

1 **LEWIS BRISBOIS BISGAARD & SMITH LLP**

RACHEL J. LEE, SB# 225263
2 Email: Rachel.Lee@lewisbrisbois.com
221 North Figueroa Street, Suite 1200
3 Los Angeles, CA 90012
Telephone: 213.250.1800
4 Facsimile: 213.250.7900

5 **LEWIS BRISBOIS BISGAARD & SMITH LLP**

JOSEPH R. LORDAN, SB# 265610
6 Email: Joseph.Lordan@lewisbrisbois.com
VINCENT R. FISHER, SB# 276334
7 Email: Vincent.Fisher@lewisbrisbois.com
333 Bush Street, Suite 1100
8 San Francisco, California 94104-2872
Telephone: 415.362.2580
9 Facsimile: 415.434.0882

10 Attorneys for Defendant RETAIL MERCHANDISING
SOLUTIONS, INC.

11
12 **LAW OFFICES OF J. KIRK DONNELLY, APC**

J. KIRK DONNELLY, SB# 179401
13 Email: kdonnelly@jkd-law.com
4370 La Jolla Village Drive, Suite 800
14 San Diego, California 92122
Telephone: 858.260.6170

15 Attorneys for Plaintiff KIMBERLY GEORGE

16
17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 COUNTY OF ALAMEDA

19
20 KIMBERLY GEORGE, individually, and on
behalf of all others similarly situated,

21 Plaintiff,

22 vs.

23 RETAIL MERCHANDISING SOLUTIONS,
24 INC., and DOES 1 through 10, inclusive,

25 Defendant.

CASE NO. RG16828194

[Assigned to the Hon. Judge Brad Seligman,
Dept. 23]

CLASS ACTION

**AMENDED JOINT STIPULATION OF
CLASS ACTION SETTLEMENT AND
RELEASE**

26
27
28

1 AMENDED JOINT STIPULATION OF CLASS ACTION SETTLEMENT AND
2 RELEASE

3 This Joint Stipulation of Class Action Settlement and Release (“Settlement” or “Settlement
4 Agreement”) is made and entered into by and between Plaintiff Kimberly George (“Plaintiff” or
5 “Class Representative”), as an individual and on behalf of all others similarly situated and
6 aggrieved, and Defendant Retail Merchandising Solutions, Inc., (“Defendant” or “RMSI”)
7 (collectively with Plaintiff, the “Parties”).

8 DEFINITIONS

9 The following definitions are applicable to this Settlement Agreement. Definitions
10 contained elsewhere in this Settlement Agreement will also be effective:

11 1. “Action” means the civil lawsuit Plaintiff filed against Defendant, styled *Kimberly*
12 *George, individually, and on behalf of all others similarly situated, v. Retail Merchandising*
13 *Solutions, Inc., and Does 1 through 10, inclusive*, on or about August 22, 2016 in the Superior
14 Court of California, in and for the County of Alameda, case number RG16828194.

15 2. “Appeal” means a timely appeal by a Class Member to the Order and Judgment
16 approving the Settlement, or an appeal by one of the Parties to an order that materially alters the
17 Settlement.

18 3. “Attorney’s Fees and Costs” means attorney’s fees agreed upon by the Parties and
19 approved by the Court for Class Counsel’s litigation and resolution of the Action, and all costs
20 incurred and to be incurred by Class Counsel in the Action, including but not limited to, costs
21 associated with documenting the Settlement, providing any notices required as part of the
22 Settlement or Court order, securing the Court’s approval of the Settlement, administering the
23 Settlement, obtaining entry of an Order and Judgment approving the Settlement, and expenses for
24 any experts. Class Counsel will request not more than thirty percent (30%) of the Class
25 Settlement Amount, or Three Hundred Sixty Thousand Dollars and Zero Cents (\$360,000.00) in
26 attorney’s fees, and not more than Ten Thousand Dollars and Zero Cents (\$10,000.00) in litigation
27 costs and expenses. Defendant has agreed not to oppose Class Counsel’s request for attorney’s
28 fees and costs and expenses as set forth above.

1 4. "Class Counsel" means J. Kirk Donnelly and the Law Offices of J. Kirk Donnelly,
2 APC.

3 5. "Class List" means a complete list of all Class Members that Defendant will
4 diligently and in good faith compile from its records and provide to the Settlement Administrator
5 and to Class Counsel within fourteen (14) days after entry of an Order granting Preliminary
6 Approval of this Settlement. The Class List will be formatted in Microsoft Office Excel and will
7 include each Class Member's full name; most recent mailing address and telephone number;
8 Social Security number; dates of employment; the total compensation paid to each Class Member
9 during the Class Period while employed by Defendant as a Merchandiser; and any other relevant
10 information needed to calculate settlement payments.

11 6. "Class Member(s)" or "Settlement Class" means all individuals employed by
12 Defendant as a Merchandiser during the Class Period.

13 7. "Class Notice" means the Notice of Class Action Settlement substantially in the
14 form attached hereto as Exhibit A, and approved by the Court.

15 8. "Class Period" means the period from August 22, 2012 through the date of
16 Preliminary Approval.

17 9. "Class Representative" means Plaintiff Kimberly George.

18 10. "Class Settlement Amount" means the exact amount of One Million Two Hundred
19 Thousand Dollars and Zero Cents (\$1,200,000.00), to be paid by Defendant in full satisfaction of
20 all claims alleged in the Action or that could have been alleged in the Action, based on the
21 operative facts alleged therein, which includes all Individual Settlement Payments to Participating
22 Class Members, the Labor and Workforce Development Agency Payment, Attorney's Fees and
23 Costs, the Class Representative Enhancement Payment, and Settlement Administration Costs.
24 Any employer-side payroll taxes required by law, including the employer-side FICA, FUTA, and
25 SDI contributions, will be paid by Defendant separately and apart from the Class Settlement
26 Amount. There will be no reversion of any portion of the Class Settlement Amount to Defendant.

27 11. "Court" means Department 23 of the Alameda County Superior Court.

28 12. "Defendant" means Defendant Retail Merchandising Solutions, Inc.

1 13. “Effective Date” shall be when Final Approval of the Settlement can no longer be
2 appealed by an objector, or in the absence of any objections (or if all objections are withdrawn
3 with Court approval by the time of the Final Approval Hearing), five (5) calendar days following
4 Notice of Entry of Judgment. If objections are heard by the Court and overruled, and no appeal is
5 taken of the Judgment by an objector, then the Effective Date shall be sixty-five (65) calendar
6 days after Notice of Entry of Judgment. If any appeal is taken from the Court’s overruling of any
7 objections to the Settlement, then the Effective Date shall be ten (10) calendar days after all
8 appeals are withdrawn or after an appellate decision affirming the Final Approval and Judgment
9 becomes final.

10 14. “Final Approval” means the Court’s Order granting final approval of the
11 Settlement.

12 15. “Individual Settlement Payment” means each Participating Class Member’s
13 respective share of the Net Settlement Amount.

14 16. “Labor and Workforce Development Agency Payment” means the payment of
15 Seven Thousand Five Hundred Dollars (\$7,500) from the Class Settlement Amount to the
16 California Labor and Workforce Development Agency for its portion of the civil penalties paid
17 under the Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.*

18 17. “Merchandiser” means an individual employed by Defendant in one or more of the
19 following job titles: Project Merchandiser, Project Trainer, Remodel Merchandiser, Remodel
20 Team Lead, Team Lead, Wave Merchandiser, and Wave Trainer, or any similar position however
21 titled.

22 18. “Net Settlement Amount” means the portion of the Class Settlement Amount
23 remaining after deducting the Class Representative Enhancement Payment, the Labor and
24 Workforce Development Agency Payment, Attorney’s Fees and Costs, and Settlement
25 Administration Costs. The entire Net Settlement Amount will be distributed to Participating Class
26 Members. There will be no reversion of any portion of the Net Settlement Amount to Defendant.

27 19. “Notice of Entry of Judgment” means a Notice of Entry of Judgment pursuant to
28 section 664.5(c) of the California Code of Civil Procedure filed and served by Plaintiff.

1 20. “Notice of Objection and/or Notice of Intent to Appear” means a Class Member’s
2 valid and timely written objection to the Settlement Agreement, a Class Member’s valid and
3 timely written statement of intent to appear, either personally or through counsel, at the Final
4 Approval Hearing, or both. For a Notice of Objection to be valid, it must include: (i) the
5 objector’s full name, signature, address, and telephone number; (ii) a written statement of all
6 grounds for the objection accompanied by any legal support for such objection; and (iii) copies of
7 papers, briefs, or other documents upon which the objection is based, if any. For a Notice of
8 Intent to Appear to be valid, it must include: (i) the objector’s full name, signature, address, and
9 telephone number; and (ii) a brief written statement explaining why the objector wishes to appear
10 and be heard at the Final Approval Hearing. A Class Member may combine a Notice of Objection
11 and Notice of Intent to Appear in one submission. Absent good cause found by the Court, any
12 Class Member who does not submit a timely written Notice of Objection and/or Notice of Intent to
13 Appear to the Settlement Administrator, or who fails to otherwise comply with the specific
14 requirements of this paragraph, will be foreclosed from objecting to the Settlement and seeking
15 any adjudication or review of the Settlement, by appeal or otherwise.

16 21. “Parties” means Plaintiff and Defendant collectively.

17 22. “Participating Class Member” means any Class Member who does not submit a
18 timely and valid Request for Exclusion.

19 23. “Plaintiff” means Kimberly George.

20 24. “Plaintiff’s Counsel” means J. Kirk Donnelly and the Law Offices of J. Kirk
21 Donnelly, APC.

22 25. “Preliminary Approval” means the Court order granting preliminary approval of
23 the Settlement.

24 26. “Released Claims” means any and all causes of action, claims, rights, damages,
25 punitive or statutory damages, penalties, liabilities, expenses, and losses alleged in the operative
26 complaint or which could reasonably have been alleged in the operative complaint based on the
27 facts alleged therein, including, but not limited to: (a) any alleged failure by Defendant (1) to pay
28 wages, minimum wages, or overtime; (2) to provide meal or rest periods or compensation in lieu

1 thereof; (3) to provide accurate wage statements to employees; (4) to timely pay wages during
2 employment; (5) to pay all wages due upon separation of employment; (6) to maintain payroll
3 records; or (7) to reimburse Class Members in any manner for expenses incurred in the
4 performance of their job duties; (b) any right or claim for civil penalties pursuant to the Private
5 Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.*, or any penalties arising
6 under the Labor Code or Wage Orders based on the alleged failures set forth in (a)(1) through
7 (a)(7) above; or (c) any right or claim for unfair business practices in violation of California
8 Business & Professions Code §§ 17200, *et seq.*, based on the alleged failures set forth in (a)(1)
9 through (a)(7) above; and (d) any violation of the California Labor Code arising from or related to
10 the conduct alleged in (a)(1) through (a)(7) above, including, without limitation, violation of
11 Labor Code Sections 201, 202, 203, 204, 218.5, 218.6, 221, 226, 226.3, 226.6, 226.7, 450, 510,
12 512, 558, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 1198, 2802, 2698 *et seq.*, or any other
13 state statute, rule and/or regulation (Wage Order), or similar causes of action which any Class
14 Member has or might have, known or unknown, of any kind whatsoever, that was alleged or could
15 have been alleged based on the factual allegations in the operative complaint.

16 27. “Released Parties” means Defendant (along with any of its past, present, and future
17 parents, affiliates, subsidiaries, divisions, predecessors, successors, and assigns, and each of their
18 officers, directors, board members, trustees, shareholders, members, employees, agents, attorneys,
19 auditors, accountants, benefits administrators or third-party administrators, experts, contractors,
20 stockholders, representatives, partners, insurers, reinsurers, and other persons acting on their
21 behalf).

22 28. “Request for Exclusion” means a timely letter submitted by a Class Member
23 indicating a request to be excluded from the Settlement. The Request for Exclusion must: (i) set
24 forth the name, address, telephone number and last four digits of the Social Security Number of
25 the Class Member requesting exclusion; (ii) be signed by the Class Member; (iii) be returned to
26 the Settlement Administrator; (iv) clearly state that the Class Member does not wish to be included
27 in the Settlement; and (v) be postmarked on or before the Response Deadline.

28 29. “Response Deadline” means the deadline by which Class Members must postmark

1 to the Settlement Administrator Requests for Exclusion, or postmark or file Notices of Objection
2 and/or Notices of Intent to Appear to the Court and counsel for the Parties. The Response
3 Deadline will be sixty (60) calendar days from the initial mailing of the Class Notice by the
4 Settlement Administrator, unless the 60th day falls on a Sunday or Federal holiday, in which case
5 the Response Deadline will be extended to the next day on which the U.S. Postal Service and the
6 Alameda County Superior Court are open.

7 30. "Settlement Administration Costs" means the costs to the Settlement Administrator
8 for administering this Settlement, including, but not limited to, printing, distributing, and tracking
9 documents for this Settlement, creating and maintaining a web site and toll-free telephone number,
10 tax reporting, distributing the Class Settlement Amount, and providing necessary reports and
11 declarations, as requested by the Parties or the Court. The Settlement Administration Costs will
12 not exceed Twenty One Thousand Dollars and Zero Cents (\$21,000.00).

13 31. "Settlement Administrator" means Phoenix Settlement Administrators, or any other
14 third-party class action settlement administrator agreed to by the Parties and approved by the
15 Court for the purposes of administering this Settlement. The Parties each represent that they do
16 not have any financial interest in the Settlement Administrator or otherwise have a relationship
17 with the Settlement Administrator that could create a conflict of interest.

18 TERMS OF AGREEMENT

19 The Plaintiff, on behalf of herself and the Settlement Class, and Defendant agree as
20 follows:

21 32. Funding of the Class Settlement Amount. Defendant will make a deposit of the
22 Class Settlement Amount via wire transfer into a Qualified Settlement Account ("QSA") to be
23 established by the Settlement Administrator in the exact amount of One Million Two Hundred
24 Thousand Dollars and Zero Cents (\$1,200,000.00) within twenty (20) calendar days after the
25 Effective Date;

26 33. Attorney's Fees and Costs. Defendant agrees not to oppose or impede any
27 application or motion by Class Counsel for Attorney's Fees and Costs, not to exceed thirty
28 percent (30%) of the Class Settlement Amount, or Three Hundred Sixty Thousand Dollars and

1 Zero Cents (\$360,000.00), in attorney's fees, and actual litigation costs and expenses not to exceed
2 Ten Thousand Dollars and Zero Cents (\$10,000.00). The Parties stipulate that, for purposes of
3 settlement, Plaintiff and the Class are the prevailing parties in the Action and are entitled to
4 attorney's fees and costs under the applicable fee-shifting statutes, including, inter alia, California
5 Code of Civil Procedure section 1021.5, and Labor Code sections 218.5, 1194(a) and 2699(g).
6 Any funds allocated to Attorney's Fees and Costs but not awarded by the Court will be included in
7 the Net Settlement Amount and distributed pro rata to the Participating Class Members.

8 34. Class Representative Enhancement Payment. In exchange for a general release,
9 and in recognition of her effort and work in prosecuting the Action on behalf of the Class
10 Members, Defendant agrees not to oppose or impede any application or motion for a Class
11 Representative Enhancement Payment not to exceed Two Thousand Five Hundred Dollars and
12 Zero Cents (\$2,500.00). The Class Representative Enhancement Payment will be paid from the
13 Class Settlement Amount and will be in addition to Plaintiff's Individual Settlement Payment.
14 Any funds allocated to the Class Representative Enhancement Payment but not awarded by the
15 Court will be included in the Net Settlement Amount and distributed pro rata to the Participating
16 Class Members. Plaintiff will be solely responsible to pay any and all applicable taxes on the
17 payments made pursuant to this paragraph.

18 35. Settlement Administration Costs. The Settlement Administrator will be paid for
19 the reasonable costs of administration of the Settlement and distribution of payments from the
20 Class Settlement Amount, which Settlement Administration Costs shall not exceed Twenty One
21 Thousand Dollars and Zero Cents (\$21,000.00). These costs, will include, *inter alia*, the required
22 tax reporting on the Individual Settlement Payments, the issuing of 1099 and W-2 IRS Forms,
23 distributing Class Notices, creating and maintaining a web site and toll-free telephone number,
24 calculating and distributing the Class Settlement Amount and Attorney's Fees and Costs, and
25 providing necessary reports and declarations. These costs shall be paid from the Class Settlement
26 Amount. Any funds allocated to Settlement Administration Costs but not incurred by or otherwise
27 paid to the Settlement Administrator will be included in the Net Settlement Amount and
28 distributed pro rata to the Participating Class Members.

1 36. PAGA Allocation. The Parties agree to allocate Ten Thousand Dollars (\$10,000)
2 from the Class Settlement Amount to the resolution of all claims related to the Class Members
3 arising under the California Private Attorneys General Act of 2004 (California Labor Code
4 sections 2698, *et seq.*, "PAGA"). Pursuant to PAGA, Seventy-Five Percent (75%) of the PAGA
5 allocation, or Seven Thousand Five Hundred Dollars (\$7,500), will be paid to the California Labor
6 and Workforce Development Agency, and the remaining Twenty Five Percent (25%) of the PAGA
7 allocation, or Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00), will be allocated
8 to the Net Settlement Amount.

9 37. Individual Settlement Payment Calculations. Individual Settlement Payments will
10 be calculated and apportioned pro rata from the Net Settlement Amount by: (1) determining the
11 total compensation paid to each Participating Class Member while employed by Defendant as a
12 Merchandiser during the Class Period; (2) adding together the total compensation paid to all
13 Participating Class Members while employed by Defendant as a Merchandiser during the Class
14 Period; (3) dividing each Participating Class Member's total compensation by the total
15 compensation of all Participating Class Members; and (4) multiplying the result by the Class
16 Settlement Amount to determine the Individual Settlement Payment for each Participating Class
17 Member. The Settlement Administrator will perform all calculations necessary to determine the
18 Individual Settlement Payments based upon information provided by Defendant with the Class
19 List.

20 38. The Settlement Administrator shall be responsible for reducing each Individual
21 Settlement Payment based on any required deductions for each Participating Class Member as
22 specifically set forth herein, including employee-side tax withholdings or deductions.

23 39 The entire Net Settlement Amount will be disbursed to all Class Members who do
24 not submit timely and valid Requests for Exclusion. If there are any timely and valid Requests for
25 Exclusion from members of the Class, the Settlement Administrator shall not include all
26 compensation paid to such individuals while employed by Defendant as a Merchandiser during the
27 Class Period as part of the calculation of the total compensation paid to Participating Class
28 Members under paragraph 37(1) above, so that the amount actually distributed to the Participating

1 Class Members equals 100% of the Net Settlement Amount.

2 40. No Credit To Benefit Plans. The Individual Settlement Payments made to
3 Participating Class Members under this Settlement, as well as any other payments made pursuant
4 to this Settlement, will not be utilized to calculate any additional benefits under any benefit plans
5 to which any Class Members may be eligible, including, but not limited to: profit-sharing plans,
6 bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and
7 any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not
8 affect any rights, contributions, or amounts to which any Class Members may be entitled under
9 any benefit plans.

10 41. Administration Process. The Parties agree to cooperate in the administration of the
11 settlement and to make all reasonable efforts to control and minimize the costs and expenses
12 incurred in administration of the Settlement.

13 42. Delivery of the Class List. Within fourteen (14) calendar days of Preliminary
14 Approval, Defendant will provide the Class List to the Settlement Administrator and to Class
15 Counsel.

16 43. Notice by First-Class U.S. Mail. Within ten (10) calendar days after receiving the
17 Class List from Defendant, the Settlement Administrator will mail a Class Notice to all Class
18 Members via regular First-Class U.S. Mail, using the most current, known mailing addresses
19 identified in the Class List.

20 44. Confirmation of Contact Information in the Class List. Prior to mailing, the
21 Settlement Administrator will perform a search based on the National Change of Address
22 Database for information to update and correct for any known or identifiable address changes.
23 Any Class Notices returned to the Settlement Administrator as non-deliverable on or before the
24 Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding
25 address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing
26 on the Class Notice. If no forwarding address is provided, the Settlement Administrator will
27 promptly attempt to determine the correct address using a skip-trace, or other search using the
28 name, address and/or Social Security number of the Class Member involved, and will then

1 perform a single re-mailing.

2 45. Class Notices. All Class Members will be mailed a Class Notice via First Class
3 U.S. Mail. Each Class Notice will provide: (i) information regarding the nature of the Action; (ii)
4 a summary of the Settlement's principal terms; (iii) the Settlement Class definition; (iv) the total
5 compensation paid to each respective Class Member while working for Defendant as a
6 Merchandiser during the Class Period; (v) each Class Member's estimated Individual Settlement
7 Payment and the formula for calculating Individual Settlement Payments; (vi) the dates which
8 comprise the Class Period; (vii) instructions on how to submit a Request for Exclusion, Notice of
9 Objection, or Notice of Intent to Appear; (viii) the deadlines by which the Class Member must
10 postmark Requests for Exclusion, and the deadlines by which the Class Members must file or
11 postmark Notices of Objection to the Settlement or Notices of Intent to Appear; and (ix) the
12 claims to be released. The Class Notice shall be in substantially the same form as Exhibit A
13 hereto, as approved by the Court.

14 46. The Settlement Administrator will also set up and maintain a web site and toll-free
15 telephone number for Class Members to contact the Settlement Administrator regarding the
16 Settlement. Both the URL for the web site and the toll-free telephone number will be identified in
17 the Class Notice. The web site will contain links allowing Class Members to access the operative
18 complaint, the Class Notice, the Settlement Agreement, the motion for preliminary approval and
19 all related papers and Court Orders, and the motion for final approval, attorney's fees and costs,
20 and representative enhancement and all related papers and Court Orders.

21 47. Disputed Information on Class Notices. Class Members will have an opportunity
22 to dispute the information provided in their Class Notices. To the extent Class Members dispute
23 their total compensation paid while working for Defendant as a Merchandiser during the Class
24 Period, Class Members may produce evidence to the Settlement Administrator showing that such
25 information in the Class Notice is inaccurate. The Settlement Administrator will decide the
26 dispute. Defendant's records will be presumed correct, but the Settlement Administrator will
27 evaluate the evidence submitted by the Class Member and will make the final decision as to the
28 merits of the dispute, which decision shall be final and unappealable by any Party or Class

1 Member. All disputes will be resolved within ten (10) business days of the Response Deadline.

2 48. Defective Submissions. If a Class Member's Request for Exclusion is defective as
3 to the requirements listed herein, that Class Member will be given an opportunity to cure the
4 defect(s). The Settlement Administrator will mail the Class Member a cure letter within three (3)
5 business days of receiving the defective submission to advise the Class Member that his or her
6 submission is defective and that the defect must be cured to render the Request for Exclusion
7 valid. The Class Member will have until the later of (i) the Response Deadline or (ii) fifteen (15)
8 calendar days from the date of the cure letter to postmark a revised Request for Exclusion. If the
9 revised Request for Exclusion is not postmarked within that period, it will be deemed untimely.

10 49. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the
11 Settlement Agreement must sign and postmark a written Request for Exclusion to the Settlement
12 Administrator within the Response Deadline. The postmark date will be the exclusive means to
13 determine whether a Request for Exclusion has been timely submitted.

14 50. Option to Rescind the Settlement Agreement: Defendant may elect, at its option, to
15 rescind the Settlement if more than three percent (3%) of Class Members submit timely and valid
16 Requests for Exclusion. If Defendant exercises its conditional right to rescind, it must do so by
17 written communication to Class Counsel that is received by Class Counsel within thirty (30)
18 calendar days of the Response Deadline. In the event that Defendant exercises its conditional right
19 to rescind, Defendant will be responsible for all Settlement Administration Costs incurred to the
20 date of rescission.

21 51. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
22 Member who does not affirmatively opt-out of the Settlement Agreement by submitting a timely
23 and valid Request for Exclusion will be bound by all of its terms, including those pertaining to the
24 Released Claims, as well as any Judgment that may be entered by the Court if it grants final
25 approval to the Settlement.

26 52. Objection Procedures. To object to the Settlement Agreement, a Class Member
27 must timely submit to the Settlement Administrator a Notice of Objection and/or Notice of Intent
28 to Appear at the Final Approval Hearing. The Notice of Objection and/or Notice of Intent to

1 Appear must be signed by the Class Member and contain all information required by this
2 Settlement Agreement, as specified in the Class Notice. The Notice of Objection and/or Notice of
3 Intent to Appear shall be mailed to the Settlement Administrator as explained in the Class Notice.
4 Within three (3) calendar days of receipt, the Settlement Administrator will provide copies of any
5 Notices of Objection and/or Notices of Intent to Appear to Class Counsel and counsel for the
6 defendant. The postmark date will be deemed the exclusive means for determining whether a
7 Notice of Objection and/or Notice of Intent to Appear is timely. Class Members who fail to object
8 in the manner specified above will be deemed to have waived all objections to the Settlement and
9 will be foreclosed from making any objections, whether by appeal or otherwise, to the Settlement
10 Agreement. Class Members who postmark timely Notices of Intent to Appear may, but are not
11 required to, appear at the Final Approval Hearing, personally or through their own counsel, in
12 order to have their objections heard by the Court. Only those Class Members who do not submit a
13 Request for Exclusion may object to the Settlement. At no time will any of the Parties or their
14 counsel seek to solicit or otherwise encourage Class Members to submit written or oral objections
15 to the Settlement Agreement or appeal from the Order and Judgment. Class Counsel will not
16 represent any Class Members with respect to any such objections to this Settlement. Class
17 Counsel shall timely file with the Court copies of any and all Notices of Objection and/or Notices
18 of Intent to Appear prior to the Final Approval Hearing.

19 53. Certification Reports. The Settlement Administrator will provide Defendant's
20 counsel and Class Counsel a weekly report that certifies the number of Class Members who have
21 submitted valid Requests for Exclusion, and whether any Class Member has submitted a
22 challenge to any information contained in their Class Notice. Additionally, the Settlement
23 Administrator will provide to counsel for both Parties any updated reports regarding the
24 administration of the Settlement Agreement as needed or requested.

25 54. Distribution of Settlement Payments. Distribution of the Settlement Payments will
26 be made within thirty (30) calendar days of the Effective Date, and the Settlement Administrator
27 will issue the Court-approved payments to: (i) Participating Class Members; (ii) the Labor and
28 Workforce Development Agency; (iii) Plaintiff; (iv) Class Counsel; and (v) the Settlement

1 Administrator.

2 55. Un-cashed Settlement Checks. If a Class Member's Individual Settlement Payment
3 check is not cashed within 120 days after its last mailing to the Participating Class Member, the
4 Settlement Administrator will send the Participating Class Member a letter informing him or her
5 that unless the check is cashed in the next 60 days, it will expire and become non-negotiable, and
6 offer to replace the check if it was lost or misplaced but not cashed. If the check remains uncashed
7 by the expiration of the 60-day period after this notice, then fifty percent (50%) of the funds
8 represented by those checks and funds represented by Individual Settlement Payment checks
9 returned as undeliverable will be tendered to the East Bay Community Law Center as *cy pres*
10 beneficiary. The remaining fifty percent (50%) of such unclaimed funds shall be disbursed
11 pursuant to California Code of Civil Procedure section 384(b)(3).

12 56. Certification of Completion. Upon completion of administration of the Settlement,
13 the Settlement Administrator will provide a written declaration under oath to certify such
14 completion to the Court and counsel for all Parties.

15 57. Treatment of Individual Settlement Payments. All Individual Settlement Payments
16 will be allocated as follows: (i) Twenty Five Percent (25%) of each Individual Settlement
17 Payment will be allocated as wages for which IRS Forms W-2 will be issued; and (ii) Seventy
18 Five Percent (75%) will be allocated to unreimbursed expenses, penalties, and interest for which
19 IRS Forms 1099-MISC will be issued.

20 58. Administration of Taxes by the Settlement Administrator. The Settlement
21 Administrator will be responsible for issuing to Plaintiff, Participating Class Members, and Class
22 Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid
23 pursuant to this Settlement. The Settlement Administrator will also be responsible for forwarding
24 all payroll taxes and penalties to the appropriate government authorities.

25 59. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
26 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY
27 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER
28 PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS

1 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
2 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
3 INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE
4 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN
5 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31
6 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
7 EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX
8 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
9 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
10 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
11 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
12 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
13 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
14 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
15 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
16 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
17 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
18 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
19 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
20 AGREEMENT.

21 60. No Prior Assignments. The Parties and their counsel represent, covenant, and
22 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to
23 assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand,
24 action, cause of action or right herein released and discharged.

25 61. Nullification of Settlement Agreement. In the event that: (i) the Court does not
26 finally approve the Settlement as provided herein; or (ii) the Settlement does not become final for
27 any other reason, then this Settlement Agreement, and any documents generated to bring it into
28 effect, will be null and void. Any order or judgment entered by the Court in furtherance of this

1 Settlement Agreement will likewise be treated as void from the beginning.

2 62. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to
3 request the Preliminary Approval of the Settlement, and the entry of a Preliminary Approval
4 Order. The Preliminary Approval Order will provide for the Class Notice to be sent to all Class
5 Members as specified herein. In conjunction with the Preliminary Approval hearing, Plaintiff will
6 submit this Settlement Agreement, which sets forth the terms of this Settlement, and will include
7 the proposed Class Notice, which is attached hereto as Exhibit A.

8 63. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the
9 deadline to postmark Requests for Exclusion, Notices of Objection, and Notices of Intent to
10 Appear, and with the Court's permission, a Final Approval Hearing will be conducted to
11 determine the Final Approval of the Settlement, along with the amounts properly payable for: (i)
12 Individual Settlement Payments; (ii) the Labor and Workforce Development Agency Payment;
13 (iii) the Class Representative Enhancement Payment; (iv) Attorney's Fees and Costs; and (v) all
14 Settlement Administration Costs. The Final Approval Hearing will not be held earlier than thirty
15 (30) calendar days after the Response Deadline. Class Counsel will be responsible for drafting all
16 documents necessary to obtain final approval. Class Counsel will also be responsible for drafting
17 the application for the Representative Enhancement Payment and Attorney's Fees and Costs, and a
18 request for approval of the Settlement Administration Costs, to be heard at the Final Approval
19 Hearing.

20 64. Release by the Settlement Class and LWDA. Upon the Effective Date and
21 conditioned upon full satisfaction of the payment obligations in paragraph 54, all Participating
22 Class Members will be deemed to have released the Released Claims, and the LWDA will be
23 deemed to have released the Released Claims brought under PAGA, and will be barred and
24 enjoined from bringing or prosecuting any of the Released Claims against the Released Parties.

25 65. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by
26 the Court or after the Final Approval Hearing, the Parties will present the Judgment to the Court
27 for its approval. After entry of the Judgment, the Court will have continuing jurisdiction solely for
28 purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii)

1 settlement administration matters, and (iii) such post-Judgment matters as may be appropriate
2 under court rules or as set forth in this Settlement Agreement.

3 66. Release by Plaintiff. Upon the Effective Date, in addition to the claims being
4 released by all Participating Class Members, Plaintiff will release and forever discharge the
5 Released Parties, to the fullest extent permitted by law, of and from any and all claims, known and
6 unknown, asserted and not asserted, which Plaintiff has or may have against the Released Parties
7 as of the date of execution of this Settlement Agreement. To the extent the foregoing releases are
8 releases to which Section 1542 of the California Civil Code or similar provisions of other
9 applicable law may apply, Plaintiff expressly waives any and all rights and benefits conferred
10 upon her by the provisions of Section 1542 of the California Civil Code or similar provisions of
11 applicable law, which are as follows:

12 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR
13 DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
14 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE
15 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

16 67. Exhibit Incorporated by Reference. The terms of this Settlement Agreement
17 include the terms set forth in the attached Exhibit, which is incorporated by this reference as
18 though fully set forth herein. Any Exhibit to this Settlement Agreement is an integral part of the
19 Settlement.

20 68. Entire Agreement. This Settlement Agreement and attached Exhibit constitute the
21 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral
22 agreements may be deemed binding on the Parties. The Parties expressly recognize California
23 Civil Code Section 1625 and California Code of Civil Procedure Section 1856(a), which provide
24 that a written agreement is to be construed according to its terms and may not be varied or
25 contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral or written
26 representations or terms will modify, vary or contradict the terms of this Settlement Agreement.

27 69. Amendment or Modification. No amendment, change, or modification to this
28 Settlement Agreement will be valid unless in writing and signed, either by the Parties or their

1 counsel.

2 70. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant
3 and represent they are expressly authorized by the Parties whom they represent to negotiate this
4 Settlement Agreement and to take all appropriate action required or permitted to be taken by such
5 Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other
6 documents required to effectuate the terms of this Settlement Agreement. The Parties and their
7 counsel will cooperate with each other and use their best efforts to effect the implementation of the
8 Settlement. If the Parties are unable to reach agreement on the form or content of any document
9 needed to implement the Settlement, or on any supplemental provisions that may become
10 necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the
11 Court to resolve such disagreement.

12 71. Binding on Successors and Assigns. This Settlement Agreement will be binding
13 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously
14 defined.

15 72. California Law Governs. All terms of this Settlement Agreement and Exhibit
16 hereto will be governed by and interpreted according to the laws of the State of California.

17 73. Execution and Counterparts. This Settlement Agreement is subject only to the
18 execution of all Parties. However, the Settlement Agreement may be executed in one or more
19 counterparts. All executed counterparts and each of them, including facsimile and scanned copies
20 of the signature page, will be deemed to be one and the same instrument provided that counsel for
21 the Parties will exchange among themselves original signed counterparts.

22 74. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe
23 this Settlement Agreement is a fair, adequate and reasonable settlement of the Action and have
24 arrived at this Settlement after adversarial and arm's-length negotiations before a well-respected
25 and neutral mediator, in the context of adversarial litigation, and taking into account all relevant
26 factors, present and potential. The Parties further acknowledge that they are each represented by
27 competent counsel and that they have had an opportunity to consult with their counsel regarding
28 the fairness and reasonableness of this Settlement.

1 75. Invalidity of Any Provision. Before declaring any provision of this Settlement
2 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
3 extent possible consistent with applicable precedents so as to define all provisions of this
4 Settlement Agreement valid and enforceable.

5 76. Waiver of Certain Appeals. The Parties agree to waive appeals; except, however,
6 that either party may appeal any court order that materially alters the Settlement Agreement's
7 terms.

8 77. Non-Admission of Liability. The Parties enter into this Settlement to resolve the
9 dispute that has arisen between them and to avoid the burden, expense and risk of continued
10 litigation. In entering into this Settlement, Defendant does not admit, and specifically denies, that
11 it violated any federal, state, or local law; violated any regulations or guidelines promulgated
12 pursuant to any statute or any other applicable laws, regulations or legal requirements; breached
13 any contract; violated or breached any duty; engaged in any misrepresentation or deception; or
14 engaged in any other unlawful conduct with respect to their employees. Neither this Settlement
15 Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, will
16 be construed as an admission or concession by Defendant of any such violations or failures to
17 comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this
18 Settlement, this Settlement Agreement and its terms and provisions will not be offered or received
19 as evidence in any action or proceeding to establish any liability or admission on the part of
20 Defendant or to establish the existence of any condition constituting a violation of, or a non-
21 compliance with, federal, state, local or other applicable law.

22 78. Waiver. No waiver of any condition or covenant contained in this Settlement
23 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered
24 to imply or constitute a further waiver by such party of the same or any other condition, covenant,
25 right or remedy.

26 79. Enforcement Actions. In the event that one or more of the Parties institutes any
27 legal action or other proceeding against any other Party or Parties to enforce the provisions of this
28 Settlement or to declare rights and/or obligations under this Settlement, the successful Party or

1 Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorney's'
2 fees and costs, including expert witness fees incurred in connection with any enforcement actions.

3 80. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
4 and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be
5 construed more strictly against one party than another merely by virtue of the fact that it may have
6 been prepared by counsel for one of the Parties, it being recognized that, because of the arms-
7 length negotiations between the Parties, all Parties have contributed to the preparation of this
8 Settlement Agreement.

9 81. Representation By Counsel. The Parties acknowledge that they have been
10 represented by counsel throughout all negotiations that preceded the execution of this Settlement
11 Agreement, and that this Settlement Agreement has been executed with the consent and advice of
12 counsel. Further, Plaintiff and Plaintiff's Counsel warrant and represent that there are no liens on
13 the Settlement Agreement.

14 82. All Terms Subject to Final Court Approval. All amounts and procedures described
15 in this Settlement Agreement herein will be subject to final Court approval.

16 83. Cooperation and Execution of Necessary Documents. All Parties will cooperate in
17 good faith and execute all documents to the extent reasonably necessary to effectuate the terms of
18 this Settlement Agreement.

19 84. Binding Agreement. The Parties warrant that they understand and have full
20 authority to enter into this Settlement Agreement, and further intend that this Settlement
21 Agreement will be fully enforceable and binding on all parties, and agree that it will be admissible
22 and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation
23 confidentiality provisions that otherwise might apply under federal or state law.

24 **SIGNATURES FOLLOW ON NEXT PAGE**

25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SIGNATURES

PLAINTIFF

DATED:

By _____
Kimberly George

DEFENDANTS

DATED: 5/24/2018

By _____
Jon Johnstone
Chairman
Retail Merchandising Solutions, Inc.

APPROVED AS TO FORM:

DATED:

By _____
J. Kirk Donnelly
LAW OFFICES OF J.
KIRK DONNELLY, APC
Attorneys for Plaintiff
Kimberly George

DATED:

By _____
Joseph R. Lordan
Rachel J. Lee
Vincent R. Fisher
LEWIS BRISBOIS BISGAARD &
SMITH LLP
Attorneys for Retail Merchandising
Solutions, Inc.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SIGNATURES

PLAINTIFF

DEFENDANTS

DATED:

5/20/18

DATED:

By


Kimberly George

By

Jon Johnstone
President
Retail Merchandising Solutions, Inc.


APPROVED AS TO FORM:

DATED:

5/21/18

DATED:

By


J. Kirk Donnelly
LAW OFFICES OF J.
KIRK DONNELLY, APC
Attorneys for Plaintiff
Kimberly George

By

Joseph R. Lordan
Rachel J. Lee
Vincent R. Fisher
LEWIS BRISBOIS BISGAARD &
SMITH LLP
Attorneys for Retail Merchandising
Solutions, Inc.

LEWIS
BRISBOIS

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

**IF YOU WORKED AS A MERCHANDISER FOR RETAIL
MERCHANDISING SOLUTIONS, INC. IN THE STATE OF
CALIFORNIA, YOU MAY OBTAIN PAYMENTS FROM A
SETTLEMENT REACHED IN A PROPOSED CLASS ACTION
LAWSUIT**

**PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE
AFFECTED.**

This Notice is court approved. This is not a solicitation from an attorney.

YOUR RIGHTS AND OPTIONS TO THE SETTLEMENT	
DO NOTHING	<p>Receive compensation but lose rights to sue separately.</p> <p>If you do nothing, you will receive compensation for your claims alleged in this lawsuit. You will also give up your rights to ever sue RMSI about any of the claims in this case.</p>
EXCLUDE YOURSELF FROM THE SETTLEMENT	<p>Get no compensation but keep rights to sue separately.</p> <p>If you ask exclude yourself from the settlement you will not receive any compensation from the settlement, but you will keep your rights to file a separate claim. Please be advised, however, that the time limits for filing a separate claim may have expired.</p>
OBJECT OR COMMENT	<p>Tell the Court why you like or don't like the settlement.</p> <p>You may write to the Court, or you may appear personally or through your own attorney and your own expense, and tell the Court about why you do or do not like the settlement. You must remain a part of the lawsuit to comment or object to the settlement, and you cannot object if you also ask to be excluded.</p>
<p>These rights and options – and the time deadlines for exercising them – are explained further in this Notice.</p>	

WHY DID I GET THIS NOTICE?

You have received this Notice because we believe that you are a class member who may be entitled to money from this settlement.

This Notice describes a proposed settlement of the lawsuit *George v. Retail Merchandising Solutions, Inc.*, pending in the Alameda County Superior Court, Case No. RG16828194 (the "Lawsuit"). This Notice is being sent to you by the order of the Alameda County Superior Court, which preliminarily approved the settlement and conditionally certified the Settlement Class on [DATE OF PRELIMINARY APPROVAL].

This Notice informs you of the terms of the proposed settlement, describes your rights and options in connection with the settlement, and explains what steps you may take to participate in, object to, or exclude yourself from, the settlement. **If you do not exclude yourself from the settlement and the settlement is finally approved by the Court, you will receive a settlement payment and be bound by the terms of the settlement and any final judgment.**

WHAT IS THIS LAWSUIT ABOUT?

The Lawsuit was filed by Plaintiff Kimberly George ("Plaintiff") on behalf of individuals who worked as Merchandisers for Retail Merchandising Solutions, Inc. ("RMSI") in California between August 22, 2012 and [DATE OF PRELIMINARY APPROVAL].

The Lawsuit alleges RMSI failed to pay Merchandisers for all hours worked, particularly with respect to drive time, in violation of California law. The Lawsuit also alleges RMSI failed to properly and fully reimburse Merchandisers for work-related mileage expenses. Finally, the Lawsuit alleges Merchandisers missed meal and rest breaks because drive time was not properly recorded. RMSI denies each and all of the claims and contentions alleged by the Plaintiff. The Court has not made any rulings regarding the merits of the Lawsuit.

After engaging in extensive investigation and a full day of mediation before an experienced mediator, in which both sides recognized the substantial risks of an adverse result in the Lawsuit for either side, Plaintiff and Defendant agreed on a class settlement that was preliminarily approved by the Court on [DATE OF PRELIMINARY APPROVAL]. Plaintiff and Class Counsel support the settlement.

The settlement represents a compromise of highly disputed claims. Nothing in the settlement is intended to or will be construed as an admission by RMSI that Plaintiff's claims in the Lawsuit have merit or that it has any liability to Plaintiff or the Class on those claims.

The parties and their counsel have concluded that the settlement is advantageous, considering the risks and uncertainties to each side of continued litigation and trial.

WHAT IS A CLASS ACTION?

In a class action lawsuit, one or more persons, called Class Representatives, sue on behalf of other people who have similar claims. Kimberly George is the Class Representative in the Lawsuit, and she asserts claims on behalf of herself and the Class Members. All of the Class Members form a Class. A class

action allows one court to resolve the claims of all the Class Members at the same time. A California Superior Court judge, Judge Brad Seligman, is in charge of this class action.

WHY IS THERE A SETTLEMENT?

The Court did not decide in favor of Plaintiff or RMSI. Instead, both sides agreed to a settlement. That way, both sides avoid the risks and costs of a trial, and people affected will quickly receive compensation. The Class Representative and the attorneys think the settlement is best for the Class.

WHO IS INCLUDED IN THE SETTLEMENT CLASS?

All individuals who worked for RMSI as a Merchandiser in California from August 22, 2012 through the [DATE OF PRELIMINARY APPROVAL], are included in the Class. This includes individuals who held the job titles of Project Merchandiser, Project Trainer, Remodel Merchandiser, Remodel Team Lead, Team Lead, Wave Merchandiser, Wave Trainer, or any similar position however titled.

According to RMSI's records, you are member of the Class and eligible for payments under the settlement. If you are still not sure if you are entitled to participate in the settlement, please call [SETTLEMENT ADMIN. TOLL FREE PHONE NUMBER]

WHAT ARE THE TERMS OF THE CLASS SETTLEMENT?

In exchange for the release of claims against it and final disposition of the Lawsuit, RMSI will pay One Million Two Hundred Thousand Dollars and Zero Cents (\$1,200,000.00) ("Class Settlement Amount"). After attorney's fees and costs, a service payment to the Plaintiff, a payment to the California Labor and Workforce Development Agency, and settlement administration costs are deducted from the Class Settlement Amount, the remaining "Net Settlement Amount" will be distributed to Participating Class Members. Subject to Court approval, the Class Settlement Amount will be allocated as follows:

- **Individual Settlement Payment:** Each Participating Class Member will receive a payment based on factors specific to them, including the total compensation they were paid by RMSI during the relevant time period.

Individual Settlement Payments will be calculated as follows: first, each Class Member's total compensation during the relevant time period will be totaled. Then, each Class Member will receive his or her percentage of the Net Settlement Amount based what that Class Member's percentage share of the total wages paid to all Class Members was. For example, if a Class Member was paid 0.025% of all wages RMSI paid to Merchandisers during the relevant time period, then that Class Member will receive 0.025% of the Net Settlement Amount. This way, Merchandisers who worked for RMSI for longer periods of time, were paid more, and/or drove more miles, will receive a larger share of the settlement than Merchandisers who worked for shorter periods of time, worked fewer shifts and hours, and/or did less driving.

- **Class Representative Service Payment:** For acting as the Class Representative, Plaintiff will request from the Court an award of \$2,500.00 in recognition of and as compensation for her efforts, such as starting the Lawsuit, volunteering time to assist with the case, and providing information and documents, as well as risks she assumed in starting and assisting with the

prosecution of the Lawsuit. Any amount ordered by the Court will be paid from the Class Settlement Amount.

- **Class Counsel's Attorney's Fees and Costs:** Class Counsel will request from the Court no more than thirty percent (30%) of the Class Settlement Amount (\$360,000.00) as attorney's fees for litigation and resolution of the Lawsuit. Class Counsel will also request from the Court reimbursement for litigation costs advanced on behalf of the Class, which are estimated to be no more than \$10,000.00. Any amount ordered by the Court for Class Counsel's attorney's fees and costs will be paid from the Class Settlement Amount.
- **PAGA Payment:** \$10,000.00 from the Class Settlement Amount is allocated for payment to the State of California under the Private Attorneys General Act of 2004. Upon Court approval, 75% of the allocation (\$7,500.00) will be paid to the California Labor and Workforce Development Agency, and 25% (\$2,500.00) of the allocation will be distributed to the Class as part of the Net Settlement Amount. Any amount ordered by the Court will be paid from the Class Settlement Amount.
- **Settlement Administration:** The costs of settlement administration will not exceed \$21,000.00, which pays for tasks such as mailing and tracking this Notice, mailing checks and tax forms, and reporting to the parties and the Court. Any amount ordered by the Court will be paid from the Class Settlement Amount.
- All checks issued to Participating Class Members shall remain valid and negotiable for one hundred and eighty (180) days from the date of their issuance. After that time, half of the money corresponding to any unclaimed or uncashed checks will be sent to the East Bay Community Law Center, which is a non-profit charitable organization dedicated to providing a wide variety of free legal services to low-income and disadvantaged individuals in the Bay Area community. The other half of the money corresponding to any unclaimed or uncashed checks will be sent to the California State Treasury, as required by law, for deposit in the Trial Court Improvement and Modernization Fund and the Equal Access Fund of the Judicial Branch.

WHAT DO I NEED TO DO TO RECEIVE A SETTLEMENT PAYMENT, AND HOW MUCH WILL I RECEIVE?

You do not need to do anything to receive a payment from the settlement.

RMSI's records show that, while you worked as a Merchandiser during the relevant time period, you were paid total compensation of **[\$ AMOUNT]**. Accordingly, your anticipated settlement share is **[\$ AMOUNT]**. The actual amount may vary somewhat based on the actual implementation of the settlement.

25% of your payment will be issued in a check representing unpaid wages with applicable federal, state, and local tax withholdings taken out, and you will be sent an IRS Form W-2 for tax purposes (just like a paycheck). 75% of your payment will be issued in a check representing unreimbursed expenses, penalties, and interest, and you will be issued an IRS Form 1099 for tax purposes. You will need to speak with an accountant or other tax professional about any tax issues related to your settlement checks.

If you dispute the information about the amount of your anticipated settlement share, you must advise the Settlement Administrator and follow the steps below to substantiate your dispute.

To dispute the amount of your anticipated settlement share you must send in the mail any records (such as paystubs, pay checks or other records) supporting your calculation of the total amount of compensation you were paid by RMSI while working as a Merchandiser along with a letter explaining the dispute, and be sure to include the last four digits of your social security number by **RESPONSE DEADLINE**]. The date of the postmark will determine if it was timely mailed. The Settlement Administrator will review the information you submit along with RMSI's records and make a final determination as to the correct amount of your settlement share.

The Settlement Administrator is:

George v. RMSI
c/o Phoenix Settlement Administrators
Street
City, California Zip Code

WHAT AM I GIVING UP TO STAY IN THE CLASS AND GET COMPENSATION?

Unless you ask to be excluded, you will remain a part of the Settlement Class, and that means you can't sue, continue to sue, or be a part of any other lawsuit or proceeding making any of the same claims and allegations made in *this* case. It also means all of the Court's orders will apply to you and legally bind you. If you stay in the Settlement Class, you will be deemed to have released and discharged RMSI as well as any and all of its affiliates, employees, directors, officers, shareholders, agents, attorneys, successors and assigns, from any and all claims, causes of action or obligations of any kind or nature whatsoever (including claims that have been or could have been asserted against them in this lawsuit or in any other lawsuit or claim in any other court or forum), known or unknown, that were alleged or could have been alleged based on the factual allegations regarding unpaid wages, unpaid expense reimbursement, and missed meal and rest breaks alleged in the First Amended Complaint or identified in the Joint Stipulation of Class Action Settlement and Release.

The Settlement Agreement contains additional details about the scope of the Release and Released Claims, and may be viewed online at the Settlement Administrator's website listed below.

DO I HAVE A LAWYER IN THIS CASE?

The Court has decided the law firm below is qualified to represent you and the Settlement Class. This law firm is called "Class Counsel."

Law Offices of J. Kirk Donnelly, APC
4370 La Jolla Village Drive, Suite 800
San Diego, California 92122
Telephone: (858) 260-6170
kdonnelly@jkd-law.com

If you want to be represented by your own lawyer, you may hire one at your own expense.

WHAT IF I DON'T WANT TO PARTICIPATE IN THIS SETTLEMENT?

You have the right to request exclusion from the settlement. To do so, you must submit a written opt out request to the Settlement Administrator at the following address:

George v. RMSI
c/o Phoenix Settlement Administrators
Street
City, California Zip Code

To be valid, a written request for exclusion must: (1) state your name, address, telephone number, and last four digits of your social security number; (2) be signed by you; (3) be mailed by first-class mail no later than [RESPONSE DEADLINE] to the Settlement Administrator at the above address; and (4) clearly state that you do not wish to be included in the settlement. The date of the postmark will determine if your opt out request was timely mailed. Unless you timely request to be excluded from the settlement, you will be bound by the judgment upon final approval of the settlement and payment of the Class Settlement Amount, including the Release described in this Notice.

If you timely request to be excluded from the settlement, you will not be entitled to receive any payment under the settlement. Class Counsel will not represent your interests if you request to be excluded.

WHAT IF I WANT TO OBJECT TO THIS SETTLEMENT?

Any Class Member who has **not** asked to be excluded from the settlement may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense, provided you notify the Court of your intent to do so. The Final Approval Hearing is scheduled to take place on September 18, 2018, at 3:00 p.m. in Department 23 of the Superior Court of the State of California for the County of Alameda, located at 1221 Oak Street, Oakland, California 94612.

To be valid, all written objections and supporting papers if any, and/or notices of intent to appear at the Final Approval Hearing must: (1) state your full name, address and telephone number; (2) provide a written statement of all grounds for the objection accompanied by any legal support for the objection or a brief statement of why you wish to appear at the Final Approval Hearing; (3) state the last four digits of your social security number (4) be signed by you or your counsel; and (5) clearly identify the case name and number. The case name is "George v. Retail Merchandising Solutions, Inc." and the case number is "RG16828194." You may submit both an objection and a notice of intent to appear, and may include both as part of the same document.

You must submit your written objection and all supporting papers if any, and/or any notice of intent to appear at the Final Approval Hearing to the Settlement Administrator by mailing to the following address:

George v. RMSI
c/o Phoenix Settlement Administrators
Street
City, California Zip Code

To be valid, your written objection, all supporting papers, and/or any notice of intent to appear at the Final Approval Hearing must be postmarked on or before [RESPONSE DEADLINE].

WHAT HAPPENS IF I DO NOT EXCLUDE MYSELF FROM THIS SETTLEMENT?

The settlement, if finally approved by the Court, will bind all Class Members who do not request to be excluded from the settlement whether or not they receive or timely cash their Individual Settlement Payment. Final approval of the settlement will bar any Class Member who does not request to be excluded from the settlement from initiating a lawsuit or proceeding regarding the Released Claims.

WHAT IF MY CONTACT INFORMATION CHANGES?

If, after you receive this Notice, you change your mailing address or telephone number, it is your responsibility to inform the Settlement Administrator of your updated information.

THE FINAL APPROVAL HEARING

The Final Approval Hearing is scheduled to take place on September 18, 2018, at 3:00 p.m. in Department 23 of the Superior Court of the State of California for the County of Alameda, located at 1221 Oak Street, Oakland, California 94612. The date and time may change without further notice to the Class.

At the Final Approval Hearing, the Court will make a final decision whether to approve the settlement, and will also decide what amounts will be awarded to Plaintiff for a service award, and to Class Counsel for attorney's fees and costs.

FURTHER INFORMATION

This Notice is only a summary of the settlement. To see a copy of the Settlement Agreement (which defines the capitalized terms used in this Notice), the Court's Preliminary Approval Order, Class Counsel's application for attorney's fees and costs, the operative complaint filed in the Lawsuit, and other filed documents related to the Lawsuit and this settlement, you may view all such files in the following ways: 1) Online at the Settlement Administrator's Website [URL TO SETTLEMENT ADMIN. WEB PAGE]. 2) Online on the Alameda County Superior Court's website, known as 'DomainWeb' at <https://publicrecords.alameda.courts.ca.gov/PRS/>. After arriving at the website, click the 'Search By Case Number' link, then enter RG16828194 and click 'SEARCH.' Images of every document filed in the case may be viewed through the 'Register of Actions' at a minimal charge. 3) You may also view images of every document filed in the case free of charge by using one of the computer terminal kiosks available at each court location that has a facility for civil filings. The Rene C. Davidson Courthouse located at 1225 Fallon Street, Oakland, California 94612 and the Hayward Hall of Justice located at 24405 Amador Street, Hayward, California 94544 have these kiosks available.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at [SETTLEMENT ADMIN. TOLL FREE PHONE NUMBER] or Class Counsel listed above. Please refer to the RMSI Class Action Settlement.

PLEASE DO NOT TELEPHONE OR CONTACT THE COURT WITH QUESTIONS OR FOR INFORMATION REGARDING THIS SETTLEMENT