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6 *ATTORNEYS FOR PLAINTIFF LILA BURNS*

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SACRAMENTO

10 LILA BURNS, Individually and on behalf of
11 all similarly-situated employees of Defendants
in the State of California,

12 Plaintiffs,

13 v.

14 DRIVELINE RETAIL MERCHANDISING,
15 INC., a Corporation, and DOES 1 through 50,
inclusive,

16 Defendants.

Case No.: 34-2018-00246691

Unlimited Civil - Amount Demanded
Exceeds \$25,000.00

**DECLARATION OF BRIAN R. SHORT IN
SUPPORT OF PLAINTIFFS' MOTION FOR
AN ORDER: (1) PROVISIONALLY
CERTIFYING SETTLEMENT CLASS; (2)
PRELIMINARILY APPROVING CLASS
SETTLEMENT; (3) DIRECTING
DISTRIBUTION OF NOTICE OF
SETTLEMENT TO THE CLASS; (4)
APPOINTING CLASS COUNSEL AND CLASS
REPRESENTATIVE; AND (5) SETTING A
HEARING FOR FINAL APPROVAL OF
CLASS SETTLEMENT**

IMAGED FILE

CLASS ACTION [CCP § 382]

Date: October 17, 2019
Time: 2:00 p.m.
Judge: David I. Brown
Dept.: 53

Trial Date: None set
Complaint filed: December 17, 2018

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Kira M. Rubel (SBN No. 253970)
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1 I, Brian R. Short, state and declare:

2 1. I am an attorney at law licensed to practice before all courts of the State of California. I
3 am the managing shareholder of ShortLegal, APC in San Diego, California. I am thoroughly familiar with
4 and have personal knowledge of all of the facts set forth herein. If called as a witness, I could and would
5 competently testify thereto.

6 2. My law firm, ShortLegal, APC and my Associate Dorota A. James are the attorneys of
7 record for Plaintiff Lila Burns (“Plaintiff”) in the case *Burns v. Driveline Retail Merchandising, Inc.*,
8 Sacramento County Superior Court, Case No. 34-2018-00246691, filed December 17, 2018. I submit this
9 declaration in support of Plaintiff Lila Burns’ (“Plaintiff”) Motion for Preliminary Approval of Class
10 Action Settlement which seeks primarily: (1) the granting of preliminary approval of the proposed
11 Settlement; (2) the approval of the distribution of the Class Notice to the Class; (3) the appointment of
12 Kira M. Rubel of Law Office of Kira M. Rubel, PLLC and Brian Short and Dorota A. James of ShortLegal,
13 APC as Class Counsel, the appointment of Plaintiff Lila Burns as a Class Representative, and Phoenix
14 Class Action Settlement Solutions as Claims Administrator; (4) and the setting of a hearing for final
15 approval and class counsel’s requested fees and costs and Class Representatives’ service award request.
16 The Class Action Settlement Agreement (“Stipulation” or “Agreement”) and the Proposed Notice to the
17 class are attached hereto as Exhibit 2.

18 CLASS COUNSEL’S CLASS ACTION EXPERIENCE

19 3. I have been a member of the State Bar of California since 2005. I am also admitted to
20 practice in various Districts of United States District Court. I have been practicing almost exclusively in
21 complex class action matters in state and federal courts since I began my legal practice in 2005. Since
22 February 2009, I have spent almost my entire practice representing employees in class and representative
23 action wage and hour litigation. My primary practice in complex class action litigation spans more than
24 14 years.

25 4. During just the last 10 years, I have served as plaintiffs’ counsel of record in the
26 following wage/hour employment class action and PAGA action cases, where I was responsible for the
27 prosecution of said cases: Weaver v. Hallmark Marketing Corporation, United States District Court for
28

1 the Central District of California (3,846 class members); Mahoney v. AT&T Corp, Superior Court for
2 the County of Los Angeles; Thomson v. LawInfo.com, Superior Court for the County of San Diego;
3 Vest v. Scher Tire, Inc., Superior Court for the County of Riverside; Duarte v. Rainbow Disposal Co.,
4 Inc., Superior Court for the County of Orange; Julio v L&M Tire Co., Inc., Superior Court for the
5 County of San Diego; Lucarini v. Dresser, Inc., Superior Court for the County of Los Angeles;
6 Stevenson v. Falcon Critical Care Transport, Superior Court for the County of Contra Costa;
7 Iskandaryan v. Casual Male Retail Group, Inc., Superior Court for the County of Los Angeles; Williams
8 v. OneLegacy, Superior Court for the County of Los Angeles; Corral v. Lifecare Solutions, Inc., et al.,
9 Superior Court for the County of Los Angeles; Huerta v. Venture Petroleum Company, Inc., Superior
10 Court for the County of San Diego; Frugard v. Unified Protective Services, et al., Superior Court for the
11 County of Los Angeles; Turnage v. Park Management Corp. dba. Six Flags Discovery Kingdom,
12 Superior Court for the County of Solano; Clancy, et al. v. Scripps Health, Superior Court for the County
13 of San Diego; Solaberrieta v. Baker Hughes Oilfield Operations, Inc., et al., Superior Court for the
14 County of Los Angeles; Gutierrez v. L & M Tire Company, Inc., Superior Court for the County of San
15 Diego; Stafford v. Dollar Tree Stores, Inc., Eastern District of California; Stafford v. Dollar Tree Stores,
16 Inc., Superior Court for the County of Solano; Turnage v. Old Dominion Freightlines, Inc., Central
17 District of California; Green v. Lawrence Service Company, United States District Court for the Central
18 District of California; Radford v. ACD Direct, Superior Court for the County of San Diego; De La Rosa
19 v. Quten Research Institute, LLC, Superior Court for the County of San Diego; Frayre v. UPS, Superior
20 Court for the County of San Diego; Leonard et al. v. ABTTC, Inc., Superior Court for the County of
21 Riverside; Loveless v. ASM Affiliates, Superior Court for the County of San Diego; Alfaro v. KSC
22 Studios dba OneKreate, LLC, Superior Court for the County of San Diego; Madriz v. North County
23 Ford, Inc., Superior Court for the County of San Diego; Troxel v. LA Leasing, Inc., Superior Court for
24 the County of San Diego, Garcia v. WSI, et al, Superior Court for the County of San Diego; Enriquez
25 v. Colt Services, Superior Court for the County of San Diego; Virrisimo v. L’Oreal USA Products, Inc.
26 et al, Superior Court for the County of San Diego; Horton v. Socket Payment Services, United States
27 District Court for the Southern District of California; Alfaro v. Ten Stories, Inc., Superior Court for the
28 County of San Diego; Lemar v. Earthlite, LLC, et al., Superior Court for the County of San

1 Diego; and Rodriguez v. Chimney Sweeps, Superior Court for the County of San Diego; Burgueno v.
2 Tayman Industries, Inc., Superior Court for the County of San Diego; and Garcia v. J.C. Penney
3 Corporation, Inc., Superior Court for the County of San Diego.

4 5. My Associate Dorota A. James has a long history of experience litigating complex wage
5 and hour class actions. Ms. James is a third-year attorney who has extensive experience dealing with
6 complex wage and hour litigation. She received her Paralegal Certificate from the USD Paralegal
7 Program in 2007. Prior to that, she was trained at the Law School at the University of Wroclaw, Poland
8 where she graduated in 1994. Thereafter, Ms. James moved to Germany where she first received her
9 LL.M. degree and then earned her title of Doctor of the Science of Law (S.J.D) at the University of
10 Saarland (Germany). While completing her LL.M. degree, Ms. James worked as a law assistant in a
11 German attorney's office with the focus on a civil and business litigation, including labor disputes. Ms.
12 James completed the L.L.M. Program in Comparative Law at the University of San Diego and became a
13 licensed member of the California State Bar in June 2016. Ms. James has significant experience and
14 knowledge of complex class actions against employers in wage and hour disputes. Before she joined my
15 law firm, Ms. James worked with myself as a senior litigation paralegal at another San Diego law firm
16 which specialized in representing plaintiffs in wage and hour employment litigation. During her time
17 spent at my current firm and the time she spent at our previous firm she provided all aspects of litigation
18 support pertaining to complex class action litigation from pre-filing research, discovery, pre-mediation
19 analysis through to post-settlement claims. She is actively assisting in the litigation of each of the cases
20 listed in paragraph 4, above. During her career as employment law paralegal she assisted with and
21 worked on more than 50 employment class action cases.

22 6. I and my Associate Dorota A. James are currently serving as plaintiff's counsel of record
23 in the following wage/hour and employment class action and/or PAGA representative action cases:
24 Rodriguez v. PetSmart, Inc., United States District Court, Southern District; Enriquez v. FedEx Office
25 and Print Services, Inc., Superior Court for the County of San Diego; Rivera v. Octavian FM, LLC,
26 Superior Court for the County of San Diego; Virissimo v. L'Oreal USA Products, Inc. et al., Superior
27 Court for the County of San Diego; Ruess v. Fun Bike Center, San Diego Superior Court of San Diego;
28 and Hitchko et al v. NPTI of Southern California, et al., Superior Court for the County of San Diego,

1 Dortch v. Southern California Addiction Center, Superior Court for County of Orange; Fox v. Capital
2 Growth Properties, Inc.; Superior Court for the County of San Diego; Davis v. SoCal Interiors, Inc.,
3 Superior Court for the County of San Diego.; Garcia v. J.C. Penney Corporation, Superior Court for the
4 County of San Diego; Taalib-Din v. FedEx Office and Print Services, Inc., Superior Court for the
5 County of San Diego; Hubbard v. L’Oreal USA Inc., United State District Court, Northern District;
6 Guzman-Lopez v. The American Bottling Company, et al., United State District Court, Central District.

7 7. Ms. James and I have extensive experience litigating class actions, other complex litigation
8 and wage and hour claims, such as those asserted in this action. Our knowledge of the applicable wage
9 and hour laws is evidenced by our representation of employees in numerous disputes in state and federal
10 courts in California.

11 8. Ms. James and I, along with a co-counsel, Kira M. Ruble of Law Office of Kira M. Rubel,
12 PLLC, are the attorneys of record for Plaintiff Lila Burns (“Plaintiff”), who is a former employee of
13 Defendant Driveline Retail Merchandising, Inc. Plaintiff worked as a merchandiser for Defendant during
14 the Class Period.

15 9. In or around October 2018, Plaintiff contacted our law firm with concerns arising out of
16 her employment with Defendant. We immediately sent out a request for a copy of Plaintiff’s pay records,
17 time records, and personnel file. Accordingly, based on the information known at that time, on November
18 13, 2018, Plaintiff submitted the requisite notice letter to the Labor Workforce and Development Agency.
19 Subsequently, on December 17, 2018, my firm filed a putative class action lawsuit on behalf of the
20 Plaintiff and similarly-situated employees of Defendant in the California Superior Court, County of
21 Sacramento. The case number is *34-2018-00246691*. On January 17, 2019, Plaintiff filed First Amended
22 Complaint seeking to recover applicable PAGA penalties.

23 10. Prior to filing the complaint, my firm conducted a lengthy investigation into the merits of
24 Plaintiff’s claims as well as Defendant’s potential affirmative defenses. Initially, we identified the primary
25 claims that the Plaintiff and other similarly aggrieved employees did not receive pay for their pre- and
26 post shifts work and were not reimbursed for work related expenses, including office materials and
27 supplies, computer, home-internet service and personal cell-phone. Plaintiff also alleged failure to provide
28 meal and rest periods and related premiums, failure to pay timely wages, failure to provide her with

1 accurate itemized wage statements, and failure to maintain records. Plaintiff sought damages, penalties,
2 interest, disgorgement of profits, injunctive relief and attorney's fees and costs.

3 11. My firm conducted extensive interviews with the named Plaintiff regarding the claims in
4 the action and thoroughly analyze the various time and pay records and Defendant's employment policies
5 maintained by Plaintiff.

6 12. My firm, with co-counsel, drafted and served comprehensive written formal written
7 discovery including Special Interrogatories, Form Interrogatories-General, Form Interrogatories-
8 Employment, and Requests for Production in order to evaluate the merits of the underlying claims and to
9 support Plaintiff's motion for class certification.

10 13. In order to proceed in an efficient manner and reduce the expenditure of unnecessary
11 litigation costs, the parties began to engage in discussions regarding early mediation, including the
12 exchange of informal documents to evaluate the potential damages on behalf of the Class in lieu of formal
13 discovery responses that were served on Defendant. My office requested, and Defendant agreed to
14 provide, a substantial amount of information that is sufficient to thoroughly evaluate the claims and
15 defenses for purposes of mediation and potential settlement. As a result of Defendant's agreement to
16 provide this information and to engage in settlement discussions in good faith, we scheduled a mediation
17 with experienced wage and hour class action mediator Mr. Steve Rottman for August 13, 2019.

18 14. Prior to mediation, the parties engaged in several pre-mediation discussions in order to
19 understand and evaluate the merits and potential defenses which would be asserted at the mediation. These
20 additional pre-mediation discussions are not often utilized in class action cases, but I believe that it
21 significantly narrowed the scope and arguments which were presented at mediation. Moreover, it
22 permitted the parties to better analyze the claims asserted, defenses raised and was a significant factor in
23 the parties' ability to reach resolution at mediation. Additional analysis prepared by each party were
24 confirmed and compared at mediation.

25 15. My firm meticulously scrutinized and analyzed the informal discovery documents and
26 records for accuracy and compliance with the California Labor Code. We also performed comprehensive
27 legal research based on each theory of recovery and the possible legal defenses thereto. In addition, our
28 firm performed a comprehensive class-wide damage study under each theory of recovery to evaluate the

1 extent of the class wage loss after receiving employee payroll records. The damages included calculations
2 of the estimated value for wage and hour violations, as well as the penalties and wage premiums for failure
3 to provide meal and rest periods and the amount of waiting time penalties and other penalties that would
4 result from the above violations.

5 16. The total calculated potential damages if Plaintiff was successful on *all claims at trial* are
6 as follows:

7 i. **Failure to Pay all Waiting Time Penalties: \$1,488,279.98**

8 The thrust of Plaintiff's claims was that Defendant failed to pay all wages timely,
9 thereby owing their employees waiting time penalties. This was calculated by
10 determining the average daily hours worked (7.6 hours), the average hourly rate
11 (\$11.36) and multiplying this amount by 30 days to determine the waiting time
12 penalty owed to one employee. This was then multiplied by the total number of
13 former employees in the Class Period (998).

14 ii. **Unpaid Rest Period Premium Wages: \$4,429,125.30**

15 As a result of Defendant's rest period policies and practices, Plaintiff contended
16 that Defendant also owed its employees rest period premium wages. Plaintiff
17 calculated this amount owed by first determining the total number of shifts worked
18 greater than 3.5 hours in duration during the Class Period (389,819.16) and
19 assumed 100% violation rate. This number was then multiplied by the average rate
20 of pay (\$11.36) to reflect the missed premium wages for rest periods for all eligible
21 shifts.

22 iii. **Unpaid Meal Period Premium Wages: \$4,429,125.30**

23 As a result of Defendant's meal period practices and policies, Plaintiff contended
24 that Defendant also owed its employees meal period premium wages. Plaintiff
25 calculated this amount by determining the total number of shifts with missed, short,
26 and/or late lunches (389,819.16). Assuming 100% violation rate, Plaintiff
27 multiplied the total number of shifts with missed, short, and/or late lunches by the
28 average rate of pay to reflect the total amount owed for meal premium wages.

1 iv. **Unpaid Wages for Worked Performed Off the Clock (Unpaid Driving Time**
2 **and Administrative Work): \$9,744,075.65 (10% interest included)**

3 Plaintiff contended Driveline’s written policies mandate a large amount of pre and
4 post-shift work for which Plaintiff and other Class Members were not compensated.
5 Plaintiff calculated the amount of potential damages for the unpaid off-the clock
6 work by first determining the average number of hours per shift Plaintiff and other
7 similarly-situated employees spent for pre- and post-shift administrative work and
8 driving time from/to home to/from first/last store location (2 hours per shift). This
9 number was then multiplied by the total number of shifts worked by the putative
10 Class Members during the Class Members.

11 v. **Failure to Provide Wage Statements: \$1,744,000.00**

12 Plaintiff contended that the class was owed penalties and damages from the failure
13 to provide wage statements. The code allows for recovery of the greater of all actual
14 damages recovered, or a penalty of \$50-100 per pay period (up to a maximum of
15 \$4,000 per affected employee). The total amount of damages resulting from the
16 inaccurate wage statements was in the form of unpaid wages for pre- and post-shift
17 work and meal and rest break premiums. For the class of 436 total number of non-
18 exempt California employees employed during the PAGA period, this amount was
19 \$1,744,000.

20 17. On August 13, 2019, the Parties engaged in a full-day mediation. During the mediation,
21 Defendant was represented by Yvette Davis of Haight Brown & Bonesteel LLP and Kathryn D. Terry of
22 Phillips Murrah, and Plaintiff Lila Burns by Kira M. Rubel of Law Office of Kira M. Rubel, PLLC and
23 Brian Short and Dorota A. James of ShortLegal, APC respectively. After a full day of negotiations,
24 information exchanges conducted through the mediator and directly through the parties’ representatives,
25 the parties were able to come to the terms of the present settlement agreement which would permit
26 resolution of the claims asserted in Plaintiff’s action.

27 18. Defendant vehemently denied all of the Class Action allegations. Defendant maintained
28 several arguments to Plaintiff’s theories of liability. Defendant argued that Plaintiff’s claim for

1 reimbursement of expenses was minimal at-best and that the volume of documents to be printed by
2 Plaintiff and other similarly situated employees was minimal. Defendant claims that, if a document is
3 available for employee review on the intranet-job platform but is not required to be printed to take to the
4 client location, the page is internally locked so that an employee is unable to print it out, to ensure that
5 employees are compensated for all print jobs. Contrary to Plaintiff's claims the employees were not
6 compensated for cellphone and internet expenses, Defendant contended that for each report that a
7 merchandiser submits through the Driveline Mobile App, the merchandiser gets \$ 0.13. According to
8 Defendant, this reimbursement covers the employee's internet expenses incurred in submitting that report,
9 calculated as a percentage of an employee's average monthly reports compared to the average employee's
10 monthly internet expense. Likewise, Defendant claimed that the mileage expenses were already
11 reimbursed and that any reimbursement that fell below the IRS rate was a question that could not be
12 determined on a class-wide basis due to the individualized inquiry involved in the analysis.

13 19. With respect to Plaintiff's claims Defendant failed to provide meal breaks and/or pay meal
14 premiums for missed, interrupted, short meal breaks, Defendant argued that only a very small percentage
15 of employees worked shifts longer than 5 hours that would trigger Defendant's obligation to provide meal
16 breaks. Defendant consequently discredited Plaintiff's meal break claim.

17 20. Defendant's argument against the imposition of waiting time penalties fell under two
18 theories. First Defendant contended that there was no underpayment of wages, and therefore no waiting
19 time penalties. Second, they argued that no willfulness existed for any alleged payment. Finally,
20 Defendant believed that their employees were properly compensated and the amount of unpaid wages per
21 employee may not support imposition of significant PAGA penalties. In addition to the defenses on the
22 merits, Plaintiff considered the Defendant's position that PAGA penalties are discretionary in nature and
23 that even if Plaintiff were successful at trial, the Court has discretion to significantly decrease the amount
24 of damages awarded in this PAGA action. For instance, the California Court of Appeal recently upheld
25 San Diego Superior Court Judge Katherine Bacal's heavily-discounted award of only \$5 per pay period
26 in *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504. Plaintiffs in *Carrington* had requested more than
27 \$70 million in damages and were successful in proving their PAGA claim during a bench trial. However,
28 Judge Bacal held that the Defendant had attempted to comply with the law and reduced the total award

1 after trial to only \$150,000 out of the \$70 million requested by Plaintiff’s counsel. In affirming Judge
2 Bacal’s ruling, the appellate court confirmed that it was within the Court’s discretion to significantly
3 reduce PAGA penalties even when there is a finding that a violation of the California Labor Code
4 occurred.

5 21. Accordingly, Plaintiff considered the risks of receiving no recovery whatsoever, and/or
6 very lengthy litigation and appeals process, balanced by the exhaustive analysis and investigation. Plaintiff
7 has also taken into account the uncertain outcome and the risk of loss in any litigation, especially in
8 complex actions such as this. Plaintiff is also mindful of the inherent problems of proof under - and
9 possible defenses to - the causes of action asserted in the lawsuit. Even though Plaintiff believes that her
10 case possesses substantial merit, the litigation cannot legitimately be characterized as being without risk
11 or that Plaintiff would inevitably prevail at trial or at the appeals process. Defendant is represented by able
12 counsel who have mounted a vigorous and knowledgeable defense on its behalf.

13 22. The parties would have to undergo further extensive discovery including discovery related
14 to class certification and the merits if the case did not settle. Even if class certification was achieved, there
15 could be potential motions for decertification of the class. The parties would file cross-motions for
16 summary judgment. If Defendant’s financial condition could withstand litigation, the putative class action
17 would potentially continue several additional years.

18 23. It was after months of preparation for mediation, an extended full-day of negotiations, the
19 continued assistance of the knowledgeable and impartial mediator, reviews of calculations, comparison of
20 data and exchange of information that Plaintiff agreed to accept \$ 1,280,000.00 in settlement of all of the
21 claims presented. Based on all of the circumstances, including the uncertain outcome and the risk of the
22 litigation, I believe that this is a fair and reasonable settlement value. In addition, the prospective relief
23 that Defendant agreed to implement is extremely valuable and, while difficult to place a numeric value to,
24 it represents a significant benefit conferred to the class and was a point that Plaintiff and Plaintiff’s counsel
25 strongly pushed at the mediation to prevent future violations of the California Labor Code. Indeed, this
26 is the second lawsuit faced by Defendant regarding similar claims in the last 10 years and this provision
27 of the agreement is an substantial and fundamental step towards ensuring compliance with California law.
28

1 24. All of the Net Fund Value Amount, approximately \$804,583.44 before employee-side
2 payroll taxes are deducted and any residuals are added in (the amount remaining from the Gross Fund
3 Value Amount after deducting the requested reasonable attorney’s fees and litigation costs, reasonable
4 Claims Administration Costs, reasonable Service Award, and PAGA penalties) will be allocated among
5 the participating class members. This equates to an average payment of \$547.33 per class member.

6 25. In order to participate in the settlement, putative class members are not required to
7 affirmatively perform any duties. They are not required to submit a claim form and a check will
8 automatically be sent to their best available address in a timely manner after the address-verification
9 procedures are performed. The participating class members shall be paid their Individual Settlement
10 Amounts from the Net Settlement calculated based on the wages earned by the Participating Class Member
11 while he/she was employed by Defendant in California during the Class Period.

12 26. Defendant has agreed to pay the Labor and Workforce Development Agency (LWDA) a
13 penalty payment of \$15,000 from the settlement proceeds. This equates \$11,250 (75% of the total PAGA
14 penalties) being made payable to the LWDA, and the remaining 25% distributed amount the participating
15 Class Members. We believe this is a fair and reasonable apportionment in light of the bulk of the damages
16 being waiting time penalties which would require a finding of willfulness. Furthermore, the assessment
17 of civil penalties at trial has not been well-tested the actual probability of recovery remains relatively
18 speculative. This amount provides a reasonable percentage in comparison to the fund available to the class
19 and allows for more wages to be distributed to the affected employees.

20 27. Collectively, the two Plaintiff’s firm will request attorney’s fees of no more than
21 \$426,666.666 which equates to 33% of \$1,280,000, and for reimbursement of the law firms’ litigation
22 costs up to \$20,000. The fee is warranted and “reasonable” because of the significant efforts expended in
23 litigating this case, the risks involved in taking this case on a contingency fee basis and the exceptional
24 result achieved for the class members.

25 28. I believe that the attorney’s fees requested are fair and reasonable because of the
26 exceptional results achieved for the class members in the face of the formidable defense mounted by
27 Defendant’s experienced attorneys, the difficulties presented in these highly-technical wage and hour
28 claims and the experience necessary to negotiate a settlement which contemplates claims where much of

1 the damages are dependent on demonstrating willfulness and are subject to discretionary reduction. The
2 attorneys and paralegal staff at my firm record time worked and billed contemporaneously in increments
3 of tenths of an hour. Upon the submission of my firm’s fee request, which will be submitted to be heard
4 in conjunction with the Motion for Final Approval, the request will be supported by a detailed explanation
5 of the qualifications of each timekeeper along with an explanation of the tasks performed by my office
6 during the litigation. The costs requests will also be supported at the time of final approval with an
7 explanation of the amount and nature of the costs incurred.

8 29. Plaintiff Lila Burns spent a great deal of time and made personal sacrifices to act as Class
9 Representative in furtherance of the litigation. Plaintiff contributed extensively during the case, including
10 frequently communicating with counsel, providing valuable factual resources, searching for and providing
11 numerous documents, and rearranging personal obligations in order to make herself available to answer
12 questions from the mediator or my office during the full-day mediation and settlement negotiations. At all
13 times, she acted to protect the best interests of the Class in order to achieve the proposed settlement.
14 Plaintiff was always available to respond to his Counsel’s inquiries and made significant time available
15 as the date of mediation approached. She also assisted with evaluating the proposed settlement. This work
16 was undertaken in order to achieve the proposed settlement. A declaration detailing the extent of the
17 named Plaintiff’s work and hours worked for the benefit of the class will be submitted in conjunction with
18 the Motion for Final Approval.

19 30. Most significantly, Plaintiff undertook a great deal of risk that instituting this litigation
20 against her former employers may preclude or negatively affect her ability to obtain employment with
21 another company in the future due to the public nature of this lawsuit against her former employer. This
22 is this age of internet and Google searching where a future potential employer can readily search Plaintiff’s
23 name and may very easily forgo hiring Plaintiff upon learning about this lawsuit against her former
24 employer. For this precise reason, employees are very often intimidated and discouraged from bringing
25 actions against their former employers and are even more deterred from acting as a Class Representative.
26 Indeed, on several previous cases in my office, a simple Google search of class representative names along
27 with the term “class action” has yielded search results that place their lawsuit at the top page of results
28 and were therefore readily available to any potential future employer. Plaintiff nevertheless had the

1 courage to bring this action and placed the class' interests before her own. Plaintiff's participation as the
2 Class Representative was an essential element that allowed my firm to settle the class claims.

3 31. In addition, Plaintiff is agreeing to a much broader general release and §1542 waiver which
4 leaves her without recourse for known and unknown potential claims she may have against Defendant
5 now or in the future. This concession is significant and real. Considering these risks, Plaintiff's selfless
6 desire to see that all similarly situated employees are included in this recovery is to be commended and
7 should be recognized. I believe that the requested service award in the total amount of \$7,500 for Plaintiff
8 is fair and reasonable.

9 32. Granting approval of the class action settlement would create a settlement fund that would
10 streamline this process and Class members who participate in the settlement will receive payments for
11 their claims and other damages and penalties in the immediate future.

12 33. My Associate Dorota A. James and I are qualified to evaluate the class claims and viability
13 of defenses in this unpaid wage class action based on our combined experience in other wage and hour
14 cases. The recovery for each class member is reasonable, fair and adequate, and a settlement at this time
15 is in the best interests of the class. The settlement gives each class member a fair amount of payment for
16 waiting time penalties, overtime compensation, rest and meal periods, and penalties.

17 34. I believe that the settlement of \$ 1,280,000.00 is an excellent result. It is fair, reasonable,
18 and in the parties' best interests, especially after balancing the proposed settlement terms against the
19 probable outcome of liability, the untested issues, the range of recovery at trial, and the likelihood of
20 collection of any recovery at trial, the financial condition of the Defendant, the prospect of an adverse
21 ruling on summary judgement and/or class certification, the difficulties of complex litigation, the
22 lengthy process of establishing specific damages; individual issues, and possible delays and appeals.
23 This provides a fair recovery to the class, the amount of which easily falls within the range of
24 reasonableness. As such, the evidence utilized to assess the magnitude of the class's potential damages,
25 as well as the sums proposed to be paid are reasonable and meet the criteria set forth in *Kullar v. Foot
26 Locker Retail, Inc.* (2008) 168 Cal.App.4th 116.

27 I declare under penalty of perjury under the laws of the State of California that the foregoing is
28 true and correct.

SHORTLEGAL, APC
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Executed September 23, 2019 at San Diego, California.



Brian R. Short

Exhibit 1

1 **STIPULATED SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

2 **ARTICLE I**

3 **INTRODUCTION**

4 It is stipulated and agreed by and among the undersigned Parties, subject to the approval of
5 the Court pursuant to section 382 of the California Code of Civil Procedure, that the Settlement of
6 this action shall be effectuated upon and subject to the following terms and conditions. Capitalized
7 terms used herein shall have the meanings set forth in the "Definitions" section or as defined
8 elsewhere in this Stipulated Settlement Agreement and Release of Claims (hereafter "Agreement").

9 Plaintiff Lila Burns (“Representative Plaintiff”) and the putative Class Members, make this
10 agreement with Defendant Driveline Retail Merchandising, Inc. (“Driveline” or “Defendant”)
11 Representative Plaintiff and Defendant collectively are referred to in this Agreement as "the Parties."

12 The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and
13 concluded by agreement of Defendant to pay a non-reversionary all-in settlement in the total
14 maximum amount of One Million Two Hundred and Eighty Thousand Dollars (\$1,280,000.00) as
15 provided in Section 5.06 below ("Gross Fund Value Amount") upon the terms and conditions of this
16 Agreement and for the consideration set forth herein, including but not limited to a release of all
17 claims by Representative Plaintiff and the Class Members as set forth herein.

18 **ARTICLE II**

19 **RECITALS**

20 This Agreement is made in consideration of the following facts:

21 WHEREAS on December 17, 2018 Representative Plaintiff filed her complaint in
22 Sacramento County Superior Court and then filed a First Amended Complaint on January 17, 2019
23 (the “Complaint”) asserting the following causes of action on a class action and/or representative
24 basis:

- 25 (1) Failure to Pay Minimum and Regular Wages;
- 26 (2) Failure to Pay All Overtime Wages;
- 27 (3) Failure to Provide Meal Periods;
- 28 (4) Failure to Provide Rest Periods;

- 1 (5) Failure to Indemnify/Reimburse Expenses;
- 2 (6) Failure to Provide Accurate Itemized Wage Statements;
- 3 (7) Failure to Timely Pay Wages Upon Separation of Employment;
- 4 (8) Failure to Provide Sick Leave
- 5 (9) Violation of Business & Professions Code §§17200, et seq.; and
- 6 (10) Violations of the Private Attorneys General Act (“PAGA”);

7 WHEREAS, the Parties engaged in informal discovery, exchanging information,
8 documents and reviewing and analyzing extensive data made available by Defendant which enabled
9 the parties to thoroughly evaluate Plaintiff’s claims, the claims of the putative class, Defendant’s
10 defenses, and the likely outcomes, risks and expense of pursuing litigation;

11 WHEREAS, the Parties attended an in-person mediation session with professional
12 mediator Steve Rottman and reached terms resulting in this arm’s-length Settlement;

13 WHEREAS, a bona fide dispute exists as to whether any amount of wages or
14 penalties are due from Defendant to any Class Member and/or to the California Labor and
15 Workforce Development Agency (“LWDA”) and/or to any allegedly-aggrieved employees;

16 WHEREAS, the Parties desire to compromise and settle all issues and claims that
17 have been or could have been brought, based on the facts and allegations in the Complaint, against
18 Defendant or related persons in the Action, including all claims brought on a putative class,
19 collective and representative basis in the Action;

20 WHEREAS, based on the discovery exchanged as well as their own independent
21 investigation and evaluation, the Parties have considered the claims asserted by Plaintiff, the
22 defenses asserted by Defendant, the risks associated with the continued prosecution of the Action,
23 the cost of continued litigation through trial and appeals, and after considering all the circumstances,
24 the Parties have concluded that the proposed settlement set forth in this Agreement is fair, adequate,
25 and reasonable and confers substantial benefits upon the Class Members;

26 WHEREAS, the Parties further agree that the Agreement, the fact of this Settlement,
27 any of the terms of this Agreement, and any documents filed in connection with the Settlement shall
28 not constitute, or be offered, received, claimed, construed, or deemed as an admission, finding, or

1 evidence of: (i) any wrongdoing by any Released Parties, (ii) any violation of any statute or law by
2 Released Parties, (iii) any liability on the claims or allegations in the Action on the part of any
3 Released Parties, or (iv) the propriety of certifying a litigation class or collective (conditionally or
4 otherwise) or pursuing representative relief under the PAGA in the Action or any other civil or
5 administrative proceeding; and this Agreement shall not be used by any Person for any purpose
6 whatsoever in any administrative or legal proceeding, including but not limited to arbitrations, other
7 than a proceeding to enforce the terms of the Agreement;

8 NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND
9 AGREED, by Plaintiff for herself and on behalf of the Participating Class Members and by
10 Defendant, that, subject to the approval of the Court, the Action shall be settled, compromised, and
11 dismissed, on the merits and with prejudice, and the released Class Claims, shall be finally and fully
12 compromised, settled and dismissed as to the Released Parties, in the manner and upon the terms and
13 conditions hereafter set forth in this Agreement.

14 **ARTICLE III**

15 **DEFINITIONS**

16 As used in the Agreement, the following terms have the meanings specified below:

- 17 a. "Action" means the civil action commenced by Plaintiff on December 17, 2018 in the
18 California Superior Court, County of Sacramento entitled *Lila Burns v. Driveline Retail*
19 *Merchandising, Inc.*, Case No. 34-2018-00246691.
- 20 b. "Agreement" means this Stipulated Settlement Agreement And Release Of Claims, including
21 the Class Notice, as defined below, attached as Exhibit A.
- 22 c. "Claims Administrator" and "Settlement Administrator" means the third-party administrator
23 approved by the court who will administer the settlement as set forth below.
- 24 d. "Claims Administration Costs" means all costs incurred by the Claims Administrator in
25 administration of the Settlement, including, but not limited to address verification measures, mailing
26 of notice to the Class, calculation of Individual Settlement Payments, generation of Individual
27 Settlement Payment checks, administration of uncashed checks, generation of checks to Class
28 Counsel for attorney's fees and costs, generation of the check to the Representative Plaintiff for her

1 Service Award, generation of a check to the LWDA for its share of PAGA penalties, and generation
2 and submission of all tax-related documents, all pursuant to the terms of this Agreement.

3 e. "Class Claims" means all claims for wages, benefits and related penalties actually alleged or
4 that could have been alleged in the Action by Plaintiff, on behalf of herself and the Class Members,
5 based on the facts asserted in the Complaint, including but not limited to: (1) Failure to Pay
6 Minimum and Regular Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal
7 Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Failure to Indemnify/Reimburse
8 Expenses; (6) Failure to Provide and Maintain Accurate Itemized Wage Statements; (7) Failure to
9 Pay Wages Due Upon Separation of Employment; (8) Failure to Provide Sick Leave; (9) Unfair
10 Business Practices (Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*); and (10) PAGA Claim
11 for Civil Penalties (the "Litigation").

12 f. "Class Counsel" means the attorneys for the Class and the Class Members, who are:

13 Brian R. Short
14 Brian@shortlegal.com
15 Dorota A. James
16 Dorota@shortlegal.com
17 ShortLegal, APC
18 350 10th Avenue, Suite 1000
19 San Diego, California 92101
20 Telephone: (619) 272-0720
21 Facsimile: (619) 839-3129

22 Kira M. Rubel
23 The Law Office of Kira M. Rubel, PLLC
24 krubel@kmrlawfirm.com
25 3615 Harborview Drive NW, Suite C
26 Gig Harbor, WA 98332
27 Telephone: (253) 251-2955
28 Facsimile: (206) 238-6910

g. "Class Member(s)" means all current and former employees who were employed by
Defendant in the State of California as "merchandisers" or jobs with similar titles at any time
between August 28, 2015 through the date the court enters an order granting preliminary approval or
30 days after the motion for preliminary approval is filed, whichever date is earlier (which is
estimated to consist of approximately 1470 current and former employees).

h. "Class Notice" means the Notice of Proposed Class Action Settlement attached hereto as
Exhibit "A" or in substantially the same form as ultimately approved by the Court.

1 i. "Class Period" means the period from August 28, 2015 through the date the court enters an
2 order granting preliminary approval or 30 days after the motion for preliminary approval is filed,
3 whichever date is earlier.

4 j. "Complete and General Release" means an irrevocable and unconditional release given only
5 by Representative Plaintiff, releasing Defendant and the Released Parties from any and all charges,
6 complaints, claims, causes of action, debts, sums of money, controversies, agreements, promises,
7 damages and liabilities of any kind or nature whatsoever, both at law and equity, known or
8 unknown, suspected or unsuspected, arising from conduct occurring on or before the date
9 Representative Plaintiff signs this Settlement Agreement, including but not limited to a release of
10 any and all rights Plaintiff has to sue or bring any type of claim under (a) California state law; (b)
11 Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (c) the
12 Employment Act of 1967, (d) the Civil Rights Act of 1991, (e) the Civil Rights Act of 1866 and
13 1870, (f) 42 U.S.C. § 1981, as amended, (g) Executive Order 11246, (h) the Americans with
14 Disabilities Act 42 U.S.C. § 12101, et. seq, as amended, (i) the Family and Medical Leave Act, as
15 amended, (j) the Equal Pay Act of 1963, as amended, (k) the Immigration and Reform Control Act,
16 as amended, (l) the Occupational Safety and Health Act, as amended, (m) the Sarbanes-Oxley Act of
17 2002, as amended, (n) the Employment Retirement Income Security Act of 1974, as amended
18 (except vested benefits), (o) the Worker Adjustment and Benefit Protection Act of 1990, as
19 amended, (p) the Worker Adjustment and Retraining Notification Act, as amended, (q) any federal,
20 state or common law claim or cause of action based on any alleged failure to pay wages, breach of
21 contract, wrongful discharge, constructive discharge, retaliation, defamation, slander, liable,
22 intentional or negligent infliction of emotional distress, misrepresentation, fraud, promissory
23 estoppel, (r) any other tort or negligence claim or obligations arising out of any of Defendant's
24 employment policies or practices, employee handbooks, and/or any statements by any employee or
25 agent of Defendant whether oral or written; and (s) for reinstatement, back pay, bonus, attorneys'
26 fees, compensatory damages, costs, front pay, any form of equitable or declaratory relief, liquidated
27 damages, emotional distress, personal injury, punitive damages, pain and suffering, medical
28 expenses, damage to reputation, damage for personal, emotional or economic injury or damage of

1 any kind. This provision is intended by the Parties to be all-encompassing and to act as a full and
2 total release of any claim, whether specifically enumerated herein or not, that Representative
3 Plaintiff might have or have had, that exists or ever has existed on or prior to the date this Settlement
4 Agreement is signed. This release includes a 1542 Waiver. The Parties understand and agree that the
5 word “claims” includes all actions, group actions (including any pending or future collective, class,
6 private attorney general or representative actions for which Representative Plaintiff may otherwise
7 qualify as a putative class member or represented party), complaints and grievances that could
8 potentially be brought by Representative Plaintiff against the Released Parties.

9 k. “Defendant” shall mean Driveline Retail Merchandising, Inc.

10 l. "Defense Counsel" means counsel for Defendant, who are:

11 Yvette Davis
HAIGHT BROWN & BONESTEEL LLP
12 2050 Main Street, Ste. 600
Irvine, CA 92614
13 Telephone: (714) 426-4600
Facsimile: (714) 754-0826

14 Kathryn D. Terry
15 Lauren Barghols Hanna
PHILLIPS MURRAH P.C.
16 101 N. Robinson
17 Corporate Tower, 13th Fl.
Oklahoma City, OK 73102
18 Telephone: (405)235-4100
19 Facsimile: (405) 235-4133

20 m. “Final Effective Date” means the date on which the Settlement is approved and the Court’s
21 Final Order and Judgment becomes Final. The Court’s Final Order and Judgment becomes
22 final upon the later of: (i) if no Class Member timely and properly intervenes or files a
23 motion to vacate the Judgment under Code of Civil Procedure § 663, then the date the Court
24 enters an order granting Final Approval of the Settlement; (ii) if a Class Member intervenes
25 or files a motion to vacate the Judgment, then sixty-one (61) calendar days following the date
26 the Court enters an order granting final approval, assuming no appeal is filed; or (iii) if a
27 timely appeal is filed, the date of final resolution of that appeal (including any requests for
28 rehearing and/or petitions for *certiorari*), resulting in final judicial approval of the Settlement.

- 1 n. "Final Fairness and Approval Hearing" means the hearing to determine whether the proposed
2 Agreement settling the Action should be finally approved as fair, reasonable, and adequate;
3 whether the proposed plan of allocation of the Net Fund Value Amount should be approved;
4 whether the Representative Plaintiff's Service Award should be approved; and whether the
5 applications of Class Counsel for attorney's fees and costs should be approved.
- 6 o. "Final Order" refers to the order of the Court granting final approval of this Agreement as to
7 the Final Settlement Class (defined below) and entering a judgment approving this
8 Agreement on substantially the terms provided herein or as the same may be modified by
9 subsequent written agreement of the Parties.
- 10 p. "Final Settlement Class" refers to the Representative Plaintiff and all Class Members who do
11 not timely and validly exclude themselves from the class in compliance with the exclusion
12 procedures set forth in Section 5.04.a of this Agreement.
- 13 q. "Gross Fund Value Amount" means the One Million Two Hundred and Eighty Thousand
14 Dollars (\$1,280,000.00) to be paid by Defendant as provided by this Agreement to settle this
15 Action. This is an "all in" and non-reversionary number that includes, without limitation, all
16 monetary benefits and payments for the Final Settlement Class Members, the Service
17 Awards, the Class Counsel Award, the Settlement Administrator expenses and the PAGA
18 Payment, and all other claims for interest, fees, and costs. Other than the employer's share of
19 payroll taxes, in no event will Defendant pay more than the Gross Fund Value Amount.
- 20 r. "Individual Settlement Payments" means the amounts of money from the Net Fund Value
21 Amount that shall be paid to the Participating Class Members less employee's portion of
22 payroll taxes owed. Individual Settlement Payments shall be each Participating Class
23 Member's share of the Net Fund Value Amount (which share shall be determined by the
24 calculations provided in this Agreement at Section 5.06.c.).
- 25 s. "Judgment" refers to the judgment entered by the Court in conjunction with the Final Order.
- 26 t. "LWDA" means the California Labor and Workforce Development Agency.
- 27 u. "Net Fund Value Amount" means the Gross Fund Value Amount of One Million Two
28 Hundred and Eighty Thousand Dollars (\$1,280,000.00) less all of the following amounts

1 approved by the Court: (1) Class Counsel's court-approved attorney's fees (not to exceed
2 Four Hundred Twenty Six Thousand and Six Hundred and Sixty Six Dollars and Sixty Seven
3 Cents (\$426,666.67) to Plaintiffs' counsel; (2) Class Counsel's court-approved collective
4 litigation costs (not to exceed Twenty Thousand Dollars (\$20,000.00)); (3) the court-
5 approved Service Award to be paid to the Representative Plaintiff (not to exceed Seven
6 Thousand and Five Hundred Dollars (\$7,500.00)); (4) the amount of court-approved PAGA
7 penalties to be paid to the LWDA of Eleven Thousand Two Hundred Fifty Dollars
8 (\$11,250.00) which equates to 75% of the total amount allocated for alleged PAGA Penalties
9 of Fifteen Thousand Dollars (\$15,000.00); and (5) the Claims Administrator's court-
10 approved fees in the anticipated amount of not more than Ten Thousand Dollars
11 (\$10,000.00). The Net Fund Value Amount is estimated to be Eight Hundred Thousand and
12 Eight Hundred and Thirty Three Dollars and Thirty Four Cents (\$804,583.33) plus any
13 residuals from amounts requested in this paragraph which are not ultimately distributed to the
14 respective Parties due to invoicing of a lesser amount by the Claims Administrator or court
15 approval of a lesser amount than requested.

16 v. "Non-Participating Class Member(s)" means those Class Members who submit to the Claims
17 Administrator a valid and timely written request to be excluded from the Class pursuant to
18 Section 5.04.a below.

19 w. "PAGA" means the Private Attorneys General Act of 2004, California Labor Code sections
20 2698, *et seq.*

21 x. "Participating Class Member(s)" means those Class Members who do not submit valid
22 requests for exclusion.

23 y. "Parties" means Representative Plaintiff and Defendant as defined herein.

24 z. "Released Parties" means Defendant, Defendant's former and present parents, affiliates,
25 partners, attorneys, shareholders, officers, directors, employees, administrators, fiduciaries,
26 trustees, agents, and any other predecessors, successors, assigns or legal representatives.

27 aa. "Representative Plaintiff" and/or "Burns" means named Plaintiff Lila Burns.
28

1 bb. "Service Award" means a monetary amount not to exceed Seven Thousand and Five Hundred
2 Dollars (\$7,500.00) for the Representative Plaintiff which, subject to Court approval, shall be
3 paid pursuant to Section 5.06.b.3 of the Agreement, as provided below.

4 cc. "Settlement" means the disposition of this Action and all related claims effectuated by this
5 Agreement.

6 **ARTICLE IV**

7 **CERTIFICATION FOR SETTLEMENT PURPOSES ONLY**

8 4.1. Certification Of Class And Claims. Solely for the purposes of this reviewing this
9 Settlement, the Parties stipulate and agree that the Court may certify a class consisting of "current
10 and former employees who worked as non-exempt or hourly "merchandisers" (or otherwise similar
11 job duties and/or title) for Defendant within the State of California at any time from August 28, 2015
12 through the date the court enters an order granting preliminary approval or 30 days after the motion
13 for preliminary approval is filed, whichever date is earlier

14 4.2. Appointment Of Class Representative. Solely for the purposes of this Settlement, the
15 Parties stipulate and agree Representative Plaintiff shall be appointed as representative of the Final
16 Settlement Class.

17 4.3. Appointment Of Class Counsel. Solely for the purposes of this Settlement, the Parties
18 stipulate and agree that Class Counsel shall be appointed as counsel for the Final Settlement Class.

19 4.4. Appointment Of Settlement Administrator. Solely for the purposes of this Settlement,
20 the Parties stipulate and agree that Phoenix Settlement Administrators shall be appointed to serve as
21 Settlement Administrator.

22 4.5. Conditional Nature Of Stipulation For Certification. Solely for the purposes of this
23 Settlement, the Parties stipulate and agree to the certification of the Final Settlement Class. Should,
24 for whatever reason, the Settlement not become effective, the fact that the Parties were willing to
25 stipulate to certification as part of the Settlement shall have no bearing on, and shall not be
26 admissible in connection with, the issue of whether the Class Members and/or the Class Claims
27 should be certified in a non-Settlement context in this Action or in any other lawsuit. Defendant
28

1 expressly reserves its right to oppose claim or class certification in this and/or any other action
2 should this Settlement not become effective.

3 4.6. Stay Of Proceedings. The Parties agree to stay all proceedings in the Action, except
4 such proceedings necessary to implement and complete the Settlement, pending the Final Approval
5 hearing to be conducted by the Court.

6 **ARTICLE V**

7 **PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF SETTLEMENT**

8 Because the Parties have stipulated to the certification of the Class for settlement purposes
9 only, this Agreement requires preliminary and final approval by the Court. Accordingly, as set forth
10 in Section IV, the Parties enter into this Agreement on a conditional basis. This Agreement is
11 contingent upon the approval and certification by the Court. If the Court does not grant either the
12 Preliminary or Final Approval of the settlement, the fact that the Parties were willing to stipulate to
13 class certification for the purposes of this Agreement shall have no bearing on, or be admissible in
14 connection with, the issue of whether any class should be certified in a non-settlement context. If
15 the Final Effective Date does not occur, this Agreement shall be deemed null and void, shall be of no
16 force or effect whatsoever, and shall not be referred to or used for any purpose whatsoever.
17 Defendant expressly reserves the right to challenge the propriety of class certification for any
18 purpose if the settlement does not become final.

19 The Parties and their respective counsel shall take all steps that may be requested by the
20 Court relating to the approval and implementation of this Agreement and shall otherwise use their
21 respective best efforts to obtain Court approval and implement this Agreement. The procedure for
22 obtaining Court approval of and implementing this Agreement shall be as follows.

23 **Section 5.01: Motion for Conditional Class Certification and Preliminary Approval**

24 Representative Plaintiff shall bring a motion before the Court for an order conditionally
25 certifying the Class based on the preliminary approval of this Agreement, including the Class Notice
26 attached hereto as Exhibit "A." The date that the Court grants preliminary approval of this
27 Agreement shall be the "Preliminary Approval Date."
28

1 **Section 5.02: The Claims Administrator**

2 A court-appointed third-party Claims Administrator will serve to administer this Settlement
3 pursuant to the terms herein. The Claims Administrator will administer the settlement by
4 performing address verification for the Class Members, distributing the Class Notice and Reminder
5 Postcards, if necessary, performing skip traces, receiving and recording completed Settlement Opt-
6 Outs, adjudicating Class Members' disputes over wages earned during the Class Period in the
7 relevant positions as an hourly and/or non-exempt merchandiser, providing Class Counsel and
8 counsel for Defendant with weekly updates on the status of Opt-Outs, and handling any potential
9 inquiries about the calculation of the Individual Settlement Amounts. The Claims Administrator
10 shall provide the Parties with the names of individuals who submitted timely Opt-Outs after the
11 expiration of the claims period for inclusion in the proposed final approval Order. The actions of the
12 Claims Administrator shall be governed by the terms of this Stipulation. The Parties, through their
13 counsel, may provide written information needed by the Claims Administrator pursuant to the
14 Stipulation.

15 All costs of administering the Settlement, including but not limited to all costs and fees
16 associated with preparing, issuing, and mailing any and all notices to Class Members, all costs and
17 fees associated with computing, processing, reviewing, and mailing the Individual Settlement
18 Payments, all costs and fees associated with preparing any tax returns and any other filings required
19 by any governmental taxing authority or agency, all costs and fees associated with preparing any
20 other notices, reports, or filings to be prepared in the course of administering disbursements from the
21 Net Fund Value Amount, and any other costs and fees incurred and/or charged by the Claims
22 Administrator in connection with the execution of its duties under this Agreement ("Claims
23 Administration Costs"), anticipated to be not more than Ten Thousand Dollars (\$10,000), shall be
24 paid out of the Gross Fund Value Amount.

25 **Section 5.03: Notice to Class Members**

26 **a. Initial Identification of Class Members:** Within ten (10) calendar days following
27 entry of the Preliminary Approval Order, Defendant shall provide to the Claims Administrator a
28 confidential list in an Excel spreadsheet format containing the name and last known address,

1 telephone number, and social security number of each Class Member. This list shall also contain the
2 gross wages earned by each individual Class Member as an hourly or non-exempt employee for
3 Defendant during the Class Period or the commencement dates and termination dates (if applicable)
4 relating to each individual Class Member during the Class Period. This information shall be treated
5 as confidential.

6 **b. Mailing of Class Notice:** Promptly upon receipt of the Class Member information
7 from Defendant, the Claims Administrator shall attempt to obtain updated addresses for Class
8 Members from the U.S. Postal Service and Accurint. Within fourteen (14) calendar days after
9 receipt of the Class Member information from Defendant, or receipt of any updated addresses from
10 the U.S. Postal Service or Accurint, whichever is later, the Claims Administrator shall mail the Class
11 Notice to all Class Members via first-class mail using the updated address information. With respect
12 to each Class Notice that is returned as undeliverable, the Claims Administrator shall promptly
13 attempt to determine a correct address using an additional skip trace service such as Experian and
14 shall re-send the Class Notice via first-class mail to any new address thereby determined within 10
15 days of receiving the notice that the Class Notice was undeliverable.

16 **c. Notification to Counsel:** No later than ten (10) days prior to the Final Fairness and
17 Approval Hearing, the Claims Administrator shall provide Defense Counsel and Class Counsel with
18 a declaration attesting to completion of the notice process, including any attempts to obtain valid
19 mailing addresses for and re-sending of any returned Class Notices, as well as the number of valid
20 opt-outs that the Claims Administrator received. Upon approval by the court, compliance with the
21 procedures described in this Section 5.03.b shall constitute due and sufficient notice to Class
22 Members of this proposed Settlement and the Final Fairness and Approval Hearing and shall satisfy
23 the requirement of due process. Nothing else shall be required of the Parties, Class Counsel,
24 Defense Counsel, or the Claims Administrator to satisfy the requirements of providing notice of the
25 proposed Settlement and the Final Fairness and Approval Hearing.

26 **Section 5.04: Responses to Notice**

27 **a. Requests for Exclusion from Class**

28 For any Class Member other than Plaintiff to validly exclude himself or herself from the

1 Class and this Settlement (*i.e.*, to validly opt-out), a written request for exclusion must be signed by
2 the Class Member or his or her authorized representative, and must be sent to the Claims
3 Administrator, postmarked by no later than thirty (30) days after the date the Claims Administrator
4 initially mails the Class Notice to the Class Members. For Notices re-mailed by the Claims
5 Administrator pursuant to section 5.03.b, the written request for exclusion must be postmarked by no
6 later than thirty (30) days of the initial mailing of the Class Notice or twenty (20) days of the re-
7 mailing, whichever is later. The Class Notice shall contain individualized estimated payments, set
8 forth instructions on how to opt-out and include the language to be used in a request for exclusion.
9 The date of the initial mailing (or re-mailing for Class Notices re-mailed) of the Class Notice and the
10 date the signed request for exclusion was postmarked, shall be conclusively determined according to
11 the records of the Claims Administrator. Any Class Member who timely and validly requests
12 exclusion from the Class and this Settlement shall become a Non-Participating Class Member and
13 shall not be entitled to any Individual Settlement Payment, shall not be bound by the terms and
14 conditions of this Agreement, and shall not have any right to object, appeal, or comment thereon.

15 **b. Objections to Settlement**

16 For any Class Member to object to this Agreement, or any term of it, the person making the
17 objection must not submit a request for exclusion (*i.e.*, must not opt-out), and must, by no later than
18 thirty (30) days after the Class Notice was initially mailed to the Class Members, file with the Court
19 and serve on Class Counsel and Defense Counsel, a written statement of the grounds of objection,
20 signed by the objecting Class Member or his or her attorney, along with all supporting papers. For
21 Class Notices re-mailed by the Claims Administrator pursuant to section 5.03.b, written statements
22 of the grounds for objection must be filed and served no later than thirty (30) days after the initial
23 mailing of the Class Notice or twenty (20) days of the re-mailing, whichever is later. The date of
24 mailing or re-mailing of the Class Notice to the objecting Class Member shall be conclusively
25 determined according to the records of the Claims Administrator. The Court retains final authority
26 with respect to the consideration and admissibility of any Class Member objections.

27 Counsel for the Parties shall file any response to the objections submitted by objecting Class
28 Members at least ten (10) court days before the date of the Final Fairness and Approval Hearing or

1 ten (10) days after the receipt of the notice of objection, whichever is later.

2 **c. Failure to Object**

3 Any Class Member who fails to timely file and serve such a written statement of his or her
4 intention to object shall be foreclosed from making any objection to this settlement, unless otherwise
5 ordered by the Court.

6 **d. Failure to Timely Opt-Out**

7 Any Class Member who fails to submit a timely request for exclusion from the Class
8 automatically shall be deemed a member of the Final Settlement Class whose rights and claims with
9 respect to the issues raised in the Action are determined by the Court's Final Order, and by the other
10 rulings in the Action.

11 **e. Right of Defendant to Void Agreement**

12 If five (5%) or more of Class Members make a valid request to be excluded from the Class as
13 described in Section 5.04.a above and thus become Non-Participating Class Members, Defendant
14 shall have the right, but not the obligation, to void the Agreement. If Defendant exercises that right
15 to void the Agreement, then the Parties shall have no further obligations under the Agreement,
16 including any obligation by Defendant to pay the Gross Fund Value Amount, or any amounts that
17 otherwise would have been owed under this Agreement, except that Defendant shall pay the Claims
18 Administrator's reasonable fees and expenses incurred as of the date that Defendant exercises their
19 right to void the Agreement. Defendant shall notify Class Counsel and the Court whether they are
20 exercising the right to void the Agreement no later than ten (10) calendar days after the Claims
21 Administrator notifies the Parties of the final total number of valid requests to be excluded.

22 **Section 5.05: Final Fairness and Approval Hearing**

23 **a. Final Approval Hearings**

24 On the date set forth in the Order of Preliminary Approval and Class Notice, which shall be
25 approximately one hundred and five (105) days after the initial mailing of the Notice of Proposed
26 Class Action Settlement, or on such other reasonable date as set by the Court, a Final Fairness and
27 Approval Hearing shall be held before the Court in order (1) to review this Agreement and determine
28 whether the Court should give it final approval; and (2) to consider any timely objections made

1 pursuant to Section 5.04.b above and all responses by the Parties to such objections. At the Final
2 Fairness and Approval Hearing, the Parties shall ask the Court to give final approval to this
3 Agreement and shall submit to the Court a proposed Final Order approving the Settlement and which
4 shall be entered in the Action.

5 **b. Vacating, Reversal, or Material Modification of Final Order and Judgment on**
6 **Appeal or Review**

7 If, after a notice of appeal or a petition for a writ of *certiorari* or any other motion, petition,
8 or application, the reviewing court vacates, reverses, or modifies the Final Order and Judgment such
9 that there is a material modification to the Settlement and that court's decision is not completely
10 reversed, and the Final Order and Judgment is not fully affirmed on review by a higher court, then
11 Representative Plaintiff and Defendant shall each have the right, but not the obligation, to void the
12 Settlement, which the Party must do by giving written notice to the other Parties, the final reviewing
13 court, and the Court not later than ten (10) business days after the final reviewing court's decision
14 vacating, reversing, or materially modifying the Final Order becomes final and non-appealable. If
15 either Party exercises its right to void the Agreement under this section, then the Parties shall have
16 no further obligations under the Agreement, including any obligation by Defendant to pay the Gross
17 Fund Value Amount, or any amounts that otherwise would have been owed under this Agreement.
18 The Party exercising its right to void the Agreement shall pay the Claims Administrator's reasonable
19 fees and expenses incurred as of the date the Party exercises its right to void the Agreement. If the
20 Parties mutually agree to void the Agreement, then the Claims Administrator's reasonable fees and
21 expenses incurred as of the date the Parties exercise their right to void the Agreement shall be split
22 equally. A vacation, reversal, or modification of the Court's award of the Service Award or Class
23 Counsel's fees or costs that does not result in a change to the Gross Fund Value Amount shall not
24 constitute a vacation, reversal, or material modification of the Final Order and Judgment within the
25 meaning of this paragraph.

26 **Section 5.06: Settlement Payment Procedures**

27 **a. Settlement Sum**

28 In exchange for the releases set forth in this Agreement that will bind Plaintiff and all

1 members of the Final Settlement Class, Defendant agrees to pay the Gross Fund Value Amount of
2 One Million Two Hundred and Eighty Thousand Dollars (\$1,280,000.00), which is the total and all-
3 inclusive maximum amount Defendant shall be obligated to pay under the Settlement embodied by
4 this Agreement, exclusive of employer-side payroll taxes. The Settlement Sum includes Class
5 Counsel's attorney's fees of not more than Four Hundred Twenty Six Thousand and Six Hundred
6 and Sixty Six Dollars and Sixty Seven Cents (\$426,666.67) and litigation costs not to exceed Twenty
7 Thousand Dollars (\$20,000.00), a Service Award for Representative Plaintiff of not more than Seven
8 Thousand and Five Hundred Dollars (\$7,500.00), the PAGA penalty payment of Fifteen Thousand
9 Dollars (\$15,000.00), which includes the payment of Eleven Thousand Two Hundred Fifty Dollars
10 (\$11,250.00) to the LWDA, the Claims Administration Costs anticipated to be not more than Ten
11 Thousand Dollars (\$10,000.00).

12 The Net Fund Value Amount is estimated to be Eight Hundred Thousand and Eight Hundred
13 and Thirty-Three Dollars and Thirty-Four Cents (\$804,583.33) plus any residuals from amounts
14 requested in this paragraph which are not ultimately distributed to the respective Parties due to
15 invoicing of a lesser amount.

16 **b. Allocation of Settlement Amount:** In full and complete settlement of the Action
17 and subject to this Settlement being approved by the Court, Defendant shall pay an aggregate sum
18 not to exceed One Million Two Hundred and Eighty Thousand Dollars (\$1,280,000.00), (the "Gross
19 Fund Value Amount"). The Gross Fund Value Amount of \$1,280,000.00 shall be paid to the Claims
20 Administrator no later than Fifteen (15) calendar days after the Final Effective Date. If the Court
21 does not grant final approval upon the material terms of the settlement (other than reduction of the
22 requested attorney's fees, costs or class representative service award) or if five (5%) or more to the
23 putative class members opt-out as set forth in Section 5.04(e) and the Defendant elects to void the
24 settlement, Defendant shall have no further obligation under this Agreement. If the Court grants
25 final approval of the settlement, the settlement funds shall be disbursed as follows:

26 **1. Reasonable attorney's fees and litigation expenses:** Class Counsel have
27 stated they shall request that the Court award them reasonable attorney's fees in an amount up to
28 Four Hundred Twenty Six Thousand and Six Hundred and Sixty Six Dollars and Sixty Seven Cents

1 (\$426,666.67) and collective litigation costs in an amount up to Twenty Thousand Dollars
2 (\$20,000.00). Defendant has agreed neither to oppose nor adversely comment on the fees and
3 litigation costs request. The award of reasonable attorney's fees and litigation costs granted by the
4 Court shall be paid out of the Gross Fund Value Amount within twenty calendar days of the Final
5 Effective Date in accordance with Section 5.06.d.2-3, below. Class Counsel may elect to have the
6 Settlement Administrator, directly or indirectly, disperse all or part of its attorney's fees paid to
7 Class Counsel in periodic payments, through a structured settlement. Class Counsel will bear any
8 and all costs, fees, and expenses of administration for any periodic payments of such attorney's fees
9 and shall be fully responsible for any taxes, costs, liabilities, attorneys' fees, and/or penalties
10 resulting from any issues, claims, and/or disputes arising out of, related to, or incurred in connection
11 with any such periodic payments, including, without limitation, any such issues, claims and/or
12 disputes brought by the state or federal government concerning the payment of taxes thereon. Class
13 Counsel shall indemnify, defend, and hold Defendant harmless for any and all taxes, costs,
14 liabilities, attorneys' fees, and/or penalties resulting from any issues, claims, and/or disputes arising
15 out of, related to, or incurred in connection with any such periodic payments.

16 **2. Reasonable expenses of the Claims Administrator:** The Claims
17 Administrator shall be paid out of the Gross Fund Value Amount and such payment shall not
18 constitute payment to any Participating Class Member(s). The Claims Administration Costs,
19 expected not to exceed Ten Thousand Dollars (\$10,000.00), shall be paid out of the settlement funds
20 within thirty (30) calendar days after the Final Effective Date in accordance with Section 5.06.d.1,
21 below.

22 **3. Reasonable Service Award to the Representative Plaintiff:**
23 Subject to Court approval, the Representative Plaintiff shall make a separate application for
24 up to Seven Thousand and Five Hundred Dollars (\$7,500.00) as a Service Award. The Service
25 Award shall be paid by check made payable to the Representative Plaintiff, which shall be delivered
26 by the Claims Administrator to Class Counsel within thirty (30) calendar days after the Final
27 Effective Date. The Service Award shall be paid out of the Gross Fund Value Amount and shall not
28 constitute payment(s) to any Participating Class Member(s).

1 It is the intent of the Parties that the Service Award represent payment to Representative
2 Plaintiff for the additional risks undertaken in prosecuting this action and her service to the Class
3 Members, and not wages, thus, the Claims Administrator shall not withhold any taxes from the
4 Service Award. The Service Award shall be reported on a Form 1099, which shall be provided by
5 the Claims Administrator to the Representative Plaintiff and to the pertinent taxing authorities as
6 required by law. Although it is the contemplation of the Parties that the Service Award does not
7 represent wages, the Internal Revenue Service, the California Franchise Tax Board, or some other
8 taxing authority may take the position that some or all of the Service Award constitutes wages for
9 income tax and withholding purposes. The Representative Plaintiff agrees to assume the
10 responsibility of remitting to the Internal Revenue Service, the California Franchise Tax Board, and
11 any other relevant taxing authority the amounts required by law, if any, to be withheld by Defendant
12 from the Service Award paid under this Agreement and any liability assessed against Defendant for
13 failure to withhold the required amount, if any.

14 **4. PAGA Payment:** A payment of Fifteen Thousand Dollars (\$15,000.00) shall
15 be allocated to PAGA penalties, Eleven Thousand and Two Hundred and Fifty Dollars (\$11,250.00)
16 of which shall be payable to the California LWDA within thirty (30) calendar days of the Final
17 Effective Date. The PAGA penalties shall be paid out of the Gross Fund Value Amount. The
18 remaining portion of the PAGA payment shall be distributed pro-rata to the Final Settlement Class
19 as set forth below in Section 5.06.c.1.

20 **5. Allocation to Participating Class Members:** The amount remaining from
21 the Gross Fund Value Amount after deducting the court-awarded reasonable attorney's fees and
22 litigation costs, reasonable Claims Administration Costs, reasonable Service Award payment, and
23 PAGA penalties portion allocated to the LWDA (the "Net Fund Value Amount") shall be distributed
24 to members of the Final Settlement Class in accordance with the formula set forth below in Section
25 5.06.c. Final Settlement Class members are not eligible to receive any compensation other than the
26 Individual Settlement Payments discussed below.

27 **6. Change in Corporate Payroll Policy.** Defendant also agrees to undertake a
28 thorough review of its payroll policies within 18-months of the date of Final Approval of this

1 Settlement, for purposes of an attempt to comply with California law.

2 **c. Individual Settlement Payments:** The Individual Settlement Payments shall be
3 calculated as follows:

4 **1. Calculation:** Each Class Member of the Final Settlement Class who does not Opt-
5 Out shall be eligible to receive his/her Individual Settlement Payment, which shall be based on
6 information contained in Defendant's pertinent payroll records, and calculated as follows:

7 i) Each Class Member of the Final Settlement Class shall be allocated a
8 payment equal to the pro rata portion of gross wages earned by that class member employed
9 by Defendant within the State of California in the position of a Merchandiser during the
10 Class Period in proportion to the total aggregated gross wages earned by All Settlement Class
11 Members in the position of a Merchandiser during the class period.

12 ii) The employee's share of the payroll taxes shall be deducted and paid from
13 the Individual Settlement Payment. The Claims Administrator shall calculate the Individual
14 Settlement Payments and the amount of the employee's share of payroll taxes to be deducted
15 therefrom in order to determine the net Individual Settlement Payment, pursuant to paragraph
16 C.4. below.

17 **2. Dispute Resolution:** The Claims Administrator shall have the initial responsibility
18 of resolving all disputes that arise during the claims administration process, including, without
19 limitation, disputes, if any, regarding the calculation of the total number of gross wages earned by
20 each Class Member where the information submitted by Defendant based on their employment
21 records differs from the information submitted by Class Members. In resolving such disputes,
22 Defendant's employment records shall be presumed to be accurate and correct, and shall be final and
23 binding, unless the information submitted by the Claimant (e.g., pay stubs, employment records,
24 etc.) proves otherwise. In the event the Claims Administrator cannot resolve a dispute based on a
25 review of the available information, the Claims Administrator shall request a conference call
26 between the Claims Administrator, Class Counsel, and Defense Counsel to discuss and resolve the
27 dispute. After such call, the Claims Administrator shall resolve the dispute, and such resolution shall
28

1 be final and binding on the Class Member. In advance of the conference call, the Claims
2 Administrator shall fax or email copies of all available information to all counsel.

3 **3. Fair Formula:** The Parties hereby agree that the formula for allocating payments to
4 each Class Member of the Final Settlement Class as provided herein is reasonable and designed to
5 provide a fair settlement to the Members of the Final Settlement Class.

6 **4. Allocation of Net Fund Value Amount Payments and Taxes:** All Individual
7 Settlement Payments made to Class Members of the Final Settlement Class under this Agreement
8 shall be allocated as follows: One-third to wages and the remaining two-thirds to penalties and
9 interest. The Claims Administrator shall deduct from each Individual Settlement Payment all
10 employee portions of payroll taxes from the amount allocated to wages. The amounts allocated to
11 penalties and interest shall not be subject to tax withholding, but Class Members of the Final
12 Settlement Class will receive a 1099 for those payments. Defendant shall not make as part of this
13 Agreement, nor be required to make, any deductions, nor pay any monthly contributions for any
14 insurance, retirement, bonuses, 403(b), or profit-sharing plans related to monies paid as a result of
15 this Agreement.

16 The Parties understand and agree that Defendant is not providing tax or legal advice, or
17 making representations regarding tax obligations or consequences, if any, related to this Agreement,
18 and that the Class Members of the Final Settlement Class will assume any such tax obligations or
19 consequences that may arise from this Agreement, and that Final Settlement Class Members shall
20 not seek any claim against or indemnification from Defendant in this regard. The Parties agree that,
21 in the event that any taxing body determines that additional taxes are due from any Final Settlement
22 Class Member, such Class Member assumes all responsibility for the payment of any such taxes.

23 **d. Timing of Settlement Payments:** As set forth in Section 5.06.b. above, no later than
24 fifteen (15) calendar days following the Final Effective Date, Defendant shall remit the full Gross
25 Fund Value Amount to the Claims Administrator via wire transfer (or other method reasonably
26 calculated to be received by the Claims Administrator within fifteen (15) calendar days after the
27 Final Effective Date) for the purposes of making the payments described herein. Payments from this
28

1 Gross Settlement Fund shall fund the settlement and meet the obligations of Section 5.06.b and be
2 paid by the Claims Administrator within the time frames set forth below in sections 5.06.d.1-5.

3 Payments of the following from the Gross Fund Value Amount shall be made in accordance
4 with the following subparagraphs:

5 **1. Claims Administrator:** The Claims Administrator shall be paid the Claims
6 Administration costs from the Gross Fund Value, expected to be not more than Ten Thousand
7 Dollars (\$10,000), thirty calendar days after the Final Effective Date.

8 **2. Class Counsel's Fees:** The amounts approved by the Court for Class
9 Counsel's fees shall be paid by the Claims Administrator within twenty (20) calendar days after the
10 Final Effective Date and the Claims Administrator shall pay the total attorney's fee award to Class
11 Counsel.

12 **3. Class Counsel's Costs:** The amount approved by the Court for Class
13 Counsel's costs shall be paid by the Claims Administrator within twenty (20) calendar days after the
14 Final Effective Date.

15 **4. Class Representative's Service Award:** The amount approved by the Court
16 for the Class Representative's Service Award shall be paid by the Claims Administrator to Class
17 Counsel within thirty (30) calendar days after the Final Effective Date.

18 **5. Individual Settlement Payments:** Within fifteen (15) days of the last date
19 for Opt-Outs or Objections to be timely submitted in accordance with Section 5.04.a and 5.04.b,
20 above, the Claims Administrator shall provide to the Parties a written statement of all Individual
21 Settlement Payments to be paid to all Final Settlement Class Members and all required payroll taxes.
22 The Claims Administrator will distribute the Individual Settlement Payments to all Final Settlement
23 Class Members within thirty (30) calendar days of the Final Effective Date. The Claims
24 Administrator shall issue to each Final Settlement Class Member a check in the amount of his or her
25 Individual Settlement Payment, as described in Section 5.06.c.1 (less applicable taxes and
26 withholdings) via first-class mail. Uncashed checks not negotiated within 120 days of their issuance
27 are void. All Final Settlement Class Members shall be bound by this Agreement and the releases
28 herein even if the Class Member does not cash the settlement check issued to him or her comprising

1 his or her Individual Settlement Payment. If any Final Settlement Class Member has not cashed his
2 or her Settlement Payment check within ninety (90) days of issuance, the Settlement Administrator
3 shall mail that Class Member a postcard reminding him/her of the deadline to cash such check and
4 providing information as to how to obtain a reissued check in the event the check was lost, stolen or
5 misplaced. Any checks issued to Final Settlement Class Members shall remain valid and negotiable
6 for one hundred twenty (120) days from the date of issuance. After all settlement funds have been
7 distributed and all checks issued to Final Settlement Class Members have either been cashed or have
8 remained uncashed and gone stale, the Settlement Administrator shall handle in accordance with
9 Code of Civil Procedure § 384(b) (as amended on January 1, 2019). The unpaid residue, plus any
10 interest that accrued thereon, shall be paid by the Settlement Administrator to a mutually agreed
11 upon neutral *cy pres* recipient, which will be a nonprofit organization or foundation that supports
12 projects that will benefit the class or similarly situated persons, subject to Court approval.

13 **e. Residuals**

14 If any amount of the Gross Fund Value Amount remains unallocated as a result of
15 modification to the requested attorney's fees, costs, Class Representative Service Award or Claims
16 Administration Costs, this amount shall become part of the Net Fund Value Amount and be
17 distributed pursuant to Section 5.06.c.

18 **f. Circular 230 Disclaimer**

19 Each party to this agreement (for purposes of this section, the "acknowledging party" and
20 each party to this agreement other than the acknowledging party, an "other party") acknowledges
21 and agrees that (1) no provision of this agreement, and no written communication or disclosure
22 between or among the parties or their attorneys and other advisers, is or was intended to be, nor shall
23 any such communication or disclosure constitute or be construed or be relied upon as, tax advice
24 within the meaning of united states treasury department circular 230 (31 cfr part 10, as amended);
25 (2) the acknowledging party (a) has relied exclusively upon his, her, or its own, independent legal
26 and tax counsel for advice (including tax advice) in connection with this agreement, (b) has not
27 entered into this agreement based upon the recommendation of any other party or any attorney or
28 advisor to any other party, and (c) is not entitled to rely upon any communication or disclosure by

1 any attorney or adviser to any other party to avoid any tax penalty that may be imposed on the
2 acknowledging party; and (3) no attorney or adviser to any other party has imposed any limitation
3 that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of
4 whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax
5 treatment or tax structure of any transaction, including any transaction contemplated by this
6 agreement.

7 **ARTICLE VI**

8 **LIMITATIONS ON USE OF THIS SETTLEMENT**

9 **Section 6.01: No Admission**

10 Defendant denies that Defendant has engaged in any unlawful activity, that Defendant failed
11 to comply with the law in any respect, that Defendant has any liability to anyone based upon the
12 claims asserted in the Action, and Defendant asserts that, but for this Settlement, a class should not
13 be certified in this Action. This Agreement is entered into solely for the purpose of compromising
14 highly-disputed claims. Nothing in this Agreement is intended or shall be construed as an admission
15 of liability or wrongdoing by Defendant.

16 Defendant has concluded that any further defense of this litigation would be protracted and
17 expensive for all Parties. Substantial amounts of time, energy and resources of Defendant have been
18 spent and, unless this Settlement is agreed to, will continue to be devoted to the defense of the
19 Claims asserted by the Class. Defendant has also taken into account the risks of further litigation in
20 reaching this decision. Defendant has, therefore, agreed to settle in the manner and upon the terms
21 set forth in this Agreement to put to rest the Claims as set forth in the Action.

22 As to the claims and allegations in this Action, including but not limited to wage claims,
23 meal and rest period claims, overtime pay claims, minimum wage claims, claims for uncompensated
24 work time, wage statement claims, claims for waiting time penalties, unfair business practices
25 claims, and claims for PAGA penalties, Defendant denies and continues to deny each of those claims
26 and contentions alleged by Representative Plaintiff and the Class in the Action. Defendant has
27 repeatedly asserted and continues to assert defenses thereto, and has expressly denied and continues
28 to deny any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the

1 Action.

2 **Section 6.02: Non-Evidentiary Use**

3 Whether or not the settlement becomes final, neither this Agreement nor any of its terms nor
4 the Settlement itself shall be: (a) construed as, offered, or admitted in evidence as, received as, or
5 deemed to be evidence for any purpose adverse to Defendant or any other of the Released Parties,
6 including but not limited to, evidence of a presumption, concession, indication, or admission by any
7 of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b)
8 disclosed, referred to, or offered in evidence against any of the Released Parties in any further
9 proceeding in the Action, or any other civil, criminal, or administrative action or proceeding, except
10 for the purposes of effectuating the Settlement pursuant to this Agreement or for Defendant to
11 establish that a Class Member has resolved any of his/her claims released through this Agreement.

12 **Section 6.03: Nullification**

13 The Parties have agreed to the certification of the Class for the sole purpose of effectuating
14 this Agreement. If (a) the Court should for any reason fail to certify a class for settlement, or (b) the
15 Court should for any reason fail to approve this Settlement in the form agreed to by the Parties
16 (except for the amount of attorney's fees, costs and Service Awards awarded), or (c) the Court
17 should for any reason fail to enter the Final Order, or (d) the Final Order is reversed, modified, or
18 declared or rendered void, then (i) this Agreement shall be considered null and void; (ii) neither this
19 Agreement nor any of the related negotiations or proceedings shall be of any force or effect; (iii) all
20 Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had
21 been neither entered into nor filed with the Court; and (iv) the fact that the Parties were willing to
22 stipulate to class certification as part of the Settlement shall have no bearing on, and shall not be
23 admissible in connection with, the issue of whether a class should be certified in a non-settlement
24 context in this Action or any other action, and in any of those events, Defendant expressly reserves
25 the right to oppose any motion for class certification.

26 Invalidation of any material portion of this Agreement, except for the amount of attorney's
27 fees, costs and Service Award, shall invalidate this Agreement in its entirety unless the Parties shall
28 subsequently agree in writing that the remaining provisions shall remain in full force and effect.

1 **ARTICLE VII**

2 **RELEASES**

3 **Section 7.01: Releases by Class Members**

4 On the Final Effective Date, the Final Settlement Class shall be bound by this Agreement.

5 **Section 7.02: Release of All Claims Relating To The Action**

6 Upon the court's final approval of the class settlement and entry of Final Order and
7 Judgment, each member of the Final Settlement Class shall be deemed to have released and
8 discharged each Defendant and Released Party, including all of Defendants' former and present
9 parents, and affiliates, and their officers, directors, employees, partners, shareholders, attorneys, and
10 agents, and any other successors, assigns or legal representatives from any and all claims alleged in
11 the operative complaint or that could have been alleged based on the facts therein, including claims
12 for (a) unpaid regular and overtime wages, including failure to pay wages for all hours worked, (b)
13 failure to provide rest breaks, (c) failure to provide meal periods, (d) failure to timely pay wages
14 pursuant to Labor Code §§ 201 - 204, (e) failure to provide accurate itemized wage statements, (f)
15 failure to reimburse business expenses, (g) failure to provide paid sick leave, (h) unfair business
16 practices, and (i) all other civil and statutory penalties, including those recoverable under the Private
17 Attorneys General Act, Labor Code § 2698 et seq. based on the facts or claims alleged in the
18 Complaint in the action including but not limited to, statutory, constitutional, contractual damages,
19 unpaid costs, penalties, punitive damages, interest, attorneys' fees, litigation costs, restitution, and
20 equitable relief in their positions as Settlement Class Members during the Class Period.

21 **Section 7.03: 1542 Release By Plaintiff Lila Burns**

22 In addition to the Settlement Class Members' Released Class Claims described above, in
23 exchange for the consideration recited in this Agreement, including but not limited to the court-
24 approved Class Representative Service Award, Burns enters into a Complete and General Release
25 which releases, acquits, and discharges any covenants not to sue Defendant or any of the Released
26 Parties for any claim, whether known or unknown, which Burns has ever had, or hereafter may claim
27 to have, arising on or before the date that she signs this Agreement, including without limitation to,
28 any claims relating to or arising out of any aspect of her employment, or the termination of her

1 employment with Defendant, any claims for unpaid compensation, wages, reimbursement for
2 business expenses, penalties, or waiting time penalties under the California Labor Code, the
3 California Business and Professions Code, or any federal, state, county or city law or ordinance
4 regarding wages or compensation; any claims for employee benefits, including without limitation,
5 any claims under the Employee Retirement Income Security Act of 1974; any claims of employment
6 discrimination on any basis, including without limitation, any claims under Title VII of the Civil
7 Rights Act of 1964, the Civil Rights Act of 1866, 42 U.S.C. section 1981, the Civil Rights Act of
8 1991, the Americans with Disabilities Act of 1991, the Family and Medical Leave Act of 1993, the
9 California Government Code, or any other federal, state, county or city law or ordinance regarding
10 employment discrimination. Burns acknowledges and agrees that the foregoing general release is
11 given in exchange for the consideration provided to her under this Agreement by Defendant.
12 However, this release shall not apply to claims for workers' compensation benefits, unemployment
13 insurance benefits, pension or retirement benefits, or any other claim or right that as a matter of law
14 cannot be waived or released.

15 Burns expressly waives any rights or benefits available to her under the provisions of Section
16 1542 of the California Civil Code, which provides as follows:

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

21 Burns understands fully the statutory language of Civil Code section 1542 and, with this
22 understanding, nevertheless elects to, and does, assume all risks for claims that have arisen, whether
23 known or unknown, which she ever had, or hereafter may claim to have, arising on or before the date
24 of her signature to this Agreement, and specifically waives all rights she may have under California
25 Civil Code section 1542.

1 **ARTICLE VIII**

2 **MISCELLANEOUS PROVISIONS**

3 **Section 8.01: Amendments or Modification**

4 The terms and provisions of this Agreement may be amended or modified only by an express
5 written agreement that is signed by all the Parties (or their successors-in-interest) and their counsel.

6 **Section 8.02: Representations and Warranties of Defendant's Records**

7 Defendant represent and warrant that the documents provided to Class Counsel during and
8 after mediation that constituted a material condition to this Settlement are substantially accurate to
9 the best of their knowledge.

10 **Section 8.03: Assignment**

11 None of the rights, commitments, or obligations recognized under this Agreement may be
12 assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express
13 written consent of each other Party and their respective counsel. The representations, warranties,
14 covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under
15 this Agreement and shall not be construed to confer any right or to avail any remedy to any other
16 person.

17 **Section 8.04: Governing Law**

18 This Agreement shall be governed, construed, and interpreted, and the rights of the Parties
19 shall be determined, in accordance with the laws of the State of California, irrespective of the State
20 of California's choice of law principles.

21 **Section 8.05: Entire Agreement**

22 This Agreement, including the Exhibit referred to herein, which form an integral part hereof,
23 contains the entire understanding of the Parties hereto with respect of the subject matter contained
24 herein. In case of any conflict between text contained in Articles I through VI of this Agreement and
25 text contained in the Exhibit to this Agreement, the former (*i.e.*, Articles I through VI) shall be
26 controlling. There are no restrictions, promises, representations, warranties, covenants, or
27 undertakings governing the subject matter of this Agreement other than those expressly set forth or
28 referred to herein. This Agreement supersedes all prior agreements and understandings among the

1 Parties hereto with respect to the settlement of the Action including correspondence between Class
2 Counsel and Defense Counsel and the Memorandum of Understanding signed by the Parties on
3 August 13, 2019. No rights hereunder may be waived except in writing.

4 **Section 8.06: Counterparts and Fax Signatures**

5 This Agreement, and any amendments hereto, may be executed in any number of
6 counterparts and any Party and/or their respective counsel hereto may execute any such counterpart,
7 each of which when executed and delivered shall be deemed to be an original and all of which
8 counterparts taken together shall constitute one instrument. It shall not be necessary in making proof
9 of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.
10 A fax or electronic signature on this Agreement shall be as valid as an original signature.

11 **Section 8.07: Meet and Confer Regarding Disputes**

12 Should any dispute arise among the Parties or their respective counsel regarding the
13 implementation or interpretation of this Agreement, a representative of Class Counsel and a
14 representative of Defense Counsel shall meet and confer in good faith in an attempt to resolve such
15 disputes prior to submitting such disputes to the Court.

16 **Section 8.08: Agreement Binding on Successors**

17 This Agreement shall be binding upon, and inure to the benefit of, the successors in interest
18 of each of the Parties.

19 **Section 8.09: Cooperation in Drafting**

20 The Parties have cooperated in the negotiation and preparation of this Agreement. This
21 Agreement shall not be construed against any Party on the basis that the Party, or the Party's counsel,
22 was the drafter or participated in the drafting of this Agreement.

23 **Section 8.10: Fair Settlement**

24 Representative Plaintiff, Defendant, Class Counsel, and Defense Counsel have arrived at this
25 Agreement through arm's-length negotiation and believe that this Agreement reflects a fair,
26 reasonable, and adequate settlement of the Action considering all relevant factors, current and
27 potential, and believe the Agreement is consistent with public policy and fully complies with
28 applicable provisions of law.

1 **Section 8.11: Headings**

2 The descriptive heading of any section or paragraph of this Agreement is inserted for
3 convenience of reference only and does not constitute a part of this Agreement and shall not be
4 considered in interpreting this Agreement.

5 **Section 8.12: Notice**

6 All notices, demands, or other communications given under this Agreement shall be in
7 writing and deemed to have been duly given as of the third business day after mailing by first-class
8 United States mail, addressed as follows:

9 *To Plaintiff and the Class:*

10 Brian R. Short
11 Brian@shortlegal.com
12 Dorota A. James
13 Dorota@shortlegal.com
14 ShortLegal, APC
15 350 10th Avenue, Suite 1000
16 San Diego, California 92101
17 Telephone: (619) 272-0720
18 Facsimile: (619) 839-3129

19 Kira M. Rubel
20 The Law Office of Kira M. Rubel, PLLC
21 krubel@kmrlawfirm.com
22 3615 Harborview Drive NW, Suite C
23 Gig Harbor, WA 98332
24 Telephone: (253) 251-2955
25 Facsimile: (206) 238-6910

26 *To Defendant:*

27 Yvette Davis
28 HAIGHT BROWN & BONESTEEL LLP
29 2050 Main Street, Ste. 600
30 Irvine, CA 92614T
31 Telephone: (714) 426-4600
32 Facsimile: (714) 754-0826

33 Kathryn D. Terry
34 Lauren Barghols Hanna
35 PHILLIPS MURRAH P.C.
36 101 N. Robinson
37 Corporate Tower, 13th Fl.
38 Oklahoma City, OK 73102
39 Telephone: (405)235-4100
40 Facsimile: (405) 235-4133

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Section 8.13: Enforcement and Continuing Jurisdiction of the Court

To the extent consistent with class action procedure, this Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6. The Court shall retain continuing jurisdiction over this Action and over all Parties and Class Members, to the fullest extent to enforce and effectuate the terms and intent of this Agreement.

Section 8.14: Mutual Full Cooperation

The Parties agree to fully cooperate with each other to accomplish the terms of this Agreement, including but not limited to execution of such documents, and to take such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts contemplated by this Agreement, to effectuate this Agreement and the terms set forth herein. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of the Settlement, the Parties agree to seek the assistance of the Court, after conferral as described above.

Section 8.15: Authorization to Act

Class Counsel warrant and represent that they are authorized by the Representative Plaintiff, and Defense Counsel warrant that they are authorized by Defendant, to take all appropriate action required to effectuate the terms of this Agreement, except for signing the documents, including but not limited to this Agreement, that are required to be signed by the Parties.

Section 8.16: No Reliance on Representations

The Parties have made such investigation of the facts and the law pertaining to the matters described herein and to this Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other Parties, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or with regard to the advisability of making and executing this Agreement, or with respect to any such matters. No representations, warranties, or inducements have been made to any Party concerning this Agreement other than those expressly set forth or referred to herein.

1 **Section 8.17: No Collateral Attack**

2 This Agreement shall not be subject to collateral attack by any Class Member or any
3 recipient of the Class Notice after the Final Effective Date. Such prohibited collateral attacks shall
4 include but not be limited to claims that the Class Member failed for any reason to receive timely
5 notice of the procedure for disputing the calculation of his or her Individual Settlement Payment.

6 **Section 8.18: No Public Comment/Non-Disparagement Clause**

7 Representative Plaintiff and Class Counsel will not make any public disclosure of the
8 settlement terms until after the settlement is preliminarily approved by the Court. Class Counsel will
9 take all steps necessary to ensure Representative Plaintiff is aware of, and will encourage her to
10 adhere to, the restriction against any public disclosure of the settlement terms until after the
11 settlement is preliminarily approved by the Court. None of these prohibitions on public comment
12 shall prohibit Class Counsel’s communications with the Court as necessary to finalize the settlement.

13 Representative Plaintiff and Defendant represent and agree that they have not and will not
14 directly or indirectly disparage, encourage, assist, or induce others to disparage the other Party. For
15 the purposes of this Agreement, “disparage” shall include making or publishing any statement or
16 other content, whether in written, oral, electronic, digital or other form, truthful or otherwise, which
17 may reasonably be expected to adversely affect the business, public image, reputation or goodwill of
18 the other Party, including, without limitation, their operations, employees, directors or related
19 persons, and their past, present or future products or services and the facts relating to Representative
20 Plaintiff’s past employment.

21 **Section 8.19: Interim Stay of Proceedings**

22 The Parties agree to the Court staying and holding all proceedings in the Action, except such
23 proceedings necessary to implement and complete the Settlement, in abeyance pending the
24 Settlement Hearing to be conducted by the Court.

25
26 **EXECUTION BY PARTIES AND COUNSEL**

27
28 Dated ~~September~~ September 21, 2019, 2019

~~Lila Burns~~ Lila Burns
Lila Burns, Representative Plaintiff

1 Dated September __, 2019 _____

2 By:
3 For Defendant Driveline Retail Merchandising, Inc.

4 **APPROVED AS TO FORM AND CONTENT:**

5 

6 Dated September 23, 2019

7 _____
8 Brian R. Short, Esq.
9 Dorota A. James, Esq.
10 ShortLegal, APC
11 Attorneys for Representative Plaintiff

12 Dated September __, 2019 _____

13 Kira M. Rubel, Esq.
14 Attorneys for Representative Plaintiff

15 Dated September __, 2019 _____

16 Yvette Davis, Esq.
17 HAIGHT BROWN & BONESTEEL LLP
18 Attorneys for Defendant

19
20
21 **TABLE OF EXHIBITS**

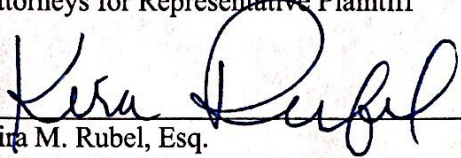
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Dated September __, 2019 _____
By:
For Defendant Driveline Retail Merchandising, Inc.

APPROVED AS TO FORM AND CONTENT:

Dated September __, 2019 _____
Brian R. Short, Esq.
Dorota A. James, Esq.
ShortLegal, APC
Attorneys for Representative Plaintiff

Dated September 22, 2019 _____

Kira M. Rubel, Esq.
Attorneys for Representative Plaintiff

Dated September __, 2019 _____
Yvette Davis, Esq.
HAIGHT BROWN & BONESTEEL LLP
Attorneys for Defendant

TABLE OF EXHIBITS

Exhibit A Notice of Proposed Class Action Settlement

1 Dated September 23, 2019


By: _____
For Defendant Driveline Retail Merchandising, Inc.

3 **APPROVED AS TO FORM AND CONTENT:**

4 Dated September __, 2019

Brian R. Short, Esq.
Dorota A. James, Esq.
ShortLegal, APC
Attorneys for Representative Plaintiff

8 Dated September __, 2019

Kira M. Rubel, Esq.
Attorneys for Representative Plaintiff

11 Dated September __, 2019

Yvette Davis, Esq.
HAIGHT BROWN & BONESTEEL LLP
Attorneys for Defendant

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Dated September __, 2019 _____

By:
For Defendant Driveline Retail Merchandising, Inc.

APPROVED AS TO FORM AND CONTENT:

Dated September __, 2019 _____

Brian R. Short, Esq.
Dorota A. James, Esq.
ShortLegal, APC
Attorneys for Representative Plaintiff

Dated September __, 2019 _____

Kira M. Rubel, Esq.
Attorneys for Representative Plaintiff



Dated September 23, 2019

Yvette Davis, Esq.
HAIGHT BROWN & BONESTEEL LLP
Attorneys for Defendant

TABLE OF EXHIBITS

Exhibit A Notice of Proposed Class Action Settlement

Exhibit A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

LILA BURNS, Individually and on behalf of
all similarly-situated employees of
Defendants in the State of California,

Plaintiffs,

v.

DRIVELINE RETAIL MERCHANDISING,
INC., a Corporation, and DOES 1 through
50, inclusive,

Defendants.

CASE NO.: 34-2018-00246691

NOTICE OF PENDENCY OF PUTATIVE
CLASS ACTION, PROPOSED
SETTLEMENT AND HEARING DATE
FOR COURT APPROVAL

Judge: Hon. David I. Brown
Dept.: 53
Action Filed: December 17, 2018
Trial Date: Not set

TO: All current and former employees who were employed by Defendant in the State of California as “merchandisers” jobs with similar titles at any time between August 28, 2015 through [the date the Court enters an order granting preliminary approval or 30 days after the motion for preliminary approval is filed, whichever date is earlier.]

If You Qualify For Inclusion in The Settlement Class And You Wish To Participate In The Settlement And Receive A Settlement Payment, You Are Not Required To Take Any Action.

Please read this notice carefully. If you choose not to participate and would like to be excluded from the settlement or if you choose to object to the terms of the settlement, this notice requires you to file a request for exclusion or notice of objection on or before <<30 days after notice mailed>>, 2019. YOU ARE NOT BEING SUED. If you choose to be excluded from the settlement, you will not receive any settlement funds.

Pursuant to the order of the Sacramento County Superior Court, entered <<preliminary approval date>>, YOU ARE HEREBY NOTIFIED AS FOLLOWS: A proposed settlement has been reached between the Parties in the lawsuit identified in the caption above, pending in the Sacramento County Superior Court, on behalf of the Settlement Class described above, which has been provisionally certified for purposes of this settlement. Your estimated individual settlement amount is <<_____>>. This is only an estimate. The final amount may change and is subject to final approval by the Court.

You have received this notice because records indicate you qualify as a member of the Settlement Class. This notice is designed to advise you of how you can participate in the settlement, how you can object to the settlement, and how you can exclude yourself from the settlement.

I. BACKGROUND OF THE CASE

On December 17, 2018, Lila Burns filed a class action complaint, amended by the First Amended Complaint filed on January 17, 2019, (“Complaint”) in the Sacramento County Superior Court entitled *Lila Burns v. Driveline Retail Merchandising, Inc.*, Case No. 34-2018-00246691, on behalf of herself and a proposed class consisting of allegedly similarly situated individuals currently or formerly employed by *Driveline Retail Merchandising, Inc* in which she asserted claims for: (1) Failure to Pay Minimum and Regular Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4)

Failure to Authorize and Permit Rest Periods (5) Failure to Indemnify/Reimburse Expenses; (6) Failure to Provide and Maintain Accurate Itemized Wage Statements; (7) Failure to Pay Wages Due Upon Separation of Employment; (8) Failure to Provide Sick Leave; (9) Unfair Business Practices (Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*); and (9) PAGA Claim for Civil Penalties (the “Litigation”).

Defendant contends the claims in the lawsuit are without merit, and disputes all claims for damages, penalties, and other relief. No court has ruled on the merits of the lawsuit.

Lila Burns has vigorously prosecuted this case, and Defendant has vigorously defended it. The Parties have investigated the facts to assess the relative merits of Driveline’s class action and representative claims and Defendant’s defenses to those claims. Ms. Burns’s attorneys (“Class Counsel”) reviewed extensive documents and information produced by Defendant and conducted extensive analysis of the potential damages and claims.

The Parties believe that further proceedings in this case, including a trial and probable appeals, would be very expensive and protracted. No one can confidently predict how the various legal questions at issue, including liability, and the amount of damages or penalties, if any, would ultimately be resolved. Therefore, upon careful consideration of all of the facts and circumstances of this case, the Parties believe that the proposed settlement is fair, reasonable and adequate.

The Parties have entered into a Class Action Settlement Agreement which has been granted preliminary approval by the Court. The Agreement provisionally certifies the Settlement Class for purposes of this settlement.

II. SUMMARY OF THE PROPOSED SETTLEMENT

Driveline and Class Counsel support this settlement. Among the reasons given for support include the risk that class certification could be denied, the inherent risk of trial on the merits, and the delays associated with litigation, including appeals.

The settlement provides for the following:

A. Gross Fund Value Amount: Defendant will pay \$1,280,000.00 to settle the Litigation. The \$1,280,000.00 Gross Fund Value Amount shall consist of the following elements: (a) Class Counsel’s Attorney’s Fees; (b) Litigation Expenses; (c) Class Representative Service Award; (d) Settlement Administration Expenses; (e) PAGA Payment to the California Labor and Workforce Development Agency; and (f) Net Fund Value Amount. Each of these components is described below.

B. Class Counsel’s Attorney’s Fees: Class Counsel anticipates requesting an attorney fee award of not more than one-third of the Gross Fund Value Amount (\$426,666.67), subject to court approval, which shall be paid from the Gross Fund Value Amount.

C. Litigation Costs: Class Counsel anticipates requesting an award of no more than \$20,000.00 subject to court approval, as reimbursement for litigation costs, which shall be paid from the Gross Fund Value Amount.

D. Class Representative Service Award: Lila Burns anticipates requesting a service award of no more than \$7,500.00 subject to court approval, for her role serving as Class Representative, which shall be paid from the Gross Fund Value Amount.

E. Private Attorneys General Act (PAGA) Allocation: The Parties have designated \$15,000.00 of the Gross Fund Value Amount as representing the recovery of civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004. Of this amount, 75% (\$11,250.00) will be paid to the California Labor and Workforce Development Agency (LWDA), and the remaining 25% (\$3,750.00) shall become part of the Net Fund Value Amount available for distribution to members of the Class.

F. **Settlement Administration Expenses:** The Parties have selected, and the court has approved, <<Settlement Administrator>> to administer the settlement. Upon final approval, Class Counsel will request that the court approve a payment to <<Settlement Administrator>> to cover its fees and costs associated with giving notice to the Class, administering and disbursing the Net Fund Value Amount, and other activities required to administer the settlement. The Parties estimate that the payment to <<Settlement Administrator>> will be approximately \$ _____, which shall be paid from the Gross Fund Value Amount.

G. **Net Fund Value Amount:** Net Fund Value Amount consists of all funds remaining from the Gross Fund Value Amount after subtraction of court-approved Class Counsel's Attorney's Fees, Litigation Costs, Class Representative Service Award, PAGA Payment to the LWDA, and Settlement Administration Expenses. The Net Fund Value Amount will be distributed to the Settlement Class as described below.

H. **Class Defined:** "Class" shall mean "All current and former employees who were employed by Defendant in the State of California as "merchandisers" or jobs with similar titles at any time between August 28, 2015 through the date the court enters an order granting preliminary approval or 30 days after the motion for preliminary approval is filed, whichever date is earlier.

I. **Settlement Class Defined:** "Settlement Class" – means all those persons who are members of the Class and who have not properly and timely excluded themselves ("opted out") from the Litigation.

J. **Settlement Period Defined:** "Settlement Period" shall mean August 28, 2015 through [the date the court enters an order granting preliminary approval or 30 days after the motion for preliminary approval is filed, whichever date is earlier.]

K. **Allocation of Net Fund Value Amount Among Settlement Class Members:** Each Settlement Class Member shall be entitled to a portion of the Net Fund Value Amount which will be allocated proportionally based on the number of gross wages earned by each Settlement Class Member during the Settlement Period in their positions as merchandisers (or otherwise similar job duties and/or title) in proportion to the total aggregated gross wages earned by all the Settlement Class Members during the Settlement Period.

L. **Tax Treatment of Payments to Settlement Class Members:** The Settlement Payments are payments for all claims asserted in the Complaint or that reasonably could have been asserted based on the claims and allegations contained in the Complaint. Of the payments to individual Settlement Class Members, 33.3% shall be designated as wages subject to payroll withholding to be reported on IRS Form W2s where required by law, and the remaining 66.6% shall be designated as interest and penalties to be reported on IRS Form 1099s where required by law. Defendant shall be responsible for paying the employer's share of payroll taxes on any amounts allocated as wages. Each Settlement Class Member shall be responsible for remitting to state and/or federal taxing authorities any applicable taxes which may be owed on the portion of his or her Settlement Payment or Class Representative Service Award. The Settlement Administrator shall report all required information to the appropriate taxing authorities regarding all payments made pursuant to this Agreement.

M. **An Internal Review of Corporate Payroll Policy.** Defendant has agreed to undertake an analysis of internal payroll policy to ensure compliance with all applicable California laws.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER?

Your interests as a Settlement Class Member are represented by Lila Burns and Class Counsel. Unless you opt out of the Settlement Class, you are a part of the Settlement Class, you will receive your settlement share, be bound by the terms of the settlement agreement and any final judgment that may be entered by the court, and you will be deemed to have released certain claims against Defendant as described below. Class Counsel will be seeking court approval for payment for its fees and litigation costs from the Gross Fund Value Amount. Accordingly, as a member of the Settlement Class you will not be individually responsible for the payment of attorney's fees or reimbursement of litigation

expenses unless you retain your own counsel, in which event you will be responsible for your own attorney's fees and costs.

A. Participating in the Settlement

If You Qualify For Inclusion In The Settlement Class And You Wish To Participate In The Settlement, You Are Not Required To Take Any Action. If the court grants final approval to the settlement and you qualify as a Settlement Class Member, you will receive a Settlement Payment based on the calculations described above. Your estimated individual settlement amount is << >>. This is only an estimate. The final amount may change and is subject to final approval by the Court. You will also be bound by the terms of the settlement and will release Defendant and all related, former, successor, or affiliated entities from any and all claims that you may have based on the allegations in the lawsuit.

B. Objecting to the Settlement

If you would like to challenge any of the settlement terms you can object to the settlement before final approval. However, if the Court rejects your objection you will still be bound by the terms of the settlement unless you seek exclusion, as described below. To object, you must file a written objection and a notice of intention to appear with the Clerk of the Sacramento County Superior Court, Gordon D. Schaber Sacramento County Courthouse, 720 9th Street, Sacramento, CA 95814, by <<30 days after notice mailing>>, 2019, and serve copies to the following:

CLASS COUNSEL:

Brian R. Short
Dorota A. James
SHORTLEGAL, APC
350 10th Avenue, Ste. 1000
San Diego, CA 92101
Tel: (619) 272-0720 / Fax: (619) 839-3129

COUNSEL FOR DEFENDANT:

Yvette Davis
HAIGHT BROWN & BONESTEEL LLP
2050 Main Street, Ste. 600
Irvine, CA 92614T
Tel: (714) 426-4600 / Fax: (714) 754-0826

Kira M. Rubel
3615 Harborview Drive NW, Suite C
Gig Harbor, WA 98332
Tel: (253) 251-2955 / Fax: (206) 238-6910

Kathryn D. Terry
Lauren Barghols Hanna
PHILLIPS MURRAH P.C.
101 N. Robinson
Corporate Tower, 13th Fl.
Oklahoma City, OK 73102
Telephone: (405)235-4100
Facsimile: (405) 235-4133

Any written objections shall state each specific reason in support of your objection and any legal support for each objection. Your objection must also state your full name, address, telephone number, and the dates of your employment as a qualified member of the Settlement Class defined above. To be valid and effective, any objection to approval of the settlement must be filed with the Clerk of the Court and served upon and received by each of the above-listed attorneys no later than <<30 days after notice mailed>>, 2019. **DO NOT TELEPHONE THE COURT.**

If you choose to file an objection to the terms of this settlement, you may enter an appearance *in propria persona* (meaning you choose to represent yourself) or through your own attorney. To do so, you must file an entry of appearance with the Clerk of the Sacramento County Superior Court and deliver copies to each of the attorneys listed above. Such entry of appearance must be filed with the court and delivered to the above attorneys no later than <<30 days after notice mailed>>, 2019. You will then continue as a settlement class member either *in propria persona* or with representation by your own attorney and will be solely responsible for the fees and costs of your attorney. The final fairness hearing at which the court will adjudicate any objections and be asked to approve the settlement will be

on _____, 2019 at _____ a.m. in Department 53 of the Sacramento Superior Court, or such other, later date as the court may authorize.

C. Excluding Yourself from the Settlement

If you qualify for inclusion in the Class but you do not wish to participate in the settlement, you may exclude yourself (i.e., “opt-out”) by submitting a letter requesting exclusion. Your letter must be signed by you personally and must clearly state: (1) your name, address, telephone number, the last four digits of your social security number, and the dates of your employment; and (2) your wish to be excluded from the Settlement Class. **Your letter requesting exclusion must be hand-delivered or postmarked on or before <<30 days after notice mailed>>, 2019, and mailed to:**

<<Name, Address and Telephone Number of Settlement Administrator>>

Any person who timely submits a letter following the procedures above to request exclusion from the Class shall, upon receipt, no longer be a member of the Settlement Class, shall be barred from participating in any portion of the settlement, may not object to the settlement, and shall receive no payment or benefits from the settlement. Any such person will not have been deemed to have released any claims he or she may have against Defendant by and through this litigation.

IV. EFFECT OF THE SETTLEMENT

A. Released Rights and Claims

Upon the court’s final approval of the class settlement and entry of Final Order and Judgment, each member of the Final Settlement Class shall be deemed to have released and discharged each Defendant and all of its former and present parents, and affiliates, and their officers, directors, employees, partners, shareholders, attorneys, and agents, and any other successors, assigns or legal representatives from any and all claims alleged in the operative complaint or that could have been alleged based on the facts therein, including claims for (a) unpaid regular and overtime wages, including failure to pay wages for all hours worked, (b) failure to provide rest breaks, (c) failure to provide meal periods, (d) failure to timely pay wages pursuant to Labor Code §§ 201 - 204, (e) failure to provide accurate itemized wage statements, (f) failure to reimburse business expenses, (g) failure to provide paid sick leave, (h) unfair business practices, and (i) all other civil and statutory penalties, including those recoverable under the Private Attorneys General Act, Labor Code § 2698 et seq. based on the facts or claims alleged in the Complaint in the action including but not limited to, statutory, constitutional, contractual damages, unpaid costs, penalties, punitive damages, interest, attorneys' fees, litigation costs, restitution, and equitable relief in their positions as Settlement Class Members during the Class Period.

B. Payment to Settlement Class Members

The distribution of the Settlement Fund will be paid approximately 30 calendar days after final court approval of this Settlement, and all appeal rights, if any, are exhausted.

V. FINAL SETTLEMENT APPROVAL HEARING

The court will hold a hearing in Department 53 of the Sacramento County Superior Court, Gordon D. Schaber Sacramento County Courthouse, 720 9th Street, Sacramento, CA 95814 on << >>, 2019, at _____ a.m./p.m., to determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for Attorney’s Fees and Litigation Costs, and the Class Representative Service Award to be paid to the Class Representative. Class Counsel's application for attorney’s fees and reimbursement of expenses will be on file with the Court no later than 10 days before this hearing and will be available for review after that date.

The hearing may be continued without further notice to the settlement class. It is not necessary for you to appear at this hearing unless you have timely filed an objection.

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you are referred to the detailed Class Action Settlement Agreement, which is available via the internet at [\[Claims Administrator Website\]](#) and which is also on file with the Clerk of the Superior Court. The pleadings and other records in this litigation including the Class Action Settlement Agreement, are also available via the internet at [\[Claims Administrator Website\]](#) or may be examined at any time during regular business hours at the Office of the Clerk of the Sacramento County Superior Court, Gordon D. Schaber Sacramento County Courthouse, 720 9th Street, Sacramento, CA 95814 or by contacting Class Counsel.

**DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR
INFORMATION REGARDING THIS SETTLEMENT.**

BY ORDER OF THE SUPERIOR COURT

Exhibit 2

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

LILA BURNS, Individually and on behalf of
all similarly-situated employees of
Defendants in the State of California,

Plaintiffs,

v.

DRIVELINE RETAIL MERCHANDISING,
INC., a Corporation, and DOES 1 through
50, inclusive,

Defendants.

CASE NO.: 34-2018-00246691

NOTICE OF PENDENCY OF PUTATIVE
CLASS ACTION, PROPOSED
SETTLEMENT AND HEARING DATE
FOR COURT APPROVAL

Judge: Hon. David I. Brown
Dept.: 53
Action Filed: December 17, 2018
Trial Date: Not set

TO: All current and former employees who were employed by Defendant in the State of California as “merchandisers” jobs with similar titles at any time between August 28, 2015 through [the date the Court enters an order granting preliminary approval or 30 days after the motion for preliminary approval is filed, whichever date is earlier.]

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Please read this notice carefully. If you choose not to participate and would like to be excluded from the settlement or if you choose to object to the terms of the settlement, this notice requires you to file a request for exclusion or notice of objection on or before <<30 days after notice mailed>>, 2019. YOU ARE NOT BEING SUED. If you choose to be excluded from the settlement, you will not receive any settlement funds.

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Failure to Authorize and Permit Rest Periods (5) Failure to Indemnify/Reimburse Expenses; (6) Failure to Provide and Maintain Accurate Itemized Wage Statements; (7) Failure to Pay Wages Due Upon Separation of Employment; (8) Failure to Provide Sick Leave; (9) Unfair Business Practices (Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*); and (9) PAGA Claim for Civil Penalties (the “Litigation”).

Defendant contends the claims in the lawsuit are without merit, and disputes all claims for damages, penalties, and other relief. No court has ruled on the merits of the lawsuit.

Lila Burns has vigorously prosecuted this case, and Defendant has vigorously defended it. The Parties have investigated the facts to assess the relative merits of Driveline’s class action and representative claims and Defendant’s defenses to those claims. Ms. Burns’s attorneys (“Class Counsel”) reviewed extensive documents and information produced by Defendant and conducted extensive analysis of the potential damages and claims.

The Parties believe that further proceedings in this case, including a trial and probable appeals, would be very expensive and protracted. No one can confidently predict how the various legal questions at issue, including liability, and the amount of damages or penalties, if any, would ultimately be resolved. Therefore, upon careful consideration of all of the facts and circumstances of this case, the Parties believe that the proposed settlement is fair, reasonable and adequate.

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Driveline and Class Counsel support this settlement. Among the reasons given for support include the risk that class certification could be denied, the inherent risk of trial on the merits, and the delays associated with litigation, including appeals.

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D. Class Representative Service Award: Lila Burns anticipates requesting a service award of no more than \$7,500.00 subject to court approval, for her role serving as Class Representative, which shall be paid from the Gross Fund Value Amount.

E. Private Attorneys General Act (PAGA) Allocation: The Parties have designated \$15,000.00 of the Gross Fund Value Amount as representing the recovery of civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004. Of this amount, 75% (\$11,250.00) will be paid to the California Labor and Workforce Development Agency (LWDA), and the remaining 25% (\$3,750.00) shall become part of the Net Fund Value Amount available for distribution to members of the Class.

F. **Settlement Administration Expenses:** The Parties have selected, and the court has approved, <<Settlement Administrator>> to administer the settlement. Upon final approval, Class Counsel will request that the court approve a payment to <<Settlement Administrator>> to cover its fees and costs associated with giving notice to the Class, administering and disbursing the Net Fund Value Amount, and other activities required to administer the settlement. The Parties estimate that the payment to <<Settlement Administrator>> will be approximately \$ _____, which shall be paid from the Gross Fund Value Amount.

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I. **Settlement Class Defined:** "Settlement Class" – means all those persons who are members of the Class and who have not properly and timely excluded themselves ("opted out") from the Litigation.

J. **Settlement Period Defined:** "Settlement Period" shall mean August 28, 2015 through [the date the court enters an order granting preliminary approval or 30 days after the motion for preliminary approval is filed, whichever date is earlier.]

K. **Allocation of Net Fund Value Amount Among Settlement Class Members:** Each Settlement Class Member shall be entitled to a portion of the Net Fund Value Amount which will be allocated proportionally based on the number of gross wages earned by each Settlement Class Member during the Settlement Period in their positions as merchandisers (or otherwise similar job duties and/or title) in proportion to the total aggregated gross wages earned by all the Settlement Class Members during the Settlement Period.

L. **Tax Treatment of Payments to Settlement Class Members:** The Settlement Payments are payments for all claims asserted in the Complaint or that reasonably could have been asserted based on the claims and allegations contained in the Complaint. Of the payments to individual Settlement Class Members, 33.3% shall be designated as wages subject to payroll withholding to be reported on IRS Form W2s where required by law, and the remaining 66.6% shall be designated as interest and penalties to be reported on IRS Form 1099s where required by law. Defendant shall be responsible for paying the employer's share of payroll taxes on any amounts allocated as wages. Each Settlement Class Member shall be responsible for remitting to state and/or federal taxing authorities any applicable taxes which may be owed on the portion of his or her Settlement Payment or Class Representative Service Award. The Settlement Administrator shall report all required information to the appropriate taxing authorities regarding all payments made pursuant to this Agreement.

M. **An Internal Review of Corporate Payroll Policy.** Defendant has agreed to undertake an analysis of internal payroll policy to ensure compliance with all applicable California laws.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER?

Your interests as a Settlement Class Member are represented by Lila Burns and Class Counsel. Unless you opt out of the Settlement Class, you are a part of the Settlement Class, you will receive your settlement share, be bound by the terms of the settlement agreement and any final judgment that may be entered by the court, and you will be deemed to have released certain claims against Defendant as described below. Class Counsel will be seeking court approval for payment for its fees and litigation costs from the Gross Fund Value Amount. Accordingly, as a member of the Settlement Class you will not be individually responsible for the payment of attorney's fees or reimbursement of litigation

expenses unless you retain your own counsel, in which event you will be responsible for your own attorney's fees and costs.

A. Participating in the Settlement

If You Qualify For Inclusion In The Settlement Class And You Wish To Participate In The Settlement, You Are Not Required To Take Any Action. If the court grants final approval to the settlement and you qualify as a Settlement Class Member, you will receive a Settlement Payment based on the calculations described above. Your estimated individual settlement amount is << >>. This is only an estimate. The final amount may change and is subject to final approval by the Court. You will also be bound by the terms of the settlement and will release Defendant and all related, former, successor, or affiliated entities from any and all claims that you may have based on the allegations in the lawsuit.

B. Objecting to the Settlement

If you would like to challenge any of the settlement terms you can object to the settlement before final approval. However, if the Court rejects your objection you will still be bound by the terms of the settlement unless you seek exclusion, as described below. To object, you must file a written objection and a notice of intention to appear with the Clerk of the Sacramento County Superior Court, Gordon D. Schaber Sacramento County Courthouse, 720 9th Street, Sacramento, CA 95814, by <<30 days after notice mailing>>, 2019, and serve copies to the following:

CLASS COUNSEL:

Brian R. Short
Dorota A. James
SHORTLEGAL, APC
350 10th Avenue, Ste. 1000
San Diego, CA 92101
Tel: (619) 272-0720 / Fax: (619) 839-3129

COUNSEL FOR DEFENDANT:

Yvette Davis
HAIGHT BROWN & BONESTEEL LLP
2050 Main Street, Ste. 600
Irvine, CA 92614T
Tel: (714) 426-4600 / Fax: (714) 754-0826

Kira M. Rubel
3615 Harborview Drive NW, Suite C
Gig Harbor, WA 98332
Tel: (253) 251-2955 / Fax: (206) 238-6910

Kathryn D. Terry
Lauren Barghols Hanna
PHILLIPS MURRAH P.C.
101 N. Robinson
Corporate Tower, 13th Fl.
Oklahoma City, OK 73102
Telephone: (405)235-4100
Facsimile: (405) 235-4133

Any written objections shall state each specific reason in support of your objection and any legal support for each objection. Your objection must also state your full name, address, telephone number, and the dates of your employment as a qualified member of the Settlement Class defined above. To be valid and effective, any objection to approval of the settlement must be filed with the Clerk of the Court and served upon and received by each of the above-listed attorneys no later than <<30 days after notice mailed>>, 2019. **DO NOT TELEPHONE THE COURT.**

If you choose to file an objection to the terms of this settlement, you may enter an appearance *in propria persona* (meaning you choose to represent yourself) or through your own attorney. To do so, you must file an entry of appearance with the Clerk of the Sacramento County Superior Court and deliver copies to each of the attorneys listed above. Such entry of appearance must be filed with the court and delivered to the above attorneys no later than <<30 days after notice mailed>>, 2019. You will then continue as a settlement class member either *in propria persona* or with representation by your own attorney and will be solely responsible for the fees and costs of your attorney. The final fairness hearing at which the court will adjudicate any objections and be asked to approve the settlement will be

on _____, 2019 at _____ a.m. in Department 53 of the Sacramento Superior Court, or such other, later date as the court may authorize.

C. Excluding Yourself from the Settlement

If you qualify for inclusion in the Class but you do not wish to participate in the settlement, you may exclude yourself (i.e., “opt-out”) by submitting a letter requesting exclusion. Your letter must be signed by you personally and must clearly state: (1) your name, address, telephone number, the last four digits of your social security number, and the dates of your employment; and (2) your wish to be excluded from the Settlement Class. **Your letter requesting exclusion must be hand-delivered or postmarked on or before <<30 days after notice mailed>>, 2019, and mailed to:**

<<Name, Address and Telephone Number of Settlement Administrator>>

Any person who timely submits a letter following the procedures above to request exclusion from the Class shall, upon receipt, no longer be a member of the Settlement Class, shall be barred from participating in any portion of the settlement, may not object to the settlement, and shall receive no payment or benefits from the settlement. Any such person will not have been deemed to have released any claims he or she may have against Defendant by and through this litigation.

IV. EFFECT OF THE SETTLEMENT

A. Released Rights and Claims

Upon the court’s final approval of the class settlement and entry of Final Order and Judgment, each member of the Final Settlement Class shall be deemed to have released and discharged each Defendant and all of its former and present parents, and affiliates, and their officers, directors, employees, partners, shareholders, attorneys, and agents, and any other successors, assigns or legal representatives from any and all claims alleged in the operative complaint or that could have been alleged based on the facts therein, including claims for (a) unpaid regular and overtime wages, including failure to pay wages for all hours worked, (b) failure to provide rest breaks, (c) failure to provide meal periods, (d) failure to timely pay wages pursuant to Labor Code §§ 201 - 204, (e) failure to provide accurate itemized wage statements, (f) failure to reimburse business expenses, (g) failure to provide paid sick leave, (h) unfair business practices, and (i) all other civil and statutory penalties, including those recoverable under the Private Attorneys General Act, Labor Code § 2698 et seq. based on the facts or claims alleged in the Complaint in the action including but not limited to, statutory, constitutional, contractual damages, unpaid costs, penalties, punitive damages, interest, attorneys' fees, litigation costs, restitution, and equitable relief in their positions as Settlement Class Members during the Class Period.

B. Payment to Settlement Class Members

The distribution of the Settlement Fund will be paid approximately 30 calendar days after final court approval of this Settlement, and all appeal rights, if any, are exhausted.

V. FINAL SETTLEMENT APPROVAL HEARING

The court will hold a hearing in Department 53 of the Sacramento County Superior Court, Gordon D. Schaber Sacramento County Courthouse, 720 9th Street, Sacramento, CA 95814 on << >>, 2019, at _____ a.m./p.m., to determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for Attorney’s Fees and Litigation Costs, and the Class Representative Service Award to be paid to the Class Representative. Class Counsel's application for attorney’s fees and reimbursement of expenses will be on file with the Court no later than 10 days before this hearing and will be available for review after that date.

The hearing may be continued without further notice to the settlement class. It is not necessary for you to appear at this hearing unless you have timely filed an objection.

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you are referred to the detailed Class Action Settlement Agreement, which is available via the internet at [\[Claims Administrator Website\]](#) and which is also on file with the Clerk of the Superior Court. The pleadings and other records in this litigation including the Class Action Settlement Agreement, are also available via the internet at [\[Claims Administrator Website\]](#) or may be examined at any time during regular business hours at the Office of the Clerk of the Sacramento County Superior Court, Gordon D. Schaber Sacramento County Courthouse, 720 9th Street, Sacramento, CA 95814 or by contacting Class Counsel.

**DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR
INFORMATION REGARDING THIS SETTLEMENT.**

BY ORDER OF THE SUPERIOR COURT