

EXHIBIT “1”

EXECUTION VERSION

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17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**

19 ANDREW QUIRUZ, individually, on behalf
20 of all others similarly situated, and as a
representative of other aggrieved employees,

21
22 Plaintiff,

23 vs.

24 ARCHER-DANIELS-MIDLAND
COMPANY (ADM) and SPECIALTY
25 COMMODITIES, INC. (SCI), a California
corporation; and DOES 1 through 250,
26 inclusive

27 Defendants.
28

Case No: 5:17-cv-03300-BLF

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

Action Filed: May 3, 2017

Date of Removal: June 7, 2017

1 This Amended Stipulation of Class and Collective Action Settlement and Release of Claims
2 is entered into by and between Plaintiff Andrew Quiruz ("Plaintiff"), individually and on behalf of
3 the Settlement Class, Defendants Archer Daniels Midland Company ("ADM" or "Defendant
4 ADM"), and Specialty Commodities, Inc. ("SCI" or "Defendant SCI"), (together, "Defendants").

5
6 **I. DEFINITIONS**

7 A. "Agreement" or "Settlement Agreement" means this Amended Stipulation of
8 Settlement of Class and Collective Action and Release of Claims.

9 B. "Action" means *Andrew Quiruz v. Archer-Daniels-Midland Company (ADM) and*
10 *Specialty Commodities, Inc. (SCI), et al.*, filed on May 3, 2017, in the Superior Court for the State
11 of California, County of Los Angeles, removed to this Court on June 7, 2017, and assigned Case
12 Number 5:17-CV-03300-BLF.

13 C. "California Non-Exempt Employee Subclass" includes any person who was
14 employed by Defendants in an hourly-paid or salaried non-exempt position in California during the
15 California Non-Exempt Employee Class Period (defined herein Section I.I).

16 D. "California Exempt Employee Subclass" includes any person who was employed by
17 Defendants in a salaried exempt position in California during the California Exempt Employee
18 Class Period (defined herein Section I.H).

19 E. "California FLSA Collective" includes each California Non-Exempt Employee
20 Subclass Member who timely and properly opts into the California FLSA Collective using an
21 FLSA Opt-In Consent Form pursuant to the terms set forth in Section III.K.9, thereby becoming a
22 California FLSA Collective Member.

23 F. "California FLSA Collective Member" means each California Non-Exempt
24 Employee Subclass Member who timely and properly opts into the California FLSA Collective
25 using an FLSA Opt-In Consent Form pursuant to the terms set forth in Section III.K.9.

26 G. "California Subclasses" means the California Non-Exempt Employee Subclass and
27 the California Exempt Employee Subclass. For avoidance of doubt, although a member of the
28 California Non-Exempt Employee Subclass can also become a California FLSA Collective
Member by timely and properly opting into the California FLSA Collective using an FLSA Opt-In

1 Consent Form pursuant to the terms set forth in Section III.K.9, the term “California Subclasses”
2 (and similar terms such as “Class”) does not itself refer to the California FLSA Collective, which is
3 a distinct concept under this Agreement and does not involve a Rule 23 “class” per se.

4 H. “California Exempt Employee Class Period” means the period from May 3, 2016
5 up to and including the Preliminary Approval Date (defined in Section I.NN below).

6 I. “California Non-Exempt Employee Class Period” means the period from May 3,
7 2013 up to and including the Preliminary Approval Date (defined in Section I.NN below). For
8 avoidance of doubt, because all members of the California Non-Exempt Employee Subclass are
9 eligible also to become California FLSA Collective Members by timely and properly opting into
10 the California FLSA Collective using an FLSA Opt-In Consent Form pursuant to the terms set
11 forth in Section III.K.9, the “California Non-Exempt Employee Class Period” shall also apply, for
12 purposes of this Agreement, to all California FLSA Collective Members.

13 J. “Class Counsel” means the Setareh Law Group.

14 K. “Class Counsel Award” means the award of fees and expenses that the Court
15 authorizes to be paid to Class Counsel for the services they have rendered to Plaintiff and the Class
16 in the Action, consisting of attorneys’ fees not to exceed Four Hundred Sixty Thousand dollars
17 (\$460,000) (approximately thirty-one percent (31%) of the \$1,500,000 Total Settlement Amount)
18 plus costs and expenses not to exceed Fifteen Thousand dollars (\$15,000).

19 L. “Class Data” means information regarding Settlement Class Members that
20 Defendants will in good faith compile from their records and provide to the Settlement
21 Administrator. The Class Data shall be formatted as a Microsoft Excel spreadsheet and shall
22 include: each Settlement Class Member’s full name; last known address; and Social Security
23 Number. The Class Data shall remain confidential, and shall not be disclosed to Class Counsel or
24 any other person or entity other than the Settlement Administrator for the purposes set forth herein.

25 M. “California Non-Exempt Class Data” means, in addition to the Class Data as
26 defined above, the number of Workweeks each California Non-Exempt Employee Subclass
27 member was employed as an hourly-paid or salaried non-exempt employee of Defendants in
28 California during the California Non-Exempt Employee Class Period and during which he or she

1 worked productive hours.

2 N. "California Exempt Class Data" means, in addition to the Class Data, the number of
3 paystubs each California Exempt Employee Subclass member received during the California
4 Exempt Employee Class Period.

5 O. "Class Period" means, with respect to the California Exempt Employee Class
6 Period, the period from May 3, 2016 up to and including the Preliminary Approval Date (defined in
7 Section I.NN below); with respect to the California Non-Exempt Employee Class Period, the
8 period from May 3, 2013 up to and including the Preliminary Approval Date; and with respect to
9 the FCRA Class Period, the period from September 26, 2012 up to and including the Preliminary
10 Approval Date.

11 P. "Class Representative Service Award" means the amount that the Court authorizes
12 to be paid to Plaintiff, in addition to his Individual Class Member Settlement Payment and
13 Individual California FLSA Collective Settlement Payment, in recognition of his effort and risk in
14 assisting with the prosecution of the Action and in exchange for executing a General Release of
15 Defendants and the other Released Parties.

16 Q. "Class Representative" means Plaintiff Andrew Quiruz and, for avoidance of doubt,
17 includes Plaintiff's status as the representative of both the Settlement Class and the California
18 FLSA Collective.

19 R. "Court" means the United States District Court Northern District of California.

20 S. "Defendants" means Defendant ADM and Defendant SCI.

21 T. "Effective Date" means any of the following dates by which: (a) the applicable date
22 for seeking appellate review of the Court's final approval of the Settlement has passed without a
23 timely appeal; or (b) if an appeal is filed, the Court of Appeal or the Supreme Court has rendered a
24 final decision or judgment affirming the Court's final approval of the Settlement without material
25 modification, and the time for any further appeal has expired; or (c) if an appeal is filed, any timely
26 appeal has been dismissed.

27 U. "FCRA Class Period" means the period from September 26, 2012 up to and
28 including the Preliminary Approval Date (defined in Section I.NN below).

1 V. "FCRA Subclass" means (1) any person who was employed by Defendants during
2 the FCRA Class Period or (2) any person who applied for employment with Defendants during the
3 FCRA Class Period, in each case for whom a pre-employment background check was conducted
4 during the FCRA Class Period. There are approximately 20,000 FCRA Subclass Members,
5 according to data supplied to Defendants by a third-party vendor (such data to be updated when the
6 Class Data is provided). For avoidance of doubt, unlike the California Subclasses, the FCRA
7 Subclass is a nationwide settlement class.

8 W. "California FLSA Collective Settlement Amount" means a total amount of up to
9 Fifty Thousand dollars (\$50,000), payable from the Total Settlement Amount, to be used both to
10 pay separate consideration to each and every California Non-Exempt Employee Subclass Member
11 who timely and properly opts into the California FLSA Collective using an FLSA Opt-In Consent
12 Form pursuant to the terms set forth in Section III.K.9, thereby becoming a California FLSA
13 Collective Member, and to pay the applicable employer-share of payroll taxes (including but not
14 limited to Defendants' FICA and FUTA payments) on the wage component of such California
15 FLSA Collective Member payments. This amount shall be deposited into the Qualified Settlement
16 Fund by Defendants to be held in trust by the Settlement Administrator to pay California FLSA
17 Collective Members. Only the portion of the California FLSA Collective Settlement Amount that
18 is claimed by California FLSA Collective Members by timely and properly opting into the
19 California FLSA Collective shall be deemed owed by Defendants, and any amount not claimed by
20 California FLSA Collective Members shall remain Defendants' property and be returned to
21 Defendants accordingly.

22 X. "Individual California FLSA Collective Settlement Payment" means each
23 California FLSA Collective Member's respective share of the California FLSA Collective
24 Settlement Amount after also accounting for payment from the California FLSA Collective
25 Settlement Amount of the applicable employer-share of payroll taxes (including but not limited to
26 Defendants' FICA and FUTA payments) on the wage component of such Individual California
27 FLSA Collective Settlement Payments. See Section III.K.15.c.

28 Y. "Individual Class Member Settlement Payment" means the amount payable from the

1 Aggregate Class Payment Amount to each Settlement Class Member, as follows: (a) with respect
2 to the FCRA Subclass members, the Individual Background Check Payment (see Section
3 III.K.15.a); (b) with respect to the California Non-Exempt Employee Subclass members, the
4 California Non-Exempt Employee Individual Settlement Amount (see Section III.K.15.b); and (c)
5 with respect to the California Exempt Employee Subclass members, the California Exempt
6 Employee Individual Settlement Amount (see Section III.K.15.d); and whatever combination of
7 such amounts a Class Member is entitled to, if any, based on their membership in one or more
8 subclasses; in each case after also accounting for payment from the Aggregate Class Payment
9 Amount of the applicable employer-share of payroll taxes (including for example FICA and
10 FUTA) on the wage component (if any) of such Class Member payments. Class Members are not
11 required to submit a claim form to receive their Individual Class Member Settlement Payments
12 pursuant to this Agreement. Rather, Class Members will receive an Individual Class Member
13 Settlement Payment automatically, without the return of a claim form. For avoidance of doubt,
14 Individual Class Member Settlement Payments do not include any Individual California FLSA
15 Collective Settlement Payment that becomes payable to a California FLSA Collective Member
16 under this Agreement, it being understood and agreed that a California FLSA Collective Member
17 must timely and properly opt-in to the California FLSA Collective using an FLSA Opt-In Consent
18 Form pursuant to Section III.K.9 below to receive an Individual California FLSA Collective
19 Settlement Payment. Put another way, any Individual California FLSA Collective Settlement
20 Payments that become payable under this Agreement are distinct from, and will be paid via checks
21 that are separate from, any Individual Class Member Settlement Payments hereunder.

22 Z. "Individual Background Check Payment" has the meaning set forth in Section
23 III.K.15.a below.

24 AA. "California Non-Exempt Employee Individual Settlement Amount" has the meaning
25 set forth in Section III.K.15.b below.

26 BB. "California Exempt Employee Individual Settlement Amount" has the meaning set
27 forth in Section III.K.15.d below.

28 CC. "Total Settlement Amount" means, and shall not under any circumstances exceed,

1 the gross sum of One Million Five Hundred Thousand Dollars (\$1,500,000.00).

2 DD. "Aggregate Class Payment Amount" means the Total Settlement Amount, less the
3 Class Counsel Award, the Class Representative Service Award, the California FLSA Collective
4 Settlement Amount, the PAGA Payment component paid to the California LWDA, and Settlement
5 Administration Costs. For avoidance of doubt, it is understood and agreed that the Aggregate
6 Class Payment Amount: (a) shall include, without limitation: the Defendants' and the Class
7 Members' respective shares of any applicable payroll taxes, including but not limited to
8 Defendants' and the Class Members' FICA and FUTA contributions, and any other taxes; and also
9 the PAGA Payment component paid to the California Subclasses; and (b) shall not include the
10 California FLSA Collective Settlement Payment, which is a distinct payment (not payable to a
11 Rule 23 "class") for which California FLSA Settlement Collective Members become eligible by
12 timely and properly opting-in to the California FLSA Collective using an FLSA Opt-In Consent
13 Form pursuant to Section III.K.9 below.

14 EE. "FLSA" means the federal Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et*
15 *seq.*, as amended.

16 FF. "FLSA Opt-In Consent Form" means a form, in a form substantially similar to the
17 form attached hereto as part of Exhibit 1, and as approved by the Court, that a California Non-
18 Exempt Employee Subclass Member must timely and properly complete and submit to the
19 Settlement Administrator pursuant to the terms set forth in Section III.K.9 if he or she wishes to opt
20 into the California FLSA Collective and become a California FLSA Collective Member eligible to
21 receive an Individual California FLSA Collective Settlement Payment pursuant to this Agreement.

22 GG. "LWDA" means the California Labor and Workforce Development Agency.

23 HH. "Notice Packet" means the Notice of Class Action Settlement in a form substantially
24 similar to the form attached hereto as Exhibit 1 or Exhibit 2, as applicable, and as approved by the
25 Court. See Section III.K.2.a.

26 II. "PAGA" means the California Labor Code Private Attorneys General Act of 2004,
27 as amended.

28 JJ. "PAGA Payment" means the total payments made hereunder to the California Labor

1 and Workforce Development Agency and to the California Subclasses (as provided in Section
2 III.K.17 below) pursuant to PAGA. For avoidance of doubt, this Agreement does not include a
3 “PAGA Subclass” definition (or similar term) as a distinct concept because the PAGA Payment
4 (defined below) is paid to the members of the California Subclasses (and the LWDA), rendering a
5 distinct “PAGA Subclass” (or similar term) unnecessary hereunder.

6 KK. “Participating Class Members” means all Class Members who do not submit timely
7 and valid Requests for Exclusion.

8 LL. “Parties” means Plaintiff and Defendants, collectively, and “Party” shall mean either
9 Plaintiff or Defendants.

10 MM. “Plaintiff” means Andrew Quiruz.

11 NN. “Preliminary Approval Date” means the date the Court enters an order granting
12 preliminary approval of the Settlement.

13 OO. “Qualified Settlement Fund” and “QSF” mean the qualified settlement fund as more
14 fully described below in Section III.B.

15 PP. “Released Claims” means all any and all claims released by any Settlement Class
16 Member, as such releases are further defined below, in Section III.C.

17 QQ. “Released FLSA Claims” has the meaning set forth in Section III.C.2 below and
18 includes, without limitation, a release of any and all claims under the FLSA that were or could
19 have been alleged in this Action based on the facts alleged in the operative complaint in this
20 Action. Each California FLSA Collective Member (*i.e.*, each California Non-Exempt Employee
21 Subclass Member who timely and properly opts into the California FLSA Collective using an
22 FLSA Opt-In Consent Form pursuant to the terms set forth in Section III.K.9 below) thereby
23 agrees and consents to give the Released Parties a waiver and release of all Released FLSA Claims,
24 as further provided in Section III.C.2 below. Only California FLSA Collective Members shall
25 release and be deemed to have Released FLSA Claims. The Individual California FLSA Collective
26 Settlement Payment constitutes separate consideration for a California FLSA Collective Member’s
27 Released FLSA Claims pursuant to the FLSA Release in this Agreement.

28 RR. “FLSA Release” means the waiver and release of Released FLSA Claims as set

1 forth in Section III.C.2 below.

2 SS. "Released Parties" means Defendant ADM and Defendant SCI, any of their
3 respective subsidiaries, predecessors, successors, affiliates, and otherwise related entities, and any
4 of their respective past, present and/or future, direct and/or indirect, officers, directors, employees,
5 agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent
6 companies, divisions, assigns, and joint venturers.

7 TT. "Response Deadline" means the date forty-five (45) calendar days after the
8 Settlement Administrator mails Notice Packets to Settlement Class Members and the last date on
9 which Settlement Class Members may submit Requests for Exclusion from the Settlement or, as
10 applicable, FLSA Opt-In Consent Forms.

11 UU. "Objection Deadline" means the date three (3) weeks prior to the Court hearing on
12 Plaintiff's Final Settlement Approval Motion and the last date on which Settlement Class Members
13 may submit Objections to the Settlement.

14 VV. "Rule 23" means Rule 23 of the Federal Rules of Civil Procedure, as amended.

15 WW. "Settlement" means the disposition of the Action pursuant to this Agreement.

16 XX. "Settlement Administrator" means Phoenix Settlement Administrators, Post Office
17 Box 7208, Orange, California 92863; telephone: (800) 523-5773, email:
18 info@phoenixclassaction.com or such other experienced third-party settlement administrator that
19 Plaintiff and Defendants mutually approve to administer the Settlement.

20 YY. "Settlement Class Members," "Settlement Class" or "Class Members" means any
21 and all persons who are members of: (a) the California Non-Exempt Employee Subclass (whether
22 or not such person also timely and properly opts into the California FLSA Collective using an
23 FLSA Opt-In Consent Form), (b) the California Exempt Employee Subclass, and (c) the FCRA
24 Subclass. The "Settlement Class Members," "Settlement Class" or "Class Members" shall not
25 include any person who submits a timely and valid Request for Exclusion as provided in this
26 Agreement. As stated, for avoidance of doubt, although a member of the California Non-Exempt
27 Employee Subclass (and thus a member of the Settlement Class) can also become a California
28 FLSA Collective Member by timely and properly opting into the California FLSA Collective using

1 an FLSA Opt-In Consent Form pursuant to the terms set forth in Section III.K.9, the term
2 “Settlement Class” (and similar terms referring to a “class”) does not itself refer to the California
3 FLSA Collective, which is a distinct concept under this Agreement and does not involve a Rule 23
4 “class” per se.

5 ZZ. “Workweeks” or “Individual Workweek Count” means the total number of
6 Workweeks a California Non-Exempt Employee Subclass Member was employed as an hourly-
7 paid non-exempt or salaried non-exempt employee of Defendants in California during the
8 California Non-Exempt Employee Class Period and during which he or she worked productive
9 hours.

10 II. RECITALS

11 A. The Class Representative shall file a Second Amended Complaint (“SAC”) which
12 shall allege the following:

- 13 1. Violation of 15 U.S.C. §§ 1681b(b)(2)(A) (Fair Credit Reporting Act
14 (“FCRA”));
- 15 2. Violation of 15 U.S.C. §§ 1681d(a)(1) and 1681g(c) (Fair Credit Reporting
16 Act);
- 17 3. Violation of California Civil Code § 1786 *et seq.* (Investigative Consumer
18 Reporting Agencies Act (“ICRAA”));
- 19 4. Violation of California Civil Code § 1785 *et seq.* (Consumer Credit
20 Reporting Agencies Act (“CCRAA”));
- 21 5. Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512, and
22 1198);
- 23 6. Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7, and 1198);
- 24 7. Failure to Pay Hourly Wages (Lab. Code §§ 223, 510, 1194, 1194.2, 1197,
25 1997.1, and 1198);
- 26 8. Failure to Provide Accurate Written Wage Statements (Lab. Code § 226(a));
- 27 9. All claims or penalties under the wage and hour laws, including under Labor
28 Code § 558;

1 10. All damages, penalties, interest, and other amounts recoverable under
2 California and federal law, including under the applicable Industrial Welfare Wage Order and the
3 California Unfair Competition Law;

4 11. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*);

5 12. Civil Penalties (Lab. Code §§ 2698, *et seq.*) (PAGA); and

6 13. Failure to pay all minimum and overtime wages due under the FLSA.

7 B. The Class Representative believes he has meritorious claims based on alleged
8 violations of the California Labor Code, the FLSA, the FCRA, the ICRAA, the CCRAA, and the
9 Industrial Wage Commission Orders, and that class and FLSA collective certification is
10 appropriate because the prerequisites for class and FLSA collective certification can be satisfied in
11 the Action, and this action is manageable as a PAGA representative action.

12 C. Defendants and each of the other Released Parties deny any liability or wrongdoing
13 of any kind associated with the claims alleged in the Action, dispute the wages, damages and
14 penalties claimed by the Class Representative, and further contend that, for any purpose other than
15 settlement, the Action is not appropriate for class, FLSA collective, or representative action
16 treatment. Defendants contend, among other things, that at all times they complied with the
17 California Labor Code, the Fair Labor Standards Act, the FCRA, the ICRAA, the CCRAA, and the
18 Industrial Wage Commission Orders.

19 D. The Class Representative is represented by Class Counsel. Class Counsel
20 conducted an investigation into the facts relevant to the Action, including conducting an
21 independent investigation as to the allegations, reviewing documents and information exchanged
22 through formal and informal discovery, and reviewing documents and information provided by
23 Defendants pursuant to formal and informal requests for information to prepare for mediation.
24 Defendants produced for the purpose of settlement negotiations certain employment data
25 concerning the Settlement Class and the putative California FLSA Collective, which Class Counsel
26 reviewed and analyzed. Based on their own independent investigation and evaluation, Class
27 Counsel is of the opinion that the Settlement with Defendants is fair, reasonable and adequate, and
28 is in the best interest of the Settlement Class and the putative California FLSA Collective in light

1 of all known facts and circumstances, including the risks of significant delay, defenses asserted by
2 Defendants, uncertainties regarding class and FLSA collective certification, and numerous
3 potential appellate issues. Although they deny any liability, Defendants are agreeing to this
4 Settlement solely to avoid the cost of further litigation. The Parties and their counsel have agreed
5 to settle the claims on the terms set forth herein.

6 E. The Parties attended a day-long mediation session on April 12, 2018, with Michael
7 Dickstein, a well-respected mediator with considerable experience in mediating wage and hour
8 class and collective actions. The mediation resulted in the Settlement described herein.

9 F. The Parties believe that the Settlement is fair, reasonable and adequate. The
10 Settlement was arrived at through arm's-length negotiations, taking into account all relevant
11 factors. The Parties recognize the uncertainty, risk, expense and delay attendant to continuing the
12 Action through trial and any appeal. Accordingly, the Parties desire to fully, finally, and forever
13 settle, compromise and discharge all disputes and claims arising from or relating to the Action.

14 III. TERMS OF AGREEMENT

15 A. Settlement Consideration by Defendants. Conditioned upon the Court's approval of
16 the SAC and final approval of this Settlement such that the Effective Date occurs, Defendants will
17 become obligated to fund the Settlement according to the terms and conditions set forth herein.
18 The Parties agree that no portion of the Total Settlement Amount, other than any unclaimed portion
19 of the California FLSA Collective Settlement Amount, shall revert to Defendants. In no event
20 shall Defendants be required to pay more than the Total Settlement Amount.

21 B. Qualified Settlement Fund.

22 1. The parties agree to treat the Total Settlement Amount as being at all times a
23 "Qualified Settlement Fund," also referred to throughout this Stipulation as "QSF," within the
24 meaning of Treas. Reg. § 1.468B-1. In addition, the Settlement Administrator shall timely make
25 such elections as necessary or advisable to carry out the provisions of this paragraph, including the
26 "relation-back election" (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date.
27 Such elections shall be made in compliance with the procedures and requirements contained in
28 such regulations. It shall be the responsibility of the Settlement Administrator to timely and

1 properly prepare and deliver the necessary documentation for signature by all necessary parties,
2 and thereafter to cause the appropriate filings to occur.

3 2. For the purpose of §468B of the Internal Revenue Code of 1986, as
4 amended, and the regulations promulgated thereunder, the “administrator” shall be the Settlement
5 Administrator. The Settlement Administrator shall timely and properly file all informational and
6 other tax returns necessary or advisable with respect to administering this Settlement. Such returns
7 (as well as the election described in Section III.B.1 hereof) shall be consistent with this paragraph
8 and in all events shall reflect that all taxes (including any estimated taxes, interest, or penalties) on
9 the Total Settlement Amount shall be paid out of the Total Settlement Amount as provided in
10 Section III.K.13 hereof.

11 3. The Settlement Administration Costs include all expenses and costs incurred
12 in connection with the operation and implementation of the QSF, including and not limited to, all
13 accounting and preparation and filing of all required tax reports and returns for the QSF. The
14 Parties hereto agree to cooperate with each other and with the Settlement Administrator to the
15 extent reasonably necessary to carry out the provisions of this Section.

16 C. Releases By Settlement Class Members and California FLSA Collective Members.
17 As of the Effective Date, in exchange for the consideration set forth in this Agreement, Plaintiff,
18 the Settlement Class Members, and the California FLSA Collective Members, respectively, fully
19 and finally release the Released Parties from the Released Claims and, as applicable, the FLSA
20 Released Claims, as follows:

21 1. Releases by California Non-Exempt Employee Subclass: California Non-
22 Exempt Employee Subclass members fully and finally release the Released Parties from any and
23 all claims, rights, demands, liabilities and causes of action of every nature and description, whether
24 known or unknown, arising on or before the Preliminary Approval Date (the “Release Period”),
25 arising out of, based on, or encompassed by: (a) any and all claims for unpaid wages (including
26 claims for regular wages, overtime, final wages, and meal period and rest period premiums),
27 interest, penalties (including waiting time penalties pursuant to Labor Code section 203 and wage
28 statement penalties pursuant to Labor Code section 226), any and all claims pursuant to Labor

1 Code sections 201-204, 226, 226.7, 510, 512, 558, 1194, and the Industrial Welfare Commission
2 Wage Orders; (b) any and all claims under Business and Professions Code section 17200, *et seq.*,
3 based on or reasonably relating to (1) claims or facts asserted or alleged in the Action, or (2) the
4 violation of any statute, regulation, wage order, or decisional construction of a law alleged to have
5 been violated in the Action; (c) any and all claims under PAGA; and (d) claims for attorneys' fees
6 and costs and any other remedies available at law or in equity allegedly owed or available to the
7 California Non-Exempt Employee Subclass arising or reasonably flowing from any complaints (or
8 amended complaints) filed in the Action (together, "California Non-Exempt Employee Released
9 Claims").

10 2. FLSA Releases by California FLSA Collective. California Non-Exempt
11 Employee Subclass Members who timely and properly opt into the California FLSA Collective
12 using an FLSA Opt-In Consent Form pursuant to the terms set forth in Section III.K.9, thereby
13 becoming California FLSA Collective Members, fully and finally release the Released Parties from
14 any and all claims, rights, demands, liabilities and causes of action of every nature and description,
15 whether known or unknown, arising at any time during the Release Period, arising out of, based on,
16 or encompassed by: (a) any and all claims under the FLSA that were or could have been alleged in
17 this Action based on the facts alleged in any complaints (or amended complaints) filed in the
18 Action (including claims for regular wages, minimum wages, overtime, interest and penalties
19 including claims for liquidated damages); and (b) claims for attorneys' fees and costs and any other
20 remedies available at law or in equity allegedly owed or available to the California FLSA
21 Collective arising or reasonably flowing from any complaints (or amended complaints) filed in the
22 Action (together, the "Released FLSA Claims"). No other Class Members (including any
23 California Non-Exempt Employee Subclass Members who do not timely and properly opt into the
24 California FLSA Collective) shall release or be deemed to have released any Released FLSA
25 Claims hereunder.

26 3. Releases by California Exempt Employee Subclass: California Exempt
27 Employee Subclass members fully and finally release the Released Parties from any and all claims,
28 rights, demands, liabilities and causes of action of every nature and description, whether known or

1 unknown, arising at any time during the Release Period, arising out of, based on, or encompassed
2 by: (a) any allegation that Defendants maintained inaccurate wage statements under Labor Code
3 Section 226; (b) any and all claims under PAGA; and (c) claims for attorneys' fees and costs and
4 any other remedies available at law or in equity allegedly owed or available to the California
5 Exempt Employee Subclass arising or reasonably flowing from any complaints (or amended
6 complaints) filed in the Action (together, "California Exempt Employee Released Claims").

7 4. Releases by FCRA Subclass: FCRA Subclass members fully and finally
8 release the Released Parties from any and all claims, rights, demands, liabilities and causes of
9 action of every nature and description, whether known or unknown, arising at any time during the
10 Release Period, arising out of, based on, or encompassed by: (a) claims under the Fair Credit
11 Reporting Act, and any other statutes relating to background checks, consumer credit reports, or
12 applications for employment; (b) claims under applicable state and local laws relating to
13 background checks, consumer credit reports, or applications for employment; and (c) claims for
14 attorneys' fees and costs and any other remedies available at law or in equity allegedly owed or
15 available to the FCRA Subclass members arising or reasonably flowing from any complaints (or
16 amended complaints) filed in the Action (together, "FCRA Subclass Released Claims").

17 D. General Release By Plaintiff and Class Representative. As of the Effective Date, in
18 consideration for the consideration set forth in this Agreement, the Class Representative, for
19 himself and his heirs, successors and assigns, does hereby fully and finally waive, release, acquit
20 and forever discharge the Released Parties, from any and all claims, actions, charges, complaints,
21 grievances and causes of action, of whatever nature, whether known or unknown, which exist or
22 may exist on the Class Representative's behalf as of, or prior to, the date of this Agreement,
23 including but not limited to any and all tort claims, contract claims, wage claims, wrongful
24 termination claims, disability claims, benefit claims, public policy claims, retaliation claims,
25 statutory claims, personal injury claims, emotional distress claims, invasion of privacy claims,
26 defamation claims, fraud claims, quantum meruit claims, and any and all claims arising under any
27 federal, state or other governmental statute, law, regulation or ordinance, including, but not limited
28 to claims for unpaid wages (including claims for regular wages, overtime, final wages, and meal

1 period and rest period premiums), interest, penalties (including waiting time penalties pursuant to
2 Labor Code section 203 and wage statement penalties pursuant to Labor Code section 226), claims
3 pursuant to Labor Code sections 201-204, 226, 226.7, 510, 512, 558, 1194, the Industrial Welfare
4 Commission Wage Orders, Business and Professions Code section 17200, *et seq.*, the federal Fair
5 Labor Standards Act, the Private Attorneys General Act, the Fair Credit Reporting Act, the
6 California Consumer Credit Reporting Agencies Act (CCRAA) and the California Investigative
7 Consumer Reporting Agencies Act (ICRAA) and any other statutes relating to background checks,
8 or applications for employment, and claims for attorneys' fees and costs and any other remedies
9 available at law or in equity allegedly owed or available to the Class Representative (including as a
10 Class Member) arising or reasonably flowing from any complaints (or amended complaints) filed
11 in the Action for the time period up to and including the date of this Agreement. The Class
12 Representative also shall fully and finally release the Released Parties from any and all claims,
13 actions, demands, causes of action, suits, debts, obligations, damages, rights or liabilities, of any
14 nature and description whatsoever, that are based on or reasonably related to the claims or facts
15 asserted in the Action, and specifically the following claims based on or reasonably relating to
16 claims or facts asserted or alleged in the Action: claims for violations of the Fair Credit Reporting
17 Act. The Class Representative hereby expressly waives and relinquishes any and all claims, rights
18 or benefits that he may have under California Civil Code § 1542, which provides as follows:

19 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT**
20 **THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR**
21 **SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF**
22 **EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM**
23 **OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR**
24 **HER SETTLEMENT WITH THE DEBTOR OR RELEASED**
25 **PARTY.**

26 The Class Representative may hereafter discover claims or facts in addition to, or different
27 from, those which he now knows or believes to exist, but he expressly agrees to fully, finally and
28 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

1 from the Class Representative's employment with Defendants. The Parties further acknowledge,
2 understand and agree that this representation and commitment is essential to the Agreement and
3 that this Agreement would not have been entered into were it not for this representation and
4 commitment.

5 E. Conditions Precedent: This Settlement will become final and effective only upon
6 the occurrence of all of the following events:

- 7 1. The Court approves Plaintiff's SAC;
- 8 2. The Court enters an order granting preliminary approval of the Settlement;
- 9 3. The Court enters an order granting final approval of the Settlement and a
10 Final Judgment;
- 11 4. Either: (a) the applicable date for seeking appellate review of the Court's
12 final approval of the Settlement has passed without a timely appeal; or (b) if an appeal is filed, the
13 Court of Appeal or the Supreme Court has rendered a final decision or judgment affirming the
14 Court's final approval of the Settlement without material modification, and the time for any further
15 appeal has expired; or (c) if an appeal is filed, any timely appeal has been dismissed; and
16 5. Defendants do not invoke their right to revoke the Settlement as described in
17 Section III.M ("Defendants' Option to Revoke Settlement") herein.

18 F. Nullification of Settlement Agreement. In the event that this Settlement Agreement
19 is not preliminarily or finally approved by the Court, fails to become effective, or is reversed,
20 withdrawn or materially modified by the Court or any reviewing court, or in any way prevents or
21 prohibits Defendants from obtaining a complete resolution of the claims as described herein:

- 22 1. This Settlement Agreement shall be void *ab initio* and of no force or effect,
23 and shall not be admissible in any judicial, administrative or arbitral proceeding for any purpose or
24 with respect to any issue, substantive or procedural;
- 25 2. The conditional class and FLSA collective certification (in each case,
26 obtained for any purpose) shall be void *ab initio* and of no force or effect, and shall not be
27 admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to
28 any issue, substantive or procedural; and

1 3. None of the Parties to this Settlement will be deemed to have waived any
2 claims, objections, defenses or arguments in the Action, including with respect to the issues of
3 class or FLSA collective certification.

4 4. The Second Amended Complaint shall be deemed void *ab initio* and of no
5 force or effect and the First Amended Complaint shall serve as the operative complaint.

6 G. Certification of the Settlement Class and California FLSA Collective. The Parties
7 stipulate to conditional class certification of the Settlement Class and conditional certification of
8 the California FLSA Collective, in each case for the Class Period for purposes of settlement only.
9 In the event that this Settlement is not approved by the Court, fails to become effective, or is
10 reversed, withdrawn or modified by the Court or any reviewing court, or in any way prevents or
11 prohibits Defendants from obtaining a complete resolution of the claims as described herein, the
12 conditional class and FLSA collective certification (in each case, obtained for any purpose) shall be
13 void *ab initio* and of no force or effect, and shall not be admissible in any judicial, administrative
14 or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural.

15 H. Tax Liability. The Parties make no representations as to the tax treatment or legal
16 effect of the payments called for hereunder, and Settlement Class Members (including California
17 FLSA Collective Members) are not relying on any statement or representation by the Parties in this
18 regard. Settlement Class Members (including California FLSA Collective Members) understand
19 and agree that they will be responsible for the payment of any taxes and penalties assessed on the
20 Individual Class Member Settlement Payments, Individual California FLSA Collective Settlement
21 Payments, and California Subclass share of the PAGA Payment described herein, and will be
22 solely responsible for any penalties or other obligations resulting from their personal tax reporting
23 of Individual Class Member Settlement Payments, Individual California FLSA Collective
24 Settlement Payments, and California Subclass share of the PAGA Payment.

25 I. Preliminary Approval Motion. At the earliest practicable time, Plaintiff shall file
26 with the Court a Motion for Order Granting Preliminary Approval and supporting papers, which
27 shall include this Settlement Agreement and the Notice Packet.

28 J. Settlement Administrator. The Settlement Administrator shall be responsible for:

1 calculating, processing and mailing payments to the Class Representatives, Class Counsel, LWDA
2 and Settlement Class Members (including, as applicable, any California FLSA Collective
3 Members); printing and mailing the Notice Packets to the Settlement Class Members as directed by
4 the Court; receiving and reporting the Objections, Requests for Exclusion, and FLSA Opt-In
5 Consent Forms; notifying the Parties of, and helping to resolve, any disputes by the Class Members
6 regarding their individual Workweeks number or individual paystubs number and notifying Class
7 Members of the decision on such disputes; calculating and deducting all legally required taxes from
8 Individual Class Member Settlement Payments and Individual California FLSA Collective
9 Settlement Payments (and any other amounts, as applicable) and distributing tax forms; processing
10 and mailing tax payments to the appropriate local, state, and federal taxing authorities; providing
11 declaration(s) as necessary in support of preliminary and/or final approval of this Settlement; and
12 other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to
13 perform. The Settlement Administrator shall keep the Parties timely apprised of the performance
14 of all Settlement Administrator responsibilities.

15 K. Notice and Response Procedures.

16 1. Class Data. No later than twenty-one (21) calendar days after the
17 Preliminary Approval Date, Defendants shall provide the Settlement Administrator with the Class
18 Data for purposes of preparing and mailing Notice Packets to Settlement Class Members.

19 2. Notice Packets.

20 a) Each Notice Packet shall contain one of two Notices of Class Action
21 Settlement in a form substantially similar to the form attached hereto as Exhibit 1 or Exhibit 2,
22 respectively, as follows: Exhibit 1 hereto shall be a Notice of Class Action Settlement to be sent to
23 California Non-Exempt Employee Subclass Members informing them (in relevant part) of their
24 eligibility to opt into the California FLSA Collective using an FLSA Opt-In Consent Form, which
25 shall be enclosed with each such Notice of Class Action Settlement in a form substantially similar
26 to the FLSA Opt-In Consent Form included as part of Exhibit 1 hereto; and Exhibit 2 hereto shall
27 be a Notice of Class Action Settlement to be sent to all other Class Members (*i.e.*, who are not
28 eligible to opt into the California FLSA Collective), and shall not include an FLSA Opt-In Consent

1 Form. All Class Members will be mailed a Notice Packet. Each Notice Packet will provide: (i)
2 information regarding the nature of the Action; (ii) a summary of the Settlement's principal terms;
3 (iii) the Settlement Class definition(s); (iv) with respect to California Non-Exempt Employee
4 Subclass Members, a description of the putative California FLSA Collective and how such an
5 individual may (but is not obligated to) opt into the California FLSA Collective by submitting an
6 FLSA Opt-In Consent Form; (v) with respect to California Non-Exempt Employee Subclass
7 Members, the total number of Workweeks that particular California Non-Exempt Employee
8 Subclass Member was employed as a non-exempt, hourly or salaried non-exempt employee of
9 Defendants in California during the California Non-Exempt Employee Class Period and during
10 which he or she worked productive hours; (vi) with respect to California Exempt Employee
11 Subclass Members, the total number of paystubs that particular California Exempt Employee
12 Subclass Member received from Defendants during the California Exempt Employee Class Period;
13 (vii) each Class Member's estimated Individual Class Member Settlement Payment, estimated
14 share of the PAGA Payment (for California Subclass Members), estimated Individual California
15 FLSA Collective Settlement Payment (for California Non-Exempt Employee Subclass Members,
16 each of whom is eligible to become a California FLSA Collective Member), and the formulas for
17 calculating Individual Class Member Settlement Payments, shares of the PAGA Payment, and
18 Individual California FLSA Collective Settlement Payments; (viii) the dates which comprise the
19 Class Period; (ix) instructions on how to submit FLSA Opt-In Consent Forms (for California Non-
20 Exempt Employee Subclass Members), Requests for Exclusion, disputes as to the number of
21 Workweeks or paystubs stated in the Class Member's Notice of Class Action Settlement (if
22 applicable), or Notices of Objection; (x) an explanation that Class Members who do not file timely
23 Requests for Exclusion will receive one or two checks, as applicable: one check for the Individual
24 Class Member Settlement Payment and, for California Subclass Members, also including the Class
25 Member share of the PAGA Payment; and, for California Non-Exempt Employee Subclass
26 Members who also become California FLSA Collective Members by timely and properly
27 submitting an FLSA Opt-In Consent Form (thereby also granting an FLSA Release), a separate
28 check for his or her Individual California FLSA Collective Settlement Payment; (xi) the deadlines

1 by which the Class Member must postmark or fax Requests for Exclusion, postmark or fax FLSA
2 Opt-In Consent Forms, or postmark, fax or email Notices of Objection to the Settlement, in each
3 case to the Settlement Administrator; (xii) the claims to be released; and (xiii) the address of a
4 Class Counsel website at which Class Counsel will post the Settlement-related documents
5 (including this Agreement and the Final Settlement Approval Motion) at least five (5) weeks prior
6 to the hearing on the Final Settlement Approval Motion.

7 b) The Notice Packet's mailing envelope shall include the following
8 language: "IMPORTANT LEGAL DOCUMENT- YOU MAY BE ENTITLED TO
9 PARTICIPATE IN A CLASS ACTION SETTLEMENT; A PROMPT REPLY TO CORRECT
10 YOUR ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED NOTICE."

11 3. Confirmation of Contact Information in the Class Lists. Prior to mailing, the
12 Settlement Administrator will perform a search based on the National Change of Address Database
13 for information to update and correct for any known or identifiable address changes.

14 4. Notice By First Class U.S. Mail. No later than twenty-one (21) calendar
15 days after receiving the Class Data from Defendants as provided herein, the Settlement
16 Administrator shall mail copies of the applicable Notice Packet (in accordance with Section
17 III.K.2.a above) to all Settlement Class Members via regular First Class U.S. Mail. The Settlement
18 Administrator shall exercise its best judgment to determine the current mailing address for each
19 Settlement Class Member. The address identified by the Settlement Administrator as the current
20 mailing address shall be presumed to be the best mailing address for each Settlement Class
21 Member.

22 5. Reminder Postcard. No later than thirty (30) calendar days prior to the
23 Response Deadline, the Settlement Administrator shall send a reminder postcard to all Settlement
24 Class Members who have not submitted a written Request for Exclusion or FLSA Opt-In Consent
25 Form reminding them of the Response Deadline.

26 6. Undeliverable Notices. Any Notice Packets returned to the Settlement
27 Administrator as non-deliverable on or before the Response Deadline will be sent promptly via
28 regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement

1 Administrator will indicate the date of such re-mailing on the Notice Packet. If no forwarding
2 address is provided, the Settlement Administrator will promptly attempt to determine the correct
3 address by lawful use of a skip-trace, or other search using the name, address and/or Social
4 Security number of the Class Member involved, and shall then perform a single re-mailing, if
5 another mailing address is identified by the Settlement Administrator. Settlement Class Members
6 who received a re-mailed Notice Packet shall have their Response Deadline extended fifteen (15)
7 calendar days from the original Response Deadline.

8 7. Exclusions.

9 a) Any Class Member wishing to opt out from the Settlement
10 Agreement must sign and fax or postmark a written Request for Exclusion to the Settlement
11 Administrator within the Response Deadline. In the case of Requests for Exclusion that are mailed
12 to the Settlement Administrator, the postmark date will be the exclusive means to determine
13 whether a Request for Exclusion has been timely submitted. Requests for Exclusion submitted on
14 behalf of multiple Class Members will be rejected. If a Class Member submits a timely Request
15 for Exclusion, any Notice of Objection and/or FLSA Opt-In Consent Form also submitted by such
16 Class Member, if any, shall be disregarded and of no force and effect.

17 b) Defective Submissions. If a Class Member's Request for Exclusion is
18 defective as to the requirements listed herein, that Class Member will be given an opportunity to
19 cure the defect(s). The Settlement Administrator will mail the Class Member a cure letter within
20 three (3) business days of receiving the defective submission to advise the Class Member that his
21 or her submission is defective and that the defect must be cured to render the Request for Exclusion
22 valid. The Class Member will have until the later of (i) the Response Deadline or (ii) fifteen (15)
23 calendar days from the date of the cure letter, to postmark, email or fax a revised Request for
24 Exclusion. If the revised Request for Exclusion is not postmarked or received by email or fax
25 within that period, it will be deemed untimely.

26 8. Settlement Terms Bind All Class Members Who Do Not Opt Out. Any Class
27 Member who does not affirmatively opt out of the Settlement Agreement by submitting a timely
28 and valid Request for Exclusion will be bound by all of its terms, including those pertaining to the

1 Released Claims, as well as any Judgment that may be entered by the Court if it grants final
2 approval to the Settlement. However, this provision shall not grant an FLSA Release by any
3 California Non-Exempt Employee Subclass Member who does not timely and properly opt in to
4 the California FLSA Collective.

5 9. FLSA Opt-In Consent Forms.

6 a) Any California Non-Exempt Employee Subclass Member wishing to
7 opt into the California FLSA Collective must sign and fax or postmark a written FLSA Opt-In
8 Consent Form (without deleting or modifying any portion thereof) to the Settlement Administrator
9 by the Response Deadline. In the case of FLSA Opt-In Consent Forms that are mailed to the
10 Settlement Administrator, the postmark date will be the exclusive means to determine whether an
11 FLSA Opt-In Consent Form has been timely submitted. FLSA Opt-In Consent Forms submitted
12 on behalf of multiple Class Members will be rejected. If a California Non-Exempt Employee
13 Subclass Member submits both a Notice of Objection and an FLSA Opt-In Consent Form, such
14 FLSA Opt-In Consent Form shall remain valid and binding on such California Non-Exempt
15 Employee Subclass Member notwithstanding his or her Notice of Objection, unless the Court holds
16 otherwise.

17 b) Defective Submissions. If a California Non-Exempt Employee
18 Subclass Member's FLSA Opt-In Consent Form is defective as to the requirements listed herein,
19 that California Non-Exempt Employee Subclass Member will be given an opportunity to cure the
20 defect(s). The Settlement Administrator will mail the California Non-Exempt Employee Subclass
21 Member a cure letter within three (3) business days of receiving the defective submission to advise
22 the Class Member that his or her submission is defective and that the defect must be cured to
23 render the FLSA Opt-In Consent Form valid. The California Non-Exempt Employee Subclass
24 Member will have until the later of (i) the Response Deadline or (ii) fifteen (15) calendar days from
25 the date of the cure letter, to postmark or fax a revised FLSA Opt-In Consent Form. If the revised
26 FLSA Opt-In Consent Form is not postmarked or received by fax within that period, it will be
27 deemed untimely.

28 c) The Settlement Administrator shall submit to Class Counsel copies

1 of all timely FLSA Opt-In Consent Forms promptly following the Settlement Administrator's
2 receipt thereof. Class Counsel shall file all such FLSA Opt-In Consent Forms with the Court
3 promptly following Class Counsel's receipt thereof.

4 10. Objections.

5 a) To object to the Settlement Agreement, a Class Member must
6 postmark, fax or email a valid Notice of Objection to the Settlement Administrator on or before the
7 Objection Deadline. The Notice of Objection must be signed by the Class Member and contain all
8 information required by this Settlement Agreement, including the Class Member's full name, last
9 four digits of his or her Social Security number, the grounds for the Objection, and a statement as
10 to whether the Class Member will appear at the Final Approval Hearing, whether they will be
11 represented by legal counsel, and the contact information for such legal counsel. The postmark,
12 fax confirmation or date and time of email receipt by the Settlement Administrator will be deemed
13 the exclusive means for determining whether the Notice of Objection is timely. Class Members
14 who fail to object in the manner specified above will be deemed to have waived all objections to
15 the Settlement and will be foreclosed from making any objections, whether by appeal or otherwise,
16 to the Settlement Agreement. Class Members who timely postmark, fax or email timely Notices of
17 Objection will have a right to appear at the Final Approval Hearing in order to have their
18 objections heard by the Court. At no time will any of the Parties or their counsel seek to solicit or
19 otherwise encourage Class Members to submit written objections to the Settlement Agreement or
20 appeal from the Final Approval Order and Judgment. Class Counsel will not represent any Class
21 Members with respect to any objections to this Settlement.

22 11. Disputes Regarding Individual Class Member Settlement Payments and
23 Individual California FLSA Collective Settlement Payments.

24 a) A California Subclass Member may, should he or she disagree with
25 Defendants' records regarding the number of Workweeks or paystubs provided in his or her Notice
26 Packet, provide documentation and/or an explanation to show a contrary number of Workweeks
27 worked or paystubs received. A California Subclass Member seeking to dispute the Workweek or
28 paystub numbers in his or her Notice Packet must send a letter to the Settlement Administrator

1 post-marked or faxed within the Response Deadline that (i) sets forth the name, address, telephone
2 number and last four digits of the Social Security number of the California Subclass Member; (ii) is
3 signed by the California Subclass Member; (iii) is returned to the Settlement Administrator; and
4 (iv) states the number of Workweeks or paystubs that the California Subclass Member claims he or
5 she worked or received, with any supporting documentation the California Subclass Member
6 wishes to include.

7 b) If there is a dispute, the Settlement Administrator will consult with
8 the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall
9 determine the eligibility for, and the amounts of, any Individual Class Member Settlement
10 Payments and/or Individual California FLSA Collective Settlement Payments under the terms of
11 this Agreement. The Settlement Administrator's determination of the eligibility for and amount of
12 any Individual Class Member Settlement Payment and/or Individual California FLSA Collective
13 Settlement Payment shall be binding upon the Class Member and the Parties.

14 12. Disputes Regarding Administration of Settlement. In the event of any
15 disputes not resolved by the Settlement Administrator concerning the administration of the
16 Settlement, counsel for the Parties will confer in good faith to resolve the disputes without the
17 necessity of involving the Court. If any such dispute is not resolved after such good faith
18 conferring, the Parties shall submit such dispute to non-binding mediation and, if not resolved in
19 mediation, shall resolve such dispute through binding arbitration before such arbitrator and
20 pursuant to such rules as the Parties agree.

21 13. Funding and Allocation of the Total Settlement Amount. Defendants are
22 required to fund the QSF with an amount sufficient to cover (but no greater than) the Total
23 Settlement Amount (as defined in Section I.CC), from which the Individual Class Member
24 Settlement Payments, the Individual California FLSA Collective Settlement Payments, the Class
25 Representative Service Award, the Class Counsel Award, the PAGA Payment, the Settlement
26 Administration Costs, any employer- and employee-shares of payroll taxes and other required
27 employer withholdings due on Individual Class Member Settlement Payments, Individual
28 California FLSA Collective Settlement Payments or other amounts (including but not limited to

1 Defendants' and Class Members' respective shares of FICA and FUTA contributions), and any
2 other taxes, shall be deducted.

3 14. Funding Due Date. No later than ten (10) calendar days after the Effective
4 Date, Defendants shall deposit the Total Settlement Amount in the QSF, as set forth in this
5 Agreement.

6 15. Distribution Formula. There shall be three settlement subclasses – the
7 California Non-Exempt Employee Subclass, the California Exempt Employee Subclass, and the
8 FCRA Subclass – and one settlement collective, *i.e.*, the California FLSA Collective. As noted, for
9 avoidance of doubt, this Agreement does not include a “PAGA Subclass” definition (or similar
10 term) as a distinct concept because the PAGA Payment is paid to the members of the California
11 Subclasses (and the LWDA), rendering a distinct “PAGA Subclass” (or similar term) unnecessary
12 hereunder. Participating Class Members may be eligible for payment in one or several subclasses
13 and, as applicable, the California FLSA Collective. Individual Class Member Settlement Payments
14 shall be paid from the Aggregate Class Payment Amount, Individual California FLSA Collective
15 Settlement Payments shall be paid from the California FLSA Collective Settlement Amount, and
16 both shall be paid pursuant to the formulas set forth herein.

17 a) Calculation of FCRA Subclass Payments: From the Aggregate Class
18 Payment Amount, and subject to subpart (e) below, Three Hundred Thousand dollars (\$300,000)
19 (the “Total FCRA Settlement Amount”) shall be allocated in equal proportionate shares among all
20 members of the FCRA Subclass as provided herein, as payment in settlement of the FCRA
21 Subclass Released Claims, after also accounting for payment from such Total FCRA Settlement
22 Amount of the applicable employer-share of payroll taxes (including but not limited to Defendants'
23 FICA and FUTA payments), if any, on any wage component, if any, of such FCRA Subclass
24 Member payments (it being understood that the Parties do not believe that the Total FCRA
25 Settlement Amount is subject to any such employer-share payroll tax obligations, but include the
26 foregoing caveat out of an abundance of caution). That Total FCRA Settlement Amount will be
27 divided by the number of FCRA Subclass Members, resulting in each Class Members' “Individual
28 Background Check Payment” (subject to the foregoing caveat).

b) Calculation of California Non-Exempt Employee Subclass Payments:

From the Aggregate Class Payment Amount, and subject to subpart (e) below, Five Hundred Ten Thousand dollars (\$510,000) (the "Total California Non-Exempt Employee Settlement Amount") shall be allocated as provided herein for the payment of the "California Non-Exempt Employee Individual Settlement Amounts," as payment in settlement of the California Non-Exempt Employee Released Claims, after also accounting for payment from such Total California Non-Exempt Employee Settlement Amount of the applicable employer-share of payroll taxes (including but not limited to Defendants' FICA and FUTA payments) on the wage component of such California Non-Exempt Employee Individual Settlement Amounts. Defendants will provide a Workweek count for each California Non-Exempt Employee Subclass Member ("Individual Workweek Count"). Using the Class Data, the Settlement Administrator shall determine the total number of Workweeks for all California Non-Exempt Employee Subclass Members. The respective Individual Workweek Count for each California Non-Exempt Employee Subclass Member shall be divided by the total Workweeks for all California Non-Exempt Employee Subclass Members, resulting in the "California Non-Exempt Employee Payment Ratio" for each California Non-Exempt Employee Subclass Member. Each California Non-Exempt Employee Subclass Member's California Non-Exempt Employee Payment Ratio will then be multiplied by the Total California Non-Exempt Employee Settlement Amount (after adjustment for the foregoing employer-share of payroll taxes) to calculate each California Non-Exempt Employee Subclass Member's estimated California Non-Exempt Employee Individual Settlement Amount. Each California Non-Exempt Employee Individual Settlement Amount will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.).

c) Calculation of Individual California FLSA Collective Settlement

Payments:

(i) In addition to the California Non-Exempt Employee Individual Settlement Amount, each California Non-Exempt Employee Subclass Member who becomes a California FLSA Collective Member shall also receive, from the California FLSA Collective Settlement Amount, a separate Individual California FLSA Collective Settlement

1 Payment as provided herein, as payment in settlement of the FLSA Released Claims, after also
2 accounting for payment from such California FLSA Collective Settlement Amount of the
3 applicable employer-share of payroll taxes (including but not limited to Defendants' FICA and
4 FUTA payments) on the wage component of such Individual California FLSA Collective
5 Settlement Payments. Individual California FLSA Collective Settlement Payments will be
6 calculated and apportioned from the California FLSA Collective Settlement Amount based on the
7 California FLSA Collective Member's Individual Workweek Count. Specifically, each California
8 FLSA Collective Member's California Non-Exempt Employee Payment Ratio will be multiplied
9 by the California FLSA Collective Settlement Amount (after also accounting for payment from
10 such California FLSA Collective Settlement Amount of the applicable employer-share of payroll
11 taxes (including but not limited to Defendants' FICA and FUTA payments) on the wage
12 component of such Individual California FLSA Collective Settlement Payments) to calculate each
13 such California FLSA Collective Member's Individual California FLSA Collective Settlement
14 Payment.

15 (ii) Delivery of Individual California FLSA Collective Settlement

16 Payments: Each California FLSA Collective Member shall receive, in addition to their Individual
17 Class Member Settlement Payment and Class Member share of the PAGA Payment, a separate
18 check in the amount of their Individual California FLSA Collective Settlement Payment, less any
19 legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). The Settlement
20 Administrator shall ensure that the check is identified as a check for an Individual California FLSA
21 Collective Settlement Payment. Any portion of the California FLSA Collective Settlement
22 Amount that is not claimed by California FLSA Collective Members will remain Defendants'
23 property and the Settlement Administrator shall take all steps to ensure its return to Defendants.

24 d) Calculation of California Exempt Employee Subclass Payments:

25 From the Aggregate Class Payment Amount, and subject to subpart (e) below, Fifty Thousand
26 dollars (\$50,000) (the "Total California Exempt Employee Settlement Amount") shall be allocated
27 as provided herein for the payment of the "California Exempt Employee Individual Settlement
28 Amounts," as payment in settlement of the California Exempt Employee Released Claims, after

1 also accounting for payment from such Total California Exempt Employee Settlement Amount of
2 the applicable employer-share of payroll taxes (including but not limited to Defendants' FICA and
3 FUTA payments), if any, on any wage component, if any, of such California Exempt Employee
4 Individual Settlement Amounts (it being understood that the Parties do not believe that the Total
5 California Exempt Employee Settlement Amount is subject to any such employer-share payroll tax
6 obligations, but include the foregoing caveat out of an abundance of caution). Defendants will
7 provide a paystub count for each California Exempt Employee Subclass Member. Using the Class
8 Data, the Settlement Administrator shall determine the total number of paystubs for all California
9 Exempt Employee Subclass Members. The respective paystub total for each California Exempt
10 Employee Subclass Member shall be divided by the total paystubs for all California Exempt
11 Employee Subclass Members, resulting in the "California Exempt Employee Payment Ratio" for
12 each California Exempt Employee Subclass Member. Each California Exempt Employee Subclass
13 Member's California Exempt Employee Payment Ratio will then be multiplied by the Total
14 California Exempt Employee Settlement Amount (after adjustment for the foregoing employer-
15 share of payroll taxes, if any) to calculate each California Exempt Employee Subclass Member's
16 estimated California Exempt Employee Individual Settlement Amount. Each California Exempt
17 Employee Individual Settlement Amount will be reduced by any legally mandated employee tax
18 withholdings (e.g., employee payroll taxes, etc.).

19 e) Adjustments to Distribution Formula Based on Changes to Aggregate
20 Class Payment Amount: In the event that more than Eight Hundred Sixty Thousand Dollars
21 (\$860,000) remains in the Aggregate Class Payment Amount after payment of the Class Counsel
22 Award, the Class Representative Service Award, the California FLSA Collective Settlement
23 Amount, the PAGA Payment, and Settlement Administration Costs, then the amounts allocated to
24 the California Non-Exempt Employee Subclass, the California Exempt Employee Subclass, and the
25 FCRA Subclass for the Total California Non-Exempt Employee Settlement Amount, Total
26 California Exempt Employee Settlement Amount, and Total FCRA Settlement Amount,
27 respectively, will be increased on a pro-rata basis, in proportion to the amounts estimated in
28 Sections III.K.15.a, 15.b, and 15.d above.

1 f) Allocation. For tax purposes, the Individual Class Member
2 Settlement Payments payable from the Total California Non-Exempt Employee Settlement Amount
3 for the California Non-Exempt Employee Subclass members shall be allocated and treated as
4 follows: 10% as wages and 90% as penalties and interest. The Individual California FLSA
5 Collective Settlement Payments for the California FLSA Collective Members shall be allocated
6 and treated as follows: 50% as wages and 50% as penalties and interest. For each California
7 Exempt Employee Subclass member, the Individual Class Member Settlement Payments payable
8 from the Total California Exempt Employee Settlement Amount shall be allocated 100% as
9 penalties. For each FCRA Subclass member, the Individual Class Member Settlement Payments
10 payable from the Total FCRA Settlement Amount shall be allocated 100% as penalties. For each
11 California Subclass Member, such Class Member portion of the PAGA Payment shall be allocated
12 100% as penalties. The Settlement Administrator will be responsible for issuing to claimants a
13 form W-2 for the amount deemed “wages” and an IRS Form 1099 for the portions allocated to
14 penalties and interest. All taxes shall be distributed from the Aggregate Class Payment Amount.

15 g) Mailing of Settlement Checks. Individual Class Member Settlement
16 Payments and, if and as applicable, Individual California FLSA Collective Settlement Payments
17 and California Subclass Member shares of the PAGA Payment, shall be mailed by regular First
18 Class U.S. Mail to Settlement Class Members’ last known mailing address no later than twenty-
19 five (25) calendar days after the Effective Date, and shall advise the recipient that the check(s) will
20 remain valid and negotiable only for ninety (90) calendar days from the date of each applicable
21 check’s issuance. Any settlement check(s) shall thereafter automatically be void if not cashed
22 within ninety (90) calendar days after issuance (subject to Section III.K.15.h below). As stated,
23 Class Members who do not file timely Requests for Exclusion will receive one or two checks, as
24 applicable: (i) one check for the Individual Class Member Settlement Payment and, for California
25 Subclass Members, also including the Class Member share of the PAGA Payment; and, (ii) for
26 California Non-Exempt Employee Subclass Members who also become California FLSA
27 Collective Members by timely and properly submitting an FLSA Opt-In Consent Form (thereby
28 also granting an FLSA Release), a separate check for his or her Individual California FLSA

1 Collective Settlement Payment.

2 h) Returned or Un-cashed Settlement Checks.

3 (i) If any given Settlement check(s) are returned as undeliverable
4 within sixty (60) calendar days after issuance, such check(s) will be sent promptly via regular First-
5 Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided,
6 the Settlement Administrator will promptly attempt to determine the correct address through lawful
7 use of a skip-trace, or other search using the name, address and/or Social Security number of the
8 Class Member and/or California FLSA Collective Member involved, and will then perform a single
9 re-mailing if another mailing address is identified by the Settlement Administrator. In the event of
10 any such re-mailing, the Settlement Administrator shall promptly cancel any originally mailed
11 check(s). The Settlement Administrator will keep a record of such re-mailing and check
12 cancellation, and report the fact and date thereof to the Parties.

13 (ii) If any given Settlement check(s) remain uncashed forty-five
14 (45) calendar days after issuance (including after any re-mailing pursuant to subpart (i) above), the
15 Settlement Administrator will promptly send the Class Member and/or California FLSA Collective
16 Member involved via regular First-Class U.S. Mail a postcard or similar notice reminding the Class
17 Member and/or California FLSA Collective Member to cash such check(s) by the end of the ninety
18 (90) calendar day period after each applicable check's issuance. The Settlement Administrator will
19 keep a record of such reminder notice, and report the fact and date thereof to the Parties.

20 (iii) Settlement checks remaining un-cashed after expiration of
21 the foregoing deadlines (including without limitation any check(s) that again were returned as
22 undeliverable despite re-mailing pursuant to subpart (i) above) shall be immediately cancelled by
23 the Settlement Administrator. The Settlement Administrator will keep a record of such check
24 cancellations, and report the fact and date thereof to the Parties. Funds represented by cancelled
25 checks for Individual Class Member Settlement Payments and Class Member shares of the PAGA
26 Payment will be tendered by the Settlement Administrator to the California Department of
27 Industrial Relations Unpaid Wage Fund (*see* Cal. Lab. Code § 96.6) within sixty (60) calendar days
28 following the final cancellation of such checks. Funds represented by cancelled checks for

1 Individual California FLSA Collective Settlement Payments will revert to Defendants and shall be
2 returned by the Settlement Administrator to Defendants within sixty (60) calendar days following
3 the final cancellation of such checks.

4 (iv) Any Class Member (including any California FLSA
5 Collective Member) who does not timely cash his or her Settlement check(s) shall still be bound by
6 all of the Settlement's terms, including those pertaining to the Released Claims and, as applicable,
7 FLSA Released Claims, as well as any Judgment that may be entered by the Court if it grants final
8 approval to the Settlement.

9 i) Class Representative Service Award. Defendants agree not to
10 oppose or object to any application or motion by the Class Representative for a Class
11 Representative Service Award of up to Ten Thousand Dollars (\$10,000) to Plaintiff Andrew
12 Quiruz in exchange for the Released Claims and a General Release and for his time, effort and risk
13 in bringing and prosecuting this matter. The Settlement Administrator shall pay the Class
14 Representative Service Award to Plaintiff from the Total Settlement Amount no later than twenty
15 five (25) calendar days after the Effective Date. Any portion of the requested Class Representative
16 Service Award that is not awarded to the Class Representative shall be part of the Aggregate Class
17 Payment Amount and shall be distributed to Settlement Class Members as provided in Section
18 III.K.15.e of this Agreement. The Settlement Administrator shall issue an IRS Form 1099 —
19 MISC to Plaintiff for his Class Representative Service Award. Plaintiff shall be solely and legally
20 responsible to pay any and all applicable taxes on his Class Representative Service Award and
21 shall hold harmless Defendants from any claim or liability for taxes, penalties, or interest arising as
22 a result of the Class Representative Service Award. The Class Representative Service Award shall
23 be in addition to the Plaintiff's respective Individual Class Member Settlement Payment and
24 Individual California FLSA Collective Settlement Payment as a Settlement Class Member and a
25 California FLSA Collective Member, respectively. In the event that the Court reduces or does not
26 approve the requested Class Representative Service Award, Plaintiff shall not have the right to
27 revoke the Settlement, or to appeal such order, and the Settlement will remain binding.

28 16. Class Counsel Award. Defendants agree not to oppose or object to any

1 application or motion by Class Counsel for a Class Counsel Award comprised of attorneys' fees
2 not to exceed Four Hundred Sixty Thousand dollars (\$460,000) (approximately thirty-one percent
3 (31%) of the \$1,500,000 Total Settlement Amount), plus costs and expenses supported by
4 declaration not to exceed Fifteen Thousand Dollars (\$15,000), from the Total Settlement Amount.
5 Any portion of the requested Class Counsel Award that is not awarded to Class Counsel shall be
6 part of the Aggregate Class Payment Amount and shall be distributed to Settlement Class Members
7 as provided in Section III.K.15.e of this Agreement. The Settlement Administrator shall pay the
8 Class Counsel Award to Class Counsel from the Total Settlement Amount no later than twenty five
9 (25) calendar days after the Effective Date. Class Counsel shall be solely and legally responsible
10 to pay all applicable taxes on the payment made pursuant to this paragraph. The Settlement
11 Administrator shall issue an IRS Form 1099 — MISC to Class Counsel for the payments made
12 pursuant to this paragraph. In the event that the Court reduces or does not approve the requested
13 Class Counsel Award, Plaintiff and Class Counsel shall not have the right to revoke the Settlement,
14 or to appeal such order, and the Settlement will remain binding.

15 17. PAGA Payment. Forty Thousand dollars (\$40,000) shall be allocated from
16 the Total Settlement Amount for settlement of claims for civil penalties under PAGA. The
17 Settlement Administrator shall pay seventy-five percent (75%) of the PAGA Payment, or Thirty
18 Thousand dollars (\$30,000), to the California Labor and Workforce Development Agency no later
19 than twenty five (25) calendar days after the Effective Date. Twenty-five (25%) of the PAGA
20 Payment, or Ten Thousand dollars (\$10,000), will be part of the Aggregate Class Payment Amount
21 and distributed to California Subclass Members in prorata shares using the respective proration
22 methodologies set forth in Sections III.K.15.b and 15.d of this Agreement, *i.e.*, proration based on
23 the applicable California Non-Exempt Employee Payment Ratio (based on Workweeks) for
24 California Non-Exempt Employee Subclass Members, and proration based on the applicable
25 California Exempt Employee Payment Ratio (based on paystubs) for California Exempt Employee
26 Subclass Members. Class Counsel is responsible for all required notifications to the LWDA.

27 18. Settlement Administration Costs. The Settlement Administrator shall be
28 paid for the costs of administration of the Settlement from the Total Settlement Amount (the

1 “Settlement Administration Costs”), up to a maximum total of Sixty-Five Thousand dollars
2 (\$65,000). The Settlement Administrator shall be paid the Settlement Administration Costs no
3 later than twenty five (25) calendar days after the Effective Date. Class Counsel shall be solely
4 responsible for, and shall pay, any Settlement Administration Costs, if any, that exceed Sixty-Five
5 Thousand dollars (\$65,000) (“Excess Settlement Administration Costs”). In no event shall any
6 such Excess Settlement Administration Costs, if any, be paid out of, increase, or decrease, the Total
7 Settlement Amount or the Aggregate Class Payment Amount.

8 L. Final Approval Motion. At the earliest practicable time following the expiration of
9 the Response Deadline, Plaintiff shall file with the Court a Motion for Order Granting Final
10 Approval and Entering Judgment (“Final Settlement Approval Motion”), which motion shall
11 request final approval of the Settlement and a determination of the amounts payable for the Class
12 Representative Service Award, the Class Counsel Award, the PAGA Payment, and the Settlement
13 Administration Costs.

14 1. Declaration by Settlement Administrator. The Settlement Administrator
15 shall submit a declaration in support of Plaintiff’s Final Settlement Approval Motion detailing the
16 number of Notice Packets mailed and re-mailed to Settlement Class Members, the number of
17 undeliverable Notice Packets, the number of timely Requests for Exclusion, the number of timely
18 Objections received, the number of timely FLSA Opt-In Consent Forms received, the amount of
19 the average Individual Class Member Settlement Payment, the Settlement Administration Costs,
20 and any other information as the Parties mutually agree or the Court orders the Settlement
21 Administrator to provide.

22 2. Settlement Website and Summary of Objections. Class Counsel shall
23 establish a settlement website for this Settlement, the address of which shall be included in the
24 Notices of Class Action Settlement. At least five (5) weeks prior to the hearing on the Final
25 Settlement Approval Motion, Class Counsel shall post to their settlement website the Settlement-
26 related documents (including this Agreement and the Final Settlement Approval Motion). Within
27 two (2) weeks following the Objection Deadline (which, as noted, is three (3) weeks prior to the
28 hearing on the Final Settlement Approval Motion), Class Counsel shall file with the Court and

1 serve upon Defendants a brief reasonably summarizing all Objections received and Plaintiff's
2 responses to such Objections. Defendants also may, if they so choose, file responses to any or all
3 such Objections by such deadline.

4 3. Final Approval Order and Judgment. Class Counsel shall present an Order
5 Granting Final Approval of Class Action Settlement to the Court for its approval, and Judgment
6 thereon, at the time Class Counsel files the Final Settlement Approval Motion.

7 M. Defendants' Option to Revoke Settlement. Defendants have, in their sole discretion,
8 the unilateral right to revoke and terminate the Settlement if, after the Response Deadline, the
9 number of Settlement Class Members who submitted timely and valid written Requests for
10 Exclusion from the Settlement is at least ten percent (10%) of all Settlement Class Members. If
11 Defendants exercise the option to terminate this Settlement, Defendants shall: (a) provide written
12 notice to Class Counsel within seven (7) calendar days after the Settlement Administrator provides
13 information regarding opt outs (which shall occur no later than fourteen (14) calendar days after
14 the Response Deadline, see paras. I.TT, III.J, and III.K.7, above, and also upon Defendants'
15 reasonable request from time to time) and (b) pay all Settlement Administration Costs incurred up
16 to the date or as a result of the termination; and the Parties shall proceed in all respects as if this
17 Agreement had not been executed.

18 N. Review of Motions for Preliminary and Final Approval. Class Counsel will provide
19 a reasonable opportunity for Counsel for Defendants to review the Motions for Preliminary and
20 Final Approval, including the Order Granting Final Approval of Class Action Settlement, and
21 Judgment thereon, and supplemental brief responding to any Objections, prior to filing with the
22 Court. The Parties and their counsel will cooperate with each other and use their best efforts to
23 obtain the Court's approval of the Motions for Preliminary and Final Approval of the Settlement,
24 and entry of Judgment.

25 O. Cooperation. The Parties and their counsel will cooperate with each other and use
26 their best efforts to cause the implementation of the Settlement.

27 P. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
28 except such proceedings necessary to implement and complete the Settlement, pending the Final

1 Approval/Settlement Fairness Hearing to be conducted by the Court

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

4 R. Entire Agreement. This Agreement and any attached Exhibits constitute the entire
5 Agreement among these Parties, and no oral or written representations, warranties or inducements
6 have been made to any Party concerning this Agreement or its Exhibits other than the
7 representations, warranties and covenants contained and memorialized in the Agreement and its
8 Exhibits.

9 S. Effect on Benefits and Compensation. The payments made pursuant to this
10 Settlement shall not have any effect on the eligibility or calculation of any employee benefits (if
11 any) provided by any Defendant or any of the other Released Parties. The Parties agree that these
12 payments do not represent any modification of any Class Member's previously-credited hours of
13 service or other eligibility criteria including under any employee pension benefit plan, employee
14 welfare benefit plan, other program or policy, or collective bargaining agreement, if any. These
15 payments also will not be considered wages, compensation, or annual earnings for benefits in any
16 year for purposes of determining eligibility for, or benefit accrual within, any employee pension
17 benefit plan, employee welfare benefit plan, other program or policy, or collective bargaining
18 agreement, if any.

19 T. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant
20 and represent they are expressly authorized by the Parties whom they represent to negotiate this
21 Agreement and to take all appropriate actions required or permitted to be taken by such Parties
22 pursuant to this Agreement to effectuate its terms, and to execute any other documents required to
23 effectuate the terms of this Agreement. The persons signing this Agreement on behalf of
24 Defendants represent and warrant that they are authorized to sign this Agreement on behalf of
25 Defendants. Plaintiff represents and warrants that he is authorized to sign this Agreement and that
26 he has not assigned any claim, or part of a claim, covered by this Settlement to a third-party.

27 U. Binding on Successors and Assigns. This Agreement shall be binding upon, and
28 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

1 V. California Law Governs. All terms of this Agreement and the Exhibits hereto and
2 any disputes arising hereunder shall be governed by and interpreted according to the laws of the
3 State of California.

4 W. Counterparts. This Agreement may be executed in one or more counterparts. All
5 executed counterparts and each of them shall be deemed to be one and the same instrument
6 provided that counsel for the Parties to this Agreement shall exchange among themselves copies or
7 originals of the signed counterparts.

8 X. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this
9 Settlement is a fair, adequate and reasonable settlement of this Action and have arrived at this
10 Settlement after extensive arms-length negotiations, taking into account all relevant factors, present
11 and potential.

12 Y. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction
13 with respect to the interpretation, implementation and enforcement of the terms of this Agreement
14 and all orders and judgments entered in connection therewith, and the Parties and their counsel
15 hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing and
16 enforcing the settlement embodied in this Agreement and all orders and judgments entered in
17 connection therewith.

18 Z. Invalidity of Any Provision. Before declaring any provision of this Agreement
19 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible
20 consistent with applicable precedents so as to define all provisions of this Agreement valid and
21 enforceable.

22 AA. Publicity. Plaintiff and Class Counsel agree not to disclose or publicize the
23 Settlement, including the fact of the Settlement, its terms or contents, and the negotiations
24 underlying the Settlement, in any manner or form, directly or indirectly, to any person or entity,
25 except potential class members and as shall be contractually required to effectuate the terms of the
26 Settlement as set forth herein. For the avoidance of doubt, this section means Plaintiff and Class
27 Counsel agree not to issue press releases, communicate with or respond to any media or publication
28 entities, publish information in any manner or form, whether printed or electronic, on any medium.

1 or otherwise communicate, whether by print, video, recording or any other medium, with any
2 person or entity concerning the Settlement, including the fact of the Settlement, its terms or
3 contents and the negotiations underlying the Settlement, except as shall be contractually required to
4 effectuate the terms of the Settlement as set forth herein. However, for the limited purpose of
5 allowing Class Counsel to prove adequacy as class counsel in other actions, Class Counsel may
6 disclose the name of the Parties in this Action and the venue/case number of this Action (but not
7 any other Settlement details) for such purposes.

8 BB. No Unalleged Claims. Plaintiff and Class Counsel represent that they do not
9 currently intend to pursue any claims against Defendants, including, but not limited to, any and all
10 claims relating to or arising from Plaintiff's employment with Defendants, regardless of whether
11 Plaintiff or Class Counsel is currently aware of any facts or legal theories upon which any claims
12 or causes of action could be brought against Defendants, excepting those facts or legal theories
13 alleged in the operative complaint in this Action. The Parties further acknowledge, understand and
14 agree that this representation is essential to the Agreement and that this Agreement would not have
15 been entered into were it not for this representation.

16 CC. Waiver of Certain Appeals. The Parties agree to waive appeals from the Court's
17 final approval of this Settlement, unless the Court materially modifies the Settlement. Any
18 reduction in the amount of the Class Counsel Award and/or the Class Representative Service
19 Award will not, however, constitute a material modification of the Settlement and will not be
20 grounds to void the Settlement. The Parties agree to stipulate to class and FLSA collective
21 certification for purposes of this Settlement only.

22 DD. No Admissions by the Parties. Plaintiff has claimed and continues to claim that the
23 Released Claims have merit and give rise to liability on the part of Defendants. Defendants claim
24 that the Released Claims have no merit and do not give rise to liability. This Agreement is a
25 compromise of disputed claims. Nothing contained in this Agreement and no documents referred
26 to herein and no action taken to carry out this Agreement may be construed or used as an admission
27 by or against the Defendants or Plaintiff or Class Counsel as to the merits or lack thereof of the
28 claims asserted.

1 IT IS SO AGREED.

2 DATED: 12/06/2019, 2019

PLAINTIFF

3
4 DocuSigned by:
5 Andrew Quiruz
6 E485ECD3E576458...
7 By: Andrew Quiruz

8 DATED: 12 4 2019, 2019

SETAREH LAW GROUP

9 DocuSigned by:
10 Shaun Setareh
11 535A1260047F415...
12 By: Shaun Setareh, Esq.
William Pao, Esq.

Attorneys For Plaintiff

13 DATED: 11/22, 2019

DEFENDANTS

14
15 By: D. Cameron Findlay MBT
16 Archer Daniels Midland Company (ADM)
and Specialty Commodities, Inc. (SCI)

17 D. CAMERON FINDLAY
18 Print Name

19 SVP, GENERAL COUNSEL AND
20 Title SECRETARY

21 SIDLEY AUSTIN, LLP

22
23
24 By: Jonathan D. Lotsoff 12/3/19
25 Jonathan D. Lotsoff, Esq.
Katherine A. Roberts, Esq.
26 Attorneys for Defendants
27
28

EXHIBIT “1”

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

QUIRUZ v. ARCHER DANIELS MIDLAND COMPANY, et al.
 UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 Case No. 5:17-cv-03300-BLF

A court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.

YOU ARE RECEIVING THIS NOTICE BECAUSE RECORDS SHOW THAT YOU ARE A MEMBER OF ONE OR MORE OF THE FOLLOWING GROUPS (A “**CLASS MEMBER**”) THAT MAY RECEIVE MONEY FROM A CLASS ACTION SETTLEMENT OF THE ABOVE-CAPTIONED ACTION IF THE COURT REVIEWING THE PROPOSED SETTLEMENT APPROVES IT:

1. **California Exempt Employee Subclass:** Persons who were employed by Defendants Archer Daniels Midland Company (“**ADM**”) or Specialty Commodities, Inc. (“**SCI**”) (ADM and SCI are the “**Defendants**”) in a salaried exempt position in California at any time from May 3, 2016 up to and including **<Preliminary Approval Date>**.
2. **California Non-Exempt Employee Subclass:** Persons who were employed by Defendants in an hourly-paid or salaried non-exempt position in California at any time from May 3, 2013 up to and including **<Preliminary Approval Date>**.
3. **FCRA Subclass:** Any persons who (1) were employed by Defendants at any time from September 26, 2012 up to and including **<Preliminary Approval Date>**, or (2) applied for employment with Defendants at any time from September 26, 2012 up to and including **<Preliminary Approval Date>**, in each case for whom a pre-employment background check was conducted at any time from September 26, 2012 up to and including **<Preliminary Approval Date>**.

Also see below for information on the “**California FLSA Collective**” that the Court has certified for settlement purposes.

Why should you read this Notice?

A proposed settlement (the “**Settlement**”) has been reached in a class action lawsuit entitled *Andrew Quiruz v. Archer-Daniels-Midland Company (ADM) and Specialty Commodities, Inc. (SCI), et al.*, filed on May 3, 2017, and assigned Case Number 5:17-CV-03300-BLF, United States District Court for the Northern District of California (Hon. Beth Labson Freeman) (the “**Action**”). The purpose of this Notice of Proposed Class Action Settlement (“**Notice**”) is to briefly describe the Action and to inform you of your rights and options in connection with the Action and the proposed Settlement.

A hearing concerning final approval of the proposed Settlement will be held before the Hon. Beth Labson Freeman on Thursday, **<Preliminary Approval Date>**, 2019, at 1:30 p.m. in Courtroom 3 of the United States District Court, located at 280 South 1st Street, San Jose, CA 95113, to determine whether the Settlement is fair, adequate and reasonable.

As a Class Member, you are eligible to receive an Individual Class Settlement Payment (as described below) under the Settlement and will be bound by the release of claims described in this Notice and the Settlement Agreement filed with the Court, unless you timely request to be excluded from the Settlement. Additionally, as a member of the California Non-Exempt Employee Subclass, if you do not timely request to be excluded from the Settlement, you also have the option (but no obligation) to opt into the California FLSA Collective (described below) by timely completing and submitting an FLSA Opt-In Consent Form enclosed with this Notice pursuant to the procedures described below. If (and only if) you do so, you also will release all claims arising under the federal Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 et seq., and will receive a second settlement check for doing so (the “Individual FLSA Settlement Payment”), as described below.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

DO NOTHING	If you do nothing, you will be considered part of the Class (<i>i.e.</i> , a participating Class Member) and will receive an Individual Class Settlement Payment as explained more fully below. You will also
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	<p>give up rights to pursue a separate legal action against Defendants for the Released Claims asserted in the Action as explained more fully below.</p> <p>Note, however, that as a member of the California Non-Exempt Employee Subclass, if you do nothing, you will <u>not</u> release FLSA claims, nor will you receive an additional Individual FLSA Settlement Payment. See the “Opt Into the California FLSA Collective” section immediately below for further information.</p>
OPT INTO THE CALIFORNIA FLSA COLLECTIVE	<p>As noted, as a member of the California Non-Exempt Employee Subclass, if you do not timely request to be excluded from the Settlement, you also have the option (but no obligation) to opt into the California FLSA Collective by timely completing and submitting an FLSA Opt-In Consent Form enclosed with this Notice pursuant to the procedures described below. If (and only if) you do so, you also will release all claims arising under the FLSA, and will receive an Individual FLSA Settlement Payment, in addition to your Individual Class Settlement Payment as a Class Member.</p>
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS	<p>You have the option to pursue separate legal action against Defendants about the claims in the Action. If you choose to do so, you must exclude yourself, in writing, from the Settlement as described below. As a result, you will not receive any benefits under the Settlement including any Individual Class Settlement Payment or any Individual FLSA Settlement Payment.</p>
OBJECT	<p>To object to the Settlement, you must mail, fax or email a written explanation of why you don’t like the Settlement to the Settlement Administrator. This option is available only if you do <u>not</u> exclude yourself from the Settlement. Do <u>not</u> request to be excluded if you wish to object.</p>

This Notice summarizes the proposed Settlement. The precise terms and conditions of the Settlement will control over this Notice, and can be obtained by contacting Class Counsel (contact information listed below), by visiting Class Counsel’s Settlement website for this case at www.classcounsel.com/case/5:17-cv-03300-BLF, by accessing the Court docket in this case through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 280 South 1st Street, San Jose, CA 95113, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

Who is affected by this proposed Settlement?

The Court has certified, for settlement purposes only, the following sub-classes (collectively, the “**Class**,” and each of the respective time periods described in items (1), (2) and (3) below generally referred to as a “**Class Period**”):

1. **California Exempt Employee Subclass:** Persons who were employed by Defendants ADM or SCI in a salaried exempt position in California at any time from May 3, 2016 up to and including **<Preliminary Approval Date>**.
2. **California Non-Exempt Employee Subclass:** Persons who were employed by Defendants in an hourly-paid or salaried non-exempt position in California at any time from May 3, 2013 up to and including **<Preliminary Approval Date>**.
3. **FCRA Subclass:** Any persons who were (1) employed by Defendants at any time from September 26, 2012 up to and including **<Preliminary Approval Date>**, or (2) applied for employment with Defendants at any time from September 26, 2012 up to and including **<Preliminary Approval Date>**, in each case for

whom a pre-employment background check was conducted at any time from September 26, 2012 up to and including **<Preliminary Approval Date>**.

According to Defendants' records, you are a member of the Class and thus are a **"Class Member."**

Additionally, the Court has certified, for settlement purposes only, the **"California FLSA Collective,"** which consists of any and all members of the California Non-Exempt Employee Subclass who choose to opt into the FLSA claims in this case, thereby becoming a **"California FLSA Collective Member,"** by timely completing and submitting an FLSA Opt-In Consent Form. According to Defendants' records, you are a member of the California Non-Exempt Employee Subclass. You therefore have the option to opt into the California FLSA Collective, and an FLSA Opt-In Consent Form is enclosed with this Notice.

What is this case about?

In the Action, Plaintiff Andrew Quiruz (**"Plaintiff"**) alleges on behalf of himself and the Class the following causes of action: (1) Violation of 15 U.S.C. §§ 1681b(b)(2)(A) (Fair Credit Reporting Act); (2) Violation of 15 U.S.C. §§ 1681d(a)(1) and 1681g(c) (Fair Credit Reporting Act); (3) Violation of California Civil Code § 1786 et seq. (Investigative Consumer Reporting Agencies Act); (4) Violation of California Civil Code § 1785 et seq. (Consumer Credit Reporting Agencies Act); (5) Failure to Provide Meal Periods (Cal. Lab. Code §§ 204, 223, 226.7, 512, and 1198); (6) Failure to Provide Rest Periods (Cal. Lab. Code §§ 204, 223, 226.7, and 1198); (7) Failure to Pay Hourly Wages (Cal. Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1, and 1198); (8) Failure to Provide Accurate Written Wage Statements (Cal. Lab. Code § 226(a)); (9) All claims or penalties under the wage and hour laws, including under California Labor Code § 558; (10) All damages, penalties, interest, and other amounts recoverable under California and federal law, including under the applicable Industrial Welfare Wage Order and the California Unfair Competition Law; (11) Unfair Competition (Cal. Bus. & Prof. Code §§ 17200, et seq.); (12) Civil Penalties under Cal. Lab. Code §§ 2698, et seq. (the **"Private Attorneys General Act"** or **"PAGA"**), which authorizes aggrieved employees to file lawsuits to recover civil penalties on behalf of themselves, other employees, and the State of California for California Labor Code violations; and (13) Failure to pay all minimum and overtime wages due under the federal Fair Labor Standards Act (**"FLSA"**), 29 U.S.C. § 201 et seq. Plaintiff seeks unpaid wages, actual damages, statutory penalties, civil penalties under PAGA, restitution, interest, attorneys' fees, and costs.

Defendants deny all liability and are confident that they have strong legal and factual defenses to these claims, but they recognize the inherent risks, distractions, and costs associated with litigation. Defendants contend that their conduct is and has been lawful at all times relevant and that Plaintiff's claims do not have merit and do not meet the requirements for class or collective certification.

This Settlement is a compromise reached after good faith, arm's length negotiations between Plaintiff and Defendants (the **"Parties"**), through their attorneys and resulting from a mediation with an experienced neutral third-party mediator, and is not an admission of liability on the part of Defendants or any of the other Released Parties (defined below). Both sides agree that, in light of the risks and expenses associated with continued litigation, this Settlement is fair, adequate and reasonable. Plaintiff also believes this Settlement is in the best interests of all Class Members.

The Court has not ruled on the merits of Plaintiff's claims or Defendants' defenses.

Who are the attorneys representing the Parties?

The attorneys representing the Parties in the Action are:

1. Class Counsel

Shaun Setareh
William M. Pao
SETAREH LAW GROUP
315 S. Beverly Dr., Suite 315
Beverly Hills, California 90212
Telephone: (310) 888-7771
Facsimile: (310) 888-0109

2. Defendants' Counsel

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Chicago, Illinois 60603
 Telephone: (312) 853-7000
 Facsimile: (312) 853-7036

What are the Settlement terms?

Subject to final Court approval, Defendants will pay an aggregate total of \$1,500,000.00 (the “**Total Settlement Amount**”) for: (a) Individual Class Settlement Payments to participating Class Members; (b) Individual FLSA Settlement Payments to any members of the California Non-Exempt Employee Subclass who timely opt into the California FLSA Collective; (c) the Court-approved Class Representative Service Award (described below) to Plaintiff; (d) the Court-approved attorneys’ fees and costs to Class Counsel; (e) payment to the California Labor and Workforce Development Agency (“**LWDA**”) for PAGA penalties; (f) the employer-share of payroll and other taxes on any settlement payments; and (g) settlement administration costs.

Individual Class Settlement Payments and Individual FLSA Settlement Payments. After deduction from the Total Settlement Amount for Class Counsel attorneys’ fees and costs, the Class Representative Service Award to Plaintiff, the PAGA payment to the LWDA, and settlement administration costs, there will be (1) an Aggregate Class Payment Amount, and (2) a California FLSA Collective Payment, each as described below.

A. Aggregate Class Payment Amount and Individual Class Settlement Payments

Defendants will pay an “**Aggregate Class Payment Amount**” comprised as follows: (1) an aggregate total of \$300,000.00 will be allocated to the FCRA Subclass Members; (2) an aggregate total of \$510,000.00 will be allocated to the California Non-Exempt Employee Subclass Members; (3) an aggregate total of \$50,000.00 will be allocated to the California Exempt Employee Subclass Members; (4) an additional aggregate total of \$10,000.00 will be allocated to the California Non-Exempt Employee Subclass Members and the California Exempt Employee Subclass Members (together, the “**California Subclasses**”) for their respective shares of the PAGA payment (this amount will not be allocated to any FCRA Subclass Members who are not also members of these two California Subclasses); and (5) each of the foregoing amounts shall be inclusive of and used to pay (and not in addition to) the employer-share of payroll and other taxes on any and all such settlement payments. Certain of the foregoing amounts could increase somewhat depending on whether and to what extent the Court approves Class Counsel’s request for attorneys’ fees and costs and/or the Class Representative’s request for a Class Representative Service Award, but in no event will the total aggregate amount payable pursuant to the Settlement exceed the Total Settlement Amount (\$1,500,000.00).

From the Aggregate Class Payment Amount, an “**Individual Class Settlement Payment**” will be made to each Class Member who does not request to be excluded from the Settlement (“**participating Class Members**”). The Aggregate Class Payment Amount shall be divided among all participating Class Members (as noted, after accounting for the employer-share of payroll and other taxes). The applicable payments to the California Subclasses (including the employee share of the PAGA payment, but not the FCRA settlement payments) will be made on a pro rata basis based upon the total number of workweeks worked by each respective participating California Non-Exempt Employee Subclass Member, and the total number of paystubs for each respective participating California Exempt Employee Subclass Member, in the State of California during the applicable Class Period. Payments to the FCRA Subclass Members will be distributed in equal shares to each FCRA Subclass Member.

Class Members do **not** need to submit an FLSA Opt-In Consent Form and opt into the California FLSA Collective to receive an Individual Class Settlement Payment from the Aggregate Class Payment Amount. (As discussed below, however, California Non-Exempt Employee Subclass Members who wish to receive an additional Individual **FLSA** Settlement Payment will only receive that additional payment if they also opt into the California FLSA Collective.)

B. California FLSA Collective Payment and Individual FLSA Settlement Payments

In addition, an aggregate total of \$50,000.00 (the “**California FLSA Collective Payment**”) will be allocated for payment of “**Individual FLSA Settlement Payments**” to California Non-Exempt Employee Subclass Members who choose to opt into the California FLSA Collective by timely completing and submitting an FLSA Opt-In Consent Form (again, after accounting for the employer-share of payroll and other taxes). The pro-rata factor used to determine a California Non-Exempt Employee Subclass Member’s Individual Class Settlement Payment as described in Subpart A above (*i.e.*, the total number of workweeks worked by such individual in the State of

California during the applicable Class Period divided by the total number of workweeks worked by all California Non-Exempt Employee Subclass Members in the State of California during the applicable Class Period) will be used to determine his or her Individual FLSA Settlement Payment if he or she timely opts into the California FLSA Collective.

Again, according to Defendants' records, you are a member of the California Non-Exempt Employee Subclass. You therefore have the option to opt into the California FLSA Collective and receive an Individual FLSA Settlement Payment, and an FLSA Opt-In Consent Form is enclosed with this Notice.

C. Certain Tax Issues

Please note that all settlement payments (including Individual Class Settlement Payments and, if applicable, Individual FLSA Settlement Payments) are TAXABLE INCOME TO YOU as and to the extent provided by applicable law. For tax reporting purposes, the payments to participating California Non-Exempt Employee Subclass Members will be allocated ten percent as wages and ninety percent as penalties and interest (except as provided below). The Individual FLSA Settlement Payments to California Non-Exempt Employee Subclass Members who opt into the California FLSA Collective will be allocated 50% as wages and 50% as penalties and interest. The wage portion of the foregoing settlement payments shall be subject to the withholding of applicable local, state, and federal taxes, and the Settlement Administrator shall deduct applicable payroll taxes from the wage portion of such Individual Class Settlement Payments and Individual FLSA Settlement Payments. Settlement payments to each California Exempt Employee Subclass Member, FCRA settlement payments to each FCRA Subclass Member, and each California Subclass Member's share of the PAGA payment shall be allocated 100% as penalties. The portion of the settlement payments allocated to penalties and interest shall be classified as other miscellaneous income and reported on IRS Form 1099-MISC. **Again, any taxes owed on that other miscellaneous income also will be the responsibility of participating Class Members receiving those payments.**

None of the Parties or attorneys make any representations concerning the tax consequences of this Settlement or your participation in it. Settlement Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel is unable to offer advice concerning the local, state or federal tax consequences of payments to any Class Member.

D. Uncashed or Returned Settlement Checks.

All checks for Individual Class Settlement Payments and, as applicable, Individual FLSA Settlement Payments paid to participating Class Members shall advise that the checks will remain valid and negotiable for ninety (90) days from the date of the checks' issuance. If any given settlement check(s) are returned as undeliverable within sixty (60) days after issuance, the Settlement Administrator will attempt to identify a valid mailing address and, if one is found, will promptly re-issue such check(s) (this will be done a maximum of one time).

If any given settlement check(s) remain uncashed forty-five (45) days after issuance (including after any re-mailing as described above), the Settlement Administrator will promptly send the recipient via regular First-Class U.S. Mail a postcard or similar notice reminding him or her to cash such check(s) by the end of the ninety (90) day period after each applicable check's issuance.

Any settlement check(s) shall thereafter automatically be void if not cashed within ninety (90) days after issuance. Funds represented by any Individual Class Settlement Payment that is not timely cashed by a participating Class Member (including any checks returned as undeliverable for which a valid mailing address was not identified by the Settlement Administrator) shall be transmitted to the California Department of Industrial Relations Unpaid Wage Fund in the name of the employee that did not cash the check. Funds represented by any portion of the \$50,000.00 total California FLSA Collective Payment that remains unclaimed (including without limitation any FLSA Individual Settlement Payment that is not timely cashed, or that is returned as undeliverable for which a valid mailing address was not identified by the Settlement Administrator) will revert to Defendants.

In any such event, the participating Class Member shall nevertheless remain bound by the Settlement and the releases of claims therein (including without limitation, in the case of California FLSA Collective Members, the release of all claims arising under the FLSA).

Class Counsel Attorneys' Fees and Costs, Class Representative Service Award, Claims Administration Costs and Payment to the LWDA. Class Counsel will ask the Court to award them attorneys' fees up to \$460,000.00 (approximately thirty-one percent) of the Total Settlement Amount and reimbursement of reasonable

costs incurred in the Action not to exceed \$15,000.00. In addition, Class Counsel will ask the Court to authorize a Class Representative Service Award payment of up to \$10,000.00 for Plaintiff for his efforts in bringing the case on behalf of the Class. The Settlement Administrator shall be paid for the costs of administration of the Settlement from the Total Settlement Amount, which is currently estimated to equal \$65,000. A payment in the amount of \$30,000.00 will also be made to the LWDA for PAGA penalties, which represents 75% of the \$40,000.00 total set aside for payment under PAGA. As noted, the remaining \$10,000.00 of the PAGA payment will be paid to the California Subclass Members in the aggregate, distributed pro-rata as described above.

What claims are being released by the proposed Settlement?

California Non-Exempt Employee Subclass Members fully and finally release the Released Parties (as defined below) from any and all claims, rights, demands, liabilities and causes of action of every nature and description, whether known or unknown, arising on or before the date of Preliminary Approval of this Settlement, *i.e.*, [DATE] (the “**Release Period**”), arising out of, based on, or encompassed by: (a) any and all claims for unpaid wages (including claims for regular wages, overtime, final wages, and meal period and rest period premiums), interest, penalties (including waiting time penalties pursuant to Labor Code section 203 and wage statement penalties pursuant to Labor Code section 226), any and all claims pursuant to Labor Code sections 201-204, 226, 226.7, 510, 512, 558, 1194, and the Industrial Welfare Commission Wage Orders; (b) any and all claims under Business and Professions Code section 17200, et seq., based on or reasonably relating to (1) claims or facts asserted or alleged in the Action, or (2) the violation of any statute, regulation, wage order, or decisional construction of a law alleged to have been violated in the Action; (c) any and all claims under PAGA; and (d) claims for attorneys’ fees and costs and any other remedies available at law or in equity allegedly owed or available to the California Non-Exempt Employee Subclass arising or reasonably flowing from any complaints (or amended complaints) filed in the Action.

Additionally, California Non-Exempt Employee Subclass Members who timely and properly opt into the California FLSA Collective using an FLSA Opt-In Consent Form, thereby becoming California FLSA Collective Members, fully and finally release the Released Parties from any and all claims, rights, demands, liabilities and causes of action of every nature and description, whether known or unknown, arising at any time during the Release Period, arising out of, based on, or encompassed by: (a) any and all claims under the FLSA that were or could have been alleged in this Action based on the facts alleged in any complaints (or amended complaints) filed in the Action (including claims for regular wages, minimum wages, overtime, interest and penalties including claims for liquidated damages); and (b) claims for attorneys’ fees and costs and any other remedies available at law or in equity allegedly owed or available to the California FLSA Collective arising or reasonably flowing from any complaints (or amended complaints) filed in the Action (together, the “**Released FLSA Claims**”). No other Class Members (including any California Non-Exempt Employee Subclass Members who do not timely and properly opt into the California FLSA Collective) shall release or be deemed to have released any Released FLSA Claims.

California Exempt Employee Subclass Members fully and finally release the Released Parties from any and all claims, rights, demands, liabilities and causes of action of every nature and description, whether known or unknown, arising at any time during the Release Period, arising out of, based on, or encompassed by (a) any allegation that Defendants maintained inaccurate wage statements under Labor Code Section 226; (b) any and all claims under PAGA; and (c) claims for attorneys’ fees and costs and any other remedies available at law or in equity allegedly owed or available to the California Exempt Employee Subclass arising or reasonably flowing from any complaints (or amended complaints) filed in the Action.

The FCRA Subclass Members fully and finally release the Released Parties from any and all claims, rights, demands, liabilities and causes of action of every nature and description, whether known or unknown, arising at any time during the Release Period, arising out of, based on, or encompassed by: (a) claims under the Fair Credit Reporting Act, and any other statutes relating to background checks, consumer credit reports, or applications for employment; (b) claims under applicable state and local laws relating to background checks, consumer credit reports, or applications for employment; and (c) claims for attorneys’ fees and costs and any other remedies available at law or in equity allegedly owed or available to the FCRA Subclass Members arising or reasonably flowing from any complaints (or amended complaints) filed in the Action.

“**Released Parties**” means Defendant ADM and Defendant SCI, any of their respective subsidiaries, predecessors, successors, affiliates, and otherwise related entities, and any of their respective past, present and/or future, direct and/or indirect, officers, directors, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, divisions, assigns, and joint venturers.

What are my options in this matter?

You have two options under this Settlement, each of which is further discussed below. You may: (A) remain in the Class and receive an Individual Class Settlement Payment; or (B) exclude yourself from the Settlement. If you choose Option (A):

- You may also object to the Settlement, as explained below.
- Additionally, individuals who are California Non-Exempt Employee Subclass Members have the option (but not any obligation) to opt into the California FLSA Collective using an FLSA Opt-In Consent Form, thereby becoming California FLSA Collective Members, giving a release of Released FLSA Claims, and receiving an Individual FLSA Settlement Payment.

As noted, according to Defendants' records, you are a member of the California Non-Exempt Employee Subclass and therefore have the option to opt into the California FLSA Collective. An FLSA Opt-In Consent Form therefore is enclosed with this Notice.

If you remain in the Class, you will be represented at no additional cost to you by Class Counsel (beyond the attorneys' fees and cost awards sought by Class Counsel out of the Total Settlement Amount). Class Counsel, however, will not represent you for purposes of making objections to the Settlement. If you do not exclude yourself from the Settlement, you will be subject to any Judgment that will be entered in the Action, including the release of the Released Claims as described above.

OPTION A. Remain in the Class. If you wish to remain in the Class and be eligible to receive an Individual Class Settlement Payment under the Settlement, **you do not need to take any action.** Simply by remaining in the Class and receiving settlement monies, you consent to the release of the Released Claims (other than the FLSA Released Claims) as described above.

Any amount paid to participating Class Members (including without limitation, if applicable, any Individual FLSA Settlement Payment) will not count or be counted for determination of eligibility for, or calculation of, any employee benefits (for example, vacations, holiday pay, retirement plans, non-qualified deferred compensation plans, etc.), or otherwise modify any eligibility criteria under any employee pension benefit plan or employee welfare plan sponsored by any Defendant, unless otherwise required by law.

- **Objecting to the Settlement:** If you believe the proposed Settlement is not fair, reasonable or adequate in any way, you may object to it. To object, you must submit a written objection ("Notice of Objection") to the Settlement Administrator at **Phoenix Settlement Administrators, P.O. Box _____, [City], [State] [Zip] [Fax Number] [Email Address]**. The Notice of Objection must: (1) state your full name; (2) state the last four digits of your Social Security number; (3) state the grounds for the objection; (4) state whether you will appear at the final approval hearing, whether you will be represented at that hearing by an attorney, and the contact information for any such attorney; (5) be signed by you; and (6) be postmarked on or before **[DATE THAT IS 3 WEEKS BEFORE FINAL APPROVAL HEARING]** and returned to the Settlement Administrator at the address listed above, or be received by the Settlement Administrator on or before **[DATE THAT IS 3 WEEKS BEFORE FINAL APPROVAL HEARING]** by fax or email at the fax number or email address listed above. If you wish, you can (but are not obligated to) also hire an attorney at your own expense to represent you in your objection, including at the final approval hearing. Any Class Member who does not timely object in the manner described above shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement, unless otherwise ordered by the Court. **Even if you submit an objection, you will be bound by the terms of the Settlement, including the release of Released Claims (and, if applicable, the FLSA Released Claims) as set forth above, unless the Settlement is not finally approved by the Court.**
- **Opting Into the California FLSA Collective:** As noted, California Non-Exempt Employee Subclass Members who do not timely request to be excluded from the Settlement also have the option (but no obligation) to opt into the California FLSA Collective by timely completing and submitting an FLSA Opt-In Consent Form. As noted, according to Defendants' records, you are a member of the California Non-Exempt Employee Subclass and therefore have the option to opt into the California FLSA Collective. An FLSA Opt-In Consent Form therefore is enclosed with this Notice. To opt into the California FLSA Collective and become a California FLSA Collective

Member: (a) you must complete and submit the enclosed FLSA Opt-In Consent Form (without deleting or modifying any portion thereof) to the Settlement Administrator at **Phoenix Settlement Administrators, P.O. Box _____, [City], [State] [Zip] [Fax Number] [Email Address]**, and (b) such signed and completed FLSA Opt-In Consent Form must be postmarked on or before **[Response Deadline]** and returned to the Settlement Administrator at the address listed above, or be received by the Settlement Administrator on or before **[Response Deadline]** by fax or email at the fax number or email address listed above. Any California Non-Exempt Employee Subclass Member who does not timely complete and submit an FLSA Opt-In Consent Form in the manner described above shall not opt into the California FLSA Collective, shall not become a California FLSA Collective Member, shall not release any Released FLSA Claims, and shall not receive any Individual FLSA Settlement Payment. Even if you submit an objection, you will be bound by any FLSA Opt-In Consent Form that you submit and the terms of the Settlement relating to California FLSA Collective Members, including the release of FLSA Released Claims as set forth above, unless the Settlement is not finally approved by the Court.

OPTION B. Request to Be Excluded from the Settlement. If you do not want to be part of the Settlement, you must submit a Request to be Excluded from the Settlement to the Settlement Administrator at **Phoenix Settlement Administrators, P.O. Box _____, [City], [State] [Zip] [Fax Number] [Email Address]**. In order to be valid, your Request to be Excluded from the Settlement must: (1) state your full name; (2) state the last four digits of your Social Security number; (3) state that you wish to be excluded from the Settlement; (4) be signed by you; and (5) be postmarked on or before **[Response Deadline]** and returned to the Settlement Administrator at the address listed above, or be received by the Settlement Administrator on or before **[Response Deadline]** by fax or email at the fax number or email address listed above. If you do not submit a complete and signed Request to be Excluded from the Settlement on time (as evidenced by the postmark or fax receipt or date and time of email receipt by the Settlement Administrator), your Request will be rejected, you will be deemed a participating Class Member, and you will be bound by the release of Released Claims (and, if applicable, Released FLSA Claims) as described above and all other terms of the Settlement. If you submit a valid Request to be Excluded: (a) you will have no further role in the Action, and you will not be entitled to any benefit, including money, as a result of the Action and Settlement and will not be entitled to or permitted to assert an objection to the Settlement or, if applicable, an FLSA Opt-In Consent Form; and (b) you will retain the right to bring your own action against the Defendants at your own personal cost.

What is the next step in the approval of the Settlement?

The Court will hold a Final Settlement Approval Hearing regarding the fairness, reasonableness and adequacy of the proposed Settlement, the plan of distribution, Class Counsel's request for attorneys' fees and costs, the Class Representative Service Award to Plaintiff, the settlement administration costs, and the payment to the LWDA for PAGA penalties on Thursday, _____, 2019, at 1:30 p.m. in Courtroom 3 of the United States District Court for the Northern District of California, 280 South 1st Street, San Jose, CA 95113. The Final Settlement Approval Hearing may be continued without further notice to Class Members.

You are not required to attend the Final Settlement Approval Hearing to receive a Settlement Payment.

You are welcome to personally attend the Final Settlement Approval Hearing without a lawyer, at your own expense, if you so choose. You are not required to do so, even if you submit an objection to the Settlement. You also may if you so choose, but are not required to, hire an attorney to appear on your behalf at the Final Settlement Approval Hearing, at your own expense.

How can I get additional information?

This Notice summarizes the Action and the basic terms of the Settlement (as noted, the actual Settlement terms and conditions are controlling). More details are in the Settlement Agreement. The precise terms and conditions of the Settlement can be obtained by contacting Class Counsel (contact information listed above), by visiting Class Counsel's Settlement website for this case at **www. _____ / _____**, by accessing the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 280 South 1st Street, San Jose, CA 95113, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT CALL OR WRITE THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.

EXHIBIT “2”

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

QUIRUZ v. ARCHER DANIELS MIDLAND COMPANY, et al.
 UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 Case No. 5:17-cv-03300-BLF

A court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.

YOU ARE RECEIVING THIS NOTICE BECAUSE RECORDS SHOW THAT YOU ARE A MEMBER OF ONE OR MORE OF THE FOLLOWING GROUPS (A “**CLASS MEMBER**”) THAT MAY RECEIVE MONEY FROM A CLASS ACTION SETTLEMENT OF THE ABOVE-CAPTIONED ACTION IF THE COURT REVIEWING THE PROPOSED SETTLEMENT APPROVES IT:

1. **California Exempt Employee Subclass:** Persons who were employed by Defendants Archer Daniels Midland Company (“**ADM**”) or Specialty Commodities, Inc. (“**SCI**”) (ADM and SCI are the “**Defendants**”) in a salaried exempt position in California at any time from May 3, 2016 up to and including **<Preliminary Approval Date>**.
2. **California Non-Exempt Employee Subclass:** Persons who were employed by Defendants in an hourly-paid or salaried non-exempt position in California at any time from May 3, 2013 up to and including **<Preliminary Approval Date>**.
3. **FCRA Subclass:** Any persons who (1) were employed by Defendants at any time from September 26, 2012 up to and including **<Preliminary Approval Date>**, or (2) applied for employment with Defendants at any time from September 26, 2012 up to and including **<Preliminary Approval Date>**, in each case for whom a pre-employment background check was conducted at any time from September 26, 2012 up to and including **<Preliminary Approval Date>**.

Also see below for information on the “**California FLSA Collective**” that the Court has certified for settlement purposes.

Why should you read this Notice?

A proposed settlement (the “**Settlement**”) has been reached in a class action lawsuit entitled *Andrew Quiruz v. Archer-Daniels-Midland Company (ADM) and Specialty Commodities, Inc. (SCI), et al.*, filed on May 3, 2017, and assigned Case Number 5:17-CV-03300-BLF, United States District Court for the Northern District of California (Hon. Beth Labson Freeman) (the “**Action**”). The purpose of this Notice of Proposed Class Action Settlement (“**Notice**”) is to briefly describe the Action and to inform you of your rights and options in connection with the Action and the proposed Settlement.

A hearing concerning final approval of the proposed Settlement will be held before the Hon. Beth Labson Freeman on Thursday, **<Preliminary Approval Date>**, 2019, at 1:30 p.m. in Courtroom 3 of the United States District Court, located at 280 South 1st Street, San Jose, CA 95113, to determine whether the Settlement is fair, adequate and reasonable.

As a Class Member, you are eligible to receive an Individual Class Settlement Payment (as described below) under the Settlement and will be bound by the release of claims described in this Notice and the Settlement Agreement filed with the Court, unless you timely request to be excluded from the Settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING	If you do nothing, you will be considered part of the Class (<i>i.e.</i> , a participating Class Member) and will receive an Individual Class Settlement Payment as explained more fully below. You will also give up rights to pursue a separate legal action against Defendants for the Released Claims asserted in the Action as explained more fully below.
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS	You have the option to pursue separate legal action against Defendants about the claims in the Action. If you choose to do so,

	you must exclude yourself, in writing, from the Settlement as described below. As a result, you will not receive any benefits under the Settlement.
OBJECT	To object to the Settlement, you must mail, fax or email a written explanation of why you don't like the Settlement to the Settlement Administrator. This option is available only if you do <u>not</u> exclude yourself from the Settlement. Do <u>not</u> request to be excluded if you wish to object.

This Notice summarizes the proposed Settlement. The precise terms and conditions of the Settlement will control over this Notice, and can be obtained by contacting Class Counsel (contact information listed below), by visiting Class Counsel's Settlement website for this case at www._____/_____, by accessing the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 280 South 1st Street, San Jose, CA 95113, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

Who is affected by this proposed Settlement?

The Court has certified, for settlement purposes only, the following sub-classes (collectively, the "**Class**," and each of the respective time periods described in items (1), (2) and (3) below generally referred to as a "**Class Period**"):

1. **California Exempt Employee Subclass:** Persons who were employed by Defendants ADM or SCI in a salaried exempt position in California at any time from May 3, 2016 up to and including **<Preliminary Approval Date>**.
2. **California Non-Exempt Employee Subclass:** Persons who were employed by Defendants in an hourly-paid or salaried non-exempt position in California at any time from May 3, 2013 up to and including **<Preliminary Approval Date>**.
3. **FCRA Subclass:** Any persons who were (1) employed by Defendants at any time from September 26, 2012 up to and including **<Preliminary Approval Date>**, or (2) applied for employment with Defendants at any time from September 26, 2012 up to and including **<Preliminary Approval Date>**, in each case for whom a pre-employment background check was conducted at any time from September 26, 2012 up to and including **<Preliminary Approval Date>**.

According to Defendants' records, you are a member of the Class and thus are a "**Class Member**."

Additionally, the Court has certified, for settlement purposes only, the "**California FLSA Collective**," which consists of any and all members of the California Non-Exempt Employee Subclass who choose to opt into the FLSA claims in this case, thereby becoming a "**California FLSA Collective Member**," by timely completing and submitting an FLSA Opt-In Consent Form. According to Defendants' records, you are **not** a member of the California Non-Exempt Employee Subclass. You therefore **do not** have the option to opt into the California FLSA Collective, and an FLSA Opt-In Consent Form is **not** enclosed with this Notice.

What is this case about?

In the Action, Plaintiff Andrew Quiruz ("**Plaintiff**") alleges on behalf of himself and the Class the following causes of action: (1) Violation of 15 U.S.C. §§ 1681b(b)(2)(A) (Fair Credit Reporting Act); (2) Violation of 15 U.S.C. §§ 1681d(a)(1) and 1681g(c) (Fair Credit Reporting Act); (3) Violation of California Civil Code § 1786 et seq. (Investigative Consumer Reporting Agencies Act); (4) Violation of California Civil Code § 1785 et seq. (Consumer Credit Reporting Agencies Act); (5) Failure to Provide Meal Periods (Cal. Lab. Code §§ 204, 223, 226.7, 512, and 1198); (6) Failure to Provide Rest Periods (Cal. Lab. Code §§ 204, 223, 226.7, and 1198); (7) Failure to Pay Hourly Wages (Cal. Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1, and 1198); (8) Failure to Provide Accurate Written Wage Statements (Cal. Lab. Code § 226(a)); (9) All claims or penalties under the wage and hour laws, including under California Labor Code § 558; (10) All damages, penalties, interest, and other amounts recoverable under California and federal law, including under the applicable Industrial Welfare Wage Order and the California Unfair Competition Law; (11) Unfair Competition (Cal. Bus. & Prof. Code §§ 17200,

et seq.); (12) Civil Penalties under Cal. Lab. Code §§ 2698, et seq. (the “**Private Attorneys General Act**” or “**PAGA**”), which authorizes aggrieved employees to file lawsuits to recover civil penalties on behalf of themselves, other employees, and the State of California for California Labor Code violations; and (13) Failure to pay all minimum and overtime wages due under the federal Fair Labor Standards Act (“**FLSA**”), 29 U.S.C. § 201 et seq. Plaintiff seeks unpaid wages, actual damages, statutory penalties, civil penalties under PAGA, restitution, interest, attorneys’ fees, and costs.

Defendants deny all liability and are confident that they have strong legal and factual defenses to these claims, but they recognize the inherent risks, distractions, and costs associated with litigation. Defendants contend that their conduct is and has been lawful at all times relevant and that Plaintiff’s claims do not have merit and do not meet the requirements for class or collective certification.

This Settlement is a compromise reached after good faith, arm’s length negotiations between Plaintiff and Defendants (the “**Parties**”), through their attorneys and resulting from a mediation with an experienced neutral third-party mediator, and is not an admission of liability on the part of Defendants or any of the other Released Parties (defined below). Both sides agree that, in light of the risks and expenses associated with continued litigation, this Settlement is fair, adequate and reasonable. Plaintiff also believes this Settlement is in the best interests of all Class Members.

The Court has not ruled on the merits of Plaintiff’s claims or Defendants’ defenses.

Who are the attorneys representing the Parties?

The attorneys representing the Parties in the Action are:

- | | |
|---|---|
| <p>1. <u>Class Counsel</u>
 Shaun Setareh
 William M. Pao
 SETAREH LAW GROUP
 315 S. Beverly Dr., Suite 315
 Beverly Hills, California 90212
 Telephone: (310) 888-7771
 Facsimile: (310) 888-0109</p> | <p>2. <u>Defendants’ Counsel</u>
 Katherine A. Roberts
 SIDLEY AUSTIN LLP
 555 West Fifth Street, Suite 4000
 Los Angeles, California 90013
 Telephone: (213) 896-6000
 Facsimile: (213) 896-6600</p> <p>Jonathan D. Lotsoff
 SIDLEY AUSTIN LLP
 One South Dearborn St.
 Chicago, Illinois 60603
 Telephone: (312) 853-7000
 Facsimile: (312) 853-7036</p> |
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What are the Settlement terms?

Subject to final Court approval, Defendants will pay an aggregate total of \$1,500,000.00 (the “**Total Settlement Amount**”) for: (a) Individual Class Settlement Payments to participating Class Members; (b) Individual FLSA Settlement Payments to any members of the California Non-Exempt Employee Subclass who timely opt into the California FLSA Collective; (c) the Court-approved Class Representative Service Award (described below) to Plaintiff; (d) the Court-approved attorneys’ fees and costs to Class Counsel; (e) payment to the California Labor and Workforce Development Agency (“**LWDA**”) for PAGA penalties; (f) the employer-share of payroll and other taxes on any settlement payments; and (g) settlement administration costs.

Individual Class Settlement Payments and Individual FLSA Settlement Payments. After deduction from the Total Settlement Amount for Class Counsel attorneys’ fees and costs, the Class Representative Service Award to Plaintiff, the PAGA payment to the LWDA, and settlement administration costs, there will be (1) an Aggregate Class Payment Amount, and (2) a California FLSA Collective Payment, each as described below.

A. Aggregate Class Payment Amount and Individual Class Settlement Payments

Defendants will pay an “**Aggregate Class Payment Amount**” comprised as follows: (1) an aggregate total of \$300,000.00 will be allocated to the FCRA Subclass Members; (2) an aggregate total of \$510,000.00 will be

allocated to the California Non-Exempt Employee Subclass Members; (3) an aggregate total of \$50,000.00 will be allocated to the California Exempt Employee Subclass Members; (4) an additional aggregate total of \$10,000.00 will be allocated to the California Non-Exempt Employee Subclass Members and the California Exempt Employee Subclass Members (together, the “**California Subclasses**”) for their respective shares of the PAGA payment (this amount will not be allocated to any FCRA Subclass Members who are not also members of these two California Subclasses); and (5) each of the foregoing amounts shall be inclusive of and used to pay (and not in addition to) the employer-share of payroll and other taxes on any and all such settlement payments. Certain of the foregoing amounts could increase somewhat depending on whether and to what extent the Court approves Class Counsel’s request for attorneys’ fees and costs and/or the Class Representative’s request for a Class Representative Service Award, but in no event will the total aggregate amount payable pursuant to the Settlement exceed the Total Settlement Amount (\$1,500,000.00).

From the Aggregate Class Payment Amount, an “**Individual Class Settlement Payment**” will be made to each Class Member who does not request to be excluded from the Settlement (“**participating Class Members**”). The Aggregate Class Payment Amount shall be divided among all participating Class Members (as noted, after accounting for the employer-share of payroll and other taxes). The applicable payments to the California Subclasses (including the employee share of the PAGA payment, but not the FCRA settlement payments) will be made on a pro rata basis based upon the total number of workweeks worked by each respective participating California Non-Exempt Employee Subclass Member, and the total number of paystubs for each respective participating California Exempt Employee Subclass Member, in the State of California during the applicable Class Period. Payments to the FCRA Subclass Members will be distributed in equal shares to each FCRA Subclass Member.

Class Members do **not** need to submit an FLSA Opt-In Consent Form and opt into the California FLSA Collective to receive an Individual Class Settlement Payment from the Aggregate Class Payment Amount. (As discussed below, however, California Non-Exempt Employee Subclass Members who wish to receive an additional Individual **FLSA** Settlement Payment will only receive that additional payment if they also opt into the California FLSA Collective.)

B. California FLSA Collective Payment and Individual FLSA Settlement Payments

In addition, an aggregate total of \$50,000.00 (the “**California FLSA Collective Payment**”) will be allocated for payment of “**Individual FLSA Settlement Payments**” to California Non-Exempt Employee Subclass Members who choose to opt into the California FLSA Collective by timely completing and submitting an FLSA Opt-In Consent Form (again, after accounting for the employer-share of payroll and other taxes). The pro-ratio factor used to determine a California Non-Exempt Employee Subclass Member’s Individual Class Settlement Payment as described in Subpart A above (*i.e.*, the total number of workweeks worked by such individual in the State of California during the applicable Class Period divided by the total number of workweeks worked by all California Non-Exempt Employee Subclass Members in the State of California during the applicable Class Period) will be used to determine his or her Individual FLSA Settlement Payment if he or she timely opts into the California FLSA Collective.

Again, according to Defendants’ records, you are **not** a member of the California Non-Exempt Employee Subclass. You therefore **do not** have the option to opt into the California FLSA Collective and receive an Individual FLSA Settlement Payment, and an FLSA Opt-In Consent Form is **not** enclosed with this Notice.

C. Certain Tax Issues

Please note that all settlement payments (including Individual Class Settlement Payments) are TAXABLE INCOME TO YOU as and to the extent provided by applicable law. For tax reporting purposes, the payments to participating California Non-Exempt Employee Subclass Members will be allocated ten percent as wages and ninety percent as penalties and interest (except as provided below). The Individual FLSA Settlement Payments to California Non-Exempt Employee Subclass Members who opt into the California FLSA Collective will be allocated 50% as wages and 50% as penalties and interest. The wage portion of the foregoing settlement payments shall be subject to the withholding of applicable local, state, and federal taxes, and the Settlement Administrator shall deduct applicable payroll taxes from the wage portion of such Individual Class Settlement Payments and Individual FLSA Settlement Payments. Settlement payments to each California Exempt Employee Subclass Member, FCRA settlement payments to each FCRA Subclass Member, and each California Subclass Member’s share of the PAGA payment shall be allocated 100% as penalties. The portion of the settlement payments allocated to penalties and interest shall be classified as other miscellaneous income and reported on IRS Form

1099-MISC. **Again, any taxes owed on that other miscellaneous income also will be the responsibility of participating Class Members receiving those payments.**

None of the Parties or attorneys make any representations concerning the tax consequences of this Settlement or your participation in it. Settlement Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel is unable to offer advice concerning the local, state or federal tax consequences of payments to any Class Member.

D. Uncashed or Returned Settlement Checks.

All checks for Individual Class Settlement Payments and, as applicable, Individual FLSA Settlement Payments paid to participating Class Members shall advise that the checks will remain valid and negotiable for ninety (90) days from the date of the checks' issuance. If any given settlement check(s) are returned as undeliverable within sixty (60) days after issuance, the Settlement Administrator will attempt to identify a valid mailing address and, if one is found, will promptly re-issue such check(s) (this will be done a maximum of one time).

If any given settlement check(s) remain uncashed forty-five (45) days after issuance (including after any re-mailing as described above), the Settlement Administrator will promptly send the recipient via regular First-Class U.S. Mail a postcard or similar notice reminding him or her to cash such check(s) by the end of the ninety (90) day period after each applicable check's issuance.

Any settlement check(s) shall thereafter automatically be void if not cashed within ninety (90) days after issuance. Funds represented by any Individual Class Settlement Payment that is not timely cashed by a participating Class Member (including any checks returned as undeliverable for which a valid mailing address was not identified by the Settlement Administrator) shall be transmitted to the California Department of Industrial Relations Unpaid Wage Fund in the name of the employee that did not cash the check. Funds represented by any portion of the \$50,000.00 total California FLSA Collective Payment that remains unclaimed (including without limitation any FLSA Individual Settlement Payment that is not timely cashed, or that is returned as undeliverable for which a valid mailing address was not identified by the Settlement Administrator) will revert to Defendants.

In any such event, the participating Class Member shall nevertheless remain bound by the Settlement and the releases of claims therein (including without limitation, in the case of California FLSA Collective Members, the release of all claims arising under the FLSA).

Class Counsel Attorneys' Fees and Costs, Class Representative Service Award, Claims Administration Costs and Payment to the LWDA. Class Counsel will ask the Court to award them attorneys' fees up to \$460,000.00 (approximately thirty-one percent) of the Total Settlement Amount and reimbursement of reasonable costs incurred in the Action not to exceed \$15,000.00. In addition, Class Counsel will ask the Court to authorize a Class Representative Service Award payment of up to \$10,000.00 for Plaintiff for his efforts in bringing the case on behalf of the Class. The Settlement Administrator shall be paid for the costs of administration of the Settlement from the Total Settlement Amount, which is currently estimated to equal \$65,000. A payment in the amount of \$30,000.00 will also be made to the LWDA for PAGA penalties, which represents 75% of the \$40,000.00 total set aside for payment under PAGA. As noted, the remaining \$10,000.00 of the PAGA payment will be paid to the California Subclass Members in the aggregate, distributed pro-rata as described above.

What claims are being released by the proposed Settlement?

California Non-Exempt Employee Subclass Members fully and finally release the Released Parties (as defined below) from any and all claims, rights, demands, liabilities and causes of action of every nature and description, whether known or unknown, arising on or before the date of Preliminary Approval of this Settlement, *i.e.*, **[DATE]** (the "**Release Period**"), arising out of, based on, or encompassed by: (a) any and all claims for unpaid wages (including claims for regular wages, overtime, final wages, and meal period and rest period premiums), interest, penalties (including waiting time penalties pursuant to Labor Code section 203 and wage statement penalties pursuant to Labor Code section 226), any and all claims pursuant to Labor Code sections 201-204, 226, 226.7, 510, 512, 558, 1194, and the Industrial Welfare Commission Wage Orders; (b) any and all claims under Business and Professions Code section 17200, et seq., based on or reasonably relating to (1) claims or facts asserted or alleged in the Action, or (2) the violation of any statute, regulation, wage order, or decisional construction of a law alleged to have been violated in the Action; (c) any and all claims under PAGA; and (d) claims for attorneys' fees and costs and any other remedies available at law or in equity allegedly owed or available to the California Non-Exempt Employee Subclass arising or reasonably flowing from any complaints (or amended complaints) filed in the Action.

Additionally, California Non-Exempt Employee Subclass Members who timely and properly opt into the California FLSA Collective using an FLSA Opt-In Consent Form, thereby becoming California FLSA Collective Members, fully and finally release the Released Parties from any and all claims, rights, demands, liabilities and causes of action of every nature and description, whether known or unknown, arising at any time during the Release Period, arising out of, based on, or encompassed by: (a) any and all claims under the FLSA that were or could have been alleged in this Action based on the facts alleged in any complaints (or amended complaints) filed in the Action (including claims for regular wages, minimum wages, overtime, interest and penalties including claims for liquidated damages); and (b) claims for attorneys' fees and costs and any other remedies available at law or in equity allegedly owed or available to the California FLSA Collective arising or reasonably flowing from any complaints (or amended complaints) filed in the Action (together, the **"Released FLSA Claims"**). No other Class Members (including any California Non-Exempt Employee Subclass Members who do not timely and properly opt into the California FLSA Collective) shall release or be deemed to have released any Released FLSA Claims.

California Exempt Employee Subclass Members fully and finally release the Released Parties from any and all claims, rights, demands, liabilities and causes of action of every nature and description, whether known or unknown, arising at any time during the Release Period, arising out of, based on, or encompassed by (a) any allegation that Defendants maintained inaccurate wage statements under Labor Code Section 226; (b) any and all claims under PAGA; and (c) claims for attorneys' fees and costs and any other remedies available at law or in equity allegedly owed or available to the California Exempt Employee Subclass arising or reasonably flowing from any complaints (or amended complaints) filed in the Action.

The FCRA Subclass Members fully and finally release the Released Parties from any and all claims, rights, demands, liabilities and causes of action of every nature and description, whether known or unknown, arising at any time during the Release Period, arising out of, based on, or encompassed by: (a) claims under the Fair Credit Reporting Act, and any other statutes relating to background checks, consumer credit reports, or applications for employment; (b) claims under applicable state and local laws relating to background checks, consumer credit reports, or applications for employment; and (c) claims for attorneys' fees and costs and any other remedies available at law or in equity allegedly owed or available to the FCRA Subclass Members arising or reasonably flowing from any complaints (or amended complaints) filed in the Action.

"Released Parties" means Defendant ADM and Defendant SCI, any of their respective subsidiaries, predecessors, successors, affiliates, and otherwise related entities, and any of their respective past, present and/or future, direct and/or indirect, officers, directors, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, divisions, assigns, and joint venturers.

What are my options in this matter?

You have two options under this Settlement, each of which is further discussed below. You may: (A) remain in the Class and receive an Individual Class Settlement Payment; or (B) exclude yourself from the Settlement. If you choose Option (A):

- You may also object to the Settlement, as explained below.
- Additionally, individuals who are California Non-Exempt Employee Subclass Members have the option (but not any obligation) to opt into the California FLSA Collective using an FLSA Opt-In Consent Form, thereby becoming California FLSA Collective Members, giving a release of Released FLSA Claims, and receiving an Individual FLSA Settlement Payment.

As noted, according to Defendants' records, you are **not** a member of the California Non-Exempt Employee Subclass and therefore **do not** have the option to opt into the California FLSA Collective. An FLSA Opt-In Consent Form therefore is **not** enclosed with this Notice.

If you remain in the Class, you will be represented at no additional cost to you by Class Counsel (beyond the attorneys' fees and cost awards sought by Class Counsel out of the Total Settlement Amount). Class Counsel, however, will not represent you for purposes of making objections to the Settlement. If you do not exclude yourself from the Settlement, you will be subject to any Judgment that will be entered in the Action, including the release of the Released Claims as described above.

OPTION A. Remain in the Class. If you wish to remain in the Class and be eligible to receive an Individual Class Settlement Payment under the Settlement, **you do not need to take any action.** Simply by remaining in

the Class and receiving settlement monies, you consent to the release of the Released Claims (other than the FLSA Released Claims) as described above.

Any amount paid to participating Class Members will not count or be counted for determination of eligibility for, or calculation of, any employee benefits (for example, vacations, holiday pay, retirement plans, non-qualified deferred compensation plans, etc.), or otherwise modify any eligibility criteria under any employee pension benefit plan or employee welfare plan sponsored by any Defendant, unless otherwise required by law.

- Objecting to the Settlement:** If you believe the proposed Settlement is not fair, reasonable or adequate in any way, you may object to it. To object, you must submit a written objection (“Notice of Objection”) to the Settlement Administrator at **Phoenix Settlement Administrators, P.O. Box _____, [City], [State] [Zip] [Fax Number] [Email Address]**. The Notice of Objection must: (1) state your full name; (2) state the last four digits of your Social Security number; (3) state the grounds for the objection; (4) state whether you will appear at the final approval hearing, whether you will be represented at that hearing by an attorney, and the contact information for any such attorney; (5) be signed by you; and (6) be postmarked on or before **[DATE THAT IS 3 WEEKS BEFORE FINAL APPROVAL HEARING]** and returned to the Settlement Administrator at the address listed above, or be received by the Settlement Administrator on or before **[DATE THAT IS 3 WEEKS BEFORE FINAL APPROVAL HEARING]** by fax or email at the fax number or email address listed above. If you wish, you can (but are not obligated to) also hire an attorney at your own expense to represent you in your objection, including at the final approval hearing. Any Class Member who does not timely object in the manner described above shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement, unless otherwise ordered by the Court. **Even if you submit an objection, you will be bound by the terms of the Settlement, including the release of Released Claims as set forth above, unless the Settlement is not finally approved by the Court.**
- Opting Into the California FLSA Collective:** As noted, California Non-Exempt Employee Subclass Members who do not timely request to be excluded from the Settlement also have the option (but no obligation) to opt into the California FLSA Collective by timely completing and submitting an FLSA Opt-In Consent Form. As noted, according to Defendants’ records, you are **not** a member of the California Non-Exempt Employee Subclass and therefore **do not** have the option to opt into the California FLSA Collective. An FLSA Opt-In Consent Form therefore is **not** enclosed with this Notice.

OPTION B. Request to Be Excluded from the Settlement. If you do not want to be part of the Settlement, you must submit a Request to be Excluded from the Settlement to the Settlement Administrator at **Phoenix Settlement Administrators, P.O. Box _____, [City], [State] [Zip] [Fax Number] [Email Address]**. In order to be valid, your Request to be Excluded from the Settlement must: (1) state your full name; (2) state the last four digits of your Social Security number; (3) state that you wish to be excluded from the Settlement; (4) be signed by you; and (5) be postmarked on or before **[Response Deadline]** and returned to the Settlement Administrator at the address listed above, or be received by the Settlement Administrator on or before **[Response Deadline]** by fax or email at the fax number or email address listed above. If you do not submit a complete and signed Request to be Excluded from the Settlement on time (as evidenced by the postmark or fax receipt or date and time of email receipt by the Settlement Administrator), your Request will be rejected, you will be deemed a participating Class Member, and you will be bound by the release of Released Claims as described above and all other terms of the Settlement. If you submit a valid Request to be Excluded: (a) you will have no further role in the Action, and you will not be entitled to any benefit, including money, as a result of the Action and Settlement and will not be entitled to or permitted to assert an objection to the Settlement; and (b) you will retain the right to bring your own action against the Defendants at your own personal cost.

What is the next step in the approval of the Settlement?

The Court will hold a Final Settlement Approval Hearing regarding the fairness, reasonableness and adequacy of the proposed Settlement, the plan of distribution, Class Counsel’s request for attorneys’ fees and costs, the Class Representative Service Award to Plaintiff, the settlement administration costs, and the payment to the LWDA for PAGA penalties on Thursday, _____, 2019, at 1:30 p.m. in Courtroom 3 of the United States District Court for the Northern District of California, 280 South 1st Street, San Jose, CA 95113. The Final Settlement Approval Hearing may be continued without further notice to Class Members.

You are not required to attend the Final Settlement Approval Hearing to receive a Settlement Payment.

You are welcome to personally attend the Final Settlement Approval Hearing without a lawyer, at your own expense, if you so choose. You are not required to do so, even if you submit an objection to the Settlement. You also may if you so choose, but are not required to, hire an attorney to appear on your behalf at the Final Settlement Approval Hearing, at your own expense.

How can I get additional information?

This Notice summarizes the Action and the basic terms of the Settlement (as noted, the actual Settlement terms and conditions are controlling). More details are in the Settlement Agreement. The precise terms and conditions of the Settlement can be obtained by contacting Class Counsel (contact information listed above), by visiting Class Counsel's Settlement website for this case at www.classcounsel.com/settlement, by accessing the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 280 South 1st Street, San Jose, CA 95113, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT CALL OR WRITE THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.