

Exhibit 1

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12 Attorneys for Plaintiff
13 SARAH CHOOKEY

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16

17 SARAH CHOOKEY, individually and
18 on behalf of all others similarly situated,

19 Plaintiff,

20 v.

21 SEARS, ROEBUCK AND CO.; and
22 DOES 1 through 100, inclusive,

23 Defendants.

Case No. CV 12-2491-GW (MRWx)

**STIPULATION AND
SETTLEMENT AGREEMENT OF
CLASS ACTION AND
INDIVIDUAL CLAIMS**

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1 **IT IS HEREBY STIPULATED**, by and among Plaintiff Sarah Chookey,
2 individually and on behalf of all others similarly situated, and Defendant Sears,
3 Roebuck and Co., subject to the approval of the Court, that this action is hereby
4 compromised and settled pursuant to the terms and conditions set forth below in
5 this Stipulation and Settlement Agreement of Class Action and Individual Claims:

6 **Defined Terms.**

7 1. “Action” means the action entitled *Sarah Chookey, individually and on*
8 *behalf of all others similarly situated v. Sears, Roebuck and Co.*, Case No. CV 12-
9 2491-GW (MRWx), initially filed in California Superior Court, County of Ventura,
10 and currently pending in United States District Court, Central District of California.

11 2. “Administration Costs” mean the actual and direct costs reasonably
12 charged by the Settlement Administrator for its services in administering the Class
13 Settlement, currently projected by the Parties not to exceed Fifty Thousand Dollars
14 (\$50,000.00).

15 3. “Authorized Claimant” means a Settlement Class Member who
16 submits a timely and valid Claim Form to the Settlement Administrator.

17 4. “Claim Form” means a proof of claim and release in substantially the
18 form of Exhibit 1, attached hereto.

19 5. “Claims Deadline” means the date forty-five (45) days following the
20 date on which the Settlement Administrator first mails Class Notice and Claim
21 Forms to the Class Members.

22 6. “Claims Period” means the period commencing on the date the Class
23 Notices and Claim Forms are first mailed and ending forty-five (45) days thereafter.

24 7. “Class” means the aggregate group of Class Members.

25 8. “Class Counsel” means Plaintiff’s counsel, David Zelenski and Alan
26 Harris of the law firm of Harris & Ruble.

27 9. “Class Members” (or “Members of the Class”) means all non-exempt
28 individuals who worked overtime hours and who received sales commissions

1 totaling less than one-half of their total compensation during the work week
2 (meaning Sears' "C-Plan" employees) who were employed by Sears in California in
3 Sears's retail stores or Sears's retail-store automotive departments at any time
4 between February 10, 2008, through the date of Preliminary Approval.

5 10. "Class Notice" (or "Notice") means the Court-approved form of notice
6 to Class Members, substantially in the form of Exhibit 2, attached hereto, which
7 will notify Class Members of (1) Preliminary Approval of Class Action Settlement;
8 (2) Final Approval Hearing; (3) Right to Object or Opt Out; and (4) Requirement to
9 Return a Claim Form to Receive a Monetary Payment from the Settlement.

10 11. "Class Period" means the period from February 10, 2008, through the
11 date of Preliminary Approval.

12 12. "Class Released Claims" means all claims, demands, rights, liabilities,
13 and causes of action that were asserted in the Action based on the facts,
14 transactions, events, policies, occurrences, acts, disclosures, statements, exhibits,
15 omissions or failures to act that were pled in the Complaint regarding the failure to
16 properly calculate overtime compensation; all other claims, demands, rights,
17 liabilities, and causes of action that were asserted in the Action other than the
18 failure to properly calculate overtime compensation addressed in the preceding
19 clause, including claims that Defendant failed to provide meal periods, failed to
20 authorize and permit rest breaks, failed to keep records properly concerning time
21 worked, failed to provide proper itemized wage statements (including but not
22 limited to claims that Defendant's wage statements failed to show all applicable
23 hourly rates in effect during the pay period and the corresponding number of hours
24 worked at each hourly rate by the employee), and/or engaged in unfair business
25 practices; and any claims that could have been asserted in the Action for violation
26 of any law or regulation, whether legal or equitable, state or federal (including but
27 not limited to the California Labor Code, the California Business and Professions
28 Code, the applicable Industrial Welfare Commission Wage Order(s), or any claim

1 sounding in tort, contract, statute or otherwise), for any type of relief, based on the
2 facts, transactions, events, policies, occurrences, acts, disclosures, statements,
3 exhibits, omissions or failures to act that were pled in the Complaint. Class
4 Released Claims are limited to all claims as described above that arose during the
5 Class Period.

6 13. "Class Settlement" means the terms and conditions set forth in this
7 Stipulation and Settlement Agreement regarding the resolution of the claims of
8 Class Members.

9 14. "Complaint" means the First Amended Complaint filed in the Action
10 on or about April 18, 2012, including any exhibits thereto.

11 15. "Court" means the United States District Court, Central District of
12 California.

13 16. "Defendant" or "Sears" means Defendant Sears, Roebuck and Co.

14 17. "Defendant's Counsel" means the law firm of Orrick, Herrington &
15 Sutcliffe LLP.

16 18. "Fee and Expense Award" means such award of fees and expenses as
17 the Court may authorize to be paid to Class Counsel for the services they have
18 rendered and will render to Plaintiff and the Class in the Action. The Fee and
19 Expense Award will not exceed 33 1/3% of the Total Maximum Settlement
20 Amount, plus Class Counsel's actual out-of-pocket expenses in prosecuting this
21 Action not to exceed Twenty Five Thousand Dollars (\$25,000.00).

22 19. "Final Approval" means that the Order Granting Final Approval of
23 Class Settlement and Judgment have been entered by the Court.

24 20. "Final Approval Hearing" means a hearing held before the Court to
25 consider Final Approval of the Class Settlement, the amount of attorneys' fees and
26 expenses that should be awarded to Class Counsel, and the merits of any objections
27 to the Settlement Agreement and the Class Settlement set forth therein or any of its
28 terms.

1 21. “Final Approval Order and Judgment” means the Order Granting Final
2 Approval of Class Settlement and Judgment entered by the Court, in substantially
3 the form attached hereto as Exhibits 4 and 5.

4 22. “Incentive Award” means such award as the Court may authorize to be
5 paid to Plaintiff Sarah Chookey in recognition of her effort in obtaining the benefits
6 of the Class Settlement. Plaintiff’s request for an Incentive Award shall not exceed
7 Five Thousand Dollars (\$5,000.00).

8 23. “Mediator” means Mark Rudy, Esq.

9 24. “Objection/Exclusion Deadline” means the date forty-five (45) days
10 following the date on which the Settlement Administrator first mails Notice and
11 Claim Forms to the Class Members.

12 25. “Net Settlement Sum” means the amount remaining after all
13 deductions for the Fee and Expense Award, Incentive Award, Administration
14 Costs, and the PAGA Payment approved by the Court have been made from the
15 Total Maximum Settlement Amount. The Net Settlement Sum shall be used to pay
16 all Authorized Claimants.

17 26. “PAGA Payment” means the sum of Twenty Thousand Dollars
18 (\$20,000.00) which shall be allocated from the Total Maximum Settlement Amount
19 to pay the government’s portion of penalties under the California Labor Code’s
20 Private Attorneys General Act of 2004, as amended, California Labor Code
21 sections 2698 *et seq.* to the Labor and Workforce Development Agency.

22 27. “Parties” mean Plaintiff Sarah Chookey, and Defendant Sears,
23 Roebuck and Co., and “Party” means either of said Parties.

24 28. “Payment Obligation and Class Release Date” means the date which is
25 sixty-five (65) days after (a) entry of the Final Approval Order and Judgment
26 without any appeals or requests for review being taken, or (b) sixty-five (65) days
27 after entry of an order (or orders) affirming said Final Approval Order and
28 Judgment or denying review after exhaustion of all appellate remedies, if appeals or

1 requests for review have been taken.

2 29. "Percentage Share" means each Class Member's total Work Weeks
3 divided by the Total Class Work Weeks.

4 30. "Plaintiff" or "Named Plaintiff" means Plaintiff Sarah Chookey.

5 31. "Preliminary Approval" means that the Court has entered an order
6 substantially in the form attached hereto as Exhibit 3, preliminarily approving the
7 terms and conditions of this Settlement Agreement, including but not limited to the
8 manner of providing notice to Class Members.

9 32. "Released Parties" means Sears; its past or present officers, directors,
10 shareholders, employees, associates, agents, principals, heirs, representatives,
11 accountants, auditors, consultants, insurers and reinsurers, and its and their
12 respective successors and predecessors in interest, parents, subsidiaries, affiliates,
13 predecessors, successors, assigns, and attorneys.

14 33. "Settlement Administrator" means a third party that the Parties
15 mutually agree shall serve as Settlement Administrator.

16 34. "Settlement Award" means the amount that each Authorized Claimant
17 is entitled to receive from the Net Settlement Sum.

18 35. "Settlement Class Members" (or "Settlement Class") means all Class
19 Members who have not excluded themselves from the Settlement Class by filing a
20 timely request for exclusion in accordance with the requirements set forth in the
21 Class Notice.

22 36. "Stipulation" or "Settlement Agreement" means this Stipulation and
23 Settlement Agreement.

24 37. "Total Class Work Weeks" means the sum of all Class Members'
25 Work Weeks worked during the Class Period.

26 38. "Total Maximum Settlement Amount" means the maximum amount of
27 Three Million Two Hundred Thousand Dollars (\$3,200,000.00) that Defendant may
28 be required to pay pursuant to the terms of this Settlement Agreement.

1 39. “Work Weeks” means weeks of employment for each Class Member
2 during the Class Period as reflected by Defendant’s corporate and business records,
3 exclusive of leaves of absence. Approximations and averages will be used to cover
4 periods where data is missing or otherwise not available.

5 **Procedural History.**

6 40. The Action was filed by Plaintiff Sarah Chookey on February 10,
7 2012, in Ventura County Superior Court, and was subsequently removed by Sears
8 to the United States District Court, Central District of California. Plaintiff filed a
9 First Amended Complaint on or about April 18, 2012. After engaging in
10 substantial discovery, the Parties agreed to enter into private mediation before Mark
11 Rudy, Esquire, to try and resolve Plaintiff’s claims. At the conclusion of the
12 mediation on June 7, 2013, the Parties had not reached a settlement, but continued
13 to negotiate, and through further negotiation and with the assistance of the Mediator
14 reached a settlement which is memorialized in this Settlement Agreement.

15 **Stipulation for Class Certification.**

16 41. The Parties stipulate and agree to the conditional certification of the
17 Class for purposes of this Class Settlement only. Should, for whatever reason, the
18 Court not grant Final Approval, the Parties’ stipulation to class certification as part
19 of the Class Settlement shall become null and void *ab initio*, shall not be admissible
20 for any purpose in any action, and shall have no bearing on the issue of whether or
21 not certification would be appropriate in a non-settlement context. Defendant
22 expressly reserves its right and declares that it intends to oppose class certification
23 vigorously should this Class Settlement not be granted Final Approval.

24 **Inadmissibility of Settlement Agreement.**

25 42. Whether or not the Class Settlement is granted Final Approval, neither
26 the Class Settlement, nor any of its terms, nor any document, statement, proceeding
27 or conduct related to this Settlement Agreement, nor any reports or accounts
28 thereof, shall in any event be:

- 1 a. Construed as, offered or admitted in evidence as, received as, or
2 deemed to be evidence for any purpose adverse to the Released
3 Parties, including, but not limited to, evidence of a presumption,
4 concession, indication or admission by any of the Released
5 Parties of any liability, fault, wrongdoing, omission, concession
6 or damage; or
- 7 b. Disclosed, referred to or offered or received in evidence against
8 the Parties or any of the Released Parties, in any further
9 proceeding in the Action, or any other civil, criminal or
10 administrative action or proceeding except for purposes of
11 settling this Action or enforcing the terms of this Settlement
12 Agreement.

13 **Investigation in the Class Action.**

14 43. The Parties have conducted significant investigation of the facts and
15 law both before and after the Action was filed. Such discovery and investigations
16 have included, *inter alia*, the deposition of Plaintiff, Rule 30(b)(6) depositions of
17 Sears, the exchange of substantial written discovery and document productions,
18 informal exchanges of information, and extensive law and motion practice.
19 Counsel for the Parties have further investigated the applicable law as applied to the
20 facts discovered regarding Plaintiff's claims, the defenses thereto and the damages
21 claimed by Plaintiff.

22 **Benefits of Class Settlement.**

23 44. Plaintiff has considered the expense and length of continued
24 proceedings necessary to continue the Action against Defendant through trial and
25 any possible appeals. Plaintiff has also taken into account the uncertainty and risk
26 of the outcome of further litigation, and the difficulties and delays inherent in such
27 litigation, including those involved in class certification. Plaintiff is also aware of
28 the burdens of proof necessary to establish liability for the claims asserted in the

1 Action, Defendant's defenses thereto, and the difficulties in establishing Plaintiff's
2 damages. Plaintiff has also considered the settlement negotiations conducted by the
3 Parties and the recommendations of the Mediator, who is highly experienced in
4 employment litigation. Based on the foregoing, Plaintiff has determined that the
5 Class Settlement set forth in this Settlement Agreement is fair, adequate and
6 reasonable, and is in the best interests of the Class.

7 **Plaintiff's Claims.**

8 45. Plaintiff has claimed and continues to claim that the Class Released
9 Claims have merit and give rise to Defendant's liability. Should the Class
10 Settlement not be granted Final Approval by the Court, neither this Settlement
11 Agreement nor any documents referred to herein, nor any action taken to carry out
12 this Settlement Agreement is, or may be construed as or may be used as, an
13 admission by or against the Plaintiff as to the merits or lack thereof of the claims
14 asserted by Plaintiff.

15 **Defendant's Denials of Wrongdoing.**

16 46. Defendant contends that all of its employees have been compensated
17 in compliance with the law, and that its conduct was not willful with respect to any
18 alleged failure to properly calculate or pay any wages (including but not limited to
19 overtime wages, missed breaks, or otherwise), provide meal periods and rest breaks,
20 provide proper itemized wage statements or in any other respect. Defendant has
21 denied and continues to deny each of the claims and contentions alleged by Plaintiff
22 in the Action. Defendant denies any wrongdoing or legal liability arising out of any
23 of the facts or conduct alleged in the Action, and believes that it has valid defenses
24 to Plaintiff's claims. Neither this Settlement Agreement, nor any document referred
25 to or contemplated herein, nor any action taken to carry out this Settlement
26 Agreement, may be construed as, or may be used as an admission, concession or
27 indication by or against Defendant of any fault, wrongdoing or liability whatsoever,
28 or of any concession that certification of a class other than for purposes of this

1 Class Settlement would be appropriate in this or any other case.

2 **Release as to All Settlement Class Members.**

3 47. The Settlement Class Members stipulate and agree that, upon the
4 Payment Obligation and Class Release Date, they shall be deemed to have, and by
5 operation of the Final Approval Order and Judgment shall have, expressly waived
6 and relinquished the Class Released Claims. Even if the Settlement Class Members
7 may hereafter discover facts in addition to or different from those which they now
8 know or believe to be true with respect to the subject matter of the Class Released
9 Claims, each Settlement Class Member, upon the Payment Obligation and Class
10 Release Date, shall be deemed to have, and by operation of the Final Approval
11 Order and Judgment shall have, fully, finally, and forever settled and released any
12 and all of the Class Released Claims. This is true whether the Class Released
13 Claims are known or unknown, suspected or unsuspected, contingent or non-
14 contingent, whether or not concealed or hidden, and whether or not they now exist
15 or heretofore have existed upon any theory of law or equity now existing or coming
16 into existence in the future, including, but not limited to, conduct which is
17 negligent, intentional, with or without malice, or a breach of any duty, law, or rule,
18 without regard to the subsequent discovery or existence of such different or
19 additional facts. The Settlement Class Members agree not to sue or otherwise make
20 a claim against any of the Released Parties for the Class Released Claims. The
21 Settlement Awards shall be paid to Authorized Claimants specifically in exchange
22 for the release of the Released Parties from the Class Released Claims and the
23 covenant not to sue concerning the Class Released Claims.

24 **The Class Settlement Components.**

25 48. The Class Settlement in this Action shall have five components: (1)
26 the Settlement Awards; (2) the Incentive Award; (3) the Fee and Expense Award;
27 (4) the Administration Costs; and (5) the PAGA Payment.
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1 **Reasonable Allocation of the Settlement Awards.**

2 49. The Settlement Administrator shall have the authority and obligation
3 to calculate the amounts of Settlement Awards in accordance with the methodology
4 set forth in this Settlement Agreement and orders of the Court. The Parties
5 recognize and agree that the claims for relief in the Action are extremely difficult to
6 determine with any certainty for any given year, or at all, and are subject to myriad
7 differing calculations and formulas. The Parties agree that the formula for
8 allocating the Settlement Awards to Settlement Class Members provided herein is
9 reasonable and that the payments provided herein are designed to provide a fair
10 settlement to such persons, in light of the uncertainties of the monies alleged to be
11 owed to the Settlement Class and the calculation of such amounts. The Parties have
12 agreed that the Settlement Awards will be calculated on the basis of the number of
13 Work Weeks.

14 **Calculation of Settlement Awards.**

15 50. After Defendant provides the Total Class Work Weeks to the
16 Settlement Administrator, the Settlement Administrator shall calculate each Class
17 Member’s Percentage Share of the Total Class Work Weeks. Each Authorized
18 Claimant shall be entitled to receive a Settlement Award equal to his or her
19 Percentage Share of the Total Class Work Weeks multiplied by the Net Settlement
20 Sum.

21 51. All Settlement Awards paid under this Class Settlement will be on a
22 claims-made basis. If the total Settlement Awards claimed by Authorized
23 Claimants equals less than 50% of the Net Settlement Sum, the Settlement
24 Administrator shall pay to the California Labor and Workforce Development
25 Agency (“LWDA”) a total amount equal to the difference of (a) 50% of the Net
26 Settlement Sum minus (b) the gross amount actually claimed by Authorized
27 Claimants. This payment to the LWDA shall be made within thirty-five (35) days
28 after the Payment Obligation and Class Release Date.

1 52. After all Settlement Awards have been made to Authorized Claimants
2 (and, if applicable, any payment to the LWDA pursuant to Paragraph 51), any
3 remaining or unclaimed funds above 50% of the Net Settlement Sum shall remain
4 the property of Defendant, and any corporate portion of FICA, payroll taxes or
5 other withholding obligations may be paid out of that amount.

6 **Taxes.**

7 53. The Parties agree that, for purposes of this Class Settlement, 5% of
8 each Authorized Claimant's Settlement Award shall be deemed wages for which
9 the employee's share of payroll deductions will be made from such Authorized
10 Claimant's Settlement Award for state and federal withholding taxes or any other
11 applicable payroll deductions, and shall be reported on IRS Form W-2. The Parties
12 further agree that the other 95% of each such Settlement Award represents the
13 payment of penalties and interest (allocated as 80% penalties and 15% interest) and
14 shall be reported on IRS Form 1099. W-2 and 1099 Forms shall be provided to
15 each respective Authorized Claimant and applicable governmental authorities by
16 the Settlement Administrator.

17 54. Each Authorized Claimant will be responsible for paying all applicable
18 state, local, and federal income taxes on all amounts the Authorized Claimant
19 receives pursuant to this Settlement Agreement.

20 55. It shall be the responsibility of the Settlement Administrator to timely
21 and properly withhold from the wage portion of the Settlement Awards payable to
22 Authorized Claimants all applicable taxes, and to prepare and deliver the necessary
23 tax documentation for signature by all necessary parties and, thereafter, to cause the
24 appropriate deposits of withholding taxes and informational and other tax return
25 filing to occur. Payments to Authorized Claimants and to Class Counsel pursuant
26 to this Settlement Agreement shall be reported on IRS Forms W-2 or 1099, and
27 provided to the respective Authorized Claimants, Class Counsel and applicable
28 governmental authorities as required by law. Each Authorized Claimant's share of

1 all applicable payroll and employment taxes withheld and deposited with the
2 applicable governmental authorities in accordance with this Settlement Agreement
3 shall be a part of, and paid out of, the Settlement Award to each Authorized
4 Claimant.

5 **Administration Costs.**

6 56. All reasonable and direct expenses and costs incurred by, or at the
7 direction of, the Settlement Administrator in connection with the operation and
8 implementation of this Settlement Agreement (including, without limitation,
9 expenses of tax attorneys and/or accountants and mailing and distribution costs and
10 expenses relating to filing (or failing to file) the informational and other tax returns
11 described above) shall be treated as, and considered to be, a cost of administration
12 of the Class Settlement and part of the Administration Costs.

13 **Fee and Expense Award.**

14 57. Subject to Court approval, the Settlement Administrator shall pay up to
15 33 1/3% (One Million Sixty Six Thousand Six Hundred Sixty Six Dollars and Fifty
16 Cents (\$1,066,666.50)) of the Total Maximum Settlement Amount to Class Counsel
17 as attorneys' fees, plus Class Counsel's reasonable litigation expenses. The Fee
18 and Expense Award shall be paid out of the Total Maximum Settlement Amount.
19 Class Counsel shall not be permitted to petition the Court for, or accept, any
20 additional payments for fees or expenses. The amounts paid in fees shall be for all
21 claims for attorneys' fees past, present and future incurred in the Action. Defendant
22 will not object to Class Counsel's request set forth in this paragraph. Should a
23 lesser sum for attorneys' fees and costs than the amount set forth in this paragraph
24 ultimately be awarded, the residual shall be included in the Net Settlement Sum for
25 the Class.

26 58. The Fee and Expense Award will be paid within fourteen (14) days
27 after the Payment Obligation and Class Release Date. Payment of the Fee and
28 Expense Award to Class Counsel shall constitute full satisfaction of any obligation

1 to pay any amounts to any person, attorney or law firm for attorneys' fees, expenses
2 or costs in the Action incurred by any attorney on behalf of Plaintiff or the
3 Settlement Class, and shall relieve Defendant and Defendant's Counsel of any other
4 claims or liability to any other attorney or law firm for any attorneys' fees, expenses
5 and/or costs to which any of them may claim to be entitled on behalf of Plaintiff
6 and/or the Settlement Class. Upon receipt of the Fee and Expense Award, Class
7 Counsel, Plaintiff and the Settlement Class will be deemed to have released
8 Defendant from any and all claims for fees and costs resulting from the Action.

9 **Incentive Award.**

10 59. Class Counsel also intends to request that the Court approve an
11 Incentive Award of Five Thousand Dollars (\$5,000.00) for Plaintiff, to be paid out
12 of the Total Maximum Settlement Amount. The Incentive Award paid under this
13 Settlement Agreement shall be reported on IRS Form 1099 by the Settlement
14 Administrator and provided to Plaintiff and applicable governmental authorities.
15 Defendant will not object to Class Counsel's request set forth in this paragraph.
16 Should a lesser sum for the Incentive Award ultimately be awarded, the residual
17 shall be included in the Net Settlement Sum for the Authorized Claimants.

18 60. The Incentive Award will be paid within fourteen (14) days after the
19 Payment Obligation and Class Release Date.

20 **Plaintiff's General Release.**

21 61. Plaintiff stipulates and agrees that, upon the Payment Obligation and
22 Class Release Date, she shall be deemed to have, and by operation of the Final
23 Approval Order and Judgment shall have, expressly released all Released Parties as
24 to all claims, demands, rights, liabilities, and causes of action through the date of
25 this Settlement Agreement, including without limitation known or unknown claims,
26 whether for economic damages, non-economic damages, punitive damages,
27 restitution, tort, contract, penalties, injunctive or declaratory relief, attorneys' fees,
28 costs, or other monies or remedies. This general release by Plaintiff includes

1 without limitation all federal and state statutory claims, and federal and state
2 common law claims (including but not limited to those for contract, tort, and
3 equity), including, without limitation, the Americans with Disabilities Act, Age
4 Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964 (as
5 amended), 42 U.S.C. §1981, 42 U.S.C. § 1983, the Fair Labor Standards Act, the
6 Employee Retirement Security Income Act of 1974, the California Constitution, the
7 California Fair Employment and Housing Act, the California Unfair Competition
8 Act (California Business and Professions Code section 17200 *et seq.*), the
9 California Labor Code, and claims for additional compensation relating to stock
10 options. Notwithstanding the foregoing, Plaintiff's general release does not include
11 the claims pending in Plaintiff's pending workers' compensation claim.

12 62. Plaintiff acknowledges the language of Section 1542 of the California
13 Civil Code, which provides:

14 A GENERAL RELEASE DOES NOT EXTEND TO
15 CLAIMS WHICH THE CREDITOR DOES NOT KNOW
16 OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
17 THE TIME OF EXECUTING THE RELEASE, WHICH
IF KNOWN BY HIM OR HER MUST HAVE
MATERIALLY AFFECTED HIS OR HER
SETTLEMENT WITH THE DEBTOR.

18 Plaintiff expressly waives the protection of Section 1542. Plaintiff understands and
19 agrees that claims or facts in addition to or different from those which are now
20 known or believed by her to exist may hereafter be discovered. It is Plaintiff's
21 intention to settle fully and release all of the claims she now has or may have
22 against the Released Parties, whether known or unknown, suspected or
23 unsuspected, through the date of this Settlement Agreement. Plaintiff further
24 covenants not to sue any of the Released Parties for any claims covered by this
25 general release. Plaintiff shall receive a Settlement Award and will not have to
26 submit a Claim Form in exchange for executing this General Release.

27 **PAGA Payment.**

28 63. Twenty Thousand Dollars (\$20,000.00) shall be allocated from the

1 Total Maximum Settlement Amount to pay the government portion of penalties
2 under the California Labor Code's Private Attorneys General Act of 2004, as
3 amended, California Labor Code sections 2699, 2699.3, and 2699.5. Within thirty-
4 five (35) days after the Payment Obligation and Class Release Date, the Settlement
5 Administrator shall pay the PAGA Payment to the LWDA in satisfaction of all
6 amounts payable to the government under the PAGA.

7 **Notice/Approval of Class Settlement and Class Settlement**
8 **Implementation.**

9 64. As part of this Class Settlement, the Parties agree to the following
10 procedures for obtaining Preliminary Approval of the Class Settlement, certifying
11 the Class, and notifying Class Members:

12 a. Preliminary Approval Hearing. Class Counsel shall request a
13 hearing before the Court to seek Preliminary Approval of the
14 Class Settlement on the earliest practical mutually available
15 date. In conjunction with such hearing, Class Counsel shall
16 submit this Settlement Agreement, together with the Exhibits
17 attached hereto, and any other documents necessary to
18 implement the Class Settlement. Class Counsel shall submit the
19 preliminary approval papers to Defendant's Counsel for their
20 review no less than three (3) business days prior to filing such
21 papers with the Court.

22 b. Certification of Class. Simultaneous with the filing of the
23 Settlement Agreement and solely for purposes of this Class
24 Settlement, Class Counsel shall request the Court enter a
25 Preliminary Approval Order, substantially in the form of Exhibit
26 3 attached hereto, preliminarily approving the proposed Class
27 Settlement, certifying the Class, and setting a date for the Final
28 Approval Hearing. The Preliminary Approval Order shall

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provide for notice of the Class Settlement and related matters to be sent to the Class Members as specified herein.

c. Information Regarding Class. Within ten (10) days following Preliminary Approval, Defendant shall provide the Settlement Administrator the following information with respect to each Class Member: name, most current mailing address indicated in Defendant's records, the number of Work Weeks, and each Class Member's social security number and telephone number(s) contained in Defendant's personnel records. The Settlement Administrator shall undertake all customary procedures to assure itself that it has the current addresses of the Class Members.

d. Settlement Administrator. The Settlement Administrator shall be responsible for (i) printing and mailing to the Class Members the Claim Form and Class Notice as approved and directed by the Court; (ii) mailing a reminder notice to Class Members who have not mailed a Claim Form or request for exclusion; (iii) receiving and reviewing the Claim Forms submitted by Class Members to determine eligibility for a Settlement Award; (iv) consulting with Class Counsel and Defendant's Counsel concerning the time worked by Class Members and amounts of any Settlement Awards to be paid to Authorized Claimants; (v) resolving disputed claims; (vi) keeping track of opt outs; and (vii) distributing such Settlement Awards, Incentive Award, Fee and Expense Award, PAGA Payment, and cy pres payments as may be ordered by the Court, together with such other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform. The Settlement Administrator's

1 determination of eligibility for any Settlement Awards under the
2 terms of this Settlement Agreement shall be conclusive, final
3 and binding on all Parties and all Settlement Class Members, so
4 long as the Settlement Administrator has first consulted with the
5 Parties regarding any disputes or questions as to eligibility. The
6 Parties all represent they do not have any financial interest in the
7 Settlement Administrator or otherwise have a relationship with
8 the Settlement Administrator that could create a conflict of
9 interest.

10 **Class Notice.**

11 65. The Parties agree to the following procedures for giving notice of this
12 Class Settlement to the Class:

- 13 a. Within twenty (20) days after entry of the Preliminary Approval
14 Order as provided herein, the Settlement Administrator shall
15 send a copy of the Class Notice and Claim Form in the form
16 approved by the Court in its Preliminary Approval Order to all
17 persons shown by Defendant's records to be Class Members, via
18 First Class regular U.S. mail, using the most current mailing
19 address from Defendant's records or any more current address
20 discovered from an address search. The Claim Form shall
21 include instructions on how to submit the Claim Form, and shall
22 notify Class Members that the Claim Form must be completed,
23 signed and postmarked no later than the Claims Deadline for a
24 Class Member to be eligible to receive any Settlement Award.
- 25 b. Any Notices returned to the Settlement Administrator with a
26 forwarding address shall be re-mailed by the Settlement
27 Administrator within five (5) days following receipt of the
28 returned mail. For any Notices returned to the Settlement

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Administrator without a forwarding address, the Settlement Administrator shall conduct address searches using skip tracing methods, and shall promptly, within the time periods described in the preceding sentence, re-mail the Notices to the newly-found addresses. In the event that an intended recipient of a Class Notice does not receive the Class Notice, the intended recipient shall nevertheless remain a Settlement Class Member, but not an Authorized Claimant, unless he or she timely files a Claim Form as provided in this Settlement Agreement. The Notice and Claim Form to be sent to Class Members at a forwarding address provided by the post office or obtained by the Settlement Administrator using skip tracing methods as discussed in this paragraph shall be identical to the original Notice and Claim Form except that it shall notify the Class Members that the Claims Deadline is extended by seven (7) days.

- c. Within twenty-one (21) days after the first mailing set forth in paragraph 65(a) above, the Settlement Administrator shall mail a reminder postcard to any Class Members who have not yet submitted a Claim Form or a request for exclusion.
- d. All Claim Forms received by the Settlement Administrator by the Claims Deadline are deemed timely. For Claim Forms that are received by the Settlement Administrator after the Claims Deadline, the date of the postmark on the return envelope shall be the exclusive means used to determine whether a Class Member has timely returned his/her Claim Form on or before the Claims Deadline. Claim Forms postmarked on or before the Claims Deadline or the extended period contemplated by

1 paragraph 65(b) above are deemed timely. In the event that the
2 postmark is illegible, the Claim Form shall be deemed timely if
3 it is received within seven (7) days after the Claims Deadline.
4 Subject to the provisions of paragraph 72 below, or unless
5 otherwise agreed by the Parties, Claim Forms that are not timely
6 mailed by a Class Member or timely received shall be
7 disregarded. Named Plaintiff need not make a claim to receive a
8 portion of the Settlement Proceeds.

9 **Procedure for Objecting to or Requesting Exclusion from the Class**
10 **Settlement.**

11 66. Class Members who wish to object to the Class Settlement or to be
12 excluded from the Settlement Class shall submit objections and/or requests for
13 exclusion using the following procedures:

- 14 a. Procedure for Objecting. The Notice shall provide that only
15 Settlement Class Members may object to the Class Settlement
16 and that Settlement Class Members who wish to object to the
17 Class Settlement must file with the Court and serve on counsel
18 for the Parties a written statement objecting to the Class
19 Settlement. Such written statement and all supporting briefs or
20 other materials must be filed with the Court and served on
21 counsel for the Parties no later than the Objection/Exclusion
22 Deadline. No Settlement Class Member shall be entitled to be
23 heard at the Final Approval Hearing (whether individually or
24 through separate counsel) or to object to the Class Settlement,
25 and no written objections or briefs submitted by any Settlement
26 Class Member shall be received or considered by the Court at
27 the Final Approval Hearing, unless the written statement of
28 objections and supporting materials are timely filed and served

1 as set forth herein. Settlement Class Members who fail to file
2 and serve timely written objections in the manner specified
3 above shall be deemed to have waived any objections and shall
4 be foreclosed from making any objection (whether by appeal or
5 otherwise) to the Class Settlement.

6 b. Procedure for Requesting Exclusion. The Class Notice shall
7 provide that Class Members who wish to exclude themselves
8 from the Class must submit to the Settlement Administrator a
9 written statement requesting exclusion from the Class (also
10 referred to herein as “opt out”) no later than the
11 Objection/Exclusion Deadline. Such written request for
12 exclusion must contain the name(s) (including any names used
13 when working for Defendant), address, telephone number, and
14 last four digits of the Social Security number of the person
15 requesting exclusion, and must be postmarked on or before the
16 Objection/Exclusion Deadline. Any Class Member who
17 properly opts out of the Class using this procedure will not be
18 entitled to any payment from the Class Settlement and will not
19 be bound by the Class Settlement or have any right to object,
20 appeal or comment thereon. Class Members who fail to submit
21 a valid and timely request for exclusion on or before the
22 Objection/Exclusion Deadline Date shall be bound by all terms
23 of the Class Settlement and any Judgment entered in this Action
24 if the Class Settlement is approved by the Court, regardless of
25 whether they ineffectively or untimely request exclusion from
26 the Class Settlement.

27 c. Exclusion and Objection Reports. The Settlement Administrator
28 shall provide the Parties every two weeks with a report listing

1 the names of Class Members who have requested exclusion
2 from the Class and the names of Class Members who have
3 submitted valid Claim Forms, as well as the gross settlement
4 amount for each valid Claim Form received.

5 No later than five (5) days before Class Counsel must file Final Approval papers
6 with the Court, the Settlement Administrator shall provide to Class Counsel and
7 Defendant's Counsel a complete list of all Class Members who have timely
8 requested exclusion from the Class, the total number of Class Members who have
9 submitted valid Claim Forms, and the gross settlement amount for all valid Claim
10 Forms received. If the total number of Class Members who request exclusion from
11 the Class is 5% or more of the Class Members, Defendant will have the option at its
12 discretion of rejecting the Class Settlement in its entirety. Defendant must exercise
13 this right of rescission in writing to Class Counsel within fourteen (14) days after
14 the Settlement Administrator notifies both Parties of the number of Class Members
15 who have made timely requests for exclusion.

16 **No Interference in the Class Settlement.**

17 67. The Parties agree to use their best efforts to carry out the terms of this
18 Class Settlement. At no time shall any of the Parties or their counsel or agents (or
19 the Settlement Administrator) discourage Class Members to make a claim under
20 this Class Settlement. Nor shall the Parties or their counsel encourage Class
21 Members to submit written objections to the Class Settlement or requests for
22 exclusion from the Class, or to appeal from the Court's Final Judgment.

23 **Questions and Disputes.**

24 68. In the event that questions or disputes arise regarding the entitlement
25 of Plaintiff or any Class Member under this Settlement Agreement, Defendant shall
26 provide to Class Counsel and the Settlement Administrator all available information
27 reasonably necessary in order to resolve that issue. Such information shall be
28 provided in either electronic form or hard copy, as the Settlement Administrator

1 may reasonably request.

2 **Final Settlement Approval Hearing and Entry of Final Approval Order**
3 **and Judgment.**

4 69. Class Counsel will file their motion for Final Approval of the Class
5 Settlement following the Claims Deadline and the Objection/Exclusion Deadline in
6 which Class Counsel will ask the Court to conduct a Final Approval Hearing to
7 determine Final Approval of the Class Settlement. Upon Final Approval of the
8 Class Settlement by the Court at or after such hearing, the Parties shall present the
9 Final Approval Order and Judgment to the Court for its approval and entry. Class
10 Counsel will file their motion for attorneys' fees and costs prior to the
11 Objection/Exclusion Deadline and ask that it be heard at the same time as the Final
12 Approval Hearing.

13 **Procedure for Payment of Class Settlement Awards.**

14 70. After the Payment Obligation and Class Release Date, and solely for
15 purposes of this Settlement Agreement, the Settlement Awards shall be distributed
16 in accordance with the following eligibility requirements:

- 17 a. Class Members who submit valid and timely requests for
18 exclusion pursuant to the Class Notice are not entitled to any
19 Settlement Award and will not be bound by terms of the Class
20 Settlement and any Final Approval Order and Judgment entered
21 by the Court.
- 22 b. Class Members who do not exclude themselves from the Class
23 and who submit valid and timely Claim Forms shall be deemed
24 to be Authorized Claimants and shall receive a Settlement
25 Award.
- 26 c. Class Members who do not exclude themselves from the Class
27 but fail to submit valid and timely Claim Forms shall not be
28 deemed to be Authorized Claimants and shall not receive a

1 Settlement Award, although they will be bound by all terms of
2 the Class Settlement and any Final Approval Order and
3 Judgment entered by the Court.

4 71. For purposes of this Settlement Agreement, a Claim Form shall be
5 deemed valid only if: (i) the Claim Form contains the Settlement Class Member's
6 name, and his or her social security number; (ii) the Settlement Class Member has
7 dated and signed the Claim Form; and (iii) the name and social security number
8 provided by the Settlement Class Member on the Claim Form match Defendant's
9 records. If the Settlement Administrator receives a Claim Form on or before the
10 Claims Deadline but the Claim Form is defective as to any of these three
11 requirements, then within five (5) days after its receipt of the defective Claim Form,
12 the Settlement Administrator shall, after retaining a copy of the defective Claim
13 Form, mail the defective Claim Form back to the Class Member with instructions
14 on how to cure the defect(s) and instructions that the corrected Claim Form must be
15 received by the Settlement Administrator within seven (7) days after the Claims
16 Deadline. If the Settlement Class Member's Claim Form remains defective after
17 this opportunity to cure, the Claim Form shall be rejected by the Settlement
18 Administrator and the Settlement Administrator shall send that person a notice
19 stating the reason the claim was denied.

20 72. Class Counsel shall have the right to request that the Court excuse the
21 late submission of any Claim Form by any Settlement Class Member for good
22 cause shown, as long as the Settlement Administrator has received such Claim
23 Form prior to the Final Approval Hearing. Alternatively, if Class Counsel and
24 Defendant's Counsel mutually agree to waive the defect(s) in a Claim Form, then
25 that Claim Form shall be deemed valid.

26 73. The name and social security number provided by the Settlement Class
27 Member will be deemed to match Defendant's records only if: (i) both the first and
28 last name and the social security number provided by the Settlement Class Member

1 match Defendant's records; or (ii) the first name and the social security number
2 provided by the Settlement Class Member match Defendant's records and it appears
3 the last name has been legally changed as a result of a change in marital status or
4 the order of a court. The parties will engage in good faith attempts to resolve any
5 questions regarding such matters. In the event of an irreconcilable conflict between
6 the information provided on a Claim Form and information in Defendant's records,
7 Defendant's records shall be determinative.

8 74. Within ten (10) days after the Payment Obligation and Class Release
9 Date, Defendant shall transfer to the Settlement Administrator all components (i.e.,
10 Settlement Awards, Incentive Award, Fee and Expense Award, Administration
11 Costs, PAGA Payment, and if applicable the amount to the LWDA to reach the
12 minimum 50 percent payout) of the Class Settlement in the amounts approved by
13 the Court and consistent with the terms of this Settlement Agreement.

14 75. The Settlement Administrator shall mail the Settlement Award checks
15 to each Authorized Claimant within fourteen (14) days after the Payment
16 Obligation and Class Release Date but in no event shall any payment be made prior
17 to the Payment Obligation and Class Release Date.

18 76. Funds represented by Settlement Award checks returned as
19 undeliverable and Settlement Award checks remaining un-cashed for more than
20 one-hundred-eighty (180) days after the mailing of the Settlement Award checks by
21 the Claims Administrator shall be tendered to the California Department of
22 Industrial Relations Unclaimed Wages Fund. Administration of the Class
23 Settlement shall be completed no later than two-hundred-seventy (270) days after
24 the Payment Obligation and Class Release Date. Upon completion of
25 administration of the Class Settlement, the Settlement Administrator shall provide
26 written certification of such completion to the Court, Class Counsel and
27 Defendant's Counsel.

28 77. No person shall have any claim against Defendant, Defendant's

1 Counsel, Plaintiff, the Settlement Class, Class Counsel or the Settlement
2 Administrator based on mailings, distributions and payments made in accordance
3 with this Settlement Agreement.

4 **Administration Costs.**

5 78. The Parties agree to cooperate in the Class Settlement administration
6 process and to make all reasonable efforts to control and minimize the costs and
7 expenses incurred in administration of the Class Settlement.

8 **Defendant's Legal Fees.**

9 79. All of Defendant's own legal fees, costs and expenses incurred in the
10 Action shall be borne by Defendant.

11 **Nullification of Class Settlement Agreement.**

12 80. In the event of any of the following: (i) the Court does not approve the
13 scope of the Class Released Claims; (ii) the Court finds the Total Maximum
14 Settlement Amount or Net Settlement Sum is insufficient to warrant approval; or
15 (iii) five percent (5%) or more of the Class Members opt-out, Defendant may elect
16 to reject this Class Settlement and the Class Settlement shall be null and void *ab*
17 *initio* and any order or judgment entered by the Court in furtherance of this Class
18 Settlement shall be treated as withdrawn or vacated by stipulation of the Parties. In
19 such case, the Class Members and Defendant shall be returned to their respective
20 statuses as of the date immediately prior to the execution of this Settlement
21 Agreement. In the event an appeal is filed from the Final Approval Order and
22 Judgment, or any other appellate review is sought prior to the Payment Obligation
23 and Class Release Date, administration of the Class Settlement shall be stayed
24 pending final resolution of the appeal or other appellate review, provided, however,
25 that the Claims Administrator is permitted to accept change-of-address information
26 from Class Members during such stay, as well as to take such other actions it deems
27 necessary and appropriate to bring the Action to closure under the assumption that
28 the Class Settlement will be approved. However, under no circumstances shall any

1 payments be issued by the Claims Administrator while the appeal is pending.

2 **Notification and Certification By Settlement Administrator.**

3 81. The Settlement Administrator shall keep Defendant's Counsel and
4 Class Counsel apprised of the status of the claims-administration process and its
5 distributions of Settlement Awards.

6 **No Effect on Employee Benefits.**

7 82. The Settlement Awards paid to Authorized Claimants and the
8 Incentive Award paid to Plaintiff shall be deemed not to be "pensionable" earnings
9 and shall not have any effect on the eligibility for, or calculation of, any employee
10 benefits of any kind (*e.g.* vacation, holiday pay, retirement plans, etc.) of
11 Authorized Claimants or Plaintiff. The Parties agree that any Settlement Awards or
12 Incentive Award paid under the terms of this Settlement Agreement do not
13 represent any modification of Class Members' previously credited hours of service
14 or other eligibility criteria under any employee pension benefit plan, employee
15 welfare benefit plan, or any other plan or program, including but not limited to
16 sabbatical, sponsored by Defendant. Further, any Settlement Awards or Incentive
17 Award paid hereunder shall not be considered "compensation" in any year for
18 purposes of determining eligibility for, or benefit accrual within, an employee
19 pension benefit plan, employee welfare benefit plan, or any other plan or program
20 sponsored by Defendant. No benefit, including but not limited to 401K benefits,
21 shall increase or accrue as a result of any payment made as a result of this Class
22 Settlement.

23 **Privacy of Documents and Information.**

24 83. Plaintiff and Class Counsel agree that they will destroy all confidential
25 documents and information provided to them by Defendant within thirty (30) days
26 after the Payment Obligation and Class Release Date, except for documents that
27 must be saved for malpractice purposes. Plaintiff and Class Counsel further agree
28 that none of the documents and information provided to them by Defendant shall be

1 used for any purpose other than prosecution of this Action or the defense or
2 prosecution of a malpractice action.

3 **Publicity.**

4 84. Absent written agreement of counsel, neither Plaintiff nor Class
5 Counsel (or their firm), nor other agent for or representative of Plaintiff or Class
6 counsel (or their firm) will make or cause to be made any public statement,
7 comment or communication regarding the settlement or claims against Defendant in
8 the Action other than straightforward statements (without elaboration) in
9 substantially the form “the action has settled.” Nothing in this paragraph shall
10 restrict statements made in papers filed with the Court or any other court of
11 competent jurisdiction in connection with the Class Settlement of the claims against
12 Defendant in this Action or any continuing prosecution of the Action in other
13 respects. Nothing in this paragraph shall restrict Plaintiff and Class Counsel from
14 responding to questions from Class Members or describing and explaining the
15 specific terms of this Settlement Agreement to Class Members, including without
16 limitation statements repeating or paraphrasing, in a non-misleading form, all or a
17 portion of any Court-approved notice to the Class or the proposal for the form of
18 Notice, or providing to Class Members upon request copies of pleadings filed in the
19 public Court file (not under seal) in the Action.

20 **Exhibits and Headings.**

21 85. The terms of this Settlement Agreement include the terms set forth
22 herein and attached Exhibits 1–5, which are incorporated by this reference as
23 though fully set forth herein. Any Exhibits to this Settlement Agreement are an
24 integral part of the Class Settlement. The descriptive headings of any paragraphs or
25 sections of this Settlement Agreement are inserted for convenience of reference
26 only and do not constitute a part of this Settlement.

27 **Interim Stay of Proceedings.**

28 86. The Parties agree to hold in abeyance all proceedings in the Action,

1 except such proceedings necessary to implement and complete the Class
2 Settlement, pending the Final Approval Hearing to be conducted by the Court.

3 **Amendment or Modification.**

4 87. This Settlement Agreement may be amended or modified only by a
5 written instrument signed by counsel for all Parties or their successors-in-interest.

6 **Entire Agreement.**

7 88. This Settlement Agreement and the attached Exhibits constitute the
8 entire agreement among the Parties, and no oral or written representations,
9 warranties or inducements have been made to any Party concerning this Settlement
10 Agreement or its Exhibits other than the representations, warranties and covenants
11 contained and memorialized in such documents. All prior or contemporaneous
12 negotiations, agreements, understandings, and representations, whether written or
13 oral, are expressly superseded hereby and are of no further force and effect. Each
14 of the Parties acknowledges that it has not relied on any promise, representation or
15 warranty, express or implied, not contained in this Settlement Agreement.

16 **Authorization to Enter into Settlement Agreement.**

17 89. Counsel for all Parties warrant and represent that they are expressly
18 authorized by the Parties whom they represent to enter into this Settlement
19 Agreement and to take all appropriate action required or permitted to be taken by
20 such Parties pursuant to this Settlement Agreement to effectuate its terms, and to
21 execute any other documents required to effectuate the terms of this Settlement
22 Agreement. The Parties and their counsel agree to cooperate with each other and to
23 use their best efforts to effect the implementation of the Class Settlement. In the
24 event the Parties are unable to reach agreement on the form or content of any
25 document needed to implement the Class Settlement, or on any supplemental
26 provisions or actions that may become necessary to effectuate the terms of this
27 Class Settlement, the Parties shall seek the assistance of the Court or the Mediator
28 to resolve such disagreement.

1 **Binding on Successors and Assigns.**

2 90. This Settlement Agreement shall be binding upon, and inure to the
3 benefit of, the heirs, beneficiaries, successors or assigns of the Parties hereto, as
4 previously defined.

5 **Governing Laws.**

6 91. All terms of this Settlement Agreement and the Exhibits hereto shall
7 be governed by and interpreted according to the Federal Rules of Civil Procedure
8 and, where necessary, the laws of the State of California, regardless of its rules
9 concerning conflict of laws.

10 **Counterparts.**

11 92. This Settlement Agreement may be executed in one or more
12 counterparts. All executed counterparts and each of them shall be deemed to be one
13 and the same instrument, provided that counsel for the Parties to this Settlement
14 Agreement shall exchange among themselves original signed counterparts.

15 **Cooperation and Drafting.**

16 93. Each of the Parties has cooperated in the drafting and preparation of
17 this Settlement Agreement; hence the drafting of this Settlement Agreement shall
18 not be construed against any of the Parties.

19 **Jurisdiction of the Court.**

20 94. Following entry of Judgment pursuant to this Settlement Agreement,
21 the Court shall retain jurisdiction over this Action solely for the purpose of
22 implementation and enforcement of the terms of this Settlement Agreement, and the
23 Parties and Settlement Class Members submit to the jurisdiction of the Court for
24 those purposes.

25 **Invalidity of Any Provision.**

26 95. The Parties request that before declaring any provision of this
27 Settlement Agreement invalid, the Court shall first attempt to construe all
28 provisions valid to the fullest extent possible consistent with applicable precedents.

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Plaintiff’s Waiver of Right to be Excluded.

96. By signing this Settlement Agreement, Plaintiff agrees to be bound by the terms herein and agrees not to request to be excluded from the Settlement Class. Any request for exclusion shall be void and of no force or effect. Additionally, Plaintiff agrees to waive any right of appeal from or other appellate challenge to any order or judgment made in furtherance of the Settlement Agreement, including but not limited to the Final Approval Order and Judgment, provided that the material terms of the Class Settlement—and all payments contemplated by the Settlement Agreement—are approved in full.

Dated: November ____, 2013 NAMED PLAINTIFF

Sarah Chookey

Dated: November ____, 2013 COUNSEL FOR PLAINTIFF

Alan Harris
David Zelenski
Harris & Ruble

Dated: November ____, 2013 SEARS, ROEBUCK AND CO.

By: _____

Title: _____

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Dated: November ____, 2013

COUNSEL FOR SEARS, ROEBUCK,
AND CO.

Joseph C. Liburt
Christian N. Brown
Orrick, Herrington, & Sutcliffe LLP

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Plaintiff's Waiver of Right to be Excluded.

96. By signing this Settlement Agreement, Plaintiff agrees to be bound by the terms herein and agrees not to request to be excluded from the Settlement Class. Any request for exclusion shall be void and of no force or effect. Additionally, Plaintiff agrees to waive any right of appeal from or other appellate challenge to any order or judgment made in furtherance of the Settlement Agreement, including but not limited to the Final Approval Order and Judgment, provided that the material terms of the Class Settlement—and all payments contemplated by the Settlement Agreement—are approved in full.

Dated: November 21, 2013 NAMED PLAINTIFF

Sarah Chookey
Sarah Chookey

Dated: November __, 2013 COUNSEL FOR PLAINTIFF

Alan Harris
David Zelenski
Harris & Ruble

Dated: November __, 2013 SEARS, ROEBUCK AND CO.

By: _____
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Plaintiff's Waiver of Right to be Excluded.

96. By signing this Settlement Agreement, Plaintiff agrees to be bound by the terms herein and agrees not to request to be excluded from the Settlement Class. Any request for exclusion shall be void and of no force or effect. Additionally, Plaintiff agrees to waive any right of appeal from or other appellate challenge to any order or judgment made in furtherance of the Settlement Agreement, including but not limited to the Final Approval Order and Judgment, provided that the material terms of the Class Settlement—and all payments contemplated by the Settlement Agreement—are approved in full.

Dated: November __, 2013 NAMED PLAINTIFF

Sarah Chookey

Dated: November 21, 2013 COUNSEL FOR PLAINTIFF



Alan Harris
David Zelenski
Harris & Ruble

Dated: November __, 2013 SEARS, ROEBUCK AND CO.

By: _____

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Plaintiff's Waiver of Right to be Excluded.

96. By signing this Settlement Agreement, Plaintiff agrees to be bound by the terms herein and agrees not to request to be excluded from the Settlement Class. Any request for exclusion shall be void and of no force or effect. Additionally, Plaintiff agrees to waive any right of appeal from or other appellate challenge to any order or judgment made in furtherance of the Settlement Agreement, including but not limited to the Final Approval Order and Judgment, provided that the material terms of the Class Settlement—and all payments contemplated by the Settlement Agreement—are approved in full.

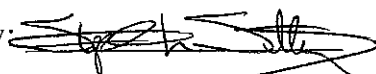
Dated: November __, 2013 NAMED PLAINTIFF

Sarah Chookey

Dated: November __, 2013 COUNSEL FOR PLAINTIFF

Alan Harris
David Zelenski
Harris & Ruble

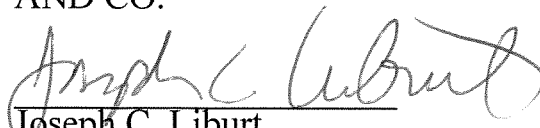
Dated: November 13, 2013 SEARS, ROEBUCK AND CO.

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Title: V.P. & DEPUTY GC

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Dated: November 21, 2013

COUNSEL FOR SEARS, ROEBUCK,
AND CO.



Joseph C. Liburt
Christian N. Brown
Orrick, Herrington, & Sutcliffe LLP

Exhibit 1

#1926
CLAIM FORM
Chookey, et al. v. Sears, Roebuck and Co.
**United States District Court, Central District of California, Case No. CV 12-2491-
GW (MRWx)**

THE DEADLINE FOR SUBMITTING THIS FORM IS [REDACTED], 2014.

Your estimated settlement amount: \$ [REDACTED]

This estimate is based on payroll records maintained by Sears, Roebuck and Co. ("Sears"), which show that the total number of Work Weeks you were employed by Sears as a Class Member during the Class Period, excluding leaves of absence, is: [REDACTED].

I. CLAIMANT IDENTIFICATION

Please Make any Name/Address Corrections Below:

<<First>> <<Last>> _____

<<Address1>> _____

<<Address2>> _____

<<City>> <<State>> <Zip>> _____

II. GENERAL INFORMATION

As a current or former non-exempt employee of Sears in Sears' retail stores or Sears' retail-store automotive departments in California who, at any time between February 10, 2008, and [preliminary approval date], worked overtime hours and received sales commissions totaling less than one-half of your total compensation in any work week (meaning a "C-Plan" associate), you are a Class Member in the class action entitled Chookey, et al. v. Sears, Roebuck and Co., United States District Court, Central District of California, Case No. CV 12-2491-GW (MRWx). As a Class Member, or as a representative, assign, heir, executor, administrator, custodian, predecessor or successor in interest to a Class Member, you are eligible to submit a Claim Form to participate in the Class Settlement reached by the Parties.

Pursuant to the Order of the Court dated [preliminary approval date], in order to receive money from the Class Settlement, you must sign this Claim Form and return it by first-class mail, **postmarked no later than [REDACTED], 2014**, to the following address:

Chookey, et al. v. Sears, Roebuck and Co.

c/o **Claims Administrator**

[Address]

[Number]

If you fail to submit your Claim Form by that date, your claim will be rejected and you will not receive any money in connection with the Class Settlement (although you will be bound by the other provisions of the Settlement Agreement approved by the Court unless you request exclusion from the Class).

III. IF YOU DISPUTE THE INFORMATION ABOVE

If you believe the number of Work Weeks listed at the top of this page is incorrect, you may send this Claim Form, a letter, and supporting documentation and information to the Settlement Administrator indicating what you believe is correct. The Settlement Administrator will resolve any dispute based upon Sears' records and any documents and information you provide. Please be advised that the number of Work Weeks is presumed to be correct unless the documents you submit are company records from Sears.

I disagree with the Work Week information listed above **and** have submitted supporting documentation.

IV. CLASS RELEASE OF CLAIMS

I hereby agree to the release of claims that applies to Settlement Class Members, set forth in relevant part below:

The Settlement Class Members stipulate and agree that, upon the Payment Obligation and Class Release Date, they shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, expressly waived and relinquished the Class Released Claims. Even if the Settlement Class Members may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Class Released Claims (as defined below), each Settlement Class Member, upon the Payment Obligation and Class Release Date, shall be deemed to have and by operation of the Final Approval Order and Judgment shall have, fully, finally, and forever settled and released any and all of the

Class Released Claims. This is true whether the Class Released Claims are known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, and whether or not they now exist or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Settlement Class Members agree not to sue or otherwise make a claim against any of the Released Parties for the Class Released Claims. The Settlement Awards shall be paid to Authorized Claimants specifically in exchange for the release of the Released Parties from the Class Released Claims and the covenant not to sue concerning the Class Released Claims.

“Class Released Claims” means all claims, demands, rights, liabilities, and causes of action that were asserted in the Action based on the facts, transactions, events, policies, occurrences, acts, disclosures, statements, exhibits, omissions or failures to act that were pled in the Complaint regarding the failure to properly calculate overtime compensation; all other claims, demands, rights, liabilities, and causes of action that were asserted in the Action other than the failure to properly calculate overtime compensation addressed in the preceding clause, including claims that Defendant failed to provide meal periods, failed to authorize and permit rest breaks, failed to keep records properly concerning time worked, failed to provide proper itemized wage statements (including but not limited to claims that Defendant’s wage statements failed to show all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee), and/or engaged in unfair business practices; and any claims that could have been asserted in the Action for violation of any law or regulation, whether legal or equitable, state or federal (including but not limited to the California Labor Code, the California Business and Professions Code, the applicable Industrial Welfare Commission Wage Order(s), or any claim sounding in tort, contract, statute or otherwise), for any type of relief, based on the facts, transactions, events, policies, occurrences, acts, disclosures, statements, exhibits, omissions or failures to act that were pled in the Complaint. Class Released Claims are limited to all claims as described above that arose during the Class Period.

“Released Parties” means Sears; its past or present officers, directors, shareholders, employees, associates, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and its and their respective successors and predecessors in interest, parents, subsidiaries, affiliates, predecessors, successors, assigns, and attorneys.

I have received the Class Notice. I submit this Claim Form under the terms of the proposed Class Settlement described in the Class Notice. I also submit to the jurisdiction of the United States District Court, Central District of California with respect to my claim as a Settlement Class Member. I understand that the full and precise terms of the proposed settlement are contained in the Settlement Agreement filed with the Court. I further acknowledge that I am bound by the terms of any Judgment that may be entered in this Action. I agree to furnish additional information to support my claim if required to do so. If I am the executor and/or heir of a Class Member or a representative of a Class Member, I have provided appropriate documentation about the capacity in which I am submitting this Claim Form on separate sheets attached.

I declare under penalty of perjury under the laws of the United States of America that the foregoing information is true and accurate, that I have read and understand the Class Notice that was mailed with this Claim Form, and agree to abide by the terms of the Class Notice and this Claim Form.

Taxpayer Identification Number Certification - Substitute IRS Form W-9

Enter your Social Security Number: -- --

Under penalties of perjury, I certify that:

1. The social security number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); **and**
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; **and**
3. I am a U.S. citizen or resident alien.

Note: If you have been notified by the IRS that you are subject to backup withholding, you must cross out item 3 above.

The IRS does not require your consent to any provision of this document other than this Form W-9 certification to avoid backup withholding.

Dated: _____

(Signature)

Exhibit 2

IMPORTANT LEGAL NOTICE

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

SARAH CHOOKEY, individually, and on behalf of all others similarly situated,

Plaintiffs,

v.

SEARS, ROEBUCK AND CO. and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: CV 12-2491-GW (MRWx)

NOTICE OF (1) PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; (2) FINAL APPROVAL HEARING; (3) RIGHT TO OBJECT OR OPT OUT; AND (4) REQUIREMENT TO RETURN A CLAIM FORM TO RECEIVE A MONETARY PAYMENT FROM THE SETTLEMENT

THIS NOTICE AFFECTS YOUR RIGHTS - PLEASE READ IT CAREFULLY.

TO: ALL CURRENT AND FORMER NON-EXEMPT EMPLOYEES OF SEARS, ROEBUCK AND CO. ("SEARS") IN SEARS' RETAIL STORES OR SEARS' RETAIL-STORE AUTOMOTIVE DEPARTMENTS IN CALIFORNIA WHO, AT ANY TIME BETWEEN FEBRUARY 10, 2008, AND [PRELIMINARY APPROVAL DATE], 2014, WORKED OVERTIME HOURS AND RECEIVED SALES COMMISSIONS TOTALING LESS THAN ONE-HALF OF THEIR TOTAL COMPENSATION DURING A WORK WEEK (MEANING SEARS' "C-PLAN" ASSOCIATES):

YOU ARE HEREBY NOTIFIED that a proposed class settlement (the "Class Settlement") of the above-captioned purported class action ("the Action") filed in the United States District Court, Central District of California ("the Court") has been reached by Plaintiff and Sears (the "Parties") and has been granted Preliminary Approval by the Court. The proposed Class Settlement will resolve all class claims in this Action. The Court has ordered that this Notice be sent to you because you may be a Class Member. The purpose of this Notice is to inform you of the Class Settlement of this Action and your legal rights under the Class Settlement.

You must return the attached Claim Form, postmarked by [REDACTED], 2014, to receive money from the Class Settlement. If you fail to submit a timely Claim Form, you will receive no payment under the Class Settlement, but you will be bound by its terms unless you request exclusion from the Class. An estimate of your Settlement Award can be found on the attached Claim Form.

SUMMARY OF CASE

1. Plaintiff Sarah Chookey ("Plaintiff") filed a complaint against Sears, Roebuck and Co. ("Sears") on February 10, 2012, on behalf of herself and other employees in the Superior Court of California for the County of Ventura, and Sears subsequently removed the Action to this Court. The Action alleges, among other things, that the Class Members are owed additional compensation for overtime hours worked based on an alleged miscalculation of overtime rates, as well as additional amounts for meal and rest break violations, inaccurate itemized wage statements, and related penalties. The lawsuit seeks damages for lost wages, interest, penalties, injunctive relief, attorneys' fees and expenses.

2. The Action includes claims under the California Labor Code, related Wage Orders of the Industrial Welfare Commission, and California Business and Professions Code section 17200 *et seq.*

3. After extensive investigation and an exchange of relevant information, the Parties agreed to enter into private mediation to try and resolve the claims. The Parties attended mediation on June 7, 2013,

and thereafter reached the Class Settlement that is memorialized in the Settlement Agreement that is on file with the Court, and whose terms are generally summarized in this Notice.

4. You have received this Notice because Sears' records show you are or were employed as a Class Member and your rights may be affected by this Class Settlement.

POSITIONS OF THE PARTIES AND REASONS FOR SETTLEMENT

5. Sears contends that all of its employees have been compensated in compliance with the law, and that its conduct was not willful with respect to any alleged failure to properly calculate or pay any wages (including but not limited to overtime wages or otherwise), provide certain breaks, or provide accurate itemized wage statements. Sears has denied and continues to deny each of the claims and contentions Plaintiff alleges in the Action. Sears denies any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Action, and believes that it has valid defenses to Plaintiff's claims. Although Sears believes it has meritorious defenses to the Action, Sears has concluded that the further defense of this Action would be lengthy and expensive for all Parties. Sears has, therefore, agreed to settle this Action in the manner and upon the terms set forth in the proposed Class Settlement to put to rest all claims that are or could have been asserted against it in the Action. Neither the proposed Class Settlement nor any action taken to carry out the proposed Class Settlement is, may be construed as, or may be used as an admission, concession or indication by or against Sears of any fault, wrongdoing or liability whatsoever.

6. Counsel for the Plaintiff ("Class Counsel") has extensively investigated and researched the facts and circumstances underlying the issues raised in the Action, and the law applicable thereto. Class Counsel recognizes the expense and length of continued proceedings necessary to continue the Action against Sears through trial and through any possible appeals, the uncertainty and the risk of the outcome of further litigation, including the risk that the Class might not be certified in light of Sears' opposition to certification, as well as the difficulties and delays generally inherent in such litigation, the burdens of proof necessary to establish liability for the claims, Sears' defenses thereto, and the difficulties in establishing damages for the Class Members. Class Counsel has also taken into account the settlement negotiations conducted by the Parties. Class Counsel believes the proposed Class Settlement is fair, adequate, reasonable and in the best interests of the Class Members.

7. The Court has made no ruling on the merits of the Class Members' claims and has determined only that certification of the Class for settlement purposes is appropriate under the law.

PRELIMINARY APPROVAL OF THE CLASS SETTLEMENT

8. On [date of preliminary approval], the Court held a Preliminary Approval Hearing during which it preliminarily certified the Class for the purposes of the Class Settlement.

9. At the Preliminary Approval Hearing, the Court appointed the following attorneys as Class Counsel to represent the Class in this Action:

Alan Harris and Priya Mohan
Harris & Ruble
4771 Cromwell Avenue
Los Angeles, CA 90027
Tel: (323) 962-3777

SUMMARY OF SETTLEMENT TERMS

10. Class Settlement Amount. The Settlement Agreement provides that Sears will pay up to \$3,200,000.00 (the "Total Maximum Settlement Amount") to fully resolve the claims in the Action.

(a) Deductions. The following deductions will be made from the Total Maximum Settlement Amount:

(i) Settlement Administration. The Court has tentatively approved a payment of up to \$50,000.00 to the Settlement Administrator, Rust Consulting, for the costs incurred in notifying the Class and processing claims.

(ii) Attorneys' Fees and Expenses. Class Counsel will ask the Court to approve a Fee and Expense Award of up to \$1,066,560.00, plus reimbursement of the reasonable litigation expenses Class Counsel has incurred up to \$25,000.00. Class Counsel has been prosecuting the Action on behalf of the Class on a contingency fee basis (that is, without being paid to date) while advancing litigation costs and expenses. The Fee and Expense Award will constitute full compensation for all legal fees and expenses of Class Counsel in the Action, including any work they do in the future. Class Members are not personally responsible for any fees or expenses.

(iii) Incentive Award to Named Plaintiff. Class Counsel will also ask the Court to approve an Incentive Award in the amount of \$5,000.00 for Named Plaintiff Sarah Chookey for acting as the representative on behalf of the Class and spending time assisting with the lawsuit, which was not required of other Class Members.

(iv) PAGA Payment. A payment of \$20,000.00 shall be paid to California's Labor and Workforce Development Agency to pay the government portion of any penalties allocated under California Labor Code's Private Attorneys General Act of 2004 ("PAGA"), as amended, California Labor Code sections 2699, 2699.3, and 2699.5.

(b) Payment to Class Members: Plan of Allocation. The balance of the Total Maximum Settlement Amount after the deductions described above is the "Net Settlement Sum". The Net Settlement Sum is estimated to be \$2,033,440.00. Class members who do not opt out of participating in the Settlement ("Settlement Class Members") who submit timely Claim Forms ("Authorized Claimants") will receive a Settlement Award based on their relative number of weeks of employment as Class Members since February 10, 2008, as reflected by Sears' corporate records, exclusive of leaves of absence ("Work Weeks"). Approximations and averages will be used to cover periods where data are missing or otherwise not available. Any portion of the Net Settlement Sum that is not claimed by Authorized Claimants shall remain Sears' property, except that the Class Settlement requires that at least 50% of the Net Settlement Sum will be paid out. If less than 50% of the Net Settlement Sum is claimed by Authorized Claimants, then any unclaimed amounts less than 50% of the Net Settlement Sum shall be paid to the California Labor and Workforce Development Agency.

(c) Tax Matters. IRS Forms W-2 and 1099 (and the equivalent California forms) will be distributed to Authorized Claimants reflecting the payments they receive under the Class Settlement. For tax purposes, five percent (5%) of each Authorized Claimant's Settlement Award shall be treated as damages for unpaid wages and reported on a W-2, and ninety-five percent (95%) shall be treated as interest and penalties under the California Labor Code and reported on a Form 1099. Authorized Claimants should consult with their tax advisors concerning the tax consequences of the payments they receive under the Class Settlement. The usual and customary employee payroll deductions will be taken out of the amounts attributable to unpaid wages.

11. Class Release. If approved by the Court, the Class Settlement will bar any Class Member who does not timely opt out of the Class Settlement from bringing certain claims against Sears described below. The Settlement Agreement contains the following provisions regarding the release of claims by Class Members:

The Settlement Class Members stipulate and agree that, upon the Payment Obligation and Class Release Date, they shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, expressly waived and relinquished the Class Released Claims, as defined below. Even if the Settlement Class Members may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Class Released Claims, each Settlement Class Member, upon the Payment Obligation and Class Release Date, shall be deemed to have and by operation of the Final Approval Order and Judgment shall have, fully, finally, and forever settled and released any and all of the Class Released Claims. This is true whether the Class Released Claims are known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, and whether or not they now exist or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Settlement Class Members agree not to sue or otherwise make a claim against any of the Released Parties for the Class Released Claims. The Settlement Awards shall be paid to Authorized Claimants specifically in exchange for the release of the Released Parties from the Class Released Claims and the covenant not to sue concerning the Class Released Claims.

“Class Released Claims” means all claims, demands, rights, liabilities, and causes of action that were asserted in the Action based on the facts, transactions, events, policies, occurrences, acts, disclosures, statements, exhibits, omissions or failures to act that were pled in the Complaint regarding the failure to properly calculate overtime compensation; all other claims, demands, rights, liabilities, and causes of action that were asserted in the Action other than the failure to properly calculate overtime compensation addressed in the preceding clause, including claims that Defendant failed to provide meal periods, failed to authorize and permit rest breaks, failed to keep records properly concerning time worked, failed to provide proper itemized wage statements (including but not limited to claims that Defendant’s wage statements failed to show all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee), and/or engaged in unfair business practices; and any claims that could have been asserted in the Action for violation of any law or regulation, whether legal or equitable, state or federal (including but not limited to the California Labor Code, the California Business and Professions Code, the applicable Industrial Welfare Commission Wage Order(s), or any claim sounding in tort, contract, statute or otherwise), for any type of relief, based on the facts, transactions, events, policies, occurrences, acts, disclosures, statements, exhibits, omissions or failures to act that were pled in the Complaint. Class Released Claims are limited to all claims as described above that arose during the Class Period.

“Complaint” means the First Amended Complaint filed in the Action on or about April 18, 2012, including any exhibits thereto.

“Class Period” means the period from February 10, 2008, through the date of Preliminary Approval.

“Released Parties” means Sears; its past or present officers, directors, shareholders, employees, associates, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and its and their respective successors and predecessors in interest, parents, subsidiaries, affiliates, predecessors, successors, assigns, and attorneys.

12. **Condition of Class Settlement.** This Class Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing approving the Class Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class.

PROCEDURE FOR SEEKING MONETARY RECOVERY

13. **If you want to participate in the Class Settlement and receive money under the Class Settlement, you must sign and date the enclosed Claim Form and mail the completed Claim Form postmarked by [redacted], 2014, to the Settlement Administrator at the following address.**

Chookey, et al. v. Sears, Roebuck and Co.

c/o Claims Administrator

[Address]

Telephone: [Number]

A copy of your Claim Form is enclosed. (If you need an extra copy, contact the Settlement Administrator at the address or telephone number above.) If any information provided on the Claim Form is incorrect, please make corrections. For example, if your address is incorrect, please indicate your correct address. Also, please provide your telephone number and any other requested information if it is not already filled in. If you wish to have confirmation that the Settlement Administrator has received your Claim Form, please send your Claim Form to the Settlement Administrator by certified U.S. Mail with a return-receipt request.

The Claim Form lists your total number of Work Weeks as a Class Member during the Class Period. If you believe the number of Work Weeks listed on the Claim Form is incorrect, you may send the Claim Form, a letter, and supporting documentation and information to the Settlement Administrator indicating what you believe is correct. The Settlement Administrator will resolve any dispute regarding the dates you worked as a Class Member, based on Sears's records and any documents and information that you provide. Please be advised that the number of Work Weeks is presumed to be correct unless the documents you submit are company records from Sears. Your Settlement Award may increase or decrease depending on any disputes submitted by you or any other Class Members.

14. If you are a Class Member and you do not exclude yourself from the Class Settlement in the manner described in paragraph 16 below, you will be bound by all of the provisions of the Class Settlement, including a release of claims that will prevent you from separately suing any of the Released Parties for the Class Released Claims.

15. **Any Class Member who does not submit a timely Claim Form will not receive any payment from the Class Settlement. If you do nothing, that is, if you do not mail a timely Claim Form and do not request exclusion from the Class, you will not be entitled to a Settlement Award but will be bound by the terms of the Class Settlement, including the Class Release described in paragraph 11 above.**

PROCEDURE FOR EXCLUDING YOURSELF FROM THE CLASS SETTLEMENT

16. Class Members may exclude themselves ("opt-out") from the Settlement Class by submitting a written exclusion request to the Settlement Administrator at the address listed in paragraph 13, above, on or before [redacted], 2014. To opt out, your written statement must include your name (and former names, if any), current address, telephone number, and last four digits of your social security number. Opt-out requests that do not include all required information, or that are not submitted timely, will be disregarded. Persons who submit valid and timely opt-out requests will not participate in the Class Settlement and will not be bound by either the Class Settlement or the Final Approval Order and Judgment.

PROCEDURE FOR OBJECTING TO THE CLASS SETTLEMENT

17. If you are a Settlement Class Member and believe that the Class Settlement should not be finally approved by the Court for any reason, you must file with the Court a written objection stating the basis of your objection. The objection must be filed in the United States District Court, Central District of California, at 312 North Spring Street, Los Angeles, CA 90012-4701 on or before [REDACTED], 2014. You must also at the same time mail copies of your objection to both Class Counsel and Sears' Counsel at the addresses below.

Class Counsel

Alan Harris and Priya Mohan
HARRIS & RUBLE
4771 Cromwell Avenue
Los Angeles, CA 90027
Tel: (323) 962-3777

Sears's Counsel

Joseph C. Liburt and Christian N. Brown
ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 Marsh Road
Menlo Park, CA 94025-1015
Tel: (650) 614-7400

18. You may also appear at the Final Approval Hearing scheduled for [REDACTED]:00 a.m. on [REDACTED], 2014, in Courtroom 10 of the United States District Court, Central District of California, located at 312 North Spring Street, Los Angeles, CA, 90012, to have your objection heard by the Court. Objections not previously filed in writing in a timely manner as described above will not be considered by the Court. Any attorney who intends to represent an individual objecting to the Class Settlement must file a notice of appearance with the Court and serve counsel for all Parties on or before [REDACTED], 2014. All objections or other correspondence must state the name and number of the case, which is Chookey, et al. v. Sears, Roebuck and Co., Case No. CV 12-2491-GW (MRWx). If you object to the Class Settlement, you will remain a Member of the Settlement Class, and if the Court approves the Class Settlement, you will be bound by the terms of the Class Settlement in the same way as Settlement Class Members who do not object.

19. Any Member of the Settlement Class who does not object in the manner provided above shall be deemed to have approved the Class Settlement and to have waived such objections, and shall be forever foreclosed from making any objections (by appeal or otherwise) to the Class Settlement.

20. Any Member of the Settlement Class who is satisfied with the Class Settlement need not appear at the Settlement Hearing.

HEARING ON THE CLASS SETTLEMENT

21. **You are not required to attend the Final Approval Hearing.**

22. The Final Approval Hearing on the adequacy, reasonableness and fairness of the Class Settlement will be held at [REDACTED]:00 a.m. on [REDACTED], 2014, in Courtroom 10 of the United States District Court, Central District of California, located at 312 North Spring Street, Los Angeles, CA, 90012. The Hearing date may be changed without further notice; however, you can contact the Clerk of the Court to find out if the Hearing date has changed.

CHANGE OF ADDRESS

23. If you move after receiving this Class Notice, if it was misaddressed, or if for any reason you want your payment or future correspondence concerning this Action and the Class Settlement to be sent to a different address, you should send your current preferred address to the Settlement Administrator.

ADDITIONAL INFORMATION

24. This Class Notice is only a summary of the Action and the Class Settlement. For a more detailed statement of the matters involved in the Action and the Class Settlement, you may refer to the pleadings, the Settlement Agreement, and other papers filed in the Action, which may be inspected at the Office of the Clerk of the United States District Court, Central District of California, located at 312 North Spring Street, Los Angeles, CA, 90012, during regular business hours of each court day.

25. All inquiries by Class Members regarding this Class Notice and/or the Class Settlement should be directed to the Settlement Administrator or Class Counsel (see contact information above).

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, SEARS OR SEARS'S ATTORNEYS WITH INQUIRIES.

DATED: _____, 2014

BY ORDER OF THE COURT
HON. GEORGE H. WU
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Exhibit 3

1 JOSEPH C. LIBURT (STATE BAR NO. 155507)
CHRISTIAN N. BROWN (STATE BAR NO. 233147)
2 ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 Marsh Road
3 Menlo Park, California 94025
United States of America
4 Telephone: (650) 614-7400
Facsimile: (650) 614-7401
5 Email: jliburt@orrick.com
Email: cbrown@orrick.com

6 Attorneys for Defendant
7 SEARS, ROEBUCK AND CO.

8 ALAN HARRIS (STATE BAR NO. 146079)
PRIYA MOHAN (STATE BAR NO. 228984)
9 HARRIS & RUBLE
4771 Cromwell Avenue
10 Los Angeles, California 90027
Telephone: (323) 962-3777
11 Facsimile: (323) 962-3004
Email: aharris@harrisandruble.com
12 Email: pmohan@harrisandruble.com

13 Attorneys for Plaintiff
14 SARAH CHOOKEY

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

18 SARAH CHOOKEY, individually and
on behalf of all others similarly situated,

19 Plaintiff,

20 v.

22 SEARS, ROEBUCK AND CO.; and
DOES 1 through 100, inclusive,

23 Defendants.
24

Case No. CV 12-2491-GW (MRWx)

**[PROPOSED] ORDER
GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

1 On February 10, 2012, Plaintiff Sarah Chookey (“Plaintiff”), individually and
2 on behalf of all others similarly situated, filed suit against Sears, Roebuck & Co.
3 (“Defendant”) in Ventura County Superior Court, and Defendant subsequently
4 removed the suit to the United States District Court, Central District of California
5 (“Court”). Plaintiff filed a First Amended Complaint on or about April 18, 2012.
6 The First Amended Complaint asserted claims under the California Labor Code and
7 California Business and Professions Code for additional overtime compensation
8 based on an alleged miscalculation of overtime rates, as well as additional
9 amounts for meal- and rest-break violations, inaccurate itemized wage statements,
10 and related penalties. The lawsuit seeks damages for unpaid wages, penalties,
11 interest, injunctive relief, attorneys’ fees and expenses. Defendant denied all of
12 Plaintiff’s claims.

13 After initial exchanges of information, the Parties entered into private
14 mediation before respected neutral mediator (and plaintiffs’ counsel) Mark Rudy,
15 Esq. to try and resolve the claims. As a result of that mediation on June 7, 2013,
16 and under the auspices of Mr. Rudy, the Parties reached a settlement. On or about
17 November 11, 2013, Plaintiff and Defendant executed the Stipulation and
18 Settlement Agreement of Class Action and Individual Claims (“Settlement
19 Agreement”), setting forth the terms of the Class Settlement.

20 A preliminary hearing was held before this Court on February 13, 2014 for
21 the purpose of determining, among other things, whether the proposed Settlement
22 Agreement was within the range of possible approval and whether notice to the
23 Class of its terms and conditions, and the scheduling of a formal fairness hearing,
24 also known as a final approval hearing, will be worthwhile. Appearing at the
25 hearing were Joseph C. Liburt of Orrick, Herrington & Sutcliffe LLP on behalf of
26 Defendant; and Alan Harris of Harris & Ruble on behalf of Plaintiff and the Class
27 Members.

28 Having reviewed the papers and documents presented, having heard the

1 statements of counsel, having considered the matter, and having made findings and
2 rulings at the hearing, the Court **HEREBY ORDERS** as follows:

3 1. The Court hereby GRANTS preliminary approval of the terms and
4 conditions contained in the Settlement Agreement. The Court preliminarily finds
5 that the terms of the Settlement Agreement appear to be within the range of
6 possible approval, pursuant to Federal Rule of Civil Procedure 23 and applicable
7 law.

8 2. It appears to the Court on a preliminary basis that: (1) the settlement
9 amount is fair and reasonable to the Class Members when balanced against the
10 probable outcome of further litigation relating to class certification, liability and
11 damages issues, and potential appeals; (2) significant formal discovery,
12 investigation, research, and litigation have been conducted such that counsel for the
13 Parties at this time are able to reasonably evaluate their respective positions; (3)
14 settlement at this time will avoid substantial costs, delay and risks that would be
15 presented by the further prosecution of the litigation; and (4) the proposed
16 settlement has been reached as the result of intensive, serious and non-collusive
17 negotiations between the Parties. Accordingly, the Court preliminarily finds that
18 the Settlement Agreement was entered into in good faith.

19 3. The Court hereby GRANTS conditional certification of the provisional
20 Class, in accordance with the Settlement Agreement, for the purposes of this Class
21 Settlement only. The Class is defined as “all non-exempt individuals who worked
22 overtime hours and who received sales commissions totaling less than one-half of
23 their total compensation during the work week (meaning Sears’ ‘C-Plan’
24 associates) who were employed by Sears in California in Sears’ retail stores or
25 Sears’ retail-store automotive departments at any time between February 10, 2008,
26 and the date of Preliminary Approval.”

27 4. The Court hereby authorizes the retention of _____ as
28 Settlement Administrator for the purpose of the Class Settlement.

1 5. The Court hereby conditionally finds that Alan Harris and Priya
2 Mohan of Harris & Ruble may act as counsel for the Class, and that Plaintiff Sarah
3 Chookey may act as class representative for the Class.

4 6. The Court hereby APPROVES the Notice of (1) Preliminary Approval
5 of Class Action Settlement; (2) Final Approval Hearing; (3) Right to Object or Opt
6 Out; and (4) Requirement to Return a Claim Form to Receive a Monetary Payment
7 from the Settlement (the "Notice"), attached to the Settlement Agreement as
8 Exhibit 2. The Court finds that the Notice, along with the related notification
9 procedure contemplated by the Settlement Agreement, constitute the best notice
10 practicable under the circumstances and are in full compliance with the laws of the
11 State of California, to the extent applicable, the United States Constitution, and the
12 requirements of due process. The Court further finds that the Notice appears to
13 fully and accurately inform the Class Members of all material elements of the
14 proposed Settlement Agreement, of the Class Members' right to be excluded from
15 the Settlement Class, and of each Settlement Class Member's right and opportunity
16 to object to the Class Settlement. Subject to the terms of the Settlement Agreement,
17 the Notice shall be mailed via first-class mail to the most recent known address of
18 each Class Member by _____, and twenty-one (21) days thereafter a reminder
19 postcard shall be mailed via first-class mail to Class Members who have not yet
20 responded.

21 7. The Court hereby APPROVES the proposed procedure for exclusion
22 from the Settlement Class, which is to submit a written statement requesting
23 exclusion to the Settlement Administrator no later than forty-five (45) days
24 following the date on which the Settlement Administrator first mails the Notice and
25 Claim Forms to Class Members. Any Class Member who submits a valid and
26 timely request for exclusion shall not be a Member of the Settlement Class, shall be
27 barred from participating in the Class Settlement and shall receive no benefit from
28 the Class Settlement.

1 8. The Court hereby APPROVES the proposed Claim Form for use in
2 administering the Class Settlement, attached to the Settlement Agreement as
3 Exhibit 1. Claim Forms must be mailed to Class Members along with the Notice.
4 Subject to the terms of the Settlement Agreement, Class Members must return
5 completed Claim Forms to the Settlement Administrator postmarked no later than
6 forty-five (45) days following the date on which the Settlement Administrator first
7 mails the Notice and Claim Forms to Class Members in order to receive a monetary
8 payment.

9 9. The Court further ORDERS that Class Counsel shall file a motion for
10 approval of the Fee and Expense Award and the Incentive Award, with the
11 appropriate declarations and supporting evidence, by _____, to be heard at the
12 same time as the motion for Final Approval of the Class Settlement.

13 10. The Court further ORDERS that Class Counsel shall file a motion for
14 Final Approval of the Class Settlement, with the appropriate declarations and
15 supporting evidence, including a declaration setting forth the identity of any Class
16 Members who request exclusion from the Class Settlement, by _____.

17 11. The Court further ORDERS that each Class Member who does not
18 request exclusion from the Class Settlement shall be given a full opportunity to
19 object to the proposed Settlement Agreement and request for attorneys' fees, and to
20 participate at a Final Approval Hearing, which the Court sets to commence on
21 _____ at 8:30 a.m. in Courtroom 10 of the United States District Court, Central
22 District of California. Any Settlement Class Member seeking to object to the
23 proposed Class Settlement shall file such objection in writing with the Court and
24 shall serve such objection on Class Counsel and Defendant's Counsel no later than
25 forty-five (45) days following the date on which the Settlement Administrator first
26 mails the Notices and Claim Forms to Class Members. In addition, any attorney
27 who intends to represent an individual objecting to the Class Settlement must file a
28 notice of appearance with the Court and serve counsel for all Parties no later than

1 forty-five (45) days following the date on which the Settlement Administrator first
2 mails the Notices and Claim Forms to Class Members. Any Class Member who
3 fails to file and serve these materials shall be foreclosed from objecting to the
4 proposed Settlement Agreement, unless otherwise ordered by the Court.

5 12. The Court further ORDERS that, pending further order of this Court,
6 all proceedings in this Action except those contemplated herein and in the
7 Settlement Agreement are stayed.

8 13. If the Court grants final approval of the Class Settlement and enters
9 judgment, Settlement Class Members and their successors shall conclusively be
10 deemed to have given a release, as set forth in the Settlement Agreement and
11 Notice, against the Released Parties, and all Settlement Class Members and their
12 successors shall be permanently enjoined and forever barred from asserting any
13 claim covered by the Class Released Claims. If for any reason the Court does not
14 execute and file a Final Approval Order and Judgment, the proposed Class
15 Settlement subject to this Order and all evidence and proceedings had in connection
16 with the Class Settlement shall be null and void.

17 14. The Court may, for good cause, extend any of the deadlines set forth in
18 this Order or adjourn or continue the final approval hearing without further notice
19 to the Class.

20
21 **IT IS SO ORDERED.**

22
23 Dated: _____, 2014

24 HON. GEORGE H. WU
25 JUDGE OF THE UNITED STATES
26 DISTRICT COURT
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Exhibit 4

1 JOSEPH C. LIBURT (STATE BAR NO. 155507)
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7 SEARS, ROEBUCK AND CO.

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12 Email: pmohan@harrisandruble.com

13 Attorneys for Plaintiff
14 SARAH CHOOKEY

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

18 SARAH CHOOKEY, individually and
on behalf of all others similarly situated,
19 Plaintiff,

20 v.

21 SEARS, ROEBUCK AND CO.; and
DOES 1 through 100, inclusive,
22 Defendants.

Case No. CV 12-2491-GW (MRWx)

**[PROPOSED] ORDER
GRANTING FINAL APPROVAL
OF CLASS ACTION
SETTLEMENT**

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2 The Court has before it Plaintiff's unopposed motion for final approval of a
3 proposed class action settlement ("Class Settlement") and attorneys' fees. After
4 reviewing the Motion for Final Approval and the Stipulation and Settlement
5 Agreement of Class Action and Individual Claims ("Settlement Agreement") filed
6 with the Court, the Court hereby finds and orders as follows:

7 1. This Court has jurisdiction over the claims of the Class Members
8 asserted in this proceeding and over all parties to the action.

9 2. The Court finds that ___ Class Members have objected to the
10 Settlement. ___ Class Members have requested exclusion from the Settlement.
11 Nearly ___% of the Class Members have filed timely and valid claims. These
12 _____ individuals have claimed, and will be paid, approximately \$_____ from
13 the Total Maximum Settlement Amount.

14 3. For the reasons set forth in the Preliminary Approval Order and in the
15 transcript of the Final Approval hearing, which are adopted and incorporated herein
16 by reference, this Court finds that the applicable requirements of Federal Rule of
17 Civil Procedure 23 have been satisfied with respect to the Settlement Class and the
18 proposed Class Settlement. The Court hereby makes final its earlier provisional
19 certification of the Class, as set forth in the Preliminary Approval Order. The Court
20 finds that the settlement is fair, adequate, and reasonable, and falls within the range
21 of reasonableness.

22 4. The notice given to the Class Members fully and accurately informed
23 the Class Members of all material elements of the proposed Class Settlement and of
24 their opportunity to object to or comment thereon; was the best notice practicable
25 under the circumstances; was valid, due and sufficient notice to all Class Members;
26 and complied fully with the laws of the State of California, the Federal Rules of
27 Civil Procedure, the United States Constitution, due process and other applicable
28 law. The notice fairly and adequately described the Class Settlement and provided

1
2 Class Members adequate instructions and a variety of means to obtain additional
3 information. A full opportunity has been afforded to the Class Members to
4 participate in this hearing, and all Class Members and other persons wishing to be
5 heard have been heard. Accordingly, the Court determines that all Class Members
6 (as defined in the Class Settlement) who did not timely and properly execute a
7 request for exclusion are bound by this Order and Judgment.

8 5. The Court hereby grants final approval to the Class Settlement and
9 finds it reasonable and adequate, and in the best interests of the Class as a whole.
10 Accordingly, the Court hereby directs that the Class Settlement be effected in
11 accordance with the Settlement Agreement and the following terms and conditions.

12 6. It is hereby ordered that the Settlement Administrator shall pay the
13 Settlement Awards in the amounts and pursuant to the terms set forth in the
14 Settlement Agreement.

15 7. It is hereby ordered that the that the Settlement Administrator shall pay
16 the Incentive Award of \$5,000.00 to Named Plaintiff Sarah Chookey because the
17 Court finds the Incentive Award is fair and reasonable for the work she provided to
18 the Class and Class Counsel.

19 8. It is hereby ordered that the Settlement Administrator shall pay the Fee
20 and Expense Award of \$_____, plus \$_____ in actual costs, to Class Counsel
21 because Class Counsel's request falls within the range of reasonableness and the
22 result achieved justified the award. Class Counsel's actual expenses in prosecuting
23 this Action are hereby approved as reasonably incurred.

24 9. It is hereby ordered that the Settlement Administrator shall pay the
25 PAGA Payment of \$_____ as set forth in the Settlement Agreement.

26 10. It is hereby ordered that the Settlement Administrator shall pay the
27 Labor and Workforce Development Agency \$_____ as set forth in the
28 Settlement Agreement.

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11. It is hereby ordered that the Settlement Administrator shall be paid Administration Costs of \$_____ as set forth in the Settlement Agreement.

12. With this final approval of the Class Settlement, it is hereby ordered that all claims that are released as set forth in the Settlement Agreement are hereby barred.

IT IS SO ORDERED.

Dated: _____

HON. GEORGE H. WU

Exhibit 5

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13 Attorneys for Plaintiff
14 SARAH CHOOKEY

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

18 SARAH CHOOKEY, individually and
on behalf of all others similarly situated,
19 Plaintiff,

20 v.

21 SEARS, ROEBUCK AND CO.; and
DOES 1 through 100, inclusive,
22 Defendants.

Case No. CV 12-2491-GW (MRWx)

**[PROPOSED] JUDGMENT OF
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

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In accordance with the Order Granting Final Approval of Class-Action Settlement (“Final Approval Order”) entered by the Court in this action, **IT IS ORDERED** that:

1. The Settlement Class conditionally certified in the Preliminary Approval Order is confirmed.
2. Judgment is hereby entered dismissing the above-captioned action against Defendant on the merits and with prejudice and without the payment of fees or costs other than as provided in the Settlement referred to in the Final Approval Order.
3. Without affecting the finality of this Judgment in any way, the Court hereby retains continuing jurisdiction over (a) the implementation of the Settlement as described in the Final Approval Order, (b) the payment of the amount of reasonable attorney’s fees and costs to be awarded to Class Counsel as provided for in the Settlement, and (c) all Parties hereto for the purpose of administering the Settlement and enforcing the terms of this Judgment.

IT IS SO ORDERED.

Dated: _____

HON. GEORGE H. WU