

Exhibit A-1

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (“Settlement Agreement,” “Settlement” or “Agreement”), is entered into by and between Defendant Tuesday Morning, Inc. (“Defendant” or “Tuesday Morning”), on the one hand, and Plaintiff Cynthia McMahon (“Plaintiff”), on behalf of herself and all others similarly situated, on the other (collectively referred to herein as the “Parties”). This Agreement is intended to fully, finally and forever resolve, discharge and settle the Released Claims, as defined below, upon and subject to the terms and conditions of this Agreement.

I. FACTUAL BACKGROUND AND RECITALS

A. WHEREAS, on November 19, 2014, Cynthia McMahon filed a complaint (the “Initial Complaint”), initiating a class action lawsuit against Tuesday Morning in Contra Costa County Superior Court, entitled *Cynthia McMahon, on behalf of herself, all others similarly situated, Plaintiff v. Tuesday Morning, Inc. a Texas corporation; and DOES 1-50, inclusive, Defendants*, Case No. C-14-05547.

B. WHEREAS, on December 19, 2015, Tuesday Morning removed the action to the United States District Court for the Northern District of California – San Francisco Division. The matter was given the case No. 3:14-cv-05547-EMC. Tuesday Morning filed an Answer on January 26, 2015. Thereafter, on June 20, 2015, Plaintiff filed a motion for leave to file a First Amended Complaint and a Memorandum of Law and Declaration in support thereof, seeking to add claims for meal break violations under California law. After this motion was fully briefed, the Court denied the motion in a hearing on October 1, 2015, leaving the Initial Complaint unchanged.

C. WHEREAS, Plaintiff alleged in her Initial Complaint the following causes of action on behalf of herself and the proposed class: (1) failure to provide rest breaks pursuant to Labor Code §§ 204, 223, 226.7, and 1198; (2) failure to timely pay all final wages and waiting time penalties pursuant to Labor Code §§ 201-203; (3) unfair competition pursuant to Business & Professions Code § 17200, *et seq.*; and (4) for civil penalties pursuant to Labor Code §§ 2698, *et seq.*

D. WHEREAS, Tuesday Morning denies any liability or wrongdoing of any kind associated with the claims alleged in the Action. Tuesday Morning contends, among other things, that it has complied at all times with the California Labor Code, the Industrial Welfare Commission Wage Orders and their codification in the California Code of Regulations, and the California Business and Professions Code. Moreover, Tuesday Morning contends, specifically, that it provides its non-exempt employees with all wages owed and rest periods as required by law.

E. WHEREAS, after the Parties filed their pleadings, they engaged in substantial discovery whereby the Parties each responded to Requests for the Production of Documents and Interrogatories, and produced documents. Among other things, in November 2015, Tuesday Morning made an extensive production of its then-available time and pay records for the entire proposed class. In addition, during the period from September 2015 through March 2016,

Tuesday Morning produced thousands of documents encompassing hundreds of thousands of pages, including but not limited to the electronically stored information of over a dozen custodians, as well as documents relating to Tuesday Morning's applicable policies and procedures.

F. WHEREAS, Class Counsel reviewed the time and pay data Defendant produced, and engaged an expert to determine the approximate number of purportedly non-compliant rest breaks for each of the proposed class members included in Defendant's production. Defendant also engaged an expert to perform a review and analysis of this data to establish its compliance with California law.

G. WHEREAS, on March 3, 2016, the Parties participated in a court-ordered mediation before Jeffrey A. Ross, Esq., an experienced and well-regarded neutral mediator. While the Action did not settle at mediation, that effort was productive, and the Parties engaged in extensive discussions at the mediation and thereafter.

H. WHEREAS, on April 11, 2016, Defendant took Plaintiff Cynthia McMahon's deposition, after which the Parties continued to engage in settlement discussions.

I. WHEREAS, on May 5, 2016, the Parties reached an agreement in principle on settlement that is intended to fully and finally resolve all claims as to all members of the "Settlement Class," described below, in the Action.

J. WHEREAS, on January 26, 2017, the Parties filed a joint stipulation and proposed order (the "Stipulation") to grant Plaintiff leave to file a first amended complaint for settlement purposes ("First Amended Complaint"), which clarified the inclusion of a cause of action for civil penalties pursuant to Labor Code § 2698, *et seq.*, and which stated that the First Amended Complaint will be deemed filed and served as of the date of the order granting the stipulation. The Initial Complaint and the First Amended Complaint shall hereinafter be referred to collectively as the "Complaint."

K. WHEREAS, on February 24, 2017, the Court granted the Stipulation with respect to the First Amended Complaint.

L. WHEREAS, at all times, including during the mediation and thereafter, the Parties' negotiations were vigorous, adversarial, non-collusive, and at arms' length.

M. WHEREAS, nothing in this Agreement, nor the fact of the Agreement itself, shall be construed or deemed to be an admission of liability, culpability, negligence or wrongdoing of any kind on the part of Tuesday Morning. Tuesday Morning denies that it has engaged in any unlawful activity, has failed to comply with the law in any respect, or has any liability to anyone under the claims asserted in the Action. Tuesday Morning, moreover, denies all the claims and contentions alleged by Plaintiff in the Action. Nonetheless, Tuesday Morning has concluded that further litigation would be protracted and expensive, and would also divert management and employee time. Tuesday Morning has also taken into account the uncertainty and risks inherent in litigation. Tuesday Morning has therefore concluded that it is desirable that this Action be

fully and finally settled in the manner and upon the terms and conditions set forth in this Agreement.

N. WHEREAS, Plaintiff and Class Counsel believe that the claims asserted in this lawsuit have merit, a contention that Tuesday Morning vehemently denies. Class Counsel, however, recognizes and acknowledges the significant expense and length of continued proceedings necessary to prosecute this Action through trials and through appeals. Class Counsel is also mindful of the inherent problems of proof and possible defenses to the alleged claims in the Action. After careful consideration and mediation, Class Counsel has concluded that it is desirable that this Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Agreement. Both Class Counsel and Plaintiff believe that the settlement set forth in this Agreement confers substantial benefits upon the Settlement Class and each of the Settlement Class members.

O. WHEREAS, the Parties are sufficiently familiar with the facts of the Action and the applicable law so as to warrant settlement at this time. As discussed above, the Parties engaged in substantial discovery prior to reaching a settlement in principle, and had researched the applicable law in connection with, among other things, their confidential briefs submitted for mediation.

P. WHEREAS, Plaintiff and Defendant are each represented by competent counsel (Class Counsel and Defendant's Counsel, respectively) and have had the opportunity to consult with their counsel prior to the submission of this Agreement to the Court. This Agreement is entered into by the Parties with the consent and advice of their respective counsel.

Q. WHEREAS, Pursuant to Federal Rule of Evidence 408 and California Evidence Code §§ 1119, 1151, 1152, this Agreement and any related documents created in connection with it shall be inadmissible in evidence in any proceeding, except as necessary to approve, interpret or enforce this Agreement.

NOW, THEREFORE, the Parties agree as follows:

II. DEFINITIONS

- A. "Action" refers to the action identified in the Recitals above, which is currently pending in the United States District Court for the Northern District of California - San Francisco Division.
- B. "Claims Administrator" refers to CPT Group, Inc. or such other entity upon which the Parties mutually agree and which will handle the administration of the Settlement set forth in this Agreement.
- C. "Class Counsel" refers to Shaun Setareh of the Setareh Law Group.
- D. "Class Notice" refers to the Notice substantially in the form of Exhibit A hereto, as it may hereafter be modified by agreement of the Parties or order of the Court.

- E. “Class Period” refers to the period from November 19, 2010 to the date when the Court grants and enters the Preliminary Approval Order.
- F. “Court” refers to the court having jurisdiction over the Action, at any stage of the Action, presently the United States District Court for the Northern District of California – San Francisco Division.
- G. “Defendant’s Counsel” refers to Gary Friedman of Weil, Gotshal & Manges, LLP.
- H. “Exclusion Period” refers to the interval beginning with the date the Class Notice is first mailed to Settlement Class members and ending 30 days after the date of first mailing.
- I. “Final Approval Order” refers to the order of the Court granting final approval of this settlement as to the Final Settlement Class (defined below) and entering a judgment approving this settlement on substantially the terms provided herein or as the same may be modified by subsequent agreement of the Parties.
- J. “Final Settlement Class” refers to all members of the Settlement Class who do not timely and validly exclude themselves from the class in compliance with the exclusion procedures set forth in this Agreement and the Class Notice.
- K. “Final Effective Date” means the date by which the last of the following has occurred: (a) all conditions of settlement have been satisfied; (b) the Court has entered and filed the Final Approval Order and Judgment; and (c) the time period for appeal of the Judgment has been exhausted without any appeals having been filed (30 days after entry of the Judgment), or all such appeals have been voluntarily or involuntarily dismissed or the appropriate appellate court or courts have entered a final judgment affirming the Final Approval Order and Judgment of the Court and the final judgment of such appellate court or courts is no longer subject to any further appellate challenge or procedure. If there are no objections filed, then the Parties agree that the date of the Final Approval Order and entry of judgment thereon shall be the Final Effective Date.
- L. “Judgment” refers to the judgment entered by the Court in conjunction with the Final Approval Order.
- M. “Maximum Distributable Amount” shall be the amount as determined under section IX.A.5., below.
- N. “Maximum Settlement Amount” shall be Seven Hundred and Seventy Nine Thousand, Five Hundred Dollars (\$779,500.00) and shall consist of the following elements: Attorneys’ fees and litigation costs of Class Counsel as provided in this Agreement and approved by the Court, the costs and fees of the Claims Administrator, the enhancement award to the Named Plaintiff as approved by the Court, civil penalties payable to the Labor and Workforce Development Agency (“LWDA”) and Settlement Class members pursuant to the Private Attorneys

General Act (“PAGA”) as described in this Agreement, and payments to Settlement Class members as described in this Agreement (including the employer’s portion of payroll taxes such as FICA, FUTA and any other state and local taxes required to be withheld as a result of such payments).

- O. “Named Plaintiff” refers to Cynthia McMahon.
- P. “Parties” refer to the Named Plaintiff and Tuesday Morning, Inc.
- Q. “Preliminary Approval Order” refers to the order of the Court granting preliminary approval of the settlement set forth herein.
- R. “*Randell Action*” means the now-settled action entitled *Julia Randell and Marina Nikitas, on behalf of themselves and others similarly situated, Plaintiffs v. Tuesday Morning, Inc., and DOES 1 to 50, Inclusive, Defendant*, Case No. BC403298, in the Superior Court for the State of California, County of Los Angeles. As part of the settlement, for which the court granted final approval on October 9, 2014, all class members who did not opt out of the settlement had released, among other claims: (a) alleged failure to provide rest breaks pursuant to Labor Code § 226.7; (b) alleged waiting time penalties pursuant to Labor Code §§ 201, 202, 203; (c) alleged violation of Business & Professions Code § 17200, et seq.; (d) alleged civil penalties pursuant to Labor Code § 2698 et seq.; and (e) alleged violation of the Industrial Welfare Commission Wage Orders. The release in the *Randell Action* covers each cause of action in the instant Action for the period from January 1, 2005 to and including December 31, 2013.
- S. “*Randell Settlement Class Member*” means each member of the class in the *Randell Action* who did not opt out of the settlement in the *Randell Action*, and are therefore covered by the release in the *Randell Action*.
- T. “Settlement Class” refers to all persons who are members of the following category: All non-exempt employees (i.e., employees paid on an hourly basis and eligible to receive overtime compensation) who are or were employed by Defendant in California between November 19, 2010 and the date when the Court grants and enters the Preliminary Approval Order and who worked at least one shift in California of 3.5 hours or more, but shall exclude each *Randell Settlement Class Member* unless the *Randell Settlement Class Member* worked for Defendant in California after December 31, 2013, the last date to which the release in the *Randell Action* extends.
- U. “Settlement Share” refers to the payment to which a qualifying Final Settlement Class member becomes entitled pursuant to this Settlement, as more fully set forth in section IX.B.2., below.

III. APPLICATION FOR COURT APPROVAL OF SETTLEMENT CLASS CERTIFICATION, CLASS NOTICE AND FINAL APPROVAL HEARING

- A. Promptly upon the full execution of this Agreement, Plaintiff shall apply to the Court for approval of the Settlement, including a Preliminary Approval Order preliminarily approving the Settlement Agreement under the legal standards relating to preliminary approval of class action settlements; certifying the Settlement Class for settlement purposes only; approving the Class Notice attached hereto as Exhibit A; staying all proceedings in the Action, and enjoining the prosecution of any other individual or class claims; setting a final approval hearing (for no sooner than one hundred (100) calendar days following the date motion for a Preliminary Approval Order is filed with the Court) and briefing schedule; and providing that, in the event the proposed Settlement set forth in this Agreement is not approved by the Court, or in the event that this Agreement becomes null and void pursuant to its terms, this Agreement and all orders entered in connection therewith shall become null and void and shall be of no further force and effect and shall not be used or referred to for any purposes whatsoever in the Action or in any other case or controversy; and that in such an event, this Agreement and all negotiations and proceedings related thereto shall be deemed to be without prejudice to the rights of any and all parties hereto, who shall be restored to the respective positions as of the date of this Agreement. Class Counsel will provide Defendant with at least ten (10) business days to review and approve the motion for a Preliminary Approval Order and all supporting papers.
- B. Pursuant to the Class Action Fairness Act of 2005 (“CAFA”), Defendant shall prepare and provide the notices required by CAFA, as specified by 28 U.S.C. § 1715, within ten (10) calendar days after Plaintiff files the Motion for Preliminary Approval.
- C. The Parties expressly agree that, in the event the Court does not enter the Preliminary Approval Order described herein, or modifies the Preliminary Approval Order in such a fashion that one or both of the Parties cannot agree to such modifications, the Parties will use their best efforts and negotiate in good faith so as to attempt to effectuate settlement of the Action without further litigation.
- D. Consistent with the schedule approved by the Court, Plaintiff shall file a motion for a Final Approval Order, including all documents consistent with Settlement and reasonably necessary to obtain the Court’s final approval of the Settlement. Class Counsel will provide Defendant with at least ten (10) business days to review and approve the motion for a Final Approval Order and all supporting papers.
- E. Should this Settlement not become effective for any reason, the fact that the Parties stipulated to certification of a Settlement Class in this Agreement shall have no bearing on and not be admissible on the question of whether a class should be certified in a non-settlement context.

IV. CLAIMS ADMINISTRATION

A. Engagement of Claims Administrator: Promptly upon entry of the Preliminary Approval Order (if not sooner), the Parties shall engage the Claims Administrator. As more fully set forth in section IX.A.2., below, all of the Claims Administrator's fees, estimated not to exceed \$40,000, shall be paid to the Claims Administrator out of the Maximum Settlement Amount; provided, however, that under no circumstances shall Defendant's total obligation under this Settlement exceed the Maximum Settlement Amount, including the Claims Administrator's fees.

B. Duties of Claims Administrator: The Claims Administrator shall be solely responsible for:

- i) Preparing, printing and disseminating to Settlement Class members the Class Notice;
- ii) Promptly furnishing to counsel for the Parties copies of any requests for exclusion, objections or other written or electronic communications from Settlement Class members which the Claims Administrator receives;
- iii) Determining and distributing the Settlement Share of each qualifying Final Settlement Class member in accordance with this Agreement;
- iv) Keeping track of requests for exclusion, including maintaining the original mailing envelope in which a request was mailed;
- v) Preparing and mailing, in accordance with this Agreement and order of the Court, Class Counsel's attorneys' fees and litigation costs, the Named Plaintiff's enhancement award and Settlement Shares to Final Settlement Class members;
- vi) Ascertaining current address and addressee information for each Class Notice returned as undeliverable and re-mailing the Class Notice where appropriate as set forth in section V.B., below;
- vii) Performing all tax reporting duties and otherwise handling all tax-related functions, including the payment and administration of payroll taxes, required by federal, state or local law pertaining to its duties as set forth in subsections B.iii. and B.v., above (e.g., 1099s, W-2s, etc.);
- viii) Creating a static website that will include pertinent information about the terms and conditions of the settlement;
- ix) Sending reminder postcards to Settlement Class members who have not cashed their Settlement checks.
- x) Creating a toll free telephone number to answer questions concerning the settlement, and referring to both Class Counsel and Defendant's counsel

all inquiries by Settlement Class members regarding matters not within the Claims Administrator's duties specified herein;

- xi) Regularly apprising counsel for the Parties of the activities of the Claims Administrator;
- xii) Maintaining adequate records of its activities, including the mailing dates of the Class Notice, returned mail and other communications and attempted written or electronic communications with Settlement Class members;
- xiii) Confirming with Class Counsel and Defendant's Counsel, in writing, its completion of the administration of the settlement;
- xiv) Preparing a final report summarizing the number of claims, requests for exclusion and disputes filed;
- xv) Resolving disputes during the claims administration process in the manner provided under subparagraph C., below; and
- xvi) Such other tasks as to which the Parties mutually agree.

C. Dispute Resolution: The Claims Administrator will have the initial responsibility for resolving all disputes that arise during the claims administration process, including, without limitation, disputes regarding whether an employee is entitled to a Settlement Share and, if so, to what extent, except that the dispute resolution process applicable to resolving disputes regarding (i) the inclusion in the Settlement Class and/or (ii) calculations of Settlement Shares shall be handled as set forth below in Section V.D. Except as provided in Section V.D., in resolving disputes that arise during the claims administration process, Defendant's employment records shall be presumed to be accurate and correct and shall be final and binding, unless the information submitted by the Settlement Class member (e.g., time records, paystubs, employment records, termination notice, final pay information, etc.) proves otherwise. In the event the Claims Administrator cannot resolve a dispute based on a review of the available information, the Claims Administrator will request a conference call between Class Counsel, Defendant's Counsel and itself to discuss and resolve the dispute. After such call, the Claims Administrator will resolve the dispute and such resolution shall be final and binding on the Settlement Class member.

V. CLASS NOTICE

A. Initial Identification of Settlement Class Members: Within thirty (30) calendar days after the Court grants preliminary approval, Defendant will provide the Claims Administrator with a confidential list containing the name and employee identification number, last known address, telephone number and social security number of each member of the Settlement Class. In addition, Defendant will provide information sufficient to allow the Claims Administrator to determine the approximate number of total workweeks worked as a non-exempt

employee during the Class Period by each Settlement Class member, exclusive of any workweeks each Settlement Class member may have worked that were covered by the release in the *Randell* Action. Any week in which a Settlement Class member worked at least one shift will count as a workweek. This information shall be treated as confidential.

B. Mailing of Class Notice: Promptly upon receipt of the Settlement Class member information from Defendant, the Claims Administrator shall obtain updated forwarding addresses from the U.S. Postal Service. Within fifteen (15) business days after receipt of the Settlement Class member information identified in section V.A., above, the Claims Administrator shall mail the Class Notice to all Settlement Class members via first-class mail using the updated address information. Unless the Claims Administrator receives a Class Notice returned from the U.S. Postal Service, the Class Notices shall be deemed mailed on the date the Claims Administrator places the Class Notices with the U.S. Postal Service for mailing. With respect to each Class Notice that is returned as undeliverable before the end of the Exclusion Period, the Claims Administrator shall promptly attempt to determine a correct address using its best efforts to locate the Settlement Class member and shall re-send the Class Notice via first-class mail to any new address thereby determined.

C. Participation in the Settlement. Settlement Class members are not required to file claims to be eligible to recover their Settlement Share. All Settlement Class members shall be mailed their Settlement Share unless they timely request exclusion from the Settlement Class. Settlement Share amounts shall be determined from Defendant's records that shall be provided, in electronic form, to the Claims Administrator.

D. Challenges to Calculations and/or Inclusion in the Settlement Class. A participating Settlement Class member may dispute his or her inclusion in the Settlement Class and/or the amount of his or her Settlement payment, and the data used to calculate the Settlement payment, by timely sending a written notice to the Claims Administrator informing the Claims Administrator of the nature of the dispute, and providing any records or documentation supporting the Settlement Class member's position. In response to such a dispute, Defendant will first verify the information contained in Defendant's records. Class Counsel and Defendant's Counsel will then make a good faith effort to resolve the dispute informally. If counsel for the Parties cannot agree, the dispute shall be resolved by the Claims Administrator who shall examine the records provided by the Defendant and the Settlement Class member. The Claims Administrator's determination regarding any such dispute shall be final. A dispute regarding the Settlement payment or the underlying data used to calculate the Settlement payment shall be considered timely if received by the Claims Administrator postmarked before the conclusion of the Exclusion Period.

In the event that an individual not previously identified as a member of the Settlement Class (a "Non-Disclosed Potential Class Member") asserts his or her right to membership in the Settlement Class and seeks recovery under the Settlement, the Claims Administrator shall provide all counsel with the evidence (as described below) provided by the Non-Disclosed Potential Class Member. To be eligible for recovery under this Settlement Agreement, each Non-Disclosed Potential Class Member must provide acceptable proof (documentation or declaration(s)) to the Claims Administrator supporting his or her request for inclusion in the

Settlement Class, including specific evidence establishing that he or she meets the criteria for membership in the Settlement Class, as defined above. If the Parties agree that a Non-Disclosed Potential Class Member should be treated as a member of the Settlement Class, the Claims Administrator will issue his or her settlement payment from the Maximum Distributable Amount. For the avoidance of doubt, under no circumstances shall Defendant contribute any funds under this Settlement Agreement in excess of the Maximum Distributable Amount. To determine the amount of the Settlement Share for any Non-Disclosed Potential Class Member who becomes a member of the Settlement Class, the Claims Administrator will utilize the formula used to calculate the Settlement Class member's Settlement Share. To provide for potentially accepted Non-Disclosed Potential Class Members into the Settlement Class, the Claims Administrator will withhold one percent (1%) of the Maximum Distributable Amount when initially providing anticipated Settlement Share amounts to members of the Settlement Class.

If Defendant disagrees with Class Counsel that any Non-Disclosed Potential Class Member is, in fact, a Settlement Class member, the Parties agree that the Claims Administrator will resolve the issue based solely upon written submissions by each party. If both Class Counsel and Defendant jointly agree that the Non-Disclosed Potential Class Member is not a member of the Settlement Class, the Claims Administrator will not be involved and the Claims Administrator is authorized to notify the Non-Disclosed Potential Class Member that his or her request for inclusion in the Settlement Class has been rejected. If the Non-Disclosed Potential Class Member is either agreed by the Parties, or determined by the Claims Administrator, to be a Settlement Class member, the Claims Administrator will pay the individual his or her Settlement payment upon payment of proceeds to all Settlement Class members.

VI. BINDING EFFECT; EXCLUSION; AND OBJECTION RIGHTS

A. Right of Settlement Class Members to be Excluded: Any Settlement Class member, other than the Named Plaintiff, may elect to be excluded from the Settlement Class at any time before the conclusion of the Exclusion Period. To be effective, any such election must be made in writing; must contain the name (and former names, if any), current address, telephone number and last four digits of the social security number of the individual requesting exclusion; must be signed by the individual who is electing to be excluded; and must be mailed to the Claims Administrator and postmarked on or before the end of the Exclusion Period. The date of the postmark on the mailing envelope shall be the exclusive means to determine whether a request for exclusion is timely (if there is no postmark, a timely submitted notarized declaration from the individual requesting exclusion, wherein the individual states the date on which he or she mailed his or her request for exclusion, shall suffice to establish the date on which the individual mailed his or her request for exclusion). Any Settlement Class member who timely requests exclusion in compliance with these requirements: (i) shall not have any rights under this Agreement; (ii) shall not be entitled to receive a Settlement Share; and (iii) shall not be bound by this Agreement, the Final Approval Order or the Judgment.

B. Notification to Counsel of Exclusions: Within five (5) business days after the expiration of the Exclusion Period, the Claims Administrator shall notify Class Counsel and Defendant's Counsel of the Settlement Class members who have timely requested exclusion

from the Settlement Class in compliance with the above requirements. The Claims Administrator shall identify these Settlement Class members by employee identification number.

C. Binding Effect on Final Settlement Class Members: Except for those Settlement Class members who exclude themselves in compliance with the procedures set forth above, all Settlement Class members will be deemed to be members of the Final Settlement Class for all purposes under this Agreement; will be bound by the terms and conditions of this Agreement, the Final Approval Order, the Judgment and the releases set forth herein; and, except as provided in section VI.D., below, will be deemed to have waived all objections and opposition to the fairness, reasonableness and adequacy of the settlement.

D. Right to Object: Any Final Settlement Class member, other than the Named Plaintiff, may object to this settlement, provided that such objection is made in writing and mailed to the Court and served on both Class Counsel and Defendant's Counsel no later than before the conclusion of the Exclusion Period. Such objection shall include the name, address and telephone number of the objector, dates of employment, a statement of all grounds for the objection accompanied by legal support for the objection (if any), copies of any papers, briefs, or other documents upon which the objection is based, a list of all persons who will be called to testify in support of the objection (if any), a statement of whether the objector intends to appear at the Final Approval Hearing, and, if the objector is represented by counsel, the name, address and signature of the objector's counsel. Any Final Settlement Class member who has filed and served written objections to the proposed Settlement shall enter an appearance at the Final Approval Hearing either personally or through counsel, or seek and obtain leave of Court excusing such appearance prior to the Final Approval Hearing. The date of the postmark on the mailing envelope or a legal proof of service accompanied and a file-stamped copy of the submission shall be the exclusive means used to determine whether an objection and/or notice of intention to appear has been timely filed and served. In the event that the postmark is illegible, the objection and/or notice to appear shall be deemed untimely unless it is received by the counsel for the Parties within two (2) calendar days of the conclusion of the Exclusion Period. No Final Settlement Class member may be heard at the final settlement hearing who has not complied with the requirements in this section VI.D., and any Final Settlement Class member who fails to comply with these requirements will be deemed to have waived any right to object to the Settlement and will be foreclosed from making any objection to the Settlement, and shall have no right and/or standing to file an appeal relating to the approval of this Settlement.

E. Communication between Counsel regarding Objections and Extensions: Upon receipt, counsel for the Parties shall promptly exchange with one another copies of all objections, exclusions and/or challenges to the settlement or to any part thereof. Class Counsel and Defendant's Counsel shall file any responses to any written objections submitted to the Court in accordance with this Settlement Agreement at least two (2) weeks before the final fairness and approval hearing (or such other number of days as the Court shall specify).

F. Prohibition on Filing Complaints or Proceedings Pending Final Approval: From the date of entry of the Preliminary Approval Order through the date of the final approval hearing, Settlement Class members including the Named Plaintiff, who do not exclude themselves from the Settlement Class shall be prohibited from receiving any monetary recovery

from a complaint or charge of any kind filed with the California Division of Labor Standards Enforcement or from initiating any lawsuit or other legal proceeding regarding any of the Released Claims as defined in Section X below.

G. No Solicitation of Settlement Objections: The Parties agree to use their best efforts to carry out the terms of this Settlement. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class members to object to the Settlement, or encourage any Settlement Class member to appeal from the Final Approval Order.

H. Covenant Not to Sue or Participate in Any Other Action: Subject to the Court's granting final approval, any Settlement Class member who does not exclude himself or herself from the Settlement in compliance with the procedures set forth above shall be forever barred from filing any other action or proceeding or participating either as a named plaintiff or as an unnamed class member in any other lawsuit or class action in any state or federal court or administrative tribunal as permitted by law regarding any of the Released Claims as defined in section X., below.

VII. FINAL SETTLEMENT APPROVAL

A hearing shall be held for the purpose of obtaining the Final Approval Order and entry of Judgment approving this Settlement Agreement and releasing the claims of the Final Settlement Class. The date of the hearing shall be set by the Court and notice of such shall be provided to Settlement Class members in the Class Notice, although such hearing may be continued by the Court without further notice to Settlement Class members.

On the date set forth for the final fairness and approval hearing in the order granting preliminary approval of the settlement, which shall be at least one hundred and five (105) days, subject to the Court's calendar, after the Court grants preliminary approval of this Settlement, a final fairness and approval hearing shall be held before the Court in order to consider and determine whether (i) the Court should give final approval to this Settlement; (ii) Class Counsel's application for attorneys' fees and litigation costs should be granted; (iii) the Named Plaintiff's application for an enhancement award should be granted; and (iv) any timely objections made have any merit and to consider all responses by Class Counsel and Counsel for Defendant.

Upon final approval of the Settlement by the Court, the Parties request that the Court enter an order and Judgment as follows:

1. Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;
2. Approving Class Counsel's application for an award of attorneys' fees and litigation costs;
3. Approving the administration costs to the Claims Administrator;

4. Approving the enhancement award to the Named Plaintiff;
5. Approving the amount paid to the LWDA;
6. Dismissing the Action with prejudice; and
7. Entering Judgment, permanently barring and enjoining all members of the Settlement Class from prosecuting against Defendant, and its direct and indirect subsidiaries and affiliates, and their past, present and future parents, affiliates, subsidiaries, divisions, predecessors, successors, partners, joint ventures, affiliated organizations, insurers and assigns and each of their past, present and future officers, directors, trustees, agents, employees, attorneys, contractors, representatives, partners, joint ventures, benefit plans sponsored or administered by them, divisions, units, branches and other persons or entities acting on their behalf regarding any individual or class claim released herein pursuant to section X, below, of this Agreement, upon satisfaction of all payments and obligations hereunder.

Following entry of Judgment and Defendant's satisfaction of its payment obligations, Class Counsel will execute and file an acknowledgment that Defendant has satisfied the payment obligations under the Settlement Agreement.

A. Final Accounting: No later than thirty (30) calendar days after the Final Effective Date, the distribution of all settlement checks referenced herein and the provision of any unclaimed funds to Defendant, the Claims Administrator shall serve on the Parties, for Class Counsel to file with the Court, a final accounting, executed under penalty of perjury, of all monies paid from the Maximum Distributable Amount.

VIII. SETTLEMENT TERMINATION

A. Grounds for Settlement Termination: In accordance with the procedures specified in subsection B., below, this Agreement may be terminated on the following grounds:

1. Any party may terminate the Agreement if the Court declines to enter the Preliminary Approval Order (incidental or minor changes to the Class Notice ordered by the Court are not grounds for termination), Final Approval Order or Judgment in substantially the form submitted by the Parties, or if the Settlement as agreed upon by the Parties does not become final for any other reason. Within three (3) days of entry of Judgment, the notice of Judgment shall be provided to the class via a posting on the Claims Administrator's website.

Recovery of attorneys' fees and costs by Class Counsel and an enhancement award to the Named Plaintiff are terms of this Agreement, but the allowance or disallowance by the Court of an award of attorneys' fees and/or costs and/or the enhancement award to the Named Plaintiff are not part of this Settlement, and will be considered by the Court separately from the Court's consideration of the fairness, reasonableness, adequacy and good faith of this Settlement to the Settlement Class. No decision by the Court concerning the granting, in whole or in part, of such

attorneys' fees and/or costs, and/or the enhancement award to the Named Plaintiff, shall be grounds for termination of the Settlement, or affect the validity of this Agreement or finality of the Settlement in any manner. This paragraph is not intended to preclude an appeal from an order regarding the attorney fees or enhancement award.

2. If more than five percent (5%) of the Settlement Class makes a valid request to be excluded from the class as described in section VI., above, Defendant will have the right, but not the obligation, to void the Agreement. If Defendant exercises that right to void the Agreement, then the Parties will have no further obligations under the Agreement, including any obligation by Defendant to pay the Maximum Settlement Amount, or any amounts that otherwise would have been owed under this Agreement. If Defendant chooses to exercise its right to void the Agreement, Defendant will so notify Class Counsel, in writing via the USPS and email, and the Court no later than twenty (20) business days after the Claims Administrator notifies the Parties of the final total number of valid requests to be excluded.

B. Procedures for Termination: In the case of termination pursuant to subsection A.1., above, the terminating party shall give written notice to the other party no later than twenty (20) business days after the Court acts.

C. Effect of Termination: Valid termination shall have the following effects:

1. The Settlement Agreement shall be terminated and shall have no force or effect, and no party shall be bound by any of its terms, except for those in this subsection and sections XI., XII. and XIII., below;

2. The Preliminary Approval Order, Final Approval Order and Judgment, including any order of class certification, shall be vacated;

3. The Settlement Agreement and all negotiations, statements and proceedings relating thereto shall be without prejudice to the rights of any of the Parties, all of whom shall be restored to their respective positions in the Action prior to the Settlement; and

4. Neither this Settlement Agreement, nor filings in furtherance of the settlement shall be admissible or offered into evidence in the Action or any other action for any purpose whatsoever.

IX. SETTLEMENT PAYMENTS

A. Defendant's Settlement Payment Obligations: In full and complete Settlement of the Action, subject to this Settlement receiving final approval from the Court and Judgment being entered, Defendant shall forward a sum not to exceed Seven Hundred and Seventy Nine Thousand, Five Hundred Dollars (\$779,500.00) to the Claims Administrator within thirty (30) calendar days after the Final Effective Date, to be deposited by the Claims Administrator into an interest bearing account; provided, however, that by no later than ten (10) calendar days after the Final Effective Date, Class Counsel shall provide Defendant's Counsel with all necessary information to allow Defendant to deposit the Maximum Settlement Amount with the Claims

Administrator, and if Class Counsel has not timely provided such information then Defendant's deadline for depositing the Maximum Settlement Amount with the Claims Administrator shall be extended until ten (10) calendar days after Class Counsel provides the necessary information. The Maximum Settlement Amount shall be allocated as follows:

1. Reasonable attorneys' fees and litigation costs: Class Counsel may request, without opposition from Defendant, that the Court award him reasonable attorneys' fees in an aggregate amount up to and including thirty percent (30%) of the Maximum Settlement Amount, or Two Hundred Twenty Five Thousand Dollars (\$225,000.00). Class Counsel will also ask the Court to award him reasonable litigation costs incurred in prosecuting the Action, not to exceed Twenty Thousand Dollars (\$20,000.00). Defendant has agreed not to oppose such requests. The award of reasonable attorneys' fees and litigation costs granted by the Court will be paid out of the Maximum Settlement Amount. Any award of attorneys' fees and costs shall include and satisfy all past and future fees and costs incurred to prosecute, settle and administer the Action and this Settlement Agreement, including obtaining the Final Approval Order and Judgment. In the event the Court awards Class Counsel fees of less than thirty percent (30%) of the Maximum Settlement Amount, the difference shall be used to increase the amount of the Maximum Settlement Amount to be allocated to the Settlement Class.

2. Reasonable costs of the Claims Administrator: All costs of administering the Settlement including, but not limited to, all costs and fees associated with preparing, issuing and mailing any and all notices to the Settlement Class, all costs and fees associated with computing, processing, reviewing and mailing the Settlement Share, all costs and fees pertaining to the Claims Administrator's duties as set forth in sections IV.B.iii. and IV.B.v., above, including those associated with preparing any tax documents and any other filings required by any governmental taxing authority or agency, all costs and fees associated with preparing any other notices, reports or filings to be prepared in the course of administering disbursements from the Maximum Settlement Amount, and any other costs and fees incurred and/or charged by the Claims Administrator in connection with the execution of its duties under this Agreement ("Settlement Administration Costs"), shall be paid to the Claims Administrator out of the Maximum Settlement Amount in accordance with this section. Settlement Administration Costs are currently estimated not to exceed Forty Thousand Dollars (\$40,000.00).

3. Reasonable enhancement award to the Named Plaintiff: Class Counsel will request that the Court award a reasonable enhancement award of up to a maximum amount of Four Thousand Five Hundred Dollars (\$4,500.00) to the Named Plaintiff, to be paid out of the Maximum Settlement Amount, and Defendant has agreed not to oppose this request.

4. Allocation to the LWDA: The Parties agree that Forty Thousand Dollars (\$40,000.00) of the Maximum Settlement Amount is in consideration for a full and complete release of any claim that penalties may be owed pursuant to PAGA for alleged violations of the Labor Code that were or could have been asserted in the Action. This amount, which represents the LWDA's 75 percent (75%) share of the allocated settlement of the claim under California Labor Code section 2698, *et seq.*, will be paid to the LWDA in satisfaction of any claim for penalties that may be owed to that agency under PAGA.

5. Defendant's Payroll Taxes: Tuesday Morning's share of payroll taxes associated with monies distributed pursuant to this Settlement shall be paid out of the Maximum Settlement Amount. For the avoidance of doubt, under no circumstances shall Defendant's total payment under this Settlement Agreement, including with respect to any and all taxes, exceed the Maximum Settlement Amount.

6. Allocation to the Settlement Class: The amount remaining from the Maximum Settlement Amount after deducting the Court awarded attorneys' fees and litigation costs, Settlement Administration Costs, enhancement award, the amount paid to the LWDA, and Defendant's payroll taxes as set forth above (the "Maximum Distributable Amount") will be available for distribution to members of the Settlement Class who do not submit a valid and timely request for exclusion, in accordance with the formula set forth in section IX.B.2., below, of the Settlement Agreement. All interest earned on the account opened by the Claims Administrator shall inure to the benefit of the Settlement Class.

7. Unclaimed Funds: Any portion of the Maximum Settlement Amount for which a check is issued but not cashed within one hundred eighty (180) days of issuance shall be distributed to the cy pres beneficiary Bay Area Legal Aid.

B. Payout of Maximum Settlement Amount: The Maximum Settlement Amount shall be distributed as follows:

1. Reasonable enhancement award to the Named Plaintiff. Class Counsel has stated he will seek approval from the Court for a reasonable enhancement award to the Named Plaintiff in the amount specified in subsection A.3, above. This payment is in addition to the Named Plaintiff's Settlement Share to which she may be entitled as a member of the Final Settlement Class. The Named Plaintiff will receive an IRS Form 1099 for the portion of the settlement distributed to her that represents her respective enhancement award. The Named Plaintiff shall be responsible for properly declaring such income to the appropriate taxing authorities, and for paying any taxes due on such amount. In exchange for her enhancement award, the Named Plaintiff will enter into a binding release of all claims, as set forth in section X.C. below.

2. Payment to Final Settlement Class Members. Each member of the Final Settlement Class who does not submit a valid and timely request for exclusion will be paid based on his or her total actual workweeks worked during the Class Period as a non-exempt employee. This amount will be determined by the following formula: First, the Claims Administrator shall reduce the Settlement Amount of \$779,500.00 by deducting (a) all attorneys' fees and litigation costs approved by the Court and awarded to Class Counsel, (b) all fees to be paid to the Claims Administrator associated with settlement administration, (c) the enhanced payment to the Named Plaintiff approved by the Court and awarded to the Named Plaintiff, (d) payment to the LWDA, and (e) Defendant's share of payroll taxes. The Settlement Share for each Settlement Class member will be based on a ratio of his or her individual actual workweeks worked during the Class Period as a non-exempt employee to the total actual workweeks worked by all Settlement Class members who do not request exclusion. The individual settlement payment to each Settlement Class member will be calculated by dividing the Settlement Class member's

individual actual workweeks during the Class Period as a non-exempt employee by the total actual workweeks of all Settlement Class members during the Class Period and multiplying by the Maximum Distributable Amount; provided, however, that for each Settlement Class member who was also a member of the settlement class in the *Randell* Action, the number of workweeks worked during the Class Period shall, for purposes of these calculations, exclude workweeks worked through December 31, 2013, the last date to which the release in the *Randell* Action extends. The maximum amount paid in Settlement, including all reasonable attorneys' fees and litigation costs to be paid to Class Counsel, the amount paid to the Claims Administrator for settlement administration expenses, the enhancement award to the Named Plaintiff, and payment of Defendant's share of payroll taxes, shall not exceed \$779,500.00.

3. Allocation of Settlement Payments and Taxes. All payments made to the Settlement Class under this Settlement shall be allocated thirty-three percent (33.3%) to wages, thirty-three percent (33.3%) to penalties and thirty-three percent (33.3%) to interest. Any amounts paid for penalties and interest shall not be subject to tax withholding. Any amounts paid for wages shall be subject to tax withholding. The Claims Administrator will issue Settlement Class members an IRS Form W-2 for the wages portion of their allocation of the Settlement, and an IRS Form 1099 for the non-wages portion of their allocation of the Settlement. Settlement Class members who did not submit a request for exclusion will be issued one check for their Settlement Share. Defendant shall not make as part of this Agreement, nor be required to make, any deductions, nor pay any monthly contributions for any insurance, retirement, 401(k) or profit sharing plans related to monies paid as a result of this Settlement Agreement, nor will Defendant consider the monies paid as part of this Settlement Agreement "compensation" for purposes of determining eligibility for, or benefit accrual within, any employee pension benefit or employee welfare benefit plan, or for calculating any additional benefits for Settlement Class members such as vacation pay, holiday pay, credited hours of service for any employee pension or employee welfare benefit plan, or any other benefit.

4. Timing of Settlement Payments. Payment of Settlement Shares shall be made in accordance with the following subparagraphs:

a. Defendant shall meet its obligation to pay the Maximum Settlement Amount to the Claims Administrator the period set forth in section IX.A., above.

b. Within ten (10) days after entry of the Final Approval Order, the Claims Administrator shall provide to the Parties a written statement indicating how the Maximum Settlement Amount will be allocated. The allocation shall include the attorneys' fees and litigation costs of Class Counsel as awarded by the Court, claims administration expenses to the Claims Administrator, an enhancement award to the Named Plaintiff as awarded by the Court, the payment to the LWDA, Defendant's share of payroll taxes, and the total of all payments to be paid to all eligible Final Settlement Class members.

c. Upon receipt of the Maximum Settlement Amount from Defendant, the Claims Administrator shall promptly (but no later than three (3) days), deposit the funds into an interest bearing bank account, held in escrow for the purpose of effectuating this Settlement. The Parties agree to treat this account as a "Qualified Settlement Fund" pursuant to

section 468(13) of the Internal Revenue Code of 1986, as amended, and the Claims Administrator shall treat the Qualified Settlement Fund as the “employer” for purposes of federal and state income and employment tax withholding and reporting with respect to the Settlement Shares.

d. Within ten (10) days of the Final Effective Date, the Claims Administrator shall issue to each qualifying Final Settlement Class member a check for a portion of his or her Settlement Share (less applicable taxes) via first-class mail. Checks not negotiated within 180 days from their issue are void, but this Agreement and the release herein will nonetheless be binding as if they had cashed the checks. Any unclaimed funds in the Claims Administrator’s account as a result of the failure to timely cash Settlement Share checks shall be distributed by the Claims Administrator to the cy pres beneficiary Bay Area Legal Aid.

e. Class Counsel will advise Defendant and the Claims Administrator as to the amount of attorneys’ fees and costs payments awarded by the Court. Class Counsel shall also advise Defendant and the Claims Administrator as to how the enhancement award shall be paid to the Named Plaintiff, whether by check sent directly to the Named Plaintiff or provided to Class Counsel. Within ten (10) days of the Final Effective Date, the Claims Administrator shall distribute the fees, costs and enhancement award; and within ten (10) business days of the Final Effective Date, the Claims Administrator shall make payment to the LWDA provided for in section IX.A.4., above, as set forth in this Agreement.

C. Taxes. The Parties understand and agree that the Qualified Settlement Fund (“QSF”) will qualify and be characterized as a qualified settlement fund under the provisions of the U.S. Treasury Regulations 1.468B-1 and 1.468B-5, and the QSF will be taxed as a separate entity for purposes of all federal, state and local taxes, and further agree to treat the QSF on a basis consistent therewith, that the QSF will be characterized as the employer of all Settlement Class members for purposes of determining all tax obligations associated with any and all payments under this Settlement, and the QSF will bear full responsibility for all taxes associated with the QSF and Settlement Shares to Settlement Class members under this Agreement.

The Claims Administrator shall be responsible for ensuring that all taxes associated with the Agreement are timely paid to the appropriate authorities. The Claims Administrator’s responsibilities include, but are not limited to, the following: Performing all tax reporting duties required by federal, state or local law pertaining to the Claims Administrator’s duties as set forth in sections IV.B.iii. and IV.B.v., above. In addition, the Claims Administrator shall timely make such elections as necessary or advisable to carry out the provisions of this paragraph. Such elections shall be made in compliance with the procedures and requirements contained in the QSF regulations. It shall be the responsibility of the Claims Administrator to timely and properly prepare and deliver all necessary documentation for signature as may be required, and thereafter to cause the appropriate filing of such documentation to occur. To the extent that, for any period of time, the QSF is not treated as a “qualified settlement fund” within the meaning of the U.S. Treasury Regulations 1.468B-1 and 1.468B-5, the Claims Administrator shall promptly notify Class Counsel and Counsel for Defendant of that fact.

Each party to this Agreement (for purposes of this section, the “Acknowledging Party;” and each party to this Agreement other than the Acknowledging Party, an “Other Party”) acknowledges and agrees that: (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisors, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of the United States Treasury Department Circular 230 (31 CFR Part 10, as amended); (2) the Acknowledging Party (a) has relied exclusively upon his, her or its own independent legal and tax advisors for advice (including tax advice) in connection with this Agreement; (b) has not entered into this Agreement based upon the recommendation of any Other Party or any attorney or advisor to any Other Party; and (c) is not entitled to rely upon any communication or disclosure by any attorney or advisor to any Other Party to avoid any tax penalty that may be imposed on the Acknowledging Party; and (3) no attorney or advisor to any Other Party has imposed any limitation that protects the confidentiality of any such attorney’s or advisor’s tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement. Final Settlement Class members shall hold harmless Defendant from any and all actions, claims or demands brought by any tax or other authority based upon Final Settlement Class members’ tax obligations arising from the payment to be made pursuant to this Settlement.

D. Inapplicability of Code of Civil Procedure section 384: The Parties agree that California Code of Civil Procedure section 384 is not applicable to this Settlement Agreement.

E. No Additional Contribution by Defendant: Defendant’s monetary obligation under this Agreement is limited to the Maximum Settlement Amount. Defendant may not be called upon or required to contribute additional monies above the Maximum Settlement Amount under any circumstances whatsoever. All costs and expenses arising out of or in connection with the performance of this Agreement shall be paid from the Maximum Settlement Amount. If this Agreement is cancelled, rescinded, terminated, voided or nullified, or the Settlement of the Action is barred by operation of law, invalidated or ordered not to be carried out by a court of competent jurisdiction, Defendant will cease to have any obligation to pay any portion of the Maximum Settlement Amount to anyone under the terms of this Agreement, and all previous disbursements from the Maximum Settlement Amount will be immediately paid back to Defendant by the person or entity who received such disbursement.

X. RELEASE OF CLAIMS; WAIVER; ASSIGNMENT OF RIGHTS

A. Class Release: Effective as of the Final Effective Date, and in exchange for the consideration provided pursuant to this Agreement, Plaintiff and each member of the Final Settlement Class and their respective heirs, attorneys, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, personal representatives, successors-in-interest and assigns (collectively, the “Releasing Persons”) hereby forever completely release and discharge Defendant and its direct and indirect subsidiaries and affiliates, and their past, present and future parents, affiliates, subsidiaries, divisions, predecessors, successors, partners, shareholders, joint ventures, affiliated organizations, insurers and assigns and each of their past,

present and future officers, directors, trustees, agents, employees, attorneys, fiduciaries, contractors, representatives, partners, joint ventures, benefit plans sponsored or administered by them, divisions, units, branches and other persons or entities acting on their behalf (collectively, the “Released Parties”), from any and all of the following claims (collectively, the “Released Claims”):

1. Any and all claims, causes of action, demands, rights, liabilities, expenses and losses of every nature and description whatsoever that arise from, relate to, are connected in any way to, could have been raised or asserted, touch or concern any of the facts, claims, conduct, or circumstances in the Complaint, or any conduct, facts or circumstances emanating from or as a result of the Complaint, that any of the Releasing Persons have, might have, or might have had against any of the Released Parties at any time prior to and through the Class Period based on the facts, claims, or allegations in the Complaint or any conduct, facts or circumstances emanating from or as a result of the Complaint, whether in tort, contract, or for violation of any state constitution, state, rule or regulation, including state wage and hour laws, whether for economic damages, wages, non-economic damages, restitution, penalties or liquidated damages, arising out of, relating to, or bearing any connection to any of the facts, conduct, circumstances, or legal claims in the Complaint, including but not limited to those alleged, pled or could have been alleged or pled in the Complaint, based upon the factual allegations therein or resulting therefrom. These released claims include, but are not limited to, any claims in connection with, relating to or arising out of the following statutory code sections which have been pled or could have been pled based upon the factual allegations in the Complaint or any conduct, facts or circumstances emanating from or as a result of the Complaint: (1) Labor Code § 226.7; (2) Labor Code §§ 201, 202, 203; (3) Business & Professions Code § 17200, *et seq.*; (4) Labor Code § 2698, *et seq.*; (5) Labor Code § 226(a); (6) Labor Code § 216; (7) Labor Code § 218.6; (8) Labor Code § 1199; (9) Labor Code § 223; (10) Labor Code § 1198; (11) Labor Code § 204; (12) Labor Code § 1194; (13) Code of Civil Procedure § 1021.5; (14) Labor Code § 215; (15) Labor Code § 225; (16) Labor Code § 226.6; (17) the Industrial Welfare Commission Wage Orders and their codification in the California Code of Regulations; and all related statutory claims, or any other claim for any statutory or civil penalty that was asserted in the Complaint or could have been asserted based on, arising out of, relating to, or in connection with the facts, conduct or circumstances alleged in the Complaint or any conduct, facts or circumstances emanating from or as a result of the Complaint under California law or that arise from the allegations as plead;

2. Any claims for restitution, liquidated damages, disgorgement, conversion, unjust enrichment, equitable relief, interest and/or for penalties of any kind arising under state or federal law with respect to the claims that were asserted or could have been reasonably asserted based on the facts, conduct or circumstances alleged in the Complaint on behalf of the Settlement Class, and any other relief arising out of, relating to, or in connection with the facts, conduct or circumstances alleged in the Action on behalf of the Settlement Class; and

3. Any claim for attorneys’ fees or costs against any of the Released Parties.

B. Waiver of California Civil Code Section 1542: Plaintiff Cynthia McMahon and the Settlement Class members expressly, knowingly and intentionally waive and relinquish any and all rights that they have under the provisions of Section 1542 of the California Civil Code

asserted or that might have been asserted in the Complaint that arise out of, relate to, touch on, or are connected in any way to any of the facts, conduct, circumstances or legal claims alleged or plead in the Complaint, including any such claims that Plaintiff and/or each of the Settlement Class members do not know or suspect to exist in his or her favor as of the date the Court enters the Preliminary Approval Order. This release pursuant to Section 1542 is not meant to waive any known or unknown claims that do not arise out of or relate to any of the facts, circumstances, or legal claims alleged or plead in the Complaint.

Section 1542 of the California Civil Code provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER 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.

C. Assignment: Plaintiff, for herself and on behalf of the other Releasing Persons, represents and warrants that nothing which would otherwise be released herein has been assigned, transferred or hypothecated, or purportedly assigned, transferred or hypothecated.

D. Waiver of Appeal: Any Final Settlement Class member who does not timely submit an objection to the settlement hereby waives any and all rights to appeal from the Final Approval Order and Judgment, including all rights to any post-judgment proceeding and appellate proceeding such as a motion to vacate judgment, motion for new trial and extraordinary writs. This waiver does not include a waiver of the right to oppose any appeals, appellate proceedings or post-judgment proceedings, if any.

XI. INADMISSIBILITY OF SETTLEMENT AGREEMENT/DENIAL OF LIABILITY

This Settlement Agreement is the result of a good faith compromise of disputed claims, and neither it nor any statement or conduct in furtherance of the Settlement shall be offered or construed to be an admission or concession of any kind by any party. In particular, but without limiting the generality of the foregoing, nothing about this Settlement shall be offered or construed as an admission of liability, wrongdoing, impropriety, responsibility or fault whatsoever by Defendant, who expressly denies any liability, wrongdoing, impropriety, responsibility or fault whatsoever. In addition, and also without limiting the generality of the foregoing, nothing about this Settlement shall be offered or construed as an admission or evidence of the propriety or feasibility of certifying a class in the Action or any other action for adversarial, rather than settlement purposes. The Parties further agree that if, for any reason, the Settlement is not approved, the certification will have no force or effect and will be immediately revoked.

Pursuant to Federal Rule of Evidence 408 and California Evidence Code §§ 1119, 1151, 1152, this Agreement and any related documents created in connection with it shall be inadmissible in evidence in any proceeding, except as necessary to approve, interpret or enforce this Agreement.

XII. INTERIM STAY OF PROCEEDINGS

Pending completion of the settlement process, the Parties agree to a stay of all proceedings in the Action, except as is necessary to implement the Settlement itself.

XIII. NOTICES

All notices, requests, demands and other communications required or permitted to be given pursuant to this Agreement shall be in writing and, except as provided elsewhere in this Agreement or in any communication to the Settlement Class, shall be delivered personally, via postage prepaid first-class mail or via e-mail as follows:

A. If to Plaintiff or Class Counsel, then to:

Shaun Setareh, Esq.
shaun@setarehlaw.com
Setareh Law Group
9454 Wilshire Boulevard, Suite 907
Beverly Hills, CA 90212
Tel: 310-888-7771
Fax: 310-888-0109

B. If to Defendant or Defendant's Counsel, then to:

Gary Friedman, Esq.
gary.friedman@weil.com
Weil, Gotshal & Manges, LLP.
767 Fifth Avenue
New York, NY 10153-0119
Tel: 212-310-8963
Fax: 212-310-8007

XIV. RETENTION OF JURISDICTION BY THE COURT

Following entry of the Final Approval Order and Judgment pursuant to this Settlement Agreement, the Court shall retain jurisdiction for the purpose of addressing any issues which may arise with respect to settlement administration or the enforcement of the terms of this Settlement Agreement.

XV. ENTIRE AGREEMENT

This Settlement Agreement and Exhibit A attached hereto set forth the entire agreement of the Parties with respect to this subject matter and supersede any and all other prior agreements and all negotiations leading up to the execution of this Settlement Agreement, whether oral or written, regarding the subjects covered herein. The Parties acknowledge that no representations, inducements, promises or statements relating to the subjects covered herein, oral or otherwise,

have been made by any of the Parties or by anyone acting on behalf of the Parties that are not embodied or incorporated by reference herein, and further agree that there are no other agreements, covenants, representations, inducements, promises or statements relating to the subjects covered herein that are not set forth in writing in this Settlement Agreement.

XVI. MODIFICATION OR AMENDMENT

This Settlement Agreement may not be modified, amended or altered except in a writing signed by each party whose rights or obligations hereunder would be affected thereby or by that party's authorized legal representative, or as ordered by the Court.

XVII. CHOICE OF LAW

This Settlement Agreement shall be governed by and construed, enforced and administered in accordance with the laws of the State of California, without regard to its conflicts-of-law rules.

XVIII. CONSTRUCTION

This Settlement Agreement is entered into freely and voluntarily without duress or undue pressure or influence of any kind or nature whatsoever and that neither Plaintiff nor Defendant has relied on any promises, representations or warranties regarding the subject matter hereof other than as set forth in this Agreement. Each party has been represented by counsel in the settlement negotiations leading up to, and in connection with the preparation and execution of, this Settlement Agreement.

The Parties acknowledge and agree that all Parties had an equal hand in drafting this Settlement Agreement so that it shall not be deemed to have been prepared or drafted by one party or another. All Parties waive the provisions of California Civil Code section 1654, which provide, in pertinent part, that "the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist."

XIX. EXECUTION IN COUNTERPARTS

This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Any signature to this Agreement transmitted by facsimile and/or email attachment of electronic scan, and any copies of any signatures, are valid and binding.

XX. AUTHORITY

The individuals signing this Settlement Agreement on behalf of Defendant represent and warrant that they are duly authorized to do so. The Parties likewise represent and warrant that they have the authority to execute this Settlement Agreement and to take all appropriate action required and permitted to be taken by this Settlement Agreement, except such action that is the prerogative of the Court.

XXI. REASONABLE COOPERATION

The Parties shall provide reasonable cooperation with one another and the Claims Administrator in implementing this Settlement including, but not limited to, providing information and executing documents necessary to effectuate its purpose. No party, nor any of his or its attorneys or agents, shall solicit or encourage any Settlement Class members to exclude themselves from the Settlement or object to the Settlement.

XXII. BINDING EFFECT

This Settlement shall be enforceable, binding upon and inure to the benefit of the respective Parties hereto, his or its respective legal successors, heirs, administrators, executors, assigns and each of them.

XXIII. PUBLICITY

Plaintiff and Class Counsel agree to maintain as confidential and not to disclose the Settlement amounts, the terms of the Agreement, or any of the issues discussed during settlement negotiations or the amounts provided therein until the date of the filing of the motion for the Preliminary Approval Order. After the Preliminary Approval Order has been issued, Plaintiff and Class Counsel agree not to publicize the Settlement or issue any press releases or engage in any contact with the press or other media concerning this Settlement or the underlying Action.

Plaintiff and Class Counsel agree that, other than with respect to Court submissions in the Action and providing Class Notices as provided for in the Agreement, they will not disclose or publish to non-parties (other than Settlement Class members) the fact of the Settlement or its terms in any way that would identify Tuesday Morning (and will only refer to Tuesday Morning generically as a “retail industry employer”) or the facts in the underlying Action in any tangible form (including but not limited to materials related to marketing, seminars, speeches or presentations), or any intangible form such as on websites, blogs, social media, email or other servers or the internet. Notwithstanding the foregoing, the Parties agree that Class Counsel may refer to the Settlement to a court in a declaration for purposes of showing adequacy of counsel in subsequent class representations, but in doing so may only refer to the Settlement by providing the name of the court and the case number of the Action, and may not mention the name of Defendant except by referring generically to a “retail industry employer”. Plaintiff and Class Counsel acknowledge that this section XXIII is a material term of this Agreement, and a violation of this section XXIII will, to the extent allowed by law, permit Tuesday Morning to sue for breach of this Agreement in which it may seek any available remedy, and Plaintiff and Class Counsel agree that, in any lawsuit brought by Tuesday Morning for injunctive relief for any breach of this section XXIII, Plaintiff and Class Counsel shall concede the element of irreparable harm.

Plaintiff and Class Counsel are hereby notified, in accordance with the Defend Trade Secrets Act of 2016, 18 U.S.C. § 1833(b), that: (i) an individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is

made in confidence to a federal, state, or local government official, or to an attorney, solely for the purpose of reporting or investigating a suspected violation of law; (ii) an individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal; and (iii) an individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual files any document containing the trade secret under seal and does not disclose the trade secret except pursuant to court order.

XXIV. CONFIDENTIAL DOCUMENTS AND DATA

Within fifteen (15) calendar days after the Effective Date, Class Counsel shall return or destroy all documents and data received from Tuesday Morning that was identified as confidential by Tuesday Morning or that constitutes employee payroll data or time records other than Plaintiff's. Neither Class Counsel nor Plaintiff, nor their agents or representatives, shall retain any such documents and data. Should Class Counsel choose to destroy instead of return the aforementioned documents and data, Class Counsel will provide Tuesday Morning with a signed undertaking confirming such destruction within the aforementioned fifteen (15) calendar day period. Notwithstanding this Agreement, the Stipulated Protective Order, entered by the Court in the Action on September 30, 2015, shall remain in full force and effect indefinitely.

XXV. ASSIGNMENT

A. The Parties hereto represent, covenant and warrant that they have not directly or indirectly, assigned, transferred, encumbered or purported to assign, transfer or encumber to any person or entity, any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

B. None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any party or Class Member without the express written consent of each other Party hereto. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties and Class Members under this Agreement, and shall not be construed to confer any right or to avail any remedy to any other person.

XXVI. MISCELLANEOUS

A. Headings: The headings, titles and captions in this Agreement are included for convenience only and shall not be given weight in its construction.

B. Material Terms: Each term of this Agreement is a material term of the Agreement not merely a recital, and reflects not only the intent and objectives of the Parties but also the consideration to be exchanged by the Parties hereunder.

C. Attorney-Client Privilege / Work Product: None of the Parties waives or intends to waive any applicable attorney-client privilege or work product protection for any negotiations, statements, or proceedings relating to this Agreement.

D. No Collateral Attack: This Agreement shall not be subject to collateral attack by any Settlement Class member or any recipient of the Class Notices after the Final Approval Order has been entered. Such prohibited collateral attacks shall include claims made before the Final Approval Hearing that a Settlement Class member's settlement amount was improperly calculated or adjusted or that the Class Member failed to receive timely notice of the procedure for disputing the calculation of the Settlement Shares or failed to submit a timely dispute letter for any reason.

E. Administrative Proceedings: If any federal, state, or local government authority, including the U.S. Department of Labor or the California Division of Labor Standards Enforcement, commences an administrative proceeding or action (either in a parens patriae or other function) that asserts claims within the scope of the alleged claims in this Action on or before a date that is three (3) years from the date of issuance of the Preliminary Approval Order, Class Counsel will execute an appropriate declaration at the request of Tuesday Morning supporting the Settlement, and, if Class Counsel agrees that the governmental action is within the scope of the Action, the Settlement, and the Final Approval Order, making a statement in the declaration to that effect.

F. Class Counsel Signatories: It is agreed that because the Settlement Class appears to be so numerous, it is impossible or impractical to have each member of the Settlement Class execute this Agreement. The class notice plan set forth in section V above will advise Settlement Class members of all material terms of this Agreement, including the binding nature of the releases and such shall have the same force and effect as if this Agreement were executed by each Settlement Class member.

IN WITNESS WHEREOF, this Settlement Agreement has been duly executed by and on behalf of the Parties as of the dates indicated below.

DATED: 3/9/2017

DocuSigned by:
Cynthia McMahon
E320847236654C0
CYNTHIA MCMAHON

DATED: _____

TUESDAY MORNING, INC.

By: _____

Name: _____

Title: _____

C. Attorney-Client Privilege / Work Product: None of the Parties waives or intends to waive any applicable attorney-client privilege or work product protection for any negotiations, statements, or proceedings relating to this Agreement.

D. No Collateral Attack: This Agreement shall not be subject to collateral attack by any Settlement Class member or any recipient of the Class Notices after the Final Approval Order has been entered. Such prohibited collateral attacks shall include claims made before the Final Approval Hearing that a Settlement Class member's settlement amount was improperly calculated or adjusted or that the Class Member failed to receive timely notice of the procedure for disputing the calculation of the Settlement Shares or failed to submit a timely dispute letter for any reason.

E. Administrative Proceedings: If any federal, state, or local government authority, including the U.S. Department of Labor or the California Division of Labor Standards Enforcement, commences an administrative proceeding or action (either in a parens patriae or other function) that asserts claims within the scope of the alleged claims in this Action on or before a date that is three (3) years from the date of issuance of the Preliminary Approval Order, Class Counsel will execute an appropriate declaration at the request of Tuesday Morning supporting the Settlement, and, if Class Counsel agrees that the governmental action is within the scope of the Action, the Settlement, and the Final Approval Order, making a statement in the declaration to that effect.

F. Class Counsel Signatories: It is agreed that because the Settlement Class appears to be so numerous, it is impossible or impractical to have each member of the Settlement Class execute this Agreement. The class notice plan set forth in section V above will advise Settlement Class members of all material terms of this Agreement, including the binding nature of the releases and such shall have the same force and effect as if this Agreement were executed by each Settlement Class member.

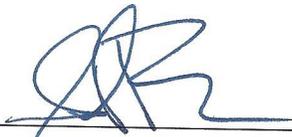
IN WITNESS WHEREOF, this Settlement Agreement has been duly executed by and on behalf of the Parties as of the dates indicated below.

DATED: _____

CYNTHIA MCMAHON

DATED: 3/9/17

TUESDAY MORNING, INC.

By:  _____

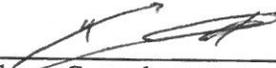
Name: STEVEN BECKER

Title: CEO

Approved as to Form Only, except as to the affirmative obligations on Setareh Law Group as set forth in Section XXIII and Section XXIV, which are approved as to both form and substance:

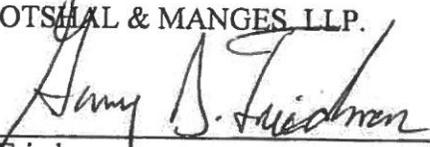
DATED: 3/9/17

SETAREH LAW GROUP

By: 
Shaun Setareh
Counsel for Plaintiff

DATED: 3/9/17

WEIL, GOTTSCHAL & MANGES, LLP.

By: 
Gary Friedman
Counsel for Defendant
Tuesday Morning, Inc.