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15 U.S. SECURITY ASSOCIATES, INC.
U.S. SECURITY ASSOCIATES STAFFING, INC.

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION**

18 FERNANDO HARRIS, et al.,
19 Plaintiffs,

20 v.

21 U.S. SECURITY ASSOCIATES, INC., et al.,
22 Defendants.

23 U.S. SECURITY ASSOCIATES, INC. AND
U.S. SECURITY ASSOCIATES STAFFING,
24 INC.,

Cross-Complainants,

25 v.

26 ODYSSEY UNLIMITED SECURITY, INC.
and ROES 1 through 10, inclusive,
27 Cross-Defendants.

CASE NO. 37-2015-00014759-CU-OE-CTL

[Judge: Ronald L. Styn, Dept., C-74]

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

1 This Stipulation of Class Action Settlement and Release of Claims is entered into by and
2 between Plaintiffs Fernando Harris, Heladio Ortega Diaz and William Odell, individually, on behalf
3 of the Settlement Class, and as the PAGA representative plaintiffs for the Private Attorneys General
4 Act claims, and Defendants U.S. Security Associates, Inc. and U.S. Security Associates Staffing,
5 Inc.

6 **I. DEFINITIONS**

7 **A. “Action.”**

8 The class-action lawsuit entitled *Harris et al. v. U.S. Security Associates, Inc., et al.*, Case
9 No. 37-2015-00014759-CU-OE-CTL, filed on May 1, 2015 in the Superior Court for the State of
10 California, County of San Diego.

11 **B. “Agreement” or “Settlement.”**

12 This Stipulation of Class Action Settlement and Release of Claims.

13 **C. “Black Friday Event”**

14 An event conducted at a Wal-Mart Store for which workers performed security or crowd
15 control functions on the Wednesday before Thanksgiving, Thanksgiving Day, or the day after
16 Thanksgiving during the Class Period.

17 **D. “Claim Form.”**

18 The Claim Form in a form substantially similar to the form attached hereto as Exhibit 4-1 for
19 those mailed to Class Members and Exhibit 4-2 for posting on the Settlement Website, to be
20 submitted by the Settlement Class Members in order to participate in this Settlement and to receive a
21 portion of the Net Settlement Amount. To be valid, a Claim Form must have all information
22 completed that is requested on the form and be timely submitted.

23 **E. “Class Data.”**

24 The information regarding Settlement Class Members contained in the Excel workbooks
25 produced as Bates No. DEF001289 and DEF013627, as well as similar information regarding
26 Settlement Class Members obtained by Defendants from their subcontractors regarding individuals
27 provided by those subcontractors to work Black Friday Events during the Class Period. This
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1 information will be provided to the Settlement Administrator.

2 **F. “Class Period.”**

3 The period from May 1, 2011 through December 31, 2015.

4 **G. “Class Representative Service Award.”**

5 The amount that the Court authorizes to be paid to each Class Representative, in addition to
6 their respective Individual Settlement Payments, in recognition of their efforts and risks in assisting
7 with the prosecution of the Action and in exchange for executing the General Release provided
8 herein (Paragraph III.C).

9 **H. “Class Representative(s).”**

10 The named Plaintiffs in the Action, in their capacity as representatives of the Settlement
11 Class Members.

12 **I. “Compensable Work-Shifts.”**

13 The total number of work-shifts for Wal-Mart Black Friday Events during which Settlement
14 Class Members worked during the Class Period.

15 **J. “Court.”**

16 The California Superior Court, for the County of San Diego.

17 **K. “Defendants.”**

18 U.S. Security Associates, Inc. (“USSA”) and U.S. Security Associates Staffing, Inc.
19 (“USSAS”). This term is expressly defined to be limited to the Defendants which are entering into
20 the Agreement, irrespective of the current or former presence of other defendants in the Action.

21 **L. “Effective Date.”**

22 The date upon which the time for appeal of the Court’s order granting final approval of the
23 Agreement expires, unless an appeal is timely filed, and then “Effective Date” means the date of
24 final resolution of any appeal from the order granting final approval of the Agreement.

25 **M. “Individual Settlement Payment.”**

26 The amount payable from the Net Settlement Amount to each Participating Class Member
27 who has submitted a timely and valid Claim Form and who has not submitted a timely and valid
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1 Request for Exclusion.

2 **N. “Maximum Settlement Fund.”**

3 The agreed total settlement payment in the exact amount of Five Million Two Hundred Fifty
4 Thousand Dollars and No Cents (\$5,250,000.00).

5 **O. “Net Settlement Amount” or “NSA.”**

6 The Maximum Settlement Fund, less the Settlement Class Counsel Award, Class
7 Representative Service Awards, the California Labor & Workforce Development Agency’s
8 (“LWDA”) portion of the PAGA Payment, Defendants’ share of employment taxes, and Settlement
9 Administration Costs.

10 **P. “Notice.”**

11 The Notice of Class Action Settlement in a form substantially similar to the form attached
12 hereto as Exhibit 1.

13 **Q. “PAGA.”**

14 The California Labor Code Private Attorneys General Act of 2004.

15 **R. “PAGA Payment.”**

16 The payment made hereunder, in the amount of Fifty-Two Thousand Five Hundred Dollars
17 and No Cents (\$52,500.00) for the release of the PAGA claims. The PAGA Payment shall be
18 distributed as follows: 75% (\$39,375.00) to the LWDA and the remaining 25% (\$13,125.00) shall be
19 included in the Net Settlement Amount.

20 **S. “Participating Class Member.”**

21 A Settlement Class Member who is entitled to receive his/her share of the Net Settlement
22 Amount. Class Members must submit a timely and properly completed Claim Form in compliance
23 with the procedures set forth herein in order to be Participating Class Members.

24 **T. “Parties.”**

25 Plaintiffs and Defendants, collectively. “Party” shall mean either Plaintiffs or Defendants,
26 individually.

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U. “Payment Ratio.”

The respective Compensable Work-Shifts for each Settlement Class Member divided by the total Compensable Work-Shifts for all Settlement Class Members.

V. “Plaintiffs.”

Fernando Harris, Heladio Ortega Diaz and William Odell.

W. “Preliminary Approval Date.”

The date on which the Court enters an order granting preliminary approval of the Settlement.

X. “Publication Notice.”

The legal notice summarizing the proposed Settlement terms, as approved by Settlement Class Counsel, Defendants’ Counsel, and the Court, to be provided to Settlement Class Members via publication. The Publication Notice must be substantially similar to the form attached hereto as Exhibit 2.

Y. “Release Period.”

The period from May 1, 2011 through December 31, 2015.

Z. “Released Claims.”

All wage and hour claims that were plead or could have been pleaded under the Labor Code, Wage Orders or federal, state or local wage and hour laws, including the Fair Labor Standards Act (“FLSA”), based on the facts or legal theories alleged in the *Harris* Second Amended Complaint, including claims for: (a) failure to pay minimum wages or regular wages; (b) unpaid overtime wages; (c) unpaid wages due to “off-the-clock” work, including time spent traveling to the worksite; (d) failure to pay the agreed upon wage; (e) waiting-time penalties due to the failure to timely pay wages following termination; (f) failure to pay wages by appropriate pay period; (g) failure to provide accurate itemized wage statements; (h) failure to reimburse necessary work-related expenses, including, but not limited to, travel expenses, uniforms, tools and equipment; (i) any meal break violations, including non-compliant on-duty meal breaks; (j) any rest break violations; (k) all claims under PAGA (Labor Code § 2698, *et seq.*) that could have been premised on the claims, causes of action or legal theories described above in (a)-(j); (l) all claims for unfair business

1 practices under California Business & Professions Code Section 17200 *et seq.* that could have been
2 premised on the claims, causes of action or legal theories of relief described above in (a)-(j); and (m)
3 all damages, including, but not limited to, liquidated damages, civil and statutory penalties, interest
4 and other amounts recoverable under said claims, causes of action or legal theories of relief
5 identified above in (a)-(l) (collectively, the “Released Claims”). The Released Claims include all
6 such claims arising under the California Labor Code (including, but not limited to, sections 201,
7 201.3, 202, 203, 204, 210, 216, 218.5, 218.6, 221, 222.5, 225.5, 226, 226.3, 226.7, 227.3, 246, 256,
8 432, 450, 510, 511, 512, 514, 516, 558, 1174, 1174.5, 1175, 1182.12, 1194, 1194.2, 1197, 1197.1,
9 1197.2, 1198, 1198.5, 1199, 2800, 2802, 2810.5 and 2698 *et seq.*), the Wage Orders of the California
10 Industrial Welfare Commission; California Business and Professions Code sections 17200, *et seq.*;
11 the California common law of contract; the California Civil Code; the Fair Labor Standards Act, 29
12 U.S.C. sections 201, *et seq.*; federal common law; the Private Attorneys General Act, California
13 Labor Code sections 2698, *et seq.*; and the Employee Retirement Income Security Act, 29 U.S.C.
14 sections 1001, *et seq.* The period of the Released Claims shall extend to the limits of the Class
15 Period. The Parties agree that the judgment, and release of claims provided herein, shall have *res*
16 *judicata* effect. The definition of Released Claims shall not be limited in any way by the possibility
17 that Plaintiffs or Settlement Class Members may discover new facts or legal theories or legal
18 arguments not alleged in the operative pleadings in the Action but which might serve as an
19 alternative basis for pursuing the same claims, causes of action, or legal theories of relief falling
20 within the definition of Released Claims.

21 **AA. “Released Parties.”**

22 Defendants and their past, present and/or future, direct and/or indirect, parents, predecessors,
23 successors, affiliates, subsidiaries, officers, directors, agents, employees, subcontractors,
24 stockholders and Wal-Mart Stores, Inc. and its past, present and/or future, direct and/or indirect,
25 parents, predecessors, successors, affiliates, subsidiaries, officers, directors, agents, employees and
26 stockholders. Wal-Mart Stores, Inc. must provide a general release in favor of Plaintiffs and a waiver
27 of costs to obtain the benefit of the release by the Plaintiffs and to be dismissed from the Action.
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1 **BB. “Request for Exclusion.”**

2 A written statement requesting exclusion from the Settlement, as provided hereafter,
3 containing the Settlement Class Member’s name, address, telephone number, last four digits of his or
4 her social security number, and valid signature to be mailed by Settlement Class Members who wish
5 to opt out of the Settlement Class. To be effective, the Request for Exclusion must be post-marked
6 by the Response Deadline and received by the Settlement Administrator.

7 **CC. “Response Deadline.”**

8 The date thirty (30) calendar days after the Settlement Administrator mails the Notice to
9 Settlement Class Members and the last date on which Settlement Class Members may submit Claim
10 Forms, Requests for Exclusion or objections to the Settlement.

11 **DD. “Settlement Administrator.”**

12 KCC LLC.

13 **EE. “Settlement Class Counsel.”**

14 Patterson Law Group APC.

15 **FF. “Settlement Class Counsel Award.”**

16 The attorneys’ fees for Settlement Class Counsel’s litigation and resolution of this Action
17 and their expenses and costs incurred in connection with the Action, paid from the Maximum
18 Settlement Fund, as approved by the Court.

19 **GG. “Settlement Class Members” or “Settlement Class.”**

20 All individuals who were provided by or worked through USSAS, Inc. as a security
21 guard/officer or crowd control worker in California at a Wal-Mart Black Friday Event, irrespective
22 of whether those individuals were paid by USSA, USSAS, or one of their subcontractors. The
23 “Settlement Class Members” shall not include any person who hereafter submits a timely and valid
24 Request for Exclusion as provided in this Agreement, or any person who previously released the
25 Released Claims under a separate agreement or who was paid or received awards through civil or
26 administrative actions for all of the claims covered by this Settlement.

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HH. “Settlement Website”

The website that shall be created for settlement administration purposes and administered by the Settlement Administrator.

II. RECITALS

A. Plaintiffs Fernando Harris and Heladio Ortega Diaz filed a putative class action on May 1, 2015 against USSA in the Superior Court of California for the County of San Diego, Case No. 37-2015-00014759-CU-OE-CTL. Plaintiffs Harris and Diaz filed a First Amended Complaint on May 26, 2017, and Plaintiffs Harris, Diaz and William Odell filed a Second Amended Complaint on March 9, 2018. The Second Amended Complaint, brought against USSA, USSAS, Wal-Mart Stores, Inc. and Odyssey Unlimited Security, Inc. alleges causes of action for: (1) violation of California Labor Code §§ 510, 1194(a) and 1197 (Failure to Pay Lawful Wages); (2) violation of California Labor Code § 223 (Unlawful Paying of a Lower Wage); (3) violation of California Labor Code §§ 201-203 (Wages Not Paid Upon Termination); (4) violation of California Labor Code § 204 (Failure to Pay All Wages By the Appropriate Pay Period); (5) violation of California Labor Code § 226(a) (Improper Wage Statements); (6) violation of California Labor Code § 2802 (Failure to Reimburse Business Expenses); (7) violation of California Business & Professions Code § 17200, et seq. (Unfair Competition); (8) violation of the Private Attorneys General Act, California Labor Code §§ 2698, et seq. (PAGA Penalties); and (9) violation of California Labor Code § 226.7 (Failure to Pay Meal and Rest Period Wages). Plaintiffs sought to represent a class of all of Defendants’ California-based temporary employees who worked through USSAS at a Wal-Mart Black Friday Event during the Class Period.

B. Defendants deny any liability or wrongdoing of any kind associated with the claims alleged in the Action, dispute the wages, damages and penalties claimed by the Plaintiffs and the Settlement Class, and further contend that, for any purpose other than settlement, Plaintiffs’ claims are not appropriate for class or representative action treatment. Defendants contend, among other things, that, at all times, they have complied with the California Labor Code, and the Industrial Wage Commission Orders.

1 C. Settlement Class Counsel conducted an investigation into the facts relevant to the
2 Action, including interviewing Settlement Class Members, an independent investigation into the
3 industry, propounding written discovery and obtaining formal written responses, taking depositions,
4 and reviewing documents and information provided by Defendants during discovery. Based on their
5 own independent investigation and evaluation, Settlement Class Counsel is of the opinion that the
6 Settlement with Defendants is fair, reasonable and adequate, and in the best interest of the
7 Settlement Class in light of all known facts and circumstances, including the risks of significant
8 delay, defenses asserted by Defendants, uncertainties regarding a class and representative action trial
9 on the merits, and numerous potential appellate issues. Although Defendants deny any liability,
10 Defendants are agreeing to this Settlement solely to avoid the cost of further litigation. Accordingly,
11 the Parties and their counsel desire to fully, finally, and forever settle, compromise and discharge all
12 disputes and claims arising from or relating to the Actions on the terms set forth herein.

13 **III. TERMS OF AGREEMENT**

14 **A. Settlement Consideration.**

15 Defendants shall pay no more than the sum of Five Million Two Hundred Fifty Thousand
16 Dollars and No Cents (\$5,250,000.00), which is the Maximum Settlement Fund. In no event shall
17 Defendants be required to pay more than the Maximum Settlement Fund.

18 **B. Release By All Settlement Class Members.**

19 As of the Effective Date, in exchange for the consideration set forth in this Agreement,
20 Plaintiffs and the Settlement Class Members release the Released Parties from the Released Claims
21 for the Class Period. Plaintiffs and the Settlement Class Members may hereafter discover facts or
22 legal arguments in addition to or different from those they now know or currently believe to be true
23 with respect to the claims, causes of action and legal theories of recovery in this case which are the
24 subject matter of the Released Claims. Regardless, the discovery of new facts or legal arguments
25 shall in no way limit the scope or definition of the Released Claims, and by virtue of this Agreement,
26 Plaintiffs and the Settlement Class Members shall be deemed to have, and by operation of the final
27 judgment approved by the Court, shall have, fully, finally, and forever settled and released all of the
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1 Released Claims as defined in this Agreement and any new or different claims that could have been
2 asserted based on the facts alleged in the operative pleading.

3 **C. General Release and Waiver of Future Employment by Named Plaintiffs.**

4 As of the Effective Date, in exchange for the consideration set forth in this Agreement,
5 Plaintiffs, for themselves and their heirs, successors and assigns, do hereby waive, release, acquit
6 and forever discharge the Released Parties, from any and all claims, actions, charges, complaints,
7 grievances and causes of action, of whatever nature, whether known or unknown, which exist or may
8 exist on Plaintiffs' behalf as of the date of this Agreement, including, but not limited to, any and all
9 tort claims, contract claims, wage claims, wrongful termination claims, disability claims, benefit
10 claims, public policy claims, retaliation claims, statutory claims, personal injury claims, emotional
11 distress claims, invasion of privacy claims, defamation claims, fraud claims, *quantum meruit* claims,
12 and any and all claims arising under any federal, state or other governmental statute, law, regulation
13 or ordinance, including, but not limited to, claims for violation of the FLSA, the California Labor
14 Code, the Wage Orders of California's Industrial Welfare Commission, other state wage and hour
15 laws, the Americans with Disabilities Act, the Age Discrimination in Employment Act (ADEA), the
16 Employee Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the California
17 Fair Employment and Housing Act, the California Family Rights Act, the Family Medical Leave
18 Act, California's Whistleblower Protection Act, California Business & Professions Code Section
19 17200 *et seq.*, and any and all claims arising under any federal, state or other governmental statute,
20 law, regulation or ordinance. Plaintiffs also forever release, waive, and relinquish any right or claim
21 to be hired by, or to reinstatement with, Defendants, and their past, present and/or future, direct
22 and/or indirect, parents, predecessors, successors, all affiliates, subsidiaries, officers, directors,
23 agents, employees and stockholders. Plaintiffs hereby expressly waive and relinquish any and all
24 claims, rights or benefits that they may have under California Civil Code § 1542, which provides as
25 follows:

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

Plaintiffs may hereafter discover claims or facts in addition to, or different from, those which they now know or believe to exist, but Plaintiffs expressly agree to fully, finally and forever settle and release any and all claims against the Released Parties, known or unknown, suspected or unsuspected, which exist or may exist on behalf of or against the other at the time of execution of this Agreement, including, but not limited to, any and all claims relating to or arising from Plaintiffs' employment with Defendants. The Parties further acknowledge, understand and agree that this representation and commitment is essential to the Agreement and that this Agreement would not have been entered into were it not for this representation and commitment.

D. Release by Settlement Class Counsel.

As of the Effective Date, in exchange for the consideration set forth in this Agreement, Settlement Class Counsel, for themselves and their heirs, successors and assigns, do hereby waive, release, acquit and forever discharge the Released Parties, from any and all claims, actions, charges, complaints, grievances and causes of action for attorneys' fees and costs related to this Action.

E. Conditions Precedent.

This Settlement will become final and effective only upon the occurrence of all of the following events:

1. The Court enters an order granting preliminary approval of the Settlement;
2. The Court enters an order granting final approval of the Settlement and a Final Judgment;
3. The time to file a Notice of Appeal of the Final Judgment and Order Granting Final Approval of Class Action Settlement expires; or, if an appeal is timely filed, there is a final resolution of any such appeal(s) from the Judgment and Order Granting Final Approval of Class Action Settlement; and
4. Defendants do not invoke their right to revoke the Settlement as provided herein.

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F. Certification of Class.

The Parties further stipulate, for settlement purposes only, to conditional class certification of the Settlement Class. This stipulation is not, and it shall not be construed as, an admission of fact or law, in this matter or any other matter, that class certification is appropriate.

G. Nullification of Settlement Agreement.

If this Agreement is not preliminarily or finally approved by the Court, fails to become effective, or is reversed, withdrawn or modified by the Court, or in any way prevents or prohibits Defendants from obtaining a complete and final resolution of the claims as described herein:

1. This Agreement shall be void *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural;
2. The Parties shall return to the pre-settlement litigation status, prior to the execution of this Settlement or Settlement Term Sheet in the Action;
3. The conditional class certification (obtained for any purpose) shall be void *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; and
4. None of the Parties to this Settlement will be deemed to have waived any claims, objections, defenses or arguments in the Actions.

H. Tax Liability.

The Parties make no representations as to the tax treatment or legal effect of the payments called for hereunder, and Settlement Class Members are not relying on any statement or representation by the Parties in this regard. Settlement Class Members understand and agree that they will be responsible for the payment of any employee taxes and penalties assessed on the Individual Settlement Payments described herein and will hold the Parties free and harmless from and against any claims, liabilities, costs and expenses, including attorney's fees, resulting in any way from personal tax treatment of the payments made pursuant to this Agreement, including the treatment of such payments as not subject to withholding or deduction for payroll and employment

1 taxes. Defendants’ share of any employer payroll taxes attributed to the wage portion of the
2 Individual Settlement Payments and other required employer withholdings due on the Individual
3 Settlement Payments or the Class Representative Services Awards, including but not limited to
4 Defendants’ FICA and FUTA contributions, shall be paid from the Maximum Settlement Fund.

5 **I. Circular 230 Disclaimer.**

6 Each Party to this Agreement (for purposes of this section, the “acknowledging party” and
7 each Party to this Agreement other than the acknowledging party, an “other party”) acknowledges
8 and agrees that: (1) no provision of this Agreement, and no written communication or disclosure
9 between or among the Parties or their attorneys and other advisers, is or was intended to be, nor shall
10 any such communication or disclosure constitute or be construed or be relied upon as, tax advice
11 within the meaning of United States Treasury Department circular 230 (31 CFR part 10, as
12 amended); (2) the acknowledging party (a) has relied exclusively upon his, her or its own,
13 independent legal and tax counsel for advice (including tax advice) in connection with this
14 Agreement, (b) has not entered into this Agreement based upon the recommendation of any other
15 Party or any attorney or advisor to any other Party, and (c) is not entitled to rely upon any
16 communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty
17 that may be imposed on the acknowledging party, and (3) no attorney or adviser to any other Party
18 has imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax
19 strategies (regardless of whether such limitation is legally binding) upon disclosure by the
20 acknowledging party of the tax treatment or tax structure of any transaction, including any
21 transaction contemplated by this Agreement.

22 **J. Preliminary Approval Motion.**

23 At the earliest practicable time, Plaintiffs shall file with the Court a Motion for Order
24 Granting Preliminary Approval and supporting papers, which shall include this Agreement and a
25 settlement agreement between Plaintiffs and defendant Wal-Mart Stores, Inc., agreeing to dismiss
26 Wal-Mart Stores, Inc. from the Action with prejudice.
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1 **K. Settlement Administrator.**

2 The Settlement Administrator shall be responsible for: (a) calculating, processing and
3 mailing payments to the Class Representatives, Settlement Class Counsel, LWDA and Settlement
4 Class Members; (b) printing, translating into Spanish, and mailing in English and Spanish the
5 Notices to the Settlement Class Members and Claim Forms as directed by the Court; (c) distributing
6 the Notice by Publication; (d) receiving, determining timeliness of, and reporting on the Claim
7 Forms received; (e) receiving and reporting the objections and Requests for Exclusion; (f) deducting
8 all legally required taxes from Individual Settlement Payments and distributing tax forms; (g)
9 processing and mailing tax payments to the appropriate state and federal taxing authorities;
10 (h) providing declaration(s), as necessary, in support of preliminary and/or final approval of this
11 Settlement; and (h) other tasks as the Parties mutually agree or the Court orders the Settlement
12 Administrator to perform. The Settlement Administrator shall keep the Parties timely apprised of the
13 performance of all Settlement Administrator responsibilities.

14 **L. Settlement Administration.**

15 **1. Class Data**

16 No later than seven (7) days after the Preliminary Approval Date, Defendants shall mail a
17 letter to each subcontractor who they are aware provided workers for a Black Friday Event during
18 the Class Period (except for those subcontractors affiliated with Defendants – e.g., StaffPro),
19 requesting the (i) name, (ii) mailing address, (iii) telephone number, (iv) social security number, and
20 (v) time sheets and payroll data of anyone they supplied or referred to work a Black Friday Event
21 who fall within the Settlement Class. Plaintiffs also may subpoena such records from these
22 subcontractors (except for those subcontractors affiliated with Defendants – e.g., StaffPro) at
23 Plaintiffs' expense. No later than thirty (30) calendar days after the Preliminary Approval Date,
24 Defendants shall provide the Settlement Administrator and Settlement Class Counsel with the Class
25 Data for purposes of preparing and mailing the Notice to Settlement Class Members. The Class Data
26 shall be confidential. The Settlement Administrator and Settlement Class Counsel shall not provide
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1 the Class Data to any third party, or use the Class Data or any information contained therein for any
2 purpose other than to administer this Settlement.

3 **2. Notice.**

4 The Notice shall be in a form substantially similar to Exhibit 1. The Notice shall set forth the
5 release to be given by all members of the Settlement Class who do not timely request to be excluded
6 from the Settlement Class, as permitted herein. The Notice shall set forth the material terms of the
7 Settlement and the proposed certification, for settlement purposes only, of the Settlement Class. The
8 Notice shall expressly advise the Settlement Class Members of their right to opt out of the
9 Settlement in its entirety.

10 The Notice's mailing envelope shall include the following language: "IMPORTANT LEGAL
11 DOCUMENT- YOU ARE ENTITLED TO MONEY FROM A CLASS ACTION SETTLEMENT
12 AS EXPLAINED IN THE ENCLOSED NOTICE."

13 **3. Notice By First Class U.S. Mail.**

14 Upon receipt of the Class Data, the Settlement Administrator will perform a search based on
15 the National Change of Address Database and/or similar database(s) to update and correct any
16 known or identifiable address changes. No later than thirty (30) calendar days after receiving the
17 Class Data from Defendants as provided herein, the Settlement Administrator shall mail copies of
18 the Notice and Claim Form to all Settlement Class Members via regular First Class U.S. Mail. The
19 Settlement Administrator shall exercise its best judgment to determine the current mailing address
20 for each Settlement Class Member. The address identified by the Settlement Administrator as the
21 current mailing address shall be presumed to be the best mailing address for each Settlement Class
22 Member. In the event more than one address is identified, then the Settlement Administrator shall
23 mail to each potentially valid address. The Settlement Administrator shall send a reminder notice to
24 any Settlement Class Member that has not submitted a claim 15 days before the Response Deadline.

25 **4. Undeliverable Notices.**

26 Any Notices returned to the Settlement Administrator as non-delivered on or before the
27 Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding
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1 address is provided, the Settlement Administrator shall promptly attempt to determine a correct
2 address by lawful use of skip-tracing, or other search using the name, address and/or Social Security
3 number of the Settlement Class Member involved, and shall then perform a re-mailing, if another
4 mailing address is identified by the Settlement Administrator. Settlement Class Members who
5 received a re-mailed Notice shall have their Response Deadline extended ten (10) days from the
6 original Response Deadline.

7 **5. Defective Claim Form or Request For Exclusion**

8 A Claim Form or Request for Exclusion shall be defective if the Settlement Class Member
9 does not provide all of the required information. If the Settlement Administrator receives a defective
10 Claim Form or Request for Exclusion, the Settlement Administrator shall return such form to the
11 Settlement Class Member via first class mail (“Deficiency Notice”) and instruct the Class Member
12 as to the basis of the deficiency and that he or she has fifteen (15) days from the date of mailing of
13 the Deficiency Notice within which to correct the deficiency and return the Claim Form or Request
14 for Exclusion to the Claims Administrator. The Claims Administrator shall also provide Settlement
15 Class Counsel and Defendants’ Counsel with any defective Claim Forms or Request for Exclusions
16 on a weekly basis. The Claims Administrator will send only one Deficiency Notice per member of
17 the Settlement Class.

18 **6. Settlement Website**

19 The Settlement Administrator will post the Notice on an Internet website (“Internet Posting”)
20 specifically created for the Settlement of this Action. The Internet Posting will also contain the
21 Claim Form, Second Amended Complaint, Settlement Agreement, and Preliminary Approval Order.
22 The Internet Posting shall be operative starting on or before fifteen (15) calendar days after entry of
23 the Preliminary Approval Order. The Internet Posting shall remain active until the Court grants Final
24 Approval of the Settlement and shall be made inactive after that date.

25 **7. Notice By Publication**

26 No later than five (5) days after it mails the Notice to Class Members, the Settlement
27 Administrator will cause the Publication Notice to be published via an Internet-only media campaign
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1 in California. The Publication Notice will be substantially similar to the form attached as Exhibit 2,
2 and will provide the web address of the Settlement Website, and the phone number, U.S. postal
3 address and an email address to contact the Settlement Administrator, and the Response Deadline.

4 **M. Disputes Regarding Individual Settlement Payments.**

5 Any Class Member who receives Notice other than through mailing of a Notice by the
6 Settlement Administrator shall be subject to verification that said individual is a member of the
7 Settlement Class. Verification may be obtained through Defendants' records and/or the records of
8 the subcontractor that purportedly employed the individual. Defendants' records and/or the records
9 of the subcontractor that purportedly employed the individual shall be conclusive as to whether an
10 individual is a Settlement Class Member. If membership in the Settlement Class cannot be
11 confirmed through either Defendants' records or the records of the subcontractor, then the individual
12 shall not be a member of the Settlement Class.

13 Settlement Class Members will have the opportunity, should they disagree with Defendants'
14 records regarding the work-shifts worked by Settlement Class Members as stated on their individual
15 Notice, to provide documentation and/or an explanation to support a claim to additional work-shifts.
16 If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether
17 an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the
18 amounts of, any Individual Settlement Payments under the terms of this Agreement. The Settlement
19 Administrator's determination of the eligibility for and amount of any Individual Settlement
20 Payment shall be binding upon the Settlement Class Member and the Parties.

21 **N. Disputes Regarding Administration of Settlement.**

22 Any disputes not resolved by the Settlement Administrator concerning the administration of
23 the Settlement will be resolved by the Court under the laws of the State of California. Prior to any
24 such involvement of the Court, counsel for the Parties will confer in good faith to resolve the
25 disputes without the necessity of involving the Court.

26 **O. Claims**

27 Settlement Class Members must submit by the Response Deadline (or extended Response
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1 Deadline due to re-mailing of the Notice to certain Class Members) a timely and properly completed
2 Claim Form in compliance with the procedures set forth herein in order to receive Individual
3 Settlement Payments. The Claim Form can be submitted either by returning the paper claim form or
4 by submitting the claim online through the Settlement Website. Claims submitted through the
5 Settlement Website must be submitted with the Class Members written or electronic signature and
6 must include the Class Member's unique tracking code included on the Claim Form sent to the Class
7 Member by mail such that the Class Member's identity and membership in the Class may be
8 verified.

9 **P. Opt-Out/Request for Exclusion.**

10 The Notice shall state that Settlement Class Members who wish to exclude themselves from
11 the Settlement must submit to the Settlement Administrator a written statement requesting exclusion
12 from the Settlement. The written statement must contain the Settlement Class Member's name,
13 address, telephone number, and last four digits of their social security number. The Request for
14 Exclusion will not be valid if it is not timely submitted by the Response Deadline and received by
15 the Settlement Administrator. The date of the postmark on the return mailing envelope or fax stamp
16 on the Request for Exclusion shall be the exclusive means used to determine whether the Request for
17 Exclusion was timely submitted. Any Settlement Class Member who requests to be excluded from
18 the Settlement Class pursuant to the Exclusion/Opt-out rights set forth above will not be entitled to
19 any recovery under the Settlement, and will not be bound by the terms of the Settlement or have any
20 right to object, appeal or comment thereon. Settlement Class Members who fail to submit a valid and
21 timely written Request for Exclusion on or before the Response Deadline shall be bound by all terms
22 of the Settlement and any final judgment entered in this Action if the Settlement is approved by the
23 Court.

24 **Q. Objections.**

25 The Notice shall state that Settlement Class Members who wish to object to the Settlement
26 must file with the Court and submit by mail to the Settlement Administrator a written statement of
27 objection ("Notice of Objection") by the Response Deadline. The date on the postmark shall be
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1 deemed the exclusive means for determining that a Notice of Objection was timely served. The
2 Notice of Objection must be signed by the Settlement Class Member and must state: (1) the full
3 name of the Settlement Class Member; (2) all legal and/or factual bases supporting the objection;
4 (3) the date(s) the Settlement Class Member worked a Wal-Mart Black Friday Event; (4) the last
5 four digits of the Settlement Class Member's social security number and/or the Employee ID
6 number; (5) if the Settlement Class Member intends to appear at the Final Approval/Settlement
7 Fairness Hearing. Settlement Class Members who fail to make objections in the manner specified
8 above may be deemed to have waived any objections and may be foreclosed from making any
9 objections to the Settlement. Settlement Class Members who submit a timely Notice of Objection
10 will have a right to appear at the Final Approval/Settlement Fairness Hearing (although they need
11 not appear) in order to have their objections heard by the Court. A Settlement Class Member may
12 not be heard at the Final Approval/Settlement Fairness Hearing (at the discretion of the Court) if he
13 or she has not submitted a timely objection that complies with the procedures provided in this
14 paragraph. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage
15 Settlement Class Members to file or serve written objections to the Settlement or appeal from the
16 Order and Final Judgment. Settlement Class Members who submit a Request for Exclusion are not
17 entitled to object to the Settlement.

18 **R. Reporting Claims/Opt-Outs**

19 No later than thirty (30) calendar days after the Response Deadline, the Settlement
20 Administrator shall provide counsel for the Parties with a final report showing: (i) the names and
21 number of Settlement Class Members who are Participating Class Members (i.e., all Settlement
22 Class Members who submitted a timely and properly completed Claim Form); (ii) the names and
23 number of Settlement Class Members who have objected to the Settlement; (iii) the names of
24 Settlement Class Members opting out of the Settlement; (iv) copies of the submitted Request for
25 Exclusions; (v) copies of the submitted Notice of Objections; (vi) copies of any defective Claim
26 Forms or Requests for Exclusion; and (vii) the amount owed to each Participating Class Member.
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1 At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage members of
2 the Settlement Class to submit objections or Requests for Exclusion from the Settlement.

3 **S. Funding and Allocation of the Settlement Amount.**

4 Within twenty (20) calendar days after the Effective Date (but no earlier than January 2,
5 2019) (the “Funding Date”), Defendants shall fund a qualified settlement fund established by the
6 Settlement Administrator, who will be responsible for making appropriate payroll deductions and
7 reporting obligations and issuing the settlement payments, as set forth in this Agreement. Subject to
8 Paragraph III.U herein, the fund shall include the Net Settlement Amount, the Settlement Class
9 Counsel Award, the Class Representative Service Awards, the California Labor & Workforce
10 Development Agency’s (“LWDA”) portion of the PAGA Payment, Defendants’ share of
11 employment taxes, and Settlement Administration Costs.

12 **T. Individual Settlement Payments.**

13 Individual Settlement Payments shall be paid from the Net Settlement Amount and shall be
14 paid pursuant to the formula set forth herein.

15 **1. Calculation of Individual Settlement Payments.**

16 Using the Class Data, the Settlement Administrator will calculate the total Compensable
17 Work-Shifts for all Settlement Class Members by adding the number of Black Friday Events worked
18 by each Settlement Class Member during the Class Period. Each Settlement Class Member will be
19 considered to have worked one Compensable Work-Shift for each year they worked a Black Friday
20 Event during the Class Period. The respective Compensable Work-Shifts for each Participating
21 Class Member will be divided by the total Compensable Work-Shifts for all Settlement Class
22 Members, resulting in the Payment Ratio for each Participating Class Member. Each Participating
23 Class Member’s Payment Ratio will then be multiplied by the Net Settlement Amount to calculate
24 each Participating Class Member’s estimated Individual Settlement Payments. Each Individual
25 Settlement Payment will be reduced by any legally mandated employee tax withholdings (*e.g.*,
26 employee payroll taxes, etc.). No Person shall have any claim against Defendants, Defendants’
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1 counsel, Plaintiffs, the Settlement Class, Settlement Class Counsel, or the Claims Administrator
2 based on distributions and payments made in accordance with this Agreement.

3 **2. Allocation.**

4 For tax purposes, Individual Settlement Payments shall be allocated and treated as follows:
5 one-quarter (25%) as wages; one-half (50%) as penalties; and one-quarter (25%) as interest.

6 **3. Mailing.**

7 Individual Settlement Payments shall be mailed by regular First Class U.S. Mail to
8 Participating Class Members' last known mailing address or address provided on the Claim Form no
9 later than thirty (30) calendar days after the Effective Date.

10 **4. Expiration of Checks.**

11 Any checks issued to Participating Class Members shall remain valid and negotiable for one
12 hundred and eighty (180) days from the date of their issuance. If a Participating Class Member does
13 not cash his or her settlement check within 180 days, the uncashed funds shall be transmitted to the
14 California Department of Industrial Relations Unpaid Wage Fund in the name of the Participating
15 Class Member so that all Participating Class Members will have the opportunity to claim their
16 payments from the California Department of Industrial Relations after the expiration of the
17 settlement checks.

18 **U. Minimum Allocation**

19 The amount actually distributed to the Participating Class Members shall equal at least 50%
20 of the Net Settlement Amount. If the total Individual Settlement Payments claimed by Participating
21 Class Members and the employer's payroll taxes would equal less than 50% of the Net Settlement
22 Amount, the Settlement Administrator shall proportionately increase the Individual Settlement
23 Payment for each Participating Class Member to ensure that the total of all Individual Settlement
24 Payments (and the employer's payroll taxes) combined equals 50% of the Net Settlement Amount.
25 Any unclaimed amounts above 50% of the Net Settlement Amount shall remain the exclusive
26 property of Defendants.
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1 **V. Class Representative Service Award.**

2 Plaintiffs shall apply for a Class Representative Service Award, with the total payout to each
3 Plaintiff totaling no more than Twenty-Five Thousand Dollars (\$25,000) per Plaintiff. The Class
4 Representative Service Awards are in consideration of the broad General Release (see Par. III.C)
5 being agreed to by each of the Class Representatives, as distinct from the more narrowly tailored
6 Released Claims being agreed to on behalf of the Settlement Class Members; their further agreement
7 to the demand of the Defendants that they agree to a waiver of the right to future employment with
8 the Defendants; and for their time, effort and litigation risks incurred by each of them in bringing
9 and prosecuting the Action. In addition to the risks of litigation, the Class Representatives have also
10 willingly and knowingly accepted the personal risk of reputational damage triggered by the “power
11 of the Internet” and the likelihood that all future employers to whom they apply for employment will
12 “discover,” through a basic internet search commonly done for all job applicants, that each of them
13 has been a plaintiff in an employment class action against a former employer.

14 The Settlement Administrator shall pay the Class Representative Service Awards to the Class
15 Representatives from the Maximum Settlement Fund no later than thirty (30) calendar days after the
16 Effective Date. Any portion of the requested Class Representative Service Awards that is not
17 awarded by the Court shall be added to the Net Settlement Amount and shall be distributed to
18 Settlement Class Members as provided in this Agreement. The Settlement Administrator shall issue
19 an IRS Form 1099 — MISC to each of the Class Representatives for their Class Representative
20 Service Awards. The Class Representatives shall be solely and legally responsible to pay any and all
21 applicable taxes on their respective Class Representative Service Awards and shall hold harmless
22 Defendants from any claim or liability for taxes, penalties, or interest arising as a result of the Class
23 Representative Service Award. The Class Representative Service Award shall be in addition to the
24 Class Representatives’ respective Individual Settlement Payment as a Participating Class Member.
25 In the event that the Court reduces or does not approve the requested Class Representative Service
26 Award, the final award shall be binding and shall not constitute grounds to revoke the Settlement or
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1 file an appeal. Defendants agree not to oppose or object to any application or motion by the Class
2 Representatives for a service award that is consistent with the terms set forth above.

3 **W. Settlement Class Counsel Award.**

4 Plaintiffs shall apply for a Settlement Class Counsel Award of attorneys' fees not to exceed
5 one-million-nine-hundred-ninety-five-thousand dollars (\$1,995,000), which is thirty-eight percent
6 (38%) of the Maximum Settlement Fund (\$5,250,000), plus up to \$200,000 of costs and expenses,
7 supported by a declaration from Settlement Class Counsel, to be paid from the Maximum Settlement
8 Fund. The Parties agree that any and all claims for attorneys' fees and costs have been settled by this
9 Agreement and that neither Plaintiffs, Settlement Class Members, nor Settlement Class Counsel shall
10 seek payment of attorneys' fees or reimbursement of costs/expenses from Defendants except as set
11 forth in this Agreement. Any portion of the requested Settlement Class Counsel Award that is not
12 awarded to Settlement Class Counsel shall be added to the Net Settlement Amount and shall be
13 distributed to Participating Class Members as provided in this Agreement, subject however to the
14 right of appeal as set forth herein. The Settlement Administrator shall pay the Settlement Class
15 Counsel Award to Settlement Class Counsel from the Maximum Settlement Fund no later than thirty
16 (30) calendar days after the Effective Date. Settlement Class Counsel shall be solely and legally
17 responsible to pay all applicable taxes on the payment made pursuant to this paragraph. The
18 Settlement Administrator shall issue an IRS Form 1099 — MISC to Settlement Class Counsel for
19 the payments made pursuant to this paragraph.

20 If the Court reduces or does not approve the requested Settlement Class Counsel Award,
21 Plaintiffs and Settlement Class Counsel shall have the right to appeal the Court's ruling, but the final
22 award of the Superior Court following any appeal shall be binding and shall not constitute grounds
23 to revoke the Settlement.

24 Settlement Class Counsel may elect to have the Settlement Class Counsel Award paid in
25 periodic payments through a structured settlement, entered into prior to payment of any such fees
26 and costs to Settlement Class Counsel. Settlement Class Counsel shall be solely and legally
27 responsible to pay all applicable taxes on the payment made pursuant to this Paragraph. A Form
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1 1099 – MISC, Box 14 shall be provided to the Qualified Settlement Fund for any Settlement Class
2 Counsel Award directed to the Qualified Settlement Fund.

3 Defendants agree not to oppose or object to any application or motion by Settlement Class
4 Counsel for an award of attorneys’ fees and costs that is consistent with the terms set forth above.

5 **X. PAGA Payment.**

6 Fifty-two Thousand Five Hundred Dollars (\$52,500) shall be allocated from the Maximum
7 Settlement Fund for settlement of claims for civil penalties under the PAGA. The Settlement
8 Administrator shall pay seventy-five percent (75%) of the PAGA Payment, or \$39,375, to the
9 California Labor and Workforce Development Agency no later than thirty (30) calendar days after
10 the Effective Date. Twenty-five (25%), or \$13,125, will be part of the Net Settlement Amount and
11 distributed to Settlement Class Members as described in this Agreement.

12 **Y. Settlement Administration Costs.**

13 The Settlement Administrator shall be paid for the costs of administration of the Settlement
14 from the Maximum Settlement Fund. The estimate of the Settlement Administration Costs, including
15 publication notice, is not to exceed Seventy-Five Thousand Dollars and No Cents (\$75,000.) The
16 Settlement Administrator shall be paid the Settlement Administration Costs no later than thirty (30)
17 calendar days after the Funding Date.

18 **Z. Government Actions Affecting Settlement.**

19 If a representative action is commenced by any federal, state or local government authority,
20 including, without limitation, the U.S. Department of Labor or the California Division of Labor
21 Standards Enforcement, in a *parens patriae* or other function asserting any of the Released Claims,
22 (hereinafter a “Governmental Representative Action”) within one year of the Preliminary Approval
23 Date, Plaintiffs and Settlement Class Counsel will sign an appropriate declaration at the request of
24 Defendants supporting the Settlement and intervene in such action at the request of the Defendants
25 to support the Settlement, by asserting, if true, that the governmental action is within the scope of
26 this Stipulation, the Action and the Final Judgment.

1 In the event that such a Governmental Representative Action is commenced prior to the
2 distribution of the Individual Settlement Payments, Defendants shall have the option in their sole
3 discretion to immediately suspend a portion of payments to the Participating Class Members pending
4 the outcome of the action or administrative proceeding brought by the governmental authority. The
5 amount of payments suspended, if any, shall be commensurate with the percentage of the total class
6 period that falls within the time period at issue in the Governmental Representative Action. Any
7 suspended payment amount shall be calculated by determining the percentage of the total class
8 period that falls within the time period of the representative action (as compared to the percentage of
9 the class period falling outside of the representative action) and multiplying that percentage by the
10 total class settlement amount. Should any supplemental distribution be required based upon the
11 withholding of payments as described in this section, Defendants shall pay for and commence the
12 supplemental distribution of all remaining class funds within thirty (30) calendar days of the final
13 resolution of the Governmental Representative Action.

14 **AA. Final Approval Motion.**

15 At the earliest practicable time, Plaintiffs shall file with the Court a Motion for Order
16 Granting Final Approval and Entering Judgment, which motion shall request final approval of the
17 Settlement and the amounts payable for the Class Representative Service Awards, the Settlement
18 Class Counsel Award, the PAGA Payment, and the Settlement Administration Costs.

19 **1. Declaration by Settlement Administrator.**

20 The Settlement Administrator shall submit a declaration in support of Plaintiffs' motion for
21 final approval of this Settlement detailing the number of Notices mailed and re-mailed to Settlement
22 Class Members, the number of undeliverable Notices, the number of timely and properly returned
23 claim forms, the number of timely Requests for Exclusion, the number of timely objections received,
24 the amount of the average Individual Settlement Payment, the Settlement Administration Costs, and
25 any other information as the Parties mutually agree or the Court orders the Settlement Administrator
26 to provide.
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1 **2. Final Approval Order and Judgment.**

2 The Parties shall present a Judgment and Order Granting Final Approval of Class Action
3 Settlement to the Court for its approval, in the form substantially similar to Exhibit 3. The Final
4 Judgment shall, among other things:

- 5 i. Find that the Court has personal jurisdiction over all Settlement Class
6 Members and that the Court has subject matter jurisdiction to approve this
7 Stipulation of Class Action Settlement and Release of Claims (“Stipulation”)
8 and all exhibits thereto;
- 9 ii. Approve this Stipulation and the proposed Settlement as fair, reasonable and
10 adequate, consistent and in compliance with all applicable requirements of the
11 California Code of Civil Procedure, the California and United States
12 Constitutions (including the due process clauses), the California Rules of
13 Court, the San Diego County Superior Court Local Rules and any other
14 applicable law, and in the best interests of each of the Parties and the
15 Settlement Class Members; direct the Parties and their counsel to implement
16 this Stipulation according to its terms and provisions; and declare this
17 Stipulation to be binding on Plaintiffs and all other Settlement Class
18 Members, except those who timely and properly submitted Request for
19 Exclusions, as well as their heirs, executors and administrators, successors and
20 assigns;
- 21 iii. Find that the Notice and notice methodology implemented pursuant to this
22 Stipulation (i) constituted the best practicable notice; (ii) constituted notice
23 that was reasonably calculated, under the circumstances, to apprise Settlement
24 Class Members of the pendency of the Action, their right to object to or
25 exclude themselves from the proposed Settlement and their right to appear at
26 the Final Approval/Settlement Fairness Hearing; (iii) were reasonable and
27 constituted due, adequate and sufficient notice to all persons entitled to
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- receive notice; and (iv) met all applicable requirements of the California Code of Civil Procedure, the California and United States Constitutions (including the Due Process Clause), the California Rules of Court, the San Diego County Superior Court Local Rules and any other applicable law;
- iv. Find that Plaintiffs and Settlement Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Settlement;
 - v. Dismiss the Action (including all individual claims and Released Claims) and enter judgment, without fees or costs to any party except as provided in this Stipulation;
 - vi. Incorporate the Released Claims set forth in this Agreement, make the Released Claims effective as of the date of the Preliminary Approval Date, and forever discharge the Released Parties from any claims or liabilities arising from or related to the Action;
 - vii. Permanently bar and enjoin Plaintiffs and all Settlement Class Members who have not been excluded from the Settlement Class, and any person acting on their behalf, from (i) filing, commencing, prosecuting, intervening in, participating in (as class members or otherwise), or receiving any benefits or other relief from, any other lawsuit, in any state or federal court, arbitration, or administrative, regulatory or other proceeding or order in any jurisdiction based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, in the Action; and (ii) organizing such non-excluded Class Members into a separate class for purposes of pursuing as a purported class or collective action or representative action (including by seeking to amend a pending complaint to include class, collective, or representative allegations, or by seeking class certification in a pending action) any lawsuit based on or relating to the claims and causes of action, or

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the facts and circumstances relating thereto, in the Action;

viii. Authorize the Parties, without further approval from the Court, to agree to and to adopt such amendments, modifications and expansions of this Stipulation and all exhibits attached hereto as (i) are consistent with the Final Judgment; and (ii) do not limit the rights of Settlement Class Members under the Stipulation;

ix. Without affecting the finality of the Final Judgment, the Court shall retain continuing jurisdiction over the Action and the Parties and Settlement Class, and the administration and enforcement of the Settlement. Any disputes or controversies arising with respect to the interpretation, consummation, enforcement, or implementation of the Settlement shall be presented by motion to the Court.

BB. Option to Terminate Settlement.

1. Defendants' Right to Terminate.

If, after the Response Deadline, the total number of Settlement Class Members who submitted timely and valid Requests for Exclusion from the Settlement is over five percent (5%) of all Settlement Class Members, Defendants shall have, in their sole discretion, the option to terminate this Settlement. In addition, if, by the Response Deadline, Plaintiff does not have an agreement with defendant Wal-Mart Stores, Inc. that satisfies paragraph I.AA above and provides for a release of claims and the dismissal of Wal-Mart Stores, Inc. from the Action with prejudice, Defendants shall have, in their sole discretion, the option to terminate this Settlement. If Defendants exercise the option to terminate this Settlement on either ground, Defendants shall: (a) provide written notice to Settlement Class Counsel within thirty (30) calendar days after being informed of the percentage of Settlement Class Members who opted out and (b) pay all Settlement Administration Costs incurred up to the date or as a result of the termination; and the Parties shall proceed in all respects as if this Agreement had not been executed.

1 **2. Termination Due to Material Modification of Agreement by Court.**

2 If the Court modifies this Agreement in a material manner, the adversely-affected Party shall
3 have the right to void the Agreement. The Court’s denial of the Parties’ request for an injunction
4 against Settlement Class Members (who have not timely opted out of the Settlement) from pursuing
5 claims released by this Agreement shall not constitute a material modification of this Agreement.
6 The Court’s denial or modification of Settlement Class Counsel’s Award shall not constitute a
7 material modification of this Agreement. The Court’s denial or modification of Class Representative
8 Service Awards shall not constitute a material modification of this Agreement.

9 **CC. Motions for Preliminary and Final Approval.**

10 Settlement Class Counsel will provide an opportunity for Counsel for Defendants to review
11 the Motions for Preliminary and Final Approval prior to filing with the Court. The Parties and their
12 counsel will cooperate with each other and use their best efforts to effect the Court’s approval of the
13 Motions for Preliminary and Final Approval of the Settlement.

14 **DD. No Impact on Benefit Plans.**

15 Neither this Settlement nor any amounts paid under the Settlement will modify any
16 previously credited hours or service under any employee benefit plan, policy, or bonus program
17 sponsored by Defendants. Such amounts will not form the basis for additional contributions to,
18 benefits under, or any other monetary entitlement under Defendant-sponsored benefit plans, policies,
19 or bonus programs. The payments made under the terms of this Stipulation shall not be applied
20 retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other form of
21 compensation for the purposes of Defendants’ benefit plan, policy, or bonus program. Defendants
22 retain the right to modify the language of their benefit plans, policies and bonus programs to effect
23 this intent, and to make clear that any amounts paid pursuant to this Settlement are not for “hours
24 worked,” “hours paid,” “hours of service,” or any similar measuring term as defined by applicable
25 plans, policies and bonus programs for purposes of eligibility, vesting, benefit accrual, or any other
26 purpose, and that additional contributions or benefits are not required by this Settlement.

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1 **IV. MISCELLANEOUS PROVISIONS.**

2 **A. Notices.**

3 Unless otherwise specifically provided herein, all notices, demands, or other communications
4 given hereunder shall be in writing and shall be deemed to have been duly given as of the third
5 business day after mailing by United States certified mail, return receipt requested, addressed as
6 follows:

7 To Plaintiffs and the Settlement Class:
8 James Patterson, Esq.
9 Patterson Law Group
10 1350 Columbia Street, Suite 603
11 San Diego, California 92101
12 Telephone: (619) 756-6990
13 Facsimile: 619-756-6991

14 To Defendants:
15 Emily Burkhardt Vicente
16 Hunton Andrews Kurth LLP
17 550 S. Hope Street, Suite 2000
18 Los Angeles, CA 90071
19 Telephone: (213) 532-2000
20 Facsimile: (213) 532-2020

21 **B. Cooperation.**

22 The Parties and their counsel will cooperate with each other and use their best efforts to
23 effect the implementation of the Settlement.

24 **C. Interim Stay of Proceedings.**

25 The Parties agree to stay all proceedings in the Action, except such proceedings necessary to
26 implement and complete the Settlement, pending the Final Approval to be conducted by the Court.

27 **D. Admissibility of Agreement.**

28 This Agreement shall not be admissible in any proceeding for any purpose, except to enforce
it according to its terms.

E. Amendment or Modification.

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

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F. Entire Agreement.

This Agreement and any attached exhibits constitute the entire Agreement among these Parties, and no oral or written representations, warranties or inducements have been made to any Party concerning this Agreement or its exhibits other than the representations, warranties and covenants contained and memorialized in the Agreement and its exhibits.

G. Authorization to Enter Into Settlement Agreement.

Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate actions required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The persons signing this Agreement on behalf of Defendants represent and warrant that they are authorized to sign this Agreement on behalf of Defendants. Plaintiffs represent and warrant that they are authorized to sign this Agreement and that they have not assigned any claim, or part of a claim, covered by this Settlement to a third-party.

H. Binding on Successors and Assigns.

This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

I. California Law Governs.

All terms of this Agreement and the exhibits hereto and any disputes arising hereunder shall be governed by and interpreted according to the laws of the State of California.

J. The parties agree that this settlement is not subject to Section 384 of the California Code of Civil Procedure.

K. Counterparts.

This Agreement may be executed in one or more counterparts, and signatures may be provided in “wet ink,” PDF or via facsimile, all of which shall constitute “original” executed signatures. All executed counterparts and each of them shall be deemed to be one and the same

1 instrument provided that counsel for the Parties to this Agreement shall exchange among themselves
2 copies or originals of the signed counterparts.

3 **L. This Settlement Is Fair, Adequate and Reasonable.**

4 The Parties believe this Settlement is a fair, adequate and reasonable settlement of this
5 Action and have arrived at this Settlement after extensive arms-length negotiations, taking into
6 account all relevant factors, present and potential.

7 **M. Jurisdiction of the Court.**

8 The Parties agree that the Court shall retain jurisdiction with respect to the interpretation,
9 implementation and enforcement of the terms of this Agreement and all orders and judgments
10 entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of
11 the Court for purposes of interpreting, implementing and enforcing the settlement embodied in this
12 Agreement and all orders and judgments entered in connection therewith.

13 **N. Invalidity of Any Provision.**

14 Before declaring any provision of this Agreement invalid, the Court shall first attempt to
15 construe the provisions valid to the fullest extent possible consistent with applicable precedents so as
16 to define all provisions of this Agreement valid and enforceable.

17 **O. Publicity.**

18 Defendants may disclose the terms and contents of the Settlement, as required under their
19 contractual and legal obligations. Plaintiffs and Settlement Class Counsel agree not to issue press
20 releases, communicate with, or respond to any media or publication entities, publish information in
21 manner or form, whether printed or electronic, on any medium or otherwise communicate, whether
22 by print, video, recording or any other medium, with any person or entity concerning the Settlement,
23 including the fact of the Settlement, its terms or contents and the negotiations underlying the
24 Settlement, except as shall be contractually required to effectuate the terms of the Settlement as set
25 forth herein. This Agreement does not restrict communications between Settlement Class Counsel
26 and Settlement Class Members. Settlement Class Counsel shall be permitted to post a neutral
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1 statement about the Action and Settlement on its/their websites, but shall not publish the names of
2 Defendants; any such website postings shall refer to Defendants as “Doe Company.”

3 **P. No Unalleged Claims.**

4 Plaintiffs and Settlement Class Counsel represent that they do not currently intend to pursue
5 any other claims against Defendants, including, but not limited to, any and all claims relating to or
6 arising from Plaintiffs’ employment with Defendants. The Parties further acknowledge, understand
7 and agree that this representation is essential to the Agreement and that this Agreement would not
8 have been entered into were it not for this representation.

9 **Q. Waiver of Certain Appeals.**

10 Except as provided herein, the Parties agree to waive any and all rights to appeal, this waiver
11 being contingent upon the Court entering the Final Judgment. This waiver includes waiver of all
12 rights to any post-judgment proceeding and appellate proceeding, including, but not limited to,
13 motions for relief from judgment and motions to amend or alter the judgment. Nothing in this
14 paragraph or Agreement shall preclude Settlement Class Counsel from appealing any reduction in
15 the requested Settlement Class Counsel Award.

16 **R. No Admissions.**

17 Plaintiffs have claimed and continue to claim that the Released Claims have merit and give
18 rise to liability on the part of Defendants. Defendants claim that the Released Claims have no merit
19 and do not give rise to liability. This Agreement is a compromise of disputed claims. Nothing
20 contained in this Agreement and no documents referred to herein and no action taken to carry out
21 this Agreement may be construed or used as an admission by or against the Defendants, Plaintiffs or
22 Settlement Class Counsel as to the merits or lack thereof of the claims asserted.

23 **S. Return of All Documents Produced by Defendants.**

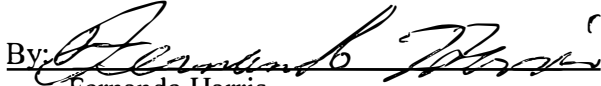
24 Plaintiffs and Settlement Class Counsel agree to return or destroy all confidential documents
25 and electronic information produced by Defendants in the Actions within 30 days after the entry of
26 the Final Judgment by the Court.

27 [SIGNATURES ON FOLLOWING PAGE]
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Hunton Andrews Kurth LLP
550 South Hope Street, Suite 2000
Los Angeles, California 90071-2627

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**ACCEPTED AND AGREED:
FERNANDO HARRIS**

By: 
Fernando Harris

Date: Nov-27-18

U.S. SECURITY ASSOCIATES, INC.

By: _____

Its: _____

Date: _____

HELADIO ORTEGA-DIAZ

By: _____
Heladio Ortega-Diaz

Date: _____

**U.S. SECURITY ASSOCIATES
STAFFING, INC.**

By: _____

Its: _____

Date: _____

WILLIAM ODELL


By: _____
William Odell

Date: _____

APPROVED AS TO FORM:

ATTORNEYS FOR PLAINTIFFS

PATTERSON LAW GROUP

By: 
James R. Patterson
Allison H. Goddard
Jacquelyn E. Quinn

Date: November 28, 2017

**ATTORNEYS FOR U.S. SECURITY
ASSOCIATES, INC. AND U.S. SECURITY
ASSOCIATES STAFFING, INC.**

HUNTON ANDREWS KURTH LLP

By: _____
Emily Burkhardt Vicente
Michael J. Mueller
Corey Lee
Matthew I. Bobb

Date: _____

Hunton Andrews Kurth LLP
550 South Hope Street, Suite 2000
Los Angeles, California 90071-2627

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Fernando Harris

Date: _____

U.S. SECURITY ASSOCIATES, INC.

By: _____

Its: _____

Date: _____

HELADIO ORTEGA-DIAZ

By: Heladio Ortega
Heladio Ortega-Diaz

Date: 11/27/18

**U.S. SECURITY ASSOCIATES
STAFFING, INC.**

By: _____

Its: _____

Date: _____

WILLIAM ODELL

By: _____
William Odell

Date: _____

APPROVED AS TO FORM:

ATTORNEYS FOR PLAINTIFFS

PATTERSON LAW GROUP

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James R. Patterson
Allison H. Goddard
Jacquelyn E. Quinn

Date: _____

**ATTORNEYS FOR U.S. SECURITY
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**ACCEPTED AND AGREED:
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By: _____
Fernando Harris

Date: _____

HELADIO ORTEGA-DIAZ

By: _____
Heladio Ortega-Diaz

Date: _____

WILLIAM ODELL

By: William O. Odell II
William Odell

Date: 11/26/2018

APPROVED AS TO FORM:

ATTORNEYS FOR PLAINTIFFS

PATTERSON LAW GROUP

By: _____
James R. Patterson
Allison H. Goddard
Jacquelyn E. Quinn

Date: _____

U.S. SECURITY ASSOCIATES, INC.

By: _____

Its: _____

Date: _____

**U.S. SECURITY ASSOCIATES
STAFFING, INC.**

By: _____

Its: _____

Date: _____

**ATTORNEYS FOR U.S. SECURITY
ASSOCIATES, INC. AND U.S. SECURITY
ASSOCIATES STAFFING, INC.**

HUNTON ANDREWS KURTH LLP

By: _____
Emily Burkhardt Vicente
Michael J. Mueller
Corey Lee
Matthew I. Bobb

Date: _____

1 **ACCEPTED AND AGREED:**
2 **FERNANDO HARRIS**

3 By: _____
4 Fernando Harris

5 Date: _____

6 **HELADIO ORTEGA-DIAZ**

7 By: _____
8 Heladio Ortega-Diaz

9 Date: _____

10 **WILLIAM ODELL**

11 By: _____
12 William Odell

13 Date: _____

14 **APPROVED AS TO FORM:**

15 **ATTORNEYS FOR PLAINTIFFS**

16 **PATTERSON LAW GROUP**

17 By: _____
18 James R. Patterson
19 Allison H. Goddard
20 Jacquelyn E. Quinn

21 Date: _____

22 **U.S. SECURITY ASSOCIATES, INC.**

23 By: _____
24 *[Signature]*
25 **General Counsel**

26 Date: 11/28/18

27 **U.S. SECURITY ASSOCIATES
STAFFING, INC.**

28 By: _____
29 *[Signature]*
30 **General Counsel**

31 Date: 11/28/18

32 **ATTORNEYS FOR U.S. SECURITY
ASSOCIATES, INC. AND U.S. SECURITY
ASSOCIATES STAFFING, INC.**

33 **HUNTON ANDREWS KURTH LLP**

34 By: _____
35 *[Signature]*
36 Emily Burkhardt Vicente
37 Michael J. Mueller
38 Corey Lee
39 Matthew I. Bobb

40 Date: 11/28/18