

LAW OFFICE OF MARY-ALICE COLEMAN

MARY-ALICE COLEMAN, SBN 98365

MICHAEL S. AHMAD, SBN 231228

1109 Kennedy Place, Suite #2

Davis, CA 95616

Telephone: (916) 498-9131

Facsimile: (916) 304-0880

LAW OFFICES OF SOHNEN & KELLY

HARVEY SOHNEN, SBN 62850

PATRICIA M. KELLY, SBN 99837

2 Theatre Square, Suite 230

Orinda, CA 94563-3346

Telephone: (925) 258-9300

Facsimile: (925) 258-9315

Attorneys for Plaintiffs **ANDREA SEWELL,**

CONRAD SILVA, and **EDITH VIERA**

individually, and on behalf of all others similarly situated

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ANDREA SEWELL, CONRAD SILVA, and
EDITH VIERA individually, and on behalf of
all others similarly situated,

Plaintiffs,

vs.

STATE COMPENSATION INSURANCE
FUND,

Defendant.

Case No. 3:13-cv-00588-TEH

**MEMORANDUM OF UNDERSTANDING
REGARDING CLASS ACTION
SETTLEMENT AGREEMENT AND
RELEASE**

Dept.: 15th Floor, Courtroom B
Judge: Hon. Thelton E. Henderson

I. INTRODUCTION

This Memorandum of Understanding Regarding Class Action Settlement Agreement and Release (hereinafter "Settlement Agreement" or "Agreement") is made and entered into by and between the following parties: Plaintiffs Andrea Sewell, Conrad Silva, and Edith Viera,

1 individually and on behalf of all others similarly situated (“Plaintiffs”), Defendant State
2 Compensation Insurance Fund (“Defendant” or “State Fund”), and their respective counsel of
3 record. This Settlement Agreement is subject to the terms and conditions set forth below and to the
4 approval of the Court. This Settlement Agreement supersedes any and all prior memoranda of
5 understanding and accurately sets forth the Parties’ class action and collective action settlement to
6 resolve the class claims for alleged failure to pay overtime compensation under the Federal Labor
7 Standards Act (“FLSA”), and/or related claims of alleged unfair competition, under California
8 Business and Professions Code sections 17200, *et seq.*, as averred in the First Amended Complaint
9 on file in this action.

10 **II. DEFINITIONS**

- 11 1. Plaintiffs and Defendant herein are collectively referred to as “the Parties.”
12 2. The “Action” means the lawsuit captioned above.
13 3. “California Class” means the class described in Paragraph 54 of this Agreement.
14 4. “California Class Member” means a member of the Class described in Paragraph 54
15 of this Agreement.
16 5. “California Settlement Class” means those persons who are members of the
17 California Class who have not properly and timely opted out of the Action.
18 6. “California Settlement Class Member” means any person who is included in the
19 California Settlement Class.
20 7. “Claim Form” means the form members of the Settlement Class are required to
21 submit in order to establish their entitlement to recovery of a portion of the Net Settlement Fund.
22 8. “Class Counsel” mean the Plaintiffs’ Counsel after appointment as counsel for the
23 Class by the Court.
24 9. “Class” means the California and FLSA Classes.
25 10. “Class Member” means a member of the California and/or FLSA Classes.
26 11. “Class Notice” means the Notice of Pendency of Class/Collective Action provided
27 to Class Members.

1 12. “Class Positions” means Payroll Auditors or Senior Payroll Auditors who regularly
2 performed officially assigned duties outside of an assigned office at any time during the Settlement
3 Period.

4 13. “Class Period” means February 11, 2009 (for the California Class) and April 4,
5 2010 (for the FLSA Class) through the date upon which the Court grants Preliminary Approval of
6 the Settlement.

7 14. “Class Representatives” means Plaintiffs Andrea Sewell, Conrad Silva, and Edith
8 Viera, who have been designated by Plaintiffs’ Counsel as Class Representatives for the Settlement
9 Class.

10 15. “Class Representative Service Award” means the sum to be paid to the named
11 Plaintiffs as enhancement for their role as potential and actual Class representatives, and for the
12 risks and work attendant to that role, and shall be paid from the Gross Fund.

13 16. “Court” means the United States District Court for the Northern District of
14 California or any other court taking jurisdiction of the Action.

15 17. “Final Approval Hearing” means the hearing to be conducted by the Court to
16 determine whether to finally approve and implement the terms of this Agreement, including a
17 ruling on Plaintiffs’ Counsel’s Fees and Costs and the Class Representative Service Awards.

18 18. “FLSA Class” means the class described in Paragraph 55 of this Agreement.

19 19. “FLSA Class Member” means a member of the FLSA Class described in Paragraph
20 55 of this Agreement.

21 20. “FLSA Settlement Class” means those persons who have previously submitted an
22 “opt-in” claim form in this Action and/or those persons who are members of the FLSA Class,
23 receive an FLSA Notice, and who submit a valid Claim Form consenting to join the FLSA Class,
24 consistent with the process described herein.

25 21. “FLSA Settlement Class Member” means any person who is included in the FLSA
26 Settlement Class.

1 22. “Gross Fund” shall mean the principal amount of \$1,175,000.00, which is the
2 maximum amount State Fund is required to pay, inclusive of the employer’s share of standard
3 payroll tax requirements, the employee’s share of payroll tax requirements, Plaintiffs’ Counsel’s
4 Attorneys’ Fees and Costs, the amount of the Settlement Administration Expenses, and the amount
5 of the Class Representative Service Awards.

6 23. “Judgment” means the Judgment and Order Regarding Final Approval of Class
7 Action Settlement and Dismissal with Prejudice issued by the Court.

8 24. “Net Settlement Fund” means the Gross Fund after deduction of the employer’s
9 share of standard payroll tax requirements, the employee’s share of standard payroll tax
10 requirements, Plaintiffs’ Counsel’s Attorneys’ Fees and Costs, the amount of the Settlement
11 Administration Expenses, and the amount of the Class Representative Service Awards, and is the
12 amount that will be apportioned to Settlement Class Members for Settlement Payments.

13 25. “Opt-Out Class Member” means any person who submits a valid and timely request
14 for exclusion from the California Class.

15 26. “Plaintiffs” mean the named Plaintiffs in the Action, individually, and in their
16 capacity as the parties seeking to act as class representatives.

17 27. “Plaintiffs’ Counsel” means the Law Offices of Sohnen & Kelly of Orinda,
18 California, and Law Offices of Mary-Alice Coleman in Davis, California.

19 28. “Plaintiffs’ Counsel’s Fees and Costs” means the amount that may be awarded to
20 the attorneys for Plaintiffs by the Court (or other Court taking jurisdiction of this matter) for
21 prosecuting and settling the Action, including all attorneys’ fees, costs, and expenses.

22 29. “Plaintiffs’ Counsel’s Released Claim” means Plaintiffs’ Counsel’s request for their
23 fees and costs, which claims shall be released following payment of the Plaintiffs’ Counsel’s Fees
24 and Costs pursuant to the terms of this Agreement, including adoption of any potential structure
25 arrangement for such payments.

1 30. “Released Parties” means the same as “State Fund” or “Defendant” as that term is
2 defined above in the opening of this Agreement and Defendant’s agents, insurers, attorneys,
3 successors and assigns.

4 31. “Released State Law Claims” means any and all applicable state and local law
5 claims, obligations, demands, actions, rights, causes of action, and liabilities against the Released
6 Parties, of whatever kind and nature, character and description, that were alleged in the First
7 Amended Complaint of this Action, whether known or unknown, as well as similar claims that
8 arise from the same factual predicate of the Action, Complaint or First Amended Complaint,
9 whether known or unknown, that exist from February 11, 2009 through the date of entry of the
10 Order of Final Approval by the Court. The Released State Law Claims include claims meeting the
11 above definition under all applicable statutes, regulations or common law.

12 32. “Released Federal Law Claims” means any and all federal law claims, obligations,
13 demands, actions, rights, causes of action, and liabilities against the Released Parties, of whatever
14 kind and nature, character and description, that were alleged in the First Amended Complaint of
15 this Action, whether known or unknown, as well as similar claims that arise from the same factual
16 predicate of the Action, Complaint or First Amended Complaint, whether known or unknown, that
17 exist from February 11, 2009 through the date of entry of the Order of Final Approval by the
18 Court.

19 33. “Released Period” means February 11, 2009 through the date of entry of the Order
20 of Final Approval by the Court.

21 34. “Settlement” means the settlement of this Action and related claims effectuated by
22 this Agreement.

23 35. “Settlement Administration Expenses” means those expenses incurred by the
24 Settlement Administrator in effectuating the Settlement.

25 36. “Settlement Administrator” means Simpluris, Inc. or any other administrator
26 mutually agreed upon by the Parties.

27 37. “Settlement Class” means the California and FLSA Settlement Classes.

1 38. "Settlement Class Member" means any person who is included in the California and
2 FLSA Settlement Classes.

3 39. "Settlement Class Members' Released Claims" means those claims of the
4 Settlement Class set forth herein that are released pursuant to the terms of the Agreement.

5 40. "Settlement Payments" means the amounts to be paid to individual Settlement Class
6 Members.

7 41. "Settlement Period" means February 11, 2009 (for the California Class) and April 4,
8 2010 (for the FLSA Class) through the date upon which the Court grants Preliminary Approval of
9 the Settlement.

10 42. "Settlement Effective Date" means the date by which all of the following have
11 occurred: (i) this Settlement is finally approved by the Court; (ii) the Court's Judgment and Order
12 Re Final Approval of Class Settlement and Dismissal with Prejudice ("Judgment") becomes Final;
13 (iii) if there are no objections to the settlement, the date the Court's Judgment is entered; (iv) if
14 there is an appeal of the trial court's final Judgment in the Action, the date of final affirmance on
15 an appeal or the date of dismissal of such appeal; and (v) if there is a petition for writ of certiorari
16 to the U.S. Supreme Court, the date of denial of such petition or the date of affirmance of the trial
17 court judgment pursuant to such petition.

18 **III. LITIGATION BACKGROUND**

19 43. On February 11, 2013, Plaintiffs Sewell, Silva, and Viera filed a complaint seeking
20 relief for themselves individually and for a class of similarly situated individuals in California. The
21 Complaint was initially filed in the United States District Court, Northern District of California,
22 Case No. 3:13-cv-00588-TEH.

23 44. The gravamen of the Complaint was that Defendant had failed to provide overtime
24 compensation and minimum wages to its Auditors. Plaintiffs Sewell, Silva, and Viera sought
25 class-wide damages and restitution for pay allegedly due under the Fair Labor Standards Act and/or
26 California's Unfair Compensation laws, liquidated damages, interest thereon, injunctive relief, and
27 costs and attorneys' fees.

1 45. A First Amended Complaint was filed on April 3, 2013. The First Amended
2 Complaint stated claims for alleged failure to provide overtime compensation under the FLSA and
3 related claims for Unfair Competition Law violations, but did not include any claims for minimum
4 wage violations.

5 46. In its answers to the original and amended Complaint, Defendant denied Plaintiffs'
6 claims. In settling the Action, Defendant maintains that position.

7 47. Since before the filing of the Action and through settlement, Plaintiffs' Counsel has
8 conducted a thorough investigation into the facts of this class action, including interviewing
9 numerous witnesses and reviewing State Fund documents regarding the payment of wages.
10 Plaintiffs' Counsel has also engaged in extensive discovery, including Initial Disclosures,
11 interrogatories to Defendant and response to discovery requests to Plaintiffs, production of
12 documents by Defendant and Plaintiffs, and the deposition of Plaintiff Sewell. All discovery has
13 been reviewed and analyzed. In addition, Plaintiffs' Counsel has interviewed approximately 122
14 prospective Class Members.

15 48. Forty-six (46) Settlement Class Members, including the 3 named plaintiffs, filed
16 their consent forms opting into the Action on or before November 27, 2013.

17 49. The Parties participated in a mediation with Mark Rudy, an experienced
18 employment law mediator, on September 9, 2013.

19 50. After a full day of arms-length negotiation on September 9, 2013, assisted by Mr.
20 Rudy, the Parties continued to engage in settlement discussions. In early December 2013, the
21 parties agreed to the principle settlement terms.

22 51. It is the desire of the Parties to fully, finally, and forever settle, compromise, and
23 discharge all disputes and claims against the Defendant arising from or related to the Action.

24 52. It is the intention of the Parties that this Settlement Agreement shall constitute a full
25 and complete settlement and release of the claims averred in the Action. This release includes in
26 its effect a release of the Defendant, and a mutual release as between Plaintiffs Sewell, Silva,
27 Viera, and Defendant.

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IV. JURISDICTION AND VENUE

53. This Court has jurisdiction over the Parties and the subject matter of this Action. This Court will have continuing jurisdiction over the terms and conditions of this Settlement Agreement, until all payments and obligations provided for herein have been fully executed.

V. CLASS DEFINITION

54. The California Class shall be defined as and consist of “all persons employed as a ‘Payroll Auditor’ or ‘Senior Payroll Auditor’ by Defendant and who regularly performed officially assigned duties outside of an assigned office at any time during the period on or after February 11, 2009 through date of entry of an Order of Preliminary Approval of this Settlement (the ‘California Settlement Period’).”

55. The FLSA Class shall be defined as and consist of “all persons employed as a ‘Payroll Auditor’ or ‘Senior Payroll Auditor’ by Defendant and who regularly performed officially assigned duties outside of an assigned office at any time during the period on or after April 4, 2010 through date of entry of an Order of Preliminary Approval of this Settlement (the ‘FLSA Settlement Period’).”

56. Class Members entitled to recover under this Settlement Agreement will include only those individuals who are identified on Defendant’s records as having worked as a Class Member during the Class Period, or those additional individuals who obtain a determination by the Settlement Administrator that they worked in that capacity notwithstanding the absence of Defendant’s records confirming such employment.

57. Class Certification For Settlement Purposes. The California Class may be provisionally certified as a class action for settlement purposes pursuant to Federal Rules of Civil Procedure Rule 23(b)(3) to facilitate the monetary relief provided in this Settlement Agreement. Plaintiffs Sewell, Silva, Viera and their attorneys, the Law Offices of Sohnen & Kelly and Law Office of Mary-Alice Coleman, may be preliminarily and conditionally appointed as Class Representatives and Class Counsel, respectively.

1 58. Conditional Collective Certification. The FLSA Class may be provisionally
2 certified as a collective action pursuant to 29 U.S.C. § 216(b) for the purposes of the monetary
3 relief provided in this Settlement Agreement. Plaintiffs Sewell, Silva, Viera and their attorneys,
4 the Law Offices of Sohnen & Kelly and Law Office of Mary-Alice Coleman, may be preliminarily
5 and conditionally appointed as Collective Representatives and Collective Counsel, respectively.

6 59. Should, for whatever reason, the Settlement not become final, the fact that Plaintiffs
7 and Defendant were willing to stipulate to class and collective action certification as part of the
8 Settlement shall have no bearing on, and shall not be admissible in connection with, the issue of
9 whether a class or collective should be certified in a non-settlement context in this Action.
10 Defendant expressly reserves the right to oppose class and/or collective action certification should
11 the Settlement not become final.

12 **VI. TERMS OF SETTLEMENT**

13 60. NOW, THEREFORE, in consideration of the mutual covenants, promises, and
14 undertakings set forth herein, the Parties agree, subject to the Court’s approval, as follows:

15 a. Scope. The Settlement described herein will resolve fully and finally all
16 federal and state claims, rights, demands, liabilities, and causes of action of every nature and
17 description, that were alleged in the First Amended Complaint of this Action, whether known or
18 unknown, as well as similar claims that arise from the same factual predicate of the Action,
19 Complaint or First Amended Complaint, including but not limited to unpaid minimum wages and
20 overtime compensation, liquidated damages, penalties, interest, attorneys’ fees and expenses,
21 whether known or unknown, for the Released Period.

22 b. Non-Approval By The Court. In the event that this Settlement Agreement is
23 not approved by the Court, fails to become effective, or is reversed, withdrawn or materially
24 modified by the Court:

25 i. The Settlement Agreement shall have no force or effect;

1 ii. The Settlement Agreement shall not be admissible in any judicial,
2 administrative, or arbitral proceeding for any purpose or with respect to any issue, substantive or
3 procedural;

4 iii. None of the parties to this Settlement Agreement will be deemed to
5 have waived any claims, objections, defenses, or arguments with respect to the issue of class
6 certification, collective certification, or the merits of Plaintiffs' claims.

7 c. Settlement Amount. Subject to conditional class and collective action
8 certification and Court approval, and in consideration for the release described in this Agreement,
9 Defendant shall pay an amount not to exceed \$1,175,000.00 ("Gross Fund") to resolve the Action,
10 as described more fully below. Within ten (10) days of entry of the Order Granting Final
11 Approval, Defendant shall deposit the entirety of the settlement amount (\$1,175,000.00) into an
12 escrow account established by the Settlement Administrator. The Gross Fund of \$1,175,000.00
13 shall be the sole financial obligation of Defendant under this Agreement. The Gross Fund shall be
14 used to satisfy (1) the claims of all Settlement Class Members for all Released State Law Claims
15 and all Released Federal Law Claims, including but not limited to unpaid minimum wage and
16 overtime compensation, liquidated damages, penalties, interest, attorneys' fees and expenses due or
17 claimed to be due at any time during Released Period, by all members of the Settlement Class.; (2)
18 Settlement Administration Expenses; (3) Plaintiffs' Counsel's Fees and Costs; (4) the employer's
19 share of the payroll taxes; (5) the Class Member's share of the payroll taxes; and (6) the Class
20 Representative Service Awards. The Gross Fund will be distributed in accordance with the terms
21 of this Agreement. The Gross Fund shall be deposited in an interest-bearing escrow account
22 selected by the Settlement Administrator. Interest accruing on the Gross Fund while in escrow
23 shall be treated as, and revert in a like manner as, the Gross Fund principal amount.

24 d. Settlement Payments to Class Members. The Net Settlement Fund shall be
25 used to pay all amounts due to Settlement Class Members based on the distribution method set
26 forth below. The portion of the Net Settlement Fund payable to each Settlement Class Member
27 will be calculated as follows:

1 i. A portion of the Net Settlement Fund shall be allocated to the FLSA
2 Class (i.e., “all persons employed as a ‘Payroll Auditor’ or ‘Senior Payroll Auditor’ by Defendant
3 and who regularly performed officially assigned duties outside of an assigned office at any time
4 during the period on or after April 4, 2010 through date of entry of an Order of Preliminary
5 Approval of this Settlement (the ‘Settlement Period’)”) in the amount of \$30.00 multiplied by the
6 total number of work months worked by the FLSA Class during the FLSA Class Period (hereafter
7 referenced as the “FLSA Class Award”). The amount of this potential award for each FLSA Class
8 Member will be listed on the “Claim Form” as the “Estimated FLSA Class Award.”

9 ii. The remaining portion of the Net Settlement Fund shall be disbursed
10 to the California Settlement Class on a pro rata basis (hereafter referenced as the “California Class
11 Award”) based on the total number of work months worked by each California Class Member as
12 described further below.

13 iii. In order for FLSA Class Members to receive their portion of the
14 FLSA Class Award, they must opt in to the FLSA Settlement Class. The FLSA Class Members
15 that opt in to the FLSA Settlement Class (hereafter referred to as “FLSA Opt Ins”) will receive
16 \$30.00 multiplied by the total number of work-months they individually worked. FLSA Class
17 Members who do not opt in to the FLSA Settlement Class will not receive a portion of the FLSA
18 Class Award, but may fully participate in the California Class Settlement as described below,
19 assuming they do not opt out of the California Class Settlement. The 46 persons who have opted in
20 prior to this Agreement are included as opt ins without being required to complete any further opt-
21 in forms. If there is a portion of the total FLSA Class Award that goes undistributed, based on
22 FLSA Class Members who do not opt in to the FLSA Settlement Class, the remaining portion of
23 the FLSA Class Award will revert to the California Class Settlement and will be distributed as
24 described below.

25 iv. The minimum potential Settlement share for each member of the
26 California Class shall be calculated as follows: The California Class Award will be divided, on a
27 pro rata basis, based on the total number of work months for which all California Class members

1 were employed as a Payroll Auditor who conducted audits outside of a designated office or as a
2 Senior Payroll Auditor who conducted audits outside of a designated office during the Class
3 Period. The pro rata amount of this potential award for each individual California Class Member
4 will be listed on the “Claim Form” as the “Estimated California Class Award.”

5 v. To calculate the actual Final California Class Award for each
6 member of the California Settlement Class, the Settlement Administrator shall determine the
7 number of members of the California Settlement Class (i.e. all California Class Members who have
8 not timely opted-out), then calculate the number of work-months, on a pro rata basis, of all
9 members of the California Settlement Class, and distribute the California Class Award, on a pro
10 rata basis, to each member of the California Settlement Class based on the number of work-months
11 each California Class Member worked.

12 vi. Notwithstanding this formula, the minimum payment to any
13 Settlement Class Member, whether a member of the FLSA Settlement Class, the California
14 Settlement Class, or both, shall be \$50.00.

15 vii. The number of months worked by Settlement Class Members as a
16 Payroll Auditor who conducted audits outside of a designated office or as a Senior Payroll Auditor
17 who conducted audits outside of a designated office shall be determined by the Settlement
18 Administrator based on employment records to be provided by Defendant as specified below.
19 Settlement Class Members shall have the right to challenge the number of work months reflected in
20 Defendant’s records. The Settlement Administrator shall make final and non-appealable
21 determinations as to any such challenges, and shall revise Class Members’ months worked
22 numbers consistent with its determinations.

23 e. Attorneys’ Fees and Costs. From the Gross Fund, Defendant has agreed to
24 pay, subject to Court approval, up to fifteen thousand dollars (\$15,000.00) to resolve Plaintiffs’
25 Counsel’s claims for out-of-pocket litigation expenses, and additionally up to twenty-five percent
26 (25%) of the Gross Fund (two hundred ninety-three, seven hundred and fifty thousand dollars
27

1 (\$293,750)) to resolve Plaintiffs' Counsels' claims for attorneys' fees. Plaintiffs' Counsel will
2 apply to the Court for, and Defendant does not oppose, approval of payment of those amounts.

3 f. Settlement Administrator. The costs of settlement administration, currently
4 estimated at fourteen thousand dollars (\$14,000.00), will also be paid from the Gross Fund.

5 The Settlement Administrator shall make settlement payments due to Class Members under
6 this Agreement, as well as service payments to the Plaintiffs and attorneys' fees and expenses
7 awarded to Plaintiffs' Counsel by sending such payments by mail or other reliable means to the
8 respective recipients as specified below.

9 The Settlement Administrator will administer the notice, challenge, objection to settlement
10 procedures, informing Class Members of their rights in regard to the proposed settlement as
11 specified below; will disburse monies from the Net Settlement Fund as and when authorized in this
12 Agreement and by order of the Court; will file and issue any necessary tax reporting documents;
13 and will inform the Parties and the Court of its fulfillment of the duties imposed by this Agreement.

14 g. Class Representative Service Award. From the Gross Fund, Defendant has
15 agreed to pay, subject to Court approval, Class Representative Service Awards of seven thousand,
16 five hundred dollars (\$7,500) each to Andrea Sewell and Conrad Silva, and five thousand dollars
17 (\$5,000) to Edith Viera in exchange for general releases from each Class Representative as more
18 fully described below in paragraphs 97 to 99. These amounts will be reported on a form 1099-
19 MISC (not subject to withholdings or payroll taxes). Plaintiffs' Counsel will apply to the Court
20 for, and Defendant does not oppose, approval of payment of these amounts.

21 h. Cy Pres Award. Any unclaimed funds shall be distributed to Legal Services
22 of Northern California as *cy pres* beneficiary, subject to Court approval. If the Court does not
23 approve Legal Services of Northern California as beneficiary, the Parties shall designate another
24 charity in its place.

25 i. Characterization of Settlement Awards. Except for the service awards to be
26 made to the Class Representatives, all settlement payments to Class Members under this
27 Agreement are for wages, liquidated damages or penalties, and/or interest.

1 i. The Settlement Payments for those California Settlement Class
2 Members who do not opt into the FLSA Settlement Class shall be characterized as seventy-five
3 percent (75%) wages and twenty-five percent (25%) interest.

4 ii. The Settlement Payments for those California Settlement Class
5 Members that also opt into the FLSA Settlement Class shall be characterized as fifty percent (50%)
6 wages, twenty-five percent (25%) FLSA liquidated damages or penalties, and twenty-five percent
7 (25%) interest.

8 iii. The portion of the Settlement Payments deemed wages shall be
9 subject to the withholding of all applicable local, state, and federal income and employment taxes.
10 However, Plaintiffs and Defendant agree that with respect to the portion of the Settlement
11 Payments deemed interest and the portion of the Settlement Payments deemed liquidated damages
12 or penalties, such amounts are not characterized as compensation for services rendered and are not
13 subject to income and employment tax withholdings, but will be reported on IRS Form 1099, or
14 similar form, to the appropriate taxing authorities.

15 iv. The Settlement Class Members' share of all legal deductions is to
16 come out of their allocation. It is understood that, as part of the consideration flowing to the
17 Defendant, claims for additional benefits under employee benefit plans or other plans maintained
18 by Defendant at any time, that could potentially or arguably result from payment of any proceeds
19 distributed under this Agreement, shall be released pursuant to this Agreement.

20 v. Any tax obligation arising from the Settlement Payments, Class
21 Representative Service Awards, and/or Plaintiffs' Counsel's Fees and Costs payments made under
22 the terms of this Agreement, will be the sole responsibility of each person receiving such
23 Settlement Payment(s), Class Representative Service Awards, and/or Plaintiffs' Counsel's Fees and
24 Costs, respectively. Both the employer and employees' share of the payroll taxes for the amount
25 allocated as wages shall be taken out from the Net Settlement Fund. Defendant will not be
26 responsible for paying the employer's share of the payroll taxes separately from, or in addition to,
27 the Gross Fund or Net Settlement Fund. Each Settlement Class Member is responsible to pay

1 appropriate taxes due on the Settlement Payment received. Each Settlement Class Member shall be
2 solely responsible for any tax liability, penalties or costs assessed to said Class Member in
3 connection with the Settlement Payment(s).

4 **VII. DUTIES OF SETTLEMENT ADMINISTRATOR**

5 61. The Parties have agreed to appoint Simpluris, Inc. (“Simpluris”) to perform the
6 duties of Settlement Administrator. In the event the Court does not approve the appointment of
7 Simpluris, the parties will meet and confer to select an alternate Settlement Administrator.

8 62. The Settlement Administrator shall be responsible for and the Gross Fund shall
9 cover: (a) preparing and mailing notices of settlement and of estimated settlement payment
10 amounts, and instructions to object to the Settlement, to all Settlement Class Members, including
11 taking appropriate steps to trace and locate any individual Settlement Class Members whose
12 address or contact information as provided to the Settlement Administrator is inaccurate or
13 outdated; (b) receiving and independently reviewing and resolving any challenges, and associated
14 documentation, from Settlement Class Members regarding the number of months they actively
15 performed work as a Payroll Auditor who conducted audits outside of a designated office or as a
16 Senior Payroll Auditor who conducted audits outside of a designated office during the Class
17 Period; (c) receiving and serving on Plaintiffs’ Counsel and Defendant’s Counsel, and the Court,
18 copies of written objections, and any rescission statements; (d) establishing a toll free telephone
19 line and responding to inquiries and requests for information or assistance from Settlement Class
20 Members; (e) maintaining the Gross Fund in an interest bearing escrow account; (f) determining
21 and paying the final amounts due to be paid to Settlement Class Members after adjustments: (i)
22 resulting from the resolution of all challenges; and (ii) for funds that cannot be distributed due to
23 the inability to locate Settlement Class Members; (g) determining the validity of any late disputes
24 or claims by previously unidentified Class Members, and making payment for any valid late claims
25 or disputes, should there be funds available, on a pro rata basis as provided for below; (h) paying
26 any residual funds from uncashed checks from the second round distribution to cy pres beneficiary
27 as provided for below; (i) reporting to Plaintiffs’ Counsel, Defendant’s Counsel, and the Court

1 regarding the completion of the tasks identified in this paragraph; and (j) carrying out other related
2 tasks including the proper maintenance of undisbursed Settlement Fund amounts in an interest
3 bearing account and reporting required for that account, in accordance with the terms of this
4 Settlement Agreement.

5 63. All disputes relating to the Settlement Administrator's ability and need to perform
6 its duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over
7 the terms and conditions of this Settlement Agreement, until all payments and obligations
8 contemplated by the Settlement Agreement have been fully executed.

9 **VIII. NOTICE TO THE SETTLEMENT CLASS MEMBERS**

10 64. Upon approval by the Court, the Settlement Administrator shall send a Notice of
11 Settlement and Opportunity to Object to Settlement ("Notice of Settlement") to all Settlement
12 Class Members, by first class mail, within twenty (20) days after receiving the Class Members'
13 information from Defendant. Attached to the Notice of Settlement will be an Estimated Payment
14 and Opt-In Form ("Claim Form"). The Notice of Settlement and Claim Form shall be sent in an
15 envelope that shall include a return address to the Class Administrator:

16 State Compensation Insurance Fund Class Action Administrator

17 c/o Simpluris, Inc.

18 [Address of Settlement Administrator]
19

20 65. By no later than twenty (20) days after the date of the entry of an Order granting
21 Preliminary Approval, Defendant shall provide to the Settlement Administrator confidential
22 information in electronic format regarding all Settlement Class Members, including last known
23 addresses, and telephone numbers, Social Security numbers, and dates worked in Class Positions.
24 At the same time, Defendant shall provide to Plaintiffs' Counsel the same information, but without
25 Social Security numbers. Defendant shall also furnish to the Settlement Administrator and
26 Plaintiffs' Counsel a specification of any periods of leave of absence used in calculating work
27 months during the Class Period, but that need not be in spreadsheet format.

1 66. All information provided to the Settlement Administrator and Plaintiffs' Counsel
2 will be marked CONFIDENTIAL and produced subject to the Protective Order and Nondisclosure
3 Agreement entered into by the Parties in this Action. This information shall be kept confidential
4 and not disclosed, either in writing or orally, by the Settlement Administrator or Plaintiffs'
5 Counsel.

6 67. The Settlement Administrator shall use due care with respect to the storage, custody,
7 use, and/or dissemination of the confidential information. Such information must be stored in a
8 secure fashion and all persons who access the data must agree to be bound by and abide by the
9 Protective Order and Nondisclosure Agreement.

10 68. Prior to mailing the Notice of Settlement and Claim Forms, the Settlement
11 Administrator will update the addresses for the Settlement Class Members using the National
12 Change of Address database and other available resources deemed suitable by the Settlement
13 Administrator. Any returned envelopes from the initial mailing with forwarding addresses will be
14 used by the Settlement Administrator to locate missing Settlement Class Members and re-mail the
15 Notice to the correct or updated address. The Settlement Administrator will use all appropriate
16 tracing methods to ensure that the Notice of Settlement packets are received by all Settlement Class
17 Members.

18 69. Plaintiffs' Counsel shall have the right to take appropriate steps to locate and assist
19 Settlement Class Members during the notice and distribution process.

20 **IX. CALCULATION OF SETTLEMENT PAYMENTS AND**
21 **DISTRIBUTION OF NET SETTLEMENT FUND**

22 70. Each Claim Form mailed to a Settlement Class Member will identify the number of
23 compensable months that Defendant's records indicate the individual actively performed work as a
24 Payroll Auditor who conducted audits outside of a designated office or as a Senior Payroll Auditor
25 who conducted audits outside of a designated office during the Class Period and estimate each
26 Settlement Class Member's pro rata share of the California Class Award as well as their share of
27 the FLSA award in the event they opt in to the FLSA Settlement Class by returning the Claim

1 Form.

2 71. Each Class Member will have sixty (60) calendar days from the mailing of the Opt-
3 In Claim Forms within which to postmark their Claim Form for return to the Claims Administrator,
4 which will verify that they have opted into the FLSA Settlement Class. Opt-In Claim Forms
5 postmarked after the sixty (60) calendar day period will be reviewed jointly by counsel for the
6 parties to determine whether the late claim form should be permitted. Late Opt-In Claim Forms
7 may be permitted upon agreement by the parties, and in accordance with the provisions below, as
8 long as it will not create significant additional expenses or delay the distribution of the Net
9 Settlement Funds to the Class Members.

10 72. Settlement Class Members will have the right to challenge only the number of
11 months worked as shown on the Estimated Payment and Opt-In Claim Form. Challenges to the
12 number of months shall be sent directly to the Settlement Administrator at the address indicated on
13 the Form. No challenge to the number of months worked will be accepted unless postmarked
14 within 60 days of the date of mailing of class notice, subject to the provisions in Paragraph 73.

15 73. Additional time may be provided to a Settlement Class Member to submit a Claim
16 Form or challenge the number of months worked for good cause and within an amount of time
17 determined by the Settlement Administrator that will not delay the distribution of settlement
18 payments to other Settlement Class Members. The Settlement Administrator will inform Plaintiffs'
19 Counsel and Defendant's Counsel in writing of any timely filed challenges.

20 74. Challenges will be resolved without hearing by the Settlement Administrator, who
21 will make a decision based on Defendant's records and any documents or other information
22 presented by the Class Member making the challenge, Plaintiffs' Counsel or Defendant. The
23 Settlement Administrator's determination is final and binding without a right of appeal.

24 75. The Settlement Administrator shall (a) date stamp all original objections to the
25 settlement that it receives; (b) serve copies on Plaintiffs' Counsel and Defendant's Counsel no later
26 than ten (10) business days after receipt, or immediately if received within five (5) business days of
27 the Court's final approval hearing; and (c) file the date-stamped originals with the Clerk of the

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1 Court no later than five (5) business days prior to the date of the Court's final approval hearing or
2 immediately if received less than five (5) business days prior to the date of the Court's final
3 approval hearing.

4 76. The Settlement Administrator shall also (a) date stamp all original withdrawal of
5 objection statements it receives; (b) serve copies on Plaintiffs' Counsel and Defendant's Counsel
6 no later than five (5) business days after receipt, or immediately if received within (5) business
7 days of the Court's final approval hearing; and (c) file the date-stamped originals with the Clerk of
8 the Court no later than five (5) business days prior to the date of the Court's final approval hearing
9 or immediately if received less than five (5) business days prior to the date of the Court's final
10 approval hearing.

11 77. The settlement is non-reversionary. There will be two rounds of check distribution.
12 The first distribution will be sent to all eligible Settlement Class Members within 25 days of the
13 Settlement Effective Date. Any uncashed checks from the first distribution will be canceled after
14 90 days as set forth below, and the sum of those uncashed checks reallocated pro-rata to Settlement
15 Class Members who cashed their checks during the first distribution. The Settlement
16 Administrator shall make the final calculation of the first round payments from the Net Settlement
17 Fund to be distributed to the Settlement Class Members within 15 days after the entry of the
18 Court's order granting final approval of the settlement. Upon completion of its final calculation of
19 first round payments, the Settlement Administrator shall provide Plaintiffs' Counsel and
20 Defendant's Counsel with a report listing the amount of all payments to be made to each
21 Settlement Class Member from the Net Settlement Fund. The Settlement Administrator also will
22 supply Plaintiffs' Counsel and Defendant's Counsel with an updated address list for the Settlement
23 Class Members, reflecting any corrections or updates made by the Settlement Administrator in the
24 course of administering notice to the Settlement Class and the receipt of any challenges and written
25 objections. All updated reports provided by the Settlement Administrator shall be marked
26 CONFIDENTIAL and produced subject to the Protective Order and Nondisclosure Agreement
27 entered into by the Parties in this Action.

1 78. No later than 15 days of the Settlement Effective Date, the Settlement Administrator
2 shall mail to the Class Representatives the amount awarded by the Court for service payments and
3 to Class Counsel the amount awarded as fees and costs, and pay administration costs. The
4 Settlement Administrator shall be responsible for issuing and mailing the checks and any necessary
5 tax reporting forms to Settlement Class Members, Plaintiffs, Plaintiffs' Counsel, and Defendant.

6 79. Settlement Class Members who are sent first round payments shall have 90 calendar
7 days after mailing by the Settlement Administrator to cash their settlement checks. If such
8 Settlement Class Members do not cash their checks within that period, those checks will become
9 void and a stop payment will be placed on the uncashed checks. In such event, those Settlement
10 Class Members will be deemed to have waived irrevocably any right in or claim to a settlement
11 payment; however, the Settlement Administrator may, in its discretion and without appeal to or
12 right of review by the Court, agree to make full or partial payment of the amounts calculated to be
13 due to such Settlement Class Members out of any residual funds remaining from any and all
14 uncashed checks. All amounts remaining from voided and uncashed checks after deduction of
15 costs, including stop payment charges, shall be placed in an interest-bearing Reserve Fund to make
16 a second round distribution to the Settlement Class members who have cashed the first round
17 distribution checks during the required 90-day period. The second round distribution shall occur
18 no later than 45 days after the end of the 90-day period for cashing checks in the first round
19 distribution.

20 80. Payments in the second round distribution will be allocated with all available funds
21 paid pro rata based on the gross amounts of the settlement checks the eligible persons received in
22 the first round payments. As with the first round payments, Settlement Class Members who are
23 sent second round payments shall have 90 calendar days after mailing by the Settlement
24 Administrator to cash their settlement checks. If such Settlement Class Members do not cash their
25 second round payment checks within that period, those checks will become void and a stop
26 payment will be placed on the uncashed checks. Whether or not such Settlement Class Members
27 receive any payment from the Reserve Fund, this Settlement Agreement shall be binding upon
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1 them. The Settlement Administrator shall provide a declaration of payment, which will be filed
2 with the Court and served on Plaintiffs' Counsel and Defendant within 75 days of mailing the
3 second round payments to Settlement Class Members

4 81. Any amounts remaining in the Reserve Fund, as a result of funds corresponding to
5 uncashed second round distribution checks after the end of the 90 day period for those payments
6 will be payable to Legal Services of Northern California as *cy pres* beneficiary.

7 82. Any costs associated with administering the residual (e.g., bank stop payment
8 charges, settlement administration costs associated with the Reserve Fund) or payments to the *cy*
9 *pres* beneficiary will be deducted from the residual before donation of the *cy pres* funds.

10 83. No later than 30 days after the end of the 90-day period for cashing checks in the
11 second round distribution, the Claims Administrator shall pay over any residual from uncashed
12 second round distribution checks including any residue in the Reserve Fund to the *cy pres*
13 beneficiary designated by the process described above. The Claims Administrator shall provide a
14 declaration of payment to the *cy pres* beneficiary, which will be filed with the Court and served on
15 Plaintiffs' Counsel within 30 days of payment of the residual to such beneficiary.

16 **X. LATE CLAIMS**

17 84. Any claim received after sixty (60) calendar days from the mailing of the Claim
18 Forms shall be considered as a late claim ("Late Claim"). Persons submitting Late Claims shall be
19 contacted by the Settlement Administrator and given an opportunity to present the Settlement
20 Administrator with a written statement, under penalty of perjury, as to the basis for their claim
21 being late. If the Settlement Administrator determines that there is substantial justification for the
22 Late Claim, and that payment would serve the equitable distribution of Net Settlement Funds, the
23 Late Claim shall be allowed. However, no Late Claim shall be considered where the written
24 statement explaining the basis for being late is received more than one hundred and twenty (120)
25 days after the initial mailing.

1 90. Settlement Class Members shall be permitted to withdraw their objections in writing
2 by submitting a withdrawal statement to the Settlement Administrator not later than one (1)
3 business day prior to the Court's final approval hearing, orally at the final approval hearing, or as
4 otherwise ordered by the Court.

5 91. No later than five (5) court days before the Final Approval Hearing, the Settlement
6 Administrator shall provide the Parties with a complete and accurate list of all California Class
7 Members who have timely requested exclusion from the Class.

8 92. All Requests for Exclusion from the Class and all written objections to the
9 Settlement and/or Notices of Intention to Appear and Object shall be filed with the Court by the
10 Administrator no later than five (5) court days before the Final Approval Hearing.

11 93. The Parties agree that neither they nor their counsel will solicit or otherwise
12 encourage directly or indirectly Class Members to request exclusion from the Class, object to the
13 Settlement or to appeal any order denying or overruling such requests or objections.

14 **XII. RELEASES**

15 94. Upon entry of the Order Granting Final Approval, the Class Members, on behalf of
16 themselves and each of their heirs, representatives, successors, assigns, and attorneys, shall be
17 deemed to release and forever discharge all Released State and Federal Law Claims.

18 95. Class Members may hereafter discover facts in addition to or different from those
19 they now know or believe to be true with respect to the subject matter of the Released State Law
20 and Released Federal Law Claims. However, on entry of the Order Granting Final Approval (and
21 to the extent provided for in this paragraph), all Class Members shall be deemed to have, and by
22 operation of the Final Judgment fully, finally, and forever settled and released any and all of the
23 Released State Law Claims and Released Federal Law Claims, whether known or unknown,
24 suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore have
25 existed, upon any theory of law or equity now existing or coming into existence in the future,
26 including, but not limited to, conduct that is negligent, intentional, with or without malice, or a
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1 breach of any duty, law or rule, without regard to the subsequent discovery or existence of such
2 different or additional facts which are released by this Agreement.

3 96. Each Class Member who has not submitted a valid Request for Exclusion forever
4 agrees that he or she shall not institute any action seeking, nor accept, back pay, overtime
5 premiums, penalties, liquidated damages, punitive damages, penalties of any nature, attorneys' fees
6 and costs, or any other relief from any other suit, class or collective action, administrative claim or
7 other claim of any sort or nature whatsoever against Released Parties, for the Released Period,
8 arising from any claims released in this Section. This release shall become effective at such time
9 as Defendant has complied with all of its obligations pursuant to the Settlement Agreement.

10 97. In addition to the releases provided in the prior paragraphs, Plaintiffs Sewell, Silva,
11 and Viera—for their family members, heirs, representatives, attorneys, executors, administrators,
12 successors, and assigns—hereby unconditionally waive and forever release Defendant—and any
13 parent, subsidiary, affiliate, predecessor or successor, and all agents, employees, officers, directors
14 and attorneys thereof—from any and all claims, debts, liabilities, demands, obligations, guarantees,
15 costs, expenses, attorneys' fees, damages, action or causes of action contingent or accrued for, or
16 which arise from the allegations and claims asserted in the Action, including without limitation any
17 and all claims under state and federal law, including but not limited to unpaid minimum wage,
18 overtime compensation, liquidated damages, meal periods, penalties, interest, attorneys' fees and
19 expenses, whether known or unknown arising or accruing at any time prior to the date of the entry
20 of the Order granting Final Approval.

21 98. This release also includes, but is not limited to, any claims by Plaintiffs Sewell,
22 Silva, and Viera—for their family members, heirs, representatives, attorneys, executors,
23 administrators, successors, and assigns, against Defendant—and any parent, subsidiary, affiliate,
24 predecessor or successor, and all agents, employees, officers, directors and attorneys thereof—
25 related to Plaintiffs' employment Defendant for breach of any implied or express contract or
26 covenant; claims for promissory estoppel; claims of entitlement to any pay or employee benefit,
27 including commissions, insurance or unit grants; claims of wrongful termination; claims for

1 wrongful termination, retaliatory discharge or public policy violations of whatever kind or nature,
2 defamation, invasion of privacy, fraud, misrepresentation, emotional distress or other common law
3 or tort matters; assault, claims of harassment, retaliation or discrimination based on age, race,
4 color, religion, sex, sexual orientation, national origin, ancestry, physical or mental disability,
5 medical condition including genetic characteristics, marital status, or any other protected status
6 under state or federal law or regulation or local ordinance; claims under the California Labor,
7 Government, Business and Professions, and Health and Safety Codes; claims based upon the
8 California or Federal Constitutions; claims based on any federal, state or other governmental
9 statute, regulation or ordinance, including, without limitation, the California Fair Employment &
10 Housing Act, the California Family Rights Act, Title VII of the Civil Rights Act, as amended, the
11 Americans with Disabilities Act, the Labor Management Relations Act, and the Family Medical
12 Leave Act.

13 99. For the purpose of implementing a full and complete release, Plaintiffs Sewell,
14 Silva, and Viera expressly acknowledge that the release they give in this Agreement is intended to
15 include in its effect, without limitation, claims that they did not know or suspect to exist in their
16 favor at the time of the effective date of this Agreement, regardless of whether the knowledge of
17 such claims, or the facts upon which they might be based, would materially have affected the
18 settlement of this matter, and that the consideration given under the Agreement was also for the
19 release of those claims and contemplates the extinguishment of any such unknown claims.

20 Plaintiffs Sewell, Silva, and Viera acknowledge that they have had the opportunity to review and
21 have reviewed California Civil Code Section 1542, which provides:

22 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR
23 DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME
24 OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST
 HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

25 Being fully informed of this provision of the Civil Code and understanding its provisions,
26 as consideration for this Agreement, Plaintiffs Sewell, Silva, and Viera agree to waive any rights
27 under that section, and acknowledge that this Agreement and the release contained herein extends
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1 to all claims that he, she or it has or might have against the persons and entities released, including
2 those which are presently unknown to him, her or it.

3 100. Plaintiffs Sewell, Silva, and Viera promise never to sue nor participate in any suit
4 against Defendant—and any parent, subsidiary, affiliate, predecessor or successor, and all agents,
5 employees, officers, directors and attorneys thereof—in any forum for any reason, including but
6 not limited to claims, laws or theories covered by the release set forth above in Paragraphs 97
7 through 99 of this Agreement, based on any acts or omissions occurring prior to the effective date
8 of this Agreement. Plaintiffs Sewell, Silva, and Viera expressly agree that they will not participate
9 in any class, collective, or representative action of any kind or nature against Defendant related to
10 the released claims. Plaintiffs Sewell, Silva, and Viera agree further not to testify in any matter
11 related to the released claims in which Defendant has an interest, unless they are under compulsory
12 process or are asked to testify by Defendant. Plaintiffs Sewell, Silva, and Viera expressly waive
13 any rights or potential rights or recovery that he may have in a potential class, collective, or
14 representative settlement in these or other actions that are related to the released claims. Plaintiffs
15 Sewell, Silva, and Viera further agrees to opt out of or withdraw their consent for participation in
16 any such class, collective, or representative action and agrees that, even if they do not opt out or
17 withdraw they consent for participation, they will not be entitled to recover or participate in such
18 actions in any way. Notwithstanding this Covenant Not to Sue, any Party may bring an action to
19 enforce this Agreement. If Plaintiffs Sewell, Silva, or Viera sue Defendant in violation of this
20 Covenant Not to Sue, the prevailing party is entitled to recovery of their reasonable attorneys' fees
21 and other litigation costs incurred, and if Plaintiffs Sewell, Silva, or Viera sue and do not prevail,
22 he/she must return all payments made to them under this Agreement.

23 101. State Fund hereby unconditionally waives and forever releases any and all demands,
24 damages, debts, liabilities, actions, causes of action, and claims of every kind and nature
25 whatsoever, whether now known or unknown, suspected or unsuspected, which it ever had or now
26 has against Plaintiffs Sewell, Silva, and Viera, their agents, insurers, attorneys, successors and
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1 assigns, and each of them arising or accruing at any time prior to the date of entry of the Order
2 granting Final Approval.

3 102. Nothing in this Settlement Agreement shall be construed to bar any claims by the
4 Settlement Class Members that may arise after the Released Period.

5 **XIII. DUTIES OF THE PARTIES PRIOR TO PRELIMINARY APPROVAL**
6 **AND BETWEEN PRELIMINARY AND FINAL APPROVAL**

7 103. The Plaintiffs shall promptly submit this Settlement Agreement to the Court
8 together with a Motion for Preliminary Approval of Settlement and Certification of Settlement
9 Class. Plaintiffs' motion shall also seek an order:

- 10 a. Preliminarily approving the settlement;
- 11 b. Approving as to form and content the proposed Notice of Settlement;
- 12 c. Approving as to form and content the proposed Estimated Payment and Opt-
13 In Claim Form ("Claim Form");
- 14 d. Directing the mailing of the Notice of Settlement and Claim Forms by first
15 class mail to members of the Settlement Class;
- 16 e. Preliminarily appointing Plaintiffs and Plaintiffs' Counsel as representatives
17 of the Settlement Class;
- 18 f. Preliminarily approving settlement administration services to be provided by
19 the Settlement Administrator;
- 20 g. Preliminarily approving the proposed Class Representative service awards to
21 each of the Plaintiffs;
- 22 h. Preliminarily approving the application for payment of reasonable attorneys'
23 fees and reimbursement of litigation-related expenses to Plaintiffs' Counsel; and
- 24 i. Scheduling a fairness hearing on the question of whether the proposed
25 settlement should be finally approved as fair, reasonable and adequate as to the members of the
26 Settlement Class.

1 104. Defendant shall not oppose Plaintiffs' motions for approval of the proposed
2 settlement.

3 105. Defendant shall provide to the Settlement Administrator and Plaintiffs' counsel,
4 within 20 days of the date of the entry of an Order granting Preliminary Approval Order, the
5 confidential class membership list and identification and contact information specified in
6 Paragraph 65 above. Defendant shall submit this confidential information in electronic format as
7 specified by the Settlement Administrator and shall thereafter, during the notice, approval,
8 objection and payment processes, assist the Settlement Administrator as necessary or as requested
9 to use, correct, or update this information in order to enable the Settlement Administrator to locate
10 and contact Settlement Class Members, and to provide information needed or requested by the
11 Settlement Administrator in order to make determinations on Settlement Class Members'
12 challenges.

13 106. The Parties shall cooperate with each other and the Settlement Administrator during
14 the process of giving Settlement Class Members notice and opportunity to object to the Settlement,
15 as necessary and appropriate to assure effective communication to individual Settlement Class
16 Members of information about their rights and obligations under this Settlement Agreement.

17 107. Plaintiffs' Counsel shall provide the Court, at least five (5) days prior to the final
18 approval and fairness hearing, a declaration by the Settlement Administrator of due diligence and
19 proof of mailing of the Notice of Settlement and Claim Form required to be mailed to Settlement
20 Class Members by this Settlement Agreement, and of the delivery results of the Settlement
21 Administrator's mailings including tracing and re-mailing efforts.

22 **XIV. DUTIES OF THE PARTIES AFTER FINAL COURT APPROVAL**

23 108. Plaintiffs' Counsel will submit a proposed order and judgment for final approval,
24 which shall include findings and orders:

25 a. Approving the settlement, adjudging the terms thereof to be fair, reasonable
26 and adequate, and directing that its terms and provisions be carried out;

1 Court grants necessary approvals and orders notice to the class, and sets further hearings. The
 2 schedule may also be modified to correct clerical errors and to reflect the provisions in the
 3 Settlement Agreement as described above. In the event of such modification, the parties shall
 4 cooperate in order to complete the settlement procedures as expeditiously as reasonably
 5 practicable.

6 Within 20 days after the date of 7 entry of an Order granting 8 Preliminary Approval	Defendant to provide the Settlement Administrator the most recent names, mailing addresses, phone numbers, and social security numbers it has for all eligible Settlement Class Members, as well as any information regarding the Settlement Class Members' dates of employment and leaves of absence, and provide the same information to Plaintiffs' counsel, except for Social Security numbers.
11 20 days after receipt of 12 information from Defendant	Settlement Administrator to complete any skip trace or other address searched for Class Members, including updating any Class Member contact information that was obtained in the notice and opt out process for class certification in this matter.
14 20 days after receipt of 15 information from Defendant	Mailing by first class mail and email of Class Action Settlement Notice and Settlement Claim Form by Settlement Administrator.
17 20 days after mailing of Notice 18 and Settlement Claim Form	Settlement Administrator to conduct trace/search efforts and send a follow up mailing to individuals whose Notice was returned as undeliverable or whose listed address is found to be inaccurate or outdated.
19 60 days after mailing of Notice 20 and Claim Form	Last day for FLSA Class Members to opt-in to FLSA Settlement Class
21 60 days after mailing of Notice 22 and Settlement Claim Form	Last day for Class Members to challenge dates of employment, work months, or submit written objections.
23 10 days after close of 24 objection/challenge period	Settlement Administrator to provide counsel with written objections or statements of intention to object to the Settlement received from Settlement Class Members, and also prepare a declaration for Plaintiffs' counsel review and approval certifying the completion and results of the class notice and related processes.

1	Within 10 days of date of entry of order granting final approval.	The Settlement Fund will be deposited in Settlement Administrator-established interest-bearing account.
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4	Within 15 days of date of entry of order granting final approval	Settlement Administrator to make the final calculation of payments from the Net Settlement Fund to be distributed to the Settlement Class Members and provide all Counsel with a report listing the amount of all payments to be made to each Eligible Settlement Class Member from the Net Settlement Fund.
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7		
8	15 days of Settlement Effective Date	Settlement Administrator to distribute and pay from the Gross Fund: (1) awarded attorneys' fees and reimbursed litigation expenses to Plaintiffs' Counsel; (2) checks for the class representatives' service awards; and (3) administration costs paid to the Settlement Administrator.
9		
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11		
12	15 days of date of entry of order granting final approval.	Settlement Administrator to provide Plaintiffs' Counsel and Defendant's Counsel with a report listing the amount of all payments to be made to each Settlement Class Member from the Net Settlement Fund, after payment of the employer's share and the employee's share of the payroll taxes.
13		
14		
15		
16	25 days of Settlement Effective Date	Settlement Administrator to distribute and pay Settlement share checks to all participating Settlement Class Members from the Net Settlement Fund, after payment of the employer's share and the employee's share of the payroll taxes.
17		
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19		
20	90 days after payment of settlement checks	Expiration of first round class member settlement checks.
21		
22	Within 45 days of date of expiration of first round class member settlement checks.	Settlement Administrator to distribute and pay second round Settlement share checks to all participating Settlement Class Members from the Settlement Fund who cashes first round checks within the ninety day period.
23		
24		
25	90 days after payment of second round settlement checks.	Expiration of second round class member settlement checks
26		
27	Within 75 days after payment of second round settlement checks.	Plaintiffs to submit final Settlement Administrator's report regarding status of payments.
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1 **To Plaintiffs' Counsel:**

2 Harvey Sohnen
3 Law Offices of Sohnen & Kelly
4 2 Theatre Square, Suite 230
Orinda, CA 94563

5 Facsimile: (925) 258-9315

6 Michael Ahmad
7 Law Office of Mary-Alice Coleman
8 1109 Kennedy Place, Suite #2
Davis, CA 95616

9 Facsimile: (916) 304-0880

To Defendant's Counsel :

Mark P. Grajski
Julie G. Yap
Seyfarth Shaw LLP
400 Capitol Mall, Suite 2350
Sacramento, CA 95814-4428

Facsimile: (916) 558-4839

Gina Marie S. Ong
Jody A. DeBernardi
State Compensation Insurance Fund
1750 E. Fourth Street, Suite 450
Santa Ana, CA 92705-3930

Facsimile: (714) 347-6145

Brandon R. McKelvey
Medina McKelvey LLP
983 Reserve Drive
Roseville, CA 95678

Facsimile: (916) 742-5151

14 If the identity of the person(s) to be notified for any party changes, or their address changes,
15 that party shall notify all other parties of said change in writing.

16 **XXII. CAPTIONS AND INTERPRETATIONS**

17 118. Paragraph titles or captions contained herein are inserted as a matter of convenience
18 and for reference, and in no way define, limit, extend, or describe the scope of this Settlement
19 Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not
20 merely a recital.

21 119. The Parties hereto agree that the terms and conditions of this Settlement Agreement
22 are the result of lengthy, intensive arms-length negotiations between the Parties supervised by an
23 experienced employment law mediator and that this Settlement Agreement shall not be construed
24 in favor of or against any Party by reason of the extent to which any Party or his, her or its counsel
25 participated in the drafting of this Settlement Agreement.

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XXIII. INTEGRATION CLAUSE

120. This Settlement Agreement contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party’s legal counsel, are merged herein. No rights hereunder may be waived except in writing.

XXIV. NO PRIOR ASSIGNMENTS

121. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators and successors. The Parties hereto represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

XXV. COOPERATION

122. Plaintiffs and Defendant have cooperated in the drafting and preparation of this Agreement. This Agreement shall not be construed against any party on the basis that the party was the drafter or participated in the drafting.

XXVI. SETTLEMENT CLASS MEMBER SIGNATORIES

123. It is agreed that because the members of the Settlement Class are so numerous, it is impossible or impractical to have each member of the Settlement Class execute this Settlement Agreement. The parties shall agree on the wording of a Notice of Settlement and Estimated Payment and Opt-In Form within 15 days of Execution of this Agreement. The Notice of Settlement, will advise all Settlement Class Members of the binding nature of the release and such shall have the same force and effect as if this Settlement Agreement were executed by each member of the Settlement Class.

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XXVII. COUNTERPARTS

124. This Settlement Agreement may be executed in counterparts with signatures transmitted by facsimile or as an electronic image of the original signature. When each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement Agreement, which shall be binding upon and effective as to all Parties. A facsimile signature shall have the same force and effect as the original signature, if and only if it is transmitted from counsel for one party to the other. Such transmissions shall be interpreted as verification by the transmitting counsel that the signature is genuine and that the party signing has authorized and reviewed the agreement.

Dated: April 12, 2014

Andrea Sewell
ANDREA SEWELL
Plaintiff

Dated: _____, 2014

CONRAD SILVA
Plaintiff

Dated: _____, 2014

EDITH VIERA
Plaintiff

Dated: _____, 2014

LAW OFFICE OF MARY-ALICE COLEMAN
LAW OFFICES OF SOHNEN & KELLY

By: _____
Harvey Sohnen
Attorneys for Plaintiffs ANDREA SEWELL,
CONRAD SILVA, and EDITH VIERA
individually, and on behalf of all others
similarly situated

Dated: April 9, 2014

STATE COMPENSATION INSURANCE FUND

By: Andreas Acker
Andreas Acker
Sr. VP of HR & Chief Administrative Officer

XXVII. COUNTERPARTS

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Dated: _____, 2014

ANDREA SEWELL
Plaintiff

Dated: 4-13, 2014


CONRAD SILVA
Plaintiff

Dated: _____, 2014

EDITH VIERA
Plaintiff


Dated: _____, 2014

LAW OFFICE OF MARY-ALICE COLEMAN
LAW OFFICES OF SOHNEN & KELLY

By: _____
Harvey Sohnen
Attorneys for Plaintiffs ANDREA SEWELL,
CONRAD SILVA, and EDITH VIERA
individually, and on behalf of all others
similarly situated

Dated: April 9, 2014

STATE COMPENSATION INSURANCE FUND

By: 
Andreas Acker
Sr. VP of HR & Chief Administrative Officer

XXVII. COUNTERPARTS

124. This Settlement Agreement may be executed in counterparts with signatures transmitted by facsimile or as an electronic image of the original signature. When each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement Agreement, which shall be binding upon and effective as to all Parties. A facsimile signature shall have the same force and effect as the original signature, if and only if it is transmitted from counsel for one party to the other. Such transmissions shall be interpreted as verification by the transmitting counsel that the signature is genuine and that the party signing has authorized and reviewed the agreement.

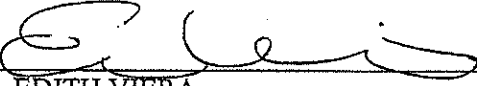
Dated: _____, 2014

ANDREA SEWELL
Plaintiff

Dated: _____, 2014

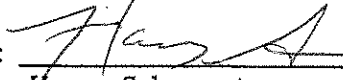
CONRAD SILVA
Plaintiff

Dated: April 13, 2014


EDITH VIERA
Plaintiff

Dated: April 17, 2014

LAW OFFICE OF MARY-ALICE COLEMAN
LAW OFFICES OF SOHNEN & KELLY

By: 
Harvey Sohnen
Attorneys for Plaintiffs ANDREA SEWELL,
CONRAD SILVA, and EDITH VIERA
individually, and on behalf of all others
similarly situated

Dated: April 9, 2014

STATE COMPENSATION INSURANCE FUND

By: 
Andreas Acker
Sr. VP of HR & Chief Administrative Officer

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Dated: April 17, 2014

SEYFARTH SHAW LLP

By: Julie A. Yap

MARK P. GRAJSKI
JULIE G. YAP
Attorneys for Defendant
STATE COMPENSATION
INSURANCE FUND

Dated: April 17, 2014

MEDINA MCKELVEY LLP

By: [Signature]

BRANDON R. MCKELVEY
Attorneys for Defendant
STATE COMPENSATION
INSURANCE FUND