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JANNIKA SCHAKOW, and on behalf of herself  
and all other similarly situated, and the general  
public

Plaintiffs,

v.

LERNER NEW YORK, INC. dba NEW YORK  
& COMPANY, NEW YORK & COMPANY,  
INC. dba NEW YORK & COMPANY and  
DOES 1 through 10, inclusive,

Defendant.

Case No. C08-01145

**ORDER GRANTING JOINT MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS SETTLEMENT**

Date: May 28, 2009  
Time: 9:30 a.m.  
Dept: 6  
Judge: Hon. David B. Flinn

1 Plaintiff JANNIKA SCHAKOW (“Plaintiff”) filed this class action suit on April 29, 2008.  
2 The Complaint avers that the meal and rest break policies of defendant LERNER NEW YORK,  
3 INC. dba NEW YORK & COMPANY (“NY& CO” or “Defendant”) violate California law, and  
4 seeks recovery of the unpaid meal and rest period wages, related interest, penalties, and attorneys’  
5 fees and costs. The Complaint also claims that NY&CO is violating California’s itemized wage  
6 statement statute, Labor Code section 226, by failing to list hours worked and pay rates on  
7 employees’ wage statements.

8 After approximately eight months of investigation, litigation, discussion, discovery, and  
9 concerted effort to negotiate a settlement, which included exchange of information and two all-day  
10 mediation sessions, Plaintiff and NY&CO (jointly “the Parties”) agreed to a claims-made settlement  
11 figure of up to a maximum of \$850,000, depending on the actual number of valid and timely claims  
12 submitted by Class Members (“Settlement Sum”). Subsequently, in full settlement of the class-wide  
13 claims that are encompassed by this case, the Parties agreed to the Joint Stipulation of Settlement and  
14 Release Between Plaintiff and Defendant (“Settlement”) filed with the Court and incorporated here as  
15 Exhibit 1.

16 In light of the Settlement, the Parties have jointly moved this Court to: (1) provisionally  
17 certify a Class for settlement purposes; (2) preliminarily approve the Settlement; (3) order distribution  
18 of the proposed Notice of Class Action Settlement and Opportunity to Opt Out or Object to  
19 Settlement (“Notice,” attached hereto as Exhibit 1A); and (4) set a hearing date for final approval of  
20 the Settlement.

21 The Parties’ motion for preliminary approval came on for hearing before the Court on May  
22 28, 2009, at 9:00 a.m. Class Counsel and Defense Counsel were present at the hearing.

23 This Court having fully received and considered the notice of motion; supporting  
24 memorandum of points and authorities; declarations of David Pogrel, Hunter Pyle, Dan Rosenthal,  
25 and Jannika Schakow; the Settlement; the proposed Notice, and the oral argument presented to the  
26 Court, and in recognition of the Court’s duty to make a preliminary determination as to the  
27 reasonableness of any proposed class action settlement, and to conduct a fairness hearing as to good  
28

1 faith, fairness, adequacy, and reasonableness of any proposed settlement, **HEREBY ORDERS and**  
2 **MAKES DETERMINATIONS** as follows:

3 1. All defined terms contained herein shall have the same meaning as set forth in the  
4 Settlement executed by the Parties, filed with the Court, and incorporated here as Exhibit 1.

5 **ORDER PROVISIONALLY APPROVING SETTLEMENT, CERTIFYING SETTLEMENT**  
6 **CLASS AND APPOINTING CLASS REPRESENTATIVES AND CLASS COUNSEL**

7 2. For settlement purposes only, under Code of Civil Procedure section 382 and related  
8 case law, the Court conditionally certifies the following Class:

9 NY&CO's Assistant Sales Managers ("ASMs"), Co-Sales Managers ("CSMs"), Junior  
10 Management Associates ("JMAs"), and Sales Associates ("Associates") (collectively  
11 "Class Members") employed in the State of California between April 29, 2004 and  
12 December 31, 2008 ("Class Period").

13 3. The Court conditionally finds that, for the purposes of approving this Settlement  
14 only, the proposed Class meets the requirements for certification of a settlement class in that: (a)  
15 the proposed Class is ascertainable and numerous (approximately 8.111 persons) so that joinder of  
16 all Class Members is impracticable; (b) there are questions of law or fact common to the proposed  
17 Class regarding whether Defendant had certain policies and/or practices that violated California  
18 meal and rest period laws; (c) the Plaintiff's claims are typical of the claims of other Class  
19 Members; (d) Plaintiff and her counsel will fairly and adequately protect the interests of the  
20 proposed Class; and (e) a settlement class action is superior to other available methods for an  
21 efficient resolution of this controversy.

22 4. If the Settlement does not become final for any reason, the fact that the Parties were  
23 willing to stipulate to class certification as part of the Settlement shall have no bearing on, and will  
24 not be admissible in connection with, the issue of whether a class in this action should be certified  
25 in a non-settlement context. The Court's findings are for purposes of conditionally certifying a  
26 Settlement Class and will not have any claim or issue or evidentiary preclusion or estoppel effect in  
27 any other action against the Released Parties, or in this Litigation if the Settlement is not finally  
28 approved.

5. The Court appoints, for settlement purposes only, plaintiff JANNIKA SCHAKOW

1 as Class Representatives.

2 6. The Court appoints, for settlement purposes only, Hunter Pyle and Pamela Kong, of  
3 Sundeen Salinas & Pyle, and Aaron Kaufmann and David Pogrel, of Hinton, Alfert & Sumner, as  
4 Class Counsel. The Court finds that Class Counsel have extensive experience and expertise in  
5 prosecuting meal and rest period class actions.

6 7. The Court confirms, for settlement purposes only, the selection of Rosenthal & Co.  
7 as Settlement Administrator, the reasonable costs of which will be paid from the Settlement Sum.

8 8. The Court finds on a preliminary basis that the proposed Settlement (including the  
9 claims made process, the opt-out process and requirements, the monetary provisions, the method of  
10 calculating Claim Amounts, the release of claims, and the proposed award of attorneys' fees and  
11 costs and the agreement regarding administration costs) appears to be fundamentally fair and  
12 adequate and falls within the "range of reasonableness" and therefore grants preliminary approval  
13 of the Settlement.

14 9. Based on a review of the papers submitted by the Parties, the Court finds that the  
15 Settlement is the result of extensive arms-length negotiations conducted after Class Counsel had  
16 adequately investigated the claims and became familiar with the strengths and weaknesses of those  
17 claims. The assistance of an experienced mediator in the settlement process supports the Court's  
18 conclusion that the Settlement is non-collusive. The Court finds the Settlement to be  
19 presumptively valid, subject only to any objections that may be raised at the Final Fairness and  
20 Approval Hearing.

21  
22 **APPROVAL OF CLASS NOTICE AND OPT-IN PROCEDURE**

23 10. The Court finds and concludes that the Notice fairly, plainly, accurately, and  
24 reasonably informs Class Members of: (1) appropriate information about the nature of this case, the  
25 definition of the Class, the identity of Class Counsel, and the essential terms of the Settlement; (2)  
26 appropriate information about Class Counsel's forthcoming application for attorneys' fees and  
27 costs award; (3) appropriate information about how to submit a timely claim under the Settlement,  
28 how to opt out of the Settlement, and how to object to the Settlement; and (5) appropriate

1 instructions as to how to obtain additional information regarding the Settlement. The Court further  
2 finds that the Notice and proposed distribution of such Notice by first class mail to each identified  
3 Class Member at his or her last known address (with a skip trace searching as necessary, remailing  
4 of any returned mail, and a reminder postcard) comports with all constitutional requirements,  
5 including those of due process and is the best notice practicable under the circumstances. The  
6 Notice is hereby approved.

7 11. The Parties are ordered to carry out and proceed with the Settlement according to  
8 the terms of the Settlement.

9 **FINAL APPROVAL HEARING**

10 12. The Court will conduct a Final Approval and Fairness Hearing on September 18,  
11 2009, at 9:30 a.m., to determine: (1) whether the proposed Settlement is fair, reasonable, and  
12 adequate and should be finally approved by the Court, including consideration of any timely filed  
13 objections; and (2) the amount of attorneys' fees and costs to award to Class Counsel.

14 13. Plaintiff's motion for final approval of the settlement, and Class Counsel's motion  
15 for awards of attorneys' fees and costs, and shall be filed no later than five (5) days prior to the  
16 date of the Final Approval and Fairness Hearing.

17 14. In the event the Settlement is not finally approved, or otherwise does not become  
18 effective in accordance with the terms of the Settlement, this order shall be rendered null and void  
19 and shall be vacated, and the Parties shall revert to their respective positions as of before entering  
20 into the Settlement.

21 Accordingly, good cause appearing, the Court hereby approves the proposed Notice and  
22 adopts the following dates and deadlines, consistent with and in addition to all deadlines in the  
23 Settlement:

24 20 days after Preliminary 25 Approval of Settlement	NY&CO to provide the Settlement Administrator the most recent names, mailing addresses, and 26 compensation information it has for the Class 27 Members.
28 35 days after Preliminary Approval of Settlement	Mailing of Class Notice and Claim Form by Settlement Administrator.

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30 days after mailing of Class Notice	Mailing of Reminder Postcard by Settlement Administrator.
60 days after mailing of Class Notice	Last day for Class Members to submit a Timely and Valid Claim Form, Election Not to Participate, or written objections.
[5 court days before final approval hearing]	Last day for filing and service of papers in support of final settlement approval and requests for attorneys' fees and expenses.
September 18, 2009	Final settlement approval hearing.
15 days after "Final Approval" (as defined in the Settlement Agreement) or November 4, 2009, whichever is earlier	NY&CO to transfer Settlement Fund to Claims Administrator
20 days after "Final Approval" (as defined in the Settlement Agreement)	NY&CO to pay Class Representative Participation award to Plaintiff and pay Class Counsel fees and costs.
20 days after "Final Approval" (as defined in the Settlement Agreement):	Claims Administrator to mail individual settlement checks to Plaintiff and Class Members.

IT IS SO ORDERED, this 28<sup>th</sup> day of May, 2009

---

Honorable David B. Flinn  
JUDGE OF THE SUPERIOR COURT

## **EXHIBIT 1**

1 SUNDEEN SALINAS & PYLE  
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JANNIKA SCHAKOW

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15 Attorneys for Defendant  
LERNER NEW YORK, INC.

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
17 COUNTY OF CONTRA COSTA

19 JANNIKA SCHAKOW, on behalf of herself,  
20 and all others similarly situated,

21 Plaintiff,

22 vs.

23 LERNER NEW YORK, INC. dba NEW YORK  
& COMPANY; NEW YORK & COMPANY,  
24 INC. dba NEW YORK & COMPANY; and  
DOES 1 through 10, inclusive,

25 Defendants.  
26

Case No. C 08-01145

ASSIGNED FOR ALL PURPOSES TO:  
HON. DAVID B. FLINN  
DEPARTMENT 06

**CLASS ACTION - COMPLEX**

**JOINT STIPULATION OF  
SETTLEMENT AND RELEASE  
BETWEEN PLAINTIFF AND  
DEFENDANT**

27 Complaint Filed: April 29, 2008  
28 Trial Date: None Set

1 This Joint Stipulation of Settlement and Release (hereinafter “Stipulation of Settlement”  
2 or “Settlement”) is made and entered into by and between JANNIKA SCHAKOW, individually  
3 and on behalf of others similarly situated (“Plaintiff” or “Class Representative”), and LERNER  
4 NEW YORK, INC. (“Defendant”).

5 This Settlement shall be binding on Plaintiff and those persons she represents, and on  
6 Defendant and its former and present parents (including without limitation NEW YORK &  
7 COMPANY, INC.), subsidiaries, divisions, related or affiliated companies, and its officers,  
8 directors, employees, partners, shareholders and agents, and any other successors, assigns, or  
9 legal representatives, and any individual or entity which could be jointly liable with Defendant,  
10 and their respective counsel, subject to the terms and conditions hereof and the Court’s approval.

11 THE PARTIES STIPULATE AND AGREE as follows:

- 12 1. Plaintiff and Defendant are collectively referred to herein as “the Parties.”
- 13 2. On April 29, 2008, Plaintiff filed a Class Action Complaint (“Lawsuit” or  
14 “Action”) against Defendant in the Contra Costa County Superior Court in the State of California  
15 on behalf of herself and all persons “who are or have been employed as in-store employees paid  
16 on an hourly basis and classified as non-exempt by LERNER NEW YORK, INC. and NEW  
17 YORK & COMPANY, INC. in the State of California during the period commencing four years  
18 from the filing of this action through the entry of final judgment in this action.” (Complaint, par.  
19 31) Plaintiff alleges in her Complaint that Defendant failed to provide off-duty meal periods,  
20 failed to authorize and permit rest periods, failed to pay waiting time penalties on all wages due  
21 and owing at the time of employees’ terminations or discharges, failed to provide accurate  
22 itemized wage statements, and engaged in unfair competition by failing to provide meal and rest  
23 periods. Plaintiff seeks damages and other relief on behalf of herself and the members of the  
24 Class under the California Labor Code and the California Business and Professions Code. In this  
25 regard, the Complaint seeks damages in the amount of unpaid meal and rest period premiums,  
26 waiting time penalties under Labor Code section 203, penalties pursuant to Labor Code section  
27 226 , restitution, declaratory relief, an equitable accounting, interest, attorneys’ fees and costs.

1           3.       On July 25, 2008, Defendant filed and served an Answer to Plaintiff's unverified  
2 Complaint, denying all material allegations of the Complaint and asserting affirmative defenses.  
3 On September 11, 2008, pursuant to a stipulation by the Parties, the Court entered an order  
4 dismissing Defendant New York & Company, Inc., without prejudice, from the Action.

5           4.       Plaintiff has not filed a motion for class certification in this action.

6           5.       This Action has been actively litigated since it was filed. Specifically, Plaintiff  
7 has propounded, and Defendant has responded to, comprehensive class-wide discovery regarding  
8 both class certification and the merits of her underlying claims. In response to this discovery,  
9 Defendant produced a sample of data regarding class size, payroll records, and work schedules.  
10 Plaintiff then retained a forensic accountant, Hemming Morse, to analyze these data. Hemming  
11 Morse's analysis then formed the basis of Plaintiff's damage calculations.

12          6.       Additionally, Plaintiff's attorneys deposed Plaintiff's District Sales Leader, as well  
13 as a person most knowledgeable regarding the following topics, among others:

14           LERNER's California operations;

15           LERNER's creation, implementation, and enforcement of meal period and rest break  
16 policies and procedures in California during the COVERED PERIOD;

17           LERNER's provision of training of ASSISTANT MANAGERS, ASSOCIATES, and their  
18 supervisors regarding the implementation, and enforcement of meal period and rest break  
policies and procedures in California during the COVERED PERIOD;

19           Audits, complaints, or investigations regarding LERNER's meal or rest break policy or  
20 practice; and.

21           LERNER's time keeping system and time keeping records, and policies and procedures  
regarding time keeping as applied or communicated to CLASS MEMBERS.

22          7.       Plaintiff then relied upon the information that she received at these depositions in  
23 evaluating this case for settlement.

24          8.       Following this investigation and analysis, the Parties engaged in settlement  
25 negotiations and participated in two mediation sessions before a well-known class action  
26 mediator. As a result of these efforts, the Parties reached a tentative classwide Settlement and  
27 executed a Memorandum of Understanding, subject to Court approval. The Parties now enter  
28

1 into this more detailed, formalized agreement to submit the Settlement to the Court for  
2 preliminary and final approval.

3 9. For purposes of this Settlement, the “Settlement Class” shall consist of all persons  
4 employed as hourly-paid Assistant Sales Managers, Co-Sales Managers, Junior Management  
5 Associates, Sales Associates and Seasonal Sales Associates employed by Defendant in the State  
6 of California at a New York & Company store between April 29, 2004 and December 31, 2008  
7 (the “Class Period”). The “Settlement Class” or “Class Members,” however, shall not include  
8 any individual who previously settled or released the claims covered by this Settlement, any  
9 individual who previously was paid or received awards through civil or administrative actions for  
10 the claims covered by this Settlement, or any individual who submits a timely and valid Request  
11 for Exclusion as provided in this Settlement.

12 10. Solely for the purpose of settling this case, the Parties stipulate and agree that the  
13 requisites for establishing class certification with respect to the Settlement Class have been met  
14 and are met. This stipulation as to class certification will not be deemed admissible in any other  
15 proceeding, for any purpose, or in this Action, other than to effectuate the Settlement. The Parties  
16 agree that if, for any reason, the Settlement is not approved, the stipulation as to class certification  
17 will be of no force or effect.

18 11. More specifically, the Parties stipulate and agree that:

19 a. The Settlement Class is ascertainable and so numerous as to make it  
20 impracticable to join all Class Members.

21 b. There are common questions of law and fact including, but not limited to,  
22 the following:

23 i. Whether or not Defendant complied with applicable laws affecting  
24 Plaintiff and the Settlement Class regarding the provision of meal and rest periods, timely  
25 payment of wages to terminated or discharged employees, and the provision of accurate itemized  
26 wage statements;

27 ii. Whether or not Defendant engaged in unfair, unlawful or fraudulent  
28 business practices affecting Plaintiff and the Settlement Class in violation of California Business

1 and Professions Code section 17200 et seq.; and

2                   iii.     Whether or not Plaintiff and the Settlement Class are entitled to  
3 declaratory relief.

4                   c.     Plaintiff's claims are typical of the claims of the members of the Settlement  
5 Class.

6                   d.     Plaintiff and Class Counsel will fairly and adequately protect the interests  
7 of the Settlement Class. Sundeen Salinas & Pyle and Hinton, Alfert & Sumner should be deemed  
8 "Class Counsel" and will fairly and adequately protect the interests of the Settlement Class.

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

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

16                  12.     Defendant denies any liability or wrongdoing of any kind whatsoever associated  
17 with the claims alleged in Plaintiff's Complaint, and further denies that, for any purpose other  
18 than settling this Lawsuit, this Action is appropriate for class or representative treatment. With  
19 respect to Plaintiff's claims, Defendant contends, among other things, that it has complied with all  
20 applicable state, federal and local laws affecting Plaintiff and the Settlement Class regarding the  
21 provision of meal and rest periods, timely payment of meal and rest period wages to terminated or  
22 discharged employees, and the provision of accurate itemized wage statements.

23                  13.     It is the desire of the Parties to fully, finally and forever settle, compromise and  
24 discharge all disputes and claims arising from or related to Plaintiff's Complaint in this case.

25                  14.     It is the intention of the Parties that this Stipulation of Settlement shall constitute a  
26 full and complete settlement and release of all claims arising from or related to the allegations of  
27 this class action case against Defendant, which release includes in its effect all of Defendant's  
28 former and present parents (including without limitation New York & Company, Inc.),

1 subsidiaries, divisions, related or affiliated companies, and its officers, directors, employees,  
2 partners, shareholders and agents, and any other successors, assigns, or legal representatives, and  
3 any individual or entity which could be jointly liable with Defendant, and their respective  
4 counsel.

5 15. Counsel for the Settlement Class have conducted a thorough investigation into the  
6 facts of this class action case, including an extensive review of relevant documents and data, and  
7 have diligently pursued an investigation of Class Members' claims against Defendant. Based on  
8 their own independent investigation and evaluation, Class Counsel are of the opinion that the  
9 Settlement with Defendant for the consideration and on the terms set forth in this Stipulation of  
10 Settlement is fair, reasonable, adequate and in the best interest of the Settlement Class in light of  
11 all known facts and circumstances, including the risk of significant delay, the risk the Settlement  
12 Class will not be certified by the Court, defenses asserted by Defendant, and numerous potential  
13 appellate issues.

14 16. Specifically, Defendant contends that Plaintiff will not be able to certify a broad  
15 class pursuant to the holding in *Brinker Restaurant Corp. v. Superior Court* (2008) 165  
16 Cal.App.4<sup>th</sup> 25, review granted, 2008 Cal. LEXIS 12467. Defendant further contends that  
17 Plaintiff is unlikely to prevail on her claim for penalties under Labor Code 226 pursuant to the  
18 holding in *Brinkley v. Public Storage, Inc.* (2008) 167 Cal.App.4<sup>th</sup> 1278, review granted. Finally,  
19 Defendant further contends that even if Plaintiffs are able to establish meal and rest break  
20 violations, damages should be limited to one "penalty" per day, not one penalty for a missed meal  
21 period and a second penalty for a missed rest period. *See, Corder v. Houston's Rest., Inc.*, 424 F.  
22 Supp. 2d 1205, 1207 n.2 (C.D. Cal. 2006).

23 17. In the event that Defendant prevails on any of these contentions, the damages  
24 awarded to the Class will be severely reduced or non-existent. Moreover, litigation of these  
25 issues will take years and potentially multiple appeals. For these reasons, Defendant and  
26 Defendant's counsel also agree that the Settlement is fair and in the best interest of the Settlement  
27 Class.



1           b.     Effective Date: The Settlement embodied in this Stipulation of Settlement  
2 shall become effective when all of the following events have occurred: (i) this Stipulation of  
3 Settlement has been executed by all Parties and by counsel for the Class and Defendant; (ii) the  
4 Court has given preliminary approval to the Settlement; (iii) the notice has been given to the  
5 Settlement Class, providing them with an opportunity to submit claim forms to participate in the  
6 Settlement, or to opt out of the Settlement; (iv) the Court has held a formal fairness hearing and  
7 entered a final order and judgment certifying the Settlement Class, dismissing this case with  
8 prejudice as of the time all payments have been made and all obligations under this Stipulation of  
9 Settlement have been performed, and approving this Stipulation of Settlement; and (v) in the  
10 event there are written objections filed prior to the formal fairness hearing which are not later  
11 withdrawn, the later of the following events: when the period for filing any appeal, writ or other  
12 appellate proceeding opposing the Settlement has elapsed without any appeal, writ or other  
13 appellate proceeding having been filed; or any appeal, writ or other appellate proceeding  
14 opposing the Settlement has been dismissed finally and conclusively with no right to pursue  
15 further remedies or relief; or any appeal, writ or other appellate proceeding has upheld the Court's  
16 final order with no right to pursue further remedies or relief. In this regard, it is the intention of  
17 the Parties that the Settlement shall not become effective until the Court's order approving the  
18 Settlement is completely final, and there is no further recourse by an appellant or objector who  
19 seeks to contest the Settlement. Additionally, it is agreed by the Parties that this Settlement will  
20 not become effective if Defendant, contrary to Paragraph 19 above, is required to pay to any  
21 person, entity or organization the difference between the total amount of its maximum total  
22 liability under the Settlement as set forth in Paragraph 19, and the total amount of (1) the valid  
23 claims filed by the Settlement Class (which shall equal at least sixty-five percent (65%) of the Net  
24 Settlement Amount as described below); (2) the attorneys' fees approved by the Court; (3) the  
25 attorneys' costs approved by the Court; (4) the enhancement award to the Class Representative  
26 approved by the Court; (5) the fees and expenses of the Claims Administrator; and (6) any other  
27 payments provided by this Settlement.

28           c.     Maximum Settlement Amount and Net Settlement Amount: To implement

1 the terms of this Settlement, Defendant agrees to pay on a claims-made basis a Maximum  
2 Settlement Amount consisting of a maximum of Eight Hundred Fifty Thousand Dollars  
3 (\$850,000.00), plus the employer's share of withholding taxes for FICA, FUTA, and SDI. Except  
4 as provided in subparagraph vii, below, Defendant shall not have the obligation to segregate the  
5 funds comprising the Maximum Settlement Amount, and Defendant shall retain exclusive  
6 authority over and responsibility for those funds subject to the transfer of those funds to the  
7 Settlement Administrator and disbursement of funds necessary for the payment of claims,  
8 approved attorneys' fees, approved attorneys' costs, approved enhancement award to the Class  
9 Representative, the claims administration fees and expenses, and any other payments provided by  
10 this Settlement. All claims submitted by Class Members, all attorneys' fees and attorneys' costs,  
11 the enhancement award to the Class Representative, the fees and expenses of the Claims  
12 Administrator, and any other payments provided by this Settlement shall be paid out of the  
13 Maximum Settlement Amount. The Net Settlement Amount shall be calculated by deducting all  
14 attorneys' fees (not to exceed Two Hundred Fifty-Five Thousand Dollars [\$255,000.00]), plus  
15 actual costs not to exceed Thirty Thousand Dollars [\$30,000]), the enhancement award to the  
16 Class Representative (not to exceed Ten Thousand Dollars [\$10,000.00]), and the fees and  
17 expenses of the Claims Administrator, from the Maximum Settlement Amount. Any amount of  
18 the Maximum Settlement Amount not required to pay class claims, administration costs,  
19 attorneys' fees and costs, the Class Representative's enhancement award, or any other payments  
20 provided by this Settlement shall remain Defendant's property; however, at least sixty-five  
21 percent (65%) of the Net Settlement Amount must be paid to Class Members as set forth below.  
22 In accordance with the holding in In re Microsoft I-V Cases (2006) 135 Cal.App.4th 706, 722,  
23 California Code of Civil Procedure section 384(b) does not apply to this Settlement. Except for  
24 residue from uncashed checks issued to class members who filed valid and timely claims, which  
25 shall be transferred to the Food Bank of Contra Costa County and Solano as *cy pres* beneficiary,  
26 any unpaid residue remaining in the Net Settlement Amount after the payment of all valid claims  
27 shall remain Defendant's sole and exclusive property, and Defendant shall not be required to  
28 apply to the Court for a return of the unpaid residue. Settlement awards to the Class Members

1 who file valid and timely claims will be calculated by the Claims Administrator and paid out of  
2 the Net Settlement Amount as set forth below.

3 i. Settlement Awards to Class Members: Settlement Awards to Class  
4 Members will be determined as follows: The Claims Administrator will calculate the total gross  
5 compensation paid to all of the Class Members during the Class Period, and the total gross  
6 compensation paid to each of the Class Members during the Class Period. Each Class Member's  
7 share of the settlement will be a percentage calculated by dividing the individual Class Member's  
8 total compensation paid during the Class Period by the total compensation paid to all of the Class  
9 Members during the Class Period. The compensation paid to all Class Members, and to each  
10 Class Member individually, will be determined by the Claims Administrator based on records  
11 provided by Defendant. Defendant's records will be presumed to be correct unless evidence to  
12 the contrary is timely submitted to the Claims Administrator. In the event the total Settlement  
13 Awards for the claims submitted by the Class Members do not comprise at least sixty-five percent  
14 (65%) of the Net Settlement Amount, the amount to be paid to each Class Member who filed a  
15 valid and timely claim ("Claiming Class Member") shall be increased until at least sixty-five  
16 percent (65%) of the Net Settlement Amount is disbursed to the Class Members. To accomplish  
17 this, the Claims Administrator shall calculate the difference between the total amount of the  
18 Settlement Awards already determined by the Claims Administrator as provided above, and sixty-  
19 five percent (65%) of the Net Settlement Amount ("Difference"). The Difference shall be  
20 allocated among the claiming Class Members based on percentages obtained by dividing the  
21 individual Class Member's total compensation paid during the Class Period by the total  
22 compensation paid to all of the Claiming Class Members during the Class Period.

23 ii. Allocation of Settlement Awards: The Parties have agreed that  
24 individual Settlement Awards payable to eligible Class Members will be allocated as follows:  
25 one-third (1/3) will be allocated to alleged unpaid wages for which IRS Forms W-2 shall issue;  
26 one-third (1/3) will be allocated to alleged unpaid interest for which IRS Forms 1099 INT will  
27 issue; and one-third (1/3) will be allocated to alleged unpaid penalties for which IRS Forms 1099  
28 MISC will issue. The Class Members will be liable for the employee share of any taxes that may

1 be assessed on the Settlement Awards.

2                   iii.    Settlement Awards Do Not Trigger Additional Benefits: All  
3 Settlement Awards to Class Members shall be deemed to be income to such Class Members  
4 solely in the year in which such awards actually are received by the Class Members. It is  
5 expressly understood and agreed that the receipt of such Settlement Awards will not entitle any  
6 Class Member to additional compensation or benefits under any company bonus, contest or other  
7 compensation or benefit plan or agreement in place during the period covered by the Settlement,  
8 nor will it entitle any Class Member to any increased retirement, 401(k) benefits or matching  
9 benefits, or deferred compensation benefits. It is the intent of this Settlement that the Settlement  
10 Awards provided for in this Agreement are the sole payments to be made by Defendant to the  
11 Class Members in connection with this Settlement, and that the Class Members are not entitled to  
12 any new or additional compensation or benefits as a result of having received the Settlement  
13 Awards (notwithstanding any contrary language or agreement in any benefit or compensation  
14 plan document that might have been in effect during the period covered by this Settlement).

15                   iv.    Attorneys' Fees and Attorneys' Costs: Subject to Court approval or  
16 modification, Defendant further agrees to pay to Class Counsel attorneys' fees and attorneys'  
17 costs as set forth in Paragraphs 25 and 26 below.

18                   v.    Class Representative: Subject to Court approval, Defendant further  
19 agrees to pay to Plaintiff an enhancement award for her service as Class Representative in an  
20 amount not to exceed Ten Thousand Dollars (\$10,000.00). Plaintiff agrees to execute a general  
21 release of all known and unknown claims she might have against Defendant based on her  
22 employment with Defendant. Accordingly, Defendant will not object to Class Counsel's  
23 application for Court approval of this enhancement award to Plaintiff. It is understood that the  
24 enhancement award is in addition to any claimed individual Settlement Award to which Plaintiff  
25 is entitled along with other Claiming Class Members. Defendant or the Claims Administrator  
26 will issue an IRS Form 1099 for the enhancement award to Plaintiff for her service as Class  
27 Representative, and Plaintiff will be responsible for correctly characterizing this compensation for  
28 tax purposes and for paying any taxes on the amounts received. Plaintiff agrees to indemnify

1 Defendant for any liability it incurs to any tax authority on account of Plaintiff's failure to pay all  
2 taxes due on the enhancement award. Should the Court approve an enhancement award to the  
3 Class Representative in an amount less than that set forth above, the difference between the lesser  
4 amount approved by the Court and the enhancement award set forth above shall be added to the  
5 Net Settlement Amount.

6 vi. Claims Administrator: The Claims Administrator will be be  
7 Rosenthal & Company ("Rosenthal"), or such other claims administrator as may be mutually  
8 agreeable to the Parties.

9 vii. Payment of Settlement Awards: Defendant shall transfer the  
10 Maximum Settlement Amount (or, if calculated at the time of transfer, such portion thereof as the  
11 Claims Administrator has calculated will be required to pay all timely and valid claims, attorneys'  
12 fees and costs, enhancement award to the Class Representative, and the claims administration  
13 expenses) to the Claims Administrator by November 4, 2009 or within fifteen (15) calendar days  
14 of final approval, whichever is earlier. The Claims Administrator will deposit these funds into an  
15 interest-bearing account, with all interest accruing to the benefit of the fund. The Claims  
16 Administrator will be responsible for making appropriate deductions, reporting obligations and  
17 paying the individual Settlement Awards, attorneys' fees and costs, and Plaintiff's enhancement  
18 award. The Claims Administrator shall cause the Settlement Awards to be mailed to the Class  
19 Members twenty (20) calendar days following the Court's final approval of the settlement, if  
20 there are no objections or appeals and the Settlement is "effective" under Paragraph 20(b), or, if  
21 there is any objection to the settlement or appeal, within twenty (20) calendar days after the  
22 Settlement becomes effective as defined in Paragraph 20(b).

23 viii. Claim Forms: For each Class Member, there will be pre-printed  
24 information on the Claim Form mailed to the Class Member, based on Defendant's records,  
25 stating the Class Member's total compensation for covered employment during the Class Period.  
26 The pre-printed information based on Defendant's records shall be presumed to be correct, unless  
27 proof to the contrary is provided to the Claims Administrator. A Class Member may challenge  
28 the pre-printed information on the Claim Form as to his or her total compensation during the

1 Class Period by submitting evidence (e.g. pay stubs, W-2 forms, etc.) to the Claims Administrator  
2 along with the Claim Form. All disputes involving the total compensation received by Class  
3 Members during the Class Period will be resolved and decided by the Claims Administrator, and  
4 the Claims Administrator's decision on all such disputes will be final and binding. All Claim  
5 Forms must be completed in their entirety to be considered valid.

6 d. Enhancement Award to Plaintiff for Her Service as Class Representative:  
7 Defendant will pay the enhancement award approved by the Court to Plaintiff at the same time as  
8 Defendant or the Claims Administrator pays the Settlement Awards to the Class Members  
9 pursuant to Paragraph 20(c)(vii).

10 e. Right to Rescission: If more than five percent (5%) of the Settlement Class  
11 opt out of the Settlement Class by submitting valid and timely Requests for Exclusion as set forth  
12 in the Notice of Pendency of Proposed Class Action Settlement, Defendant shall have the right in  
13 its sole discretion to rescind and void the Parties' Settlement, before final approval by the Court,  
14 by providing written notice to Class Counsel at least five (5) calendar days prior to the final  
15 fairness hearing, provided the Claims Administrator has previously furnished Defendant with the  
16 number and percentage of valid and timely Requests for Exclusion.

#### 17 CLAIMS ADMINISTRATION

18 21. The Parties have agreed to the appointment of Rosenthal to perform the customary  
19 duties of Claims Administrator; provided, however, the Parties shall have the right to select or  
20 substitute a different Claims Administrator by mutual agreement. The Claims Administrator will  
21 send to the Class Members the Notice of Pendency of Proposed Class Action Settlement and the  
22 Claim Form, and will also send the Reminder Postcard. The Claims Administrator will  
23 independently review the Claim Forms and documentation, based on Defendant's records, as to  
24 the compensation of the Class Members and will calculate the amounts due to Class Members in  
25 accordance with this Stipulation of Settlement. The Claims Administrator shall report, in  
26 summary or narrative form, the substance of its findings. The Claims Administrator shall be  
27 granted reasonable access to Defendant's records to perform its duties. At the request of  
28 Defendant, and upon receipt of funds from Defendant, the Claims Administrator will issue and

1 send Settlement Award checks to Class Members. Tax treatment of the Settlement Awards will  
2 be as set forth herein, and in accordance with state and federal tax laws. All disputes relating to  
3 the Claims Administrator's performance of its duties shall be referred to the Court, if necessary,  
4 which will have continuing jurisdiction over the terms and conditions of this Stipulation of  
5 Settlement until all payments and obligations contemplated by this Stipulation of Settlement have  
6 been fully carried out.

7 22. The Settlement Administrator will certify jointly to Class Counsel and Defense  
8 Counsel the number of all Class Members who have submitted timely Claim Forms, opt out  
9 requests, and/or disputes. The Settlement Administrator will certify jointly to Class Counsel and  
10 Defense Counsel the number of all Class Members who have submitted timely Claim Forms, opt  
11 out requests, and/or disputes. During the sixty (60) day period after the date the Notice is mailed  
12 to Class Members, the Settlement Administrator will provide this information beginning on the  
13 15<sup>th</sup> day after the Notice is mailed, and will update this information every following 7 days.

14 23. Additionally, upon request, the Settlement Administrator will provide to Class  
15 Counsel the names, contact information, and settlement shares for all Class Members who have  
16 not yet filed a claim.

17 24. The settlement administration costs will be paid out of the Maximum Settlement  
18 Fund upon the Court's final approval of the settlement. Should Defendant fail to transfer the  
19 settlement funds as required by Paragraph 20(c)(vii), above, or if NY&CO exercises its right of  
20 rescission under paragraph 20(e), above, NY&CO shall be responsible for any settlement  
21 administration fees incurred by the administrator for work performed and costs incurred prior to  
22 NY&CO's rescission of the settlement or its failure to fund the settlement.

23 ATTORNEYS' FEES AND ATTORNEYS' COSTS

24 25. In consideration for settling this matter and in exchange for the release of claims  
25 by the Settlement Class, and subject to final approval or modification by the Court, Defendant  
26 agrees to pay to Class Counsel attorneys' fees up to the maximum amount of Two Hundred Fifty-  
27 Five Thousand Dollars (\$255,000.00) and attorneys' costs up to a maximum of Thirty Thousand  
28 Dollars (\$30,000.00) from the Maximum Settlement Amount. Defendant will not object to Class

1 Counsel's application for attorneys' fees and costs up to this amount. The amount set forth above  
2 will cover all work performed and all fees and costs incurred to date, and all work to be  
3 performed and all fees and costs to be incurred in connection with the approval by the Court of  
4 this Stipulation of Settlement, the administration of the Settlement, obtaining dismissal with  
5 prejudice of this case, and litigating any objection to, or appeal of, this Settlement. Should Class  
6 Counsel request a lesser amount(s) or the Court approve a lesser amount(s) of attorneys' fees or  
7 attorneys' costs, the difference between the lesser amount(s) and the maximum amount set forth  
8 above shall be added to the Net Settlement Amount.

9 26. The attorneys' fees and attorneys' costs approved by the Court shall be paid to  
10 Class Counsel by the Claims Administrator at the same time as the Claims Administrator pays the  
11 Settlement Awards to the Class Members pursuant to Paragraph 20(c)(vii). Class Counsel will be  
12 issued an IRS Form 1099 for its award of attorneys' fees and attorneys' costs.

13 NOTICE TO THE PLAINTIFF CLASS

14 27. A Notice of Pendency of Proposed Class Action Settlement and Hearing Date for  
15 Final Court Approval ("Notice") in substantially the form attached hereto as Exhibit A, and as  
16 approved by the Court, shall be sent by the Claims Administrator to the Class Members by First-  
17 Class U.S. mail. Accompanying the Notice will be a Claim Form in substantially the form  
18 attached hereto as Exhibit B, and as approved by the Court. Any returned envelopes from this  
19 mailing with forwarding addresses will be used by the Claims Administrator to forward the  
20 Notice and the Claim Form to the Class Members.

21 a. Within twenty (20) calendar days of preliminary approval of this  
22 Settlement by the Court, Defendant shall provide to the Claims Administrator and Class Counsel  
23 a spreadsheet, which will list for each Class Member the Class Member's name, last known  
24 address and phone number, Social Security number, and total compensation paid by Defendant to  
25 the Class Member for employment in a covered position during the Class Period in California.  
26 This spreadsheet shall be based on Defendant's payroll and other business records and in a format  
27 acceptable to the Claims Administrator. Defendant agrees to consult with the Claims  
28 Administrator prior to the production date to ensure the format will be acceptable to the Claims

1 Administrator. The Claims Administrator will run a check of the Class Members' addresses  
2 against those on file with the U.S. Postal Service's National Change of Address Database; this  
3 check will be performed only once per Class Member by the Claims Administrator. Within  
4 thirty-five (35) calendar days of preliminary approval of this Settlement by the Court, the Claims  
5 Administrator will mail the Notice and the Claim Form to the Class Members.

6 b. Notices and Claim Forms returned to the Claims Administrator as  
7 non-delivered during the sixty (60)-calendar-day period for the filing of claims shall be resent to  
8 the forwarding address, if any, on the returned envelope. If there is no forwarding address, the  
9 Claims Administrator will do a "skip trace" search for a new address and re-mail the Notice and  
10 Claim Form within five (5) calendar days; this search will be performed only twice per Class  
11 Member by the Claims Administrator, and under no circumstances will this re-mailing extend the  
12 period for post-marking claims by more than an additional fifteen (15) calendar days. The Parties  
13 agree to cooperate with the Claims Administrator to locate a more recent address for Class  
14 Members, where necessary. Upon completion of these steps by the Claims Administrator,  
15 Defendant and the Claims Administrator shall be deemed to have satisfied their obligations to  
16 provide the Notice to the affected member of the Settlement Class. The affected member of the  
17 Settlement Class shall remain a member of the Settlement Class and shall be bound by all of the  
18 terms of the Stipulation of Settlement and the Court's Order and Final Judgment.

19 c. Claim Forms must be completed in full to be valid. If a Claim Form is not  
20 completed in full, the Claims Administrator will send one (1), but not more than one (1), notice of  
21 deficiencies in timely claim forms submitted by Class Members. A deficiency notice will be sent  
22 out by the Claims Administrator within five (5) calendar days of receiving a defective claim. The  
23 deficiency notice will provide the Class Member a maximum of fifteen (15) calendar days from  
24 the date of mailing of the deficiency notice to cure the deficiency; the corrected Claim Form must  
25 be postmarked not later than the fifteenth (15<sup>th</sup>) day after the date of mailing of the deficiency  
26 notice, or it must be rejected as untimely by the Claims Administrator. Plaintiff and Defendant  
27 will meet and confer on disputed claims that are not cured.

28 d. Thirty (30) calendar days before the expiration of the Claims Period, the

1 Claims Administrator will send one reminder postcard to submit Claim Forms to Class Members  
2 from whom it has not received a Claim Form. The reminder postcard will be in the form attached  
3 hereto as Exhibit C, and as approved by the Court.

4 e. Class Counsel shall provide to the Court, at least five (5) court days before  
5 the final fairness hearing, a declaration by the Claims Administrator of due diligence and proof of  
6 mailing with regard to the mailing of the Notice and the Claim Form. This declaration will also  
7 include the number of claimants, the percentage of the Net Settlement Fund claimed, the  
8 minimum claim, the maximum claim, the median claim amount, and the mean (average) claim  
9 amount.

#### 10 CLAIM PROCESS

11 28. Class Members will have sixty (60) calendar days from the mailing of the Claim  
12 Forms within which to postmark their Claim Forms for return to the Claims Administrator. No  
13 Claim Forms will be honored if postmarked after the sixty (60)-calendar-day period for the filing  
14 of Claims, except as specified in paragraph 27(b), above. Class Members are responsible to  
15 maintain a photocopy of the fully completed Claim Form and record of proof of mailing. Plaintiff  
16 and Defendant will meet and confer on any late claims, and may agree to accept late claims  
17 provided good cause is shown.

18 29. All original Claim Forms shall be sent directly by Class Members to the Claims  
19 Administrator at the address indicated on the Claim Form. The Claims Administrator shall  
20 review the Claim Forms and calculate the Settlement Awards. The Claims Administrator will  
21 certify jointly to Class Counsel and Defendant's counsel what claims were timely filed. Any  
22 Settlement Award checks shall remain valid and negotiable for one hundred eighty (180) calendar  
23 days from the date of their issuance and will automatically be cancelled by Defendant or the  
24 Claims Administrator if not cashed by the Class Member within that time, at which point the  
25 Class Member's claim will be deemed void and of no further force or effect, and the Class  
26 Member's claims will remain released by the Settlement. The checks provided to Class Members  
27 shall prominently state the expiration date or a statement that the checks will expire in one  
28 hundred eighty (180) days, or alternatively, such a statement may be made in a letter

1 accompanying the check. Expired Settlement Award checks will not be reissued.

2 30. Should there remain any residual from the Net Settlement Fund after all payments  
3 are made under this Settlement because some settlement checks are not cashed within one  
4 hundred eighty (180) days, the residual funds will be transferred to *cy pres* beneficiary Food Bank  
5 of Contra Costa and Solano within 30 days of the expiration date on any checks. Any costs  
6 associated with administering the residual amount (*e.g.*, bank stop payment charges, tax reporting  
7 and accounting) will be deducted from the residual amount before the *cy pres* distribution. The  
8 Settlement Administrator shall provide a declaration of *cy pres* distribution, which will be filed  
9 with the Court and served on Class Counsel and counsel for NY&CO, within ten (10) days of  
10 payment of the residual.

11 31. Upon completion of its calculation of payments, the Claims Administrator shall  
12 provide Plaintiff and Defendant with a report listing the amount of all payments to be made to  
13 each Class Member. Proof of payment will be filed with the Court and provided to Class Counsel  
14 and Defendant's counsel.

15 RELEASE BY THE CLASS

16 32. Upon final approval by the Court of this Stipulation of Settlement, and except as to  
17 such rights or claims as may be created by this Stipulation of Settlement, the Settlement Class and  
18 each member of the Class who has not submitted a valid Request for Exclusion, fully and finally  
19 releases and discharges Defendant and its former and present parents (including without  
20 limitation NEW YORK & COMPANY, INC.), subsidiaries, divisions, related or affiliated  
21 companies, and its officers, directors, employees, partners, shareholders and agents, and any other  
22 successors, assigns, or legal representatives, and any individual or entity which could be jointly  
23 liable with Defendant, and their respective counsel, from all applicable state, federal and/or local  
24 wage and hour claims, rights, demands, liabilities, causes of action of every nature and  
25 description, whether known or unknown, arising from or related to the claims litigated in this  
26 Lawsuit, including without limitation statutory, constitutional, contractual or common law claims  
27 for wages, damages, penalties of any nature, injunctive relief, punitive damages, interest,  
28 attorneys' fees, litigation costs, restitution or other relief under California Business and

1 Professions Code section 17200 et seq., based on the following categories of allegations: (a) all  
2 claims for the failure to provide meal periods; (b) all claims for the failure to provide rest periods;  
3 (c) all claims for waiting time penalties under Labor Code section 203; (d) all claims for the  
4 failure to issue properly itemized wage statements; and (e) claims for unfair competition arising  
5 from failure to provide meal and rest periods (“Released Claims”). The period covered by this  
6 release is April 29, 2004 through December 31, 2008.

7 33. The Claim Form mailed to the claimants will state: “My signature below affirms  
8 that I have read the Notice of Proposed Class Settlement, will be bound to the Release and other  
9 terms of the Settlement therein, am entitled to the settlement payment and that no other person and  
10 or entity has a claim to any settlement monies that I will receive.”

11 DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

12 34. The Parties or Plaintiff shall promptly submit this Stipulation of Settlement to the  
13 Contra Costa County Superior Court in support of Plaintiff’s Motion for Preliminary Approval  
14 and determination by the Court as to its fairness, adequacy and reasonableness.

15 a. Scheduling a final fairness hearing on the question of whether the proposed  
16 Settlement, including payment of attorneys’ fees, attorneys’ costs and the Class Representative’s  
17 Service Payment should be finally approved as fair, reasonable and adequate as to the members of  
18 the Settlement Class;

19 b. Certifying a Settlement Class, Plaintiff Jannika Schakow as the Class  
20 Representative, and Sundeen Salinas & Pyle and Hinton, Alfert & Sumner as Class Counsel;

21 c. Approving as to form and content the proposed Notice;

22 d. Approving as to form and content the proposed Claim Form;

23 e. Approving as to form and content the proposed Reminder Postcard;

24 f. Directing the mailing of the Notice and the Claim Form by First-Class U.S.  
25 mail to the Class Members.; andand

26 g. Preliminarily approving the Settlement subject only to the objections of  
27 Class Members and final review by the Court.

28 DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL





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CONSTRUCTION

42. The Parties hereto agree that the terms and conditions of this Stipulation of Settlement are the result of lengthy, intensive arms-length negotiations between the Parties with the assistance of a neutral mediator, and this Stipulation of Settlement 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 Stipulation of Settlement.

CAPTIONS AND INTERPRETATIONS

43. 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 Stipulation of Settlement or any provision of it. Each term of this Stipulation of Settlement is contractual and not merely a recital.

MODIFICATION

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

INTEGRATION CLAUSE

45. This Stipulation of Settlement 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.

BINDING ON ASSIGNS

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

1 CLASS MEMBER SIGNATORIES

2 47. It is agreed that, because the members of the Class are so numerous, it is  
3 impossible or impractical to have each member of the Class execute this Stipulation of  
4 Settlement. The Notice (Exhibit A hereto) will advise all Class Members of the binding nature of  
5 the release, and the release shall have the same force and effect as if this Stipulation of Settlement  
6 were executed by each member of the Class.

7 COUNTERPARTS

8 48. This Stipulation of Settlement may be executed in counterparts and by facsimile  
9 signatures, and when each party has signed and delivered at least one such counterpart, each  
10 counterpart, including e-mail and PDF versions, shall be deemed an original and, when taken  
11 together with other signed counterparts, shall constitute one Stipulation of Settlement binding  
12 upon and effective as to all Parties.

13 PUBLIC COMMENT

14 49. Plaintiff and Class Counsel agree that they will not make any public disclosure of  
15 this settlement until after the settlement is preliminarily approved by the Court. Class counsel  
16 will take all steps necessary to ensure that Plaintiff is aware of, and will encourage her to adhere  
17 to, the restriction against any public disclosure of the settlement until after the settlement is  
18 preliminarily approved by the Court.

19 50. Following preliminary approval of the settlement, Plaintiff and Class Counsel  
20 agree not to have any communications with the media regarding the settlement, other than to  
21 direct the media to the public records of this case on file with the Court. Class counsel will take  
22 all steps necessary to ensure that Plaintiff is aware of, and will encourage her to adhere to, the  
23 restriction against any media comment on the settlement and its terms.

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1 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint  
2 Stipulation of Settlement and Release between Plaintiff and Defendant as of the date(s) set forth  
3 below:

4 **Plaintiff and Class Representative**

5 DATED: May \_\_\_\_, 2009

PLAINTIFF JANNIKA SCHAKOW

6 By: \_\_\_\_\_  
7 Jannika Schakow

8 **Class Counsel**

9 DATED: May \_\_\_\_, 2009

SUNDEEN SALINAS & PYLE

10 By: \_\_\_\_\_  
11 Hunter Pyle  
12 Attorneys for Plaintiff Jannika Schakow  
13 and Class Counsel

HINTON, ALFERT & SUMNER

14 By: \_\_\_\_\_  
15 David Pogrel  
16 Attorneys for Plaintiff Jannika Schakow  
17 and Class Counsel

18 **Defendant**

19 DATED: May \_\_\_\_, 2009

LERNER NEW YORK, INC.

20 By: \_\_\_\_\_  
21 Title: \_\_\_\_\_

22 **Defendant's Counsel**

23 DATED: May \_\_\_\_, 2009

JACKSON LEWIS LLP

24 By \_\_\_\_\_  
25 David S. Bradshaw  
26 Attorneys for Defendant Lerner New York, Inc.

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