

1 Mia Farber (SBN 131467)
2 Shagha Balali (SBN 245061)
3 JACKSON LEWIS, P.C.
4 725 South Figueroa Street, Suite 2500
5 Los Angeles, California 90017-5408
6 Telephone: (213) 689-0404
7 Facsimile: (213) 689-0430
8 farberm@jacksonlewis.com
9 balalis@jacksonlewis.com

10 Attorneys for Defendants
11 Ecolab, Inc. and GCS Service, Inc.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF ORANGE

14 PAUL CASEY, individually and on behalf)
15 of all others similarly situated, and on behalf)
16 of the general public,)

17 Plaintiff,)

18 vs.)

19 ECOLAB, INC., GCS SERVICE, INC.; and)
20 DOES 1 through 20, inclusive,)

21 Defendants.)

22 **CASE NO.: 30-2014-00753644-CU-0E-CXC**

23 [*Assigned for all purposes to the*
24 *Honorable Gail A. Andler, Dept. CX101]*

25 **CLASS ACTION**

26 **STIPULATION AND AGREEMENT OF**
27 **COMPROMISE AND SETTLEMENT**

28 Complaint Filed: October 28, 2014

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STIPULATION AND AGREEMENT
OF COMPROMISE AND SETTLEMENT

This Stipulation and Agreement of Compromise and Settlement (“Settlement Agreement”) is made and entered into between the Class Representative and Plaintiff Paul Casey (herein after referred to as “Plaintiff” or “Class Representative”), individually and on behalf of the Class (as defined below), by and through his counsel of record, Aegis Law Firm, P.C. and The Cooper Law Firm, P.C., (“Class Counsel”), on the one hand, and Defendants Ecolab, Inc. and GCS Service, Inc. (“Defendants”), by and through their counsel of record, Jackson Lewis P.C. (“Defense Counsel”), on the other hand, and is subject to the approval of the Court, as provided below. This Settlement Agreement is intended by the Class Representative and Defendants to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined below), upon and subject to the terms and conditions hereof, as follows:

1. Definitions. As used herein, for the purposes of this Settlement Agreement only, the following terms shall be defined as set forth below:

- 1.1 “Action”** means the above-captioned matter filed in the Superior Court of California, County of Orange, Case No. 30-2014-00753644-CU-0E-CXC.
- 1.2 “The Class”** refers to all persons employed by GCS Service, Inc. in California on a non-exempt and exempt basis between October 28, 2013 through October 31, 2014. It shall be an opt-out class.
- 1.3 “Class Counsel”** refers to the attorneys of record for the Class Representative, *i.e.*, Aegis Law Firm, P.C. and The Cooper Law Firm, P.C.
- 1.4 “Class Member”** refers to any member of the Class, as that term is defined herein.
- 1.5 “Class Notice”** refers to the form of direct-mail notice to Class Members, substantially in the form attached hereto as “Exhibit A,” as may be modified by the Court.
- 1.6 “Class Representative”** refers to Plaintiff Paul Casey.
- 1.7 “Court”** refers to Department CX101 of the California Superior Court, County of Orange, the Honorable Gail A. Andler, Superior Court Judge, presiding or the Department of the Complex Civil Panel to which this case is later assigned.

1 **1.8 “Final Fairness Hearing”** refers to the hearing at which the Court will make a
2 final determination whether the terms of the Settlement Agreement are fair,
3 reasonable, and adequate for the Class and meet all applicable requirements for
4 approval, and, if the Settlement is so approved, whether a judgment should be
5 entered thereon, whether the Class Representative’s application for an
6 enhancement award should be granted, and whether an application by Class
7 Counsel for an award of reasonable attorneys’ fees and reimbursement of their
8 reasonable costs and expenses should be granted.

9 **1.9 “Final Approval Order”** refers to the final order by the Court approving the
10 Settlement Agreement following the Final Fairness Hearing.

11 **1.10 “Final Effective Date”** refers to the date by which the last of the following has
12 occurred: (1) the Settlement Agreement has been executed by all Parties, Class
13 Counsel and Defense Counsel; (2) the Court has given preliminary approval to the
14 Settlement Agreement; (3) the Notice of Class Action Settlement has been given
15 to the putative members of the Settlement Class, providing them with an
16 opportunity to object to the terms of the Settlement Agreement or to opt out of the
17 Settlement; (4) the Court has held a formal Final Fairness Hearing and entered a
18 final Order and Judgment certifying the Settlement Class, and approving the
19 Settlement Agreement; (5) 65 calendar days have passed since the Court has
20 entered a final Order and Judgment certifying the Settlement Class and approving
21 the Settlement Agreement; and (6) in the event there are written objections filed
22 prior to the Final Fairness Hearing which are not later withdrawn or denied, the
23 later of the following events: five (5) business days after the period for filing any
24 appeal, writ or other appellate proceeding opposing the Court’s final Order
25 approving the Stipulation of Settlement has elapsed without any appeal, writ or
26 other appellate proceeding having been filed; or, if any appeal, writ or other
27 appellate proceeding opposing the Court’s final Order approving the Settlement
28 Agreement has been filed, five (5) business days after any appeal, writ or other
appellate proceedings opposing the Stipulation of Settlement has been finally and

1 conclusively dismissed with no right to pursue further remedies or relief. For
2 purposes of determining the Final Effective Date, the Settling Parties agree that
3 only California Courts have jurisdiction over any such appeals, except for any
4 appellate procedure over which the United States Supreme Court may exercise
5 jurisdiction.

6 **1.11 “Maximum Settlement Amount”** refers to the maximum settlement amount
7 Defendants shall be obligated to pay: Two Hundred Thousand Dollars and Zero
8 Cents (\$200,000.00).

9 **1.12 “Judgment”** refers to the final judgment by the Court approving the Settlement
10 consistent with the California Rules of Court, Rule 3.769.

11 **1.13 “Net Settlement Amount”** shall be defined as the Maximum Settlement
12 Amount, less the amounts awarded by the Court for attorneys’ fees, costs,
13 administrative expenses, payments pursuant to the Private Attorneys General Act
14 of 2004 (“PAGA Payments”) and enhancement payment, as provided for in
15 Paragraphs 3.1 – 3.6. The Net Settlement Amount is the maximum amount that
16 shall be made available to Class Members.

17 **1.14 “Notice Date”** refers to the date ordered by the Court for the dissemination of the
18 direct mail the Class Notice, a date that is expected to be approximately thirty
19 (30) calendar days after the Preliminary Approval Order Date.

20 **1.15 “Parties”** refers to Plaintiff and Defendants.

21 **1.16 “Preliminary Approval Order”** refers to the order by the Court granting
22 preliminary approval to the Settlement Agreement and directing the parties to
23 disseminate the Class Notice.

24 **1.17 “Preliminary Approval Order Date”** refers to the date on which the Court
25 enters the Preliminary Approval Order.

26 **1.18 “Settlement Administrator”** refers to Phoenix Settlement Administrators, Inc.,
27 an independent third-party that will be engaged by the Parties and paid out of the
28 Maximum Settlement Amount, to perform the notice, claims administration, and
distribution functions further described in this Settlement Agreement.

1 **1.19 “Settlement Agreement”** refers to this Stipulation and Agreement of
2 Compromise and Settlement, exhibits annexed thereto, and any permitted and
3 executed amendments hereto.

4 **1.20 “Settlement Sum”** refers to the amount that shall be payable to each Class
5 Member as determined in accordance with the provisions of Paragraph 2.2.

6 **1.21 “Settling Parties”** refers to the Plaintiff, the Class Members, and Defendants.

7 **1.22 “Pay Period”** refers to the Pay Periods during which a Class Member worked
8 during the Class Period of October 28, 2013 through October 31, 2014.

9 **2. Payments to Class Members.**

10 **2.1** Defendants shall make available to the Settlement Administrator for payment to
11 Class Members who have not opted out, the Net Settlement Amount as defined in
12 Paragraph 1.13. Defendants agree to pay the Class a total of up to \$200,000.00 as
13 the Maximum Settlement Amount, which includes the sum of the attorneys’ fees
14 awarded under Paragraph 3.1, expenses awarded under Paragraph 3.2 and 3.4,
15 PAGA Payments under Paragraph 3.6, and the enhancement awarded under
16 Paragraph 3.3.

17 **2.2** The Net Settlement Amount shall be divided among Class Members based on the
18 Class Member’s Pay Periods worked during the Class Period (excluding leaves of
19 absences and sabbaticals). Each Class Member’s pro rata share of the Net
20 Settlement will be determined by dividing the Class Member’s total Pay Periods
21 worked as a Class Member during the Class Period by the total number of Pay
22 Periods worked by the entire Class during the Class Period (the “Settlement
23 Award”). Defendants’ Pay Period data will be presumed to be correct, unless a
24 particular Class Member proves otherwise to the Settlement Administrator by
25 credible written evidence. All Pay Period disputes will be resolved and decided
26 by the Settlement Administrator, as set forth in Paragraph 6.8.

27 **3. Additional Benefits to the Class.**

28 **3.1 Attorneys’ Fees.** Defendants will pay any attorneys’ fees awarded to Class
 Counsel out of the Maximum Settlement Amount. Class Counsel shall apply to

1 the Court for approval of an award of attorneys' fees in an amount that will not
2 exceed 33.3% of the Maximum Settlement Amount, or \$66,600.00, in accordance
3 with the applicable legal precedents therefore, and conditioned upon the
4 Settlement reaching its Final Effective Date. As long as the total amount
5 requested or awarded does not exceed 33.3% of the Maximum Settlement
6 Amount, Defendants agree not to oppose the application for attorneys' fees and to
7 pay such amounts as requested by Class Counsel and awarded by the Court, up to
8 \$66,600.00. Payment shall be made to Class Counsel within thirty (30) court days
9 of the Final Effective Date. Class Counsel shall not apply to the Court for an
10 award of attorneys' fees that is greater than the amounts set forth in this
11 Settlement Agreement, and, in no event shall Defendants be required to pay Class
12 Counsel more than \$66,600.00 in attorneys' fees. Any reduction by the Court in
13 attorneys' fees awarded to Class Counsel will revert to the Net Settlement
14 Amount and be distributed to Class Members on a pro rata basis proportionate to
15 the amounts to be paid to each Class Member, in accordance with Paragraph 2.2.

16 **3.2 Expenses.** Defendants will pay expenses awarded to Class Counsel out of the
17 Maximum Settlement Amount so long as those expenses do not exceed
18 \$10,000.00. Class Counsel shall apply to the Court for approval of an award of
19 expenses in an amount not to exceed \$10,000.00 in accordance with the
20 applicable legal precedents therefore, and conditioned upon the Settlement
21 reaching its Final Effective Date. Defendants agree not to oppose the application
22 for expenses and to pay such amounts as requested by Class Counsel and awarded
23 by the Court, up to \$10,000.00. Payment shall be made to Class Counsel within
24 thirty (30) court days of the Final Effective Date. Expenses were not negotiated
25 until a settlement was reached as to all major issues pertaining to the claims of the
26 Class.

27 **3.3 Additional Compensation to Class Representative.** Class Counsel will petition
28 the Court for an enhancement for the Class Representative to compensate him for
his time and energy spent in serving as the Class Representative. Class Counsel's

1 application for an enhancement for the Class Representative will not exceed
2 \$2,500.00. As long as the total amount requested or awarded does not exceed
3 \$2,500.00 for the Class Representative, Defendants agree not to oppose the
4 application for the enhancement and to pay the amount awarded by the Court out
5 of the Maximum Settlement Amount. Defendants shall provide an IRS Form
6 1099 for the amounts paid as an enhancement. The enhancement shall be
7 independent of any other benefits to which the Class Representative may be
8 entitled as a Class Member pursuant to this Settlement Agreement and plan of
9 allocation. The enhancement payment to the Class Representative will be paid
10 within thirty (30) court days of the Final Effective Date. Any reduction by the
11 Court in the enhancement awarded to the Class Representative will revert to the
12 Net Settlement Amount and be distributed to all Class Members on a pro-rata
13 basis proportionate to the amounts to be paid to each Class Member, in
14 accordance with Paragraph 2.2.

14 **3.4 Notice and Administration Costs.** All costs of settlement notice and settlement
15 administration will be paid from the Maximum Settlement Amount, subject to
16 Court approval. Class Counsel will apply for payment to the Settlement
17 Administrator for the Notice, and administration costs as expenses which will not
18 exceed \$7,000.00 in accordance with the applicable legal precedents. Defendants
19 agree not to oppose the application for administration costs and to pay such
20 amounts as requested by Class Counsel and awarded by the Court, which will not
21 exceed \$7,000.00, within thirty (30) court days of the Final Effective Date. If
22 administration costs exceed \$7,000, the additional monies requested by the
23 Settlement Administrator shall be paid from the Net Settlement Amount.
24 Payment of administration costs were not negotiated until a settlement was
25 reached as to all major issues pertaining to the claims of the Class. The Parties
26 will be responsible for structuring and disseminating any notices in accordance
27 with the Court's orders.
28

1 **3.5 Limitation on Costs and Fees.** Except as provided in this Settlement
2 Agreement, Defendants shall not be required to pay any other expenses, costs,
3 damages or fees incurred by the Class Representative, by any Class Member, or
4 by any of their attorneys, experts, advisors, agents or representatives. Any award
5 of attorneys' fees, costs and expenses payable hereunder to Class Counsel shall be
6 in complete satisfaction of any and all claims for such attorneys' fees, costs and
7 expenses, under state or federal law, which the Class Representative, the Class,
8 Class Counsel, or any other attorneys have or may have against Defendants
9 arising out of or in connection with the Action and its Settlement, including, but
10 not limited to, any claims for attorneys' fees, costs and expenses involved in
11 litigating the Action and in negotiating and implementing this Settlement
12 Agreement, as well as attorneys' fees, costs and expenses incurred through and
13 after the final disposition and termination of the Action and including any and all
14 appeals. Defendants shall not be responsible for distributing or apportioning any
award of attorneys' fees and expenses among Class Counsel.

15 **3.6 Payments to the California Workforce Development Agency.** The Parties
16 shall apply to the Court for approval of payment under the California Private
17 Attorneys General Act ("PAGA"). Defendants shall pay up to \$3,000.00 (the
18 "PAGA Payment") from the Maximum Settlement Amount to the California
19 Labor & Workforce Development Agency ("LWDA") for penalties under PAGA,
20 \$2,250.00 of which will be paid directly to the LWDA.

21 **3.7 Persons Objecting to the Settlement.** Neither Defendants nor the Class shall be
22 responsible for any additional fees, costs or expenses related to any Class
23 Members who submit objections to the Settlement Agreement or any appeal by an
24 objector arising from the Action for attorneys' fees, costs, or expenses of any
25 kind.

26 **4. No Admissions.** The Settling Parties understand and agree that this Settlement
27 Agreement is the result of a good faith compromise settlement of disputed claims, and Defendants are
28 entering into this Agreement solely to resolve doubtful and disputed matters. No part of this Settlement

1 Agreement or any conduct or written or oral statements made in connection with this Settlement and this
2 Settlement Agreement, whether or not the Settlement is finally approved and/or consummated, may be
3 offered as or construed to be an admission or concession of any kind by Defendants or any of the
4 Releasing or Released Parties or anyone else. In particular, but without limiting the generality of the
5 foregoing, nothing about this Settlement Agreement shall be offered or construed as an admission that
6 Defendants have failed to provide any Class Member wage statements in accordance with their
7 obligations set forth in the California Labor Code, or of liability in general, or any wrongdoing,
8 impropriety, responsibility, or fault whatsoever on the part of Defendants and/or the Released Parties, as
9 alleged in the operative First Amended Complaint in this matter. Similarly, nothing about this
10 Settlement Agreement shall be construed as or deemed to be evidence of, or an admission or concession
11 that the Class Representative or any Class Member has suffered any damage. In addition, this
12 Settlement Agreement shall not be offered or be admissible in evidence against Defendants or any
13 Released Party, except in any action or proceeding brought by or against the Class Representative, the
14 Class, Class Members, or Defendants to enforce its terms, or by Defendants in defense of any claims
15 brought by the Class Representative, the Class, Class Members, or any member of the general public,
16 including any and all individuals who opted out of the Class. The provisions of this Paragraph shall
17 become effective when this Settlement Agreement is signed and shall be binding on the Settling Parties
18 and their counsel regardless of whether the Settlement Agreement is preliminarily and/or finally
19 approved or terminated for any reason, or rendered null and void.

20 **5. Judgment and Release.** In exchange for the consideration set forth in this Settlement
21 Agreement, the Class Representative, the Class, and the Class Members agree to enter a Judgment in the
22 Action and to release all claims as set forth herein.

23 **5.1 Judgment.** Upon Final Approval of this Settlement Agreement, judgment shall
24 be entered by the Court and the Action shall be resolved in its entirety.

25 **5.2 Released Claims by Class Members.** Upon Final Approval of this Settlement
26 Agreement, the claims to be released by the Class Members who do not seek exclusion
27 from this Settlement (“Releasing Parties”), pursuant to the procedure set forth in
28 Paragraph 6.6, will include all claims under state, federal or local law arising out of or
reasonably related to allegations of: failure to provide accurate itemized wage statements,

1 penalties resulting from that alleged failure, including PAGA penalties, interest, fees,
2 costs; and all other claims and allegations made or which reasonably could have been
3 made based on the facts alleged in the Operative Complaint, from October 28, 2013
4 through the date the Court preliminarily approves the Settlement or June 29, 2015,
5 whichever date is earlier (“Released Claims”) against Defendants, their respective
6 successors, current and former parents, subsidiaries, affiliated corporations and entities,
7 and each of their respective officers, directors, agents, and employees and any other
8 person or entity that could be jointly liable with them for the claims (collectively, the
9 “Released Parties”) Each Class Member will also acknowledge that he/she has read
10 Section 1542 of the Civil Code of the State of California, which provides as follows:

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

16
17 Each Class Member shall further warrant that he/she understands that Section 1542 gives
18 him/her the right not to release existing claims of which he/she is not now aware, unless
19 he/she voluntarily chooses to waive this right. Having been so apprised, each Class
20 Member shall nevertheless voluntarily waive the rights described in Section 1542 only as
21 to the Released Claims, as defined above, and elect to assume all risks as to the Released
22 Claims set forth in paragraph 5.2 herein that now exist in his/her favor, known or
23 unknown.

24 **5.3 Released Claims.** The claims set forth in all of paragraph 5.2 hereinabove and
25 subparts thereto shall be referred to as the (“Released Claims”).

26 **5.4 Effective Dates of Release.** The Release set forth in paragraph 5.2 shall cover all
27 claims held by the Releasing Parties from October 29, 2013 through the
28 Preliminary Approval Order Date, or June 29, 2015, whichever date is earlier.

1 **5.5 Released Claims by the Class Representative.** In consideration for the
2 enhancement payment to the Class Representative as detailed in Paragraph 3.3,
3 the Class Representative has agreed to execute a separate Settlement Agreement
4 and General Release, substantially in the form attached hereto as “Exhibit B”.

5 **5.6 No Other Liability.** The Settlement Agreement shall be in full settlement,
6 compromise, release and discharge of the Released Claims and each of them, and
7 the Released Claims by the Class Representative, and the Released Parties shall
8 have no further or other liability or obligation to any Class Member, the Class
9 Representative or any other Releasing Party with respect to the Released Claims,
10 except as expressly provided herein.

11 **6. Class Notice and Administration.**

12 **6.1 Engagement of Settlement Administrator.** The Parties have agreed to retain
13 Phoenix Settlement Administrators, Inc. as the “Settlement Administrator” to
14 perform the notice and other administration functions necessary for the parties to
15 fulfill their settlement obligations.

16 **6.1.1** The Settlement Administrator shall perform the customary duties of a
17 Settlement Administrator, as more fully described below, including, but
18 not limited to the following: (a) preparing, printing and disseminating the
19 Class Notice; (b) promptly furnishing to Class Counsel and Defense
20 Counsel copies of all disputes, objections and requests for exclusions
21 received; (c) administering the settlement including determining each
22 putative Class Member’s status as a member of the Class and verifying the
23 information contained in any disputes submitted by Class Members; and
24 (d) calculating and distributing a Settlement Sum to each Class Member
25 who does not request exclusion. Additionally, the Settlement
26 Administrator will handle all tax document preparation and filing,
27 including state and federal tax forms if any.

28 **6.1.2** Also, on a weekly basis after the Notice Date, the Settlement
Administrator shall provide Defense Counsel and Class Counsel with a

1 summary report, including the total number of Class Notice that were
2 returned as undeliverable, the total number of disputes received, the total
3 number of requests for exclusions received, and the total number of
4 objections received. The Settlement Administrator shall maintain records
5 of its work, which shall be available for inspection upon request by
6 Defense Counsel or Class Counsel.

7 **6.2 Identification of Class Members.**

8 **6.2.1** Defendants will complete a review of their records to identify the Class
9 Members.

10 **6.2.2** Within fifteen (15) calendar days of the entry of the Preliminary Approval
11 Order, Defendants shall provide the Settlement Administrator with the
12 following information:

13 **6.2.2.1** the names, last known addresses, and social security numbers of
14 each Class Member;

15 **6.2.2.2** the total number of Pay Periods worked by each Class Member
16 during the Class Period; and

17 **6.2.2.3** such other information that the Settlement Administrator requires
18 to identify Class Members.

19 **6.2.2.4** The information described in subparagraphs 6.2.2.1 through
20 6.2.2.3 shall be collectively referred to as the (“Class Data List”).

21 **6.2.3** Upon its receipt of the list of names and last known addresses of each
22 Class Member, the Settlement Administrator shall access the National
23 Change of Address (“NCOA”) Database, and update the addresses
24 maintained by Defendants.

25 **6.2.4** On or before the Notice Date, (*i.e.*, with thirty (30) calendar days of the
26 entry of the Preliminary Approval Order) the Settlement Administrator
27 shall send the Class Notice by bulk first class mail, forwarding requested,
28 to the Class Members at the addresses identified through the process
described above.

1 **6.2.5** As to any Class Notices that are returned by the Post Office as
2 undeliverable or where the NCOA Database indicates that the last known
3 address of any Class Member is invalid or otherwise undeliverable or not
4 appropriate for receipt of the Class Notice, the Settlement Administrator
5 shall perform a skip trace procedure. Such skip-trace procedure shall be
6 performed upon receipt of the notice thereof, on a batch basis for
7 efficiency reasons. If this procedure reveals a new address, the Settlement
8 Administrator shall within five (5) business days thereafter re-mail the
9 Class Notice to the new address. The re-mailed notice packet will contain
10 an updated deadline to request exclusion or object, which will be (30) days
11 from the date of re-mailing.

12 **6.2.6** If Defendants, Class Counsel, and the Settlement Administrator determine,
13 based upon further review of available data, that a person previously
14 identified as being a Class Member should not be so included or identify a
15 person who should have been included as a Class Member but was not so
16 included, Defendants and the Settlement Administrator shall promptly
17 delete or add such person as appropriate and notify Class Counsel prior to
18 such deletions or additions (and the reasons therefore).

19 **6.2.7** The time periods and methodologies set forth herein reflect Defendants’
20 best current belief as to its ability to make such identifications and it is
21 understood that Defendants, in undertaking the tasks set forth herein, shall
22 use reasonable efforts to identify all Class Members and to determine their
23 last known addresses and social security numbers, as provided in
24 Paragraphs 6.2.1 and 6.2.2, and to do so within the stated time periods.

25 **6.2.8** Other than the obligations set forth in this Settlement Agreement,
26 Defendants shall have no additional obligation to identify or locate any
27 Class Member.

28 **6.4 Objections to the Settlement.** Any Class Member may object to the proposed
Settlement, or any portion thereof, by mailing a written objection, and supporting

1 papers, if any, to the Settlement Administrator, Class Counsel and Defense
2 Counsel at the addresses that are set forth in the Class Notice. To be timely, all
3 objections must be postmarked, physically delivered to the Settlement
4 Administrator, or faxed to the Settlement Administrator no later than sixty (60)
5 days after the Notice Date (“Objection Deadline”). A written objection must
6 contain the objecting person’s full name, current address, and include all
7 objections and the reasons therefore, and include any and all supporting papers
8 (including, without limitation, all briefs, written evidence, and declarations). A
9 Class Member who desires to object but who fails to comply with the objection
10 procedure set forth herein shall be deemed to have not objected. The Settlement
11 Administrator shall send all objections by .pdf to counsel for Defendants and
12 Class Counsel. Only objectors who timely submit written objections may appear
13 at the final fairness hearing, but the Court may consider any objections filed,
14 regardless of whether the individual appears at the final fairness hearing. Any
15 Class Member who does not timely file written objections shall not be permitted
16 to present his, her, or its objections at the Final Fairness Hearing. Any Class
17 Member who files an objection, but does not otherwise properly and timely
18 exclude themselves from this Settlement Agreement pursuant to the procedure set
19 forth below at Paragraph 6.6, shall receive monetary compensation from the
20 Settlement.

20 **6.5 All Class Members Settling Parties.** All Class Members shall be deemed to be
21 within the Class for all purposes under this Settlement Agreement, shall be bound
22 by the terms and conditions of this Settlement Agreement, including all orders
23 issued pursuant thereto, and shall be deemed to have waived all unstated
24 objections and opposition to the fairness, reasonableness, and adequacy of this
25 Settlement Agreement, and any of its terms, except those who properly and timely
26 exclude themselves from this Settlement Agreement pursuant to the procedure set
27 forth below at Paragraph 6.7.
28

1 **6.6 Effect of Settlement Agreement.** If the Settlement Agreement is given final
2 approval, it shall operate as a full, complete, and final release of all the Released
3 Claims of the Class Representative, all the Released Claims of all Releasing
4 Parties.

5 **6.7 Exclusion.** In order for a Class Member to validly and effectively request
6 exclusion from, and opt out of, this Settlement, the Class Member must submit a
7 signed request to be excluded from this Settlement to the Settlement
8 Administrator that is postmarked by, physically delivered to the Settlement
9 Administrator, or faxed to the Settlement Administrator by no later than, sixty
10 (60) calendar days after the Notice Date. Any Class Member who requests to be
11 excluded from this Settlement as provided in this Paragraph shall not receive any
12 payment pursuant to this Settlement, shall have no right to object to this
13 Settlement, and shall not be bound by any release provided for in this Settlement
14 Agreement. The share of any Class Member who submits a valid requests for
15 exclusion will revert to the Net Settlement Amount and be distributed to Class
16 Members on a pro rata basis proportionate to the amounts to be paid to each Class
Member, in accordance with Paragraph 2.2.

17 **7. Notice Process.**

18 **7.1** Class Members will have sixty (60) calendar days from the date the Class Notices
19 are mailed by the Settlement Administrator to postmark, physically deliver to the
20 Settlement Administrator, or fax to the Settlement Administrator their Pay Period
21 disputes, requests for exclusion and/or objections. The Settlement Administrator
22 will perform one skip-trace on returned mail and re-mail the Class Notice to an
23 updated address (if any) immediately upon receiving notice that a Class Notice
24 was undeliverable and will make best efforts promptly to re-mail a notice packet
25 if an updated address is located. The re-mailed notice packet will contain an
26 updated deadline to dispute Pay Periods, request exclusion or object, which will
27 be 30 days from the date of re-mailing. It is the intent of the Parties that
28 reasonable means be used to locate Class Members.

1 **7.2** Included within the Class Notice sent to persons believed to be Class Members
2 based on the identification information contained in Defendants' records shall be
3 pre-printed information about each Class Member's approximate share of the
4 settlement based on Defendants' Pay Period data. It shall state the total number
5 of Pay Periods during which the Class Member to whom it is being sent worked
6 during the Class Period according to Defendants' records, and Class Member's
7 approximate share of the Settlement Sum as set forth in this Settlement
8 Agreement, subject to the limitations set forth herein.

9 **7.3** The Class Notice shall also state that if the Class Member disagrees with the
10 information set forth thereon regarding the number of Pay Periods worked by the
11 Class Member during the Class Period, the Class Member must submit to the
12 Settlement Administrator the information that he or she believes is correct,
13 explain the basis for such belief, and submit written documentation to support his
14 or her challenge. Failure to submit written documentation to the Settlement
15 Administrator to support such challenge means that Defendants' information will
16 be controlling, without the need for a curative letter from the Settlement
17 Administrator. The Settlement Administrator will have the power to make the
18 final determination as to any disputes.

19 **7.4** The Settlement Administrator shall be responsible for issuing the payments and
20 calculating, withholding and paying all required state and federal taxes, if any,
21 and for communicating this information to Defense Counsel. Upon completion of
22 its calculation of payments, the Settlement Administrator shall provide Class
23 Counsel and Defense Counsel with a report listing the amount of all payments to
24 be made to each Class Member, in which the names of such Class Members will
25 be coded. Proof of payment will be filed with the Court and provided to the
26 Parties' counsel.

27 **7.5** Defendants' provision of payments, as provided in Paragraph 2.1, shall
28 commence on or before thirty (30) court days after the Final Effective Date.
 Checks shall be mailed to the addresses used for the mailing of the Notices by the

1 Settlement Administrator unless the Class Member provides the Settlement
2 Administrator with a different address prior to mailing of the checks.

3 **7.6** If a check sent to a Class Member is returned with a forwarding address provided
4 by the Postal Service, it shall be re-mailed to the forwarding address provided. If
5 a check is returned as undeliverable by the Postal Service or is otherwise
6 designated by the Postal Service as having been sent to an invalid address, and the
7 Class Member did not provide the Settlement Administrator with additional
8 address information after the mailing of the Check, the Settlement Administrator
9 shall provide the checks to the Department of Labor Standards Enforcement's
10 unclaimed wage fund at the same time as it provides those settlement checks that
11 have expired pursuant to Paragraph 7.7.

12 **7.7 Discharge of Obligations.** Defendants shall fully discharge their obligations to
13 those Class Members to whom they will pay a Settlement Sum through the
14 mailing of a check as set forth in Paragraphs 7.4 and 7.5, above, regardless of
15 whether such checks are actually received and/or negotiated by Class Members.
16 Any check that is not negotiated within 120 days of mailing to a Class Member,
17 or that is undeliverable under Paragraph 7.5, above, shall not be re-issued and will
18 be provided to the Department of Labor Standards Enforcement's unclaimed
19 wage fund. For purposes of determining whether Defendants have met their
20 financial obligation to pay the Settlement, Defendants will be deemed to have
21 paid upon the mailing of the check to the Class Member, regardless of whether
22 such Class Member subsequently negotiates the check.

23 **7.8** Any Class Member who does not negotiate the check or does not submit a valid
24 and timely request for exclusion shall nonetheless be bound by the release
25 provided for hereinabove, and shall be barred from bringing any action against the
26 Released Parties concerning the Released Claims.

27 **7.9 Dispute Resolution Procedure.** In the event of any disagreement between an
28 actual or potential Class Member and Defendants regarding the right to receive a
Settlement Sum or the amount of the Settlement Sum, the following dispute

1 resolution procedure shall be used: The actual or potential Class Member shall
2 set forth all facts supporting the person's dispute, any written statements from
3 witnesses supporting the person's dispute, and any other supporting evidence to
4 the Settlement Administrator. The Settlement Administrator shall provide these
5 items to Defense Counsel and Class Counsel for review, within three (3) business
6 days of receipt. If the Parties cannot thereafter resolve the disagreement, the
7 dispute shall be resolved by the Settlement Administrator, based on a review of
8 Defendants' records and the person's records. The Settlement Administrator's
9 decision will be final and non-appealable.

10 **8. Taxes.**

11 **8.1** The Settling Parties agree that all of the settlement payments to Class Members
12 shall be considered payment of penalties and interest associated with alleged
13 incorrect pay instruments/stubs and/or wage/earnings statements, neither of which
14 shall be subject to any withholdings and all of which shall be reflected on IRS
15 Forms 1099 issued to Class Members.

16 **8.2** The Settlement Administrator will also be responsible for issuing any required
17 state and federal reporting documents (such as IRS Forms 1099s) to Class
18 Members, Class Counsel, and the Class Representative on behalf of Defendant
19 GCS Service, Inc.

20 **8.3** The Settlement Administrator shall issue a Form 1099, under the terms set forth in
21 this Settlement Agreement, to Class Members receiving settlement compensation.

22 **8.4** For all purposes, payments shall be deemed compensation to the Class Member,
23 whether a current or former relationship to Defendants exists, in the year the
24 payment is actually made. It is expressly understood and agreed that the receipt of
25 any payments made to a Class Member will not entitle any Class Member
26 additional compensation or benefits under any company bonus, contest or other
27 compensation or benefit plan or agreement in place during the period covered by
28 the Settlement, nor will it entitle any Class Member to any increased retirement,
401K benefits or matching benefits, or deferred compensation benefits. It is the

1 intent of this Settlement that Settlement payments are the sole payments to be
2 made by Defendants to the Class Member, and that Class Members are not
3 entitled to any new or additional compensation or benefits as a result of having
4 received the individual settlement awards (notwithstanding any contrary language
5 or agreement in any benefit or compensation plan document that might have been
6 in effect during the period covered by this Settlement).

7 **8.5** Defendants make no representation as to the tax treatment or legal effect of the
8 payments called for hereunder and the Class Representative and Class Members
9 are not relying on any statement, representation, or calculation by Defendants or
10 by the Settlement Administrator in this regard. The Class Representative and
11 Class Members understand and agree that they will be solely responsible for the
12 payment of any taxes and penalties assessed on the payments described herein and
13 will defend, indemnify, and hold Defendants free and harmless from and against
14 any claims in connection therewith, except as to those relating to the employer-
side taxes.

15 **9. Application for Preliminary Approval Order.** Class Counsel will file a Motion for
16 Preliminary Approval of the proposed Settlement, pursuant to California Rule of Court 3.769, set to be
17 heard on a date to be determined. In connection with the Motion, the Settling Parties shall apply for a
18 Preliminary Approval Order that contains the following provisions:

19 **9.1** preliminarily approving the Settlement Agreement under the legal standards
20 relating to the preliminary approval of class action settlements;

21 **9.2** approving the form of the Class Notice, and finding that the proposed method of
22 disseminating the Class Notice meets the requirements of California Rule of
23 Court 3.766 and of due process and is the best notice practicable under the
24 circumstances;

25 **9.3** approving Phoenix Settlement Administrators, Inc. as the Settlement
26 Administrator;

27 **9.4** establishing the procedures and the deadline by which Class Members may assert
28 objections to, or request exclusion from, the Settlement;

1 **9.5** setting a date for the Final Fairness Hearing; and

2 **9.6** setting a date that is approximately seven (7) court days before the date of the
3 Final Fairness Hearing by which the Parties must file their respective responses to
4 any objections to the Settlement that were filed by Class Members on or before
5 the Objection Deadline.

6 **10. Final Fairness Hearing.** The Settling Parties will contact the Court and reserve a date
7 for the Final Fairness Hearing at the time Preliminary Approval is granted. At the Final Fairness
8 Hearing, Plaintiff and Defense Counsel shall use their best efforts to urge the Court to grant final
9 approval of the Settlement in its entirety (including any modification made thereto with the consent of
10 the Settling Parties as provided herein), and to enter a Final Approval Order and Judgment as set forth in
11 Paragraph 11.

12 **11. Final Approval Order and Judgment.** If the Settlement (including any modification
13 made thereto with the consent of the Settling Parties as provided herein) is finally approved by the Court
14 following the Final Fairness Hearing, the Settling Parties hereto shall jointly request that the Court enter
15 a Final Approval Order and Judgment as follows:

16 **11.1** The Final Approval Order shall include the following provisions:

17 **11.1.1** finding that the dissemination of the Class Notice = in the form and
18 manner ordered by the Court was accomplished as directed, met the
19 requirements of due process, was the best notice practicable under the
20 circumstances, and constituted due and sufficient notice to all Persons
21 entitled thereto;

22 **11.1.2** finding that the Class Representative and Class Counsel herein have fairly
23 and adequately represented and protected the interests of the Class at all
24 times in the Action;

25 **11.1.3** finally approving the Settlement Agreement and the settlement as fair,
26 reasonable and adequate and directing consummation of the Settlement in
27 accordance with its terms and provisions;

28 **11.2** The Judgment shall include the following provisions:

1 **11.2.1** directing the Settling Parties to implement the terms of the Settlement
2 Agreement, including without limitation the provisions regarding the
3 payment of the Settlement Sum to each Class Member as set forth in this
4 Settlement Agreement;

5 **11.2.2** defining the Class;

6 **11.2.3** releasing and discharging the Released Parties from any and all liability
7 with respect to the Released Claims as hereinabove provided;

8 **11.2.4** awarding reasonable attorneys' fees, costs, and expenses to Class Counsel
9 as provided in Paragraphs 3.1 and 3.2, and subject to the limitations set
10 forth in Paragraph 3.5, or reserving jurisdiction with respect thereto;

11 **11.2.5** awarding enhancements to the Class Representative as provided in
12 Paragraph 3.3, and subject to the limitations set forth therein, or reserving
13 jurisdiction with respect thereto; and

14 **11.2.6** reserving continuing and exclusive jurisdiction over all matters related to
15 the administration and consummation of the terms of this Settlement, over
16 the enforcement, construction and interpretation of this Settlement
17 Agreement, over the enforcement, construction, and interpretation of the
18 Judgment, and over Plaintiff and all Class Members (and their attorneys
19 and law firms) in connection therewith.

20 **12. Finality; Effect of the Settlement Not Being Final.**

21 **12.1 Finality.** The approval of the Settlement shall be considered Final on the Final
22 Effective Date. Except as expressly stated herein, none of the obligations of
23 Defendants pursuant to the Settlement Agreement shall become effective until the
24 settlement becomes Final, but Defendants may waive this condition in writing.

25 **12.2** In the event that the Settlement as provided for in this Settlement Agreement does
26 not become Final, or does not become effective for any reason other than the
27 failure of any party to perform such party's obligations hereunder (except as to
28 the Settlement not becoming Final because of any appeal, which circumstance can
 be waived by Defendants), then the Settlement Agreement shall become null and

1 void and of no further force and effect, and all negotiations, proceedings, and
2 statements relating thereto shall be without prejudice as to the rights of any and all
3 parties hereto and their respective predecessors and successors, and all parties and
4 their respective predecessors and successors shall be deemed to have reverted to
5 their respective positions in the Action as of the date and time immediately prior
6 to the execution of this Settlement Agreement, and except as otherwise expressly
7 provided, the effect shall be the same as if the Settlement Agreement was
8 terminated pursuant to Paragraph 13.

9 **13. Settlement Termination.**

10 **13.1** In the event that more than an aggregate total of fifteen (15%) percent of the total
11 number of Class Members elect to exclude themselves from this Settlement,
12 Defendants will have the unilateral right to void this Settlement within fourteen
13 (14) calendar days of the Objection and Request for Exclusion Deadline. If
14 Defendants exercise their rights under this Paragraph: (a) this Settlement
15 Agreement and the Settlement (with the exception of Paragraph 4) shall be
16 terminated and become void and of no effect, except for the obligation of
17 Defendants to pay for any and all expenses incurred in connection with the Notice
18 and administration of the Settlement on or before the date on which the
19 Settlement is terminated; (b) any actions taken or to be taken in connection with
20 this Settlement Agreement and the Settlement shall become null and void and of
21 no effect; (c) this Settlement Agreement and the Settlement and any hearings or
22 proceedings thereunder shall not be referred to or used as evidence for or against
23 any party or Class Member in this or any other action or proceeding; and (d) all
24 pretrial proceedings, including discovery, shall resume thirty (30) calendar days
25 thereafter as if this Settlement had not been submitted for approval of the Court.

26 **13.2** In the event that the total number of Class Members exceeds 116 people, which is
27 the estimated number of Class Members provided by Defendants to Plaintiff in
28 connection with the Parties' mediation on April 27, 2015, by more than fifteen
(15%) percent, (*i.e.*, the total number of Class Members exceeds 135 people),

1 Plaintiff will have the unilateral right to void this Settlement within fourteen (14)
2 calendar days of the date Defendants turn over the Class Data to the
3 Administrator. If Plaintiff exercises its rights under this Paragraph: (a) this
4 Settlement Agreement and the Settlement (with the exception of Paragraph 4)
5 shall be terminated and become void and of no effect, except for the obligation of
6 Defendants to pay for any and all expenses incurred in connection with the Notice
7 and administration of the Settlement on or before the date on which the
8 Settlement is terminated; (b) any actions taken or to be taken in connection with
9 this Settlement Agreement and the Settlement shall become null and void and of
10 no effect; (c) this Settlement Agreement and the Settlement and any hearings or
11 proceedings thereunder shall not be referred to or used as evidence for or against
12 any party or Class Member in this or any other action or proceeding; and (d) all
13 pretrial proceedings, including discovery, shall resume thirty (30) calendar days
14 thereafter as if this Settlement had not been submitted for approval of the Court.

15 **13.3** Moreover, in the event that (a) the Court declines to enter Preliminary Approval
16 of the Settlement Agreement or declines to enter the Final Approval and/or
17 Judgment or any part thereof as provided for herein, or the Settling Parties hereto
18 fail to consent to the entry of alternative forms of Judgment, in lieu thereof, or
19 after such consent the Court declines to enter such alternate form of Judgment; (b)
20 any other conditions to the Settlement are not satisfied; (c) the Court disapproves
21 this Settlement, or any term contained in this Settlement Agreement, including
22 any amendments hereto, and such disapproval becomes final by reason of its
23 affirmance on appeal or lapse of time or otherwise; or (d) the Court approves this
24 Settlement, including any amendments hereto, but any such judgment and
25 approval is finally reversed on appeal, then, in any such event, this Settlement
26 shall be void, and the Preliminary Approval Order and the Final Approval Order
27 and Judgment shall be vacated upon application to the Court. In such event, (a)
28 this Settlement Agreement and the Settlement (with the exception of Paragraph 4)
shall be terminated and become void and of no effect, except for the obligation of

1 Class Counsel and Defendants to equally pay for any and all expenses incurred in
2 connection with the Notice and administration of the Settlement on or before the
3 date on which the Settlement is terminated; (b) any actions taken or to be taken in
4 connection with this Settlement Agreement and the Settlement shall become null
5 and void and of no effect; (c) this Settlement Agreement and the Settlement and
6 any hearings or proceedings thereunder shall not be referred to or used as
7 evidence for or against any party or Class Member in this or any other action or
8 proceeding; and (d) all pretrial proceedings, including discovery, shall resume
9 thirty (30) calendar days thereafter as if this Settlement had not been submitted
10 for approval of the Court.

11 **14. Extensions of Time.** Without further order of the Court, the Settling Parties hereto may
12 agree in writing to reasonable extensions of time to carry out any of the provisions of the Settlement,
13 with the exception of the deadline to file the motion for final approval and the hearing date for the
14 motion for final approval.

15 **15. Construction.** This Settlement Agreement was entered into after substantial good faith,
16 arms-length negotiations between the Settling Parties' Counsel. This Settlement Agreement is entered
17 into freely and voluntarily only after each party had carefully read and reviewed it with counsel, and it
18 reflects the conclusion of each party that this Settlement Agreement and the Judgment and the releases,
19 waivers, and covenants contemplated hereby are in the best interest of said party. This Settlement
20 Agreement has been entered into without any coercion and under no duress. The Settling Parties
21 acknowledge and agree that all parties had an equal hand in drafting this Settlement Agreement so that it
22 shall not be deemed to have been prepared or drafted by one party or another. All parties waive the
23 provisions of California Civil Code Section 1654, which provides, in pertinent part, that "the language
24 of a contract should be interpreted most strongly against the party who causes the uncertainty to exist."
25 Except as expressly provided herein, this Settlement Agreement is not intended to confer any rights or
26 remedies upon any person other than the Settling Parties.

27 **16. Due Authority of Attorneys.** Each of the attorneys executing this Settlement
28 Agreement on behalf of one or more parties hereto warrants and represents that he or she has been duly

1 authorized and empowered to execute this Settlement Agreement on behalf of each such respective party
2 and to bind them to the terms hereof.

3 **17. Entire Agreement.** This Settlement Agreement (including the Exhibits annexed hereto)
4 sets forth the entire agreement of the Settling Parties with respect to its subject matter and supersedes
5 any and all other prior agreements and all negotiations leading up to the execution of this Settlement
6 Agreement, whether oral or written, regarding the subjects covered herein. The Settling Parties
7 acknowledge that no representations, inducements, warranties, promises, or statements relating to the
8 subjects covered herein, oral or otherwise, have been made by any of the Settling Parties or by anyone
9 acting on behalf of the Settling Parties which are not embodied or incorporated by reference herein, and
10 further agree that no other agreement, covenant, representation, inducement, promise or statement
11 relating to the subjects covered herein not set forth in writing in this Settlement Agreement, shall be
12 valid or binding.

13 **18. Modification or Amendment.** This Settlement Agreement may not be modified or
14 amended except in a writing signed by all signatories hereto or their successors in interest.

15 **19. Deadlines Falling on Weekends or Holidays.** To the extent that any deadline set forth
16 in this Settlement Agreement falls on a Saturday, Sunday, or legal holiday, that deadline shall be
17 continued until the following business day.

18 **20. Successors.** This Settlement Agreement shall be binding upon and inure to the benefit of
19 the Settling Parties hereto (including Class Members) and their respective heirs, executors,
20 administrators, successors and assigns, and upon any corporation, partnership or other entity into or with
21 which any Settling Party hereto may merge, combine or consolidate.

22 **21. Severability.** In the event that any one or more of the provisions contained in this
23 Settlement Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such
24 invalidity, illegality, or unenforceability shall in no way affect any other provision if Defendants and
25 Class Counsel, on behalf of the Settling Parties and the Class, mutually elect in writing to proceed as if
26 such invalid, illegal, or unenforceable provision had never been included in this Settlement Agreement.

27 **22. Counterparts.** This Settlement Agreement may be executed in counterparts, each of
28 which shall be deemed an original, and all of which together shall constitute one and the same

1 instrument. Facsimile and/or email transmission of the signatures of the Settling Parties or their
2 representatives shall be binding on the Settling Parties.

3 **23. Waivers.** The waiver by any party of any breach of this Settlement Agreement shall not
4 be deemed or construed as a waiver of any other breach, whether prior, subsequent, or
5 contemporaneous, of this Settlement Agreement.

6 **24. Governing Law.** This Settlement Agreement shall be governed by and construed,
7 enforced, and administered in accordance with the laws of the State of California, without regard for the
8 law of the State regarding conflicts of laws or choice of law. Any orders or judgments entered by the
9 Court in conjunction with the proceedings relating to or arising out of this Settlement Agreement shall
10 be construed and enforced under, and all issues relating to the preclusive effect of such orders or
11 judgments shall be determined by, the laws of the State of California relating to the construction,
12 enforcement, and preclusive effect of orders and judgments entered by state courts.

13 **25. Continuing Jurisdiction.** The Court will have continuing jurisdiction over the Action
14 for the purpose of implementing the Settlement Agreement, the Final Approval of the Settlement, entry
15 of Judgment, and post-judgment issues, until all related matters are fully resolved. Except as provided
16 in Paragraph 7.9, above, any dispute regarding the Settling Parties' obligations pursuant to this
17 Settlement Agreement and/or interpretation of the terms of this Settlement Agreement will be presented
18 by written motion to, and resolved by, the Court.

19 **26. Regulation.** In the event that any provision in this Settlement Agreement shall be
20 affected by any rule, regulation, ordinance, order, directive, or statute by any unit of government,
21 whether state, federal, or local, such rule, regulation, ordinance, order, directive, or statute shall
22 supersede and take precedence over any such provision of this Settlement Agreement to the contrary and
23 in no event shall Defendants be in violation of this Settlement Agreement nor shall this Settlement
24 Agreement be in any way affected should Defendants take any action or change any of its business
25 practices to comply with such state, federal, or local rules, regulations, ordinances, or statutes currently
26 in force or enacted in the future.

27 **27. Headings.** The headings contained in this Settlement Agreement are for convenience
28 and reference purposes only, and shall not be given weight in its construction.

DEFENDANTS ECOLAB, INC. AND GCS SERVICE, INC.

Dated: _____, 2015

Joanne J. Mullen, Associate General Counsel
On behalf of Defendants, Ecolab, Inc. and GCS Service, Inc.

APPROVED AS TO FORM AND CONTENT

Dated: _____, 2015

AEGIS LAW FIRM, P.C.

Samuel A. Wong
Kashif Haque
Jessica Campbell
Attorneys for Plaintiff Paul Casey and the Settlement Class

Dated: _____, 2015

JACKSON LEWIS P.C.

Mia Farber
Shagha Balali
Attorney for Defendants, Ecolab, Inc. and GCS Service, Inc.