

EXHIBIT 1

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12 Attorneys for Defendant
13 WESTERN MANAGEMENT, LLC

14
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF SANTA CLARA
17 COMPLEX CIVIL LITIGATION
18

19 KEVIN TYLER, on behalf of himself, all
20 others similarly situated,

21 *Plaintiff,*

22 vs.

23 WESTERN MANAGEMENT, LLC, a
California limited liability company; and
24 DOES 1 through 50, inclusive,

25 *Defendants.*

Case No. 17CV319893

Assigned For All Purposes to the Honorable
Sunil R. Kulkarni, Department 8

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

Complaint Filed: November 30, 2017

1 This Joint Stipulation of Class Action Settlement and Release of Claims (“Settlement
2 Agreement” or “Agreement” or “Stipulation of Settlement”) is made and entered into by and
3 between Plaintiff KEVIN TYLER (“Plaintiff” or “Class Representative”), individually and on
4 behalf of all putative class members, on the one hand, and Defendant WESTERN
5 MANAGEMENT, LLC (“Defendant”). Plaintiff and Defendant are collectively referred to herein as
6 the “Parties.”

7 **RECITALS**

8 A. On November 30, 2017, Plaintiff filed a class action complaint in the Santa Clara
9 County Superior Court, alleging violation of the Fair Credit Reporting Act, Investigative Consumer
10 Reporting Agencies Act, Consumer Credit Reporting Agencies Act, Labor Code Sections 201, 202,
11 203, 204, 223, 226, 226.7, 510, 512, 1194, 1197, 1194.2, 1197, 1197.1, 1198, Business &
12 Professions Code section 17200, *et seq.*, and the IWC Wage Orders. On March 14, 2018, Plaintiff
13 filed a First Amended Complaint alleging an additional cause of action for Civil Penalties under
14 Labor Code Sections 2698, *et seq.* Plaintiff alleges that: Defendant violated the Fair Credit
15 Reporting Act, Investigative Consumer Reporting Agencies Act and Consumer Credit Reporting
16 Agencies Act by furnishing disclosure forms that did not consist solely of the disclosure, failed to
17 pay its non-exempt employees’ wages, minimum wages, wages for all hours worked and overtime
18 wages; non-exempt employees of Defendant were deprived of meal and rest periods and were not
19 paid one additional hour of pay at their regular rate of pay when a meal or rest period was missed;
20 non-exempt employees of Defendant did not receive all wages due them at termination of
21 employment; non-exempt employees of Defendant did not receive complete and accurate wage
22 statements; Defendant did not keep complete and accurate payroll records; and Plaintiff seeks
23 restitution under the Unfair Competition Law and penalties under the Private Attorneys General Act
24 (“PAGA”).

25 B. Defendant denies all of Plaintiff’s material allegations. Specifically, Defendant
26 denies that its disclosure forms did not consist solely of the disclosure and/or violated the Fair
27 Credit Reporting Act, Investigative Consumer Reporting Agencies Act and Consumer Credit
28 Reporting Agencies Act. Defendant denies that Plaintiff and putative class members are entitled to

1 additional wages. Defendant denies their employees were deprived of meal and rest periods, avers
2 that they had meal and rest break policies and procedures in place to ensure compliance with
3 California law, and avers that employees were not impeded from taking their lawful rest and meal
4 periods. Defendant further avers that the rest and meal period claims are not amenable to class
5 treatment because common issues do not predominate. Defendant believes that the stand-alone
6 wage statement claim will fail because there was no knowing and intentional violation and that the
7 derivative wage statement claim will fail for the reasons stated above. Defendant believes that the
8 claim for failure to maintain complete and accurate payroll records will fail, because it keeps
9 complete payroll and timekeeping records for all of its employees as required by law. Defendant
10 believes that the claims related to the calculation of the regular rate of pay and all claims related to
11 PAGA will fail. Defendant asserts that Plaintiff failed to satisfy the administrative prerequisites to
12 maintaining a PAGA claim as to the Defendant.

13 C. The Parties engaged in an informal, voluntary exchange of information in the context
14 of privileged settlement discussions to facilitate an early mediation. Defendant produced Plaintiff's
15 entire personnel file, payroll and timekeeping records, including policies and agreements he signed
16 and acknowledged, copies of its relevant company written policies, and time-keeping records and
17 paycheck data and records.

18 D. On May 22, 2019, the Parties participated in a mediation before Jeffrey Krivis, Esq.
19 The mediation did not result in a settlement. The parties continued informal settlement discussions
20 and on or about January 16, 2020, reached agreement on a class-wide settlement. During the
21 mediation, each party, represented by its respective counsel, recognized the risk of an adverse result
22 in the Action and agreed to settle the Action and all other matters covered by this Agreement
23 pursuant to the terms and conditions of this Agreement.

24 E. Based on their own thorough, independent investigation and evaluation of this case,
25 Class Counsel (as defined in paragraph 8 below) are of the opinion that the settlement with
26 Defendant for the consideration and on the terms set forth in this Agreement is fair, reasonable,
27 adequate, and in the best interest of the Settlement Class (as defined in paragraph 7 below) in light
28 of all known facts and circumstances, including the risk of significant costs and delay, the risk of

1 non-certification of the Class, the defenses asserted by Defendant, the risks of adverse
2 determinations on the merits, and numerous potential appellate issues. Although Defendant
3 contends that they have no liability in this case, Defendant’s counsel shares Class Counsel’s belief
4 that the Agreement represents a fair and adequate settlement given the respective risks associated
5 with the Action.

6 F. This Agreement represents a compromise and settlement of highly disputed claims.
7 Nothing in this Agreement is intended or will be construed as an admission by Defendant that
8 Plaintiff’s claims in the Action have merit or that it has any liability to Plaintiff or the Class on
9 those claims or the State, or as an admission by Plaintiff that Defendant’s defenses raised in the
10 Action have merit. This Agreement is intended to fully, finally, and forever compromise, release,
11 resolve, discharge, and settle the released claims subject to the terms and conditions set forth in this
12 Agreement.

13 **AGREEMENT**

14 Subject to the approval of the Court, the Parties agree as follows:

15 1. **“Action”** shall mean the civil action commenced on November 30, 2017, by Plaintiff
16 against Defendant in the Superior Court of California, County of Santa Clara, Case No.
17 17CV319893, entitled: “Kevin Tyler v. Western Management, LLC, et al.”
18

19
20 2. **“Court”** shall mean the Superior Court for the County of Santa Clara.
21

22 3. **“Settlement”** shall mean the disposition of the Action and all related claims
23 effectuated by this Agreement.
24

25 4. **“FCRA Class Period”** shall mean the class period for the FCRA Claims beginning
26 November 30, 2012, through the date of Preliminary Approval of the Settlement.
27

28 5. **“Wage and Hour Class Period”** shall mean the class period for the Wage and Hour

1 Claims beginning November 30, 2013, through the date of Preliminary Approval of the Settlement.

2
3 **6. “FCRA Class,” “FCRA Class Members,” or “FCRA Settlement Class”** shall
4 mean all persons who, during the Class Period, applied for and gained employment with Defendant
5 and for which a background check was performed. Class members include those employed directly
6 by Western Management, LLC or through employment agencies or professional services
7 organizations.

8
9 **7. “Wage and Hour Class,” “Wage and Hour Class Members,” or “Wage and**
10 **Hour Settlement Class”** shall mean all persons who, during the Class Period, have previously been
11 or currently are employed in California by Defendant as hourly-paid or “non-exempt” employees
12 (“Employees”). Class members include those employed directly by Western Management, LLC or
13 through employment agencies or professional services organizations. “Settlement Class” shall mean
14 the “FCRA Settlement Class” and the “Wage and Hour Settlement Class” collectively.

15
16 **8. “Class Counsel”** shall mean the attorneys representing Plaintiff in the Action: Shaun
17 Setareh and William M. Pao of Setareh Law Group.

18
19 **9. “Defense Counsel”** shall mean the attorneys representing Defendant Western
20 Management, LLC in the Action: Jennifer E. Duggan and Laura C. McHugh of Duggan Law
21 Corporation.

22
23 **10. “Claims Administrator”** shall mean the administrator proposed by the Parties and
24 appointed by the Court to administer the Settlement.

25
26 **11. “Preliminary Approval of the Settlement”** shall mean the Court’s preliminary
27 approval of the Settlement without material change.

28

1 **12. “Final Approval Hearing”** shall mean the hearing to be conducted by the Court to
2 determine whether to approve finally, and implement, the terms of, this Agreement.

3
4 **13. “Judgment”** shall mean the Order of Final Judgment entered by the Court that the
5 Parties anticipate will be entered following a Final Approval Hearing on the Settlement in this
6 Action.

7
8 **14. “Effective Date”** shall mean the date by which this Agreement is approved by the
9 Court by entry of the Judgment and the Judgment becomes Final. The Judgment becomes “Final”
10 when the later of the following events occurs: (a) the period for filing any appeal, writ, or other
11 appellate proceeding opposing the Settlement has elapsed without any appeal, writ, or other
12 appellate proceeding having been filed; (b) any appeal, writ, or other appellate proceeding opposing
13 the Settlement has been dismissed finally and conclusively with no right by any appellant or
14 objector to pursue further remedies or relief; or (c) any appeal, writ, or other appellate proceeding
15 has upheld the Judgment with no right by any appellant or objector to pursue further remedies or
16 relief. In this regard, it is the intention of the Parties that the Settlement shall not become effective
17 until the Court’s Judgment granting final approval of the Settlement is completely final, and no
18 further recourse exists by an appellant or objector who seeks to contest the Settlement. The
19 occurrence of the Effective Date is a prerequisite to any obligation of Defendant to pay any funds
20 into the Settlement Account, as set forth in paragraph 42.

21
22 **15. “Maximum Settlement Amount”** In consideration for the Settlement and the
23 release of claims set forth below, Defendant agrees to pay a maximum of Five Hundred Thousand
24 Dollars and No Cents (\$500,000.00), inclusive of the employer’s share of payroll taxes (“the
25 Maximum Settlement Amount” or “MSA”). The MSA is the maximum total amount that Defendant
26 may be required to pay for all claims that are alleged, or that could have been brought in the Action
27 arising from the allegations made therein as against employees or applicants for employment to
28 Defendant, and also including reimbursement and enhancement to the Class Representative, all

1 amounts payable to the Labor Workforce Development Agency (“LWDA”), all Court-approved
2 attorneys’ fees of Class Counsel, all costs and expenses incurred or advanced by Class Counsel
3 related to the Action, and the fees and costs of the Claims Administrator. In no event will Defendant
4 be required to pay more than the MSA and in no event shall Plaintiff or Class Counsel seek more
5 than the MSA from Defendant.

6
7 **16. “Net Settlement Amount”** The Net Settlement Number (“NSA”) shall mean the
8 MSA payable by Defendant pursuant to this Settlement, less the following sums set forth in
9 subsections a through e of this section 16:

10
11 **a. Class Counsel Fees Payment.** Class Counsel will apply to the Court for an
12 award of not more than One Hundred Sixty-Six Thousand Six Hundred Sixty-Six and 66/100
13 (\$166,666.66) (which is one-third of the MSA) as their Class Counsel Fees Payment. The Claims
14 Administrator will pay the amount approved by the Court from the MSA (but not more than
15 \$166,666.66 in Class Counsel Fees Payment.) Withholding and deductions will not be taken from
16 the Class Counsel Fees Payment and one or more Forms 1099 will be issued to Class Counsel with
17 respect to that payment.

18
19 **b. Class Counsel Litigation Expenses Payment.** Class Counsel will apply to
20 the Court for an award of not more than Thirty Thousand Dollars and No Cents (\$30,000.00) to
21 compensate them for out of pocket costs and expenses actually incurred in connection with the
22 Action. The Claims Administrator will pay the amount approved by the Court from the MSA (but
23 not more than \$30,000.00 in Class Counsel Litigation Expenses). Withholding and deductions will
24 not be taken from the Class Counsel Litigation Expenses Payment and one or more Forms 1099 will
25 be issued to Class Counsel with respect to that payment.

26
27 **c. Class Representative Payment.** Plaintiff will apply to the Court for an
28 award of not more than Ten Thousand Dollars and No Cents (\$10,000.00) as his Class

1 Representative Payment, made in his capacity as Class Representative to compensate him for
2 initiating the Action, performing work in support of the Action, and undertaking the risk of liability
3 for attorneys' fees and expenses in the event he was unsuccessful in the prosecution of the Action.
4 Defendant will not oppose a Class Representative Payment of not more than \$10,000.00. The
5 Claims Administrator will pay the Class Representative Payment approved by the Court from the
6 MSA. Payroll taxes, withholdings, and deductions will not be taken from the Class Representative
7 Payment, and instead a Form 1099 will be issued to Plaintiff with respect to that payment. Plaintiff
8 agrees to assume all responsibility and liability for the payment of taxes due on the Class
9 Representative Payment.

10

11 **d. Payment to Claims Administrator.** The Parties agree to designate
12 Simpluris, Inc. as the Claims Administrator, and will be paid from the MSA its reasonable fees and
13 expenses as approved by the Court in an amount currently estimated to not exceed Ten Thousand
14 Dollars and No Cents (\$10,000.00).

15

16 **e. Payment to the LWDA.** The Parties will jointly apply to the Court for
17 approval of a settlement of claims under PAGA for One Hundred Fifty Thousand Dollars and No
18 Cents (\$150,000.00) of which, payment from the MSA to the Labor Workforce Development
19 Agency ("LWDA") shall be made in the amount of One Hundred Twelve Thousand Five Hundred
20 Dollars and No Cents (\$112,500.00) which is 75% of the PAGA settlement. Thirty-Seven Thousand
21 Five Hundred Dollars and No Cents (\$37,500.00), which is 25% of the PAGA settlement, will
22 remain in the NSA for distribution.

23

24 **17. Allocation of NSA and Calculation of Settlement Shares.** Subject to the terms and
25 conditions of this Agreement, the Claims Administrator will calculate a settlement share from the
26 NSA for each Class Member. The NSA will be allocated as follows: seventy-five percent (75%) of
27 the NSA will be allocated to the Wage and Hour Class Members ("Wage and Hour NSA") and
28 twenty-five percent (25%) shall be allocated to the FCRA Class Members ("FCRA NSA"). An

1 employee who is a member of both classes may recover from both the Wage and Hour NSA and the
2 FCRA NSA. The Settlement Share for each Class Member will be calculated as follows,
3 understanding that the formula below does not constitute an admission by Defendant, and is
4 intended only to provide a practical means to simplify and administer the claims process:

5
6 **a. Allocation.** With respect to the Wage and Hour Class, each settlement share
7 is allocated thirty percent to wages (for which employment taxes will be deducted and W-2s
8 issued), thirty percent to interest (for which 1099s will be issued) and forty percent to penalties (for
9 which 1099s will be issued). With respect to the FCRA Class, each settlement share is allocated one
10 hundred percent to penalties (for which 1099s will be issued).

11
12 **b. Settlement Ratio Calculation.** With respect to the Wage and Hour Class, the
13 Claims Administrator shall assign to each Class Member a “Settlement Ratio,” which shall be a
14 fractional number comprised of (i) that Class Member's Individual Work Weeks as the numerator,
15 and (ii) the aggregate total of all Class Members' Individual Work Weeks as the denominator. The
16 Claims Administrator shall assign to each Class Member the “Settlement Share” which shall be
17 calculated by multiplying that Class Member's Settlement Ratio by the amount allocated to Class
18 Members from the NSA. With respect to the FCRA Class, each FCRA Class Member shall receive
19 a pro-rata share of the NSA allocated to the FCRA Class.

20
21 **c. Number of Class Members and Workweeks.**

22 As of April 2020, the FCRA Class specifically excludes applicants for employment who
23 were not hired by Defendant and consists solely of:

- 24 • Former employees and current employees in states other than California employed
25 within five years prior to the filing of the Complaint, approximately 355;
- 26 • California employees employed within five years of the filing of the
27 Complaint, approximately 167 (includes approximately 164 members of the Wage
28 and Hour Class);

1 As of April 2020, the Wage and Hour Class consists of approximately 164 former and
2 current employees in California employed within four years prior to the filing of the Complaint.

3 **18. Settlement Share Worksheet.** Upon calculation of the Class Members' Settlement
4 Share, the Claims Administrator shall furnish to Class Counsel and Defense counsel a worksheet
5 containing a list of the employee identification numbers of the Class Members with their
6 corresponding Individual Work Weeks and Settlement Shares.

7
8 **19. Taxes and Withholdings.** Each Settlement Share is intended, in part, to settle the
9 Class Members' claims for unpaid wages, interest and penalties. Each Class Member shall be
10 individually responsible for the employee's share of applicable payroll tax withholdings and
11 deductions. Accordingly, each Settlement Share allocated to wages will be reduced by applicable
12 payroll tax withholdings and deductions, and the Claims Administrator will issue a Form W-2 to
13 each Class Member. The employer's share of any payroll tax attributable to the Settlement Share
14 payments will be paid from the MSA.

15
16 **20. Release of Claims by Plaintiff and Class Members.** Upon the entry of an order by
17 the Court granting final approval of this Stipulation of Settlement, and except as to such rights or
18 claims as may be created by this Stipulation of Settlement, the Settlement Class and Each Class
19 Member who has been identified on the Class List submitted by Defendant to the Claims
20 Administrator, and who has not properly submitted a timely and valid request to “opt-out” or be
21 excluded from the Action, without the need to manually sign a release document, in exchange for
22 the consideration recited in this Stipulation of Settlement, on behalf of himself or herself and on
23 behalf of his/her current, former, and future heirs, executors, administrators, attorneys, agents, and
24 assigns, shall fully release and discharge Defendant, Western Management, LLC, and its parents,
25 predecessors, successors, subsidiaries, affiliates, partners, and trusts, employment agencies and
26 professional employer organizations, and their employees, officers, agents, attorneys, stockholders,
27 fiduciaries, other service providers, and assigns (collectively hereinafter the “Releasees”), from any
28 and all claims, demands, rights, liabilities, and causes of action of any kind whatsoever, that have

1 been, or that could have been, asserted against the Releasees, whether or not presented, based on the
2 primary rights or the facts alleged at any point in time in this Action (the “Released Claims”), and
3 Class Counsel agrees not to pursue or seek any further remuneration whatsoever, or assist any other
4 litigant or counsel to do so, in this or any future action, from Defendant for any claims, demands,
5 rights, liabilities, and causes of action of any kind whatsoever, that have been, or that could have
6 been asserted in this Action, whether or not presented, based on the primary rights or the facts
7 alleged at any point in time in this Action. The Released Claims expressly include, without
8 limitation, all claims for unpaid wages, including without limitation overtime wages, off-the-clock
9 claims, minimum wage claims, claims for failure to timely pay wages, both during employment and
10 after termination of employment, claims for failure to keep accurate and complete payroll records,
11 claims for failure to provide accurate and complete wage statements, claims relating to meal periods
12 and rest breaks, claims for wage premiums, penalties, and interest; claims for penalties, including,
13 but not limited to, recordkeeping penalties, wage statement penalties, minimum wage penalties,
14 missed meal-period and rest break penalties, waiting time penalties, penalties under the Private
15 Attorneys General Act; premiums or costs and attorneys’ fees and expenses, and any claim arising
16 from the claims described above under applicable federal, state, local or territorial law; all such
17 claims arising under the California Labor Code (including, but not limited to, sections 201, 202,
18 203, 204, 223, 226, 226.7, 510, 512, 1194, 1197, 1194.2, 1197, 1197.1, 1198); the wage orders of
19 the California Industrial Welfare Commission (including the Minimum Wage Order and Wage
20 Orders 1); the Private Attorneys General Act, California Labor Code section 2698, *et seq.*;
21 California Business and Professions Code section 17200 *et seq.*; Fair Credit Reporting Act;
22 Investigative Consumer Reporting Agencies Act; Consumer Credit Reporting Agencies Act; the
23 California common law of contract; and federal common law.

24
25 **21. Waiver of Known and Unknown Claims.** Plaintiff waives all rights and benefits
26 afforded by Section 1542 of the Civil Code of the State of California, and does so understanding the
27 significance of that waiver, which states:
28

1 **“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
2 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**
3 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE**
4 **AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY**
5 **AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED**
6 **PARTY.”**

7
8 **22. Class Counsel.** As of the date the Judgment becomes Final, and except as otherwise
9 provided by this Agreement, Class Counsel and any counsel associated with Class Counsel waive
10 any claims to costs and attorneys’ fees and expenses against Defendant or the Releasees, and the
11 rights to raise any other claims arising from or related to the Action, including but not limited to
12 claims based on the California Labor Code, the California Civil Code, the California Code of Civil
13 Procedure, or any other statute or law (the “Class Counsel Released Claims”).

14
15 **23. Certification for Settlement Purposes.** Solely for the purposes of effectuating this
16 Settlement, and subject to Court approval, the Parties hereby stipulate to the conditional
17 certification of the following Settlement Classes:

18
19 **Wage and Hour Settlement Class:**

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21 **“All persons who, from November 30, 2013, to the date the Court grants preliminary**
22 **approval of this settlement, have previously been or currently are employed in**
23 **California by Defendant, whether directly or through an employment agency or a**
24 **professional services organization, as a non-exempt or hourly employee.”**

25
26 **FCRA Settlement Class:**

27
28 **“All persons who, from November 30, 2012, to the date the Court grants preliminary**

1 **approval of this settlement, applied for and gained employment with Defendant and**
2 **for which a background check was performed in the United States.”**

3
4 The Parties agree that if for any reason the Settlement is not preliminarily and finally approved, the
5 conditional certification of the Settlement Class will be of no force or effect, does not constitute an
6 admission by Defendant that class certification is proper, and will not be deemed admissible in this
7 or any other proceeding, and that the Parties will litigate the issue of class certification.

8
9 **24. Motion for Preliminary Approval of Settlement by the Court.** Class Counsel will
10 move the Court for an order granting Preliminary Approval of the Settlement (the “Motion for
11 Preliminary Approval”), setting a date for the Final Approval Hearing, and approving the Class
12 Notice. At the hearing on the Motion for Preliminary Approval Class Counsel will submit an Order
13 Granting Preliminary Approval of Settlement, Approval of Notice to Class and Setting Hearing for
14 Final Approval of Settlement. Should the Court decline to approve the Settlement in its entirety, the
15 Settlement will be null and void and the Parties will have no further obligations under it.

16
17 **25. Duties of the Claims Administrator.** The Parties have agreed to the appointment of
18 the Simpluris, Inc., (the "Claims Administrator") or such other independent administrator as the
19 Court might appoint to mail the Notice, to independently review and verify documentation
20 associated with any submitted claims or opt-out requests, and to compute and pay the appropriate
21 sums from the MSA. The Claims Administrator's estimate of its costs/fees for the administration of
22 the settlement shall not exceed \$10,000.00. The actual fees and costs of the Claims Administrator
23 which will be paid out of the MSA, will not be known until all claims are administered, and could
24 vary materially from the estimate.

25
26 **26. List of Class Members.** Within thirty (30) days after the Court grants Preliminary
27 Approval of the Settlement, Defendant shall provide to the Claims Administrator:

1 **a.** An electronic database of all Class Members, last known mailing address,
2 Social Security number and Defendant’s employee identification number (“Class Members’ Data”).

3
4 **b.** Corresponding to each Class Member’s name, Defendant shall provide a
5 figure indicating the total number of Work Weeks during the Class Period in which that Class
6 Member performed any work for Defendant as an hourly or non-exempt employee. That number of
7 Work Weeks shall be referred to as that Class Member’s “Individual Work Weeks.” If any of the
8 Class Members’ Data are unavailable to Defendant, Defendant will so inform Class Counsel and the
9 Parties will make their best efforts to reconstruct or otherwise agree upon the Class Members’ Data
10 prior to when it must be submitted to the Claims Administrator. Class Members’ Data will
11 otherwise remain confidential and will not be disclosed to anyone, except as necessary to applicable
12 taxing authorities, or pursuant to Defendant’s express written authorization or by order of the Court.

13
14 **27. Notice to Class Members.** Upon receipt of the names and addresses, the Claims
15 Administrator will run the same through the NCOA database to obtain current address information.
16 Within fifteen (15) days of its receipt of the Class Data, the Claims Administrator will mail to each
17 Class Member by first-class mail a Notice packet containing a Notice of Pendency of Class Action
18 Settlement, Proposed Settlement, and Hearing Date for Final Court Approval (“Notice”) in the form
19 attached hereto as **Exhibit “1”** and approved by the Court.

20
21 **a. Mailing of Class Notice.** As noted above, the Claims Administrator will mail
22 the Class Notice Packets to all identified Class Members via first-class U.S. mail using the mailing
23 address information provided by Defendant, unless modified by any updated address information
24 that the Claims Administrator obtains in the course of administration of the Settlement.

25
26 **b. Returned Class Notice.** If a Class Notice Packet is returned because of an
27 incorrect address, the Claims Administrator will promptly, and not later than ten (10) days from
28 receipt of the returned packet, search for a more current address for the Class Member and re-mail

1 the Class Notice Packet to the Class Member. The Claims Administrator will use the Class
2 Members' Data and otherwise work with Defendant's Counsel and Class Counsel to find a more
3 current address. The Claims Administrator will be responsible for taking reasonable steps,
4 consistent with its agreed-upon job parameters, court orders, and fee, to trace the mailing address of
5 any Class Member for whom a Class Notice Packet is returned by the U.S. Postal Service as
6 undeliverable. These reasonable steps shall include the tracking of all undelivered mail; performing
7 address searches for all mail returned without a forwarding address; and promptly re-mailing to
8 Class Members for whom new addresses are found. If the Class Notice Packet is re-mailed, the
9 Claims Administrator will note for its own records and notify Class Counsel and Defendant's
10 Counsel of the date and address of each such re-mailing as part of a weekly status report provided to
11 the Parties. In the event the procedures in this paragraph are followed and the intended recipient of a
12 Class Notice Packet still does not receive the Class Notice Packet, or receives the Class Notice
13 Packet but does not timely and properly request to opt out, the Class Member shall be bound by all
14 terms of this Agreement, including the Releases set forth in paragraph 20.

15

16 **28. Request for Exclusion from Settlement.** A Class Member may request to be
17 excluded from the effect of this Agreement, and any payment of amounts under this Agreement by
18 timely mailing a letter to the Claims Administrator stating that the Class Member wants to be
19 excluded from this Action. This letter must include the Class Member's name, address, telephone
20 number, and signature. To be valid and timely, the request to be excluded must be postmarked by
21 the date specified in the Class Notice (no less than forty-five (45) days from the initial mailing of
22 the Class Notice by the Claims Administrator). A Class Member who properly submits a valid and
23 timely request to be excluded from the Action shall not receive any payment of any kind in
24 connection with this Agreement or this Action, shall not be bound by or receive any benefit of this
25 Agreement, and shall have no standing to object to the Settlement. A request for exclusion must be
26 mailed to the Claims Administrator as follow (who shall transmit the request for exclusion to
27 counsel for the Parties) as follows:

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To Claims Administrator

To Class Counsel:

To Defense Counsel:

Tyler v. Western
Management, LLC
Claims Administrator
c/o Simpluris, Inc.
[Address]

Shaun Setareh, Esq.
William M. Pao, Esq.
Setareh Law Group
315 S. Beverly Dr., Ste. 315
Beverly Hills, CA 90212

Jennifer E. Duggan, Esq.
Laura C. McHugh, Esq.
Duggan Law Corporation
641 Fulton Ave, Ste. 100
Sacramento, CA 95825

29. Objections to Settlement. The Class Notice will provide that any Class Member who does not request exclusion from the Action and who wishes to object to the Settlement must submit an objection in writing to the Claims Administrator not later than forty-five (45) days after the Claims Administrator mails the Class Notice, a written objection to the Settlement which sets forth the grounds for the objection and the other information required by this paragraph and paragraph 28. The objection must be mailed to the Claims Administrator (who shall transmit the objections to counsel for the Parties).

30. The written objection must state the objecting Class Member’s full name, address, and the written basis for each specific objection and any legal support in clear and concise terms. The written objection also shall state whether the Class Member intends to formally intervene and become a party of record in the action as now required under the California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 4th 260, 228 Cal. Rptr. 3d 106 (2018), and upon formally intervening, appear and argue at the Final Approval Hearing; the failure to so state will constitute a waiver of the right to appear and argue at the Final Approval Hearing. A Class Member who does not file and serve a written objection in the manner and by the deadline specified above, in addition to formally intervening in the action as required under *Hernandez v. Restoration Hardware*, 4 Cal. 4th 260, 228 Cal. Rptr. 3d 106 (2018), will be deemed to have waived any objections and will be foreclosed from making any objections (whether at the Final Approval Hearing, by appeal, or otherwise) to the Settlement. If the objecting Class Member does not formally intervene in the action and/or the Court rejects the Class Member’s objection, the Class Member will still be bound by the terms of this Agreement.

1 **31. Disputed Class Member Settlement Shares.** If a Class Member disputes his/her
2 Settlement Share, the Class Member may produce evidence to the Claims Administrator for the
3 Class Period. In order for the dispute to be considered, he/she must follow the directions on the
4 Class Notice. To be valid and timely, all disputes and supporting documents must be postmarked by
5 the date specified in the Class Notice (no less than forty-five (45) days from the initial mailing of
6 the Class Notice by the Claims Administrator). Any disputes concerning administration of the
7 settlement not resolved by the Parties will initially be decided by the Claims Administrator. If the
8 Claims Administrator's decisions are not mutually accepted by all Parties, the dissatisfied party may
9 request that the Court make a final decision. The Court's decision shall be final and binding on the
10 Parties.

11
12 **32. Report.** Not later than fourteen (14) days after the deadline for submission of
13 requests for exclusion, the Claims Administrator will provide the Parties with a complete and
14 accurate list of all Class Members who sent timely requests to be excluded from the Action and all
15 Class Members who objected to the settlement.

16
17 **33. Declaration of Claims Administrator.** Not later than seven days (7) days prior to
18 the Final Approval Hearing, the Claims Administrator will provide the Parties for filing with the
19 Court a declaration of due diligence setting forth its compliance with its obligations under this
20 Agreement. Prior to the Final Approval Hearing, the Claims Administrator will supplement its
21 declaration of due diligence if any material changes occur from the date of the filing of its prior
22 declaration.

23
24 **34. No Solicitation of Objection; Right to Void.** Neither the Parties, nor their
25 respective counsel, will directly or indirectly solicit or otherwise encourage any Class Member to
26 seek exclusion from the Settlement, object to the Settlement, or to appeal from the Judgment. If ten
27 percent (10%) or more of the Class Members submit a valid request to be excluded from the
28 Settlement, then Defendant shall have the unilateral right to void this Settlement. Defendant may do

1 so by giving notice to Class Counsel and the Court of its election to void the Settlement not later
2 than seven (7) days before the Final Approval Hearing. No sums shall be payable by Defendant if
3 this Agreement is voided as provided for herein with one exception: Defendant agrees to pay any
4 fees owing to the Claims Administrator for services rendered in the event Defendant exercises its
5 right to void the Settlement.

6
7 **35. Additional Briefing and Final Approval.** Plaintiff will file with the Court a motion
8 for final approval of the Settlement and payment of the Claims Administrator’s reasonable fees and
9 expenses and a memorandum in support of their motion; and Plaintiff and Class Counsel will serve
10 on Defendant and file with the Court a motion for awards of the Class Representative Payment, the
11 Class Counsel Fees Payment, and the Class Counsel Litigation Expenses Payment pursuant to this
12 Settlement, and memoranda in support of their motions.

13
14 **36. Right to Respond to Objections.** Before the Final Approval Hearing, the Parties
15 shall be entitled to file and serve a response to any Class Member’s objection to the Settlement
16 and/or reply in support of their motion for final approval of the Settlement, and payment of the
17 Claims Administrator’s reasonable fees and expenses to the extent that any opposition to the motion
18 is filed; and Plaintiff and Class Counsel may file replies in support of their motions for the Class
19 Representative Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation
20 Expenses Payment.

21
22 **37. Right to Void Settlement Agreement.** If the Court ultimately does not grant final
23 approval of the Settlement or grants final approval conditioned on any material change to the
24 Settlement, then either Party will have the unilateral right to void the Settlement in its entirety; if
25 that occurs, the Parties will have no further obligations under the Settlement, including any
26 obligation by Defendant to pay the MSA, NSA or any amounts that otherwise would have been
27 payable under this Agreement, except that Defendant and Plaintiff will jointly and equally pay the
28 Claims Administrator’s reasonable fees and expenses incurred as of the date that the Party exercises

1 the right to void the Settlement under this paragraph. However, an award by the Court of a lesser
2 amount than that sought by Plaintiff and Class Counsel for the Class Representative Payment, the
3 Class Counsel Fees Payment, or the Class Counsel Litigation Expenses Payment, will not constitute
4 a material modification to the Settlement within the meaning of this paragraph and shall not render
5 the Settlement voidable. Plaintiff and Class Counsel shall retain the right to appeal awards of
6 attorneys' fees and costs less than requested.

7
8 **38. Final Judgment.** Upon final approval of the Settlement by the Court at or after the
9 Final Approval Hearing, the Parties will present for the Court's approval and entry a Proposed Final
10 Order and Judgment. The Final Order and Judgment shall permanently bar all Class Members (other
11 than those who have submitted timely and valid requests to be excluded from the Action as
12 provided in this Agreement) from prosecuting against Defendant any claims within the scope of the
13 Releases contained in this Agreement.

14
15 **39. Continuing Jurisdiction.** After entry of the Judgment, the Court will have
16 continuing jurisdiction over the Action and the Settlement solely for purposes of (a) enforcing this
17 Agreement, (b) addressing claims administration matters, and (c) addressing such post-Judgment
18 matters as may be appropriate under court rules or applicable law.

19
20 **40. Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms
21 and conditions of this Agreement, Plaintiff, Class Members who did not submit a valid and timely
22 objection to the Settlement *and* also formally intervene into the action as now required under the
23 California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 4th 260, 228 Cal.
24 Rptr. 3d 106 (2018), Defendant, and their respective counsel hereby waive, except as provided for
25 in this Agreement or prohibited by law, any and all rights to appeal from the Judgment, including all
26 rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate
27 judgment, a motion for new trial, any extraordinary writ, and any appeal, and the Judgment
28 therefore will become non-appealable at the time it is entered. The waiver of appeal does not

1 include any waiver of the right to oppose any appeal, appellate proceedings or post-Judgment
2 proceedings. If an appeal is taken from the Judgment, the time for consummation of the Settlement
3 (including making any payments under the Settlement) will be suspended until the appeal is fully
4 and finally resolved and the Judgment, consistent with the terms of this Agreement, becomes Final.
5

6 **41. Vacating, Reversal, or Material Modification of Judgment on Appeal or**
7 **Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other
8 motion, petition, writ, application, or appeal, the reviewing court vacates, reverses, or modifies the
9 Judgment such that there is a material modification to the Settlement, and that court's decision is
10 not completely reversed and the Judgment is not fully affirmed on review by a higher court, then
11 either Plaintiff or Defendant will have the unilateral right to void the Settlement, which the Party
12 must do by giving written notice to the other Parties, the reviewing court, and the Court, not later
13 than fourteen (14) days after the reviewing court's decision vacating, reversing, or materially
14 modifying the Judgment becomes final. The Party exercising its right to unilaterally void the
15 Settlement pursuant to this provision agrees to pay any fees owing to the Claims Administrator for
16 services rendered. An order vacating, reversing or modifying the Court's award of the Class
17 Representative Payment or the Class Counsel Fees Payment and/or Class Counsel Litigation
18 Expenses Payment will not constitute a vacation, reversal, or material modification of the Judgment
19 within the meaning of this paragraph, and shall not render the Settlement voidable.
20

21 **42. Establishment of Settlement Account.** The Claims Administrator will establish a
22 Settlement Account for the purpose of administering the funds described in this Stipulation of
23 Settlement. Within thirty (30) calendar days of the later of (a) the Court's final approval of
24 settlement if no objection by any Class Member has been filed, (b) the time for appeal has expired if
25 an objection has been filed, or (c) the final resolution of any appeal that has been filed, including
26 any subsequent proceedings on remand and appeals and remands thereof, if any, Defendant shall
27 pay into the Settlement Account (via wire transfer) an amount equal to the sum of the following: (i)
28 all gross individual settlement amounts due to Qualified Claimants; (ii) court-approved

1 enhancement to the Class Representative; (iii) court-approved attorneys' fees and costs of Class
2 Counsel; (iv) Claims Administrator fees and costs and (v) payment to the LWDA. In no event shall
3 the amount Defendant shall pay into the Settlement Account exceed the MSA.

4
5 **43. Minimum Claims.** In the event that Qualified Claimants' claims amount to a total
6 figure that is less than sixty percent (60%) of the amount equal to the NSA, then each Qualified
7 Claimant will receive a share of the difference between 60% and the aggregate total amount payable
8 to Qualified Claimants pursuant to the calculation described in paragraph 17, in an amount equal to
9 their percentage of the aggregate total amount payable to Qualified Claimants pursuant to
10 application of paragraph 17(b).

11
12 **44. Payment of Settlement Shares.** The Claims Administrator shall pay Settlement
13 Shares, from the Settlement Account, to all Qualified Claimants. The Claims Administrator shall
14 pay each Settlement Share by sending a check in the appropriate amount to the Class Member at the
15 address indicated in the list of Class Member names and addresses provided by Defendant, or as
16 subsequently determined by the Claims Administrator to be the correct address. Such payment shall
17 be sent by the Claims Administrator via U.S. Mail within ten (10) days of its receipt from
18 Defendant of the sums described above in paragraph 42.

19
20 **45. Uncashed Settlement Share Checks.** Any checks issued by the Claims
21 Administrator to Qualified Claimants who do not timely and validly opt out shall be negotiable for
22 one hundred and eighty (180) calendar days. Those funds represented by checks returned as
23 undeliverable and those checks remaining un-cashed for more than 180 days after issuance
24 (collectively, "Voided Settlement Checks") will be sent to the Controller of the State of California,
25 in the name of that Class Member, to be held pursuant to the Unclaimed Property Law for the
26 benefit of the Class Member until such time as they claim their property, as allowed by law.
27 California Civil Code § 1500 et seq. The Parties agree this disposition results in no "unpaid residue"
28 under California Civil Procedure Code § 384 (b), as the entire Net Settlement Amount will be paid

1 to Settlement Class members, whether or not all checks are cashed. Because no unpaid residue will
2 exist, Defendant will not be required to pay any interest on the uncashed checks.

3
4 **46. Final Report by Claims Administrator to Court.** Within ten (10) days after final
5 disbursement of all funds from the Settlement Account, the Claims Administrator will serve on the
6 Parties for filing with the Court a declaration providing a final summary report on the disbursements
7 of all funds from the Settlement Account.

8
9 **47. Non-Publicity Provision.** The Parties and their counsel agree that they will not issue
10 any press releases, initiate any contact with the press, respond to any press inquiry or have any
11 communication with the press about the fact, amount or terms of the Settlement. In addition, the
12 Parties and their counsel agree that they will not engage in any advertising or distribute any
13 marketing materials relating to the Settlement of this case in any manner that identifies the
14 Defendant, including but not limited to any postings on any websites maintained by Class Counsel.
15 Neither Plaintiff nor Class Counsel will discuss the terms or the fact of the Settlement with third
16 parties other than (1) their immediate family members, (2) their respective accountants or lawyers
17 as necessary for tax purposes; or (3) other Class Members. Plaintiff and Class Counsel agree not to
18 publish any of the terms or conditions of this Settlement in any manner that identifies Defendant.
19 However, Class Counsel may identify this Settlement (in a manner that does not identify Defendant)
20 in other matters to demonstrate their adequacy as counsel in such other matters.

21
22 **48. No Effect on Other Benefits.** The Settlement Shares will not result in any additional
23 employee benefit payments (such as pension, ERISA, 401(k), vacation, or bonus) and shall not have
24 any effect on the eligibility for, or calculation of, any employee benefit. Plaintiff and Class
25 Members are deemed to have waived all such claims, whether known or unknown by them, as part
26 of their release of claims under this Agreement.

27
28 **49. No Admission of Liability.** Defendant deny that they engaged in any unlawful

1 activity, failed to comply with the law in any respect, or have any liability to anyone under the
2 claims asserted in the Action. This Agreement is entered into solely for the purpose of
3 compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as
4 an admission of liability or wrongdoing by Defendant, or an admission by Plaintiff that any of his
5 claims was non-meritorious or any defense asserted by Defendant was meritorious. This Settlement
6 and the fact that Plaintiff and Defendant were willing to settle the Action will have no bearing on,
7 and will not be admissible in connection with, any litigation (other than solely in connection with
8 the Settlement).

9
10 **50. Improper Use of Settlement.** Whether or not the Settlement becomes final, this
11 Stipulation of Settlement is a settlement document and shall, pursuant to California Evidence Code
12 section 1152 and Federal Rule of Evidence 408(a), be inadmissible in evidence. The preceding
13 sentence shall not apply to an action or proceeding to approve, interpret, or enforce this Stipulation
14 of Settlement.

15
16 **51. Integrated Agreement.** After this Agreement is signed and delivered by all Parties
17 and their counsel, this Agreement and its exhibits will constitute the entire agreement between the
18 Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties,
19 covenants, or inducements have been made to any Party concerning this Agreement or its exhibits
20 other than the representations, warranties, covenants, and inducements expressly stated in this
21 Agreement and its exhibits.

22
23 **52. Modification.** This Stipulation of Settlement may not be changed, altered, or
24 modified, except in a writing signed by the Parties hereto and approved by the Court. This
25 Stipulation of Settlement may not be discharged except by performance in accordance with its terms
26 or by a writing signed by all of the Parties hereto.

27
28 **53. Attorney Authorization.** Class Counsel and Defense Counsel warrant and represent

1 that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action
2 required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms,
3 and to execute any other documents required to effectuate the terms of this Agreement. The Parties
4 and their counsel will cooperate with each other and use their best efforts to effect the
5 implementation of the Settlement. In the event the Parties are unable to reach agreement on the form
6 or content of any document needed to implement the Agreement, or on any supplemental provisions
7 that may become necessary to effectuate the terms of this Agreement, the Parties will seek the
8 assistance of the Court, and in all cases, all such documents, supplemental provisions and assistance
9 of the court will be consistent with this Agreement.

10

11 **54. Agreement Binding on Successors.** This Agreement will be binding upon, and
12 inure to the benefit of, the successors of each of the Parties.

13

14 **55. Applicable Law.** All terms and conditions of this Agreement and its exhibits will be
15 governed by and interpreted according to the laws of the State of California, without giving effect to
16 any conflict of law principles or choice of law principles.

17

18 **56. Cooperation in Drafting.** The Parties have cooperated in the drafting and
19 preparation of this Agreement. This Agreement will not be construed against any Party on the basis
20 that the Party was the drafter or participated in the drafting.

21

22 **57. Fair Settlement.** The Parties and their respective counsel believe and warrant that
23 this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at
24 this Agreement through arms-length negotiations, considering all relevant factors, current and
25 potential.

26

27 **58. Headings.** The descriptive heading of any section or paragraph of this Agreement is
28 inserted for convenience of reference only and does not constitute a part of this Agreement.

1 **59. Notice.** All notices, demands or other communications given under this Agreement
2 will be in writing and deemed to have been duly given as of the third business day after mailing by
3 United States mail, addressed as follows:

4 To Class Counsel:

5 Shaun Setareh, Esq.
6 William M. Pao, Esq.
7 Setareh Law Group
8 315 S. Beverly Dr., Ste. 315
9 Beverly Hills, CA 90212

 To Defense Counsel:

 Jennifer E. Duggan, Esq.
 Laura C. McHugh, Esq.
 Duggan Law Corporation
 641 Fulton Ave., Ste. 100
 Sacramento, CA 95825

10 **60. Execution in Counterpart.** This Agreement may be executed in one or more
11 counterparts. All executed counterparts and each of them will be deemed to be one and the same
12 instrument provided that counsel for the Parties will exchange between themselves original signed
13 counterparts. Facsimile signatures will be presumptive evidence of execution of the original, which
14 shall be produced on reasonable request. Any executed counterpart will be admissible to prove the
15 existence and contents of this Agreement.

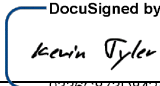
16 **61. No Assignments.** The Parties hereto represent, covenant, and warrant that they have
17 not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
18 encumber to any person or entity any portion of any liability, claim, demand, action, cause of
19 action, or rights herein released and discharged.

20
21 **62. Class Counsel Signatories.** It is agreed that, because the members of the
22 Settlement Class are so numerous, it is impossible or impractical to have each such Class Member
23 execute this Stipulation of Settlement. The Notice will advise all Class Members of the binding
24 nature of the release, and such shall have the same force and effect as if this Stipulation of
25 Settlement were executed by each Member of the Settlement Class.

1 DATED: September 24, 2020

2

3

By: 

KEVIN TYLER

4

5

6 DATED: September __, 2020

WESTERN MANAGEMENT, LLC

7

8

By: _____
JOHN BOVONE

9

10

Its _____
MANAGING PARTNER

11

12

13 **APPROVED AS TO FORM AND CONTENT**

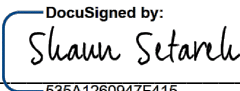
14 DATED: September 17, 2020

SETAREH LAW GROUP

15

16

17

By: 

SHAUN SETAREH
Attorneys for Plaintiff KEVIN TYLER

18

19

20 DATED: September __, 2020

DUGGAN LAW CORPORATION

21

22

By: _____
JENNIFER E. DUGGAN
Attorneys for Defendant WESTERN
MANAGEMENT, LLC

23

24

25

26

27

28

1 DATED: November __, 2020

2

3

By: _____
KEVIN TYLER

4

5

6 DATED: November __, 2020

WESTERN MANAGEMENT, LLC

7

8

By: _____
JOHN BOVONE

9

10

Its _____
MANAGING PARTNER

11

12

13 **APPROVED AS TO FORM AND CONTENT**

14

DATED: November __, 2020

SETAREH LAW GROUP

15

16

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By: _____
SHAUN SETAREH
Attorneys for Plaintiff KEVIN TYLER

18

19

DATED: November 25, 2020

DUGGAN McHUGH LAW CORPORATION

20

21

22

By:  _____
JENNIFER E. DUGGAN
Attorneys for Defendant WESTERN
MANAGEMENT, LLC

23

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26

27

28

1 DATED: November __, 2020

2

3

By: _____
KEVIN TYLER

4

5

6 DATED: November 25, 2020

WESTERN MANAGEMENT, LLC

7

By: _____
JOHN BOVONE

8

9

Its _____
MANAGING PARTNER

10

11

12

13 **APPROVED AS TO FORM AND CONTENT**

14

DATED: November __, 2020

SETAREH LAW GROUP

15

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17

By: _____
SHAUN SETAREH
Attorneys for Plaintiff KEVIN TYLER

18

19

DATED: November __, 2020

DUGGAN McHUGH LAW CORPORATION

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21

22

By: _____
JENNIFER E. DUGGAN
Attorneys for Defendant WESTERN
MANAGEMENT, LLC

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