

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)

Eduardo Garcia (State Bar #290572)

5440 Morehouse Drive, Suite 3500

San Diego, CA 92121

Telephone: (619)599-8292

Facsimile: (619) 599-8291

jlapuyade@jcl-lawfirm.com

egarcia@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)

Jackland K. Hom (State Bar #327243)

5440 Morehouse Drive, Suite 3500

San Diego, CA 92121

Telephone: (619)255-9047

Facsimile: (858) 404-9203

shani@zakaylaw.com

jackland@zakaylaw.com

Attorneys for Plaintiff MONSERRAT LOPEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF VENTURA

MONSERRAT LOPEZ, an individual, on
behalf of herself, on behalf of all persons
similarly situated, and in her representative
capacity on behalf of the State of California and
fellow Aggrieved Employees,

Plaintiffs,

vs.

ADIDAS AMERICA, INC., an Oregon
corporation; and DOES 1 through 50, Inclusive;

Defendants.

Case No. 56-2021-00549844-CU-OE-VTA

**DECLARATION OF JEAN-CLAUDE
LAPUYADE, ESQ. IN SUPPORT OF
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: April 4, 2022

Time: 8:20 a.m.

Judge: Hon. Mark Borrell

Dept.: 40

I, Jean-Claude Lapuyade, Esq., declare as follows:

1. I am over eighteen years of age and if called as a witness, I could and would competently testify to the following facts from my own personal knowledge. I am an attorney-at-law and the owner of the law firm of JCL LAW FIRM, APC (hereinafter “Class Counsel”). I am counsel of record for Plaintiff MONSERRAT LOPEZ, (hereafter “Plaintiff”) in this wage and hour class action filed against ADIDAS AMERICA, INC. (hereinafter collectively “Defendant”).

2. This declaration is being submitted in support of Plaintiffs’ Motion for Final Approval of Class Action Settlement.

3. Attached hereto as **Exhibit “A”** are true and correct copies of the fully executed Stipulation of Settlement of Class Action and PAGA Claims and Release of Claims (hereinafter collectively “Settlement Agreement”).

4. Attached hereto as **Exhibit “B”** is a true and correct copy of the conformed December 1, 2021, Preliminary Approval Order.

5. Attached hereto as **Exhibit “C”** is a true and correct copy of the October 28, 2021, proof of filing the proposed Settlement with the LWDA.

6. Attached hereto as **Exhibit “D”** is true and correct copy of the March 10, 2022, proof of filing this motion seeking final approval of this Settlement.

I. INTRODUCTION

7. An objective evaluation of the proposed settlement of \$1,500,000 (“Total Settlement Amount”) confirms that the relief negotiated on behalf of the Class is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial, and non-collusive negotiations, between experienced counsel, guided by the wisdom and experience of prominent wage and hour mediator Jeffd Ross, Esq. After deducting any Court-approved attorneys’ fees and costs, class representative incentive payments, administration costs, and payments to the Labor & Workforce Development Agency (“LWDA”), the net settlement fund shall be distributed to the Settlement Class based on the number of Workweeks they worked while employed by Defendants during the relevant time period. ***The Settlement Class greeted news of the Settlement with overwhelming approval as 100% of the***

1 ***Settlement Class choose to participate in the Settlement.*** There are zero opt-outs and zero objections
2 to the Settlement. The unanimous approval by the Settlement Class evidences the clear fairness and
3 reasonableness of the Settlement.

4 8. This Settlement provides substantial recovery for Defendant's alleged wage and hour
5 violations. Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount
6 of \$865,000. This will result in an average Individual Settlement Payment of **\$225.55** and high payment
7 of **\$1,028.15**.

8 9. The relief offered by the Settlement is immediate and is particularly impressive when
9 viewed against the difficulties encountered by plaintiffs pursuing similar wage and hour cases (*see*
10 *infra*). Indeed, by settling now rather than proceeding to trial, the Settlement Class will not have to wait
11 (possibly years) for relief, nor will they have to bear the risks associated with prolonged and uncertain
12 litigation.

13 10. As discussed below, the proposed Settlement satisfies all criteria for final settlement
14 approval under California law and falls well within the range of reasonableness. Accordingly, Class
15 Representative and Class Counsel respectfully request this Court grant final approval of the Settlement
16 Agreement and, entry of the proposed Final Approval Order and Judgment.

17 **II. OVERVIEW OF THE LITIGATION**

18 11. Defendant is the American subsidiary of the international sports apparel, footwear and
19 lifestyle brand Adidas. Defendant operates approximately thirty retail stores throughout California.
20 This action asserts claims on behalf of Defendant's non-exempt employees working at those California
21 retail store locations. Plaintiff worked for Defendant as a non-exempt retail store employee in California
22 between August of 2019 to August of 2020. At all times during her employment, Plaintiff earned an
23 hourly wage and was entitled to legally compliant meal and/or rest periods, and minimum, regular and
24 overtime wages for all hours worked. Throughout her employment, Plaintiff was subject to Defendant's
25 written policies and procedures contained in, among other documents, the "Adidas Global Stores
26 Operation Manual" and the Adidas "Ready to Go Play Book."

12. Generally, Plaintiff claims that Defendant failed to pay for all time worked, including, time spent waiting for and undergoing mandatory loss prevention security checks, failed to provide compliant meal and rest periods, failed to provide suitable seating, failed to furnish accurate itemized wage statements, and failed to pay all wages upon separation failure. Defendant forcefully denies liability for each of Plaintiff's claims. Further, Defendant asserts that it fully complied with all applicable employment laws and raised several other significant defenses to Plaintiff's claims, including but not limited to, facially compliant meal and rest period policies, written policies requiring all loss prevention security checks to take place while on-the-clock, compliant wage statements, and timely paid all wages due upon separation of employment.

13. On October 27, 2020, Plaintiff served Defendant and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth the facts and theories supporting Defendant's alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of her intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 et seq ("PAGA").

14. On December 4, 2020, Plaintiff filed a class action complaint in the Ventura Superior Court, Case Number 56-2020-00547592-CU-OE-VTA ("Class Action"). The Class Action alleged eight causes of action against Defendant for: (1) Unfair Competition in Violation of California Business and Professions Code §§ 17200; (2) Failure to Pay Overtime Wages in Violation of California Labor Code §§ 510 *et seq.*; (3) Failure to Pay Minimum Wages in Violation of California Labor Code §§ 1194, 1197 and 1197.1; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (6) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code §226; (7) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203; and (8) Violation of California Labor Code § 1198 and California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating) ("Class Claims"). On January 15, 2021, Defendant removed the Class Action to the United States District Court, Central District of California.

1 15. On January 27, 2021, Plaintiff separately filed a representative action in Ventura County
2 Superior Court, Case Number 56-2021-00549844-CU-OE-VTA, alleging a single cause of action for
3 Violations of PAGA (“Representative Action”). On March 11, 2021, United States District Court Judge
4 Mark C. Scarsi denied Plaintiff’s motion to remand the Class Action.

5 16. Plaintiff commenced written discovery in both the Class Action and the Representative
6 Action in March 2021. After answering Plaintiff’s written discovery, producing thousands of pages of
7 documents, and taking Plaintiff’s deposition, the Parties agreed to collectively mediate the Class Action
8 and the Representative Action (collectively “Actions”). In anticipation of mediation, the Parties agreed
9 to stay additional formal discovery and continue deadlines for class certification in the Actions. To
10 prepare for mediation, the Parties agreed to informally produce additional documents and data points
11 subject to the mediation privilege, including but not limited to, the Class Members’ time data and certain
12 payroll data points. As discussed *infra*, Plaintiff’s counsel retained the forensic consultants at Berger
13 Consulting Group (“BCG”) to analyze Defendant’s time and payroll data.

14 17. On July 1, 2021 the Parties participated in a full day mediation with highly regarded wage
15 and hour mediator Jeff Ross, Esq. After arms-length negotiations and bargaining, the Parties reached
16 an agreement to settle and signed a Memorandum of Understanding. After reaching an agreement in
17 principle, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of
18 the instant motion. As part of the Agreement, the Parties stipulated to the filing of a First Amended
19 Complaint adding the Class Claims to the Representative Action, to dismiss, without prejudice, the
20 Class Action pending in federal court, and to seek approval of the entire Agreement in the amended
21 Representative Action.

22 18. The Court preliminarily approved a Total Settlement Amount of \$1,500,000 based on a
23 total of approximately 169,946 Workweeks worked by the Class during the Class Period. The Total
24 Settlement Amount shall be used: (1) to satisfy Individual Settlement Payments; (2) to satisfy the Class
25 Representative Service Award; (3) to satisfy the Class Counsel Award; (4) to satisfy the PAGA
26 Settlement; and (5) to satisfy the Settlement Administration Costs incurred in this action.

1 19. As explained in further detail below, the Settlement is fair, adequate, and reasonable to
2 the class and should be granted final approval. This is evidenced by the unanimous approval of the
3 Settlement by the Settlement Class and absence of any objections to the Settlement.

4 20. Further supporting final approval, the average Individual Settlement Payment of \$225.55
5 is comparable to settlement payments in similar wage and hour class actions. This result is particularly
6 favorable considering that liability and certification were far from certain. Given the complexities of
7 this case, the defenses asserted, the uncertainty of class certification, along with the uncertainties of
8 proof at trial and appeal, the proposed settlement is fair, reasonable, and adequate, and should be granted
9 final approval.

10 **IV. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE**

11 **A. Adequate Investigation**

12 21. Months before filing any one of the Actions, Class Counsel began its pre-filing
13 investigation into the Plaintiff's complaints. Class Counsel's investigation started with several lengthy
14 interviews with Plaintiff. As part of the interview process, the Plaintiff produced documents related to
15 her employment, including portions of Defendant's handbooks, compensation policies and time and
16 payroll records. At the conclusion of the interviews, Class Counsel determined that each Plaintiff's
17 complaints justified further inquiry.

18 22. Class Counsel subsequently requested Plaintiff's employee files from Defendant. In
19 response, Defendant produced hundreds of pages of documents, including but not limited, copies of
20 Plaintiff's hiring documents, payroll and time records, performance reviews and separation documents.
21 Class Counsel reviewed and analyzed the documents and determined the documents appeared to
22 substantiate Plaintiff's claim that Defendant's failed to, among other things, pay for all time worked
23 and to provide compliant meal and rest periods.

24 23. Class Counsel retained a private investigator to visually observe eleven of Defendant's
25 retail store locations in California. Again, this investigation substantiated Plaintiff's claims.

26 24. Additionally, during the pre-litigation meetings with Class Counsel, Plaintiff provided
27 the names and contact information for several Class Members. During the litigation, as result of
28

1 Plaintiff's formal discovery requests, Defendant produced the names and contact information for the
2 Class Members. During the litigation, Class Counsel interviewed hundreds of Class Members to further
3 investigate the allegations asserted in the Actions. As a result of these interviews, Class Counsel
4 obtained dozens of declarations from putative class members in preparation for Plaintiff's motion for
5 class certification. Ultimately, Class Counsel used these declarations to great affect at the time of
6 mediation.

7 25. Considering the many anticipated factual disputes, the Parties agreed, relatively early in
8 the litigation, that it would be in the best interest of both Parties to mediate the matter. To prepare for
9 mediation, Class Counsel requested documents and data points to further evaluate Plaintiff's claims and
10 Defendant's liability exposure to the Class Members. In response to Class Counsel's request, Defendant
11 produced the time records for the Class Members, aggregate workweek and pay period data for the
12 Class Members, aggregate meal premiums paid to the Class Members, average hourly rate for the Class
13 Members, and copies of applicable handbooks, policies, and agreements containing, *inter alia*,
14 compensation, timekeeping and meal and rest period policies. In total, Defendant produced
15 approximately 4,500 pages of pertinent policy documents and more than 4.1 million unique cells of
16 time and payroll data for Class Counsel to analyze.

17 26. Class Counsel then retained the statisticians and economists at BCG to evaluate the Class
18 Members' payroll and time data. BCG provides data analysis and damage modeling consulting services
19 specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed
20 and experienced experts in their fields and have provided their expertise on thousands of cases. Stated
21 differently, the BCG is uniquely qualified to analyze Defendant's time and payroll data.

22 27. BCG analyzed Defendant's time and payroll data to assist in the development of various
23 damage models. Among other things, BCG determined the approximate number of work shifts,
24 workweeks, pay periods, average length of shift and average number of hours worked per week and pay
25 periods during the Class Period. BCG also estimated the number of missed, late or truncated meal and
26 rest periods, the amount of paid missed meal period premiums paid during the Class Period, and the
27 amount of off-the-clock work performed by the Class Members during the Class Period.

28. In advance of mediation, Class Counsel created several damage models predicated on the BCG analysis. Class Counsel's models calculated Defendant's potential liability exposure while accounting for the uncertainties of continued litigation. These damage models informed and guided Class Counsel during the mediated settlement discussions.

29. In addition to formal and informal discovery, witness interviews, document review, data analysis and legal research, Class Counsel also researched similar wage and hour actions. Here, Class Counsel's investigation uncovered *Chavez v. Adidas America, Inc.*, United States District Court, Northern District of California, Case Number 5:16-cv-6533 LHK a prior wage and hour class action against Defendant. In that case, Defendant resolved the class claims asserted on behalf of 3,700 class members (a number similar to class members covered by this Settlement) for the period between October 11, 2012 and September 15, 2017 for \$1.5 Million Dollars. Although no two cases are identical, this research provided Class Counsel with a marker to inform settlement discussions and, ultimately, to measure this settlement against.

30. Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiff's suitability as a putative class representative through interviews, background investigations, and analysis of her employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing the Settlement Class' time and payroll records; (5) analyzing Defendant's labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendant's liability for purposes of settlement; (8) holding phone interviews with hundreds of putative class members; (9) drafting the mediation brief; and (10) participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the Parties have agreed.

31. Class Counsel only agreed to enter the Settlement following his thorough investigation and evaluation of Plaintiff's claims. Based on his investigation of the facts, applicable law, and

marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated with litigation, and the various defenses asserted by Defendant, Class Counsel firmly believes this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement

B. The Parties Settled at Mediation

32. The Settlement is the product of a mediation session with a respected mediator and negotiations over the terms of the Settlement. The negotiations were adversarial, conducted at arm's length and tempered by the efforts of both sides to serve the interests of their clients. The amount of the service award was not negotiated until after the parties agreed to the Total Settlement Amount and many other terms.

C. Class Counsel is Experienced in Similar Litigation

33. Plaintiffs are represented by competent and experienced counsel to pursue their claims. I established the JCL Law Firm, APC ("Firm"), in 2010. The Firm is a boutique plaintiff firm representing aggrieved employees and consumers throughout California in wage and hour class actions and complex multi-party product liability matters. The Firm currently consists of myself, Jean-Claude Lapuyade, Esq. (Partner/Owner), Eduardo Garcia (Associate Attorney) Tesla Stone (Paralegal), Leilani Edmunds (Legal Secretary), Peyton Turner (Law Clerk), Amanda Rasmussen (Law Clerk), Sara Christensen (Legal Assistant).

34. I am qualified to represent the Plaintiffs, the State of California and the Aggrieved Employees. I have extensive experience with wage and hour class and representative actions litigation like this matter, and employment matters in general. Additionally, I have extensive complex mass tort litigation experience and complex construction product liability experience. I can, will and have adequately represented the interests of the Plaintiffs, the State of California and the Aggrieved Employees throughout this action.

35. I have represented consumers and employees in California class actions, and complex multi-party product liability actions exclusively for more than 13 years. I have been in practice as a plaintiffs' civil litigation attorney since April 2007.

36. I have significant class counsel and collective action counsel experience. I served as class and/or collective (PAGA) counsel in the following matters:

a. *Felix v. TVI, Inc., d.b.a. Savers*, Santa Clara Superior Court Case No. 21CV376407 (February 18, 2022) Hon. Sunil R. Kulkarni approved a \$1.8 million dollar class action and PAGA action settlement for, *inter alia*, unpaid off-the-clock work. The Court appointed JCL Law Firm, APC as Class Counsel and as representative PAGA counsel for the State of California.

b. *Munoz v. AMTCR*, San Bernardino Superior Court Case No. CIV-DS2001914 (August 24, 2021) Hon. David Cohn approved a \$1.8 million dollar class and PAGA settlement for, *inter alia*, inaccurate itemized wage statements. The JCL Law Firm, APC acted as class counsel for the settlement class and as representative PAGA counsel the State of California and the Aggrieved Employees.)

c. *Nunes v. Home Depot U.S.A., Inc.*, San Joaquin Superior Court Case No. STK-CV-UOE-2020-0011011 (October 20, 2021 – Hon. Roger Ross approved a \$1.5 million dollar class and PAGA settlement for, *inter alia*, miscalculated meal period premiums and appointed Jean-Claude Lapuyade, Esq, as Class Counsel.)

d. *Pillsbury v. T&T Restaurants CA, Inc.*, Del Norte Superior Court Case No. CVUJ-20-1214 (December 14, 2021 – Hon. Darren McElfresh approved \$550 billing rate and appointed Jean-Claude Lapuyade, Esq, as Class Counsel in a wage and hour class action settlement.)

e. *Rodriguez v. RSI Home Products, Inc.*, San Bernardino Superior Court Case No. CIVDS2023354 (July 30, 2021 – Hon. David Cohn approved a \$1.45 million class and PAGA settlement for, *inter alia*, failure to comply with piece-rate laws, and appointed the JCL Law Firm, APC as Class Counsel)

f. *Elias Kaser v. Aviation Consultants, Inc.*, Orange County Superior Court Case No. 30-2021-01191204-CU-OE-CXC (September 22, 2021 – Hon. Peter J. Wilson

1 approved \$550 billing rate in a representative California Labor Code Private Attorney
2 General Act settlement).

3 g. *Jer Vang v. Bridge Property Management*, Alameda County Superior Court, Case
4 No RG19047434 (January 8, 2021 – Hon. Winifred Smith approved a class and PAGA
5 settlement for, *inter alia*, unpaid off the clock work. The JCL Law Firm, APC acted as
6 class counsel for the settlement class and as representative PAGA counsel the State of
7 California and the Aggrieved Employees.)

8 h. *Johnson v. Volt Management Corp., Inc. et al.*, Los Angeles County Superior
9 Court, Case No. 19STCV16466 (December 11, 2020 – Hon. Amy Hogue approved a
10 PAGA Settlement negotiated on behalf of the State of California and the aggrieved
11 employees by the JCL Law Firm, APC.)

12 i. *Salazar v. Frontier Auto Sales Inc., dba Frontier Toyota*, Los Angeles Superior
13 Court, Case No. 19STCV20382 (November 24, 2020 – Hon. John P. Doyle appointed the
14 JCL Law Firm, APC as class counsel and approved a class and PAGA settlement for,
15 *inter alia*, missed meal and rest periods.)

16 j. *Villalobos v. Alterra Group, LLC et al.*, Los Angeles County Superior Court, Case
17 No. 19STCV19448 (November 11, 2020 – Hon. Richard Fruin approved a PAGA
18 Settlement for, *inter alia*, unreimbursed business expenses. The JCL Law Firm, APC
19 acted as counsel for the plaintiff, the State of California and the Aggrieved Employees.)

20 k. *Stevens et al., v. Bank of England*, San Diego County Superior Court Case No.
21 37-2019-00018662-CU-OE-CTL (October 16, 2020 – Hon. John Meyer appointed JCL
22 Law Firm as Class Counsel and granted final approval of wage and hour class action for,
23 *inter alia*, off-the-clock work.)

24 l. *Frazier v. ASA Carlton, Inc.*, San Diego Superior Court Case No. 37-2019-
25 00036147 (October 9, 2020 Hon. Kenneth Medel appointed the JCL Law Firm as Class
26 Counsel and granted final approval of wage and hour class action for off-the-clock work.)
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28

m. *Krake et al., v. Central Valley Diner, Inc.*, Placer County Superior Court Case No. SCV0041645 (September 4, 2020 – Hon. Michael Jones appointed JCL Law Firm as class counsel and granted final approval of wage and hour class action for meal period violations.)

n. *Conner v. Ascendant Marketing, LLC et al.*, San Diego Superior Court Case No. 37-2019-00026864-CU-OE-CTL (July 24, 2020 Hon. Joel Wohlfeil granted approval of PAGA Settlement for, among other things, off-the-clock work. JCL Law Firm, APC acted as lead counsel.)

o. *Guerrero v. Estancia Operations, LLC.*, San Diego Superior Court Case No. 37-2019-00028963 (August 25, 2020 – Hon. Katherine Bacal approved PAGA Settlement for, *inter alia*, missed meal and rest periods. JCL LAW Firm, APC, acted as lead counsel.)

p. *Moreno v. Dash Lube, et al.*, United States District Court, Southern District of California, Case No. 18cv1922 DMS (AHG) (December 13, 2019 – Granted class certification of Labor Code Section 226 claim and appointed JCL Law Firm, APC, as Class Counsel.)

q. *Perkins et al., v. Tahiti Enterprises, Inc., et al.*, Orange County Superior Court Case No. 30-2016-00863095 (October 22, 2019 – Hon. Peter Wilson appointed JCL Law Firm, APC, as Class Counsel and granted final approval for an unlawful housing class action settlement arising out of Civil Code Section 1940.1.)

r. *Hill v. Stemak Holdings, Ltd.*, San Diego Superior Court Case No., 37-2018-00000747 (January 28, 2020 – Hon. Kenneth Medel appointed JCL Law Firm, APC as class counsel and granted final approval of wage and hour class action for unpaid overtime.)

s. *Shachno et al., v. KT Hotels, LLC, et al.* San Diego Superior Court Case No Case No. 37-2018-00043601 (May 31, 2019 – Hon, Gregory Pollack appointed JCL Law Firm, APC, as Class Counsel and granted preliminary approval for the wage and hour class

action settlement involving nearly 900 current and former employees. Final approval scheduled for October 4, 2019)

t. *Almanza v. The Express Group, Inc.*, San Bernardino Superior Court Case No. CIVDS1722542 (April 19, 2019 – Hon. David Cohn appointed the JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement for *inter alia*, missed meal and rest periods and independent contractor misclassification.)

u. *Moschetto v. Pillow Global, Inc. San Diego Superior Court*, Case No. 37-2017-00024031-CU-OE-CTL (April 5, 2019 – Hon. John S. Meyer appointed JCL LAW Firm, APC, as Class Counsel and granted final approval for a wage and hour wage class action settlement involving misclassified house cleaners.)

v. *Burke v. Friendship Hotel, LLC*, San Diego County Superior Court Case No. 37-2017-00022517-CU-OE-CTL (March 10, 2019 – final approval granted on for an unlawful housing class action arising under Civil Code Section 1940.2)

w. *Terrado et al., v. Accredited Debt Relief, LLC*, San Diego County Superior Court Case No. 37-2018-00014181-CU-OE-CTL (February 8, 2019 – Hon. Gregory W. Pollock appointed JCL Law Firm, APC as Class Counsel and granted final approval for a wage and hour class action settlement for meal and rest period violations);

x. *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court Case No. CIVDS1512625, (July 27, 2018 – Hon. Thomas S. Garza appointed JCL Law Firm, APC, as Class Counsel and granted final approval for a wage and hour class action settlement involving claims for on duty meal and rest periods.);

y. *Summerlin et al. v. Maplebear, Inc. dba Instacart*, Los Angeles Superior Court Case No. BC603030 (2018 - certified and settled wage and hour class action.)

z. *Ortega v. Prime Healthcare*, San Diego Superior Court Case No. 37-2014-00011240-CU-OE-CTL (2018 – Approved PAGA only settlement for on duty meal and rest periods)

- aa. *Engstrom v. Bender-Rosenthal, Inc.* San Diego Superior Court Case No. 37-2016-00012373-CU-OE-CTL (2017 - Certified and settled class action for employee misclassification);
- bb. *Crawford v. Outlook Amusements, Inc.*, Los Angeles Superior Court Case No. BC617160 (2017 - Certified and settled wage and hour class action.);
- cc. *Hernandez v. Sunglass Hut Trading, LLC*, San Bernardino Superior Court Case No. CIVDS1505181 (2016 - Certified and settled wage and hour class action);
- dd. *Burns v. Shalom, LLC*, San Diego Superior Court, Case No., 37-2013-00058356-CU-BT-CTL (2015 - certified and settled class action for unlawful housing practices arising out of Civil Code Section 1940.1);

37. Since 2010, I have successfully tried two (2) cases to conclusion, each resulting in a favorable verdict for the firm's clients.

38. Finally, I have published appellate experience in *William Blanchette et al., v. The Superior Court of Imperial County, (GHA Enterprises)*, 8 Cal.App.5th 521.

39. Consequently, I have been named to the prestigious Thomson Reuters, Super Lawyers, Rising Star in 2015, 2016, 2017 and, again, in 2018. According to Thomson Reuters, the Super Lawyers, Rising Star list recognizes the top 2.5% of eligible attorneys. (see https://www.superlawyers.com/about/selection_process.html.)

D. Strength of Plaintiff's Case

40. Here, the Settlement is clearly within the "ballpark" of reasonableness because the Settlement provides a sizeable recovery to the Settlement Class Members and need not necessarily obtain 100 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91 Cal. App. 4th at 250. While the Total Settlement Amount of \$1,500,000 represents a discount on Defendant's potential exposure if Plaintiff established liability on all claims and was awarded the full amount of the estimated damages at trial, this compromise is reasonable because the formidable defenses raised by Defendant presented a risk that could award significantly less in damages than

1 Plaintiffs' estimate and (2) any theoretical post-trial recovery may require many more years of litigation,
2 resulting in added fees and costs without any guarantee of recovery for the Class.

3 41. Although Class Counsel believe strongly in Plaintiff's claims, it would be misguided to
4 ignore the asserted defenses. If successful on any one its defenses, Defendant could defense the action
5 or, at least, drastically undercut Plaintiffs' claims.

6 **E. Risks of Continued Litigation**

7 42. With respect to the most immediate challenge, i.e., class certification, the risks attendant
8 to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart*
9 *Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded
10 a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed
11 the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies,*
12 *Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
13 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
14 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
15 1077, 1088 ("[T]he reason, if any, that employees might not take their breaks were predominantly
16 individualized questions of fact not susceptible to class treatment."); *Ali v. U.S.A. Cab Ltd.* (2009) 176
17 Cal.App.4th 1333, 1341 (affirming denial of certification because employees' declarations attesting to
18 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
19 harm); *Campbell v. Best Buy Stores, L.P.,* (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
20 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
21 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
22 certification of driver meal and rest period claims based on the predominance of individual issues).
23 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
24 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
25 settlement.

26 43. Although Plaintiff is confident about the strength of her claims, Plaintiff nevertheless
27 recognizes that Defendant has factual and legal defenses that, if successful, would potentially defeat or
28

1 impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can
2 drastically affect the value of Plaintiffs' claims and, in fact, already has. Recently, the California Court
3 of Appeal, Second District, held that meal and rest period violations do not entitle employees to pursue
4 the derivative waiting time and itemized wage statement penalties. *Naranjo v. Spectrum Security*
5 *Services, Inc.*, 40 Cal.App.5th 444 (2019) (review granted). The *Naranjo* decision gutted Plaintiffs'
6 claims for Labor Code Section 226 penalties and Labor Code Section 203 waiting time penalties
7 predicated on rest period violations.

8 44. As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668 and *O'Conner v. Uber*
9 *Technologies*, 82 F. Supp. 3d 1133 (N.D. Cal. 2018) and *Duran v. U.S. Bank National Assn.*, 59 Cal.
10 4th 1 (2014), the complexities and duration of further litigation cannot be overstated. There is little
11 doubt that if Defendant faced a large adverse judgement, Defendant undoubtedly has the resources to
12 post a bond and appeal. A post-judgment appeal by Defendant would have required many more years
13 to resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the
14 case could have dragged on for years after the appeal. The benefits of a guaranteed recovery today
15 outweigh an uncertain result three or more years in the future.

16 45. Class Representative and Class Counsel recognize the expense and length of a trial
17 against Defendant through possible appeals which could take another three years. In arriving at their
18 informed belief that the present settlement is fair and adequate, Class Counsel accounted for the
19 uncertain outcome and risk inherent in complex actions such as this one. Class Counsel is also mindful
20 of and recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in
21 the litigation. Moreover, post-trial motions and appeals would have been inevitable. Costs would have
22 mounted, and recovery would have been delayed if not denied, thereby reducing the benefits of an
23 ultimate victory. Class Representative and Class Counsel believe that the Settlement confers substantial
24 monetary and non-monetary benefits upon the Class. Based upon their evaluation, Class Representative
25 and Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest
26 of the Class, is fair, reasonable and adequate, and should be granted final approval. With respect to the
27 most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage
28

and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. (*See also O’Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues).) Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement.

F. The Total Settlement Amount is Fair and Reasonable

46. The Total Settlement Amount of \$1,500,000 in this case is fair and well within the range of recognized reasonableness. As detailed at the time of preliminary approval, the Total Settlement Amount is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Class Counsel developed varied economic damages models measuring Defendant’s liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel’s investigation, including the analysis of a significant sample of time and payroll data. As detailed in greater depth during the preliminary approval process, Class Counsel projected a range of Defendant’s liability exposure for the claims asserted on behalf of the Settlement Class. The Total Settlement Amount represents approximately between 9%

1 and 24% of Defendant's *class-wide* liability exposure as estimated by Class Counsel at the time of
2 mediation.

3 47. Clearly the goal of this litigation to obtain redress for the class has been met by this
4 Settlement. Given the amount of the Settlement, the risks of litigation and the arm's length negotiations
5 between experienced counsel, the settlement is fair and reasonable, and is therefore entitled to final
6 approval.

7 **IV. THE PENALTIES UNDER PAGA ARE REASONABLE**

8 48. Here, Plaintiffs and Defendant negotiated a good faith PAGA Settlement in the amount
9 of \$80,000 which is 5.3% of the Total Settlement Amount. This amount falls well within the range of
10 approved PAGA Settlements. Seventy-Five percent (75%) of the PAGA Settlement (\$60,000) will be
11 paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) to be distributed
12 to the Aggrieved Employees, which is within the range of PAGA penalties approved by courts and
13 should be approved.

14 49. Further, on October 28, 2021, Class Counsel gave the LWDA notice of this Settlement
15 and proposed allocation by filing a copy of the Settlement and the Motion for Preliminary Approval
16 with the LWDA. On March 9, 2022, Plaintiff gave the LWDA notice of this motion seeking final
17 approval of this settlement.

18 I declare under the penalty of perjury under the laws of the State of California that the foregoing
19 is true and correct. Executed this 9th day of March 2022, at San Diego, California.

21 **JCL LAW FIRM, APC**

22 By: 
23 Jean-Claude Lapuyade
24 Attorneys for Plaintiff

EXHIBIT A

1 JEAN-CLAUDE LAPUYADE, ESQ. (SBN 248676)
2 **JCL LAW FIRM, APC**
3 3990 OLD TOWN AVENUE, SUITE C204
4 SAN DIEGO, CA 92110
5 TEL: 619-599-8292
6 FAX: 619-599-8291

7 **ZAKAY LAW GROUP, APLC**
8 SHANI O. ZAKAY (STATE BAR #277924)
9 3990 OLD TOWN AVENUE, SUITE C204
10 SAN DIEGO, CA 92110
11 TEL: (619) 255-9047
12 FAX: (858) 404-9203

13 ROBERT S. BLUMBERG, Bar No. 161649
14 ASHLEY J. BRICK, Bar No. 281657
15 **LITTLER MENDELSON, P.C.**
16 633 West 5th Street, 63rd Floor
17 Los Angeles, CA 90071
18 Telephone: 213.443.4300
19 Facsimile: 213.443.4299

20 Attorneys for Defendant
21 ADIDAS AMERICA, INC.

22 **SUPERIOR COURT OF CALIFORNIA**

23 **COUNTY OF VENTURA**

24 MONSERRAT LOPEZ, an individual, on
25 behalf of herself and on behalf of all persons
26 similarly situated,

27 PLAINTIFF,

28 vs.

ADIDAS AMERICA, INC., a Corporation;
and DOES 1 through 50, Inclusive;
DEFENDANTS.

Case No. 56-2021-00549844-CU-OE-VTA

[Action Filed 1/27/2021]

**STIPULATION OF SETTLEMENT OF
CLASS ACTION AND PAGA CLAIMS
AND RELEASE OF CLAIMS**

Judge: Honorable Mark Borrell
Dept.: 40

1 This Stipulation of Settlement of Class Action and PAGA Claims and Release of Claims is
2 entered into by and between Plaintiff MONSERRAT LOPEZ (hereinafter “Plaintiff”), individually
3 and on behalf of the Putative Class, and Defendant ADIDAS AMERICA, INC. (hereinafter
4 “Defendant”):

5 **I. DEFINITIONS**

6 A. “Actions” shall mean the putative class action lawsuit designated *Lopez v. Adidas*
7 *America, Inc.*, Ventura County Superior Court, Case No. 56-2020-00547592-CU-OE-
8 VTA, filed December 4, 2020 (hereinafter Class Action), *Lopez v. Adidas America,*
9 *Inc.*, Ventura County Superior Court, Case No. 56-2021-00549844-CU-OE-VTA,
10 filed January 27, 2021 (hereinafter the “PAGA Action”) and *Lopez v. Adidas*
11 *America, Inc.*, Case No. 2:21-cv-00447 MCS (PVC) (hereinafter the Federal Class
12 Action).

13
14
15 B. “Aggrieved Employees” shall mean all non-exempt retail store employees who are or
16 previously were employed by Defendant in California during the PAGA Period.

17
18 C. “Agreement” or “Settlement Agreement” means this Stipulation of Settlement of
19 Class Action and PAGA Claims and Release of Claims.

20
21 D. “Class Counsel” shall mean Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC and
22 Shani Zakay of Zakay Law Group, APLC.

23 E. “Class Counsel Award” means the award of fees and expenses that the Court
24 authorizes to be paid to Class Counsel for the services they have rendered to Plaintiff
25 and the Class in the Actions, consisting of attorneys’ fees currently not to exceed
26 one-third of the Total Settlement Amount currently estimated to be \$500,000 out of
27 \$1,500,000 plus costs subject to Class Counsel’s billing statement. Class Counsel’s
28

award for attorneys' fees will be divided equally between Class Counsel (50% to JCL Law Firm, APC and 50% to Zakay Law Group, APLC).

F. "Class Data" means information regarding Class Members that Defendant will in good faith compile from its records and provide to the Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include: each Class Member's full name; last known address; Social Security Number; start dates and end dates of employment or work in Defendant's retail stores in California during the Class Period; the number of Workweeks (as defined below) for each Class Member and the number of PAGA Workweeks (as defined below).

G. "Class Members" or the "Class" means all non-exempt retail store employees who are or previously were employed by and performed work for Defendant in California during the Class Period.

H. "Class Period" means the period between September 16, 2017 and October 1, 2021.

I. "Class Representative Service Award" means the amount that the Court authorizes to be paid to the Class Representative, in addition to her Individual Settlement Payment and her pro-rata share of the PAGA Settlement, in recognition of her efforts and risks in assisting with the prosecution of the Actions and in exchange for executing a General Release of Defendant.

J. "Class Representative" shall mean plaintiff MONSERRAT LOPEZ.

K. "Court" means the Superior Court for the State of California, County of Ventura currently presiding over the PAGA Action.

1 L. "Defendant" shall mean ADIDAS AMERICA, INC., an Oregon Corporation.

2
3 M. "Effective Date" means the earliest date, following entry by the Court (or Courts) of
4 an Order (or Orders) and judgment finally approving this Settlement, upon which one
5 of the following have occurred: (i) if no objection is filed to the settlement and no
6 objector appears at the hearing on final approval, the date of the Court's entry of the
7 order granting final approval, (ii) if an objection is filed to the settlement and/or an
8 objector appears at the hearing on final approval, then the earlier of the following: (a)
9 the expiration of all potential appeal periods without a filing of a notice of appeal of
10 the final approval order or judgment; (b) final affirmance of the final approval order
11 and judgment by an appellate court as a result of any appeal(s), or (c) final dismissal
12 or denial of all such appeals (including any petition for review, rehearing, certiorari,
13 etc.) such that the final approval order and judgment concerning the Actions is no
14 longer subject to further judicial review. If this settlement is approved through
15 motions in both Courts, then Effective Date shall mean the latter of both approvals.
16
17

18 N. "Funding Date" shall mean sixty-five (65) calendar days after the Effective Date and
19 is the date Defendant transfers the Total Settlement Amount into the QSF in accord
20 with the terms of this Agreement.
21

22 O. "Individual Settlement Payment" means the amount payable from the Net Settlement
23 Amount to each Settlement Class Member and excludes any amounts distributed to
24 Aggrieved Employees pursuant to PAGA.
25
26
27
28

- 1 P. "Net Settlement Amount" or "NSA" means the Total Settlement Amount, less Class
2 Counsel Award, Class Representative Service Award, PAGA Settlement, and
3 Settlement Administration Costs.
4
- 5 Q. "Notice Packet" means the Class Notice to be provided to the Class Members by the
6 Settlement Administrator in the form set forth as Exhibit A to this Agreement (other
7 than formatting changes to facilitate printing by the Settlement Administrator).
8
- 9 R. "PAGA" means the California Labor Code Private Attorneys General Act of 2004,
10 Labor Code § 2698 *et seq.*
11
- 12 S. "PAGA Payment Ratio" means the respective Workweeks during the PAGA Period
13 for each Aggrieved Employee divided by the sum total of the Workweeks for all
14 Aggrieved Employees during the PAGA Period.
15
- 16 T. "PAGA Period" means the period between October 27, 2019 and October 1, 2021,
17 (the "PAGA Period").
18
- 19 U. "PAGA Settlement" shall mean Eighty Thousand Dollars (\$80,000) to be allocated
20 from the Total Settlement Amount.
- 21 V. "Parties" means Plaintiff and Defendant, collectively, and "Party" shall mean either
22 Plaintiff or Defendant, individually.
23
- 24 W. "Payment Ratio" means the respective Workweeks for each Class Member divided
25 by the sum total Workweeks for all Class Members.
26
- 27 X. "Plaintiff" shall mean MONSERRAT LOPEZ.
28

1 Y. “QSF” means the Qualified Settlement Fund established, designated and maintained
2 by the Settlement Administrator to fund the Total Settlement Amount.

3
4 Z. “Released Class Claims” means all claims alleged or which could have been alleged
5 based on the facts alleged in any and all complaints filed in the Actions which
6 occurred during the Class Period, specifically including claims for (1) Failure to pay
7 overtime wages; (2) Failure to pay minimum wages; (3) Failure to provide required
8 meal periods; (4) Failure to provide required rest periods; (5) Failure to provide
9 accurate itemized wage statements; (6) Failure to provide wages when due; as well as
10 any federal, state or local provisions. To the extent employees are required to “opt-
11 in” to have this release be deemed effective under federal law, the acceptance and
12 negotiation of any settlement check shall be deemed effective for this purpose. The
13 Released Class Claims expressly excludes all other claims, including claims for
14 vested benefits, wrongful termination, unemployment insurance, disability, social
15 security, workers’ compensation, and class claims outside of the Class Period.

16
17
18 AA. “Released PAGA Claims” mean any and all claims alleged in the operative PAGA
19 Action complaint and Plaintiff’s PAGA notice to the LWDA which occurred during
20 the PAGA Period, including all claims which could have been alleged under PAGA
21 based on the facts disclosed to the LWDA in Plaintiff’s letters notice to the LWDA,
22 which occurred during the PAGA Period, including PAGA penalties for (1) Failure
23 to pay overtime wages; (2) Failure to pay minimum wages; (3) Failure to provide
24 required meal periods; (4) Failure to provide required rest periods; (5) Failure to
25 provide accurate itemized wage statements; (6) Failure to provide wages when due,
26 including at the time of termination; (7) Failure to maintain true and accurate records;
27
28

1 or (8) Failure to provide suitable seating. Any Released PAGA Claim not presented
2 directly in the complaint must be based on facts alleged in the PAGA Action
3 complaint. Excluded from the PAGA Released Claims are any claims under PAGA
4 which were not and could not have been alleged based upon the facts set forth in
5 Plaintiff's Complaints and administrative exhaustion letter and expressly excluding
6 all other claims, including claims vested benefits, wrongful termination,
7 unemployment insurance, disability, social security, workers' compensation, and
8 PAGA claims outside the PAGA Period.
9

10
11
12 BB. "Released Parties" shall mean Defendant.
13

14 CC. "Response Deadline" means the date forty-five (45) days after the Settlement
15 Administrator mails Notice Packets to Class Members and the last date on which
16 Class Members may submit requests for exclusion or objections to the Settlement.
17

18 DD. "Settlement" means the disposition of the Actions pursuant to this Agreement.
19

20 EE. "Settlement Administrator" means ILYM Group Inc., 14771 Plaza Drive, Ste. L,
21 Tustin, CA 92780; Tel: 1-888-250-6810; Fax: 1-888-845-6185. The Settlement
22 Administrator establishes, designates and maintains, as a QSF under Internal Revenue
23 Code section 468B and Treasury Regulation section 1.468B-1, into which the amount
24 of the Total Settlement Amount is deposited for the purpose of resolving the claims
25 of Settlement Class Members. The Settlement Administrator shall maintain the funds
26 until distribution in an account(s) segregated from the assets of Defendant and any
27 person related to Defendant. *All accrued interest shall be paid and distributed to the*
28

Settlement Class Members as part of their respective Individual Settlement Payment.

FF. “Settlement Class Members” or “Settlement Class” means all Class Members who have not submitted a timely and valid request for exclusion as provided in this Agreement.

GG. “Total Settlement Amount” means One Million, Five Hundred Thousand Dollars (\$1,500,000.00) that Defendant must pay into the QSF in connection with this Settlement, inclusive of the sum of the Individual Settlement Payments, the Class Representative Service Awards, the Class Counsel Award, PAGA Settlement and the Settlement Administration Costs and *exclusive* of the employer’s share of payroll tax, if any, triggered by any payment under this Settlement, as determined by the Settlement Administrator.

HH. “Workweeks,” for purposes of calculating the distribution of the Net Settlement Amount, means the number of weeks of employment during the Class Period that each Class Member worked in California for Defendant, excluding any week of employment during which the Class Member did not perform any work for Defendant.

II. “PAGA Workweeks,” for purposes of calculating the distribution of the Aggrieved Employee Payment, as defined herein, means the number of weeks of employment during the PAGA Period that each Aggrieved Employee worked in California, excluding any week of employment during which the Aggrieved Employee did not perform any work for Defendant.

1 **II. RECITALS**

2 A. On October 27, 2020, Plaintiff Lopez filed a Notice of Violations with the Labor and
3 Workforce Development Agency (LWDA) and served the same on Defendant.

4
5 B. On December 4, 2020, Plaintiff Lopez filed the Class Action lawsuit in the Superior
6 Court for the County of Ventura for:

7
8 1. Unfair Competition in Violation of Bus. and Prof. Code sections 17200 *et seq*;

9
10 2. Failure to pay overtime wages in violation of California Labor Code sections
11 510 *et seq*;

12 3. Failure to pay minimum wages in violation of California Labor Code sections
13 1194, 1197 and 1197.1;

14
15 4. Failure to provide required meal periods in violation of California Labor Code
16 sections 226.7 and 512 and the applicable IWC wage order;

17
18 5. Failure to provide required rest periods in violation of California Labor Code
19 sections 226.7 and 512 and the applicable IWC wage order;

20
21 6. Failure to provide accurate itemized wage statements in violation of California
22 Labor Code section 226;

23
24 7. Failure to provide wages when due in violation of California Labor Code
25 sections 201, 202 and 203.

26
27 8. Failure to provide suitable seating in violation of California Labor Code 1198
28 and California Code of Regulations, Title 8, Section 11070(14).

1 C. On January 19, 2021, Defendant removed the Class Action lawsuit to the United
2 States District Court for the Central District of California, (Federal Class Action),
3 Case No. 2:21-cv-00447 MCS (PVC).

4
5 D. On January 27, 2021, Plaintiff filed a PAGA Action in the Superior Court for the
6 County of Ventura against Defendant alleging single cause of action for violations of
7 PAGA for, *inter alia*, the following:

- 8
9 1. Failure to provide complaint meal and rest periods;
- 10
11 2. Failure to allow employees to take duty-free, off-the-premises rest periods;
- 12
13 3. Failure to pay all minimum, regular and overtime wages;;
- 14
15 4. Failure to provide suitable seating;
- 16
17 5. Failure to maintain true and accurate records;
- 18
19 6. Failure to provide accurate itemized wages statements;
- 20
21 7. Failure to pay employees wages for time spent getting their bags checked; and
- 22
23 8. Failure to timely pay wages when due during, and upon termination of
24 employment.

25 E. Plaintiff believes she has meritorious claims based on alleged violations of the
26 California Labor Code, and the Industrial Wage Commission Orders, and that class
27 certification is appropriate because the prerequisites for class certification can be
28 satisfied in the Action, and this action is manageable as a PAGA representative
action.

1 F. Defendant denies any liability or wrongdoing of any kind associated with the claims
2 alleged in the Action, disputes any wages, damages and penalties claimed by the
3 Class Representative are owed, and further contends that, for any purpose other than
4 settlement, the Action is not appropriate for class or representative action treatment.
5 Defendant contends, among other things, that at all times it complied with the
6 California Labor Code and the Industrial Wage Commission Orders.

7
8 G. Plaintiff is represented by Class Counsel. Class Counsel conducted an investigation
9 into the facts relevant to the Action, including conducting an independent
10 investigation as to the allegations, reviewing documents and information exchanged
11 through informal discovery, and reviewing documents and information provided by
12 Defendant pursuant to informal requests for information to prepare for mediation.
13 Defendant produced for the purpose of settlement negotiations certain employment
14 data concerning the Settlement Class, including electronic time punch data for the
15 Class Members, which Class Counsel reviewed and analyzed. Furthermore, Class
16 Counsel propounded substantial formal discovery, including numerous requests for
17 production, requests for admission, and form and special interrogatories. Class
18 Counsel engaged in a comprehensive review and analysis of Defendant's discovery
19 responses, including obtaining the contact information of the class members and
20 conducting numerous interviews of the class members. Based on their own
21 independent investigation and evaluation, Class Counsel are of the opinion that the
22 Settlement with Defendant is fair, reasonable and adequate, and is in the best
23 interest of the Settlement Class in light of all known facts and circumstances,
24 including the risks of significant delay, defenses asserted by Defendant,
25 uncertainties regarding class certification, and numerous potential appellate issues.
26
27
28

1 Although it denies any liability, Defendant is agreeing to this Settlement solely to
2 avoid the inconveniences and cost of further litigation. The Parties and their counsel
3 have agreed to settle the claims on the terms set forth in this Agreement.
4

5 H. On July 1, 2021, the Parties participated in mediation presided over by Jeffrey Ross,
6 Esq., a well-respected wage and hour class action mediator.
7

8 I. At the conclusion of the mediation, the Parties were able to reach an agreement to
9 settle this Action for the total Gross Settlement Amount of \$1,500,000. The Parties
10 subsequently executed a binding and enforceable Memorandum of Agreement
11 (“MOU”), and agreed that a detailed, long-form Joint Stipulation of Settlement of
12 Class Action and PAGA Claims and Release of Claims would be completed shortly
13 thereafter.
14

15 J. As part of this Agreement, the Parties stipulated to the filing of a First Amended
16 Complaint in the PAGA Action, pursuant to and for the purposes of this Agreement
17 only. The First Amended Complaint in the PAGA Action will add all the class
18 action claims and allegations asserted in both the Class Action and Federal Class
19 Action into the PAGA Action. Following Plaintiff’s filing of the First Amended
20 Complaint in the PAGA Action, Defendant will file an answer to Plaintiff’s First
21 Amended Complaint within the time frame allowed in the Code of Civil Procedure.
22

23 K. This Agreement replaces and supersedes the MOU and any other agreements,
24 understandings, or representations between the Parties. This Agreement represents
25 a compromise and settlement of highly disputed claims. Nothing in this Agreement
26 is intended or will be construed as an admission by Defendant that the claims in the
27
28

1 Actions of Plaintiff or the Class Members have merit or that Defendant bears any
2 liability to Plaintiff or the Class on those claims or any other claims, or as an
3 admission by Plaintiff that Defendant's defenses in the Actions have merit.
4

5 L. The Parties believe that the Settlement is fair, reasonable and adequate. The
6 Settlement was arrived at through arm's-length negotiations, taking into account all
7 relevant factors. The Parties recognize the uncertainty, risk, expense and delay
8 attendant to continuing the Action through trial and any appeal. Accordingly, the
9 Parties desire to fully, finally, and forever settle, compromise and discharge all
10 disputes and claims arising from or relating to the Action.
11

12 M. The Parties agree to certification of the Class for purposes of this Settlement only.
13 If for any reason the settlement does not become effective, Defendant reserves the
14 right to contest certification of any class for any reason and reserves all available
15 defenses to the claims in the Action.
16

17 Based on these Recitals that are a part of this Agreement, the Parties agree as follows:
18

19 **III. TERMS OF AGREEMENT**

20 A. Settlement Consideration and Settlement Payments by Defendant.
21

- 22 1. Settlement Consideration. In full and complete settlement of the Actions, and
23 in exchange for the releases set forth below, Defendant will pay the sum of
24 the Individual Settlement Payment, the Class Representative Service Award,
25 the Class Counsel Award, PAGA Settlement, and the Settlement
26 Administration Costs, as specified in this Agreement, equal to the Total
27 Settlement Amount of One Million Five Hundred Thousand Dollars
28

1 (\$1,500,000.00). The Parties agree that this is a non-reversionary Settlement
2 and that no portion of the Total Settlement Amount shall revert to Defendant.
3 Other than Defendant's share of employer payroll taxes, or as otherwise
4 specified in the Agreement, Defendant shall not be required to pay more than
5 the Total Settlement Amount, except as provided for hereinbelow.
6

7 2. Class Size. At the time of mediation, Defendant estimated that the Settlement
8 Class was comprised of 3,474 individuals who collectively worked
9 approximately 152,828 Workweeks in California ("Projected Workweeks")
10 during the Class Period as of March 31, 2021. In regard hereto, Defendant
11 will provide a declaration under penalty of perjury confirming the number of
12 Class Members and Workweeks they worked in California during the Class
13 Period prior to the filing of the motion for preliminary approval. If, at the time
14 of Defendant's declaration, the actual number of Workweeks as of March 31,
15 2021 exceeds the Projected Workweeks by more than 10%, the Gross
16 Settlement Amount will increase proportionally with added workweeks (e.g.,
17 if the workweeks as of March 31, 2021 exceed 152,828 by 11%, the Gross
18 Settlement Amount will increase by 1%).
19
20

21 3. Settlement Payment. Defendant is liable for payment of the Total Settlement
22 Amount. Defendant shall pay, via wire transfer, the Total Settlement Amount
23 to the Settlement Administrator on the Funding Date.
24

25 4. Defendant's Share of Payroll Taxes. Defendant's share of employer side
26 payroll taxes is in addition to the Total Settlement Amount and shall be paid
27 together with the Total Settlement Amount.
28

- 1 B. Release by Settlement Class Members. As of the Funding Date, in exchange for the
2 consideration set forth in this Agreement, Plaintiff and the Settlement Class Members
3 release the Released Parties from the Released Class Claims for the Class Period.
4
- 5 C. Released PAGA Claims by the Aggrieved Employees. As of the Funding Date, in
6 exchange for the consideration set forth in this Agreement, Plaintiff, the LWDA and
7 the State of California, acting on behalf of Aggrieved Employees, release the Released
8 Parties from the Released PAGA Claims for the PAGA Period.
9
- 10 D. General Release by Plaintiff. As of the Funding Date, for the consideration set forth
11 in this Agreement, Plaintiff waives, releases, acquits and forever discharges the
12 Released Parties from any and all claims, whether known or unknown, which exist or
13 may exist on her behalf as of the date of this Agreement, including but not limited to
14 any and all tort claims, contract claims, wage claims, wrongful termination claims,
15 disability claims, benefit claims, public policy claims, retaliation claims, statutory
16 claims, personal injury claims, emotional distress claims, invasion of privacy claims,
17 defamation claims, fraud claims, quantum meruit claims, and any and all claims
18 arising under any federal, state or other governmental statute, law, regulation or
19 ordinance, including, but not limited to claims for violation of the Fair Labor
20 Standards Act, the California Labor Code, the Wage Orders of California's Industrial
21 Welfare Commission, other state wage and hour laws, the Americans with
22 Disabilities Act, the Age Discrimination in Employment Act (ADEA), the Employee
23 Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the
24 California Fair Employment and Housing Act, the California Family Rights Act, the
25 Family Medical Leave Act, California's Whistleblower Protection Act, California
26 Business & Professions Code Section 17200 et seq., and any and all claims arising
27
28

1 under any federal, state or other governmental statute, law, regulation or ordinance.
2 Plaintiff also waives and relinquishes any and all claims, rights or benefits that she
3 may have under California Civil Code § 1542, which provides as follows:
4

5 ***A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE***
6 ***CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO***
7 ***EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE***
8 ***RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE***
9 ***MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE***
10 ***DEBTOR OR RELEASED PARTY.***
11

12 Thus, notwithstanding the provisions of section 1542, and to implement a full and
13 complete release and discharge of the Released Parties, Plaintiff expressly
14 acknowledges this Settlement Agreement is intended to include in its effect, without
15 limitation, all claims Plaintiff does not know or suspect to exist in Plaintiff's favor at
16 the time of signing this Settlement Agreement, and that this Settlement Agreement
17 contemplates the extinguishment of any such claims. Plaintiff warrants that Plaintiff
18 has read this Settlement Agreement, including this waiver of California Civil Code
19 section 1542, and that Plaintiff has consulted with or had the opportunity to consult
20 with counsel of Plaintiff's choosing about this Settlement Agreement and specifically
21 about the waiver of section 1542, and that Plaintiff understands this Settlement
22 Agreement and the section 1542 waiver, and so Plaintiff freely and knowingly enters
23 into this Settlement Agreement. Plaintiff further acknowledges that Plaintiff later may
24 discover facts different from or in addition to those Plaintiff now knows or believes to
25 be true regarding the matters released or described in this Settlement Agreement, and
26
27
28

1 even so Plaintiff agrees that the releases and agreements contained in this Settlement
2 Agreement shall remain effective in all respects notwithstanding any later discovery
3 of any different or additional facts. Plaintiff expressly assumes any and all risk of any
4 mistake in connection with the true facts involved in the matters, disputes, or
5 controversies released or described in this Settlement Agreement or with regard to any
6 facts now unknown to Plaintiff relating thereto.
7

8
9 E. Conditions Precedent. This Settlement will become final and effective only upon the
10 occurrence of all of the following events:

- 11 1. Plaintiff amends her state court action to allege her class claims as part of her
12 state court action, and the federal court claims are stayed pending the approval
13 process set forth herein;
14
- 15 2. The Court enters an order granting preliminary approval of the Settlement;
16
- 17 3. The Court enters an order granting final approval of the Settlement and a Final
18 Judgment;
19
- 20 4. If an objector appears at the final approval hearing, the time for appeal of the
21 Final Judgment and Order Granting Final Approval of Class Action
22 Settlement expires; or, if an appeal is timely filed, there is a final resolution of
23 any appeal from the Judgment and Order Granting Final Approval of Class
24 Action Settlement; and
25
- 26 5. Defendant fully funds the Total Settlement Amount.
27
28

1 F. Dismissal of the Class Action and Federal Class Action. Upon the Effective Date, and
2 prior to the Funding Date, Class Counsel will take all steps necessary to dismiss the
3 Class Action and Federal Class Action with prejudice.
4

5 G. Nullification of Settlement Agreement. In the event that this Settlement Agreement is
6 not preliminarily or finally approved by the Court, fails to become effective, or is
7 reversed, withdrawn or modified by the Court, or in any way prevents or prohibits
8 Defendant from obtaining a complete resolution of the Released Claims, or if
9 Defendant fails to fully fund the Total Settlement Amount:
10

11 1. This Settlement Agreement and the First Amended Complaint in the PAGA
12 Action shall be void *ab initio* and of no force or effect, and shall not be
13 admissible in any judicial, administrative or arbitral proceeding for any
14 purpose or with respect to any issue, substantive or procedural;
15

16 2. The conditional class certification (obtained for any purpose) shall be void *ab*
17 *initio* and of no force or effect, and shall not be admissible in any judicial,
18 administrative or arbitral proceeding for any purpose or with respect to any
19 issue, substantive or procedural; and
20

21 3. None of the Parties to this Settlement will be deemed to have waived any
22 claims, objections, defenses or arguments in the Actions, including with
23 respect to the issue of class certification.
24

25 The Party responsible for any nullification shall bear the costs associated with
26 nullification. If neither party is responsible for the nullification, following
27
28

1 good faith efforts to cure, the costs associated with nullification shall be split
2 equally.

3
4 H. Certification of the Settlement Class. The Parties stipulate to conditional class
5 certification of the Class for the Class Period for purposes of settlement only. In the
6 event that this Settlement is not approved by the Court, fails to become effective, or is
7 reversed, withdrawn or modified by the Court, or in any way prevents or prohibits
8 Defendant from obtaining a complete resolution of the Released Claims, the
9 conditional class certification (obtained for any purpose) shall be void *ab initio* and of
10 no force or effect, and shall not be admissible in any judicial, administrative or arbitral
11 proceeding for any purpose or with respect to any issue, substantive or procedural.
12

13
14 I. Tax Liability. The Parties make no representations as to the tax treatment or legal
15 effect of the payments called for, and Class Members and/or Aggrieved Employees are
16 not relying on any statement or representation by the Parties in this regard. Class
17 Members and/or Aggrieved Employees shall be provided notice that they will be
18 responsible for the payment of any taxes and penalties assessed on the Individual
19 Settlement Payments and/or Aggrieved Employees' individual shares of the Aggrieved
20 Employee Payment described and will be solely responsible for any penalties or other
21 obligations resulting from their personal tax reporting of Individual Settlement
22 Payments and/or Aggrieved Employees' individual shares of the Aggrieved Employee
23 Payment.
24

25
26 J. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
27 the "acknowledging party" and each Party to this Agreement other than the
28 acknowledging party, an "other party") acknowledges and agrees that: (1) no provision

1 of this Agreement, and no written communication or disclosure between or among the
2 Parties or their attorneys and other advisers, is or was intended to be, nor shall any
3 such communication or disclosure constitute or be construed or be relied upon as, tax
4 advice within the meaning of United States Treasury Department circular 230 (31 CFR
5 part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his,
6 her or its own, independent legal and tax counsel for advice (including tax advice) in
7 connection with this Agreement, (b) has not entered into this Agreement based upon
8 the recommendation of any other Party or any attorney or advisor to any other Party,
9 and (c) is not entitled to rely upon any communication or disclosure by any attorney
10 or adviser to any other party to avoid any tax penalty that may be imposed on the
11 acknowledging party, and (3) no attorney or adviser to any other Party has imposed
12 any limitation that protects the confidentiality of any such attorney's or adviser's tax
13 strategies (regardless of whether such limitation is legally binding) upon disclosure by
14 the acknowledging party of the tax treatment or tax structure of any transaction,
15 including any transaction contemplated by this Agreement.
16
17
18

19 K. Preliminary Approval Motion. At the earliest practicable time, Plaintiff shall file with
20 the Court a Motion for Order Granting Preliminary Approval and supporting papers,
21 which shall include this Settlement Agreement. Plaintiff will provide Defendant with
22 a draft of the Motion at least five (5) business days prior to the filing of the Motion to
23 give Defendant an opportunity to propose changes or additions to the Motion.
24

25 L. Settlement Administrator. The Settlement Administrator shall be responsible for:
26 establishing and administering the QSF; calculating, processing and mailing payments
27 to the Class Representatives, Class Counsel, LWDA and Class Members; printing and
28

1 mailing the Notice Packets to the Class Members as directed by the Court; receiving
2 and reporting the objections and requests for exclusion; calculating, deducting and
3 remitting all legally required taxes from Individual Settlement Payments and
4 distributing tax forms for the Wage Portion and Non-Wage Portion of the Individual
5 Settlement Payments and/or Aggrieved Employees' individual shares of the Aggrieved
6 Employee Payment; processing and mailing tax payments to the appropriate state and
7 federal taxing authorities; providing declaration(s) as necessary in support of
8 preliminary and/or final approval of this Settlement; and other tasks as the Parties
9 mutually agree or the Court orders the Settlement Administrator to perform. The
10 Settlement Administrator shall keep the Parties timely apprised of the performance of
11 all Settlement Administrator responsibilities by among other things, sending a weekly
12 status report to the Parties' counsel stating the date of the mailing, the of number of
13 Elections Not to Participate in Settlement it receives (including the numbers of valid
14 and deficient), and number of objections received.

17 M. Notice Procedure.

18
19 1. Class Data. No later than fifteen (15) business days after the Preliminary
20 Approval Date, Defendant shall provide the Settlement Administrator with the
21 Class Data for purposes of preparing and mailing Notice Packets to the Class
22 Members.

23
24 2. Notice Packets.

25
26 a) The Notice Packet shall contain the Notice of Class Action Settlement
27 in a form substantially similar to the form attached as Exhibit A. The
28

1 Notice of Class Action Settlement shall inform Class Members and
2 Aggrieved Employees that they need not do anything in order to
3 receive an Individual Settlement Payment and/or Aggrieved
4 Employees' individual shares of the Aggrieved Employee Payment
5 and to keep the Settlement Administrator apprised of their current
6 mailing address, to which the Individual Settlement Payments and/or
7 Aggrieved Employees' individual shares of the Aggrieved Employee
8 Payment will be mailed following the Funding Date. The Notice of
9 Class Action Settlement shall set forth the release to be given by all
10 members of the Class who do not request to be excluded from the
11 Settlement Class and/or Aggrieved Employees' in exchange for an
12 Individual Settlement Payment and/or Aggrieved Employees'
13 individual shares of the Aggrieved Employee Payment, the number of
14 Workweeks worked in California by each Class Member during the
15 Class Period and PAGA Period, if any, and the estimated amount of
16 their Individual Settlement Payment if they do not request to be
17 excluded from the Settlement and each Aggrieved Employee's share
18 of the PAGA Settlement, if any. The Settlement Administrator shall
19 use the Class Data to determine Class Members' Workweeks and
20 PAGA Workweeks. The Notice will also advise the Aggrieved
21 Employees that they will release the Released PAGA Claims and will
22 receive their share of the PAGA Settlement regardless of whether they
23 request to be excluded from the Settlement.
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1 b) The Notice Packet's mailing envelope shall include the following
2 language: "IMPORTANT LEGAL DOCUMENT - YOU MAY BE
3 ENTITLED TO PARTICIPATE IN A CLASS ACTION
4 SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR
5 ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED
6 NOTICE."

7
8 3. Notice by First Class U.S. Mail and Email. Upon receipt of the Class Data,
9 the Settlement Administrator will perform a search based on the National
10 Change of Address Database to update and correct any known or identifiable
11 address changes. No later than fourteen (14) calendar days after receiving the
12 Class Data from Defendant, the Settlement Administrator shall mail and email
13 copies of the Notice Packet to all Class Members via regular First-Class U.S.
14 Mail and electronic mail. The Settlement Administrator shall exercise its best
15 judgment to determine the current mailing address for each Class Member.
16 The address identified by the Settlement Administrator as the current mailing
17 address shall be presumed to be the best mailing address for each Class
18 Member.
19 Member.

20
21 4. Undeliverable Notices. Any Notice Packets returned to the Settlement
22 Administrator as non-delivered on or before the Response Deadline shall be
23 re-mailed to any forwarding address provided. If no forwarding address is
24 provided, the Settlement Administrator shall promptly attempt to determine a
25 correct address by lawful use of skip-tracing, or other search using the name,
26 address and/or Social Security number of the Class Member involved, and
27
28

1 shall then perform a re-mailing, if another mailing address is identified by the
2 Settlement Administrator. In addition, if any Notice Packets, which are
3 addressed to Class Members who are currently employed by Defendant, are
4 returned to the Settlement Administrator as non-delivered and no forwarding
5 address is provided, the Settlement Administrator shall notify Defendant.
6 Defendant will request that the currently employed Class Member provide a
7 corrected address, and transmit to the Administrator any corrected address
8 provided by the Class Member. Class Members who received a re-mailed
9 Notice Packet shall have their Response Deadline extended fifteen (15) days
10 from the original Response Deadline.
11

12
13 5. Disputes Regarding Individual Settlement Payments. Class Members will
14 have the opportunity, should they disagree with Defendant's records regarding
15 the number of Workweeks to provide documentation and/or an explanation to
16 show contrary dates in which they performed work at a California retail
17 location. If there is a dispute, the Settlement Administrator will consult with
18 the Parties to determine whether an adjustment is warranted. The Settlement
19 Administrator shall determine the eligibility for, and the amounts of, any
20 Individual Settlement Payments under the terms of this Agreement. The
21 Settlement Administrator's determination of the eligibility for and amount of
22 any Individual Settlement Payment shall be binding upon the Class Member
23 and the Parties.
24

25
26 6. Disputes Regarding Administration of Settlement. Any disputes not resolved
27 by the Settlement Administrator concerning the administration of the
28

1 Settlement will be resolved by the Court under the laws of the State of
2 California. Before any such involvement of the Court, counsel for the Parties
3 will confer in good faith to resolve the disputes without the necessity of
4 involving the Court.
5

6 7. Exclusions. The Notice of Class Action Settlement contained in the Notice
7 Packet shall state that Class Members who wish to exclude themselves from
8 the Settlement must submit a written request for exclusion by the Response
9 Deadline. The written request for exclusion must state that the Class Member
10 wishes to exclude himself or herself from the Settlement and (1) must contain
11 the name, address, and the last four digits of the Social Security number of the
12 person requesting exclusion; (2) must be signed by the Class Member; (3)
13 must be postmarked or fax stamped by the Response Deadline and returned to
14 the Settlement Administrator at the specified address or fax telephone number;
15 and (4) contain a typewritten or handwritten notice stating in substance: "I
16 wish to opt out of the settlement of the class action lawsuit entitled *Lopez v.*
17 *Adidas America, Inc.*, currently pending in the Superior Court for the County
18 of Ventura, Case No. 56-2020-00547592-CU-OE-VTA . I understand that
19 by requesting to be excluded from the settlement, I will receive no money
20 from the Settlement described in this Notice." The request for exclusion will
21 not be valid if it is not timely submitted, if it is not signed by the Class
22 Member, or if it does not contain the name and address and last four digits of
23 the Social Security number of the Class Member. The date of the postmark
24 on the mailing envelope or fax stamp on the request for exclusion shall be the
25 exclusive means used to determine whether the request for exclusion was
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1 timely submitted. Any Class Member who requests to be excluded from the
2 Settlement Class will not be entitled to an Individual Settlement Payment and
3 will not be otherwise bound by the terms of the Settlement or have any right
4 to object, appeal or comment thereon. However, any Class Member that
5 submits a timely request for exclusion that is also a member of the Aggrieved
6 Employees will still receive his/her pro rata share of the PAGA Settlement, as
7 specified below, and in consideration, will be bound by the Release by the
8 Aggrieved Employees as set forth herein. Settlement Class Members who fail
9 to submit a valid and timely written request for exclusion on or before the
10 Response Deadline shall be bound by all terms of the Settlement and any final
11 judgment entered in this Action if the Settlement is approved by the Court.
12 No later than fourteen (14) calendar days after the Response Deadline, the
13 Settlement Administrator shall provide counsel for the Parties with a final list
14 of the Class Members who have timely submitted written requests for
15 exclusion. At no time shall any of the Parties or their counsel seek to solicit
16 or otherwise encourage members of the Class to submit requests for exclusion
17 from the Settlement.

- 21 8. Objections. The Notice of Class Action Settlement contained in the Notice
22 Packet shall state that Class Members who wish to object to the Settlement
23 may submit to the Settlement Administrator a written statement of objection
24 ("Notice of Objection") by the Response Deadline. The postmark date of
25 mailing shall be deemed the exclusive means for determining that a Notice of
26 Objection was served timely. The Notice of Objection must be signed by the
27 Settlement Class Member and state: (1) the case name and number; (2) the

1 name of the Settlement Class Member; (3) the address of the Settlement Class
2 Member; (4) the last four digits of the Settlement Class Member's Social
3 Security number; (4) the basis for the objection; and (5) if the Settlement Class
4 Member intends to appear at the Final Approval/Settlement Fairness Hearing.
5 Class Members who fail to make objections in writing in the manner specified
6 above may still make their objections orally at the Final Approval/Settlement
7 Fairness Hearing with the Court's permission. Settlement Class Members will
8 have a right to appear at the Final Approval/Settlement Fairness Hearing to
9 have their objections heard by the Court. At no time shall any of the Parties
10 or their counsel seek to solicit or otherwise encourage Class Members to file
11 or serve written objections to the Settlement or appeal from the Order and
12 Final Judgment. Class Members who submit a written request for exclusion
13 may not object to the Settlement. Class Members may not object to the PAGA
14 Settlement.
15
16

17
18 N. Funding and Allocation of the Total Settlement Amount. Defendant is required to pay
19 the Total Settlement Amount on or before the Funding Date, plus any employer's share
20 of payroll taxes as mandated by law within the time specified herein.

21
22 1. Individual Settlement Payments. Individual Settlement Payments shall be
23 paid from the Net Settlement Amount and shall be paid pursuant to the
24 formula set forth herein. Using the Class Data, the Settlement Administrator
25 shall add up the total number of Workweeks for all Class Members. The
26 respective Workweeks for each Class Member will be divided by the total
27 Workweeks for all Class Members, resulting in the Payment Ratio for each
28

1 Class Member. Each Class Member's Payment Ratio will then be multiplied
2 by the Net Settlement Amount to calculate each Class Member's estimated
3 Individual Settlement Payments. Each Individual Settlement Payment will be
4 reduced by any legally mandated employee tax withholdings (e.g., employee
5 payroll taxes, etc.). Individual Settlement Payments for Class Members who
6 submit valid and timely requests for exclusion will be redistributed to
7 Settlement Class Members who do not submit valid and timely requests for
8 exclusion on a pro rata basis based on their respective Payment Ratios.
9

10
11 2. PAGA Settlement. Eighty Thousand Dollars (\$80,000) shall be allocated
12 from the Total Settlement Amount for settlement of claims for civil penalties
13 under the Private Attorneys General Act of 2004 ("PAGA Settlement"). The
14 Settlement Administrator shall pay seventy-five percent (75%) of the PAGA
15 Settlement (\$60,000) to the California Labor and Workforce Development
16 Agency no later than twenty-five (25) calendar days after the Funding Date
17 (hereinafter "LWDA Payment"). Twenty-five (25%) of the PAGA Settlement
18 (\$20,000) will be distributed to the Aggrieved Employees as described in this
19 Agreement (hereinafter "Aggrieved Employee Payment"). For purposes of
20 distributing the Aggrieved Employee Payment to the Aggrieved Employees,
21 each Aggrieved Employee shall receive his or her pro-rata share of the
22 Aggrieved Employee Payment using the PAGA Payment Ratio as defined
23 above.
24

25
26 3. Calculation of Individual Payments to the Aggrieved Employees. Using the
27 Class Data, the Settlement Administrator shall add up the total number of
28

PAGA Workweeks for all Aggrieved Employees during the PAGA Period. The respective PAGA Workweeks for each Aggrieved Employee will be divided by the total PAGA Workweeks for all Aggrieved Employees, resulting in the "PAGA Payment Ratio" for each Aggrieved Employee. Each Aggrieved Employee's PAGA Payment Ratio will then be multiplied by the Aggrieved Employee Payment to calculate each Aggrieved Employee's estimated share of the PAGA Settlement.

4. Allocation of Individual Settlement Payments. For tax purposes, Individual Settlement Payments shall be allocated and treated as follows: 1/3 as wages ("Wage Portion"); 2/3 as penalties and interest ("Non-Wage Portion"). The Wage Portion is subject to wage withholdings and shall be reported on IRS Form W-2. The Non-Wage Portion shall not be subject to wage withholdings and shall be reported on IRS Form 1099.

5. Allocation of Aggrieved Employee Payments. For tax purposes, Aggrieved Employee Settlement Payments shall be allocated and treated as 100% penalties and shall be reported on IRS Form 1099.

6. No Credit Toward Benefit Plans. The Individual Settlement Payments and individual shares of the Aggrieved Employee Payment made to Settlement Class Members and/or Aggrieved Employees under this Settlement Agreement, as well as any other payments made pursuant to this Settlement Agreement, will not be utilized to calculate any additional benefits under any benefit plans to which any Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase

1 plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan.
2 Rather, it is the Parties' intention that this Settlement Agreement will not
3 affect any rights, contributions, or amounts to which any Class Members may
4 be entitled under any benefit plans.
5

6 7. All monies received by Settlement Class Members under the Settlement which
7 are attributable to wages shall constitute income to such Settlement Class
8 Members solely in the year in which such monies actually are received by the
9 Settlement Class Members. It is the intent of the Parties that Individual
10 Settlement Payments and individual shares of the Aggrieved Employee
11 Payment provided for in this Settlement agreement are the sole payments to be
12 made by Defendant to Settlement Class Members and/or Aggrieved Employees
13 in connection with this Settlement Agreement, with the exception of Plaintiff,
14 and that the Settlement Class Members and/or Aggrieved Employees are not
15 entitled to any new or additional compensation or benefits as a result of having
16 received the Individual Settlement Payments and/or their shares of the
17 Aggrieved Employee Payment.
18
19

20 8. Mailing. Individual Settlement Payments and Aggrieved Employee Payments
21 shall be mailed by regular First-Class U.S. Mail to Settlement Class Members'
22 and/or Aggrieved Employees last known mailing address no later than fifteen
23 (15) calendar days after the Funding Date.
24

25 9. Expiration. Any checks issued to Settlement Class Members and Aggrieved
26 Employees shall remain valid and negotiable for one hundred and eighty (180)
27 days from the date of their issuance. If a Settlement Class Member and/or
28

1 Aggrieved Employee does not cash his or her settlement check within 90 days,
2 the Settlement Administrator will send a letter to such persons, advising that
3 the check will expire after the 180th day, and invite that Settlement Class
4 Member and/or Aggrieved Employee to request reissuance in the event the
5 check was destroyed, lost or misplaced. In the event a check for an Individual
6 Settlement Payment and/or individual shares of the Aggrieved Employee
7 Payment has not been cashed within one hundred and eighty (180) days, all
8 funds represented by such uncashed checks, plus any interest accrued thereon,
9 shall be distributed consistent with California Code of Civil Procedure Section
10 384 as follows: to the Legal Aid Association of California ("LAAC"). Neither
11 Class Counsel nor Defendant's counsel, nor any of the Parties, has any
12 interest, pecuniary or otherwise, in LAAC..
13

- 14
- 15 10. Class Representative Service Award. In addition to the Individual Settlement
16 Payment and her individual share of the Aggrieved Employee Payment to be
17 paid to Plaintiff, Plaintiff will apply to the Court for an award of not more than
18 \$10,000, as the Class Representative Service Award. Defendant does not
19 presently intend to oppose a Class Representative Service Award of not more
20 than \$10,000 for Plaintiff. The Settlement Administrator shall pay the Class
21 Representative Service Award, either in the amount stated herein if approved
22 by the Court or some other amount as approved by the Court, to Plaintiff from
23 the Total Settlement Amount no later than ten (10) calendar days after the
24 Funding Date. Any portion of the requested Class Representative Service
25 Award that is not awarded to the Class Representatives shall be part of the Net
26 Settlement Amount and shall be distributed to Settlement Class Members as
27
28

provided in this Agreement. The Settlement Administrator shall issue an IRS Form 1099-MISC to Plaintiff for her Class Representative Service Award. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on her Class Representative Service Award and shall hold harmless the Released Parties from any claim or liability for taxes, penalties, or interest arising as a result of the Class Representative Service Award. The Class Representative Service Award shall be in addition to Plaintiff's Individual Settlement Payment as a Settlement Class Member. Approval of this Settlement shall not be conditioned on Court approval of the requested amount of the Class Representative Service Award. In the event that the Court reduces or does not approve the requested Class Representative Service Award, Plaintiff shall not have the right to revoke the Settlement, and it will remain binding.

11. Class Counsel Award. Defendant understands a motion by Class Counsel for attorneys' fees not to exceed one-third of the Total Settlement Amount currently estimated to be \$500,000.00, plus costs and expenses supported by declaration not to exceed Twenty-Five Thousand Dollars (\$25,000.00), from the Total Settlement Amount will be filed. Any portion of the requested Class Counsel Award that is not awarded to Class Counsel shall be part of the Net Settlement Amount and shall be distributed to Settlement Class Members as provided in this Agreement. The Settlement Administrator shall allocate and pay the Class Counsel Award to Class Counsel from the Total Settlement Amount no later than five (5) calendar days after the Funding Date. Class Counsel shall be solely and legally responsible to pay all applicable taxes on

1 the payment made pursuant to this paragraph. The Settlement Administrator
2 shall issue an IRS Form 1099 — MISC to Class Counsel for the payments
3 made pursuant to this paragraph. In the event that the Court reduces or does
4 not approve the requested Class Counsel Award, Plaintiff and Class Counsel
5 shall not have the right to revoke the Settlement, or to appeal such order, and
6 the Settlement will remain binding.
7

8
9 12. Settlement Administration Costs. The Settlement Administrator shall be paid
10 for the costs of administration of the Settlement from the Total Settlement
11 Amount. The estimate of the Settlement Administration Costs is \$20,000.00.
12 The Settlement Administrator shall be paid the Settlement Administration
13 Costs no later than twenty-five (25) calendar days after the Funding Date.
14

15 O. Final Approval Motion. Class Counsel and Plaintiff shall use best efforts to file with
16 the Court a Motion for Order Granting Final Approval and Entering Judgment, within
17 twenty-eight (28) days following the expiration of the Response Deadline, which
18 motion shall request final approval of the Settlement and a determination of the
19 amounts payable for the Class Representative Service Award, the Class Counsel
20 Award, the PAGA Settlement, and the Settlement Administration Costs. Plaintiff will
21 provide Defendant with a draft of the Motion at least 3 business days prior to the filing
22 of the Motion to give Defendant an opportunity to propose changes or additions to
23 the Motion.
24

25
26 1. Declaration by Settlement Administrator. No later than fourteen (14) days
27 after the Response Deadline, the Settlement Administrator shall submit a
28 declaration in support of Plaintiff's motion for final approval of this

1 Settlement detailing the number of Notice Packets mailed and re-mailed to
2 Class Members, the number of undeliverable Notice Packets, the number of
3 timely requests for exclusion, the number of objections received, the amount
4 of the average Individual Settlement Payment and highest Individual
5 Settlement Payment, the Settlement Administration Costs, and any other
6 information as the Parties mutually agree or the Court orders the Settlement
7 Administrator to provide.
8

9
10 2. Final Approval Order and Judgment. Class Counsel shall present an Order
11 Granting Final Approval of Class Action Settlement to the Court for its
12 approval, and Judgment thereon, at the time Class Counsel files the Motion
13 for Final Approval.
14

15 N. Review of Motions for Preliminary and Final Approval. Class Counsel will provide
16 an opportunity for Counsel for Defendant to review the Motions for Preliminary and
17 Final Approval, including the Order Granting Final Approval of Class Action
18 Settlement, and Judgment before filing with the Court. The Parties and their counsel
19 will cooperate with each other and use their best efforts to affect the Court's approval
20 of the Motions for Preliminary and Final Approval of the Settlement, and entry of
21 Judgment.
22

23 O. Cooperation. The Parties and their counsel will cooperate with each other and use
24 their best efforts to implement the Settlement.
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1 P. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Actions,
2 except such proceedings necessary to implement and complete the Settlement, pending
3 the Final Approval/Settlement Fairness Hearing to be conducted by the Court.
4

5 Q. Amendment or Modification. This Agreement may be amended or modified only by
6 a written instrument signed by counsel for all Parties or their successors-in-interest.
7

8 R. Entire Agreement. This Agreement and any attached Exhibit constitute the entire
9 Agreement among these Parties, and no oral or written representations, warranties or
10 inducements have been made to any Party concerning this Agreement or its Exhibit
11 other than the representations, warranties and covenants contained and memorialized
12 in this Agreement and its Exhibit.
13

14 S. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
15 represent they are expressly authorized by the Parties whom they represent to negotiate
16 this Agreement and to take all appropriate action required or permitted to be taken by
17 such Parties pursuant to this Agreement to effectuate its terms, and to execute any other
18 documents required to effectuate the terms of this Agreement. The person signing this
19 Agreement on behalf of Defendant represents and warrants that he/she is authorized to
20 sign this Agreement on behalf of Defendant. Plaintiff represents and warrants that she
21 is authorized to sign this Agreement and that she has not assigned any claim, or part
22 of a claim, covered by this Settlement to a third-party.
23
24

25 T. No Public Comment: The Parties and their counsel agree that they will not issue any
26 press releases, initiate any contact with the press, respond to any press inquiry, or have
27 any communication with the press about the fact, amount or terms of the Settlement
28

1 Agreement. Class Counsel further agrees not to use the Settlement Agreement or any
2 of its terms for any marketing or promotional purposes. Nothing herein will restrict
3 Class Counsel from including publicly available information regarding this settlement
4 in future judicial submissions regarding Class Counsel's qualifications and experience.
5 Further, Class Counsel will not include, reference or use the Settlement Agreement for
6 any marketing or promotional purposes, or for attempting to influence business
7 relationships, either before or after the Motion for Preliminary Approval is filed. Any
8 communication about the Class Action Settlement to Class Members prior to the court-
9 approved mailing will be limited to a statement that a settlement has been reached and
10 the details will be communicated in a forthcoming Court-approved notice.
11

12
13 U. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure
14 to the benefit of, the successors or assigns of the Parties, as previously defined.
15

16 V. California Law Governs. All terms of this Agreement and the Exhibit and any disputes
17 shall be governed by and interpreted according to the laws of the State of California.
18

19 W. Counterparts. This Agreement may be executed in one or more counterparts. All
20 executed counterparts and each of them shall be deemed to be one and the same
21 instrument provided that counsel for the Parties to this Agreement shall exchange
22 among themselves copies or originals of the signed counterparts.
23

24 X. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this Settlement
25 is a fair, adequate and reasonable settlement of this Action and have arrived at this
26 Settlement after extensive arms-length negotiations, taking into account all relevant
27 factors, present and potential.
28

1 Y. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction with
2 respect to the interpretation, implementation and enforcement of the terms of this
3 Agreement and all orders and judgments entered in connection therewith, and the
4 Parties and their counsel submit to the jurisdiction of the Court for purposes of
5 interpreting, implementing and enforcing the settlement and all orders and judgments
6 entered in connection with this Agreement.

7
8 Z. Invalidity of Any Provision. In the event that any one or more of the provisions
9 contained in this Agreement shall for any reason be held invalid, illegal or
10 unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no
11 way affect any other provision if counsel for Defendant and Class Counsel, on behalf
12 of the Parties and the Class, mutually elect in writing to proceed as if such invalid,
13 illegal or unenforceable provision had never been included in this Agreement. The
14 Parties agree to respectfully request that before declaring any provision of this
15 Agreement invalid, the Court shall first attempt to construe the provisions valid to the
16 fullest extent possible consistent with applicable precedents so as to define all
17 provisions of this Agreement valid and enforceable.

18
19
20 AA. No Unalleged Claims. Plaintiff and Class Counsel represent that they do not currently
21 intend to pursue any claims against the Released Parties, including, but not limited to,
22 any and all claims relating to or arising from Plaintiff's employment with Defendant,
23 regardless of whether Class Counsel is currently aware of any facts or legal theories
24 upon which any claims or causes of action could be brought against Released Parties,
25 including those facts or legal theories alleged in the operative complaint in this Action.
26 The Parties further acknowledge, understand and agree that this representation is
27
28

1 essential to the Agreement and that this Agreement would not have been entered into
2 were it not for this representation.

3
4 BB. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class
5 certification for purposes of this settlement only.

6
7 CC. No Admissions by the Parties. Plaintiff has claimed and continues to claim that the
8 Released Claims have merit and give rise to liability on the part of Defendant.
9 Defendant claims that the Released Claims have no merit and do not give rise to
10 liability. This Agreement is a compromise of disputed claims. Nothing contained in
11 this Agreement and no documents referred to and no action taken to carry out this
12 Agreement may be construed or used as an admission by or against the Defendant or
13 Plaintiff or Class Counsel as to the merits or lack thereof of the claims asserted. Other
14 than as may be specifically set forth herein, each Party shall be responsible for and
15 shall bear its/her own attorney's fees and costs.

16
17 DD. Extension of Time. Without further order of the Court, the Parties hereto may agree in
18 writing to reasonable extensions of time to carry out any of the provisions of the
19 Agreement.

20
21 EE. Deadlines Falling on Weekends or Holidays. To the extent that any deadline set forth
22 in this Agreement falls on a Saturday, Sunday or legal holiday, that deadline shall be
23 continued until the following business day.
24
25
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IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFF:

DATED: 8/12/2021

DocuSigned by:
Monserat Lopez
08D2253454DB42F...
MONSERRAT LOPEZ

IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANT:

DATED: 11.08.2021

ADIDAS AMERICA, INC.
DocuSigned by:
51CA9296C2EF408...
PAUL EHRLICH
General Counsel, Global Brands and Americas

DATED: 11.08.2021

ADIDAS AMERICA, INC.
DocuSigned by:
901AA1EC6B084A5...
LANIECE DOUGLAS
VICE PRESIDENT - RETAIL

IT IS SO AGREED AS TO FORM BY COUNSEL:

DATED: 8/12/2021

JCL LAW FIRM, A.P.C.
DocuSigned by:
Jean-Claude Lapuyade
0EBC25D5B9CD469...
JEAN-CLAUDE LAPUYADE
Attorneys for Plaintiff and the Settlement Class Members

DATED: 8/12/2021

ZAKAY LAW GROUP, APLC
DocuSigned by:
4ECDE73A91D4420...
SHANI O. ZAKAY
Attorneys for Plaintiff and the Settlement Class Members

1 DATED: August 10, 2021

LITTLER MENDELSON, P.C.

2 
3 ROBERT S. BLUMBERG
4 Attorneys for Defendant

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EXHIBIT B

RECEIVED

VENTURA SUPERIOR COURT

10/28/21

VENTURA
SUPERIOR COURT

FILED

DEC 03 2021

BRENDA L. MCCORMICK
Executive Officer and Clerk
By: Deputy

M. SOTO

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Eduardo Garcia (State Bar #290572)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
egarcia@jcl-lawfirm.com

Attorneys for Plaintiff MONSERRAT LOPEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF VENTURA

MONSERRAT LOPEZ, an individual, on
behalf of herself, on behalf of all persons
similarly situated, and in her representative
capacity on behalf of the State of California
and fellow Aggrieved Employees,

Plaintiffs,

vs.

ADIDAS AMERICA, INC., an Oregon
corporation; and DOES 1 through 50,
Inclusive;

Defendants.

Case No. 56-2021-00549844-CU-OE-VTA

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT**

Date: November 22, 2021

Time: 8:30 a.m.

Reservation No. 2582394

Judge: Hon. Mark Borrell

Dept.: 4

Ventura Superior Court Accepted through eDelivery submitted 10-28-2021 at 12:33:02 PM

1 This matter having come before the Honorable Judge Mark Borrell of the Superior Court of the
2 State of California, in and for the County of Ventura, at 8:30 a.m. on November 22, 2021, with Jean-
3 Claude Lapuyade, Esq., of the JCL Law Firm, APC and Shani O. Zakay, Esq. of the ZLG Law Group,
4 APLC as counsel for plaintiff MONSERRAT LOPEZ (“Plaintiff”), and Robert Blumberg, Esq., and
5 Ashley Brick of Littler Mendelson, P.C. appearing for defendant ADIDAS AMERICA, INC.
6 (hereinafter “Defendant”). The Court, having carefully considered the briefs, argument of counsel and
7 all the matters presented to the Court, and good cause appearing, hereby GRANTS Plaintiff’s Motion
8 for Preliminary Approval of Class Action Settlement.

9 **IT IS HEREBY ORDERED:**

10 1. The Court preliminarily approves the Stipulation of Settlement of Class Action Claims
11 and Release of Claims (“Settlement Agreement” or “Agreement”), a true and correct copy of which is
12 attached hereto as **Exhibit “1”**. This is based on the Court’s determination that the Settlement
13 Agreement is within the range of possible final approval, pursuant to the provisions of Section 382 of
14 the California Code of Civil Procedure and California Rules of Court, rule 3.769.

15 2. This Order incorporates by reference the definitions in the Agreement, and all terms
16 defined therein shall have the same meaning in this Order as set forth in the Agreement.

17 3. Subject to the terms of the Settlement Agreement, the Total Settlement Amount that
18 Defendant shall pay is One Million Five Hundred Thousand Dollars (\$1,500,000). It appears to the
19 Court on a preliminary basis that the settlement amount and terms are fair, adequate, and reasonable as
20 to all Class Members when balanced against the probable outcome of further litigation relating to
21 certification, liability, and damages issues. It further appears that investigation and research have been
22 conducted such that counsel for the Parties are able to reasonably evaluate their respective positions. It
23 further appears to the Court that settlement at this time will avoid substantial additional costs by all
24 Parties, as well as avoid the delay and risks that would be presented by the further prosecution of the
25 litigation. It further appears that the Settlement has been reached as the result of intensive, serious, and
26 non-collusive arms-length negotiations.

27 4. The Court preliminarily finds that the Settlement appears to be within the range of
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1 reasonableness of a settlement that could ultimately be given final approval by this Court. The Court
2 has reviewed the monetary recovery that is being granted as part of the Settlement and preliminarily
3 finds that the monetary settlement awards made available to the Class Members are fair, adequate, and
4 reasonable when balanced against the probable outcome of further litigation relating to certification,
5 liability, and damages issues.

6 5. Plaintiff seeks an award of Attorneys' Fee and Costs in the amount of up-to one-third of
7 the Total Settlement Amount for attorneys' fees, currently estimated at Five Hundred Thousand Dollars
8 (\$500,000), an award of litigation expenses incurred not to exceed Twenty-Five Thousand Dollars
9 (\$25,000), and proposed Class Representative Service Award to the Class Representative, Monserrat
10 Lopez, in an amount not to exceed Ten Thousand Dollars (\$10,000). While these awards appear to be
11 within the range of reasonableness, the Court will not approve the Class Counsel Award or Class
12 Representative Service Award until the Final Approval Hearing.

13 6. The Court recognizes that Plaintiff and Defendant stipulate and agree to certification of
14 a class for settlement purposes only. This stipulation will not be deemed admissible in this or any other
15 proceeding should this Settlement not become final. For settlement purposes only, the Court
16 conditionally certifies the following Class:

17 "All of non-exempt retail store employees who are or previously were
18 employed by and performed work for defendant ADIDAS AMERICA,
19 INC., in California during the period between September 16, 2017 and
20 October 1, 2021."

21 7. The Court concludes that, for settlement purposes only, the Class meets the requirements
22 for certification under section 382 of the California Code of Civil Procedure in that: (a) the Class is
23 ascertainable and so numerous that joinder of all members of the Class Members is impracticable; (b)
24 common questions of law and fact predominate, and there is a well-defined community of interest
25 amongst the Class Members with respect to the subject matter of the litigation; (c) the claims of the
26 Class Representative are typical of the claims of the Class Members; (d) the Class Representative will
27 fairly and adequately protect the interests of the Class Members; (e) a class action is superior to other

1 available methods for the efficient adjudication of this controversy; and (f) Class Counsel are qualified
2 to act as counsel for the Class Representative in her individual capacity and as the representative of the
3 Class Members.

4 8. The Court provisionally appoints plaintiff MONSERRAT LOPEZ as the representative
5 of the Class.

6 9. The Court provisionally appoints Jean-Claude Lapuyade, Esq., of the JCL Law Firm,
7 A.P.C., and Shani Zakay, of the Zakay Law Group, APLC, as Class Counsel for the Class Members.

8 10. The Court hereby approves, as to form and content, the Proposed Notice of Pendency of
9 Class and Representative Action Settlement (“Class Notice”) attached to the Agreement as **Exhibit**
10 **“A”**. The Court finds that both notices appear to fully and accurately inform the Class Members and
11 Aggrieved Employees of all material elements of the proposed Settlement, including right of any Class
12 Member to be excluded from the Class by submitting a written request for exclusion, and of each Class
13 Member’s right and opportunity to object to the Settlement. The Court further finds that the distribution
14 of the notices substantially in the manner and form set forth in the Agreement and this Order meets the
15 requirements of due process, is the most reasonable notice under the circumstances, and shall constitute
16 due and sufficient notice to all persons entitled thereto. The Court orders the mailing of the notices by
17 first class mail, pursuant to the terms set forth in the Agreement.

18 11. The Court hereby appoints ILYM Group, Inc., as Settlement Administrator. Within
19 fourteen (14) business days of this order, Defendant shall provide, to the Settlement Administrator the
20 Class Data, including information regarding Class Members that Defendant will in good faith compile
21 from its records, including each Class Member’s full name; last known address; Social Security
22 Number; start dates and end dates of employment or work in Defendant’s retail stores in California
23 during the Class Period, the number of Workweeks for each Class Members and the number of PAGA
24 Workweeks. Within fourteen (14) calendar days after receiving the Class Data from Defendant, the
25 Settlement Administrator shall mail the Class Notice to all identified, potential Class Members via first
26 class U.S. Mail using the most current mailing address information available.

27 12. The Court hereby preliminarily approves the proposed procedure for exclusion from the
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Settlement. Any Class Member may individually choose to opt out of and be excluded from the Settlement as provided in the Notice by following the instructions for requesting exclusion from the Settlement of the Released Claims that are set forth in the Notice. All requests for exclusion must be postmarked or received by the Response Deadline which is forty-five (45) calendar days after the date the Class Notice is mailed to the Class Members or, in the case of a re-mailed Notice, not more than fifteen (15) calendar days after the original Response Deadline. Any such person who chooses to opt out of and be excluded from the Settlement will not be entitled to an Individual Settlement Payment under the Settlement and will not be bound by the Settlement, or have any right to object, appeal or comment thereon. Class Members who have not requested exclusion shall be bound by all determinations of the Court, the Agreement and Judgment. A request for exclusion may only opt out that particular individual, and any attempt to affect an opt-out of a group, class, or subclass of individuals is not permitted and will be deemed invalid.

13. Any Class Member who has not opted out may appear at the final approval hearing and may object or express the Class Member's views regarding the Settlement and may present evidence and file briefs or other papers that may be proper and relevant to the issues to be heard and determined by the Court as provided in the Notice. Class Members will have forty-five (45) days from the date the Settlement Administrator mails the Class Notice to postmark their written objections to the Settlement Administrator.

14. A final approval hearing shall be held before this Court on 4/4/22 at 8:20 AM in Department 40 of the Ventura County Superior Court to determine all necessary matters concerning the Settlement, including: whether the proposed settlement of the Action on the terms and conditions provided for in the Agreement is fair, adequate and reasonable and should be finally approved by the Court; whether an Order Granting Final Approval should be entered herein; whether the plan of allocation contained in the Agreement should be approved as fair, adequate and reasonable to the Class; and to finally approve the Class Counsel Award, Class Representative Service Award, and the Settlement Administration Costs. All papers in support of the motion for final approval and the motion for Attorneys' Fee and Costs and Class Representative Service Award shall be filed with the

1 Court and served on all counsel no later than sixteen (16) court days before the hearing.

2 15. Neither the Settlement nor any exhibit, document, or instrument delivered thereunder
3 shall be construed as a concession or admission by Defendant in any way, and shall not be used as
4 evidence of, or used against Defendant as, an admission or indication in any way, including with respect
5 to any claim of any liability, wrongdoing, fault or omission by Defendant or with respect to the truth
6 of any allegation asserted by any person. Whether or not the Settlement is finally approved, neither the
7 Settlement, nor any exhibit, document, statement, proceeding or conduct related to the Settlement, nor
8 any reports or accounts thereof, shall in any event be construed as, offered or admitted in evidence as,
9 received as or deemed to be evidence for any purpose adverse to the Defendant, including, but not
10 limited to, evidence of a presumption, concession, indication or admission by Defendant of any
11 liability, fault, wrongdoing, omission, concession or damage.

12 16. In the event the Settlement does not become effective in accordance with the terms of the
13 Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to become
14 effective for any reason, this Order shall be rendered null and void and shall be vacated, and the Parties
15 shall revert to their respective positions as of before entering into the Agreement. In such an event, the
16 Court's orders regarding the Settlement, including this Preliminary Approval Order, shall not be used
17 or referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of
18 the Settlement Agreement with respect to the effect of the Settlement Agreement if it is not approved.

19 17. Pending final determination of whether the Settlement should be approved, Class
20 Representative and all Class Members are barred and enjoined from filing, commencing, prosecuting,
21 intervening in, instigating or in any way participating in the commencement or prosecution of any
22 lawsuit, action or administrative, regulatory, arbitration or other proceeding, in any forum, asserting
23 any claims that are, or relate in any way to, the Released Claims, unless and until they submit a timely
24 request for exclusion pursuant to the Agreement.

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1 18. The Court reserves the right to adjourn or continue the date of the final approval hearing
2 and all dates provided for in the Agreement without further notice to Class Members and retains
3 jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

4
5 Dated:

12/1/21

A handwritten signature in blue ink, appearing to read "Judge [unclear] - C", written over a horizontal line.

JUDGE OF THE SUPERIOR COURT

EXHIBIT C

Tesla Stone

From: Form Assembly <no-reply@formassembly.com> on behalf of DIR PAGA Unit
<lwdadonotreply@dir.ca.gov>
Sent: Thursday, October 28, 2021 12:05 PM
To: Tesla Stone
Subject: Thank you for your Proposed Settlement Submission

10/28/2021 12:05:13 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT D