

EXHIBIT 1

1 This Class Action Settlement Agreement and Release (hereinafter
2 **“Settlement”** or **“Agreement”**) is made and entered into by and between Plaintiff
3 Lindsay Santini (hereinafter, **“Plaintiff”** or **“Class Representative”**), individually and
4 on behalf of the settlement class, and Defendant Wells Fargo Bank, N.A., (hereinafter
5 **“Defendant”** or **“Wells Fargo”**) (collectively, **“the Parties”**) and subject to the approval
6 of the Court.

7
8 1. On April 15, 2016, Plaintiff Lindsay Santini filed a Class Action Complaint in the
9 United States District Court for the Northern District of California, which initiated
10 Case No. 16-cv-01992-YGR (the **“Action”**). The Action is brought on behalf of all
11 current and former employees who worked as Phone Banker 1’s and/or Phone
12 Banker 2’s (collectively **“Phone Bankers”**) for Wells Fargo in the State of
13 California during the period commencing from April 15, 2012, to the present. The
14 Action alleges that Wells Fargo failed to pay for all wages earned, including
15 overtime, failed to provide compliant meal periods and rest breaks, failed to timely
16 pay all wages owed upon termination, failed to furnish accurate wage statements,
17 and violated California Business & Professions Code Section 17200 *et seq.*

18
19 2. As part of the settlement of this Action and for purposes of this settlement only,
20 Plaintiff will file a First Amended Complaint in the Action alleging a cause of
21 action for violation of the Fair Labor Standards Act (**“FLSA”**) on behalf of the
22 Class Members for unpaid wages, including unpaid overtime, liquidated damages
23 and other available remedies. Otherwise, the First Amended Complaint will be
24 identical to the Complaint. If this Agreement does not become final for any reason,
25 the Parties’ willingness to stipulate to the filing of a First Amended Complaint
26 shall have no bearing on, and will not be admissible in connection with, these
27 issues in this case or any subsequent proceeding. The Parties and their counsel will
28 not offer or make reference to this provisional stipulation for purposes of

1 settlement in any subsequent proceeding in this Action or in any other action. If
2 the Payment Date does not occur for any reason, Plaintiff will dismiss the FLSA
3 claim.

4

5 3. On January 24, 2017, the Parties participated in a day-long mediation before
6 Jeffrey A. Ross, a well-regarded mediator who has mediated many wage and hour
7 class actions.

8

9 4. Prior to the January 24, 2017 mediation, the Parties engaged in written discovery
10 and engaged in an informal exchange of information. Defendant provided
11 Plaintiff with documentation regarding its policies regarding timekeeping,
12 overtime, meal periods and rest breaks, provided data compilations regarding the
13 putative class members, and provided Plaintiff with an opportunity to assess the
14 login process that Phone Bankers engage in before fielding customer calls.
15 Furthermore, counsel for the Parties conferred extensively concerning this
16 information, the merits of the Parties' claims and/or defenses, and other issues
17 relevant to reaching a settlement.

18

19 5. The Parties were able to reach a settlement in the days following the January 24,
20 2017, mediation.

21

22 6. Plaintiff and her counsel have conducted sufficient discovery (formal and informal)
23 and analysis to evaluate the strengths and weaknesses of her respective claims and
24 Wells Fargo's defenses and to recommend this Settlement to the Class Members
25 and the Court.

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1 **TERMS OF SETTLEMENT**

2
3 NOW, THEREFORE, in consideration of the mutual covenants, promises and warranties
4 set forth herein, the Parties agree, subject to the Court’s approval, as follows:

5
6 7. Definitions of Certain Settlement Terms:

7
8 a. The word “**Person**” shall have the meaning set forth in Government Code
9 Section 17.

10
11 b. The “**Settlement Class**” consists of those individuals who, according to
12 Wells Fargo’s personnel and payroll records, are or were employed by
13 Wells Fargo in California as Phone Bankers at any time from April 15,
14 2012, through April 15, 2017 (this period shall be referred to as the “**Class**
15 **Period**”).

16
17 i. The Settlement Class shall exclude any individual who has a pending
18 civil complaint or administrative complaint that contains allegations
19 that are also contained in this Action or who, to Wells Fargo’s
20 knowledge, has retained counsel to represent him or her in
21 connection with any wage-and-hour related claims and/or any
22 individual who has previously signed an individual release that
23 encompasses all claims contained in this Action.

24
25 ii. The Opt-In Class shall include all Class Members who cash their
26 settlement checks, consenting to join this Action as a party plaintiff
27 under 29 U.S.C. § 216(b) and expressly releasing in writing any and
28 all claims under the Fair Labor Standards Act of 1938, as amended,

1 29 U.S.C. §§ 201, *et seq.* that are or could be based on or related to
2 the same matters alleged in the Complaint and/or First Amended
3 Complaint. The members of the Opt-In Class are also Members of
4 the Class.

5
6 c. Each individual member of the Settlement Class shall be referred to as a
7 “**Class Member**.”

8
9 d. “**Participating Class Members**” means and refers to Class Members,
10 except those who timely submit a valid Request for Exclusion (as defined in
11 Paragraph 29 below) from this Settlement pursuant to the process described
12 herein.

13
14 e. “**FLSA Participating Class Members**” means and refers to all
15 Participating Class Members who, in addition to waiving their state law
16 claims, waive any claims pursuant to the Fair Labor Standards Act, by virtue
17 of cashing their Settlement Checks, which incorporate opt-in consent
18 language (as detailed in Paragraph 28).

19 f. “**Class Counsel**” means and refers to the Markham Law Firm and United
20 Employees Law Group.

21 g. “**Administrator**” means and refers to the administrator responsible for
22 administering this settlement, Rust Consulting.

23
24 8. Settlement of Action: This Action and any claims, damages, or causes of action
25 alleged in this Action or that could have been alleged based on the allegations
26 alleged in the Action, including any claims arising from the alleged violation of
27 any provision of California and/or federal law which were or could have been
28

1 raised as a part of the Action, shall be settled and compromised as between the
2 Settlement Class and each Participating Class Member, and Defendant, subject to
3 the terms and conditions set forth in this Agreement and the approval of the United
4 States District Court for the Northern District of California.

5
6 9. Settlement Date: The Settlement embodied in this Agreement shall become
7 effective upon execution by all Parties, Class Counsel, counsel for Defendant, and
8 final approval from the Court, following notice to the Class Members and a formal
9 fairness hearing and entry of a final judgment by the Court in accordance with the
10 terms herein.

11
12 10. Settlement Amount.

13
14 a. In consideration for this Settlement and a release by the Settlement Class
15 and each Participating Class Member, as provided herein, Defendant has
16 agreed to pay Six Hundred and Eighty-Five Thousand Dollars
17 (\$685,000.00) (the “**Gross Settlement Amount**”) plus the employer’s share
18 of any payroll taxes related to the settlement payments. In no event shall the
19 amount paid by Defendant exceed the Gross Settlement Amount (plus the
20 employer’s share of any payroll taxes), and in no event shall any part of the
21 Gross Settlement Amount revert to the Defendant.

22
23 b. The “**Net Settlement Amount**” is defined as the Gross Settlement Amount,
24 less all of the following: (1) all costs of settlement administration, estimated
25 at \$25,000; (2) attorneys’ fees of up to \$171,250 (the maximum amount of
26 Class Counsel’s fee application, pursuant to Paragraph 15, below); (3) Class
27 Counsel’s reasonable out-of-pocket costs (not to exceed \$20,000), pursuant
28

1 to Paragraph 15, below; and (4) the Class Representative service payment
2 award, pursuant to Paragraph 14, below, not to exceed the sum of \$5,000.

3
4 Defendant provided Plaintiff for purposes of mediation the number of Class
5 Members based on Defendant's records and files as of September 30, 2016.
6 Due to the passage of time since September 30, 2016, there will be
7 additional Class Members. Should the class size increase by more than 10
8 percent from the 2,061 Class Members identified by Wells Fargo as of
9 September 30, 2016, the Net Settlement Amount shall be increased by the
10 same percentage above 10 percent (i.e. if the class size were to increase by
11 11 percent, Wells Fargo would increase the Net Settlement Amount by one
12 percent).

13
14 11. Settlement Formula and Distribution: Subject to the conditions of this Agreement,
15 Participating Class Members shall be entitled to a share (the "**Settlement Share**")
16 of the Net Settlement Amount. The Net Settlement Amount is to be divided among
17 all Participating Class Members, based on their pro-rata percentage of workweeks
18 (determined by dividing the number of weeks worked by the Participating Class
19 Member as a Phone Banker in California during the Class Period, by the total
20 number of weeks worked by all Participating Class Members as a Phone Banker in
21 California during the Class Period), such that the Participating Class Members shall
22 receive a dollar amount calculated by multiplying his or her percentage by the Net
23 Settlement Amount.

24
25 12. Reference to Wells Fargo's Records: The number of weeks worked by
26 Participating Class Members as Phone Bankers in California during the Class
27 Period will be determined by reference to Wells Fargo's records. Wells Fargo's
28 records shall be presumptively correct for determining who the Class Members are

1 (including which Phone Bankers are excluded under Paragraph 7.b. above), and the
2 number of weeks worked by the Class Member as a Phone Banker in California
3 during the Class Period.

4
5 13. Allocation of Settlement Payments:

6
7 a. One-half (1/2) of all Settlement Share payments to Participating Class
8 Members shall be considered wages and shall be subject to the withholding of
9 all applicable local, state and federal taxes. Participating Class Members will
10 receive from the Administrator a W-2 for the payment and taxes that will be
11 withheld at the rate required by law. As to all Settlement Share payments that
12 shall be considered wages, Defendant (via the Administrator) will pay all
13 amounts required by law to be paid by the employer to any federal, state or
14 local tax authority.

15
16 b. One-half (1/2) of all Settlement Share payments to Participating Class
17 Members shall be considered non-wages for the settlement of interest claims
18 and statutory and civil penalty claims. Participating Class Members will also
19 receive from the Administrator an IRS Form 1099 for these payments, in
20 accordance with IRS requirements, and will be responsible for correctly
21 characterizing this compensation for tax purposes and to pay any taxes owing.

22
23 14. Service Payment Award to Class Representative: Subject to the approval of the
24 Court, Defendant will pay Five Thousand Dollars (\$5,000) to the Class
25 Representative as a service payment award for her time and efforts as Class
26 Representative and taking the risk of paying the costs of Defendant in the event of
27 an unsuccessful outcome, as well as for her assistance to her counsel in prosecuting
28 this Action on behalf of the absent class members. This service payment award is

1 in addition to her right to participate in the claims process. This service payment
2 award shall be paid from the Gross Settlement Amount. In addition, the Class
3 Representative will execute a general release of all known and unknown claims,
4 substantially in the form attached hereto as **Exhibit “A,”** in exchange for her
5 service payment award.

- 6
- 7 a. The Class Representative will receive an IRS Form 1099 for the service
8 payment award and will be responsible for correctly characterizing this
9 compensation for tax purposes and to pay any taxes owing.
- 10
- 11 b. The Class Representative hereby indemnifies and holds Defendant harmless
12 for and against any action or liability of Class Representative, including but
13 not limited to any costs and/or legal fees incurred by Defendant if any tax
14 authority should dispute the characterization of this compensation.
- 15
- 16 c. The Class Representative shall not be entitled to the payment set forth in the
17 paragraph above unless she provides to the Administrator a Social Security
18 number or tax identification number.

19

20 15. Attorneys’ Fees and Costs

- 21
- 22 a. Class Counsel shall submit an application for an award of attorneys’ fees not
23 to exceed One Hundred and Seventy-One Thousand, Two Hundred and
24 Fifty Dollars (\$171,250), which is one-quarter (1/4) of the Gross Settlement
25 Amount. The amount not to exceed \$171,250 will cover all work performed
26 to date and all work to be performed in connection with the approval by the
27 Court of this Agreement and the final conclusion of this Action. Defendant
28

1 agrees not to oppose any fee application that is not in excess of the amount
2 specified in this Paragraph.

- 3
- 4 b. Class Counsel shall submit an application for reimbursement of costs and
5 expenses in an amount not to exceed Twenty Thousand Dollars (\$20,000).
6 The amount not to exceed \$20,000 will cover all costs and expenses
7 incurred to date or to be incurred. This amount shall come from the Gross
8 Settlement Amount. Defendant agrees not to oppose any cost and expense
9 application that is not in excess of the amount specified in this Paragraph.

10

11 16. Payment Date: Defendant shall pay to Administrator all amounts awarded and
12 approved by the Court, for payment to the Settlement Class, the service payment
13 award, and attorneys' fees and costs on the "**Payment Date**," which shall be the
14 latest of the following occurrences:

- 15
- 16 a. Thirty (30) calendar days following the entry of a Judgment finally
17 approving this Settlement, provided no objection is made to this Settlement
18 prior to or at the hearing for final approval of this Settlement.
- 19
- 20 b. If an objection to this Settlement is made before or at the hearing for final
21 approval of this Settlement, then seventy-five (75) days after the notice of
22 entry of a Judgment is served, provided that no appeal is filed.
- 23
- 24 c. If an appeal has been taken or sought, fourteen (14) days after the date the
25 Judgment finally approving this Settlement is finally affirmed by an
26 appellate court with no possibility of subsequent appeal or other judicial
27 review, or the date the appeal(s) or other judicial review are finally
28 dismissed with no possibility of subsequent appeal or other judicial review.

1 d. Within five (5) calendar days of the receipt of all amounts awarded and
2 approved by the Court, as specified in this paragraph, the Administrator
3 shall pay the payments to the Participating Class Members, the service
4 payment award, and attorneys' fees and costs accordingly.
5

6 17. No Further Payments: Defendant shall have no obligation to pay or provide any
7 further consideration to any Class Member by reason of this Agreement or because
8 of the foregoing payments, including but not limited to contributions to any 401(k)
9 or other retirement or employee benefit plan, vacation or sick pay, etc. Any
10 payments made pursuant to this Agreement will not trigger any obligation of
11 Defendant to make any withholding for 401(k) contributions or to make any
12 contributions to any 401(k) or similar such plan.
13

14 18. Certification for Settlement Purposes Only: As part of this Agreement, the Parties
15 stipulate to the certification of the Settlement Class for purposes of this Settlement
16 only. If this Agreement does not become final for any reason, the Parties'
17 willingness to stipulate to class certification as part of this Settlement shall have no
18 bearing on, and will not be admissible in connection with, the issue of whether any
19 class should be certified in these cases or in any subsequent proceeding. The
20 Parties and their counsel will not offer or make reference to this provisional
21 stipulation to class certification for purposes of this Settlement in any subsequent
22 proceeding in this Action (except for purposes of having this Agreement approved
23 by the Court) or in any other action.
24

25 19. Parties' Contentions: In entering into this Agreement, Defendant denies any
26 liability or wrongdoing of any kind associated with the claims alleged in Plaintiff's
27 Complaint and First Amended Complaint, and further denies that this Action is
28 appropriate for class treatment. Defendant contends, among other things, that it

1 has complied with the California Labor Code and the Business and Professions
2 Code at all times. In entering into this Agreement, Plaintiff believes that she has
3 filed a meritorious action and that class certification is appropriate.

4
5 20. Settlement Fair, Reasonable, and Adequate: Plaintiff and her counsel are of the
6 opinion that the terms set forth in this Agreement are fair, reasonable, and adequate
7 and this Agreement is in the best interest of the class in light of all known facts and
8 circumstances, including the risk of significant delay, defenses asserted by
9 Defendant, and numerous potential appellate issues. Defendant and its counsel
10 also agree that this Agreement is fair and in the best interests of the Settlement
11 Class and each Class Member.

12 13 **THE SETTLEMENT ADMINISTRATOR**

14
15 21. Selection of Administrator: Subject to the Court's approval, Rust Consulting shall
16 be retained as the Administrator.

17
18 22. Class List: Within twenty-one (21) calendar days of the date the Court enters an
19 order granting Plaintiff's Motion for Preliminary Approval (the "**Preliminary**
20 **Approval Date**"), Defendant shall provide to the Administrator a listing
21 containing, for each and every member of the Settlement Class, the following
22 information: (1) name, (2) last known address, (3) number of weeks worked by
23 each individual as a Phone Banker in California during the Class Period; and (4)
24 Social Security number.

25
26 23. Administrator's Duties: The Administrator's duties will include preparing,
27 printing, and mailing the Notice of Settlement to Class Members; conducting any
28 necessary verifications of Class Member Social Security numbers; conducting a

1 National Change of Address search on all Class Members before the initial Notice
2 of Settlement mailing; conducting skip tracing on any Notice of Settlement
3 returned by the U.S. Postal Service as non-deliverable, as needed, and re-mailing
4 the Notice of Settlement to the Class Member's new address; reviewing and
5 processing Requests for Exclusion (as defined in Paragraph 29 below); handling
6 disputes made by Class Members; providing the Parties with periodic status reports
7 about the delivery of Notice of Settlement and receipt of Requests for Exclusion;
8 calculating Settlement Shares; issuing the checks to effectuate the payments due
9 under the Settlement; issuing the tax reports required under this Settlement; and
10 otherwise administering the Settlement pursuant to this Agreement.

11
12 24. Qualified Settlement Fund: The Parties agree that the settlement funds will be
13 placed in an account held by the Administrator to effectuate the terms of this
14 Agreement and the orders of the Court. The Parties agree that the settlement fund
15 (1) shall be established pursuant to an order of the Court prior to the receipt of any
16 monies from Defendant; (2) that it shall be established to resolve and satisfy the
17 contested Claims that have resulted, or may result, from the matters that are the
18 subject of this Action and that are released by this Settlement; and (3) that the fund
19 or account that is established and its assets are segregated and shall be segregated
20 (within a separately established fund or account) from the assets of Defendant and
21 all related other persons. The Administrator shall be responsible for establishing,
22 administering and otherwise operating the settlement fund, including the
23 preparation and filing of federal, state, and local tax returns. The Administrator
24 shall also be responsible for preparing and issuing all checks to the Participating
25 Class Members, Plaintiff, Class Counsel, the employer's share of any payroll taxes
26 and all checks for claims administration costs and expenses that are approved by
27 the Court and any other payments included in this Agreement and approved by the
28 Court.

1 25. Administrator's Findings: The Administrator shall report, in summary or narrative
2 form, the substance of its findings and, in that regard, the Administrator's approval
3 of claims shall be considered presumptively correct and binding on the Parties,
4 unless the Court rules otherwise. The Administrator shall be granted reasonable
5 access to Wells Fargo's records to perform its duties. All disputes relating to the
6 Administrator's ability and need to perform its duties shall be referred to the Court,
7 if necessary, which will have continuing jurisdiction over the terms and conditions
8 of this Agreement. The Administrator submits to the jurisdiction of the Court in
9 connection with its appointment as Administrator.

10
11 26. Administrator's Reports: The Administrator shall provide weekly reports to
12 counsel concerning receipt of Class Members' requests for exclusion and returned
13 mail.

14 15 **ADMINISTRATION OF SETTLEMENT**

16
17 27. Notice of Settlement: Within thirty-five (35) days of the Preliminary Approval
18 Date, the Notice of Settlement, in the form attached hereto as **Exhibit "B"**, and
19 approved by the Court, shall be sent by the Administrator to each Class Member.
20 The Notice of Settlement shall be sent by first class mail to each Class Member's
21 current or last known address on file at Defendant, following an updated review of
22 the National Change of Address Registry by the Administrator.

23
24 a. Returned Notices: All Notice of Settlement mailing packets returned from
25 this mailing with forwarding addresses affixed thereto will be utilized by the
26 Administrator to locate the Class Members through reasonable and
27 customary skip tracing efforts used in the administration of such
28 settlements.

1 It will be presumed that if an envelope has not been returned within thirty
2 (30) days of the mailing that the Class Member received the notice.

3
4 b. The Administrator shall provide the Court, at least five (5) days prior to the
5 final fairness hearing, a declaration of due diligence and proof of mailing
6 with regard to the mailing of the Notice of Settlement, and all attempts to
7 locate Class Members. Class Counsel shall be responsible for working with
8 the Administrator to timely file the declaration of due diligence.

9
10 28. Administrator's Responsibility for Payment: The Administrator is responsible for
11 having the payments to each Participating Class Member issued, calculating and
12 withholding all required state and federal taxes, and performing the tax reporting
13 on such payments. Upon completion of its review, the Administrator shall provide
14 the Parties with a report listing the amount of payments made to each Participating
15 Class Member. This report will not contain names or identifying information of
16 Participating Class Members. Settlement checks will be valid for ninety (90) days.
17 At the end of that 90-day period, settlement checks will be void. The amounts of
18 any voided settlement checks shall be distributed to the Unclaimed Property Fund
19 of the State of California Controller's Office.

20
21 All settlement checks issued to Participating Class Members shall contain, on the
22 back of the check, the following language, which shall be the opt-in consent
23 required by the Fair Labor Standards Act: "By endorsing this check, I consent to
24 join the Class in *Lindsay Santini v. Wells Fargo Bank, N.A.*, elect to participate in
25 the Settlement and agree to release all of my claims that are covered by the
26 Settlement, including under FLSA and state law." Any Participating Class
27 Member who cashes the check will be considered to have "opted-in" to the
28 settlement of the FLSA claims and will become an FLSA Participating Class

1 Member, such that in addition to waiving their state law claims, they will have also
2 waived any claims available under the FLSA. If a Participating Class Member
3 attempts to alter this language on the back of the check, any such alterations will be
4 null and void and have no legal effect. The release language will be effective and
5 controlling.

6
7 29. Exclusions: The Notice of Settlement shall describe the process for Class
8 Members to submit a request for exclusion (i.e., “opt-out”) (“**Request for**
9 **Exclusion**”) from this Settlement. Class Members who submit a Request for
10 Exclusion cannot object to the Settlement, cannot be Participating Class Members,
11 and are not eligible for a Settlement Share unless they revoke their Request for
12 Exclusion in writing prior to the Final Fairness Hearing.

13
14 a. Any Class Member who does not validly submit a Request for Exclusion
15 within forty-five (45) days of the date the Notice of Settlement is sent to the
16 Settlement Class shall be bound by the terms of this Agreement and the
17 class release, even if he/she files an objection to the Settlement.

18
19 b. No Class Member will be permitted to pursue a claim released by this
20 Settlement on the grounds that a Request for Exclusion was submitted
21 timely and lost, destroyed, misplaced or otherwise not received by the
22 Administrator unless the Class Member has adequate proof that the Request
23 for Exclusion was mailed timely certified and return receipt requested or has
24 equivalent proof of timely delivery.

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28

1 30. Objections to the Settlement:

- 2
- 3 a. Class Members who do not submit a timely Request for Exclusion shall be
- 4 permitted to object to the Settlement before final approval. To object, a
- 5 Class Member must file a timely written objection with the Court.
- 6
- 7 b. Any written objections shall state each specific objection and any legal and
- 8 factual support for each objection. The objection must also state the Class
- 9 Member's full name, address, and the dates of his/her employment at
- 10 Defendant. To be valid and effective, any objections to approval of the
- 11 Settlement must be filed with the Court no later than forty-five (45) days
- 12 after the Administrator mails the Notices of Settlement to the Settlement
- 13 Class.
- 14
- 15 c. If the Court rejects the Class Member's objection, the Class Member will
- 16 still be bound by the terms of this Agreement including the release.
- 17

18 31. Handling of Disputes: Class Member disputes may arise from the following

19 information: (1) job positions held during the Class Period; (2) the time periods in

20 which various job positions were held during the Class Period; and/or (3) the

21 number of weeks worked as a Phone Banker in California during the Class Period.

22

- 23 a. If a Class Member disputes the accuracy of Well Fargo's records or
- 24 Defendant contends a claim is invalid, counsel for the Parties will make a
- 25 good faith effort to resolve the disagreement. If the dispute is not thereby
- 26 resolved, it will be referred to the Administrator, who will talk to such
- 27 persons and representatives from Defendant telephonically, and issue a
- 28

1 non-appealable, final decision as to the total amount due, if any, to the Class
2 Member.

3
4 b. The submission of any dispute to the Administrator must be made within
5 forty-five (45) days after the Notices of Settlement are sent to the Class
6 Members.

7
8 **RELEASE OF CLAIMS BY THE SETTLEMENT CLASS**

9
10 32. Release of Claims: Upon the Settlement Date, and except as to such rights or
11 claims as may be created by this Agreement, each Participating Class Member
12 fully releases and discharges Defendant, its present, former, and future parents,
13 subsidiaries, affiliates, predecessors, successors and assigns, and each of their
14 respective past and present members, shareholders, directors, officers, employees,
15 agents, servants, registered representatives, insurers and attorneys (collectively
16 hereafter, the “**Released Parties**”) from any and all claims, debts, liabilities,
17 demands, obligations, guarantees, actions, or causes of action of whatever kind or
18 nature, whether known or unknown, from April 15, 2012, through April 15, 2017,
19 that were or could have been alleged based on the claims, facts and/or allegations
20 contained in Plaintiff’s Complaint and/or First Amended Complaint (hereinafter,
21 the “**Released Claims**”), including those arising out of or related to all claims
22 based on failure to pay minimum wages, failure to pay overtime wages, failure to
23 provide meal periods, failure to provide rest periods, failure to pay meal period
24 and/or rest period premium compensation, waiting time penalties for failure to pay
25 all wages due upon termination of employment, failure to provide accurate wage
26 statements, and violation of California Business & Professions Code Section 17200
27 *et seq.* including all claims of any kind for minimum wages, regular wages,
28 overtime wages, premium pay, liquidated damages, statutory penalties, civil

1 penalties, restitution, interest, injunctive relief, punitive damages, other damages,
2 costs, expenses and attorneys' fees arising from the alleged violation of any
3 provision of common law or statutory law which were or could have been raised as
4 part of Plaintiff's claims including but not limited to claims under California Labor
5 Code Sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1194,
6 1194.2, 1197, 1197.1, 1198, and 2698, *et seq.*, and all provisions of the California
7 Industrial Welfare Commission Wage Orders that provide the same or similar
8 protection(s). As set forth in Paragraph 28 above, FLSA Participating Class
9 Members will also expressly release in writing any and all claims under the Fair
10 Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201, *et seq.*, that are or
11 could be based on or related to the same matters alleged in the Complaint and/or
12 First Amended Complaint.

13
14 a. In order to achieve a full and complete release of the Released Parties, the
15 Class Representative and each Participating Class Member acknowledges
16 that the release in Paragraph 32 immediately above is also intended to
17 include in its effect all such Released Claims whether or not the Class
18 Representative and each Participating Class Member knows or suspects
19 them to exist.

20
21 b. With respect to the Released Claims, Plaintiff and Class Members may
22 hereafter discover facts or legal arguments in addition to or different from
23 those they now know or currently believe to be true with respect to the
24 claims and causes of action in this case which are the subject matter of the
25 Released Claims. Regardless, the discovery of new facts or legal arguments
26 shall in no way limit the scope or definition of the Released Claims and by
27 virtue of this Agreement, Plaintiff and the Class Members shall be deemed
28 to have, and by operation of the final judgment approved by the Court shall

1 have, fully, finally, and forever settled and released all of the Released
2 Claims as defined above.

3
4 33. Subsequent Actions: If any Class Member initiates a new lawsuit against
5 Defendant based on any claim released under this Agreement, and the Court
6 invalidates the release, any recovery by the Class Member shall be offset by the
7 amount, if any, paid to the Class Member in connection with this Settlement. The
8 language in this Paragraph shall be included in the Notice of Settlement.

9
10 **DUTIES OF THE PARTIES PRIOR TO PRELIMINARY APPROVAL**

11
12 34. The Parties shall promptly submit this Agreement to the United States District
13 Court for the Northern District of California in support of the motion for
14 preliminary approval and determination by the Court as to its fairness, adequacy,
15 and reasonableness. The Parties shall also apply to the Court for the entry of a
16 preliminary order substantially in the form attached hereto as **Exhibit “C.”** Class
17 Counsel shall submit the preliminary approval papers to Wells Fargo’s Counsel for
18 their review prior to the filing of such papers with the Court.

19
20 **DUTIES OF THE PARTIES FOR FINAL COURT APPROVAL**

21
22 35. In advance of the final approval hearing of the Settlement provided for in this
23 Agreement, the Parties will jointly submit a proposed final judgment. Class
24 Counsel shall submit the final approval papers to Wells Fargo’s Counsel for their
25 review prior to the filing of such papers with the Court.
26
27
28

VOIDING THE AGREEMENT

1
2
3 36. If the Court disapproves of or refuses to enforce any of the material conditions set
4 forth in this Settlement, this Settlement shall, at the option of Defendant, be void,
5 and of no further force and effect and shall not be used or admissible in any
6 subsequent proceeding. Defendant may exercise its option to void this
7 Settlement as provided in this paragraph by giving notice, in writing, to Class
8 Counsel and to the Court within two (2) weeks of the entry of the Court's order
9 disapproving or refusing to enforce any of the material conditions of the
10 Settlement.

11
12 37. Defendant shall have the right, in its sole discretion, to rescind this Agreement if
13 more than five percent (5%) of the Settlement Class "opts-out" of the Class by
14 submitting a valid and timely Request for Exclusion. Defendant may exercise its
15 option to void this Settlement as provided in this paragraph by giving notice, in
16 writing, to Class Counsel and to the Court at any time prior to final approval of the
17 settlement by the Court, but not later than two (2) weeks after receiving notice that
18 the number of "opt-outs" exceeds five percent (5%). If the right to void is
19 exercised in accordance with the terms of this paragraph, all portions of the
20 Settlement shall be null and void and any order or judgment entered by the Court in
21 furtherance of this Agreement shall not apply.

22
23 38. If the conditions of the Settlement set forth herein are not satisfied, or if Defendant
24 voids the Settlement under Paragraph 36 or 37 above, or if the Payment Date does
25 not occur, or, if one or more of the material terms of the Agreement is not approved
26 or is materially modified or reversed, with the exception of the Court's reduction of
27 the amounts of Attorneys' Fees and Costs, Class Representative's Service Payment
28 Award, or Administrator's fee, then this Agreement shall be cancelled, terminated,

1 and shall have no force or effect, unless the Parties agree otherwise. If the
2 Settlement is not finally approved, or if this Settlement is terminated, revoked or
3 cancelled pursuant to its terms, the Parties to this Settlement shall be deemed to
4 have reverted to their respective status as of the date and time immediately prior to
5 the execution of this Agreement.

6
7 **PARTIES' AUTHORITY**

8
9 39. The signatories hereby represent that they are fully authorized to enter into this
10 Agreement and bind the Parties hereto to the terms and conditions hereof.

11
12 **MUTUAL FULL COOPERATION**

13
14 40. The Parties shall fully cooperate with each other to accomplish the terms of this
15 Agreement, including execution of such documents and to take such other action as
16 may reasonably be necessary to implement the terms of this Agreement and to
17 secure the Court's final approval of this Agreement.

18
19 **NO PRIOR ASSIGNMENTS**

20
21 41. The Class Representative hereto represents, covenants, and warrants that she has
22 not directly or indirectly assigned, transferred, encumbered, or purported to assign,
23 transfer, or encumber to any person or entity any portion of any liability, claim,
24 demand, action, cause of action, or rights herein released and discharged except as
25 set forth herein.

1 **NO ADMISSION**

2

3 42. Nothing contained herein, including the consummation of this Agreement, is to be
4 construed or deemed an admission of liability, culpability, negligence, or
5 wrongdoing on the part of Defendant. Each of the Parties hereto has entered into
6 this Agreement with the intention to avoid further disputes and litigation settled
7 herein with the attendant inconvenience, expenses, and uncertainties. This
8 Agreement is a settlement document and shall, pursuant to Federal Rule of
9 Evidence 408 and California Evidence Code Section 1152, be inadmissible in
10 evidence in any proceeding, except an action or proceeding to approve, interpret, or
11 enforce this Agreement.

12

13 **TAXES**

14

15 43. Neither Class Counsel nor counsel for Defendant intend anything contained herein
16 to constitute legal advice regarding the taxability of any amount paid hereunder,
17 nor shall it be relied upon as such. The tax issues for each Class Member may be
18 unique, and each Class Member is advised to obtain tax advice from his or her own
19 tax advisor with respect to any payments resulting from this Settlement Agreement.

20

21 44. It shall be the responsibility of the Administrator or its designee to timely and
22 properly withhold from individual Settlement Shares payable to Participating Class
23 Members all applicable federal, state and local income and employment taxes and
24 to prepare and deliver the necessary tax documentation for signature by all
25 necessary Parties and, thereafter, to cause the appropriate deposits of withholding
26 taxes and informational and other tax return filing to occur. It shall be the
27 responsibility of the Administrator to pursue tax refunds on any uncashed checks,
28 and to remit such payments accordingly. Payments to Participating Class Members

1 and to Class Counsel pursuant to this Stipulation shall be reported on IRS Forms
2 W-2 or 1099, and provided by the Administrator to the respective Class Members,
3 Class Counsel and all applicable governmental authorities as required by law.
4

5 **NOTICES**

6
7 45. Unless otherwise specifically provided herein, all notices, demands or other
8 communications given hereunder shall be in writing and shall be deemed to have
9 been duly given as of the third business day after mailing by United States certified
10 mail with return receipt requested, addressed as follows:
11

12 To Plaintiff and Settlement Class:

13 Peg Reali, Esq.
14 Maggie Realin, Esq.
15 The Markham Law Firm
16 750 B Street, Suite 1950
17 San Diego, California 92101

18 To Defendant's Counsel:

19 Glenn L. Briggs, Esq.
20 Theresa Kading, Esq.
21 Sarah Mohammadi, Esq.
22 Kading Briggs LLP
23 100 Spectrum Center Drive, Suite 800
24 Irvine, California 92618

25 **CONSTRUCTION**

26 46. The terms and conditions of this Agreement are the result of lengthy, intensive
27 arms-length negotiations between the Parties, and this Agreement shall not be
28

1 construed in favor of or against any party by reason of the extent to which any
2 party or his, her, or its counsel participated in its drafting.

3
4 **CAPTIONS AND INTERPRETATIONS**

5
6 47. Paragraph titles or captions contained herein are inserted as a matter of
7 convenience and for reference, and in no way define, limit, extend, or describe the
8 scope of this Agreement or any provision hereof. Each term of this Agreement is
9 contractual and not merely a recital.

10
11 **MODIFICATION**

12
13 48. This Agreement may not be changed, altered, or modified, except in writing and
14 signed by the Parties hereto. This Agreement may not be discharged except by
15 performance in accordance with its terms or by a writing signed by the Parties
16 hereto.

17
18 **INTEGRATION CLAUSE**

19
20 49. This Agreement contains the entire agreement between the Parties relating to the
21 Settlement and transaction contemplated hereby, and all prior or contemporaneous
22 agreements, understandings, representations, and statements, whether oral or
23 written and whether by a party or such party's legal counsel, are merged herein.
24 No rights hereunder may be waived except in writing.

25
26
27
28

1 **BINDING ON ASSIGNS**

2
3 50. This Agreement shall be binding upon and inure to the benefit of the Parties hereto
4 and their respective spouses, heirs, trustees, and executors, administrators,
5 successors, and assigns, including Defendant and the Released Parties.
6

7 **CLASS MEMBER SIGNATORIES**

8
9 51. Because the members of the class are so numerous, it is impossible or impractical
10 to have each member of the class execute this Agreement. The Notice of
11 Settlement, Exhibit "B" hereto, and other forms of notice described herein will
12 advise all Class Members of the binding nature of the release and such shall have
13 the same force and effect, to the extent permitted by law, as if this Agreement were
14 executed by each Class Member.
15

16 **CORPORATE SIGNATORIES**

17
18 52. Any person executing this Agreement or any such related document on behalf of a
19 corporate signatory hereby warrants and promises for the benefit of all Parties
20 hereto that such person has been duly authorized by such corporation to execute
21 this Agreement or any such related document.
22

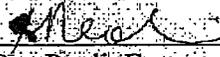
23 **COUNTERPARTS**

24
25 53. This Agreement may be executed in counterparts, and when each Party has signed
26 and delivered at least one such counterpart, each counterpart shall be deemed an
27 original, and, when taken together with other signed counterparts, shall constitute
28 one Agreement, which shall be binding upon and effective as to all Parties as set

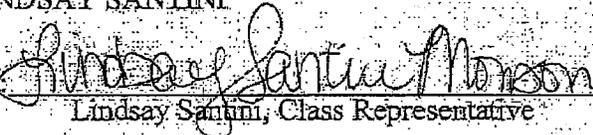
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Nothing contained in this section shall limit or restrict Class Counsel's ability to file a declaration with any Court that identifies this case by name and case number and provides any information about this case and the Settlement in such declaration reasonably necessary to the filing with such court.

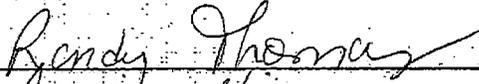
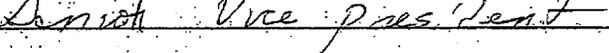
DATED: March 29, 2017 MARKHAM LAW FIRM

By: 
Peg Reali, Esq.
Maggie Reali, Esq.
Attorneys for Plaintiff

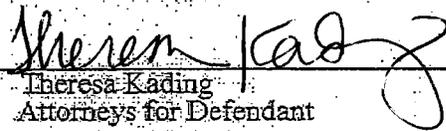
DATED: March 29, 2017 LINDSAY SANTINI

By: 
Lindsay Santini, Class Representative

DATED: March 31, 2017 WELLS FARGO BANK, N.A.

By: 
Its:  Vice President

DATED: March 31, 2017 KADING BRIGGS LLP

By: 
Theresa Kading
Attorneys for Defendant