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FLOOR AND DECOR OUTLETS OF
AMERICA, INC.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

JANETTA BANKS, an individual
California resident, and the proposed class,

Plaintiff,

v.

FLOOR AND DECOR OUTLETS OF
AMERICA, INC., a Delaware corporation,
et al.,

Defendant.

Case No. 2:20-CV-02573-JWH-MAA

**SETTLEMENT AGREEMENT AND
RELEASE OF PAGA CLAIMS**

Complaint Filed:
Trial Date:

March 18, 2020
None Set

SETTLEMENT AGREEMENT AND RELEASE OF PAGA CLAIMS

Plaintiff Janetta Banks, individually and in her capacity as a representative of the State of California on behalf of other aggrieved employees, and Defendant Floor and Decor Outlets of America, Inc., hereby enter into this Settlement Agreement and Release of Private Attorneys General Act of 2004 Claims (“Settlement”) as follows:

I. DEFINITIONS

As used in this Settlement, the following terms shall have the following meanings:

1. “Action” shall mean the civil action entitled “*Janetta Banks v. Floor and Decor Outlets of America, Inc.*,” filed in the United States District Court for the Central District of California, designated as Case No. 2:20-CV-02573-JWH-MAA.
2. “Defendant” shall mean Floor and Decor Outlets of America, Inc.
3. “Defense Counsel” shall mean Daniel C. Whang and David Rosenberg of Seyfarth Shaw LLP.
4. “Effective Date” of the Settlement refers to the date upon which both of the following have occurred: (i) approval of the PAGA Settlement is granted by the United States District Court for the Central District of California, or other court assuming jurisdiction of this matter, and (ii) the Court’s Judgment approving the PAGA Settlement becomes Final. Final shall mean the latest of: (i) if there is an appeal of the Court’s Judgment, the date the Judgment is affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for writ of certiorari to the United States Supreme Court or California Supreme Court; (ii) if a petition for writ of certiorari is filed, the date of denial of the petition for writ of certiorari, or the date the Judgment is affirmed pursuant to such petition; or (iii) if no appeal is filed, the expiration date of the time for filing or noticing any appeal of the Judgment.
5. “LWDA” refers to the California Labor & Workforce Development Agency.
6. “PAGA” refers to the Labor Code Private Attorneys General Act of 2004, California Labor Code Sections 2698 *et seq.*

7. “PAGA Period” shall mean February 6, 2019, through the date of approval of the PAGA settlement.

8. “PAGA Settlement Members” shall mean approximately 1,234 hourly persons employed by Defendant as non-exempt employees in the following stores in California at any time during the PAGA Period:

- A. Norco (Store No. 123)
- B. Santa Ana (Store No. 129)
- C. Fullerton (Store No. 155)
- D. Downey (Store No. 157)
- E. Woodland Hills (Store No. 169)
- F. Fountain Valley (Store No. 176)
- G. Camel Valley (Store No. 178)
- H. Carson (Store No. 201)
- I. Mission Viejo (Store No. 207)
- J. Moreno Valley (Store No. 222)
- K. San Gabriel (Store No. 226)
- L. La Quinta (Store No. 227)

9. “Plaintiff” refers to Janetta Banks individually and in her capacity as a representative of the State of California on behalf of other aggrieved employees.

10. “Plaintiff’s Counsel” refers to Christopher J. Hamner of Hamner Law Offices, APLC.

11. “Parties” collectively refers to Plaintiff and Defendant.

12. “Released Claims” shall mean any and all claims, whether known or unknown, to recover penalties for any alleged violations of California Labor Code sections 201-203, 226, 226.7, 226.8, 510, 512, 1174, 1175, 1182.12, 1194, 1197, 1197.1, 1198, 1199, and 2802, and the applicable California Industrial Welfare Commission Wage Orders.

13. “Released Parties” shall mean Defendant, and all of Defendant’s past, present, and future subsidiaries, parents, affiliates, predecessors, insurers, agents, employees, successors, assigns, officers, officials, directors, attorneys, personal representatives, executors, and shareholders, including their respective pension, profit sharing, savings, health, and other employee benefits plans of any nature, the successors of such plans, and those plans’ respective current or former trustees and administrators, agents, employees, and fiduciaries.

II. RECITALS

1. On February 6, 2020, Plaintiff’s Counsel submitted a letter to the LWDA on behalf of Plaintiff, in compliance with California Labor Code section 2699.3. Plaintiff seeks to represent herself and all PAGA Settlement Members. More than 65 days passed after the letter was sent to the LWDA, and the LWDA has not indicated that it intends to investigate the alleged violations referenced in the letter.

2. On March 18, 2020, Plaintiff filed a Complaint against Defendant in the United States District Court for the Central District of California.

3. On June 18, 2020, Plaintiff filed a First Amended Complaint in the Action.

4. The Parties agreed to engage in a mediation, which took place on September 15, 2020, with well-respected wage and hour mediator Lisa Klerman. The Parties engaged in extensive settlement negotiations at the mediation, which involved substantive offers and counteroffers between the Parties. Ultimately, negotiations resulted in this Settlement.

5. Counsel for all Parties have thoroughly investigated the facts relating to the claims alleged in the operative complaint and have made a thorough study of the legal principles applicable to the claims asserted against Defendant. Based on their investigation and evaluation of this case, Plaintiff’s Counsel has concluded that the settlement is fair, reasonable, and adequate in light of all known facts and circumstances, including the defenses asserted by Defendant, potential adverse findings regarding liability, and numerous potential appellate issues.

1 6. Defendant denies, and continues to deny, each and every claim and
2 contention alleged in the Action, and has always maintained that it never engaged in any
3 unlawful acts regarding any of the matters alleged in the Action.

4 **NOW, THEREFORE**, in consideration of the mutual covenants, promises, and
5 conditions set forth, the Parties agree as follows:

6 **III. NON-ADMISSION OF LIABILITY**

7 A. Based on the factual and legal issues involved, the expense and time
8 necessary to prosecute the Action through trial, the risks, uncertainty and costs of further
9 prosecution, the difficulty of proof necessary to establish a class for purposes of liability,
10 and the relative benefits to the PAGA Settlement Members of an expeditious resolution
11 to the Action, the Parties have concluded that the terms set forth in this Settlement are
12 fair, reasonable, adequate and in the best interests of the PAGA Settlement Members.

13 B. By entering into this Settlement, Defendant denies any liability for any of
14 the claims in the Action, as well as any other potential or unknown claims based on wage
15 and hour violations under state or federal law. Neither this Settlement, nor any document
16 referred to or contemplated herein, nor any action taken to carry out this Settlement, is,
17 may be construed as, or may be used as, an admission, concession, or indication by or
18 against Defendant of any unlawful conduct, fault, wrongdoing or liability whatsoever.
19 Defendant specifically denies that it has engaged in any unlawful or wrongful conduct
20 against Plaintiff or the PAGA Settlement Members.

21 **IV. TERMS OF THE PAGA SETTLEMENT**

22 **A. The Total Settlement Payment**

23 Defendant shall pay a settlement payment in a total amount not to exceed Thirty-
24 Five Thousand Dollars (\$35,000) (the "Total Settlement Payment"). The Total
25 Settlement Payment shall include attorneys' fees and costs, settlement administration
26 fees, and the amounts paid to the LWDA and all PAGA Settlement Members.

B. Attorneys' Fees And Costs

1. Plaintiff's Counsel will apply to the Court for an award of attorneys' fees and costs not to exceed a combined total of Five Thousand Dollars (\$5,000).

2. In the event that the Court does not approve an award of attorneys' fees or costs equal to the requested amount, or the Court alters the formula for calculating the settlement share each settlement class member is entitled to receive, Plaintiff and Plaintiff's Counsel agree not to seek additional review of the Court's decision regarding attorneys' fees or costs, and this Settlement Agreement will be enforceable.

3. Defendant will not oppose or object to Plaintiff's Counsel's application for \$5,000 in attorneys' fees and costs. The Parties agree that attorneys' fees and costs shall not exceed \$5,000.

4. Payment of attorneys' fees and costs shall be paid from the Total Settlement Payment. Any reductions by the Court of Plaintiff's Counsel's request for attorneys' fees or costs shall revert to the PAGA Fund.

C. Settlement Administration Fees

1. Settlement administration shall be done by a qualified, third-party settlement administrator agreed to by the Parties and approved by the Court ("Settlement Administrator"). The Parties will request that the Court appoint Phoenix Settlement Administrators as the Settlement Administrator.

2. The Parties agree that the Settlement Administrative Costs shall be paid from the Total Settlement Payment. This includes all fees and costs for postage, envelopes, and computer searches to locate addresses; and expenses of the Settlement Administrator to implement and complete the settlement process according to the terms of this Settlement, to calculate payments to individual PAGA Settlement Members, any cost associated with the escheatment process for any uncashed or undeliverable settlement checks, to prepare any necessary tax documents for PAGA Settlement Members, and any other related fees and costs (the "Settlement Administrative Costs").

3. The Parties agree that settlement administration costs shall not exceed \$4,350.00, based on a written bid received from the Settlement Administrator. Any reductions by the Court or any unused amount shall revert to the PAGA Fund.

D. PAGA Fund

1. After deducting the attorneys' fees and costs and Settlement Administration Costs, the remainder of the Total Settlement Payment shall be allocated toward payment to the LWDA and PAGA Settlement Members ("PAGA Fund").

2. Seventy-five percent (75%) of the PAGA Fund will be sent to the LWDA and twenty-five percent (25%) of the PAGA Fund will be allocated among the PAGA Settlement Members based on his or her proportionate share of the pay periods worked during the PAGA Period.

V. COMPUTATION AND DISTRIBUTION OF TOTAL SETTLEMENT FUND

A. Deposit Of Total Settlement Payment

1. The Settlement Administrator shall establish a Qualified Settlement Fund pursuant to Section 468B(g) of the Internal Revenue Code for purposes of administering the Settlement. The Settlement Administrator shall furnish the Qualified Settlement Fund with its own Employer ID Number and calculate all settlement checks and payroll deductions and withholdings required under law based on information that will be confidentially furnished by Defendant.

2. Within fifteen (15) days after the Effective Date, Defendant shall deposit the Total Settlement Payment with the Settlement Administrator.

B. Formula For Calculating Share Of PAGA Fund

The portion of the PAGA Fund that is paid to each PAGA Settlement Member shall be determined based on the following formula:

1. The payment to PAGA Settlement Members will be based on the number of pay periods worked by each PAGA Settlement Member during the PAGA Period. Partial pay periods will be counted as full pay periods.

2. The amount to be paid per pay period worked by a PAGA Settlement

Member will be calculated by dividing the value of the portion of the PAGA Fund that will be paid to PAGA Settlement Members by the total number of pay periods worked by all PAGA Settlement Members during the PAGA Period.

3. Defendant's records shall be determinative for purposes of calculating the number of pay periods worked and any payments to PAGA Settlement Members.

C. Distribution Of PAGA Fund

1. Defendant shall provide the Settlement Administrator with a list of the names and addresses of the PAGA Settlement Members, to be furnished within thirty (30) days after the Court issues an Order approving the Settlement. The contact information is being provided confidentially to the Settlement Administrator only, and the Settlement Administrator shall treat the information as private and confidential and take all necessary precautions to maintain the confidentiality of contact information of the PAGA Settlement Members. This information is to be used only to carry out the Settlement Administrator's duties as specified in this Settlement.

2. Within thirty (30) days after the Effective Date, the Settlement Administrator shall pay to the LWDA an amount equivalent to seventy-five percent (75%) of the PAGA Fund, or as otherwise directed by the Court.

3. Within thirty (30) days after the Effective Date, the Settlement Administrator shall distribute to PAGA Settlement Members their individual portion of the PAGA Fund (the "Individual Payment"), or as otherwise directed by the Court.

4. The Settlement Administrator will send the Individual Payment to the PAGA Settlement Members by postmarked First Class U.S. Mail.

5. To provide the best notice practicable, any Individual Payment returned to the Settlement Administrator as non-delivered shall be sent by post-marked First Class U.S. Mail to the forwarding address affixed thereto, if any. If no forwarding address is provided for an Individual Payment that is returned as non-deliverable, the Settlement Administrator shall use the best available technology accessible (e.g., skip tracing, address verification, etc.) to the Settlement Administrator or other mutually

1 agreeable method to locate PAGA Settlement Members and will then mail the Individual
2 Payment to the address identified by the best available technology accessible to the
3 Settlement Administrator or other mutually agreeable method. If no current address is
4 located, the Individual Payment for that individual will be deemed undeliverable. If any
5 PAGA Settlement Members cannot be located within two attempts at mailings by the
6 Settlement Administrator, the Individual Payment for that individual will be deemed
7 undeliverable.

8 6. The Settlement Administrator shall maintain a list of the postmark
9 date for the original mailing of the Individual Payment to the PAGA Settlement
10 Members, the postmark date of any subsequent mailing to any PAGA Settlement
11 Members, and a list of PAGA Settlement Members who did not receive the Individual
12 Payment due to the inability to locate a valid address using the procedures described
13 herein or who otherwise could not be located within two attempts at mailing.

14 7. All settlement checks will remain valid and negotiable for 180 days
15 from the date of their mailing by the Settlement Administrator. After 180 days from the
16 date of their mailing by the Settlement Administrator, any uncashed checks will be void
17 and escheat to the California State Controller's Office in the name of the Class Member
18 who did not cash his or her check.

19 8. No later than January 31 of the year following payment of their
20 individual portion of the PAGA Fund, the Settlement Administrator will prepare and
21 issue IRS Form 1099 to PAGA Settlement Members who received a payment.

22 9. For any PAGA Settlement Members for whom the Individual
23 Payment was deemed undeliverable, their portion of the PAGA Fund will be sent to the
24 State of California Department of Industrial Relations, Unclaimed Wages Fund in the
25 PAGA Settlement Member's name within sixty (60) days after the Effective Date, or as
26 otherwise directed by the Court.

E. Payment For Settlement Administration Costs

VI. CLAIMS RELEASED BY LWDA AND PAGA SETTLEMENT MEMBERS

A. Claims Released By The LWDA And All PAGA Settlement Members

B. Tax Treatment And Tax Indemnification

PAGA Settlement Members will assume any tax obligations or consequences which may arise from this Settlement. PAGA Settlement Members release any and all claims that they have or may have against Defendant for any claims, demands, deficiencies, levies, assessments, executions, judgments, penalties, taxes, indemnification, and any other recoveries related to any payments made under this Settlement or any compensation provided at any time by Defendant or any of the Released Parties. If any state or federal taxing authority contacts, investigates, or pursues any action against any PAGA Settlement Members for their individual share of taxes related to any payments made under this Settlement or any compensation provided at any time by Defendant or any of the Released Parties, each PAGA Settlement Member shall be responsible for their own defense of and payment for any claim of unpaid taxes, interest, or penalties brought by any state or federal taxing authority for the PAGA

Settlement Member's share of any state or federal tax obligation. If a PAGA Settlement Member has questions about any liability to any state or federal taxing authority, they shall contact the Settlement Administrator. The PAGA Settlement Members shall not contact Defendant, any of the Released Parties, or Defense Counsel.

VII. MISCELLANEOUS PROVISIONS

A. Voiding The Settlement

A failure of the Court to approve any material term of this Settlement shall render the entire Settlement voidable and unenforceable as to Plaintiff and Defendant, at the option of Plaintiff or Defendant. If the Court fails to approve any material term of this Settlement, the Parties agree to work in good faith to modify the Settlement for approval by the Court. If the Parties are unable to reach agreement on a modified Settlement after exercising good faith efforts, each party may void this Settlement by giving notice, in writing, to the other, and to the Court within ten (10) days after the Order granting approval of the Settlement has been received by the party seeking to void the Settlement.

B. Mutual Full Cooperation

Plaintiff, Defendant, Plaintiff's Counsel, and Defense Counsel agree to fully cooperate with each other to accomplish the terms of this Settlement, including, but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms herein. The Parties agree to use their best efforts and any other efforts that may become necessary by Order of the Court, or otherwise, to effectuate this Settlement.

C. Parties' Authority

The signatories hereto represent that they are fully authorized to enter into this Settlement.

D. Binding Nature Of The Settlement

1. This Settlement shall be binding upon, and inure to the benefit of, the successors or assigns of the Released Parties. Plaintiff represents, covenants, and warrants that she has not directly or indirectly, assigned, transferred, encumbered, any

claim, demand, action, cause of action or rights released in the Released Claims in this Settlement. This Settlement also shall be binding upon Plaintiff and the PAGA Settlement Members.

2. This Settlement may be amended or modified only by a written instrument signed by Plaintiff's Counsel and Defense Counsel. No rights under this Settlement may be waived except in writing.

3. This Settlement and any attached exhibits constitute the entire agreement between Plaintiff and Defendant relating to the terms contained herein. All prior or contemporaneous agreements, understandings and statements, whether oral or written, whether express or implied, and whether by a party or its counsel, concerning this Settlement are merged herein. No oral or written representations, warranties or inducements have been made to any party concerning this Settlement or its exhibits other than the representations, warranties and covenants contained and memorialized in such documents.

4. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any of its provisions. Each term of this Settlement is intended to be contractual and not merely a recital.

E. Joint Drafting Of Settlement Documents

1. Plaintiff's Counsel and Defense Counsel have arrived at this Settlement as a result of a series of arm's-length negotiations, taking into account all relevant factors, present and potential.

2. This Settlement has been drafted jointly by Plaintiff's Counsel and Defense Counsel and, therefore, in any construction or interpretation of this Settlement, the same shall not be construed against any of the Parties.

3. Plaintiff and Plaintiff's Counsel agree that none of the documents provided to them by Defendant shall be used for any purpose other than the settlement of

1 this Action. Specifically, none of the documents provided shall be used to pursue any
2 subsequent claims or litigation against Defendant or the Released Parties.

3 **F. Execution Of The Settlement**

4 This agreement may be executed in one or more counterparts and by facsimile. All
5 executed copies of this Settlement and photocopies thereof shall have the same force and
6 effect and shall be as legally binding and enforceable as the original.

7 **G. No Press Release Or Publicity Regarding The Terms Of Settlement**

8 Plaintiff and Plaintiff's Counsel agree that they will not issue any media or press
9 release, initiate any contact with the media or the press, respond to any media or press
10 inquiry or have any communications with the media or the press about the fact, amount or
11 terms of this Settlement. Plaintiff and Plaintiff's Counsel shall not publicize or refer to
12 the fact or amount of the Settlement, on their websites, social media, any other marketing
13 materials, or legal publication. Plaintiff and Plaintiff's Counsel will not state on their
14 websites, social media, any other marketing materials, or legal publications, that
15 Defendant engaged in any act contrary to California law, or denied payment owed to
16 individual employees, or otherwise disparage Defendant, or otherwise identify
17 Defendant. Defendant shall be allowed to report the Settlement or results of this lawsuit
18 if required to do so by public disclosure regulatory requirements or with respect to any
19 financial or other disclosures which in their judgment are necessary.

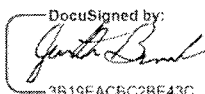
20 **H. Continuing Jurisdiction Of The Court**

21 The Parties agree that the Court shall retain jurisdiction over the Parties and this
22 Settlement, in order to: (i) monitor and enforce compliance of Settlement, and (ii) resolve
23 any disputes over this Settlement or the administration of the benefits of this Settlement.

24 **AGREED TO BY PLAINTIFF:**

25 DATED: November 9, 2020

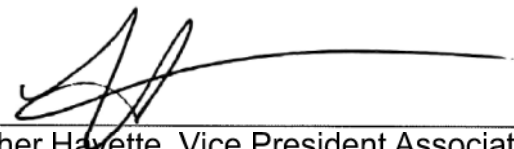
**JANETTA BANKS, individually and on
behalf of other aggrieved employees**

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27 By: 
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1 **AGREED TO BY DEFENDANT:**

2 DATED: November 12, 2020

**FLOOR AND DECOR OUTLETS OF
AMERICA, INC.**

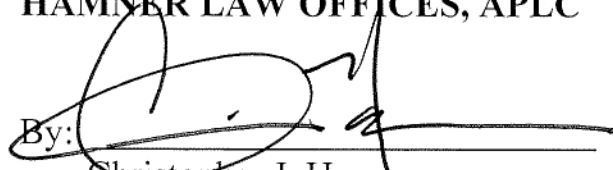
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5 By: 

Heather Havette, Vice President Associate
Relations and Labor & Employment Counsel

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7 **AGREED TO BY PLAINTIFF'S COUNSEL:**

8 DATED: November 9, 2020

HAMNER LAW OFFICES, APLC

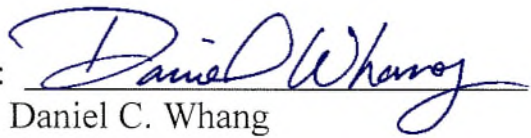
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10 By: 

Christopher J. Hamner
Attorney for Plaintiff

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13 **AGREED TO BY DEFENSE COUNSEL:**

14 DATED: November 13, 2020

SEYFARTH SHAW LLP

15
16 By: 

Daniel C. Whang
David Rosenberg
Attorneys for Defendant