inherent in any litigation, especially in national, collective
4 action cases like this Litigation. Holiday has therefore determined that it is desirable
5 and beneficial to it that the Litigation be settled in the manner and upon the terms
6 and conditions set forth in this Stipulation.

7 **V. Claims of Plaintiff and Benefits of Settlement**

8 Plaintiff and Class Counsel believe that the claims presently asserted in
9 the Litigation have merit. However, Plaintiff and Class Counsel recognize and
10 acknowledge the expense and length of the type of continued proceedings necessary
11 to prosecute the Litigation against Holiday through trial and through appeals.
12 Plaintiff and Class Counsel have also taken into account the uncertain outcome and
13 the risk of any litigation, as well as the difficulties and delays inherent in such
14 litigation, especially in collective action litigation. Based upon their evaluation,
15 Plaintiff and Class Counsel have determined that the settlement set forth in the
16 Stipulation is in the best interests of Plaintiff and the Class.

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

18 NOW, THEREFORE, IT IS HEREBY FURTHER STIPULATED
19 AND AGREED by and between the Plaintiff (for herself and on behalf of the
20 Settlement Class Members) and Holiday, with the assistance of their respective
21 counsel or attorneys of record, that, as among the Settling Parties, including all
22 Settlement Class Members, the Litigation and the Released Claims shall be finally
23 and fully compromised, settled, and released, and the Litigation shall be dismissed
24 with prejudice, as to all Settling Parties, upon and subject to the terms and
25 conditions of the Stipulation and the Judgment.

26 1. Definitions.

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

1 1.1.1 “Claims Administrator” means the third-party claims
2 administration firm of Rust Consulting, Inc.

3 1.1.2 “Class” means all Persons who were employed by Holiday
4 (and/or its affiliates Harvest Management Sub TRS Corp and Holiday AL
5 Management Sub LLC) anywhere in the United States of America as Resident
6 Managers during the following time periods: (A) if they have opted into the
7 Lawsuit, (i) the date three years prior to the date they have opted into the Lawsuit
8 and (ii) the Preliminary Order Date; or (B) if they have not opted into the Lawsuit as
9 of April 15, 2013, (i) the date three years prior to the Preliminary Order Date
10 through (ii) the Preliminary Order Date. These periods together shall be the “Class
11 Period.”

12 1.1.3 “Class Counsel” means, collectively, the law firms of Garcia,
13 Artigliere & Shadrack, and Howarth & Smith.

14 1.1.4 “Class Member” or “Member of the Class” means a Person
15 who is a member of the Class.

16 1.1.5 “Class Period” means the two time periods collectively as
17 specified in the definition of Class.

18 1.1.6 “Court” means the United States District Court for the Central
19 District of California.

20 1.1.7 “Effective Date” means the date on which the Judgment
21 becomes Final.

22 1.1.8 “Final” means the point at which the Judgment has become
23 final and irreversible because the latest of the following dates has occurred: (i) the
24 date of final affirmance on an appeal of the Judgment; (ii) the date of final dismissal
25 with prejudice of the last pending appeal from the Judgment; or (iii) if no appeal is
26 filed, the passing of the deadline for the filing or noticing of any form of valid
27 appeal from the Judgment. Notwithstanding the foregoing, any proceeding or order,
28 or any appeal or petition for a writ pertaining solely to the award of attorney fees or

1 costs shall not, by itself, in any way delay or preclude the Judgment from becoming
2 Final.

3 1.1.9 “Manager” or “Resident Manager” mean, collectively, the
4 positions or jobs of Community Manager or Community Co-Manager, as those
5 terms are commonly used at Holiday. For purposes of this Stipulation, the term
6 “Manager” does not include the position of Floating Manager as that term is
7 commonly used at Holiday.

8 1.1.10 “Holiday” means Harvest Management Sub LLC dba Holiday
9 Retirement, defendant in the Litigation.

10 1.1.11 “Holiday Releasees” means Holiday and all of Holiday’s
11 employees, investors (including without limitation Fortress Investment Group,
12 LLC), parents, affiliates (including without limitation Harvest Management SUB
13 TRS Corporation and Holiday AL Management Sub LLC), subsidiaries,
14 predecessors, successors, divisions, joint ventures and assigns, other related or
15 affiliated entities/persons and each of the forgoing entities’ past or present owners,
16 directors, officers, employees, partners, members, principals, agents, insurers, co-
17 insurers, re-insurers, shareholders, attorneys, employee benefit plans, employee
18 benefit plan trustees, fiduciaries, administrators, personal or legal representatives.

19 1.1.12 “Judgment” means the judgment to be rendered by the Court
20 pursuant to this Stipulation, substantially in the form attached hereto as Exhibit 4.

21 1.1.13 “Last Known Address” or “Last Known Addresses” means
22 the most recently recorded mailing address for a Class Member as such information
23 is contained in employment records maintained by Holiday.

24 1.1.14 “Litigation” or “Lawsuit” means the case captioned *Sallie*
25 *Cwik v. Harvest Management Sub LLC* (Case No. 12-08309 DMG (JC)) in the
26 United States District Court for the Central District of California.

27 1.1.15 “Maximum Settlement Amount” means the maximum gross
28 amount that Holiday shall pay under the terms of this Stipulation, which is

1 \$7,500,000. The specific components of this Maximum Settlement Amount are (a)
2 the Maximum Settlement Portion for Payments to Participating Claimants, which
3 assuming maximum fee, cost and enhancement awards, will be \$5,542,500; (b) all
4 attorney fees for Class Counsel as approved by the Court, which will not exceed
5 twenty-five percent of the Maximum Settlement Amount, and assuming maximum
6 allocation will be \$1,875,000; (c) all allowable litigation costs and associated
7 litigation expenses, which shall be in the maximum amount of \$25,000; (d) claims
8 administration costs, which are estimated to be in the amount of \$50,000; (e)
9 enhancement payments to Plaintiff Sallie Cwik, which will be in the total and
10 maximum amount of \$5,000; and (f) payment to the California Labor Workforce
11 Development Agency as part of the consideration for the release of claims under
12 California Labor Code sections 2698 et seq., which will be in the amount of \$2,500.
13 It is understood and agreed that under the terms of this Stipulation, Holiday will pay
14 less than this Maximum Settlement Amount if fewer than all Class Members
15 become Settlement Class Members, but Holiday will not under any circumstances
16 pay more than this Maximum Settlement Amount.

17 1.1.16 “Maximum Settlement Portion for Payments to Participating
18 Claimants” means the total gross amount that shall be paid to Participating
19 Claimants if all Class Members become Settlement Class Members by submitting
20 Qualifying Opt In and Release Forms.

21 1.1.17 “Notice Mailing Deadline” means the date thirty (30) days
22 after the Preliminary Order Date.

23 1.1.18 “Notice Re: Pendency of Collective Action” or “Notice To
24 Collective Action Class Members Re: Pendency of a Collective Action” or “Notice”
25 means a notice (and associated response forms) entitled “Notice To Collective
26 Action Class Members Re: Pendency and Settlement of a Collective Action” to be
27 approved by the Court, substantially in the form attached hereto as Exhibit 2.
28

1 1.1.19 “Notice Response Deadline” means the date sixty (60) days
2 after the date that the Claims Administrator mails the Notice to the Class Members.

3 1.1.20 “Opt In and Release Form” or “Opt In and Settlement Claim
4 Form” means the form attached as Form A to the Class Notice, in the same or
5 substantially the same manner as set forth in Exhibit 2.

6 1.1.21 “Order of Final Approval” or “Order Granting Final Approval
7 of Settlement” or “Final Approval Order” means an order to be entered and filed by
8 the Court entitled “Order Determining Good Faith and Granting Final Approval of
9 Settlement,” substantially in the form attached hereto as Exhibit 3. “Approval Date”
10 shall mean the date that the Court enters the Order of Final Approval. “Final
11 Approval Motion Date” shall mean the date forty days after the Notice Response
12 Deadline.

13 1.1.22 “Participating Claimant” means each Member of the Class
14 who submits a Qualifying Opt In and Release Form in response to the Class Notice.

15 1.1.23 “Payroll Taxes” shall mean the payroll taxes and associated
16 payments that an employer is required to make when making standard wage
17 payments to employees, i.e., the employer share of the payroll tax.

18 1.1.24 “Person” means a natural person.

19 1.1.25 “Plaintiff” means Sallie Cwik, named plaintiff in the
20 Litigation.

21 1.1.26 “Preliminary Order Date” means the date on which the Court
22 enters the Preliminary Approval Order.

23 1.1.27 “Preliminary Approval Order” or “Order Granting
24 Preliminary Approval” means an order to be executed and filed by the Court entitled
25 “Order Granting Preliminary Approval of Settlement,” substantially in the form
26 attached hereto as Exhibit 1.

27 1.1.28 A “Qualifying and Payable Work Week” shall be the work
28 week variable used to calculate the Settlement Sum, and this Variable shall be

1 calculated as: one Qualifying and Payable Work Week shall be credited for each
2 Qualifying Work Week worked anywhere in the United States. The total number of
3 Qualifying and Payable Work Weeks multiplied by the Settlement Sum Variable
4 shall equal the Maximum Settlement Portion for Payments to Participating
5 Claimants.

6 1.1.29 A “Qualifying Opt In and Release Form” or “Qualifying Opt
7 In and Claim Form” means an Opt In and Release Form that is fully completed, is
8 properly executed and is timely returned to the Claims Administrator, i.e., returned
9 with a postmark on or before the Notice Response Deadline.

10 1.1.30 A “Qualifying Work Week” is any calendar week during the
11 Class Period for which a Class Member received payment from Harvest
12 Management Sub LLC dba Holiday Retirement for active work (as opposed to
13 vacation or leave time) that the Class Member performed as a Manager anywhere in
14 the United States.

15 1.1.31 “Released Claims” means any and all claims, including
16 without limitations Unknown Claims, demands, rights, liabilities, and causes of
17 action of every nature and description whatsoever, including without limitation
18 statutory, constitutional, contractual or common law claims, whether arising under
19 federal or state or other law, against the Holiday Releasees, or any of them, accruing
20 at any point prior the Approval Date and arising out of the Class Member’s
21 employment by any Holiday Releasee as a Resident Manager, for failure to pay any
22 types of wages, including without limitation, claims for failure to pay regular,
23 overtime or premium wages; failure to pay for standby time; failure to pay all
24 compensation due and owing at termination; failure to provide meal and rest break
25 periods or premiums in lieu thereof; failure to provide complete or accurate wage
26 statements; and any associated remedies such as liquidated damages, penalties,
27 interest, fees, costs or any other remedies. Released Claims include without
28 limitation all wage and hour claims under the Fair Labor Standards Act (“FLSA”);

1 the Portal to Portal Act; and/or any statutes, laws or regulations of any state or local
2 government, including without limitation California Labor Code limitation sections
3 203, 218, 218.5, 226, 226.7, 512, 1194 and 2698 et seq.; and California Business
4 and Professions Code §§ 17200, et seq. and to the extent not covered above, any
5 claims pled in or reasonably arising out of the Lawsuit.

6 1.1.32 A “Reasonable Address Verification Measure” means the
7 utilization of the National Change of Address Database maintained by the United
8 States Postal Service to review the accuracy of and, if possible, update a mailing
9 address.

10 1.1.33 “Settlement Class” means the group of all of the Class
11 Members who become Participating Claimants and thus means the collective group
12 of all of the Class Members who will release and waive all Released Claims and
13 become subject to and bound by the Judgment if the Effective Date occurs.

14 1.1.34 “Settlement Class Member” or “Member of the Settlement
15 Class” means any Person who is a member of the Settlement Class.

16 1.1.35 “Settlement Sum” means the total amount due to an
17 individual Settlement Class Member, which shall be the product of the Settlement
18 Sum Variable multiplied by the number of Qualifying and Payable Work Weeks
19 worked by that Participating Claimant. Because of the withholdings and other tax
20 adjustments described in Paragraphs 2.1.1 and 2.2.1, the net amount ultimately
21 received by each Participating Claimant will be less than his or her Settlement Sum.

22 1.1.36 “Settlement Sum Variable” means the number which is the
23 quotient of the Maximum Settlement Portion for Payments to Participating
24 Claimants divided by the total number of Qualifying and Payable Work Weeks in
25 the Class Period for all Class Members, regardless of whether they actually become
26 Settlement Class Members.

1 1.1.37 “Settling Parties” means (a) Holiday, on the one hand; and (b)
2 Plaintiff on behalf of herself and all Members of the Settlement Class, on the other
3 hand.

4 1.1.38 “Stipulation” means this agreement, the Stipulation Re:
5 Settlement of Collective Action and all of its attachments and exhibits, which the
6 Settling Parties understand and agree sets forth all material terms and conditions of
7 the settlement between them, and which is subject to Court approval. It is
8 understood and agreed that Holiday’s obligations for payment under this Stipulation
9 are conditioned on, *inter alia*, the occurrence of the Effective Date.

10 1.1.39 “Unknown Claims” means any Released Claims which the
11 Plaintiff or any Settlement Class Member does not know or suspect to exist in his or
12 her favor at the time of the entry of the Judgment, and which, if known by him or
13 her might have affected his or her settlement with and release of Holiday, or might
14 have affected his or her decision to opt in to the Settlement Class, or object to this
15 settlement. With respect to any and all Released Claims, the Settling Parties
16 stipulate and agree that, upon the Effective Date, Plaintiff shall expressly, and each
17 of the Settlement Class Members shall be deemed to have, and by operation of the
18 Judgment shall have, waived the provisions, rights, and benefits of California Civil
19 Code § 1542 or any like provision of the law of any other pertinent jurisdiction.
20 California Civil Code § 1542 provides:

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

24 The Plaintiff and each Settlement Class Member may hereafter discover facts in
25 addition to or different from those which he or she now knows or believes to be true
26 with respect to the subject matter of the Released Claims, but the Plaintiff and each
27 Settlement Class Member, upon the Effective Date, shall be deemed to have, and by
28 operation of the Judgment shall have, fully, finally, and forever settled and released

1 any and all Released Claims, known or unknown, suspected or unsuspected,
2 contingent or non-contingent, whether or not concealed or hidden, which then exist,
3 or have existed, upon any theory of law or equity now existing or coming into
4 existence in the future, including, but not limited to, conduct which is negligent,
5 intentional, with or without malice, or a breach of any duty, law or rule, without
6 regard to the subsequent discovery or existence of such different or additional facts.
7 The Plaintiff acknowledges, and the Settlement Class Members shall be deemed by
8 operation of the Judgment to have acknowledged, that the foregoing waiver was
9 separately bargained for and a key element of the settlement of which this release is
10 a part. For the sake of clarity, Unknown Claims include only claims that meet the
11 definition of Released Claims and therefore include only claims for failure to pay
12 any types of wages under state and federal and other applicable law.

13 1.1.40 “Updated Address” means a mailing address that was updated
14 via a Reasonable Address Verification Measure or via an updated mailing address
15 provided by the United States Postal Service or a Class Member.

16 2. The Settlement.

17 2.1 *Consideration to Settlement Class Members*

18 2.1.1 Within thirty (30) days of the Effective Date, and only if the
19 Effective Date occurs, Holiday, through the Claims Administrator, and according to
20 the terms, conditions, and procedures set forth in this Section VI of this Stipulation,
21 shall pay each Participating Claimant his or her Settlement Sum. To the extent
22 administratively convenient, these payments shall be paid via one check. The
23 Settlement Sum shall be allocated for reporting reasons as follows: (i) one-third of
24 each payment will be reported as wage income, i.e., a payment in settlement of
25 claims for unpaid wages, which will be subject to legally required withholdings
26 (thereby causing the net amount paid to be less than the gross amount owed); and
27 (ii) the other two-thirds will be reported as non-wage income, i.e., a payment in
28 settlement of claims for interest, penalties, and/or liquidated damages, which will

1 not be subject to withholdings. Other than this reporting, which Holiday will
2 undertake, Participating Claimants will be entirely responsible for any tax
3 obligations associated with these payments. It is understood and agreed that
4 Holiday has made no representations concerning the tax implications of any
5 payments to be made pursuant to this Stipulation, and the Notice will advise Class
6 Members of their opportunity to consult a tax expert. As set forth below, each
7 Participating Claimant will receive his or her Settlement Sum only after the
8 Judgment becomes Final.

9 2.1.2 Holiday, itself or through the Claims Administrator, will
10 report each payment made pursuant to this Section 2 to government authorities,
11 including the Internal Revenue Service, as required by law, and it shall make all
12 legally required deductions and/or withholdings.

13 2.1.3 The only Class Members entitled to any payment under this
14 Stipulation and the associated Judgment are Participating Claimants, and they shall
15 be entitled to their respective Settlement Sums only. Those parts of the Maximum
16 Settlement Portion for Payments to Participating Claimants that are not claimed
17 shall remain the property of or revert to Holiday, and any finding to the contrary will
18 be a ground for Holiday to void the settlement. As such, if fewer than one hundred
19 percent of class members submit valid Opt In and Settlement Release Forms, then
20 Holiday will pay less than the Maximum Settlement Amount. This Stipulation and
21 the associated Judgment do not and will not create any unpaid residue or unpaid
22 residual, and no distribution of such shall be required. Any finding to the contrary
23 will give Holiday the option to void this Stipulation.

24 2.2 *Taxes*

25 2.2.1 Those payments (or portions thereof) allocated to the
26 settlement of claims for unpaid wages (a) shall be subject to required withholdings
27 and deductions, and so the net amounts payable will be less than the gross amounts;
28 and (b) shall be reported in the year of payment as wage income to Participating

1 Claimants on a Form W-2 or analogous form. Those payments (or portions thereof)
2 allocated to all other claims, including without limitations claims for penalties,
3 liquidated damages, interest and other non-wage recovery (a) shall not be subject to
4 withholdings and deductions, and so the net amounts payable will be equal to the
5 gross amounts; and (b) shall be reported in the year of payment as non-wage income
6 to the Participating Claimants on a Form 1099 or analogous form. The Payroll
7 Taxes on the wage portion of these payments shall be paid through a downward
8 adjustment to the Settlement Sum of each Settlement Class Member equal to the
9 amount required to be paid. Other than as set forth above, Holiday will not, unless
10 otherwise required by law, make, from the Settlement Sum of each Participating
11 Claimant, any deductions, withholdings or additional payments, including without
12 limitation, medical or other insurance payments or premiums, employee 401(k)
13 contributions or matching employer contributions, wage garnishments, or charity
14 withholdings, and entry of the Order of Final Approval by the Court shall be
15 deemed authority not to make such deductions, withholdings, or additional
16 payments. Any amount paid to Participating Claimants shall not create any credit or
17 otherwise affect the calculation of any deferred compensation, benefit, or other
18 compensation plan provided by Holiday.

19 2.2.2 Other than the withholding and reporting requirements set
20 forth in Paragraphs 2.1.2 and 2.2.1, the Participating Claimants shall be solely
21 responsible for the reporting and payment of any federal, state and/or local income
22 or other tax or any other withholdings, if any, on any of the payments made pursuant
23 to this Stipulation. Holiday makes no representations, and it is understood and
24 agreed that Holiday has made no representations, as to the taxability of any portions
25 of the settlement payments to any Participating Claimant, the payment of any costs
26 or attorney fee awards, any payments to Plaintiff, or any other payments made
27 pursuant to this Stipulation. Plaintiff and Class Counsel agree that the Class
28

1 Members will have an adequate opportunity to seek tax advice prior to acting in
2 response to the Notice.

3 *2.3 Preliminary Approval of the Settlement and Authorization*
4 *for Notice to the Classes.*

5 2.3.1 Within thirty (30) days of the final execution of this
6 Stipulation, Plaintiff and Holiday, through their counsel of record in the Litigation,
7 shall file this Stipulation with the Court and jointly move for preliminary approval
8 of this Stipulation. Via this submission, and a supporting motion, the Settling
9 Parties, through their counsel of record, will request that the Court enter the
10 Preliminary Approval Order. Via this same motion, Plaintiff, through Class Counsel
11 shall advise the Court of the agreements set forth in Paragraphs 2.8.1, 2.8.2 and
12 2.8.3 this Stipulation (concerning payment of costs, attorney fees, and Plaintiff's
13 enhancement).

14 2.3.2 Subject to Court availability, Plaintiff and Holiday shall
15 endeavor to notice the joint motion for preliminary approval described in Paragraph
16 2.3.1 for a hearing before the Court as soon as possible. Failure of the Court to enter
17 the Preliminary Approval Order in its entirety or in a substantially similar form
18 following the full efforts of the Settling Parties to obtain such entry will be grounds
19 for the Settling Parties to terminate the settlement and the terms of this Stipulation.

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

1 2.3.4 Unless the Stipulation is voided per its terms, the Settling
2 Parties and their counsel will seek approval of the Stipulation and entry of the
3 Judgment by the Court.

4 2.4 *Notice to Class Members*

5 2.4.1 If, by entering the Preliminary Approval Order, the Court
6 provides authorization to send the Notice to Class Members, Holiday, through the
7 Claims Administrator, will facilitate the mailing of the Notice to all Class Members,
8 at their Last Known Addresses. All the notices shall be mailed via first class mail
9 through the United States Postal Service, postage pre-paid. The Notice shall
10 include, as attached forms, a pre-printed change of address form and pre-printed Opt
11 In and Release Form. No other materials will be included with the mailings
12 enclosing these notices.

13 2.4.2 The Notice and its envelope or covering shall be marked to
14 denote the return address of the Claims Administrator as listed on the Opt In and
15 Release Form.

16 2.4.3 Holiday shall prepare the name, Last Known Address, Social
17 Security Number and Settlement Sum for each Class Member for the Claims
18 Administrator so that the Claims Administrator can engage in the processing and
19 mailing of each Notice, and carry out the associated opt in claims process. This
20 information will not be provided to the Plaintiff or Class Counsel. By preliminarily
21 approving this settlement, the Court will be deemed to have authorized Holiday to
22 provide the Claims Administrator with the Social Security Number of each Class
23 Member.

24 2.4.4 The Notice shall include language stating that pertinent law
25 requires Holiday to refrain from retaliating against any Class Member for any
26 actions taken or not taken in response to the notices or in regard to the Litigation,
27 and that Holiday has agreed to abide by this obligation.
28

1 2.4.5 Prior to mailing the Notice to each Class Member, the Claims
2 Administrator shall include in the space provided on each such notice the Settlement
3 Sum of each Class Member.

4 2.4.6 Prior to mailing the Notice to each Class member, the Claims
5 Administrator shall undertake a Reasonable Address Verification Measure to
6 ascertain the current accuracy of the Last Known Address of each Class Member.
7 To the extent this process yields an Updated Address, that Updated Address shall
8 replace the Last Known Address and be treated as the new Last Known Address for
9 purposes of this Stipulation and for subsequent mailings in particular.

10 2.4.7 The Notice Mailing Deadline is the last date for the Claims
11 Administrator to mail the Notices to the Last Known Address of each Class
12 Member.

13 2.4.8 All costs of mailing the Notices, which shall be the fees
14 charged by the Claims Administrator, the cost of the envelopes in which the Notice
15 will be mailed, the cost of reproducing the Notice, and the cost of postage to send
16 the Notice, shall be deducted from the Maximum Settlement Amount.

17 2.4.9 Unless the Claims Administrator receives a Notice returned
18 from the United States Postal Service for reasons discussed below in this paragraph,
19 each Notice shall be deemed mailed and received by the Class Member upon
20 mailing. In the event that subsequent to the first mailing of a Notice, and prior to
21 the Notice Response Deadline, a Notice is returned to the Claims Administrator by
22 the United States Postal Service with a forwarding address for the recipient, the
23 Claims Administrator shall re-mail that Notice to the forwarding address, that
24 Notice will be deemed mailed and received at that point, and the forwarding address
25 shall be deemed the Updated Address for that Class Member. In the event that
26 subsequent to the first mailing of a Notice, and prior to the Notice Response
27 Deadline, a Notice is returned to the Claims Administrator by the United States
28 Postal Service because the address of the recipient is no longer valid, i.e., the

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

15 *2.5 Responses to Notice; Final Approval & Entry of Judgment*

16 *2.5.1* Class Members shall be excluded from the Settlement Class
17 and the Litigation unless they elect to “opt in” to the Litigation and the Settlement
18 Class. Class Members who wish to exercise this option, i.e., wish to opt in, can do
19 so by timely and fully completing, executing, and mailing, per the instructions
20 therein, the form entitled “Opt In and Settlement Release Form” attached to the
21 Notice as Form A. Only those Class Members who submit a Qualifying Opt In and
22 Release Form shall be deemed Settlement Class Members, and they shall be the only
23 Class Members subject to the Judgment. Only those Settlement Class Members
24 who submit Qualifying Opt In and Release Forms shall be deemed Participating
25 Claimants, and only they shall be entitled to receive payment pursuant to the
26 settlement, i.e., their Settlement Sums. It is agreed and understood that if fewer than
27 one hundred percent (100%) of Class Members become Settlement Class Members,
28 then Holiday will pay less than the Maximum Settlement Amount. Class Members

1 who do not submit Qualifying Opt In and Release Forms shall be excluded from the
2 Settlement Class, shall be deemed to have forever waived their rights to be
3 Participating Claimants and to receive payment under this settlement, shall have no
4 further role in the Litigation, and for all purposes shall be regarded as if they never
5 were parties to this Litigation.

6 2.5.2 Class Members have the option to participate in this
7 Litigation at their own expense by obtaining their own attorney(s). Class Members
8 who choose this option will be responsible for any attorney fees or costs incurred as
9 a result of this election.

10 2.5.3 Class Members may object to the Stipulation by submitting
11 written objections to Class Counsel (either directly or via the Claims Administrator)
12 no later than the Notice Response Deadline. Class Counsel shall immediately
13 provide any such objections to Holiday and subsequently the Court during the final
14 approval process. The Settling Parties agree to respond to any objections before the
15 Court.

16 2.5.4 To the extent that a Class Member timely submits an
17 incomplete Opt In and Release Form (i.e., not all spaces have been completed), the
18 Claims Administrator shall send that person a “cure letter” advising him or her of
19 the deficiency and giving him or her the opportunity to correct the deficiency no
20 later than the Notice Response Deadline or fifteen (15) days after the cure letter is
21 sent, whichever is later, provided this paragraph shall in no way extend the Notice
22 Response Deadline for any Class Members to whom a cure letter is not sent.

23 2.5.5 Class Members who, for future reference and mailings from
24 the Court or Claims Administrator, if any, wish to change the name or address listed
25 on the envelope in which the Notice was first mailed to them, must either (a) add
26 their new address information to a timely submitted Opt In and Release Form; or (b)
27 fully complete, execute, and mail, per the instructions therein, the form entitled
28 “Change of Name or Address Information” attached to the Notice as Form B. All

1 name or address change requests must be postmarked or received on or before the
2 Notice Response Deadline.

3 2.5.6 Following the completion of the notice process, and
4 consistent with the rules imposed by the Court and not later than the Final Approval
5 Motion Date, Plaintiff and Holiday shall move that the Court enter the Order of
6 Final Approval and the entry of Judgment.

7 2.5.7 The Settling Parties shall make all reasonable efforts to secure
8 entry of the Order of Final Approval and Judgment. If the Court rejects the
9 Stipulation, or fails to approve and also enter the Order of Final Approval, or enter
10 the Judgment, this Stipulation shall be void *ab initio*, and Holiday shall have no
11 obligations to make any payments under the Stipulation. In the event that the
12 Stipulation becomes void for this or any other reason, Holiday retains all rights to
13 challenge all claims and allegations in the Litigation upon all procedural and factual
14 grounds, including without limitation the ability to challenge class or collective
15 action treatment on any grounds or assert any and all defenses or privileges.

16 2.6 *Timing of Payment to Claimants*

17 2.6.1 Within thirty (30) days of, and only after, the Effective Date,
18 Holiday, through the Claims Administrator, shall pay to each Participating Claimant
19 his or her relevant Settlement Sum.

20 2.6.2 In accordance with the terms of Paragraphs 2.1.1 and 2.1.2,
21 Holiday, through the Claims Administrator, shall issue to each Participating
22 Claimant one check (or more if necessary for administrative convenience) payable
23 to that Claimant from an account administered by the Claims Administrator but
24 funded by Holiday for the gross amount of his or her Settlement Sum, less required
25 deductions and withholdings. Holiday, through the Claims Administrator, shall mail
26 this check(s) to each Participating Claimant at his or her Last Known Address, or
27 Updated Address if obtained, on or before the date which is thirty (30) days after the
28 Effective Date. Checks issued to Participating Claimants pursuant to this

1 Agreement shall remain negotiable for a period of at least ninety (90) days from the
2 date of mailing, and the funds associated with any checks that are not properly or
3 timely negotiated shall remain the property of Holiday and shall not be paid to any
4 Person or entity other than Holiday. Participating Claimants who fail to negotiate
5 their settlement checks in a timely fashion shall remain subject to the terms of the
6 Judgment and the releases contained in their Opt In and Release Forms. The
7 Settling Parties hereby agree that such funds represent settlement payments for
8 matters disputed in good faith, not uncontested wage payments, and they shall not
9 be subject to escheat rules, cy pres, or other distribution not provided for in this
10 Stipulation.

11 2.6.3 Following the mailing of the payments pursuant to Paragraph
12 2.6.2, the Claims Administrator shall provide counsel for the Settling Parties with a
13 written confirmation that such payments have been made. Upon receipt of this
14 confirmation, Class Counsel will file a notice or acknowledgement of satisfaction of
15 judgment with the Court in the Litigation on behalf of the Plaintiffs and the
16 Settlement Class.

17 2.7 *Releases and Dismissals.*

18 2.7.1 Upon the Effective Date, Plaintiff and each of the Settlement
19 Class Members shall be deemed to have, and by operation of both the releases
20 contained in the Opt In and Release Forms and also the Judgment shall have, fully,
21 finally, and forever released, dismissed with prejudice, relinquished, and discharged
22 all Released Claims.

23 2.7.2 As part of this settlement, and subject to Court approval,
24 Holiday will pay through the Claims Administrator \$2,500 out of the Maximum
25 Settlement Amount to the California Labor and Workforce Development Agency.
26 The Settling Parties agree that Holiday's payment of \$2,500 to the California Labor
27 Workforce Development Agency (as part of the Maximum Settlement Amount) to
28 settle these claims is appropriate and proper consideration. It is the intent of the

1 Settling Parties to have the Released Claims include claims under the California
2 Private Attorneys General Act of 2004 (“PAGA”), codified at California Labor
3 Code section 2698 et seq.

4 2.8 *Payment of Costs, Attorneys Fees and Enhancement to*
5 *Plaintiff.*

6 2.8.1 Class Counsel shall be entitled, subject to Court approval and
7 the occurrence of the Effective Date, to an award of reasonable attorney fees and
8 litigation costs and associated expenses, not to exceed the amounts specified herein.
9 Subject to Court approval, Class Counsel may collectively seek (1) a gross amount
10 up to, but not to exceed, \$1,875,000 for all attorney fees; and (2) a gross amount up
11 to, but not to exceed, \$25,000 for all allowable litigation costs and associated
12 expenses. Plaintiff and Class Counsel agree that they shall be responsible for
13 justifying their requested fee, cost, and expense awards to the Court, and they agree
14 to submit the necessary materials to justify the requested award along with the
15 Settling Parties’ request for entry of the Final Approval Order. Holiday agrees not
16 to oppose any submission regarding, or request for approval of, an award of attorney
17 fees, costs, and expenses, provided that it is consistent with this Paragraph 2.8.1 of
18 this Stipulation and, in particular, provided that Holiday not be required to pay any
19 more than \$1,915,000 in total to all Class Counsel for all attorney fees, costs, and
20 expenses combined. In the event that the Court (or appellate court) awards less than
21 the \$1,875,000 maximum gross amount for attorney fees, only the awarded amounts
22 shall be paid and shall constitute full satisfaction of any claims for attorney fees in
23 this Litigation, and any remaining or unawarded portion of the maximum gross
24 amount for attorney fees shall revert to (remain the property of) Holiday. In the
25 event that the Court (or appellate court) awards less than the \$25,000 maximum
26 gross amount for litigation costs and associated expenses, only the awarded amounts
27 shall be paid and any remaining or unawarded portion of the maximum gross
28 amount for litigation costs and associated expenses shall revert to (remain the

1 property of) Holiday. If the Effective Date occurs, no more than thirty (30) days
2 after the Effective Date, Holiday shall make payment of any attorney fees, costs, and
3 expenses awarded by the Court pursuant to this Paragraph 2.8.1 to Class Counsel
4 directly, and prior to Holiday making this payment, Class Counsel shall provide
5 counsel for Holiday with written payment allocation instructions and the pertinent
6 taxpayer identification numbers for the payees and all necessary Form W-9s. Other
7 than any reporting of this fee payment as required by this Stipulation or law, which
8 Holiday shall make, Class Counsel and Plaintiff shall alone be responsible for the
9 reporting and payment of any federal, state and/or local income or other form of tax
10 on any payment made pursuant to this paragraph. Payments awarded and made
11 pursuant to this paragraph shall constitute full satisfaction of any claim for attorney
12 fees, costs, or expenses incurred in this Litigation, and Plaintiff and Class Counsel,
13 on behalf of themselves and all Settlement Class Members, agree that they shall
14 neither seek nor be entitled to any additional attorney fees, costs, or expenses under
15 any theory, nor shall they seek amounts in excess of those specified herein. Other
16 than as provided in this Paragraph 2.8.1 for the limited purpose discussed herein, no
17 party shall be deemed the prevailing party for any other purposes of the Litigation.

18 2.8.2 Provided that the Effective Date occurs, and following and
19 within ten (10) days of the execution of the general release discussed below,
20 Holiday will forward a check payable to Sallie Cwik, in her personal capacity only
21 and via her counsel of record, in the gross amount of five thousand United States
22 dollars (\$5,000). This payment shall be the total compensation and consideration
23 for: (i) Sallie Cwik's efforts as the Plaintiff in the Litigation; and (ii) her execution
24 of a full, general release to the benefit of Holiday. The full and general release that
25 Sallie Cwik herself shall execute to obtain payment pursuant to this Paragraph 2.8.2
26 shall be executed immediately following the Effective Date, and through it, Sallie
27 Cwik herself (and not on behalf of the Class or any members of the Class) shall
28 release, acquit, and discharge Holiday from any and all claims, demands, claims for

1 costs and attorney fees, or causes of action of any kind whatsoever (upon any legal
2 or equitable theory whether contractual, common law, statutory, Federal, State or
3 otherwise), whether known or unknown, that arose, accrued or took place at any
4 time on or prior to the date on which the full and general release is executed.
5 Through the full and general release discussed in this Paragraph 2.8.2, Sallie Cwik
6 will expressly waive the benefit of Section 1542 of the California Civil Code, and
7 will agree and represent that she has not assigned or in any way conveyed,
8 transferred or encumbered all or any portion of the claims or rights otherwise
9 released. If Sallie Cwik does not execute the full and general releases discussed in
10 this Paragraph 2.8.2, with all of the specific terms required herein, Holiday shall not
11 be required to make any payment whatsoever to Sallie Cwik (as applicable) pursuant
12 to this Paragraph 2.8.2. This enhancement award of \$5,000 will be in addition to the
13 separate payment of the Settlement Sums to which Sallie Cwik is entitled as a
14 regular Participating Claimant, provided she becomes a Participating Claimant. The
15 full and general releases discussed in this paragraph shall not extinguish or alter the
16 obligations of Holiday to the Class Members under any other paragraph of this
17 agreement. In the event that the Court (or appellate court) awards less than the
18 \$5,000 enhancement award to Sallie Cwik, the un-awarded portion of this \$5,000
19 enhancement award shall revert (remain the property of) Holiday.

20 2.8.3 Unless otherwise expressly provided, Holiday shall have no
21 responsibility for, and no liability whatsoever with respect to, the allocation among
22 Plaintiff, Class Counsel, and/or any other Person who may assert some claim
23 thereto, of any award or payment issued or made in the Litigation or pursuant to this
24 Stipulation, including, but not limited to, any award or payment made pursuant to
25 Paragraph 2.8.1. or 2.8.2.

26 2.9 *Claims Administrator.*

27 2.9.1 All fees and expenses reasonably incurred by the Claims
28 Administrator as a result of procedures and processes expressly required by this

1 Stipulation shall be paid by Holiday and taken from the Maximum Settlement
2 Amount. The Plaintiffs and Class Counsel shall have no responsibility for such fees
3 or expenses, whether or not the Effective Date occurs. Based on current estimates,
4 the Settling Parties anticipate that the total sum paid to the Claims Administrator
5 will be \$50,000, but the Settling Parties understand and agree that this figure
6 represents just an estimated maximum, and the sum charged by the Claims
7 Administrator may be different.

8 2.9.2 The actions of the Claims Administrator shall be governed by
9 the terms of this Stipulation. Holiday may provide relevant information needed by
10 the Claims Administrator per this Stipulation and engage in related communications
11 with and provide logistical instructions to the Claims Administrator without notice
12 or copies to Class Counsel or any Class Members, and Holiday may also make
13 payment to the Claims Administrator for its services without notice or copies to
14 opposing counsel, any Class Member, or the Court, provided that Holiday does not
15 give the Claims Administrator any instructions contrary to the terms of this
16 Stipulation.

17 2.9.3 In the event that any of the Settling Parties take the position
18 that the Claims Administrator is not acting in accordance with the terms of the
19 Stipulation, that party's counsel shall meet and confer with counsel for the other
20 Settling Parties prior to raising any such issue with the Claims Administrator or the
21 Court.

22 2.10 *Termination or Voidance of Settlement or Stipulation.*

23 2.10.1 In the event that the Stipulation is not substantially approved
24 by the Court or the settlement set forth in the Stipulation is terminated, cancelled,
25 declared void or fails to become effective in accordance with its terms, or if the
26 Judgment does not become Final, or to the extent termination, cancellation or
27 voiding of the Stipulation occurs as otherwise provided in this Stipulation or for any
28 other lawful or permissible reason, the Settling Parties shall resume the Litigation at

1 that time as if no Stipulation had been entered, with each of the Settling Parties
2 bearing their own costs and fees with regard to the efforts to obtain Court approval,
3 and no payments whatsoever being made by Holiday to anyone in accordance with
4 the terms of this Stipulation, except that Holiday will be responsible for any
5 reasonable costs incurred by the Claims Administrator to the point the Stipulation is
6 deemed void. In such event, any Judgment or order entered by the Court in
7 accordance with the terms of the Stipulation shall be treated as retroactively vacated
8 and the Stipulation shall have no further force and effect with respect to the Settling
9 Parties, and shall not be used in this Litigation or in any other proceeding for any
10 purpose, including in relation to issues of class or collective action certification.
11 Specifically, the Plaintiff and Class Counsel agree not to argue or present any
12 argument, and hereby waive any argument, that Holiday could not contest (or is
13 estopped from contesting) venue and/or class or collective action certification on
14 any grounds if this Litigation were to proceed; this Stipulation shall not be deemed
15 an admission by, or ground for estoppel against, Holiday that collective or class
16 action certification in the Litigation is proper or cannot be contested on any grounds.
17 The terms, negotiation, and entry of this Stipulation and the settlement shall remain
18 subject to Federal Rule of Evidence 408 and California Evidence Code sections
19 1119 and 1152, regardless of whether this Stipulation or the settlement are
20 terminated, cancelled, or declared void.

21 2.10.2 If the Court changes any hearing date(s) provided for in this
22 Stipulation by fewer than three (3) months, this shall not be deemed a substantial
23 change necessitating termination of the settlement, providing that the Settling
24 Parties agree to move other dates and deadlines in the Stipulation accordingly.

25 2.10.3 If fifty percent (50%) or fewer of Class Members become
26 Participating Claimants, Holiday will have the option (but shall not be required) to
27 void the settlement and this Stipulation. Holiday will cooperate in good faith and
28 per the terms of this Stipulation to reach this minimum figure.

1 2.10.4 Notwithstanding any other provision of this Stipulation, no
2 order of the Court or modification or reversal on appeal of any order of the Court
3 concerning the amount or allocation of any attorney fee or litigation cost or expense
4 awards or Plaintiff's enhancement award to be paid by Holiday shall constitute
5 grounds for cancellation or termination of the Stipulation or grounds for limiting any
6 other provision of the Judgment, provided that Holiday shall never be required to
7 pay in excess of the total gross amounts for attorney fees and litigation costs and
8 expenses and enhancement awards specified in Paragraphs 2.8.1 and 2.8.2. It is
9 further agreed that no order of the Court, including any order concerning attorney
10 fees, may alter or otherwise increase the Maximum Settlement Amount.

11 2.10.5 California Code of Civil Procedure section 384 does not
12 apply; any finding that California Code of Civil Procedure section 384 applies to
13 this Stipulation to require payment by Holiday to any third parties is grounds for
14 Holiday to void the settlement.

15 2.10.6 Unless otherwise ordered by the Court, in the event the
16 Stipulation shall be terminated, cancelled, or declared void, or fails to become
17 effective in accordance with its terms, or if the Judgment is reversed on appeal,
18 promptly after written notification of such event, Holiday and Class Counsel shall
19 notify each other of this event in writing.

20 2.11 *Miscellaneous Provisions.*

21 2.11.1 No Person shall have any claim against Class Counsel, the
22 Claims Administrator, or counsel for Holiday based on the payments made or other
23 actions taken substantially in accordance with the Stipulation and the settlement
24 contained therein or further orders of the Court.

25 2.11.2 The Settling Parties (a) acknowledge that it is their intent to
26 consummate this agreement; and (b) agree to exercise their best efforts to obtain
27 Court approval, secure the effectiveness of the Judgment, and implement all terms
28 and conditions of the Stipulation.

1 2.11.3 The Stipulation compromises claims which are contested in
2 good faith, and it shall not be deemed an admission by any of the Settling Parties as
3 to the merits of any claim or defense. The Settling Parties agree that the amounts
4 paid in settlement and the other terms of the settlement were negotiated at arms-
5 length and in good faith by the Settling Parties, and reflect a settlement that was
6 reached voluntarily after consultation with competent legal counsel.

7 2.11.4 The Settling Parties agree that the Notice Response Deadline
8 shall not be extended, and no untimely Opt In Settlement Release Forms or other
9 submissions will be honored, under any circumstances, unless (a) Holiday consents
10 or (b) the Class Member at issue can sufficiently demonstrate that his or her failure
11 to respond to the pertinent Notice was the product of the fact that he or she was
12 legally incompetent during the notice response period, i.e., he or she was
13 incarcerated or hospitalized; provided, however, no extensions will be granted for
14 incompetency unless first requested in writing to the Claims Administrator or Class
15 Counsel fewer than ninety (90) days following the Notice Response Deadline. The
16 Settling Parties agree that the establishment and enforcement of the Notice
17 Response Deadline is valuable consideration to Holiday, and the finality provided
18 thereby is a material aspect of this agreement. Any ruling to the contrary by the
19 Court or any ruling allowing the filing of any responses to the Notice following the
20 Notice Response Deadline shall be grounds for Holiday to void the Stipulation.

21 2.11.5 Neither the Stipulation nor the settlement, nor any act
22 performed or document executed pursuant to, or in furtherance of, the Stipulation or
23 the settlement: (a) is or may be deemed to be or may be used as an admission of, or
24 evidence of, the validity of any Released Claim, or of any wrongdoing or liability of
25 Holiday Releasees; or (b) is or may be deemed to be or may be used as an admission
26 of, or evidence of, any fault or omission of Holiday Releasees, in any civil, criminal
27 or administrative proceeding in any court, administrative agency, or other tribunal.

28

1 2.11.6 All of the exhibits to the Stipulation are material and integral
2 parts hereof and are fully incorporated herein by this reference.

3 2.11.7 The Stipulation may be amended or modified only by a
4 written instrument signed by or on behalf of all Settling Parties or their respective
5 successors-in-interest.

6 2.11.8 The Stipulation constitutes the entire agreement among the
7 Settling Parties hereto and no representations, warranties, or inducements have been
8 made to any party concerning the Stipulation or its exhibits other than the
9 representations, warranties, and covenants contained and memorialized in such
10 documents. Except as otherwise provided herein, each party shall bear its own costs
11 and fees.

12 2.11.9 Class Counsel are expressly authorized by the Plaintiff to take
13 all appropriate action required or permitted to be taken by the Class pursuant to the
14 Stipulation to effect its terms, and also are expressly authorized to enter into any
15 modifications or amendments to, or documents or pleadings filed in support of, the
16 Stipulation on behalf of the Class which they deem appropriate.

17 2.11.10 Each counsel or other Person executing the Stipulation or any
18 of its exhibits on behalf of any party hereto hereby warrants that such Person has the
19 full authority to do so.

20 2.11.11 The Stipulation may be executed in one or more counterparts
21 by email or facsimile. All executed counterparts and each of them shall be deemed
22 to be one and the same instrument. A complete set of original executed counterparts
23 shall be filed with the Court.

24 2.11.12 The Stipulation shall be binding upon, and inure to the benefit
25 of, the successors and assigns of the parties hereto; but this Stipulation is not
26 designed to and does not create any third party beneficiaries.

27 2.11.13 The Court shall retain jurisdiction with respect to
28 implementation and enforcement of the terms of the Stipulation, and all parties

1 hereto submit to the jurisdiction of the Court for purposes of implementing and
2 enforcing the settlement embodied in the Stipulation.

3 2.11.14 The Stipulation and the exhibits hereto shall be considered to
4 have been negotiated, executed, and delivered, and to have been wholly performed,
5 in the State of California, and the rights and obligations of the parties to the
6 Stipulation shall be construed and enforced in accordance with, and governed by,
7 the internal, substantive laws of the State of California without giving effect to that
8 State's choice of law principles.

9 2.11.15 The language of all parts of this Stipulation shall in all cases
10 be construed as a whole, according to its fair meaning, and not strictly for or against
11 either party. No party shall be deemed the drafter of this Stipulation. The parties
12 acknowledge that the terms of the Stipulation are contractual and are the product of
13 negotiations between the parties and their counsel. Each party and their counsel
14 cooperated in the drafting and preparation of the Stipulation. In any construction to
15 be made of the Stipulation, the Stipulation shall not be construed against any party
16 and the canon of contract interpretation set forth in California Civil Code § 1654 and
17 other similar statutory provisions shall not be applied.

18 2.11.16 Holiday will not retaliate against Class Members for any
19 actions taken or not taken with respect to this settlement and will not sue the
20 Plaintiff for filing the complaint in this Litigation.

21 2.11.17 Holiday acknowledges that Class Counsel, and Class Counsel
22 acknowledge that Holiday's counsel, have complied with the requirements of Rule
23 11 of the Federal Rules of Civil Procedure to this point in the Litigation.

24 2.11.18 At no time shall the Claims Administrator or Holiday be
25 requested or required to provide Class Counsel or the Plaintiff with the Social
26 Security Number, Last Known Address, or other payroll or contact information of
27 Class Members.

28

1 2.11.19 The parties to this agreement recognize and acknowledge that
2 at the time of the execution of this Stipulation, there are issues of law that are
3 unresolved, which could impact the claims at issue in the Litigation absent this
4 Stipulation. The parties further recognize that they are reaching this settlement in
5 light of the risks created by this case and all other issues of unsettled law, and that
6 all parties will take all efforts to enforce this Stipulation and obtain Court approval
7 for this settlement regardless of any subsequent legal developments. The Settling
8 Parties and Class Counsel agree that the proposed classes are receiving benefit from
9 this settlement by obtaining a settlement (and associated consideration) prior to such
10 possible developments, and the Settling Parties and their counsel agree not to argue
11 otherwise or seek to void this settlement or prevent court approval on the basis of
12 any subsequent precedent.

13 2.11.20 The Settling Parties agree that because this is a collective
14 action, the notice provisions of the Class Action Fairness Act of 2005 do not apply,
15 and even if they did (which they do not), the releases contained in the Opt In and
16 Release Forms to be executed by Participating Claimants would be separately
17 enforceable and effective even if the Judgment were deemed non-binding.

18 2.11.21 Prior to the parties' joint submission of this Stipulation and
19 settlement agreement for preliminary approval by the Court, neither the Plaintiff nor
20 Class Counsel shall communicate any terms of this settlement to any third parties.
21 At all times Plaintiff and Class Counsel shall not publicize the settlement in this
22 action or the terms thereof via (a) press releases; (b) Internet postings except for
23 posting publicly filed court documents; or (c) any form of communications with the
24 media. This shall not prohibit Class Counsel from discussing this case or any aspect
25 of this settlement with the Plaintiff, any Class Member (absent or otherwise) in this
26 case, or any court or opposing counsel, and this shall not prohibit Class Counsel
27 from in any way disclosing their mere status as counsel in the case.

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

Dated:



Sallie Cwik
Plaintiff

Dated:



Scott Wood
General Counsel for Holiday

Approved as to form:

GARCIA, ARTIGLIERE & SHADRACK



Bv: Stephen M. Garcia
Counsel for Plaintiff

MUNGER, TOLLES & OLSON LLP



Bv: Malcolm A. Heinicke
Counsel for Holiday

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Filer’s Attestation

I, Malcolm A. Heinicke, am the ECF user whose identification and password are being used to file this STIPULATION RE: SETTELEMENT OF COLLECTIVE ACTION. In compliance with Civil Local Rule 5-4, I hereby attest that Stephen Garcia concurs in this filing.