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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

ROSA FRANCO, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

VINCENT RAGS, INC., a California
corporation; RAJESH CHOLLERA, an
individual; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 20STCV07768

[Assigned to the Hon. Ann I. Jones in
Dept. 11]

CLASS ACTION

**JOINT STIPULATION RE: CLASS
ACTION AND REPRESENTATIVE
ACTION SETTLEMENT**

Action Filed: February 27, 2020

Trial Date: None Set

1 This Joint Stipulation re: Class Action and Representative Action Settlement
2 (“Settlement” or “Agreement” or “Settlement Agreement”) is made by, between and among
3 plaintiff ROSA FRANCO (“Plaintiff”) individually and on behalf of the Settlement Class, as
4 defined below, on the one hand; and defendants VINCENT RAGS, INC. (“Vincent Rags”) and
5 RAJESH CHOLLERA. (“Chollera” and, collectively with Vincent Rags, “Defendants”), on the
6 other hand, in the lawsuit entitled *Rosa Franco v. Vincent Rags, Inc., et al.* filed in Los Angeles
7 County Superior Court, Case No. 20STCV07768 (the “Class Action”) and the lawsuit entitled
8 *Rosa Franco v. Vincent Rags, Inc., et al.* filed in Los Angeles County Superior Court, Case No.
9 20STCV16862 (the “PAGA Action”). Plaintiff and Defendants shall be, at times, collectively
10 referred to as the “Parties”. This Agreement is intended by the Parties to fully, finally, and
11 forever resolve, discharge and settle the claims as set forth herein, based upon and subject to the
12 terms and conditions of this Agreement.

13 **1. DEFINITIONS**

14 **A. “Actions”** means, collectively, *Rosa Franco v. Vincent Rags, Inc., et al.* filed in
15 Los Angeles County Superior Court, Case No. 20STCV07768 and *Rosa Franco v. Vincent Rags,*
16 *Inc., et al.* filed in Los Angeles County Superior Court, Case No. 20STCV16862.

17 **B. “Class Action”** means *Rosa Franco v. Vincent Rags, Inc., et al.* filed in Los
18 Angeles County Superior Court, Case No. 20STCV07768.

19 **C. “Class Counsel”** means: David Bibiyan, Esq., Diego Aviles, Esq., and Sara
20 Ehsani Nia, Esq., of Bibiyan Law Group, P.C. The term “Class Counsel” shall be used
21 synonymously with the term “Plaintiff’s Counsel.”

22 **D. “Class Period”** means the period from February 27, 2016 through November 17,
23 2020.

24 **E. “Court”** means the Superior Court of the State of California for the County of
25 Los Angeles.

26 **F. “Final Approval Date”** means the later of: (1) the date the Court signs an Order
27 granting final approval of this Settlement (“Final Approval”) and Judgment; (2) if there is an
28

objector, 60 days from the date the Final Approval and Judgment; or (3) to the extent any appeals have been filed, the date on which they have been resolved or exhausted.

G. “Defendants” means Vincent Rags, Inc. and Rajesh Chollera.

H. “Employer Taxes” means employer-funded taxes and contributions imposed on the wage portions of the Individual Settlement Payments (defined below) under the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, and any similar state and federal taxes and contributions required of employers, such as for unemployment insurance.

I. “General Release” means the general release of claims by Plaintiff, which is in addition to her limited release of claims as a Participating Class Member.

J. “Gross Settlement Amount” means a non-reversionary fund in the sum of Five Hundred Thousand Dollars and Zero Cents (\$500,000.00),¹ which shall be paid by Defendants, from which all payments for the Individual Settlement Payments to Participating Class Members (defined below) and the Court-approved amounts for attorneys’ fees and reimbursement of litigation costs and expenses to Class Counsel, Settlement Administration Costs, a Service Award, and the Labor Code Private Attorneys’ General Act, codified at Labor Code Section 2698, et seq. (“PAGA”) payment, shall be paid. It expressly excludes Employer Taxes, which shall be paid by Defendants separate and apart from the Gross Settlement Amount.

K. “Service Award” means monetary amounts to be paid to Plaintiff of up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500), which subject to Court approval, will be paid out of the Gross Settlement Amount.

L. “Individual Settlement Payment” means a payment to a Participating Class Member (defined below) of his or her net share of the Net Settlement Amount (defined below, which share and payment shall be determined by the calculations provided in this Agreement).

M. “Individual Settlement Share” means the gross amount of the Net Settlement Amount that a Settlement Class Member is eligible to receive based on the number of Workweeks that he or she worked as a Settlement Class Member during the Class Period if he or she does not submit a timely and valid Request for Exclusion.

¹ As the same may be increased in accordance with Paragraph 16, below.

1 **N. “LWDA Payment” of “PAGA Payment”** means the payment to the State of
2 California Labor and Workforce Development Agency (“LWDA”) for its seventy-five percent
3 (75%) share of the total amount allocated toward penalties under the PAGA all of which is to be
4 paid from the Gross Settlement Amount. The Parties have agreed that Ten Thousand Dollars and
5 Zero Cents (\$10,000.00) shall be allocated toward PAGA penalties (“PAGA Payment”), of which
6 Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) will be paid to the LWDA
7 and Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00) will remain a part of the
8 Net Settlement Amount for payment to Participating Class Members on a *pro rata* basis.

9 **O. “Net Settlement Amount”** means the portion of the Gross Settlement Amount
10 that is available for distribution to the Participating Class Members after deductions for the Court-
11 approved allocations for Settlement Administration Costs, a Service Award to Plaintiff, an award
12 of attorneys’ fees, reimbursement of litigation costs and expenses to Class Counsel, and the
13 LWDA Payment.

14 **P. “Operative Complaint” or “Complaint”** means the First Amended Complaint
15 to be filed with the Court in the Class Action pursuant to this Agreement.

16 **Q. “PAGA Action”** means *Rosa Franco v. Vincent Rags, Inc., et al.* filed in Los
17 Angeles County Superior Court, Case No. 20STCV16862.

18 **R. “PAGA Period”** means the period from February 27, 2019 through November
19 17, 2020.

20 **S. “Participating Class Members”** means all Settlement Class Members who do
21 not submit a timely and valid Request for Exclusion.

22 **T. “Plaintiff”, “Named Plaintiff” or “Class Representative”** shall refer to
23 Plaintiff Rosa Franco.

24 **U. “Preliminary Approval Date”** means the date on which the Court enters an
25 Order granting preliminary approval of the Settlement.

26 **V. “Released Parties”** shall mean Defendants and each of their past, present, and
27 future respective subsidiaries, dba’s, affiliates, parents, insurers and reinsurers, and company-
28 sponsored employee benefit plans of any nature and their successors and predecessors in interest,

1 including all of their officers, directors, shareholders, employees, agents, principals, heirs,
2 representatives, accountants, auditors, consultants, attorneys, administrators, fiduciaries,
3 trustees, and agents.

4 **W. “Response Deadline”** means the deadline for Settlement Class Members to mail
5 or fax any Requests for Exclusion, objections, or Workweek Disputes to the Settlement
6 Administrator, which is forty-five (45) calendar days from the date that the Class Notice is first
7 mailed in English and Spanish by the Settlement Administrator. The date of the postmark or fax-
8 stamp shall be the exclusive means for determining whether a Request for Exclusion, objection,
9 or Workweek Dispute was submitted by the Response Deadline.

10 **X. “Request for Exclusion”** means a written request to be excluded from the
11 Settlement Class pursuant to Section 9.C below.

12 **Y. “Settlement Administration Costs”** means all costs incurred by the Settlement
13 Administrator in administration of the Settlement, including, but not limited to, translating the
14 Class Notice to Spanish, the distribution of the Class Notice to the Settlement Class in English
15 and Spanish, calculating Individual Settlement Shares and Individual Settlement Payments and
16 associated taxes and withholdings, providing declarations, generating Individual Settlement
17 Payment checks and related tax reporting forms, doing administrative work related to unclaimed
18 checks, transmitting payment to Class Counsel for the Court-approved amounts for attorneys’
19 fees and reimbursement of litigation costs and expenses, to Plaintiff for her Service Award, and
20 to the LWDA from the LWDA Payment, providing weekly reports of opt-outs, objections and
21 related information, and any other actions of the Settlement Administrator as set forth in this
22 Agreement, all pursuant to the terms of this Agreement. The Settlement Administration Costs are
23 estimated not to exceed \$4,000. If the actual amount of the Settlement Administration Costs is
24 less than \$4,000, the difference between \$4,000 and the actual Settlement Administration Costs
25 shall be a part of the Net Settlement Amount. If the Settlement Administration Costs exceed
26 \$4,000, then such excess will be paid solely from the Gross Settlement Amount and Defendant
27 will not be responsible for paying any additional funds in order to pay these additional costs.

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1 **Z.** “**Settlement Administrator**” means the Third-Party Administrator mutually
2 agreed upon by the Parties that will be responsible for the administration of the Settlement
3 including, without limitation, translating the Class Notice in Spanish, the distribution of the
4 Individual Settlement Payments to be made by Defendant from the Gross Settlement Amount
5 and related matters under this Agreement.

6 **AA.** “**Settlement Class**” or “**Settlement Class Members**” means all current and
7 former non-exempt, hourly paid employees who worked in California for Defendants at any time
8 during the Class Period.

9 **BB.** “**Workweeks**” means the number of workweeks that a Settlement Class Member
10 was employed by Defendants in a non-exempt, hourly position during the Class Period. If a
11 Settlement Class Member disputes his/her Individual Settlement Share, it shall be termed a
12 “Workweek Dispute.”

13 **2. BACKGROUND**

14 **A.** Plaintiff filed a putative wage-and-hour class action complaint against
15 Defendants on February 27, 2020. Plaintiff alleges that during the Class Period, with respect to
16 Plaintiff and the Settlement Class Members, Defendants, *inter alia*, failed to pay the Settlement
17 Class Members’ overtime wages and minimum wages for all hours worked and/or recorded.
18 Plaintiff further alleges that Defendants failed to provide compliant meal and rest periods and
19 associated premium payments; failed to issue compliant and accurate itemized wage statements;
20 failed to timely pay all wages due and owing at the time of termination or resignation; and
21 engaged unfair competition based on the alleged Labor Code Violations.

22 **B.** On February 27, 2020, Plaintiff filed with the LWDA and served on Defendants
23 a notice under Labor Code section 2699.3 (the “PAGA Notice”) stating she intended to serve as
24 a proxy of the LWDA to recover civil penalties for aggrieved employees. The PAGA Notice
25 includes violations of law originally pled in the Class Action, plus a request for penalties for
26 failure to comply with Labor Code sections 204, 246, 432, 1174, 1198.5, and 2810.5. On May
27 4, 2020, when 65 days passed without any communication from the LWDA, Plaintiff filed a
28 separate PAGA Action in the Los Angeles County Superior Court, Case No. 20STCV16862, on

1 behalf of herself and all other aggrieved employees in the PAGA Period as a proxy of the LWDA
2 to recover civil penalties for the Labor Code violations set out in the PAGA Notice.

3 **C.** Thereafter, the Parties agreed to exchange informal discovery and attend an early
4 mediation, in which Plaintiff was provided with, among other things: (1) hire dates and separation
5 dates (as applicable) for the fifty-seven (57) non-exempt employees working for Defendants
6 during the Class Period; (2) a representative sampling of corresponding time and payroll records
7 for twenty (20) Class Members; (3) contact information for Class Members after administration
8 of a *Belaire-West* opt-out notice; and (4) an Employee Handbook including all pertinent written
9 policies in place during the Class Period.

10 **D.** On November 17, 2020, the Parties participated in a full-day mediation before
11 mediator Deborah Crandall Saxe, Esq., a well-regarded mediator experienced in mediating
12 complex labor and employment matters. With the aid of the mediator's evaluation, the Parties
13 reached the Settlement to resolve the Actions. As part of the Settlement Plaintiff agrees to file a
14 First Amended Complaint in the Class Action effectively consolidating the Actions, as further
15 set out below.

16 **E.** Class Counsel has conducted significant investigation of the law and facts relating
17 to the claims asserted in the Actions and the PAGA Notice and has concluded that that the
18 Settlement set forth herein is fair, reasonable, adequate, and in the best interests of the Settlement
19 Class, taking into account the sharply contested issues involved, the expense and time necessary
20 to litigate the Actions through trial and any appeals, the risks and costs of further litigation of the
21 Actions, the risk of an adverse outcome, the uncertainties of complex litigation, the information
22 learned through informal discovery regarding Plaintiff's allegations, and the substantial benefits
23 to be received by the Settlement Class Members.

24 **F.** Defendants have concluded that, because of the substantial expense of defending
25 against the Actions, the length of time necessary to resolve the issues presented herein, the
26 inconvenience involved, and the concomitant disruption to their business operations, it is in their
27 best interest to accept the terms of this Agreement. Defendants deny each of the allegations and
28 claims asserted against them in the Actions and the PAGA Notice. However, Defendants

nevertheless desire to settle the Actions for the purpose of avoiding the burden, expense and uncertainty of continuing litigation and for the purpose of putting to rest the controversies engendered by the Actions.

G. This Agreement is intended to and does effectuate the full, final, and complete resolution of all Released Claims of Plaintiff and Settlement Class Members, other than those Settlement Class Members who submit a timely and valid Request for Exclusion.

3. JURISDICTION

The Court has jurisdiction over the Parties and the subject matter of the Actions. The Actions include claims that, if proven, would authorize the Court to grant relief pursuant to the applicable statutes. After the Court has granted Final Approval of the Settlement and entered judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment pursuant to California Rule of Court, rule 3.769, subdivision (h).

4. STIPULATION OF CLASS CERTIFICATION

The Parties stipulate to the certification of the Settlement Class under this Agreement for purposes of settlement only.

5. CONSOLIDATION OF ACTIONS AND MOTION FOR PRELIMINARY APPROVAL

The Parties have stipulated to the filing of a First Amended Complaint in the Class Action that includes all of the allegations in the PAGA Action, thereby effectively consolidating all allegations in the PAGA Action into this Action. If and when the First Amended Complaint is filed, Plaintiff will dismiss the PAGA Action without prejudice. Shortly thereafter, Plaintiff will move for an order granting preliminary approval of the Settlement, approving and directing the mailing of the proposed Notice of Class Action Settlement (“Class Notice”) attached hereto as **Exhibit “A”**, conditionally certifying the Settlement Class for settlement purposes only, and approving the deadlines proposed by the Parties for the submission of Requests for Exclusion, Workweek Disputes, and objections, the papers in support of Final Approval of the Settlement, and any responses to Objections or opposition papers to the Motion for Final Approval. The Parties hereby expressly agree that whether or not the Court finally approves the Settlement,

1 Plaintiff's allegations from the PAGA Action will relate back to the date on which Plaintiff filed
2 the PAGA Action, and Defendants will be estopped from making any argument that there is any
3 adverse effect on the statute of limitations caused by Plaintiff's dismissal of the PAGA Action
4 without prejudice to effectuate this consolidation.

5 **6. STATEMENT OF NO ADMISSION**

6 Defendants deny any wrongdoing of any sort and further deny any liability to Plaintiff
7 and the Settlement Class with respect to any claims or allegations asserted in the Actions and the
8 PAGA Notice. This Agreement shall not be deemed an admission by Defendants of any claims
9 or allegations asserted in the Actions or the PAGA Notice. Except as set forth elsewhere herein,
10 in the event that this Agreement is not approved by the Court, or any appellate court, is
11 terminated, or otherwise fails to be enforceable, Plaintiff will not be deemed to have waived,
12 limited or affected in any way any claims, rights or remedies, or defenses in the Actions or the
13 PAGA Notice, and Defendants will not be deemed to have waived, limited, or affected in any
14 way any of its objections or defenses in the Actions and the PAGA Notice. The Parties shall be
15 restored to their respective positions in the Actions prior to the entry of this Settlement.

16 **7. RELEASE OF CLAIMS**

17 **A. Release by All Participating Class Members.**

18 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
19 of Judgment, and payment by Defendants to the Third-Party Administrator selected of the full
20 Gross Settlement Amount and Employers' Taxes necessary to effectuate the Settlement, Plaintiff
21 and all Participating Class Members waive, release, discharge, and promise never to assert in any
22 forum against the Released Parties all claims against the Released Parties asserted in the First
23 Amended Complaint filed in the Class Action, or any and all claims that may be asserted against
24 the Released Parties based on the factual allegations in the First Amended Complaint to be filed
25 in the Class Action, as follows: For the duration of the Class Period, the release includes: (a) all
26 claims for failure to pay overtime wages; (b) all claims for failure to pay minimum wages; (c) all
27 claims for failure to provide compliant meal and rest periods and associated premium pay; (d) all
28 claims for the failure to timely pay wages upon termination; (f) all claims for non-compliant

1 wage statements; and (g) all claims asserted through California Business & Professions Code §
2 17200 *et seq.* arising out of the Labor Code violations referenced in the First Amended
3 Complaint. For individuals employed during the PAGA Period, the release includes, for the
4 duration of the PAGA Period, all claims released during the Class Period, as well as all asserted
5 PAGA claims for penalties arising out of Labor Code Sections 210, 226.3, 558, 1197.1 and 2699
6 based on the factual allegations and Labor Code sections alleged to have been violated in the
7 PAGA Notice and the First Amended Complaint to be filed in the Class Action.

8 **B. General Release.**

9 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
10 of Judgment, and payment by Defendants to the Third-Party Administrator selected of the full
11 Gross Settlement Amount and Employers' Taxes necessary to effectuate the Settlement, in
12 addition to the Released Claims, Plaintiff makes the additional following General Release:
13 Plaintiff releases the Released Parties from of all claims, demands, rights, liabilities and causes
14 of action of every nature and description whatsoever, known or unknown, asserted or that might
15 have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule,
16 law or regulation arising out of, relating to, or in connection with any act or omission of the
17 Released Parties through the date of full execution of this Agreement in connection with their
18 employment or the termination thereof. With respect to the General Release, Plaintiff stipulates
19 and agrees that, through the Final Approval Date, Plaintiff shall be deemed to have, and by
20 operation of the Final Judgment shall have, expressly waived and relinquished, to the fullest
21 extent permitted by law, the provisions, rights and benefits of Section 1542 of the California
22 Civil Code, or any other similar provision under federal or state law, which provides:

23 A general release does not extend to claims which the creditor
24 does not know or suspect to exist in his or her favor at the time of
25 executing the release, which if known by him or her must have
26 materially affected his or her settlement with the debtor or
27 released party.

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1 **8. SETTLEMENT ADMINISTRATOR**

2 Plaintiff and Defendants, through their respective counsel, have selected Simpluris, Inc.
3 to administer the Settlement, which includes but is not limited to translating the Class Notice to
4 Spanish, distributing and responding to inquiries about the Class Notice and calculating all
5 amounts to be paid from the Gross Settlement Amount. Charges and expenses of the Settlement
6 Administrator, currently estimated to be \$4,000, will be paid from the Gross Settlement Amount.
7 If the actual Settlement Administrator fees are less than \$4,000, the difference will remain a part
8 of the Net Settlement Amount.

9 **9. NOTICE, WORKWEEK DISPUTE, OBJECTION, AND EXCLUSION PROCESS**

10 **A. Notice to the Settlement Class Members.**

11 (1) Within ten (10) calendar days after the Preliminary Approval Date,
12 Defendants' Counsel shall provide the Settlement Administrator with information with respect
13 to each Settlement Class Member, including his or her: (1) name, last known address(es) and last
14 known telephone number(s) currently in Defendants' possession, custody, or control; (2) Social
15 Security Number in Defendants' possession, custody, or control; and (3) the hire dates and
16 termination dates for each Settlement Class Member ("Class List"). The Settlement
17 Administrator shall perform an address search using the United States Postal Service National
18 Change of Address ("NCOA") database and update the addresses contained on the Class List
19 with the newly-found addresses, if any. Within seven (7) calendar days of receiving the Class
20 List from Defendants, the Settlement Administrator shall mail the Class Notice in English and
21 Spanish to the Settlement Class Members via first-class regular U.S. Mail using the most current
22 mailing address information available. The Settlement Administrator shall maintain a list with
23 names and all addresses to which notice was given, and digital copies of all the Settlement
24 Administrator's records evidencing the giving of notice to any Settlement Class Member, for at
25 least four (4) years from the Final Approval Date.

26 (2) The Class Notice will set forth:

27 (a) the Settlement Class Member's estimated payment and the basis
28 for it;

- 1 (b) the information required by California Rule of Court, rule 3.766,
2 subdivision (d);
3 (c) the material terms of the Settlement;
4 (d) the proposed Settlement Administration Costs;
5 (e) the definition of the Settlement Class;
6 (f) a statement that the Court has preliminarily approved the
7 Settlement;
8 (g) how the Settlement Class Member can obtain additional
9 information, including contact information for Class Counsel;
10 (h) information regarding opt-out and objection procedures;
11 (i) the date and location of the Final Approval Hearing; and
12 (j) that the Settlement Class Member must notify the Settlement
13 Administrator no later than the Response Deadline if the
14 Settlement Class Member disputes the accuracy of the number of
15 Workweeks as set forth on his or her Class Notice (“Workweek
16 Dispute”). If a Settlement Class Member fails to timely dispute
17 the number of Workweeks attributed to him or her in conformity
18 with the instructions in the Class Notice, then he or she shall be
19 deemed to have waived any objection to its accuracy and any claim
20 to any additional settlement payment based on different data.

21 (3) If a Class Notice from the initial notice mailing is returned as
22 undeliverable, the Settlement Administrator will attempt to obtain a current address for the
23 Settlement Class Member to whom the returned Class Notice had been mailed, within five (5)
24 calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class
25 Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator
26 is successful in obtaining a new address, it will promptly re-mail the Class Notice to the
27 Settlement Class Member. Further, any Class Notices that are returned to the Settlement
28 Administrator with a forwarding address before the Response Deadline shall be promptly re-

1 mailed to the forwarding address affixed thereto. Class Members who are re-mailed a Class
2 Notice shall have an additional fifteen (15) calendar days to submit a Request for Exclusion,
3 objection or to dispute estimated payments.

4 (4) No later than seven (7) calendar days from the Response Deadline, the
5 Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the
6 completion of the notice process, including the number of attempts to obtain valid mailing
7 addresses for and re-sending of any returned Class Notices, as well as the identities, number of,
8 and copies of all Requests for Exclusion and objections/comments received by the Settlement
9 Administrator.

10 **B. Objections.**

11 Only Settlement Class Members who do not opt out of the Settlement (*i.e.*, Participating
12 Class Members) may object or comment regarding the Settlement. In order for any Settlement
13 Class Member to object or comment to this Settlement, or any term of it, he or she should do so
14 by mailing a written objection or comment to the Settlement Administrator at the address or
15 phone number provided on the Class Notice no later than the Response Deadline. The Settlement
16 Administrator shall email a copy of the objection/comment forthwith to Class Counsel and
17 Defendants' counsel. Class Counsel shall lodge a copy of the objection or comment with the
18 Court with the Motion for Final Approval. The objection or comment should set forth in writing:
19 (1) the objector's/commenter's name and address, and (2) the reason(s) for the
20 objection/comment, along with whatever legal authority, if any, the objector/commenter asserts
21 supports the objection. If a Settlement Class Member objects or comments regarding this
22 Settlement, the Settlement Class Member will remain a member of the Settlement Class and if
23 the Court approves this Agreement, the Settlement Class Member will be bound by the terms of
24 the Settlement in the same way and to the same extent as a Settlement Class Member who does
25 not object or comment. The date of mailing of the Class Notice to the objecting or commenting
26 Settlement Class Member shall be conclusively determined according to the records of the
27 Settlement Administrator. Settlement Class Members do not need to object or comment in
28 writing to be heard at, or object/comment to the Settlement, at the Final Approval Hearing.

1 **C. Requesting Exclusion.**

2 Any Settlement Class Member may request exclusion from (i.e., “opt out” of) the
3 Settlement by mailing a written request to be excluded from the Settlement (“Request for
4 Exclusion”) to the Settlement Administrator, postmarked or fax-stamped on or before the
5 Response Deadline. To be valid, a Request for Exclusion must include the Class Member’s name,
6 social security number and signature and the following statement or something to its effect:
7 “Please exclude me from the Settlement Class in the *Rosa Franco v. Vincent Rags, Inc, et al.*
8 matter” or a statement of similar meaning. The Settlement Administrator shall immediately
9 provide copies of all Requests for Exclusion to Class Counsel and Defendants’ Counsel and shall
10 report the Requests for Exclusions that it receives, to the Court, in its declaration to be provided
11 in advance of the Final Approval Hearing. Any Settlement Class Member who requests
12 exclusion using this procedure will not be entitled to receive any payment from the Settlement
13 and will not be bound by the Settlement Agreement or have any right to object to, appeal, or
14 comment on the Settlement. Any Settlement Class Member who does not opt out of the
15 Settlement by submitting a timely and valid Request for Exclusion will be bound by all terms of
16 the Settlement, including those pertaining to the Released Claims, as well as any Judgment that
17 may be entered by the Court if Final Approval of the Settlement is granted.

18 **D. Disputes Regarding Settlement Class Members’ Workweek Data.**

19 Each Settlement Class Member may dispute the number of Workweeks attributed to him
20 or her on his or her Class Notice (“Workweek Dispute”). Any such disputes must be mailed to
21 the Settlement Administrator by the Settlement Class Member, postmarked on or before the
22 Response Deadline. The Settlement Administrator shall immediately provide copies of all
23 disputes to Class Counsel and counsel for Defendants and shall immediately attempt to resolve
24 all such disputes directly with relevant Settlement Class Member(s) with the assistance of
25 Defendants and Class Counsel. If the dispute cannot be resolved in this manner, the Court shall
26 adjudicate the dispute.

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1 **10. INDIVIDUAL SETTLEMENT PAYMENTS TO PARTICIPATING CLASS**
2 **MEMBERS**

3 Individual Settlement Payments will be calculated and distributed to Participating Class
4 Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class
5 Members' respective number of Workweeks during the Class Period. Specific calculations of the
6 Individual Settlement Payments will be made as follows:

7 A. The Settlement Administrator will determine the total number of Workweeks
8 worked by each Settlement Class Member and the aggregate number of Workweeks worked by
9 all Settlement Class Members during the Class Period ("Class Workweeks"), as reflected on
10 the Class List provided by Defendants.

11 B. To determine each Participating Class Member's Individual Settlement Share,
12 the Settlement Administrator will determine the aggregate number of Workweeks worked by
13 all Participating Class Members during the Class Period ("Participating Class Workweeks")
14 and use the following formula: Individual Settlement Share = (Participating Class Member's
15 Workweeks ÷ Participating Class Workweeks) × Net Settlement Amount.

16 C. This net amount is to be paid out to Participating Class Members by way of
17 check and is referred to as "Individual Settlement Payment(s)."

18 **DISTRIBUTION OF PAYMENTS**

19 **A. Distribution of Individual Settlement Payments.**

20 Settlement Class Members who do not submit a timely and valid Request for Exclusion
21 (i.e., Participating Class Members) will receive an Individual Settlement Payment. Individual
22 Settlement Payment checks shall remain valid and negotiable for one hundred and eighty (180)
23 calendar days after the date of their issuance. Within seven (7) calendar days after expiration
24 of the 180-day period, checks for such payments shall be canceled and funds associated with
25 such checks shall be considered unpaid, unclaimed or abandoned cash residue pursuant to Code
26 of Civil Procedure section 384 ("Unpaid Residue"). The Unpaid Residue plus accrued interest,
27 if any, as provided in Code of Civil Procedure section 384, shall be transmitted as follows: to
28 Legal Aid at Work, 180 Montgomery St., Suite 600, San Francisco, California 94104 for use

1 in Los Angeles County. The Settlement Administrator shall prepare a report regarding the
2 distribution plan pursuant to Code of Civil Procedure section 384 and the report shall be
3 presented to the Court by Class Counsel along with a proposed amended judgment that is
4 consistent with the provisions of Code of Civil Procedure section 384.

5 **B. Funding of Settlement.**

6 Defendants shall, within five (5) calendar days of executing this Agreement, make
7 payment of \$150,000 to the Settlement Administrator pursuant to Internal Revenue Code section
8 1.468B-1 for deposit in an interest-bearing qualified settlement account (“QSA”) with an FDIC
9 insured banking institution, for distribution in accordance with this Agreement and the Court’s
10 Orders and subject to the conditions described herein. Starting on the first calendar day of the
11 first month thereafter, for fourteen (14) months, Defendants shall deposit \$25,000 each month
12 (*i.e.*, 1/14th of the remaining balance), into the QSA until the entire sum of the Gross Settlement
13 Amount is paid. In addition, as part of the final payment, Defendants shall include Defendants’
14 share of taxes owed on the wages portion of the settlement, which shall be determined by the
15 Settlement Administrator. Individual Settlement Payments for Class Members shall be paid
16 exclusively from the QSA, pursuant to the settlement formula set forth herein, and shall be mailed
17 within seven (7) calendar days after the entire sum of the Gross Settlement Amount is paid or
18 Final Order and Judgment following a Final Fairness and Approval hearing, whichever is later,
19 as required by this Agreement.

20 Payments from the QSA shall be made for (1) the Service Awards to Plaintiff as specified
21 in this Agreement and approved by the Court; (2) the Attorneys’ Fees and Cost Award to be paid
22 to Class Counsel, as specified in this Agreement and approved by the Court; (3) the Settlement
23 Administrator Costs, as specified in this Agreement and approved the Court; and (4) the amount
24 allocated to PAGA penalties to be paid to the LWDA, as specified in this Agreement and
25 approved by the Court. The balance remaining shall constitute the Net Settlement Amount from
26 which Individual Settlement Payments shall be made to Participating Class Members, less
27 applicable taxes and withholdings. All interest accrued shall be for the benefit of the Class
28 Members and distributed in a pro-rata basis.

1 **C. Time for Distribution.**

2 Within seven (7) calendar days after payment of the full Gross Settlement Amount by
3 Defendants, as well as Employer Taxes, or after the Final Order and Judgment following a Final
4 Fairness and Approval hearing, whichever is later, or as soon thereafter as practicable, the
5 Settlement Administrator shall distribute all payments due under the Settlement, including the
6 Individual Settlement Payments to Participating Class Members, as well as the Court-approved
7 payments for the Service Award to Plaintiff, attorneys' fees and litigation costs and expenses to
8 Class Counsel, Administration Costs to the Settlement Administrator, and the portion of the
9 LWDA payment payable to the LWDA.

10 **11. ATTORNEYS' FEES AND LITIGATION COSTS**

11 Class Counsel shall apply for, and Defendants shall not oppose, an award of attorneys'
12 fees of up to one third of the Gross Settlement Amount, or One Hundred Sixty-Six Thousand Six
13 Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$166,666.67). Class Counsel shall further
14 apply for, and Defendants shall not oppose, an application or motion by Class Counsel for
15 reimbursement of actual costs associated with Class Counsel's prosecution of this matter as set
16 forth by declaration testimony in an amount up to Twenty-Five Thousand Dollars and Zero Cents
17 (\$25,000.00). Awards of attorneys' fees and costs shall be paid out of the Gross Settlement
18 Amount, for all past and future attorneys' fees and costs necessary to prosecute, settle, and obtain
19 Final Approval of the settlement in the Action. The "future" aspect of the amounts stated herein
20 includes, without limitation, all time and expenses expended by Class Counsel (including any
21 appeals therein). There will be no additional charge of any kind to either the Settlement Class
22 Members or request for additional consideration from Defendants for such work. Should the
23 Court approve attorneys' fees and/or litigation costs and expenses in amounts that are less than
24 the amounts provided for herein, then the unapproved portion(s) shall be a part of the Net
25 Settlement Amount.

26 **12. SERVICE AWARD TO PLAINTIFFS**

27 Named Plaintiff shall seek, and Defendants shall not oppose, a Service Award in an
28 amount not to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) for

1 Plaintiff, for participation in and assistance with the Class Action. Any Service Award awarded
2 to Plaintiff shall be paid from the Gross Settlement Amount and shall be reported on an IRS Form
3 1099. If the Court approves Service Awards to Plaintiff in less than the amounts sought herein,
4 then the unapproved portion(s) shall be a part of the Net Settlement Amount.

5 **13. TAXATION AND ALLOCATION**

6 A. Each Individual Settlement Share shall be allocated as follows: 33% as wages (to
7 be reported on an IRS Form W2); and 67% as interest and penalties (to be reported on an IRS
8 Form 1099). The Parties agree that the employees' share of taxes and withholdings with respect
9 to the wage-portion of the Individual Settlement Share will be withheld from the Individual
10 Settlement Share in order to yield the Individual Settlement Payment. The amount of federal
11 income tax withholding will be based upon a flat withholding rate for supplemental wage
12 payments in accordance with Treasury Regulation § 31.3402(g)-1(a)(2) as amended or
13 supplemented. Income tax withholding will also be made pursuant to applicable state and/or
14 local withholding codes or regulations.

15 B. Forms W-2 and/or Forms 1099 will be distributed by the Settlement
16 Administrator at times and in the manner required by the Internal Revenue Code of 1986 (the
17 "Code") and consistent with this Agreement. If the Code, the regulations promulgated
18 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes
19 set forth in this Section may be modified in a manner to bring Defendants into compliance with
20 any such changes.

21 C. All Employer Taxes shall be paid by Defendants separate, apart and above from
22 the Gross Settlement Amount. Defendants shall remain liable to pay the employer's share of
23 payroll taxes as described above.

24 D. Neither Counsel for Plaintiff nor Defendants intend anything contained in this
25 Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement
26 be relied upon as such within the meaning of United States Treasury Department Circular 230
27 (31 C.F.R. Part 10, as amended) or otherwise.

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1 **14. PRIVATE ATTORNEYS' GENERAL ACT ALLOCATION**

2 The Parties agree to allocate Ten Thousand Dollars and Zero Cents (\$10,000) of the Gross
3 Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five percent (75%)
4 of the amount allocated toward PAGA (\$7,500.00) will be paid to the LWDA (*i.e.*, the PAGA
5 Payment), and twenty-five percent (25%) (\$2,500.00) will remain a part of the Net Settlement
6 Amount to be distributed to Participating Class Members on a *pro rata* basis, based upon their
7 respective Workweeks.

8 **15. COURT APPROVAL**

9 This Agreement is contingent upon an order by the Court granting Final Approval of the
10 Settlement, and that the LWDA does not intervene and object to the Settlement. In the event it
11 becomes impossible to secure approval of the Settlement by the Court and the LWDA, the Parties
12 shall be restored to their respective positions in the Actions prior to entry of this Settlement. If
13 this Settlement Agreement is voided, not approved by the Court or approval is reversed on appeal,
14 it shall have no force or effect and no Party shall be bound by its terms except to the extent: (a)
15 the Court reserves any authority to issue any appropriate orders when denying approval; and/or
16 (b) there are any terms and conditions in this Settlement Agreement specifically stated to survive
17 the Settlement Agreement being voided or not approved, and which control in such an event.

18 **16. INCREASE IN WEEKLY PAY PERIODS**

19 Defendants represent that there are no more than 11,385 Workweeks worked during
20 the Class Period by Class Members. In the event the number of Workweeks increases by
21 more than 5%, or 569 Workweeks, then the Gross Settlement Amount shall be increased
22 proportionally by the Workweek Value. The Workweek Value shall be calculated by
23 dividing the Gross Settlement Amount (\$500,000.00) by 11,385, which amounts to a
24 Workweek Value of \$43.92. Thus, for example, should there be 13,000 Workweeks in the
25 Class Period, then the Gross Settlement Amount shall be increased by \$70,930.80. (13,000
26 Workweeks – 11,385 Workweeks x \$43.92/Workweek.)

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1 **17. NOTICE OF JUDGMENT**

2 In addition to any duties set out herein, the Settlement Administrator shall provide
3 notice of the Final Judgment entered in the Class Action by posting the same on its website.

4 **18. MISCELLANEOUS PROVISIONS**

5 **A. Interpretation of the Agreement.**

6 This Agreement constitutes the entire agreement between Plaintiff and Defendants with
7 respect to its subject matter. Except as expressly provided herein, this Agreement has not been
8 executed in reliance upon any other written or oral representations or terms, and no such extrinsic
9 oral or written representations or terms shall modify, vary or contradict its terms. In entering
10 into this Agreement, the Parties agree that this Agreement is to be construed according to its
11 terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be
12 interpreted and enforced under the laws of the State of California, both in its procedural and
13 substantive aspects, without regard to its conflict of law provisions. Any claim arising out of or
14 relating to the Agreement, or the subject matter hereof, will be resolved solely and exclusively
15 in the Superior Court of the State of California for the County of Los Angeles, and Plaintiff and
16 Defendants hereby consent to the personal jurisdiction of the Court in the Action over it solely
17 in connection therewith. The foregoing is only limited to disputes concerning this Agreement
18 and in no way limits or negates the enforceability and effect of any underlying arbitration
19 agreements signed by employees of Defendants obligating them to arbitrate any and all claims
20 on an individual (and not on a class, collective, or representative) basis. Plaintiff Rivera, on
21 behalf of herself and on behalf of the Settlement Class, and Defendants participated in the
22 negotiation and drafting of this Agreement and had available to them the advice and assistance
23 of independent counsel. As such, neither Plaintiff nor Defendants may claim that any ambiguity
24 in this Agreement should be construed against the other. The Agreement may be modified only
25 by a writing signed by counsel for the Parties and approved by the Court.

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1 **B. Further Cooperation.**

2 Plaintiff, Defendants, and their respective attorneys shall proceed diligently to prepare
3 and execute all documents, to seek the necessary approvals from the Court, and to do all things
4 reasonably necessary to consummate the Settlement as expeditiously as possible.

5 **C. Counterparts.**

6 The Agreement may be executed in one or more actual or non-original counterparts, all
7 of which will be considered one and the same instrument and all of which will be considered
8 duplicate originals.

9 **D. Authority.**

10 Each individual signing below warrants that he or she has the authority to execute this
11 Agreement on behalf of the party for whom or which that individual signs.

12 **E. No Third-Party Beneficiaries.**

13 Plaintiff, Participating Class Members, Class Counsel, and Defendants are direct
14 beneficiaries of this Agreement, but there are no third-party beneficiaries.

15 **F. Force Majeure.**

16 The failure of any party to perform any of its obligations hereunder shall not subject such
17 party to any liability or remedy for damages, or otherwise, where such failure is occasioned in
18 whole or in part by acts of God, fires, accidents, earthquakes, other natural disasters, explosions,
19 floods, wars, interruptions or delays in transportation, power outages, labor disputes or shortages,
20 shortages of material or supplies, governmental laws, restrictions, rules or regulations, sabotage,
21 terrorist acts, acts or failures to act of any third parties, or any other similar or different
22 circumstances or causes beyond the reasonable control of such party.

23 **E. Deadlines Falling on Weekends or Holidays.**

24 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday,
25 or legal holiday, that deadline shall be continued until the following business day.

26 **F. Severability.**

27 In the event that one or more of the provisions contained in this Agreement shall for any
28 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or

unenforceability shall in no way effect any other provision if Defendants' Counsel and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

IT IS SO AGREED:

Dated: 12/22/2020, 2020



Rosa Franco Franco (Dec 22, 2020 14:32 PST)

ROSA FRANCO
Plaintiff and Class Representative

Dated: _____, 2020

VINCENT RAGS, INC.
Defendant
By:
Its:

Dated: _____, 2020

RAJESH CHOLLERA
Defendant

AGREED AS TO FORM:

Dated: December 22, 2020



DAVID D. BIBIYAN
Counsel for Plaintiff Rosa Franco

Dated: _____, 2020

MICHAEL ROBINSON
Counsel for Defendants Vincent Rags, Inc.
and Rajesh Chollera

unenforceability shall in no way effect any other provision if Defendants' Counsel and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

IT IS SO AGREED:

Dated: _____, 2020

ROSA FRANCO
Plaintiff and Class Representative

Dated: 12/21, 2020

VINCENT RAGS, INC.
Defendant
By: Rajesh chollera
Its:

Dated: 12/21, 2020

RAJESH CHOLLERA
Defendant

AGREED AS TO FORM:

Dated: _____, 2020

DAVID D. BIBIYAN
Counsel for Plaintiff Rosa Franco

Dated: 12/21/20, 2020

MICHAEL ROBINSON
Counsel for Defendants Vincent Rags, Inc.
and Rajesh Chollera