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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES – SPRING STREET
11

12 JOE ASCENCIO, individually, and on behalf of
13 all others similarly situated,

14 *Plaintiff,*

15 vs.

16 SMART SYSTEMS TECHNOLOGIES, INC., a
17 California corporation; and DOES 1 through 10,
18 inclusive,

19 *Defendants.*

Case No.: BC696187

Hon. Kenneth R. Freeman, Dept. SS-14

CLASS ACTION

**SECOND AMENDED JOINT STIPULATION
OF CLASS ACTION SETTLEMENT**

Action Filed: March 2, 2018

Trial date: Not set

1 **JOINT STIPULATION OF CLASS ACTION SETTLEMENT**

2 This Second Amended Joint Stipulation of Class Action Settlement (“Joint Stipulation of
3 Settlement” or “Settlement”) is made and entered into by and between Plaintiff Joe Ascencio (“Plaintiff”
4 or “Class Representative”), individually and on behalf of all others similarly situated, and Defendant Smart
5 Systems Technologies, Inc. (“Defendant”). Plaintiff and Defendant are collectively referred to herein as
6 “the Parties.”

7 THE PARTIES STIPULATE AND AGREE as follows:

8 1. On March 2, 2018, Plaintiff filed a putative class action civil complaint against Defendant
9 in the Superior Court of California, County of Los Angeles. The Complaint alleged the following causes
10 of action under California law: (1) Failure to Pay Minimum and Straight Time Wages [Lab. Code §§ 204,
11 1194, 1194.2, and 1197]; (2) Failure to Pay Overtime Compensation [Lab. Code §§ 1194 and 1198]; (3)
12 Failure to Provide Meal Periods [Lab. Code §§ 226.7, 512]; (4) Failure to Authorize and Permit Rest
13 Breaks [Lab. Code §§ 226.7]; (5) Failure to Indemnify Necessary Business Expenses [Lab. Code § 2802];
14 (6) Failure to Pay Vested Vacation Wages at Termination [Lab. Code § 227.3]; (7) Failure to Timely Pay
15 Final Wages at Termination [Lab. Code §§ 201-203]; (8) Failure to Provide Accurate Itemized Wage
16 Statements [Lab. Code § 226]; and (9) Unfair Business Practices [Bus. & Prof. Code §§ 17200, et seq.].
17 In the Complaint, Plaintiff seeks to represent all persons that worked for any Defendant in California as a
18 technician or similar position, or were paid on a piece-rate basis, at any time during the period beginning
19 four years before the filing of the initial complaint in this action and ending when notice to the Class is
20 sent.

21 2. On June 29, 2018, Plaintiff filed a First Amended Complaint (sometimes referred to herein
22 as the “Complaint”) that added a claim for Civil Penalties under the Labor Code Private Attorneys General
23 Act of 2004 [Lab. Code § 2699, et seq.].

24 3. Defendant has answered the First Amended Complaint.

25 4. For purposes of this Settlement, the “Class Period” is March 2, 2014 through April 1,
26 2019.

27 5. For purposes of this Settlement, the “Class” or “Class Members” consist of: All current
28 and former non-exempt or piece-rate paid employees of Defendant employed in California as Production

1 Installers (“Covered Positions”) during the Class Period. “Settlement Class Members” are those Class
2 Members who do not submit timely exclusion requests to the Settlement Administrator. Defendant’s best
3 estimate is that the Class includes approximately 111 individuals.

4 6. For purposes of this Settlement, “Class Counsel” means MOON & YANG, APC.

5 7. For purposes of this Settlement, “Covered Workweeks” means the number of workweeks a
6 Class Member worked at Defendant’s facilities in California during the Class Period.

7 8. For purposes of the Settlement, “Defendant’s Counsel” means BREMER WHYTE
8 BROWN & O’MEARA, LLP.

9 9. Solely for purposes of settling this case, the Parties and their respective counsel stipulate
10 and agree that the requisites for establishing class certification with respect to the Class Members have
11 been met and are met. More specifically, the Parties stipulate and agree that:

12 (a) The Class is ascertainable and so numerous as to make it impracticable to join all
13 Class Members.

14 (b) There are common questions of law and fact including, but not limited to, the
15 following:

- 16 1) Whether or not Defendant paid proper wages to the Class;
- 17 2) Whether or not Defendant provided meal periods to the Class;
- 18 3) Whether or not Defendant provided rest periods to the Class;
- 19 4) Whether or not Defendant paid compensation timely upon separation of
20 employment to former Class Members;
- 21 5) Whether or not Defendant paid compensation timely throughout Class
22 Members’ employment;
- 23 6) Whether or not Defendant provided accurate itemized statements to the
24 Class;
- 25 7) Whether or not waiting-time penalties are available to the Class for
26 violation of California Labor Code § 203;
- 27 8) Whether or not Defendant maintained requisite records;
- 28 9) Whether or not Defendant paid proper meal period pay or rest period pay to

1 the Class;

2 10) Whether or not Defendant engaged in unlawful or unfair business practices
3 affecting the Class in violation of California Business and Professions
4 Code §§ 17200-17208; and,

5 11) Whether or not Plaintiff and the Class are entitled to penalties pursuant to
6 PAGA.

7 (c) Plaintiff's claims are typical of the claims of the Class Members.

8 (d) Plaintiff and Class Counsel will fairly and adequately protect the interests of the
9 Class.

10 (e) The prosecution of separate actions by individual members of the Class would
11 create the risk of inconsistent or varying adjudications, which would establish
12 incompatible standards of conduct.

13 (f) With respect to the Class, questions of law and fact common to the members of the
14 Class predominate over any questions affecting any individual member in such
15 Class, and that a class action is superior to other available means for the fair and
16 efficient adjudication of the controversy.

17 10. Defendant denies any liability or wrongdoing of any kind whatsoever associated with the
18 claims alleged in the Complaint, and Defendant further denies that, for any purpose other than settling this
19 lawsuit, the action is appropriate for class or representative treatment. With respect to Plaintiff's claims,
20 Defendant contends, among other things, that Plaintiff and the Class Members have been paid proper
21 wages, have been provided meal periods, have been provided rest periods, have been paid timely wages
22 upon separation of employment, and have been provided with accurate itemized wage statements.
23 Defendant contends, among other things, that they have complied at all times with the California Labor
24 Code and the applicable Wage Orders of the Industrial Welfare Commission. Furthermore, with respect to
25 all claims, Defendant contends that they have complied at all times with the California Business and
26 Professions Code.

27 11. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge
28 all disputes and claims arising from or related to the Complaint.

1 12. Class Counsel has conducted a thorough investigation into the facts of this class action
2 case, including an extensive review of relevant documents, and has diligently pursued an investigation of
3 the claims of the Class against Defendant. Based on its own independent investigation and evaluation,
4 Class Counsel is of the opinion that the Settlement with Defendant for the consideration and on the terms
5 set forth in this Joint Stipulation of Settlement is fair, reasonable, and adequate and is in the best interest of
6 the Class in light of all known facts and circumstances, including the risk of significant delay, the risk the
7 Class will not be certified by the Court, defenses asserted by Defendant, and numerous potential appellate
8 issues. Defendant and Defendant’s Counsel also agree that the Settlement is fair and in the best interest of
9 the Class.

10 13. The Parties agree to cooperate and take all steps necessary and appropriate to obtain
11 preliminary and final approval of this settlement.

12 14. This Settlement provides for a non-reversionary process requiring Defendant to issue
13 payments to Class Members according to a specified formula based on Covered Workweeks. **The**
14 **maximum total payment under the Settlement, including all attorney’s fees and costs, the service**
15 **payment to the named Plaintiff, the costs of settlement administration, and any other payments**
16 **provided by this Settlement, is \$600,000 (“Gross Settlement Amount”), except that, to the extent**
17 **that any portions of the Class Members’ settlement proceeds constitute wages, Defendant will be**
18 **separately responsible for any employer payroll taxes required by law, including the employer**
19 **FICA, FUTA, and SDI contributions.** Except for any employer payroll taxes, it is understood and
20 agreed that Defendant’s maximum total liability under this Settlement shall not exceed the Gross
21 Settlement Amount. If as of the end of the Covered period the actual Class size is more than 10% of the
22 estimated Class Size of 111 persons (i.e., 123 or more Class Members) the Gross Settlement Amount shall
23 be increased by the average gross payout to individual Class Members based on 123 Class Members. For
24 example purposes only, if the average payout based on 111 Class Members is \$1,000 per Class Member
25 and there are 12 additional Class Members (123 total Class Members), Defendant would have to increase
26 the Gross Settlement Amount by \$12,000. The Gross Settlement Amount will not be reduced due to
27 Defendant’s estimate.
28

1 **TERMS OF SETTLEMENT**

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

4 (a) It is agreed by and among the Class and Defendant that this case and any claims,
5 damages, or causes of action arising out of the disputes which are the subject of
6 this case, be settled and compromised as between the Class and Defendant, subject
7 to the terms and conditions set forth in this Settlement and the approval of the
8 Court.

9 (b) Effective Date: The terms of settlement embodied in this Settlement shall become
10 effective when all of the following events have occurred: (i) this Joint Stipulation
11 of Settlement has been executed by all Parties and their respective counsel; (ii) the
12 Court has given preliminary approval to the Settlement; (iii) the notice has been
13 given to the Class, providing them with an opportunity to dispute information
14 contained in the Notices of Settlement Payment, to opt out of the Settlement, or to
15 object to the Settlement; (iv) the Court has held a final approval hearing and
16 entered a final order and judgment certifying the Class and approving this
17 Settlement; (v) any objection by the LWDA to the amount allocated to the PAGA
18 claim has been resolved; and (vi) the later of the following events: the date final
19 approval is granted if there are no objections to the settlement; sixty-five (65) days
20 following notice of entry of the Court’s final order approving the Settlement if
21 there are any objections; or if any appeal, writ or other appellate proceeding
22 opposing this Settlement has been filed within sixty-five (65) days following notice
23 of entry of the Court’s final order approving the Settlement, then when any appeal,
24 writ or other appellate proceeding opposing the Settlement has been resolved
25 finally and conclusively with no right to pursue further remedies or relief. In this
26 regard, it is the intention of the Parties that the Settlement shall not become
27 effective until the Court’s order approving the Settlement is completely final, and
28 there is no further recourse by an appellant or objector who seeks to contest the

1 Settlement.

2 (c) Net Settlement Amount: The Net Settlement Amount shall be calculated by
3 deducting from the Gross Settlement Amount (\$600,000) the following sums,
4 subject to approval by the Court: (1) attorney's fees (not to exceed 33 1/3% of the
5 Gross Settlement Amount, or \$200,000); (2) reasonable litigation costs (not to
6 exceed \$10,000); (3) a service payment for Plaintiff and Class Representative (not
7 to exceed \$5,000);(4) PAGA penalties paid to the Labor and Workforce
8 Development Agency ("LWDA") in the amount of \$7,500; and (5) costs of claims
9 administration (estimated not to exceed \$15,000). Settlement payments to the
10 Class Members will be calculated by the Settlement Administrator and paid out of
11 the Net Settlement Amount as set forth below.

12 (d) Payroll Taxes and Required Withholdings: To the extent that any portions of the
13 Class Members' settlement proceeds constitute wages, Defendant will be
14 separately responsible for any employer payroll taxes required by law, including
15 the employer FICA, FUTA, and SDI contributions. As described below, the
16 Settlement Administrator will withhold all employees' share of payroll taxes and
17 prepare Form W-2 for each employee. Except for any employer payroll taxes, it is
18 understood and agreed that Defendant's maximum total liability under this
19 Settlement shall not exceed the Gross Settlement Amount.

20 (e) Settlement Payments: Settlement Payments will be paid out of the Net Settlement
21 Amount. Each Class Member will be paid a pro-rata share of the Net Settlement
22 Amount, as calculated by the Settlement Administrator. The pro-rata share will be
23 determined by comparing the individual Settlement Class Member's Covered
24 Workweeks employed during the Class Period in California to the total Covered
25 Workweeks of all the Settlement Class Members during the Class Period as
26 follows: [Workweeks worked by a Settlement Class Member] ÷ [Sum of all
27 Covered Workweeks worked by all Settlement Class Members] × [Net Settlement
28 Amount] = individual Settlement Payment for a Settlement Class Member. Class

1 Members will be paid Settlement Payments based on the shares as calculated by
2 the Settlement Administrator. Settlement Payments in the appropriate amounts
3 will be distributed by the Settlement Administrator by mail to the Class Members.
4 Un-cashed, unclaimed or abandoned checks, shall be transmitted to the California
5 Controller's Office, as set forth below.

6 (f) Allocation of Settlement Payments: The Parties have agreed that all Settlement
7 Payments will be allocated as follows: 20% to wages and 80% to penalties and
8 interest, of which \$10,000 of that amount will be attributed specifically to penalties
9 under the PAGA (25% [\$2,500.00] will go to the Class, 75% [\$7,500.00] will be
10 sent to the LWDA). Appropriate federal, state and local withholding taxes will be
11 taken out of the wage allocations, and each Class Member will receive an IRS
12 Form W-2 with respect to this portion of the Settlement Payment. The Settlement
13 Administrator shall be responsible for withholding all employees' share of payroll
14 taxes and preparing the Form W-2 for each Class Member. The employer's share
15 of payroll taxes and other required withholdings will be separately paid as set forth
16 above, including but not limited to the Defendant's FICA and FUTA contributions,
17 based on the payment of claims to the Class Members. The Settlement
18 Administrator shall be responsible for preparing IRS Forms 1099 and issuing to
19 each Class Member, reflecting the payments for penalties and interest. Class
20 Members are responsible to pay appropriate taxes due on the Settlement Payments
21 they receive. To the extent required by law, IRS Forms 1099 and W-2 will be
22 issued to each Class Member with respect to such payments.

23 (g) Settlement Payments Do Not Give Rise to Additional Benefits: All Settlement
24 Payments to individual Class Members shall be deemed to be paid to such Class
25 Member solely in the year in which such payments actually are received by the
26 Class Member. It is expressly understood and agreed that the receipt of such
27 Settlement Payments will not entitle any Class Member to additional compensation
28 or benefits under any company bonus, contest or other compensation or benefit

1 plan or agreement in place during the period covered by the Settlement, nor will it
2 entitle any Class Member to any increased retirement, 401(k) benefits or matching
3 benefits or deferred compensation benefits. It is the intent that the Settlement
4 Payments provided for in this Settlement are the sole payments to be made by
5 Defendant to the Class Members, and that the Class Members are not entitled to
6 any new or additional compensation or benefits as a result of having received the
7 Settlement Payments (notwithstanding any contrary language or agreement in any
8 benefit or compensation plan document that might have been in effect during the
9 period covered by this Settlement).

10 (h) Attorney's Fees and Costs: Subject to approval by the Court, Defendant will not
11 object to Class Counsel's application for attorney's fees not to exceed 33 1/3% of
12 the Gross Settlement Amount (\$200,000) and litigation costs not to exceed
13 \$10,000.

14 (i) Service Payments for Class Representative: Subject to Court approval, and in
15 exchange for a general release, Defendant will not object to Class Counsel's
16 application for a Service Payment of up to \$5,000 for Plaintiff for his service as the
17 Class Representative. It is understood that this Service Payment is in addition to the
18 individual Settlement Payments to which the Class Representative is entitled to
19 along with the other Class Members. Defendant or the Settlement Administrator
20 will issue an IRS Form 1099 for the Service Payments to the Class Representative.
21 The Class Representatives will be individually responsible for correctly
22 characterizing this compensation on their personal income tax returns for tax
23 purposes and for paying any taxes on the amounts received. Should the Court
24 approve a Service Payment to a Class Representative in an amount less than that
25 set forth above, the difference between the lesser amount(s) approved by the Court
26 and the Service Payment amount(s) set forth above shall be added to the Net
27 Settlement Amount. The Settlement Administrator will pay the court-approved
28 Class Representative Service Payment within twenty (20) calendar days of the

1 Effective Date of the Settlement.

- 2 (j) Settlement Administrator: The Settlement Administrator will be ILYM GROUP,
3 INC. or such other settlement administrator as may be mutually agreeable to the
4 Parties and approved by the Court. Claims administration costs are estimated not
5 to exceed \$15,000 (and are likely to be substantially less than that amount). The
6 costs of the Settlement Administrator for work done shall be paid regardless of the
7 outcome of this Settlement.
- 8 (k) Funding of Settlement Account: Defendant will fund the settlement account within
9 seven calendar days of the Effective Date of the Settlement.
- 10 (l) Mailing of Settlement Payments: The Settlement Administrator shall cause the
11 Settlement Payments to be mailed to the Class Members within twenty (20)
12 calendar days of the Effective Date of the Settlement.
- 13 (m) Notice of Settlement Payment: For each Class Member in the Settlement Class,
14 there will be pre-printed information on the Notice of Settlement Payment mailed
15 to the Class Member, based on Defendant's records, stating the Class Member's
16 Covered Workweeks during the Class Period and the estimated Settlement
17 Payment under the Settlement. The Notice of Settlement Payment will be printed
18 in both English and Spanish. The pre-printed information based on Defendant's
19 records shall be presumed to be correct. A Class Member may dispute the pre-
20 printed information on the Notice of Settlement Payment as to his or her Covered
21 Workweeks during the Class Period. Class Members have sixty (60) calendar days
22 from the original date of mailing the Notice of Settlement Payment to dispute the
23 information on the Notice of Settlement Payment as to his or her Covered
24 Workweeks. Unless a disputing class member submits documentary evidence in
25 support of his or her dispute, the records of the Defendant will be determinative.
- 26 (n) Resolution of Disputes: If a Class Member disputes the accuracy of Defendant's
27 records, and the Parties' counsel cannot resolve the dispute informally, the matter
28 will be referred to the Settlement Administrator. The Settlement Administrator

1 will review Defendant's records and any information or documents submitted by
2 the Class Member and issue a non-appealable decision regarding the dispute. The
3 Class Member must submit information or documents supporting his or her
4 position to the Settlement Administrator prior to the expiration of the 60-day
5 claims period. Information or documents submitted after the expiration of the 60-
6 day claims period will not be considered by the Settlement Administrator, unless
7 otherwise agreed to by the Parties.

- 8 (o) Right Of Class Member To Request Exclusion From The Settlement: Any Class
9 Member may request to be excluded from the Class by mailing a "Request for
10 Exclusion from Settlement" within sixty (60) calendar days from the original date
11 of the mailing of the Notice of Class Action Settlement by the Settlement
12 Administrator, stating, as follows or in substantially similar terms:

13 "I WISH TO BE EXCLUDED FROM THE CLASS IN THE
14 *ASCENCIO V. SMART SYSTEMS TECHNOLOGIES, INC.*
15 CLASS ACTION LAWSUIT, LOS ANGELES COUNTY
16 SUPERIOR COURT CASE NO. BC696187. I
UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM
THE CLASS, I WILL NOT RECEIVE ANY MONEY FROM
THE SETTLEMENT."

17 Any Request for Exclusion must include the name, address, telephone number and
18 signature of the Class Member requesting exclusion. Any such request must be
19 made in accordance with the terms of the Notice of Class Action Settlement. Any
20 Class Member who timely requests exclusion in compliance with these
21 requirements (i) shall not have any rights under this Settlement; (ii) shall not be
22 entitled to receive any Settlement Payments under this Settlement; and (iii) shall
23 not be bound by this Settlement or the Court's Order and Final Judgment.

- 24 (p) Right of Class Member To Object To The Settlement: Any Class Member may
25 object to the Settlement. To object, the Class Member may (1) appear in person at
26 the Final Approval Hearing to explain any objection, (2) have an attorney object
27 for the Class Member, or (3) submit a simple written brief or statement of objection
28 to the Settlement Administrator. Upon receipt, the Settlement Administrator will

1 transmit a copy of any Notice of Objection it receives to the attorneys for the
2 Parties. If any Class Member chooses to submit a written objection, the written
3 objection should contain sufficient information to confirm the identity of the
4 objector and the basis of the objection, including (1) the full name of the Settlement
5 Class Member; (2) the signature of the Settlement Class Member; (3) the grounds
6 for the objection; and (4) be postmarked within the Response Deadline to permit
7 adequate time for processing and review by the Parties of the written statement or
8 objection. Class Counsel shall ensure that any written objections are transmitted to
9 the Court for the Court's review (either by Class Counsel or as an attachment to
10 declaration from the Settlement Administrator). Regardless of the form, an
11 objection alone will not satisfy the requirement that a Settlement Class Member
12 must either make a timely complaint in intervention before final judgment or by
13 file a motion to set aside and vacate the class judgment under Code of Civil
14 Procedure § 663 to have standing to appeal entry of judgment approving this
15 Settlement, as is required under the California Supreme Court decision of
16 *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018). A Class Member
17 who does not object prior to or at the Final Approval Hearing, will be deemed to
18 have waived any objections and will be foreclosed from making any objections
19 (whether at the Final Approval Hearing, by appeal, or otherwise) to the Settlement.
20 If the objecting Class Member does not formally intervene in the action or move to
21 set aside any judgment and/or the Court rejects the Class Member's objection, the
22 Class Member will still be bound by the terms of this Agreement. Class Counsel
23 and Defendant's Counsel may, at least five (5) days (or some other number of days
24 as the Court shall specify) before the final approval hearing, file responses to any
25 written objections submitted to the Court.

SETTLEMENT ADMINISTRATION

26
27 16. Subject to the Court's approval, the Parties have agreed to the appointment of ILYM
28 GROUP, INC. to perform the customary duties of Settlement Administrator. The Settlement

1 Administrator will mail the Notice of Class Action Settlement, in English and Spanish, and Notice of
2 Settlement Payment, in English and Spanish, to the Class Members. There will be a sixty (60) day period
3 from the date the Settlement Administrator mails the Notice of Class Action Settlement and Notice of
4 Settlement Payment for Class Members to submit a claim, to dispute the information contained in the
5 Notice of Settlement Payment, to file an objection, or to request exclusion (opt-out) from the Settlement.

6 17. The Settlement Administrator will independently review the Covered Workweeks
7 attributed to each Class Member and will calculate the amounts due to each Class Member in accordance
8 with this Settlement. The Settlement Administrator shall report, in summary or narrative form, the
9 substance of its findings. The Settlement Administrator shall be granted reasonable access to Defendant's
10 records in order to perform its duties.

11 18. In accordance with the terms of this Settlement, and upon receipt of funds from Defendant,
12 the Settlement Administrator will issue and send out the Settlement Payment checks to the Class
13 Members. Tax treatment of the Settlement Payments will be as set forth herein, and in accordance with
14 state and federal tax laws. As described above, the Settlement Administrator shall withhold all employees'
15 share of payroll taxes and prepare and distribute the Form W-2 and Form 1099 to each employee. The
16 Settlement Administrator shall transmit the Defendant's employer-side payroll taxes to the appropriate
17 taxing authorities at the same time it transmits all employees' withheld tax payments to the appropriate
18 taxing authorities. All disputes relating to the Settlement Administrator's performance of its duties shall
19 be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and
20 conditions of this Settlement until all payments and obligations contemplated by this Settlement have been
21 fully carried out.

22 **ATTORNEY'S FEES AND COSTS**

23 19. In consideration for resolving this matter and in exchange for the release of all claims by
24 the Class Members, and subject to approval by the Court, Defendant will not object to Class Counsel's
25 application for attorney's fees not to exceed 33 1/3% of the Gross Settlement Amount (\$200,000) and
26 litigation costs not to exceed \$10,000. The amounts set forth above will cover all work performed and all
27 fees and costs incurred to date, and all work to be performed and all fees and costs to be incurred in
28 connection with the approval by the Court of this Settlement and administration of the Settlement. Should

1 Class Counsel request a lesser amount and/or the Court approve a lesser amount(s) of attorney's fees
2 and/or attorneys' costs, the difference between the lesser amount(s) and the maximum amount set forth
3 above shall be added to the Net Settlement Amount. The attorney's fees and costs approved by the Court
4 shall be paid to Class Counsel within twenty (20) calendar days following the Effective Date of the
5 Settlement.

6 **INTERIM STAY OF PROCEEDINGS DURING SETTLEMENT APPROVAL**

7 20. Until the Parties have exhausted efforts to obtain Final Approval of the Class Action
8 Settlement, or Defendant has exercised its right to terminate as described below, the Parties agree to an
9 interim stay of proceedings other than as is necessary other than as is necessary to obtain Final Approval.

10 **NOTICE TO THE CLASS & NOTICE OF SETTLEMENT PAYMENT**

11 21. A Notice of Class Action Settlement in approximately the form attached hereto as
12 Exhibit "A," and as approved by the Court, shall be sent by the Settlement Administrator to the Class
13 Members by first class mail. The Notice of Class Action Settlement will be translated by the Settlement
14 Administrator into Spanish, and both the English and the Spanish language versions will be mailed to
15 Class Members. In addition, a Notice of Settlement Payment in approximately the form attached hereto as
16 Exhibit "B," and as approved by the Court, shall also be sent by the Settlement Administrator to the Class
17 Members by first class mail. The Notice of Settlement Payment will be translated by the Settlement
18 Administrator into Spanish, and both the English and the Spanish language versions will be mailed to
19 Class Members. Any returned envelopes from this mailing with forwarding addresses will be utilized by
20 the Settlement Administrator to forward the Notices to the Class.

- 21 (a) Within 25 calendar days from the date of preliminary approval of this Settlement
22 by the Court, Defendant shall provide to the Settlement Administrator a class
23 database containing the following information for each Class Member: (1) name;
24 (2) last known address; (3) last known telephone number; (4) social security
25 number; (5) dates of employment at Defendant's facilities in California; and (6)
26 Covered Workweeks during the Class Period. This database shall be based on
27 Defendant's payroll and other business records and shall be provided in a format
28 acceptable to the Settlement Administrator. Defendant agrees to consult with the

1 Settlement Administrator prior to the production date to ensure that the format will
2 be acceptable to the Settlement Administrator. The Settlement Administrator will
3 run a check of the Class Members' addresses against those on file with the U.S.
4 Postal Service's National Change of Address List; this check will be performed
5 only once per Class Member by the Settlement Administrator. Absent mutual
6 written agreement of counsel for the Parties or Court order, the Settlement
7 Administrator will keep this database confidential and use it only for the purposes
8 described herein, and will return this database to Defendant upon final approval of
9 the settlement or destroy electronic records containing the database after the
10 Settlement is final and all payments are distributed as required under this
11 Agreement.

12 (b) Within 15 calendar days after the Class database is provided to the Settlement
13 Administrator, the Settlement Administrator will mail the Notices of Class Action
14 Settlement and Notices of Settlement Payment to the Class Members by first class
15 United States mail. There will be a 60 day period from the date the Notices of
16 Class Action Settlement and Notices of Settlement Payment are mailed during
17 which Class Members can submit a claim, dispute the information contained in the
18 Notice of Settlement Payment, file an objection, or request exclusion (opt-out)
19 from the Settlement.

20 (c) Notices returned to the Settlement Administrator as non-deliverable during the 60
21 calendar-day period shall be resent to the forwarding address, if any, on the
22 returned envelope. A returned Notice will be forwarded only once per Class
23 Member by the Settlement Administrator. If there is no forwarding address, the
24 Settlement Administrator will do a computer search for a new address using the
25 Class Member's social security number; this search will be performed only once
26 per Class Member by the Settlement Administrator. Upon completion of these
27 steps by the Settlement Administrator, Defendant and the Settlement Administrator
28 shall be deemed to have satisfied their obligations to provide the Notice of Class

1 Action Settlement and Notice of Settlement Payment to the affected Class
2 Member. The affected Class Member shall remain a member of the Class and shall
3 be bound by all the terms of the Settlement and the Court's Order and Final
4 Judgment.

5 (d) The Settlement Administrator will not send any reminder notices of any nature to
6 the Class Members.

7 (e) Class Counsel shall provide to the Court, at least five calendar days prior to the
8 final approval hearing, a declaration by the Settlement Administrator of due
9 diligence and proof of mailing with regard to the mailing of the Notices of Class
10 Action Settlement and Notices of Settlement Payment.

11 **ADMINISTRATION OF SETTLEMENT PAYMENTS**

12 22. As set forth above, each Class Member will have 60 calendar days after the mailing of the
13 Notice of Class Action Settlement within which to postmark to the Settlement Administrator any challenge
14 or dispute to the information on the Notice of Settlement Payment. No disputes will be honored if they are
15 postmarked after the 60 calendar-day period, unless the parties mutually agree to accept the untimely
16 dispute. Each Class Member is responsible to maintain a photocopy of any documents sent to the
17 Settlement Administrator and a record of proof of mailing.

18 23. The Settlement Administrator shall cause the Settlement Payments to be mailed to the
19 Class Members within 20 calendar days of the Effective Date of the Settlement. Settlement Payment
20 checks shall remain valid and negotiable for 180 calendar days from the date of their issuance. Settlement
21 checks will automatically be cancelled by Defendant or the Settlement Administrator if they are not cashed
22 by the Class Member within that time, and the Class Member's claims will remain released by the
23 Settlement. Settlement checks which have expired will not be reissued.

24 24. If any Settlement Payment check remains uncashed after 180 days of issuance from the
25 date the check is issued, such check(s) will be voided by the Settlement Administrator. Thereafter, the
26 funds represented by any uncashed or undeliverable checks shall be distributed to the Controller of the
27 State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500, *et*
28 *seq.*, for the benefit of those Class Members who did not cash their checks until such time as they claim

1 their property. The Parties agree that this disposition results in no “unpaid cash residue,” or “unclaimed or
2 abandoned funds” under California Civil Procedure Code § 384, as the entire Net Settlement Amount will
3 be paid out to the Class Members, whether or not all cash their payment checks. Therefore, Defendant
4 will not be required to pay any interest on said amount. The Parties agree that this is “an equitable *cy pres*
5 remedy” directed by the Court within the meaning of California Civil Procedure Code § 384(c), and
6 therefore the Parties are not subject to California Civil Procedure Code § 384, including subdivision (b),
7 for purposes of this Settlement Agreement.

8 25. Upon completion of its calculation of Settlement Payments, the Settlement Administrator
9 shall provide Class Counsel and Defendant’s Counsel with a report listing the amount of all payments to
10 be made to each Class Member (to be identified anonymously by employee number). Separately, the
11 Settlement Administrator shall provide to Defendant’s Counsel *only* a report listing the name of each Class
12 Member, the workweeks attributed to each Class Member, the payments ascribed to wages for each Class
13 Member, the payments ascribed to penalties and interest to each Class Member, and the taxes withheld on
14 behalf of each Class Member. A Declaration attesting to completion of all payment obligations will be
15 provided to Class Counsel and Defendant’s Counsel and filed with the Court.

16 **RELEASE BY THE CLASS AND PLAINTIFF**

17 26. Upon the Effective Date of this Settlement, and except as to such rights or claims as may
18 be created by this Settlement, the Class Representative, the Class and each Class Member who has not
19 submitted a valid and timely request for exclusion, will release claims as follows:

20 (a) **Identity of Released Parties.** Defendant, and each of its/their former and present
21 direct and/or indirect owners, dba's, affiliates, parents, subsidiaries, brother and
22 sister corporations, divisions, related companies, successors and predecessors, and
23 current and former employees, attorneys, officers, directors, shareholders, owners,
24 trustees, attorneys, fiduciaries, beneficiaries, subrogees, executors, partners, privies,
25 agents, servants, insurers, representatives, administrators, employee benefit plans,
26 and assigns of said entities are collectively known herein as “Releasees.”

27 (b) **Claims Released By Class Members.** As of the Effective Date, and upon
28 payment of amounts set forth herein, and except as to such rights or claims as may

1 be created by this Agreement, each and every Settlement Class Member, on behalf
2 of himself or herself and his or her heirs and assigns, unless he or she has properly
3 elected to opt out of the class, hereby releases Releasees from the following claims
4 (“Released Claims”) for the entire Class Period:

- 5 1) any and all claims stated in the Action, implicitly or explicitly, including
6 but not limited to state and/or federal wage and hour claims (including all
7 claims under the California Labor Code) for unpaid wages, unreimbursed
8 business expenses, minimum wage, overtime, off-the-clock work, meal
9 periods, rest periods, wage statement violations, interest, penalties, and
10 attorneys' fees, waiting time penalties, withholding from wages and the
11 related provisions of the Labor Code including but limited to Labor Code
12 §§ 201-204, 210, 216, 218.6, 226, 226.3, 226.7, 510, 512.5, 16, 558, 1174,
13 1194, 1198, 2698 et seq., and 2802, derivative claims under California
14 Business & Professions Code Sections 17200 et seq. and all claims under
15 the Wage Order, and the Private Attorneys General Act of 2004, Labor
16 Code section 2698 et seq. (“PAGA”); and,
17 2) as to any Settlement Class Member who cashes their Settlement Payment,
18 the signing and negotiation of that check shall serve as the Settlement Class
19 Member’s consent to join the action for purposes of releasing claims
20 arising under the Fair Labor Standards Act that are related to the claims
21 stated in the Action, implicitly or explicitly (a notation on the check shall
22 state the consent to join effect of signing and negotiating the check).

23 (c) **Additional Claims Released By Plaintiff.** As of the Effective Date, and upon
24 payment of amounts set forth herein, and except as to such rights or claims as may
25 be created by this Agreement, the Class Representative will generally release any
26 and all claims against the Releasees. This general release of all claims includes any
27 and all claims arising from the employment relationship with the Releasees, or the
28 termination thereof, including, without limitation, claims for discrimination,

1 harassment, or retaliation pursuant to Title VII of the Civil Rights Act of 1964, 42
2 U.S.C. § 2000 et seq., the California Fair Employment and Housing Act, Cal.
3 Gov't Code § 12900 et seq., or any claims for violation of public policy. For the
4 purpose of implementing a full and complete release and discharge of the
5 Releasees, Class Representative expressly acknowledges that the release in this
6 Paragraph is intended to include in its effect, without limitation, all claims he did
7 not know or suspect at the time of execution hereof, regardless of whether the
8 knowledge of such claims, or the facts upon which they might be based, would
9 materially have affected the settlement of this matter, and that the consideration
10 given under this Settlement is also for the release of those claims and contemplates
11 the extinguishment of any such claims. In furtherance of this Settlement, Class
12 Representative expressly waives all rights provided by California Civil Code §
13 1542, or other similar statutes that Class Representative may have against any of
14 the Releasees. Section 1542 states:

15 A general release does not extend to claims that the creditor or
16 releasing party does not know or suspect to exist in his or her
17 favor at the time of executing the release and that, if known by
18 him or her, would have materially affected his or her settlement
19 with the debtor or released party.

18 This general release and waiver of rights under California Civil Code § 1542 shall
19 include any and all claims based on conduct or omissions that occurred at any time
20 prior to the preliminary approval of this Settlement.

21 **DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL**

22 27. The Parties shall submit this Joint Stipulation of Class Action Settlement to the Court in
23 support of Plaintiff's unopposed motion for preliminary approval for determination by the Court as to its
24 fairness, adequacy, and reasonableness. Upon execution of this Joint Stipulation of Class Action
25 Settlement, the Parties shall apply to the Court for the entry of an order:

- 26 (a) Scheduling a final approval and fairness hearing on the question of whether the
27 proposed Settlement, including payment of attorney's fees and costs, and the Class
28 Representatives' service payment, should be finally approved as fair, reasonable,

1 and adequate as to the members of the Class;

2 (b) Certifying a Class;

3 (c) Approving as to form and content the proposed Notice of Class Action Settlement;

4 (d) Approving as to form and content the proposed Notice of Settlement Payment;

5 (e) Directing the mailing of the Notices; and

6 (f) Preliminarily approving the Settlement subject only to the objections of Class

7 Members and final review by the Court.

8 **DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL**

9 28. Following final approval by the Court of the Settlement provided for in this Joint
10 Stipulation of Settlement, Class Counsel will provide to Defendant's Counsel for review and approval and
11 then submit to the Court a proposed final order and judgment containing provisions sufficient to
12 accomplish the following:

13 (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and
14 adequate, and directing consummation of its terms and provisions;

15 (b) Approving Class Counsel's application for an award of attorney's fees and costs;

16 (c) Approving the service payment to the Class Representatives;

17 (d) Entering a final judgment in the action; and,

18 (e) Directing the posting of the final judgment on a website maintained by the
19 Settlement Administrator for a period of not less than 90 days after entry of final
20 judgment.

21 **NULLIFICATION AND TERMINATION**

22 29. This Settlement will be null and void if any of the following occur: (a) the Court should for
23 any reason fail to certify a class for settlement purposes; (b) the Court should for any reason fail to
24 preliminarily or finally approve of this Settlement in the form agreed to by the Parties, other than
25 adjustments made to the attorney's fees and costs or granting of service fees; (c) the Court should for any
26 reason fail to enter the final judgment; (d) the final judgment is reversed, modified, or declared or rendered
27 void; or (e) the Settlement does not become final for any other reason.

28 30. If 15% or more of the Class Members request exclusion or opt out of this Settlement, then

1 Defendant in its sole discretion may terminate, nullify and void this Settlement. The Settlement
2 Administrator shall provide Defendant's Counsel with the information necessary to effectuate this
3 provision on a regular basis, but no less frequently than on a monthly basis. To terminate this Settlement
4 under this paragraph, Defendant's Counsel must give Plaintiff's Counsel written notice no later than 15
5 calendar days after the opt-out period has expired. In no event shall either party encourage Class Members
6 to opt out of this Settlement, object to this Settlement, or appeal the Court's Final Approval Order and
7 Judgment.

8 31. In the event this Settlement is nullified or terminated as provided above: (i) this Settlement
9 shall be considered null and void, (ii) neither this Settlement nor any of the related negotiations or
10 proceedings shall have any force or effect and no party shall be bound by any of its terms, and (iii) all
11 Parties to this Settlement shall stand in the same position, without prejudice, as if the Settlement had been
12 neither entered into nor filed with the Court.

13 **PARTIES' AUTHORITY**

14 32. The signatories hereto hereby represent that they are fully authorized to enter into this
15 Settlement and bind the Parties hereto to the terms and conditions thereof.

16 **MUTUAL FULL COOPERATION**

17 33. The Parties agree to fully cooperate with each other to accomplish the terms of this
18 Settlement including, but not limited to, execution of such documents and taking such other action as
19 reasonably may be necessary to implement the terms of this Settlement. The Parties to this Settlement
20 shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that
21 may become necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set
22 forth herein. As soon as practicable after execution of this Settlement, Class Counsel shall, with the
23 assistance and cooperation of Defendant and Defendant's Counsel, take all necessary steps to secure the
24 Court's preliminary and final approval of this Settlement.

25 **NO PRIOR ASSIGNMENTS**

26 34. The Parties and their respective counsel represent, covenant, and warrant that they have not
27 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
28 any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein

1 released and discharged except as set forth herein.

2 **NO ADMISSION OF LIABILITY**

3 35. Nothing contained herein, nor the consummation of this Settlement, is to be construed or
4 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant.
5 Defendant denies all the claims and contentions alleged by the Plaintiff in this case. The Defendant has
6 entered into this Settlement solely with the intention to avoid further disputes and litigation with the
7 attendant inconvenience and expenses.

8 **ENFORCEMENT ACTIONS**

9 36. In the event that one or more of the Parties to this Settlement institutes any legal action or
10 other proceeding against any other party or parties to enforce the provisions of this Settlement or to declare
11 rights and/or obligations under this Settlement, the successful party or parties shall be entitled to recover
12 from the unsuccessful party or parties reasonable attorney's fees and costs, including expert witness fees
13 incurred in connection with any enforcement actions.

14 **NOTICES**

15 37. Unless otherwise specifically provided herein, all notices, demands or other
16 communications given hereunder shall be in writing and shall be deemed to have been duly given as of the
17 third business day after mailing by United States registered or certified mail, return receipt requested,
18 addressed as follows:

<p>19 <u>Class Counsel:</u> 20 Kane Moon 21 H. Scott Leviant 22 Allen Feghali 23 MOON & YANG, APC 24 1055 W. Seventh St., Suite 1880 25 Los Angeles, California 90017 26 Telephone: (213) 232-3128 27 Facsimile: (213) 232-3125 28 kane.moon@moonyanglaw.com scott.leviant@moonyanglaw.com allen.feghali@moonyanglaw.com</p>	<p><u>Counsel for Defendant:</u> Jeremy Johnson Kenneth L. Mariboho II BREMER WHYTE BROWN & O'MEARA, LLP 20320 S.W. Birch Street, 2nd Floor Newport Beach, California 92660 Telephone: (949) 221-1000 Facsimile: (949) 221-1001 jjohnson@bremerwhyte.com kmariboho@bremerwhyte.com</p>
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1 **CONSTRUCTION**

2 38. The Parties hereto agree that the terms and conditions of this Settlement are the result of
3 lengthy, intensive arms-length negotiations between the Parties, and this Settlement shall not be construed
4 in favor of or against any party by reason of the extent to which any party or his, her or its counsel
5 participated in the drafting of this Settlement.

6 **CAPTIONS AND INTERPRETATIONS**

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

10 **MODIFICATION**

11 40. This Settlement may not be changed, altered, or modified, except in writing and signed by
12 the Parties hereto, and approved by the Court. This Settlement may not be discharged except by
13 performance in accordance with its terms or by a writing signed by the Parties hereto.

14 **INTEGRATION CLAUSE**

15 41. This Settlement contains the entire agreement between the Parties relating to the
16 Settlement and transaction contemplated hereby, and all prior or contemporaneous agreements,
17 understandings, representations, and statements, whether oral or written and whether by a party or such
18 party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

19 **BINDING ON ASSIGNS**

20 42. This Settlement shall be binding upon and inure to the benefit of the Parties hereto and
21 their respective heirs, trustees, executors, administrators, successors and assigns.

22 **CLASS COUNSEL SIGNATORIES**

23 43. It is agreed that because the members of the Class are so numerous, it is impossible or
24 impractical to have each member of the Class execute this Settlement. The Notice of Class Action
25 Settlement, Exhibit "A" hereto, will advise all Class Members of the binding nature of the release, and the
26 release shall have the same force and effect as if this Settlement were executed by each member of the
27 Class.

1 **COUNTERPARTS**

2 44. This Settlement may be executed in counterparts and by electronic or facsimile signatures,
3 and when each party has signed and delivered at least one such counterpart, each counterpart shall be
4 deemed an original, and, when taken together with other signed counterparts, shall constitute one
5 Settlement, which shall be binding upon and effective as to all Parties.

6 **CONFIDENTIALITY & PUBLIC COMMENT**

7 45. The Class Representative and Class Counsel agree they will not make any disparaging
8 comments about Defendant relating to this Settlement of this class action or disclose the negotiations of
9 the Settlement. The Class Representative and Class Counsel shall only disclose matters of public record.
10 The Parties and attorneys will keep the settlement confidential until the filing of the motion for preliminary
11 approval of the class settlement. Thereafter, the Parties agree to make no comments to the media or
12 otherwise publicize the terms of the Settlement, other than in court filings. To the extent counsel for either
13 Party wish to advertise this settlement, such advertising will be limited to a statement that a matter was
14 settled between a putative class and a retail company. Any communication about the Settlement to Class
15 Members prior to the Court-approved mailing will be limited to a statement that a settlement has been
16 reached and the details will be communicated in a forthcoming Court-approved notice. Prior to
17 preliminary approval, the Class Representative is prohibited from discussing the terms or the fact of the
18 settlement with third parties other than (1) his immediate family members or (2) his accountants or lawyers
19 as necessary for tax purposes. At all times, the Class Representative is prohibited from communicating
20 about the terms or the fact of the settlement on any form of social media (“Social Media Bar”). In the
21 event of a proven breach of the Social Media Bar, Plaintiff shall forfeit one-half of his respective class
22 representative enhancement payment, as a form of liquidated damages. Class Counsel will take all steps
23 necessary to ensure the Class Representative is aware of, and will adhere to, the restrictions against any
24 public disclosure of the Settlement.

25 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint
26 Stipulation of Class Action Settlement between Plaintiff and Defendant as set forth below:

27 IT IS SO STIPULATED.
28

1 **Plaintiff & Class Representative:**

2 Dated: November ___, 2019

By: _____
JOE ASCENCIO

3
4 **Plaintiff's Counsel:**

5 Dated: November ___, 2019

MOON & YANG, APC

6
7 By: _____
Kane Moon
8 H. Scott Leviant
Allen Feghali
9 Attorneys for Plaintiff

10
11 **Defendant:**

12 Dated: November ___, 2019

SMART SYSTEMS TECHNOLOGIES, INC.

13
14 By: _____
Craig Curran
15 President

16 **Defendant's Counsel:**

17
18 Dated: November ___, 2019

BREMER WHYTE BROWN & O'MEARA. LLP

19 By: _____
20 Jeremy Johnson
Kenneth L. Mariboho II
21 Attorneys for Defendant