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11  
12 **SUPERIOR COURT OF CALIFORNIA**

13 **COUNTY OF SAN DIEGO**

14 **CENTRAL DIVISION**

15 VANESSA BULCAO, an individual, on  
behalf of herself, the proposed class(es), all  
16 others similarly situated, and on behalf of the  
general public,

17  
18 Plaintiff,

19 v.

20 TAYLOR MADE GOLF COMPANY, INC.  
(d/b/a TaylorMade-adidas Golf Company), a  
Delaware corporation; and DOES 1 through  
21 10, inclusive,

22 Defendants.  
23  
24  
25  
26  
27  
28

CASE NO. 37-2015-00028124-CU-OE-CTL

CLASS ACTION

**STIPULATION AND SETTLEMENT OF  
CLASS ACTION CLAIMS**

**[IMAGED FILE]**

Complaint Filed: August 19, 2015

Honorable Timothy B. Taylor  
Dept: C-72

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1           **A. Parties.** This Stipulation and Settlement of Class Action Claims ("Settlement,"  
2 "Stipulation," or "Agreement") is made by plaintiff Vanessa Bulcao ("Class Representative") on  
3 behalf of herself and each of the other "Class Members" as defined in this Agreement, on the one  
4 hand, and defendant Taylor Made Golf Company, Inc. ("TMaG") on the other hand, in the action  
5 pending in the San Diego Superior Court ("Court"), Case No. 37-2015-00028124-CU-OE-CTL  
6 ("Class Action" or "Action"), and subject to the approval of the Court. The "Settlement Class  
7 Members" (also referred to as the "Class") consist of all Class Members who do not properly  
8 elect to exclude themselves from the terms of this Agreement. The "Participating Class  
9 Members" consist of all Class Members who submit a Claim Form that is approved for payment  
10 under the terms of this Stipulation.

11           **B. Class Certification.** Solely for purposes of this Settlement, the Settlement Class  
12 Members and TMaG (collectively referred to as the "Parties") stipulate and agree to define the  
13 "Class Members" as consisting of all persons who are or have been employed by TMaG as non-  
14 exempt employees (i.e., salaried non-exempt and/or hourly) in the State of California at any time  
15 from August 11, 2011 through December 16, 2016 (the "Class Period"). The Parties stipulate and  
16 agree to the certification of the Class Action for purposes of this Settlement only. More  
17 specifically, for the limited purposes of this Settlement Agreement, the Parties stipulate and agree  
18 that:

- 19           1. The Class is so numerous as to make impracticable to join all members of  
20           the Class.
- 21           2. The members of the Class are ascertainable.
- 22           3. There are questions of law and fact common to the members of the Class  
23           including, without limitation, the following:
  - 24           (a) whether members of the Class were provided with compliant meal  
25           periods as specified under California law, or received compensation  
26           in lieu thereof;
  - 27           (b) whether TMaG had uniform policies, procedures, and/or practices  
28           relative to meal periods;

- 1 (c) whether members of the Class were authorized and permitted to  
2 take compliant rest periods as specified under California law, or  
3 received compensation in lieu thereof;
- 4 (d) whether TMaG had uniform policies, procedures, and/or practices  
5 relative to rest breaks;
- 6 (e) whether, for those Class members who left TMaG's employ or who  
7 were terminated, TMaG timely paid any wages due and owing to  
8 such Class members;
- 9 (f) whether TMaG willfully failed to pay, in a timely manner, any  
10 wages owing to Class members who left its employ or who were  
11 terminated;
- 12 (g) whether TMaG required Class Members to sign release agreements  
13 before paying wages owed on termination of employment;
- 14 (h) whether TMaG failed to provide Class Members with compliant  
15 wage statements or paystubs; and/or
- 16 (i) whether TMaG violated any provisions of the California Labor  
17 Code or California Business and Professions Code, as alleged in  
18 Plaintiff's First Amended Complaint.

- 19 4. The claims of the Class Representative herein are typical of the claims of  
20 the members of the Class.
- 21 5. The Class Representative and Class Counsel herein will fairly and  
22 adequately protect the interests of the members of the Class.
- 23 6. The prosecution of separate actions by individual members of the Class  
24 would create a risk of inconsistent or varying adjudications, which would  
25 establish incompatible standards of conduct.
- 26 7. The questions of law and fact common to the members of the Class  
27 predominate over any questions affecting only individual member in the  
28 Class, and a class action is superior to other available methods for the fair

1 and efficient adjudication of the controversy.

2 Should the Settlement not become final for whatever reason, the fact that the Parties were  
3 willing to stipulate to class certification as part of the Settlement shall have no bearing on, and  
4 shall not be admissible in connection with, the issue of whether a class should be certified in a  
5 non-settlement context in this Action and shall have no bearing on, and shall not be admissible in  
6 connection with, the issue of whether a class should be certified in any other lawsuit. TMaG  
7 expressly reserves its right to oppose class certification should this Settlement not become final.

8 **C. Procedural History.** The action against TMaG was filed by Class Representative  
9 Vanessa Bulcao on August 11, 2015 in the Superior Court for the County of San Diego, Case No.  
10 37-2015-00028124-CU-OE-CTL ("Bulcao Action"). This case alleged 1) meal period violations;  
11 2) rest break violations; 3) pay stub violations; 4) failure to pay all wages due on termination of  
12 employment, 5) Labor Code § 206.5 violations; 6) unfair competition under California Business  
13 & Professions Code §§ 17200, et. seq.; and 7) California Private Attorney General Act violations,  
14 California Labor Code §§ 2699 et. seq. TMaG denies all material allegations contained in Ms.  
15 Bulcao's First Amended Complaint (Exhibit 1).

16 **D. Investigation in the Class Action.** The Parties have conducted significant  
17 investigation of the facts and law during the prosecution of this Action. Such investigations have  
18 included, among other things, the exchange of information and documents, meetings and  
19 conferences between representatives of the Parties, propounding and responding to written  
20 discovery, taking and defending oral depositions, interviewing putative class members and  
21 potential witnesses, obtaining informal responses to mediation information/document requests,  
22 reviewing and analyzing thousands of pages of documents and data, and participating in an all-  
23 day mediation on October 3, 2016 with the Honorable Steven Denton (Ret.). Counsel for the  
24 Parties have further investigated the applicable law as applied to the facts discovered regarding  
25 the alleged claims of the Class Representative on behalf of the Class Members and potential  
26 defenses, and the damages claimed by the Class Representative on behalf of the Class Members.  
27 In pertinent part, the investigation has yielded the following: The principal claims in the Action  
28 are the allegations that TMaG failed to provide compliant meal periods and/or authorize and

1 permit compliant rest breaks to/for its California non-exempt employees, and/or failed to  
2 compensate such non-exempt employees in lieu thereof, by paying meal period and/or rest break  
3 premiums under Labor Code §§ 226.7, 512, and/or IWC Wage Order No. 1-2001. The Class  
4 Representative believes she has meritorious claims based on alleged violations of the California  
5 Labor Code, and the California Business and Professions Code, and that class certification is  
6 appropriate because the prerequisites for class certification can be satisfied for the Action. The  
7 Class Representative is demanding various amounts for wages, penalties, interest, attorneys' fees,  
8 and other damages on behalf of the Class Members. TMaG contends the Class Members were  
9 provided meal periods and/or authorized/permitted to take rest breaks as required by California  
10 law, were compensated for all hours worked, were not required to sign releases in order to be  
11 paid wages due, were paid in full in a timely manner on termination of employment, and were  
12 provided with compliant paystubs or wage statements. After investigation, Ross H. Hyslop, of  
13 Pestotnik LLP, counsel for Plaintiff ("Class Counsel" or "Plaintiff's Counsel") appreciates the  
14 defenses and position of TMaG, but believes the Class Members would ultimately succeed in the  
15 Action. TMaG, on the other hand, continues to believe it complied with, and remains in  
16 compliance with, California law.

17       **E. Benefits of Settlement to Class Members.** Class Representative recognizes the  
18 expense and length of continued proceedings necessary to continue the litigation against TMaG  
19 through trial and through any possible appeals. Class Representative has also taken into account  
20 the uncertainty and risk of the outcome of further litigation, and the difficulties and delays  
21 inherent in such litigation. Class Representative is also aware of the burdens of proof necessary to  
22 establish liability for the claims asserted in the Action (the "Claims" or "Class Action Claims"),  
23 TMaG's defenses, and the difficulties in establishing damages for the Class Members. Class  
24 Representative has also taken into account the extensive settlement negotiations conducted.  
25 Based on those considerations, Class Representative has determined that the Settlement set forth  
26 in this Agreement is a fair, adequate and reasonable settlement, and is in the best interests of the  
27 Class Members.  
28

1           **F.     Reasons for Settlement.** Following a mediation with the Honorable Steven  
2 Denton (Ret.) on October 3, 2016, which involved extensive discussions and negotiations with  
3 the parties, Judge Denton tendered a detailed mediator’s proposal on October 4, 2016, which was  
4 accepted by all Parties without reservation. As part of their decision-making, the Parties  
5 concluded that any further litigation would be protracted and expensive for all Parties, and that  
6 substantial amounts of time, energy and resources have been and, unless this Settlement is made  
7 and approved, will continue to be devoted to the litigation and the claims asserted by the Class  
8 Representative. The settlement was arrived at through arms’ length negotiations, taking into  
9 account all relevant factors. The Parties also recognizes the uncertainty, risk, expense, and delay  
10 attendant to continuing the Action through trial and any appeal. Accordingly, the Parties desire to  
11 fully, finally, and forever settle, compromise, and discharge all disputes and claims arising from  
12 or related to this Action and therefore agree to settle this Action in the manner and upon the terms  
13 set forth in this Agreement.

14           **G.     TMaG's Denials of Wrongdoing.** TMaG has denied and continues to deny each  
15 of the claims and contentions alleged by the Class Representative in the Action. TMaG has  
16 repeatedly asserted and continues to assert defenses, and has expressly denied and continues to  
17 deny any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the  
18 Action. TMaG also has denied and continues to deny, among other things, the allegations that the  
19 Class Members have suffered damage; that TMaG failed to provide any of the Class Members  
20 meal periods and/or rest breaks as required by California law; that TMaG failed to compensate  
21 the Class Members for all hours worked; that TMaG failed to pay any earned “premium pay;”  
22 that TMaG failed to provide accurate and itemized wage statements; that TMaG failed to fully  
23 compensate employees in a timely manner upon termination of employment; that TMaG required  
24 Class Members to sign releases in order to be paid wages due; that TMaG engaged in any  
25 unlawful, unfair or fraudulent business practices; that TMaG engaged in any wrongful conduct as  
26 alleged in the Action; or that the Class Members were harmed by the conduct alleged in the  
27 Action. Neither this Agreement, nor any document referred to or contemplated in this Agreement,  
28 nor any action taken to carry out this Agreement, is, may be construed as, or may be used as an



1 admission, concession or indication by or against TMaG of any fault, wrongdoing or liability  
2 whatsoever.

3 **H. Plaintiff's Claims.** The Class Representative has claimed and continues to claim  
4 that the Released Claims (as defined below) have merit and give rise to liability on the part of  
5 TMaG.

6 NOW, THEREFORE, IT IS HEREBY STIPULATED, by and among the Class  
7 Representative on behalf of the Class Members on the one hand, and TMaG on the other hand,  
8 and subject to the approval of the Court, that the Class Action is hereby being compromised and  
9 settled pursuant to the terms and conditions set forth in this Agreement and that upon the  
10 Effective Date (as defined below) judgment shall be entered, subject to the recitals set forth above  
11 which by this reference become an integral part of this Agreement and subject to the following  
12 terms and conditions:

13 **1. "Effective Date."** As used in this Settlement, "Effective Date" means the  
14 date by which this Settlement is finally approved as provided in this Agreement and the Court's  
15 Final Judgment ("Final Judgment" or "Judgment") becomes final. For purposes of this paragraph,  
16 the Final Judgment "becomes final" upon the latter of: (a) if there are no objections to the  
17 Settlement by Class Members, the Effective Date shall be the date of the trial Court's order  
18 finally approving the Settlement; or (b) if an objection is timely made/asserted by a Class  
19 Member, (i) the date affirmance of an appeal of the Judgment becomes final or the expiration of  
20 the time for filing a petition for review or certiorari of or as to the Final Judgment or of any Court  
21 of Appeals' decision relating to the Final Judgment and, if review is granted, the date of final  
22 affirmance of the Final Judgment following review pursuant to that grant; (ii) the date of final  
23 dismissal of any writ of certiorari as to or appeal from the Judgment or the final dismissal of any  
24 proceeding on review of any Court of Appeals' decision relating to the Judgment; or (iii) if no  
25 appeal is filed, the expiration date of the time for the filing or noticing of any appeal from the  
26 Judgment, pursuant to California Rules of Court, Title 8.

27 **2. Full Investigation.** Class Representative has fully investigated the factual  
28 and legal bases for the causes of action asserted in the Class Action. TMaG has denied that it

1 failed to provide the Class Members meal periods and/or rest breaks in accordance with  
2 California law or failed to pay the Class Members for any earned premium pay. As a result of her  
3 investigation, Class Representative continues to believe that TMaG failed to provide compliant  
4 meal periods and/or rest breaks, and that the Class Members were not paid in full for any  
5 premium pay due. Given the disagreement between the Parties as to the viability of the claims  
6 raised by the Class Representative in the Class Action, the Parties believe the Settlement  
7 provided for in this Agreement is a fair, adequate, and reasonable settlement.

8 **3. Limited Release Of State Law Claims As To All Settlement Class**

9 **Members.** As of the Effective Date, the Settlement Class Members, including the Class  
10 Representative, release TMaG and its assignees, and each of their past or present officers,  
11 directors, shareholders, employees, agents, principals, heirs, representatives, accountants,  
12 auditors, consultants, insurers and reinsurers, and their and their respective successors and  
13 predecessors in interest, subsidiaries, affiliates, parents and attorneys and all of their respective  
14 officers, directors, employees, administrators, fiduciaries, trustees and agents (the "Released  
15 Parties"), from the "Released Claims." For purposes of this Agreement, the "Released Claims"  
16 are defined as those having all of the characteristics below:

17 all claims, demands, rights, liabilities, and causes of action of every nature and description  
18 whatsoever that arose from August 11, 2011 through December 16, 2016; and

19 whether in tort, contract, or for violation of any state constitution, statute, rule or  
20 regulation, including state wage and hour laws; and

21 whether for economic damages, non-economic damages, restitution, premium pay,  
22 penalties or liquidated damages; and

23 arising out of, relating to, or in connection with:

24 (1) any and all facts, transactions, events, policies, occurrences, acts,  
25 disclosures, statements, omissions or failures to act, which are or could  
26 be the basis of claims: (a) that TMaG failed to provide Plaintiffs with  
27 meal periods and/or rest breaks, or failed to compensate Plaintiffs for  
28 all hours worked in connection with meal periods and/or rest breaks, in  
accordance with California law, including any claims for waiting time  
penalties, premium pay, or inaccurate wage statements based on the  
factual allegations contained in the Class Action; (b) that TMaG failed  
to compensate plaintiffs for all hours worked, including any claims for

1 waiting time penalties, or inaccurate wage statements based on the  
2 factual allegations contained in the Class Action; (c) that TMaG failed  
3 to compensate plaintiffs for all wages due upon termination in a timely  
4 fashion; (d) that TMaG failed to provide the paystubs required by  
5 California law; (e) that TMaG required employees to sign releases  
6 before paying wages or premium pay allegedly due on termination of  
7 employment; (f) that TMaG failed to comply with any California state  
8 wage and hour laws, based on the factual allegations contained in the  
9 Class Action; (g) that TMaG failed to keep any and all records required  
10 by California law based on the factual allegations contained in the  
11 Class Action; (h) that TMaG failed to comply with Labor Code  
12 Sections 201-203, 206, 206.5, 226, 226.7, 510, 512, California Business  
13 & Professions Code Section 17200, and/or Wage Order 1-2001 based  
14 on the factual allegations contained in the Class Action; (i) any claims  
15 brought under California Labor Code Section 2699, the "Private  
16 Attorney General Act" based on the factual allegations contained in the  
17 Class Action; or (j) that TMaG owes wages, premium pay, penalties,  
18 interest, attorneys' fees or other damages of any kind based on a failure  
19 to comply with these state wage and hour laws and record keeping laws  
20 based on the factual allegations contained in the Class Action, at any  
21 times on or before the last day of the Class Period (whether based on  
22 California state wage and hour law, contract, or otherwise); and/or

(2) the causes of action asserted in the Class Action, including any and  
all claims for alleged failure to provide meal periods and/or rest breaks,  
or alleged failure to pay all wages and/or premium pay on termination  
of employment, or alleged failure to provide accurate wage statements,  
or for waiting time penalties or for premium pay, or for allegedly  
requiring employees to sign releases before paying wages and/or  
premium pay due on termination of employment and, as related to the  
foregoing, for alleged unlawful, unfair and/or fraudulent business  
practices under California Business and Professions Code § 17200, et  
seq.; and/or

(3) any other claims based on any factual allegations pled in this Class  
Action.

20 This Release is expressly limited and narrowly tailored to the factual and legal claims  
21 asserted in Plaintiff's First Amended Complaint, filed on or about March 7, 2016, and only  
22 applies to those persons identified by the Released Parties as being a member of the Settlement  
23 Class in connection with the administration of this proposed settlement. By way of example  
24 only, this release is not intended to and shall not release the Released Parties from any claim that  
25 TMaG allegedly: (a) failed to properly pay or calculate wages for any of its non-exempt  
26 employees for all hours worked (i.e., straight-time, overtime and/or off-the-clock hours); (b)  
27 improperly classified any of its employees as exempt from overtime (i.e., allegedly entitling them  
28 to overtime pay for any overtime hours alleged worked or allegedly depriving them of other

1 protections to which non-exempt employees would be entitled); (c) improperly classified,  
2 designated, or treated any person as an independent contractor rather than an employee.  
3 Additionally, this release is not intended to release and shall not release the Released Parties from  
4 all potential derivative claims (e.g., unfair competition under Business and Professions Code §§  
5 17200 *et seq.*, PAGA violations under Labor Code §§ 2699 *et seq.*, etc.) associated with such  
6 allegations; but is intended to release and shall release the Released Parties from those derivative  
7 claims specified above (i.e., the alleged failure to pay Class Members all wages in a timely  
8 fashion owed on termination of employment and the alleged failure to provide Class Members  
9 with compliant paystubs or wage statements). Any person *not* identified by the Released Parties  
10 as being a member of the Settlement Class shall not and will not be affected by this Release.  
11 Further, this Release does not apply to any claim that as a matter of law cannot be released,  
12 including but not limited to claims for indemnification pursuant to California Labor Code  
13 section 2802, unemployment insurance benefits, and workers' compensation claims.

14 The Class Members may later discover facts in addition to or different from those they  
15 now know or believe to be true with respect to the subject matter of the Released Claims, but  
16 upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment shall  
17 have, fully, finally, and forever settled and released any and all of the Released Claims, whether  
18 contingent or non-contingent, which now exist, or have existed, upon any theory of law or equity  
19 now existing or coming into existence in the future, including, but not limited to, conduct that is  
20 negligent, reckless, intentional, with or without malice, or a breach of any duty, law or rule,  
21 without regard to the subsequent discovery or existence of such different or additional facts.

22 **4. General Release Of Any And All Claims By Class Representative.** In  
23 addition to the releases made by the Settlement and Participating Class Members set forth in  
24 Paragraph 3 of this Agreement, the Class Representative, as of the Effective Date, makes the  
25 additional following general release of all claims, known or unknown.

26 The Class Representative releases the Released Parties from all claims, demands, rights,  
27 liabilities and causes of action of every nature and description whatsoever, known or unknown,  
28 asserted or that might have been asserted, whether in tort, contract, or for violation of any state or

1 federal statute, rule or regulation arising out of, relating to, or in connection with any act or  
2 omission by or on the part of any of the Released Parties committed or omitted prior to the  
3 execution of this Agreement. Class Representative also specifically agrees and acknowledges that  
4 she is waiving any right to recovery based on state or federal age, sex, pregnancy, race, color,  
5 national origin, marital status, religion, veteran status, disability, sexual orientation, medical  
6 condition or other anti-discrimination laws, including, without limitation, Title VII of the Civil  
7 Rights Act of 1964, the Age Discrimination in Employment Act, the Equal Pay Act, the  
8 Americans with Disabilities Act and the California Fair Employment and Housing Act, California  
9 Labor Code section 970, the Family and Medical Leave Act, the Employee Retirement Income  
10 Security Act, the Worker Adjustment and Retraining Act, the Fair Labor Standards Act,  
11 California Labor Code Section 2699, et. seq., the "Private Attorney General Act, and any other  
12 section of the California Labor Code, all as amended, whether such claim be filed by Class  
13 Representative or by a governmental agency, as well as the laws of any other country in the  
14 world. (The release set forth in this Paragraph H(4) shall be referred to as the "General Release").

15 The Class Representative agrees not to sue or otherwise make a claim against any of the  
16 Released Parties that is in any way related to the Released Claims. The General Release does not  
17 apply to any claim that as a matter of law cannot be released, including but not limited to claims  
18 for indemnification pursuant to California Labor Code Section 2802, unemployment insurance  
19 benefits, and workers' compensation claims, nor does it preclude filing suit to challenge TMAg's  
20 compliance with the waiver requirements of the ADEA as amended by the Older Worker Benefit  
21 Protection Act, or filing a charge with the Equal Employment Opportunity Commission.

22 The General Release includes any unknown claims the Class Representative does not  
23 know or suspect to exist in her favor at the time of the General Release, which, if known by her,  
24 might have affected her settlement with, and release of, the Released Parties by the Class  
25 Representative or might have affected her decision not to object to this Settlement or the General  
26 Release.

27 With respect to the General Release, the Class Representative stipulates and agrees that,  
28 upon the Effective Date, the Class Representative shall be deemed to have, and by operation of

1 the Final Judgment shall have, expressly waived and relinquished, to the fullest extent permitted  
2 by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any  
3 other similar provision under federal or state law, which provides:

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

8 The Class Representative may later discover facts in addition to or different from those  
9 she now knows or believes to be true with respect to the subject matter of the General Release,  
10 but the Class Representative upon the Effective Date, shall be deemed to have, and by operation  
11 of the Final Judgment shall have, fully, finally, and forever settled and released any and all of the  
12 claims released pursuant to the General Release, whether known or unknown, suspected or  
13 unsuspected, contingent or non-contingent, which now exist, or previously existed upon any  
14 theory of law or equity now existing or coming into existence in the future, including, but not  
15 limited to, conduct that is negligent, reckless, intentional, with or without malice, or a breach of  
16 any duty, law or rule, without regard to the subsequent discovery or existence of such different or  
17 additional facts.

18 **5. Final Judgment.** In connection with seeking Final Approval of this  
19 Settlement, Class Representative will seek final entry of judgment of this Action and all claims  
20 stated in this Action, and upon the Effective Date the Final Judgment will constitute a binding  
21 and final resolution of any and all claims by the Class Representative and all Class Members as  
22 set forth above.

23 **6. Settlement Fund.** The term "Settlement Fund" shall refer to the funds that  
24 TMaG has agreed to pay to settle the Class Action. The Settlement Fund has a maximum possible  
25 value of Eight Hundred Seventy-Five Thousand Dollars (\$875,000.00), plus the employer's  
26 portion of any payroll taxes in connection with the wage payments to the Participating Class  
27 Members, as outlined below. Excluding the employer's portion of payroll taxes, the Settlement  
28 Fund is the maximum payment under this Settlement Agreement, and includes but is not limited  
to all attorneys' fees and costs, incentive payments to the Class Representative, the costs of

1 settlement and claim administration, any post-settlement costs, and pre and post-judgment  
2 interest. With the exception of the employer's portion payroll taxes in connection with the wage  
3 payments to the Participating Class Members outlined below, under no circumstances shall  
4 TMaG be required to spend more than \$875,000.00 for any reason under this Settlement  
5 Agreement. It is expressly understood that, if fewer than all eligible Settlement Class Members  
6 submit claims, any monies unclaimed will be distributed to those eligible Class Members who  
7 submit valid and timely claims based on the same formula as the initial payments were  
8 determined on a pro rata basis. The Net Settlement Fund is the balance of the Settlement Fund  
9 remaining after payments from the Settlement Fund for payment to the Labor and Workforce  
10 Development Agency ("LWDA"), attorneys' fees, legal costs, administration costs, and the  
11 incentive payment to the Class Representative.

12           7.       **Allocation of Settlement Fund.** Within eighteen (18) days after the Court  
13 grants preliminary approval of this Agreement, and solely for purposes of this Settlement, TMaG  
14 shall pay the Settlement Fund to the Claims Administrator, to be held in an interest-bearing  
15 account. Any interest earned on the Settlement Fund shall remain the sole and exclusive property  
16 of TMaG, and will be paid out to TMaG within fourteen (14) days after the close of the  
17 Administration of the Settlement. If for any reason this Settlement does not become effective or  
18 final for any of the reasons set forth in this Agreement, then the Claims Administrator shall return  
19 the entire Settlement Fund, plus any accrued interest, to TMaG within fourteen (14) days of being  
20 notified in writing that the Settlement will not be effective or final as provided in this Agreement.

21           Within fourteen (14) days after the Effective Date, the Claims Administrator shall pay out  
22 the entire Settlement Amount to the Participating Class Members, Class Counsel, and the Class  
23 Representative.

24           The Settlement Fund shall be allocated among these elements: (i) the total payments to  
25 Plaintiff and Class Members of the Gross Settlement Amounts less deductions as explained in  
26 Paragraph H.8 below (the potential total Gross Settlement Amounts equal Five Hundred Seventy-  
27 Seven Thousand Five Hundred Dollars (\$577,500) and shall collectively be referred to as the  
28 "Net Settlement Fund"); (ii) the Fees Award (as defined below) to Class Counsel in an amount

1 not to exceed Two Hundred Sixty-Two Thousand Five Hundred Dollars (\$262,500); (iii)  
2 reimbursement of Litigation Costs (as defined below) incurred by Class Counsel in a total amount  
3 estimated at no more than Fifteen Thousand Dollars (\$15,000); (iv) the Incentive Award (as  
4 defined below) to the Class Representative, in a total amount not to exceed Five Thousand  
5 Dollars (\$5,000); (v) Claims Administration expenses, estimated to be Ten Thousand Dollars  
6 (\$10,000); and (vi) payment to the LWDA for Class Representative's Private Attorney General  
7 Act ("PAGA") claims under California Labor Code Section 2699 et seq. in an amount not to  
8 exceed Five Thousand Dollars (\$5,000). The sum of the: (i) Gross Settlement Amounts paid from  
9 the Net Settlement Fund (\$577,500); (ii) Fees Award (\$262,500); (iii) Litigation Costs (\$15,000);  
10 (iv) Incentive Award (\$5,000); (v) Claims Administration Expenses (\$10,000); and (vi) PAGA  
11 payment (\$5,000) shall equal the amount of the Settlement Fund. The Settlement Fund has a  
12 maximum potential value of \$875,000.00 which is completely non-reversionary.

13 **8. Plan of Allocation for Payment to Participating Class Members.**

14 Within fourteen (14) days after the Effective Date, and solely for purposes of this Settlement, the  
15 Claims Administrator shall pay the Settlement Awards (as defined below) to the Participating  
16 Class Members in accordance with the following eligibility and settlement formula requirements:

17 (a) Excluded from becoming Participating Class Members are those  
18 Class Members who submit valid and timely requests for exclusion pursuant to the terms and  
19 procedures of the Notice of Pendency and Settlement of Class Action; Settlement Hearing; and  
20 Claim, Objection, and Exclusion Procedures (attached as Exhibit 2 to the Agreement).

21 (b) All Class Members will be eligible to submit a claim for a  
22 "Settlement Award" (as defined below). If a Class Member submits a timely and properly  
23 completed Claim Form ("Claim Form") (attached as Exhibit 3) then the Class Member will be a  
24 "Participating Class Member." On TMaG's behalf, the Claims Administrator will pay Settlement  
25 Awards to Participating Class Members. The gross amounts of these Settlement Awards will be  
26 calculated by assigning a dollar value to each week of work with TMaG. In addition, Settlement  
27 Awards will be distributed as follows: Class members who primarily worked in the Assembly,  
28 Shipping, and regulated Customer Service departments will receive 25% more than other Class



1 Members. Class Members who previously signed releases with TMaG that specifically identified  
2 the *Bulcao v. TMaG* lawsuit (including but not limited to Assembly, Shipping, and regulated  
3 Customer Service Representative Employees) will receive 30% of what would otherwise be their  
4 participation had no release been executed. Class members who previously signed releases with  
5 TMaG that did not specifically identify the *Bulcao v. TMaG* lawsuit (including, but not limited to  
6 Assembly, Shipping, and regulated Customer Service representatives employees) will receive  
7 60% of what they would have otherwise been paid had no release been signed. As used here, the  
8 term "primarily" shall mean fifty-one percent (51%) or more of workweeks worked by  
9 Participating Class Members. The award will be based on the actual number of weeks worked  
10 and partial workweeks will be counted as a fraction of a workweek. The amount to be paid per  
11 week worked will be calculated by dividing the \$577,500 maximum value of the Net Settlement  
12 Fund by the number of weeks worked by all Class Members during the Class Period. If less than  
13 100% of all Class Members file Claim Forms, those Participating Class Members who do file  
14 claim forms will share proportionately in the settlement residual. TMaG shall calculate an  
15 estimated amount to be paid per week no later than fourteen (14) days after the date the Parties  
16 execute this Agreement and the Claims Administrator shall calculate a final amount to be paid  
17 per week fourteen (14) days after the close of the Claims Period.

18 (c) The Parties recognize that the Settlement Awards to be paid to the  
19 Participating Class Members are deemed to be a combination of wages and penalties. Each  
20 Settlement Award will be comprised 33 1/3% of wages, 33 1/3% interest, and 33 1/3% of non-  
21 wages representing statutory penalties. From each Participating Class Member's wage  
22 component, payroll deductions will be made for state and federal withholding taxes and any other  
23 applicable payroll deductions owed by the Participating Class Member as a result of the payment,  
24 resulting in a "Net Wage Component." TMaG will pay its share of any employer-side payroll  
25 taxes owed on each Participating Class Member's Net Wage Component. The total of the Net  
26 Wage Component and the non-wage portion will be the Participating Class Member's "Net  
27 Settlement Amount." The Net Settlement Amount that will be paid to each Participating Class  
28 Member is the Participating Class Member's "Settlement Award."

1                   9.     Prospective Employment Practices. As noted above, after thorough  
2 investigation, the Parties disagree as to whether TMaG provided the Class Members with  
3 compliant meal periods and rest breaks as required by California law, whether TMaG paid all  
4 premium pay owed, whether TMaG timely paid all wages due and owed upon termination, and  
5 whether TMaG provided accurate wage statements. TMaG believes its policies do comply, and  
6 have always complied, with the law. However, because the Parties desire to eliminate future  
7 disputes regarding the issues raised in this Action, TMaG has agreed to comply with California  
8 law regarding meal and rest periods, payment of wages, recording of hours worked, and paystubs.

9                   TMaG is not obligated by virtue of this Settlement Agreement to make any particular  
10 changes to its policies. To the extent TMaG makes any changes to its policies, TMaG may again  
11 change those policies based on any relevant changes to California or federal law or for any other  
12 reason.

13                   10.    Fees Award, Litigation Costs, and Incentive Awards.

14                   (a)     Plaintiff's Counsel will request, and TMaG will not oppose, an  
15 award of attorneys' fees ("Fees Award") of up to Two Hundred Sixty-Two Thousand Five  
16 Hundred Dollars (\$262,500). The Fees Award will cover all work performed and all fees incurred  
17 to date, and all work to be performed and all fees to be incurred in connection with the approval  
18 by the Court of this Settlement, the administration of the Settlement, and obtaining final approval  
19 of this Settlement and entry of judgment. Plaintiff's Counsel shall not be permitted to petition the  
20 Court for, or accept, any additional payments for attorneys' fees. Plaintiff's Counsel will be  
21 issued an IRS Form 1099 for the Fees Award. If the Court awards attorneys' fees in an amount  
22 less than specified above, the residual shall be distributed to the Participating Class Members on a  
23 pro rata basis, using the formula laid out in Paragraph 8(b), *supra*.

24                   The Fees Award shall be paid by the Claims Administrator via wire transfer from the  
25 Settlement Fund to Plaintiff's Counsel within seven (7) banking days after the Effective Date.

26                   The Claims Administrator's payment of the Fees Award to Plaintiff's Counsel shall  
27 constitute full satisfaction of the obligation to pay any amounts to any person, attorney, or law  
28 firm for attorneys' fees in the Action incurred by any attorney on behalf of Class Representative,

1 Settlement Class Members, and Participating Class Members, and shall relieve TMaG, the  
2 Claims Administrator, the Settlement Fund, and TMaG's Counsel of any other claims or liability  
3 to any other attorney or law firm for any attorneys' fees to which any of them may claim to be  
4 entitled on behalf of Class Representative, Settlement Class Members, and Participating Class  
5 Members.

6 (b) Plaintiff's Counsel will request, and TMaG will not oppose, an  
7 award of costs ("Litigation Costs") in an amount of up to Fifteen Thousand Dollars (\$15,000).  
8 The Litigation Costs will cover all work performed and all costs incurred to date, and all work to  
9 be performed and all costs to be incurred in connection with the approval by the Court of this  
10 Settlement, the administration of the Settlement, and final approval of this Settlement and entry  
11 of judgment. Plaintiff's Counsel shall not be permitted to petition the Court for, or accept, any  
12 additional payments for costs. If the Court awards costs in an amount less than specified above,  
13 the residual shall be distributed to the Participating Class Members on a pro rata basis using the  
14 formula laid out in Paragraph 8(b), *supra*.

15 The Litigation Costs shall be paid by the Claims Administrator via wire transfer from the  
16 Settlement Fund to Plaintiff's Counsel within seven (7) banking days after the Effective Date.

17 The Claims Administrator's payment of the Litigation Costs to Plaintiff's Counsel shall  
18 constitute full satisfaction of the obligation to pay any amounts to any person, attorney, or law  
19 firm for Class Counsel's expenses or costs in the Action incurred by any attorney on behalf of  
20 Class Representative, Settlement Class Members, and Participating Class Members, and shall  
21 relieve TMaG, the Claims Administrator, the Settlement Fund, and TMaG's Counsel of any other  
22 claims or liability to any other attorney or law firm for any expenses and/or costs to which any of  
23 them may claim to be entitled on behalf of Class Representative, Settlement Class Members, and  
24 Participating Class Members.

25 (c) Plaintiff's Counsel may request, and TMaG will not oppose, an  
26 Incentive Award to Class Representative in an amount not to exceed Five Thousand Dollars  
27 (\$5,000) total, to be paid to the Class Representative for her initiation of this Action, for a general  
28 release of all claims, and for her time, effort and risk spent pursuing the Action. TMaG agrees not

1 to oppose such an application, so long as it is consistent with the provisions of this Agreement.  
2 Any Incentive Award shall be sent to Class Counsel for distribution to the Class Representative  
3 within fourteen (14) days of the Effective Date. The Class Representative will also receive a  
4 Settlement Award from TMaG in addition to this Incentive Award. If the Court awards an  
5 Incentive Award in an amount less than specified above, the residual shall be distributed to the  
6 Participating Class Members on a pro rata basis using the formula laid out in Paragraph 8(b),  
7 *supra*.

8 The Class Representative's Incentive Award will not be taxed as wages. The Class  
9 Representative will receive IRS Forms 1099 for the Incentive Award. The Class Representative  
10 agrees to indemnify and hold harmless TMaG for any tax liability.

11 **11. Responsibilities of TMaG.** TMaG shall:

12 (a) Pay the Claims Administrator, up to a maximum of Ten Thousand  
13 Dollars (\$10,000), for costs and expenses of administering this Settlement after the Claims  
14 Administrator has submitted bills to TMaG and those bills have been approved by TMaG;

15 (b) Pay, or cause the Claims Administrator to pay, the Fees Award,  
16 Litigation Costs, payment to the LWDA and Incentive Award within seven (7) banking days after  
17 the Effective Date;

18 (c) Provide, within fourteen (14) days from the date the Court grants  
19 preliminary approval, the Claims Administrator with "Database Reports" showing each Class  
20 Member's name, address, employee or social security number, Gross Settlement Amount, and  
21 workweek information, and provide Class Counsel the Database Reports showing each Class  
22 Member's name, address, the last four digits of the employee or social security numbers, Gross  
23 Settlement Amounts, and workweek information;

24 (d) Pay, or cause the Claims Administrator to pay, the Settlement  
25 Awards to the Participating Class Members in accordance with the terms of this Agreement;

26 (e) Establish, or cause the Claims Administrator to establish, a  
27 Settlement Account (either a separate checking account or separate ledger entry), and make  
28 appropriate arrangements to fund any checks written upon the Settlement Account;

1 (f) File, or cause the Claim Administrator to file, the Claim Forms  
2 submitted by Settlement Class Members with the Court following the Settlement Hearing  
3 described in Paragraph 15. TMaG or the Claims Administrator will redact confidential  
4 information about the Settlement Class Members from the Claim Forms prior to filing.

5 (g) If the Claims Administrator's costs do not amount to the \$10,000  
6 maximum, any residual amount shall be distributed to the Participating Class Members using the  
7 formula laid out in Paragraph 8(b), *supra*.

8 **12. Operation of the Settlement Fund.**

9 (a) The Claims Administrator will calculate the net amounts to be paid  
10 to the Participating Class Members from the Net Settlement Fund in accordance with the terms  
11 and provisions of this Agreement.

12 (b) The Claims Administrator shall have the authority and obligation to  
13 make payments, credits and disbursements, including payments and credits in the manner set  
14 forth in this Agreement, to Participating Class Members from the Net Settlement Fund calculated  
15 in accordance with the methodology set out in this Agreement and orders of the Court.

16 (c) The Claims Administrator shall make all proper payments,  
17 disbursements, and credits from the Settlement Fund.

18 (d) No person shall have any claim against TMaG, TMaG's Counsel,  
19 the Class Representative, Class Members, Plaintiff's Counsel or the Claims Administrator based  
20 on distributions and payments made in accordance with this Agreement.

21 (e) The maximum amount TMaG can be required to pay under this  
22 Settlement for any purpose is the amount of the Settlement Fund.

23 **13. No Injunctive Relief.** As part of this Settlement, TMaG shall not be  
24 required to enter into any consent decree, nor shall TMaG be required to agree to any provision  
25 for injunctive relief, or to modify or eliminate any of its personnel, compensation, or payroll  
26 practices, or adopt any new personnel, compensation, or payroll practices.

27 **14. Notice/Approval of Settlement and Settlement Implementation.** As part  
28 of this Settlement, the Parties agree to the following procedures for obtaining preliminary Court

1 approval of the Settlement, certifying a Settlement Class, notifying the Class Members, obtaining  
2 final Court approval of the Settlement, and processing the settlement payments:

3 (a) Preliminary Settlement Hearing. A hearing before the Court to  
4 request preliminary approval of the Settlement and to request the entry of the order for  
5 certification of the Class for settlement purposes only ("Preliminary Approval Order" or "Order")  
6 (attached as Exhibit 4) is scheduled for December 16, 2016 at 1:30 p.m. In conjunction with this  
7 hearing, Plaintiff will submit this Agreement, which sets forth the terms of this Settlement, and  
8 will include proposed forms of all notices and other documents necessary to implement the  
9 Settlement.

10 (b) The Parties agree to take all steps as may be reasonably necessary  
11 to secure approval of this Agreement, to the extent not inconsistent with the terms of this  
12 Agreement, and will not take any action adverse to each other in obtaining Court approval, and, if  
13 necessary, appellate approval, of the Agreement in all respects. The parties and their counsel  
14 agree to cooperate fully with one another to expeditiously seek such approval.

15 (c) Simultaneous with the filing of the Stipulation of Settlement and  
16 solely for purposes of this Settlement, Plaintiffs will request the Court to enter the Preliminary  
17 Approval Order substantially in the form of Exhibit 4, preliminarily approving the proposed  
18 Settlement, certifying the Class and the Class Period for settlement purposes only, and setting a  
19 date for a Settlement Hearing to determine final approval of the Settlement. The Order shall  
20 provide for notice of the Settlement and related matters to be sent to Plaintiff as specified in this  
21 Agreement.

22 (d) Notice to Plaintiff. Notice of the Settlement shall be provided to the  
23 Class Members, and the Class Members shall submit claims, objections to the Settlement and/or  
24 requests for exclusion from the Class, using the following procedures:

25 (e) Claims Administrator. Phoenix Settlement Administrators, P.O.  
26 Box 7208, Orange, California, 92863, Telephone (800) 784-2174, or such other entity upon  
27 whom the Parties mutually agree, shall be retained to serve as Claims Administrator. The Claims  
28 Administrator shall be responsible for preparing, printing, and mailing the Notice (Exhibit 2) and

1 the Claim Form (Exhibit 3) as directed by the Court to the Class Members; determining eligibility  
2 for payment to a Participating Class Member; calculating Settlement Awards to be paid to the  
3 Participating Class Members in accordance with the terms and provisions of this Agreement;  
4 resolving any disputes regarding the calculation or application of the formula for determining  
5 Settlement Awards; keeping track of those Class Members requesting to be excluded from the  
6 Settlement and providing information regarding the requests for exclusion to the Parties' counsel;  
7 mailing the Settlement Awards to the Participating Class Members; issuing W-2 and 1099 Forms;  
8 and performing such other tasks necessary to effectuate the terms of this Agreement or as the  
9 Parties mutually agree or the Court orders the Parties to perform. The Claims Administrator shall  
10 also establish and maintain a website at [www.TMaGSettlement.com](http://www.TMaGSettlement.com) (if that domain is available –  
11 if not, a similar-sounding but available domain), and timely post thereon (i.e., when  
12 filed/available) a complete copy of the Stipulation and Settlement Agreement of Class Action  
13 Claims, the Class Notice, a blank Claim Form, Plaintiff's Motion for Preliminary Approval, the  
14 Preliminary Approval Order, Plaintiff's Motion for Final Approval, Plaintiff's Motion for An  
15 Award of Attorneys' Fees and Costs, and the Final Approval Order/Final Judgment. The Notice  
16 (Exhibit 2) shall be sent to each Class Members last known address in a mailing envelope that  
17 shall include the words "TMaG Class Settlement" as part of the return address associated with the  
18 Claims Administrator, and shall also include the following language on the envelope:  
19 **"IMPORTANT LEGAL DOCUMENT – YOU MAY GET MONEY FROM A CLASS**  
20 **ACTION SETTLEMENT AS EXPLAINED IN THE ENCLOSED NOTICE."**

21 (f) The Parties each represent they do not have any financial interest in  
22 Phoenix Settlement Administrators or otherwise have a relationship with Phoenix Settlement  
23 Administrators that could create a conflict of interest. TMaG shall be responsible for paying all  
24 agreed Claims Administrator's Administration Fees upon presentation of invoices by the Claims  
25 Administrator, up to the agreed-upon maximum amount of \$10,000.

26 (g) TMaG shall also be responsible for paying over to the Claims  
27 Administrator at such times as requested by the Claims Administrator those amounts necessary to  
28 enable the Claims Administrator to pay Participating Class Members.

1 (h) The Claims Administrator shall regularly report to the Parties, in  
2 written form, the substance of the work performed, the basis for any denial of a claim, and the  
3 total amount of Claims approved for payment and/or paid.

4 (i) The Claims Administrator will submit to the Court, in conjunction  
5 with the motion for Final Approval, a declaration providing, among other things, the number of  
6 Notice Packets it mailed to the class, the number re-mailed, the number of Notice Packets  
7 ultimately undeliverable, the number of requests for exclusion received, the number of objections  
8 received, the number of Claims Forms received, the number of defective Claims Forms received  
9 and the efforts to cure made, the number of disputed claims received and how they were resolved,  
10 the total of its charges for services rendered, and the anticipated future charges beyond the date of  
11 the Final Approval Order.

12 (j) Notice By First-Class Mail. Within thirty (30) days after entry of  
13 the Preliminary Approval Order as provided in this Agreement, the Claims Administrator shall  
14 send a copy of a Notice of Pendency and Settlement of Class Action; Settlement Hearing; and  
15 Claim, Objection, and Exclusion Procedures ("Notice") (Exhibit 2), together with a Claim Form  
16 (Exhibit 3), to all Class Members via First Class regular U.S. mail, using the most current mailing  
17 address information for Class Members as provided by TMaG to the Claims Administrator from  
18 TMaG's payroll data. Prior to mailing, the Claims Administrator will perform one search on the  
19 National Change of Address Database to update or correct for any known or identifiable address  
20 changes. Any Notices returned to the Claims Administrator as non-delivered before the Claim  
21 Deadline specified below, shall be sent to the forwarding address that will be provided. In the  
22 event there is no forwarding address, the Claims Administrator will perform a skip trace. In the  
23 event the procedures in this paragraph are followed and the intended recipient of a Notice still  
24 does not receive the Notice, the intended recipient shall remain a Class Member and will be  
25 bound by all terms of the Settlement and any Final Judgment entered by the Court if the  
26 Settlement is approved by the Court. Class Members will have forty-five (45) days in which to  
27 submit a valid and timely Claim Form.  
28



1 (k) Procedure for Objecting to or Requesting Exclusion From Class  
2 Action Settlement.

3 (i) Procedure for Objecting. The Notice shall provide  
4 that any Class Member may appear at the Settlement Hearing and may object or express the  
5 Member's views regarding the Settlement, and may present evidence and file briefs or other  
6 papers, that may be proper and relevant to the issues to be heard and determined by the Court as  
7 provided in the Notice. However, any Class Member that wishes to submit a written objection  
8 and have it considered by the Court must do so on or before 45 days after the Notice Date, and  
9 that person must serve by hand or by first class mail written objections and copies of any papers  
10 and briefs in support of their position and verification of their membership in the Class upon: (1)  
11 Ross H. Hyslop, Esq., Pestotnik LLP, 501 W. Broadway, Suite 1025, San Diego, CA 92101; and  
12 (2) William V. Whelan, Esq. Solomon Ward Seidenwurm & Smith, LLP, 401 B Street, Suite  
13 1200, San Diego, CA 92101, and must file the objections, papers and briefs with the Clerk of this  
14 Court. In order to be valid, the papers must be filed with the Clerk of this Court and received by  
15 all of the above counsel on or before 45 days after the Notice Date. Any Class Member may  
16 make oral objections at the Settlement Hearing.

17 (ii) Procedure for Requesting Exclusion. The Notice  
18 shall provide that Class Members who wish to exclude themselves from the Class must submit a  
19 written statement requesting exclusion from the Class on or before the Objection/Exclusion  
20 Deadline Date. Such written request for exclusion must contain the name, address, telephone  
21 number, and last four digits of the Social Security number of the person requesting exclusion, and  
22 the location and years of his or her employment by TMaG; must be signed by the Class Member  
23 requesting exclusion; must be returned by mail to the Claims Administrator at a specified  
24 address; and must be postmarked on or before the Objection/Exclusion Deadline Date. The date  
25 of the postmark on the return mailing envelope shall be the exclusive means used to determine  
26 whether a request for exclusion has been timely submitted. Any Class Member who opts out of  
27 the Class will not be entitled to any recovery under the Settlement and will not be bound by the  
28 Settlement or have any right to object, appeal, or comment on the Settlement. Class Members

1 who fail to submit a valid and timely request for exclusion on or before the Objection/Exclusion  
2 Deadline Date shall be bound by all terms of the Settlement and any Final Judgment entered in  
3 this Class Action if the Settlement is approved by the Court, regardless of whether they have  
4 requested exclusion from the Settlement. No later than ten (10) days after the exclusion deadline,  
5 the Claims Administrator shall provide TMaG's Counsel and Class Counsel with a complete list  
6 of all Class Members who have timely requested exclusion from the Class, along with the number  
7 of valid Claim Forms received. The Request for Exclusion deadline shall be forty-five (45) days  
8 from the date the Notice is first mailed.

9 (l) No Solicitation of Settlement Objections or Exclusions. The Parties  
10 agree to use their best efforts to carry out the terms of this Settlement. At no time shall any of the  
11 Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written  
12 objections to the Settlement or requests for exclusion from the Settlement Class, or appeal from  
13 the Court's Final Judgment.

14 (m) Option to Terminate Settlement. If, after the Objection/Exclusion  
15 Deadline Date and before the Settlement Hearing referenced in Paragraph 15 below, persons who  
16 otherwise would be members of the Class have filed with the court timely requests for exclusion  
17 from the Class in accordance with Paragraph 14(k) above, and such persons total in number  
18 greater than 10% of all Class Members, TMaG shall have, in its sole discretion, the option to  
19 terminate this Settlement, whereupon this Agreement will be null and void for all purposes and  
20 may not be used or introduced in further litigation. Provided, however, that TMaG may only  
21 exercise such termination within ten (10) business days of the Objection/Exclusion Deadline  
22 Date, by providing written notice to Class Counsel.

23 **15. Final Settlement Approval Hearing and Entry of Final Judgment.**

24 Upon expiration of the Objection/Exclusion Deadline Date, with the Court's permission, a  
25 Settlement Hearing shall be conducted to determine final approval of the Settlement along with  
26 the amount properly payable for: (i) attorneys' fees and costs; (ii) Class Representative's  
27 Incentive Award; and (iii) cost of administration. Upon final approval of the Settlement by the  
28 Court at or after the Settlement Hearing, the Parties shall present a Final Judgment ("Final

1 Judgment") (attached as Exhibit 5) to the Court for its approval. After entry of the Final  
2 Judgment, the Court shall have continuing jurisdiction with respect to the interpretation,  
3 implementation, and enforcement of the terms of this Agreement and all orders and judgments  
4 entered in connection with this Agreement, and the parties and their counsel submit to the  
5 jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the settlement  
6 embodied in this Agreement, and all orders and judgments entered in connection with this  
7 Agreement.

8 In the event: (i) more than 10% of the Class Members submit valid opt-out request forms  
9 per Paragraph 14(m) and TMaG elects to void this Agreement; (ii) the Court does not enter the  
10 Order specified in this Agreement; (iii) the Court does not finally approve the Settlement as  
11 provided in this Agreement; (iv) the Court does not enter a Final Judgment as provided in this  
12 Agreement which becomes final as a result of the occurrence of the Effective Date; or (v) the  
13 Settlement does not become final for any other reason, this Settlement Agreement shall be null  
14 and void and any order or judgment entered by the Court in furtherance of this Settlement shall  
15 be treated as void. In such a case, the Parties and any funds to be awarded under this Settlement  
16 shall be returned to their respective statuses as of the date and time immediately prior to the  
17 execution of this Agreement, and the Parties shall proceed in all respects as if this Settlement  
18 Agreement had not been executed, except that any fees already incurred by the Claims  
19 Administrator shall be paid for by TMaG and shall not be repaid to TMaG.

20 In the event an appeal is filed from the Court's Final Judgment, or any other appellate  
21 review is sought prior to the Effective Date, administration of the Settlement shall be stayed  
22 pending final resolution of the appeal or other appellate review.

23 (a) Procedure for Payment of Settlement Awards. Except for Class  
24 Members who submit valid and timely requests for exclusion as provided in this Agreement, all  
25 Class Members who have submitted a valid and timely Claim Form will receive a Settlement  
26 Award from TMaG, distributed by the Claims Administrator. The Claim Form shall include  
27 instructions on how to submit the form, and shall notify Class Members that the Claim Form  
28 must be completed, signed, and returned by mail no later than forty-five (45) days after the date

1 the Claim Form was mailed (the "Claim Deadline") for a Class Member to be eligible to receive  
2 any Settlement Award. The date of the postmark on the return envelope shall be the exclusive  
3 means used to determine whether a Class Member has "timely" returned his/her Claim Form on  
4 or before the Claim Deadline. Claim Forms received by the Claims Administrator that have been  
5 postmarked after the Claim Deadline shall be disregarded. For purposes of this Agreement, a  
6 Claim Form shall be deemed "valid" only if: (i) the Class Member has provided on the Claim  
7 Form his or her name, last four digits of the Social Security number, and telephone number; (ii)  
8 the Class Member has dated and signed the Claim Form; and (iii) the name and last four digits of  
9 the Social Security number provided by the Class Member on the Claim Form match TMaG's  
10 records as provided to the Claims Administrator. The name and the last four digits of the Social  
11 Security number provided by the Class Member will be deemed to match TMaG's records only if:  
12 (i) both the first name and the last name and the last four digits of the Social Security number  
13 provided by the Class Member match TMaG's records; (ii) the first name and the last four digits  
14 of the Social Security number provided by the Class Member match TMaG's records and it  
15 appears the last name has been changed as a result of a change in marital or domestic partner  
16 status; or (iii) the last four digits of the Class Member's Social Security number and last name  
17 matches TMaG's records and the first name provided is either a nickname or a shortened or  
18 lengthened version of the name that appears in TMaG's records. If a Class Member's Claim Form  
19 is defective as to any of these three requirements, the Class Member shall be given an opportunity  
20 to cure the defect(s). Any such Claim Form shall be returned to the Class Member, who will be  
21 informed of the defect(s). The Class Member will be given fifteen (15) days from the date the  
22 Claim Form was mailed back to the Class Member within which to cure the defect(s) and return  
23 the Claim Form to the Claims Administrator. If the revised Claim Form is not postmarked within  
24 that fifteen-day period, it shall be deemed untimely and the claim will be rejected. Although  
25 Class Members who do not submit valid and timely Claim Forms shall not receive a Settlement  
26 Award, such persons shall nonetheless be members of the Class and will be bound by all terms of  
27 the Settlement and any Final Judgment entered in this Class Action if the Settlement is approved  
28 by the Court. After the conclusion of the defect cure period, the Claims Administrator will send a

1 Notice of Denied Claim form to any Class Member who had submitted a Claim Form that was  
2 not timely and/or not valid, stating the reason the claim was denied.

3 (b) Settlement Awards for Participating Class Members shall be paid  
4 pursuant to the settlement formula set forth in this Agreement within fourteen (14) days after the  
5 Effective Date. Plaintiff's Counsel's, TMaG's, and the Claims Administrator's determination of  
6 eligibility for, and the amounts of, any Settlement Awards under the terms of this Agreement,  
7 shall be conclusive, final and binding on all Parties, including all Participating Class Members.  
8 Any checks paid to Participating Class Members shall remain valid and negotiable for one  
9 hundred eighty (180) days from the date of their issuance and may thereafter automatically be  
10 canceled if not cashed by a Participating Class Member within that time, at which time the  
11 Settlement Class Member's claim will be deemed void and of no further force and effect. Any  
12 balance remaining in any bank account created by the Claims Administrator shall be subject to a  
13 cy pres award paid to Class Counsels' and TMaG's choice of recipients. Administration of the  
14 Settlement shall be completed on or before the date two hundred and ten (210) days after the  
15 Effective Date. Upon completion of the administration of the Settlement, the Claims  
16 Administrator shall provide written certification of such completion to the Court and counsel for  
17 all Parties, as provided in this Agreement.

18 (c) Administration Costs. All of TMaG's own legal fees, costs, and  
19 expenses incurred in this Action shall be borne by TMaG. The Parties agree to cooperate in the  
20 Settlement administration process and to make all reasonable efforts to control and minimize the  
21 costs and expenses incurred in administration of the Settlement.

22 **16. No Impact on Employee Benefits.** The Settlement Awards paid to the  
23 Class Representative or other Participating Class Members shall be deemed not to be pensionable  
24 earnings and shall not have any effect on the eligibility for, or the calculation of, any of the  
25 employee benefits (e.g., vacations, holiday pay, retirement plans, etc.) of the respective Class  
26 Representative or Participating Class Members. The Parties agree that any Settlement Awards to  
27 Class Representative or other Participating Class Members under the terms of this Agreement do  
28 not represent any modification of their previously credited hours of service or other eligibility

1 criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by  
2 TMaG. Further, any Settlement Awards or Incentive Award shall not be considered  
3 "compensation" in any year for purposes of determining eligibility for, or benefit accrual within,  
4 an employee pension benefit plan or employee welfare benefit plan sponsored by TMaG.

5           **17. Taxation.** The Class Representative and Participating Class Members  
6 represent and warrant that they understand that it is their sole obligation to pay appropriate  
7 federal, state, and local income taxes, if any, on any amounts they receive under this Agreement  
8 that lawfully qualify as taxable income. For its part, TMaG represents and warrants that it will  
9 pay the employer's share of appropriate federal, state, and local income taxes, if any, on any  
10 amounts that Participating Class Members receive under this Agreement, but only as to that  
11 portion deemed/calculated as the Net Wage Component, as defined in Section H.8(c) hereof.

12           Neither the Parties nor their respective counsel provide or purport to provide any tax  
13 advice to the Class Representative or Participating Class Members in connection with this  
14 Agreement or otherwise. The Parties agree they shall not rely upon any terms of this Agreement  
15 for the purpose of determining or avoiding federal, state, or local tax obligations.

16           To the extent any tax returns must be filed, the Claims Administrator shall also cause to  
17 be timely and properly filed all informational and other tax returns, if any, necessary with respect  
18 to the Settlement Fund. Such returns shall be consistent with this paragraph. The Parties do not  
19 believe that the Settlement Fund will generate any taxable income, as no segregated Settlement  
20 Fund will be created. However, if any taxable income is generated by the Settlement Fund, in all  
21 events the tax returns filed shall reflect that all taxes payable on the taxable income of the  
22 Settlement Fund, if any, shall be paid by TMaG. Any expenses consisting of the expenses and  
23 costs incurred in connection with the operation and implementation of this paragraph (including,  
24 without limitation, reasonable expenses of tax attorneys, accountants or other designees retained  
25 by TMaG and/or the Claims Administrator as required for the preparation and filing of tax returns  
26 described in this paragraph) shall be treated as, and considered to be, a cost of administration of  
27 the Settlement and paid by TMaG.  
28

1                   18.     Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR  
2 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY  
3 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER  
4 PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS  
5 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR  
6 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS  
7 INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE  
8 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN  
9 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31  
10 C.F.R. PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED  
11 EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX  
12 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS  
13 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE  
14 RECOMMENDATION OF ANY OTHER PARTY, OR ANY ATTORNEY OR ADVISOR TO  
15 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY  
16 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY  
17 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE  
18 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER  
19 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY  
20 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF  
21 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE  
22 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY  
23 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS  
24 AGREEMENT.

25                   19.     Privacy of Documents and Information. The Class Representative and  
26 her counsel agree that none of the documents and information provided to them by TMaG shall  
27 be used for any purpose other than prosecution of this Class Action. TMaG agrees that the  
28 identities of those Class Members who submit Claim Forms will only be disclosed to

1 legal/executive level personnel, human resources personnel, finance personnel and independent  
2 auditors on a “need to know” basis, and in no event will be disclosed to the direct supervisor of  
3 any Class Member.

4           **20. Publicity.** Neither the Class Representative nor Plaintiff’s Counsel shall  
5 hold any press conference related in any way to the Settlement, but shall not be otherwise  
6 restricted from speaking publicly, electronically, or privately about the actual terms of the  
7 Settlement, as stated in this Agreement.

8           **21. No Admission By the Parties.** TMaG and the Released Parties deny any  
9 and all claims alleged in this Class Action and deny all wrongdoing whatsoever. This Agreement  
10 is not a concession or admission, and shall not be used against TMaG or any of the Released  
11 Parties as an admission or indication with respect to any claim of any fault, concession, or  
12 omission by TMaG or any of the Released Parties. Whether the Settlement is finally approved,  
13 neither the Settlement, nor any document, statement, proceeding or conduct related to this  
14 Agreement, nor any reports or accounts of this Agreement, shall in any event be:

15                   (a) construed as, offered, or admitted in evidence as, received as, or  
16 deemed to be evidence for any purpose adverse to the Released Parties, including, but not limited  
17 to, evidence of a presumption, concession, indication, or admission by any of the Released Parties  
18 of any liability, fault, wrongdoing, omission, concession, or damage; or

19                   (b) disclosed, referred to, or offered or received in evidence against any  
20 of the Released Parties, in any further proceeding in the Class Action, or any other civil, criminal,  
21 or administrative action or proceeding except for purposes of settling this Class Action pursuant  
22 to this Agreement.

23           **22. Exhibits and Headings.** The terms of this Agreement include the terms set  
24 forth in any attached Exhibits 2-5, which are incorporated by this reference as though fully set  
25 forth in this Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.  
26 The descriptive headings of any paragraphs or sections of this Agreement are inserted for  
27 convenience of reference only and do not constitute a part of this Agreement.



1                   23.     Interim Stay of Proceedings. The Parties agree to hold in abeyance all  
2 proceedings in the Class Action, except such proceedings necessary to implement and complete  
3 the Settlement, pending the Settlement Hearing to be conducted by the Court.

4                   24.     No Retaliation. TMaG will not take any retaliatory action against any  
5 Class Member who participated in the Settlement.

6                   25.     Amendment or Modification. This Agreement may be amended or  
7 modified only by a written instrument signed by counsel for all Parties or their successors-in-  
8 interest.

9                   26.     Entire Agreement. This Agreement and any attached Exhibits constitute  
10 the entire agreement among these Parties, and no oral or written representations, warranties or  
11 inducements have been made to any Party concerning this Agreement or its Exhibits other than  
12 the representations, warranties, and covenants contained and memorialized in such documents.

13                  27.     Authorization to Enter Into Settlement Agreement. Counsel for all  
14 Parties warrant and represent they are expressly authorized by the Parties whom they represent to  
15 negotiate this Agreement and to take all appropriate action required or permitted to be taken by  
16 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other  
17 documents required to effectuate the terms of this Agreement. The Parties and their counsel will  
18 cooperate with each other and use their best efforts to effect the implementation of the  
19 Settlement. In the event the Parties are unable to reach agreement on the form or content of any  
20 document needed to implement the Settlement, or on any supplemental provisions that may  
21 become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of  
22 the Court to resolve such disagreement. The person signing this Agreement on behalf of TMaG  
23 represents and warrants that he or she is authorized to sign this Agreement on behalf of TMaG.

24                  28.     Binding on Successors and Assigns. This Agreement shall be binding  
25 upon, and inure to the benefit of, the successors or assigns of the Parties, as previously defined.  
26 TMaG may assign this Agreement and delegate all of its duties under this Agreement to any  
27 successor or assign including without limitation any person or entity acquiring more than fifty percent  
28 of its TMaG's outstanding ownership interests, all or substantially all of its material business assets,

1 or all or substantially all of the material business assets of any business unit or division, effective  
2 immediately upon written notice to the Class Representative and her attorneys. TMaG may assign this  
3 Agreement without the consent of the Class Representative or her attorneys. Upon such an  
4 assignment, this Agreement will be binding upon and will inure to the benefit of such assignee.

5           **29. California Law Governs.** All terms of this Agreement and the Exhibits  
6 shall be governed by and interpreted according to the laws of the State of California and the  
7 procedures of the Court.

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

12           **31. Cooperation and Drafting.** Each of the Parties has cooperated in the  
13 drafting and preparation of this Agreement. Hence, in any construction made to this Agreement,  
14 the same shall not be construed against any of the Parties.

15           **32. Invalidity of Any Provision.** Before declaring any provision of this  
16 Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest  
17 extent possible consistent with applicable precedents so as to define all provisions of this  
18 Agreement valid and enforceable. The provisions of this Agreement are severable. To the extent  
19 any provision is deemed unlawful, to the extent possible, such provision shall be severed and the  
20 remainder of the Agreement shall remain valid and enforceable.

21           **33. Defense.** To the extent permitted by law, this Agreement may be pleaded  
22 as a full and complete defense to, and may be used as the basis for an injunction against, any  
23 action, suit, or other proceedings that may be instituted, prosecuted, or attempted with respect to  
24 the Released Claims in breach of or contrary to this Settlement.

25           **34. Class Representative's Waiver of Right to be Excluded and Object.**  
26 The Class Representative agrees to sign this Agreement and by signing this Agreement is bound  
27 by its terms and further agrees not to request to be excluded from the Class and agrees not to  
28 object to any of the terms of this Agreement. Non-compliance by the Class Representative with

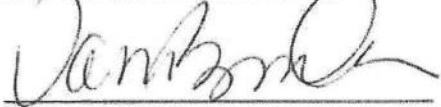
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this paragraph shall be void and of no force or effect. Any such request for exclusion or objection shall therefore be void and of no force or effect.

35. **Enforcement.** The Parties agree this Agreement shall be enforceable by the Court pursuant to Section 664.6 of the California Code of Civil Procedure, and the Court shall retain exclusive and continuing jurisdiction of this Class Action over all Parties and Class Members to interpret and enforce the terms, conditions, and obligations of the Settlement. The Class Representative, Class Members, and TMaG hereby submit to the personal and exclusive jurisdiction of the Court for purposes of interpreting, implementing and enforcing the Settlement embodied in this Agreement and all orders and judgments entered in connection therewith. The prevailing party in any action or proceeding to enforce this Agreement or otherwise concerning the terms of the settlement of the Class Action shall be awarded his, her, or its costs and attorneys' fees.

Dated: November 29, 2016

CLASS REPRESENTATIVE:




Vanessa Bulcao

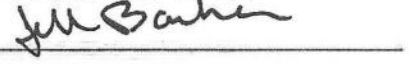
Dated: November 30, 2016

NAMED DEFENDANT:

Taylor Made Golf Company, Inc.

By: 

Name: William S. Reimus  
Title: Sr. Vice President and General Counsel




By: Jeff Barker  
Name: Jeff Barker  
Title: CFO

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**APPROVED AS TO FORM:**

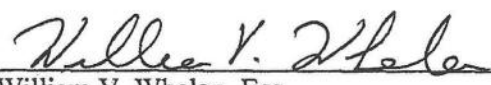
Dated: November 21, 2016

PESTOTNIK LLP

By:   
\_\_\_\_\_  
Ross H. Hyslop, Esq.  
*Attorneys for Plaintiff Vanessa Bulcao on behalf of herself, the proposed class(es), all others similarly situated, and on behalf of the general public*

Dated: November 30, 2016

SOLOMON WARD SEIDENWURM & SMITH LLP

By:   
\_\_\_\_\_  
William V. Whelan, Esq.  
*Attorneys for Defendant Taylor Made Golf Company, Inc. d/b/a TaylorMade-adidas Golf Company*