

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 hercof,
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~~ Sep 21, 2019, 2019

~~_____
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
7 Dated September 23, 2019 _____

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

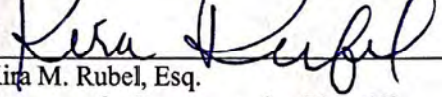
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21 **TABLE OF EXHIBITS**

22 Exhibit A Notice of Proposed Class Action Settlement
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1 Dated September __, 2019 _____
2 By:
3 For Defendant Driveline Retail Merchandising, Inc.

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

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

10 Dated September 22, 2019 
11 Kira M. Rubel, Esq.
12 Attorneys for Representative Plaintiff

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

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1 Dated September 23, 2019


By: _____
For Defendant Driveline Retail Merchandising, Inc.

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

4 Dated September __, 2019

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

8 Dated September __, 2019

9 _____
10 Kira M. Rubel, Esq.
11 Attorneys for Representative Plaintiff

11 Dated September __, 2019

12 _____
13 Yvette Davis, Esq.
14 HAIGHT BROWN & BONESTEEL LLP
15 Attorneys for Defendant

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 __, 2019 _____
Kira M. Rubel, Esq.
Attorneys for Representative Plaintiff

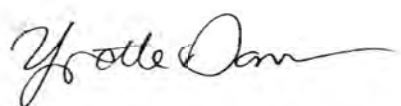
Dated September 23, 2019 
Yvette Davis, Esq.
HAIGHT BROWN & BONESTEEL LLP
Attorneys for Defendant

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