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21 SUPERIOR COURT OF THE STATE OF CALIFORNIA
22 COUNTY OF ALAMEDA

23 NAVEEN VEMULAPATI, individually and on
24 behalf of other similarly situated,

25 Plaintiff,

26 v.

27 SIEBEL SYSTEMS, INC., ORACLE
28 CORPORATION and DOES 1 through 10,
inclusive,

Defendants.

Case No. RG13662755

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT IN
VEMULAPATI V. SIEBEL SYSTEMS,
INC., AND ORACLE CORPORATION**

JOINT STIPULATION OF VEMULAPATI V. SIEBEL ET AL. CLASS ACTION SETTLEMENT
CASE NO. RG13662755

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I. INTRODUCTION

1. This Joint Stipulation of Class Action Settlement and Release (hereinafter “Settlement Agreement”) is made and entered into by and between the following parties: Plaintiff Naveen Vemulapati and the Settlement Class (as defined below) (“Plaintiff”) and Defendant Oracle America, Inc. (“Defendant”) and their respective counsel of record. This Settlement Agreement is subject to the terms and conditions set forth below and to the approval of the Court. This Settlement Agreement supersedes any and all prior memoranda of understanding and accurately sets forth the Parties’ settlement of *Vemulapati v. Siebel Systems, Inc. and Oracle Corporation*, Alameda County Superior Court Case No. RG13662755 (the “Action”) in the total amount of Nine hundred seventy five thousand dollars (\$975,000) plus the additional amounts set forth below, to resolve all claims stated in the Complaint filed in the Action and the First Amended Complaint to be filed, including claims under the Labor Code Private Attorney General Act (“PAGA”).

2. In the event that this Settlement Agreement is not approved by the Court, fails to become effective, or is reversed, disapproved, withdrawn or modified by the Court or any other court with jurisdiction over the Action, the Settlement Agreement shall become null and void *ab initio* and shall have no bearing on, and shall not be admissible in connection with, further proceedings in the Action, including but not limited to proceedings to determine whether class certification would be appropriate in any other context in this litigation, or in any other judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural, and none of the Parties to this Settlement Agreement will be deemed to have waived any claims, objections, defenses, privileges or arguments with respect to the issue of class certification or the merits of Plaintiff’s claims.

II. DEFINITIONS

3. The “Action” means the lawsuit entitled *Vemulapati v. Siebel Systems, Inc., Oracle Corporation and Does 1 through 10*, Alameda County Superior Court, Case No. RG13662755.

4. “Class Counsel” means the law firm of Goldstein, Borgen, Dardarian & Ho.

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- 5. “Class Period” means the period between February 5, 2003 through February 28, 2006.
- 6. “Class Representative” means Plaintiff Naveen Vemulapati.
- 7. “Court” means the Superior Court of the State of California, County of Alameda.
- 8. “Final Approval Date” means the date on which the Order of Final Approval is entered in this matter.
- 9. “Final Approval Hearing” means a hearing set by the Court to take place after the Notice Response Deadline for the purpose of (i) determining the fairness, adequacy and reasonableness of the Settlement Agreement; (ii) determining the good faith of the Settlement Agreement; and (iii) considering the Parties’ request for entry of Judgment.
- 10. “Judgment” means the judgment to be entered by the Court pursuant to this Settlement Agreement.
- 11. “Order of Final Approval” means the order by the Court granting Final Approval of this Settlement Agreement.
- 12. Plaintiff and Defendant herein are collectively referred to as “the Parties.”
- 13. “Preliminary Approval Date” means the date on which the Court enters the Preliminary Approval Order.
- 14. “Preliminary Approval Order” or “Order Granting Preliminary Approval of Settlement” means an order to be submitted by Plaintiff for entry and filing by the Court, as specified in this Settlement Agreement.
- 15. “Released Parties” means Oracle and its former, present and future parents, subsidiaries, and affiliated corporations and entities, and each of their respective officers, directors, partners, insurers, shareholders and agents, and any other successors, assigns, or legal representatives.
- 16. “Request for Exclusion” means the written notice containing the information set forth in paragraph 34 hereof which a Settlement Class Member is required to submit to the

1 Settlement Administrator no later than the deadline to request exclusion from the Settlement
2 Class.

3 17. "Settlement Administrator" means Rust Consulting Inc., or any other administrator
4 selected pursuant to the terms of this Agreement.

5 18. "Settlement Class" means the individuals who have not previously signed a release
6 who were employed during the Class Period by Siebel as a Quality Assurance Engineer, Senior
7 Quality Assurance Engineer, Quality Engineer or Senior Quality Engineer.

8 19. "Settlement Class Member" means a person who was in a position in the
9 Settlement Class at any time during the Class Period.

10 20. "Settlement Class Position" means each of the job titles identified in paragraph 16
11 above held by persons while Settlement Class Members.

12 21. "Settlement Effective Date" means the date of (i) the Court's Order of Final
13 Approval if there are no objections to the settlement; (ii) if there are objections, then upon the
14 expiration of time for appeal of the Court's Order of Final Approval; or (iii) if there is an appeal
15 by an objector from the Court's Order of Final Approval, then upon the final resolution of any
16 appeal from the Court's Order of Final Approval, unless the Settlement Agreement is disapproved
17 or modified or for any reason fails to become effective following the appeal.

18 22. "Gross Settlement Fund" means the gross amount of \$975,000 to be paid by
19 Defendant to the Settlement Administrator.

20 23. "Net Settlement Fund" means the net balance of the Gross Settlement Fund
21 remaining after payments have been made for attorneys' fees and litigation expenses.

22 III. LITIGATION BACKGROUND

23 24. Siebel was acquired by Oracle on or about March 1, 2006. At the time of the
24 acquisition, Class Counsel was prosecuting another case against Siebel which involved claims
25 similar to those asserted in the Action. The other case, known as *Lin v. Siebel Systems, Inc.*, San
26 Mateo Superior Court, Case No. CIV 435601, involved a class different than the class certified in
27 the Action on behalf of the Settlement Class.

1 25. Class Counsel and Oracle (after its acquisition of Siebel) entered an agreement in
2 February 2007 to toll the statute of limitations on the claims asserted in the complaint in the
3 Action (the “Tolling Agreement”).

4 26. Shortly after the Tolling Agreement was entered, *Garcia v. Oracle*, Alameda
5 County Superior Court, Case No. RG-07 321 026, was filed by other counsel. Subsequently,
6 Class Counsel joined *Garcia* as counsel. The parties litigated that action intensely over the
7 following five years. At the conclusion of *Garcia*, Oracle and other counsel litigated *Anderson v.*
8 *Oracle*, JCCP No. 4597 (San Mateo Superior Court, Case No. 469916). After *Anderson* settled in
9 December 2012, Class Counsel and counsel for Oracle commenced settlement discussions
10 pursuant to the terms of the Tolling Agreement.

11 27. The Parties agreed to mediate the matter with mediator David Rotman. The
12 mediation took place on March 12, 2013.

13 28. In connection with the Tolling Agreement, in 2007 Oracle provided Class Counsel
14 with data regarding the putative class including, but not limited to, the number of weeks worked
15 by each putative class member and the salary of each putative class member. In 2013, prior to
16 mediation, Oracle provided class counsel with additional data regarding the putative class
17 including, but not limited to, updated data regarding work weeks and work assignments, rates of
18 pay, contact information, dates of termination (where applicable), and putative class members
19 who received severance.

20 29. The complaint in this Action was filed on January 9, 2013. The Parties have
21 stipulated to the filing of a First Amended Complaint in connection with settlement of the Action.

22 30. In the Complaint, Class Representative Plaintiff challenges Defendant’s
23 classification of him and other Settlement Class Members during some or all of the Class Period
24 as exempt from California’s overtime laws. Plaintiff alleges that Defendant (1) failed to pay for
25 all overtime worked, in violation of the California Labor Code and California Wage orders,
26 including but not limited to Labor Code sections 510, 1194 and 1198; (2) failed to provide
27 required off-duty meal periods in violation of the California Labor Code and California Wage
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1 orders including but not limited to Labor Code Sections 226.7 and 512; (3) failed to pay upon
2 termination of employment for all hours worked and for missed meal breaks in violation of the
3 California Labor Code and California Wage orders including but not limited to Labor Code
4 Sections 201,202 and 203; (4) failed to comply with Labor Code Section 226 with respect to pay
5 statements; (5) committed unfair competition in violation of California Business of Professions
6 Code § 17200 *et seq.* Plaintiff seeks compensation for all Class Members for the alleged
7 violations of the pay and overtime laws, the alleged failure to provide required off-duty meal
8 periods, waiting time penalties, interest, attorneys' fees and costs. Plaintiff also seeks injunctive
9 relief and restitution under Business and Professions Code sections 17200 *et seq.*

10 31. Class Counsel participated in the mediation and they represent that they have
11 conducted a thorough investigation into the facts of the Action, and have extensively evaluated
12 the merits of the Plaintiff's claims against Defendant and the potential damages in the Action,
13 including reviewing and analyzing thousands of pages of Defendant-produced documents and
14 interviewing dozens of putative class members.

15 32. Defendant has been and is prepared to vigorously defend against the Plaintiff's
16 claims. Defendant believed and continues to believe that the claims have no merit because,
17 among other reasons, the Settlement Class Members who were classified as exempt employees
18 during the Class Period were properly classified, and thus no overtime pay or penalties for missed
19 meal or rest periods are owed.

20 33. Based on their own independent investigation and evaluation, Class Counsel are of
21 the opinion that the Settlement is fair, reasonable, and adequate and is in the best interest of the
22 Class Members in light of all known facts and circumstances, including the risk of significant
23 delay and appellate risk, and defenses asserted by the Defendant. Defendant also agrees that the
24 Settlement is fair, reasonable and adequate.

25 **IV. TERMS OF SETTLEMENT**

26 NOW, THEREFORE, in consideration of the mutual covenants, promises, and under-
27 takings set forth herein, the Parties agree, subject to the Court's approval, as follows:

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34. Stipulation for Provisional Class Certification.

The Parties agree that for the purpose of effectuating this Settlement Agreement: the Settlement Class may be provisionally certified pursuant to Code of Civil Procedure section 382 and Rule of Court 3.769, Class Representative Plaintiff may be appointed as the Class Representative of the Settlement Class and his counsel appointed Class Counsel, in conjunction with the Court’s Preliminary Approval and Final Approval of this Settlement Agreement. In the event that this Settlement Agreement is not approved by the Court, fails to become effective, or is reversed, disapproved, withdrawn or modified by the Court or any other court with jurisdiction over the Action, the provisional class certification, and the Parties’ agreement for provisional class certification, shall become null and void ab initio and shall have no bearing on, and shall not be admissible in connection with, further proceedings in the Action, including but not limited to proceedings to determine whether class certification would be appropriate in any other context in this litigation, or in any other judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural, and none of the Parties to this Settlement Agreement will be deemed to have waived any claims, objections, defenses, privileges or arguments with respect to the issue of class certification or the merits of Plaintiff’s claims.

35. Settlement Payment.

- a. Defendant shall pay the total sum of (\$975,000.00) (the “Gross Settlement Fund”) to the Settlement Administrator as provided herein, which amount will cover all payments described herein to Settlement Class Members and Class Counsel.
- b. From the Gross Settlement Amount, Defendant has agreed, subject to Court approval, that up to \$12,000.00 may be allocated from the Gross Settlement Fund to reimburse Class Counsel for litigation costs and expenses, and thirty percent (30%) of the Gross Settlement Fund (\$292,500) may be allocated from the Gross Settlement Fund to Class Counsel for attorneys’ fees. Class Counsel will apply to the Court for, and

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Defendant does not oppose, approval of payment of those amounts. Ninety percent (90%) of the amount approved as attorney’s fees will be paid following the Settlement Effective Date as provided in paragraph 57 and the remaining ten percent (10%) will be paid following the Final Accounting by the Settlement Administrator.

c. The cost of settlement administration, currently estimated to be approximately \$20,000.00, with a not to exceed amount of \$23,000.00, will also be paid directly by Oracle, separate from the Gross Settlement Fund, to the Settlement Administrator following the Settlement Effective Date. The Settlement Administrator shall submit evidence to the Court supporting its request for payment in connection with the Final Approval Hearing. No payment shall be made to the Settlement Administrator until ordered by the Court.

d. Defendant has also agreed, subject to Court approval, that a service award of \$10,000.00 may be paid to the Class Representative. Class Counsel will apply to the Court for, and Defendant does not oppose, approval of payment of that amount. Actual payment of the service award will be made directly by Defendant to Class Representative separate from the Gross Settlement Fund. Required withholdings will be deducted from the payment by Defendant.

e. Subject to Court approval, Defendant has agreed that twenty thousand dollars (\$20,000) shall be allocated and paid to the California Labor & Workforce Development Agency (“LWDA”) as payment for claims of penalties under PAGA. The amount of \$20,000 shall be paid directly by Defendant to Class Counsel, separate from the Gross Settlement Fund, and Class Counsel shall make the payment to the LWDA required by this provision within fifteen days of receipt of the payment by Defendant

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provided for herein.

- f. Defendant shall pay to the Settlement Administrator separate from the Gross Settlement Fund the amount calculated as the employer portion of payroll taxes attributable to the Settlement Class Member payments provided for in paragraph m. below.
- g. Defendant shall transmit payment of the Gross Settlement Fund to the Settlement Administrator within forty-five (45) days of the Preliminary Approval Order by the Court. Defendant shall have no further responsibility in relation to the Gross Settlement Fund after its transmission to the Settlement Administrator. It shall not be liable to any person or entity in the event the value of the Gross Settlement Fund or the corpus thereof decreases or is lost in its entirety for any reason. The Settlement Administrator in consultation with Class Counsel shall select an institution and instrument into which the Gross Settlement Amount will be held following its transmission by Defendant and until the payments provided for herein are made. The Settlement Administrator shall select an institution and instrument to hold the Gross Settlement Fund in which there is no or the lowest possible risk of loss while also permitting execution of the terms of this Settlement Agreement.
- h. The Net Settlement Fund is the balance of the Gross Settlement Fund (including interest accruing after transmission of the Gross Settlement Fund to the Settlement Administrator by Defendant) after payments have been made for attorneys' fees and litigation expenses. The Net Settlement Fund shall be used by the Settlement Administrator to pay all amounts due under this Settlement Agreement to Settlement Class Members based on their weeks worked in Settlement Class Positions during the Class Period.

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All of the Net Settlement Fund shall be expended for those purposes, without any reversion to Defendant.

i. The Settlement Administrator shall, within 30 days following the Settlement Effective Date, pay each Settlement Class Member a pro rata portion of the Net Settlement Fund based on the number of weeks he or she worked in a Settlement Class Position during the Class Period. That pro rata portion shall be determined by dividing the total number of weeks worked by all Settlement Class Members in a Settlement Class Position during the Class Period (excluding periods of leave) into the amount of the Net Settlement Fund, as appropriate, to arrive at an amount per week; then, for each Settlement Class Member, multiplying that amount times the number of weeks the Settlement Administrator determines that such Settlement Class Member worked in a Settlement Class Position during the Class Period.

j. The number of weeks worked by Settlement Class Members in the Settlement Class Positions shall be determined by the Settlement Administrator based on employment records to be provided by Defendant as specified below. Settlement Class Members shall have the right to challenge the number of weeks worked reflected in Defendant's records. The Settlement Administrator shall make final and non-appealable determinations as to any such challenges, after consulting with Class Counsel and Defendant's counsel, and shall revise Settlement Class Members' weeks worked numbers consistent with its determinations. Workweeks include all weeks in which a Settlement Class Member worked in a Settlement Class Position, and partial workweeks worked will be given pro rata credit.

k. The Settlement Administrator shall make settlement payments due to

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Settlement Class Members by sending such payments by mail or other reliable means to the respective recipients as specified below.

- l. Settlement Class Members entitled to recover under this Settlement Agreement will include only those individuals who are identified on Defendant’s records as having worked in a Settlement Class Position during the Class Period.
- m. Except for the service award to be made to the Class Representative, all Settlement Class Member payments under this Settlement Agreement are for claims for regular and overtime wages, meal period premium compensation, interest, and related penalties, in the following proportions: fifty percent (50%) claims for wages and fifty percent (50%) claims for interest and penalties. Required employee-side withholding will be deducted from all Settlement Class Members’ payments based on the last form W-4 submitted to Defendant and the Settlement Class Members will as appropriate be provided forms W-2 and 1099 for their payment.
- n. Within five (5) business days following the Preliminary Approval Order Class Counsel will notify the LWDA pursuant to Labor Code Section 2699.3. Within five (5) business days t of notice from the LWDA that it will not investigate or nonreceipt of notice from the LWDA that it will investigate within 33 days following notification of the LWDA by Class Counsel, Plaintiff will file a First Amended Complaint pursuant to stipulation of the parties, which First Amended Complaint will encompass the claims in the Complaint, and a claim under PAGA. In the event the LWDA does investigate or provides notice of its intent to investigate, Defendant shall have the authority to withdraw from the Settlement pursuant to Section XII hereof.

1 enforce the terms of the Court's final orders and judgment thereon, as is required by Rule
2 3.769(h).

3 40. Non-Approval by the Court. In the event that this Settlement Agreement is not
4 approved by the Court, fails to become effective, or is reversed, disapproved, withdrawn or
5 modified:

- 6 a. The Settlement Agreement shall have no force or effect;
7 b. The Settlement Agreement shall not be admissible in any judicial,
8 administrative or arbitral proceeding for any purpose or with respect to any
9 issue, substantive or procedural; and,
10 c. None of the Parties to this Settlement Agreement will be deemed to have
11 waived any claims, objections, defenses or arguments with respect to the
12 issue of class certification or the merits of Settlement Class Members'
13 claims.

14 41. Court Approval of Notice to the Class.

- 15 a. Plaintiff shall promptly submit this Settlement Agreement to the Court
16 together with a Motion for Preliminary Approval of Settlement and
17 provisional Certification of Settlement Class. Plaintiff's motion seeks an
18 order, attached as Exhibit C to the Declaration of Laura L. Ho in Support
19 of Plaintiff's Unopposed Motion for Preliminary Approval of this
20 Settlement, filed concurrently herewith.
- 21 i. Preliminarily approving the settlement;
22 ii. Approving as to form and content the proposed Class Notice;
23 iii. Approving as to form and content the proposed Share Form and
24 instructions;
25 iv. Directing the mailing of the Class Notice, and instructions by first
26 class mail to Settlement Class Members;
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- v. Preliminarily provisionally certifying the Settlement Class for purposes of settlement and preliminarily appointing Plaintiff and Plaintiff’s Counsel as Class Representative and Class Counsel;
- vi. Preliminarily approving settlement administration services to be provided by the Settlement Administrator;
- vii. Preliminarily approving the proposed service awards to Plaintiff Naveen Vemulapati as Class Representative;
- viii. Preliminarily approving the application for payment of reasonable attorneys’ fees, costs, and expenses to Class Counsel; and
- ix. Scheduling a fairness hearing on the question of whether the proposed settlement should be finally approved as fair, reasonable, and adequate as to the members of the Settlement Class.

b. Failure of the Court to enter the Preliminary Approval Order in its entirety or in a substantially similar form will be grounds for the Parties to terminate the settlement and the terms of this Settlement Agreement.

c. If the Court enters the Preliminary Approval Order, then at the resulting Final Fairness Hearing, Plaintiff and Defendant, through their counsel of record, shall address any written objections from Settlement Class Members or any concerns from Settlement Class Members who attend the hearing as well as any concerns of the Court, if any, and shall and hereby do, unless provided otherwise in this Settlement Agreement, stipulate to final approval of this Settlement Agreement and entry of the Judgment by the Court.

V. DUTIES OF SETTLEMENT ADMINISTRATOR

42. The Parties have agreed to the appointment of Rust Consulting, Inc. to perform the duties of Settlement Administrator.

1 43. The Settlement Administrator shall be responsible for the duties specified in this
2 Settlement Agreement including but not limited to those set forth in this paragraph including but
3 not limited to: (a) preparing and mailing notices of settlement and of estimated settlement
4 payment amounts, and instructions on how to request exclusion from or object to the Settlement,
5 to all Settlement Class Members, including taking appropriate steps to trace and locate any
6 Settlement Class Members whose address or contact information as provided to the Settlement
7 Administrator is inaccurate or outdated; (b) receiving and reviewing and resolving any challenges,
8 including associated documentation, from Settlement Class Members regarding the number of
9 weeks they worked in Class Positions during the Class Period; (c) receiving and serving on Class
10 Counsel and Defendant’s Counsel, and the Court, request for exclusion statements, copies of
11 written objections, and any withdrawal and rescission statements; (d) establishing a toll free
12 telephone line and responding to inquiries and requests for information or assistance from
13 Settlement Class Members; (e) determining and paying the final amounts due to be paid to
14 Settlement Class Members after resolution of all challenges; (f) determining proper withholdings
15 from payments to Settlement Class Members and paying required payroll taxes and withholdings
16 to appropriate authorities; (g) reporting to Class Counsel, Defendant’s Counsel, and the Court
17 regarding the completion of the tasks identified in this paragraph; and (h) carrying out other
18 related tasks including but not limited to the proper maintenance of undisbursed settlement
19 amounts and the Gross Settlement Fund in accordance with the terms of this Settlement
20 Agreement and orders of the Court.

21 44. All disputes relating to the Settlement Administrator’s ability and need to perform
22 its duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over
23 the terms and conditions of this Settlement Agreement, until all payments and obligations
24 contemplated by the Settlement Agreement have been fully carried out.

25 **VI. NOTICE OF THE SETTLEMENT TO CLASS MEMBERS**

26 45. Within twenty-one (21) days following preliminary approval of the settlement, and
27 as ordered by the Court, Defendant shall provide to the Settlement Administrator and Class
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1 Counsel information in electronic format regarding all Settlement Class Members, including last
2 known addresses and telephone numbers, email addresses (if known), Social Security Numbers,
3 and dates worked in Class Positions, with specification of any periods of absence from work. The
4 Settlement Administrator shall use the information provided to it under this Settlement
5 Agreement solely to carry out its duties herein, shall not disclose that information to anyone other
6 than its employees who are engaged in carrying out its duties hereunder, and shall take
7 appropriate measures to maintain the confidentiality and security of the information provided to it
8 by the Parties.

9 46. The Settlement Administrator shall send a Notice of Settlement and Opportunity to
10 Request Exclusion or Object to Settlement (“Notice of Settlement”) in the form attached as
11 Exhibit B to the Declaration of Laura L. Ho (filed in support of the Plaintiff’s Unopposed Motion
12 for Preliminary Approval of this Settlement) subject to approval by the Court, to all Settlement
13 Class Members, by first class mail, within thirty (30) days after Defendant provides the data
14 specified in paragraph 35. The Notice of Settlement will contain an estimated amount of the
15 portion of the Settlement allocated to the Settlement Class Member. The Notice of Settlement
16 shall be sent in an envelope in substantially the same form as Exhibit D to the Ho Declaration.

17 47. Prior to mailing the Notice of Settlement, the Settlement Administrator will update
18 the addresses for the Settlement Class Members using the National Change of Address database
19 and other available resources deemed suitable by the Settlement Administrator. Any returned
20 envelopes from the initial mailing with forwarding addresses will be used by the Settlement
21 Administrator to locate missing Settlement Class Members and re-mail the Notice to the correct
22 or updated address. The Settlement Administrator will use all appropriate tracing methods to
23 ensure that the Notice of Settlement packets are received by all Settlement Class Members.

24 48. Class Counsel shall have the right to take appropriate steps to locate and assist
25 Settlement Class Members during the notice and distribution process.
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1 c. Issue payments to Settlement Class Members who have not made a
2 Request for Exclusion.

3 58. Within thirty (30) days following the Settlement Effective Date, Defendant shall:

- 4 a. Make the payment to the Settlement Administrator for administration costs.
5 b. Make the service award payment to the Class Representative.
6 c. Make the payment to Class Counsel for the PAGA penalty settlement
7 which Class Counsel will promptly (within five business days) pay to the
8 LWDA.

9 59. The Settlement Administrator shall be responsible for issuing and mailing as
10 applicable the above-noted payments and any necessary tax reporting forms to Settlement Class
11 Members, Class Representatives, Class Counsel, the State of California, and Defendant. The
12 Settlement Administrator shall provide a declaration of payment, which will be filed with the
13 Court and served on Class Counsel and Defendant within thirty (30) days of mailing the above-
14 noted payments.

15 60. Settlement Class Members who are sent payments shall have 180 days after
16 mailing by the Settlement Administrator to cash their settlement checks. If such Settlement Class
17 Members do not cash their checks within that period, those checks will become void and the
18 Settlement Administrator will stop payment on the uncashed checks. In such event, those
19 Settlement Class Members will be deemed to have waived irrevocably any right in or claim to a
20 settlement payment; however, the Settlement Administrator may, in its discretion and for good
21 cause, and without appeal to or right of review by the Court, agree to make full or partial payment
22 of the amounts calculated to be due to such Settlement Class Members if the amounts have not
23 yet been distributed to the cy pres beneficiary(ies).

24 61. The Settlement Administrator shall provide to the court a declaration 210 days
25 following the Settlement Class Member payments provided for herein confirming the payments
26 and explaining the circumstances of and number of uncashed checks to Settlement Class
27 Members.

1 62. Should there remain any residual from the Net Settlement Fund after all payments
2 are made under this Settlement Agreement, for example, if any settlement checks are not cashed
3 within 180 calendar days after mailing, the residual amount shall be paid to one or more *cy pres*
4 beneficiaries agreed upon by the parties in compliance with California Code of Civil Procedure
5 § 384, subject to the Court’s approval. Any costs associated with administering the residual (e.g.,
6 bank stop payment charges, settlement administration costs associated with further payments to
7 Settlement Class Members or payments to the *cy pres* beneficiary(ies)) will be deducted from the
8 residual before donation of the *cy pres* funds.

9 63. No later than 365 days after the Settlement Effective Date, the Settlement
10 Administrator shall pay over any residual amounts to the *cy pres* beneficiary(ies) designated by
11 the process described above. At the same time as the payments to *cy pres* beneficiaries, the
12 Settlement Administrator shall pay the remaining 10% of attorneys fees to Class Counsel. The
13 Settlement Administrator shall provide a declaration of payment to *cy pres* beneficiary(ies),
14 which will be filed with the Court and served on Class Counsel and Defendant’s Counsel within
15 30 days of payment of the residual to such beneficiary(ies) and Class Counsel.

16 **VIII. RELEASE BY THE SETTLEMENT CLASS AND PLAINTIFF**

17 64. Upon the Court’s Order of Final Approval of this Settlement Agreement and
18 payment of amounts set forth herein, and except as to such rights or claims as may be created by
19 this Settlement Agreement, the Settlement Class Members, excepting those who timely request
20 exclusion pursuant to paragraph 37, shall be deemed to give full release and discharge to the
21 Released Parties from any and all claims, debts, liabilities, demands, obligations, guarantees,
22 costs, expenses, attorneys’ fees, damages, liquidated damages, interest, and penalties for claims
23 stated in the First Amended Complaint, including claims under the Labor Code Private Attorney
24 General Act (“PAGA”).

25 65. In exchange for the Service Award described in paragraph 35 above and payment
26 of the Gross Settlement Amount by Defendant, the Class Representative agrees to the following
27 General Release: Class Representative releases Defendant from all claims, demands, rights,
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1 liabilities and causes of action of every nature and description whatsoever, known or unknown,
2 asserted or that might have been asserted, whether in tort, contract, or for violation of any state or
3 federal statute, rule or regulation arising out of, relating to, or in connection with any act or
4 omission by or on the part of any of the Defendant committed or omitted prior to the execution
5 hereof. The General release includes claims, debts, liabilities, demands, obligations, guarantees,
6 costs, expenses, attorneys' fees, damages, liquidated damages, interest, and penalties for claims
7 relied in the Seventh Amended Complaint, plus claims under the Labor Code Private Attorney
8 General Act ("PAGA") predicated on the claims stated in the First Amended Complaint. The
9 General Release also includes any unknown claims the Class Representative does not know or
10 suspect to exist in her favor at the time of the General Release, which, if known by him, might
11 have affected her settlement with, and release of, the Defendant by Class Representative or might
12 have affected his decision not to object to this Settlement or the General Release. With respect to
13 the General Release, Class Representative stipulates and agrees that he has expressly waived and
14 relinquished, to the fullest extent permitted by law the provisions, rights and benefits of
15 Section 1542 of the California Civil Code, or any other provision under federal or state law,
16 which provides:

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

22
23 **IX. DUTIES OF THE PARTIES PRIOR TO PRELIMINARY APPROVAL AND**
24 **BETWEEN PRELIMINARY AND FINAL APPROVAL**

25 66. The Plaintiff shall promptly submit this Settlement Agreement to the Court
26 together with a Motion for Preliminary Approval of Settlement and Certification of Settlement
27 Class. Plaintiff's motion shall also seek an order:

- 28
- a. Preliminarily approving the settlement;
 - b. Approving as to form and content the proposed Notice of Settlement;
 - c. Directing the mailing of the Notice of Settlement by first class mail;

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- d. Preliminarily approving settlement administration services to be provided by the Settlement Administrator and payments to the Settlement Administrator from the Gross Settlement Amount;
- e. Preliminary approving the proposed service awards to the Class Representative Plaintiff;
- f. Preliminarily approving the application for payment of reasonable attorneys' fees and costs to Class Counsel; and,
- g. Scheduling a fairness hearing on the question of whether the proposed settlement should be finally approved as fair, reasonable and adequate.

67. Defendant shall submit to the Court, within three business days after filing of the motion for preliminary approval of the proposed settlement, a statement affirming its support for the settlement.

68. Defendant shall provide to the Settlement Administrator, within 45 days after the Court's Order Granting Preliminary Approval, (1) the Gross Settlement Fund; and within 21 days after the Court's Order Granting Preliminary Approval, (2) the class membership list and identification and contact information specified in paragraph 45 above. Defendant shall submit the class information in electronic format as specified by the Settlement Administrator and shall thereafter, during the notice, approval, Request for Exclusion/objection and payment processes, assist the Settlement Administrator as necessary or as requested to use, correct, or update this information in order to enable the Settlement Administrator to locate and contact Settlement Class Members, and to provide information needed or requested by the Settlement Administrator in order to make determinations on Settlement Class Members' challenges.

69. The Parties shall cooperate with each other and the Settlement Administrator during the process of giving Settlement Class Members notice and opportunity to opt out of or object to the Settlement, in every way necessary and appropriate to assure effective communication to individual Settlement Class Members of information concerning their rights and obligations under this Settlement Agreement.

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and assist the Settlement Administrator as needed or requested in completing the distribution of any residual amount, as specified above, to the designated cy pres beneficiary(ies);

d. The Parties and Class Counsel will certify to the Court completion of all payments required to be made by this Settlement Agreement, promptly after completion thereof, or at such other date specified by the Court.

XI. PRELIMINARY TIMELINE FOR COMPLETION OF SETTLEMENT

73. The preliminary schedule for notice, approval, and payment procedures carrying out this settlement is as follows. The schedule may be modified depending on whether and when the Court grants necessary approvals and orders notice to the class, and sets further hearings. In the event of such modification, the parties shall cooperate in order to complete the settlement procedures as expeditiously as reasonably practicable.

- a. Plaintiff’s Counsel to file Motion for Preliminary Approval of Settlement with the Court on or before April 24, 2013;
- b. Preliminary Approval hearing before the Court on May 1, 2013;
- c. Class Counsel to provide notice to the LWDA pursuant to Labor Code section 2699.3 within five business days following Preliminary Approval and to file First Amended Complaint to include a PAGA claim within five business days following notification from the LWDA that it will not investigate or the passage of 33 days following Class Counsel notice to the LWDA with no notice received therefrom.
- d. Defendants to provide names, SSNs, addresses and dates of employment in Class Positions of all Settlement Class Members to Settlement Administrator no later than 21 days after Preliminary Approval;
- e. Defendant to provide Gross Settlement Fund to Settlement Administrator within 45 days following Preliminary Approval.
- f. Settlement Administrator to send the Notice of Settlement by first class

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mail to Settlement Class Members no later than 30 days after data specified in “d” above provided by Defendant;

- g. Settlement Administrator to conduct trace/search efforts and send a follow up mailing, no later than twenty (20) days following mailing of Notice of Settlement to individuals whose Notice was returned as undeliverable or whose listed address is found to be inaccurate or outdated;
- h. Requests for Exclusion from or objections to the Settlement must be postmarked or delivered by no later than 45 days after the date of mailing of class notice;
- i. Settlement Administrator to file with the Court and serve on the parties any exclusion request statements and written objections or statements of intention to object to the settlement received from Settlement Class Members, and will also file with the Court and serve on the parties its certification of the completion and results of the class notice and related processes, no later than 20 days after the close of the opt-out period, or in the case of later-received exclusion requests, objections or statements, immediately upon receipt thereof;
- j. Class Counsel will file their motion for final approval of settlement, including their application for award of attorneys’ fees and costs, no later than five court days before the Final Approval Hearing date or such other date as the Court may set;
- k. Final Approval hearing on _____, 2013, or as soon thereafter as the Court will hear the Motion for Final Approval;
- l. Payments to Class Counsel for litigation expenses and 90% of awarded fees, and for service award payments to Class Representatives, will be made within thirty (30) days of the Settlement Effective Date.
- m. Settlement checks will be issued to Settlement Class Members by mail

1 within twenty days of the Settlement Effective Date.

- 2 n. Payments of the remaining 10% of awarded fees to Class Counsel will be
3 made upon further order of the Court following certification by Class
4 Counsel that all payments to required or permitted by this Settlement
5 Agreement have been completed.

6 **XII. VOIDING OR MODIFYING THE SETTLEMENT AGREEMENT**

7 74. In the event that Settlement Class Members with fifteen percent (15%) or more of
8 the total work weeks covered by this Settlement Agreement elect to opt out of the settlement and
9 do not timely rescind their opt out statements, or in the event the LWDA investigates or issues
10 notice of its intent to investigate, Defendant, in its discretion, may void this Settlement
11 Agreement. Defendant may exercise the option to void the Settlement by giving notice, in
12 writing, to Class Counsel and the Court within three weeks of (1) receipt of notice from the
13 Settlement Administrator that the requisite number of the Settlement Class Members have
14 requested exclusion; or, the initiation of an investigation by the LWDA or notice of an intent to
15 investigate. In any event notice of withdrawal herein must be provided at least ten (10) days
16 before the Final Approval Hearing. In the event the Court declines to approve this Settlement
17 Agreement without modifications which are not acceptable to the Parties, either Plaintiff and the
18 Settlement Class or Defendant may withdraw from this Settlement Agreement. In the event any
19 party exercises the authority provided in this paragraph, the Settlement Administrator shall within
20 five (5) days return the Gross Settlement Fund to Defendant.

21 75. The parties have analyzed data provided by Defendant to determine the number of
22 workweeks in the Class Period. The data were current as of on or about October, 2012. The
23 Parties estimate that there were 4,395 workweeks attributable to the Settlement Class Positions
24 during the Class Period.

25 76. Other than as specified above, this Settlement Agreement may not be changed,
26 altered, or modified, except in writing and signed by counsel for the Parties hereto, and with
27

1 approval by the Court. This Settlement Agreement may not be discharged except by performance
2 in accordance with its terms or by a writing signed by the Parties hereto.

3 **XIII. CONFIDENTIALITY AND PUBLICITY**

4 77. The Parties and their counsel agree that they will not issue any press releases about
5 the settlement. The Parties and their counsel also agree that they will not have any communication
6 with the press or anyone else regarding the settlement prior to preliminary approval, except that
7 Class Counsel is allowed to communicate the fact of a settlement to class members.

8 **XIV. PARTIES' AUTHORITY**

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

11 **XV. MUTUAL FULL COOPERATION**

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

22 **XVI. NO ADMISSION OF LIABILITY OR WRONGDOING;
23 INADMISSIBILITY OF SETTLEMENT AS EVIDENCE**

24 80. Nothing contained herein, nor the consummation of this Settlement Agreement, is
25 to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the
26 part of Defendant. Each of the Parties hereto has entered into this Settlement Agreement with the
27 intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

1 This Settlement Agreement is a settlement document and shall, pursuant to California Evidence
2 Code § 1152, be inadmissible in evidence in any proceeding. The preceding sentence shall not
3 apply to an action or proceeding to approve, interpret, or enforce this Settlement Agreement.
4

5 **XVII. NOTICES**

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

10 To Class Counsel:

11 David Borgen
12 Laura L. Ho
13 Goldstein, Borgen, Dardarian & Ho
14 300 Lakeside Drive, Suite 100
15 Oakland, CA 94612
16 Telephone: (510) 763-9800
17 Facsimile: (510) 835-1417

18 To the Defendant:

19 Brendan G. Dolan
20 Vedder Price, LLP
21 One Embarcadero Center, Suite 500
22 San Francisco, CA 94111
23 Telephone: (415) 749-9500
24 Facsimile: (415) 749-9502

25 82. If the identity of the person(s) to be notified for any party changes, or their address
26 changes, that party shall notify all other Parties of said change in writing.
27

28 **XVIII. CAPTIONS AND INTERPRETATIONS**

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

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

XIX. INTEGRATION CLAUSE

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

XX. NO PRIOR ASSIGNMENTS

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

XXI. SETTLEMENT CLASS MEMBER SIGNATORIES

87. It is agreed that because Settlement Class Members are so numerous, it is impossible or impractical to have each Settlement Class Member execute this Settlement Agreement. The Notice of Settlement, Exhibit “B” to the Ho Declaration, will advise all Settlement Class Members of the binding nature of the release and the Court’s final approval of this Settlement Agreement shall have the same force and effect as if this Settlement Agreement were executed by each member of the Settlement Class.

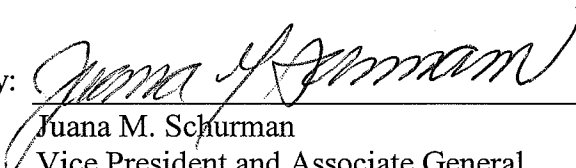
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XXII. COUNTERPARTS

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

Dated: April 24, 2013

ORACLE AMERICA, INC.

By: 
Juana M. Schurman
Vice President and Associate General Counsel

Dated: _____, 2013

FOR THE SETTLEMENT CLASS AND
NAVEEN VEMULAPATI:

By: _____
Naveen Vemulapati

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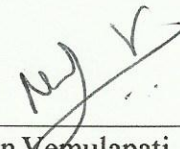
Dated: _____, 2013

ORACLE AMERICA, INC.

By: _____
Juana M. Schurman
Vice President and Associate General
Counsel

Dated: APRIL 23rd, 2013

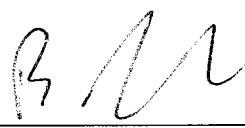
FOR THE SETTLEMENT CLASS AND
NAVEEN VEMULAPATI:

By:  _____
Naveen Vemulapati

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Dated: April 24, 2013

Vedder Price, LLP

By: 

Brendan Dolan
Attorneys for Defendant

Dated: _____, 2013

GOLDSTEIN, BORGEN, DARDARIAN & HO

By: _____
Laura L. Ho

Attorneys for Plaintiff and the Settlement Class

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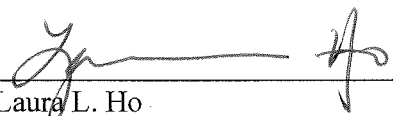
Dated: _____, 2013

Vedder Price, LLP

By: _____
Brendan Dolan
Attorneys for Defendant

Dated: April 24, 2013

GOLDSTEIN, BORGEN, DARDARIAN & HO

By:  _____
Laura L. Ho
Attorneys for Plaintiff and the Settlement Class