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14 For Plaintiff Lawrence Weinstein
15 and other persons similarly situated

16
17 **UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA**

19 **LAWRENCE WEINSTEIN**, on
20 behalf of himself and others similarly
21 situated,

22 Plaintiff,

23 vs.

24 **MORTGAGE CONTRACTING**
25 **SERVICES, LLC and DOES 1-50,**

26 Defendants.

Case No.: 5:14-CV-02521-JGB-SP

JOINT STIPULATION OF CLASS
ACTION SETTLEMENT AND
RELEASE

Complaint filed in State Court: February
4, 2014
Removed to Federal Court: December
8, 2014

1 Attorneys General Act, Cal. Labor Code § 2698 et seq. (“LCPAGA Settlement
2 Value”), of which \$18,750 will be paid to the LWDA and \$6,250 of which will be
3 paid in equal shares to Qualified Claimants; and (f) all taxes to be paid by MCS
4 (collectively the “Fixed Payments”).

5 D. “Causes of Action” means the causes of action set forth in the First
6 Amended Complaint to be filed pursuant to this Settlement, together with any other
7 claim or cause of action that could have been brought in the First Amended
8 Complaint based on the facts alleged in the First Amended Complaint, which
9 include alleged: (1) failure to pay minimum and overtime wages; (2) failure to pay
10 all wages earned; (3) failure to provide meal periods (Labor Code sections 226.7
11 and 512); (4) failure to provide rest breaks (Labor Code section 226.7); (5) failure
12 to pay wages on termination (Labor Code section 201 et seq.); (6) failure to
13 provide accurate itemized wage statements (Labor Code section 226(a)); (7) unfair
14 business practices which arise from the specific factual allegations of the
15 Complaint in violation of Business & Professions Code § 17200 *et seq.*; and (8)
16 violations of the Private Attorney General’s Act (“PAGA”), Labor Code § 2698 *et*
17 *seq.* which arise from the factual allegations of the Complaint.

18 E. “Claims Administrator” means Phoenix Class Action Administration
19 Solutions, mutually agreed to by the parties, subject to Court approval.

20 F. “Claim Form” means the form a Class Member must timely and
21 correctly complete and submit to the Claims Administrator, for a determination as
22 to whether the Class Member is a Qualified Claimant and eligible to receive an
23 Individual Settlement Payment. The claim form is attached hereto as **Exhibit 3**.

24 G. “Class” means the aggregate group of Class Members, defined below.

25 H. “Class Members” means all persons who performed residential home
26 inspections in California at the direct or indirect request of MCS (“Inspections”) at
27

1 any time from February 4, 2010 through the date the Court grants preliminary
2 approval of the settlement.

3 I. “Class Counsel” means Dennis F. Moss and Jeremy Bollinger of
4 Moss Bollinger, LLP; and Samuel Deskin of Deskin Law Firm.

5 J. “Class Period” means the period from February 4, 2010 through the
6 date the Court grants preliminary approval of the settlement.

7 K. “Class Representative Released Claims” means claims released by
8 Plaintiff, on behalf of Plaintiff, Plaintiff’s heirs, spouses, executors, administrators,
9 attorneys, agents, assigns and any entities or businesses in which Plaintiff has a
10 controlling ownership interest, which are any and all claims of any nature, known
11 or unknown, contingent or accrued, against all Released Parties, whether in tort,
12 contract or equity, including but not limited to the Released Claims, and any claims
13 arising out of or relating to any Inspections performed by Plaintiff and/or
14 Plaintiff’s engagement to perform any Inspections prior to the Final Judgment.

15 L. “Class Representative Release of Claims” means a general release, on
16 behalf of Plaintiff, Plaintiff’s heirs, spouses, executors, administrators, attorneys,
17 agents, assigns and any entities or businesses in Plaintiff has a controlling
18 ownership interest, releasing any and all claims of any nature, known or unknown,
19 contingent or accrued, against all Released Parties, whether in tort, contract or
20 equity, including but not limited to the Released Claims, and any claims arising out
21 of or relating to any Inspections performed by Plaintiff and/or Plaintiff’s
22 engagement to perform any Inspections.

23 M. “Complaint” means the Complaint filed by Plaintiff in this Action on
24 February 4, 2014.

25 N. “Costs Award” means Class Counsel’s litigation costs incurred in
26 prosecuting the Action, in an amount not to exceed \$30,000.00 as approved by the
27 Court.

1 O. "Court" means the United States District Court for the Central District
2 of California.

3 P. "Defendant's Counsel" means Rick Bergstrom and Liat Yamini of
4 Jones Day.

5 Q. "Effective Date" means the date upon which Final Approval of the
6 Settlement can no longer be appealed by an objector in the event of an objection,
7 or in the absence of any objections (or if all objections are withdrawn with Court
8 approval prior to Final Approval) the Final Approval Date. If objections are heard
9 by the Court and overruled, and no appeal is taken of the Judgment by an objector,
10 then the Effective Date will be thirty-five (35) calendar days after the entry of
11 Judgment. If any appeal is taken from the Court's overruling of any objections to
12 the Settlement, then the Effective Date will be ten (10) calendar days after all
13 appeals are withdrawn or after an appellate decision affirming the Final Approval
14 Order and Judgment becomes final. However, Defendant shall not be required to
15 fund any portion of the Total Settlement Amount and the Claims Administrator
16 shall not distribute or pay any monies, unless and until all such appeals have been
17 finally resolved or dismissed with prejudice, and the Judgment is final and
18 enforceable.

19 R. "Employee Taxes" means the Settlement Class Members' share of all
20 applicable payroll taxes or withholdings related to the wage portion of Individual
21 Settlement Payments received under the Settlement. Plaintiff and Settlement Class
22 Members bear full responsibility for payment of any personal income taxes,
23 interest or penalties arising from Individual Settlement Payments or Incentive
24 Awards paid to them.

25 S. "Employer Payroll Taxes" means Defendant's share of applicable
26 payroll taxes, such as FICA and FUTA, for that portion of the Individual
27 Settlement Payments attributed to wages. Any payroll taxes owed by Defendant as

1 a result of the Individual Settlement Payments to Settlement Class Members shall
2 be paid by Defendant out of the Gross Fund Value.

3 T. “Excluded Class Members” means all Class Members who timely
4 submit valid written requests to be excluded from the Settlement on or before the
5 Response Deadline.

6 U. “Fees and Costs Award” means the aggregate total of the Fees Award
7 and the Costs Award, as approved by the Court.

8 V. “Fees Award” means the fee amount authorized by the Court to be
9 paid to Class Counsel for services rendered in prosecuting the Action, in an
10 amount not to exceed twenty-five percent (25%) of the Gross Fund Value, *i.e.*, One
11 Million Dollars and No Cents (\$1,000,000.00).

12 W. “Final Approval” and/or “Final Approval Order and Judgment” means
13 the Court’s order granting final approval of the Settlement and entering judgment
14 thereon in a form to be agreed upon by the Parties in advance, subject to approval
15 and modification by the Court.

16 X. “Final Approval Date” means the date the Court signs the Final
17 Approval Order and Judgment.

18 Y. “Final Approval Hearing” means the hearing at which the Court
19 considers whether to issue an order granting final approval to the Settlement.

20 Z. “First Amended Complaint” means the Amended Complaint filed as a
21 condition of this Settlement, attached hereto as **Exhibit 4**.

22 AA. “Gross Fund Value” or “Gross Settlement Amount” means a sum not
23 to exceed Four Million Dollars and No Cents (\$4,000,000.00), which represents
24 the maximum amount payable in this settlement by Defendant, and which includes
25 the following, as further detailed herein: (a) all Individual Settlement Payments to
26 Settlement Class Members (b) all attorneys’ fees, court costs, (c) enhanced
27 payments for the class representative, (d) payments to the California Labor and

1 Workforce Development Agency (“LWDA”), (e) MCS’ portion of any payroll
2 taxes, all moneys needed for the administration of the class action settlement, and
3 (f) any other cost or expenses related to the settlement. Neither the Court nor the
4 Claims Administrator shall have any power to increase the Gross Fund Value.
5 MCS shall not have any obligation to provide any portion of the Gross Fund Value
6 to the Claims Administrator or any third party until final judgment has been
7 entered in the Weinstein matter and all rights of appeal have expired and/or been
8 exhausted.

9 BB. “Incentive Award” means the amount the Court authorizes to be paid
10 to the Class Representative (in addition to his Individual Settlement Payment) in
11 recognition of his efforts in assisting with the prosecution of the Action on behalf
12 of the Class Members. This amount is not to exceed Twenty Thousand Dollars and
13 No Cents (\$20,000.00).

14 CC. “Individual Settlement Payment” means each Settlement Class
15 Member’s respective share of the Adjusted Gross Settlement, subject to applicable
16 payroll deductions or withholdings as required by law on the wage portion of the
17 Individual Settlement Payment.

18 DD. “Inspections” means inspections performed by Plaintiff and/or Class
19 Members on behalf of MCS.

20 EE. “Judgment” means the Final Approval Order and Judgment issued by
21 the Court finally approving the Settlement, which shall permanently bar the Class
22 Representative and all Settlement Class Members from prosecuting any and all
23 Released Class Member Claims against the Released Parties.

24 FF. “MCS’ Release of Claims” means a general release executed by MCS
25 on behalf of itself, releasing any and all claims of any nature, known or unknown,
26 contingent or accrued, against Plaintiff, whether in tort, contract or equity, arising
27

1 out of or relating to any Inspections performed by Plaintiff and/or Plaintiff's
2 engagement to perform any Inspections.

3 GG. "MCS Released Claims" means claims MCS releases on behalf of
4 itself, which are any and all claims of any nature, known or unknown, contingent
5 or accrued, against Plaintiff, whether in tort, contract or equity, arising out of or
6 relating to any Inspections performed by Plaintiff and/or Plaintiff's engagement to
7 perform any Inspections prior to the Final Judgment.

8 HH. "Newspaper Advertisement of Settlement" means the text of the
9 Newspaper Advertisement of Settlement advising potential Class Members how to
10 obtain notice of the Settlement. The text of the advertisement is attached hereto as
11 **Exhibit 1.**

12 II. "Notice of Class Action Settlement" means the document providing
13 notice to Class Members of this Settlement, attached hereto as **Exhibit 2.**

14 JJ. "PAGA Payment" means that portion of the Gross Settlement Amount
15 allocated to settle claims brought pursuant to PAGA, California Labor Code
16 Section 2698 *et seq.*, not to exceed \$25,000, as approved by the Court, which shall
17 be distributed to the California Labor and Workforce Development Agency and
18 Settlement Class Members as set forth herein. The PAGA Payment shall be
19 allocated as follows: twenty-five percent (25% or \$6,250.00) payable to Qualified
20 Claimants in equal shares, and seventy-five percent (75% or \$18,750.00) to the
21 California Labor and Workforce Development Agency.

22 KK. "Preliminary Approval" means the Court's order granting preliminary
23 approval of the Settlement.

24 LL. "Preliminary Approval Date" means the date the Court signs the
25 Preliminary Approval Order.

26 MM. "Preliminary Approval Order" means an order to be issued by the
27 Court preliminarily approving the terms of the Settlement set forth herein, in a

1 form to be agreed upon by the Parties in advance, subject to approval and
2 modification by the Court.

3 NN. “Qualified Claimant” means a Class Member who has timely
4 submitted a correctly completed Claim Form to the Claims Administrator, and who
5 has not opted-out of the Settlement.

6 OO. “Qualified Inspections” means the number of Inspections performed
7 by, or attributed to a Class Member during the Class Period.

8 PP. “Qualified Settlement Fund” shall mean the Qualified Settlement
9 Fund established by the Claims Administrator for the benefit of the Class Members
10 and from which all Settlement Payments and other payments under this Settlement
11 shall be paid.

12 QQ. “Released Class Member Claims” means the claims released by
13 Plaintiff, and each Class Member who does not timely opt out of the settlement.
14 Plaintiff, and each Class Member who does not timely opt out of the settlement on
15 behalf of themselves, their heirs, spouses, executors, administrators, attorneys,
16 agents, assigns, and any entities or businesses in which any of them have a
17 controlling ownership interest, shall fully and finally release and discharge the
18 Released Parties from, which are all applicable California wage and hour claims,
19 rights, demands, liabilities and causes of action of every nature and description,
20 whether known or unknown, arising from or related to the claims litigated in the
21 Weinstein matter or that could have been asserted based on the facts alleged in the
22 Weinstein matter against MCS, including but not limited to claims for: violations
23 of California Labor Code §§ 226.7, 226.8, 510, 512, 558, 1197, 2753, or 2802;
24 failure to pay all wages in a timely manner in violation of California Labor Code
25 §§ 200, 201, 202, 203, 204, 210; failure to provide accurate wage statements in
26 violation of California Labor Code § 226; unfair competition; violations of the
27 California Labor Code Private Attorneys General Act, Labor Code § 2698 et seq.;

1 claims under California Business & Professions Code §§ 17000 and 17200, et seq.;
2 and any damages, penalties, restitution, disgorgement, interest or attorneys' fees as
3 a result thereof.

4 RR. "Released Parties" means MCS/Defendant and its former and present
5 parents, subsidiaries, affiliated corporations and entities, clients, and vendors and
6 independent contractors through which MCS conducts business, and each of their
7 respective current, former and future officers, directors, members, managers,
8 employees, consultants, vendors, independent contractors, clients, partners,
9 shareholders, joint venturers and third-party agents, and any successors, assigns, or
10 legal representatives.

11 SS. "Request for Exclusion" means the document which a Class Member
12 must complete and timely submit in order to opt-out of the Settlement.

13 TT. "Response Deadline" means the date, no later than sixty (60) calendar
14 days after the date the Notice of Class Action Settlement is mailed (judged by the
15 postmark date) by the Claims Administrator, prior to which Class Members may
16 validly submit a completed Claim Form to the Claims Administrator, Request for
17 Exclusion or a written Objection.

18 UU. "Settlement Class Members" or the "Settlement Class" means those
19 Class Members who do not submit a timely and valid Request for Exclusion.

20 VV. "Settlement" or "Agreement" means the terms and conditions set forth
21 in this Joint Stipulation.

22 WW. "Settlement Documents" or "Notice Packet" shall mean the Notice of
23 Class Action Settlement, attached hereto as **Exhibit 2**, the Claim Form, attached
24 hereto as **Exhibit 3**, a W-9 form and a W-4 form which shall be mailed to Class
25 Members.

1 XX. "Settlement Payment" means the total, gross amount due to a
2 Qualified Claimant, which shall be calculated pursuant to the terms of this Joint
3 Stipulation of Class Action Settlement.

4 YY. "Settling Parties" shall mean the Class Representative, on behalf of
5 himself and all Class Members who do not submit a valid Request for Exclusion
6 from the Settlement to the Claims Administrator, and Defendant.

7 ZZ. "Total Qualified Inspections" means the total aggregate number of
8 Qualified Inspections attributed to all Class Members that were performed in
9 California during the class period.

10 AAA. "Vendor" means the entities or people under written contract with
11 MCS during the Class Period to perform Inspections in California, who were paid
12 for Inspections conducted during the Class Period by MCS.

13 This Joint Stipulation is made by the Class Representative on behalf of
14 himself and the Class Members, on the one hand, and Defendant, on the other
15 hand, in this Action, and is subject to approval of the Court.

16 II. BACKGROUND AND PRELIMINARY REPRESENTATIONS

17 A. Conditional Certification. The Parties stipulate and agree to the
18 conditional certification of the Class for purposes of this Settlement only. Should
19 for whatever reason the Settlement not become final and effective as herein
20 provided, the conditional class certification shall immediately be dissolved without
21 prejudice. The fact that the Parties are willing to stipulate to conditional class
22 certification as part of the Settlement shall have no bearing on, and shall not be
23 admissible in or considered in connection with the issue of whether a class should
24 be certified in a non-settlement context in the Action and shall have no bearing on,
25 and shall not be admissible or considered in connection with, the pending
26 Contested Motion for Class Certification, or any decertification motion in the
27 Action, and shall have no bearing on, and shall not be admissible or considered in

1 connection with, the issue of whether a class should be certified in any other
2 lawsuit. Defendant reserves all rights it has to continue to oppose the current
3 motion for class certification should this Settlement not become final and effective.

4 B. Investigation. The Parties have conducted significant investigation of
5 the facts and law. Such discovery and investigation included depositions,
6 including a PMQ deposition, substantial document production, interviews of
7 percipient witnesses as well as the review of data necessary to calculate potential
8 damages. Defendant produced a large volume of documents and data concerning
9 the putative class members prior to a mediation session with mediator Robert
10 Kaplan. This data included, but was not limited to, inspection counts and
11 locations. Counsel for the Parties investigated the law as applied to the facts
12 discovered regarding the alleged claims of the Class Members and potential
13 defenses thereto, and the damages claimed by the Class Members.

14 C. Defendant's Reasons for Settlement. Defendant concluded that any
15 further defense of this litigation would be protracted and expensive for all Parties.
16 Substantial amounts of time, energy and resources of Defendant have been and,
17 unless this Settlement is made, will continue to be devoted to the defense of the
18 Causes of Action asserted in this Action. Defendant has also taken into account
19 the risks of further litigation in reaching its decision to enter into this Settlement.
20 Defendant has, therefore, agreed to settle in the manner and upon the terms set
21 forth in this Agreement to put to rest the Causes of Action as set forth in the
22 Action.

23 D. Benefits of Settlement to Class Members. Plaintiff and Class Counsel
24 recognize the risks, expense and length of continued proceedings necessary to
25 litigate the disputes in the Action through trial and through any possible appeals.
26 Plaintiff and Class Counsel also have taken into account the uncertainty and risks
27 of the outcome of further litigation, and the difficulties and delays inherent in such

1 litigation. Plaintiff and Class Counsel are also aware of the burdens of proof
2 necessary to establish liability for the Causes of Action asserted in the Action, both
3 generally and in response to Defendant's defenses thereto, and the difficulties in
4 establishing damages, penalties, restitution and other relief sought in the Actions.
5 Plaintiff and Class Counsel also have taken into account Defendant's agreement to
6 enter into a settlement that confers substantial benefits upon the Class Members.
7 Based on the foregoing, Plaintiff and Class Counsel have determined that the
8 Settlement set forth in this Joint Stipulation is fair, adequate, and reasonable and is
9 in the best interests of all Class Members.

10 E. Defendant's Denials of Wrongdoing. Defendant denied and continues
11 to deny each of the Causes of Action and contentions alleged by Class Members in
12 the Action. Defendant asserted, and continues to assert, defenses thereto, and
13 expressly denied and continues to deny any wrongdoing or legal liability arising
14 out of any of the facts or conduct alleged in the Action. Defendant also denied and
15 continues to deny, *inter alia*, the allegations that it is and has been an employer of
16 the Class Members; that Class Members were not paid properly for all hours
17 worked; that Defendant was obligated to reimburse Class Members for expenses
18 they incurred; that Defendant violated any laws regarding meal periods, and/or rest
19 breaks; that Defendant was obligated to pay Class Members wages upon
20 termination of Inspections performed by Class Members; that Defendant failed to
21 comply with the law with respect to itemized wage statements; that Defendant
22 engaged in any unlawful, unfair or fraudulent business practices; that Defendant
23 engaged in any wrongful conduct as alleged in the Action; or that Class Members
24 were harmed by the conduct alleged in the Action. Neither this Agreement, nor
25 any document referred to or contemplated herein, nor any action taken to carry out
26 this Agreement, is, may be construed as, or may be used as an admission,
27 concession or indication by or against Defendant of any fault, wrongdoing or

1 liability whatsoever.

2 F. Plaintiff's Claims. The Class Representative has claimed and
3 continues to claim that Defendant is an employer of Class Members, and the
4 Causes of Action in the First Amended Complaint have merit and give rise to
5 liability on the part of Defendant. This Agreement is a compromise of disputed
6 claims. Nothing contained in this Agreement, none of the documents referred to
7 herein, and no action taken to carry out this Agreement may be construed or used
8 as an admission by or against the Class Representative or Class Counsel as to the
9 merits or lack thereof of the claims asserted. As a condition of the Settlement,
10 subject to Court approval, Plaintiff will file the First Amended Complaint attached
11 hereto as **Exhibit 4**, and incorporated herein by this reference.

12 **NOW, THEREFORE, IT IS HEREBY STIPULATED**, by the Class
13 Representative on behalf of himself and the Class Members on the one hand, and
14 Defendant on the other hand, and subject to Court approval, that the Action is
15 hereby being compromised and settled pursuant to the terms and conditions set
16 forth in this Settlement as a final disposition of the Action in its entirety and that
17 upon the Effective Date, each and every Settlement Class Member shall be deemed
18 to have conclusively released and forever discharged each Released Party from
19 liability for any and all Released Claims, and shall be permanently barred and
20 enjoined from the institution or prosecution of any and all Released Claims against
21 the Released Parties, except as to such rights or claims as may be created by the
22 Settlement, subject to the continuing jurisdiction of the District Court as set forth
23 below, pursuant to the following terms and conditions:

24 **III. AGREEMENT**

25 A. Binding Settlement. This Settlement shall bind the Parties and
26 Settlement Class Members, subject to the terms and conditions hereof and the
27 Court's approval.

1 B. Release as to All Settlement Class Members. As of the Effective
2 Date, each Settlement Class Member (including the Class Representative) releases
3 the Released Parties from any and all Released Class Member Claims and agrees
4 not to sue or otherwise make a claim against any of the Released Parties for the
5 Released Class Member Claims. Specifically, Plaintiff, and each Class Member
6 who does not timely opt out of the settlement on behalf of themselves, their heirs,
7 spouses, executors, administrators, attorneys, agents, assigns, and any entities or
8 businesses in which any of them have a controlling ownership interest, shall fully
9 and finally release and discharge the Released Parties from, which are all
10 applicable California wage and hour claims, rights, demands, liabilities and causes
11 of action of every nature and description, whether known or unknown, arising from
12 or related to the claims litigated in the Weinstein matter or that could have been
13 asserted based on the facts alleged in the Weinstein matter against MCS, including
14 but not limited to claims for: violations of California Labor Code §§ 226.7, 226.8,
15 510, 512, 558, 1197, 2753, or 2802; failure to pay all wages in a timely manner in
16 violation of California Labor Code §§ 200, 201, 202, 203, 204, 210; failure to
17 provide accurate wage statements in violation of California Labor Code § 226;
18 unfair competition; violations of the California Labor Code Private Attorneys
19 General Act, Labor Code § 2698 et seq.; claims under California Business &
20 Professions Code §§ 17000 and 17200, et seq.; and any damages, penalties,
21 restitution, disgorgement, interest or attorneys' fees as a result thereof.

22 C. Additional General Release of All Claims by Class Representative
23 Only. In addition to the releases made by the Settlement Class Members described
24 above, as of the Effective Date, Plaintiff, on behalf of Plaintiff, Plaintiff's heirs,
25 spouses, executors, administrators, attorneys, agents, assigns and any entities or
26 businesses in which Plaintiff has a controlling ownership interest, releases any and
27 all claims of any nature, known or unknown, contingent or accrued, against all

1 Released Parties, whether in tort, contract or equity, including but not limited to
2 the Released Claims, and any claims arising out of or relating to any Inspections
3 performed by Plaintiff and/or Plaintiff's engagement to perform any Inspections
4 prior to the Final Judgment.

5 D. MCS' Release of Claims. MCS on behalf of itself releases Plaintiff
6 from any and all claims of any nature, known or unknown, contingent or accrued,
7 against Plaintiff, whether in tort, contract or equity, arising out of or relating to any
8 Inspections performed by Plaintiff and/or Plaintiff's engagement to perform any
9 Inspections prior to the Final Judgment.

10 E. California Civil Code Section 1542. With regard to the Class
11 Representative Released Claims and MCS Released Claims, Plaintiff and MCS
12 expressly waive all rights under California Civil Code Section 1542, which states:

13 A general release does not extend to claims which the
14 creditor does not know or suspect to exist in his or her
15 favor at the time of executing the release, which if known
16 to him or her must have materially affected his or her
17 settlement with the debtor.

18 Plaintiff and MCS may hereafter discover facts in addition to or different
19 from those which they now know or believe to be true with respect to the subject
20 matter of the Class Representative Released Claims and MCS Released Claims,
21 but they shall be deemed to have, and by operation of the Judgment shall have,
22 fully, finally, and forever settled and released any and all Class Representative
23 Released Claims and MCS Released Claims, known or unknown, suspected or
24 unsuspected, contingent or non-contingent, whether or not concealed or hidden,
25 which then exist, or heretofore have existed upon any theory of law or equity now
26 existing or coming into existence in the future, including, but not limited to,
27 conduct which is negligent, intentional, with or without malice, or a breach of any

1 duty, law or rule, without regard to the subsequent discovery or existence of such
2 different or additional facts.

3 In addition, the Parties agree that Civil Code Section 1542 will be set forth
4 in writing in the Notice of Class Action Settlement and Claim Form, which will be
5 part of the packet provided to all Class Members and shall apply to the Released
6 Claims. This release will cover all Class Members who do not opt out, regardless
7 of whether they receive the Notice of Class Action Settlement or make a claim.
8 The Section 1542 release will provide that Plaintiff and Class Members agree and
9 represent that they are aware of and are familiar with the provisions of California
10 Civil Code Section 1542, which provides as follows:

11 *“A general release does not extend to claims which the creditor does*
12 *not know or suspect to exist in his or her favor at the time of executing*
13 *the release, which if known by him or her must have materially*
14 *affected his or her settlement with the debtor.”*

15 With full awareness and understanding of the above provisions, Plaintiff and
16 Class Members waive and relinquish any and all rights and benefits that they may
17 have under California Civil Code Section 1542, or the law of any other state or
18 jurisdiction, or common law principle, to the same or similar effect, concerning the
19 Released Claims.

20 F. Gross Settlement Amount Allocation. Defendant shall pay an amount
21 not to exceed Four Million U.S. Dollars (\$4,000,000.00) as the Gross Settlement
22 Amount to resolve the Action on a class-wide basis. Under no circumstances will
23 Defendant be obligated to pay any more than the Gross Settlement Amount. The
24 Parties agree to the following allocations to be paid from the Gross Settlement
25 Amount, which represent Fixed Costs, subject to Court approval:

26 1. From the Gross Settlement Amount, Defendant will not oppose
27 Class Counsel’s application to the Court for an amount not to exceed 25% of the
28 Gross Fund Value (i.e. up to One Million U.S. Dollars (\$1,000,000.00) for Class

1 Counsel's Fees Award subject to the approval of the Court.

2 2. From the Gross Settlement Amount, Defendant will not oppose
3 Class Counsel's application to the Court for a Cost Award in an amount not to
4 exceed Thirty Thousand U.S. Dollars (\$30,000.00). Should costs exceed Thirty
5 Thousand U.S. Dollars (\$30,000.00), Defendant reserves the right to oppose such
6 costs.

7 3. From the Gross Settlement Amount, Administration Costs shall
8 be paid in an amount currently estimated at Thirty Thousand U.S. Dollars
9 (\$108,484), subject to Court approval.

10 4. From the Gross Settlement Amount, Defendant will not oppose
11 Class Counsel's application to the Court for the Incentive Award to the Class
12 Representative in an amount not to exceed Twenty Thousand U.S. Dollars
13 (\$20,000.00), in consideration for his individual and general full release of all
14 claims, as set forth in the Class Representative's Release of Claims, and for his
15 efforts and time in instituting and prosecuting the Action. The amount of the
16 Incentive Award will be subject to the approval of the Court.

17 Because the Incentive Award represents payment to the Class Representative
18 for services to the Class Members and consideration for the Class Representative's
19 Release of Claims, taxes will not be withheld from the Incentive Award. The
20 Claims Administrator will report the Incentive Award on an IRS Form 1099, and
21 any other required tax forms, and will provide said forms to the Class
22 Representative and to the pertinent taxing authorities as required by law.

23 5. From the Gross Settlement Amount, the portion to be allocated
24 for Settlement of any and all claims for penalties under PAGA is twenty-five
25 thousand U.S. Dollars (\$25,000.00), 75% of which shall be paid to the LWDA and
26 25% of which shall be paid in equal shares to Qualified Claimants as part of the
27 Adjusted Gross Fund Value.

1 6. To the extent the Court does not approve the full requested Fees
2 Award, Costs Award, Incentive Award, or Administration Costs, any and all
3 unawarded amounts shall be added to the Adjusted Gross Fund Value.

4 G. Adjusted Gross Fund Value. The Adjusted Gross Fund Value shall be
5 the amount remaining in the Gross Settlement Amount after deduction of the Fixed
6 Payments, as set forth in Section F paragraphs 1-5 above. This shall be a claims-
7 made settlement, with claims being paid to Qualified Claimants from the Adjusted
8 Gross Fund Value. Any payments made to Qualified Claimants shall be made
9 from the Adjusted Gross Fund Value on a claims-made basis only according to the
10 following formula: Adjusted Gross Fund Value divided by the total of the number
11 of Inspections performed in California during the Class Period credited by MCS to
12 Class Members, including, but not limited to all inspections attributed to Class
13 Members in claim forms, and any additional Inspections credited to Qualified
14 Claimants based on information or records submitted during the claims period (see
15 Section III.I. below) (“Inspection Payment Rate”) multiplied by the number of
16 Inspections performed in California during the Class Period credited by MCS to
17 the individual Class Member at issue, less applicable withholdings (“Individual
18 Settlement Payment”). To the extent that less than 55% of the Gross Fund Value is
19 paid as Fixed Payments and/or Individual Settlement Payments, Qualified
20 Claimants submitting valid claims shall be entitled to an increase in their
21 Individual Settlement Payment up to a maximum of 135% of the Individual
22 Settlement Payment to which they would otherwise be entitled (“Increased
23 Individual Payments”); but in no case shall any Increased Individual Payments
24 require payment of more than 55% of the Gross Fund Value. If the Fixed
25 Payments and/or Individual Settlement Payments, taking into account any and all
26 Increased Individual Payments, still equal less than 55% of the Gross Fund Value,
27 the difference between (i) the sum of the Fixed Payments and Individual

1 Settlement Payments (or Increased Individual Payments) and (ii) 55% of the Gross
2 Fund Value (i.e., \$2,200,000.00) shall be the “Residual Amount.” The Residual
3 Amount, if any, shall be distributed to Bet Tzedek, a 501(c)(3) charity (“Cy Pres”)
4 selected by MCS and approved by Plaintiff’s Counsel, subject to approval by the
5 Court.

6 H. Calculation of Individual Settlement Payments. The Claims
7 Administrator will calculate Individual Settlement Payments to Class Members
8 from the Adjusted Gross Settlement based on the formula outlined in the
9 immediately preceding paragraph.

10 I. Attribution of Inspections. The number of inspections attributable to
11 each Class Member will be determined as follows:

12 1. The records of MCS will determine Inspection numbers for all
13 Class Members whose Inspection totals during the class period are reasonably
14 ascertainable through those records.

15 2. For Class Members for whom MCS or MCS Vendors have only
16 contact information, the Parties agree that the Claim Form will list the average
17 number of inspections by Class Members as the inspection number.

18 3. For Class Members whose contact information is identified by
19 Aspen Grove, or via the Newspaper Ad, the number of inspections attributable will
20 be determined after such individuals provide verifying information through the
21 claims process.

22 4. The Parties agree that they will they will assist the
23 Administrator in the evaluation of any challenge by any Class Member to the
24 number of inspections identified on such Class Member’s Claim Form on an
25 individual basis to assure the Administrator resolution of the challenge in good
26 faith.

27 J. Eligibility for Settlement Payments for Qualified Claimants. This is a

1 “claims made” settlement, with claims being made against the Adjusted Gross
2 Fund. Class Members who have timely submitted valid Claim Forms and have not
3 opted-out of the Settlement will be considered Qualified Claimants eligible to
4 receive Settlement Payments. Only Qualified Claimants will be eligible to receive
5 Settlement Payments. Class Members who have not submitted timely and valid
6 Claim Forms, but have not filed timely and valid Requests for Exclusion, will still
7 be bound by the Settlement and the terms regarding the Class Member Release of
8 Claims, but will not be entitled to receive a Settlement Payment.

9 K. Tax Treatment. For tax purposes, 2/3 of all payments made to Class
10 Members under this Settlement shall be treated as non-wage payments for claimed
11 penalties, interest, and reimbursement of expenses that will not be subject to
12 payroll taxes or tax withholding (an IRS Form 1099 will be issued for such
13 payments), and 1/3 of all payments made to Class Members under this Settlement
14 shall be treated as wage payments for claimed unpaid wages that will be subject to
15 payroll taxes and tax withholding (an IRS Form W-2 will be issued for such
16 payment). Neither Defendant, its attorneys, Plaintiff or Plaintiff's counsel, make
17 any representations and it is understood and agreed that they have made no
18 representations as to the taxability to any Class Members of any portions of the
19 Settlement Payments or other consideration. The Parties further understand that
20 the Class Representative and any Class Member who receives any Settlement
21 Payment pursuant to this Settlement shall be solely responsible for any and all tax
22 obligations associated with such receipt. The Class Representative and any Class
23 Member who receives any Settlement Payment should consult with their tax
24 advisors concerning the tax consequences of the Settlement Payments they receive
25 under the Settlement.

26 L. Circular No. 230 Disclaimer. The Parties to this Joint Stipulation (for
27 purposes of this section, the “Acknowledging Party” and each party to this

1 agreement other than the Acknowledging Party, an “Other Party”) acknowledge
2 and agree that (1) no provision of this Joint Stipulation, and no written
3 communication or disclosure between or among the Parties or their attorneys and
4 other advisers, is or was intended to be, nor shall any such communication or
5 disclosure constitute or be construed or be relied upon as, tax advice within the
6 meaning of United States Treasury Department Circular No. 230 (31 CFR Part 10,
7 as amended); (2) the Acknowledging Party (a) has relied exclusively upon his, her
8 or its own, independent legal and tax counsel for advice (including tax advice) in
9 connection with this Agreement, (b) has not entered into this Agreement based
10 upon the recommendation of any other party or any attorney or advisor to any
11 other party, and (c) is not entitled to rely upon any communication or disclosure by
12 any attorney or advisor to any other party to avoid any tax penalty that may be
13 imposed on the acknowledging party; and (3) no attorney or adviser to any other
14 party has imposed any limitation that protects the confidentiality of any such
15 attorney’s or adviser’s tax strategies (regardless of whether such limitation is
16 legally binding) upon disclosure by the acknowledging party of the tax treatment
17 or tax structure of any transaction, including any transaction contemplated by this
18 Agreement.

19 M. Preliminary Court Approval of the Settlement. Plaintiff shall move
20 the Court to enter the Preliminary Approval Order, including a determination by
21 the Court as to the Settlement’s fairness, adequacy, and reasonableness. The
22 Motion for Preliminary Approval shall ask the Court to issue a Preliminary
23 Approval Order which, among other things, (1) provisionally certifies the class for
24 Settlement purposes only; (2) approves, as to form and content, the Notice of Class
25 Action Settlement and Claim Form; (3) approves as to form and content, the text of
26 the Newspaper Advertisement of the Settlement; (4) approves the newspapers the
27 Newspaper Advertisement of the Settlement will run in, and the frequency of

1 Newspaper Advertisement of the Settlement; (5) approves the manner and means
2 utilized to attempt to obtain and ascertain the addresses for Class Members; (6)
3 approves the manner and method for Class Members to request exclusion from the
4 Settlement as specified herein and in the Notice of Class Action Settlement; (7)
5 direct the mailing of the Notice Packets by first class mail to the Class Members;
6 (8) directs the placement of Newspaper Advertisement of the Settlement; (9)
7 preliminarily approves the Settlement; and (10) schedules a Final Approval
8 Hearing. The Parties agree that provisional certification of the class is for
9 Settlement purposes only and is in no way an admission by Defendant in the
10 Action or in any other proceeding that class certification is proper.

11 N. Ascertaining Class Member Contact Information. During the Class
12 Period, MCS had contracts with Vendors to provide inspection services. Some
13 vendors performed Inspections themselves, others engaged others to perform
14 Inspections, while some did both, i.e., performed some Inspections themselves and
15 engaged others to perform Inspections. Within one week of Preliminary Approval,
16 MCS shall send to the Claims Administrator the names of each Class Member it
17 has in its records who performed any Inspections in California during the Class
18 Period. For any of the Inspectors that MCS also has email and/or home address
19 information, MCS shall send such information to the Administrator as well. At the
20 same time, MCS shall send to each Vendor who performed Inspections and/or
21 engaged others to perform Inspections during the Class Period the letter attached
22 hereto as **Exhibit 5** and incorporated herein by this reference seeking address
23 information for each Inspector who performed MCS-related Inspections during the
24 Class Period. At the same time, MCS shall serve a subpoena in this case on Aspen
25 Grove, an entity that since 2014 has registered and received home address
26 information of some persons who directly or indirectly performed Inspections in
27 California, seeking production of name and address information for all Class

1 Members who performed Inspections in California during the Class Period. A
2 copy of the subpoena is attached hereto as **Exhibit 6**, and incorporated herein.
3 Simultaneously, the Claims Administrator will cause to be published in Parade
4 Magazine an advertisement to potential class members on how they can obtain a
5 Notice Packet from the Claims Administrator. The advertisement shall run for four
6 consecutive Sundays in California editions of Parade Magazine that are inserted in
7 Sunday editions of Newspapers throughout the State. All Sunday Newspapers in
8 California that regularly have Parade Magazine inserts will, by virtue of those
9 inserts, be publicizing the Settlement. Four weeks after the Vendor letters are sent,
10 a reminder letter will be sent to the Vendors that did not yet provide the last known
11 addresses of Inspectors who worked through them. Six weeks after the original
12 letters are sent to Vendors, the subpoena is served on Aspen Grove, and the
13 Newspaper Advertisement of Settlement begins, a list will be compiled of Class
14 Members for whom address information has been obtained by MCS and the
15 Claims Administrator.

16 O. Motion for Fees Costs And Incentive Award And Motion For Final
17 Approval of Settlement. Class Counsel shall file and serve their motion for Fees,
18 Costs and Incentive Award along with all supporting evidence, no later than fifteen
19 calendar days prior to the end of the Claims Period. At the same time, the
20 administrator shall post on the web site established for this Settlement, a copy of
21 the motion for Fees, Costs and Incentive Award along with all supporting
22 evidence. Class Counsel shall file and serve their motion for Final Approval of
23 Settlement, along with all supporting evidence, no later than 14 calendar days prior
24 to the Final Approval Hearing, unless the Court orders otherwise. At or in
25 connection with the Final Approval Hearing, the Parties shall request that the Court
26 enter an Order entering judgment in accordance with the Settlement, which shall
27 include that all Class Members who have not submitted a valid and timely Request

1 for Exclusion are bound by the Class Member Released Claims as set forth in this
2 Joint Stipulation.

3 P. Distribution of Settlement Payments. Before the Court grants Final
4 Approval of the Settlement, the Claims Administrator will calculate the amounts
5 due to each Qualified Claimant, and the total amount due to all Qualified
6 Claimants. The total will be provided to the Parties. After the Court grants Final
7 Approval of the Settlement, no later than twenty-one (21) calendar days after the
8 Effective Date has passed, Defendant shall provide to the Claims Administrator the
9 funds necessary for all payments required by this Settlement, including Individual
10 Settlement Payments and Fixed Payments to an account designated by the Claims
11 Administrator. No later than ten (10) business days after receiving the funds, the
12 Claims Administrator will transmit payments to Class Counsel and the Class
13 Representative for the approved Fees and Costs Award and Class Representative
14 Incentive Award, to itself for approved Administration Costs, and to the LWDA
15 for its approved share of the PAGA Payment. Concurrently, the Claims
16 Administrator will issue and mail checks to all Qualified Claimants. Checks to
17 Qualified Claimants shall be valid for 120 days after issuance, after which the
18 checks may be cancelled and the non-deposited funds shall be distributed to the Cy
19 Pres.

20 Q. Defendant's Right to Revoke. Notwithstanding any other provision of
21 this Settlement, MCS retains the right, in the exercise of its sole discretion, to
22 nullify the Settlement within fourteen (14) days of receiving notice that 3% or
23 more of Class Members have opted out of this Settlement.

24 R. Termination of Settlement Agreement. If the conditions of the
25 Settlement set forth in this Joint Stipulation are not satisfied, or if Defendant
26 exercises Defendant's Right to Revoke, or if the Court does not enter judgment in
27 the Action in accordance with the Settlement as provided for in this Joint

1 Stipulation, or if appellate review is sought and on such review the Court’s
2 decision is materially modified or reversed, or, if one or more of the material terms
3 of the Settlement is not approved or the Settlement with respect to one or more
4 such terms is materially modified or reversed, then this Settlement shall be
5 canceled, terminated, and shall have no force or effect. If the Effective Date does
6 not occur, or if this Settlement is terminated, revoked, or canceled pursuant to its
7 terms, the Parties to this Settlement shall be deemed to have reverted to their
8 respective status as of the date and time immediately prior to the execution of this
9 Settlement.

10 **IV. CLAIMS ADMINISTRATION**

11 A. Selection and Compensation of Claims Administrator. The Parties
12 agree to jointly utilize a third-party Claims Administrator to give notice of and
13 communicate with Class Members regarding the Settlement. The Parties have
14 selected Phoenix Class Action Administration Solutions to administer the
15 Settlement. If the actual Administration Costs are less than the amount approved
16 by the Court, those funds shall be paid to Qualified Claimants in addition to the
17 Adjusted Gross Settlement on a pro rata basis. All Administration Costs shall
18 come out of the Gross Settlement Amount. The Claims Administrator’s actions
19 shall be governed by the terms of this Joint Stipulation.

20 B. Establishment and Funding of the Qualified Settlement Fund. The
21 Parties agree that the Qualified Settlement Fund is intended to be a Qualified
22 Settlement Fund under Section 468B of the Internal Revenue Code and Treas. Reg.
23 §1.468B-1, 26 CFR § 1.468B-1, *et seq.*, and will be administered by the Claims
24 Administrator as such. With respect to the Qualified Settlement Fund, the Claims
25 Administrator shall: (1) open and administer a settlement account in such a
26 manner as to qualify and maintain the qualification of the Qualified Settlement
27 Fund as a “Qualified Settlement Fund” under Section 468B of the Internal

1 Revenue Code and Treas. Reg. §1.468B-1; (2) satisfy all federal, state and local
2 income and other tax reporting, return, and filing requirements with respect to the
3 Qualified Settlement Fund; and (3) satisfy out of the Qualified Settlement Fund all
4 fees, expenses and costs incurred in connection with the opening and
5 administration of the Qualified Settlement Fund and the performance of its duties
6 and functions as described in this Agreement. The aforementioned fees, costs and
7 expenses shall be treated as and included in the costs of administering the
8 Qualified Settlement Fund and as Administration Costs.

9 C. Timeline for Claims Administration. To the extent available to
10 Defendant, Defendant will provide the names, home addresses, email addresses,
11 and the number of Class Period Inspections of each Class Member (“Class Data”)
12 to the Claims Administrator within ten (10) days of the Order Granting Preliminary
13 Approval. At the same time, the Claims Administrator shall set up a Settlement
14 Web Site, that contains information about the settlement and how to procure a
15 Notice Packet. Defendant will provide the names and addresses and inspection
16 numbers it receives from Vendors and the names and addresses it receives from the
17 responses to the subpoena to Aspen Grove to the Claims Administrator fifty-six
18 (56) calendar days after the letter is mailed to vendors and after Aspen Grove is
19 served with a subpoena. At the same time, the Claims Administrator shall provide
20 MCS with a list of persons who contacted the Claims Administrator claiming they
21 performed Inspections during the Class Period, and request of MCS confirmation
22 of the names and the number of Inspections performed by each such person.
23 Within-fourteen (14) calendar days, MCS will, to the extent it can, provide
24 confirmation and inspection numbers.

25 If there are any Class Members for whom MCS confirms performed
26 Inspections, but MCS does not have the number of Inspections, those Class
27 Members shall be deemed to have performed the estimated average number of

1 Inspections ascertained by dividing the total number of Inspections by the total
2 number of Class Members, and given the opportunity to challenge the allocation of
3 the estimated average number of Inspections to them.

4 If there are people who claim to be Class Members who MCS cannot
5 confirm performed Inspections, they will be provided the opportunity to prove that
6 they are in the Class.

7 The Claims Administrator will create a master list of names, addresses, and
8 inspection data. Upon receipt of the Class Data, the Claims Administrator shall
9 check the names and addresses with the U.S. Postal Service National Change of
10 Address Database and update any addresses with any new information found
11 regarding the location of those Class Members. The Claims Administrator will
12 update the U.S. Postal Service National Change of Address Database with all new
13 contact information found pursuant to its obligations in this paragraph, or based on
14 information provided by Class Members during the claims process. Class Data
15 shall be used by the Claims Administrator solely for the purpose of notifying the
16 Class Members of the Settlement. Class Data shall be provided by MCS to the
17 Claims Administrator in a format to be mutually agreed upon by the Claims
18 Administrator and Defendant.

19 D. Class Notice. Within seventy days (70) calendar days after the Court
20 enters an Order Granting Preliminary Approval of the Settlement, the Claims
21 Administrator shall send via United States First Class Mail the Settlement
22 Documents, consisting of the Court-approved Notice of Class Action Settlement
23 (“Notice”), (Exhibit 2) a Court-approved Claim Form (Exhibit 3), a W-9 and a W-
24 4 form, (collectively “Notice Packet”). The Notice, Exhibit 2, provides that Class
25 Members will have sixty (60) calendar days from the date the Notice is mailed to
26 return the Claim Form with or without challenging the allocation of inspections,
27 return the Request for Exclusion, or object to the Settlement. The Administrator,

1 at the same time, shall email the any class Member for whom it only has an email
2 address, advising such individuals how to obtain a Notice Packet The costs of this
3 Notice program will be considered part of the Administration Costs to be paid from
4 the Gross Settlement Amount. Unless the Claims Administrator receives a Notice
5 Packet returned from the United States Postal Service with a forwarding address
6 for the recipient, that Notice Packet shall be deemed mailed and received by the
7 Class Member to whom it was sent. In the event that subsequent to the first
8 mailing of a Notice Packet and prior to the Claims Period Deadline, that Notice
9 Packet is returned to the Claims Administrator by the United States Postal Service
10 with a forwarding address for the recipient, the Claims Administrator shall re-mail
11 the Notice Packet to that address within five (5) business days, the Notice Packet
12 will be deemed mailed as of the date of re-mailing, the forwarding address shall be
13 deemed the updated address for that Class Member, and the Settlement Class
14 Member must return a Claim Form by the Claims Period Deadline or within fifteen
15 (15) calendar days from the date of re-mailing, whichever is later, in order to
16 participate in the Settlement. In the event that subsequent to the first mailing of a
17 Notice Packet, the Notice Packet is returned to the Claims Administrator by the
18 United States Postal Service because the address of the recipient is no longer valid,
19 the Claims Administrator shall engage in reasonable address search measures in an
20 effort to ascertain the current address of the particular Class Member in question
21 and, if such an address is ascertained, the Claims Administrator shall re-mail the
22 Notice Packet within five (5) business days of receiving such information, the
23 Notice Packet will be deemed mailed as of that date of re-mailing, the newly
24 obtained address shall be deemed the updated address for that Class Member, and
25 the Class Member must return a Qualifying Claim Form by the Claims Period
26 Deadline or within fifteen (15) days from the date of re-mailing, whichever is later,
27 in order to participate in the Settlement. If no updated address is obtained for that

1 Class Member from a Notice Packet returned by the United States Postal Service,
2 no Notice Packet shall be re-mailed. If applicable, the Notice Packet shall be
3 deemed received when it is mailed for the second time under this paragraph.

4 E. Claims Period. Class Members shall have sixty (60) calendar days
5 from the date of mailing of the Class Notice to return a valid Claim Form (the
6 “Claims Period”) to the Claims Administrator. If the 60th day falls on a Sunday or
7 holiday, the deadline to return Claim Forms will be the next business day that is
8 not a Sunday or holiday. Class Members who return valid, signed Claim Forms
9 bearing a postmark or other proof of transmission within the Claims Period shall be
10 deemed Qualified Claimants under the Settlement. Qualified Claimants will
11 receive their allocation from the Adjusted Gross Fund agreed upon and calculated
12 pursuant to the terms of this Joint Stipulation. Claim Forms bearing a postmark
13 after the last day of the Claims Period will be considered late claims. Class
14 Members who return late Claim Forms will not be considered Qualified Claimants,
15 unless agreed to by the Parties, but will still be bound by the Class Member
16 Released Claims.

17 F. Class Member’s Data.

18 Group A. In calculating each individual Class Member’s share of the
19 Settlement, where MCS has records, MCS' records regarding the number of
20 Inspections of Class Members shall be presumed to be correct. Class Members
21 challenging those records must provide the names of the Vendor(s) through which
22 they performed MCS Inspections, and the number of Inspections they believe they
23 performed during the Class Period. They must also provide Proof of Earnings such
24 as periodic pay statements they received from the vendor(s) that engaged them
25 during the period February 4, 2010. Preliminary Approval that evidence payments
26 for MCS-related inspections in California, along with a signed statement
27 estimating the percentage of the earnings on the proof that they are providing

1 attributable to MCS-related inspections performed by them personally.

2 Group B. In calculating each individual Class Member's share of the
3 Settlement, where MCS has records that a Class Member performed applicable
4 Inspections, but lacks information as to the total number of Inspections performed
5 during the Class Period, an estimated average of MCS inspections per class
6 member performed during the Class Period February 4, 2010 - Preliminary
7 Approval will be attributed to the Class Member. Class members in this category
8 who claim they performed more inspections than the average, and choose to
9 challenge this allocation, must provide the names of the Vendor(s) through which
10 they performed MCS Inspections, and the number of Inspections they believe they
11 performed during the Class Period. They must provide Proof of Earnings such as
12 periodic pay statements they received from vendor(s) during the Class Period that
13 evidence payments for MCS-related inspections in California, along with a
14 statement estimating the percentage of the earnings on the proof that they are
15 providing attributable to MCS-related inspections performed by them personally.

16 Group C. Persons who claim Class Membership for whom MCS has no records
17 will not receive a Settlement share absent proof acceptable to the administrator
18 establishing that they personally performed MCS Inspections in California during
19 the Class Period, February 4, 2010 - Preliminary Approval. They must provide for
20 the years during the class period that they claim they personally performed MCS
21 inspections, 1099 and/or W-2 statements from the MCS vendors that paid them,
22 with a signed statement as to the percentage of those earnings that were attributable
23 to MCS inspections they personally performed in California. They must also
24 provide an estimate of the number of Inspections they performed with payment
25 statements they received from the vendors during the applicable period.

26 The Claims Administrator will investigate challenges to Inspection allocations in
27 Groups A and B, and all claims made by persons in Group C. As part of the

1 investigation, the Administrator may consult with MCS. The Administrator's
2 determination of the proper number of inspections attributable to any one person
3 shall be binding and Class Members will be bound by the release even if they do
4 not agree with the Claim Administrator's determination. In no case will challenges
5 result in a payment by Defendant in excess of the Gross Settlement Fund.

6 G. Opt-Outs/Requests for Exclusion from the Settlement. Class
7 Members who wish to “opt-out” of and be excluded from the Settlement must
8 submit a written Request for Exclusion from the Settlement bearing a post-mark
9 with a date within the Claims Period. The Request for Exclusion must: (1) state
10 the Class Member's name, address, telephone number and the last four digits of
11 his/her Social Security number, (2) state the case name as follows: *Weinstein v.*
12 *MCS*, (3) state that the Class Member requests exclusion from or “opts out” of the
13 Settlement or words to that effect, (4) be dated, and (5) be signed by the Class
14 Member. Requests for Exclusion must be made individually and cannot be made
15 on behalf of a group or other Class Members. If a Class Member submits a
16 deficient request to opt-out, the Claims Administrator shall notify the Class
17 Member of the deficiency within five (5) business days of receipt. The Class
18 Member shall have fifteen (15) days from notice of the deficiencies to cure said
19 deficiencies, at which point his or her Request for Exclusion will be rejected if not
20 received. Mailing a notice of the deficiencies by the Claims Administrator is
21 sufficient if no other contact information is provided by the Class Member. Class
22 Members submitting untimely or deficient requests to opt-out shall be bound by
23 the Settlement and the Class Member Released Claims but will not be considered
24 Qualified Claimants for Settlement Payment distribution purposes unless they have
25 timely returned a valid Claim Form. If a Class Member submits both a Claim
26 Form and a Request for Exclusion, the Claims Administrator shall notify the Class
27 Member of the deficiency within five (5) business days of receipt, and the Class

1 Member shall have until fifteen (15) days from notification to clarify his or her
2 submission. Mailing a notice of the deficiency by the Claims Administrator is
3 sufficient if no other contact information is provided by the Class Member. Unless
4 a Class Member who files both a timely Request for Exclusion and a Claim form
5 responds that he or she wishes to be excluded from the Settlement, such Class
6 Member shall be deemed to be bound by this Settlement and the Claim form will
7 be operative. Neither the Parties nor any of their counsel will solicit, encourage, or
8 advise any Class member to submit a Request for Exclusion. Class Members who
9 opt out of the settlement are prohibited from objecting to the settlement.

10 H. Claim Form for the Class Representative. The Class Representative
11 shall automatically be deemed a Qualified Claimant and need not submit a Claim
12 Form to claim his share of the Net Settlement Amount.

13 I. Releases. Upon the Effective Date, all Class Members, including
14 Qualified Claimants and those Class Members who do not return a valid Claim
15 Form and do not return a valid Request for Exclusion within the Claims Period and
16 thus do not receive their Settlement Payment allocation, shall be deemed to have
17 fully, finally and forever released, settled, compromised, relinquished and
18 discharged any and all Released Claims against the Released Parties as set forth in
19 this Joint Stipulation.

20 J. Objections to Settlement. Class Members who do not opt out of the
21 Settlement Class may object to the Settlement by mailing written objections to the
22 Settlement Claims Administrator no later than sixty (60) calendar days from the
23 mailing of the Notice Packet. This deadline applies notwithstanding any argument
24 regarding alleged late receipt or non-receipt of the Notice Packet. Any Class
25 Member who fails to timely mail written objections in this manner shall be deemed
26 to have waived any objections and shall be foreclosed from making any objection
27 to the Settlement and from filing any appeal from any order granting final approval

1 issued by the Court. Class Members who timely and validly return a Request for
2 Exclusion from the Settlement shall have no right to object and shall be foreclosed
3 from making any objection to the Settlement. The Settlement Claims
4 Administrator shall promptly provide any such objections to Class Counsel and
5 Defendant's Counsel, who in turn shall file them with the Court in connection with
6 the final approval motion. Written objections must include: (a) the name of the
7 Action, (b) the full name, address, and telephone number of the person objecting;
8 and (c) a written explanation setting forth the specific basis or reason, if any, for
9 each objection, including any legal and factual support the objector wishes to bring
10 to the Court's attention and any evidence the objector wishes to introduce in
11 support of the objection(s). Any Class Member wishing to appear at the final
12 approval hearing to object to the Settlement shall expressly indicate this in his or
13 her written objections. The making of an objection to this Settlement does not
14 affect the Class Members' ability to return a valid Claim Form and become a
15 Qualified Claimant if the Settlement is finally approved.

16 K. Settlement Payments. Within seven (7) days after the Effective Date,
17 the Claims Administrator will provide the Parties with an accounting of the
18 amounts to be paid by Defendant pursuant to the terms of the Settlement. Within
19 twenty-one (21) days after the Claims Administrator provides the Parties with the
20 accounting of amounts to be paid, Defendant shall pay to the Claims Administrator
21 the amount necessary to fund the Qualified Settlement Fund as follows: (1) the
22 total aggregate of the Settlement Payments to be paid to Qualified Claimants, (2)
23 the Claims Administration Costs incurred and reasonably anticipated to be incurred
24 by the Claims Administrator and as approved by the Court, (3) the Court-approved
25 Incentive Award Payment to the Class Representative, (4) the Court-approved
26 attorneys' fees for Class Counsel, (5) the Court-approved litigation costs of Class
27 Counsel, (6) the PAGA payment to the LWDA, and (7) any employer share of

1 taxes to be paid to governmental entities as part of the wage component of the
2 settlement. Defendant will wire the funds requested by the Claims Administrator
3 into the Qualified Settlement Fund set up and controlled by the Claims
4 Administrator and the total amount of all funds wired into the Qualified Settlement
5 Fund shall not exceed the Maximum Settlement Amount.

6 V. MISCELLANEOUS PROVISIONS

7 A. Drafting. The Parties hereto agree that the terms and conditions of
8 this Agreement are the result of lengthy, intensive, adversarial negotiations
9 between the Parties and that neither Party shall be considered the “drafter” of this
10 Joint Stipulation for purposes of having terms construed against that Party.

11 B. Class Information Confidential. The names, addresses, telephone
12 numbers, and social security numbers of Class Members shall be kept strictly
13 confidential by the Claims Administrator.

14 C. Publicity. The Parties and their counsel agree that they will not
15 initiate or have any contact with the press, respond to any press inquiry or have any
16 communication with the press about this Action or Settlement.

17 D. Cooperation. The Parties agree to cooperate fully with one another to
18 accomplish and implement the terms of this Settlement. The Parties to this Joint
19 Stipulation shall use their best efforts, including all efforts contemplated by this
20 Joint Stipulation and any other efforts that may become necessary by Court order,
21 or otherwise, to effectuate this Joint Stipulation and the terms set forth herein.

22 E. No Retaliation. Defendant understands its legal obligation not to
23 retaliate against Class Members for their participation and/or election to participate
24 in the benefits to be afforded any of them by the Settlement.

25 F. Extensions of Time. If either Party cannot reasonably comply with an
26 obligation under this Joint Stipulation by the deadline set forth herein applicable to
27 that obligation, that Party may apply to the Court for a reasonable extension of

1 time to fulfill that obligation. Consent to such a request for an extension will not
2 be unreasonably withheld by the other Party.

3 G. Notices. Unless otherwise specifically provided herein, all notices,
4 demands, or other communications given hereunder shall be in writing and shall be
5 deemed to have been duly given as of the third business day after mailing by
6 United States certified mail, return receipt requested, addressed as follows:

7 To Class/Class Representative:

8 Dennis F. Moss
9 Jeremy F. Bollinger
10 Moss Bollinger, LLP
11 15300 Ventura Blvd., Suite 207
12 Sherman Oaks, CA 91403

13 To Defendant:

14 Liat Yamini
15 Jones Day
16 555 S. Flower Street, 50th Floor
17 Los Angeles, California 90071

18 H. Entire Agreement. This Agreement constitutes the entire agreement
19 between the Settling Parties hereto and no representations, warranties, or
20 inducements have been made to any Party concerning the Joint Stipulation or its
21 exhibits other than the representations, warranties, and covenants contained and
22 memorialized in such documents. Except as otherwise provided herein, each Party
23 shall bear his or its own costs. Defendant's and Plaintiff's complete obligations
24 are detailed herein.

25 I. Exhibits and Headings. The terms of this Agreement include the
26 terms set forth in any attached Exhibits, which are incorporated by this reference as
27 though fully set forth herein. The Exhibits to this Agreement are an integral part of
28 the Agreement. The descriptive headings of any paragraphs or sections of this

1 Agreement are inserted for convenience of reference only.

2 J. Modification. This Agreement may not be changed, altered, or
3 modified, except in writing signed by counsel for the Parties hereto and approved
4 by the Court. This Agreement may not be discharged except by performance in
5 accordance with its terms or by a writing signed by the Parties hereto. This Joint
6 Stipulation shall be binding upon and inure to the benefit of the Parties hereto and
7 their respective heirs, trustees, executors, administrators, successors, and assigns.

8 K. Interim Stay of Action. The Parties agree to stay and to request that
9 the Court stay all proceedings in the Action, except such proceedings necessary to
10 implement and complete the Agreement and enter the Final Order and Judgment.

11 L. No Prior Assignments. The Parties and their counsel represent,
12 covenant, and warrant that they have not directly or indirectly assigned,
13 transferred, encumbered, or purported to assign, transfer, or encumber to any
14 person or entity any portion of any liability, claim, demand, action, cause of action
15 or right herein released and discharged.

16 M. Binding on Successors and Assigns. This Agreement shall be binding
17 upon, and inure to the benefit of, the successors and assigns of the Parties.

18 N. This Settlement is Fair, Adequate and Reasonable. The Parties
19 believe the Settlement is a fair, adequate, and reasonable settlement of the Action
20 and have arrived at the Settlement after arm's-length negotiations and in the
21 context of adversarial litigation, taking into account all relevant factors, present
22 and potential. The Parties further acknowledge that they are each represented by
23 competent counsel and they have had an opportunity to consult with their counsel
24 regarding the fairness and reasonableness of this Settlement.

25 O. Invalidity of Any Provision. Before declaring any term or provision
26 of this Joint Stipulation invalid, the Parties request that the Court first attempt to
27 construe the terms or provisions valid to the fullest extent possible consistent with

1 applicable precedents so as to define all provisions of this Joint Stipulation as valid
2 and enforceable.

3 P. Waiver of Certain Appeals. The Parties agree to waive appeals and to
4 stipulate to class certification for purposes of this Settlement only; except that
5 Plaintiff or Class Counsel may appeal any reduction in the Attorneys' Fees and
6 Costs below the amount requested from the Court, and either party may appeal any
7 court order that materially alters the Settlement's terms.

8 Q. Binding Nature of Notice of Class Action Settlement. It is agreed that
9 because the Class Members are so numerous, it is impossible or impractical to
10 have each Class Member execute the Agreement. The Class Notice shall advise all
11 Class Members of the binding nature of the Settlement, and the release of Released
12 Class Member Claims and shall have the same force and effect as if this Joint
13 Stipulation were executed by each Participating Class Member.

14 R. Waiver. No waiver of any condition or covenant contained in this
15 Agreement or failure to exercise a right or remedy by any of the Parties hereto will
16 be considered to imply or constitute a further waiver by such party of the same or
17 any other condition, covenant, right or remedy.

18 S. Representation by Counsel. The Parties acknowledge that they have
19 been represented by counsel throughout all negotiations that preceded the
20 execution of this Joint Stipulation, and that this Joint Stipulation has been executed
21 with the consent and advice of counsel, and reviewed in full. Further, Plaintiff and
22 Class Counsel warrant and represent that there are no liens on the Settlement
23 Agreement.

24 T. All terms subject to final court approval. All amounts and procedures
25 described in this Joint Stipulation are subject to final court approval.

26 U. Governing Law. The rights and obligations of the Parties hereunder
27 shall be construed and enforced in accordance with, and shall be governed by, the

1 laws of the State of California, without regard to principles of conflict of laws.

2 V. Severability. If any provision of this Joint Stipulation or the
3 application thereof is held invalid, such invalidation shall not affect other
4 provisions or applications of this Joint Stipulation and to this end the provisions of
5 this Joint Stipulation are declared to be severable

6 W. Counterparts. Because the proposed Class has not yet been certified,
7 and the members of the proposed Class are numerous, the Parties agree that it is
8 impossible or impractical to have each Class Member sign this Joint Stipulation. It
9 is agreed that, for purposes of seeking Court approval of the Settlement, this Joint
10 Stipulation may be executed on behalf of the proposed Class by Class Counsel and
11 the Class Representative. This Joint Stipulation shall become effective upon its
12 execution by all of the undersigned. The Parties may execute this Joint Stipulation
13 in any number of counterparts, and a facsimile signature shall have the same force
14 and effect as an original.

15 X. Court Jurisdiction. The Parties agree that upon the occurrence of the
16 Effective Date, this Agreement shall be enforceable by the Court and the Court
17 shall retain jurisdiction over the Parties and the Class Members to enforce the
18 terms, conditions and obligations of the Agreement.

19 IN WITNESS WHEREOF, this Joint Stipulation is executed by the Parties
20 and their duly authorized attorneys, as of the day and year herein set forth.

21
22 DATE: January ____, 2018

23 **LAWRENCE WEINSTEIN**

24
25 DATE: January ____, 2018

26 **MORTGAGE CONTRACTING
SERVICES LLC**

27 By: _____

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Print Name: _____

Title: _____

APPROVED AS TO FORM AND CONTENT:

Date: January ____, 2018

JONES DAY

By: _____
Rick Bergstrom, Esq.

Attorneys for Mortgage Contracting
Services LLC

Date: January ____, 2018

MOSS BOLLINGER LLP

By: _____
Dennis F. Moss, Esq.

Attorneys for Plaintiff
and Class Members