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11 *and on behalf of those similarly situated*

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20 *Attorneys for Defendants COGNIZANT TECHNOLOGY SOLUTIONS U.S.*  
21 *CORPORATION, COGNIZANT TECHNOLOGY SOLUTIONS CORPORATION*

22 UNITED STATES DISTRICT COURT  
23 EASTERN DISTRICT OF CALIFORNIA  
24 SACRAMENTO DIVISION

25 DEBI MISHRA, individually and on behalf of  
26 all those similarly situated,

27 Real Party in Interest,

28 v.

COGNIZANT TECHNOLOGY SOLUTIONS  
U.S. CORPORATION, COGNIZANT  
TECHNOLOGY SOLUTIONS  
CORPORATION, and DOES 1 through 10,  
inclusive,

Defendants.

Case No. 2:17-cv-01785-TLN-EFB

**SETTLEMENT AGREEMENT AND  
STIPULATION**

Complaint Filed: August 25, 2017  
Case Assigned to: Judge Troy L. Nunley



1 California Class Period up to May 21, 2016, exclusive of leaves of absence (if known), according  
2 to Defendants' records.

3 9. "California Individual Settlement Payment" shall mean the proportional share of the  
4 California Class Fund each California Class Member is entitled to receive in accordance with the  
5 methodology set forth in this Agreement.

6 10. "California Notice of Pendency of Class/Collective Action" or "California Notice"  
7 shall mean the notice provided to California Class Members substantially in the same form as  
8 **Exhibit 1**, attached hereto, which will notify California Class Members of: i) the terms of the  
9 Settlement; ii) the automatic distribution of the California Individual Settlement Payment to  
10 Settlement Class Members; iii) how to receive payment electronically in lieu of receiving checks  
11 via U.S. Mail; iv) the amount of the California Individual Settlement Payment expected to be paid  
12 (including the California Award and the FLSA Award); v) how to dispute the number of workweeks  
13 upon which their California Individual Settlement Payments will be based; vi) the Released  
14 California and FLSA Claims; vii) the conditional certification of the California and FLSA Classes;  
15 viii) the Preliminary Approval of the Settlement; ix) the procedures for submitting a valid Exclusion  
16 Letter to opt out of the California Class; x) the procedures for objecting to the Settlement and  
17 appearing at the Final Approval Hearing; xi) the procedures for submitting a timely FLSA Claim  
18 Form to receive the FLSA Award, and xii) the date set for the Final Approval Hearing. The  
19 California Notice will attach a copy of the FLSA Claim Form that may be submitted.

20 11. "California Settlement Class" or "California Settlement Class Members" shall mean  
21 California Class Members who do not submit a timely Exclusion Letter.

22 12. "Change of Address Form" shall mean the form to be included in the Notice Packet  
23 and distributed to the Class Members to allow them to notify the Settlement Administrator of a  
24 change of address for all communications, and the distribution of their California and FLSA  
25 Individual Settlement Payments. The form will be substantially in the form attached hereto as  
26 **Exhibit 5**.

27 13. "Class" shall mean the California and FLSA Classes.

28 14. "Class Counsel" means Plaintiff's Counsel who seek to be appointed as counsel for

1 the Class Members at the Preliminary Approval hearing.

2 15. "Class Member" shall mean a member of the California and/or FLSA Classes.

3 16. "Class Member List" means a complete list of all Class Members and their  
4 associated data, which Defendants will in good faith compile from their records and provide to the  
5 Settlement Administrator within fifteen (15) business days after Preliminary Approval (as defined  
6 below) of this Settlement. The Class Member List shall include each Class Member's full name;  
7 last known mailing address and telephone number; last known e-mail address (if available);  
8 beginning and ending dates of employment; Social Security number; the number of California Class  
9 Individual Workweeks that each individual worked; and the number of FLSA Class Member  
10 Individual Workweeks that each individual worked. The Class Member List is provided to the  
11 Settlement Administrator solely for purposes of this Settlement, shall be treated as confidential,  
12 shall not be shared by the Settlement Administrator, and must be returned and/or destroyed by the  
13 Settlement Administrator upon the conclusion of the administration process.

14 17. "Complaint" shall mean the complaint captioned *Debi Mishra v. Cognizant*  
15 *Technology Solutions U.S. Corporation, Cognizant Technology Solutions Corporation, and DOES*  
16 *1 through 10*, Case No. 2:17-cv-01785 –TLN-EFB, filed by Plaintiff in the United States District  
17 Court for the Eastern District of California on or about August 25, 2017 alleging seven causes of  
18 action: (1) Failure to Pay Overtime Wages (FLSA); (2) Failure to Pay Overtime Wages (Cal. Labor  
19 Code); (3) Failure to Timely Pay Wages (Cal. Labor Code and Regulations); (4) Failure to Provide  
20 Accurate Pay Stubs (Cal. Labor Code and Regulations); (5) Violation of California Business and  
21 Professions Code 17200 (Unlawful Business Practices); (6) Violation of California Business and  
22 Professions Code 17200 (Unfair Business Practices); and (7) Conversion (Common Law).

23 18. "Court" shall mean the United States District Court for the Eastern District of  
24 California.

25 19. "Defendants" shall mean Defendants Cognizant Technology Solutions U.S.  
26 Corporation and Cognizant Technology Solutions.

27 20. "Defendants' Counsel" shall mean the law firm of Orrick, Herrington & Sutcliffe  
28 LLP.

1           21. “Effective Date” of the Settlement means the date by which this Settlement is finally  
2 approved and the Settlement Order and Judgment entered by the Court becomes final. The  
3 Settlement Order and Judgment “becomes final” upon the later of: (i) the date of final affirmance  
4 on any appeal of the Settlement Order and Judgment, including any appeal of the Fee and Expense  
5 Award; (ii) the date of final dismissal of any appeal from the Settlement Order and Judgment or the  
6 final dismissal of any proceeding to review the Settlement Order and Judgment, including any  
7 appeal/review of the Fee and Expense Award; or (iii) if no appeal is filed, thirty-five (35) days  
8 following the Court’s Settlement Order and Judgment. Notwithstanding the Effective Date, this  
9 Settlement Agreement shall be immediately enforceable per its terms upon signature by the Parties.

10           22. “Employee Taxes” shall mean the Settlement Class Members’ share of all applicable  
11 federal, state, and local income and employment taxes arising out of the Settlement.

12           23. “Employer’s Taxes” shall mean the payroll taxes (FICA, FUTA, and all other  
13 federal, state, and local payroll tax obligations) Defendants are obligated to pay on their own behalf  
14 as an employer on the portion of the California Awards, FLSA Awards, and FLSA Individual  
15 Settlement Payments designated as wages, and which are included in the Maximum Settlement  
16 Amount and which will be paid in amounts to be determined by the Settlement Administrator.

17           24. “Enhancement Payment” shall mean such award as the Court may authorize to be  
18 paid to the Plaintiff in recognition for his services in having served as the Class Representative, of  
19 an amount not to exceed Ten Thousand Dollars and no cents (\$10,000.00), payable from the MSA  
20 in exchange for a full release of claims, known or unknown, against the Released Parties.

21           25. “Exclusion Deadline” shall mean the date thirty (30) days after the date on which  
22 the Settlement Administrator first mails the California Notice Packet to the California Class  
23 Members.

24           26. “Exclusion Letter” shall mean a letter submitted by a California Class Member to  
25 the Settlement Administrator and postmarked by the Exclusion Deadline that includes the  
26 California Class Member’s name, signature, current address, telephone number, and the last four  
27 digits of the California Class Member’s Social Security number. The Exclusion Letter must contain  
28 the following statement or something similar: “I request to be excluded from the California Class

1 in the matter of *Mishra v. Cognizant Technology Solutions U.S. Corporation, et al.*, United States  
2 District Court, Eastern District of California, Case No. 2:17-cv-01785 –TLN-EFB.

3 27. “Fee and Expense Award” shall mean such award of attorneys’ fees and actual  
4 litigation costs and expenses as the Court may authorize to be paid to Plaintiff’s Counsel for the  
5 services they have rendered to the Plaintiff and the Class Members in the Action, agreed by the  
6 Parties not to exceed twenty-five percent (25%) of the MSA as the Fee Award, in addition to  
7 reasonable actual expenses, not to exceed \$45,000.00, as the Expense Award

8 28. “Final Approval” shall mean that the Settlement Order and Judgment has been  
9 entered and the Court has made its final order awarding the Fee and Expense Award.

10 29. “Final Approval Hearing” shall mean a hearing held before the Court to consider  
11 Final Approval of the Settlement, whether and in what amount a Fee and Expense Award should  
12 be awarded to Plaintiff’s Counsel, whether and in what amount an Enhancement Payment should  
13 be awarded to Plaintiff, and the merits of any objections to this Agreement and the Settlement set  
14 forth herein or any of its terms.

15 30. “First Amended Complaint” shall mean the complaint filed by Plaintiff on or about  
16 January 31, 2018, alleging five causes of action: (1) Failure to Pay Overtime Wages (FLSA);  
17 (2) Failure to Pay Overtime Wages (Cal. Labor Code); (3) Failure to Timely Pay Wages (Cal. Labor  
18 Code and Regulations); (4) Violation of California Business and Professions Code 17200  
19 (Unlawful Business Practices); and (5) Violation of California Business and Professions Code  
20 17200 (Unfair Business Practices).

21 31. “FLSA Award” shall mean the 30.8% portion of the California Class Fund to be  
22 paid to California Class Members who submit a timely FLSA Claim Form in consideration of their  
23 settlement, release, and relinquishment of the Released FLSA Claims.

24 32. “FLSA Claim Form” means a document substantially in the form attached hereto as  
25 Exhibit 6, or an electronic form virtually identical to the Court-approved FLSA Claim Form and  
26 which is to be accessible to FLSA Class Members online at a website to be determined and  
27 identified in the Notice Packet, and which Class Members must complete and submit to the  
28 Settlement Administrator (either by Mail or by online submission as set forth below) within sixty

1 (60) days from the initial mailing of the Notice Packet by the Settlement Administrator.

2 33. "FLSA Class" or "FLSA Class Members" shall mean all current and former  
3 employees of Defendants who were eligible to receive Tru Up payments at any time during the  
4 FLSA Class Period.

5 34. "FLSA Class Fund" shall mean the 2.8% of the Net Settlement Amount that will be  
6 paid to FLSA Class Members who are not California Class Members and who submit a timely  
7 FLSA Claim Form, and the amounts will be paid on a proportional basis in the manner set forth in  
8 this Agreement.

9 35. "FLSA Class Period" shall mean the period from August 25, 2014 through the date  
10 of Preliminary Approval.

11 36. "FLSA Class Member Individual Workweeks" shall mean the number of  
12 workweeks worked by an individual for Defendants as an FLSA Class Member during the portion  
13 of the FLSA Class Period up to May 21, 2016, exclusive of leaves of absence (if known), according  
14 to Defendants' records.

15 37. "FLSA Class Member Opt-In Individual Workweeks" shall mean the number of  
16 workweeks worked by an individual for Defendants as an FLSA Class Member (who timely  
17 submitted an FLSA Claim Form) during the portion of the FLSA Class Period up to May 21, 2016,  
18 exclusive of leaves of absence (if known), according to Defendants' records.

19 38. "FLSA Individual Settlement Payment" shall mean the proportional share of the  
20 FLSA Class Fund each FLSA Class Member who is not a California Class Member and who  
21 submits a timely FLSA Claim Form is entitled to receive in accordance with the methodology set  
22 forth in this Agreement.

23 39. "FLSA Notice of Pendency of Class/Collective Action" or "FLSA Notice" shall  
24 mean the notice provided to members of the FLSA Class who worked for Defendants outside the  
25 State of California, substantially in the same form as **Exhibit 2**, attached hereto, which will notify  
26 FLSA Class Members of: i) the terms of the Settlement; ii) the procedures for submitting a timely  
27 FLSA Claim Form to receive an FLSA Individual Settlement Payment; iii) how to receive payment  
28 electronically in lieu of receiving a check via U.S. Mail; iv) the amount of the FLSA Individual

1 Settlement Payment expected to be paid; v) how to dispute the number of workweeks upon which  
2 their FLSA Individual Settlement Payment will be based; vi) the Released FLSA Claims; vii) the  
3 conditional certification of the FLSA Class; viii) the Preliminary Approval of the Settlement; and  
4 ix) the date set for the Final Approval Hearing. The FLSA Notice will attach a copy of the FLSA  
5 Claim Form that may be submitted.

6 40. "Maximum Settlement Amount" or "MSA" shall mean the total of Five Million  
7 Seven Hundred Twenty-Six Thousand Dollars and no cents (\$5,726,000.00), which is the  
8 maximum amount Defendants may be required to pay under this Settlement. The MSA has seven  
9 (7) components: (1) the California Class Fund; (2) the FLSA Class Fund; (3) Fee and Expense  
10 Award; (4) Enhancement Payment to Plaintiff; (5) Administration Costs; (6) Employee Taxes; and  
11 (7) Employer's Taxes (in amounts to be determined by the Settlement Administrator).

12 41. "Mediator" shall mean Hon. William Cahill (Ret.).

13 42. "Net Settlement Amount" or "NSA" shall mean the funds remaining from the MSA  
14 following deductions of the Court-approved awards for the following items: (1) the Administration  
15 Costs, (2) the Fee and Expense Award, (3) the Enhancement Payment to Plaintiff, and (4) Employer  
16 Taxes. Of the Net Settlement Amount, 2.8% will be allocated to the FLSA Class Fund and 97.2%  
17 will be allocated to the California Class Fund. Of the California Class Fund, 69.2% shall be  
18 allocated to the California Award, and 30.8% shall be allocated to the FLSA Award. Each of these  
19 funds will be distributed to Settlement Class Members on a proportional basis as set forth in this  
20 Agreement. No portion of the MSA or the NSA will revert to Defendants under any circumstances.

21 43. "Notice Packet" shall mean the packet of documents distributed to Class Members  
22 as ordered by the Court that, for California Class Members includes (1) the California Notice and  
23 (2) the Change of Address Form, and (3) the FLSA Claim Form; and for FLSA Class Members  
24 includes (1) the FLSA Notice and (2) the Change of Address Form, and (3) the FLSA Claim Form.

25 44. "Objection Deadline" shall mean the date thirty (30) days after the date on which  
26 the Settlement Administrator first mails the Notice Packet to the California Class.

27 45. "Parties" shall collectively refer to Plaintiff and Defendants.

28 46. "Plaintiff" shall mean Debi Mishra, the named plaintiff in the Action, who will seek



1 appointment as the Class Representative at the time of Preliminary Approval.

2 47. "Plaintiff's Counsel" shall mean John T. Stralen and Joshua H. Watson of Clayeo  
3 C. Arnold, APC, who will seek appointment as Class Counsel at the time of Preliminary Approval.

4 48. "Preliminary Approval" shall mean that the Court has entered an order, in  
5 substantially the same form as **Exhibit 3**, attached hereto, preliminarily approving the terms and  
6 conditions of this Agreement, including the manner of providing notice to Class Members.  
7 Plaintiff's Counsel will draft the Motion for Preliminary Approval, and supporting documents,  
8 consistent with the terms of this Agreement.

9 49. "Released California Claims" shall mean any and all claims under the wage and  
10 hour laws and regulations of the state of California that were or could have been asserted based on  
11 the conduct alleged in the First Amended Complaint or in any complaints in this action preceding  
12 said First Amended Complaint, including, but not limited to, violation of all statutes mentioned in  
13 the First Amended Complaint and corresponding provisions of the relevant California Wage Order  
14 based on the conduct alleged in the First Amended Complaint or in any complaints in this action  
15 preceding said First Amended Complaint, including but not limited to California Labor Code  
16 sections 201-203, 204, 206, 210, 218.5, 218.6, 226, 226.3, 510, 558, 1174, 1194, 1198, and 2698,  
17 et seq. (the Labor Code Private Attorneys General Act ["PAGA"]), and California Business and  
18 Professions Code sections 17200, et seq., based on claims for: (1) overtime (including but not  
19 limited to regular rate calculations); (2) minimum wage (3) meal periods; (4) rest breaks; (5) wage  
20 statements; (6) final pay; (7) waiting time penalties; (8) restitution; (9) PAGA penalties; (10)  
21 interest; (11) costs and attorneys' fees, costs and expenses; and (12) declaratory relief; and any and  
22 all California state common law claims, based on the misconduct alleged in the First Amended  
23 Complaint (or preceding complaints in this action) or those that could have been asserted based on  
24 the conduct alleged, including but not limited to claims for fees and costs, conversion, liquidated  
25 damages, punitive damages, civil penalties, equitable remedies, and/or pre- or post-judgment, at  
26 any time through Preliminary Approval.

27 50. "Released FLSA Claims" shall mean any and all claims that were asserted in the  
28 First Amended Complaint or that could have been asserted based on the conduct alleged in the First

1 Amended Complaint, or in any complaints in this action preceding said First Amended Complaint,  
2 for any of the following based on the conduct alleged in the First Amended Complaint or in any  
3 complaints in this action preceding the First Amended Complaint: non-payment of wages,  
4 minimum wages, overtime wages (including, but not limited to regular rate calculations), or any  
5 other wage-related or recordkeeping-related claims; liquidated damages; attorneys' fees, costs and  
6 expenses; pre- and post-judgment interest; or damages or relief of any kind arising from the  
7 allegation that Class Members were not properly compensated for all time worked on a daily,  
8 weekly, or monthly basis, including, but not limited to the Fair Labor Standards Act, 29 U.S.C. §  
9 201, et seq., (FLSA) and related regulations (including, but not limited to, 29 C.F.R. §§ 778.106,  
10 778.108, 778.109, 778.207, 778.316, 778.317, 778.500, 778.502), and any other similar state or  
11 federal law, at any time through Preliminary Approval.

12 51. "Releasees" means Defendants and all of their respective past, present, and future  
13 direct and indirect affiliates, parents, subsidiaries, predecessors, successors and assigns, and all of  
14 their respective past, present, and future partners, principals, officers, directors, employees,  
15 attorneys, insurers, representatives and agents, whether acting as agents or in individual capacities,  
16 and this Agreement shall inure to the benefit of and shall be binding and enforceable by all such  
17 entities and individuals.

18 52. "Settlement" shall mean the terms and conditions set forth in this Agreement.

19 53. "Settlement Administrator" shall mean ILYM Group, Inc., or such other entity  
20 which the Parties mutually agree shall serve as Settlement Administrator.

21 54. "Settlement Class Members" and "Settlement Class" shall mean all members of the  
22 FLSA Class who submit a timely FLSA Claim form and California Settlement Class.

23 55. "Settlement Order and Judgment" shall mean an order and judgment issued by the  
24 Court following the Final Approval Hearing, in substantially the form attached hereto as **Exhibit 4**,  
25 approving the Settlement and this Settlement Agreement as binding upon the Parties.

## 26 **RECITALS**

27 56. **Background of Matter.** On or about August 25, 2017, Plaintiff filed the Complaint.  
28 On September 7, and September 14, 2017, Defendants Cognizant Technology Solutions and

1 Cognizant Technology Solutions Corporation were served with the Complaint. On November 3,  
2 2017, Defendants moved to dismiss and strike Plaintiff's Complaint. In response to Defendants'  
3 Motion to Dismiss/Strike, Plaintiff agreed to file, and did file, the First Amended Complaint on  
4 January 31, 2018, and the Parties agreed to stay and mediate the Action.

5 57. **Mediation.** The Parties attended and participated in a private mediation before the  
6 Hon. William Cahill (Ret.) on May 29, 2018. Judge Cahill issued a mediator's proposal on May  
7 30, 2018. On June 6, 2018, Plaintiff's Counsel, through Judge Cahill, conveyed a counteroffer to  
8 Defendants. Following negotiations of the Parties, on June 8, 2018, Plaintiff, through Judge Cahill,  
9 conveyed a second counteroffer to Defendants, which Defendants accepted that day and which  
10 resulted in the Settlement memorialized in this Agreement.

11 58. **Plaintiff's Claims.** Plaintiff claimed, and continues to claim, that his contentions  
12 have merit and give rise to Defendants' liability. Nothing in this Agreement, the documents  
13 referenced in this Agreement, nor any action taken to carry out this Agreement is, or may be  
14 construed as or may be used as, an admission by or against the Plaintiff as to the merits or lack  
15 thereof of the claims he asserted.

16 59. **Denial of Wrongdoing.** Defendants contend that: (1) all of the Class Members have  
17 been properly compensated for all time worked, including overtime, under applicable law;  
18 (2) Defendants provided all California Class Members, including Plaintiff, with timely pay as  
19 required by California law; (3) Defendants also provided California Class Members with accurate  
20 itemized wage statements; and Defendants did not engage in unfair or unlawful business practices  
21 in violation of California Business and Professions Code section 17200. Defendants have denied  
22 and continue to deny each of the claims and contentions alleged by Plaintiff in the Action.  
23 Defendants deny any wrongdoing or legal liability arising out of any of the facts or conduct alleged  
24 in the Action and believe that they have valid defenses to Plaintiff's claims. Neither this  
25 Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out  
26 this Agreement, may be construed as, or may be used as, an admission, concession or indication by  
27 or against Defendants of any fault, wrongdoing or liability whatsoever, including any concession  
28 that certification of a class other than for purposes of this Settlement would be appropriate in this

1 or any other case. In addition, nothing herein shall be deemed to waive any of Defendants'  
2 objections and defenses to class certification or any other issue relating to or arising from the  
3 allegations set forth in the First Amended Complaint.

4 60. **Investigation, Discovery, and Research.** The Parties represent that they conducted  
5 significant investigation of the facts and law both before and after the Action was filed. For  
6 example, Defendants provided Plaintiff's personnel file, data reflecting Class Members' total daily  
7 work hours recorded, Class Members' payroll data, as well as information regarding the total  
8 number of Class Members, their work locations, Class Members' workweeks, and the number of  
9 Class Members who resigned or were terminated in California. Plaintiff spent numerous hours  
10 analyzing this information. In addition, Plaintiff's Counsel conducted their own investigation,  
11 including retaining an expert witness to analyze the available data, interviewing potential class  
12 members, collecting and reviewing relevant documents, and reviewing similar actions against  
13 Defendants including public evidence from those actions. Counsel for the Parties have further  
14 investigated the applicable law as applied to the facts discovered regarding Plaintiff's claims, the  
15 defenses thereto, and the damages claimed by Plaintiff. Plaintiff provided Defendants with certain  
16 documents relating to his employment, including annual compensation letters, wage statements,  
17 and timesheets.

18 61. **Plaintiff's Reasons for Settlement and Benefits to Class Members.** Plaintiff,  
19 through his counsel, considered the expense and length of continued proceedings necessary to  
20 continue the Action against Defendants through trial and any possible appeals; the uncertainty and  
21 risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation,  
22 including those involved in seeking class certification pursuant to a contested motion; the burdens  
23 of proof necessary to establish liability for the claims asserted in the Action, Defendants' defenses  
24 thereto, and the difficulties in establishing damages; the settlement negotiations conducted by the  
25 Parties and the recommendations of the Mediator, who is highly experienced in employment  
26 litigation. Based on the foregoing Plaintiff through his counsel determined that the Settlement set  
27 forth in this Agreement is fair, adequate, and reasonable, and is in the best interest of the Class  
28 Members.

1           62.    Defendants’ Reasons for Settlement. Defendants’ Counsel performed a thorough  
2 study of the law and facts relating to the claims asserted in the Action. The Parties participated in  
3 a mediation session before the Hon. William Cahill (Ret.), a well-respected mediator with  
4 significant experience in wage-and-hour class actions. Based upon their investigation and  
5 mediation efforts, and taking into account the contested issues, the expense and time necessary to  
6 pursue the Action through trial, the risks and costs of further defense of the Action, the uncertainties  
7 of complex litigation, the advice of Defendants’ Counsel, and the substantial benefits to the Class  
8 Members and the state of California, Defendants concluded that a settlement with Plaintiff on the  
9 terms set forth herein is fair, reasonable, adequate and in the best interest of Defendants and the  
10 Class Members.

11           NOW THEREFORE, it is agreed by and between the undersigned that the Action be settled  
12 and compromised, conditioned upon approval by the Court and the other conditions set forth in this  
13 Agreement, as between Plaintiff, on behalf of himself and the Class Members he represents, and  
14 Defendants, on the following terms and conditions:

15  
16   **TERMS OF AGREEMENT**

17           63.    Stipulation for Conditional Certification of the California and FLSA Classes.  
18 The Parties each stipulate and agree to the conditional certification of the California Class and the  
19 FLSA Class. Should, for whatever reason, the Settlement not receive Final Approval, the Parties’  
20 stipulation to conditional certification shall become null and void ab initio and shall have no bearing  
21 on, and shall not be admissible in connection with, the issue of whether certification would be  
22 appropriate in a non-settlement context. Defendants expressly reserve their rights and declare that  
23 they intend to oppose certification vigorously should this Settlement not become final.

24           64.    Application for Preliminary Approval. Counsel for the Plaintiff shall request a  
25 hearing before the Court to seek Preliminary Approval of the Settlement on the earliest practical  
26 date. In conjunction with such hearing, Plaintiff’s Counsel will draft the Motion for Preliminary  
27 Approval, and supporting documents, consistent with the terms of this Agreement. Plaintiff’s  
28 Counsel shall provide a copy of the draft motion for Preliminary Approval to Defendants’ Counsel

1 for review and approval ten (10) court days before filing it with the Court. Plaintiff's Counsel shall  
2 timely and properly file the Motion for Preliminary Approval with the Court, along with a copy of  
3 this Agreement and its exhibits, and any other documents necessary to implement the Settlement.  
4 Simultaneously with the filing of this Agreement, and solely for purposes of this Settlement,  
5 counsel for the Plaintiff will request that the Court enter a Preliminary Approval Order,  
6 substantially in the form of **Exhibit 3** attached hereto, preliminarily approving the proposed  
7 Settlement, conditionally certifying the California and FLSA Classes, appointing Plaintiff's  
8 Counsel as Class Counsel, appointing Plaintiff as the sole representative of the Class, and setting a  
9 date for the Final Approval Hearing. The Preliminary Approval Order shall also provide for the  
10 Notice Packet to be sent to Class Members as specified herein or as may otherwise be ordered by  
11 the Court.

12 65. **Procedures for Giving Notice to the Class Members.** The Parties agree to the  
13 following procedures for giving notice of this Settlement to the Class Members:

14 (a) Defendants will provide the Settlement Administrator with the Class  
15 Member List spreadsheet, which is in a format that is complete and ready to use by the  
16 Settlement Administrator within fifteen (15) business days following the date of the  
17 Preliminary Approval.

18 (b) The Settlement Administrator shall be responsible for:

- 19 (i) Updating Class Member addresses by way of a search of the National  
20 Change of Address database before mailing the Notice Packet to the  
21 Class Members, and performing skip traces as necessary upon the  
22 return of mail;
- 23 (ii) Obtaining a toll-free number and U.S. Post Office Box for all Class  
24 Member communications;
- 25 (iii) Creating and maintaining a website for Class Members that links to  
26 the Settlement Agreement, Notice, motions for approval and for  
27 attorneys' fees, and other important documents in the case;
- 28 (iv) Printing and mailing the Notice Packet to all Class Members as

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- directed by the Court;
- (v) E-mailing the Notice Packet to each Class Member’s last known e-mail address, if provided in the Class Member List.
- (vi) Calculation of California and FLSA Individual Settlement Payments to be paid to Class Members in accordance with the methodology set forth in this Agreement and orders of the Court which estimated amount will be set forth in the Class Members’ individualized Notices;
- (vii) Consulting with counsel for the Parties concerning any relevant issue, including (without limitation) the amounts of California and FLSA Individual Settlement Payments to be paid to each Settlement Class Member;
- (viii) Investigating, consulting with counsel for the Parties, and making determinations regarding any disputes raised by Class Members regarding the calculation of their California and FLSA Individual Settlement Payments;
- (ix) Receiving, reviewing, and keeping track of timely and proper Exclusion Letters submitted by California Class Members, and providing copies of each Exclusion Letter, to the Parties, as well as receiving, reviewing, and keeping track of timely submitted FLSA Claim Forms and reporting the number of such, and providing copies of such, to the Parties;
- (x) Distributing and paying the California Award, FLSA Award, and FLSA Individual Settlement Payments, the Enhancement Payment to Plaintiff, the Fee and Expense Award, Administration Costs, Employee Taxes, and Employer Taxes, as may be ordered by the Court or as otherwise necessary;
- (xi) Calculating the wage, interest and penalties portions of each

- 1 California and FLSA Individual Settlement Payment and preparing  
2 the necessary tax documents to remit to the appropriate governmental  
3 taxing authorities;
- 4 (xii) Computing the Employer's Taxes and making all necessary  
5 payments and government filings in connection with such payments,  
6 which are included in the MSA;
- 7 (xiii) Such other tasks as the Parties mutually agree or the Court orders the  
8 Settlement Administrator to perform, including responding to  
9 questions from Class Members or directing such questions to the  
10 Parties, as appropriate; and,
- 11 (xiv) Preparing weekly status reports and declarations regarding the  
12 dissemination of the Notice Packet to the Class Members, skip traces,  
13 and performance of its duties.

14 66. The Parties agree to cooperate in the Settlement administration process and to make  
15 all reasonable efforts to control and minimize the costs and expenses incurred in administration of  
16 the Settlement.

17 67. The Parties represent that they do not have any financial interest in the Settlement  
18 Administrator or otherwise have a relationship with the Settlement Administrator that could create  
19 a conflict of interest.

20 68. Prior to mailing the Notice Packet, the Settlement Administrator shall conduct a  
21 National Change of Address database search of the names contained in the Class Member List  
22 spreadsheet.

23 69. Within ten (10) business days after receiving the Class Member List spreadsheet,  
24 the Settlement Administrator shall mail a copy of the Notice Packet in the form approved by the  
25 Court in its Preliminary Approval Order to all persons shown by Defendants' records to be Class  
26 Members, via e-mail (if provided on the Class Member List) and first-class U.S. mail, using the  
27 most current mailing address available either from Defendants' records and/or any more current  
28 address discovered from the Settlement Administrator's reasonable address searches. Any Notice



1 Packets returned to the Settlement Administrator as undelivered and bearing a forwarding address  
2 shall be re-mailed by the Settlement Administrator as soon as possible and within three (3) days  
3 following receipt of the returned mail. For any Notice Packets returned to the Settlement  
4 Administrator without a forwarding address, the Settlement Administrator shall conduct a  
5 computer/SSN and “skip trace” search to obtain an updated address, and shall promptly re-mail the  
6 Notice Packets to any newly-found address or addresses. The re-mailed Notice Packet shall be  
7 identical to the original Notice Packet, but shall also include a brief letter stating that the recipient  
8 of the Notice Packet has until the original deadline set forth on the notice or ten (10) days after re-  
9 mailing of the Notice Packet to object or submit an Exclusion Letter. The Settlement Administrator  
10 and counsel for the Parties shall undertake all reasonable efforts to locate the addresses of Class  
11 Members and to send a Notice Packet to all Class Members. Any costs incurred by having the  
12 Settlement Administrator handle these administrative tasks shall be included in the Administration  
13 Costs to be deducted from the Maximum Settlement Amount.

14 70. Receipt of a Notice Packet will be presumed if the Notice Packet is not returned to  
15 the Settlement Administrator as undeliverable.

16 71. **Procedure for Objecting to the Settlement.** The Parties agree that California  
17 Class Members and persons purporting to act on behalf of California Class Members who wish to  
18 object to the Settlement shall submit objections using the following procedures:

19 (a) The California Notice shall provide that only California Class Members may  
20 object to the Settlement, and objections must be in writing. All written objections and  
21 supporting papers must (a) clearly identify the case name and number (*Debi Mishra v.*  
22 *Cognizant Technology Solutions U.S. Corporation, et al.*, Case No. 2:17-cv-01785 –TLN-  
23 EFB), (b) be submitted to the Court either by mailing them to the Class Action Clerk, United  
24 States District Court for the Eastern District of California, Sacramento Courthouse, 501 “I”  
25 Street, Sacramento, CA 95814, or by filing them in person at any location of the United  
26 States District Court for the Eastern District of California, and (c) be filed or postmarked  
27 on or before the Objection Deadline.

28 (b) California Class Members may also appear at the Final Approval Hearing,

1 either in person or through their attorney. If they appear through their attorney, they are  
2 responsible for paying that attorney. No California Class Member shall be entitled to be  
3 heard at the Final Approval Hearing (whether individually or through separate counsel) or  
4 to object to the Settlement, and no written objections or briefs submitted by any California  
5 Class Member shall be received or considered by the Court at the Final Approval Hearing,  
6 unless the written statement of objections and supporting materials are timely filed as set  
7 forth herein.

8 (c) In addition to the written objections, if a California Class Member and/or his  
9 or her attorney wish to appear and be heard at the Final Approval Hearing, a Notice of  
10 Intention to Appear must be filed with the Court on or before the Objection Deadline. The  
11 date of the postmark on the return mailing envelope shall be the exclusive means used to  
12 determine whether an objection and/or intention to appear has been timely submitted.  
13 California Class Members who fail to timely submit written objections in the manner  
14 specified above shall be deemed to have waived any objections and shall be foreclosed from  
15 making any objection (whether by appearance or otherwise) to the Settlement.

16 72. **Procedure for Requesting Exclusion from the California Class.** The Parties  
17 agree that California Class Members who wish to be excluded from the California Class shall  
18 submit requests for exclusion using the following procedures:

19 (a) California Class Members who wish to exclude themselves from the  
20 California Class must submit an Exclusion Letter and include their current address,  
21 telephone number, and the last four digits of their Social Security number. The Exclusion  
22 Letter must be signed, dated and returned to the Settlement Administrator at the address  
23 provided in the California Notice, postmarked no later than the Exclusion Deadline.

24 (b) The date of the postmark on the Exclusion Letter envelope, or equivalent  
25 proof of mailing before the Exclusion Deadline, i.e., via FedEx, UPS, or certified mail, shall  
26 be the exclusive means used to determine whether a California Class Member has timely  
27 returned his/her Exclusion Letter on or before the Exclusion Deadline.

28 (c) Any California Class Member who fails to submit a valid and timely

1 Exclusion Letter shall be bound by all terms of the Settlement and any Judgment entered in  
2 this Action if the Settlement is approved by the Court, regardless of whether s/he has  
3 objected to the Settlement. California Class Members who have not excluded themselves  
4 and who properly and timely submitted objections may appear at the Final Approval  
5 Hearing, either in person or through a lawyer retained at their own expense.

6 (d) Persons who return a valid Exclusion Letter will not be eligible to receive  
7 the California Award and will not be deemed to have settled, released, or relinquished the  
8 Released California Claims; however, they may still choose to participate in the FLSA  
9 Class.

10 (e) If a question is raised about the authenticity of a signed Exclusion Letter, the  
11 Settlement Administrator will have the right to demand additional proof of the Class  
12 Member's identity.

13 (f) If a California Class Member does not return an Exclusion Letter in the  
14 manner and by the deadline specified above, then he or she shall receive the California  
15 Award and shall be deemed to have expressly settled, released, and relinquished the  
16 Released California Claims as of the Effective Date.

17 (g) If at any time before the Exclusion Deadline, a California Class Member  
18 submits an Exclusion Letter that is not signed, or fails to insert the last four digits of his/her  
19 Social Security number, the Settlement Administrator shall send a cure letter advising of  
20 the defect(s) and requesting that the defect(s) be cured within ten (10) days of the date of  
21 the letter in order to effectuate a valid exclusion from the Settlement. The Settlement  
22 Administrator must mail the cure letter within five (5) days of receiving the Exclusion  
23 Letter.

24 (h) If a California Class Member does not cure a defective Exclusion Letter  
25 within the time designated, the Settlement Administrator shall have no further obligation to  
26 give notice of a need to cure. Such defective Exclusion Letter will be considered invalid.  
27 A California Class Member who submits an invalid letter will still receive his or her  
28 California Award and shall be deemed to have expressly settled, released, and relinquished

1 the Released California Claims as of the Effective Date.

2 (i) If a California Class Member's Exclusion Letter is denied for any reason  
3 then such California Class Member will be notified of the basis for the denial by the  
4 Settlement Administrator.

5 (j) No later than ten (10) days after the Exclusion Deadline, the Settlement  
6 Administrator will provide Counsel for the Parties a complete list of all California Class  
7 Members who have timely requested exclusion and a list of any denied/invalid Exclusion  
8 Letters.

9 73. **Procedure for Opting into the FLSA Class.** The Parties agree that the procedures  
10 for opting into the FLSA Class are as follows:

11 74. The Settlement Administrator shall mail Notice Packets containing the FLSA Claim  
12 Form to Class Members. The Settlement Administrator shall also provide for an online interface  
13 through which California Class Members and FLSA Class Members may timely electronically  
14 complete, sign, and submit an electronic version of the FLSA Claim Form to receive a respective  
15 FLSA Award or FLSA Individual Settlement Payment; the online interface must be capable of  
16 producing to the Settlement Administrator copies of the FLSA Claim Forms electronically  
17 completed, signed, and submitted such that the forms may be submitted to the Court in connection  
18 with the Motion for Final Approval. To be effective and timely, an FLSA Claim Form must be  
19 postmarked, electronically submitted, or otherwise received by the Settlement Administrator within  
20 sixty (60) days from the initial mailing of the Notice Packet by the Settlement Administrator and  
21 include an actual or electronic signature in the designated area. The Settlement Administrator shall  
22 (1) compile a list of all Class Members who timely submit an FLSA Claim Form, whether by  
23 mailing in the FLSA Claim Form or by using the online interface to electronically complete, sign,  
24 and submit to the Settlement Administrator an FLSA Claim Form, and (2) provide to the Parties  
25 copies of such FLSA Claim Forms (whether mailed or electronically completed) and the names of  
26 those individuals in a single, alphabetized list in electronic format for the Parties to submit to the  
27 Court as part of the process leading up to the Final Approval Hearing and Final Approval.

28 75. All Class Members who timely submit an FLSA Claim Form, whether by mail or

1 online mechanism release the Released FLSA Claims, and are fully bound by the Settlement, except  
2 to the extent they otherwise opt out of the California Class. The Settlement Administrator shall  
3 distribute FLSA Awards to all California Class Members who are also part of the FLSA Class and  
4 who also timely submit an FLSA Claim Form. California Class Members will only be deemed to  
5 have consented to and expressly settled, released, and relinquished the Released FLSA Claims if  
6 they timely submit an FLSA Claim Form.

7 76. The Settlement Administrator shall also distribute FLSA Individual Settlement  
8 Payments to all FLSA Class Members who are not California Class Members and who timely  
9 submit an FLSA Claim Form. These FLSA Class Members will only be deemed to have consented  
10 to and expressly settled, released, and relinquished the Released FLSA Claims if they timely submit  
11 an FLSA Claim Form.

12 77. **Procedure for Electing Electronic Payment in Lieu of Mailed Checks.** The  
13 Notice will inform Class Members that they can elect to receive their Individual Settlement  
14 Payments electronically instead of by check by visiting the Settlement Administrator's website at  
15 www.\_\_\_\_\_.com and providing the relevant information needed to process the payments.  
16 California Class Members shall be provided the option to select which payments they want to  
17 receive electronically: the California Award, the FLSA Award, or both. The California Class  
18 Member and FLSA Class Member web pages shall include the following disclosure:

19 Pursuant to the Settlement Agreement in the matter of *Debi Mishra v. Cognizant*  
20 *Technology Solutions U.S. Corporation, et al.* (Case No. 2:17-cv-01785 –TLN-EFB),  
21 available at [INSERT LINK], I understand that by electing to receive my FLSA Award or  
22 FLSA Individual Settlement Payment by electronic payment, I am opting into the FLSA  
23 Class and am agreeing to a full and complete release of the Released FLSA Claims as  
24 defined in the Settlement Agreement.

25 78. **Challenges/Disputes to Individual Workweeks.** Class Members who wish to  
26 challenge or dispute their California or FLSA Individual Workweeks, as shown in the Notice, may  
27 notify the Settlement Administrator of their dispute and should produce any supporting information  
28 and/or evidence available to them to support the dates he or she contends to have worked for

1 Defendants as a Class Member. Defendants will review their records and provide information to  
2 the Settlement Administrator and to Class Counsel in response to any such disputed claim.  
3 Defendants' records will be presumed determinative, but the Settlement Administrator will  
4 evaluate the evidence submitted by the Class Member, consult with the Parties, and make the  
5 decision as to the correct calculation. The determination by the Settlement Administrator will be  
6 final and binding. The Class Member will be notified in writing of the results of the disputed claim  
7 by the Settlement Administrator as each disputed claim is resolved.

8 79. **No Solicitation of Objections or Exclusions.** The Parties agree to use their best  
9 efforts to carry out the terms of this Settlement. Neither the Parties nor their counsel nor their  
10 agents will contact Class Members for the purpose of attempting to influence them not to participate  
11 in this Settlement or to solicit or otherwise encourage Class Members or any other persons to submit  
12 written objections to the Settlement, or encourage Class Members or any other person to appeal  
13 from the Settlement Order and Judgment.

14 **FINAL APPROVAL AND JUDGMENT**

15 80. **Final Approval Hearing.** A Final Approval Hearing shall be held on a date set by  
16 the Court. The Plaintiff shall draft a Motion in Support of Final Approval of the Settlement.  
17 Plaintiff's Counsel shall provide a copy of the draft motion for Final Approval to Defendants'  
18 Counsel for review and approval ten (10) court days before filing it with the Court. Class Counsel  
19 shall timely and properly file the Motion in Support of Final Approval of the Settlement with the  
20 Court, together with the Settlement Administrator's declaration detailing its efforts regarding the  
21 provision of the California and FLSA Notices to the Class Members, due diligence in skip-tracing  
22 bad addresses, re-mailing returned Notice Packets, and its duties and responsibilities pursuant to  
23 the terms of this Settlement. The Settlement Administrator's declaration must also include  
24 information about the number of undeliverable Notice Packets, the number of California Class  
25 Members who submitted proper and timely Exclusion Letters, the number of California Class  
26 Members who objected to the settlement, and the number of California Class Members and FLSA  
27 Class Members who timely submitted an FLSA Claim Form, and it must also attach copies of all  
28 timely FLSA Claim Forms received (redacted as appropriate).

1           81.     **Motion Shall Seek the Fee and Expense Award, Enhancement Payment to**  
2 **Plaintiff, and Administration Costs.** As part of the Motion for Final Approval or prior thereto as  
3 required by the Court by way of a separate motion to be heard at the Final Approval hearing, in  
4 addition to approval of the Settlement generally, Class Counsel will seek approval of their Fees and  
5 Expenses, the Enhancement Payment to Plaintiff, and the Administration Costs.

6           82.     **Settlement Order and Judgment.** After or in conjunction with the Final Approval  
7 of the Settlement, the Parties shall obtain entry of a Settlement Order and Judgment. It is expressly  
8 agreed by the Parties that the Court will retain jurisdiction to enforce the terms of this Agreement  
9 and the Settlement Order and Judgment.

10  
11                   **CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION**  
12   **AND TERMINATION**

13           83.     **Nullification of Agreement.**

14                   (a)     The Parties expressly agree that, if after receiving written notice from the  
15 Settlement Administrator and after the Exclusion Deadline, the number of California Class  
16 Members requesting exclusion from the Settlement equal or exceed ten percent (10%) of  
17 the total number of California Class Members to whom a Notice was mailed, then  
18 Defendants, in their sole discretion, may choose to reject and nullify the Settlement in its  
19 entirety.

20                   (b)     The Parties expressly agree that if the Settlement does not receive Final  
21 Approval for any reason, including, but not limited to:

- 22                           (i)     Defendants choose to reject and nullify the Settlement based on the  
23                                   number of requests for exclusion as set forth in section (a) above;
- 24                           (ii)    the Court does not enter any order specified herein;
- 25                           (iii)  the Court does not finally approve the Settlement as provided herein  
26                                   or as otherwise acceptable to the Parties; or
- 27                           (iv)  the Court does not enter the Settlement Order and Judgment as  
28                                   provided herein, which becomes final as a result of the occurrence of

1 the Effective Date;  
2 this Agreement shall be null and void ab initio and any order or judgment entered by the Court in  
3 furtherance of this Settlement shall be treated as withdrawn or vacated by stipulation of the Parties.  
4 In such case, the Parties shall be returned to their respective positions as of the date immediately  
5 prior to the execution of this Agreement, and the Parties shall proceed in all respects as if this  
6 Agreement had not been executed.

7 (c) In the event that a lesser sum is awarded for the Fees and Expense Award or  
8 the Enhancement Payment referenced above, the approval by the Court of any such lesser  
9 sum shall not be grounds for Plaintiffs and/or their counsel to terminate the settlement, but  
10 such an order shall be appealable by them. Any Fee and Expense Award amount or  
11 Enhancement Payment not awarded, but which is not challenged via appeal by Plaintiff  
12 and/or his counsel, shall be added to the Net Settlement Amount and distributed to the  
13 Settlement Class Members in accordance with the terms of the Settlement Agreement.

14 **PAYMENT OF THE MAXIMUM SETTLEMENT AMOUNT**

15 84. **Consideration from Defendants.** In full settlement of the claims asserted herein  
16 and all Released California and FLSA Claims, Defendants shall pay the Maximum Settlement  
17 Amount consistent with the terms of this Agreement.

18 85. **Timing of Payment.** Defendants will deliver to the Settlement Administrator the  
19 Maximum Settlement Amount within ten (10) business days after the Effective Date.

20 86. After the totaling of the Court-approved (1) Fee and Expense Award;  
21 (2) Enhancement Payment to Plaintiff; (3) Employer's Taxes; and (4) Administration Costs, the  
22 remaining Net Settlement Amount shall be entirely distributed on a proportional basis to the Class  
23 Members in the manner described below. Following Defendants' payment of the Maximum  
24 Settlement Amount to the Settlement Administrator, such funds shall continue to be deemed the  
25 property of Defendants until such time as the funds shall be distributed to the Settlement Class  
26 Members pursuant to this Settlement Agreement and/or further order of the Court.

27 87. No withdrawals other than those specified herein shall be made from the Maximum  
28 Settlement Amount without prior Court approval.



**INDIVIDUAL SETTLEMENT PAYMENTS**

1  
2 88. **Calculation of Individual Settlement Payments.** Before computing the estimated  
3 Individual Settlement Payments to be paid, the Settlement Administrator shall calculate the Net  
4 Settlement Amount. From the Net Settlement Amount, the Settlement Administrator will allocate  
5 97.2% to the California Class Fund and 2.8% to the FLSA Class Fund. Of the California Class  
6 Fund, 69.2% shall be used to calculate the California Award and 30.8% shall be used to calculate  
7 the FLSA Award.

8 89. The minimum potential California Individual Settlement Payment for each  
9 California Class Member shall be calculated as follows: the California Class Fund shall initially  
10 be divided by the total California Class Member Individual Workweeks to determine the per-  
11 workweek share. Then, multiply the per-workweek share by each California Class Member's  
12 Individual Workweeks to determine each California Individual Settlement Payment. 69.2% of that  
13 amount shall be the minimum California Award listed on the California Notice and 30.8% of that  
14 amount shall be the minimum FLSA Award listed on the California Notice.

15 90. To calculate the actual California Award for each California Settlement Class  
16 Member, the Settlement Administrator shall determine the number of California Settlement Class  
17 Members (i.e. California Class Members who have not timely submitted valid Exclusion Letters).  
18 Then, 69.2% of the California Class Fund shall be divided by the Total California Settlement Class  
19 Member Individual Workweeks to determine the actual per-workweek share. Then, the per-  
20 workweek share is multiplied by each California Settlement Class Member's Individual  
21 Workweeks to determine each California Settlement Class Member's California Award.

22 91. To calculate the FLSA Award for California Class Members, 30.8% of the  
23 California Class Fund shall be divided by the Total FLSA Class Member Opt-In Individual  
24 Workweeks worked by the California Class Members to determine a per-workweek share. Then,  
25 the per-workweek share is multiplied by the FLSA Class Member Opt-In Individual Workweeks  
26 of each California Class Member who submitted a timely FLSA Claim Form to determine each  
27 FLSA Award.

28 92. The Settlement Administrator shall calculate the FLSA Individual Settlement

1 Payments of FLSA Class Members who are not California Class Members and who also submitted  
2 a timely FLSA Claim Form as follows: The FLSA Class Fund shall be divided by the total FLSA  
3 Class Member Opt-In Individual Workweeks worked by all Class Members who are not California  
4 Class Members to determine the per-workweek share. Then, the per-workweek share is multiplied  
5 by each FLSA Class Member's Opt-In Individual Workweeks to determine each FLSA Individual  
6 Settlement Payment for FLSA Class Members who are not California Class Members and who also  
7 submitted a timely FLSA Claim Form. Estimated FLSA Individual Settlement Payments will  
8 follow the same calculation, only using FLSA Class Member's Individual Workweeks. FLSA  
9 Class Members who are also California Class members will only be compensated from the  
10 California Class Fund to avoid double recovery.

11 93. The Parties recognize and agree that the value of the claims alleged in this litigation  
12 are extremely difficult to determine with any certainty for any given year, or at all, and are  
13 potentially subject to myriad differing calculations and formulas. The Parties agree that the method  
14 for allocating the Individual Settlement Payments to the Plaintiff and Class Members provided  
15 herein is reasonable and that the payments provided herein are designed to provide a fair settlement  
16 to such persons, in light of the uncertainties of the amounts alleged to be owed to the Class Members  
17 and the calculation of such amounts.

18 94. **Taxes.** The Parties agree that, for purposes of this Settlement, fifty percent (50%)  
19 of each California and FLSA Individual Settlement Payment shall be allocated to wages to be  
20 reported on IRS Form W-2 and from which payroll deductions will be made for state and federal  
21 withholding taxes or any other applicable payroll deductions. The remaining fifty percent (50%)  
22 of each California and FLSA Individual Settlement Payment shall be deemed to represent the  
23 payment of alleged liquidated damages, interest, and penalties under applicable law which shall not  
24 be subject to federal, state and local payroll withholding taxes and will be reported on IRS Form  
25 1099. It shall be the responsibility of the Settlement Administrator or its designee, in coordination  
26 with Defendants as necessary, to timely and properly withhold from California and FLSA  
27 Individual Settlement Payments payable to Settlement Class Members all applicable federal, state  
28 and local income and employment taxes and to prepare and deliver the necessary tax documentation

1 for signature by all necessary parties and, thereafter, to cause the appropriate deposits of  
2 withholding taxes and informational and other tax return filing to occur. Each Settlement Class  
3 Member's share of all applicable federal, state, and local income and employment taxes withheld  
4 and deposited with the applicable governmental authorities in accordance with this Agreement shall  
5 be a part of, and paid out of, the California and FLSA Individual Settlement Payments to each  
6 Settlement Class Member.

7 95. The Settlement Administrator shall be responsible for reporting on IRS Forms W-2,  
8 1099, or other appropriate tax reporting forms: (1) all California and FLSA Individual Settlement  
9 Payments paid to Settlement Class Members required to be reported; (2) the Enhancement Payment  
10 paid to Plaintiff; (3) the Fee and Expense Award paid to Class Counsel; and the Employer's Taxes.  
11 The Settlement Administrator shall issue such forms to the respective Settlement Class Members,  
12 Plaintiff, Class Counsel, Defendants, and applicable government authorities. The Settlement  
13 Administrator shall furnish to Defendants copies of the IRS Forms W-2, 1099, or other tax reporting  
14 forms provided to any Settlement Class Member, Plaintiff, and Class Counsel within thirty (30)  
15 days after each such form has been furnished to the payee shown thereon.

16 96. Each Settlement Class Member shall cooperate with Defendants and provide  
17 documentation as requested to demonstrate such payment should any taxing authority challenge  
18 the allocation of California and FLSA Individual Settlement Payments. The Parties acknowledge  
19 that Defendants and the Releasees make no representations as to the tax consequences or  
20 characterization of the nature of the payment made pursuant to this Agreement.

21 97. The Employer Taxes shall be determined by the Settlement Administrator and paid  
22 from the Maximum Settlement Amount.

23 98. **No Impact on Employee Benefits.** No benefit, including but not limited to any  
24 ERISA plan such as a 401K, shall increase or accrue as a result of any payment made as a result of  
25 this Settlement.

26 99. **Date of Distribution of the Net Settlement Amount.** To allow time for all final  
27 payments calculated to be made by the Settlement Administrator, California and FLSA Individual  
28 Settlement Payments from the Net Settlement Amount will be distributed to the Settlement Class

1 Members within twenty (20) days after the Effective Date, but in no event shall any payment be  
2 made prior to or on the Effective Date. Distributions of the Fee and Expense Award, Enhancement  
3 Payment, Administration Costs, and Employer's Taxes will occur as soon as reasonably practicable  
4 following receipt of the Settlement funds by the Settlement Administrator. The Settlement  
5 Administrator's determination of eligibility for any California or FLSA Individual Settlement  
6 Payment under the terms of this Agreement shall be conclusive, final and binding on all Parties and  
7 all Settlement Class Members.

8 100. If a Settlement Class Member's California Award, FLSA Award, or FLSA  
9 Individual Settlement Payment is returned to the Settlement Administrator, the Settlement  
10 Administrator will make reasonable efforts to re-mail it to the Settlement Class Member at his or  
11 her correct address. It is expressly understood and agreed that the checks for payments to the  
12 Settlement Class Members will become void if not cashed within 180 days after mailing. Any funds  
13 from uncashed checks shall remain with the Settlement Administrator for another 180 days, and  
14 funds from such uncashed checks may be paid by the Settlement Administrator to any Settlement  
15 Class Member who appears and requests payment during this period. Following expiration of this  
16 second 180-day period, any remaining unclaimed funds shall be sent to the applicable state  
17 unclaimed property fund unless a class member resides in California then such funds will go to the  
18 Department of Industrial Relations Unpaid Wage Fund.

19 101. The Settlement Administrator shall mail a postcard and send an e-mail (if an address  
20 is available) to Settlement Class Members who have not cashed their California Award, FLSA  
21 Award, or FLSA Individual Settlement Payment checks sixty (60) days before the checks become  
22 void to remind them that if their checks are not cashed by the deadline, their checks will become  
23 void and shall be paid to the applicable state unclaimed property fund unless a class member resides  
24 in California then such funds will go to the Department of Industrial Relations Unpaid Wage Fund.  
25 The postcard and e-mail will advise Settlement Class Members of an opportunity to receive  
26 replacement checks. The Settlement Administrator shall send a similar postcard and e-mail to  
27 Settlement Class Members thirty (30) days before their checks become void, as well.

28 102. No person shall have any claim against Defendants, Defendants' Counsel, Plaintiff,

1 the Class Members, Plaintiff's Counsel or the Settlement Administrator based on mailings,  
2 distributions and payments made in accordance with or pursuant to this Agreement. This provision  
3 excludes any claim that the Class Members may have under applicable law against Plaintiff,  
4 Plaintiff's Counsel, Defendants, Defendants' Counsel or the Settlement Administrator for theft or  
5 loss of any or all of the Individual Settlement Payments. Neither the Parties nor the Settlement  
6 Administrator are providing or shall be deemed to have provided tax advice of any kind to any  
7 Class Member, to Plaintiff or to any other person or entity in connection with payments made  
8 according to this Settlement Agreement.

9       103. **Fee and Expense Award.** Plaintiff's Counsel intends to request that the Court  
10 award the Fee and Expense Award agreed by the Parties not to exceed twenty-five percent (25%)  
11 of the MSA. as the Fee Award, in addition to reasonable actual expenses, not to exceed \$45,000.00,  
12 as the Expense Award. The amounts paid in the Fee and Expense Award shall be for all claims for  
13 attorneys' fees, expenses, and costs incurred in the Action by Class Counsel in the past, present, or  
14 future. Class Counsel shall not be permitted to petition the Court for, or accept, any additional  
15 payments for fees, costs, and/or expenses except those fees, costs and/or expenses that Class  
16 Counsel might incur in the event that Class Counsel appeals the Fee and Expense Award approved  
17 by the Court, to the extent the total amount(s) sought by Class Counsel do not exceed those set  
18 forth above for the Fee Award and Expense Award, respectively. Defendants shall not oppose the  
19 Fee and Expense request, or any appeal made by Class Counsel regarding the Fee and Expense  
20 request, so long as it remains consistent with this Agreement.

21       104. Plaintiff's Counsel is solely responsible for filing with the Court, as part of the  
22 Motion for Final Approval, their request for the Fee and Expense Award.

23       105. Payment of the Fee and Expense Award to Class Counsel shall constitute full  
24 satisfaction of any obligation to pay any amounts to any person, attorney, or law firm for attorneys'  
25 fees, expenses or costs in the Action incurred by any attorney on behalf of the Plaintiff or the  
26 Settlement Class, and shall relieve the Releasees of any other claims or liability to any other  
27 attorney or law firm for any attorneys' fees, expenses and/or costs to which any of them may claim  
28 to be entitled on behalf of the Plaintiff and/or the Settlement Class.

1           106. Should the Fee and Expense Award approved by the court be less than the amount  
2 sought, the difference shall be added to the Net Settlement Amount, subject to Plaintiff's Counsel  
3 right to appeal any such reduction. Any such appeal shall not terminate or cancel this Agreement  
4 or otherwise affect the finality of the Final Approval or the releases set forth herein.

5           107. Plaintiff's Counsel further represents that they are aware of no liens or other claims  
6 for attorneys' fees and costs asserted or reasonably capable of being asserted plausibly by any  
7 person or entity other than Plaintiff's Counsel. Plaintiff and Plaintiff's Counsel agree to indemnify,  
8 defend, and hold harmless the Releasees against any liens or other claims for attorneys' fees and  
9 costs, purportedly incurred prior to Final Approval, that are or may be later asserted by any person  
10 or entity other than Plaintiff's Counsel.

11           108. **Defendants' Legal Fees and Costs.** Defendants' own legal fees, costs and  
12 expenses incurred in the Action shall be borne by Defendants, except for the Administration Costs  
13 incurred as part of the Settlement Administration tasks described above.

14           109. **Enhancement Payment to Plaintiff.** Plaintiff's Counsel intends to request that the  
15 Court approve an Enhancement Payment of Ten Thousand Dollars and no cents (\$10,000.00) to  
16 Plaintiff for initiating this Action and acting as the Class Representative, for services provided in  
17 furtherance of this Action, the risks undertaken for payment of costs in the event this Action were  
18 unsuccessful, stigma, and a full release of claims, known or unknown, against the Releasees. The  
19 Enhancement Payment paid under this Agreement shall be reported on IRS Form 1099 by the  
20 Settlement Administrator and provided to Plaintiff and applicable government authorities.  
21 Defendants will not object to the Enhancement Payment request in the amount set forth in this  
22 paragraph.

23           110. Should the Enhancement Payment approved by the court be less than the amount  
24 sought, the difference shall be added to the Net Settlement Amount, subject to Plaintiff's right to  
25 appeal such reduction. Defendants agree not to object to any appeal made by Plaintiff regarding a  
26 reduction of the Enhancement Payment. Any such appeal shall not terminate or cancel this  
27 Agreement or otherwise affect the finality of the Final Approval or the releases set forth herein.

28           111. The payment of the Enhancement Payment in no way prohibits Plaintiff's receipt of

1 California and FLSA Individual Settlement Payments as a Class Member.

2 112. **Administration Costs.** The Settlement Administrator estimated its services for  
3 administering the Settlement pursuant to the terms set forth in this Agreement to not exceed Thirty  
4 Thousand Dollars and no cents (\$30,000.00).

5 113. **Notification and Certification by Settlement Administrator.** Following the  
6 initial mailing of the Notice Packet to the Settlement Class, the Settlement Administrator shall keep  
7 counsel for the Parties apprised on a weekly basis of the status of the delivery of Notice Packets,  
8 any dispute/challenges to the Individual Workweek information, and resolution of disputed claims,  
9 Exclusion Letters received, FLSA Claim Forms received, etc. Such information will be specifically  
10 set forth in the Settlement Administrator's declaration, which will be filed by Class Counsel with  
11 the Motion in Support of Final Approval of the Settlement. Following the 360-day deadline for  
12 Settlement Class Members to cash or otherwise claim their California and FLSA Individual  
13 Settlement Payments, the Settlement Administrator will submit a supplemental declaration  
14 detailing the payments made, the number of checks cashed, the number of payments processed  
15 electronically, and the number and total of all unclaimed amounts to be submitted to the applicable  
16 state unclaimed property fund. The declaration shall provide detail regarding the type of each  
17 payment claimed or unclaimed (i.e., California Award, FLSA Award, or FLSA Individual  
18 Settlement Payment) and the method by which each Settlement Class Member accepted payment  
19 (i.e., by check or electronically). Upon completion of administration of the Settlement, the  
20 Settlement Administrator shall provide written certification of such completion to counsel for the  
21 Parties.

22 **RELEASED CLAIMS**

23 114. **Released Claims.** The California Notice will: (1) specifically set forth the Released  
24 California Claims and Released FLSA Claims; (2) inform California Class Members that each will  
25 be deemed to have expressly settled, released, and relinquished the Released California Claims as  
26 of the Effective Date if they do not return a valid Exclusion Letter or if they do not timely cure a  
27 defect in the Exclusion Letter following notification that a cure is required; and (3) inform Class  
28 Members that, by timely submitting the FLSA Claim Form, they will be deemed to have consented

1 to and expressly settled, released, and relinquished the Released FLSA Claims.

2  
3 115. **General Release by Plaintiff.** The Enhancement Payment is also paid in  
4 consideration of Plaintiff providing Defendants the following general release of claims: Plaintiff  
5 (on his own behalf and on behalf of his heirs, beneficiaries, trustees, executors, administrators,  
6 assigns, agents, insurers, representatives, and successors) knowingly, voluntarily, irrevocably, and  
7 unconditionally fully and forever waives, releases, and discharges the Releasees from, and  
8 acknowledges full accord and satisfaction of, any and all debts, agreements, promises, liabilities,  
9 claims, damages, actions, causes of action, or demands of any kind or nature whatsoever (upon any  
10 legal or equitable theory, whether contractual, common law or statutory, under federal, state or  
11 local law or otherwise), whether known or unknown, asserted or unasserted, by reason of any act,  
12 omission, transaction, agreement or occurrence, that Plaintiff has ever had, now has, or hereafter  
13 may have against the Releasees arising out of or relating to Plaintiff's employment and/or any other  
14 event, act, occurrence or omission taking place on or before the date the Court grants Final  
15 Approval of this Settlement.

16 This release specifically includes any and all claims, demands, obligations and/or causes of  
17 action for damages, restitution, penalties, interest, and attorneys' fees and costs relating or in any  
18 way connected with the matters referred to herein, whether or not known or suspected to exist, and  
19 whether or not specifically or particularly described herein. Plaintiff expressly waives all rights  
20 and benefits accorded by California Civil Code Section 1542, which states as follows:

21 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**  
22 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**  
23 **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF**  
24 **KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR**  
25 **HER SETTLEMENT WITH THE DEBTOR.**

26 **ADDITIONAL MATTERS**

27 116. **Publicity.** Plaintiff, Plaintiff's Counsel, Defendants, and Defendants' Counsel  
28 agree not to disparage each other. Any press release relating to this Settlement by Plaintiff or



1 Defendants (or their respective counsel) is subject to the approval and consent of Plaintiff's Counsel  
2 and Defendants' Counsel, respectively, and said approval and consent shall not be unreasonably  
3 withheld. This paragraph is not intended to restrict the arguments of any party made in a Court  
4 filing in this Action.

5 117. **Privacy of Documents and Information.** At the request of Defendants, Plaintiff  
6 and Plaintiff's Counsel agree that they will return to Defendants any and all documents and  
7 information provided to them by Defendants in connection with this Action within thirty (30) days  
8 of the Effective Date, and that none of the documents and information provided by Defendants shall  
9 be used for any purpose other than prosecution of this Action. Alternatively, Defendants may  
10 require that Plaintiff's Counsel certify that all such documents have been securely destroyed.

11 118. **Exhibits, Headings, and Captions.** The terms of this Agreement include the terms  
12 set forth herein and attached Exhibits 1-5, which are incorporated by this reference as though fully  
13 set forth herein. The descriptive headings and captions contained in this Agreement are inserted  
14 for convenience and in no way define, limit, extend or describe the scope of this Agreement or the  
15 intent of any provision thereof.

16 119. **Interim Stay of Proceedings.** Pending the Final Approval Hearing to be conducted  
17 by the Court, or earlier if for any reason the settlement contemplated by this Agreement will not  
18 occur, the Parties agree to continue and extend the stay of all proceedings in the Action, including  
19 all matters scheduled with the Court, except such proceedings as are necessary to implement and  
20 complete the Settlement, or to comply with any order of the Court until Final Approval. Consistent  
21 with this Agreement, the Parties agree to promptly notify the Court that the Parties have reached a  
22 settlement and agree to a further stay of all proceedings.

23 120. **Amendment or Modification.** This Agreement may not be amended or modified  
24 in any respect except by a written instrument duly executed by all of the Parties to this Agreement  
25 or their counsel.

26 121. **Entire Agreement.** This Agreement constitutes the entire Agreement of the Parties  
27 with respect to the matters discussed herein, and no oral or written representations, warranties or  
28 inducements have been made to any Party concerning this Agreement other than the

1 representations, warranties, and covenants contained and memorialized in such documents. All  
2 prior or contemporaneous negotiations, agreements, understandings, and representations, whether  
3 written or oral, are expressly superseded hereby and are of no further force and effect. Each of the  
4 Parties acknowledges that it has not relied on any promise, representation or warranty, express or  
5 implied, not contained in this Agreement.

6 122. **Authorization to Enter into Settlement Agreement.** Each signatory to this  
7 Agreement hereby warrants and represents that he or she has the authority to execute this  
8 Agreement, thereby binding the respective party to take all appropriate action required or permitted  
9 to be taken by the Parties pursuant to this Agreement to effectuate its terms and to execute any  
10 other documents required to effectuate the terms of this Agreement. The Parties and their counsel  
11 agree to cooperate with each other and to use their best efforts to effect the implementation of this  
12 Agreement.

13 123. **Binding Effect of the Agreement.** This Agreement shall be binding upon, and  
14 inure to the benefit of, the Parties and their respective heirs, legal representatives, executors,  
15 administrators, agents, insurers, successors, and assigns.

16 124. **Choice of Law.** In determining the rights of the Parties hereto, this Agreement shall  
17 be governed by, construed, and interpreted in accordance with the laws of the state of California,  
18 without regard to the conflict of laws principles thereof.

19 125. **Counterparts.** This Agreement may be executed in one or more counterparts, each  
20 of which shall be an original, provided that counsel for the Parties shall exchange among themselves  
21 original signed counterparts. This Agreement is effective upon execution of at least one counterpart  
22 by each party to this Agreement.

23 126. **Representation by Counsel and Cooperation in Drafting.** The Parties  
24 acknowledge that they have been represented by counsel throughout all negotiations and in the  
25 execution of this Agreement and that this Agreement has been executed with the consent and advice  
26 of counsel. In addition, each of the Parties has cooperated in the drafting and preparation of this  
27 Agreement. Hence, any rule which construes ambiguities against the drafter shall have no force or  
28 effect.

1            127. **Inadmissibility of Settlement Agreement.** If this Agreement does not become  
2 effective or is cancelled or terminated for any reason, it shall be deemed negotiation for settlement  
3 purposes only and will not be admissible in evidence or usable for any purpose whatsoever in the  
4 Action or any proceedings between the Parties except in connection with enforcing its terms.  
5 Whether or not the Settlement is finally approved, neither the Settlement, nor any of its terms, nor  
6 any document, statement, proceeding or conduct related to this Agreement, nor any reports or  
7 accounts thereof, shall in any event be construed as, offered or admitted in evidence as, received  
8 as, or deemed to be evidence for any purpose adverse to the Parties, including, but not limited to,  
9 evidence of a presumption, concession, indication or admission by any of the Parties of any liability,  
10 fault, wrongdoing, omission, concession, or damage.

11            128. **Invalidity of Any Provision.** If any provision of this Agreement is held to be  
12 invalid, void, or unenforceable, the remaining provisions nevertheless shall continue in full force  
13 and effect.

14            129. **Plaintiff's Waiver of Right to be Excluded and Object.** By signing this  
15 Agreement, Plaintiff agrees to be bound by the terms herein, not to request to be excluded from the  
16 Settlement Class, and not to object to any of the terms of this Agreement. Any such request for  
17 exclusion or objection by the Plaintiff shall therefore be void and of no force or effect.

18            130. **Terminology and Construction.** All personal pronouns used in this Agreement,  
19 whether used in the masculine, feminine, or neutral gender, shall include all other genders, and the  
20 singular shall include the plural and vice versa.

21            131. **Notices.** Any notices or other documents that must or may be transmitted to  
22 Plaintiff's Counsel and/or Defendants' Counsel, pursuant to any section of this Agreement, shall  
23 be transmitted to each of the following:

24            **For Documents to Defendants' Counsel:**

25            Julie A. Totten  
26            Katie E. Briscoe  
27            Orrick, Herrington & Sutcliffe LLP  
28            400 Capitol Mall  
                 Suite 3000  
                 Sacramento, California 95814  
                 Telephone: 916.329.4908

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Facsimile: 916.329.4900 jatotten@orrick.com kbriscoe@orrick.com
<b>For Documents to Plaintiff's Counsel:</b>
John T. Stralen Joshua H. Watson Clayeo C. Arnold, APC 865 Howe Avenue Sacramento, CA 95825 Telephone: (916) 777-7777 Facsimile: (916) 924-1829 jstralen@justice4you.com jwatson@justice4you.com

132. The Parties and all counsel acknowledge and agree that for the purposes of any claims, actions, and/or proceedings arising out of this Agreement, notice provided to Plaintiff's Counsel shall be deemed to be notice to the Plaintiff.

Dated: May \_\_\_\_, 2020

\_\_\_\_\_  
DEBI MISHRA  
Plaintiff

Dated: May \_\_\_\_, 2020

\_\_\_\_\_  
JOHN T. STRALEN  
JOSHUA H. WATSON  
CLAYEO C. ARNOLD, APC  
Attorneys for Plaintiff DEBI MISHRA

Dated: May \_\_\_\_, 2020

\_\_\_\_\_  
JACOB HILL, CHIEF COUNSEL – GLOBAL  
LITIGATION  
FOR DEFENDANTS COGNIZANT  
TECHNOLOGY SOLUTIONS U.S.  
CORPORATION, COGNIZANT  
TECHNOLOGY SOLUTIONS  
CORPORATION

Dated: May \_\_\_\_, 2020

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JULIE A. TOTTEN  
ORRICK, HERRINGTON & SUTCLIFFE  
LLP  
Attorneys for Defendants

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COGNIZANT TECHNOLOGY SOLUTIONS  
U.S. CORPORATION, COGNIZANT  
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CORPORATION