

STIPULATION AND AGREEMENT OF COMPROMISE, SETTLEMENT
AND RELEASE

P.E. JIMERSON V. GENCO DISTRIBUTION SYSTEMS, INC.
ALAMEDA COUNTY SUPERIOR COURT CASE NO. RG11589846

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STIPULATION AND AGREEMENT OF COMPROMISE, SETTLEMENT, AND RELEASE

This Stipulation and Agreement of Compromise, Settlement, and Release (“Settlement Agreement”) is made and entered into between Plaintiff, P.E. Jimerson (“Plaintiff” or “Class Representative”), on the one hand, individually and on behalf of the Class (as defined below), by and through his counsel of record, James Patterson of Patterson Law Group (“Class Counsel”), and Defendant Genco Distribution Systems, Inc. (“Genco” or “Defendant”) on the other hand, by and through their counsel of record, Michael Burns of Seyfarth Shaw LLP, subject to the approval of the Court, as provided below. This Settlement Agreement is intended by Plaintiff and Defendant to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined below), upon and subject to the terms and conditions hereof, as follows:

1. Definitions.

The following terms are defined:

- 1.1 “Action” refers to the civil action entitled *P.E. Jimerson v. Genco Distribution Systems, Inc.*, Case No. RG11589846, in the Superior Court of California for the County of Alameda, for which the operative complaint shall be the Second Amended Complaint referred to in Paragraph 2.5 below.
- 1.2 “Civil Penalty Payment” refers to \$1,000 of the Gross Settlement Amount that the parties have specifically allocated as consideration for the release of claims under the Private Attorneys General Act, California Labor Code sections 2699, *et seq.* (“PAGA”).
- 1.3 “Class” refers to all individuals who will be certified as members of the class for settlement purposes only, which will be defined as follows:
 - 1.3.1 All Defendant’s California-based exempt-categorized employees who worked as Operations Supervisors during the time-period from August 10, 2007 through the date of preliminary approval by the Court.
- 1.4 “Class Counsel” refers to the attorneys of record for the Class Representative, i.e., James Patterson of Patterson Law Group.

- 1.5 “Class Members” shall mean all individuals employed by Genco in California as Operations Supervisors during the time-period from August 10, 2007 through the date of preliminary approval by the Court.
- 1.6 “Class Notice” refers to the form of direct-mail notice to Class Members substantially in the form attached hereto as Exhibit A, as may be modified by the Court.
- 1.7 “Class Member Payment” shall refer to the amount paid to a Settlement Class Member.
- 1.8 “Class Period” refers to August 10, 2007, through the date the Court grants preliminary approval of the Settlement.
- 1.9 “Class Representative” refers to P.E. Jimerson, who is the named Plaintiff herein and the representative of the Class defined in Paragraph 1.3, above.
- 1.10 “Court” refers to the Superior Court of Alameda County, California, to which this Action is assigned (Honorable George C. Hernandez, presiding).
- 1.11 “Fairness Hearing” refers to the hearing at which the Court will make a final determination whether the terms of the Settlement Agreement are fair, reasonable, and adequate for the Class and meet all applicable requirements for approval, and, if the Settlement is so approved, whether a judgment should be entered thereon, whether the Class Representative’s application for a service fee should be granted, and whether an application by Class Counsel for an award of reasonable attorneys’ fees and reimbursement of his reasonable costs and expenses should be granted.
- 1.12 “Final Approval Order” refers to the final order by the Court approving the Settlement following the Fairness Hearing.
- 1.13 “Final Effective Date” refers to the first day after the date by which the last of the following has occurred: (a) all conditions of settlement as set forth in Paragraph 24 have been satisfied; (b) the Court has entered the Final Approval Order and Judgment; and (c) the time period for appeal of the Judgment

has been exhausted without any appeals having been filed, or all such appeals have been voluntarily or involuntarily dismissed or the appropriate appellate court has finally affirmed the Final Approval Order and Judgment of the Court and the final judgment is no longer subject to any further appellate challenge or procedure.

- 1.14 “First Amended Complaint” refers to the Complaint filed by Plaintiff Jimerson in the Superior Court of Alameda County, California, on or about September 29, 2011, in Case No. RG11589846.
- 1.15 “FLSA Consent Deadline” refers to a date that is forty-five (45) calendar days after the Notice Date, as such date may be modified by the Court, and is the deadline by which Class Members’ FLSA Consent Forms must be postmarked in order to be valid.
- 1.16 “FLSA Consent Form” refers to the FLSA Consent to opt into this Action.
- 1.17 “Gross Settlement Amount” (also referred to herein as “GSA”) refers to the maximum settlement payment Defendant is obligated to make: TWO HUNDRED FIFTY THOUSAND, DOLLARS AND ZERO CENTS (\$250,000.00). The GSA is consideration for the release and settlement, as to the Class Period, of all claims under federal or state law, that were alleged or that reasonably could have arisen out of the facts alleged in the Action by Settlement Class Members relating to unpaid wages and overtime, wage-statement violations, record-keeping violations, and “waiting time” or other statutory penalties, while working in a Class position during the Class Period, and shall include, without limitation, any claim under the Fair Labor Standards Act, the applicable Wage Order or under California Labor Code sections 201, 202, 203, 226, 226.3, 510, 558, 1194, 1198, 2698, or 2699, or under Business and Professions Code section 17200 *et seq.*, relating to the facts alleged in support of the claims in the Action.
- 1.18 “Initial Complaint” refers to the Complaint filed by Plaintiff Jimerson in the Superior Court of the State of California,

County of Alameda, on or about August 10, 2011, entitled *P.E. Jimerson v. Genco Distribution Systems, Inc., et al.*, Case No. RG11589846.

- 1.19 “Judgment” refers to the final judgment by the Court approving the Settlement.
- 1.20 “Litigation Costs” refers to the actual costs incurred by Class Counsel in the course of litigating this action. Defendant shall not oppose an award of Litigation Costs to Class Counsel in an amount not to exceed \$10,000, to be taken from the GSA.
- 1.21 “Net Settlement Amount” (also referred to herein as “NSA”) shall be defined as the GSA minus court-approved attorney’s fees and costs, administrative costs, Service Fee, employer taxes, and 75% the Civil Penalty Payment (i.e., 75% of \$1,000), and payments of \$100 to each Class Member who returns a valid FLSA Consent Form. The NSA is the maximum amount that shall be made available to Class Members. The NSA shall be divided into the following funds: (i) the Overtime Wage Payment Fund, which shall amount to 80% of the NSA; (ii) the Wage Statement Fund, which shall amount to 10% of the NSA, and (iii) the Waiting Time Penalty Fund, which shall amount to 10% of the NSA.
- 1.22 “Notice Date” refers to the date ordered by the Court for the dissemination of the direct mail notice to the Class Members, a date that is within thirty (30) calendar days after the Preliminary Approval Order Date.
- 1.23 “Parties” refers collectively to Jimerson and Genco.
- 1.24 “Preliminary Approval Motion” refers to the motion described in Paragraph 2.6 to be prepared jointly by the parties and submitted by Class Counsel to the Court to obtain preliminary approval of the Settlement.
- 1.25 “Preliminary Approval Order” refers to the order by the Court granting preliminary approval to the Settlement Agreement and directing the parties to disseminate notice of the Settlement to the Class Members.

- 1.26 “Preliminary Approval Order Date” refers to the date on which the Court enters the Preliminary Approval Order.
- 1.27 “Released Claims” are those claims defined in Paragraphs 16.1 through 16.3.
- 1.28 The “Releasing Parties” are Jimerson and all Class Members who did not opt out of this Action by filing a timely, valid Request for Exclusion, and all persons purporting to act on their behalf or purporting to assert a claim under or through them, including, but not limited to, their dependents, attorneys, heirs and assigns, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, personal representatives, and successors-in-interest, whether individual, class, representative, legal, equitable, direct or indirect, or any other type or in any other capacity.
- 1.29 “Request for Exclusion” refers to a written, signed request by someone who otherwise would be a member of the Class to be excluded from the Class and who meets the requirements, including the time and manner in which a Request for Exclusion must be filed.
- 1.30 “Service Fee” refers to the Court’s award of a monetary fee to the Plaintiff for his services as Class Representative as described in Paragraph 8, to be paid for from the Gross Settlement Amount described below.
- 1.31 “Settlement” refers to the Parties’ agreement to fully resolve the claims of the Settling Parties in the Action pursuant to the provisions in the Settlement Agreement.
- 1.32 “Settlement Administrator” refers to KCC, LLC, which will be engaged by Class Counsel, with the approval of Genco, to perform the notice, settlement administration, and distribution functions further described in this Settlement Agreement. Defendant shall not oppose a reasonable Settlement Administrator’s fee, estimated not to exceed \$10,500, to be taken from the GSA.
- 1.33 “Settlement Agreement” refers to this Settlement Agreement, including any permitted and executed amendments hereto.

- 1.34 “Settlement Class” refers to all Class Members as defined in Paragraph 1.5 who do not request exclusion from the Settlement pursuant to Paragraph 20.1 of this Settlement Agreement.
- 1.35 “Settlement Class Member” refers to a Class Member as defined in Paragraph 1.5 who does not request exclusion from the Settlement pursuant to Paragraph 20.1 of this Settlement Agreement.
- 1.36 “Settling Parties” refers to the Plaintiff, the Settlement Class Members, and Genco.

2. Factual and Procedural History and Recitals.

- 2.1 Genco is a third-party logistics provider. Plaintiff was previously employed by Genco as an Operations Supervisor.
- 2.2 On or about August 10, 2011, P.E. Jimerson filed his Initial Complaint in this Action asserting class action claims against the Defendant. The Initial Complaint alleges claims for: “(1) Failure to Pay Overtime Wages; (2) Illegal Forfeiture of Vacation Wages; (3) Failure to Provide Itemized Wage Statements; (4) Waiting Time Penalties; and (5) Unfair Competition.”
- 2.3 On or about September 29, 2011, Plaintiff filed a First Amended Complaint, which added a claim for “Recovery Under the California Labor Code Private Attorneys General Act.”
- 2.4 On November 20, 2013, the Parties participated in a mediation before mediator Jeffrey Krivis of First Mediation Corporation. The parties reached the basic terms of a settlement and agreed to prepare a formal settlement agreement, subject to Court approval. The Parties now enter into a detailed, formalized Settlement Agreement for Court approval.
- 2.5 For purposes of settling the Action, the Parties agree that, prior to filing the Preliminary Approval Motion, Class Counsel shall file a Second Amended Complaint, which shall (1) add a cause of action under the Fair Labor Standards Act, and (2) shall not

include any claim for illegal forfeiture of wages. Defendants shall stipulate to allow the filing of the Second Amended Complaint in compliance with this provision. All the material allegations of the Second Amended Complaint shall be deemed denied without the necessity of Defendants filing an Answer to the Second Amended Complaint.

- 2.6 Within thirty (30) calendar days after the execution of this Settlement Agreement, Class Counsel shall file a Preliminary Approval Motion requesting conditional class certification for settlement purposes only and request preliminary approval of the Settlement. For purposes of settling the Action only, Defendant will not oppose this Preliminary Approval Motion. Class Counsel will file his Preliminary Approval Motion only after approval of the motion by Defendant.
- 2.7 Defendant denies any liability or wrongdoing of any kind, including but not limited to liability or wrongdoing that was alleged or could have been alleged in the Initial Complaint, the First Amended Complaint, or the Second Amended Complaint, and further denies that, for any purpose other than settling the Action, this Action is appropriate for class treatment. Defendant contends it has complied at all times with the California Labor Code, the California Wage Orders, and all applicable California state and federal law.
- 2.8 Class Counsel represents that he has thoroughly investigated the Class Representative's claims against Defendant. Class Counsel represents that he has conducted his own investigation into the underlying facts, events, and issues related to the subject matter of this action. Class Counsel represents that he has analyzed the legal principles applicable to the claims asserted against Defendant, and the potential defenses thereto. Both Class Representative and Defendant have had an opportunity to evaluate their respective positions on the merits of the claims asserted.
- 2.9 Class Counsel has engaged in intensive arms-length negotiations with counsel for Defendant with a view toward achieving substantial benefits for the Class while avoiding the

cost, delay, and uncertainty of further litigation, trial, and appellate review.

- 2.10 As a consequence of negotiations, and of Class Counsel's investigation, analysis and discovery, Plaintiff and Class Counsel determined to enter into this Settlement Agreement on the terms and conditions hereinafter set forth, believing the Settlement to be fair, reasonable and adequate and in the best interests of the members of the Class. Plaintiff and Class Counsel have determined to execute this Settlement Agreement and urge approval by the Court of the proposed Settlement after considering (1) the substantial factual and legal defenses available to Defendant to the claims asserted in the Action, which render the outcome of the Action substantially uncertain, (2) the potential difficulties Plaintiff and Class Members would encounter in establishing the elements of their claims, (3) the substantial benefits that Class Members shall receive pursuant to the proposed Settlement, (4) the fact that the proposed Settlement ensures that Class Members shall receive relief in the most expeditious and efficient manner practicable, and thus much sooner than would be possible were the claims to be litigated successfully through trial and appeal, and (5) the fact that the proposed Settlement allows persons who would otherwise fall within the definition of the Class to opt out of the Action, if they so desire, and to individually pursue the claims alleged in the Action. Class Counsel has further considered that Defendant would oppose the propriety of class certification.
- 2.11 Defendant denies vigorously each allegation of liability and asserts that it has substantial factual and legal defenses to all claims alleged. Nevertheless, without admitting any liability, Defendant is willing to agree to the terms of the proposed Settlement provided that all of the Released Claims (as defined below) are settled in order to fully resolve all issues relating to the subject matter of the Action. Defendant also concurs that the proposed Settlement is fair, reasonable, and adequate.

NOW THEREFORE, in consideration of the covenants and agreements set forth herein, and of the release and dismissal of all Released Claims, Plaintiff, on behalf of himself and as the Class Representative on behalf of the Class, Class

Counsel and Defendant agree to the terms of this Settlement Agreement, subject to the approval of the Court.

3. Limitation on Effect of Certification.

3.1 The certification of the Class for settlement purposes only shall not constitute, in this or any other proceeding, an admission by Defendant that certification of a class for trial purposes is appropriate or proper or that Plaintiff could establish any element for class treatment of any claim. In the event that the Settlement is not finally approved, or the Settlement is otherwise terminated or rendered null and void, the certification of the Class shall be vacated and shall not constitute evidence that the requirements for certification of a class are satisfied. In such circumstances, Defendant expressly reserves all rights to challenge certification of a class for trial purposes in this Action or in any other action on all available grounds as if no class had been certified for Settlement purposes in this Action, and no reference to the prior certification of a class, or any documents related thereto, shall be made for any purpose.

4. Establishment of the GSA Settlement.

4.1 Defendant shall pay no more than the GSA of TWO HUNDRED FIFTY THOUSAND DOLLARS AND ZERO CENTS (\$250,000.00).

4.2 Payment by Defendant pursuant to this Settlement Agreement shall settle all pending issues between the Settling Parties, including, but not limited to, all payments of class claims (including but not limited to those under PAGA), administration costs, attorneys' fees and costs, employer taxes, and service fees. The Gross Settlement Amount includes employer's share of Social Security taxes and FUTA taxes.

5. Calculation of the NSA.

5.1 The NSA is the GSA minus court-approved attorney's fees and costs, administrative costs, Service Fee, employer taxes, 75% of the Civil Penalty Payment (i.e., 75% of \$1,000), and any payments to Settlement Class members who complete and return a proper FLSA Consent Form pursuant to Paragraph 6.2,

below. The NSA constitutes the total amount of money (other than a portion of the Civil Penalty Payment) paid to the Class Members.

- 5.2 The NSA shall be divided into the following funds, the amounts of which shall be as follows: (i) the Overtime Wage Payment Fund shall amount to 80% of the NSA, (ii) the Wage Statement Fund shall amount to 10% of the NSA, and (iii) the Waiting Time Penalty Fund shall amount to 10% of the NSA.

6. Distribution of Settlement Proceeds.

- 6.1 Seventy five percent (75%) of the \$1,000 Civil Penalty Payment (\$750) shall be paid to the Labor and Workforce Development Agency of the State of California, consistent with Labor Code §§ 2699(i) and (j). The remainder is part of the NSA.
- 6.2 The Settlement Class Members who complete and return a proper FLSA Consent Form and opt into the FLSA class will receive \$100 each.
- 6.3 Each Settlement Class Member will be paid from the Overtime Wage Payment Fund a portion of the NSA in accordance with the individual Class Member's workweeks for the relevant time frame (August 10, 2007 through the date of preliminary approval). Settlement Class Members who worked 10 hour shifts during this period, as reflected by Defendant's records, will receive double credit for their weeks worked.
- 6.4 Each Settlement Class Member will be paid from the Wage Statement Fund a portion of the NSA based on the following formula: Each Settlement Class Member will be deemed to have received a wage statement for every 14 days they were employed in a Class position. Thereafter, the product of the number of the individual Settlement Class Member's bi-weekly wage statements during the relevant time frame (August 10, 2010 through the date of preliminary approval) will be multiplied by the amount of the fund divided by the total number of relevant wage statements. No individual Settlement Class Member may receive more than \$4,000 from the Wage Statement Fund. To the extent that the calculated amount to be

distributed should exceed \$4,000 for any individual Settlement Class Member, the excess amount shall augment the NSA.

6.5 Each Settlement Class Member who is no longer employed by Defendant as of the date of preliminary approval, and who worked for a Defendant during the relevant time (August 10, 2008 through the date of preliminary approval), will be paid a pro rata share of the Waiting Time Penalty Fund.

6.6 Payments to Settlement Class Members pursuant to this Settlement Agreement shall not be construed as compensation for purposes of determining eligibility for any health and welfare benefit plan, retirement benefit plan, vacation benefit plan, unemployment compensation, or any other purpose.

7. Attorneys' Fees and Costs.

In consideration for settling this Action and in exchange for the release of all claims by the Class Representative and the Settlement Class through the date of final approval of the Settlement, and for all of the work already performed by Class Counsel in this case and all of the work remaining to be performed by Class Counsel in documenting the Settlement, securing Court approval of the Settlement, administering the Settlement, making sure that the Settlement is fairly administered and implemented, and obtaining dismissal of the Action, the Parties agree that Class Counsel shall file an application for attorneys' fees in the Superior Court of California, County of Alameda, contemporaneous with the Final Approval Motion. Defendant will not oppose an attorneys' fees award that does not exceed \$82,500.00 (i.e., 33% of \$250,000.00 of the GSA), and a Litigation Costs award that does not exceed \$10,000.00. If attorneys other than Class Counsel apply for an award of fees and/or costs in this Action, then Defendant will not oppose any fee request, so long as the total amount of fees and costs, including any amount sought by other counsel, does not exceed 33% of the GSA. Should the Court approve a lesser percentage or amount of fees and costs, the unapproved portion or portions shall revert to the NSA and shall be distributed proportionally to the Settlement Class Members. The Court's approval of any request for attorneys' fees and Litigation Costs is not a condition to this Settlement Agreement. Any proceeding relating to the application by Class Counsel for an award for attorneys' fees and Litigation Costs shall not operate to terminate this Settlement Agreement.

8. Service Fee.

Subject to a request by Class Counsel and approval by the Court, Defendant further agrees to pay Jimerson a Service Fee not to exceed SEVEN THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS (\$7,500.00) from the GSA in consideration for serving as Class Representative. This Service Fee is in addition to the Class Member Payment to which Plaintiff would be entitled along with other Class Members as set forth in this Settlement Agreement. Should the Court approve a Service Fee to Jimerson in an amount less than that set forth herein, the unapproved portion shall revert to the NSA. The Court's approval of any request for a Service Fee is not a condition to this Settlement Agreement. Any proceeding relating to the application by Class Counsel for an award for a Service Fee shall not operate to terminate this Settlement Agreement.

9. Costs of Settlement Administration.

The Parties have selected KCC, LLC to act as Settlement Administrator in this Action. KCC has agreed to perform all necessary class administration duties. These administration duties shall include, without limitation, calculating the Class Member Payments and tax withholding, calculating the employer-side taxes on the Class Member Payments, mailing the Class Notices and FLSA consent forms, performing skip traces on Class Notices returned as undeliverable and remailing Class Notices to any new addresses located as a result, tracking returned Requests for Exclusion and FLSA Consent Forms, notifying the Parties of timely and untimely submitted FLSA Consent Forms, mailing the Class Member Payments and tax forms to the Settlement Class Members, performing one re-mailing of any Class Member Payments that are uncashed as set forth below in Paragraph 10.3, providing payment of 75% of the Civil Penalty Fund to the Labor and Workforce Development Agency, and providing (if necessary), on behalf of Defendant, any required notices to governmental officials. All administration costs, in an amount estimated not to exceed \$10,500, shall be taken from the GSA.

10. Payment Procedure.

10.1 Funding the Settlement. Within fifteen (15) business days after the Final Effective Date of this Settlement Agreement, Defendant will deposit the court-approved attorneys' fees and

Litigation Costs, the Service Fee, the administration costs, the Civil Penalty Payment, and the portion of the NSA allocated to interest and penalties into an account, through the Settlement Administrator. As to the portion of the NSA allocated to wages, Defendant will either deposit funds into an account, through the Settlement Administrator, or provide checks to the Settlement Administrator for distribution.

- 10.2 Payments to Settlement Class Members, Class Counsel and Class Representative. Within fifteen (15) business days after Defendant provides the settlement funds, the Settlement Administrator will pay: (1) the NSA to the Settlement Class Members per the terms of this Settlement Agreement and the Final Approval Order; (2) the amount awarded by the Court for attorneys' fees and costs to Class Counsel; (3) the administration costs to the Settlement Administrator; (4) the court-approved Service Fee to the Class Representative; and (5) the portions of the Civil Penalty Payment payable to the Labor and Workforce Development Agency.
- 10.3 Uncashed Class Member Payments. If a Class Member Payment check as set forth in Paragraphs 6.2, 6.3, 6.4, 6.5 and 6.6 is not negotiated within 180 calendar days from the date initially mailed by the Settlement Administrator, the check shall expire and be voided. The sum of any such expired checks shall be redistributed, on a pro-rata basis, to Class Members who did cash their settlement checks. Any redistribution checks that are not negotiated within 180 calendar days from the date initially mailed by the Settlement Administrator shall expire and be voided. The sum of any such expired checks shall be turned over to the State of California pursuant to applicable state law.
- 10.4 The Parties intend that all payments made pursuant to this Settlement Agreement, except for the payment to the Settlement Administrator, are in exchange for release of the Released Claims as set forth in this Settlement Agreement.

11. **Tax Treatment.**

11.1 Tax Treatment of the Class Member Payments. Of the amount to be paid to Settlement Class Members, the Parties agree to allocate the payments to wages, interest, and penalties as follows:

- a. FLSA Payments and Overtime Wage Payment Fund: 50% will be allocated to wages, 50% to interest.
- b. Wage Statement Fund: 100% will be allocated to penalties.
- c. Waiting Time Penalty fund: 100% will be allocated to penalties.

Wages shall be subject to legally required withholdings. Each Settlement Class Member who receives a Class Member Payment will receive an IRS Form W-2 from the Settlement Administrator for the portion of the amount treated as wages and an IRS Form 1099 from the Settlement Administrator for the amount treated as penalties or interest. Each Settlement Class Member who receives a Class Member Payment also will be responsible for correctly characterizing this compensation for tax purposes and for payment of any taxes owing. If an audit of GENCO by any tax authority should dispute the characterization of this compensation, GENCO reserves all rights to indemnification permitted by law.

11.2 Tax Treatment of Class Representative Service Fee. Plaintiff will receive an IRS Form 1099 for his individual Service Fee, and will be responsible for correctly characterizing this additional compensation for tax purposes and for payment of any taxes owing on said amount. If an audit of Genco by any tax authority should dispute the characterization of this compensation, Genco reserves all rights to seek indemnification permitted by law.

12. **No Impact on Employee Benefit Plan, Policy or Bonus Program.**

The amounts paid under this Settlement Agreement shall not affect any credited hours of service under any employee benefit plan, policy or

bonus program sponsored by any Defendant. The amounts paid under this Settlement Agreement will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under any Defendant-sponsored (self insured or not) employee benefit plans, policies or bonus programs. Any payments made under the terms of this Settlement Agreement shall not be applied as salary, earnings, wages, or any other form of compensation for the purposes of any employee benefit plan, policy or bonus program. Defendant retains the right to modify the language of its employee benefit plans, policies and bonus programs to effect this intent and to make clear that any amounts paid pursuant to this Settlement Agreement are not for “hours worked,” “hours paid,” “hours of service,” or any similar measuring term as defined by applicable plans, policies and bonus programs for the purpose of eligibility, vesting, benefit accrual or any other purpose, and that additional contributions or benefits are not required by this Settlement Agreement. Neither Defendant nor Plaintiff are opining on the terms of any such plan, each of which speaks for itself.

13. Severability.

The Settling Parties agree that the provisions of Paragraphs 7, 8, and 9 of this Settlement Agreement are severable from the remainder of the Settlement Agreement. Any denial or reduction in amount by the Court of the application for attorneys’ fees or Litigation Costs, Service Fee, or administrator costs shall in no way affect the validity and effect of the remainder of this Settlement Agreement.

14. Limitation on Costs and Fees.

Except as provided in this Settlement Agreement, Defendant shall not be required to pay any other expenses, costs, damages or fees incurred by the Class Representative, by any Class Member, or by any of their attorneys, experts, advisors, agents or representatives. Any award of attorneys’ fees, Litigation Costs, expenses and damages payable hereunder to Class Counsel shall be in complete satisfaction of any and all claims for such attorneys’ fees, costs, expenses and damages, that Class Representative, the Class, Class Counsel, or any other counsel have or may have against Defendant arising out of or in connection with the Action and its settlement, including, but not limited to, any claims for attorneys’ fees, costs and expenses involved in litigating the Action and in negotiating and implementing this Settlement Agreement, including attorneys’ fees, costs and expenses incurred through and after the final disposition and termination of the

Action. Defendant shall not be responsible for distributing or apportioning any award of attorneys' fees and expenses among Class Counsel, and Class Counsel shall defend, hold harmless, and indemnify Defendant and their counsel, or any of them, from and against any claims, damages, litigation, causes of action, and expenses, including reasonable attorneys' fees, resulting from any action, proceeding, or claim initiated by Class Counsel, or any other attorney, involving the apportionment of the award of attorneys' fees, costs, or expenses among Class Representative, the Class, and Class Counsel.

15. Persons Objecting to the Settlement or Requesting Exclusion from the Action.

Defendant shall not be responsible to Plaintiff for those Class Members who submit objections to the Settlement Agreement or who submit a Request for Exclusion from the Action, for attorneys' fees, costs, or expenses of any kind. The GSA will not be reduced if any Class Members submit objections or a Request for Exclusion, except that Defendant shall retain the right to nullify the settlement under the circumstances set forth in Paragraph 27 of this Agreement.

16. Release.

In exchange for the consideration set forth in this Settlement Agreement, the Class Representative and the Settlement Class Members agree to release all claims as set forth herein.

16.1 Release Provided To Defendant. Upon final approval of this Settlement Agreement, the Releasing Parties hereby forever completely and irrevocably release and discharge Genco, and any of its present and former parent companies, subsidiaries, shareholders, officers, directors, employees, agents, affiliates, servants, registered representatives, attorneys, insurers, successors and assigns (collectively, with Genco, the "Released Parties"), from all claims under federal or state law, that were alleged or that reasonably could have arisen out of the facts alleged in the Action relating to unpaid wages and overtime, wage-statement violations, record-keeping violations, and "waiting time" or other statutory penalties, while working in a Class position during the Class Period. This release shall include, without limitation, any claim under the applicable

Wage Order or under California Labor Code sections 201, 202, 203, 226, 226.3, 510, 558, 1194, 1198, 2698, or 2699, under Business and Professions Code section 17200 *et seq.*, or the Fair Labor Standards Act, relating to the facts alleged in support of the claims in the Action, through the time of final approval of the Settlement by the Court. The matters released as provided above in this paragraph are referred to in this Settlement Agreement as the “Released Claims.”

- 16.2 No Other Liability. The Settlement Agreement shall be in full settlement, compromise, release, and discharge of the Released Claims and the Released Parties shall have no further or other liability to any other Releasing Party with respect to the Released Claims, except as expressly provided herein. The Parties shall agree to an injunction prohibiting all Class Members from participating in any action involving the Released Claims.
- 16.3 Waiver of California Civil Code Section 1542. Plaintiff acknowledges that he may have claims that are presently unknown and that the release contained in this Settlement Agreement is intended to forever discharge all Released Claims, whether now asserted or unasserted, known or unknown, suspected or unsuspected, which if known, might have affected the decision to enter into this release. Plaintiff shall be deemed to waive, as to the Released Claims, any right conferred by any law that limits a person’s release of unknown claims. In making this waiver, Plaintiff understands that he may discover facts in addition to or different from those that are currently known or believed to be true with respect to the Released Claims, but agrees that it is his intention to forever release any and all Released Claim, known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery or existence of additional or different facts. The foregoing waiver includes, without limitation, an express waiver, as to the Released Claims, to the fullest extent permitted by law, any and all rights under California Civil Code section 1542, which provides:

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

In addition, Plaintiff also expressly waives, as to the Released Claims any right that is similar, comparable, or equivalent to California Civil Code § 1542.

- 16.4 Prohibition on Subsequent Assertion of Released Claims. All Releasing Parties, are prohibited from ever asserting a Released Claim. Excluded from this prohibition are any instances where any individual is legally compelled to testify through service of a subpoena or other process.
- 16.5 Covenant Not to Sue. To the fullest extent allowed by law, all Releasing Parties covenant and agree not to ever assert a Released Claim, or to commence, join in, or voluntarily assist in a proceeding against the Released Parties, or any of them, arising out of or regarding the Released Claim.
- 16.6 No Assignment of Rights. Plaintiff warrants and represents that he has not assigned or transferred any released claim. This warranty of non-assignment shall survive the execution of this Settlement Agreement and the dismissal of this Action. No Class Member Payment shall be paid to any person or entity with respect to whom the Plaintiff as Class Representative has assigned, transferred, or hypothecated, or purported to assign, transfer, or hypothecate, any of the Released Claims or any rights, claims, or causes of action arising out of the Released Claims. The Class Representative shall defend, hold harmless, and indemnify the Released Parties from any claim resulting from any breach of this warranty, or any breach by Class Representative of his release of the Released Claims.
- 16.7 Plaintiff hereby releases all individual claims relating to employment with Defendant, whether known or unknown, as against Defendant and its corporate affiliates, subsidiaries, shareholders, officers, directors, employees, agents, servants,

registered representatives, attorneys, insurers, successors, and assigns. This release shall be conditional upon final approval of the settlement.

17. Class Notice And Settlement Administration.

17.1 Engagement of Settlement Administrator. The Parties agree to the selection of KCC, LLC as a Settlement Administrator to perform the notice and other settlement administration functions set forth below.

17.1.1 The Settlement Administrator shall be responsible for:

(a) establishing the necessary bank accounts and obtaining the necessary tax identification number to administer the Settlement; (b) preparing, printing and disseminating the Class Notice and FLSA Consent Form to Class Members; (c) promptly furnishing to Class Counsel and counsel for Defendant copies of all FLSA Consent Forms, objections and Requests for Exclusion received; (d) distributing a Class Member Payment to each Settlement Class Member; (e) performing one re-mailing of any Class Member Payments that are uncashed as set forth in Paragraph 10.3; (f) distributing payment of the Service Fee to the Class Representative and the Court-awarded attorneys' fees and Litigation Costs to Class Counsel; (g) distributing the portion (75%) of the Civil Penalty Payment due the Labor and Workforce Development Agency; and (h) managing all legally required withholdings, filing any necessary tax forms and distributing to the IRS all employer-side taxes and payroll tax withholdings.

17.1.2 The Settlement Administrator shall provide Defendant's counsel and Class Counsel with periodic summary reports, including the total number of Class Notices that were returned as undeliverable and the total number of FLSA Consent Forms received, objections and Requests for Exclusion. The Settlement Administrator shall maintain records of its work, which shall be available for inspection upon request by Defendant's counsel or Class Counsel.

17.2 FLSA Consent Forms.

17.2.1 FLSA Consent Forms. Included with the Class Notice sent to persons believed to be Class Members shall be a pre-printed FLSA Consent Form, to be approved by the Court.

17.2.2 Availability of FLSA Consent Forms. FLSA Consent Forms may be requested by potential Class Members directly from the Settlement Administrator until the Claim Deadline. The Settlement Administrator shall send FLSA Consent Forms to potential Class Members within five (5) calendar days of the potential Class Member's request.

17.3 Identification of Class Members.

17.3.1 Defendant has reviewed its reasonably accessible and electronically searchable records to identify the Class Members. Defendant shall provide Plaintiff with a declaration confirming the number of class members and number of weeks worked by the class.

17.3.2 Within fifteen (15) calendar days of the entry of the Preliminary Approval Order, Defendant shall provide the Settlement Administrator with the following information:

- (1) the names, last known addresses, telephone numbers and social security numbers of each Class Member; and
- (2) such other information that the Settlement Administrator reasonably requires to identify Class Members.

17.3.3 Neither Defendant nor the Settlement Administrator shall provide the identification or financial information of Class Members to the Class Representative, Class Counsel, any other Class Member, or to any other person or entity.

17.3.4 Upon receipt of names and last known addresses of each Class Member, the Settlement Administrator shall access the National Change of Address (“NCOA”) Database and update the addresses.

17.3.5 By the Notice Date, the Settlement Administrator shall provide the Class Notice and FLSA Consent Forms by bulk first class mail, to the Class Members at the addresses identified through the process described above.

17.3.6 As to any Class Notices that are returned by the Post Office as undeliverable or where the NCOA Database indicates that the last known address of any Class Member is invalid or otherwise undeliverable or not appropriate for receipt of the Class Notice, the Settlement Administrator shall perform a skip-trace procedure. The skip-trace procedure shall be performed within five (5) calendar days of the date on which the Class Notice is returned as undeliverable. If this procedure reveals a new address, the Settlement Administrator shall within five (5) calendar days thereafter remail the Class Notice and FLSA Consent Form to the new address. Any Class Members who are remailed their Class Notices pursuant to this provision shall receive a one-time extension of 15 days as to the Objection Deadline and Exclusion Deadline.

17.3.7 If Defendant and the Settlement Administrator determine that a person previously identified as being a Class Member should not be so included or identify a person who should have been included as a Class Member but was not so included, Defendant and the Settlement Administrator shall promptly delete or add such person as appropriate and immediately notify Class Counsel prior to such deletions or additions (and the reasons therefor).

17.3.8 The time periods and methodologies set forth herein reflect Defendant’s best current belief as to their ability to make such identifications and it is understood that Defendant, in undertaking the tasks set forth herein, shall

use reasonable efforts to identify all Class Members and to determine their last known addresses and social security numbers.

17.3.9 Other than the obligations set forth in this Settlement Agreement, Defendant shall have no additional obligation to identify or locate any Class Member or have any liability in connection with the provision of information to the Settlement Administrator or otherwise.

18. **Objections to the Settlement.**

Any Class Member may object to certification of the proposed Class or to the proposed Settlement Agreement, or any portion thereof (including but not limited to provisional certification, the Service Fee, attorneys' fees, etc.). The Class Notice will provide that Class Members who wish to object to the Settlement must file with the Court and serve on the Settlement Administrator, not later than forty-five (45) calendar days after the Notice Date ("Objection Deadline"), a written statement objecting to the Settlement, proposed Class, or any portion thereof, and setting forth the specific grounds for the objection. The statement also will indicate whether the Class Member intends to appear and object to the Settlement at the Final Approval Hearing; the failure to so indicate will constitute a waiver of the right to appear at the hearing. A Class Member who does not file and serve an objection in the manner and by the deadline specified above will be deemed to have waived all objections and will be foreclosed from making any objections to the Settlement, whether by appeal or otherwise. The Settlement Administrator shall email all objections to counsel for Defendant and Class Counsel.

19. **FLSA Consent Process.**

19.1 Deadline for Submission of FLSA Consent Forms. In order for FLSA opt-ins to be timely, Class Members must execute the FLSA Consent Forms and return them to the Settlement Administrator so that they are postmarked on or before the FLSA Consent Deadline. Defendants shall not have any obligation to provide an additional FLSA payment from the Overtime and Minimum Wage Payment Fund to Class Members who do not complete and return a FLSA Consent

Form to the Settlement Administrator that is postmarked on or before the FLSA Consent Deadline.

- 19.2 Receipt and Maintenance of FLSA Consent Forms. All FLSA Consent Forms and any accompanying documents received by the Settlement Administrator shall be digitally scanned by the Settlement Administrator. The original FLSA Consent Forms will be retained by the Settlement Administrator for future review, if requested, by Defendants' Counsel for a period of 12 months after the payment of the settlement funds. Plaintiff's counsel shall be responsible for notifying the Court of the Class Members who submitted valid FLSA Consent Forms.

20. Binding Effect and Right to Request Exclusion.

- 20.1 Any Class Member may elect to opt out of the Action by filing a written Request for Exclusion from the Settlement to the Settlement Administrator at the address that is set forth in the Class Notice. To be timely, all such Requests for Exclusion must be postmarked no later than forty-five (45) calendar days after the Notice Date (the "Exclusion Deadline"). Class Members requesting exclusion must set forth in their Request for Exclusion their full name and current address. A Request for Exclusion must also contain a signed statement in substantially the same form as follows: "Please exclude me from the proposed class in the Jimerson v. Genco litigation." The Settlement Administrator shall email all Requests for Exclusion to Defendant' counsel and Class Counsel. A Class Member who fails to comply with the opt-out procedure set forth herein on or before the Exclusion Deadline, as set by the Court, shall not be excluded and shall instead be bound by all provisions of the Settlement Agreement and all orders issued pursuant thereto.
- 20.2 Any Class Member who elects to opt out of the Class in the manner and within the time limits specified above and in the Class Notice (1) shall not have any rights under the Settlement Agreement; (2) shall not be entitled to receive any compensation under the Settlement Agreement; (3) shall not have standing to submit any objection to the Settlement

Agreement; and (4) shall not be bound by the Settlement Agreement, including all orders issued pursuant thereto.

- 20.3 Except for persons who elect to opt out of the Class in the manner and within the time limits specified above and in the Class Notice, all Class Members shall be deemed to be within the Class for all purposes under this Settlement Agreement, shall be bound by the terms of this Settlement Agreement, and shall be deemed to have waived all unstated objections and opposition to the fairness, reasonableness, and adequacy of this Settlement Agreement.
- 20.4 If the Settlement Agreement is given Final Approval, it shall operate as a complete release of all the Released Claims of Class Members who do not submit timely valid Requests for Exclusion, and as an effective covenant not to sue, except as to the rights, if any, under the FLSA for such persons who did not file a FLSA Consent Form.
- 20.5 Discharge of Obligations. Defendant shall fully discharge its obligations to those Settlement Class Members to whom Defendant pays a Class Member Payment through the Settlement Administrator mailing a check as set forth in Paragraph 10.2 above, regardless of whether such checks are actually received or negotiated by Settlement Class Members. All settlement checks shall expire after 180 days of initial issuance. The sum of any expired checks shall be redistributed, on a pro-rata basis, to Class Members who did cash their settlement checks. Any redistribution checks that are not negotiated within 180 calendar days from the date initially mailed by the Settlement Administrator shall expire and be voided. The sum of any such expired checks shall be turned over to the State of California pursuant to applicable state law.
- 20.6 Dispute Resolution Procedure. In any disagreement between a Class Member and Defendant regarding the right to receive a Class Member Payment, the following dispute resolution procedure shall be used: The Class Member shall send a written statement signed under penalty of perjury setting forth all facts supporting the person's claim, any written statements from witnesses supporting the person's claim, and any other

supporting evidence to the Settlement Administrator. If the Parties cannot thereafter resolve the disagreement, the Released Parties shall also provide records to the Settlement Administrator. Disputes shall be resolved by the Settlement Administrator, based on a review of the records of the Released Parties and the Class Member's records. The decision of the Settlement Administrator with regard to the amount of the Class Member Payment, if any, that the person is entitled to receive shall be final, non-appealable, and binding on the Class Member and Defendant.

21. Application for Preliminary Approval Order.

Within thirty (30) calendar days after the Parties' execution of this Agreement, Plaintiff shall move for preliminary approval of the proposed Settlement. In connection with the Motion, the Plaintiff shall apply for a Preliminary Approval Order that contains the following provisions:

- (1) preliminarily approving the Settlement Agreement under the legal standards relating to the preliminary approval of class action settlements;
- (2) preliminarily certifying the Class as provided in this Settlement Agreement;
- (3) appointing James Patterson and the Patterson Law Group as counsel for the Class;
- (4) appointing P.E. Jimerson as the representative of the Class;
- (5) approving the form of the Class Notice, and finding that the proposed method of disseminating the Class Notice meets the requirements of due process and is the best notice practicable under the circumstances;
- (6) establishing the procedures and the deadline by which Class Members may assert objections to the certification of the Class and/or to the Settlement;
- (7) establishing a deadline for the Parties to submit papers/briefing in response to any objections and in support of Final Approval of the Settlement Agreement.

- (8) establishing procedures and the deadline by which individuals may exclude themselves from the Action; and
- (9) setting a date for the Fairness Hearing.

22. Fairness Hearing.

The Settling Parties shall request that the Court hold the Fairness Hearing not later than seventy-five (75) days after the Notice Date. At the Fairness Hearing, the Class Representative and Defendant shall use their best efforts to urge the Court to confirm the certification of the Class, to grant Final Approval of the Settlement in its entirety (including any modification made thereto with the consent of the Settling Parties as provided herein), and to enter a Final Approval Order and Judgment as set forth in Paragraphs 23.1 and 23.2 below.

23. Final Approval Order and Judgment.

If the Settlement (including any modification made thereto with the consent of the Settling Parties as provided herein) shall be finally approved by the Court following the Fairness Hearing, the Settling Parties hereto shall jointly request that the Court enter a Final Approval Order and Judgment as follows:

23.1 The Final Approval Order shall include the following provisions:

- (1) confirming certification of the Class for settlement purposes and finding that the requirements for class treatment have been met for purposes of the Class;
- (2) finding that the dissemination of the Class Notice in the form and manner ordered by the Court was accomplished as directed, met the requirements of due process, was the best notice practicable under the circumstances, and constituted sufficient notice to all persons entitled thereto;
- (3) finding that the Class Representative and Class Counsel herein have adequately represented the interests of the Class;

- (4) finally approving the Settlement Agreement as fair and adequate and directing consummation of the Settlement in accordance with its terms and provisions;

23.2 The Judgment shall include the following provisions:

- (1) directing the Settling Parties to implement the terms of the Settlement Agreement, including the payment to each Settlement Class Member as set forth in this Agreement;
- (2) defining the Class;
- (3) releasing the Released Parties from any liability with respect to the Released Claims as hereinabove provided;
- (4) providing that in order to protect the continuing jurisdiction of the Court, prevent a multiplicity of lawsuits, and protect and effectuate the Court's judgment in this Action, the Class Representative and all Settlement Class Members, and anyone acting on their behalf (including, but not limited to, attorneys, representatives, and agents of Class Representative or any Settlement Class Member), who have actual knowledge of this injunction, are permanently and forever barred and enjoined from instituting, commencing, or continuing to prosecute, directly or indirectly, as an individual or collectively, representatively, derivatively, or on behalf of himself or herself, or in any other capacity of any kind whatsoever, any action in this Court, any other state court, or any arbitration or mediation proceeding or any other similar proceeding, against any Released Party that asserts any claims that are Released Claims under the terms of the Settlement;
- (5) awarding reasonable attorneys' fees and Litigation Costs to Class Counsel as provided in Paragraph 7, and subject to the limitations set forth therein or in Paragraphs 13 and 14, or reserving jurisdiction with respect thereto;

- (6) awarding the Service Fee to the Class Representative as provided in Paragraph 8, and subject to the limitations set forth therein, or in Paragraph 13, or reserving jurisdiction with respect thereto; and
- (7) reserving exclusive jurisdiction over all matters related to the administration of this Settlement, over the enforcement, construction and interpretation of this Settlement Agreement, over the enforcement, construction, and interpretation of the Judgment, including the provisions therein enjoining any further litigation of Released Claims, and over the Class Representative and all Settlement Class Members (and their attorneys and law firms) in connection therewith.

24. Conditions of the Settlement.

This Settlement Agreement is subject to and conditioned upon:

- (1) The preliminary approval of the Settlement memorialized in this Settlement Agreement.
- (2) The final approval of the Settlement by the Court after Court-approved notice to Class Members, the Fairness Hearing, and Judgment having been entered and any appeals resolved; and
- (3) The final resolution of any other action asserting Released Claims, including the final resolution of any and all appeals.

25. Finality; Effect of the Settlement Not Being Final.

25.1 Finality. The approval of the Settlement shall be considered final on the Final Effective Date. Except as expressly stated herein, none of the obligations of Defendant pursuant to the Settlement Agreement shall become effective until the Settlement becomes final, but Defendant may waive this condition in writing.

25.2 Effect of Settlement Not Being Final. If the Settlement as provided for in this Settlement Agreement does not become final, or does not become effective for any reason other than the

failure of any Party to perform such Party's obligations hereunder (except as to the Settlement not becoming final because of any appeal, which circumstance can be waived by Defendant), then the Settlement Agreement shall become null and void and of no further force and effect, and all negotiations, proceedings, and statements relating thereto shall be without prejudice as to the rights of any and all Parties hereto and their respective predecessors and successors, and all Parties and their respective predecessors and successors shall be deemed to have reverted to their respective positions in the Action as of the date and time immediately prior to the execution of this Settlement Agreement, and except as otherwise expressly provided herein.

26. Settlement Termination.

This Settlement shall be void, and the Preliminary Approval Order and the Final Approval Order and Judgment shall be vacated upon application to the Court, if (a) the Court declines to enter preliminary approval of the Settlement Agreement or to enter the Judgment or any part thereof as provided for herein, or the Settling Parties hereto fail to consent to the entry of alternative forms of Judgment, in lieu thereof, or after such consent the Court declines to enter such alternate form of Judgment, or (b) any conditions to the Settlement are not satisfied, or (c) the Court disapproves this Settlement, or any term contained in this Settlement Agreement, except as provided in Paragraph 13, including any amendments hereto, and such disapproval becomes final by reason of its affirmance on appeal or lapse of time or otherwise, or (d) the Court approves this Settlement, including any amendments hereto, but any such judgment and approval is finally reversed on appeal. In such event, (a) this Settlement Agreement and the Settlement shall become void, except for the obligation of Defendant to pay any expense incurred in connection with the Notice and administration of the Settlement; (b) any actions taken in connection with this Settlement Agreement and the Settlement shall become null and void and of no effect, (c) this Settlement Agreement and the Settlement and any hearings or proceedings thereunder shall not be referred to or used as evidence for or against any party or Class Member in this or any other action or proceeding, and (d) all pre-trial proceedings, including discovery, shall resume thirty (30) calendar days thereafter as if this Settlement had not been proposed for approval of the Court. If any monies for attorneys' fees, costs, and expenses have been paid to Class Counsel or any monies for a service

fee has been paid to the Class Representative, then Class Counsel and the Class Representative agree to return such monies within ten (10) calendar days. If reimbursement is not made within ten (10) calendar days by the Class Representative, Class Counsel shall be required to reimburse any amounts owed by the Class Representative to Defendant within five (5) calendar days thereafter.

27. Tolerance of Opt-Outs.

Notwithstanding any other provision of this Settlement Agreement, Defendant shall retain the right, in its sole discretion, to nullify the Settlement within thirty (30) calendar days after expiration of the opt-out period set forth in Paragraph 20.1, if more than five (5) Class Members choose to opt out of this Settlement or if Plaintiff fails to execute a general release as set forth in Paragraph 16.7. In addition, Defendant shall have the option to withdraw from the Settlement at any time prior to Final Approval of the Settlement under Paragraph 25 of this Settlement Agreement if any action asserting Released Claims is allowed to be prosecuted by Settlement Class Member(s), notwithstanding the Settlement and the Orders provided for herein. If Genco exercises such an option to withdraw, a written notice of such withdrawal and the grounds therefore shall be promptly delivered to Class Counsel. As a result of any such withdrawal, this Settlement Agreement shall become void except for the obligation of Defendant to pay for any expense incurred in connection with the Notice and administration of the Settlement before Defendant withdraws from the Settlement.

28. No Admissions.

The Settling Parties agree that this Settlement Agreement is the result of a good faith compromise settlement of disputed claims, and no part of this Settlement Agreement may be offered as an admission of any kind. In particular, but without limiting the generality of the foregoing, nothing about this Settlement Agreement shall be construed as an admission of liability, wrongdoing, impropriety, responsibility, or fault whatsoever on the part of Genco and/or the Released Parties, and it shall not be construed as or deemed to be evidence of, or an admission or concession that the Class Representative or any Class Member has suffered any damage. In addition, this Settlement Agreement shall not be offered or be admissible in evidence against Genco or any Released Party, except in any action or proceeding brought by or against Class Representative, the Class, Class Members, or Genco to enforce its terms, or by Genco in defense of any claims brought by

Class Representative, the Class, Class Members, or any member of the general public. The provisions of this paragraph shall become effective when this Settlement Agreement is signed and shall be binding on the Settling Parties and their counsel regardless of whether the Settlement Agreement is preliminarily or finally approved or terminated for any reason, or rendered null and void.

29. Publicity Limitation and Non-Disparagement.

Plaintiff will not discuss the Settlement with any person other than Class Counsel prior to the issuance of Class Notices to Class Members. Plaintiff agrees not to communicate in any manner, directly or indirectly, with the media, or in any manner calculated to result in media coverage of this Settlement or the Action. Class Counsel agrees not to communicate in any manner, directly or indirectly, with the media in any manner calculated to result in media coverage of this Settlement or the Action. This provision shall not prohibit posting of notices and court orders for the benefit of the Class Members. Defendant agrees not to communicate in any manner, directly or indirectly, with the media in any manner calculated to result in media coverage of this Settlement or the Action. A breach of this paragraph by Plaintiff, Defendant or Class Counsel shall entitle the opposing party to nullify the Settlement at any time before court approval of the final Settlement. In the event of a breach, the non-breaching party shall be entitled to reasonable attorneys' fees and costs incurred as a result of that breach.

30. Extensions of Time.

Without further order of the Court, the Settling Parties hereto may agree in writing to reasonable extensions of time to carry out any of the provisions of the Settlement.

31. Force Majeure.

The failure of any party to perform any obligation hereunder shall not subject such party to any liability or remedy for damages, or otherwise, where such failure is occasioned in whole or in part by acts of God, fires, earthquakes, other natural disasters, explosions, floods, wars, sabotage, or terrorist acts beyond the reasonable control of such party.

32. Construction.

This Settlement Agreement was entered into after substantial good faith, arms-length negotiations between the Settling Parties' counsel. This Settlement Agreement is entered into freely and voluntarily only after each party has carefully read and reviewed it with counsel, and it reflects the conclusion of each party that this Settlement Agreement and the Judgment and the releases, waivers, and covenants contemplated hereby are in the best interest of said party. This Settlement Agreement has been entered into without any coercion and under no duress. The Settling Parties acknowledge and agree that all Parties had an equal hand in drafting this Settlement Agreement so that it shall not be deemed to have been prepared or drafted by one party or another. All Parties waive the provisions of California Civil Code section 1654, which provides, in pertinent part, that "the language of a contract should be interpreted most strongly against the party who causes the uncertainty to exist." Except as expressly provided herein, this Settlement Agreement is not intended to confer any rights or remedies upon any person other than the Settling Parties.

33. Due Authority of Attorneys.

Each of the attorneys executing this Settlement Agreement on behalf of one or more parties hereto warrants and represents that he or she has been duly authorized and empowered to execute this Settlement Agreement on behalf of each such respective party and to bind them to the terms hereof.

34. Entire Agreement.

This Settlement Agreement (including all Exhibits annexed hereto) sets forth the entire agreement of the Settling Parties with respect to its subject matter and supersedes any and all other prior agreements and all negotiations leading up to the execution of this Settlement Agreement, whether oral or written, regarding the subjects covered herein. The Settling Parties acknowledge that no representations, inducements, warranties, promises, or statements relating to the subjects covered herein, oral or otherwise, have been made by any of the Settling Parties or by anyone acting on behalf of the Settling Parties which are not embodied or incorporated by reference herein, and further agree that no other agreement, covenant, representation, inducement, promise or statement relating to the subjects covered herein not set forth in writing in this Settlement Agreement, shall be valid or binding.

35. Modification or Amendment.

This Settlement Agreement may not be modified or amended except in a writing signed by all signatories hereto or their successors in interest.

36. Deadlines Falling on Weekends or Holidays.

To the extent that any deadline set forth in this Settlement Agreement falls on a Saturday, Sunday, or legal holiday, that deadline shall be continued until the following business day.

37. Successors.

This Settlement Agreement shall be binding upon and inure to the benefit of the Settling Parties hereto (including Settlement Class Members) and their respective heirs, executors, administrators, successors and assigns, and upon any corporation, partnership or other entity into or with which any Settling Party hereto may merge, combine or consolidate. As used in the preceding sentence and elsewhere throughout this Settlement Agreement, “including” shall mean including without limitation.

38. Counterparts.

This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Facsimile or other electronic transmission of the signatures of the Settling Parties or their representatives shall be binding on the Settling Parties.

39. Waivers.

The waiver by any Party of any breach of this Settlement Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.

40. Governing Law.

This Settlement Agreement shall be governed by and construed, enforced, and administered in accordance with the internal laws of the State of California, without regard for the law of the State regarding conflicts of laws or choice of law. Any orders or judgments entered by the Court in conjunction with the proceedings relating to or arising out of this Settlement Agreement shall be construed and enforced under, and all issues relating to

the preclusive effect of such orders or judgments shall be determined by, the laws of the State of California relating to the construction, enforcement, and preclusive effect of orders and judgments entered by state courts.

41. Continuing Jurisdiction.

To the extent allowed by law, the Court will have continuing jurisdiction over the Action for the purpose of implementing the Settlement Agreement, the Final Approval of the Settlement, entry of Judgment, and post-judgment issues, until all related matters are fully resolved. Except as provided in Paragraph 20.6, above, any dispute regarding the Settling Parties' obligations pursuant to this Settlement Agreement or interpretation of the terms of this Settlement Agreement will be presented by written motion to, and resolved by, the Court.

42. Regulation.

In the event that any provision in this Settlement Agreement shall be affected by any rule, regulation, ordinance, order, directive, or statute by any unit of government, whether state, federal, or local, such rule, regulation, ordinance, order, directive, or statute shall supersede and take precedence over any such provision of this Settlement Agreement to the contrary and in no event shall Defendant be in violation of this Settlement Agreement nor shall this Settlement Agreement be in any way affected should Defendant take any action or change its business practices to comply with such state, federal, or local rules, regulations, ordinances, or statutes currently in force or enacted in the future.

43. Headings.

The headings contained in this Settlement Agreement are for convenience and reference purposes only, and shall not be given weight in its construction.

44. No Rescission On Grounds Of Mistake.

The Settling Parties acknowledge that they have made their own investigations of the matters covered by this Settlement Agreement to the extent they have deemed it necessary to do so. Therefore, the Settling Parties agree that they shall not seek to set aside any part of the Settlement Agreement on the grounds of mistake. Moreover, the Settling Parties understand, agree, and expressly assume the risk that any fact not recited,

contained, or embodied in the Settlement Agreement may turn out hereinafter to be other than, different from, or contrary to the facts now known to them or believed by them to be true, and further agree that the Settlement Agreement shall be effective in all respects notwithstanding and shall not be subject to termination, modification, or rescission by reason of any such difference in facts.

45. Notices.

Any notices, requests, demands, or other communications required or permitted to be given pursuant to this Settlement Agreement, other than notice to the Class or Class Members, shall be in writing and, except as provided elsewhere in this Settlement Agreement or in any communication to the Class, shall be delivered personally, via overnight delivery or via postage pre-paid first class mail, as follows: (1) to Class Representative, the Class, and Class Counsel to the attention of James Patterson, Patterson Law Group, 402 West Broadway, 29th Floor, San Diego, CA 92101 and (2) to Genco and counsel for Genco to the attention of Michael Burns, Seyfarth Shaw LLP, 560 Mission St., Suite 3100, San Francisco, CA, 94105. By written notice given in accordance herewith, each party may modify or change the addressee or address of any person identified above or pursuant hereto as the person or persons to whom all future notices shall be sent.

46. Signatures of Class Representative, Defendant and Class Counsel.

Class Representative, Defendant, and Class Counsel indicate by signing below their approval of the form of this Settlement Agreement (and exhibits thereto), and, in the case of counsel for Class Representative and the Class, a representation of authority to bind the Class as certified and the Class described herein (subject to the final approval of the Court).

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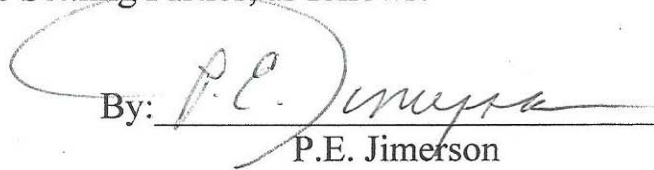
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47. **Disputes.**

All disputes arising out of or related to this Settlement Agreement (except Class Member disputes which are governed by the provision of Paragraph 20.6) shall be resolved by the Court, as set forth in Paragraph 41, above.

IN WITNESS WHEREOF, this Settlement Agreement has been duly executed by and on behalf of the Settling Parties, as follows:

Dated: April 16, 2014

By: 
P.E. Jimerson

On behalf of himself, as Plaintiff, and those similarly situated

PATTERSON LAW GROUP

Dated: April 16, 2014

1 

Allison H. Goddard
Attorneys for Plaintiff and the Class

GENCO DISTRIBUTION SYSTEMS, INC.

Dated: February ____, 2014

By: _____

Genco Distribution Systems, Inc.

SEYFARTH SHAW LLP

47. **Disputes.**

All disputes arising out of or related to this Settlement Agreement (except Class Member disputes which are governed by the provision of Paragraph 20.6) shall be resolved by the Court, as set forth in Paragraph 41, above.

IN WITNESS WHEREOF, this Settlement Agreement has been duly executed by and on behalf of the Settling Parties, as follows:

Dated: April ____, 2014

By: _____

P.E. Jimerson

On behalf of himself, as Plaintiff, and those similarly situated

PATTERSON LAW GROUP

Dated: April ____, 2014

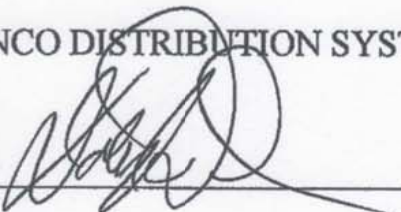
By: _____

James Patterson

Attorneys for Plaintiff and the Class

GENCO DISTRIBUTION SYSTEMS, INC.

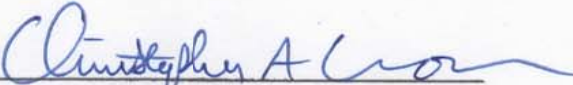
Dated: April 17, 2014

By:  _____

Genco Distribution Systems, Inc.

SEYFARTH SHAW LLP

Dated: April 17, 2014

By:  _____

Christopher A. Crosman

Attorneys for Genco Distribution Systems, Inc.