

Michael R. Crosner (Bar No. 41299)
Zachary M. Crosner (Bar No. 272295)
Blake Jones (Bar No. 211221)
Nikki Trenner (Bar No. 316007)
CROSNER LEGAL, PC
9440 Santa Monica Blvd., Ste. 301
Beverly Hills, CA 90210
Tel: (310) 496-5818
Fax: (310) 510-6429

Attorneys for Plaintiff ELAINE MOYAL

Marta M. Fernandez (Bar No. 120540)
Patricia Belton (Bar No. 264655)
JEFFER MANGELS BUTLER & MITCHELL, LLP
1900 Avenue of the Stars, 7th Floor
Los Angeles, CA 90067
Tel: (310) 203-8080
Fax: (310) 203-0567

Attorneys for Defendant CABINETS TO GO, LLC

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

ELAINE MOYAL, on behalf of herself and
others similarly situated and aggrieved,

Plaintiff,

v.

CABINETS TO GO, LLC, a California
Corporation, and DOES 1 to 100, inclusive,

Defendants.

Case No.: 20STCV32477

**SECOND REVISED JOINT
STIPULATION AND SETTLEMENT
AGREEMENT**

1 Subject to final approval by the Court, this Second Revised Settlement Agreement is
2 between Plaintiff Elaine Moyal (“Plaintiff”) and Defendant Cabinets-To-Go, LLC (“Defendant”).
3 Plaintiff and Defendant are collectively referred to in this Agreement as the “Parties.”

4 **I. DEFINITIONS**

5 In addition to the other terms defined in this Agreement, the terms below have the following
6 meanings:

7 **A. Action:** *Elaine Moyal v. Cabinets to Go, LLC and DOES 1 to 100*, Los Angeles Superior
8 Court Case No. 20STCV32477.

9 **B. Administration Costs:** The costs incurred by the Settlement Administrator to administer
10 this Settlement, including but not limited to providing Notice, various efforts to locate class
11 members, calculating Employer Taxes (defined below) owed by Defendant, administering and
12 ensuring proper tax treatment of all distributions of the Gross Settlement Fund (including but not
13 limited to payment of all payroll taxes), establishing and maintaining a Qualified Settlement Fund
14 for all funding obligations provided for herein (including but not limited to any and all fees
15 associated with the accounts and transfers to and from the accounts), administering payments to
16 Plaintiff, to Participating Class Members (defined below), to PAGA Employees (defined below),
17 to the Labor and Workforce Development Agency, and to Class Counsel. Administration Costs
18 shall not exceed Twenty Thousand Dollars [\$20,000]. All Administration Costs shall be paid from
19 the Gross Settlement Amount. If the Court awards less than the amount requested, any amount not
20 awarded will become part of the Net Settlement Amount for distribution to Participating Class
21 Members.

22 **C. Agreement, Settlement Agreement, Joint Stipulation, or Settlement:** The settlement
23 agreement reflected in this document, titled “Second Revised Joint Stipulation and Settlement
24 Agreement.”

25 **D. Attorney Fee Award:** The amount, not to exceed Thirty-Three and One-Third percent
26 [33.33%] of the Gross Settlement Amount or One Hundred Ninety-One Thousand Six Hundred
27 Sixty-Six dollars [\$191,666], finally approved by the Court and awarded to Class Counsel. The
28

Attorney Fee Award shall be paid from the Gross Settlement Amount and will not be opposed by Defendant. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.

E. Class: All hourly paid, non-exempt individuals who worked for Defendant in California at any time during the Settlement Period. It shall be an opt-out class.

F. Class Counsel: Michael Crosner, Esq., Zachary Crosner, Esq., Blake Jones, Esq., and Nikki Trenner, Esq. of Crosner Legal, PC.

G. Class Member: Each person eligible to participate in this Settlement who is a member of the Class as defined above.

H. Class Notice or Notice: The Notice of Class Action Settlement, substantially similar to the form attached hereto as **Exhibit A**, subject to Court approval.

I. Class Period: The period beginning April 6, 2016 through June 9, 2021. .

J. Class Release or Class Released Claims: Class Members who do not opt out of the settlement will release the Released Parties from any and all claims alleged by Plaintiff and Class Members in the Operative Complaint including, but not limited to, any and all claims for the payment of minimum wages, overtime wages, rest periods, meal periods, wage statement and paystubs, waiting time penalties, maintaining business records, unfair business practices, interest, attorneys' fees, and any other alleged wage and hour violations or other claims that were or could have been asserted based on the facts alleged in the Operative Complaint. The release only applies to periods of time when Class Members were members of the Class (i.e., excluding periods of time in an exempt position or working outside of California).

K. Class Representative or Plaintiff: Plaintiff Elaine Moyal.

L. Class Representative Enhancement Payment: The amount the Court awards to Plaintiff, which will not exceed Ten Thousand dollars [\$10,000]. This payment shall be paid from the Gross Settlement Amount and will not be opposed by Defendant. This payment is offered in consideration for the Plaintiff's actions in conferring a benefit upon the State of California and the Class, the time and effort Plaintiff put into pursuing the litigation, and reasonable fears of being

blacklisted from future employment. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.

M. Cost Award: The amount that the Court awards Class Counsel for payment of actual litigation costs, which shall not exceed Twenty Thousand dollars [\$20,000]. The Cost Award will be paid from the Gross Settlement Amount and will not be opposed by Defendant. The Cost Award is subject to Court approval. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.

N. Counsel for Defendant: Marta M. Fernandez and Patricia Belton of Jeffer Mangels Butler & Mitchell, LLP.

O. Defendant: Defendant Cabinets-To-Go, LLC.

P. Disbursement of the Settlement: The date on which the Settlement Administrator shall disburse the Gross Settlement Amount as indicated herein. Under the terms of this Settlement Agreement, ten (10) business days after the Effective Final Settlement Date, the Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative Enhancement Payment paid to the Class Representative, as approved by the Court; (4) the Administration Costs, as approved by the Court; and (5) the PAGA Payment to the LWDA and to PAGA Employees, as approved by the Court.

Q. Effective Final Settlement Date: The effective date of this Settlement shall occur upon one day after the Judgment is final. The occurrence of the Effective Settlement Date is a prerequisite to any distributions from the Settlement Fund. The Judgment shall be considered final on the later of: (i) the date of final affirmance (including expiration of time for any request or petition for any further review) of the Judgment on any appeal; or (ii) the date of final dismissal of any appellate proceeding regarding the Judgment; or (iii) if no appeal is filed, the expiration of

the time for the filing or noticing of any appeal from the Court's judgment approving this Settlement; i.e., sixty (60) days after the entry of the Judgment. Within ten (10) days following the Entry of Judgment it shall be uploaded to the settlement website.

R. Employer Taxes: Defendant's portion of payroll taxes as the Class Members' current or former employer (including the employer's payment of applicable FICA, FUTA, and SUI contributions, etc.) owed to the appropriate local, state, and federal taxing authorities. Defendant will pay its portion of payroll taxes separate and apart from the Gross Settlement Amount to the QSF to be distributed by the Settlement Administrator to the appropriate taxing authorities.

S. Final Approval: The final order entered by the Court finally approving this Agreement.

T. Funding of Settlement: Defendant shall wire to the Settlement Administrator the Gross Settlement Amount within five (5) business days of the Effective Final Settlement Date.

U. Gross Settlement Amount: The total value of the Settlement is a non-reversionary Five Hundred Seventy-Five Thousand dollars and Zero cents [\$575,000]. This gross amount is the maximum Defendant can be required to pay under this Settlement Agreement, with the exception of its obligation to pay Employer Taxes. The following disbursements will be paid from the Gross Settlement Amount: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative Enhancement Payment paid to the Class Representative, as approved by the Court; (4) the Administration Costs, as approved by the Court; and (5) the PAGA Payment to the LWDA and to PAGA Employees, as approved by the Court. No portion of the Gross Settlement Amount will revert to Defendant for any reason.

V. Individual PAGA Share(s): The amount payable from the PAGA Payment to each PAGA Employee.

W. Individual Settlement Share(s): The amount due to each Participating Class Member under the terms of this Settlement Agreement. The Participating Class Member shall receive payment in the amount of his/her Individual Settlement Share reduced by the Participating Class Member's tax liability for the Individual Settlement Share. Class Members are not required to

submit a claim form to receive their Individual Settlement Shares pursuant to this Agreement. Rather, Participating Class Members will receive an Individual Settlement Share automatically, without the return of a claim form.

X. LWDA: California Labor and Workforce Development Agency.

Y. Net Settlement Amount: The total amount of money available for payout to Participating Class Members, which is the Gross Settlement Amount less the Attorney Fee Award, Cost Award, the Class Representative Enhancement Payment, the PAGA Payment, and Administration Costs. In other words, the Net Settlement Amount is the portion of the Gross Settlement Amount that will be distributed to Class Members who do not request exclusion from the Settlement. The payment of employee-side taxes on the portion of the Individual Settlement Shares earmarked as wages shall be paid out of the Net Settlement Amount. Thus, the Individual Settlement Shares that are paid out of the Net Settlement Amount shall be reduced by the employee's tax liability for the share.

Z. PAGA: The California Labor Code Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698 *et seq.*).

AA. PAGA Employee(s): All current and former California non-exempt, hourly employees of Defendant during the PAGA Period, including those who submit a valid and timely Request for Exclusion but are nevertheless bound by the release of the PAGA Released Claims.

BB. PAGA Payment: The PAGA Payment consists of Ten Thousand dollars [\$10,000] of the Gross Settlement Amount allocated to satisfy the PAGA penalties claim as alleged in the in the Operative Complaint. Seventy-five percent (75%) of the PAGA Payment or Seven Thousand Five Hundred dollars [\$7,500] shall be paid to the LWDA, and twenty-five percent (25%) or Two Thousand Five Hundred dollars [\$2,500] of the PAGA Payment shall be distributed as Individual PAGA Shares to PAGA Employees.

CC. PAGA Period: The period beginning January 8, 2019 through June 9, 2021.

DD. PAGA Release or PAGA Released Claims: Plaintiff and all PAGA Employees release the Released Parties from all claims and penalties under the California Labor Code §§ 2698 *et seq.*

as pled in the PAGA Notice and Operative Complaint from January 8, 2019 through June 9, 2021. In light of the binding nature of a PAGA judgment on non-party employees pursuant to *Arias v. Superior Ct. (Dairy)*, 46 Cal. 4th 969 (2009), Class Members employed by Defendants on or after January 8, 2019, who exclude themselves from this Settlement shall still receive an Individual PAGA Share directly from the Settlement Administrator for the amount of each such individual's estimated share of the PAGA Payment as calculated by the Settlement Administrator.

EE. Participating Class Members: All Class Members who do not submit a valid and timely request to exclude themselves from this Settlement.

FF. Parties: Plaintiff Elaine Moyal as an individual and as Class Representative, and Defendant Cabinets-To-Go, LLC.

GG. Preliminary Approval or Preliminary Approval Order: The Court's order preliminarily approving the proposed Settlement.

HH. Qualified Settlement Fund or QSF: The Parties agree that the Gross Settlement Amount is intended to be a "Qualified Settlement Fund" under Section 468B of the Code and Treasury Regulations § 1.4168B-1, 26 C.F.R. § 1.468B-1 *et seq.*, and will be administered by the Settlement Administrator as such. The Parties and Settlement Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law. The Parties understand and agree that: (1) the Settlement Fund will qualify and be characterized as a Qualified Settlement Fund under the provisions of Treasury Regulation Sections 1.468B-1 and 1.468B-5 with the purpose of resolving and/or satisfying the claims raised in this Settlement, (2) the Qualified Settlement Fund will be taxed as a separate entity for purposes of all federal, state, and local taxes, (3) the parties shall treat the Qualified Settlement Fund on a basis consistent therewith for all tax purposes (and, for the avoidance of doubt, this Agreement shall be interpreted consistently therewith), (4) the Qualified Settlement Fund will be characterized as the employer of all Settlement Class Members for purposes of determining all tax obligations (including withholding obligations) and/or benefits obligations, if any, associated with any and all

1 payments under this Settlement, and (5) the Qualified Settlement Fund will bear full and sole
2 responsibility (including the preparation and submission of necessary tax forms) for all
3 withholding taxes and benefits (if any) associated with the Qualified Settlement Fund and
4 Settlement Funds under this Settlement, in addition to any income taxes with respect to the
5 earnings within the Qualified Settlement Fund and tax requirements relating to payments from the
6 Qualified Settlement Fund. All taxes and benefits (if any) (including any interest and penalties)
7 arising with respect to income earned by the Qualified Settlement Fund shall be paid from the
8 Qualified Settlement Fund. All expenses and costs incurred in connection with the operation and
9 implementation of this Section (including without limitation, expenses of attorneys and/or
10 accountants and mailing and distribution of expenses related to filing (or failing to file) any
11 necessary tax returns or making (or failing to make) any necessary benefits payments) shall be
12 paid from the Qualified Settlement Fund. For the avoidance of doubt, Defendant shall have no
13 obligations with respect to the administration of the Qualified Settlement Fund, except as expressly
14 provided under this paragraph CC.

15 **II. Released Parties:** Defendant and its past, present and/or future, direct and/or indirect,
16 officers, directors, shareholders, partners, members, customers, agents, owners, attorneys, insurers,
17 past, present, and future divisions, predecessors, successors, trustees, representatives,
18 administrators, fiduciaries, assigns, subrogees, executors, partners, privies, and employees, and all
19 parents, subsidiaries and related or affiliated entities, etc.

20 **JJ. Response Deadline:** Fifty (50) calendar days from the initial mailing of the Notice by the
21 Settlement Administrator.

22 **KK. Settlement Administration:** The Settlement Administrator will conduct a skip trace for
23 the address of all former employee Class Members prior to the mailing of the Class Notice. The
24 Settlement Administrator will mail the Notice by first class U.S. mail to all current employee Class
25 Members at the address Defendant has on file for those Class Members and to all former employee
26 Class Members at the address resulting from the skip trace. The Notice will inform Class Members
27 that they have until the Response Deadline to either object to the Settlement or to opt-out of the
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Settlement. Any Class Member who does not receive Notice after the steps outlined above have been taken will still be bound by the Settlement and/or judgment.

LL. Settlement Administrator: The third-party administrator agreed upon by Parties to administer this Settlement is Simpluris.

MM. Superior Court: Los Angeles Superior Court.

II. RECITALS

A. Effective April 6, 2020, Plaintiff's claims were tolled under the CA Emergency Rule of Court 9 due to the COVID-19 pandemic. The Action was filed by Plaintiff Elaine Moyal in the Los Angeles Superior Court on August 24, 2020. The complaint alleged causes of action on behalf of Plaintiff and those similarly situated hourly/non-exempt employees for failure to provide meal and rest periods, failure to pay for all work performed at minimum and overtime rates, failure to properly itemize wage statements, failure to pay for all wages owed at the time of termination, failure to maintain accurate business records, violations of the PAGA, and violations of the UCL.

B. Following the filing of the Complaint, the Parties agreed to an early mediation and a protocol for exchanging documents and information before the mediation. Defendant produced a random sampling of time and pay records for class members. Defendant also provided documents of its wage and hour policies and practices during the class period, and information regarding the total number of current and former employees, the estimated total amount of workweeks and pay periods, and the average hourly rate, among other relevant data.

C. The Parties attended mediation with Marc Feder on September 21, 2020. After a full day of arms-length mediation, the Parties were able to reach a settlement, the terms of which are reflected herein.

D. Benefits of Settlement to Class Members. Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals. Plaintiff and Class Counsel also have taken into account the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel have conducted extensive settlement

1 negotiations. Based on the foregoing, Plaintiff and Class Counsel believe the Settlement set forth
2 in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the
3 Class Members.

4 **E. Defendant's Reasons for Settlement.** Defendant recognizes that the defense of this
5 litigation will be protracted and expensive. Substantial amounts of time, energy, and resources of
6 Defendant has been and, unless this Settlement is made, will continue to be devoted to the defense
7 of the claims asserted by Plaintiff. Defendant, therefore, has agreed to settle in the manner and
8 upon the terms set forth in this Agreement to put to rest the Class Released Claims and PAGA
9 Released Claims.

10 **F. Defendant's Denial of Wrongdoing.** Defendant generally and specifically denies
11 any and all liability or wrongdoing of any sort with regard to any of the claims alleged, makes no
12 concessions or admissions of liability of any sort, and contends that for any purpose other than
13 settlement, the Action is not appropriate for class treatment. Defendant asserts a number of
14 defenses to the claims, and has denied any wrongdoing or liability arising out of any of the alleged
15 facts or conduct in the Action. Neither this Agreement, nor any document referred to or
16 contemplated herein, nor any action taken to carry out this Agreement, is or may be construed as,
17 or may be used as an admission, concession, or indication by or against Defendant or any of the
18 Released Parties of any fault, wrongdoing, or liability whatsoever. There has been no final
19 determination by any court as to the merits of the claims asserted by Plaintiff against Defendant
20 or as to whether a class or classes should be certified, other than for settlement purposes only.

21 **G. Plaintiff's Claims.** Plaintiff asserts that Defendant's defenses are without merit.
22 Neither this Agreement nor any documents referred to or contemplated herein, nor any action taken
23 to carry out this Agreement is, may be construed as, or may be used as an admission, concession,
24 or indication by or against Plaintiff, Class Members, PAGA Employees, or Class Counsel as to the
25 merits of any claims or defenses asserted, or lack thereof, in the Action. However, in the event that
26 this Settlement is finally approved by the Court, the Plaintiff, Class Members, PAGA Employees,
27 and Class Counsel will not oppose Defendant's efforts to use this Agreement to prove that Plaintiff,

1 Class Members, and PAGA Employees have resolved and are forever barred from re-litigating the
2 Class Released Claims and PAGA Released Claims.

3 **III. SETTLEMENT TERMS AND CONDITIONS**

4 **A. Gross Settlement Amount.** Subject to the terms and conditions of this Agreement,
5 the maximum Gross Settlement Amount, that Defendant is obligated to pay under this Settlement
6 Agreement is Five Hundred Seventy-Five Thousand dollars and Zero cents [\$575,000].

7 **B. Class Certification.** Solely for the purposes of this Settlement, the Parties stipulate
8 and agree to certification of the claims asserted on behalf of Class Members. As such, the Parties
9 stipulate and agree that in order for this Settlement to occur, the Court must certify the Class as
10 defined in this Agreement.

11 **C. Conditional Nature of Stipulation for Certification.** The Parties stipulate and agree
12 to the certification of the claims asserted on behalf of Plaintiff and Class Members for purposes of
13 this Settlement only. If the Settlement does not become effective, the fact that the Parties were
14 willing to stipulate to certification as part of the Settlement shall not be admissible or used in any
15 way in connection with, the question of whether the Court should certify any claims in a non-
16 settlement context in this Action or in any other lawsuit. If the Settlement does not become
17 effective, Defendant reserves the right to contest any issues relating to class certification and
18 liability.

19 **D. Appointment of Class Representative.** Solely for the purposes of this Settlement,
20 the Parties stipulate and agree Plaintiff Elaine Moyal shall be appointed as representative for the
21 Class.

22 **E. Appointment of Class Counsel.** Solely for the purpose of this Settlement, the Parties
23 stipulate and agree that the Court appoint Class Counsel to represent the Class.

24 **F. Individual PAGA Share.** Subject to the terms and conditions of this Agreement, the
25 Settlement Administrator will pay an Individual PAGA Share from the PAGA Payment to each
26 PAGA Employee.

27 **1. Calculation.**

a. Individual PAGA Share Calculation. The Settlement Administrator will calculate Individual PAGA Shares by dividing the 25% of the PAGA Payment to be distributed to PAGA Employees, i.e., \$2,500, by the total number of pay periods for the PAGA Employees resulting in a PAGA Pay Period Value; and then multiplying the PAGA Pay Period Value by the number of pay periods worked by each PAGA Employee. All PAGA Employees will be entitled to payment for at least one pay period. Therefore, the value of each PAGA Employee's Individual PAGA Share ties directly to the amount of pay periods that he or she worked during the PAGA Period as a non-exempt California employee.

2. Tax Withholdings. The Settlement Administrator shall issue an IRS Form 1099 to each PAGA Employee for the Individual PAGA Share which shall be allocated as penalties and not subject to payroll tax withholdings.

G.Individual Settlement Share. Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual Settlement Share from the Net Settlement Amount to each Participating Class Member.

1. Calculation.

a. Individual Settlement Share Calculation. Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to (i) the Net Settlement Amount divided by the total number of work weeks worked by all Class Members during the Class Period, multiplied by (ii) the number of work weeks worked by the individual Class Member. One day worked in a given week will be credited as a week for purposes of this calculation. Only workweeks when the Class Members worked as non-exempt California employees shall be considered. Therefore, the value of each Class Member's Individual

1 Settlement Share ties directly to the amount of weeks that he or she
2 worked during the Class Period as a non-exempt California employee.

- 3 **2. Tax Withholdings.** Each putative class member's gross settlement award will be
4 apportioned as follows: 20% wages and 80% penalties and interest. The amounts
5 paid as wages shall be subject to all tax withholdings customarily made from an
6 employee's wages and all other authorized and required withholdings and shall be
7 reported by W-2 forms. Payment of all amounts will be made subject to backup
8 withholding unless a duly executed W-9 form is received from the payee(s). The
9 amounts paid as penalties and interest shall be subject to all authorized and required
10 withholdings other than the tax withholdings customarily made from employees'
11 wages and shall be reported by IRS 1099 forms. Defendant will pay its portion of
12 payroll taxes separate and apart from the Gross Settlement Amount to the QSF.

13 **H. Constituents of Gross Settlement Amount Disbursement.** Subject to the terms and
14 conditions of this Agreement, the Settlement Administrator shall disburse the Gross Settlement
15 Amount as directed later on herein to the following:

- 16 **1. To the Named Plaintiff:** In addition to her Individual Settlement Share, Individual
17 PAGA Share, and subject to the Court's approval, the named Plaintiff, Elaine
18 Moyal, will receive a Class Representative Enhancement Payment of up to Ten
19 Thousand dollars and Zero cents [\$10,000]. The Settlement Administrator will pay
20 the Class Representative Enhancement Payment out of the Gross Settlement
21 Amount. Payroll tax withholdings and deductions will not be taken from the Class
22 Representative Enhancement Payment. An IRS Form 1099 will be issued to the
23 Plaintiff with respect to her Class Representative Enhancement Payment.

- 24 **2. To Class Counsel.** Class Counsel will apply to the Court for, and Defendant agrees
25 not to oppose, a total Attorney Fee Award not to exceed Thirty-Three and One-
26 Third percent [33.33%] or One Hundred Ninety-One Thousand Six Hundred Sixty-
27 Six dollars [\$191,666] of the Gross Settlement Amount and a Cost Award not to

1 exceed Twenty Thousand dollars [\$20,000]. The Settlement Administrator will pay
2 the court-approved amounts for the Attorney Fee Award and Cost Award out of the
3 Gross Settlement Fund. Settlement Administrator may purchase an annuity to
4 utilize US treasuries and bonds or other attorney fee deferral vehicles for Class
5 Counsel. Payroll tax withholding and deductions will not be taken from the
6 Attorney Fee Award or the Cost Award. IRS Forms 1099 will be issued to Class
7 Counsel with respect to the Attorney Fee Award. In the event the Court does not
8 approve the entirety of the application for the Attorney Fee Award and/or Cost
9 Award, the Settlement Administrator shall pay whatever amount the Court awards,
10 and neither Defendant nor the Settlement Administrator shall be responsible for
11 paying the difference between the amount requested and the amount awarded. If
12 the amount awarded is less than the amount requested by Class Counsel for the
13 Attorney Fee Award and/or Cost Award, the difference shall become part of the
14 Net Settlement Amount and be available for distribution to Participating Class
15 Members.

16 **3. To the Responsible Tax Authorities.** The Settlement Administrator will pay the
17 amount of the Participating Class Members' portion of normal payroll withholding
18 taxes out of each person's Individual Settlement Share. The Settlement
19 Administrator will pay the amount of the Defendant's portion of payroll taxes
20 separate and apart from the Gross Settlement Amount.

21 **4. To the Settlement Administrator.** The Settlement Administrator will pay to itself
22 Administration Costs (reasonable fees and expenses) approved by the Court not to
23 exceed Twenty Thousand dollars and Zero cents [\$20,000]. This will be paid out
24 of the Gross Settlement Amount. If the actual amount of Administration Costs is
25 less than the amount estimated and/or requested, the difference shall become part
26 of the Net Settlement Amount and be available for distribution to Participating
27 Class Members.

5. To the LWDA. The Settlement Administrator will pay Ten Thousand dollars and Zero cents [\$10,000] of the Gross Settlement Amount allocated to satisfy the PAGA penalties claim as alleged in the Operative Complaint. Seventy-five percent (75%) of the PAGA Payment, or Seven Thousand Five Hundred dollars [\$7,500] shall be paid to the LWDA.

6. To PAGA Employees. The Settlement Administrator will pay PAGA Employees according to the Individual PAGA Share calculations set forth above.

7. To Class Members. The Settlement Administrator will pay Participating Class Members according to the Individual Settlement Share calculations set forth above.

I. Appointment of Settlement Administrator. Solely for the purposes of this Settlement, the Parties stipulate and agree to the appointment of the Settlement Administrator. The Settlement Administrator shall be responsible for preparing, printing, and mailing the Notice to the Class Members; keeping track of any objections or requests for exclusion from Class Members; performing skip traces and re-mailing Notices and Individual Settlement Shares to Class Members; calculating any and all payroll tax deductions as required by law; calculating each Class Member's Individual Settlement Share; calculating each PAGA Employee's Individual PAGA Share; providing weekly status reports to Defendant's Counsel and Class Counsel, which is to include updates on any objections or requests for exclusion that have been received; providing a due diligence declaration for submission to the Court prior to the Final Approval hearing; mailing Individual Settlement Shares to Participating Class Members; calculating and mailing the PAGA Payment to the LWDA; mailing Individual PAGA Shares to PAGA Employees; distributing the Attorney Fee Award and Cost Award to Class Counsel; calculating and paying amounts owed to the appropriate tax authorities including but not limited to Employer Taxes owed; printing and providing Class Members, PAGA Employees, and Plaintiff with W-2s and 1099 forms as required under this Agreement and applicable law; providing a due diligence declaration for submission to the Superior Court upon the completion of the Settlement; providing any funds remaining in the OSF as a result of uncashed checks to the State of California's State Controller Unclaimed Property

1 Fund, in the amounts directed per this Settlement, including the administration of related tax
2 reimbursements; and for such other tasks as the Parties mutually agree. The Parties each represent
3 that they do not have any financial interest in the Settlement Administrator or otherwise have a
4 relationship with the Settlement Administrator that could create a conflict of interest.

5 **J. Procedure for Approving Settlement.**

6 **1. Motion for Preliminary Approval and Conditional Certification.**

- 7 a. Plaintiff will move for an order conditionally certifying the Class for
8 settlement purposes only, giving Preliminary Approval of the Settlement,
9 setting a date for the Final Approval hearing, and approving the Class
10 Notice.
- 11 b. At the Preliminary Approval hearing, the Plaintiff, through Class Counsel,
12 will appear, support the granting of the motion, and submit a proposed
13 order granting conditional certification of the Class and Preliminary
14 Approval of the Settlement; appointing the Class Representatives, Class
15 Counsel, and Settlement Administrator; approving the Class Notice; and
16 setting the Final Approval hearing.
- 17 c. **Effect of Denial of Preliminary Approval.** Should the Court decline to
18 conditionally certify the Class or to Preliminarily Approve all material
19 aspects of the Settlement, the Settlement will be null and void, and the
20 Parties will have no further obligations under it. Provided, however, that
21 the amounts of the Attorney Fee Award, Cost Award, Administration
22 Costs, and Class Representative Enhancement Payment shall be
23 determined by the Court, and the Court's determination on these amounts
24 shall be final and binding, and that the Court's approval or denial of any
25 amount requested for these items are not conditions of this Settlement
26 Agreement, and are to be considered separate and apart from the fairness,
27 reasonableness, and adequacy of the Settlement. Any order or proceeding
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1 relating to an application for the Attorney Fee Award, Cost Award,
2 Administration Costs, and Class Representative Enhancement Payment
3 shall not operate to terminate or cancel this Settlement Agreement.
4 Nothing in this Agreement shall limit Plaintiff's or Class Counsel's ability
5 to appeal any decision by the Court to award less than the requested
6 Attorney Fee Award, Cost Award, Administration Costs, and Class
7 Representative Enhancements. All claims for Attorney Fee Award, Cost
8 Award, Administration Costs, and Class Representative Enhancements
9 that Class Counsel, Plaintiff, and the Participating Class Members may
10 possess against Defendant have been compromised, released, and
11 resolved in this Settlement Agreement and shall not be affected by any
12 appeal that Class Counsel may file. Defendant shall not be required to pay
13 any additional amount in Settlement regardless of costs and fees incurred
14 by Class Counsel or any other person in such an appeal.

15 **2. Notice to Class Members.** After the Court enters its Preliminary Approval Order,
16 every Class Member will be provided with the Class Notice in accordance with the
17 following procedure:

18 **a. Class Data.** Within ten (10) business days after entry of the Preliminary
19 Approval Order, Defendant shall deliver to the Settlement Administrator
20 an electronic database, which will list for each Class Member: (1) first
21 and last name; (2) last known mailing address; (3) social security number;
22 (4) hire and termination dates; (5) last known email address; and (6) the
23 total number of weeks during which the Class Member performed any
24 actual work during the Class Period as a member of the Class
25 ("Database"). . The data provided under this Section 2(a) shall be used
26 only for the purpose of administering this Settlement. If any or all of this
27 information is unavailable to Defendant, Defendant will so inform Class
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Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon how to deal with the unavailable information. The Settlement Administrator will conduct a skip trace for the address of all Class Members who are former employees of Defendant. The Database shall be based on Defendant's payroll, personnel, and other business records. The Settlement Administrator shall maintain the Database and all data contained within the Database as private and confidential and will not be disclosed to anyone, except as required to Class Counsel for administration of the settlement and applicable tax authorities, pursuant to the express written consent of Defendant, or by order of the Court.

b. Notice Mailing. Within fourteen (14) business days after entry of the Preliminary Approval Order, the Settlement Administrator will mail the Class Notice to all identified Class Members via first-class regular U.S. Mail, using the mailing address information provided by Defendant and the results of the skip trace performed on all former Defendant employee Class Members.

c. Returned Notices. If a Class Notice is returned because of an incorrect address, within five (5) business days from receipt of the returned Notice, the Settlement Administrator will conduct a search for a more current address for the Class Member and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the National Change of Address Database and skip traces to attempt to find the current address. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Class Member for whom a Class Notice is returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned

1 without a forwarding address; and promptly re-mailing to Class Members
2 for whom new addresses are found. The Settlement Administrator is
3 unable to locate a better address, the Class Notice shall be re-mailed to
4 the original address. If the Class Notice is re-mailed, the Settlement
5 Administrator will note for its own records the date and address of each
6 re-mailing. Class Members who are sent a re-mailed Settlement Notice
7 shall have their Response Deadline begin to run from the date the
8 Settlement Administrator re-mails the Settlement Notice.

9 **d. Weekly Status Reports.** The Settlement Administrator shall provide a
10 weekly status report to the Parties. As part of its weekly status report, the
11 Settlement Administrator will inform Class Counsel and Defendant's
12 Counsel of the number of Notices mailed and emailed (if applicable), the
13 number of Notices returned as undeliverable, the number of Notices re-
14 mailed, and the number of requests for exclusion or objections received.

15 **e. Settlement Administrator's Declaration.** No later than fourteen (14)
16 calendar days after the Response Deadline or at the request of the Parties,
17 whichever comes first, the Settlement Administrator will provide the
18 Parties a declaration of due diligence setting forth its compliance with its
19 obligations under this Agreement. The declaration from the Settlement
20 Administrator shall also be filed with the Court by Class Counsel at the
21 time the Motion for Final Approval is filed. Before the Final Approval
22 Hearing, the Settlement Administrator will supplement its declaration of
23 due diligence if any material changes occur from the date of the filing of
24 its prior declaration.

25 **3. Objections to Settlement.** The Class Notice will provide the method and timing
26 for objections to the Settlement.
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1 **a. Timing.** Any written objection must be submitted to the Settlement
2 Administrator by mail, postmarked by the Response Deadline.

3 **b. Format.** Any written Objections shall include: (a) the case name (e.g.,
4 *Elaine Moyal v. Cabinets to Go, LLC and DOES 1 to 100*) and case
5 number (e.g. 20STCV32477); (b) the objecting person’s or his/her
6 attorney’s full name, address, telephone number, and signature; (c) the
7 words “Notice of Objection” or “Formal Objection;” (d) describe, in clear
8 and concise terms, the legal and factual arguments supporting the
9 objection; (e) list identifying witness(es) the objector may call to testify
10 at the Final Approval Hearing; (f) provide true and correct copies of any
11 exhibit(s) the objector intends to offer at the Final Approval Hearing; and
12 (g) state whether the objection applies only to the objector, to a specific
13 subset of the Class, or to the entire Class.

14 **c. Appearance at Final Approval Hearing.** Class Members who object to
15 the Settlement may (though are not required to) appear at the Final
16 Approval Hearing, either in person or through the objector’s own counsel.
17 The Court will hear from any Class Member who attends the Final
18 Approval Hearing and asks to speak regarding his or her objection
19 regardless of whether they submitted a written objection.

20 **4. Request for Exclusion from the Settlement (“Opt-Out”).** The Class Notice will
21 provide that Class Members who wish to exclude themselves from the Settlement
22 must mail to the Settlement Administrator a written request for exclusion by the
23 Response Deadline. The written request for exclusion must: (a) state the Class
24 Member’s name, address, telephone number, and social security number or
25 employee identification number; (b) state the Class Member’s intention to exclude
26 themselves from or opt-out of the Settlement (e.g., “I want to exclude myself from
27 this settlement. I also understand that I retain all rights to sue the Defendant for the
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claims asserted in this lawsuit.”); (c) be addressed to the Settlement Administrator; (d) be signed by the Class Member or his or her lawful representative; and (e) be postmarked no later than the Response Deadline. If the Class Member submits a request for exclusion that is not timely and/or valid then the Settlement Administrator will notify such Class Member that the request is untimely or invalid. Any disputes regarding the timeliness, validity, or effectiveness of a request for exclusion shall be decided by the Administrator consistent with the terms of this Settlement Agreement, with the Parties’ input, if appropriate. The date of the postmark on the mailing envelope for any request for exclusion shall be the exclusive means used to determine whether the request for exclusion has been timely submitted.

If a Class Member timely submits both an objection and a request for exclusion (“opt out” under Section 2.7), the request for exclusion shall supersede the objection regardless of timing, and the objection shall therefore be waived.

a. Effect of “Opt-Out.” Any Class Member who returns a timely, valid, and executed request for exclusion will not participate in or be bound by the Settlement and subsequent judgment and will not receive an Individual Settlement Share or any benefit of this Settlement.

b. Failure to “Opt-Out.” A Class Member who does not complete and mail a timely request for exclusion will automatically be included in the Settlement, will receive an Individual Settlement Share, and be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and by the subsequent judgment, regardless of whether he or she has objected to the Settlement.

c. Confirmation of Authenticity. If there is a question about the authenticity of a signed request for exclusion, the Settlement

1 Administrator may demand additional proof of the Class Member's
2 identity.

3 **d. Report.** No later than five (5) business days after the Response Deadline,
4 the Settlement Administrator will provide the Parties with a complete and
5 accurate accounting of the number of Notices mailed to Class Members,
6 the number of Notices returned as undeliverable, the number of Notices
7 re-mailed to Class Members, the number of re-mailed Notices returned as
8 undeliverable, the number of Class Members who objected to the
9 Settlement and copies of their submitted objections, the number of Class
10 Members who returned valid requests for exclusion, and the number of
11 Class Members who returned invalid requests for exclusion.

12 **5. Revocation of Agreement by Defendant.** In the event five percent (5%) or more
13 of the Class Members opt-out of the settlement, Defendant may, at its option, void
14 the agreement.

15 **6. Escalation Clause.** If the number of workweeks worked by all Class Members
16 during the Class Period is ultimately determined to exceed 6,418 (5,834 workweeks
17 + 584 (i.e., 10%), then the Gross Settlement Amount shall be increased by a pro
18 rata amount for each additional workweek over 6,418 workweeks. However,
19 Defendant has the right to shorten the Class Period in lieu of increasing the Gross
20 Settlement Amount.

21 **7. No Solicitation of Objections or Requests for Exclusion.** Neither the Parties nor
22 their respective counsel will solicit or otherwise encourage directly or indirectly
23 any Class Member to object to the Settlement, request exclusion from the
24 Settlement, or appeal from the Judgment. Plaintiff shall not respond to inquiries
25 directed to her by Class Members but shall direct any such individuals to contact
26 Class Counsel.

1 **8. No Undue Publicity.** Except as ordered by the Court, Plaintiff and Class Counsel
2 will not initiate any publicity or respond to any media or other inquiries about the
3 terms of the settlement or the case and agree to keep the terms of the settlement
4 confidential prior to filing the motion for preliminary approval.

5 **9. Class Member Disputes.** If a Class Member disputes the basis for the calculation
6 of their Individual Settlement Share, the Class Member must provide notice, in
7 writing, to the Settlement Administrator before the Response Deadline. Any such
8 challenge shall include the reasons supporting the challenge, as well as any
9 documentation supporting his or her contention that the Individual Settlement Share
10 calculation is incorrect. In the absence of such evidence, the Database will be
11 controlling. The Settlement Administrator will consult with the Defendant about
12 how to resolve the challenge, evaluate the information provided, but will make a
13 final and unappealable decision as to the outcome of the challenge. If the Individual
14 Settlement Share calculation is adjusted following a challenge, then the Settlement
15 Administrator shall notify the Class Member of the adjustment.

16 **10. Motion for Final Approval.**

17 **a.** Class Counsel will file unopposed motions and memorandums in support
18 thereof for Final Approval of the Settlement and the following payments
19 in accord with the terms of the Settlement: (1) the Attorney Fee Award;
20 (2) the Cost Award; (3) Administrative Costs; (4) the Class
21 Representative Enhancement Payment; and (5) PAGA Payment. Class
22 Counsel will also move the Court for an order of Final Approval (and
23 associated entry of Judgment) releasing and barring any Class Released
24 Claims of the Participating Class Members.

25 **b. Denial or Appeal of Final Approval.** If the Court does not grant Final
26 Approval of the Settlement, or if the Court's Final Approval of the
27 Settlement is reversed or materially modified on appellate review, then
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1 this Settlement will become null and void. If that occurs, the Parties will
2 have no further obligations under the Settlement, including any obligation
3 by Defendant to pay the Gross Settlement Amount or any amounts that
4 otherwise would have been owed under this Agreement. Further, should
5 this occur, the Parties agree they shall be equally responsible for the
6 Settlement Administrator's Administration Costs through that date. An
7 award by the Court of a lesser amount than sought by Plaintiff and Class
8 Counsel for the Class Representative Enhancement Payment, Attorney
9 Fee Award, Cost Award, will not constitute a material modification to the
10 Settlement within the meaning of this paragraph.

11 **c. Proposed Order and Judgment.** Upon Final Approval of the Settlement,
12 the Parties shall present to the Court a proposed Final Approval Order,
13 approving of the Settlement and entering Judgment in accordance
14 therewith. After entry of Judgment, the Court shall have continuing
15 jurisdiction over the Action for purposes of: (1) enforcing this Settlement
16 Agreement; (2) addressing settlement administration matters; and (3)
17 addressing such post-Judgment matters as may be appropriate under
18 Court rules and applicable law.

19 **11. Waiver of Right to Appeal.** Provided that the Judgment is consistent with the
20 terms and conditions of this Agreement, if Class Members do not timely object to
21 the Settlement, then the Parties and their respective counsel waive any and all rights
22 to appeal from the Judgment, including, but not limited to, all rights to any post-
23 judgment proceeding and appellate proceeding, such as a motion to vacate or set
24 aside judgment, and any extraordinary writ, and the Judgment will become non-
25 appealable at the time it is entered. The waiver of appeal does not include any
26 waiver of the right to oppose any appeal, appellate proceeding, or post-judgment
27 proceeding.

1 **12. Vacating, Reversing, or Modifying Judgment on Appeal.** If, after a notice of
2 appeal, the reviewing court vacates, reverses, or modifies the Judgment such that
3 there is a material modification to the Settlement, and that court's decision is not
4 completely reversed and the Judgment is not fully affirmed on review by a higher
5 court, then this Settlement will become null and void and the Parties will have no
6 further obligations under it. A material modification would include, but not
7 necessarily be limited to, any alteration of the Gross Settlement Amount and any
8 change to the scope of the Class Released Claims or Released Parties.

9 **13. Disbursement of Settlement Shares and Payments.** Subject to the Court finally
10 approving the Settlement, the Settlement Administrator shall distribute funds
11 pursuant to the terms of this Agreement and the Court's Final Approval Order and
12 Judgment. The maximum amount Defendant can be required to pay under this
13 Settlement for any purpose is the Gross Settlement Amount. The Settlement
14 Administrator shall keep Defendant's Counsel and Class Counsel apprised of all
15 distributions from the Gross Settlement Amount. The Settlement Administrator
16 shall respond to questions from Defendant's Counsel and Class Counsel. No person
17 shall have any claim against Defendant, Defendant's Counsel, Plaintiff, Class
18 Counsel, or the Settlement Administrator based on the distributions and payments
19 made in accordance with this Agreement.

20 **a. Funding the Settlement:** Defendant shall wire to the Settlement
21 Administrator the Gross Settlement Amount within ten (10) business days
22 of the Effective Final Settlement Date.

23 **b. Disbursement:** Fifteen (15) business days after the Effective Final
24 Settlement Date, the Settlement Administrator shall disburse: (1) the Net
25 Settlement Amount to be paid to Participating Class Members; (2) the
26 Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees
27 and costs, as approved by the Court; (3) the Class Representative

Enhancement Payment paid to the Class Representative, as approved by the Court; (4) the Administration Costs, as approved by the Court; and (5) the PAGA Payment to the LWDA and to PAGA Employees, as approved by the Court.

14. Final Report by Settlement Administrator. Within ten (10) business days after the disbursement of all funds, the Settlement Administrator will serve on the Parties a declaration providing a final report on the disbursements of all funds.

15. Uncashed Checks. Participating Class Members must cash or deposit their Individual Settlement Share checks within one hundred and eighty (180) calendar days after the checks are mailed to them. PAGA Employees must also cash or deposit their Individual PAGA Share checks within one hundred and eighty (180) calendar days after the checks are mailed to them.

a. Reminder Postcard. If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited in the next ninety (90) days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced.

b. Uncashed Checks. If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, cancel the checks. All funds associated with the Individual Settlement Share checks and the Individual PAGA Share checks returned as undeliverable and funds associated with those Individual Settlement Share checks and Individual PAGA Share checks remaining uncashed, shall be delivered to the State of California's State Controller Unclaimed Property Fund with an identification of the amount

1 of unclaimed funds attributable to each Participating Class Member
2 and/or PAGA Employee.

3 **16. Other Legal Fees and Costs.** Except for the Attorney Fee Award and Cost Award
4 to be paid from the Gross Settlement Fund as expressly provided in this Agreement
5 and pursuant to Court Approval, the Parties agree to bear their own attorneys' fees
6 and costs related to this Action.

7 **K. Class Released Claims.** As of the date Defendant fully funds the Gross Settlement
8 Amount, Class Members who do not submit a timely and valid request for exclusion will release
9 the Released Parties from the Class Released Claims. Participating Class Members agree not to
10 sue or otherwise make a claim against any of the Released Parties for any of the Class Released
11 Claims and shall be legally barred from doing the same.

12 **L. PAGA Released Claims.** As of the date Defendant fully funds the Gross Settlement
13 Amount, PAGA Employees will release the Released Parties from the PAGA Released Claims.

14 **M. Plaintiff's Release of Claims and General Release.** As of the date Defendant fully
15 funds the Gross Settlement Amount, Plaintiff shall give the following general release of claims for
16 herself and her respective spouse (is any), heirs, successors and assigns, forever release the
17 Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises,
18 agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses,
19 debts, penalties and expenses of any nature whatsoever, from the beginning of time through the
20 date of his signature on this Agreement, known or unknown, suspected or unsuspected, whether in
21 tort, contract, equity, or otherwise, for violation of any federal, state or local statute, rule, ordinance
22 or regulation, including but not limited to all claims arising out of, based upon, or relating to his
23 employment with Defendant or the remuneration for, or termination of, such employment.
24 Plaintiff's Release of Claims also includes a waiver of California Civil Code section 1542, which
25 provides as follows:

26 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
27 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT**
28 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**

1 **RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE**
2 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE**
3 **DEBTOR OR RELEASED PARTY.**

4 This release excludes any release of any claims not permitted to be released by law.

5 **N. Miscellaneous Terms.**

6 **1. No Admission of Liability.** Defendant makes no admission of liability or
7 wrongdoing by virtue of entering into this Agreement. Additionally, Defendant
8 reserves the right to contest any issues relating to class certification and liability if
9 the Settlement is not approved. Defendant denies that it has engaged in any
10 unlawful activity, has failed to comply with the law in any respect, has any liability
11 to anyone under the claims asserted in the Action, or that but for the Settlement, a
12 Class should be certified in the Action. This Agreement is entered into solely for
13 the purpose of compromising highly disputed claims. Nothing in this Agreement is
14 intended or will be construed as an admission by Defendant of liability or
15 wrongdoing. This Settlement and Plaintiff's and Defendant's willingness to settle
16 the Action will have no bearing on, and will not be admissible in connection with,
17 any litigation (other than solely in connection with this Settlement).

18 **2. No Effect on Employee Benefits.** The Class Representative Enhancement
19 Payment, Individual PAGA Shares, and/or Individual Settlement Shares paid to
20 Plaintiff, PAGA Employees, and Participating Class Members shall not be deemed
21 to be pensionable earnings and shall not have any effect on the eligibility for, or
22 calculation of, any of the employee benefits (*e.g.*, vacation, holiday pay, retirement
23 plans, etc.) of Plaintiff, the PAGA Employees, or the Participating Class Members.
24 The Parties agree that any Class Representative Enhancement Payment, Individual
25 PAGA Share, and/or Individual Settlement Share paid to Plaintiff, the PAGA
26 Employees or the Participating Class Members under the terms of this Agreement
27 do not represent any modification of Plaintiff's, the PAGA Employees', or
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Participating Class Members' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendant. Further, any Class Representative Enhancement Payment shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan or employee welfare benefit plan sponsored by Defendant.

3. No Injunctive Relief. As part of this Agreement, Defendant shall not be required to enter into any consent decree, nor shall Defendant be required to agree to any provision for injunctive relief. Defendant shall not be required as part of the Settlement to modify or eliminate any of its personnel, compensation, or payroll practices, or adopt any new personnel, compensation, or payroll practices.

4. Plaintiff agrees to sign this Agreement and by signing this Agreement is bound by the terms herein stated and further agrees not to request to be excluded and agrees not to object to any of the terms of this Settlement. Any request by Plaintiff to be excluded and/or objection by Plaintiff shall be void and of no force or effect.

5. Integrated Agreement. After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.

6. Authorization to Enter Into Settlement Agreement. Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties under this Agreement to effectuate its terms, and to execute

any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions, and assistance of the Court will be consistent with this Agreement.

7. Exhibits and Headings. The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

8. Interim Stay of Proceedings. The Parties agree to stay and hold all proceedings in the Action in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Superior Court.

9. Amendment or Modification of Agreement. This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest.

10. Agreement Binding on Successors and Assigns. This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.

11. No Prior Assignment. Plaintiff hereby represents, covenants, and warrants that she has not directly or indirectly, assigned, transferred, encumbered, or purported to

1 assign, transfer, or encumber to any person or entity any portion of any liability,
2 claim, demand, action, cause of action or rights herein released and discharged.

3 **12. Applicable Law.** All terms and conditions of this Agreement and its exhibits will
4 be governed by and interpreted according to the laws of the State of California,
5 without giving effect to any conflict of law principles or choice of law principles.

6 **13. Fair, Adequate, and Reasonable Settlement.** The Parties and their respective
7 counsel believe and warrant that this Agreement reflects a fair, reasonable, and
8 adequate settlement of the Action and have arrived at this Agreement through arms-
9 length negotiations, taking into account all relevant factors, current and potential.

10 **14. No Tax or Legal Advice.** The Parties understand and agree that the Parties are
11 neither providing tax or legal advice, nor making representations regarding tax
12 obligations or consequences, if any, related to this Agreement, and that Class
13 Members and PAGA Employees will assume any such tax obligations or
14 consequences that may arise from this Agreement, and that Class Members and
15 PAGA Employees shall not seek any indemnification from the Parties or any of the
16 Released Parties in this regard. The Parties agree that, in the event that any taxing
17 body determines that additional taxes are due from any Class Member or PAGA
18 Employee, such Class Member or PAGA Employee assumes all responsibility for
19 the payment of such taxes and shall hold Defendant and the Released Parties
20 harmless. Class Members and PAGA Employees will be specifically informed that
21 neither Defendant nor Class Counsel make any representations regarding the tax
22 implications of any amounts paid under this Settlement Agreement and that if any
23 Class Member or PAGA Employee has any questions regarding those implications,
24 they can and should consult a tax expert.

25 **15. Jurisdiction of the Court.** The Court shall retain jurisdiction with respect to the
26 interpretation, implementation, and enforcement of the terms of this Agreement and
27 all orders and judgment entered in connection therewith, and the Parties and their
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counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments in connection therewith.

16. Invalidity of Any Provision; Severability. Before declaring any provision of this Agreement invalid, the Parties request that the Superior Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.

17. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

18. Execution in Counterpart. This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

19. Disputes. Any dispute between the Parties as to the remaining terms of the Settlement Agreement shall be referred to March Feder for further mediation and the Parties shall split his fees evenly.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

Date: 12 / 23 / 2021

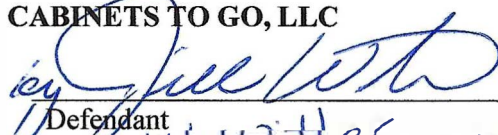
ELAINE MOYAL



Plaintiff

1 Date: December 20, 2021

CABINETS TO GO, LLC


Defendant
Name: Jill Wittler
Title: Chief Legal Officer

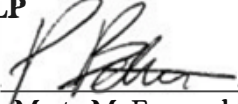
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4 Date: December 27, 2021

CROSNER LEGAL, PC


Zachary Crosner
Blake Jones
Attorneys for Plaintiff Elaine Moyal

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6
7
8 Date: December 20, 2021

**JEFFER MANGELS BUTLER & MITCHELL,
LLP**


Marta M. Fernandez
Patricia Belton
Attorneys for Defendant Cabinets to Go LLC