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 C&S WHOLESALE GROCERS, INC. and TRACY
 12 LOGISTICS, LLC

13 UNITED STATES DISTRICT COURT
 14 EASTERN DISTRICT OF CALIFORNIA

15
 16 DENNIS BICEK; individually, and on behalf
 of other members of the general public
 17 similarly situated, and on behalf of aggrieved
 employees pursuant to the Private Attorneys
 18 General Act ("PAGA"),

19 Plaintiff,

20 v.

21 C&S WHOLESALE GROCERS, INC., a
 Vermont corporation; TRACY LOGISTICS,
 22 LLC, an unknown business entity; and DOES
 1 through 100, inclusive,,
 23

24 Defendants.

Case No. 2:13-cv-00411-MCE-KJN

**STIPULATION OF DISMISSAL
 PURSUANT TO FEDERAL RULE OF
 CIVIL PROCEDURE SECTION
 41(A)(1)(A)(II) REGARDING
 PLAINTIFFS BICEK, CHAN,
 ALVAREZ, GEERLOF, MOORE,
 TILOS, ROBERTS, RAUSCHE,
 GUNTER, VALDES, AND WOHRLE
 AND ORDER**

Before The Hon. Morrison C. England, Jr.

1 **STIPULATION OF DISMISSAL PURSUANT TO FEDERAL RULE**
2 **OF CIVIL PROCEDURE SECTION 41(A)(1)(A)(II)**

3 Plaintiffs Dennis Bicek, Jose Chan, Jesus Alvarez, Eugene Geerlof, Bradley
4 Moore, Benjamin Tilos, Jr., Sean Roberts, Timothy Rausch, Sue Gunter, Manuel Valdes,
5 Jr., and James E. Woehrle (collectively, “Plaintiffs”) and Defendant C&S Wholesale
6 Grocers, Inc. and Tracy Logistics, LLC (“Defendants”), by and through their respective
7 counsel of record, agree as follows:

8 **WHEREAS**, on or about December 10, 2012, Plaintiff Dennis Bicek filed a
9 putative class action complaint against Defendants in the Superior Court of the State of
10 California for the County of Sacramento, *Bicek v. C&S Wholesale Grocers, Inc., et al.*,
11 Case No. 34-2012-00136674, alleging state law claims for unpaid overtime wages,
12 unpaid meal period premiums, unpaid rest period premiums, unpaid minimum wages,
13 wages not timely paid during employment, non-compliant wage statements, failure to
14 keep requisite payroll records, and violations of the California Business and Professions
15 Code § 17200, *et seq.*. On February 28, 2013, Defendants removed this matter to the
16 United States District Court for the Eastern District of California based on diversity of
17 citizenship jurisdiction under 28 U.S.C. § 1332(a) and under the Class Action Fairness
18 Act.

19 **WHEREAS**, on or about July 18, 2013, Plaintiff Jose Chan filed a Complaint in
20 the Los Angeles County Superior Court of the State of California in *Chan v. C&S*
21 *Wholesale Grocers, Inc., et al.*, Case No. BC515593, alleging state law claims for unpaid
22 overtime wages, unpaid meal period premiums, unpaid rest period premiums, unpaid
23 minimum wages, wages not timely paid during employment, non-compliant wage
24 statements, failure to keep requisite payroll records, unreimbursed business expenses, and
25 violations of the California Business and Professions Code § 17200, *et seq.*. On August
26 29, 2013, Defendants removed this matter to the United States District Court for the
27 Central District of California based on diversity of citizenship jurisdiction under 28
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1 U.S.C. § 1332(a). On October 11, 2013, on Defendants’ motion, the matter was
2 transferred to the United States District Court for the Eastern District of California.

3 **WHEREAS**, on or about July 19, 2013, Plaintiff Jesus Alvarez filed a Complaint
4 in the San Joaquin County Superior Court of the State of California in *Alvarez v. C&S*
5 *Wholesale Grocers, Inc., et al.*, Case No. 39-2013-00299543, alleging state law claims
6 for unpaid overtime wages, unpaid meal period premiums, unpaid rest period premiums,
7 unpaid minimum wages, wages not timely paid during employment, non-compliant wage
8 statements, failure to keep requisite payroll records, unreimbursed business expenses, and
9 violations of the California Business and Professions Code § 17200, *et seq.*. On August
10 29, 2013, Defendants removed this matter to the United States District Court for the
11 Eastern District of California based on diversity of citizenship jurisdiction under 28
12 U.S.C. § 1332(a).

13 **WHEREAS**, on or about July 30, 2013, Plaintiffs Eugene Geerlof, Bradley
14 Moore, Benjamin Tilos, Jr., Sean Roberts, Timothy Rausch, Sue Gunter, Manuel Valdes,
15 Jr., and James E. Woehrle filed a complaint against Defendants in the Superior Court of
16 the State of California for the County of Los Angeles in *Geerlof, et al. v. C&S Wholesale*
17 *Grocers, Inc., et al.*, alleging claims under the California Labor Code for unpaid overtime
18 wages, unpaid meal period premiums, unpaid rest period premiums, unpaid minimum
19 wages, wages not timely paid during employment, non-compliant wage statements,
20 failure to keep requisite payroll records, unreimbursed business expenses, and violations
21 of the California Business and Professions Code § 17200, *et seq.*, Case No. BC516796
22 (“Action”). On September 6, 2013, Defendants removed this matter to the United States
23 District Court for the Central District of California based on diversity of citizenship
24 jurisdiction under 28 U.S.C. § 1332(a). On October 11, 2013, on Defendants’ motion,
25 the matter was transferred to the United States District Court for the Eastern District of
26 California.

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1 **WHEREAS**, on April 14, 2014, this Court issued a Memorandum and Order,
2 granting Defendants’ Motion to Deny Class Certification [Document No. 67].

3 **WHEREAS**, on June 25, 2014, *Chan v. C&S Wholesale Grocers, Inc.*, Case No.
4 2:13-cv-02140; *Alvarez v. C&S Wholesale Grocers, Inc.*, Case No. 2:13-cv-01798; *Payne*
5 *v. C&S Wholesale Grocers, Inc.*, Case No. 2:13-cv-02153; and *Geerlof v. C&S Wholesale*
6 *Grocers, Inc.*, Case No. 2:13-cv-02175, were consolidated with the litigation entitled,
7 *Bicek v. C&S Wholesale Grocers, Inc.*, Case No. 2:13-cv-00411 (“Consolidated Action”)
8 [Document No. 76].

9 **WHEREAS**, on or about September 22, 2014, Plaintiff Bicek served, by mail,
10 a statutory offer of compromise to Defendants pursuant to California Code of Civil
11 Procedure section 998, offering to dismiss all of his claims in this lawsuit with
12 prejudice in exchange for Defendants waiving costs and attorneys’ fees. Defendants
13 timely accepted Plaintiff’s statutory offer of compromise. Defendants filed a Notice
14 of Accepted Offer of Judgment on November 7, 2014, including the offer, acceptance,
15 and proof of service [Document No. 81].

16 **WHEREAS**, on or about September 22, 2014, Plaintiff Gunter served, by mail,
17 a statutory offer of compromise to Defendants pursuant to California Code of Civil
18 Procedure section 998, offering to dismiss all of his claims in this lawsuit with
19 prejudice in exchange for Defendants waiving costs and attorneys’ fees. Defendants
20 timely accepted Plaintiff’s statutory offer of compromise. Defendants filed a Notice
21 of Accepted Offer of Judgment on November 7, 2014, including the offer, acceptance,
22 and proof of service [Document No. 82].

23 **WHEREAS**, on or about September 22, 2014, Plaintiff Rausche served, by
24 mail, a statutory offer of compromise to Defendants pursuant to California Code of
25 Civil Procedure section 998, offering to dismiss all of his claims in this lawsuit with
26 prejudice in exchange for Defendants waiving costs and attorneys’ fees. Defendants
27 timely accepted Plaintiff’s statutory offer of compromise. Defendants filed a Notice
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1 of Accepted Offer of Judgment on November 7, 2014, including the offer, acceptance,
2 and proof of service [Document No. 83].

3 **WHEREAS**, on or about September 22, 2014, Plaintiff Woehrle served, by
4 mail, a statutory offer of compromise to Defendants pursuant to California Code of
5 Civil Procedure section 998, offering to dismiss all of his claims in this lawsuit with
6 prejudice in exchange for Defendants waiving costs and attorneys' fees. Defendants
7 timely accepted Plaintiff's statutory offer of compromise. Defendants filed a Notice
8 of Accepted Offer of Judgment on November 7, 2014, including the offer, acceptance,
9 and proof of service [Document No. 84].

10 **WHEREAS**, on or about September 22, 2014, Plaintiff Moore served, by mail,
11 a statutory offer of compromise to Defendants pursuant to California Code of Civil
12 Procedure section 998, offering to dismiss all of his claims in this lawsuit with
13 prejudice in exchange for Defendants waiving costs and attorneys' fees. Defendants
14 timely accepted Plaintiff's statutory offer of compromise. Defendants filed a Notice
15 of Accepted Offer of Judgment on November 7, 2014, including the offer, acceptance,
16 and proof of service [Document No. 85].

17 **WHEREAS**, on or about September 22, 2014, Plaintiff Geerlof served, by
18 mail, a statutory offer of compromise to Defendants pursuant to California Code of
19 Civil Procedure section 998, offering to dismiss all of his claims in this lawsuit with
20 prejudice in exchange for Defendants waiving costs and attorneys' fees. Defendants
21 timely accepted Plaintiff's statutory offer of compromise. Defendants filed a Notice
22 of Accepted Offer of Judgment on November 7, 2014, including the offer, acceptance,
23 and proof of service [Document No. 86].

24 **WHEREAS**, on or about September 22, 2014, Plaintiff Tilos served, by mail, a
25 statutory offer of compromise to Defendants pursuant to California Code of Civil
26 Procedure section 998, offering to dismiss all of his claims in this lawsuit with
27 prejudice in exchange for Defendants waiving costs and attorneys' fees. Defendants
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1 timely accepted Plaintiff's statutory offer of compromise. Defendants filed a Notice
2 of Accepted Offer of Judgment on November 7, 2014, including the offer, acceptance,
3 and proof of service [Document No. 87].

4 **WHEREAS**, on or about September 22, 2014, Plaintiff Roberts served, by
5 mail, a statutory offer of compromise to Defendants pursuant to California Code of
6 Civil Procedure section 998, offering to dismiss all of his claims in this lawsuit with
7 prejudice in exchange for Defendants waiving costs and attorneys' fees. Defendants
8 timely accepted Plaintiff's statutory offer of compromise. Defendants filed a Notice
9 of Accepted Offer of Judgment on November 7, 2014, including the offer, acceptance,
10 and proof of service [Document No. 88].

11 **WHEREAS**, on or about September 22, 2014, Plaintiff Alvarez served, by
12 mail, a statutory offer of compromise to Defendants pursuant to California Code of
13 Civil Procedure section 998, offering to dismiss all of his claims in this lawsuit with
14 prejudice in exchange for Defendants waiving costs and attorneys' fees. Defendants
15 timely accepted Plaintiff's statutory offer of compromise. Defendants filed a Notice
16 of Accepted Offer of Judgment on November 7, 2014, including the offer, acceptance,
17 and proof of service [Document No. 89].

18 **WHEREAS**, on or about December 23, 2014, Plaintiff Chan served, by mail, a
19 statutory offer of compromise to Defendants pursuant to California Code of Civil
20 Procedure section 998, offering to dismiss all of his claims in this lawsuit with
21 prejudice in exchange for Defendants waiving costs and attorneys' fees. Defendants
22 timely accepted Plaintiff's statutory offer of compromise. Defendants filed a Notice
23 of Accepted Offer of Judgment on January 14, 2015, including the offer, acceptance,
24 and proof of service [Document No. 92].

25 **WHEREAS**, on or about December 23, 2014, Plaintiff Valdes served, by mail,
26 a statutory offer of compromise to Defendants pursuant to California Code of Civil
27 Procedure section 998, offering to dismiss all of his claims in this lawsuit with
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1 prejudice in exchange for Defendants waiving costs and attorneys' fees. Defendants
2 timely accepted Plaintiff's statutory offer of compromise. Defendants filed a Notice
3 of Accepted Offer of Judgment on January 14, 2015, including the offer, acceptance,
4 and proof of service [Document No. 93].

5 **NOW, THEREFORE, THE PARTIES, BY AND THROUGH THEIR**
6 **COUNSEL, HEREBY STIPULATE AND AGREE AS FOLLOWS:**

7 1. Plaintiff Dennis Bicek's individual claims shall be dismissed with
8 prejudice, in exchange for a waiver and full release of fees and costs incurred by
9 Defendants, [Document 81];

10 2. Plaintiff Jose Chan's individual claims shall be dismissed with prejudice, in
11 exchange for a waiver and full release of fees and costs incurred by Defendants,
12 [Document 92];

13 3. Plaintiff Jesus Alvarez's individual claims shall be dismissed with
14 prejudice, in exchange for a waiver and full release of fees and costs incurred by
15 Defendants, [Document 89];

16 4. Plaintiff Eugene Geerlof's individual claims shall be dismissed with
17 prejudice, in exchange for a waiver and full release of fees and costs incurred by
18 Defendants, [Document 86];

19 5. Plaintiff Bradley Moore's individual claims shall be dismissed with
20 prejudice, in exchange for a waiver and full release of fees and costs incurred by
21 Defendants, [Document 85];

22 6. Plaintiff Benjamin Tilos, Jr.'s individual claims shall be dismissed with
23 prejudice, in exchange for a waiver and full release of fees and costs incurred by
24 Defendants, [Document 87];

25 7. Plaintiff Sean Roberts's individual claims shall be dismissed with
26 prejudice, in exchange for a waiver and full release of fees and costs incurred by
27 Defendants, [Document 88];

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