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16
17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **FOR THE COUNTY OF LOS ANGELES**

19 * * *

20 MARK THOMPSON, as an individual and)
on behalf of all similarly situated)
21 employees,)

22 Plaintiff(s),)

23 vs.)

24 PROFESSIONAL COURIER &)
NEWSPAPER DISTRIBUTION; BRANDT)
25 BROTHERS ENTERPRISES, INC.; and)
DOES 1 through 50, inclusive,)

26 Defendant(s).)
27)
28)

Case No. BC568018

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT AND
RELEASE**

Complaint Filed: December 30, 2014

Trial Date: None Set

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1 This Joint Stipulation of Settlement and Release of Class Action ("Stipulation") is made and
2 entered into by Plaintiff Mark Thompson ("Plaintiff"), individually and as representative of the
3 Settlement Class, as defined below, and Defendants Professional Courier & Newspaper Distribution,
4 Inc. and Brandt Brothers Enterprises, Inc. ("Defendants"). This Stipulation is subject to the approval of
5 the Court pursuant to California Rules of Court Rule 3.769 and is made for the sole purpose of
6 attempting to consummate settlement of this Action on a class-wide basis subject to the following terms
7 and conditions. As detailed below, in the event the Court does not enter an order granting final approval
8 of the Settlement or the conditions precedent are not met for any reason, this Stipulation shall be void
9 and shall be of no force or effect whatsoever.

10 **I. DEFINITIONS.**

11 As used in this Stipulation, the following terms shall have the meanings specified below. To the
12 extent terms or phrases used in this Stipulation are not specifically defined below, but are defined
13 elsewhere in this Stipulation, they are incorporated by reference into this definition section.

14 **1. Action.**

15 "Action" shall mean the prosecution of the wage and hour claims asserted by Plaintiff, including
16 the civil action filed in the Superior Court of California, County of Los Angeles, and the amended
17 version thereof as provided in Section XI.2.

18 **2. Complaint.**

19 "Complaint" shall mean the complaint to be filed by Plaintiff in the Superior Court of California,
20 County of Los Angeles, as provided in Section XI.2. The Complaint shall be the operative complaint for
21 purposes of this Stipulation.

22 **3. Administrative Expenses.**

23 "Administrative Expenses" shall include all costs and expenses associated with the Settlement
24 Administrator.

25 **4. Claims.**

26 "Claims" shall mean the claims asserted in the Complaint, including any claim arising out of or
27 related to those claims and all matters released in Article X of this Stipulation.

1 **5. Class or Settlement Class.**

2 “Class” or “Settlement Class” shall mean all current and former non-exempt employees of
3 Defendants employed between December 30, 2010 and the Preliminary Approval Date.

4 **6. Class Counsel.**

5 “Class Counsel” shall mean the Kevin Mahoney and Treana Allen at Mahoney Law Group,
6 APC, 249 E. Ocean Boulevard, Suite 814, Long Beach, CA 90802.

7 **7. Class Attorney’s Fee and Expenses.**

8 “Class Attorney’s Fee and Expenses” shall mean Class Counsel’s attorney fees and expenses as
9 set forth in Section IV, paragraph 6.

10 **8. Class Member or Settlement Class Member.**

11 “Class Member” or “Settlement Class Member” shall mean any person who is a member of the
12 Settlement Class, or, if such person is incompetent or deceased, the person’s legal guardian, executor,
13 heir or successor-in-interest.

14 **9. Class Notice.**

15 “Class Notice” shall mean the Notice of Proposed Class Action Settlement and Hearing Date for
16 Court Approval, as set forth in the form of *Exhibit 1* attached hereto, or as otherwise approved by the
17 Court, which is to be mailed to Class Members.

18 **10. Class Claimants.**

19 “Class Claimants” shall mean any and all Class Members who **do not** submit a valid and timely
20 opt-out form in the form attached hereto as *Exhibit 2* (the “Opt-Out Form”) as provided herein.

21 **11. Class Period.**

22 “Class Period” shall mean December 30, 2010 through the date of Preliminary Approval, as
23 defined herein.

24 **12. Class Representative.**

25 “Class Representative” shall mean Plaintiff Mark Thompson.

1 **13. Opt-Out Deadline.**

2 “Opt-Out Deadline” shall mean the date forty-five (45) days following the date on which the
3 Settlement Administrator first mails Class Notice and Opt-Out Forms to the Class Members.

4 **14. Claims Period.**

5 “Claims Period” shall mean the period of time from December 30, 2010 through the Opt-Out
6 Deadline.

7 **15. Class Settlement or Settlement.**

8 “Class Settlement” or “Settlement” shall mean the settlement embodied in this Stipulation, which
9 is subject to Court approval.

10 **16. Court.**

11 “Court” shall mean the Superior Court of California, County of Los Angeles.

12 **17. Defendants.**

13 “Defendants” shall mean Professional Courier & Newspaper Distribution, Inc. and Brandt
14 Brothers Enterprises, Inc.

15 **18. Defense Counsel.**

16 “Defense Counsel” shall mean S. Brett Sutton, Jared Hague, and Wesley Carlson of Sutton
17 Hague Law Corporation, P.C.

18 **19. Effective Date.**

19 1. Effective Date” of this Stipulation means the first business day upon which the last of the
20 following have occurred:

- 21 a. If Stipulated Class Members have not filed objections, or if they have filed objections
22 and said objections have been withdrawn, entry of the Final Judgment in this Action
23 after the Court has granted final approval of the Settlement, and a file stamped copy
24 of the Final Judgment with a proof of service has been served on all Parties by Class
25 Counsel, or
26 b. If Stipulated Class Members have filed objections that have not been withdrawn,
27 either (1) the time to appeal, object or attack the Court’s entry of Final Judgment has
28

1 expired and there has been no appeal, objection or attack; or (2) The court of last
2 resort to which any appeal is taken has affirmed its entry of Final Judgment in its
3 entirety or the Stipulated Class Member has presented a petition for review and the
4 affirmance is no longer subject to further appeal or review, and no further challenge
5 to the entry of Final Judgment is possible.

6 **20. Final Approval and Fairness Hearing.**

7 "Final Approval and Fairness Hearing" shall mean the final hearing held to ascertain the fairness,
8 reasonableness, and adequacy of the Class Settlement.

9 **21. Professional Courier & Newspaper Distribution, Inc.**

10 "Professional Courier" shall mean Professional Courier & Newspaper Distribution, Inc., and its
11 present and former parent companies, subsidiaries, divisions, affiliates, successors, predecessors, related
12 companies, and joint ventures, and each of their present and former officers, directors, shareholders,
13 agents, employees, insurers, attorneys, accountants, auditors, advisors, representatives, consultants,
14 pension and welfare benefit plans, plan fiduciaries, administrators, trustees, general and limited partners,
15 predecessors, successors and assigns.

16 **22. Brandt Brothers Enterprises, Inc.**

17 "Brandt Brothers" shall mean Brandt Brothers Enterprises, Inc., and its present and former parent
18 companies, subsidiaries, divisions, affiliates, successors, predecessors, related companies, and joint
19 ventures, and each of their present and former officers, directors, shareholders, agents, employees,
20 insurers, attorneys, accountants, auditors, advisors, representatives, consultants, pension and welfare
21 benefit plans, plan fiduciaries, administrators, trustees, general and limited partners, predecessors,
22 successors and assigns.

23 **23. Gross Settlement Amount.**

24 "Gross Settlement Amount" shall mean the total amount, not to exceed Three Hundred Thousand
25 Dollars (\$300,000), that may be paid by Defendant to the Class Members in full settlement of the
26 Released Claims asserted in this case, the Administrative Expenses, Taxes and Required Withholdings,
27

1 Incentive Award, Class Attorney's Fees and Expenses, and payment made to the Labor and Workforce
2 Development Agency pursuant to the Labor Code Private Attorney General Act of 2004 ("PAGA").
3 Defendant shall separately pay its share of the employer related taxes. The Gross Settlement Amount is
4 based on Defendants representation that the Class size is approximately 320 individuals. Should the
5 class size increase by more than 10%, the Gross Settlement Amount shall increase proportionately (i.e.,
6 if the class size increases by 32 individuals, the Gross Settlement Amount will also increase by Thirty
7 Thousand Dollars (\$30,00.00)).

8 **24. Hearing on Preliminary Approval.**

9 "Hearing on Preliminary Approval" shall mean the hearing held on the motion for preliminary
10 approval of the Class Settlement.

11 **25. Incentive Award.**

12 "Incentive Award" shall mean any additional monetary payment, up to Seven Thousand Five
13 Hundred Dollars (\$7,500) to Named Plaintiff, provided to Named Plaintiff for his efforts and risks on
14 behalf of the Class in this Action.

15 **26. Individual Settlement Amount.**

16 "Individual Settlement Amount" shall mean the amount which is ultimately distributed to each
17 Class Claimant, net of any Taxes and Required Withholdings.

18 **27. Named Plaintiff.**

19 "Named Plaintiff" shall mean Plaintiff Mark Thompson.

20 **28. Net Settlement Amount.**

21 "Net Settlement Amount" shall mean the Gross Settlement Amount less the Class Attorney's Fee
22 and Expenses, Administrative Expenses, Incentive Award, and payment made to the Labor and
23 Workforce Development Agency pursuant to PAGA.

24 **29. Opt-Out(s).**

25 "Opt-Out(s)" shall mean any and all persons who timely and validly request exclusion from the
26 Class in accordance with the terms of the Class Notice.

1 **30. Opt-Out Request.**

2 “Opt-Out Request” shall mean a timely and valid request for exclusion from the Class in
3 accordance with the terms of the Class Notice and in the Opt-Out Form attached hereto as *Exhibit 2*, or
4 as otherwise approved by the Court.

5 **31. Parties.**

6 “Parties” shall mean the Named Plaintiff and Defendants.

7 **32. Preliminary Approval Date.**

8 “Preliminary Approval Date” shall mean the date upon which the Court enters an order
9 preliminarily approving this Stipulation.

10 **33. Released Claims.**

11 “Released Claims” shall mean any and all claims, demands, rights, debts, obligations, costs,
12 expenses, wages, liquidated damages, statutory damages, penalties including civil and statutory,
13 liabilities, and/or causes of action of any nature and description whatsoever, whether known or
14 unknown, at law or in equity, whether concealed or hidden, whether under federal, state, and/or local
15 law, statute, ordinance, regulation, common law, or other source of law, which were asserted in the
16 Action or could have been asserted based on the facts and claims alleged in the Complaint. Released
17 Claims include, without limitation, claims arising under federal, state, and/or local statutory,
18 constitutional, contractual, or common law claims for wages, damages, costs, penalties, liquidated
19 damages, punitive damages, interest, attorney fees, litigation costs, restitution, equitable relief, or other
20 relief under California Business & Professions Code Section 17200 et seq. (“Section 17200”) based on
21 the California Labor Code; the Wage Orders of the California Industrial Welfare Commission; and
22 Section 17200, including, but not limited to, failure to provide timely, off-duty meal and/or rest breaks;
23 failure to promptly pay all wages due and owing at the time of the employee’s separation from
24 employment; engaging in unlawful/unfair/fraudulent business practices in violation of Section 17200;
25 failure to provide accurate itemized wage statements; failure to keep accurate payroll records; failure to
26 pay the California or federal minimum wage; failure to pay California or federal overtime; and any and
27 all California Labor Code provision giving rise to PAGA penalties. Only those Class Members who cash
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1 their Settlement check will be deemed to have released all claims under the Fair Labor Standards Act
2 (“FLSA”) that could have been brought based on the allegation in the Operative Complaint whether
3 known or unknown.

4 It is understood and agreed that the Stipulation will not release any person, party or entity from
5 claims, if any, by Settlement Class Members for workers compensation, unemployment, or disability
6 benefits of any nature. However, it is understood and agreed that any and all claims for penalties of any
7 kind, including civil or statutory penalties with respect to any and all wages of any nature are released.

8 **34. Released Parties.**

9 “Released Parties” shall mean the named Defendants Professional Courier & Newspaper
10 Distribution and Brandt Brothers Enterprises, Inc. and its present and former parent companies,
11 subsidiaries, divisions, affiliates, related companies, joint ventures, and each of their respective present
12 and former officers, directors, shareholders, agents, employees, insurers, attorneys, payroll companies,
13 accountants, auditors, advisors, representatives, consultants, pension and welfare benefit plans, plan
14 fiduciaries, administrators, trustees, general and limited partners, predecessors, successors and assigns.

15 **35. Settlement.**

16 “Settlement” shall mean the settlement between the Parties, which is memorialized in this
17 Stipulation.

18 **36. Settlement Administrator.**

19 “Settlement Administrator” shall mean Phoenix Settlement Administrators, which the Parties
20 have agreed will be responsible for administration of the Settlement and related matters, or another
21 neutral administrator mutually agreed to by the Parties.

22 **37. Settling Parties.**

23 “Settling Parties” shall mean the Named Plaintiff, the Settlement Class, and Defendants.

24 **38. Stipulation.**

25 “Stipulation” shall mean this Joint Stipulation of Settlement and Release of Class Action,
26 including any attached exhibits.

1 **39. Taxes and Required Withholding.**

2 “Taxes and Required Withholding” shall mean any and all applicable federal, state or local
3 payroll taxes including those collected under authority of the Federal Insurance Contributions Act
4 (“FICA”) on the employee’s portion of any Class Claimant’s Individual Settlement Amount that
5 constitutes wages as set forth in Section IV, paragraph 4. Defendants shall separately pay its share of
6 payroll taxes outside of the Gross Settlement Amount as defined in Section I, paragraph 23 above.

7 **II. FACTUAL AND PROCEDURAL BACKGROUND OF ACTION.**

8 **1. Named Plaintiff’s Claims.**

9 On December 23, 2014, Plaintiff Mark Thompson (“Thompson”) sent written notice to the Labor
10 and Workforce Development Agency (“LWDA”), as required by Labor Code section 2699.3, of
11 purported California wage and hour violations (“PAGA Notice”) allegedly committed by Defendants.
12 On December 30, 2014, Thompson filed a complaint in Los Angeles County Superior Court, Case No.
13 BC568018. Thompson filed a first amended complaint on August 19, 2015 which alleged the following
14 violations: 1) Failure to Pay All Minimum Wages; 2) Failure to Pay Promised Piece Rate; 3) Failure to
15 Provide Meal Breaks; 4) Failure to Provide Meal Breaks; 5) Failure to Pay Wages Upon Ending
16 Employment; 6) Failure to Keep Accurate Payroll Records (Labor Code Section 1174 and Section 226);
17 7) Unfair Competition (Business and Professions Code Section 17200 et seq.); and 8) Violation of Labor
18 Code Sections 2698-2699 (Private Attorney General Act).

19 As provided by Section XI.2 of this Stipulation, Named Plaintiff will file a second amended
20 complaint that will include a claim for expense reimbursement. The second amended complaint
21 (“Complaint”) will be the operative Complaint for purposes of the instant Joint Stipulation of Class
22 Settlement, as stated in Section I.2.

23 **2. Discovery, Investigation, and Research.**

24 Class Counsel has conducted significant formal and informal discovery and investigation during
25 the prosecution of the Action. This discovery and investigation includes the exchange of documents and
26 data pertaining to the potential Class Members and wage and hour policies and practices of Defendant
27 during the applicable period. The Parties have determined that the estimated size of the Class is
28

1 approximately 320 non-exempt current and former employees who worked for Defendant during the
2 Class Period. Should the Class Size increase by 10% or more, the Gross Settlement Amount shall
3 increase proportionately (i.e., if the class size increases by 32 individuals, the Gross Settlement Amount
4 will also increase by Thirty Thousand Dollars (\$30,00.00)).

5 The Class Representative has vigorously prosecuted his case, and Defendant has vigorously
6 contested it. The Parties have engaged in sufficient investigation and discovery to assess the relative
7 merits of the claims of the Class Representative and of Defendant's defenses to them.

8 **3. Allegations of the Class Representative and Benefits of Settlement.**

9 The extensive discovery conducted in this matter, as well as discussions between counsel, have
10 been adequate to give the Class Representative and Class Counsel a sound understanding of the merits
11 of their positions and to evaluate the worth of the claims of the Class. This Settlement was reached after
12 arm's-length bargaining over a period of several months. The discovery conducted in the Action and the
13 information exchanged by the Parties are sufficient to reliably assess the merits of the Parties' respective
14 positions and to compromise the issues on a fair and equitable basis.

15 The Named Plaintiff and Class Counsel believe that the claims, causes of action, allegations and
16 contentions asserted in the Action have merit. However, the Named Plaintiff and Class Counsel
17 recognize and acknowledge the expense and delay of continued lengthy proceedings necessary to
18 prosecute the Action against Defendant through trial and through appeals. Class Counsel has taken into
19 account the uncertain outcome of the litigation, the risk of continued litigation in complex actions such
20 as this, as well as the difficulties and delays inherent in such litigation, and the potential difficulty of
21 obtaining certification of the Action as well as trying the claims of the class. Class Counsel is mindful of
22 the potential problems of proof relating to, and possible defenses to, the claims alleged in the Action.

23 Class Counsel believes that the Settlement set forth in this Stipulation confers substantial
24 benefits upon the Named Plaintiff and the Class Members and that an independent review of this
25 Stipulation by the Court in the approval process will confirm this conclusion. Based on their own
26 independent investigation and evaluation, Class Counsel has determined that the Settlement set forth in
27 the Stipulation is in the best interests of the Named Plaintiff and the Class Members.

1 **4. Defendant's Denials of Wrongdoing and Liability.**

2 Defendant denies and continues to deny each and all of the claims and contentions alleged by the
3 Named Plaintiff in the Action. Defendant denies that Named Plaintiff and Class Members would be
4 entitled to statutory and/or civil penalties as a result of Named Plaintiff's claims in the Action.
5 Defendant further denies that, for any purpose other than settling the Action, these claims are
6 appropriate for class or representative treatment. Nonetheless, Defendant has concluded that further
7 proceedings in the Action would be protracted and expensive and that it is desirable that the Action be
8 fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation in
9 order to dispose of burdensome and protracted litigation, to permit the operation of Defendant's business
10 without further expensive litigation and the distraction and diversion of its personnel with respect to
11 matters at issue in the Action. Defendant has also taken into account the uncertainty and risks inherent in
12 any litigation, especially in complex cases such as the Action. Defendant has, therefore, determined that
13 it is desirable and beneficial to it that the Action be settled in the manner and upon the terms and
14 conditions set forth in this Stipulation.

15 **5. Intent of the Settlement.**

16 The Class Settlement set forth herein intends to achieve the following: (1) entry of an order
17 approving the Class Settlement; (2) entry of Judgment effecting the provisions of this Stipulation; and
18 (3) the Court shall retain continuing jurisdiction over this Action and over all Parties and Class
19 Members, to the fullest extent to enforce and effectuate the terms and intent of this Agreement, and to
20 adjudicate any claimed breaches of this Agreement.

21 **III. CONDITIONAL CLASS CERTIFICATION AND APPOINTMENT OF CLASS**
22 **COUNSEL.**

23 **1. The Settlement Class.**

24 For the purposes of this Stipulation and the Settlement of the Action only, the Parties stipulate to
25 conditional class certification of the Settlement Class pursuant to California Rules of Court Rule 3.769.

1 **2. Appointment of Class Counsel.**

2 For purposes of this Stipulation and subject to the Court's approval, the Parties hereby stipulate
3 to the appointment of Class Counsel as counsel for the Class and the effectuation of the Settlement
4 pursuant to this Stipulation.

5 **IV. SETTLEMENT CONSIDERATION.**

6 **1. Gross Settlement Amount.**

7 The Gross Settlement Amount shall not exceed the aggregate sum of Three Hundred Thousand
8 Dollars (\$300,000.00), except as provided for in Section I, paragraph 23 above. The Gross Settlement
9 Amount and other actions and forbearances taken by Defendants shall constitute adequate consideration
10 for the Settlement and will be made in full and final settlement of: (a) the Released Claims, (b) Class
11 Attorney's Fees and Expenses, (c) the Administrative Expenses, (d) the Incentive Award, (d) Taxes and
12 Required Withholding, (e) PAGA payments, and (f) any other obligation of Defendant under this
13 Stipulation.

14 After the Court issues an Order preliminarily approving this Settlement, the Claims
15 Administrator will distribute Class Notices and Opt-Out Forms to all Class Members. Each Class Notice
16 shall identify the Class Member as well as the estimated amount of the Individual Settlement Amount
17 the Class Member can expect to receive if he or she does not return a valid and timely Opt-Out Form. As
18 described in Article V below, 14 days after the expiration of the Effective Date, Defendant shall be
19 obligated to deposit with the Claims Administrator funds sufficient to pay the following: (1) Class
20 Attorney's Fees and Expenses, as approved by the Court; (2) Incentive Award, as approved by the
21 Court; (3) Administrative Expenses, not expected to exceed Eight Thousand Five Hundred Dollars
22 (\$8,500.00), but in the event that Administrative Expenses do exceed Eight Thousand Five Hundred
23 Dollars (\$8,500.00), any and all additional amounts shall be deducted from the Gross Settlement
24 Amount and the Net Settlement Amount will be recalculated to reflect such additional Administrative
25 Expenses; (4) a Five Thousand Dollars (\$5,000.00) PAGA award, 75 percent of which is to be paid to
26 the LWDA pursuant to California Labor Code Section 2699(i); (5) the aggregate of all Individual
27 Settlement Amounts payable to Class Claimants; and (6) Taxes and Required Withholding associated
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1 with each Class Member's share of the Individual Settlement Amounts. In no event shall Defendant be
2 obligated to pay or deposit with the Claims Administrator more than Three Hundred Thousand Dollars
3 (\$300,000.00), except as provided for in Section I, paragraph 23 above.

4 **2. Incentive Awards for Named Plaintiff.**

5 Named Plaintiff may petition the Court to approve an Incentive Award in an amount up to Seven
6 Thousand Five Hundred Dollars (\$7,500.00) each for his efforts on behalf of the Class in this Action,
7 including assisting in the investigation and consulting with Class Counsel. Defendant shall not oppose
8 any request by Named Plaintiff for an Incentive Award in such an amount. Any Incentive Award
9 approved by the Court shall be paid to Named Plaintiff from the Gross Settlement Amount and shall be
10 in addition to any distribution to which he may otherwise be entitled as a Class Member. Such Incentive
11 Award shall not be considered wages, and Defendant shall issue Named Plaintiff a Form 1099 reflecting
12 such payment. Named Plaintiff shall be responsible for the payment of any and all taxes with respect to
13 his Incentive Award and shall hold Defendant harmless from any and all liability with regard thereto.

14 **3. Payment to Class Claimants.**

15 Each Class Claimant shall be eligible to receive payment of the Individual Settlement Amount,
16 which is a share of the Net Settlement Amount based on the number of pay periods worked by the Class
17 Members during the Class Period. The Individual Settlement Amount for each Class Member shall be
18 calculated in accordance with Section VII, paragraph 2. Each Class Claimant, including Named
19 Plaintiff, shall be responsible for the payment of any and all taxes with respect to his or her Individual
20 Settlement Amount and shall hold Defendant harmless from any and all liability with regard thereto.

21 **4. Tax Treatment and Payment.**

22 For the purpose of calculating Taxes and Required Withholding for the Individual Settlement
23 Amounts for Class Members (including any payments to the Class Representatives but exclusive of their
24 Incentive Awards), the parties agree that 15% of each Individual Settlement Amount shall constitute
25 wages in the form of back pay (and each Class Claimant will be issued an IRS Form W-2 for such
26 payment to him or her) and interest thereon, 10% of each Individual Settlement Amount constitutes
27 reimbursement for business expenses, and 75% of each Individual Settlement Amount constitutes
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1 penalties (and each Class Claimant will be issued an IRS Form 1099 for such payment to him or her).
2 The Parties understand that the Named Plaintiff and the Class Claimants who receive any payment
3 pursuant to this Stipulation shall be solely responsible for any and all other individual tax obligations
4 associated with this Settlement.

5 **5. No Effect on Employee Benefit Plans.**

6 Neither the Class Settlement nor any amounts paid under the Class Settlement will modify any
7 previously credited hours, days, or weeks of service under any employee benefit plan, policy or bonus
8 program sponsored by Defendant. Such amounts will not form the basis for additional contributions to,
9 benefits under, or any other monetary entitlement under Defendant's sponsored benefit plans, policies or
10 bonus programs. The payments made under the terms of this Stipulation shall not be applied
11 retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other form of
12 compensation for the purposes of any of Defendant benefit plan, policy or bonus program. Defendant
13 retains the right to modify the language of its benefits plans, policies and bonus programs to effect this
14 intent and to make clear that any amounts paid pursuant to this Stipulation are not for "weeks worked,"
15 "weeks paid," "weeks of service," or any similar measuring term as defined by applicable plans, policies
16 and bonus programs for purpose of eligibility, vesting, benefit accrual, or any other purpose, and that
17 additional contributions or benefits are not required by this Stipulation. Defendant does not consider the
18 Settlement payments "compensation" for purposes of determining eligibility for, or benefit accrual
19 within, any benefit plans, policies, or bonus programs, or any other plan sponsored by Defendant.

20 **6. Class Attorney's Fees and Expenses.**

21 As part of the Motion for Final Approval of the Settlement, Class Counsel may submit an
22 application for an award of Class Attorney's Fees up to 1/3rd of the Gross Settlement Amount or One
23 Hundred Thousand Dollars (\$100,000.00) and Expenses not to exceed Five Thousand Dollars
24 (\$5,000.00). Defendant agrees not to object to any such fee, cost or expense application in those
25 amounts. As a condition of this Settlement, Class Counsel has agreed to pursue fees only in the manner
26 reflected by this Section. Any Class Attorney's Fees and Expenses awarded by the Court shall be paid
27 from the Gross Settlement Amount in arriving at the Net Settlement Amount and shall not constitute
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1 payment to any Class Members. If the Court's award of Class Attorney's Fees or Expenses is less than
2 set forth above, or is otherwise less than the amount actually requested by Class Counsel, the Net
3 Settlement Amount shall be recalculated to reflect the actual Class Attorney's Fees and Expenses
4 awarded as necessary. If the Court awards less than the requested amount for fees and/or costs, the
5 amount not approved by the Court shall remain in the Gross Settlement Amount and be allocated to the
6 Participating Class Members. It shall **NOT** revert to the Defendant.

7 The Class Attorney's Fee and Expenses approved by the Court shall encompass: (a) all work
8 performed and costs and expenses incurred by, or at the direction of, any attorney purporting to
9 represent the Class through the date of this Stipulation; (b) all work to be performed and costs to be
10 incurred in connection with approval by the Court of the Class Settlement; and (c) all work to be
11 performed and costs and expenses, if any, incurred in connection with administering the Settlement
12 through entry of final judgment in the Consolidated Action.

13 **7. Payment of Attorney Fees and Expenses.**

14 Class Attorney's Fee and Expenses as awarded by the Court shall be paid by the Settlement
15 Administrator out of the Gross Settlement Amount within fourteen (14) days of the Effective Date in
16 accordance with Section VII, paragraph 3 of this Stipulation.

17 **V. CLAIMS ADMINISTRATION COSTS AND EXPENSES.**

18 **1. The Settlement Administrator's Costs and Expenses.**

19 All costs and expenses due the Settlement Administrator in connection with its administration of
20 the Settlement including, but not limited to, providing the Class Notice, locating Class Members, issuing
21 a Reminder Postcard to Class Members, processing Opt-Out Forms, and calculating, administering and
22 distributing Individual Settlement Amounts to the Class Claimants, shall be paid from the Gross
23 Settlement Amount.

24 **2. Payment by Defendant.**

25 Within fourteen (14) days after the Effective Date, Defendant shall deposit with the Claims
26 Administrator funds sufficient to pay: (1) the Class Attorney's Fee and Expenses, as approved by the
27 Court; (2) Incentive Award, as approved by the Court; (3) Administrative Expenses, not expected to
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1 exceed Eight Thousand Five Hundred Dollars (\$8,500.00), but in the event that Administrative Expenses
2 do exceed Eight Thousand Five Hundred Dollars (\$8,500.00), any and all additional amounts shall be
3 deducted from the Gross Settlement Amount and the Net Settlement Amount will be recalculated to
4 reflect such additional Administrative Expenses; (4) a Five Thousand Dollars (\$5,000.00) PAGA
5 award, 75 percent of which is to be paid to the LWDA pursuant to California Labor Code Section
6 2699(i); (5) the aggregate of all Individual Settlement Amounts submitted by Class Claimants; and (6)
7 Taxes and Required Withholding associated with the Individual Settlement Amounts, if any. In no event
8 shall Defendant be obligated to pay or deposit with the Claims Administrator more than Three Hundred
9 Thousand Dollars (\$300,000.00) except as provided in Section I, paragraph 23 above.

10 **VI. NOTICE TO CLASS MEMBERS AND CLAIMS ADMINISTRATION PROCESS.**

11 **1. The Settlement Administrator.**

12 The Settlement Administrator will be responsible for mailing the Class Notice to Class Members,
13 setting up a toll-free number for the purpose of handling inquiries from Class Members concerning the
14 Class Notice and determination of Individual Settlement Amounts, mailing a reminder postcard to the
15 Class Members, maintaining the settlement funds in an appropriate interest bearing account, preparing,
16 administering and distributing Individual Settlement Amounts to Class Claimants, issuing a final report
17 and performing such other duties as the Parties may direct.

18 On a weekly basis, the Settlement Administrator will provide reports to Class Counsel and
19 Defense Counsel updating them as to the number of validated and timely received Opt-Out Requests and
20 objections. The Settlement Administrator will serve on Class Counsel and Defense Counsel via e-mail
21 date-stamped copies of the original Opt-Out Requests no later than seven days after their receipt. The
22 Settlement Administrator will provide Class Counsel with proof of mailing of the Class Notice and the
23 Opt-Out Request Form, which Class Counsel will file with the Court no later than seven days prior to
24 the Court's Final Approval and Fairness Hearing. No later than seven (7) days prior to the Final
25 Approval and Fairness Hearing, the Settlement Administrator will compile and deliver to Class Counsel
26 and Defense Counsel a report with information regarding (a) the final Individual Settlement Amounts of
27 each Class Claimant and (b) the final number of Opt-Outs.

Administrative Expenses are not anticipated to exceed Eight Thousand Five Hundred Dollars (\$8,500.00). In the event that Administrative Expenses exceed Eight Thousand Five Hundred Dollars (\$8,500.00), any and all additional amounts shall be deducted from the Gross Settlement Amount and the Net Settlement Amount will be recalculated to reflect such additional Administrative Expenses. Prior to the calculation and distribution of the Individual Settlement Amounts, the Settlement Administrator shall calculate the total Administrative Expenses through the conclusion of their services and such actual amount will be deducted from the Gross Settlement Amount prior to the final calculation of the Individual Settlement Amounts. If the Administrative Expenses are less than the requested Eight Thousand Five Hundred Dollars (\$8,500.00) amount, the residual amount shall remain in the Gross Settlement Amount and be allocated to the Participating Class Members. It shall **NOT** revert to the Defendant.

2. Notice to Class Members.

Notice shall be provided to Class Members in the following manner: Within fourteen (14) days after date of service of notice of entry by the Court of its Order of Preliminary Approval, Defendant shall provide the Settlement Administrator and Class Counsel with an updated list of Class Members containing names, social security numbers, dates of employment, number of pay periods worked, last-known addresses and phone numbers (the "Database"). The Database shall be marked "Confidential – Attorney's and Settlement Administrator's Eyes Only." Class Counsel represents, warrants, covenants and agrees (a) Class Counsel shall hold the Database, including any copies thereof, in strictest confidence and shall not disclose or divulge its contents to any Class Member, including Named Plaintiff, or to any third party; (b) the Database shall be kept in secure facilities; and (c) the contents of the Database shall be used exclusively for or to assist in administration of the Settlement pursuant to this Stipulation and for no other purpose, including, but not limited to, fact-gathering, discovery, or communication with individuals contained in the Database for any purpose, other than administration of the Settlement pursuant to this Stipulation.

Within fourteen (14) days following receipt of the Database, the Settlement Administrator shall determine the pay periods worked by each Class Member, populate the Class Notice for each

1 accordingly, and send each Class Member the Class Notice via first-class, United States mail. The Opt-
2 Out Request form and a postage paid return envelope shall also be included with the Class Notice. The
3 Class Notice shall also contain an easily understood statement alerting the Class Members that, unless
4 they elect to opt-out of the Settlement, the Class Member is releasing and waiving all Released Claims
5 against Defendants.

6 Phoenix Settlement Administrator shall re-mail by First-Class U.S. mail the Class Notice
7 returned by the Post Office with a forwarding address, and shall re-mail by First-Class U.S. mail the
8 Class Notice to any Class Member who personally provides an updated address to the SA.

9 In the event that the first mailing of the Class Notice to any Class Member is returned without a
10 forwarding address, Phoenix Settlement Administrator will immediately perform skip trace(s) if
11 necessary using social security numbers provided by Defendant and National Change of Address
12 searches, as needed, to verify the accuracy of the addresses provided and will conduct a second round of
13 mailings of the Class Notice by First-Class U.S. mail within an agreed number of days for those forms
14 returned to sender. If no new information is ascertained by means of a skip trace, or if the Class Notice
15 is returned to Phoenix Settlement Administrator after using an address obtained from a standard skip
16 trace, Phoenix Settlement Administrator will immediately perform a manual "in-depth skip trace" to
17 locate a more recent or accurate address. If an updated address is identified by this method, Phoenix
18 Settlement Administrator will resend the Class Notice to the updated address within three (3) calendar
19 days of identifying the updated address

20 **3. Opt-Out and Claims Procedure.**

21 All Class Members will receive an Individual Settlement Amount, unless the Class Member
22 elects to opt-out of the Settlement. In order to opt-out of the Settlement, the Opt-Out Request must be
23 received by the Settlement Administrator within forty-five (45) days of being mailed by the Settlement
24 Administrator ("Opt-Out Deadline"). Any Opt-Out Request Form received after the 45th day, will be
25 invalid. In the event that, prior to the Opt-Out Deadline, any Class Notice mailed to a Class Member is
26 returned as having been undelivered by the U.S. Postal Service, the Settlement Administrator shall
27 perform a skip trace search and seek an address correction for such Class Member(s), and a second Class
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1 Notice will be sent to any new or different address obtained. Such Class Member(s) shall have an
2 additional fourteen (14) days in which to return the Opt-Out Request.

3 It will be presumed that, if an envelope containing the Class Notice has not been returned within
4 twenty-eight (28) days of the mailing, the Class Member received the Class Notice. At least fourteen
5 (14) days prior to the Final Approval and Fairness Hearing, the Settlement Administrator shall provide
6 Class Counsel and Defense Counsel with a Declaration of Due Diligence and Proof of Mailing with
7 regard to the mailing of the Class Notice and its attempts to locate Class Members. The declaration shall
8 specify the number of Class Members to whom Class Notices were sent and the number of Class
9 Members to whom Class Notices were not delivered. Class Counsel shall file this declaration with the
10 Court.

11 If the Settlement Administrator determines that a Opt-Out Form returned by a Class Member
12 before the Opt-Out Deadline is deficient, then the Settlement Administrator shall mail a deficiency letter
13 to that Class Member identifying the problem and either returning the Opt-Out Form for completion or,
14 if deemed necessary by the Settlement Administrator, sending a new Opt-Out Form no later than seven
15 days after receipt of the deficient Opt-Out Form. To be excluded from distribution of the Settlement, the
16 Class Member must return a correctly completed Opt-Out Form by the last of the following to occur for
17 that Class Member: (a) the Opt-Out Deadline or (b) fourteen (14) calendar days after the Settlement
18 Administrator mails the deficiency letter ("Opt-Out Deficiency Deadline").

19 Those Class Members who have not returned a completed Opt-Out Form by the Opt-Out
20 Deadline (or the Opt-Out Deficiency Deadline, if applicable) shall be eligible for an Individual
21 Settlement Amount, and shall be bound by the Release of Released Claims set forth in Section X of this
22 Stipulation.

23 **4. Objections.**

24 The Class Notice shall inform the Class Members of their right to object to the Settlement. Any
25 Class Member who wishes to object to the Settlement must file a written objection with the
26 Administrator no later than 45 days from the date that Class Notice is mailed. The objection must
27 include the case name and number and must set forth, in clear and concise terms, a statement of the
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1 reasons why the Class Member believes the Settlement should not be approved. Copies of any objection
2 or notice of intention to appear will be forward to Class Counsel and Defense Counsel by the
3 Administrator. Unless otherwise ordered by the Court, Class Members shall not be entitled to appear
4 and/or object at the Final Approval Hearing unless they have submitted a timely written objection and
5 notice of intention to appear pursuant to this Section. Class Members who have properly and timely
6 submitted objections may appear at the Final Approval Hearing, either in person or through a lawyer
7 retained at their own expense.

8 **5. Languages.**

9 All notices and/or forms provided to Class Members in furtherance of this Settlement shall be in
10 the following languages: 1) English, and 2) Spanish. A certified translator shall translate the language of
11 the notices and/or forms from English to Spanish for purposes of preparing such notices and/or forms. It
12 shall be the duty of the Settlement Administrator to take all steps reasonably necessary to comply with
13 this section.

14 **VII. SETTLEMENT FUNDING, AND DISTRIBUTION.**

15 **1. Allocation of the Gross Settlement Amount.**

16 The Released Claims of all Class Members are settled for the Gross Settlement Amount of up to
17 a maximum of Three Hundred Thousand Dollars (\$300,000.00), which will be allocated as follows:

- 18 a. The Administrative Expenses;
 - 19 b. Class Attorney's Fee and Expenses;
 - 20 c. Incentive Awards;
 - 21 d. Taxes and Required Withholding, if any;
 - 22 e. PAGA award of Five Thousand (\$5,000.00) of which 75% Three Thousand Seven
23 Hundred Fifty Dollars (\$3,750.00) shall be paid to the LWDA pursuant to California Labor Code
24 Section 2699(i); and
 - 25 f. The aggregate of all Individual Settlement Amounts
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1 For purposes of calculating the estimated Individual Settlement Amounts, the Settlement
2 Administrator shall calculate the estimated Net Settlement Amount based on the estimated values in
3 Section 1(a-f) prior to sending Notice to Class Members. Prior to final distribution, the Settlement
4 Administrator shall calculate the final Net Settlement Amount based on the actual values in Section 1 (a-
5 f).

6 **2. Calculation of the Individual Settlement Amounts.**

7 Individual Settlement Amounts to be paid to Class Claimants shall be paid from the Net
8 Settlement Amount. The portion of the Net Settlement Amount payable to each Class Claimant will be
9 calculated as follows: each Class Claimant shall receive a gross payment equal to the Net Settlement
10 Amount, multiplied by a fraction, the numerator of which is the number of pay periods worked by the
11 applicable Settlement Class Member while employed by Defendant during the Class Period and the
12 denominator of which shall be the total number of pay periods worked by all Class Claimants while
13 employed by Defendant during the Class Period. The Individual Settlement Amount paid to each Class
14 Claimant shall be no less than One Hundred Dollars (\$100.00).

15 Defendant will provide the Settlement Administrator with the Database, and any other
16 reasonably required information the Settlement Administrator requests to perform the calculations
17 required under this Settlement Agreement. Defendant shall have no responsibility for deciding the
18 validity of the Individual Settlement Amounts or any other payments made pursuant to this Stipulation,
19 shall not be liable under any circumstances for any errors in the decision of any Claims, and shall have
20 no liability for any errors made with respect to Taxes and Required Withholding. Although the
21 Settlement Administrator will calculate and pay the standard Taxes and Required Withholding on the
22 portion of the Individual Settlement Amounts constituting wages on their behalf, as applicable, Named
23 Plaintiff and Class Claimants represent and understand that they shall be solely responsible for any and
24 all tax obligation associated with their respective Individual Settlement Amounts and Incentive Award.

1 **3. Time for Payment of Attorney Fees and Expenses to Class Counsel.**

2 The Settlement Administrator shall distribute to Class Counsel any attorney fees and expenses
3 approved by the Court to Class Counsel no later than fourteen (14) days after the Defendant deposits the
4 funds with the Settlement Administrator in accord with Article V above.

5 **4. Time for Payment of Incentive Awards to Class Representative.**

6 The Settlement Administrator shall distribute to Named Plaintiff the Incentive Award approved
7 by the Court to Named Plaintiff no later than fourteen (14) days after the Defendant deposits the funds
8 with the Settlement Administrator in accord with Article V above.

9 **5. Time for Payment of Taxes and Required Withholding and Individual Settlement**
10 **Amounts.**

11 If any Taxes or Required Withholdings are required for any payments made pursuant to this
12 Stipulation, the Settlement Administrator shall make every effort to pay the Taxes and Required
13 Withholding associated with each Class Claimant's Individual Settlement Amount and mail the
14 Individual Settlement Amount to each Class Claimant, by first-class U.S. mail, to the last-known address
15 no later fourteen (14) days after the Defendant deposits the funds with the Settlement Administrator in
16 accord with Article V above. If the Settlement Administrator is not able to do so within the time period
17 set forth above, it shall so inform Class Counsel and Defense Counsel and provide an approximate date
18 by which any Taxes and Required Withholding shall be paid and the Individual Settlement Amounts
19 will be mailed. Under no circumstances shall the Settlement Administrator distribute checks to Class
20 Claimants until all timely Opt-Outs have been considered, calculated, and accounted for, and all of the
21 remaining monetary obligations have been calculated and accounted for.

22 In the event that any Class Claimant is deceased, payment shall be made payable to the estate of
23 that Class Member and delivered to the executor or administrator of that estate, unless the Settlement
24 Administrator has received an affidavit or declaration pursuant to California Probate Code § 13101, in
25 which case payment shall be made to the affiant(s) or declarant(s). Within 14 days of mailing the
26 Individual Settlement Amounts to Class Claimants, the Settlement Administrator shall file with the
27 Court and provide to Class Counsel a declaration of payment.

1 **6. Non-Cashed Settlement Checks.**

2 Each Class Claimant must cash such Claimant's Individual Settlement Amount check within 120
3 days after it is mailed to the Claimant. If a check is returned to the Settlement Administrator, the
4 Settlement Administrator will make all reasonable efforts to re-mail it to the Class Claimant at the
5 Claimant's correct address. If the check remains uncashed by the expiration of the 30-day period after
6 this notice, the Settlement Administrator will void the check and send the corresponding funds to the
7 Industrial Relations Unpaid Wage Fund ("UWF"). In such event, the Class Claimant will nevertheless
8 remain bound by the Settlement, including the release of the Released Claims.

9 **7. Un-retained and Uncashed Settlement Checks.**

10 If the check remains uncashed by the expiration of the 30-day period after this notice, the
11 Settlement Administrator will void the check and send the corresponding funds to the Industrial
12 Relations Unpaid Wage Fund ("UWF"). In such event, the Class Claimant will nevertheless remain
13 bound by the Settlement, including the release of the Released Claims.

14 **8. Extension of Time to Pay and/or Process Claims.**

15 Should the Settlement Administrator need more time than is provided under this Stipulation to
16 complete any of its obligations, the Settlement Administrator may request, in writing, such additional
17 time (including an explanation of the need for additional time) from the Court.

18 **VIII. NULLIFICATION OF THIS STIPULATION.**

19 **1. Non-Approval of the Stipulation.**

20 If (a) the Court should for any reason fail to approve this Stipulation in the form agreed to by the
21 Parties, or (b) the Court should for any reason fail to enter a Judgment pursuant to this Stipulation in the
22 Action, or (c) the approval of the Settlement and Judgment is reversed, modified or declared or rendered
23 void, then the Settlement and conditional class certification shall be considered null and void, and
24 neither the Settlement, conditional class certification, nor any of the related negotiations or proceedings,
25 shall be of any force or effect, and all parties to the Settlement shall stand in the same position, without
26 prejudice, as if the Settlement had been neither entered into nor filed with the Court. Notwithstanding
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1 the foregoing, the Parties may attempt in good faith to cure any perceived defects in the Stipulation to
2 facilitate approval.

3 **2. Defendant's Right to Void Settlement.**

4 If 5% (5 percent) or more of the Class timely submit Opt-Out Requests, Defendant shall have the
5 exclusive right to void this Settlement. Defendant shall make its election prior to the date of the Final
6 Approval and Fairness Hearing. If Defendant decides to void the Settlement, then the Settlement and
7 conditional class certification shall be considered void, and neither the Settlement, conditional class
8 certification, nor any of the related negotiations or proceedings, shall be of any force or effect, and the
9 Parties shall stand in the same position, without prejudice, as if this Stipulation had been neither entered
10 into nor filed with the Court.

11 **4. Invalidation.**

12 Invalidation of any material portion of the Settlement shall invalidate the Settlement in its
13 entirety, unless the Parties shall subsequently agree in writing that the remaining provisions of the
14 Settlement are to remain in full force and effect.

15 **5. Stay Upon Appeal.**

16 In the event of a timely appeal from the approval of the Settlement and judgment and dismissal,
17 the judgment shall be stayed, and Defendant shall not be obligated to fund the Gross Settlement Amount
18 or take any other actions required by this Stipulation until all appeal rights have been exhausted by
19 operation of law.

20 **IX. MOTION FOR COURT APPROVAL.**

21 **1. Preliminary Approval.**

22 Class Counsel will submit this Stipulation to the Court along with a Motion for Preliminary
23 Approval of the Settlement. Each party shall cooperate to present the Settlement to the Court for
24 preliminary approval in a timely fashion. The Court's preliminary approval of the Settlement shall be
25 embodied in an Order substantially in the form attached hereto as *Exhibit 3*.

1 **2. Final Approval.**

2 The Final Approval and Fairness Hearing shall be held before the Court in the Superior Court of
3 the State of California, County of Los Angeles.

4 **3. Entry of Judgment.**

5 At the Final Approval and Fairness Hearing, Plaintiff and Defendant shall jointly request the
6 Court for the entry of the final order certifying the Class for settlement purposes only and approving the
7 Settlement as being fair, reasonable and adequate to the Class Claimants and for the entry of a final
8 Judgment consistent with the terms of the Settlement. Class Counsel and Defense Counsel shall submit
9 to the Court such pleadings and/or evidence as may be required for the Court's determination. If the
10 Court grants final approval of the Settlement, Notice of the Entry of Judgment will be posted on the
11 Settlement Administrator's website at www.phoenixclassaction.com/thomasvbrandtbrothers.

12 **X. RELEASE OF CLAIMS BY SETTLEMENT CLASS.**

13 Upon the Effective Date, each Class Member who has not submitted a timely Opt-Out Form, and
14 the Named Plaintiff, each releases the Released Parties, and each of them, of and from any and all
15 Released Claims through the Opt-Out Deadline.

16 It is the desire of the Parties and the Class Members to fully, finally, and forever settle,
17 compromise, and discharge the Released Claims. As such, the Class Members understand and agree that
18 they are providing the Released Parties with a full and complete release with respect to the Released
19 Claims through the Opt-Out Deadline. It is agreed that this Stipulation is intended to fully and finally
20 resolve the Released Claims via final judgment as to each and every Class Member, except as to those
21 who timely submit Opt-Out Requests.

22 Each Class Member, except those who timely Opt-Out, will be bound to the release of Released
23 Claims as a result of the Settlement and to the final judgment entered in the Action.

24 **XI. DUTIES OF THE PARTIES.**

25 **1. Mutual Full Cooperation.**

26 The Parties agree to cooperate fully with one another to accomplish and implement the terms of
27 this Stipulation. Such cooperation shall include, but not be limited to, execution of such other documents
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1 and the taking of such other actions as may reasonably be necessary to fulfill the terms of this
2 Settlement, including filing of a Complaint, as provided by Section XI.2. The Parties shall use their best
3 efforts, including all efforts contemplated by this Stipulation and any other efforts that may become
4 necessary by court order or otherwise, to effectuate this Stipulation and the terms set forth herein. As
5 soon as practicable after execution of this Stipulation, Class Counsel, with the cooperation of
6 Defendants and Defense Counsel, shall take all necessary and reasonable steps to secure the Court's final
7 approval of this Stipulation.

8 **2. Filing a Second Amended Complaint.**

9 Named Plaintiff and Class Counsel shall, prior to or at the time of seeking preliminary approval
10 from the Court, take all steps reasonably necessary to file a second amended complaint ("Complaint"),
11 which shall incorporate all material allegations, claims, and theories of relief expressed in Plaintiff's
12 First Amended Complaint and include allegation(s), claim(s), and theor(ies) of relief for reimbursement
13 of business expenses pursuant to Labor Code section 2802. Defense Counsel shall stipulate to the filing
14 of the Complaint, upon approval by Defense Counsel of the proposed Complaint.

15 **3. Duty to Support and Defend the Settlement.**

16 The Parties agree to abide by all of the terms of the Settlement in good faith and to support the
17 Settlement fully and to use their best efforts to defend this Class Settlement from any legal challenge,
18 whether by appeal or collateral attack.

19 **4. Duties Prior to Court Approval.**

20 Class Counsel shall promptly submit this Stipulation to the Court for preliminary approval and
21 determination by the Court as to its fairness, adequacy, and reasonableness. Promptly upon execution of
22 this Stipulation, Class Counsel shall apply to the Court for the entry of a preliminary order substantially
23 in the form filed concurrently herewith as *Exhibit 3*, scheduling a hearing on the question of whether the
24 proposed Class Settlement should be approved as fair, reasonable, and adequate as to the Class
25 Members, approving as to form and content the proposed Class Notice attached hereto as *Exhibit 1*, and
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directing the mailing of the Class Notice to Class Members. Defense Counsel shall file a notice of non-opposition to the motion for preliminary approval or join in the motion.

XII. MISCELLANEOUS PROVISIONS.

1. Voiding the Stipulation.

Pending Court approval and other than as provided in Article VIII herein, if any of the conditions set forth in this Stipulation are not met and satisfied, this Stipulation shall, at the option of either the Named Plaintiff or Defendants, be ineffective, void, and of no further force and effect, and shall not be used or be admissible in any subsequent proceeding, either in this Court or in any other court or forum.

2. Different Facts.

The Parties hereto, and each of them, acknowledge that, except for matters expressly represented herein, the facts in relation to the dispute and all claims released by the terms of this Stipulation may turn out to be other than or different from the facts now known by each party and/or its counsel, or believed by such party or counsel to be true, and each party therefore expressly assumes the risk of the existence of different or presently unknown facts, and agrees that this Stipulation shall be in all respects effective and binding despite such difference.

3. No Prior Assignments.

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

4. Non-Admission.

Nothing in this Stipulation shall be construed as or deemed to be an admission by any Party of any liability, culpability, negligence, or wrongdoing toward any other Party, or any other person, and the Parties specifically disclaim any liability, culpability, negligence, or wrongdoing toward the each other or any other person. Each of the Parties has entered into this Stipulation with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and contingencies. Nothing herein shall constitute any admission by Defendants of wrongdoing or liability, or of the truth of any

1 factual allegations in the Action. Nothing herein shall constitute any admission by Named Plaintiff
2 regarding the merits of the Claims in this Action, including but not limited to claims for unpaid wages
3 under California and/or federal law. Nothing herein shall constitute an admission by Defendants that the
4 Action was properly brought as a class or representative action other than for settlement purposes. To
5 the contrary, Defendants deny and continue to deny each and every material factual allegation and all
6 Claims. To this end, the Settlement of the Action, the negotiation and execution of this Stipulation, and
7 all acts performed or documents executed pursuant to or in furtherance of this Stipulation or the
8 Settlement are not, shall not be deemed to be, and may not be used as, an admission or evidence of any
9 wrongdoing or liability on the part of Defendant or of the truth of any of the factual allegations in the
10 Action; and are not, shall not be deemed to be, and may not be used as, an admission or evidence of any
11 fault or omission on the part of Defendants in any civil, criminal or administrative proceeding in any
12 court, administrative agency or other tribunal.

13 **5. Non-Retaliation.**

14 Defendants understand and acknowledges that they have a legal obligation not to retaliate against
15 any member of the Class who elects to participate in the Settlement or elects to Opt-Out of the
16 Settlement. Defendants will refer any inquiries regarding this Settlement to the Settlement Administrator
17 or Class Counsel and will not discourage Class Members who are employees, directly or indirectly, from
18 opting out or objecting to the Settlement.

19 **6. Construction.**

20 The Parties hereto agree that the terms and conditions of this Stipulation are the result of lengthy,
21 intensive, arms-length negotiations between the Parties and that this Stipulation is not to be construed in
22 favor of or against any party by reason of the extent to which any party or its counsel participated in the
23 drafting of this Stipulation.

24 **7. Governing Law.**

25 This Stipulation is intended to and shall be governed by the laws of the State of California,
26 without regard to conflict of law principles, in all respects, including execution, interpretation,
27 performance, and enforcement.

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Section titles or captions contained herein are inserted as a matter of convenience and for reference only and in no way define, limit, extend, or describe the scope of this Stipulation or any provision thereof.

10. Modification.

11. Integration Clause.

12. Successors and Assigns.

This Stipulation shall be binding upon and inure to the benefit of the Settling Parties (excluding only persons who submitted timely Opt-Out Requests and failed to rescind their Opt-Out Requests) and their respective present and former heirs, trustees, executors, administrators, representatives, officers, directors, shareholders, agents, employees, insurers, attorneys, accountants, auditors, advisors, consultants, pension and welfare benefit plans, fiduciaries, parent companies, subsidiaries, affiliates, related companies, joint ventures, predecessors, successors, and assigns.

1 **13. Corporate Signatories.**

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

5 **14. Execution in Counterparts.**

6 This Stipulation shall become effective upon its execution by all of the undersigned. The Settling
7 Parties may execute this Stipulation in counterparts, and execution of counterparts shall have the same
8 force and effect as if all Settling Parties had signed the same instrument.

9 **15. Attorney's Fees, Costs and Expenses.**

10 Except as otherwise specifically provided for herein, each party shall bear his or its own attorney
11 fees, costs and expenses, taxable or otherwise, incurred by them in or arising out of the Action and shall
12 not seek reimbursement thereof from any other party to this Stipulation.

13 **16. Action to Enforce Agreement.**

14 In any suit or court action to enforce the terms of this Agreement, the prevailing party shall be
15 entitled to recover attorney fees and costs.

16 **17. The Court Shall Retain Enforcement Jurisdiction**

17 The Parties shall request that the Court retain jurisdiction over the Parties and to enforce the
18 terms of the settlement pursuant to Code of Civil Procedure section 664.6.

19
20
21 **[Signature Page Follows]**
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27
28

1 **IN WITNESS WHEREOF**, the Parties and their counsel have executed this Stipulation on the
2 date below their signatures or the signature of their representatives. The date of the Stipulation shall be
3 the date of the latest signature.

4
5 Dated: 2/21/17


Mark Thompson

Professional Courier & Newspaper Distribution, Inc.
and Brandt Brothers Enterprises, Inc.

11 Dated: _____

Printed: _____

Title: _____

14 **APPROVED AS TO FORM AND CONTENT**


MAHONEY LAW GROUP, APC

17 Dated: _____

Kevin Mahoney
Attorney for Plaintiff and the Class

SUTTON HAGUE LAW CORPORATION, P.C.

22 Dated: February 14, 2017


S. Brett Sutton
Attorney for Defendants

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4
5 Dated: _____

6 _____
7 Mark Thompson

8
9 Professional Courier & Newspaper Distribution, Inc.
10 and Brandt Brothers Enterprises, Inc.

11 Dated: 2-14-17

12 _____
13 *Phil Brandt*

14 Printed: Phil Brandt

15 Title: Pres

16 **APPROVED AS TO FORM AND CONTENT**

17 MAHONEY LAW GROUP, APC

18 Dated: _____

19 _____
20 Kevin Mahoney
21 Attorney for Plaintiff and the Class

22 SUTTON HAGUE LAW CORPORATION, P.C.

23 Dated: _____

24 _____
25 S. Brett Sutton
26 Attorney for Defendants

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6
7
8 Professional Courier & Newspaper Distribution, Inc.
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11 Dated: _____

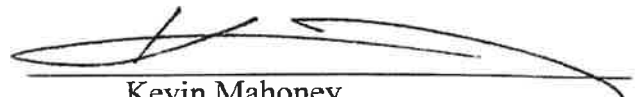
12 Printed: _____

13 Title: _____

14 **APPROVED AS TO FORM AND CONTENT**

15 MAHONEY LAW GROUP, APC

16
17 Dated: 2/13/17

18 
19 Kevin Mahoney
Attorney for Plaintiff and the Class

20 SUTTON HAGUE LAW CORPORATION, P.C.

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17 Dated: _____

18 Kevin Mahoney
Attorney for Plaintiff and the Class

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20 SUTTON HAGUE LAW CORPORATION, P.C.

21
22 Dated: February 14, 2017



S. Brett Sutton
Attorney for Defendants