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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **COUNTY OF LOS ANGELES**

18 JOSE PENA, individually, and on behalf of
19 all others similarly situated,

20 Plaintiff,

21 vs.

22 BUNZL UTAH, LLC, a limited liability
23 company; and DOES 1 through 10, inclusive,

24 Defendants.
25
26
27
28

Case No.: 20STCV48809

[Hon. Judge Daniel J. Buckley]

**JOINT STIPULATION OF CLASS ACTION
AND PAGA SETTLEMENT**

Complaint filed: December 18, 2020
Trial date: Not set

JOINT STIPULATION OF CLASS ACTION SETTLEMENT

This Joint Stipulation of Class Action and PAGA Settlement (“Joint Stipulation of Settlement” or “Settlement” or “Agreement”) is made and entered into by and between Plaintiff JOSE PENA, individually, and on behalf of all others similarly situated, (“Plaintiff” or “Class Representative”), and Defendant BUNZL UTAH, LLC (“Defendant”). Plaintiff and Defendant are sometimes referred to individually as a “Party” or collectively referred to herein as “the Parties.”

THE PARTIES STIPULATE AND AGREE as follows:

DEFINITIONS

1. For purposes of this Settlement, “Complaint” refers to the First Amended Class Action and Representative Complaint filed in the Action.

2. For purposes of this Settlement, the “Action” refers to the above-captioned action entitled *Pena v. Bunzl Utah, LLC, et al.*, Los Angeles Superior Court Case No. 20STCV48809.

3. For purposes of this Settlement, the “Class Period” is December 18, 2016 through the earlier of the date the court enters an order granting preliminary approval of the Agreement, or February 7, 2022.

4. For purposes of this Settlement, the “Class” or “Class Members” consist of: All non-exempt or hourly-paid employees of Defendant who worked for Defendant in California during the Class Period.

5. For purposes of this Settlement, “Class Counsel” means MOON & YANG, APC.

6. For purposes of this Settlement, “Covered Workweeks” means the number of weeks a Class Member worked at Defendant’s locations in California during the Class Period. Defendant estimates there were approximately 18,300 Covered Workweeks as of September 16, 2021.

7. For purposes of this Settlement, “Response Deadline” means the date sixty (60) days after the Settlement Administrator initially mails the Notice to Class and PAGA Members (“Notice”) and the last date on which Class Members may submit a workweek dispute, request for exclusion, or written objection to the Settlement. In the case of a re-mailed Notice, the Response Deadline will be the later of 60 calendar days after initial mailing or 14 calendar days from re-mailing. The Response Deadline may be extended only as expressly described herein.

8. For purposes of the Settlement, “Defendant’s Counsel” means OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

1 9. For purposes of the Settlement, “Effective Date” means the date the court enters its order
2 granting final approval of the Settlement and judgment thereon, if there are no objections to the
3 Settlement. If there are any objections to the Settlement, the Effective Date shall be extended to 75
4 days after the date of entry of the Final Approval Order. If there are any objections to the settlement
5 and an appeal of the judgment and/or final approval order is filed, the Effective Date shall be 20 days
6 following the final resolution of any such appeal with no right to pursue further remedies or relief. In
7 this regard, it is the intention of the Parties that the Settlement shall not become effective until the Court’s
8 order approving the Settlement is completely final, and there is no further recourse by an appellant or
9 objector who seeks to contest the Settlement.

10 10. For purposes of this Settlement, “Final Approval Order” means the court’s order granting final
11 approval of this Settlement and entry of the Judgment thereon.

12 11. For purposes of this Settlement, “PAGA” means the Labor Code Private Attorneys General
13 Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*).

14 12. For purposes of this Settlement, “PAGA Allocation” means the portion of the Gross
15 Settlement Amount that the Parties have agreed to allocate to resolution of the Released PAGA Claims.
16 The Parties have agreed that the PAGA Allocation will be \$70,000 from the Gross Settlement Amount.
17 Pursuant to PAGA, Seventy-Five Percent (75%), or \$52,500, of the PAGA Allocation will be paid to the
18 Labor and Workforce Development Agency (“LWDA”) (“PAGA Penalty Payment”), and Twenty-Five
19 Percent (25%), or \$17,500, of the PAGA Allocation will be paid to the PAGA Employees (“PAGA
20 Settlement Payment”).

21 13. For purposes of this Settlement, “PAGA Period” means the period from December 16, 2019
22 through the earlier of the date the court enters an order granting preliminary approval of the Agreement, or
23 February 7, 2022.

24 14. For purposes of this Settlement, “PAGA Employee” means all non-exempt or hourly-paid
25 employees of Defendant who worked in California during the PAGA Period. It is stipulated by the Parties
26 that, for purposes of this Settlement only, all PAGA Employees are “aggrieved employees” as defined
27 pursuant to PAGA.

28 15. For purposes of this Settlement, “PAGA Letter” means the written notice dated December 16,

1 2020 that Plaintiff submitted to the LWDA alleging various wage-and-hour violations under the Labor
2 Code, to exhaust his administrative remedies as required by PAGA.

3 16. For purposes of this Settlement, “PAGA Pay Periods” means the number of pay periods each
4 PAGA Employee worked during the PAGA Period.

5 17. For purposes of this Settlement, “PAGA Representative” means Plaintiff.

6 18. For purposes of this Settlement, “Released Claims” means any and all claims for wages,
7 damages, unpaid costs, penalties, liquidated damages, benefits, fringes, interest, attorney fees, litigation
8 costs, restitution, or equitable relief, against any of the Released Parties, that were pled or could have been
9 pled based on the factual allegations, circumstances, and/or primary rights set forth in the Action and/or
10 PAGA Letter, including all claims under the California Labor Code, Industrial Welfare Commission Wage
11 Orders and applicable law for: failure to pay wages (including overtime wages, regular wages, minimum
12 wages, and rounding), failure to provide compliant meal and/or rest periods or proper premiums in lieu
13 thereof, failure to pay wages timely during employment and upon termination, failure to maintain payroll
14 records, failure to provide legally-compliant wage statements, all claims for violation of California
15 Business and Professions Code §§ 17200, et seq., arising from the above-referenced claims and those
16 claims in the Actions; and all claims for penalties under California Labor Code § 2698, et. seq. For
17 purposes of this Settlement, “Released PAGA Claims” means all Released Claims arising under PAGA
18 during the PAGA Period.

19 19. For purposes of this Settlement, “Released Parties” means Defendant and its past, present
20 and/or future, direct and/or indirect, officers, directors, members, employees, agents, representatives,
21 attorneys, insurers, investors, parent companies, subsidiaries, affiliates, and any individual or entity that
22 could be jointly liable with Defendant.

23 20. For purposes of this Settlement, the “Settlement Class” or “Settlement Class Members” are
24 those Class Members who do not submit timely and compliant exclusion requests to the Settlement
25 Administrator.

26 21. For purposes of this Settlement, “Settlement Payments” means all of the payments to
27 Settlement Class Members (the “Settlement Class Payments”) and all of the payments to PAGA
28 Employees (the “PAGA Settlement Payments”).

STIPULATED BACKGROUND

22. On December 16, 2020, Plaintiff submitted the PAGA Letter to the LWDA, to satisfy his administrative exhaustion requirement under PAGA.

23. On December 18, 2020, Plaintiff initiated the Action. The operative complaint is the First Amended Complaint that alleges Defendant, among other things: (1) failed to pay minimum and straight time wages (due in part to alleged rounding violations); (2) failed to pay overtime wages; (3) failed to provide meal periods; (4) failed to authorize and permit rest periods; (5) failed to timely pay all wages to terminated employees; (6) failed to maintain payroll records and furnish accurate itemized wage statements; (7) engaged in unfair business practices, in violation of California Business and Professions Code section 17200 et seq.; and (8) violated provisions of the Labor Code giving rise to civil penalty liability under PAGA. Plaintiff asserts these claims on an individual basis and on a class and PAGA representative basis on behalf of all persons that worked for Defendant in California as an hourly-paid, non-exempt employee at any time during the relevant time period.

24. Solely for purposes of settling the Action, the Parties and their respective counsel stipulate and agree that the requisites for establishing class certification with respect to the Class Members have been met and are met

25. Should, for whatever reason, the Settlement be terminated or not approved by the Court or the judgment not become final,, the fact that the Parties were willing to stipulate to class certification as part of the Settlement shall have no bearing on, and shall not be admissible in connection with, the issue of whether the Class Members and/or the Class Claims should be certified in a non-Settlement context in this Action or in any other lawsuit. And Defendant expressly reserves its right to oppose claim or class certification in this or any other action. Additionally, if the Settlement is terminated or not approved by the Court or the judgment not become final, this Agreement and all negotiations, court orders, and proceedings related thereto shall be without prejudice to the rights of all Parties hereto, and evidence relating to this Agreement and all negotiations shall not be admissible in the Action or otherwise. Certification for purposes of this Settlement will have no force or effect and will be revoked immediately.

26. Defendant denies any liability or wrongdoing of any kind whatsoever associated with the claims alleged or which could have been alleged in the Complaint, and Defendant further denies that, for

1 any purpose other than settling this lawsuit, that the Action is appropriate for class or representative
2 treatment. With respect to Plaintiff's claims, Defendant contends, among other things, that Plaintiff and
3 the Class Members have been paid proper wages, have been provided meal periods or they have been
4 made available as required, have been provided rest periods or they have been authorized and permitted as
5 required, have been paid timely and proper wages upon separation of employment, and have been
6 provided with accurate and complete itemized wage statements. Defendant contends, among other things,
7 that it has complied at all times with the California Labor Code and the applicable Wage Orders of the
8 Industrial Welfare Commission. Furthermore, with respect to all claims, Defendant contends that it has
9 complied at all times with the California Business and Professions Code.

10 27. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all
11 disputes and claims arising from or related to the Complaint.

12 28. Class Counsel has conducted a thorough investigation into the facts of this Action, including
13 an extensive review of relevant documents, and has diligently pursued an investigation of the claims of the
14 Class against Defendant. Based on its own independent investigation and evaluation, Class Counsel is of
15 the opinion that the Settlement with Defendant for the consideration and on the terms set forth in this Joint
16 Stipulation of Settlement is fair, reasonable, and adequate and is in the best interest of the Class in light of
17 all known facts and circumstances, including the risk of significant delay, the risk the Class will not be
18 certified by the Court, defenses asserted by Defendant, and numerous potential appellate issues.
19 Defendant and Defendant's Counsel also agree that the Settlement is fair, adequate and reasonable and in
20 the best interest of the Class.

21 29. The Parties agree to cooperate and take all steps necessary and appropriate to obtain
22 preliminary and final approval of this Settlement.

23 30. The Parties agree to stay all proceedings in the Action, except such proceedings necessary to
24 implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Court.
25 No party, nor any of its attorneys or agents, shall solicit or encourage any Class Member to opt out of or
26 object to the Settlement.

PRIMARY TERMS OF SETTLEMENT

31. Gross Settlement Amount: Defendant’s maximum total payment under the Settlement, which shall cover all Settlement Payments, all attorney’s fees and costs, the Service Payment to the named Plaintiff, the costs of settlement administration, the PAGA Allocation, and any other payments provided by this Settlement, is \$700,000.00 (“Gross Settlement Amount”), except as provided in the Escalator Clause and Defendant will be separately responsible for any employer payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions. Defendant shall not be required to pay any additional sums under this Agreement or to otherwise settle the Action.

32. Escalator Clause: The Parties agree that in the event the actual number of Covered Workweeks exceeds 21,045, Defendant shall increase the Gross Settlement Amount by the percentage that that actual number of Covered Workweeks exceeds 21,045 (the “Escalator Clause”). For example, if the actual number of Covered Workweeks exceeds 21,045 by 1%, the Gross Settlement Amount shall be increased by 1%. The Gross Settlement Amount will not be reduced for any reason.

33. Non-reversionary Settlement: No portion of the Gross Settlement Amount will revert to Defendant.

34. No Claims Required: Class and PAGA Members will not be required to submit a claim to receive their Settlement Payments.

35. Net Settlement Amount: The “Net Settlement Amount” shall be calculated by deducting from the Gross Settlement Amount (\$700,000.00) the following sums, subject to approval by the Court: (1) attorney’s fees (not to exceed 33 1/3% of the Gross Settlement Amount, or \$233,333.33); (2) reasonable litigation costs (not to exceed \$20,000.00); (3) the Service Payment (not to exceed \$7,500.00 to the named Plaintiff); (4) the PAGA Allocation (\$70,000.00); and (5) costs of settlement administration (estimated not to exceed \$20,000). Any amounts not approved by the court shall become part of the Net Settlement Amount for distribution to Settlement Class Members and shall not be grounds to void or reject this Settlement. Settlement Class Payments will be calculated by the Settlement Administrator and paid out of the Net Settlement Amount as set forth below.

36. Payroll Taxes and Required Withholdings: The portion of Settlement Class Payments attributable to wages shall be subject to all applicable taxes and other withholdings and shall be net of the

1 Settlement Class Member's share of all federal, state, and local taxes and required withholdings, including
2 without limitation, FICA, Medicare tax, FUTA, and state unemployment taxes. Defendant will be
3 separately responsible for any employer-side payroll taxes required by law, including the employer FICA,
4 FUTA, and SDI contributions ("Employer-Side Payroll Taxes"). The Settlement Administrator will
5 calculate and submit the Defendant's employer- share of payroll taxes after advising Defendant of the total
6 amount owed, in aggregate, as employer-side payroll taxes and receiving a lump sum payment from
7 Defendant in that amount when the Gross Settlement Amount is delivered to the Settlement Administrator.

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

1 BY THIS AGREEMENT.

2 38. Settlement Class Payments (Excludes PAGA Payments): Settlement Class Payments will be
3 paid out of the Net Settlement Amount. Each Settlement Class Member will be paid a pro-rata share of
4 the Net Settlement Amount as calculated by the Settlement Administrator. The pro-rata share will be
5 determined by comparing the individual Settlement Class Member's Covered Workweeks employed
6 during the Class Period in California to the total Covered Workweeks of all the Settlement Class Members
7 during the Class Period as follows: $[\text{Workweeks worked by a Settlement Class Member}] \div [\text{Sum of all}$
8 $\text{Covered Workweeks worked by all Settlement Class Members}] \times [\text{Net Settlement Amount}] = \text{individual}$
9 Settlement Class Payment for a Settlement Class Member. Settlement Class Payments in the appropriate
10 amounts will be distributed by the Settlement Administrator by mail to the Settlement Class Members.
11 Uncashed, unclaimed or abandoned checks, shall be transmitted by the Settlement Administrator to the
12 California Controller's Office, as set forth below.

13 39. PAGA Payments: PAGA Settlement Payments will be paid out of the PAGA Allocation
14 deducted from the Gross Settlement Amount after the PAGA Penalty Amount (75 percent of the PAGA
15 Allocation) is paid to the LWDA. Each PAGA Employee will be paid a pro-rata share of the PAGA
16 Settlement Payment, as calculated by the Settlement Administrator. Class Members who are PAGA
17 Employees will not be permitted to exclude themselves from this portion of the Settlement. Each PAGA
18 Employee's pro-rata share will be determined by comparing the individual PAGA Employees' PAGA Pay
19 Periods during the PAGA Period to the total PAGA Pay Periods of all the PAGA Employees during the
20 PAGA Period as follows: $[\text{PAGA Pay Periods worked by a PAGA Employee}] \div [\text{Sum of all PAGA Pay}$
21 $\text{Periods worked by all PAGA Employees}] \times [\text{PAGA Settlement Payment}] = \text{individual PAGA Employee's}$
22 portion of the PAGA Settlement Payment. PAGA Settlement Payments to PAGA Employees in the
23 appropriate amounts will be distributed by the Settlement Administrator by mail to the PAGA Employees
24 at the same time Settlement Class Payments issue to the Settlement Class. Settlement Class Members who
25 are also PAGA Employees may receive their settlement payments in a single check. Class Members who
26 exclude themselves from the Class Settlement will still receive their PAGA Settlement Agreement and
27 such Class Members will still be bound by the Released PAGA Claims, notwithstanding their exclusion
28 from the Settlement Class. Uncashed, unclaimed or abandoned checks, shall be transmitted by the

1 Settlement Administrator to the California Controller's Office, as set forth below. The Settlement
2 Administrator will send the PAGA Penalty Payment to the LWDA at the same time the Settlement
3 Administrator send Settlement Payments to the Settlement Class and PAGA Settlement Payments to the
4 PAGA Employees

5 40. Allocation of Settlement Payments: The Parties have agreed that Settlement Class Payments
6 will be allocated as follows: 20% to wages and 80% to penalties and interest. The PAGA Settlement
7 Payments will be entirely allocated to penalties. Appropriate federal, state and local withholding taxes will
8 be taken out of the wage allocations, and each Settlement Class Member will receive an IRS Form W-2
9 with respect to this portion of the Settlement Class Payment. The Settlement Class Member's share of
10 payroll taxes and other required withholdings will be remitted by the Settlement Administrator to the
11 appropriate taxing authorities as set forth above, along with Defendant's employer portion of FICA and
12 FUTA contributions, based on the payment of claims to the Settlement Class Members. IRS Forms 1099
13 will be issued by the Settlement Administrator to each Settlement Class Member and/or PAGA Employee
14 reflecting the payments for penalties and interest. Settlement Class Members and PAGA Employees are
15 responsible to pay appropriate taxes due on the Settlement Class Payments and PAGA Settlement
16 Payments they receive. To the extent required by law, IRS Forms 1099 and W-2 will be issued to each
17 Settlement Class Member and PAGA Employee with respect to such payments.

18 41. Settlement Payments Do Not Give Rise to Additional Benefits: All Settlement Payments to
19 individual Settlement Class Members and PAGA Employees shall be deemed to be paid to such
20 Settlement Class Member or PAGA Employee solely in the year in which such payments actually are
21 received by the Settlement Class Member or PAGA Employee. It is expressly understood and agreed that
22 the receipt of such Settlement Payments will not entitle any Settlement Class Member or PAGA Employee
23 to additional wages, compensation or benefits under any company bonus, contest or other compensation or
24 benefit plan or agreement in place during the period covered by the Settlement up to and including the date
25 the Settlement becomes effective, nor will it entitle any Settlement Class Member or PAGA Employee to
26 any increased retirement, 401(k) benefits or matching benefits or deferred compensation benefits. It is the
27 intent of all Parties that the Settlement Payments provided for in this Settlement are the sole payments to
28 be made by Defendant to the Settlement Class Members and PAGA Employees, and that the Settlement

1 Class Members and PAGA Employees are not entitled to any new or additional compensation or benefits
2 as a result of having received the Settlement Payments (notwithstanding any contrary language or
3 agreement in any benefit or compensation plan document that might have been in effect during the period
4 covered by this Settlement).

5 42. Attorney's Fees and Costs: Subject to approval by the Court, Defendant will not object to
6 Class Counsel's application for attorney's fees not to exceed 33 1/3% of the Gross Settlement Amount
7 (\$233,333.33) and reimbursement of litigation costs and expenses not to exceed \$20,000.00.

8 43. Service Payment: Subject to Court approval, and in exchange for a general release from
9 Plaintiff, Defendant will not object to Class Counsel's application for an additional payment of up to
10 \$7,500.00 to Plaintiff for service as a Class Representative ("Service Payment"). It is understood that the
11 Service Payment is in addition to the individual Settlement Payment to which the Plaintiff and Class
12 Representative is entitled along with the other Settlement Class Members.

13 44. The Settlement Administrator will issue an IRS Form 1099 for the Service Payment to the
14 Plaintiff. The Plaintiff will be individually responsible for correctly characterizing this compensation on
15 personal income tax returns for tax purposes and for paying any taxes on the amounts received. Should
16 the Court approve a Service Payment in an amount less than that set forth above, the difference between
17 the lesser amount(s) approved by the Court and the Service Payment amount(s) set forth above shall be
18 added to the Net Settlement Amount. Plaintiff agrees not to opt out or object to the Service Payment as
19 the Class Representative.

20 45. Settlement Administrator: The Settlement Administrator will be Phoenix Settlement
21 Administrators, or such Settlement Administrator as may be mutually agreeable to the Parties and
22 approved by the Court. Settlement Administration Costs are estimated not to exceed \$20,000. The costs
23 of the Settlement Administrator for work done shall be paid regardless of the outcome of this Settlement.
24 If the Settlement does not become final and effective, the cost of the Settlement Administrator will be
25 shared equally by Plaintiff and Defendant.

26 46. Funding of Settlement Account: Defendant will wire the Gross Settlement Amount and
27 Employer-Side Payroll Taxes as determined by the Settlement Administrator, to the QSF within 14
28 business days after the Effective Date.

1 47. Mailing of Settlement Payments: The Settlement Administrator shall cause the Settlement
2 Payments to be mailed to the Class Members within 14 calendar days of the receipt of funding.

3 48. Notice of Settlement: Each Class Member will be mailed a notice setting forth the material
4 terms of the proposed Settlement, along with instructions about how to object or request exclusion from
5 the class portion of the proposed Settlement (“Notice”), in substantially the same form as the attached
6 **Exhibit A**. For each Class Member, there will be pre-printed information on the mailed Notice, based on
7 Defendant’s records, stating the Class Member’s Covered Workweeks during the Class Period, PAGA
8 Workweeks during the PAGA Period, and the estimated total Settlement Payment under the Settlement,
9 including the Settlement Class Payment and the PAGA Settlement Payment.

10 49. Settlement Notice Language: The Notice will issue in English and Spanish. If there is any
11 ambiguity between the English and Spanish translation, the English version will be controlling.

12 50. Class Members Cannot Exclude Themselves from the Released PAGA Claims: Class
13 Members submitting a Request for Exclusion will nevertheless receive their pro-rata share of the PAGA
14 Settlement Payment. If the Court approves the compromise of the PAGA Claims, all Class Members are
15 bound by the Court’s resolution of that Claim. Plaintiff shall serve a notice of settlement on the LWDA at
16 or before the time Plaintiff files the motion for preliminary approval.

17 51. Resolution of Workweek Disputes: If a Class Member disputes the number of Covered
18 Workweeks or PAGA Workweeks as stated in the Notice, he or she may dispute that figure by informing
19 the Settlement Administrator of the number of Covered Workweeks and PAGA Workweeks he or she
20 claims to have worked and provide any supporting documentation (such as, without limitation, payroll or
21 timekeeping records, and paystubs) on or before the Response Deadline. If there is a dispute, the
22 Settlement Administrator will consult with Class Counsel and Defendant’s Counsel to determine whether
23 an adjustment is warranted. However, Defendant’s records shall be presumed to be accurate and the
24 Settlement Administrator shall have the sole discretion to determine any such disputes. The Settlement
25 Administrator shall use best efforts to resolve any disputes regarding the number of Qualifying
26 Workweeks submitted by a Class Member within ten (10) business days of receipt of the dispute.

27 52. Right of Class Member to Request Exclusion from the Settlement: Any Class Member may
28 request to be excluded from the Settlement Class by mailing a “Request for Exclusion” from the

1 Settlement within the Response Deadline.

2 Any Request for Exclusion must include the name, address, telephone number, last four digits
3 of the Class Member's Social Security Number, and the signature of the Class Member requesting
4 exclusion. Any such request must be made in accordance with the terms of the Notice, and the Notice
5 will advise Class Members of these requirements. Any Class Member who timely requests exclusion
6 in compliance with these requirements (i) shall not have any rights under this Settlement other than a
7 right to receive a pro-rata share of the PAGA Settlement Payment if the Class Member is also PAGA
8 Employee; (ii) shall not be entitled to receive any Settlement Class Payments under this Settlement
9 other than as stated herein; and (iii) shall not be bound by this Settlement or the Court's Order and Final
10 Judgment other than as it applies to the PAGA Claims.

11 53. Right of Settlement Class Member to Object to The Settlement: Any Settlement Class
12 Member may object to the Settlement as it relates to the class claims. To object, the Settlement Class
13 Member may (1) appear at the Final Approval Hearing, remotely or in person, to explain any objection, (2)
14 have an attorney object for the Settlement Class Member, or (3) submit a simple written brief or statement
15 of objection to the Settlement Administrator. If any Settlement Class Member chooses to submit a written
16 objection, the written objection should contain sufficient information to confirm the identity of the objector
17 and the basis of the objection, including (1) the full name of the Settlement Class Member; (2) the
18 signature of the Settlement Class Member; (3) the grounds for the objection; and (4) be postmarked within
19 the Response Deadline to permit adequate time for processing and review by the Parties of the written
20 statement or objection. Class Counsel shall ensure that any written objections are transmitted to the Court
21 for the Court's review (either by Class Counsel or as an attachment to a declaration from the Settlement
22 Administrator). Regardless of the form, an objection alone will not satisfy the requirement that a
23 Settlement Class Member must either make a timely complaint in intervention before final judgment or by
24 filing a motion to set aside and vacate the class judgment under Code of Civil Procedure §663, to have
25 standing to appeal entry of judgment approving this Settlement, as is required under the California
26 Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018). A Settlement
27 Class Member who does not object prior to or at the Final Approval Hearing, will be deemed to have
28 waived any objections and will be foreclosed from making any objections (whether at the Final Approval

1 Hearing, by appeal, or otherwise) to the Settlement. If the objecting Settlement Class Member does not
2 formally intervene in the action or move to set aside any judgment and/or the Court rejects the Settlement
3 Class Member's objection, the Settlement Class Member will still be bound by the terms of this
4 Agreement and the Settlement. Class Counsel and Defendant's Counsel may, at least five (5) calendar
5 days (or some other number of days as the Court shall specify) before the final approval hearing, file
6 responses to any written objections submitted to the Court. Class counsel will not represent any Class
7 Members with respect to any objections to the Settlement.

8 **THE SETTLEMENT ADMINISTRATOR'S PRIMARY DUTIES**

9 54. Subject to the Court's approval, the Parties have agreed to the appointment of Phoenix
10 Settlement Administrators to perform the customary duties of Settlement Administrator.

11 55. The Settlement Administrator's duties shall include, without limitation: establishing and
12 maintaining the Qualified Settlement Fund ("QSF"); translating the Notice to Spanish; preparing and
13 distributing the Notice in English and Spanish; calculating and directing the disbursement of payments to
14 Settlement Class Members, PAGA Employees, Class Counsel, the Class Representative, and the LWDA;
15 calculating and timely paying any and all payroll taxes from the wages portion of the Net Settlement
16 Amount to the appropriate tax authorities, as required under this Agreement and applicable law; handling
17 inquiries about the calculation of individual settlement payments; preparing and filing any tax returns and
18 information returns and any other filings required by any governmental taxing authority or other
19 governmental agency; providing weekly status reports to the Parties' counsel; advising Defendant and
20 Class Counsel of any Class Members who submit objections and/or Requests for Exclusion; providing a
21 due diligence declaration for submission to the Court prior to the final approval hearing; printing and
22 providing Settlement Class Members and the Class Representative with W-2 and 1099 forms as required
23 under this Agreement and applicable law; preparing and mailing reminder postcards to Settlement Class
24 Members who do not cash their settlement payment within sixty (60) days of disbursement; arranging for
25 and remitting funds from any uncashed settlement payment to the designated recipient, as determined by
26 the Court; resolving any disputes submitted by Class Members regarding the number of Covered
27 Workweeks and PAGA Workweeks attributed to them for purposes of settlement calculations; and for
28 such other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform.

1 56. The Settlement Administrator shall establish a settlement payment center address, telephone
2 number and email address to receive Class Members' inquiries about the Notice, requests to be excluded
3 from the Settlement, objections to the Settlement, and disputes concerning workweek calculations..

4 57. In addition, the Settlement Administrator shall establish a static website and, on the website,
5 post this stipulation, any preliminary approval order and the Final Approval Order and Judgment, for a
6 duration of at least 180 days after the Effective Date, unless otherwise ordered by the Court. Posting of the
7 Final Approval Order and Judgment on such website shall constitute notice of judgment to the Settlement
8 Class, as required by California Rule of Court 3.771(b).

9 58. The Parties confirm, and Class Counsel and Defendant's Counsel confirm that they do not
10 have any financial interest in the Settlement Administrator or otherwise have a relationship with the
11 Settlement Administrator that could create a conflict of interest.

12 59. All disputes relating to the Settlement Administrator's performance of its duties shall be
13 referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of
14 this Settlement until all payments and obligations contemplated by this Settlement have been fully carried
15 out.

ATTORNEY'S FEES AND COSTS

16
17 60. In consideration for resolving this matter and in exchange for the release of all claims by the
18 Settlement Class Members, including Plaintiff, and subject to approval by the Court, Defendant will not
19 object to Class Counsel's application for attorney's fees not to exceed 33 1/3% of the Gross Settlement
20 Amount (\$233,333.33 of \$700,000.00) and litigation costs not to exceed \$20,000.00. The amounts set
21 forth above will cover all work performed and all fees and costs incurred to date, and all work to be
22 performed and all fees and costs to be incurred in connection with the approval by the Court of this
23 Settlement and administration of the Settlement. Should Class Counsel request a lesser amount and/or the
24 Court approve a lesser amount(s) of attorney's fees and/or attorneys' costs, the difference between the
25 lesser amount(s) and the maximum amount set forth above shall be added to the Net Settlement Amount.
26 The Parties agree that there is no prevailing party, and the Class and Class Counsel shall not be entitled to
27 any fees or costs other than those awarded out of and deducted from the Gross Settlement Amount. As
28 with the Class Settlement Payments to the Settlement Class, the attorney's fees and costs approved by the

1 Court shall be distributed by the Settlement Administrator to Class Counsel within 14 calendar days of the
2 receipt of settlement funds by the Settlement Administrator. In the event that the Court awards less than
3 25% of the Gross Settlement Amount for attorney's fees, Class Counsel shall retain the right to appeal that
4 portion of any Final Approval Order and Judgment.

5 **THE NOTICE PROCESS**

6 61. Within 14 calendar days from the date of preliminary approval of this Settlement by the Court,
7 Defendant shall provide to the Settlement Administrator a class database containing the following
8 information for each Class Member: (1) name; (2) last known address; (3) social security number; (4)
9 dates of employment for Defendant in California during the relevant time period; and (5) the number of
10 workweeks actually worked by the Class Member during the relevant time period, taking into account
11 leaves of absence and any gaps in employment. This database shall be based on Defendant's payroll and
12 other business records and shall be provided in a reasonable format to the Settlement Administrator.

13 Defendant agrees to consult with the Settlement Administrator prior to the production date to ensure that
14 the format will be acceptable to the Settlement Administrator. The Settlement Administrator will run a
15 check of the Class Members' addresses against those on file with the U.S. Postal Service's National
16 Change of Address List; this check will be performed only once per Class Member by the Settlement
17 Administrator. Absent mutual written agreement of counsel for the Parties or Court order, the Settlement
18 Administrator will keep this database confidential and secure and use it only for the purposes described
19 herein, and will return this database to Defendant upon final approval of the settlement or destroy
20 electronic records containing the database after the Settlement is final and all payments are distributed as
21 required under this Agreement.

22 62. Within 14 calendar days after the Class database is provided to the Settlement Administrator,
23 the Settlement Administrator will mail the Notices to the Class Members by First Class United States mail.

24 63. Notices returned to the Settlement Administrator as non-deliverable on or before the initial
25 Response Deadline shall be resent to the forwarding address, if any, on the returned envelope. A returned
26 Notice will be forwarded by the Settlement Administrator any time that a forwarding address is provided
27 with the returned mail. If there is no forwarding address, the Settlement Administrator will do a computer
28 search for a new address using the Class Member's social security number or other information. In any

1 instance where a Notice is re-mailed, that Class Member will have until the extended Response Deadline
2 as described above to submit objections or request exclusion. A letter prepared by the Settlement
3 Administrator will be included in the re-mailed Notice in that instance, stating the extended Response
4 Deadline. Upon completion of these steps by the Settlement Administrator, Defendant and the Settlement
5 Administrator shall be deemed to have satisfied their obligations to provide the Notice to the affected
6 Class Member. The affected Class Member shall remain a member of the Settlement Class and shall be
7 bound by all the terms of the Settlement and the Court's Order and Final Judgment.

8 64. Class Counsel shall provide to the Court, at least five calendar days prior to the final approval
9 hearing, or such other date as set by the Court, a declaration by the Settlement Administrator of due
10 diligence and confirming mailing of the Notices.

11 **DISPOSITION OF SETTLEMENT PAYMENTS AND UNCASHED CHECKS**

12 65. As set forth above, each Settlement Class Member will have until the expiration of the
13 applicable Response Deadline to submit to the Settlement Administrator any challenge or dispute to the
14 Settlement Class Member's Covered Workweek information on the Notice. No disputes will be honored
15 if they are submitted after the Response Deadline, unless the Parties mutually agree to accept the untimely
16 dispute. Each Settlement Class Member is responsible to maintain a copy of any documents sent to the
17 Settlement Administrator and a record of proof of mailing.

18 66. The Settlement Administrator shall cause the Settlement Payments to be mailed to the
19 Settlement Class Members and PAGA Employees as provided herein. Settlement Class Payments and
20 PAGA Settlement Payments may be combined into one check. Settlement Payment checks shall remain
21 valid and negotiable for 180 calendar days from the date of their issuance. Settlement Payment checks
22 will automatically be cancelled by the Settlement Administrator if they are not cashed by the Settlement
23 Class Member within that time, and the Settlement Class Member's relevant claims will remain released
24 by the Settlement. Settlement Payment checks which have expired will not be reissued.

25 67. Funds from uncashed or abandoned Settlement Class Payment checks or PAGA Settlement
26 Checks, based on a 180-day void date, shall be transmitted by the Settlement Administrator to the
27 California State Controller's Office for Unclaimed Property in the name of each Settlement Class Member
28 and/or PAGA Employee who failed to cash their Settlement Payment check prior to the void date, unless

1 otherwise ordered by the Court.

2 68. Upon completion of its calculation of Settlement Class Payments and PAGA Settlement
3 Payments, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel with a
4 report listing the amounts of all payments to be made to Class Members (to be identified anonymously by
5 employee number or other identifier). A Declaration attesting to completion of all payment obligations
6 will be provided to Class Counsel and Defendant's Counsel and filed with the Court by Class Counsel.

7 **RELEASES**

8 69. Release by Settlement Class Members. Upon final approval by the Court of this Settlement
9 and Defendant's payment of the Gross Settlement Amount and Employer-Side Payroll Taxes, and except
10 as to such rights or claims as may be created by this Settlement, the Settlement Class Members shall be
11 deemed to have released the Released Parties from the Released Claims arising during the Class Period.

12 70. Release by PAGA Employees. Upon final approval by the Court of this Settlement and
13 Defendant's payment of the Gross Settlement Amount and Employer-Side Payroll Taxes, the PAGA
14 Employees will be deemed to have released the Released Parties from the Released PAGA Claims,
15 regardless of whether they submitted a request for exclusion from the Settlement of Class claims.

16 71. General Release by Plaintiff and Class Representative. Upon the final approval by the Court
17 of this Settlement and Defendant's payment of the Gross Settlement Amount and Employer-Side Payroll
18 Taxes, and except as to such rights or claims as may be created by this Settlement, the Plaintiff and Class
19 Representative, will be deemed to have released and discharged the Released Parties from any and all of
20 the Released Claims and from any and all other claims, charges, complaints, liens, demands, agreements,
21 contracts, covenants, actions, suits, causes of action, penalties, wages, obligations, debts, expenses,
22 damages, attorneys' fees, costs, judgments, orders, and liabilities of whatever kind or nature in law, equity,
23 or otherwise, known or unknown, suspected or unsuspected, that the Plaintiff and Class Representative
24 had, now has, or may hereafter claim to have against the Released Parties arising out of, or relating in any
25 way to, the Plaintiff and Class Representative's hiring by, employment with, separation of employment
26 with, or any other transactions, occurrences, acts or omissions or any loss, damage or injury whatsoever,
27 known or unknown, suspected or unsuspected, resulting from any act or omission by or on the part of any
28 Released Party (the "Class Representative's Released Claims"), arising or accruing from the beginning of

1 time up through the Effective Date (“Class Representative’s Released Period”). The Class
2 Representative’s Released Claims include, but are not limited to, claims arising from or dependent on the
3 California Labor Code; the Wage Orders of the California Industrial Welfare Commission; California
4 Business and Professions Code section 17200 et seq.; the California Fair Employment and Housing Act,
5 Cal. Gov’t Code § 12900 et seq.; the California Healthy Workplaces, Healthy Families Act, Cal. Labor
6 Code § 245 et seq., the California common law of contract and tort; Title VII of the Civil Rights Act of
7 1964; the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.; the Employee Retirement Income
8 Security Act of 1974, 29 U.S.C. § 1001 et seq.; the Fair Labor Standards Act, 29 U.S.C. § 201 et seq., the
9 Portal to Portal Act, 29 U.S.C. § 251 et seq., and the Families First Coronavirus Response Act.

10 The Plaintiff and Class Representative also acknowledges that he has read Section 1542 of the
11 Civil Code of the State of California, which provides as follows:

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

16 The Plaintiff and Class Representative further warrants that he understands that Section 1542 gives
17 him the right not to release existing claims of which he is not now aware, unless he voluntarily chooses to
18 waive this right. Having been so apprised, Plaintiff and Class Representative shall nevertheless voluntarily
19 waive the rights described in Section 1542, and elects to assume all risks and to release the claims set forth
20 herein, that now exist in his favor, whether known or unknown.

21 **DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL**

22 72. Upon execution of this Agreement, Class Counsel shall submit the Agreement to the Court as
23 part of Plaintiff’s motion for preliminary approval of the Settlement. The motion shall request entry of an
24 order:

- 25 (a) Scheduling a preliminary approval hearing and later final approval and fairness
26 hearing on the question of whether the proposed Settlement, including payment of
27 attorney’s fees and costs, settlement administration costs, the Class
28 Representative’s service payment, and PAGA Allocation, should be finally

1 approved as fair, reasonable, and adequate;

2 (b) Conditionally certifying a Class for settlement purposes only;

3 (c) Approving as to form and content the proposed Notice;

4 (d) Directing the mailing of the Notice by the Settlement Administrator;

5 (e) Preliminarily approving the Settlement subject only to the objections of Settlement
6 Class Members and final review by the Court;

7 (f) Conditionally appointing Plaintiff and Class Counsel as representatives of the
8 proposed Class Members; and,

9 (g) Appointing Phoenix Settlement Administrators as the Settlement Administrator.

10 73. Class Counsel shall provide Defendant’s counsel with the opportunity to review and comment
11 on drafts of all papers to be filed in connection with the motion for preliminary approval (notice of motion,
12 memorandum of points and authorities, and declarations) before filing such motion with the Court.

13 Plaintiff’s motion for preliminary approval shall also include a proposed order that is mutually agreed
14 upon by the Parties. Defendant shall not oppose Plaintiff’s motion for preliminary approval to the extent it
15 is consistent with the terms and conditions herein. Defendant may, however, provide a written response to
16 any characterization of the law or facts contained in the motion.

17 **DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL**

18 74. On or before the date set by the Court, Class Counsel will file a motion for final approval of
19 this Settlement pursuant to California Rule of Court 3.769. In connection therewith, , Class Counsel will
20 submit to the Court a proposed final order and judgment containing provisions sufficient to accomplish the
21 following:

22 (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and
23 adequate, and directing consummation of its terms and provisions;

24 (b) Approving Class Counsel’s application for an award of attorney’s fees and costs;

25 (c) Approving the Service Payment to the Class Representative;

26 (d) Approving the PAGA Allocation;

27 (e) Adjudging the Settlement Administrator has fulfilled its initial notice and reporting
28 duties under the Settlement and approving payment of fees to the Settlement

1 Administrator;

- 2 (f) Adjudging Plaintiff and Class Counsel as adequately representing the Settlement
3 Class Members for the purpose of entering into and implementing the Agreement;
4 (g) Entering a final judgment in the action; and
5 (h) Adjudging that notwithstanding the submission of a timely request for exclusion,
6 Class Members are still bound by the settlement and release of the Released PAGA
7 Claims or remedies under the Judgment pursuant to *Arias v. Superior Court*, 46
8 Cal. 4th 969 (2009), as requests to be excluded from the Settlement do not apply to
9 the Released PAGA Claims, and further affirming that the State's claims for civil
10 penalties pursuant to PAGA are also extinguished.

11 75. Class Counsel will provide Defendant's counsel with the opportunity to review and comment
12 on drafts of all papers to be filed in connection with the motion for final approval (notice of motion,
13 memorandum of points and authorities and declarations) before filing such motion with the Court.
14 Plaintiff's motion for final approval will also include a proposed order and judgment that are mutually
15 agreed-upon by the Parties. Defendant shall not oppose Class Counsel's motion for final approval of the
16 settlement to the extent it is consistent with the terms and conditions of this Agreement. Defendant may,
17 however, provide a written response to any characterization of the law or facts contained in the motion for
18 final approval.

19 76. The Final Approval Order will be posted on the Settlement Administrator's website. The
20 posting of the Final Approval Order on the Settlement Administrator's website will constitute notice of
21 entry of the judgment, as required by California Rule of Court 3.771(b).

22 **NULLIFICATION AND TERMINATION**

23 77. This Settlement will be null and void if any of the following occur: (a) the Court should for any
24 reason fail to certify a Class for settlement purposes; (b) the Court should for any reason fail to
25 preliminarily or finally approve this Settlement in the form agreed to by the Parties, other than adjustments
26 made to the attorney's fees and costs, settlement administration costs, Plaintiff's service award, and PAGA
27 Allocation (c) the Court should for any reason fail to enter the final judgment; (d) the final judgment is
28 reversed, modified, or declared or rendered void; or (e) the Settlement does not become final for any other

1 reason. Under those circumstances, neither this Settlement, nor any of the related negotiations or
2 proceedings, will be of any force or effect, and all Parties will stand in the same position, without
3 prejudice, as if the Settlement had not been entered or filed. Invalidation of any material portion of this
4 Settlement will invalidate this Settlement in its entirety, unless the Parties subsequently agree in writing
5 the remaining provisions of the Settlement are to remain in full force and effect.

6 78. If 5% or more of the Class Members opt out of this Settlement, then Defendant in its sole
7 discretion may terminate, nullify and void this Settlement. The Settlement Administrator shall provide
8 Defendant's Counsel with the information necessary to effectuate this provision on a regular basis, but no
9 less frequently than on a weekly basis. To terminate this Settlement under this paragraph, Defendant's
10 Counsel must give Plaintiff's Counsel written notice, by facsimile, e-mail, or mail, no later than 30
11 calendar days after the Response Deadline. If this option is exercised by Defendant, Defendant shall be
12 solely responsible for the costs incurred by the Settlement Administrator for the settlement administration.

13 79. In the event this Settlement is nullified or terminated as provided above: (i) this Settlement
14 shall be considered null and void, (ii) neither this Settlement nor any of the related negotiations or
15 proceedings shall have any force or effect and no Party shall be bound by any of its terms, and (iii) all
16 Parties to this Settlement shall stand in the same position, without prejudice, as if the Settlement had been
17 neither entered into nor filed with the Court.

18 **PARTIES' AUTHORITY**

19 80. The signatories hereto hereby represent that they are fully authorized to enter into this
20 Settlement and bind the Parties hereto to the terms and conditions thereof.

21 **MUTUAL FULL COOPERATION**

22 81. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement
23 including, but not limited to, execution of such documents and taking such other action as reasonably may
24 be necessary to implement the terms of this Settlement. The Parties to this Settlement shall use their best
25 efforts, including all efforts contemplated by this Settlement and any other efforts that may become
26 necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set forth herein.
27 As soon as practicable after execution of this Settlement, Class Counsel shall, with the assistance and
28 cooperation of Defendant and Defendant's Counsel, take all necessary steps to secure the Court's

1 preliminary and final approval of this Settlement.

2 **NO PRIOR ASSIGNMENTS**

3 82. The Parties and their respective counsel represent, covenant, and warrant that they have not
4 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
5 any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein
6 released and discharged except as set forth herein, and that they are not on notice of any liens as to the
7 Gross Settlement Amount or any right to attorneys' fees or costs.

8 **NO ADMISSION OF LIABILITY**

9 83. Nothing contained herein, nor the consummation of this Settlement, is to be construed or
10 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant.
11 Defendant denies all the claims and contentions alleged by the Plaintiff in this case. Defendant does not
12 admit, and specifically denies, that it has violated any federal, state, or local law; violated any regulations
13 or guidelines promulgated pursuant to any statute or any other applicable laws, regulations or legal
14 requirements; breached any contract; violated or breached any duty; engaged in any misrepresentation or
15 deception; or engaged in any other unlawful conduct with respect to its current or former employees.
16 Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations
17 connected with it, will be construed as an admission or concession by Defendant of any such violations or
18 failures to comply with any applicable law. Defendant has entered into this Settlement solely with the
19 intention to avoid further disputes and litigation with the attendant inconvenience and expenses. Except as
20 necessary in a proceeding to enforce the terms of this Settlement Agreement, this Settlement Agreement
21 and its terms and provisions will not be offered or received as evidence in any action or proceeding to
22 establish any liability or admission on the part of Defendant or to establish the existence of any condition
23 constituting a violation of, or a non-compliance with, federal, state, local or other applicable law.

24 **ENFORCEMENT ACTIONS**

25 84. In the event that one or more of the Parties to this Settlement institutes any legal action or other
26 proceeding against any other party or parties to enforce the provisions of this Settlement or to declare
27 rights and/or obligations under this Settlement, the successful party or parties shall be entitled to recover
28 from the unsuccessful party or parties reasonable attorney's fees and costs, including expert witness fees

1 incurred in connection with any enforcement actions.

2 **NOTICES**

3 85. Unless otherwise specifically provided herein, all notices, demands or other communications
4 given hereunder shall be in writing and shall be deemed to have been duly given as of the third business
5 day after mailing by United States registered or certified mail, return receipt requested, addressed as
6 follows:

7 Class Counsel:

8 Kane Moon
9 Allen Feghali
10 Enzo Nabiev
11 **MOON & YANG, APC**
12 1055 W. Seventh St., Suite 1880
13 Los Angeles, California 90017
14 Telephone: (213) 232-3128
15 Facsimile: (213) 232-3125
16 kane.moon@moonyanglaw.com
17 allen.feghali@moonyanglaw.com
18 enzo.nabiev@moonyanglaw.com

Counsel for Defendant:

EVAN R. MOSES, CA Bar No. 198099
evan.moses@ogletree.com
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
400 South Hope Street, Suite 1200
Los Angeles, CA 90071
Telephone: 213-239-9800
Facsimile: 213-239-9045

MARLENE M. MOFFITT, CA Bar No.
223658
marlene.moffitt@ogletree.com
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
4370 La Jolla Village Drive, Suite 990
San Diego, CA 92122
Telephone: 858-652-3100
Facsimile: 858-652-3101

19 **CONSTRUCTION**

20 86. The Parties hereto agree that the terms and conditions of this Settlement are the result of
21 lengthy, intensive arms-length negotiations between the Parties, including but not limited to an all-day
22 mediation with Mark Rudy, Esq., and this Settlement shall not be construed in favor of or against any
23 Party by reason of the extent to which any Party or his, her or its counsel participated in the drafting of this
24 Settlement.

25 **CAPTIONS AND INTERPRETATIONS**

26 87. Paragraph titles or captions contained herein are inserted as a matter of convenience and for
27 reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision
28 hereof. Each term of this Settlement is contractual and not merely a recital.

1 **MODIFICATION**

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

5 **CONFIDENTIALITY**

6 89. Confidentiality Agreement. The Parties and their counsel agree that none of them will issue
7 any marketing materials, press release, social media post, internet or website announcement, or otherwise
8 initiate any contact with the press, respond to any press inquiry or have any communication with the press
9 regarding the Settlement or the terms of this settlement. Class Counsel will not communicate with other
10 wage-hour plaintiffs' counsel about this settlement, nor utilize it in any way in their marketing or
11 advertising materials or website, prior to Preliminary Approval. Plaintiff will not discuss the Settlement
12 with anyone other than his counsel, tax advisors or spouses, except as required or authorized by law.
13 Additionally, Class Counsel agree that the fact that the Actions were filed and/or settled will not be
14 included in any filing or court submission in any other case or controversy unless required to do so by
15 applicable law or done in submissions to courts or arbitrators in connection with establishing adequacy as
16 class counsel or relevant experience in wage and hour lawsuits.

17 **INTEGRATION CLAUSE**

18 90. This Settlement contains the entire agreement between the Parties relating to the Settlement
19 and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings,
20 representations, and statements, whether oral or written and whether by a Party or such Party's legal
21 counsel, are merged herein. No rights hereunder may be waived except in writing. The Parties expressly
22 recognize California Civil Code Section 1625 and California Code of Civil Procedure Section 1856(a),
23 which provide that a written agreement is to be construed according to its terms and may not be varied or
24 contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral or written
25 representations or terms will modify, vary or contradict the terms of this Agreement.

26 **AMENDMENT**

27 91. This Settlement Agreement may be amended or modified only by a written instrument
28 mutually signed by counsel for all Parties or their successors-in-interest.

WAIVER OF APPEALS

92. The Parties agree to waive appeals and to stipulate to class certification for purposes of implementing this Settlement only, with the exception that Class Counsel retains the right to appeal the amount awarded as attorney’s fees in the event that the Court awards less than twenty-five percent of the Gross Settlement Amount as attorney’s fees.

BINDING ON ASSIGNS

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

CLASS COUNSEL SIGNATORIES

94. It is agreed that because the members of the Class are so numerous, it is impossible or impractical to have each member of the Class execute this Settlement. The Notice will advise all Class Members of the binding nature of the Released Claims and Released PAGA Claims, and the release shall have the same force and effect as if this Settlement were executed by each member of the Class.

COUNTERPARTS

95. This Settlement may be executed in counterparts and by electronic or facsimile signatures, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement, which shall be binding upon and effective as to all Parties.

FINAL JUDGMENT

96. The Parties agree that, upon final approval of the Settlement, final judgment of this Action will be made and entered in its entirety at or following the final approval hearing. The final judgment may be included in the Order granting Final Approval of the Settlement.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Action Settlement between Plaintiff and Defendant as set forth below:

IT IS SO STIPULATED.

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Plaintiff & Class Representative:

Dated: 12/9/2021

DocuSigned by:
Jose Pena

By: _____
JOSE PENA

Plaintiff's Counsel:

Dated: December 7, 2021

MOON & YANG, APC

By: _____
Kane Moon
Allen Feghali
Enzo Nabiev

Attorneys for Plaintiff

Defendant:

Dated:

BUNZL UTAH, LLC

By: _____
Print Name

Signature

Title

Defendant's Counsel:

Dated:

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

By: _____
Evan Moses
Marlene Moffitt
Attorney for Defendant

49503075.1

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Plaintiff & Class Representative:

Dated: _____
By: _____
JOSE PENA

Plaintiff's Counsel:

Dated: _____
MOON & YANG, APC
By: _____
Kane Moon
Allen Feghali
Enzo Nabiev
Attorneys for Plaintiff

Defendant:

Dated: December 9, 2021
BUNZL UTAH, LLC
By: David J. Kelt
Print Name
[Signature]
Signature
Secretary
Title

Defendant's Counsel:

Dated: December 9, 2021
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
By: [Signature]
Evan Moses
Marlene Moffitt
Attorney for Defendant

49503075.1

EXHIBIT A

NOTICE OF PROPOSED CLASS ACTION AND PAGA SETTLEMENT

Pena v. Bunzl Utah, LLC
Los Angeles Superior Court Case No. 20STCV48809

A court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.

IF YOU ARE OR WERE EMPLOYED BY BUNZL UTAH, LLC IN CALIFORNIA AS A NON-EXEMPT OR HOURLY-PAID EMPLOYEE AT ANY TIME FROM DECEMBER 18, 2016, THROUGH <<the earlier of the date of preliminary approval or February 7, 2022>>, THIS PUTATIVE CLASS, COLLECTIVE, AND PRIVATE ATTORNEYS GENERAL ACT ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS. PLEASE READ THIS NOTICE CAREFULLY.

Why you are receiving this Notice?

A proposed settlement (the “Settlement”) has been reached in a class action and PAGA lawsuit entitled *Pena v. Bunzl Utah, LLC*, Los Angeles Superior Court Case No. 20STCV48809 (the “Action”). As discussed below, the settlement will result in payments to current and former non-exempt employees who worked for Bunzl Utah, LLC (“Defendant”) in California at any time from December 18, 2016, through <<the earlier of the date of preliminary approval or February 7, 2022>>.

When used in this Notice, the following terms have the following meanings:

“Action”	<i>Pena v. Bunzl Utah, LLC</i> , Los Angeles Superior Court Case No. 20STCV48809
“Plaintiff” and “Class Representative”	Jose Pena
“Defendant”	Bunzl Utah, LLC
“Class Period”	December 18, 2016, through <<the earlier of the date of preliminary approval or February 7, 2022>>
“Class”	All non-exempt and hourly-paid employees of Defendant who worked in California during the Class Period.
“Class Member”	A non-exempt or hourly-paid employee of Defendant who worked in California at any time during the Class Period.
“Settlement Class Member”	A Class Member who does not timely requested to be excluded from the proposed Class of non-exempt employees who worked for Defendant in California at any time during the Class Period.
“Individual Class Settlement Payment”	A share of the settlement fund that will be made to a Settlement Class Member on a pro rata basis, based upon his or her workweeks during the Class Period.
“PAGA”	The Labor Code Private Attorneys General Act, California Labor Code sections 2688 <i>et seq.</i>
“PAGA Period”	December 16, 2019, through <<the earlier of the date of preliminary approval or February 7, 2022>>
“PAGA Employee”	A non-exempt or hourly-paid employee of Defendant who worked in California at any time during the PAGA Period.
“Individual PAGA Settlement Payment”	A share of the PAGA Allocation from settlement fund that will be made to a PAGA Employee on a pro rata basis, based upon his or her workweeks during the PAGA Period
“Settlement Administrator”	Phoenix Settlement Administrators <<mailing address>>

Defendant’s records indicate that you are a Class Member and/or a PAGA Employee as defined above. As a Class Member, you may be eligible to receive an Individual Class Settlement Payment based on the number of workweeks

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that you worked for Defendant in California during the Class Period and you will be bound by the release of claims described in this Notice and in the Settlement Agreement filed with the Court, unless you timely request to be excluded from the Settlement. A Class Member who excludes himself or herself from the Settlement will still be bound by the PAGA portion of the settlement, to the extent he or she is also a PAGA Employee, and will receive an Individual PAGA Settlement Payment based on the number of workweeks that he or she worked for Defendant in California during the PAGA Period.

A hearing concerning final approval of the proposed Settlement (“Final Approval Hearing”) will be held on <<**FA Date and Time**>> in Department 1 of the Los Angeles Superior Court, 312 North Spring Street, Los Angeles, CA 90017, to determine whether the Settlement is fair, adequate and reasonable.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING – GET MONEY	If you do nothing, you will be considered part of the Settlement Class and will receive settlement benefits as explained more fully below. You will also give up rights to pursue a separate legal action against Defendant for the Released Claims asserted in the Action as explained more fully below.
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS DEADLINE TO EXCLUDE YOURSELF: << RESPONSE DATE >>	You have the option to exclude yourself from the Settlement Class and pursue a separate legal action against Defendant about the claims in the Action (other than the PAGA claim). If you choose to do so, you must exclude yourself, in writing, from the Settlement Class by submitting a written Request to be Excluded. If you timely submit a Request to be Excluded, you will not receive any money or benefits under the Settlement except for a pro rata allocation of the PAGA portion of the settlement (if applicable to you), and you will not be bound by the release of claims against Defendant, except for the PAGA portion of the release.
OBJECT TO THE SETTLEMENT DEADLINE TO SUBMIT WRITTEN OBJECTIONS: << RESPONSE DATE >>	You may also object to the terms of the Settlement. To object to the Settlement, you can mail a written explanation of why you object to the Settlement Administrator, appear at the Final Approval Hearing, or hire an attorney at your expense to object for you. You may only object, however, only if you do <u>not</u> exclude yourself from the Settlement. Do <u>not</u> submit a Request to be Excluded if you wish to object. <i>Written</i> objections must be submitted to the Settlement Administrator by << RESPONSE DATE >>.

Who is affected by this proposed Settlement?

The Court has certified, for settlement purposes only, the following Class:

“All non-exempt or hourly-paid employees of Defendant who worked in California during the Class Period of December 18, 2016, through <<the earlier of the date of preliminary approval or February 7, 2022>>.”

You were sent this Notice because you have a right to know about the proposed Settlement of the Action and about your options before the Court rules on whether to finally approve the Settlement. If the Court approves the settlement, and after any objections and appeals are resolved, the Settlement Administrator appointed by the Court will make payments to Settlement Class Members and PAGA Employees that the settlement allows. This Notice explains the Action, the proposed Settlement, your legal rights, what benefits are available to you, and how to receive them.

What this case is about?

In the Action, Plaintiff alleges on behalf of himself, the Class, and the State of California that Defendant: (1) failed to pay minimum and straight time wages (due in part to alleged rounding violations); (2) failed to pay overtime wages; (3) failed to provide meal periods; (4) failed to authorize and permit rest periods; (5) failed to timely pay all wages to terminated employees; (6) failed to maintain payroll records and furnish accurate itemized wage statements; (7) engaged in unfair business practices, in violation of California Business and Professions Code section 17200 *et seq.*; and (8) violated provisions of the Labor Code giving rise to civil penalty liability

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under PAGA. Plaintiff seeks unpaid wages, actual damages, declaratory relief, statutory penalties, civil penalties under PAGA, restitution, interest, attorneys' fees, and costs.

Defendant denies the claims and is confident it has strong legal and factual defenses to Plaintiff's claims. Defendant contends that, at all relevant times, Defendant properly compensated all employees and fully complied with all applicable laws. Defendant also denies that the Action is appropriate to maintain as a class or PAGA representative action.

The Court has not ruled on the merits of Plaintiff's claims or Defendant's defenses.

Why is there a settlement?

The parties disagree on the probable outcome of the case with respect to viability of the Class, liability, damages, and how much money could be recovered if Plaintiff won at trial. This Settlement is a compromise reached after good faith, arm's length negotiations between Plaintiff and Defendant (together, the "Parties"), through their attorneys, and is not an admission of liability on the part of Defendant. Both sides agree that this Settlement is fair, adequate and reasonable. Plaintiff also believes this Settlement is in the best interests of all Class Members and PAGA Employees.

What is a class action and PAGA settlement?

On <<PA Date and Time>>, the Court granted preliminary approval of the proposed Settlement. However, the Court must still approve the terms of the proposed Settlement as fair and reasonable before the Settlement becomes final and payments can be made. Once approved, the settlement will affect all Class Members, except those who have submitted a timely Request to be Excluded. The settlement will affect all PAGA Employees regardless of whether they opt out of the Class. This Class Notice explains your legal rights, the terms of the settlement, what you must do to participate, and the estimated amount of money you may receive.

Who are the attorneys representing the Parties?

The attorneys representing the Parties in the Action are:

Class Counsel

Kane Moon
Allen Feghali
Enzo Nabiev
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125

Defendant's Counsel

EVAN R. MOSES
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OGLETREE, DEAKINS, NASH, SMOAK
& STEWART, P.C.
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MARLENE M. MOFFITT
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& STEWART, P.C.
4370 La Jolla Village Drive, Suite 990
San Diego, CA 92122
Telephone: 858-652-3110
Facsimile: 858-652-3101

What are the Settlement terms?

Subject to final Court approval, Defendant will pay a total of \$700,000 (the "Gross Settlement Amount") to fully and finally resolve all claims in the Action. The amount to be distributed to Settlement Class Members, i.e., Class Members who do not exclude themselves from the settlement (the "Net Settlement Amount") will be the Gross Settlement Amount, minus the following amounts, all subject to court approval: (a) payment to the Settlement Administrator for administration fees and cost (up to an estimated maximum of \$20,000); (b) payment to the Plaintiff of a Class Representative Service Payment (\$7,500 to be requested); (c) payment to Class Counsel of Plaintiff's attorneys' fees (up to \$233,333.33 to be requested) (d) payment to Class Counsel of Plaintiff's actual litigation costs (up to \$20,000 to be requested); and (d) payment of \$70,000 for resolution of all claims under

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PAGA (the “PAGA Allocation”). The Net Settlement Amount will be used to pay each Settlement Class Members a pro-rata Individual Class Settlement Payment based on the number of workweeks each Settlement Class Member worked for Defendant in California during the Class Period.

Calculation of Individual Settlement Payments. The Net Settlement Amount will be divided among all Settlement Class Members on a pro rata basis, based upon the total number of workweeks actually worked for Defendant, during the Class Period, taking into account leaves of absence and any gaps in employment. . Your estimated individual workweeks during the Class Period and estimated Individual Class Settlement Payment are listed below:

Defendant’s records indicate you worked a total of << **Class Workweeks**>> workweeks in California during the Class Period. Based on your workweeks during the Class Period, your estimated Individual Class Settlement Payment is approximately \$<<**Est Individual Class Settlement Payment**>>, minus any withholdings and deductions required by law.

For tax reporting purposes, each Individual Class Settlement Payment will be allocated 20% as wages and 80% as penalties and interest. The wage portion of each Individual Class Settlement Payments will be subject to withholding of applicable local, state, and federal taxes, and the Settlement Administrator will deduct applicable employee-side payroll taxes from the wage portion of each Individual Class Settlement Payment. The portion of each Individual Class Settlement Payment allocated to penalties and interest will be classified as other miscellaneous income and reported to state and federal taxing authorities by the Settlement Administrator using Form 1099-MISC without any tax withholding. All taxes owed on the other miscellaneous income portion of each Individual Class Settlement Payment will be the responsibility of the Settlement Class Member receiving the payment. The employer’s share of any payroll taxes will be separately paid by Defendant.

Calculation of Individual PAGA Settlement Payments. The PAGA Allocation will be distributed to the California Labor and Workforce Development Agency (“LWDA”) and to the PAGA Employees. In accordance with California law, 75 percent of the PAGA Allocation (or \$52,500) will be paid to the LWDA and the remaining 25 percent of the PAGA Allocation (or \$17,500) will paid to the PAGA Employees on a pro-rata basis (the “Individual PAGA Settlement Payments”) based on the number of workweeks each PAGA Employee actually worked for Defendant in California during the PAGA Period, taking into account leaves of absence and any gaps in employment.. Your estimated individual workweeks during the PAGA Period and estimated Individual PAGA Settlement Payment are listed below:

Defendant’s records indicate you worked a total of <<**PAGA Workweeks**>> workweeks in California during the PAGA Period. Based on your workweeks during the PAGA Period, your estimated Individual PAGA Settlement Payment is approximately \$<<**Est Individual PAGA Settlement Payment**>>.

Each Individual PAGA Settlement Payment will be allocated as 100 percent miscellaneous income and reported to state and federal taxing authorities by the Settlement Administrator using Form 1099-MISC. Any taxes owed on the PAGA Settlement Payment will be the responsibility of the PAGA Employee receiving these payments.

Handling of Unclaimed and Uncashed Checks. All checks for Individual Class Settlement Payments and Individual PAGA Settlement Payments will remain valid and negotiable for one hundred and eighty (180) days from the date of the checks’ issuance and shall thereafter automatically be void if not cashed by a participating Settlement Class Member or PAGA Employee within that time. Any Individual Settlement Class Payment or Individual PAGA Settlement Payment that is not cashed by a Settlement Class Member or PAGA Employee within 180 days of issuance will be transmitted by the Settlement Administrator to the California State Controller’s Office for Unclaimed Property in the name of each check recipient who failed to cash his or her check prior to the void date. The Settlement Administrator will also void any tax documents issued to the Settlement Class Members or PAGA Employees who did not cash their checks within 180 days of issuance. In such event, the Settlement Class Member and/or PAGA Employee will nevertheless remain bound by the terms of the Settlement.

Neither the Parties nor attorneys make any representations concerning the tax consequences of this Settlement or your participation in it. Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel, Defendant’s counsel, the Settlement Administrator, and the Court are unable to offer advice concerning the state or federal tax consequences of payments to any Settlement Class Member or PAGA Employee.

Class Counsel Attorneys' Fees and Costs, Class Representative Service Award, Settlement Administration Costs and Payment to the LWDA. Class Counsel will ask the Court to award attorneys' fees up to \$233,333.33 (one-third of the Gross Settlement Amount) and reimbursement of reasonable costs incurred in the Action not to exceed \$20,000.00. In addition, Class Counsel will ask the Court to authorize a Class Representative Service Payment of \$7,500 for Plaintiff for his efforts in bringing the case on behalf of the Class. The Parties estimate the cost of the Settlement Administrator will not exceed \$20,000.00. A proposed payment in the amount of \$52,500.00 will also be made to the LWDA for PAGA penalties, which represents 75 percent of the \$70,000 PAGA Allocation from the Gross Settlement Amount.

How you may dispute your workweek calculation?

Workweeks for Class Members are calculated based on the number of workweeks each Class Member worked for Defendant in California during the Class Period, i.e., December 18, 2016 through <<the earlier of the date of preliminary approval or February 7, 2022>>. Workweeks for PAGA Employees are calculated based on the number of workweeks each PAGA Employee worked for Defendant in California during the PAGA Period, i.e., December 16, 2019 through <<the earlier of the date of preliminary approval or February 7, 2022>>.

If you dispute the number of workweeks for which you were credited during the Class Period or the PAGA Period, you must submit your dispute ("Workweek Dispute") in writing and send it to the Settlement Administrator via fax or mail, postmarked or faxed no later than <<+60 days from date of mailing>> (the "Response Deadline"). Your Workweek Dispute must be sent to:

Phoenix Settlement Administrators

<<mailing address>>

Your Workweek Dispute must be in writing and must contain: (a) your full name, signature, address, telephone number, and the last four digits of your Social Security number; (b) the number of workweeks you contend to have worked for Defendant in California during the Class Period and PAGA Period; and (c) any evidence supporting your contention. Defendant's records will be presumed correct unless you prove otherwise by credible evidence. The Settlement Administrator will resolve and decide all Workweek Disputes, and the Settlement Administrator's decision will be final and non-appealable. **REMINDER:** The deadline to submit a written Workweek Dispute to the Settlement Administrator, with any supporting evidence, is <<RESPONSE DATE>>.

What claims are being released by Settlement Class Members and PAGA Employees?

Upon the final approval by the Court of this Settlement and Defendant's payment of the Gross Settlement Amount and its employer-side payroll taxes, and except as to such rights or claims as may be created by this Settlement, each Settlement Class Member and PAGA Employee will be deemed to have released the following claims:

(a) **Identity of Released Parties.** "Released Parties" means Defendant and its past, present and/or future, direct and/or indirect, officers, directors, members, employees, agents, representatives, attorneys, insurers, investors, parent companies, subsidiaries, affiliates, and any individual or entity that could be jointly liable with Defendant.

(b) **Claims Released by Settlement Class Members.** Each and every Class Member, on behalf of himself or herself and his or her heirs and assigns, unless he or she has submitted a timely and valid Request for Exclusion, will be deemed to have released the Released Parties from the Released Claims arising during the Class Period. "Released Claims" means any and all claims for wages, damages, unpaid costs, penalties, liquidated damages, benefits, fringes, interest, attorney fees, litigation costs, restitution, or equitable relief, against any of the Released Parties, that were pled or could have been pled based on the factual allegations, circumstances, and/or primary rights set forth in the Action and/or PAGA Letter, including all claims under the California Labor Code, Industrial Welfare Commission Wage Orders and applicable law for: failure to pay wages (including overtime wages, regular wages, minimum wages, and rounding), failure to provide compliant meal and/or rest periods or proper premiums in lieu thereof, failure to pay wages timely during employment and upon termination, failure to maintain payroll records, failure to provide legally-compliant wage statements, all claims for violation of California Business and Professions Code §§ 17200, et seq., arising from the above-referenced claims and those claims in the Actions; and all claims for penalties under California Labor Code § 2698, et. seq.

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Class Members who submit a timely and valid Request for Exclusion will not be bound by this release and will not receive any payments under the Settlement, unless they are also a PAGA Employee in which instance they will still receive an Individual PAGA Settlement Payment and be bound by the release of PAGA Claims as set forth below.

(c) **Claims Released by PAGA Employees.** All PAGA Employees will be deemed to have released the Released Parties from the Released PAGA Claims, regardless of whether they have submitted a Request for Exclusion to opt out of the class portion of the Settlement. “Released PAGA Claims” means all Released Claims arising under PAGA during the PAGA Period.

What are your Options at this time?

As a Class Member, you have two options under this Settlement, each of which is further discussed below. You may: (Option A) remain in the Class and receive an Individual Class Settlement Payment and an Individual PAGA Settlement Payment (if applicable); or (Option B) exclude yourself from the Settlement Class and receive only an Individual PAGA Settlement Payment (if applicable). If you choose Option A, you may also object to the Settlement, as explained below.

OPTION A. Remain in the Class. If you choose Option A and remain in the Class, you will be represented at no cost by Class Counsel. Class Counsel, however, will not represent you for purposes of making objections to the Settlement. If you do not exclude yourself from the Settlement, you will be subject to any Judgment that will be entered in the Action, including the release of the Released Claims as described above.

If you wish to remain in the Class and be eligible to receive an Individual Class Settlement Payment, **you do not need to take any action.** By remaining in the Class and receiving settlement monies, you consent to the release of the Released Claims as described above.

Any and all amounts paid to Settlement Class Members will not count or be counted for determination of eligibility for, or calculation of, any employee benefits (for example, vacations, holiday pay, retirement plans, non-qualified deferred compensation plans, etc.), or otherwise modify any eligibility criteria under any employee pension benefit plan or employee welfare plan sponsored by Defendant, unless otherwise required by law.

If you chose Option A, but you believe the proposed Settlement is not fair, reasonable, or adequate in any way, you have several options that you may use to object or express any concerns. To object, you may appear in person at the Final Approval Hearing, have an attorney object for you, or submit a written brief or statement of objection (“written objection”) to the Settlement Administrator at Phoenix Settlement Administrators <<address>>. If you submit a written objection to the Settlement Administrator, it should contain sufficient information to confirm your identity and the basis of the objection, including: (1) your full name; (2) the grounds for the objection; and (3) your signature. Your written objection must be postmarked on or before <<Response Deadline>> and sent to the Settlement Administrator at the address listed above to ensure that it is received in time to be considered by the Court. You can also hire an attorney at your own expense to represent you with respect to your objection. The Parties may file responses to any written objections before the Final Approval Hearing. Regardless of whether you object in writing, the Court may, in its sole discretion, permit you to state any objections you may have at the Final Approval Hearing. **Regardless of any objection, however, if you choose Option A, you will be bound by the terms of the Settlement, including the release of Released Claims as set forth above, if the Settlement is finally approved by the Court.**

An objection alone will not satisfy the legal requirements for a Settlement Class Member to appeal a Judgment entered in the Action. In order to have standing to appeal a Judgment entered following an Order finally approving this Settlement, a Settlement Class Member must formally intervene and become a party of record in the action to appeal, as is required under the California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018).

OPTION B. Request to Be Excluded from the Class. If you do not want to be part of the Settlement Class, you must submit a written Request to be Excluded to the Settlement Administrator at Phoenix Settlement Administrators <<address>>. In order to be valid, your written Request to be Excluded must be signed and must include your name, address, and telephone number (to confirm your identity and make certain that only persons requesting exclusion are removed from the settlement).

Your written Request to be Excluded from the Settlement must be signed and postmarked on or before <<**Response Deadline**>>. If you do not submit a written Request to be Excluded on time (as evidenced by the postmark), your written Request to be Excluded will be rejected, you will be deemed a participating Settlement Class Member, and you will be bound by the release of Released Claims as described above and all other terms of the Settlement. If you submit a written Request to be Excluded by the deadline to request exclusion, you will have no further role in the Action, and **you will not be entitled to any benefit, including an Individual Class Settlement Payment**, as a result of the Action and Settlement. However, if you are also a PAGA Employee you will still be entitled to receive an Individual PAGA Settlement Payment and you will still release the Released PAGA Claims against Defendant described above. Moreover, if you submit a Request to be Excluded, you will not be able to object to the Settlement or complain to the Court about any aspect of the Settlement.

What is the next step in the approval of the Settlement?

The Court will hold a Final Approval Hearing regarding the fairness, reasonableness and adequacy of the proposed Settlement, the plan of distribution, Class Counsel's request for attorneys' fees and costs, the Class Representative Service Payment to Plaintiff, the Settlement Administrator's costs, PAGA Allocation, and payment to the LWDA for PAGA penalties on <<**FA Date and Time**>> in Department 1 of the Los Angeles Superior Court, 312 North Spring Street, Los Angeles, CA 90012. Because of healthcare guidance and Orders of the Los Angeles Superior Court related to COVID-19, the hearing may be a telephonic hearing only. If you wish to attend the Final Approval Hearing telephonically, visit <https://my.lacourt.org/laccwelcome> for instructions on how to do so. The Final Approval Hearing may be continued without further notice to Class Members. You are not required to attend the Final Approval Hearing to receive an Individual Class Settlement Payment or Individual PAGA Settlement Payment.

How to get additional information?

This Notice summarizes the Action and the basic terms of the Settlement. More details are in the Joint Stipulation of Class Action and PAGA Settlement attached to the Declaration of Kane Moon in Support of Plaintiff's Motion for Preliminary Approval. The Joint Stipulation of Class Action and PAGA Settlement and all other records relating to the lawsuit are available for inspection and/or copying at the Civil Records Office of the Los Angeles Superior Court. Because of the Los Angeles Superior Court's COVID-19 pandemic procedures, in order to view documents filed in the lawsuit, Class Members may be required to make an appointment with the Court. You may also request a copy of the Settlement Agreement from Class Counsel, at the address listed above. You may also review the Settlement Agreement and other documents on-line at the following website: [www._____](http://www._____.com), or you may contact the Settlement Administrator as follows:

Phoenix Settlement Administrators
<<Telephone Number>>
<<Fax Number>>
<<Email>>
<<Website>>

**IT IS IMPORTANT THAT YOU NOTIFY THE SETTLEMENT ADMINISTRATOR IMMEDIATELY
IF YOU HAVE A CHANGE OF ADDRESS**

**PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS
SETTLEMENT.**

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