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5 on behalf of herself, the proposed class(es),
all others similarly situated, and on behalf
6 of the general public

7 THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF SAN DIEGO

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

11 Plaintiff,

12 v.

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

15 Defendants.

Case No. 37-2015-00028124-CU-OE-CTL

**DECLARATION OF ROSS H. HYSLOP
IN SUPPORT OF PLAINTIFF
VANESSA BULCAO'S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

[IMAGED FILE]

[CCP § 382 & CRC Rule 3.769]

Date: December 16, 2016
Time: 1:30 p.m.
Judge: Hon. Timothy Taylor
Dept: 72
Trial Date: Not Set

Unlimited Civil Case

Complaint Filed: August 19, 2015
Amended Complaint Filed: March 7, 2016

21 I, Ross H. Hyslop, declare:

22 1. I am a partner at the law firm of Pestotnik LLP, counsel for Plaintiff Vanessa
23 Bulcao in the above-referenced matter, and a member of the Bar of this Court. I make each of the
24 statements below based on my personal knowledge, and if called as a witness, I could and would
25 competently testify as to their truthfulness.

26 2. I submit this declaration in support of the Motion for Preliminary Approval of
27 Class Action Settlement by Plaintiff Vanessa Bulcao, on behalf of herself, the proposed classes
28 and all others similarly situated.

1 **A. INTRODUCTION**

2 3. This is a putative class action lawsuit filed by Plaintiff Vanessa Bulcao (“Plaintiff”)
3 against her former employer, Defendant Taylor Made Golf Company, Inc. d/b/a TaylorMade-
4 adidas Golf Company (“TMaG”). The lawsuit alleges TMaG violated various wage and hour laws
5 and regulations, and seeks class action status. After 15 months of intensive investigation and
6 litigation, the parties have reached a provisional class action settlement with the assistance of
7 mediator and retired Superior Court Judge Steven R. Denton. Plaintiff seeks preliminary approval
8 of the proposed settlement through this motion.

9 **B. AUTHENTICATION OF EXHIBITS**

10 4. Attached hereto as **Exhibit A** is a true and correct copy of a Stipulation and
11 Settlement of Class Action Claims, executed by and between Plaintiff Vanessa Bulcao
12 (“Plaintiff”) and Defendant Taylor Made Golf Company, Inc. d/b/a TaylorMade-adidas Golf
13 Company (“TMaG”). Attached to Exhibit A are five (5) exhibits: (a) Plaintiff’s First Amended
14 Complaint; (b) a proposed Class Notice; (c) a proposed Claim Form; (d) a proposed Preliminary
15 Approval Order; and (e) a proposed Final Judgment.

16 5. Attached hereto as **Exhibit B** is a true and correct copy of a quote from Phoenix
17 Settlement Administrators (“Phoenix”), as obtained by defense counsel, for the third party
18 administration of the proposed class action settlement in this action. Phoenix quoted a “will not
19 exceed” price of \$9,250 for all settlement administration services to be performed, provided the
20 Court approves of using Phoenix for settlement administration. Defense counsel also solicited
21 quotes from other potential third party class action administrators. Based on the other quotes I
22 received from defense counsel for third party class action administration services, Phoenix was the
23 lowest quote, by several thousand dollars, for the same services.

24 **C. CASE BACKGROUND AND PREVIEW OF KEY LEGAL ISSUES**

25 6. TMaG is a golf club, golf equipment, and golf accessory company headquartered in
26 the County of San Diego, California. *See, e.g.,* <http://taylormadegolf.com/>. Plaintiff is a resident
27 of California, and was employed in California by TMaG as a non-exempt executive/administrative
28 assistant. Plaintiff was hired by TMaG on or about February 11, 2015, and was involuntarily

1 terminated on or about May 19, 2015. Plaintiff's putative class action complaint was filed against
2 TMaG on August 19, 2015.

3 7. Plaintiff's complaint alleges that, during the course of her employment, she was
4 subjected to various wage and hour and Labor Code violations by TMaG, including unlawful/non-
5 compliant meal and rest period policies and practices, unlawful forfeitures of earned but unpaid
6 meal and rest period premiums, unlawful/non-compliant and/or inaccurate wage statements, and
7 unlawful withholding of her final pay upon termination.

8 8. The complaint has been amended once, on March 7, 2016, and now alleges these
9 seven claims:

- 10 a. meal period violations (Labor Code §§ 226.7, 512; Industrial Welfare
11 Commission ("IWC") Wage Order No. 1-2001/8 C.C.R. § 11010);
- 12 b. rest break violations (Labor Code § 226.7; Wage Order No. 1-2001/8
13 C.C.R. § 11010);
- 14 c. failure to properly itemize pay stubs (Labor Code § 226(a));
- 15 d. failure to pay all wages due on termination (Labor Code § 203);
- 16 e. improperly obtained wage/general releases (Labor Code § 206.5);
- 17 f. unfair competition (Business & Professions Code § 17200 *et seq.*); and
- 18 g. PAGA violations (Labor Code § 2699 *et seq.*).

- 19 9. TMaG's alleged liability is primarily based on Plaintiff's allegations that TMaG:
20 a. established and maintained statutorily non-compliant meal period and rest
21 break policies;
- 22 b. failed to immediately pay meal period/rest break premiums to employees
23 when otherwise due;
- 24 c. failed to include earned but unpaid meal period/rest break premiums in its
25 wage statements;
- 26 d. failed to include meal period/rest break premiums in the final wages paid to
27 employees who separated from employment; and

1 e. presented employees with wage releases without paying them the wages
2 “concededly due” to them in the form of earned but unpaid meal period/rest
3 break premiums.

4 10. For purposes of this litigation, there were two key TMaG policies:

5 a. Meal Periods: As stated in its Employee Handbook, TMaG’s meal period
6 policy (which was in effect during the Class Period until March 2016) said:

7 [N]on-exempt Employees are entitled to a meal
8 period of not less than thirty (30) minutes for **time**
9 **worked of five (5) hours or more.** ... Non-
10 exempt Employees are entitled to a second meal
11 period of not less than thirty (30) minutes for a
12 work period of more than ten (10) hours per day.
13 [Emphasis added.]

11 b. Rest Breaks: As stated in its Employee Handbook, TMaG’s rest period
12 policy (which was in effect during the Class Period until March 2016) said:

13 Non-exempt Employees are entitled to a minimum
14 ten (10) minute rest period per every four hours of
15 time worked.

15 11. In contrast to these two key policies, which Plaintiff claimed were *facially*
16 improper under California, California law requires:

17 a. Meal Periods: California’s meal period rules require that “[n]o
18 employer shall employ any person for a work period of more than
19 five (5) hours without a meal period of not less than 30 minutes ...
20 .” *See, e.g.,* 8 C.C.R. § 11010(11)(A); Labor Code § 512(a). This
21 means that, absent waiver, “an employer’s obligation is to provide
22 a first meal period after no more than five hours of work and a
23 second meal period after no more than 10 hours of work.” *Brinker*
24 *Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1049.
25 Thus, California law requires that a meal break be provided *during*
26 the first five hours of an employee’s shift. *Brinker, supra*, 53
27 Cal.4th at 1048–1049. **In this respect, Plaintiff asserted**
28 **TMaG’s meal period policy facially required employees to**

1 ***complete five hours of work before they would be eligible to***
2 ***take a meal period, contrary to California law as stated in***
3 ***Brinker.***

4 b. Rest Breaks: “Every employer shall authorize and permit all
5 employees to take rest periods, which insofar as practicable shall
6 be in the middle of each work period. The authorized rest period
7 time shall be based on the total hours worked daily at the rate of
8 ten (10) minutes net rest time per four (4) hours *or major fraction*
9 *thereof.*” (Emphasis added) *See also*, Labor Code § 226.7(b).
10 Thus, California law requires employers to provide, as the
11 California Supreme Court held in *Brinker, supra*, “10 minutes rest
12 for shifts from three and one-half to six hours in length, 20 minutes
13 for shifts more than six hours up to 10 hours, 30 minutes for shifts
14 of more than 10 hours up to 14 hours, and so on.” *Brinker, supra*,
15 53 Cal.4th at 1029; *e.g.* 8 C.C.R. § 11010(12)(A). *See also*,
16 *Rodriguez v. E.M.E., Inc.* (2016) 246 Cal.App.4th 1027, 1037. **In**
17 **this respect, Plaintiff asserted that, by failing to give due**
18 **regard to the “or major fraction thereof” language, TMaG’s**
19 **rest period was facially non-compliant with California law**
20 **because it only “authorized and permitted” rest breaks for**
21 **complete (i.e., non-fractional) four hour increments (i.e., for**
22 **four hours of work, eight hours of work, twelve hours of work,**
23 **etc.).** *See, Brinker, supra*, 53 Cal.4th at 1033 (finding that
24 plaintiffs’ claim that employer adopted a uniform rest break policy
25 that failed to give full effect to the “major fraction” language of the
26 applicable Wage Order was the sort of claim “routinely, and
27 properly, found suitable for class treatment”).
28

1 12. In *Brinker, supra*, the California Supreme Court expressly acknowledged this
2 theory of liability, saying: “The theory of liability – that Brinker has a uniform policy, and that
3 that policy, measured against wage order requirements, allegedly violates the law – is by its nature
4 a common question eminently suited for class treatment.” *Brinker, supra*, 53 Cal.4th at 1040.

5 13. Under 8 C.C.R. § 11010(11)(D)/(12)(B) and Labor Code §§ 226.7(c) and 512(a),
6 the “remedy” for such violations is an “additional hour of pay” (*United Parcel Serv., Inc. v.*
7 *Superior Court* (2011) 196 Cal.App.4th 57, 70), which constitutes a “premium wage intended to
8 compensate employees,” as opposed to a penalty (*Murphy v. Kenneth Cole Prods., Inc.* (2007) 40
9 Cal.4th 1094, 1114).

10 14. *Brinker* also contained an important qualification, though, and one that is critical to
11 the risk assessment in any case of this nature. Specifically, *Brinker* held:

12 An employer’s duty with respect to meal breaks under both section 512,
13 subdivision (a) and Wage Order No. 5 is an obligation to provide a meal
14 period to its employees. The employer satisfies this obligation if it relieves
15 its employees of all duty, relinquishes control over their activities and
16 permits them a reasonable opportunity to take an uninterrupted 30–minute
17 break, and **does not impede or discourage them from doing so. ... On**
18 **the other hand, the employer is not obligated to police meal breaks and**
19 **ensure no work thereafter is performed.** Bona fide relief from duty and
20 the relinquishing of control satisfies the employer’s obligations, and work
21 by a relieved employee during a meal break does not thereby place the
22 employer in violation of its obligations and create liability for premium
23 pay under Wage Order No. 5, subdivision 11(B) and Labor Code section
24 226.7, subdivision (b).

19 *Brinker, supra*, 53 Cal.4th at 1040-1041 (emphasis added).

20 15. For its part, TMaG continually asserted and argued throughout the litigation that it
21 had never impeded, discouraged, or prevented its employees from taking compliant meal periods
22 and/or rest breaks. TMaG also continually asserted and argued that, even if its policies were
23 somehow non-compliant (which it denied), it had never *implemented* its policies in a manner that
24 deprived any employee of lawful meal periods or rest breaks. On this basis, TMaG reasoned that
25 that no employee had been “damaged” by its policies, and therefore that no employee was eligible
26 to recover any “premium pay.” These issues created heavy factual (and legal) disputes in the
27 litigation, as well as challenges for both sides. Class Counsel carefully considered these issues,
28 and others as described herein, as part of its risk analysis to determine whether settlement on the

1 terms proffered by this motion was a better alternative than continuing with risky and expensive
2 litigation that may not achieve an optimal result for the Class.

3 16. As Plaintiff learned in discovery, TMaG had never paid any premium wages to any
4 employee, ostensibly because no employee had ever been impeded, discouraged, or prevented
5 from taking compliant meal periods and/or rest breaks. Likely as a direct result of this lawsuit,
6 though, TMaG's has since changed its meal period, rest break, and premium pay policies.
7 Specifically: (a) TMaG's new meal period policy now provides meal periods to employees within
8 the first five hours of work, as required by *Brinker, supra*, 53 Cal.4th at 1048–1049; (b) TMaG's
9 new rest break policy now accounts for “major fraction[s]” of four hour work periods, and thus
10 authorizes and permits rest breaks on the schedule contemplated in *Brinker, supra*, 53 Cal.4th at
11 1029; and (c) TMaG's newly-enacted premium pay policy regularly pays its employees meal
12 period and/or rest break premiums if they have been impeded, discouraged, or prevented from
13 taking meal periods and/or rest breaks.

14 **D. DISCOVERY AND INVESTIGATION BY PLAINTIFF**

15 17. Before the action was filed, we conducted a substantial pre-filing investigation,
16 including factual and legal research/analysis of Plaintiff's claims. Since the inception of this
17 action in August 2015, TMaG has vigorously denied all of the allegations in their entirety. The
18 case has been actively investigated and litigated for well over 18 months. For example:

- 19 a. Plaintiff conducted substantial deposition discovery of TMaG, included
20 taking extensive, multi-day person most qualified (“PMQ”) depositions,
21 including deposing four TMaG employees – Marcie Faraimo, Tim Nau,
22 Amber Hagen, and Jennie Jagoda – on 16 detailed PMQ topics and
23 subtopics. During much of the putative class period, Ms. Faraimo – one of
24 TMaG's key PMQ witnesses produced on many of the 16 topics and
25 subtopics – held the position of Vice President of Global Human Resources
26 at TMaG, making her the highest ranking HR executive at the company and
27 therefore ultimately responsible for the development, implementation,
28

1 and/or enforcement of many of the same policies and procedures that
2 Plaintiff alleges were improper and/or unlawful.

3 b. Plaintiff's PMQ deposition notice also requested that TMaG produce
4 documents in 36 specific categories. The vast majority of TMaG's
5 document production in response to the PMQ deposition notice was
6 completed well in advance of the taking of the depositions, which allowed
7 me a sufficient amount of time to review and analyze TMaG's production,
8 prepare relevant questions, and create/organize exhibits.

9 c. Plaintiff also took the deposition of Jennie Jagoda (the lead HR
10 representative of TMaG) in her personal (non-PMQ) capacity. Ms. Jagoda
11 was directly involved in Plaintiff's termination and was also personally
12 responsible for coordinating a rather massive reduction in force at TMaG
13 (beginning approximately 2015) that resulted in the involuntary termination
14 as many as 150 or more putative class members, many of whom signed
15 general release agreements in exchange for additional compensation and/or
16 benefits.

17 18. Once the deposition transcripts were prepared, I reviewed and analyzed them in
18 detail, created notes, and made annotations.

19 19. Plaintiff also obtained substantial written discovery from TMaG, in multiple
20 document productions. Plaintiff's written discovery included: (a) Form Interrogatories; (b) 8
21 Special Interrogatories; (c) 81 Requests for Production of Documents; and (d) 52 Requests for
22 Admission. TMaG responded to all of Plaintiff's written discovery, and produced almost 2,200
23 pages of documents. Included in TMaG's document productions were, among other things, the
24 following:

- 25 a. Plaintiff's personnel, administrative, employment, time-keeping, phone, and
26 TMaG company store purchase records;
- 27 b. all of TMaG's records relating to Plaintiff's termination;

- 1 c. numerous email and text message communications relating to Plaintiff,
2 including those about her, as well as those by and between her, her
3 supervisors, her co-workers, and others;
- 4 d. all of TMaG's employee handbooks covering the putative class period;
- 5 e. all of TMaG's policies and procedures relating to:
- 6 i. meal periods;
- 7 ii. rest breaks;
- 8 iii. timekeeping by non-exempt personnel;
- 9 iv. payment of wages to non-exempt personnel;
- 10 v. termination and separation of employment, both voluntary and
11 involuntary;
- 12 vi. payment of final wages upon separation of employment;
- 13 vii. payment of severance and/or preparation of (proposed/potential)
14 severance agreements for departing employees;
- 15 viii. settlement and release agreements applicable to terminated
16 employees;
- 17 ix. accrual/payment of premium pay;
- 18 x. inclusion (or non-inclusion) and/or itemization (or non-itemization)
19 of premium pay on wage statements;
- 20 xi. employee codes of conduct;
- 21 xii. other policy/procedure documents related to Plaintiff's allegations.
- 22 f. electronic announcements, memos, emails, correspondence and/or notices
23 provided to the putative class members relating to TMaG's:
- 24 i. meal period and rest break policies, procedures, and practices;
- 25 ii. premium pay;
- 26 iii. payment of final wages; and
- 27 iv. work schedules.
- 28

- 1 g. work, meal-period, and/or rest break schedules for hundreds of putative
- 2 class members;
- 3 h. electronic time-keeping records;
- 4 i. job descriptions applicable to Plaintiff's position;
- 5 j. settlement and release agreements executed by over 60 class members;
- 6 k. documents supporting TMaG's denials of material allegations, and
- 7 affirmative defenses, as specified in TMaG's answer to Plaintiff's first
- 8 amended complaint;
- 9 l. documents supporting and/or referenced in TMaG's responses to Special
- 10 Interrogatories and/or Requests for Admission; and
- 11 m. other materials related to the allegations of Plaintiff's first amended
- 12 complaint.

13 20. I personally reviewed and analyzed all of TMaG's discovery responses and its
14 extensive production of documents. I also engaged in meet and confer efforts with TMaG's
15 counsel concerning the nature and breadth of TMaG's various document productions, as well as
16 TMaG's responses and objections to written discovery. Generally speaking, my meet and confer
17 efforts resulted in TMaG providing substantial additional documentation and/or information.

18 21. Plaintiff also initiated a stipulated "Belaire" notice process, which resulted in
19 Plaintiff obtaining the names and addresses of over 100 former employees of TMaG. As part of
20 our investigation, I personally conducted several interviews of former TMaG employees.

21 22. In addition, and in anticipation of settlement and mediation discussions, TMaG also
22 informally produced thousands of additional pages of documents, data, and/or information. For
23 example, among other materials, TMaG voluntarily produced the following for mediation and
24 settlement purposes:

- 25 a. thousands and thousands of pages of class member time records;
- 26 b. compensation information/data for putative class members, segregated by
- 27 job category/classification (*e.g.*, assembly, shipping, customer service, retail

- 1 and wholesale sales, executive assistant, design, finance, marketing, human
2 resources, operations, credit, etc.);
- 3 c. class member headcount data, including headcounts by year for the various
4 non-exempt personnel employed by TMaG in various job
5 categories/classifications, as referenced directly above;
- 6 d. termination dates and job classification/category for terminated class
7 members;
- 8 e. identity of class members who had signed releases upon termination of
9 employment;
- 10 f. and otherwise.

11 23. I personally reviewed and analyzed all of TMaG’s extensive informal production of
12 documents and data in anticipation of settlement/mediation discussions.

13 24. I also conducted – and continuously refined and updated – substantial legal
14 research on all case-related theories, which included the review and analysis of more than 200
15 appellate decisions relating to (among others): (a) class certification; (b) meal period violations
16 (Labor Code §§ 226.7, 512; Industrial Welfare Commission (“IWC”) Wage Order No. 1-2001/8
17 C.C.R. § 11010); (c) rest break violations (Labor Code § 226.7; Wage Order No. 1-2001/8 C.C.R.
18 § 11010); (c) failure to properly itemize pay stubs (Labor Code § 226(a)); (d) failure to pay all
19 wages due on termination (Labor Code § 203); (e) Labor Code § 206.5 violations; (f) unfair
20 competition (Business & Professions Code § 17200 *et seq.*); and (g) PAGA violations (Labor
21 Code § 2699 *et seq.*).

22 25. I also reviewed thousands of pages of court records at the courthouse, mainly
23 related to cases filed against or involving TMaG and/or its key witnesses, including Ms. Faraimo
24 and Ms. Jagoda.

25 26. For its part, TMaG took an all-day deposition of Plaintiff Vanessa Bulcao. (TMaG
26 also conducted numerous interviews of putative class members, many of which – as referenced
27 below – resulted in the preparation of declarations that were provided to us.) TMaG also issued
28 written discovery to Plaintiff, including: (a) 3 Special Interrogatories; and (b) 11 Requests for

1 Production of Documents. Plaintiff responded to all of TMaG's written discovery responses, and
2 produced all of the requested documents (almost 200 pages) in her possession, custody and
3 control.

4 27. As part of its defense efforts and strategy, and also as a precursor to mediation,
5 **TMaG obtained and produced to Plaintiff more than 50 detailed and varying declarations**
6 (from supervisors, co-workers, and employees that Plaintiff was seeking to represent) in support of
7 TMaG's legal and factual defenses, contentions and positions. Generally speaking, the overall gist
8 of the declarations, when taken as a whole, asserted that:

- 9 a. Plaintiff had not been denied her meal period and rest break rights, and was
10 never prohibited from taking meal periods or rest breaks;
- 11 b. Plaintiff had clocked out for meal periods on several occasions, and had
12 also left her desk for meal breaks and/or eaten meals with co-workers while
13 still clocked in;
- 14 c. Plaintiff was free to leave her desk to take, and did take, rest breaks;
- 15 d. TMaG had generous meal break and rest period policies that allowed non-
16 exempt employees to take more than adequate meal periods and rest breaks;
- 17 e. TMaG had a fun, low-key and easygoing work atmosphere that allowed
18 many of the putative class members significant discretion to engage in non-
19 work activities at TMaG's large campus, including an on-site gym and
20 cafeteria, and numerous golf related events, and that TMaG's relaxed work
21 environment carried over to its timekeeping practices such that numerous
22 employees were still "on the clock" (and being paid) even when engaging in
23 certain non-work activities;
- 24 f. TMaG did not deny meal breaks and/or rest periods to the declarants, nor
25 require that they take skip or postpone them, nor discourage or impede them
26 from taking them;
- 27 g. Although there were numerous instances in which meal breaks were not
28 *recorded* in TMaG's time records (so that it appeared as though a meal

1 break had not actually been *taken*), such most likely resulted from one or
2 more of the following: (i) the employee’s choice to work during their meal
3 periods; (ii) the employee’s failure to clock out for a meal period even if
4 taken; and/or (iii) TMaG allowing or tolerating “paid” (i.e., on the clock)
5 meal periods, particularly when employees were traveling on business
6 and/or working at golf tournaments and other events;

- 7 h. TMaG frequently allowed certain employees (including those in Plaintiff’s
8 position as executive assistant) to remain on the clock while taking meal
9 periods;
- 10 i. Most instances of potential non-compliance with meal and/or rest break
11 rules (*e.g.*, employees being scheduled for late meal periods by supervisors,
12 etc.) were promptly identified and remedied, or were isolated events;
- 13 j. Employees did not register any complaints with management to the effect
14 that they had been denied the ability to take meal periods or rest breaks;
- 15 k. TMaG maintained and enforced compliant meal period and rest break
16 policies, consistent with the requirements of California law; and
- 17 l. Plaintiff was not similarly situated with others she sought to represent.

18 **E. SETTLEMENT DISCUSSIONS**

19 28. Following the completion of the initial round of depositions, interrogatory
20 responses, and after substantial formal document productions had been completed, counsel for the
21 parties began discussing the possibility of a potential settlement. Defense counsel, Mr. William
22 Whelan, requested that I provide a letter analyzing and outlining Plaintiff’s theories of liability,
23 class certification, and damages issues. On February 18, 2016, I sent Mr. Whelan with a detailed,
24 20 page letter containing such an analysis, and requesting certain informal discovery for the
25 purpose of discussing a potential settlement. Mr. Whelan and I had a preliminary discussion about
26 that letter on February 19, 2016, wherein Mr. Whelan acknowledged receiving it and asked me
27 some questions about it.

1 29. Following my initial letter and our preliminary discussion, Mr. Whelan and I then
2 exchanged numerous detailed letters that outlined and described the parties' positions on various
3 legal and factual issues. It was clear to me that the parties had very conflicting views on the facts
4 and key legal issues. In part, such conflicting views were set forth in numerous detailed follow-up
5 letters discussing in detail the substance of plaintiff's claims and the defendant's responses and
6 related defenses, as referenced below:

<u>Author</u>	<u>Date</u>	<u>Number of Pages</u>
Mr. Hyslop	February 25, 2016	5
Mr. Whelan	March 21, 2016	5
Mr. Hyslop	March 24, 2016	6
Mr. Whelan	April 1, 2016	6
Mr. Hyslop	April 14, 2016	4
Mr. Hyslop	May 9, 2016	3
Mr. Hyslop	May 10, 2016	5
Mr. Whelan	June 29, 2016	33 (with declarations)

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16
17 30. In order to advance the ball towards a potential settlement and/or mediation, Mr.
18 Whelan and I also exchanged numerous emails, conducted telephone calls, and met in person on
19 April 19, 2016. We agreed to try and negotiate a potential settlement without having to involve a
20 mediator to save costs if possible. As part of this process, TMaG also provided to me exemplar
21 but voluminous paper time records (due to the unavailability of reasonably usable/obtainable
22 electronic or summary records). I personally reviewed and analyzed them, and it was an arduous
23 and extremely time-consuming process. Following the completion of the timecard review and
24 analysis, I developed a preliminary alleged exposure model.

25 31. On July 22, 2016, Messrs. Pestotnik, Winslow and I met in-person with Mr.
26 Whelan to further discuss liability and settlement. We provided him with a preliminary alleged
27 exposure model, and made a settlement demand. Mr. Whelan did not provide a counter-proposal
28 at the meeting.

1 32. While the parties were hopeful that a potential class action settlement might be
2 possible to achieve without the assistance of a professional mediator, the parties concluded that a
3 professional mediator would be necessary to achieve further progress. Thus, notwithstanding our
4 diligence, Mr. Whelan and I determined and agreed that, in order to explore the viability and/or
5 potential terms of a mutually acceptable class action settlement, we needed conduct mediation
6 with a professional mediator.

7 **F. MEDIATION**

8 33. Ultimately, we were able to schedule a mediation with the Honorable Steven R.
9 Denton (Ret.), who has experience in wage and hour claims, to take place on October 3, 2016.

10 34. In advance of the mediation, Plaintiff submitted a 23 page mediation brief, plus 16
11 pages of exhibits. TMaG submitted a mediation binder with a 15 page mediation brief, plus 6
12 exhibits comprising 218 pages. Among TMaG’s exhibits were over 40 declarations from putative
13 class members and 58 releases from class members that were signed after the lawsuit had been
14 filed. The parties exchanged their mediation briefs and exhibits in advance of the mediation.

15 35. TMaG made it very clear that, if the case did not settle, it would pursue the strategy
16 discussed in *Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal.App.4th 796, 801, wherein the
17 employer solicited and obtained releases directly from putative class members, thereby
18 undermining plaintiff’s case. In fact, TMaG represented in connection with mediation/settlement
19 discussions that 182 former employees (of a total of 381 former employees) had *already* signed
20 wage “releases” in connection with terminating their employment, and many more would be
21 sought.

22 36. The parties met with Judge Denton (Ret.) for an all-day mediation on October 3,
23 2016. Despite our diligence, we were unable to reach an agreement. At the end the day however,
24 we agreed that Judge Denton would develop a “mediator’s proposal,” which could be either
25 rejected or accepted by either or both sides. Under its terms, if one or both sides rejected the
26 proposal, neither side would be informed of the other’s decision.

27 37. On October 4, 2016, Judge Denton (Ret.) issued his “mediator’s proposal,” with an
28 acceptance/rejection deadline of noon on October 7, 2016. Both parties ultimately accepted the

1 mediator's proposal, and then proceeded to formally document the proposed settlement. Mr.
2 Whelan prepared the first drafts of the settlement-related documents that are attached hereto as
3 **Exhibit A**. The parties then exchanged a series of proposed redline revisions over the course of
4 several weeks, culminating in the final versions that were signed by both parties and their counsel.

5 **G. PROPOSED (STIPULATED) SETTLEMENT TERMS**

6 38. Subject to Court approval, and with the significant assistance of the Honorable
7 Steven R. Denton (Ret.), the parties have *provisionally* agreed to the following proposed class
8 action settlement:

- 9 a. TMaG will stipulate to certification of the following Class: All persons
10 who are or have been employed by TMaG as non-exempt employees (i.e.,
11 salaried non-exempt and/or hourly) in the State of California at any time
12 from August 11, 2011 through December 16, 2016 (the "Class Period").
- 13 b. **TMaG will create a "Settlement Fund" with a maximum possible value**
14 **of \$875,000**, plus its portion of any payroll taxes in connection with the
15 wage payments to participating class members.
- 16 c. Excluding its portion of payroll taxes, the Settlement Fund is the maximum
17 payment that TMaG will be obligated to make under the proposed
18 settlement, and which also includes, without limitation, all attorneys' fees
19 and costs, any incentive payment to the Class Representative, the costs of
20 settlement and claim administration, any post-settlement costs, and pre and
21 post-judgment interest.
- 22 d. If fewer than all eligible Settlement Class Members submit claims, any
23 monies unclaimed will be distributed to those eligible Class Members who
24 submit valid and timely claims based on the same formula as the initial
25 payments were determined on a pro rata basis. (Given that all putative class
26 members are either current or former employees, addresses for which are
27 largely known, there is a higher probability in this case that the vast
28 majority of them will submit claims.)

1 e. The Net Settlement Fund shall be the balance of the Settlement Fund
2 remaining after payments from the Settlement Fund for a \$5,000 payment to
3 the Labor and Workforce Development Agency (“LWDA”), attorneys’ fees,
4 legal costs, administration costs, and the incentive payment to the Class
5 Representative.

6 39. As noted, **TMaG will pay its share of any employer payroll taxes** associated
7 with the wage payments to participating Class Members.

8 40. According to TMaG, as of August 25, 2016 **the putative class contains**
9 **appropriately 685 employees**, consisting of 304 current and 381 former employees. If approved,
10 TMaG will update these numbers for the administrator.

11 41. In ¶ 14.H.7 of the Stipulation of Settlement, the parties have provisionally agreed to
12 the following breakdown of the \$875,000 common fund, subject to Court approval:

- 13 a. a guaranteed payment of \$577,500 – *i.e.*, the Net Settlement Fund – to those
14 members of the Settlement Class who submit valid and timely claim forms;
- 15 b. an attorneys’ fees award to Class Counsel of up to \$262,500 (*i.e.*, 30% of
16 the settlement fund, which percentage was proposed by Judge Denton
17 (Ret.), in his “mediator’s proposal”);
- 18 c. litigation costs payable to Class Counsel of up to \$15,000;
- 19 d. a Class Representative’s incentive award payable to Plaintiff Bulcao of up
20 to \$5,000;
- 21 e. a payment to the LWDA for Plaintiff’s PAGA claims under California
22 Labor Code §§ 2699 *et seq.* in an amount not to exceed \$5,000; and
- 23 f. claims administration expenses of up to \$10,000.

24 Each of these components are discussed in detail below.

25 **Class Notice**

26 42. Each Class Member will be sent a Notice (Exhibit 2 to the Stipulation of
27 Settlement) to his/her last known address in a mailing envelope that shall include the words
28 “TMaG Class Settlement” as part of the return address associated with the Claims Administrator,

1 and shall also include the following language on the envelope: “**IMPORTANT LEGAL**
2 **DOCUMENT – YOU MAY GET MONEY FROM A CLASS ACTION SETTLEMENT AS**
3 **EXPLAINED IN THE ENCLOSED NOTICE.**” *See*, Exhibit A, ¶ H.14(e).

4 43. Class Members will have Claim Forms mailed to them at their last known address,
5 as updated by the administrator through the NCOA database. *See*, Exhibit A, ¶ H.14(j).

6 44. Notices will be provided in English only, as TMaG represented that virtually all – if
7 not all – employees are fluent in or fully capable of reading an English notice, and that a notice in
8 Spanish is not necessary.

9 45. For any Notice Packets that are returned to the administrator as undeliverable, the
10 administrator will perform a skip trace, and then re-mail the Notice Packet to the new address.
11 *See*, Exhibit A, ¶ H.14(j).

12 Website

13 46. The administrator will also create and maintain a website, at which it will post
14 (when filed/available) at www.TMaGSettlement.com (if that domain is available – if not, a similar
15 but available domain), a complete copy of the Stipulation and Settlement Agreement of Class
16 Action Claims, the Class Notice, a blank Claim Form, Plaintiff’s Motion for Preliminary
17 Approval, the Preliminary Approval Order, Plaintiff’s Motion for Final Approval, Plaintiff’s
18 Motion for An Award of Attorneys’ Fees and Costs, and the Final Approval Order/Final
19 Judgment. *See*, Exhibit A, ¶ H.14(e). The Notice itself will also direct Class Members to the
20 website. *See*, Exhibit 2 as attached to Exhibit A, hereto. Thus, Class Members will be able to
21 determine, by going to the website, whether Final Approval was granted.

22 Plan of Allocation

23 47. As expressed in the Stipulation of Settlement, the **plan of allocation** among Class
24 Members is as follows (emphasis added):

25 All Class Members will be eligible to submit a claim for a ‘Settlement
26 Award’ (as defined below). If a Class Member submits a timely and
27 properly completed Claim Form (‘Claim Form’) (attached as Exhibit 3)
28 then the Class Member will be a ‘Participating Class Member.’ On
TMaG’s behalf, the Claims Administrator will pay Settlement Awards to
Participating Class Members. The gross amounts of these Settlement
Awards will be calculated by assigning a dollar value to each week of

1 work with TMaG. **In addition, Settlement Awards will be distributed**
2 **as follows: Class members who primarily worked in the Assembly,**
3 **Shipping, and regulated Customer Service departments will receive**
4 **25% more than other Class Members. Class Members who**
5 **previously signed releases with TMaG that specifically identified the**
6 ***Bulcao v. TMaG* lawsuit (including but not limited to Assembly,**
7 **Shipping, and regulated Customer Service Representative Employees)**
8 **will receive 30% of what would otherwise be their participation had**
9 **no release been executed. Class members who previously signed**
10 **releases with TMaG that did not specifically identify the *Bulcao v.***
11 ***TMaG* lawsuit (including, but not limited to Assembly, Shipping, and**
12 **regulated Customer Service representatives employees) will receive**
13 **60% of what they would have otherwise been paid had no release**
14 **been signed.** As used here, the term ‘primarily’ shall mean fifty-one
percent (51%) or more of workweeks worked by Participating Class
Members. The award will be based on the actual number of weeks
worked and partial workweeks will be counted as a fraction of a
workweek. The amount to be paid per week worked will be calculated by
dividing the \$577,500 maximum value of the Net Settlement Fund by the
number of weeks worked by all Class Members during the Class Period.
If less than 100% of all Class Members file Claim Forms, those
Participating Class Members who do file claim forms will share
proportionately in the settlement residual. TMaG shall calculate an
estimated amount to be paid per week no later than fourteen (14) days
after the date the Parties execute this Agreement and the Claims
Administrator shall calculate a final amount to be paid per week fourteen
(14) days after the close of the Claims Period.

15 See, Exhibit A, ¶ H.8(c).

16 48. These different allocations by category of Class Member were agreed upon
17 primarily for the following reasons:

- 18 a. First, the decision to allocate 25% more to employees who worked
19 primarily in “Assembly, Shipping, and regulated Customer Service
20 departments” was based on the fact that these employees had work and
21 meal schedules *imposed* on them by supervisors (as opposed to an employee
22 determining on his/her own, potentially in consultation with his/her
23 supervisor, when/if a meal period would be taken), and were more likely to
24 have been scheduled for late meal periods on occasion.
- 25 b. Second, for those employees who signed a release *after* the lawsuit was
26 filed that *specifically mentioned* the *Bulcao v. TMaG* lawsuit, the decision
27 to allocate only 30% of what would otherwise be their participation had no
28 release been executed was based on the probable enforceability of such

1 releases under *Aleman v. AirTouch Cellular* (2012) 209 Cal.App.4th 556,
2 578; *Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal.App.4th 796, 801; and
3 *Watkins v. Wachovia Corp.* (2009) 172 Cal.App.4th 1576, 1587.

4 c. Third, for those employees who signed a more “generic” release that did *not*
5 mention the *Bulcao v. TMaG* lawsuit, the decision to allocate to them 60%
6 of what they would have otherwise been paid had no release been signed
7 was based on the *possibility* that such releases *could* be considered valid
8 under the *Aleman*, *Chindarah*, and *Watkins* cases but *may* not be.

9 **Average Payout**

10 49. **The proposed “guaranteed payment of \$577,500” to the Settlement Class of**
11 **approximately 685 employees results in an average payout per Class Member of \$843 (i.e.,**
12 **$\$577,500 \div 685 = \843.07 .** However, since the payments will ultimately be calculated based on
13 the number of weeks each employee worked at TMaG within the Class Period (as calculated based
14 on the aggregate total of all weeks worked by all Class Members during the Class Period), those
15 employees with more seniority will – rightfully so – receive a much larger share than those who
16 may have only worked at TMaG for a few months. For example, although Plaintiff Bulcao will be
17 permitted to submit a Claim, her share will be comparatively small, as she only worked at TMaG
18 for a few months, from February 11, 2015 to May 19, 2015. As to Ms. Bulcao in particular, the
19 settlement also provides that, in conjunction with the proposed incentive payment of \$5,000, she
20 will settle any residual individual claims against TMaG in exchange for a general release.

21 50. To put the \$843.07 number into perspective, the average hourly rate for assembly
22 and shipping workers during the Class Period was, respectively, \$11.77 and \$12.44.¹ Under the
23 proposed allocation of settlement funds as referenced above, assembly and shipping workers (plus
24 regulated customer service workers) will receive a 25% increase in their pro rata share because –
25 as hourly workers who had rigid schedules imposed on them – they were more likely to have been
26 occasionally scheduled for meal periods *after* completing five hours of work. **Among all Class**

27 _____
28 ¹ Based upon compensation data provided by TMaG to Plaintiff, we calculated that the average
hourly rates paid to Class Members during the Class Period ranges from \$11.77 to \$27.42.

1 **Members, employees working in assembly and shipping positions with TMaG had the**
2 **highest average headcounts: 79 for assembly and 76.5 for shipping.**² Assembly and shipping
3 also had – by far – the highest number of terminations out of any category: 49 for assembly and 53
4 for shipping.

5 51. **With a 25% bump, the average payout per Class Member for assembly and**
6 **shipping workers would be \$1,053.84, which for an assembly worker who earned**
7 **\$11.77/hour equates to 89.53 hours of work.** However, because the final calculation for each
8 individual Class Member will be based on weeks of actual employment with TMaG, an assembly
9 worker who was employed by TMaG during the *entire* Class Period will receive *substantially*
10 *more* than \$1,053.84. On the flip side, this also means that an assembly worker who was only
11 employed by TMaG for two months during the Class Period, for example, will receive a relatively
12 small amount of money.

13 52. By contrast, for example, other non-exempt TMaG employees covered by the
14 proposed settlement had comparatively small average headcounts – design (4.5), executive admin
15 (8.5), finance (6.5), IT (5.5), marketing (11), operations (18), PGA (14.5), and retail (15).
16 According to TMaG, employees in the vast majority of these categories – design, executive admin,
17 finance, IT, marketing, operations, and PGA, for example – had comparatively flexible schedules
18 (not rigid schedules imposed on them by supervisors) that (according to TMaG and as referenced
19 in many of its declarations) gave them the freedom to choose when and if they would take meal
20 and rest breaks, and for how long. As to these people, TMaG claimed that – even if its meal and
21 rest policies were somehow defective or improper, a contention TMaG hotly disputed – such
22 people had suffered no harm because TMaG did not implement or enforce its meal period and rest
23 break policies in a manner that deprived them of lawful meal periods and/or rest breaks.

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27 ² “Average headcount” refers to the number of people employed in a position at any given time;
28 therefore, due to turnover, the actual number of Class Members in such categories will necessarily
be higher.

1 **Retail Employees**

2 53. According to TMaG and my own independent review of the exemplar records I
3 obtained from TMaG for settlement purposes, retail employees (unlike other employees) were
4 actually on an adidas™ time-keeping and payroll system (not the same TMaG time-keeping and
5 payroll system that applied to the other categories of employees)³ that *automatically* paid them
6 premium pay when/if they clocked out for a meal after completing five hours of work, or if they
7 clocked back in before 30 minutes had expired.

8 54. Nevertheless, for retail employees, my examination of exemplar time-keeping and
9 payroll/paystub records did reveal certain instances in which retail employees were not properly
10 paid with premium pay. For example, I noticed instances in which retail employees worked more
11 than 6 hours of work but were not paid a premium payment. Given how the adidas™ premium
12 pay process was explained to me in the deposition of Jennie Jagoda, I expected to see premium
13 payments made in such instances, but that was not the case with the exemplar records I was
14 reviewed.

15 55. On the flip side, however, the adidas™ automatic payment system may have been
16 *overly* generous to employees in certain respects, because – for example – I noticed that in several
17 instances it resulted in the automatic payment of an extra hour of pay even when an employee
18 clocked out for a 28 or 29 minute meal period, but not for the full 30 minutes. As another
19 example, I also saw instances in which an employee received premium pay for clocking out a
20 minute or two beyond the fifth hour of work, which *Brinker* held “the statute requires a first meal
21 period no later than the start of an employee’s sixth hour of work” (*Brinker, supra*, 53 Cal.4th at
22 1041), meaning that clocking out at the *beginning* of the sixth hour would not be considered a
23 violation under *Brinker*. This type of automatic payment system programming can result in
24 employees “gaming” the system by clocking back in a few minutes too early (*i.e.*, before the
25 expiration of a full 30 minutes) or a few minutes too late (*i.e.*, after completing five hours of work)
26 even though they may never have been truly prevented, discouraged, or impeded from taking a full

27 _____
28 ³ Even so, retail employees were considered employees of TMaG, as indicated on their paystubs.

1 30 minute meal break, as *Brinker* would require to establish a violation. *Brinker, supra*, 53
2 Cal.4th at 1040.

3 56. Further, because TMaG only opened its one or two retail stores in 2015, the
4 number of workweeks associated with retail workers is expected to be comparatively low,
5 particularly considering that the average headcount for such category was also relatively low (15).
6 In any case, we included retail employees in the settlement due to the anomalies I found in their
7 premium payment process, so that TM.

8 **Fairness of Allocations and Unavailability of Electronic Database**

9 57. The parties have attempted to be as fair as possible in the allocations without the
10 necessity of undertaking an exceptionally detailed, cumbersome and expensive review of each
11 Class Members actual time records, since that type of “forensic accounting” would not only create
12 a logistical nightmare for the administrator but – due to the expense involved in such an
13 undertaking – it would also likely consume a substantial portion of the Net Settlement Fund.
14 Moreover, TMaG represented in settlement discussions (as part of Plaintiff’s request for informal
15 discovery) that it was *unable* to obtain a complete electronic database of its time records from its
16 timekeeping vendor, ADP. (Consequently, Plaintiff was only able to obtain exemplar time-
17 keeping reports, consisting of thousands and thousands of pages, but was not able to obtain an
18 electronic database of time-records or reliable statistical data-points from TMaG.) Thus, even *if*
19 such a forensic accounting were considered the preferred method for allocating settlement funds,
20 according to TMaG it would not be possible or feasible given the inability of its vendor, ADP, to
21 provide such data electronically.

22 **Estimated Potential Recovery If Plaintiff Had Prevailed**

23 58. Plaintiff’s inability to obtain an entire database of time records for the Class Period
24 also hampers our ability to accurately or precisely provide a reasonable estimate of the amount of
25 recovery that each Class Member *could have obtained* if Plaintiff had prevailed in this case
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1 (through appeal).⁴ Moreover, TMaG repeatedly asserted – as set forth in many declarations
2 provided to us – that certain Class Members routinely and affirmatively *chose* to take late lunches,
3 or didn’t clock out even if they took meal breaks, or were actually given paid (on the clock) meal
4 periods by TMaG, or *voluntarily* returned to work before the expiration of 30 minutes, etc.
5 According to TMaG, this meant that – under *Brinker* – Plaintiff would not be able to demonstrate
6 that TMaG *impaired, impeded* or *discouraged* such people from taking their statutory meal
7 periods, even if their policies were facially unlawful. *See, e.g., Brinker, supra*, 53 Cal.4th at 1040
8 (employer must give employees a reasonable opportunity to take a timely, uninterrupted 30-
9 minute break, and may not impede or discourage them from doing so). While we disputed this
10 reading of *Brinker* and other cases, we also considered TMaG’s arguments as part of our risk
11 analysis when determining to settle.

12 59. If TMaG’s arguments were accepted, that meant that for employees in design,
13 executive admin, finance, IT, marketing, operations, and PGA, for example, a time-record
14 showing no meal period, a late meal period, or a short meal period would not necessarily equate to
15 a violation of applicable meal period rules. Even using our time-keeping sampling methodology,
16 we could not therefore *assume* each such instance would or did equate to a violation, or that each
17 such “violation” would necessarily (or even reasonably) translate into an “extra hour of pay”
18 remedy. In short, we considered the risk that Plaintiff’s meal and rest period claims could have
19 been defeated by TMaG’s arguments.

20 60. For these reasons, the more reliable approach to “estimating” the potential recovery
21 could be considered one based on the exemplar time records of those employees who *were*
22 subjected to meal period schedules imposed on them by supervisors – i.e., shipping, assembly, and
23 regulated customer service workers. Based on my review of exemplar time-keeping records
24 (numbering in the thousands of pages) for these employees, I estimated “violation” rates by
25 category for settlement purposes that *could* reasonably translate into a finding that TMaG would

26
27 ⁴ By law, employers need only keep records of meal periods, and are not required to keep records
28 of rest breaks. Since TMaG didn’t keep time-keeping records of rest breaks, obtaining a database
would not have helped us estimate the potential recovery on our rest break claim.

1 owe meal and rest period premium payments (under Labor Code § 226.7) to such employees in the
2 amount of \$1,199,000. However, this number assumes hypothetical “violation” rates of 10% on
3 the rest period claims for these employees, even though there are no records to prove such
4 “violations” and there are also instances in which TMaG did apparently build compliant rest
5 breaks into certain schedules. So for employees who were affirmatively *scheduled* to take timely
6 rest breaks, even if they were scheduled to take late/non-compliant meal periods, assigning a
7 dollar amount to these claims could be considered tenuous.

8 61. Potential paystub penalties (under Labor Code § 226(e)) – assuming both meal and
9 rest period violations could be proven for all such employees – could *potentially* add another
10 \$187,000, which totals \$1,386,000. Such is not a given, however, as Section 226(e) limits
11 remedies to those circumstances in which an employee can prove he or she has actually
12 “*suffer[ed] injury* as a result of a *knowing* and *intentional* failure to comply” with the provisions
13 of Labor Code § 226(a). (Emphasis added.) Again, we took this into account as part of our risk
14 assessment.

15 62. For those shipping, assembly, and regulated customer service workers who were
16 terminated, applying “waiting time penalties” (under Labor Code § 203) to these claims could add
17 roughly \$460,000, but as a derivative claim Plaintiff would not only need to prove the underlying
18 violations (and that premium paid was owed but not paid), but would also need to prove the non-
19 payment of the premium pay was “willful.” This was part of our risk assessment, too.

20 63. If the stars aligned for Plaintiff on the claims for these shipping, assembly, and
21 regulated customer service workers, these employees could conceivably recover roughly
22 \$1,846,000 – if Plaintiff prevailed on a class basis and such an award were affirmed on appeal.
23 The assignment of dollar amounts to these claims is admittedly non-scientific and imprecise.

24 64. Accounting for all these risks, including the risk of a complete loss at trial or on
25 appeal, and for certification risks, and giving due regard for “assumptions” which may ultimately
26 prove untrue, a settlement that *guarantees* TMaG will pay \$875,000 now is preferable to “betting
27 the farm,” rolling the dice, and coming up empty-handed.

28

1 **No Reversion**

2 65. **The settlement *does not* provide for any reversion of funds to TMaG.** Rather,
3 the Stipulation of Settlement provides in ¶ H.8(c): “If less than 100% of all Class Members file
4 Claim Forms, those Participating Class Members who do file claim forms will share
5 proportionately in the settlement residual.” That means that, if approved according to its terms,
6 TMaG *will not benefit* from a lower participation rate, because any “residual” will be reallocated
7 to those Class Members who submit Claim Forms. Stated differently, if the settlement as
8 proposed receives final approval, *TMaG will pay \$875,000* to settle this case and *will not receive*
9 *any residual, reversion, or refund*, other than interest that accrues.

10 **No Cy Pres Distribution, Unless Settlement Checks Are Not Cashed/Negotiated**

11 66. **Except in the event of uncashed checks, the settlement does not provide for**
12 **any *cy pres* distribution.** In this respect, the Stipulation of Settlement says: “Any checks paid to
13 Participating Class Members shall remain valid and negotiable for one hundred eighty (180) days
14 from the date of their issuance and may thereafter automatically be canceled if not cashed by a
15 Participating Class Member within that time, at which time the Settlement Class Member’s claim
16 will be deemed void and of no further force and effect. Any balance remaining in any bank
17 account created by the Claims Administrator shall be subject to a *cy pres* award paid to Class
18 Counsels’ and TMaG’s choice of recipients.” *See*, Stipulation of Settlement, ¶ 15(b).

19 **No Injunctive Relief**

20 67. **The settlement does not contemplate or provide for any injunctive relief.** *See*,
21 Exhibit A, ¶ H.13. Given that TMaG has changed several of its policies (likely in response to this
22 lawsuit), the proposed settlement does not mandate more changes.

23 **No General Release – Limited Scope Release Only**

24 68. **The Class *will not* be providing a general release under Civil Code § 1542 or**
25 **otherwise.** Rather, under the terms of the proposed settlement, the Class will – if approved – only
26 provide a limited release. Indeed, the Stipulation of Settlement states as much, and also gives
27 examples of common wage and hour claims that would *not* be released as a result of the settlement
28 saying (emphasis added):

1 **This Release is expressly limited and narrowly tailored to the factual**
2 **and legal claims asserted in Plaintiff’s First Amended Complaint, filed**
3 **on or about March 7, 2016, and only applies to those persons**
4 **identified by the Released Parties as being a member of the Settlement**
5 **Class in connection with the administration of this proposed**
6 **settlement.** By way of example only, this release is not intended to and
7 shall not release the Released Parties from any claim that TMaG allegedly:
8 (a) failed to properly pay or calculate wages for any of its non-exempt
9 employees for all hours worked (i.e., straight-time, overtime and/or off-
10 the-clock hours); (b) improperly classified any of its employees as exempt
11 from overtime (i.e., allegedly entitling them to overtime pay for any
12 overtime hours alleged worked or allegedly depriving them of other
13 protections to which non-exempt employees would be entitled); (c)
14 improperly classified, designated, or treated any person as an independent
15 contractor rather than an employee. Additionally, this release is not
16 intended to release and shall not release the Released Parties from all
17 potential derivative claims (e.g., unfair competition under Business and
18 Professions Code §§ 17200 *et seq*, PAGA violations under Labor Code §§
19 2699 *et seq.*, etc.) associated with such allegations; but is intended to
20 release and shall release the Released Parties from those derivative claims
21 specified above (i.e., the alleged failure to pay Class Members all wages in
22 a timely fashion owed on termination of employment and the alleged
23 failure to provide Class Members with compliant paystubs or wage
24 statements).

25 *See*, Exhibit A, ¶ H.3.

26 **Settlement Does Not Cover Claims Outside of Operative Complaint**

27 69. **The proposed settlement terms would not and does not cover any claims that**
28 **are *outside* the four corners of the first amended complaint.** *See*, Exhibit A, ¶ H.3. Nor does
the proposed settlement require that the operative complaint be amended.

Every Class Member Has the Right to Object

70. Under the proposed settlement terms, **every Class Member shall have the right to**
object to the settlement and/or be heard at the final approval hearing, regardless of whether such
Class Member files or submits a formal written objection. *See*, Exhibit A, ¶ H.14(k)(i). Class
Members shall have 45 days to submit objections, from the date of mailing notice packets. *Id.*

Every Class Member Has the Right to Opt Out

71. Under the proposed settlement terms, **every Class Member shall have the right to**
exclude himself or herself from the settlement (i.e., opt out), in which case the Class Member
shall be excluded from the Class, shall not be bound by the settlement, and shall be permitted to

1 bring her or her own claim. *See*, Exhibit A, ¶ H.14(k)(i), (ii). Class Members shall have 45 days
2 to submit opt-outs/requests for exclusion, from the date of mailing notice packets. *Id.*

3 **H. REASONS FOR SETTLEMENT**

4 72. From my perspective, there was uncertainty about numerous factual and legal
5 issues, all of which we took into account as part of the assessment of the risk going forward. For
6 example, such risks include:

- 7 a. The risk that certifying an entire class of TMaG’s non-exempt employees
8 may be denied – in the trial court or after an appeal – particularly given that:
- 9 i. TMaG posited that Ms. Bulcao’s grievances were based on
10 individualized factual disputes based on her own personal
11 interactions with her supervisors, which could lead to a denial of
12 certification;
- 13 ii. TMaG had already compiled more than 50 declarations from class
14 members, which it would use to oppose class certification, on the
15 grounds that common factual and legal issues did not predominate.
- 16 b. The risk that we might not establish liability if:
- 17 i. our main liability theory on meal periods 8 C.C.R. § 11010(11)(A)
18 and/or Labor Code § 226.7(b) based on TMaG’s meal period policy
19 (“non-exempt Employees are entitled to a meal period of not less
20 than thirty (30) minutes for time worked of five (5) hours or more”)
21 was considered hyper-technical, and did not actually or directly
22 result in TMaG denying meal periods to employees *during* the first
23 five hours of an employee’s shift, as California law requires under
24 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004,
25 1048–1049;
- 26 ii. the trier of fact accepted TMaG’s argument that most non-exempt
27 employees were generally permitted to take their meal periods
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whenever they wished, and were not required to take them *after* working for five hours or more;

- iii. the trier of fact accepted TMaG’s argument that, even if it had a non-compliant meal period policy (a premise it denied), the policy was not *implemented* or *enforced* in a way that denied Class Members the meal periods that are mandated by law;
- iv. our main liability theory on rest breaks under 8 C.C.R. § 11010(12)(A) and/or Labor Code § 226.7(b) based on the omission from TMaG’s meal period policy (“Non-exempt Employees are entitled to a minimum ten (10) minute rest period per every four hours of time worked.”) of the phrase “or major fraction thereof” (from the applicable Wage Order, 8 C.C.R. § 11010(12)(A)) was considered hyper-technical, and did not actually or directly result in TMaG denying rest breaks to employees on the schedule required by *Brinker, supra*, 53 Cal.4th at 1029 (i.e., “10 minutes rest for shifts from three and one-half to six hours in length, 20 minutes for shifts more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on”).
- v. the trier of fact accepted TMaG’s argument that most non-exempt employees (those not subject to rigorous, supervisor-imposed schedules) were permitted to take rest breaks whenever they wished, for however long they wanted, and however frequently they wanted;
- vi. the trier of fact accepted TMaG’s argument that, even if it had a non-compliant rest break policy (a premise it denied), the policy was not *implemented* or *enforced* in a way that denied Class Members the rest breaks that are mandated by law; and
- vii. the trier of fact (or the Court) concluded the proposed “remedy” for these “violations” (i.e., one hour of pay at the employee’s regular

1 rate of compensation for each work day that the meal ore period is
2 not provided, per 8 C.C.R. § 11010(11)(D) and (12)(B)) was overly
3 punitive or confiscatory, thereby substantially reducing or
4 eliminating the Class remedy.

5 73. We also took into account as part our risk assessment and analysis that several of
6 our liability theories (i.e., paystub violations under Labor Code § 226(a), termination pay
7 violations under Labor Code § 201-202, waiting time penalties under Labor Code § 203, improper
8 wage releases under Labor Code § 206.5, UCL claim, PAGA claim under Labor Code § 2699 *et*
9 *seq.*) were derivative in nature, in the sense that we would be required to prove “premium pay”
10 was owed but had not been paid. In addition, we also took into account that two of our claims
11 (paystub violations under Labor Code § 226(a) and termination pay/waiting time penalties under
12 Labor Code § 201-203) had elevated standards of proof. Specifically: (a) the remedy for paystub
13 violations under Labor Code § 226(e) is only available where the employee proves he suffered an
14 “injury as a result of a knowing and intentional failure to comply with [Labor Code § 226(a)]”;
15 and (b) waiting time penalties under Labor Code § 203 require proof that the failure to pay at
16 termination was “willful.”

17 74. Further, we also took into account as part our risk assessment and analysis that:

- 18 a. the court has substantial discretion under PAGA to assess a penalties far
19 less than that statutory maximum if the penalty would be considered
20 confiscatory or punitive in nature;
- 21 b. the releases *already obtained* by TMaG could ultimately be enforceable,
22 such that hundreds of people could be removed from the putative class
23 and/or denied recovery; and
- 24 c. TMaG could seek and obtain hundreds of *additional* releases, as happened
25 in *Chindarah, supra*, 171 Cal.App.4th at 801, thereby undermining and/or
26 eliminating the vast majority of Plaintiff’s claims.

27 75. Moreover, TMaG vigorously defended this case, and continuously denied each of
28 the claims and contentions asserted. TMaG has also repeatedly asserted and denied any

1 wrongdoing or legal liability arising out of any of the facts or conduct alleged in the lawsuit. We
2 took all of TMaG's repeated denials into account as part of our risk assessment. For example,
3 these included TMaG's denials that the Class Members had suffered any damage; that TMaG
4 failed to provide any of the Class Members meal periods and/or rest breaks as required by
5 California law; that TMaG failed to compensate the Class Members for all hours worked; that
6 TMaG failed to pay any earned "premium pay;" that TMaG failed to provide accurate and
7 itemized wage statements; that TMaG failed to fully compensate employees in a timely manner
8 upon termination of employment; that TMaG required Class Members to sign releases in order to
9 be paid wages due; that TMaG engaged in any unlawful, unfair or fraudulent business practices;
10 that TMaG engaged in any wrongful conduct as alleged in the lawsuit; or that the Class Members
11 were harmed by the conduct alleged in the lawsuit.

12 76. **As evidenced by its ability and willingness to obtain more than 50 declarations**
13 **and at least 58 releases *after the litigation had been filed*, TMaG was exceptionally**
14 **resourceful and was determined to fight Plaintiff's allegations at every turn. Indeed, given**
15 **that TMaG obviously sought to completely deny the Class from ever receiving *any recovery***
16 **from this lawsuit, the fact that this settlement – if approved – will provide Class Members**
17 **with a guaranteed payout of \$577,500 is very significant. For these reasons and others, I**
18 **believe it supports preliminary approval.**

19 77. For its part, TMaG was faced with the risks inherent of additional expensive
20 discovery followed by a lengthy and expensive trial against a (probable) certified class represented
21 by Class Counsel experienced in handling employment class actions. As part of their decision-
22 making, both parties concluded that any further litigation would be protracted and expensive for
23 everyone, as well as risky, and that substantial amounts of time, energy and resources had been
24 and would be devoted to the litigation, if a settlement were not reached and approved. The
25 settlement we agreed upon was arrived at through arms' length negotiations, taking into account
26 all relevant factors as discussed herein, including uncertainty, risk, expense, and delay attendant to
27 continuing the case through trial and any appeal. Both the facts and the law were hotly contested
28 and disputed by both sides.

1 78. Although as Class Counsel we were ultimately confident in the merits of the Class
2 Members' position, we were put in the position of negotiating a settlement at this juncture or
3 facing the risk that the case might not be certified or that trial might not result favorably for the
4 Class. Employment and class action laws are constantly evolving, and any changes in the law
5 always threaten to eliminate the claims of Plaintiff and the Class. In these rapidly changing areas
6 of law, claims can be created and deleted with the risk of retroactivity. Thus, although Class
7 Counsel believe in the viability of the claims in this action and the ability to succeed at trial, we
8 accounted for the risks that the Court would reach, or future changes in the law would dictate, a
9 different conclusion, which could leave the Class Members with no benefits at all. Accordingly,
10 Class Counsel decided that settlement on the terms and conditions as described herein was in the
11 best interests of Class Members.

12 **I. SUITABILITY OF SETTLEMENT CLASS FOR CERTIFICATION**

13 79. All settlement class members were ascertainable from TMaG's records. The
14 settlement class is comprised of approximately 685 people.

15 80. The proposed settlement class members' claims all stem from a common set of
16 circumstances. The questions of law and fact common to the members of the Class predominate
17 over any questions affecting only individual member in the Class, and a class action is superior to
18 other available methods for the fair and efficient adjudication of the controversy. Specifically,
19 there are questions of law and fact common to the members of the Class including, without
20 limitation, the following:

- 21 a. whether members of the Class were provided with compliant meal periods
- 22 as specified under California law, or received compensation in lieu thereof;
- 23 b. whether TMaG had uniform policies, procedures, and/or practices relative
- 24 to meal periods;
- 25 c. whether members of the Class were authorized and permitted to take
- 26 compliant rest periods as specified under California law, or received
- 27 compensation in lieu thereof;
- 28 d. whether TMaG had uniform policies, procedures, and/or practices relative

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- to rest breaks;
- e. whether, for those Class members who left TMaG’s employ or who were terminated, TMaG timely paid any wages due and owing to such Class members;
- f. whether TMaG willfully failed to pay, in a timely manner, any wages owing to Class members who left its employ or who were terminated;
- g. whether TMaG required Class Members to sign release agreements before paying wages owed on termination of employment;
- h. whether TMaG failed to provide Class Members with compliant wage statements or paystubs; and/or
- i. whether TMaG violated any provisions of the California Labor Code or California Business and Professions Code, as alleged in Plaintiff’s First Amended Complaint.

81. The claims of the Class Representative herein are typical of the claims of the members of the Class. Specifically, Plaintiff Bulcao, the Class Representative, worked at TMaG during the putative class period and was subject to TMaG’s aforementioned business practices. Thus, Ms. Bulcao’s claims arise from the same course of conduct from which the Class Members’ claims arise.

82. The Class Representative and Class Counsel herein will fairly and adequately protect the interests of the members of the Class. As described herein, Plaintiff has also aggressively and competently asserted the Class Members’ interests through this litigation. Class Counsel is experienced in wage and hour, employment, and class action litigation, and has litigated this action for the class for 15+ months, plus several months of pre-filing investigation.

83. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct. Namely, if TMaG were required to defend multiple actions by numerous individual Class Members, it could be exonerated in some cases and found liable in others, leaving

1 it future/contingent liability uncertain, and the enforceability of its uniform policies and
2 procedures in question.

3 **J. CLASS REPRESENTATIVE'S ENHANCEMENT AND GENERAL**
4 **RELEASE PAYMENT**

5 84. It is appropriate to recognize the contributions of the Class Representative in
6 prosecuting this litigation. The enhancement serves as recognition for the extraordinary amount of
7 time and effort Plaintiff Bulcao spent assisting in the prosecution of this case. The settlement
8 provides the Class Representative, Ms. Bulcao, with a reasonable enhancement for the risks, time
9 and effort she expended in coming forward to provide invaluable information in support of the
10 claims alleged in the complaint. As previously noted, the settlement provides that Ms. Bulcao will
11 be able to submit a claim as a Class Member, but that she will also settle any residual individual
12 claims against TMaG in exchange for the general release/incentive payment.

13 85. Ms. Bulcao sat for a full day deposition in this case, and has spent valuable time
14 reviewing drafts of complaints, reviewing and verifying discovery responses, reviewing, analyzing
15 and explaining various TMaG policies and procedures and document productions, assisting me to
16 prepare for depositions and mediation, and reviewing depositions, briefs, and pleadings which I
17 sent to her.

18 86. She also attended some deposition sessions that I took of TMaG personnel. In
19 addition, I have met with, spoken to, and corresponded with Ms. Bulcao on numerous occasions,
20 and have routinely sent her updates on the progress of the case and have provided her with case-
21 related materials to review.

22 87. Ms. Bulcao was an essential element in the successful prosecution and ultimate
23 settlement of this case and was always available to provide her input on the litigation, gather
24 evidence and other information that proved critical to the prosecution.

25 88. Accordingly, I believe a \$5,000 enhancement/general release payment to Plaintiff
26 Bulcao is fair and reasonable, especially given her invaluable assistance in prosecuting this case.

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1 **K. PROPOSED ATTORNEYS' FEES AND COSTS**

2 89. This Court can appreciate that litigating a class action matter against a corporate
3 defendant represented by a skilled law firm in an unsettled area of law is not appealing to most
4 lawyers, particularly when the plaintiff's lawyer will have to finance the litigation. This case was
5 taken on a contingency basis and is not a case undertaken lightly. Even the simple risk of
6 advancing costs in this type of litigation can be high.

7 90. Out-of-pocket costs incurred by Class Counsel to date are near \$15,000. Here is
8 the breakdown of costs we have incurred/identified at this point:

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Expense Type	Expense Total
Court Reporter Charges	\$6,325.67
Court Filing Fees	\$1,685.00
Settlement Administrator (Half Share of <i>Belaire Notice</i>)	\$279.50
Westlaw	\$401.67
Photocopies of TMaG documents, etc. at 12 cents per page only	\$860.04
Postage	\$57.69
Court Service Fee (One Legal)	\$79.50
Mediation Fees paid to Judicate West	\$4,030.00
Messenger Fees paid to Cal Express	\$83.40
File Folders	\$5.00
Total	\$13,807.47

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17 91. From the outset, my firm and I understood that we were embarking on a complex,
18 expensive, and lengthy litigation with no guarantee of ever being compensated for the enormous
19 investment of time and money that the case would require. In undertaking that responsibility, my
20 firm and I were obligated to assure that sufficient resources of attorneys were dedicated to the
21 prosecution of the litigation and that funds would be available to compensate staff and for the
22 considerable out-of-pocket costs that a case such as this entails. Moreover, in committing to fully
23 prosecute this case, my firm – and myself in particular – had to forego work on other potentially
24 profitable matters in order to devote the time necessary to pursue this litigation. However, without
25 the substantial work performed by Plaintiff's counsel, as discussed herein, this case would never
26 have been positioned for settlement on the terms which were ultimately achieved.

1 92. The settlement provides that, at final approval, class counsel will seek attorneys’
2 fees not to exceed \$262,500 and costs not to exceed \$15,000, which amount TMaG has agreed it
3 will not oppose.

4 93. Even with my extensive experience litigating class action cases, prosecuting these
5 cases still carries a considerable amount of risk. There is the significant risk that Plaintiff would
6 not succeed in certifying the class or in proving TMaG’s liability at trial. Even a win at trial
7 presents appellate risks that could eliminate any or all trial victories, especially if an appellate
8 court found that certification of the claims on a class basis was not warranted or justified.

9 94. Through November 30, 2016, **my firm has invested a total of 885.3 hours** into
10 this matter, at hourly rates for attorneys ranging from \$450 to \$610, for a total lodestar to date of
11 \$527,727, without application of any multiplier, as referenced in the chart below.

<u>Attorney</u>	<u>CA Bar Admission Year</u>	<u>Hourly Rate</u>	<u>Hours</u>	<u>Lodestar</u>
Timothy R. Pestotnik	1987	\$610	53.7	\$32,757
Ross H. Hyslop	1990	\$600	805.0	\$483,000
Russell F. Winslow	2006	\$450	26.6	\$11,970
		TOTAL:	885.3	\$527,727

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16 95. My reasonable hourly rate for this matter is \$600 per hour, and is based on my 26+
17 years of complex business litigation, employment/consumer and class action experience, including
18 serving as lead or co-lead counsel on numerous class action cases, as referenced below. Although
19 the vast majority of the time spent on this matter is mine alone, Messrs. Pestotnik and Winslow
20 were invaluable in assisting me to prosecute this case. Their hourly rates, ranging from \$450 to
21 \$610, are reasonable and commensurate with their experience in handling sophisticated business
22 and/or class action litigation.

23 96. All Pestotnik LLP attorneys keep their time in six minute increments, by matter.
24 Although we all keep detailed time sheets, California case law permits fee awards even in the
25 absence of detailed time sheets. *See, Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th
26 224, 255; *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 64. The Court need only be provided
27 with enough detail to assess the reasonableness of the fees claim. *Margolin v. Regional Planning*
28 *Commission* (1982) 134 Cal.App.3d 999, 1006-1007 (attorney declaration as to number of hours

1 worked by firm members sufficient). While I have summarized my firm's activities herein, we
2 have not submitted detailed time sheets, in order to preserve Plaintiff's attorney-client and work
3 product privileges. However, we would be willing to provide them to the Court upon request, if
4 necessary.

5 97. The nature of class action work and Class Counsel's expertise justify the requested
6 fees as well. Class Counsel has expertise in employment class action litigation, which requires
7 specialized learning and the willingness to take large risks. Consequently, Class Counsel will
8 respectfully request that, if this settlement receives final approval, the Court approve an award of
9 attorneys' fees to Class Counsel in the amount of \$262,500 and costs not to exceed \$15,000, as
10 agreed to by TMaG as part of the settlement (see, Exhibit A hereto). Plaintiff Bulcao has
11 expressly given written approval for this fee award not only in Stipulation of Settlement but also
12 in her concurrently filed declaration in support of preliminary approval.

13 98. Significantly, if approved, Plaintiff's request for an award of attorneys' fees in the
14 amount of \$262,500 (representing 30% of the class recovery) would result in a *downward*
15 adjustment of the lodestar, by approximately 50% (*i.e.*, a *negative* multiplier of .5). Even though
16 more work remains, if approved this award of attorneys' fees would result (if applied only to the
17 accrued hours to date of 885.3) in **an effective/blended hourly rate of \$296.50/hour.**

18 **L. EXPERIENCE AND ADEQUACY OF CLASS COUNSEL**

19 99. I have been licensed to practice law in the State of California since December 1990,
20 and have maintained my license in good standing as an active California lawyer since admission to
21 the California bar. I am AV rated by my peers through Martindale Hubbell. Before joining
22 Pestotnik LLP (formerly known as Pestotnik + Gold LLP) as a partner in May 2010, I was a
23 partner with the international law firm of McKenna Long & Aldridge LLP (now Dentons US) for
24 more than ten years, from January 2000 through May 2010. From December 1993 through
25 December 1999, I was an associate attorney with McKenna Long & Aldridge LLP. From 1990
26 through October 1993, I was an associate attorney with Jennings Engstrand & Henrikson, which
27 dissolved as a law firm in October 1993.

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1 100. Over the course of my career to date, I have been directly and personally involved
2 in the litigation of numerous employment, class, collective, and private attorney general actions,
3 including the following examples:

- 4 • *Gomez et al. v. Pizza Hut of Southeast Kansas, Inc.* (San Bernardino Superior
5 Court, Case No. CIVVS900679) (employment class action alleging pizza delivery
6 company did not sufficiently reimburse delivery drivers for expenses incurred
7 using their personal vehicles to deliver pizzas).
- 8 • *Cotoner v. Viasys International, LLC* (Los Angeles Superior Court, Case No.
9 BC451584) (employment class action alleging cable/internet installation employees
10 were not sufficiently reimbursed their expenses, and were denied meal and rest
11 periods).
- 12 • *Harris v. D.S. Waters of America, Inc.* (San Diego Superior Court, Case No. 37-
13 2013-00073724-CU-0E-CTL) (individual action alleging wrongful termination and
14 PAGA claims on behalf of other aggrieved employees)
- 15 • *O'Brien et al. v. Pizza Hut of Southeast Kansas, Inc. et al.* (United States District
16 Court for the Central District of California, Eastern Division, Case No. ED CV 13-
17 01602 VAP (OPx)) (employment class action alleging violations of meal and rest
18 period statutes/rules, and derivative claims)
- 19 • *Avila et al. v. Pizza Hut of Southeast Kansas, Inc. et al.* (United States District
20 Court for the Central District of California, Eastern Division, Case No. ED 13-CV-
21 01168 JGB SPx) (employment class action alleging violations of meal and rest
22 period statutes/rules, and derivative claims)
- 23 • *Davis v. D.S. Waters of America, Inc.* (United States District Court of the Southern
24 District of California, Case No. 14-CV-250 BAS (NLS) (employment class action
25 alleging violation of meal and rest period statutes/rules, plus derivative claims)
- 26 • *Malone v. DS Waters of America, Inc.* (United States District Court of the Southern
27 District of California, Case No. 14-cv-02776-GPC-BGS) (class action and PAGA
28 action alleging managers were improperly classified as exempt from overtime);
- *Gomez v. Mycles Cycles, Inc. dba San Diego Harley-Davidson et al.* (San Diego
Superior Court, Case No. 37-2015-00043311-CU-BT-CTL) (consumer class action
alleging non-compliance with Vehicle Code sections, false advertising, unfair
competition, and improper imposition of fees/charges);
- *Perry et al. v. Truong Giang Corp.* (Los Angeles Superior Court, Case No.
BC539568) (consumer class action alleging false advertising associated with herbal
weight-loss teas)
- *Fuentes v. Riverside Motorcycle, Inc. et al.* (Riverside Superior Court, Case No.
RIC 1515384) (consumer class action alleging non-compliance with Vehicle Code

1 sections, false advertising, unfair competition, and improper imposition of
2 fees/charges);

- 3 • *Baker v. Temecula Motorsports, Inc. et al.* (Riverside Superior Court, Case No.
4 MIC 1500556) (consumer class action alleging non-compliance with Vehicle Code
5 sections, false advertising, unfair competition, and improper imposition of
6 fees/charges);
- 7 • *Kotlov v. Fun Bike Center et al.* (San Diego Superior Court, Case No. 37-2010-
8 00102059-CU-BT-CTL) (consumer class action alleging non-compliance with
9 Vehicle Code sections, false advertising, unfair competition, and improper
10 imposition of fees/charges);
- 11 • *C.L. Trustees, et al. v. ACS State & Local Solutions, et al.* (San Diego Superior
12 Court, Case No. 4305) (consolidated set of consumer/general public class actions
13 alleging city red light contractor improperly and unlawfully operated red light
14 intersection cameras).
- 15 • *Rice v. Harbor View Medical Center & Tenet HealthCare* (San Diego Superior
16 Court, Case No. 699605) (consumer/patient class action alleging hospital and
17 health care provider paid unlawful kickbacks to physicians for the referral of
18 patients).
- 19 • *Fraker v. KFC Corp., et al.* (U.S. District Court for the Southern District of
20 California, Case No. 06CV 1284 (JM) WMc) (consumer class action alleging KFC
21 engaged in false advertising by allegedly failing to disclose the unhealthy nature of
22 trans fat contained in KFC's various restaurant foods).
- 23 • *Yabsley v. Cingular Wireless, LLC* (Santa Barbara Superior Court, Case No.
24 01221332) (consumer class action lawsuit alleging false advertising of cellular
25 phones at prices that did not disclose sales tax would be calculated based on gross
26 retail price, not specially discounted price)
- 27 • *Moore, et al. v. T-Mobile et al.* (U.S. District Court for the Central District of
28 California, Case No. CV 08-03108 GW (AGRx)) (consumer class action alleging
that T-Mobile, Flycell, and other providers of premium cell phone content engaged
in false advertising, "crammed" cell phone bills with allegedly unauthorized
charges, and failed to comply with rules and regulations imposed on cell phone
providers).
- *Struyk, et al. v. AT&T Mobility* (U.S. District Court for the Southern District of
California, Case No. 07CV1314L (CAB)) (consumer class action lawsuit alleging
that cellular telephone company falsely advertised rebates associated with cellular
telephones).
- *Niblock, et al. v. Skadden Arps Slate Meager & Flom LLP* (San Diego Superior
Court, Case No. GIC 775297) (investor class action alleging misrepresentations to

1 prospective shareholders associated with private placement securities offering by
2 law firm's client).

- 3 • *Hoffman, et al. v. Cingular Wireless, LLC* (U.S. District Court for the Southern
4 District of California, Case No. 06 CV 1021 W (BLM)) (consumer class action
5 lawsuit alleging false and deceptive advertising associated with sale of cellular
6 telephones).
- 7 • *Galloway Pharmacy, et al. v. Health Benefit Services, Inc., et al.* (San Diego
8 Superior Court, Case No. GIC 878182) (class action lawsuit by class of California
9 pharmacies alleging that Defendants breached managed care services contracts and
10 tortiously interfered with pharmacy businesses by processing pharmacy
11 transactions to include members in a drug discount program).
- 12 • *Brower, et al. v. Motorola, Inc., et al.* (San Diego Superior Court, Case No. GIC
13 765987) (consumer class action lawsuit alleging that cellular telephone use caused
14 Plaintiff, and similarly situated people, to develop brain tumors).
- 15 • *Karges v. Massachusetts Mutual Life Ins. Co.* (San Diego Superior Court, Case No.
16 731920) (consumer class action by policyholders alleging marketing of whole life
17 insurance policies was unlawful, deceptive and misleading).
- 18 • *Citizen Action Council v. Main Street Direct, LLC* (San Diego Superior Court, Case
19 No. GIC 789677) (private attorney general/consumer class action alleging
20 marketing of products with credit card statements issued by nation's major banks
21 was unlawful, deceptive and misleading).
- 22 • *Phanco v. BMG Direct Music, Inc.* (San Diego Superior Court, Case No. GIC
23 774082) (private attorney general/consumer class action alleging that BMG's
24 marketing of CD's was unlawful and misleading).
- 25 • *Harry Powell v. Star Scientific, Inc., et al.* (San Diego Superior Court, Case No.
26 GIC 771483) (private attorney general action alleging manufacturer failed to pay
27 proper escrow amounts into California tobacco settlement fund).
- 28 • *Citizen Action Council v. Allied Marketing Group, Inc.* (San Diego Superior Court,
Case No. 783870) (private attorney general/consumer class action alleging direct
mailing practices were unlawful and misleading).
- *Frank v. MBNA Corp., et al.* (San Diego Superior Court, Case No. GIC734311)
(consumer class action alleging that marketing of life insurance policies through
credit card company was unlawful and deceptive).
- *Rothschild v. Tyco International, Ltd., et al.* (San Diego Superior Court, Case No.
726930) (private attorney general/class action alleging that water works parts were
not manufactured as represented and failed to comply with industry standards and
specifications).

- 1 • *People v. Allied Marketing Group, Inc., et al.* (San Diego Superior Court, Case No. 702037) (attorney general civil enforcement action alleging direct mailing practices were unlawful and misleading).
- 2
- 3 • *Diaz et al. v. First American Home Buyers Protection Corporation* (United States District Court for the Southern District of California, Case No. 09-CV0775 H (WMC)) (consumer class action alleging seller of home warranty plans sold/marketted warranty plans in unlawful and misleading manner, and failed to abide by its promises).
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- 7 • *Goldman, et al. v. RadioShack Corp.* (U.S. District Court for the Eastern District of Pennsylvania, Case No. 03-CV-0032) (employment class action alleging managers were improperly and unlawfully classified as exempt from overtime).
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- 9 • *Madely, et al. v. RadioShack Corp.* (Wisconsin Circuit Court, County of Milwaukee, Case No. 02-CV-011800) (employment class action alleging managers were improperly and unlawfully classified as exempt from overtime).
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- 11 • *O’Gorman v. RadioShack Corp.* (San Diego Superior Court, Case No. 37-2007-00067739-CU-OE-CTL) (employment class action alleging employer required employees to improperly forfeit accrued personal paid absence benefits, on the theory that such benefits constitute accrued vacation time not subject to forfeiture)
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- 14 • *Baskall et al. v. KFC* (San Diego Superior Court, Case No. 37-2007-00084348-CU-OE-CTL) (employment class action alleging that employer required managerial employees to sign allegedly unenforceable on-duty meal period agreements, did not permit such employees to take state-mandated meal and rest periods, and did not pay employees all wages allegedly due).
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- 17 • *Perez, et al. v. RadioShack Corp.* (U.S. District Court for the Northern District of Illinois, Case No. 02-CV-7884) (FLSA collective action by exempt managers alleging that they were improperly and unlawfully classified as exempt from overtime).
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- 20 • *Lloredo, et al. v. RadioShack Corp.* (U.S. District Court for the Southern District of Florida, Case No. 04-CV-20991) (FLSA collective action by exempt managers alleging that they were improperly and unlawfully classified as exempt from overtime).
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- 23 • *Birns, et al. v. RadioShack Corp.* (U.S. District Court for the Southern District of New York, Case No. 06-CV-0900) (FLSA collective action by exempt managers alleging that they were improperly and unlawfully classified as exempt from overtime).
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- 26 • *Gonzalez, et al. v. RadioShack Corp.* (U.S. District Court for the Southern District of Florida, Case No. 05-CV-22195) (FLSA collective action by exempt manager alleging that he was improperly and unlawfully classified as exempt from overtime).
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- 1 • *Belazi, et al. v. Tandy Corp.* (Orange County Superior Court, Case No. 00CC03817) (employment class action by exempt managers alleging that they were
- 2 improperly and unlawfully classified as exempt from overtime).
- 3 • *Macario, et al. v. Tandy Corp.* (Los Angeles Superior Court, Case No. BC231950)
- 4 (employment class action alleging that employer imposed improper and unlawful
- 5 deductions from earned bonuses).
- 6 • *Rivera, et al. v. RadioShack Corp.* (Los Angeles Superior Court, Case No. BC252808) (employment class action alleging that pay plans improperly and
- 7 unlawfully failed to pay properly calculated overtime wages to non-exempt
- 8 employees).
- 9 • *Garrow et al. v. Tandy Corp.* (San Diego Superior Court, Case No. 690117)
- 10 (employment class action by exempt managers alleging that they were improperly
- 11 and unlawfully classified as exempt from overtime).
- 12 • *Puchalski, et al. v. Taco Bell Corp.* (San Diego Superior Court, Case No. GIC 328987) (employment class action by exempt managers alleging that they were
- 13 improperly and unlawfully classified as exempt from overtime).
- 14 • *Brookler, et al. v. RadioShack Corp.* (Los Angeles Superior Court, Case No. BC 313383) (employment class action by hourly employees alleging that employees
- 15 were improperly denied their meal periods).
- 16 • *Aguilar, et al. v. Cingular Wireless LLP* (U.S. District Court for the Central District of California, Case No. 06-CV-8197 ER (FFMx)) (employment class action
- 17 alleging numerous California labor law violations).

18 101. At any given time over the last ten years, I estimate that between 60% and 80% of
 19 my full time work as a lawyer has been devoted to class action litigation. Presently, at least 80%
 20 of my full time practice is devoted to consumer and employment class action litigation as either
 21 lead or co-lead counsel.

22 **M. CLASS COUNSEL’S EVALUATION OF SETTLEMENT**

23 102. Based on my 26+ years of experience and my own independent investigation and
 24 evaluation, and given the circumstances we faced as outlined herein, in my opinion the settlement
 25 for the consideration and on the terms set forth in the Stipulation of Settlement (**Exhibit A**) is fair,
 26 adequate, and reasonable and is in the best interest of the Class in light of all known facts and
 27 circumstances and the expenses and risks inherent in litigation. Although I am and was confident
 28 in the merits of the case, there is always risk associated with litigation. TMaG has raised
substantial defenses, and there is always a chance that TMaG could defeat certification or obtain a

1 complete defense verdict at trial. Even succeeding at trial is no guarantee, as the court of appeal
 2 can always reverse successful judgments, with devastating consequences. All things considered, I
 3 believe the settlement is fair, adequate and reasonable and in the best interests of the Class.

4 103. In my opinion, the settlement that will be made available for each participating
 5 Class Member is fair, reasonable, and adequate given the inherent risks of litigation, specifically
 6 those relating to trial, class certification, TMaG's threats to obtain additional releases from class
 7 members, the likelihood of TMaG appealing a favorable judgment for the class, and the costs of
 8 pursuing that litigation. The settlement is the result of extensive, arms'-length negotiations,
 9 without any collusion, and with the assistance of a highly experienced mediator, Judge Steven R.
 10 Denton (Ret.).

11 N. **PROJECTED SETTLEMENT ADMINISTRATION SCHEDULE, IF**
 12 **APPROVED**

13 104. If the Court grants preliminary approval to this proposed class action settlement on
 14 December 16, 2016, we have projected/estimated that the following schedule will likely apply:⁵

Estimated Dates	Description	References to Settlement Agreement
December 16, 2016	Close of class period	¶ B
December 16, 2016	Preliminary Approval Date	¶ 14a
December 30, 2016 (14 days from 12/16/16)	TMaG provides administrator database reports showing employees' names, addresses, EID or SSN, and workweek information. TMaG provides Class Counsel the Database Reports showing each Class Member's name, address, the last four digits of the employee or social security numbers, Gross Settlement Amounts, and workweek information.	¶ 11c
January 1, 2017 (18 days from 12/16/16)	TMaG funds settlement, payable to administrator.	¶ 7


27 ⁵ These dates depend on the Court granting preliminary approval at the hearing on December 16,
 28 2016. Further dates will be calculated once the Final Approval Hearing date is set.

Estimated Dates	Description	References to Settlement Agreement
January 16, 2017 (30 days from 12/16/15)	Administrator mails notices/claim forms.	¶ 14j
_____, 2017 (45 days after the Notice Date)	Class Members sign and send in objections or requests for exclusion.	¶¶ 14l, 14m
_____, 2017 (45 days after the Date the Claim Form was mailed)	Class Member may cure any defects within 15 days of being notified of such defect by Administrator.	¶ 15a
_____, 2017 (45 days after the Notice Date)	Claim/objection/exclusion deadline	¶ 14m, 15a
_____, 2017 (No later than 10 days after the exclusion deadline)	Administrator provides counsel with list of all Class Members who have timely requested exclusion, as well as number of valid claim forms received.	¶ 14k(ii)
_____, 2017 (following claim deadline, which is 45 days after the Notice Date)	Administrator calculates final amounts to be paid.	¶¶ 14m, 15a, 15b
_____, 2017 (within 10 business days of Objection/Exclusion Date)	TMaG may cancel the settlement if more than 10% of all class members request exclusion.	¶ 14o
TBD	Final Approval Hearing	¶ 15
Same as Final Judgment Date	Effective Date	¶ 1
(within 7 banking days after the Effective Date)	Fees award and litigation costs wired to Class Counsel.	¶ 10b
(within 14 days of the Effective Date)	Bulcao's incentive award mailed to Class Counsel.	¶ 10c

Estimated Dates	Description	References to Settlement Agreement
(14 days from Effective Date)	Participating Class Member settlement award mailing date.	¶ 8, 15b
(14 days from Effective Date)	LWDA Payment Mailing Date	
(on or before 210 days after the Effective Date)	Check stale date	¶ 15b
(on or before 210 days after the Effective Date)	Close of administration of settlement	¶ 15b
(on or before 210 days after the Effective Date)	Administrator provides written certification of completion of settlement to court and counsel for all parties.	¶ 15b
(14 days after Close of Administration)	Administrator pays TMaG any interest earned on settlement fund account.	¶ 7

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed this 2nd day of December, 2015, at San Diego, California.



 Ross H. Hyslop

EXHIBIT A

1 PESTOTNIK LLP
Ross H. Hyslop (149358)
2 501 W. Broadway, Suite 1025
San Diego, California 92101
3 Tel: 619.237.3000

4 Attorneys for Plaintiff Vanessa Bulcao, on behalf of
herself, the proposed class(es), all others similarly
5 situated, and on behalf of the general public

6 SOLOMON WARD SEIDENWURM & SMITH LLP
William V. Whelan (116372)
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8 San Diego, CA 92101
Tel: 619.231.0303

9 Attorneys for Defendant TAYLOR MADE
10 GOLF COMPANY, INC. (d/b/a TaylorMade-
adidas Golf Company)

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
debtor.

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

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

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

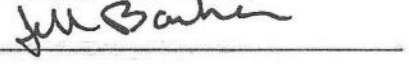
Dated: November 30, 2016

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

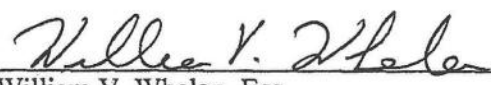
PESTOTNIK LLP

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

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LIST OF EXHIBITS

1. Plaintiff's First Amended Complaint
2. Class Notice
3. Claim Form
4. [Proposed] Preliminary Approval Order
5. [Proposed] Final Judgment

EXHIBIT 1

1 **PESTOTNIK LLP**
2 Ross H. Hyslop (149358)
3 501 W. Broadway, Suite 1025
4 San Diego, California 92101
5 Tel: 619.237.3000
6 Fax: 619.342.8020

7 *Attorneys for Plaintiff Vanessa Bulcao, on behalf of*
8 *herself, the proposed class(es), all others similarly*
9 *situated, and on behalf of the general public*

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

03/07/2016 at 03:47:00 PM
Clerk of the Superior Court
By Christina Villegas, Deputy Clerk

10 THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SAN DIEGO

12
13 VANESSA BULCAO, an individual, on behalf of
14 herself, the proposed class(es), all others similarly
15 situated, and on behalf of the general public

16 Plaintiff,

17 v.

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

22 Defendants.

Case No. 37-2015-00028124-CU-OE-CTL

E-FILE

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. MEAL PERIOD VIOLATIONS
2. REST BREAK VIOLATIONS
3. FAILURE TO PROPERLY
ITEMIZE PAY STUBS
4. FAILURE TO PAY ALL
WAGES DUE ON
TERMINATION
5. LABOR CODE § 206.5
VIOLATIONS
6. UNFAIR COMPETITION
7. PAGA

Complaint Filed: August 19, 2015

First Amended Complaint Filed (per Labor
Code § 2699.3(a)(2)(C)): March 7, 2016

Assigned to the Hon. Timothy Taylor
Department 72

1 Plaintiff VANESSA BULCAO (“Plaintiff” or “Bulcao”), on behalf of herself, the proposed
2 class(es), all others similarly situated, and on behalf of the general public, hereby complains
3 against Defendants TAYLOR MADE GOLF COMPANY, INC. d/b/a TaylorMade-adidas Golf
4 Company (“Defendant” or “TAYLORMADE”), and Does 1-10, inclusive, (collectively,
5 “Defendants”) as follows:

6 1. This is a class action pursuant to California Code of Civil Procedure section 382 on
7 behalf of Plaintiff and all persons who are or have been employed by Defendants in the State of
8 California as non-exempt employees (hereinafter, “Non-Exempt Employees”).

9 2. At all times mentioned herein, the common policies and practices of Defendants
10 were a direct cause of Defendants’ failure to comply with California’s wage and hour laws, Wage
11 Orders, and/or the California Labor Code as set forth more fully within.

12 3. For at least four years prior to the filing of this action and through to present,
13 Defendants have had a consistent policy of failing to provide Non-Exempt Employees within the
14 State of California, including Plaintiff, with legally compliant meal periods, as required by
15 California’s state wage and hour laws.

16 4. For at least four years prior to the filing of this action and through to the present,
17 Defendants have had a consistent policy of failing to authorize and permit Non-Exempt
18 Employees within the State of California, including Plaintiff, with legally compliant rest periods,
19 as required by California’s state wage and hour laws.

20 5. Throughout the statutory period, Defendants have had uniform policies and/or
21 practices of not satisfying their obligations under relevant statutes and Wage Order(s) to provide
22 legally compliant meal breaks.

23 6. Throughout the statutory period, Defendants have had uniform policies and/or
24 practices of not satisfying their obligations under relevant statutes and Wage Order(s) to provide
25 legally compliant rest breaks.

26 7. Throughout the statutory period, Defendants have had uniform policies and/or
27 practices of failing to provide accurate wage statements.
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1 8. Throughout the statutory period, Defendants have had uniform policies and/or
2 practices that result in said employees not being timely paid all wages, such as premium pay and
3 other wages, owed to them at the time of termination.

4 9. For at least four years prior to the filing of this action and through to the present,
5 Defendants and/or their officers and/or managing agents willfully failed to pay, in a timely
6 manner, wages owed to Plaintiff and Non-Exempt Personnel who left Defendants' employ or who
7 were terminated.

8 10. For at least four years prior to the filing of this action and through to the present,
9 Defendants, by failing to lawfully pay Plaintiff and those similarly situated all the wages they are
10 owed, engaged in false, unfair, fraudulent and deceptive business practices within the meaning of
11 the Business and Professions Code section 17200 *et seq.*

12 11. Plaintiff, on behalf of herself and all class members, brings this action pursuant to
13 Labor Code sections 226, subdivision (b), 226.7, 510, 512, and California Code of Regulations,
14 Title 8, section 11040, seeking unpaid rest and meal period compensation, penalties and
15 reasonable attorneys' fees and costs.

16 **Jurisdiction and Venue**

17 12. This action arises out of acts and events occurring within the bounds of the State of
18 California, County of San Diego.

19 13. Defendant TAYLORMADE is, and at all times mentioned herein was, a Delaware
20 corporation registered to do business and doing business in the State of California, with an agent
21 for service of process located in the County of San Diego, California. Defendant
22 TAYLORMADE's principal place of business is located in the County of San Diego, California.
23 As such, TAYLORMADE is domiciled as a matter of law in the State of California, with the result
24 that this Court has jurisdiction over this action pursuant to the California Constitution, Article VI,
25 Section 10, which grants the Superior Court original jurisdiction in all causes except those given
26 by statute to other courts, and California Code of Civil Procedure § 410.10.

27 14. Venue is proper in this Court pursuant to California Code of Civil Procedure
28 §§ 395 and 395.5 because Defendants conduct business in this County, hire and fire employees in

1 this County, and commit Labor Code violations in this County. Additionally, the acts and
2 transactions that are the subject of this complaint took place within this County.

3 15. Each Defendant is within the jurisdiction of this Court for service of process
4 purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and those similarly
5 situated with the State of California. Within the County of San Diego, Defendants employ or have
6 employed numerous class members.

7 16. The monetary damages, premium wages, restitution and penalties sought by
8 Plaintiff, on behalf of herself and on behalf of the proposed class(es), exceed the minimal
9 jurisdictional limits of the Superior Court and will be established according to proof at trial.

10 **Parties**

11 17. Plaintiff VANESSA BULCAO is a resident of California, and of the County of San
12 Diego, and at all times relevant herein was employed in California by Defendants as a non-exempt
13 executive/administrative assistant. Plaintiff was hired by Defendants on or about February 11,
14 2015, and was involuntarily terminated on or about May 19, 2015.

15 18. During the course of her employment, Plaintiff was subjected to various wage and
16 hour and Labor Code violations by Defendants, including, without limitation, unlawful/non-
17 compliant meal and rest period policies and practices, unlawful forfeitures of earned but unpaid
18 meal and rest period premiums, unlawful/non-compliant and/or inaccurate wage statements, and
19 unlawful withholding of her final pay upon termination.

20 19. Contrary to the requirements of California Labor Code section 202, which require
21 that employees who are involuntarily terminated be given their final pay “immediately” upon
22 termination, and also contrary to the Employee Handbook for Defendants, which states that
23 employees will be given their final paychecks in an exit interview, Plaintiff did not receive an
24 “exit interview” and was not issued her (supposed) final paycheck until on or about June 2, 2015.

25 20. On the date of her termination, May 19, 2015, Defendants sent Plaintiff a letter
26 dated May 19, 2015 which enclosed various documents for her signature, including but not limited
27 to an “Employee Separation Form” and a proposed “Separation Agreement and General Release
28 of All Claims” (“Separation Agreement/General Release”). Although she was involuntarily

1 terminated on or about May 19, 2015, and, in violation of the law, had not yet received her
2 (supposed) final paycheck, the Defendants' letter requested that Plaintiff sign and return the
3 enclosed Separation Agreement/General Release, and further informed her that her (supposed)
4 final paycheck would be delivered on June 2, 2015. Although Plaintiff declined to sign and return
5 the Separation Agreement/General Release, Defendants' letter inferred that the issuance of her
6 (supposed) final paycheck was contingent upon her signing and returning the Separation
7 Agreement/General Release. Such conduct by Defendants violated California Labor Code section
8 206.5, which prohibits employers from seeking, requiring, or obtaining wage releases unless the
9 affected employee(s) has/have already received payment of the wages due. California Labor Code
10 section 206.5 makes violation of that section by an employer a (criminal) misdemeanor.

11 21. Upon information and belief, Plaintiff and other members of the proposed class(es),
12 experienced the common policies and practices of Defendants that resulted in various wage and
13 hour and Labor Code violations, including, without limitation, unlawful/non-compliant meal and
14 rest period policies and practices, unlawful forfeitures of earned but unpaid meal and rest period
15 premiums, unlawful/non-compliant and inaccurate wage statements, and – for those employees
16 who have voluntarily and/or involuntarily terminated their employment with Defendants –
17 unlawful withholding of final pay upon voluntarily or involuntarily termination.

18 22. Upon information and belief, Defendants, as a matter of common practice and
19 policy, willfully failed to pay timely members of the Plaintiff class compensation owing to them
20 upon termination of their employment with Defendants. Upon information and belief, Defendants,
21 also as a matter of common practice and policy, subjected terminated employees to the unlawful
22 practice of seeking/obtaining general releases of any and all wage and/or employment-related
23 claims before payment of all wages due and owing, in violation of California Labor Code section
24 206.5.

25 23. This case only concerns non-exempt employees of Defendants who were or are
26 employed in the State of California at any time within the limitations period(s).

27 24. Defendant TAYLORMADE is a golf club, golf equipment, and golf accessory
28 company headquartered in the County of San Diego, California. According to its website

1 (<http://taylormadegolf.com/>), TaylorMade Golf Company, Inc. does business as TaylorMade –
2 adidas Golf Company, and is a member of the adidas Group, which comprises four “premium”
3 brands, including TaylorMade, adidas Golf, Adams and Ashworth.

4 25. Plaintiff is unaware of the true names, identities or capacities, whether individual,
5 corporate, association, or otherwise, of those Defendants sued herein as Does 1-10, inclusive.
6 Plaintiff therefore sues said Defendants by such fictitious names. Plaintiff will seek leave to
7 amend this Complaint pursuant to California Code of Civil Procedure section 474 to set forth the
8 true names and capacities of these Defendants once they are ascertained.

9 26. Plaintiff is informed and believes and on that basis alleges that Defendants sued
10 herein as Does 1-10, inclusive, and each of them, are in some way responsible for the acts and
11 events complained of herein, and proximately caused the injuries and damages to Plaintiff and
12 members of the class(es) which are described in this Complaint. Plaintiff will seek leave of court
13 to amend this Complaint to more specifically set forth the wrongful conduct of those Defendants
14 when it has been ascertained.

15 27. Plaintiff is informed and believes, and on that basis alleges, that at all times herein
16 mentioned, Defendants, and each of them, were the parent companies, subsidiary companies,
17 agents, owners, principals, controllers, servants, joint venturers, partners, shareholders, managers,
18 representatives and/or employees of the remaining defendants and, in doing the things herein
19 complained of, were acting on behalf of Defendants. Plaintiff is informed and believes, and
20 thereon alleges, that each and all of the acts and omissions alleged was performed by, or is
21 attributable to, Defendants and Does 1-10, inclusive, each acting as the agent for the other, with
22 legal authority to act on the other’s behalf. The acts of any and all Defendants were in accordance
23 with, and represent the official policy of, all other Defendants.

24 28. At all times mentioned herein, Defendants, and each of them, ratified each and
25 every act or omission complained of herein. At all times mentioned, Defendants, and each of
26 them, aided and abetted the acts and omissions of each and all the other Defendants.

27
28

1 29. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants
2 is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions,
3 occurrences, and transactions alleged herein.

4 Class Allegations

5 30. Plaintiff brings this action on behalf of herself and all others similarly situated as a
6 class action pursuant to section 382 of the California Code of Civil Procedure. Except for the
7 Seventh Cause of Action, which Plaintiff does not seek to certify, Plaintiff seeks to represent a
8 class composed of and defined as follows:

9 All persons who are or have been employed by Defendants in the State of
10 California as non-exempt personnel during the period of the relevant
11 statute of limitations.

12 31. Plaintiff also seeks to represent subclasses composed of and defined as follows:

13 a. All persons who are or have been employed by Defendants in the State of
14 California as non-exempt personnel during the period of the relevant statute
15 of limitations who worked five hours or more without being provided a
16 meal period before the completion of the fifth hour of work and were not
17 provided compensation of one hour's pay or other compensation for each
18 day on which such meal period was not timely provided.

19 b. All persons who are or have been employed by Defendants in the State of
20 California as non-exempt personnel during the period of the relevant statute
21 of limitations who have not been authorized and permitted to take a rest
22 period for every four hours or major fraction thereof worked per day and
23 were not provided compensation of one hour's pay or other compensation
24 for each day on which such rest periods were not properly authorized and
25 permitted.

26 c. All persons who are or have been employed by Defendants in the State of
27 California as non-exempt personnel during the period of the relevant statute
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1 of limitations who were entitled to receive but were not paid premium pay,
2 and whose wage statements did not account for premium wages owed.

3 d. All persons who are or have been employed by Defendants in the State of
4 California as non-exempt personnel during the period of the relevant statute
5 of limitations from whom Defendants did not issue final checks
6 immediately upon involuntary termination of their employment.

7 e. All persons who are or have been employed by Defendants in the State of
8 California as non-exempt personnel during the period of the relevant statute
9 of limitations from whom Defendants did not issue final checks within 72
10 hours upon voluntary termination of their employment.

11 f. All persons who were employed by Defendants in the State of California as
12 non-exempt personnel during the period of the relevant statute of limitations
13 but who terminated (either voluntarily or involuntarily) and were presented
14 with a general release of any and all wage and/or employment-related
15 claims before payment of all wages due and owing had been made.

16 32. Plaintiff reserves the right under rule 1855, subdivision (b), California Rules of
17 Court, to amend or modify the class descriptions with greater specificity or further division into
18 subclasses or limitation to particular issues.

19 33. This action has been brought and may properly be maintained as a class action
20 under the provisions of section 382 of the California Code of Civil Procedure because there is a
21 well-defined community of interest in the litigation and the proposed class(es) is/are easily
22 ascertainable.

23 **Numerosity**

24 34. The potential members of the class(es) as defined are so numerous that joinder of
25 all the members of the class(es) is impracticable. While the precise number of class members has
26 not been determined at this time, Plaintiff is informed and believes that Defendants currently
27 employ, and during the relevant time periods have employed, more than one hundred (100)
28 employees, all in the State of California, in non-exempt positions and who are or have been

1 affected by Defendants’ policies of not providing meal periods compliant with California law
2 without payment of premium pay for meal periods not so provided, not authorizing and permitting
3 rest periods compliant with California law without payment of premium pay for rest breaks not so
4 provided, providing unlawful/non-compliant and/or inaccurate wage statements, and – for those
5 whose employment has terminated – not timely paying waiting time monies, failing to timely pay
6 such employees upon termination, and presenting such employees with a general release of any
7 and all claims before payment of all final wages due to such employees. For example, according
8 to one of its websites (<http://careers.adidas-group.com/taylormade/working-here.aspx>), Defendant
9 TAYLORMADE states that it employs approximately 930 people at its headquarters in San Diego
10 County, including in “Research & Development, Engineering, Design, Marketing, Sales and
11 Service, eCommerce, Finance & Accounting, Operations, Legal, Human Resources and
12 Information Technology.”

13 35. Accounting for employee turnover during the relevant periods necessarily increases
14 this number substantially. Upon information and belief, Plaintiff alleges Defendants’ and/or
15 DOES 1-10’s employment records would provide information as to the number and location of all
16 class members. Joinder of all members of the proposed class(es) is not practicable.

17 **Commonality**

18 36. There are questions of law and fact common to the class(es) that predominate over
19 any questions affecting only individual class members. These common questions of law and fact
20 include, without limitation:

- 21 a. Whether Defendants violated Labor Code sections 226.7 and 512,
22 IWC Wage Order No. 4-2001 or other applicable IWC Wage
23 Orders, and California Code of Regulations, Title 8, section 11040,
24 by failing to provide meal periods to Non-Exempt Employees per
25 every (5) hours of continuous work, before the completion of the
26 fifth hour of work, and/or failing to pay said employees one hour
27 of pay at the employee’s regular rate of compensation for each
28 work day that the meal period was not timely provided.

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- b. Whether Defendants violated Labor Code sections 226.7 and 512, IWC Wage Order No. 4-2001 or other applicable IWC Wage Orders, and California Code of Regulations, Title 8, section 11040, by failing to provide meal periods to Non-Exempt Employees per every (10) hours of continuous work, before the completion of the tenth hour of work, and/or failing to pay said employees one hour of pay at the employee's regular rate of compensation for each work day that the meal period was not timely provided.
- c. Whether Defendants violated Labor Code section 226.7, IWC Wage Orders No. 4-2001 or other applicable IWC Wage Orders, and California Code of Regulations, Title 8, section 11040, by failing to authorize, permit, and/or provide rest periods to Non-Exempt Employees for every four hours or major fraction thereof worked and/or failing to pay said employees one hour of pay at the employee's regular rate of compensation for each work day that the rest period was not properly authorized, permitted and/or provided.
- d. Whether Defendants violated Labor Code sections 226.7 and 512, IWC Wage Order No. 4-2001 or other applicable IWC Wage Orders, and California Code of Regulations, Title 8, section 11040, by not relieving said Non-Exempt Employees from all duties during a timely 30 minute meal period.
- e. Whether, for those members of the class(es) who left Defendants' employ or who were terminated, Defendants timely paid all wages due and owing to such class members.
- f. Whether Defendants willfully failed to pay, in a timely manner, wages owed to members of the class(es) who left Defendants' employ or who were terminated.

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- g. Whether Defendants violated section 17200 *et. seq.* of the California Business and Professions Code by failing to pay all wages when due (including premium wages), failing to provide rest and meal periods without compensating said Non-Exempt Employees one hour's pay for every day such periods were not provided, and/or seeking/requiring/obtaining wage releases before the affected employee(s) has/have already received payment of the wages due.
- h. Whether Defendants violated Labor Code Labor Code Section 203 which provides for the assessment of a penalty against the employer when there is a willful failure to pay wages due the employee at conclusion of the employment relationship.
- i. Whether Defendants had uniform policies and/or practices relative to meal periods.
- j. Whether Defendants had uniform policies and/or practices relative to rest breaks.
- k. Whether, for those Non-Exempt Employees employed for more than five continuous hours, Defendants and/or DOES had uniform policies and/or practices that failed to provide said employees a reasonable opportunity to take duty-free uninterrupted 30- minute meal breaks before the completion of the fifth hour of work.
- l. Whether, for those Non-Exempt Employees employed for more than ten continuous hours, Defendants and/or DOES had uniform policies and/or practices that failed to provide said employees a reasonable opportunity to take a second duty-free uninterrupted 30- minute meal break before the completion of the tenth hour of work.

- 1 m. Whether Defendants had uniform policies and/or practices that
- 2 failed to authorize and permit legally compliant 10 minute paid rest
- 3 periods for every four hours worked or major fraction thereof.
- 4 n. Whether Defendants had uniform policies and/or practices that
- 5 resulted in them presenting non-exempt employees with a general
- 6 release of any and all claims before payment of all final wages due
- 7 to such employees.
- 8 o. Whether Defendants violated California Labor Code section 206.5,
- 9 which prohibits employers from seeking or obtaining wage
- 10 releases unless the affected employee(s) has/have already received
- 11 payment of the wages due.

12 37. The answer to each of these respective questions will generate a common answer
13 capable of resolving class-wide liability in one stroke.

14 38. On information and belief, each of said respective work practices and/or policies
15 were uniform throughout all of Defendants' California locations during the class period.

16 39. Said common questions predominate over any individualized issues and/or
17 questions affecting only individual members.

18 **Typicality**

19 40. The claims of the named Plaintiff are typical of the claims of the class(es). Plaintiff
20 and all members of the class(es) sustained injuries and damages arising out of and caused by
21 Defendants' common course of conduct in violation of laws and regulations that have the force
22 and effect of law and statutes as alleged.

23 41. Plaintiff, along with all of the Non-Exempt Employees employed by Defendants,
24 was subjected to the same uniform policies and/or practices that affected all such Non-Exempt
25 Employees.

26 42. As result of said uniform policies and/or practices, Plaintiff, along with all of the
27 Non-Exempt Employees employed by Defendants, was not provided with legally compliant meal
28 periods, nor was she provided any premium compensation for meal periods not properly provided.

1 43. As result of said uniform policies and/or practices, Plaintiff, along with all of the
2 Non-Exempt Employees employed by Defendants, was not authorized and permitted to take
3 legally compliant rest breaks, nor was she provided any premium compensation for rest breaks not
4 properly authorized and permitted.

5 44. Throughout the statutory period, Defendants had uniform policies and/or practices
6 of not satisfying their obligation to provide legally compliant meal periods to their Non-Exempt
7 Employees.

8 45. As result of said uniform policies and/or practices Defendants had of not satisfying
9 their obligation to provide legally compliant meal periods, Plaintiff and other Non-Exempt
10 Personnel regularly either did not receive timely and/or compliant meal periods and/or worked
11 during what should have been their meal periods.

12 46. Throughout the statutory period, Defendants had uniform policies and/or practices
13 of not satisfying their obligation to authorize and permit legally compliant rest breaks to their
14 Non-Exempt Employees.

15 47. As result of said uniform policies and/or practices Defendants had of not satisfying
16 their obligation to provide legally compliant rest breaks, Plaintiff and other Non-Exempt
17 Personnel regularly either did not receive timely and/or compliant rest breaks and/or worked
18 during what should have been their rest breaks.

19 48. Throughout the statutory period, Defendants had uniform policies and/or practices
20 that resulted in said employees not being timely paid all wages owed to them at the time of
21 termination.

22 49. As result of said uniform policies and/or practices Defendants had of not paying all
23 wages owed at the time of termination, Plaintiff and said Non-Exempt Personnel were not paid the
24 wages owed to them in a timely manner. Thus, Plaintiff and said Non-Exempt Personnel that
25 terminated their employment with Defendants during the statutory period are owed waiting time
26 penalties.

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1 **Adequacy of Representation**

2 50. Plaintiff will fairly and adequately represent and protect the interests of the
3 members of the class(es).

4 51. Plaintiff is ready and willing to take the time necessary to help prosecute this case.

5 52. Plaintiff has no conflicts that will not allow her to fairly and adequately represent
6 and protect the interests of the members of the class.

7 53. Counsel who represents Plaintiff is competent and experienced in litigating large
8 employment class actions.

9 **Superiority of Class Action**

10 54. A class action is superior to other available means for the fair and efficient
11 adjudication of this controversy. Individual joinder of all class members is not practicable, and
12 questions of law and fact common to the class(es) predominate over any questions affecting only
13 individual members of the class(es). Each member of the class(es) has been damaged and is
14 entitled to recovery by reason of Defendants' policy and/or practice of denying class members
15 legally compliant meal periods and rest breaks without legal compensation, providing
16 unlawful/non-compliant and inaccurate wage statements, requiring unlawful forfeitures of earned
17 but unpaid meal and rest period premiums, unlawfully withholding final pay upon voluntarily or
18 involuntarily termination, willfully failing to timely pay members of the Plaintiff class(es)
19 compensation owing to them upon termination of their employment, and subjecting terminated
20 employees to the unlawful practice of seeking/obtaining general releases of any and all wage
21 and/or employment-related claims before payment of all wages due and owing.

22 55. Class action treatment will allow those similarly situated persons to litigate their
23 claims in the manner that is most efficient and economical for the parties and the judicial system.
24 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
25 action that would preclude its maintenance as a class action.

26 56. Because such common questions predominate over any individualized issues and/or
27 questions affecting only individual members, class resolution is superior to other methods for fair
28 and efficient adjudication.

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First Cause of Action

Failure to Provide Compliant Meal Periods

(Against All Defendants)

(California Labor Code §§ 226.7, 512; IWC Wage Order No. 4-2001; 8 C.C.R. § 11040)

57. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this section as though fully set forth herein.

58. Under California Labor Code, section 512, and Industrial Welfare Commission Wage Order No. 4-2001, absent waiver by mutual consent, no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. In addition, California law also requires that, for employees who work more than ten hours, a second meal period of not less than thirty (30) minutes be provided, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. During these meal periods of not less than thirty (30) minutes, which must be provided before the completion of the fifth hour of work for the first meal period and no later than the completion of the tenth hour of work for the second meal period, the employee must be completely free of the employer's control and must not perform any work for the employer. If the employer's policies, procedures and/or practices do not comply with California law, the employee has not been provided a meal period in accordance with the law.

59. Under California Labor Code, section 226.7, if the employer does not provide an employee a meal period in accordance with the above requirements, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

60. Defendants failed to provide 30 minute, uninterrupted meal periods, before the completion of the fifth hour of work, to said Non-Exempt Employees who worked for work periods of more than five consecutive hours. Defendants also failed to provide 30 minute uninterrupted meal periods for those working ten hours of more, before the completion of the tenth hour of work.

1 61. Nevertheless, Defendants failed to pay their Non-Exempt Employees one (1) hour
2 of premium pay at the employee’s regular rate of compensation for each workday that the meal
3 period was not provided.

4 62. Such premium pay is due and owing to class members, and was due and owing to
5 Plaintiff at the time of her termination, but was not paid.

6 63. By failing to provide premium pay compensation for such unprovided or
7 improperly provided meal periods, as alleged above, Defendants violated the provisions of Labor
8 Code sections 226.7, 512 and IWC Wage Order No. 4-2001.

9 64. As a result of the unlawful acts of Defendants, Plaintiff and the class(es) she seeks
10 to represent have been deprived of premium wages in amounts to be determined at trial, and are
11 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and costs,
12 under Labor Code sections 226, 226.7, and IWC Wage Order No. 4-2001. Plaintiff and the class
13 members she seeks to represent did not willfully waive their right to take meal periods through
14 mutual consent with Defendants.

15 65. WHEREFORE, Plaintiff and the class(es) she seeks to represent request relief as
16 described below.

17 **Second Cause of Action**

18 **Failure to Authorize and Permit Compliant Rest Breaks**

19 **(Against All Defendants)**

20 **(California Labor Code § 226.7; IWC Wage Order No. 4-2001; 8 C.C.R. § 11040)**

21 66. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this
22 section as though fully set forth herein.

23 67. Defendants failed to authorize and permit said Non-Exempt Employees to take 10
24 minute rest periods per every four hours worked or major fraction thereof.

25 68. By their failure to authorize and permit said Non-Exempt Employees to take rest
26 periods for every four hours or major fraction thereof worked per day Defendants violated
27 provisions of Labor Code section 226.7 and IWC Wage Order No. 4-2001. Plaintiff and the class
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1 members she seeks to represent did not willfully waive their right to take rest periods through
2 mutual consent with Defendants and/or DOES.

3 69. As a result of the unlawful acts of Defendants, Plaintiff and the class(es) she seeks
4 to represent have been deprived of premium wages in amounts to be determined at trial, and are
5 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,
6 under Labor Code section 226.7, and IWC Wage Orders 4-2001.

7 70. Under California law, Section 226.7 is interpreted as permitting up to two premium
8 payments per workday – one for failure to provide one or more legally compliant meal periods,
9 and another for failure to timely provide one or more rest periods. Accordingly, for the applicable
10 limitations period, Plaintiff and the class(es) she seeks to represent seek two premium payments
11 per day from Defendants, one for failure to properly provide one or more legally compliant meal
12 periods and another for failure to properly authorize and permit one or more legally compliant rest
13 periods.

14 71. WHEREFORE, Plaintiff and the class(es) she seeks to represent request relief as
15 described below.

16 **Third Cause of Action**

17 **Failure to Properly Itemize Paystubs**

18 **(Against All Defendants)**

19 **(California Labor Code § 226)**

20 72. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this
21 section as though fully set forth herein.

22 73. California Labor Code § 226(a) requires an employer to furnish its employees with
23 an accurate itemized statement in writing showing, among other things, (a) gross wages earned
24 and (b) net wages earned.

25 74. At all material times set forth herein, California Labor Code § 226(a) provided, in
26 relevant part: "Every employer shall, semimonthly or at the time of each payment of wages,
27 furnish each of his or her employees, either as a detachable part of the check, draft, or voucher
28 paying the employee's wages, or separately when wages are paid by personal check or cash, an

1 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by
2 the employee, except for any employee whose compensation is solely based on a salary and who is
3 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
4 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
5 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all
6 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
7 net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
8 name of the employee and only the last four digits of his or her social security number or an
9 employee identification number other than a social security number, (8) the name and address of
10 the legal entity that is the employer ... , and (9) all applicable hourly rates in effect during the pay
11 period and the corresponding number of hours worked at each hourly rate by the employee”

12 75. Plaintiff’s pay stubs were inaccurate under (at least) subsections (a)(1) and (a)(5) of
13 California Labor Code § 226, insofar as the pay stubs did not state, properly itemize, or accurately
14 reflect:

15 (a) the gross wages *earned*, because they omitted premium pay for meal period and
16 rest break violations that had actually been earned but had not been paid, as it should have
17 been; and

18 (b) the net wages *earned*, because they omitted premium pay for meal period and rest
19 break violations that had actually been earned but had not been paid, as it should have
20 been.

21 76. As a result of such violations, Plaintiff and the class(es) she seeks to represent was
22 damaged by Defendants’ failure to comply with Labor Code § 226.

23 77. For “inaccurate pay stubs,” California Labor Code § 226(e) allows an employee to
24 seek from the employer the greater of all actual damages suffered by the employee or statutory
25 penalties.

26 78. Under California Labor Code § 226, the penalty shall be the greater of all actual
27 damages suffered by the employee or \$50 for the initial pay period in which a violation occurs and
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1 \$100 per employee for each violation in a subsequent pay period, not exceeding an “aggregate
2 penalty” of \$4,000.

3 79. For this violation, employees may also recover costs and reasonable attorney fees.
4 Thus, under Section 226(e), Plaintiff, and every member of the class(es) she seeks to represent,
5 seeks a penalty comprised of the greater of all actual damages suffered by the employee or the
6 aggregate penalty \$4,000, plus costs and reasonable attorney fees.

7 **Fourth Cause of Action**

8 **Failure to Pay All Wages Due on Termination**

9 **(Against All Defendants)**

10 **(California Labor Code § 203)**

11 80. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this
12 section as though fully set forth herein.

13 81. Plaintiff’s employment with Defendants terminated on May 19, 2015. However,
14 her supposed final check was not delivered until June 2, 2015, despite the fact that California
15 Labor Code § 201(a) requires the immediate payment of wages upon involuntary termination.

16 82. Further, Plaintiff’s alleged final paycheck also did not include any premium
17 payments for the meal break and rest period violations alleged herein.

18 83. Accordingly, by reason of the substantial delay in payment (from May 19, 2015 to
19 June 2, 2015) and the failure of Defendants to include any premium payments for the meal break
20 and rest period violations alleged herein, Plaintiff did not receive “immediately” all of her
21 outstanding wages which were due and owing at the time of her termination, as California Labor
22 Code § 201(a) requires. Indeed, Plaintiff’s premium payments for meal period and rest break
23 violations still have not been paid.

24 84. For employees who separate employment voluntarily, California Labor Code
25 § 202(a) requires the payment of wages within 72 hours, unless the employee has given 72 hours
26 previous notice of his or her intention to quit, in which case the employee is entitled to his or her
27 wages at the time of quitting.

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1 85. California Labor Code § 203 requires the payment of waiting time penalties by an
2 employer who willfully fails to pay wages due an employee, whether the employee is discharged
3 or quits.

4 86. Upon information and belief, numerous members of the class(es) are no longer
5 employed by Defendants. They were either fired by Defendants or quit. Upon information and
6 belief, Defendants have consistently and routinely violated California Labor Code §§ 201(a) and
7 202(a), as applicable, by failing to timely pay – within the time limits specified by California
8 Labor Code §§ 201(a) and 202(a) – all final wages to those Non-Exempt Personnel who have
9 terminated their employment. Upon information and belief, Defendants have also consistently and
10 routinely failed to pay any meal period premiums and/or rest period premiums owed to Non-
11 Exempt Personnel at the time of termination, or otherwise.

12 87. Defendants willfully failed to pay Plaintiff’s wages upon separation. Upon
13 information and belief, Defendants also willfully failed to pay wages to Non-Exempt Personnel in
14 compliance with California Labor Code §§ 201(a) and/or 202(a), upon voluntary and involuntary
15 separation, as the case may be, consisting of (at least) earned but unpaid premium payments for
16 the meal period and rest break violations committed by Defendants, as alleged herein. Thus, in
17 addition to the unpaid premium payments for the meal period and rest break violations, Plaintiff
18 and the Non-Exempt Personnel she seeks to represent seek penalties under California Labor Code
19 § 203 in an amount equal to her/their daily wages for each day, not exceeding 30 days, that the
20 wages are unpaid.

21 88. The failure of Defendants to pay wages, as alleged above, was willful in that
22 Defendants and/or DOES and each of them knew the wages to be due but failed to pay them, thus
23 entitling members of the class(es) to penalties under Labor Code, section 203, which provides that
24 an employee’s wages shall continue as a penalty until paid for a period of up to thirty (30) days
25 from the time they were due.

26 89. WHEREFORE, Plaintiff and the class(es) she seeks to represent request relief as
27 described below.
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1 **Fifth Cause of Action**

2 **Requiring Execution of a Wage/General Release Before Final Wages Have Been Paid**

3 **(Against All Defendants)**

4 **(California Labor Code § 206.5)**

5 90. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this
6 section as though fully set forth herein.

7 91. As alleged herein, Plaintiff's employment with Defendants terminated on May 19,
8 2015. Yet, her supposed final check was not delivered until June 2, 2015, despite the fact that
9 California Labor Code § 201(a) requires the immediate payment of wages upon involuntary
10 termination.

11 92. On the date of her termination, May 19, 2015, Defendants sent Plaintiff a letter
12 dated May 19, 2015 which enclosed various documents for her signature, including but not limited
13 to an "Employee Separation Form" and a Separation Agreement/General Release. Although she
14 was involuntarily terminated on or about May 19, 2015, and had not yet received her (supposed)
15 final paycheck, the letter requested that Plaintiff sign and return the enclosed Separation
16 Agreement/General Release, and further informed her that her (supposed) final paycheck would be
17 delivered on June 2, 2015.

18 93. Upon information and belief, Defendants, as a matter of common practice and
19 policy, willfully failed to timely pay members of the Plaintiff class compensation owing to them
20 upon termination of their employment. Upon information and belief, Defendants, also as a matter
21 of common practice and policy, subjected terminated employees to the practice of requiring the
22 execution of a general release before payment of all final wages had been made and/or without
23 payment of any premium wages for the meal period and rest break violations, in violation of
24 California Labor Code section 206.5.

25 94. Upon information and belief, Defendants had a common policy and/or practice
26 wherein they would seek, require, or obtain a similar Separation Agreement/General Release from
27 those employees who voluntarily and/or involuntarily terminated their employment with
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1 Defendants, even though the alleged final wages of such employees had not been paid in
2 compliance with California Labor Code §§ 201(a) and/or 202(a).

3 95. Such conduct by Defendants violated California Labor Code § 206.5, which
4 prohibits employers from seeking, requiring, or obtaining wage releases unless the affected
5 employee(s) has/have already received payment of the wages due. California Labor Code § 206.5
6 makes violation of that section by an employer a (criminal) misdemeanor.

7 96. Under California Labor Code § 206.5(a), “[a] release required or executed in
8 violation of the provisions of this section shall be null and void as between the employer and the
9 employee.”

10 97. Accordingly, for all Non-Exempt Personnel of Defendants who signed a Separation
11 Agreement/General Release before the alleged final wages of such employees had been paid in
12 compliance with California Labor Code §§ 201(a) and/or 202(a), Plaintiff seeks an order from this
13 Court invalidating all such releases, and declaring them null and void.

14 **Sixth Cause of Action**

15 **Unfair Competition**

16 **(Against All Defendants)**

17 **(California Business & Professions Code §§ 17200 et seq.)**

18 98. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this
19 section as though fully set forth herein.

20 99. California Business & Professions Code §§ 17200 et seq., the UCL, defines unfair
21 competition to include any unlawful, unfair, or fraudulent/deceptive business act or practice, and
22 prohibits such conduct.

23 100. Plaintiff has standing to bring this claim because she has lost money or property as
24 a result of the misconduct alleged.

25 101. The acts and practices alleged herein violate Business & Professions Code § 17200
26 et seq., and consequently constitute unlawful, unfair, and/or fraudulent/deceptive business acts or
27 practices within the meaning of the UCL, because Defendants violated:
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- a. IWC Wage Order 4-2001 (8 C.C.R. § 11040) and Labor Code §§ 226.7 and 512, by failing to provide Plaintiff and other Non-Exempt Personnel with statutorily proper meal periods;
- b. IWC Wage Order 4-2001 (8 C.C.R. § 11040) and Labor Code § 226.7, by failing to authorize and permit Plaintiff and other Non-Exempt Personnel to take statutorily proper rest breaks;
- c. Labor Code § 226, including without limitation subsections (a)(1) and (a)(5) thereof, by issuing inaccurate pay stubs to Plaintiff and other Non-Exempt Personnel;
- d. Labor Code §§ 201(a)/202(a), by failing to timely pay wages to Plaintiff and other Non-Exempt Personnel upon separation of employment;
- e. Labor Code § 203, by willfully failing to pay all wages due Plaintiff and other Non-Exempt Personnel, upon separation of employment; and
- f. California Labor Code § 206.5, by seeking, requiring, or obtaining wage releases from Plaintiff and other Non-Exempt Personnel even though such employees have not received payment of all wages due.

102. The actions and/or inactions of Defendants have resulted in various wage and hour and Labor Code violations, including, without limitation, unlawful/non-compliant meal and rest period policies and practices, unlawful forfeitures of earned but unpaid meal and rest period premiums, and unlawful/non-compliant and inaccurate wage statements. For those employees who have voluntarily and/or involuntarily terminated their employment with Defendants, the actions and/or inactions of Defendants have also resulted in various additional wage and hour and Labor Code violations, including unlawful withholding of final pay upon voluntarily or involuntarily termination and the unlawful practice of seeking/obtaining general releases of any and all wage and/or employment-related claims before payment of all wages due and owing.

1 103. Pursuant to California Business and Professions Code § 17208, Plaintiff is entitled
2 to earned but unpaid meal and rest period premiums, as referenced California Labor Code §§
3 226.7 and 512, IWC Wage Order No. 4-2001, and 8 C.C.R. § 11040, for a period of four (4) years
4 prior to the filing of the complaint. Thus, within the limitations period of Section 17208, Plaintiff
5 and each class member as identified herein seeks two premium payments per day from
6 Defendants, one for failure to properly provide one or more legally compliant meal periods and
7 another for failure to properly authorize and permit one or more legally compliant rest periods.

8 104. The unlawful, unfair, and/or fraudulent business acts and practices, as described
9 above, are, by definition, violations of the UCL. The UCL is not confined to anticompetitive
10 business practices, but is also directed toward the public's right to protection from fraud, deceit,
11 and unfair/unlawful conduct.

12 105. Plaintiff is entitled to equitable relief against such unlawful, unfair, or
13 fraudulent/deceptive acts and practices in order to prevent future damage, for which there is no
14 adequate remedy at law, and to avoid a multiplicity of lawsuits. Plaintiff brings this cause
15 individually and as a member of the general public actually harmed and as a representative of all
16 others subject to the unlawful, unfair, or fraudulent/deceptive acts and practices of Defendants.

17 106. As a result of their unlawful, unfair, or fraudulent/deceptive acts, Defendants have
18 reaped and continue to reap unfair benefits at the expense of Plaintiff and the class(es) she seeks to
19 represent. Therefore, Defendants should be made to disgorge these ill-gotten gains and restore to
20 Plaintiff and the members of the Plaintiff class(es) the wrongfully withheld premium wage
21 compensation pursuant to Business and Professions Code section 17203.

22 107. Plaintiff is informed and believes, and thereon alleges, that Defendants have been
23 unjustly enriched through their failure to provide legally compliant meal periods, failure to
24 authorize and permit legally compliant rest breaks, and/or failure to pay premium wages to
25 Plaintiff and members of the class(es) for the meal and rest period violations alleged herein.

26 108. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and members
27 of the Plaintiff class(es) are prejudiced by the unlawful, unfair, or fraudulent/deceptive business
28 acts and practices of Defendants.

1 109. As a direct and proximate result of the unfair business acts and practices of
2 Defendants, and each of them, Plaintiff, individually and on behalf of all employees similarly
3 situated, is entitled to equitable relief, including full restitution and/or disgorgement of all
4 premium pay and/or waiting time penalties which have/has been unlawfully withheld from them.

5 110. Pursuant to California Business and Professions Code § 17203, Plaintiff seeks
6 compensation and/or restitution of all monies due and owing, in an amount according to proof, but
7 in excess of the minimal jurisdiction of this Court.

8 **Seventh Cause of Action**

9 **Private Attorney General Act**

10 **(Against All Defendants)**

11 **(Labor Code §§ 2698 *et seq.*)**

12 111. Plaintiff re-alleges and incorporates herein by reference all paragraphs outside this
13 section as though fully set forth herein.

14 112. The Private Attorney General Act or “PAGA”, codified at Labor Code §§ 2698 *et*
15 *seq.*, allows private plaintiffs (i.e., “an aggrieved employee”) to act as a “private attorney general”
16 so as to obtain civil penalties against “employers” for violations of numerous Labor Code
17 provisions “on behalf of himself or herself and other current or former employees pursuant to the
18 procedures specified in Section 2699.3.” Under Labor Code § 2699(f)(2), “the civil penalty is one
19 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and
20 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
21 violation.”

22 113. PAGA supplements enforcement actions by public agencies, which lack adequate
23 resources to bring all such actions themselves. An employee plaintiff suing under PAGA does so
24 as the proxy or agent of the state’s labor law enforcement agencies. A PAGA plaintiff represents
25 the same legal right and interest as state labor law enforcement agencies – namely, recovery of
26 civil penalties that otherwise would have been assessed and collected by the Labor Workforce
27 Development Agency (“LWDA”). PAGA claims need not be certified like ordinary class action
28 cases in order for Plaintiff to obtain penalties on behalf of other aggrieved employees.

1 114. Plaintiff has complied with the procedures set forth in Labor Code section 2699.3.
2 Specifically, by certified mail correspondence dated December 22, 2015, and copied to counsel for
3 Defendant TAYLORMADE, Plaintiff notified the LWDA of Defendant TAYLORMADE's
4 various Labor Code violations and Plaintiff's intent to seek statutory penalties under PAGA. A
5 true and correct copy of Plaintiff's correspondence showing compliance with Labor Code § 2699.3
6 is attached hereto as **Exhibit A** and demonstrates that Plaintiff is an aggrieved employee with
7 standing to bring a representative action on behalf of the State of California and as a private
8 attorney general. No notice of cure by Defendant TAYLORMADE was provided and no notice of
9 investigation was received from the LWDA in the statutorily prescribed 33-day period since the
10 mailing of Plaintiff's correspondence/notice. Indeed, LWDA has failed to respond to Plaintiff's
11 December 22, 2015 correspondence within 33 days, such that Plaintiff may now bring a PAGA
12 action against Defendant TAYLORMADE *without* leave of court. Accordingly, Plaintiff files this
13 action as a "Representative Action" as permitted and authorized by Labor Code § 2699.3(a)(2)(C).

14 115. The provisions of subdivision (a) of Section 2699.3 apply to the violations by
15 Defendant TAYLORMADE, as alleged herein, including but not limited to Labor Code §§ 201,
16 202, 203, 206.5, 226 (paragraphs (a)(1) and (a)(5)), 226.7, and 512, among others.

17 116. As alleged herein, Defendant TAYLORMADE violated Labor Code §§ 201, 202,
18 203, 206.5, 226 (paragraphs (a)(1) and (a)(5)), 226.7, and 512, among others, by:

- 19 a. failing to provide Plaintiff and other Non-Exempt Personnel with
20 statutorily proper meal periods, as referenced in Labor Code
21 §§ 226.7 and 512;
- 22 b. failing to authorize and permit Plaintiff and other Non-Exempt
23 Personnel to take statutorily proper rest breaks, as referenced in
24 Labor Code § 226.7;
- 25 c. issuing inaccurate pay stubs to Plaintiff and other Non-Exempt
26 Personnel, as referenced in Labor Code § 226, including without
27 limitation subsections (a)(1) and (a)(5) thereof;

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- d. failing to timely pay wages to Plaintiff and other Non-Exempt Personnel upon separation of employment, per Labor Code §§ 201(a)/202(a);
- e. willfully failing to pay all wages due Plaintiff and other Non-Exempt Personnel, upon separation of employment, as referenced in Labor Code § 203; and
- f. seeking, requiring, or obtaining wage releases from Plaintiff and other Non-Exempt Personnel even though such employees have not received payment of all wages due, as referenced in California Labor Code § 206.5.

117. Pursuant to California Labor Code section 2699, the “aggrieved employees” are entitled to be awarded twenty-five (25%) percent of all penalties due under California law, in addition to an award of interest, attorney’s fees and costs.

118. The Court should award seventy-five (75%) percent of all penalties due under California law to the State of California.

119. Plaintiff therefore seeks to recover from Defendant TAYLORMADE allowable penalties, interest, costs, and attorneys’ fees, in an amount according to proof at trial, in accordance with Labor Code §§ 2699, *et seq.*

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- a. For certification of this action as a class action, with the exception of the Seventh Cause of Action;
- b. For compensatory damages according to proof;
- c. For premium wages according to proof;
- d. For penalties according to proof;
- e. For restitution according to proof;
- f. For prejudgment interest according to proof;

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- g. For attorneys' fees and costs of suit, pursuant to Labor Code §§ 218.5, 226(e), and/or 2699(g), Code of Civil Procedure § 1021.5, or as otherwise allowable by law;
- h. For injunctive and equitable measures consistent with the allegations herein; and
- i. For such other and further relief as the Court deems just and proper.

Jury Demand

Plaintiff demands a trial by jury on all causes of action so providing.

March 7, 2016

PESTOTNIK LLP

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

EXHIBIT A

PESTOTNIK LLP

ATTORNEYS AT LAW

Ross H. Hyslop

Partner

619.365.9065

hyslop@pestotnik.com

December 22, 2015

VIA CERTIFIED MAIL

California Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: Bulcao v. Taylor Made Golf Company, Inc. – San Diego Superior Court
Case No. 37-2015-00028124-CU-OE-CTL

Dear Sir/Madam:

We represent Ms. Vanessa Bulcao, a former employee of Taylor Made Golf Company, Inc. (“Taylor Made”), located in Carlsbad, CA. Pursuant to California Labor Code § 2699.3, this letter constitutes written notice of Taylor Made’s Labor Code violations and our intent to seek statutory penalties under the Labor Code’s Private Attorney General Act of 2004. A copy of this letter is also being sent to Taylor Made, in care of its counsel of record in a pending putative class action lawsuit Ms. Bulcao has filed against Taylor Made.

Ms. Bulcao contends at this time that the following policies and/or practices of Taylor Made violate or violated California law:

1. Taylor Made has/had an apparent policy and/or practice of failing to provide its all non-exempt California employees (“Non-Exempt Employees”) with uninterrupted, statutorily compliant, duty-free, thirty-minute meal periods before the end of the fifth hour of work:
 - a. Ms. Bulcao contends that Taylor Made violated Labor Code sections 226.7 and 512 by failing to maintain, undermining, and/or refusing to enforce a policy that provided its Non-Exempt Employees with uninterrupted, statutorily compliant, duty-free, thirty-minute meal periods before the end of the fifth hour of work. For example, Taylor Made’s established policy, as stated in its employee handbook, is/was facially non-compliant with California law insofar as Non-Exempt Employees were not provided with a meal period until after they had worked for five hours, rather than providing its Non-Exempt Employees with uninterrupted, statutorily compliant, duty-free, thirty-minute meal periods before the end of the fifth hour of work. Even if Taylor Made’s stated policy could

somehow be considered compliant with California law, Taylor Made consistently undermined and/or refused to enforce its established policy by, among other things, failing to schedule uninterrupted, statutorily compliant, duty-free, thirty-minute meal periods for its Non-Exempt Employee before the end of the fifth hour of work and/or by discouraging employees from taking, pressuring them not to take, and/or encouraging them to skip such meal periods.

- b. Ms. Bulcao contends that Taylor Made violated Labor Code sections 226.7 and 512 by failing to pay its Non-Exempt Employees one hour of pay at the employee's regular rate of compensation for each work day that uninterrupted, statutorily compliant, duty-free, thirty-minute meal periods were not provided to Non-Exempt Employees before the end of the fifth hour of work. In particular, Ms. Bulcao contends she was never paid "premium pay" even though she was not provided uninterrupted, statutorily compliant, duty-free, thirty-minute meal periods before the end of the fifth hour of work. In fact, Taylor Made admittedly has no system for payment of "premium pay" even when earned.
 - c. Ms. Bulcao further contends that Taylor Made violated Labor Code sections 226.7 and 512 by discouraging her from taking, pressuring her not to take, and/or encouraging her to skip, uninterrupted, duty-free, thirty-minute meal periods before the end of the fifth hour of work.
 - d. Ms. Bulcao further contends that Taylor Made violated Labor Code Labor Code section 203 by willfully failing to pay "premium pay" wages due the employee at conclusion of the employment relationship. In particular, Ms. Bulcao contends she was never paid "premium pay" even though she was not provided uninterrupted, statutorily compliant, duty-free, thirty-minute meal periods before the end of the fifth hour of work. Indeed, Taylor Made has no system in place for ensuring that any earned "premium pay" due and owing to employees at the termination of their employment relationship with Taylor Made is actually paid to such employees as part of their final pay.
2. Taylor Made has/had an apparent policy and/or practice of failing to authorize and permit its Non-Exempt Employees to take uninterrupted, duty-free, statutorily compliant, ten minute rest periods for every four hours or major fraction thereof worked:
- a. Ms. Bulcao contends that Taylor Made violated Labor Code section 226.7 by failing to maintain, undermining, and/or refusing to enforce a policy that authorized and permitted its Non-Exempt Employees to take uninterrupted, duty-free, statutorily compliant, ten minute rest periods for every four hours or major fraction thereof worked. In particular, Taylor

Made's established policy is/was facially non-compliant with California law, in that, by deleting and/or failing to include the "major fraction" language in its alleged rest period policy, Taylor Made failed to authorize and permit Non-Exempt Employees to take uninterrupted, duty-free, statutorily compliant, ten minute rest periods for every four hours or major fraction thereof worked.

- b. Ms. Bulcao contends that Taylor Made violated Labor Code sections 226.7 by failing to pay its Non-Exempt Employees one hour of pay at the employee's regular rate of compensation for each work day that uninterrupted, duty-free, statutorily compliant, ten minute rest periods were not authorized and/or permitted to Non-Exempt Employees for every four hours or major fraction thereof worked. In particular, Ms. Bulcao contends she was never paid "premium pay" even though she was not authorized and/or permitted to take an uninterrupted, duty-free, statutorily compliant, ten minute rest period for every four hours or major fraction thereof worked. As noted, Taylor Made admittedly has no system for payment of "premium pay" even when earned.
 - c. Ms. Bulcao further contends that Taylor Made violated Labor Code sections 226.7 by discouraging her from taking, pressuring her not to take, and/or encouraging her to skip, uninterrupted, duty-free, ten minute rest periods for every four hours or major fraction thereof worked.
 - d. Ms. Bulcao further contends that Taylor Made violated Labor Code Labor Code section 203 by willfully failing to pay "premium pay" wages due the employee at conclusion of the employment relationship. In particular, Ms. Bulcao contends she was never paid "premium pay" even though she was not authorized and/or permitted to take an uninterrupted, duty-free, statutorily compliant, ten minute rest period for every four hours or major fraction thereof worked. As noted, Taylor Made has no system in place for ensuring that any earned "premium pay" due and owing to employees at the termination of their employment relationship with Taylor Made is actually paid to such employees as part of their final pay.
3. Taylor Made has/had an apparent policy and/or practice of failing and/or refusing to pay "premium pay" when uninterrupted, statutorily compliant, duty-free, thirty-minute meal periods are not provided to Non-Exempt Employees before the end of the fifth hour of work:
- a. Ms. Bulcao was never paid "premium pay" even though she was not provided uninterrupted, statutorily compliant, duty-free, thirty-minute meal periods before the end of the fifth hour of work.

- b. Ms. Bulcao contends that Taylor Made violated Labor Code sections 226.7 and 512 by failing to pay its Non-Exempt Employees one hour of pay at the employee's regular rate of compensation for each work day that uninterrupted, statutorily compliant, duty-free, thirty-minute meal periods were not provided to Non-Exempt Employees before the end of the fifth hour of work. As noted, Taylor Made admittedly has no system for payment of "premium pay" even when earned.
 - c. Ms. Bulcao further contends that Taylor Made violated Labor Code Labor Code section 203 by willfully failing to pay "premium pay" wages due the employee at conclusion of the employment relationship. As noted, Taylor Made has no system in place for ensuring that any earned "premium pay" due and owing to employees at the termination of their employment relationship with Taylor Made is actually paid to such employees as part of their final pay.
4. Taylor Made has/had an apparent policy and/or practice of failing and/or refusing to pay "premium pay" when its Non-Exempt Employees are not authorized and permitted to take uninterrupted, duty-free, statutorily compliant, ten minute rest periods for every four hours or major fraction thereof worked:
 - a. Ms. Bulcao was never paid "premium pay" even though she not authorized and permitted to take uninterrupted, duty-free, statutorily compliant, ten minute rest periods for every four hours or major fraction thereof worked.
 - b. Ms. Bulcao contends that Taylor Made violated Labor Code sections 226.7 by failing to pay its Non-Exempt Employees one hour of pay at the employee's regular rate of compensation for each work day that its Non-Exempt Employees were not authorized and permitted to take uninterrupted, duty-free, statutorily compliant, ten minute rest periods for every four hours or major fraction thereof worked. As noted, Taylor Made admittedly has no system for payment of "premium pay" even when earned.
 - c. Ms. Bulcao further contends that Taylor Made violated Labor Code Labor Code section 203 by willfully failing to pay "premium pay" wages due the employee at conclusion of the employment relationship. As noted, Taylor Made has no system in place for ensuring that any earned "premium pay" due and owing to employees at the termination of their employment relationship with Taylor Made is actually paid to such employees as part of their final pay.

5. Taylor Made has/had an apparent policy and/or practice of failing and/or refusing to issue final paychecks immediately upon involuntary termination of employment:
 - a. Ms. Bulcao did not receive her final paycheck immediately upon involuntary termination of employment. Specifically, Ms. Bulcao was hired by Taylor Made or about February 11, 2015, and was involuntarily terminated on or about May 19, 2015. Contrary to the requirements of California Labor Code section 201, which require that employees who are involuntarily terminated be given their final pay “immediately” upon termination, Ms. Bulcao was not issued her (supposed) final paycheck until on or about June 2, 2015.
 - b. Ms. Bulcao contends that Taylor Made violated Labor Code section 201 by failing to issue her final pay “immediately” upon termination. Ms. Bulcao further contends that Taylor Made has or had an established policy and/or practice of failing and/or refusing to issue final paychecks immediately upon involuntary termination of employment, in violation of Labor Code section 201.
 - c. Ms. Bulcao further contends that Taylor Made violated Labor Code Labor Code section 203 by willfully failing to pay wages due her at conclusion of her employment relationship. Ms. Bulcao further contends that Taylor Made violated Labor Code Labor Code section 203 by willfully failing to pay wages due to other similarly terminated employees at the conclusion of their respective employment relationships.
6. Taylor Made has/had an apparent policy and/or practice of failing and/or refusing to issue final paychecks within seventy-two hours of voluntary termination of employment:
 - a. Although Ms. Bulcao was involuntarily terminated by Taylor Made, on or about May 19, 2015, and did not receive her paycheck “immediately” as required by California Labor Code section 202, it appears that Taylor Made has or had an established policy and/or practice of failing and/or refusing to issue final paychecks within seventy-two hours of voluntary termination of employment, in violation of Labor Code section 202.
 - b. Ms. Bulcao further contends that Taylor Made violated Labor Code Labor Code section 203 by willfully failing to pay wages due such employees at the conclusion of their respective employment relationships.
7. Taylor Made has/had an apparent policy and/or practice of presenting employees with a general release of any and all wage and/or employment-related claims before payment of all wages due and owing has been made:

- a. On the date of her termination, May 19, 2015, Taylor Made sent Ms. Bulcao a letter dated May 19, 2015 which enclosed various documents for her signature, including but not limited to an "Employee Separation Form" and a proposed "Separation Agreement and General Release of All Claims" ("Separation Agreement/General Release"). Although she was involuntarily terminated on or about May 19, 2015, and, in violation of the law, had not yet received her (supposed) final paycheck, the letter requested that Ms. Bulcao sign and return an enclosed Separation Agreement/General Release, and further informed her that her (supposed) final paycheck would be delivered on June 2, 2015. Although Ms. Bulcao declined to sign and return the Separation Agreement/General Release, Taylor Made's letter inferred that the issuance of her (supposed) final paycheck was contingent upon her signing and returning the Separation Agreement/General Release. Ms. Bulcao contends that such conduct by Taylor Made violated California Labor Code section 206.5, which prohibits employers from seeking, requiring, or obtaining wage releases unless the affected employee(s) has/have already received payment of the wages due. California Labor Code section 206.5 makes violation of that section by an employer a (criminal) misdemeanor.
 - b. Ms. Bulcao further contends that Taylor Made has or had an established policy and/or practice of seeking, requiring, or obtaining wage releases, in violation of Labor Code section 206.5, before the affected employee(s) has/have already received payment of the final wages due.
8. Taylor Made has/had an apparent policy and/or practice of not including earned but unpaid "premium pay" on wage statements, even when its where Non-Exempt Employees are not: (a) provided uninterrupted, statutorily compliant, duty-free, thirty-minute meal periods before the end of the fifth hour of work; and/or (b) authorized and permitted to take uninterrupted, duty-free, statutorily compliant, ten minute rest periods for every four hours or major fraction thereof worked:
- a. Ms. Bulcao was never paid any "premium pay" even though she was not: (a) provided uninterrupted, statutorily compliant, duty-free, thirty-minute meal periods before the end of the fifth hour of work; and/or (b) authorized and permitted to take uninterrupted, duty-free, statutorily compliant, ten minute rest periods for every four hours or major fraction thereof worked. Because she was never paid any "premium pay," Ms. Bulcao's wage statements were inaccurate by reason of (at least) Taylor Made's omission of premium pay that had actually been earned but not paid, as it should have been.
 - b. Ms. Bulcao further contends that Taylor Made has consistently and routinely failed to pay any meal period premiums and/or rest period premiums owed to Non-Exempt Personnel during their course of their


employment, at the time of termination, or otherwise. As noted, Taylor Made admittedly has no system for payment of "premium pay" even when earned.

- c. Ms. Bulcao further contends that Taylor Made violated Labor Code 226(a) by failing to accurately itemize for the employee(s), on a statement in writing, among other things, (a) gross wages earned and (b) net wages earned, by reason of its omission of premium pay that had actually been earned but not paid, as it should have been.

Accordingly, Ms. Bulcao respectfully requests that the Labor & Workforce Development Agency ("LWDA") initiate an enforcement action with respect to the aforementioned violations. If the LWDA declines to pursue enforcement, Ms. Bulcao will pursue claims in Superior Court for statutory penalties on behalf of herself and all other current and former aggrieved employees.

Should you have any questions, please contact me. Thank you.

Sincerely,



Ross H. Hyslop
PESTOTNIK LLP

cc: Taylor Made Golf Company, Inc. (via certified mail)
c/o Mr. William V. Whelan, Esq.
Solomon Ward Seidenwurm & Smith LLP
401 B Street, Ste. 1200
San Diego, CA 92101

California Labor & Workforce Development Agency (via certified mail)
800 Capitol Mall, MIC-55
Sacramento, CA 95814

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 City, State, ZIP+4 *SACRAMENTO CA 94612*

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<p>1. Article Addressed to:</p> <p>Taylor Made Golf Co. c/o Solomon Ward Et. Al. 401 B St. #1200 SAN DIEGO CA 92101</p>  <p>9590 9403 0118 5077 5561 27</p>	<p>3. Service Type <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Adult Signature <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p>
<p>2. Article Number (Transfer from service label)</p> <p>7010 1870 0001 9626 5393</p>	
<p>PS Form 3811, April 2015 PSN 7530-02-000-9053 Domestic Return Receipt</p>	

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<p>1. Article Addressed to:</p> <p>LA LWDA ATTN: PAGA Admin 1515 Clay St. #801 SACRAMENTO CA 94612</p>  <p>9590 9403 0118 5077 5561 03</p>	<p>3. Service Type <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Adult Signature <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p>
<p>2. Article Number (Transfer from service label)</p>	
<p>PS Form 3811, April 2015 PSN 7530-02-000-9053 Domestic Return Receipt</p>	

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
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<p>1. Article Addressed to:</p> <p>LA LWDA 800 Capital Mall MIL-55 SACRAMENTO CA 95814</p>  <p>9590 9403 0118 5077 5561 34</p>	<p>3. Service Type <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Adult Signature <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p>
<p>2. Article Number (Transfer from service label)</p> <p>7010 1870 0001 9626 5331</p>	
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DATE & TIME	STATUS OF ITEM	LOCATION
December 28, 2015 , 1:58 pm	Delivered	SAN DIEGO, CA 92101
Your item was delivered at 1:58 pm on December 28, 2015 in SAN DIEGO, CA 92101.		
December 24, 2015 , 1:07 pm	Departed USPS Facility	SAN DIEGO, CA 92199
December 23, 2015 , 10:43 pm	Arrived at USPS Facility	SAN DIEGO, CA 92199

Tracking Number: 70101870000196265331

Product & Tracking Information

Postal Product:

Features:
Certified Mail™

Available Actions

Text Updates

Email Updates

DATE & TIME	STATUS OF ITEM	LOCATION
December 28, 2015 , 10:22 am	Delivered	SACRAMENTO, CA 95814
Your item was delivered at 10:22 am on December 28, 2015 in SACRAMENTO, CA 95814.		
December 26, 2015 , 8:59 am	Arrived at Unit	SACRAMENTO, CA 95813
December 26, 2015 , 8:10 am	Departed USPS Facility	WEST SACRAMENTO, CA 95799
December 25, 2015 , 12:56 am	Arrived at USPS Facility	WEST SACRAMENTO, CA 95799

December 23, 2015 , 6:51 pm

Arrived at USPS Facility

SAN DIEGO, CA 92199

Tracking Number: 70101870000196265348

Updated Delivery Day: Saturday, December 26, 2015

Product & Tracking Information

Postal Product:

Features:
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Available Actions

Text Updates

Email Updates

DATE & TIME	STATUS OF ITEM	LOCATION
December 29, 2015 , 2:59 pm	Delivered	OAKLAND, CA 94612
Your item was delivered at 2:59 pm on December 29, 2015 in OAKLAND, CA 94612.		
December 28, 2015 , 5:21 pm	Business Closed	OAKLAND, CA 94612
December 26, 2015 , 11:04 am	Business Closed	OAKLAND, CA 94612
December 26, 2015 , 8:41 am	Arrived at Unit	OAKLAND, CA 94612
December 26, 2015 , 5:20 am	Departed USPS Facility	OAKLAND, CA 94615
December 24, 2015 , 11:23 pm	Arrived at USPS Facility	OAKLAND, CA 94615
December 23, 2015 , 7:45 pm	Departed USPS Facility	SAN DIEGO, CA 92199
December 23, 2015 , 6:58 pm	Arrived at USPS Facility	SAN DIEGO, CA 92199

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1 **PESTOTNIK LLP**
2 Ross H. Hyslop (149358)
3 501 W. Broadway, Suite 1025
4 San Diego, California 92101
5 Tel: 619.237.3000
6 Fax: 619.342.8020

7 *Attorneys for Plaintiff Vanessa Bulcao,*
8 *on behalf of herself, the proposed class(es),*
9 *all others similarly situated, and on behalf*
10 *of the general public*

11 THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SAN DIEGO

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

16 Plaintiff,

17 v.

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

22 Defendants.

Case No. 37-2015-00028124-CU-OE-CTL

PROOF OF SERVICE

*Assigned to the Hon. Timothy Taylor
Department 72*

23 I, Dominique C. Houston, the undersigned, declare as follows:

24 I am an employee at the law firm of Pestotnik LLP, whose address is 501 West Broadway
25 Street, Suite 1025, San Diego, California 92101. I am over the age of 18 years, and am not a party
26 to this action.

27 On March 7, 2016, I served the **First Amended Complaint** on counsel for the following
28 parties in this action:

///

///

///

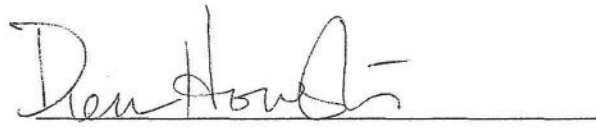
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William V. Whelan, Esq. Leah S. Strickland, Esq. Solomon Ward Seidenwurm & Smith LLP 401 B Street, Ste. 1200 San Diego, CA 92101 Tel: 619.231.0303 Em: <i>wwhelan@swsslaw.com</i> <i>lstrickland@swsslaw.com</i>	<i>Counsel for Defendant Taylor Made Golf Company, Inc.</i>
---	---

The following is the procedure in which service was affected:

- VIA E-MAIL DELIVERY:** Per agreement, I sent an electronic copy of the documents described herein to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
- BY MAIL:** I am readily familiar with the firm's practice of collection and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the United States Postal Service that same day in the ordinary course of business. Such envelope(s) were placed for collection and mailing with postage thereon fully prepaid at San Diego, California, on that same day.
- BY PERSONAL SERVICE:** I personally delivered such envelope(s) to the addressee(s) listed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Diego, California on March 7, 2016.



DOMINIQUE C. HOUSTON

EXHIBIT 2

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO
CENTRAL DIVISION**

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

Plaintiff,

v.

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

Defendants.

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

CLASS ACTION

NOTICE OF PENDENCY AND SETTLEMENT OF CLASS ACTION; SETTLEMENT HEARING; AND EXCLUSION AND OBJECTION PROCEDURES

[IMAGED FILE]

Complaint Filed: August 19, 2015

Honorable Timothy B. Taylor
Dept: C-72

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

**YOU MAY GET MONEY FROM A CLASS ACTION
SETTLEMENT AS EXPLAINED BELOW.**

If you were employed by Taylor Made Golf Company, Inc. ("TMaG") in California at any time from August 11, 2011 through December 16, 2016 as a non-exempt employee, you should read this Notice carefully because it will affect your rights.

The San Diego County California Superior Court authorized this Notice. This is not a lawsuit against you, and you are not being sued. This is not a solicitation from a lawyer.

- To qualify as a Participating Class Member and receive a share of the Settlement described in this Notice, you must complete and mail the enclosed Claim Form by [DATE]. If you submit a claim for your share of the settlement proceeds, your direct supervisor will not be informed that you did so. TMaG has also promised that it will not take any adverse or retaliatory action against anyone for submitting a claim.
- Your legal rights are affected by how you act in response to this Notice. Please read this Notice carefully.

BASIC INFORMATION

1. What is this Class Action about?

The Class Action was filed by Vanessa Bulcao ("Class Representative") on behalf of herself and on behalf of all current and former hourly employees in California employed by TMaG at any time from August 11, 2011 through December 16, 2016 (defined as "Class Members"). The lawsuit alleges that that TMaG denied its California non-exempt (i.e., hourly) employees uninterrupted, duty free, legally compliant, and timely meal periods and rest breaks; failed to pay "premium pay" for non-compliant meal periods and rest breaks; failed to issue final paychecks immediately upon involuntary termination of employment; failed to issue final paychecks within 72 hours of voluntary termination of employment; presented employees with general releases before payment of all wages due; and failed to provide compliant wage statements or paystubs. The Class Action seeks wages, premium pay, penalties, interest, attorneys' fees, and other damages on behalf of the Class Members.

TMaG contends the Class Members were provided meal periods and/or rest breaks as required by California law, that Class Members were paid in full on a timely basis, and that class members were provided with compliant paystubs. The Parties have conducted significant

investigation of the facts and law during the prosecution of this Class Action. Such investigations have included, among other things, the exchange of information and documents, meetings and conferences between representatives of the Parties, propounding and responding to written discovery, taking and defending oral depositions, interviewing putative class members and potential witnesses, obtaining informal responses to mediation information/document requests, reviewing and analyzing thousands of pages of documents and data, and participating in an all-day mediation on October 3, 2016 with the Honorable Steven Denton (Ret.). Lawyers for both parties have also investigated the applicable law as applied to the facts discovered during the Class Action. Due to the uncertainty, risk, and expense attendant to continuing the Class Action, and the difficulties, expense and delays inherent in such litigation, Class Representative and TMaG agreed to enter into a settlement of this case (“Settlement”).

2. Why did I receive this Notice?

You received this Notice because TMaG's records show that you have been employed by TMaG as a non-exempt (i.e., hourly) employee in the State of California at some point between August 11, 2011 through December 16, 2016.

All Class Members are receiving a Notice. All Class Members who do not timely request to be excluded from the Settlement as set forth below will be "Settlement Class Members." All Settlement Class Members who submit a valid and timely Claim Form will become "Participating Class Members."

This Notice explains that the Court has granted preliminary approval of a proposed Settlement of a class action lawsuit that may affect you. You have legal rights and options that you may exercise before the Court decides whether to grant final approval of the proposed Settlement.

3. What is a class action, who is involved, and how does it work?

In a class action, one or more people, in this case Vanessa Bulcao (the "Class Representative"), file a lawsuit on behalf of people who they believe have similar claims. These people together are called "Class Members". The company they sued (in this case TMaG) is called the Defendant.

In this case, the Class Representative and the Defendant have decided to settle the case. However, their proposed Settlement must be approved by the Court. This happens in two stages. First, if the Court is satisfied that the proposed Settlement appears fair, adequate and reasonable, it grants preliminary approval and orders that a Notice like this be sent to the Class Members. Class Members can then request exclusion or object to the proposed Settlement. If you have not requested exclusion, Class Members may also submit a claim. Once Class Members have had an opportunity to make this decision, the Court reviews this information -- and submissions by all interested persons -- and decides whether to grant final approval of the Settlement. If the Court grants final approval, the Class Members who filed proper and timely Claim Forms and did not ask to be excluded will become Settlement Class Members and will be paid out of the Settlement monies in exchange for a release of additional claims.

The Honorable Timothy B. Taylor of the Superior Court of California, County of San Diego (the “Court”), is overseeing this class action. You can see more information about Judge Taylor and the Superior Court of San Diego at the Court's website at: <http://www.sdcourt.ca.gov>.

4. Why is this a class action?

The Class Representative filed this case on behalf of herself and on behalf of all other Class Members. The Court then made a preliminary determination that the proposed Settlement appears fair, adequate, and reasonable. In making this determination, the Court looked at factors like the amount of money that TMaG may have had to pay if the Class Representative were to win the Class Action, and the likelihood that either party would win the Class Action. The Court also considered the costs that both Class Representative and TMaG would have to pay in attorneys' fees and other expenses if they did not settle the case, and the amount of time and resources each would expend if the case were to proceed through trial and appeal. The Court also considered that the Settlement was reached after serious, arms-length negotiations.

5. Is there any money available now?

No money or benefits are available right now because the Court has not yet decided whether to give final approval to the Settlement. If the Court gives final approval to the Settlement, and you have properly filled out your Claim Form and mailed it in on time, then you will be sent your portion of the Settlement once the Court's order becomes final.

6. Do I have a lawyer in this case?

The Court approved designation of Ross H. Hyslop, Esq., Pestotnik LLP, 501 W. Broadway, Suite 1025, San Diego, CA 92101 as Class Counsel to represent you and all Settlement Class Members. Pestotnik LLP is the legal counsel representing the Class (“Class Counsel”). You do not need to hire your own lawyer because Pestotnik LLP is working on your behalf. But, if you want to hire your own lawyer, you may do so at your own expense.

THE SETTLEMENT BENEFITS—WHAT YOU RECEIVE

7. What does the Settlement provide?

The proposed Settlement requires TMaG to pay a Settlement amount not to exceed Eight Hundred Seventy-Five Thousand Dollars (\$875,000.00). This is called the “Common Fund.” The amount of the Common Fund includes all alleged penalties and unpaid wages, Incentive Award for the Class Representative, attorneys' fees and costs for the Class Counsel, and Claims Administration costs. Settlement proceeds will be paid to Class Members who properly file Claim Forms in the manner described in Paragraph 10 below. The Settlement will provide no less than Five Hundred Seventy-Seven Thousand Five Hundred Dollars (\$577,500) to pay claims to those who qualify to receive payment.

Class Counsel have litigated this case since August 2015, and have devoted substantial time, effort and expense to prosecuting the case. According to California law, the Court may award attorneys' fees to counsel for the Class as well as reimbursement for costs they have expended in their work. Class Counsel plans to request that the Court authorize payment to them of attorneys' fees in an amount not to exceed Two Hundred Sixty-Two Thousand Five Hundred Dollars (\$262,500.00), which, if approved, will come from the Common Fund amount. Class Counsel will also ask the Court to award costs and other expenses incurred by them in prosecuting the case, which are not expected to exceed \$15,000.00.

The Class Representative will ask the Court to approve a monetary payment as compensation for the work she has done in bringing and prosecuting the case on behalf of the Class, in an amount not to exceed Five Thousand Dollars (\$5,000) ("Incentive Award"). If approved by the Court, the payment will be made from the Common Fund amount and will be in addition to any other amounts paid to the Class Representative under the terms of the Settlement.

Finally, Class Representative will ask the Court to approve a payment of Ten Thousand Dollars (\$10,000) to the claims administrator who is handling the processing of this Notice and the accompanying Claim Form.

8. What can I get from the Settlement?

Your share of the Settlement will depend on: a) how many weeks you worked for TMaG as a non-exempt/hourly employee in California from August 11, 2011 through December 16, 2016; b) whether you have already signed a severance agreement, separation agreement, or release agreement with TMaG; c) the job you hold or held at TMaG; d) the amounts of the attorneys' fees and costs, claims administration expenses, and Incentive Award approved by the Court; and e) how many Class Members participate in the Settlement. Settlement monies allocated to attorneys' fees and costs, claims administration expenses, and Incentive Award that are not awarded by the court, as well as Settlement monies that would have been allocated to Class Members who do not make claims under the Settlement, will be redistributed to those Class Members who do make claims. At this time it is therefore not possible to precisely determine how much money you will receive if you submit a timely and valid Claim Form.

9. If the Settlement is approved, when will I receive my share of the Payout Fund?

The Court has scheduled a Final Approval Hearing on [DATE], at [TIME] at the Superior Court for the State of California for the County of San Diego, Dept. C-72, 330 West Broadway, San Diego, California 92101, at which time the Court will determine: (1) whether the proposed settlement should be approved as fair, reasonable and adequate to Settlement Class Members; and (2) whether the application for the Class Representative's Incentive Award, attorneys' fees and costs, and claims administration expenses should be approved. If the Court approves the settlement, an Order Granting Final Approval will be entered. It is neither required nor necessary that you attend the Final Approval Hearing.

Once the order granting final approval is signed by the Court, and if there is no appeal of the Court's order, then checks will be mailed out to the Participating Class Members within

approximately 10 days, or on [DATE]. If an appeal is filed, then distributions will be delayed until after final resolution of any appeals. Please be patient.

OPTIONS UNDER THE SETTLEMENT

Summary of Your Legal Rights and Options in this Settlement	
SUBMIT A CLAIM FORM	<p>Submit a Claim Form by [DATE]. Release certain claims under state law.</p> <p>If you submit a timely and valid Claim Form (enclosed), you will be entitled to participate in the settlement. If you are still employed by TMaG, your direct supervisors will not be informed that you submitted a claim. TMaG has also promised that it will not take any adverse or retaliatory action against anyone for submitting a claim.</p>
EXCLUDE YOURSELF	<p>Submit an Exclusion request by [DATE], receive no money and retain your rights.</p> <p>If you submit a timely and valid Exclusion request then you will receive no payment and you will retain your right to pursue claims against TMaG in a separate action/proceeding.</p>
OBJECT	<p>Submit a written objection to the Court by [DATE].</p> <p>If you disagree with the proposed settlement, you may submit an objection. If the Court agrees with your objection, the parties can choose whether to withdraw the settlement or change its terms. If the Court rejects your objection, you will be entitled to participate in the settlement <u>only</u> if you have also submitted a timely and valid Claim Form. You will release certain claims under state law, and will also release certain claims under federal law if you submitted a Claim Form.</p>
GO TO A HEARING	Ask to speak in Court about the fairness of the Settlement.
DO NOTHING	Receive no payment. Release certain claims under state.

HOW YOU RECEIVE A PAYMENT—SUBMITTING A CLAIM FORM

10. How can I receive my portion of the Settlement?

To qualify for a payment from the Settlement, you must complete the Claim Form enclosed with this Notice, sign it under penalty of perjury, and return it to Phoenix Settlement Administrators, ("Claims Administrator"), located at P.O. Box 7208, Orange, California, 92863, Telephone (800) 784-2174, via first class U.S. mail or equivalent, postage paid, postmarked no later than [DATE]. If you do not send it in on time, then your claim will be denied.

If this Notice was sent to you at your current address, you do not need to do anything further to receive any further notices concerning this case. If this Notice was forwarded by the postal service, or if it was otherwise sent to you at an address that is not current, or if you have changed your address, then you should immediately send a letter to the Claims Administrator stating your name and past and current addresses.

The Claims Administrator's address is:

**TMaG, Inc. Claims Administration
c/o Phoenix Settlement Administrators
P.O. Box 7208
Orange, California, 92863
Telephone (800) 784-2174**

If you lose, misplace or need another Claim Form, you should contact the Claims Administrator immediately for a replacement. If there is any dispute regarding whether a Claim Form was timely mailed, the Claims Administrator will make a decision, which will be final and not subject to any appeal. You should make and keep a copy of your fully completed Claim Form and the original record showing proof of timely mailing.

11. What am I giving up to get a payment or stay in the class?

Unless you exclude yourself, you will remain part of the class for state law claims, and that means you cannot sue, continue to sue, or be part of any other lawsuits against TMaG about the state law issues in this case, and you will be bound by any orders entered by the Court about state law claims. Specifically, you will not be allowed to sue TMaG for:

all claims, demands, rights, liabilities, and causes of action of every nature and description whatsoever that arose from August 11, 2011 through December 16, 2016, whether in tort, contract, or for violation of any state constitution, statute, rule or regulation, including state wage and hour laws, whether for economic damages, non-economic damages, restitution, penalties or liquidated damages, arising out of, relating to, or in connection with:

- (1) any and all facts, transactions, events, policies, occurrences, acts, disclosures, statements, omissions or failures to act, which are or could be the basis of claims: (a) that TMaG failed to provide Plaintiffs with meal periods and/or rest breaks, or failed to compensate Plaintiffs for 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 waiting time penalties, or inaccurate wage statements based on the factual allegations contained in the Class Action; (c) that TMaG failed to compensate plaintiffs for all wages due upon termination in a timely fashion; (d) that TMaG failed to provide the paystubs required by California law; (e) that TMaG required employees to sign releases before paying wages or premium pay allegedly due on termination of

employment; (f) that TMaG failed to comply with any California state wage and hour laws, based on the factual allegations contained in the Class Action; (g) that TMaG failed to keep any and all records required by California law based on the factual allegations contained in the Class Action; (h) that TMaG failed to comply with Labor Code Sections 201-203, 206, 206.5, 226, 226.7, 510, 512, California Business & Professions Code Section 17200, and/or Wage Order 1-2001 based on the factual allegations contained in the Class Action; (i) any claims under California Labor Code Section 2699, the "Private Attorney Generals Act" based on the factual allegations contained in the Class Action; or (j) that TMaG owes wages, premium pay, penalties, interest, attorneys' fees or other damages of any kind based on a failure to comply with these state wage and hour laws and record keeping laws based on the factual allegations contained in the Class Action, at any times on or before the last day of the Class Period (whether based on 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.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you want to keep the right to sue or continue to sue on your own about legal issues alleged in this case under state law, and/or you do not want a payment from this Settlement, then you must take certain steps. This is called excluding yourself — or is sometimes referred to as “opting out” of the Settlement Class.

12. How do I request to be excluded from the Settlement?

To exclude yourself from the Settlement, or “opt out,” you must submit a written statement requesting exclusion from the Class postmarked on or before [DATE]. Your written request for exclusion must contain your name, address, telephone number and the last four digits of your social security number, as well as the location and years of your employment with TMaG. You must return your request to Phoenix Settlement Administrators, P.O. Box 7208, Orange, California, 92863, Telephone (800) 784-2174, postmarked no later than [DATE].

13. If I do not exclude myself, can I sue TMaG for the same thing later?

No. If you do not submit a valid and/or timely request for exclusion postmarked by [DATE], you will be bound by all terms of the Settlement regarding state law, and any Final Judgment entered in the Class Action, if the Settlement is approved by the Superior Court. If you have a pending lawsuit, speak to your lawyer in that case immediately.

14. If I exclude myself, can I get money from this Settlement?

No. If you exclude yourself, do not send in a Claim Form to ask to be included in the Settlement. The request for exclusion will override the Claim Form and you will not receive payment under the Settlement.

OBJECTING TO THE SETTLEMENT

15. Why would I object?

If you think that the proposed Settlement is unfair, inadequate or unreasonable, you can object to the proposed Settlement and you can also submit a Claim Form. If you object and do not also timely submit a valid Claim Form, and if the Court approves the proposed Settlement, then you will not receive a share of the Settlement money, and you will be bound by the terms of the first Release set forth in Paragraph 11.

16. How do I object?

If you want to object to the Settlement; any part of the Settlement; the amount of attorneys' fees, costs and expenses claimed by Class Counsel; or the Incentive Award for the Class Representative, you should send the Court a notice of intention to appear, along with any papers for the Court to consider, and mail or personally deliver copies of those papers to the attorneys listed below postmarked no later than [DATE].

All written objections should be filed with the Superior Court at: The Superior Court for the State of California for the County of San Diego, Dept. C-72, 330 West Broadway, San Diego, CA 92101.

Copies of all documents filed with the Superior Court must be sent to the following:

(1) Ross H. Hyslop, Esq., Pestotnik LLP, 501 W. Broadway, Suite 1025, San Diego, CA 92101; and (2) William V. Whelan, Esq. Solomon Ward Seidenwurm & Smith, LLP, 401 B Street, Suite 1200, San Diego, CA 92101.

You or your attorney may also appear at the Final Approval Hearing, currently set for [DATE], at [TIME] at the address listed above for the Superior Court, to present any arguments concerning the fairness, reasonableness and adequacy of the Settlement, or concerning the Class Representative's applications for the Incentive Award; the award of attorneys' fees and costs; or the amount awarded for Claims Administration expenses.

If you intend to object to the Settlement, but wish to receive your share of the Settlement, you must also timely file your Claim Form as stated above. If the court approves the Settlement despite any objections, and you do not have a timely Claim Form on file, you will not receive any settlement proceeds.

17. What's the difference between objecting and excluding?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

18. What happens if I do nothing at all?

By doing nothing, you will lose any right you have to receive money under the Settlement. You will also lose your right to object. In addition, you will be deemed to have waived any right you might have had to sue TMaG as part of any lawsuit about the California state law claims that are the subject of this lawsuit. You will also be legally bound by all of the Orders the Court and judgments the Court makes in this class action with regard to state law claims.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing in front of the Honorable Timothy B. Taylor on [DATE], at [TIME] at the Superior Court for the State of California for the County of San Diego, Dept. C-72, 330 West Broadway, San Diego, CA 92101, to determine whether the proposed Settlement of the Action is fair, adequate, reasonable and should be approved by the Court and whether a judgment should be entered on the terms specified in the Settlement Agreement. At the Hearing, Class Counsel will speak on your behalf and answer any questions Judge Taylor might have.

19. May I attend the hearing and speak?

Anyone may attend this hearing. If you are a Class Member and wish to speak, however, it is preferred that you file and serve an objection as described above.

GETTING MORE INFORMATION

20. Are there more details about the Settlement?

This Notice summarizes the proposed Settlement. For a more detailed statement of the matters involved in the Action and the proposed Settlement, you may refer to the pleadings, the Stipulation and Settlement Agreement of Class Action Claims, and other papers filed in the Action, which may be inspected at the Office of the Clerk of the Court, during regular business hours of each Court day. The Court's address is: The Superior Court for the State of California for the County of San Diego, 330 West Broadway, San Diego, CA 92101.

You may also obtain more information about this case on-line, by visiting www.TMaGSettlement.com, where you will find (as soon as they are available/filed) a complete copy of the Stipulation and Settlement Agreement of Class Action Claims, the Class Notice, a blank Claim Form, Plaintiff's Motion for Preliminary Approval, the Preliminary Approval Order, Plaintiff's Motion for Final Approval, Plaintiff's Motion for An Award of Attorneys' Fees and Costs, and the Final Approval Order/Final Judgment.

21. How do I get more information?

All questions regarding this Notice and/or the Settlement should be directed to your Class Counsel at Ross H. Hyslop, Esq., Pestotnik LLP, 501 W. Broadway, Suite 1025, San Diego, CA 92101, Telephone: (619) 237-3000, E-mail: hyslop@pestotnik.com.

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, TMAG, OR
TMAG'S ATTORNEYS WITH INQUIRIES.

Dated: _____, 2016

BY ORDER OF THE COURT
HON. TIMOTHY B. TAYLOR
SUPERIOR COURT OF CALIFORNIA

EXHIBIT 3

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO
CENTRAL DIVISION**

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

Plaintiff,

v.

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

Defendants.

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

CLASS ACTION

CLAIM FORM

[IMAGED FILE]

Complaint Filed: August 19, 2015

Honorable Timothy B. Taylor
Dept: C-72

Vanessa Bulcao v. Taylor Made Golf Company, Inc.
San Diego Superior Court
Case No. 37-2015-00028124-CU-OE-CTL

CLAIM FORM
COMPLETE FOR MONETARY RECOVERY

Please Type or Print

Name (First, Middle, Last): _____

Street Address: _____

City, State, Zip Code: _____

Former Names (if any): _____

Last Four Digits of Social Security Number

Taylor Made Golf Company, Inc. ("TMaG") ID # (if known)

(_____) _____ (Work)
Area Code Telephone Number

(_____) _____ (Home)
Area Code Telephone Number

**YOU MUST TIMELY COMPLETE, SIGN AND RETURN THIS FORM TO SHARE IN THE
MONETARY RECOVERY.**

INSTRUCTIONS

1. Please complete, sign and mail this form to share in the recovery.
2. If you move, please send us your new address.
3. Please do not send any supporting documentation at this time. If such documentation is deemed necessary, a separate request will be sent to you directly. **If you submit a claim, your identity will not be disclosed to your direct supervisor at TMaG. TMaG has also promised that it will not take any adverse or retaliatory action against anyone who submits a claim.**
4. If found eligible, you should not expect to receive any payment until approximately DATE.

YOU MUST COMPLETE, SIGN AND MAIL THIS FORM BY FIRST CLASS U.S. MAIL OR EQUIVALENT, POSTAGE PAID, POSTMARKED ON OR BEFORE _____, 2017, ADDRESSED AS FOLLOWS IN ORDER TO RECEIVE MONETARY RECOVERY.

TMaG, Inc. Claims Administration c/o Phoenix Settlement Administrators P.O. Box 7208 Orange, California, 92863 Telephone (800) 784-2174
--

I have reviewed the Class Notice and this form and I consent to have the Class Representative and her counsel represent me.

X _____
(sign your name here)

Date

EXHIBIT 4

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO
CENTRAL DIVISION**

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

Plaintiff,

v.

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

Defendants.

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

CLASS ACTION

PRELIMINARY APPROVAL ORDER

[IMAGED FILE]

Complaint Filed: August 19, 2015

Honorable Timothy B. Taylor
Dept: C-72

This consolidated action is pending before this Court as a class action (the "Action"); and Class Counsel have applied to this Court for an order preliminarily approving the settlement of the Action in accordance with a Stipulation and Settlement of Class Action Claims (the "Stipulation" or "Settlement"), which, together with its exhibits, sets forth the terms and conditions for a proposed settlement and final judgment upon the Settlement terms and conditions; and the Court having read and considered the Stipulation and the exhibits;

1 NOW, THEREFORE, IT IS HEREBY ORDERED:

2 1. This Order incorporates by reference the definitions in the Stipulation, and all
3 defined terms shall have the same meaning in this Order as set forth in the Stipulation.

4 2. The Court hereby conditionally certifies the Class for settlement purposes only.
5 Should for whatever reason the Settlement not become final, the fact that the Parties were willing
6 to stipulate to class certification as part of the Settlement shall have no bearing on, nor be
7 admissible in connection with, the issue of whether a class should be certified in a non-settlement
8 context.

9 3. Class Representative Vanessa Bulcao ("Class Representative") is hereby appointed
10 and designated, for all purposes, as the representative of the Class, and the following attorneys are
11 hereby appointed and designated as counsel for the Class Representative and the Class ("Class
12 Counsel"):

13 Ross H. Hyslop, Esq.
14 Pestotnik LLP
15 501 W. Broadway, Suite 1025
San Diego, CA 92101

16 Class Counsel is authorized to act on behalf of Class Members with respect to all acts or
17 consents required by, or which may be given pursuant to, the Settlement, and such other acts
18 reasonably necessary to consummate the Settlement. Any Class Member may enter an appearance
19 through counsel of such Class Member's own choosing and at such Class Member's own expense.
20 Any Class Member who does not enter an appearance or appear on his or her own will be
21 represented by Class Counsel.

22 4. The Court hereby approves the definition and disposition of the Settlement Fund
23 and related matters provided for in the Stipulation.

24 5. The Court hereby preliminarily approves the Settlement, including the guaranteed
25 payment of Five Hundred Seventy-Seven Thousand Five Hundred Dollars (\$577,500) to those
26 members of the Settlement Class who submit valid and timely claim forms, the Fees Award of up
27 to Two Hundred Sixty-Two Thousand Five Hundred Dollars (\$262,500), Litigation Costs of up to
28 Fifteen Thousand Dollars (\$15,000), the Class Representative's Incentive Award of up to Five

1 Thousand Dollars (\$5,000), payment to the Labor and Workforce Development Agency
2 ("LWDA") for Plaintiffs' Private Attorney General Act ("PAGA") claims under California Labor
3 Code section 2699 *et seq.* in an amount not to exceed Five Thousand Dollars (\$5,000), and Claims
4 Administration expenses of up to Ten Thousand Dollars (\$10,000). The Court finds on a
5 preliminary basis that the Settlement appears to be within the range of reasonableness of a
6 settlement that could ultimately be given final approval by this Court. The Court has reviewed the
7 monetary recovery that is being granted as part of the Settlement and recognizes the significant
8 value to the Class of that monetary recovery. The Court has reviewed the relevant facts and law,
9 including, but not limited to, all previous pleadings filed in this Action and the Declarations and
10 Points and Authorities submitted by the Parties. Without expressly asserting any opinion as to the
11 legality of TMaG's previous practices, it appears to the Court on a preliminary basis that the
12 settlement amount is fair, adequate and reasonable as to all potential Class Members when
13 balanced against the probable outcome of further litigation relating to liability and damages issues.
14 It further appears that extensive and costly investigation and research have been conducted such
15 that counsel for the Parties at this time are able to reasonably evaluate their respective positions. It
16 further appears to the Court that settlement at this time will avoid substantial additional costs by
17 all Parties, as well as avoid the delay and risks that would be presented by the further prosecution
18 of the Action. It further appears that the Settlement has been reached as the result of intensive,
19 serious and non-collusive, arms-length negotiations.

20 6. A hearing (the "Settlement Hearing") shall be held before this Court on
21 _____, 2017, at _____.m. at the Superior Court of California, County of San Diego,
22 Dept. C-72, 330 West Broadway, San Diego, CA 92101, to determine all necessary matters
23 concerning the Settlement, including: whether the proposed settlement of the Action on the terms
24 and conditions provided for in the Stipulation is fair, adequate and reasonable and should be
25 finally approved by the Court; whether a Judgment, as provided in the Stipulation, should be
26 entered; whether the plan of allocation contained in the Stipulation should be approved as fair,
27 adequate and reasonable to the Class Members; and to finally approve Class Counsels' Fees
28 Award and Litigation Costs, the Class Representative's Incentive Awards, and the claims

1 administration expenses.

2 7. The Court hereby approves, as to form and content, the Notice and Claim Form
3 attached as Exhibits 3 and 4 to the Stipulation. The Court finds that the distribution of the Notice
4 and Claim Form substantially in the manner and form set forth in the Stipulation and this Order
5 meets the requirements of due process, is the best notice practicable under the circumstances, and
6 shall constitute due and sufficient notice to all persons entitled thereto.

7 8. The Court hereby appoints Phoenix Settlement Administrators, P.O. Box 7208,
8 Orange, California, 92863, Telephone (800) 784-2174, as Claims Administrator and hereby
9 directs the Claims Administrator to mail or cause to be mailed to Class Members the Notice and
10 Claim Form by first class mail at the last known address for each Class Member within thirty
11 (30) days after the entry of this Preliminary Order (the "Notice Date") using the procedures set
12 forth in the Stipulation. Class Members who wish to participate in the settlement provided for by
13 the Stipulation ("Participating Class Members") must complete and return the Claim Form
14 pursuant to the instructions contained therein by first class mail or equivalent, postage paid, within
15 forty-five (45) days of the Notice Date.

16 9. Any Class Member may choose to opt out of and be excluded from the Class as
17 provided in the Notice by following the instructions for requesting exclusion from the Class that
18 are set forth in the Notice. All requests for exclusion must be submitted as provided in the Notice.
19 Any such person who chooses to opt out of and be excluded from the Class will not be entitled to
20 any recovery under the Settlement and will not be bound by the Settlement or have any right to
21 object, appeal or comment on the Settlement. Any written request to opt out must be signed by
22 each such person opting out. Class Members who have not requested exclusion shall be bound by
23 all determinations of the Court, the Stipulation and Judgment, with the exception as to the federal
24 claims that only those filing the Claim Form will be bound.

25 10. Any Class Member may appear at the Settlement Hearing and may object or
26 express the Member's views regarding the Settlement, and may present evidence and file briefs or
27 other papers, that may be proper and relevant to the issues to be heard and determined by the
28 Court as provided in the Notice. However, any Class Member that wishes to submit a written

1 objection and have it considered by the Court must do so on or before 45 days after the Notice
2 Date, and that person must serve by hand or by first class mail written objections and copies of
3 any papers and briefs in support of their position and verification of their membership in the Class
4 upon: (1) Ross H. Hyslop, Esq., Pestotnik LLP, 501 W. Broadway, Suite 1025, San Diego, CA
5 92101; and (2) William V. Whelan, Esq. Solomon Ward Seidenwurm & Smith, LLP, 401 B Street,
6 Suite 1200, San Diego, CA 92101, and must file the objections, papers and briefs with the Clerk of
7 this Court. In order to be valid, the papers must be filed with the Clerk of this Court and received
8 by all of the above counsel on or before 45 days after the Notice Date. Any class member may
9 make oral objections at the Settlement Hearing.

10 11. All papers in support of the Settlement shall be filed with the Court and served on
11 the Parties' Counsel no later than five (5) court days before the Settlement Hearing.

12 12. All claims administration expenses shall be paid from the Settlement Fund.

13 13. The Fees Award and Litigation Costs shall be paid to Pestotnik LLP ("Class
14 Counsel"). Upon payment to Class Counsel, TMaG, the Released Parties, TMaG's Counsel, and
15 the Claims Administrator shall have no further liability or responsibility to Class Counsel, or any
16 vendors or third parties employed by Class Members or the Class Counsel, for attorneys' fees,
17 expenses and/or costs incurred by the Class Counsel on behalf of Class Representatives and/or
18 Class Members in the Action.

19 14. To the extent permitted by law, pending final determination as to whether the
20 settlement contained in the Stipulation should be approved, the Class Members, whether directly,
21 representatively, or in any other capacity, whether or not such persons have appeared in the
22 Action, shall not institute or prosecute any Released Claims against the Released Parties.

23 15. The Settlement is not a concession or admission, and shall not be used against
24 TMaG or any of the Released Parties as an admission or indication with respect to any claim of
25 any fault or omission by TMaG or any of the Released Parties. Whether or not the Settlement is
26 finally approved, neither the Settlement, nor any document, statement, proceeding or conduct
27 related to the Settlement, nor any reports or accounts thereof, shall in any event be:
28

1 (a) Construed as, offered or admitted in evidence as, received as or deemed to
2 be evidence for any purpose adverse to the Released Parties, including, but not limited to,
3 evidence of a presumption, concession, indication or admission by TMaG or any of the Released
4 Parties of any liability, fault, wrongdoing, omission, concession or damage; or

5 (b) Disclosed, referred to, or offered or received in evidence against any of the
6 Released Parties in any further proceeding in the Action, or in any other civil, criminal or
7 administrative action or proceeding, except for purposes of settling the Action pursuant to the
8 Stipulation or enforcing the terms of the Stipulation.

9 16. As of the date this Order is signed, all dates and deadlines associated with the
10 Action shall be stayed, other than those related to the administration of the Settlement of the
11 Action.

12 17. In the event the Settlement does not become effective in accordance with the terms
13 of the Stipulation, or the Settlement is not finally approved, or is terminated, canceled or fails to
14 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
15 and the Parties shall revert to their respective positions as of before entering into the Stipulation.

16 18. The Court reserves the right to adjourn or continue the date of the Settlement
17 Hearing and all dates provided for in the Stipulation without further notice to Class Members, and
18 retains jurisdiction to consider all further applications arising out of or connected with the
19 proposed Settlement.

20
21 Dated: _____

22 _____
23 HONORABLE TIMOTHY B. TAYLOR
24 JUDGE OF THE SUPERIOR COURT OF
25 CALIFORNIA, COUNTY OF SAN DIEGO
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EXHIBIT 5

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO
CENTRAL DIVISION

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

Plaintiff,

v.

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

Defendants.

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

CLASS ACTION

FINAL JUDGMENT AND ORDER:

- 1. CERTIFYING CLASS FOR PURPOSES OF CLASS ACTION SETTLEMENT;**
- 2. GRANTING FINAL APPROVAL TO CLASS ACTION SETTLEMENT;**
- 3. AWARDING ATTORNEYS' FEES AND COSTS TO CLASS COUNSEL;**
- 4. APPROVING CLASS REPRESENTATIVE INCENTIVE AWARD;**
- 5. AUTHORIZING PAYMENT TO CLAIMS ADMINISTRATOR; AND**
- 6. DIRECTING CONSUMMATION OF SETTLEMENT AND DISTRIBUTION OF SETTLEMENT PROCEEDS**

[IMAGED FILE]

Complaint Filed: August 19, 2015

Honorable Timothy B. Taylor
Dept: C-72

1 This matter having come before the Court for hearing pursuant to the Order of this Court
2 dated _____, for approval of the settlement set forth in the Stipulation and Settlement of
3 Class Action Claims ("Stipulation" or "Settlement"), and due and adequate notice having been
4 given to the Class Members as required in that Order, and the Court having considered all papers
5 filed and the proceedings held, and good cause appearing,

6 IT IS ORDERED, ADJUDGED AND DECREED THAT:

7 All terms used in this Order shall have the same meaning as defined in the Stipulation.

8 1. This Court has jurisdiction over the subject matter of this litigation and over all
9 Parties to this litigation, including all Class Members.

10 2. Distribution of the Notice directed to the Class Members as set forth in the
11 Stipulation and the other matters set forth in the Stipulation have been completed in conformity
12 with the Preliminary Approval Order, including individual notice to all Class Members who could
13 be identified through reasonable effort, and was the best notice practicable under the
14 circumstances. This Notice provided due and adequate notice of the proceedings, including the
15 proposed settlement set forth in the Stipulation, to all persons entitled to such Notice, and the
16 Notice fully satisfied the requirements of California Code of Civil Procedure Section 382 and due
17 process. __[#]__ Class Members have objected to the Settlement. __[#]__ Class Members have
18 opted out of the Settlement.

19 3. This Court hereby approves the settlement set forth in the Stipulation and finds that
20 the Settlement is, in all respects, fair, adequate, and reasonable and directs the Parties to effectuate
21 the Settlement according to its terms. The Court finds that the Settlement has been reached as a
22 result of intensive, serious, and non-collusive arms' length negotiations. The Court further finds
23 that the Parties have conducted extensive and costly investigation and research and counsel for the
24 Parties are able to reasonably evaluate their respective positions. The Court also finds that
25 settlement at this time will avoid additional substantial costs, as well as avoid the delay and risks
26 that would be presented by the further prosecution of the Action. The Court has reviewed the
27 monetary recovery that is being granted as part of the Settlement and recognizes the significant
28 value to the Settlement Class of that monetary recovery. The Court hereby certifies the Class for

1 settlement purposes only.

2 4. For purposes of class certification and this Judgment, the term "Class" means all
3 persons who are or have been employed by TMaG as non-exempt (i.e., hourly or salaried non-
4 exempt) employees in the State of California at any time from August 11, 2011 through December
5 16, 2016 and who did not elect to be excluded from the Class.

6 5. Consummation of the Settlement shall proceed as described in the Agreement,
7 including without limitation payment of his/her proportional share of the Net Settlement Fund by
8 the Claims Administrator to each Class Member who: (a) submitted a valid and timely claim; and
9 (b) did not opt out or exclude himself/herself from the Settlement.

10 6. As of the Effective Date, each and every Released Claim (as defined in the
11 Stipulation and Settlement of Class Claims) of each and every Settlement Class Member is and
12 shall be deemed to be conclusively released as against the Released Parties. All Settlement Class
13 Members as of the Effective Date are hereby forever barred and enjoined from prosecuting the
14 Released Claims against the Released Parties. However, this Release is expressly limited and
15 narrowly tailored to the factual and legal claims asserted in Plaintiff's First Amended Complaint,
16 filed on or about March 7, 2016.

17 7. The Action and all claims asserted in the Action are settled as to the Class
18 Representative and all Class Members. Notwithstanding the foregoing, this Judgment does not
19 settle or release any claims that have been or may be asserted in the future by any persons or
20 entities who have validly and timely requested exclusion from the Class as provided for in the
21 Agreement. A list of persons and entities who validly and timely requested exclusion is on file
22 with this Court.

23 8. The Stipulation and Settlement are not an admission by TMaG or any of the other
24 Released Parties, nor is this Judgment a finding, of the validity of any claims in the Action or of
25 any wrongdoing by TMaG or any of the other Released Parties. Neither this Judgment, the
26 Stipulation, nor any document referred to in the Stipulation, nor any action taken to carry out the
27 Stipulation is, may be construed as, or may be used as an admission by or against TMaG or any of
28 the other Released Parties of any fault, wrongdoing, or liability whatsoever. The entering into or

1 carrying out of the Stipulation, and any related negotiations or proceedings, shall not in any event
2 be construed as, or deemed to be evidence of, an admission or concession with regard to the
3 denials or defenses by TMaG or any of the other Released Parties and shall not be offered in
4 evidence in any action or proceeding against TMaG or any of the Released Parties in any court,
5 administrative agency, or other tribunal for any purpose whatsoever other than to enforce the
6 provisions of this Judgment, the Stipulation, or any related agreement or release. Notwithstanding
7 these restrictions, any of the Released Parties may file in the Action or in any other proceeding the
8 Judgment, Stipulation, or any other papers and records on file in the Action as evidence of the
9 Settlement to support a defense of res judicata, collateral estoppel, release, or other theory of claim
10 or issue preclusion or similar defense as to the Released Claims. Notwithstanding the foregoing,
11 nothing in this Final Judgment shall be interpreted to prohibit the use of this Judgment in a
12 proceeding to consummate or enforce the Agreement or Judgment, or to defend against the
13 assertion of Released Claims in any other proceeding, or to defend against the assertion of
14 Released Claims in any other proceeding, or as otherwise required by law.

15 9. Without affecting the finality of this Judgment in any way, the Court reserves
16 exclusive and continuing jurisdiction over the Action, the Class Representative, the Class
17 Members, and TMaG for the purposes of supervising the implementation, enforcement,
18 construction, and interpretation of the Agreement, all orders and judgments entered in connection
19 with the Settlement, and this Final Judgment and Order.

20 10. The Court awards Class Counsel attorneys' fees ("Fees Award") in the amount of
21 \$262,500, costs ("Litigation Costs") in the amount of \$15,000, and approves Claims
22 Administration costs of up to \$10,000. Class Counsel shall not be entitled to any other award of
23 attorneys' fees or costs in any way connected with this Action. The Court also approves the
24 Incentive Award to the Named Plaintiff in the amounts of \$5,000, and payment to the Labor and
25 Workforce Development Agency in the amount of \$5,000. Any separate appeal from the portion
26 of this Judgment as to the Fees Award shall not operate to terminate or cancel the Stipulation. No
27 later than seven (7) banking days following the Effective Date, the Claims Administrator, TMaG
28 and/or its insurance carrier shall pay such amounts by wire transfer. Class Counsel shall provide

1 TMaG all identification information necessary to effectuate payment of such amounts, including
2 but not limited to, tax payer identification number, completed internal revenue service form W-9,
3 and wire transfer information.

4 11. TMaG shall bear its own costs, attorneys' fees, and expenses, and may not claim or
5 be awarded any costs, attorneys' fees, or expenses in connection with this Settlement.

6 12. After administration of the Settlement has been completed in accordance with the
7 Stipulation and all amounts calculated, and in no event later than 210 days after the Effective Date,
8 TMaG shall file a report with this Court setting forth the total of the Gross Settlement Amounts for
9 the Settlement Class Members and certifying compliance with the terms of the Settlement.

10 13. The Court finds that the Stipulation is in good faith and constitutes a fair,
11 reasonable and adequate compromise of the Released Claims against TMaG.

12 14. If the Settlement does not become final and effective in accord with the terms of
13 the Stipulation, resulting in the return and/or retention of the Settlement Fund to TMaG consistent
14 with the terms of the Settlement, then this Judgment and all orders entered in connection herewith
15 shall be rendered null and void and shall be vacated.

16
17 Dated: _____

18 _____
19 HONORABLE TIMOTHY B. TAYLOR
20 JUDGE OF THE SUPERIOR COURT OF
21 CALIFORNIA, COUNTY OF SAN DIEGO
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EXHIBIT B



PHOENIX
SETTLEMENT ADMINISTRATORS

CLASS ACTION SETTLEMENT SOLUTIONS

CASE ASSUMPTIONS	
Class Members	685
Total Claims Processed	685
Subtotal Admin Only	\$12,554.01
Will Not Exceed	\$9,250.00

November 8, 2016

Case: Bulcao v. Taylormade Opt Out

Phoenix Contact: Jodey Lawrence
 Contact Number: 949.566.1455
 Email: Jodey@phoenixclassaction.com

Requesting Attorney: Paul M. Huston
 Firm: Solomon Ward Seidenwurm & Smith, LLP,
 Contact Number: 619.238.4814
 Email: phuston@swsslaw.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly. Estimate is based on 685 Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / Website/ NCOA (USPS)			
Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$100.00	3	\$300.00
Programming Database & Setup	\$100.00	2	\$200.00
Toll Free Setup*	\$150.00	1	\$150.00
Call Center & Long Distance	\$2.50	50	\$125.00
NCOA (USPS)	\$150.00	1	\$150.00
Static Website	\$500.00	1	\$500.00
		Total	\$1,425.00

* Up to 120 days after disbursement

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Data Merger & Scrub / Notice, Claim Form, Opt-Out Form & Postage			
Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$100.00	2	\$200.00
Data Merge & Duplication Scrub	\$0.15	685	\$102.75
Notice, and Opt Out	\$1.50	685	\$1,027.50
Estimated Postage (up to 2 oz.)*	\$0.68	685	\$465.80
		Total	\$1,796.05

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX
SETTLEMENT ADMINISTRATORS

CLASS ACTION SETTLEMENT SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Associate	\$55.00	2	\$110.00
Skip Tracing Undeliverables	\$0.50	137	\$68.50
Remail Notice Packets	\$1.50	137	\$205.50
Estimated Postage	\$0.68	137	\$93.16
Programming Undeliverables	\$100.00	1	\$100.00
		Total	\$577.16

Database Programming / Processing Opt-Outs, Deficiencies or Disputes			
Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Claims Database	\$150.00	3	\$450.00
Case Associate	\$55.00	5	\$275.00
Opt-Outs/Deficiency/Dispute Letters	\$8.00	4	\$32.00
Case Manager	\$85.00	5	\$425.00
		Total	\$1,182.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks			
Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Calculations	\$135.00	6	\$810.00
Disbursement Review	\$135.00	6	\$810.00
Programming Manager	\$95.00	5	\$475.00
QSF Bank Account & EIN	\$135.00	3	\$405.00
Check Run Setup & Printing	\$135.00	2	\$270.00
Mail Class Checks *	\$1.00	685	\$685.00
Estimated Postage	\$0.48	685	\$328.80
		Total	\$3,783.80

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX
SETTLEMENT ADMINISTRATORS

CLASS ACTION SETTLEMENT SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Supervisor	\$115.00	6	\$690.00
Case Associate	\$55.00	6	\$330.00
Reconcile Uncashed Checks	\$85.00	3	\$255.00
Conclusion Reports	\$115.00	4	\$460.00
Case Manager Conclusion	\$85.00	5	\$425.00
Final Reporting & Declarations	\$115.00	2	\$230.00
IRS & QSF Annual Tax Reporting * (State Tax Reporting Included)	\$1,400.00	1	\$1,400.00
		Total	\$3,790.00

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$12,554.01



PHOENIX
SETTLEMENT ADMINISTRATORS

CLASS ACTION SETTLEMENT SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are at \$10.00 per claim.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.