

DAVID YEREMIAN & ASSOCIATES, INC.
David Yeremian (SBN 226337)
david@yeremianlaw.com
Natalie Haritonian (SBN 324318)
natalie@yeremianlaw.com
535 N. Brand Blvd., Suite 705
Glendale, California 91203
Telephone: (818) 230-8380
Facsimile: (818) 230-0308

DAVTYAN LAW FIRM, INC.
Emil Davtyan (SBN 299363)
emil@davtyanlaw.com
880 E. Broadway
Glendale, CA 91205
Telephone: (818) 875-2008
Facsimile: (818) 722-3674

Attorneys for Plaintiff ROSALINDA MARCHBANKS-POWELL,
on behalf of herself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

ROSALINDA MARCHBANKS-POWELL,
an individual on behalf of herself and all
others similarly situated,

Plaintiff,

vs.

TORRID ADMINISTRATION, INC., a
California corporation; TORRID
MERCHANDISING, INC., a California
corporation; TORRID PARENT, INC., a
Delaware corporation; TORRID LLC, a
California limited liability company; HOT
TOPIC ADMINISTRATION, INC., a
California corporation; HOT TOPIC
MERCHANDISING, INC., a California
corporation; HOT TOPIC TENNESSEE,
INC., a California corporation; HOT TOPIC,
INC., a California corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: 37-2020-00008179-CU-OE-NC

Assigned For All Purposes to
The Honorable Timothy M. Casserly

**DECLARATION OF DAVID YEREMIAN
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF THE
CLASS ACTION SETTLEMENT**

*[Filed concurrently with Plaintiff's Notice of
Motion and Motion; Memorandum of Points
and Authorities; Declaration of Emil Davtyan;
and [Proposed] Order]*

Date: July 2, 2021
Time: 1:30 p.m.
Dept: N-31

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

1. I am an attorney licensed and admitted to practice before all courts of the State of California, the United States District Court for the Central, Southern, Eastern, and Northern Districts of California, and the Ninth Circuit Court of Appeals. I am the managing attorney of David Yeremian & Associates, Inc., counsel for Plaintiff Rosalinda Marchbanks-Powell (“Plaintiff” or “Class Representative”) on behalf of similarly situated employees of Defendant Torrid LLC (“Defendant”). Class counsel includes my firm, David Yeremian & Associates, Inc. and Davtyan Law Firm, Inc. I have personal knowledge of the facts herein and if called as a witness, I could and would competently testify.

2. All of the matters set forth herein are within my personal knowledge, except those matters that are stated to be upon information and belief. As to such matters, I believe them to be true. I have represented Plaintiff and the putative Class since the inception of this matter. I submit this Declaration in support of the Motion for Preliminary Approval, filed by Plaintiff, on behalf of herself and other similarly situated employees of Defendant, and without opposition from Defendant, for preliminary approval of the parties' Class and PAGA Action Settlement Agreement and Stipulation ("Settlement Agreement" or "Settlement"), a true and correct copy of which is attached hereto as **Exhibit 1**.

29
20
21
22
23
24
25
26
27
28

3. My firm is well qualified because of our experience, knowledge, and resources to act as counsel and represent Plaintiff and the putative class in this action. My practice is exclusively focused on employment matters, with a substantial percentage devoted to litigating wage, hour, and working-conditions violations on a class-wide basis.

4. I graduated from UC Berkeley in 1997 and received my law degree and MBA from UCLA in 2001. I am a member of the Los Angeles County Bar Association and the California Employment Lawyers Association. I have been honored as a Super Lawyers Rising Star in 2009, 2010, 2012-2015. I have been named and honored as a Super Lawyer since 2016.

5. I have been practicing law since 2003. Since 2007, I have focused almost exclusively

1 on representing employees, including in wage-and-hour class actions. During my career I have
2 represented employees in over 100 wage-and-hour class action lawsuits as lead or co-lead counsel
3 (including in the Central, Southern, Eastern and Northern Districts of California), and I have
4 obtained six and seven figure settlements against a range of defendants, including Fortune 500
5 companies. These cases have involved the gamut of wage-and-hour claims, including claims for
6 failure to pay minimum wages, unpaid wages and overtime, failure to provide meal breaks,
7 inaccurate pay statements, and failure to pay timely wages - similar to claims at issue in the
8 present matter.

9 6. I am experienced in prosecuting employment matters, particularly class actions. In
10 addition to the present case, I am also class counsel for dozens of other putative wage-and-hour
11 class-action lawsuits pending in various state and federal jurisdictions throughout California.

12 7. My extensive experience in litigating employment wage and hour matters has been
13 integral in identifying legal issues, evaluating the strengths and weaknesses of a case, and
14 generally negotiating fair and reasonable class action settlements. Practice in the narrow field of
15 wage and hour litigation requires skill and knowledge concerning the constantly evolving
16 substantive law (state and federal), as well as the procedural law of class action litigation. In this
17 action, I am fully equipped to use the skills and knowledge I have developed through more than a
18 decade of prosecuting and defending wage and hour class actions to fairly and adequately
19 represent the interests of the Class. Therefore, on the account of my resources, experience, and
20 knowledge, I am well qualified to act as Class Counsel and represent Plaintiff and the putative
21 Class Members in this action.

22 8. In the last several years I have had several contested class cases certified. When
23 necessary we pursue cases on appeal. Owing to my experience, I am well qualified to evaluate the
24 class claims in this action, to evaluate settlement v. trial and defenses raised. I have negotiated
25 over 100 class action settlements, including many involving the same issues presented in this
26 case. A selection of cases wherein I have served as lead or co-lead class counsel includes: *Galavis*
27 *v. Patina Restaurant Group, LLC* (LASC BC375225; class size approx. 10,000; co-lead counsel);
28 *Milford v. ADT Security Services, Inc.* (CACD CV08-2236; class size approx. 2,000; lead

counsel); *Carreon v. Wolfgang Puck Catering and Events, LLC* (LASC BC398569; class size approx. 1,400; lead counsel); *Fluke v. RFG Oil, Inc.* (LASC BC403354; class size approx. 1,400; lead counsel); *Urena v. Camachos Restaurant* (LASC BC365913; class size approx. 887; lead counsel); *Smith v. Rio Rancho Pontiac GMC Buick Inc.* (LASC BC391187; class size approx. 860; lead counsel); *Callela v. Dolce Group* (LASC BC364711; class size approx. 600; lead counsel); *Vasquez v. The Hollywood Pig n Whistle LP* (LASC BC335075; class size approx. 600; lead counsel); *Goldman v. Aorta Restaurant Operating LP* (LASC BC379688; class size approx. 300; lead counsel); *Sink-Crilly v. Centex Homes* (CACD CV09-2476; class size approx. 250; lead counsel); *Utey v. Cranbrook Partners Inc.* (LASC BC392813; class size approx. 200; lead counsel); *Garcia v. California Credits Group* (LASC BC353213; class size approx. 160; lead counsel); *Afanasyev v. Miller Infiniti, Inc.* (LASC BC350788; class size approx. 160; lead counsel); *Morris v. Gymboree, Inc.* (LASC BC393270; class size approx. 150; lead counsel); *Ortega v. AJC Sandblasting, Inc.* (LASC BC378806; class size approx. 140; lead counsel); *Lulejyan v. Jim Falk Motors of Beverly Hills, Inc.* (LASC BC398459; class size approx. 72; lead counsel); *Rylko v. The Griddle Café, Inc.* (LASC BC386126; class size approx. 70; lead counsel); *Healy v. Siemens IT Solutions and Services, Inc.* (Santa Clara Superior Court 108CV113479; class size approx 60; lead counsel).

9. For purposes of this motion, the “Class” or “Class Members” consist of “all non-exempt employees who worked for Torrid LLC at any of its retail store locations in the State of California at any time from February 11, 2016 through December 31, 2020.” I do not believe that I have any conflicts of interest with the Class or with the Class Representative. I am not related to the Class Representative. I have not previously represented Defendant in any matter. I respectfully submit that I, and David Yeremian & Associates, Inc. are well suited to act as Class Counsel in this action, and we have and will continue to vigorously represent the interests of the Class Members.

PROCEDURAL HISTORY

10. On February 11, 2020, Plaintiff filed a class action complaint against Defendant alleging eleven causes of action: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages

1 and Overtime Under Labor Code § 510; (3) Meal Period Liability Under Labor Code § 226.7; (4)
2 Rest-Break Liability Under Labor Code § 226.7; (5) Violation of Labor Code § 226(a); (6)
3 Violation of Labor Code §203; (7) Violation of Labor Code §204; (8) Failure to Keep Required
4 Payroll Records Under Labor Code §§ 1174 and 1174.5; (9) Failure to Reimburse Necessary
5 Business Expenses § 2802; (10) Violation of Labor Code § 246; and (11) Violation of Business
6 and Professions Code § 17200 et seq. Plaintiff alleges Defendant failed to pay minimum wages
7 and overtime for all hours worked, failure to provide compliant meal and rest breaks, failed to pay
8 premium wages for missed meal and rest breaks, failed to furnish accurate wage statements,
9 failed to timely pay wages including upon termination; failed to maintain accurate records, failed
10 to reimburse necessary business expenses, and failed to provide required paid sick days.

11 11. On February 10, 2020, Plaintiff submitted a Private Attorneys General Act (“PAGA”)
12 notice letter to the Labor Workforce Development Agency (“LWDA”) and served Defendant. A
13 true and correct copy of the confirmatory email and the LWDA letter submitted on behalf of
14 Plaintiff is attached hereto as **Exhibit 2**. The LWDA did not express an interest in investigating
15 Plaintiff’s claims within the 65 day period. Therefore, on May 26, 2020, Plaintiff filed a first
16 amended complaint adding a cause of action pursuant to the Private Attorneys General Act
17 (“PAGA”) under Labor Code § 2699, *et seq.*

18 12. On October 8, 2020, Plaintiff submitted an amended notice letter to the LWDA and
19 served Defendant. A true and correct copy of the confirmatory email and the LWDA letter
20 submitted on behalf of Plaintiff is attached hereto as **Exhibit 3**. On October 28, 2020, Plaintiff
21 filed a second amended complaint adding a cause of action for the failure to provide suitable
22 seating.

23 **INVESTIGATION AND DISCOVERY**

24 13. I have participated in all discovery, mediation and negotiations since the inception of
25 Plaintiff’s case. Before filing the lawsuit, Class Counsel investigated and researched the facts and
26 circumstances underlying the pertinent issues and the law applicable thereto. This required
27 thorough discussions and interviews between Class Counsel and Plaintiff, as well as preliminary
28 research into the various legal issues involved in the case. After conducting their initial

1 investigation, Class Counsel determined that Plaintiff's claims were well-suited for class and
2 representative action adjudication owing to what appeared to be a common course of conduct
3 affecting a similarly situated group of employees.

4 14. After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts
5 and claims giving rise to the action, including: (1) conducting informal and formal discovery, and
6 meeting and conferring with defense counsel about same; (2) reviewing and analyzing
7 timekeeping and payroll records as well as employment handbooks, Plaintiff's personnel files,
8 relevant policies and other documentation; (3) researching the applicable law and potential
9 defenses; (4) constructing damage models based on interpretations of California law; and (5)
10 reviewing information provided by Defendant at the mediation. The Class enumerated in this
11 action is ascertainable because the Class Members may be readily identified by reference to
12 Defendant's records. Defendant has agreed to share the information from these records with the
13 Settlement Administrator in order to identify and contact the Class Members. I understand there
14 are approximately 3,755 total Class Members.

15 15. Defendant, for their part, vigorously contested liability, the amount of claimed
16 damages, and the propriety of class certification. After Class Counsel analyzed the relevant
17 documents and other gathered data, Class Counsel believed that this case was appropriate for
18 resolution via mediation. Given the high level of risk present for both sides, the parties elected to
19 mediate Plaintiff's claims and explore the possibility of settlement.

20 16. On September 8, 2020, the parties mediated this case with Hon. Carl J. West (Ret.), a
21 respected and highly experienced mediator in wage and hour class actions. During mediation,
22 Plaintiff's and Defendant's counsel discussed all aspects of the case, including the risks of
23 litigation and the risks to both parties of proceeding with a motion for class certification as well as
24 the law relating to unpaid wages, meal periods, rest periods, wage statements, final pay, and
25 reimbursement of business expenses. As a result of the mediation, the parties agreed to settle the
26 lawsuit according to the terms set forth in the Settlement Agreement. From Class Counsel's
27 review of the facts, strengths, and weaknesses of the case, the risks and delays posed by further
28 litigation, and Class Counsel's own prior litigation experience, Class Counsel believes that the

1 recovery for each class member is fair and reasonable taking into consideration the amounts
2 received in other wage and hour class actions, the risks inherent in litigation of this genre, and the
3 reasonable tailoring of each Class Member's claim to the settlement award he or she will receive.
4 Further, and based on the settlement negotiations, which were extensive and conducted in good
5 faith and at arm's length between attorneys with substantial experience litigating class actions and
6 wage and hour cases, the Settlement Agreement was the product of a non-collusive settlement
7 process in which the parties were forced to make significant compromises in the interest of
8 reaching a full and complete settlement of the lawsuit.

9 **SUMMARY OF SETTLEMENT**

10 17. The parties have executed a Class and PAGA Action Settlement Agreement and
11 Stipulation ("Settlement Agreement" or "Settlement") attached hereto and incorporated herein as
12 **Exhibit 1**. Defendant has agreed to pay Seven Hundred Thousand Dollars and Zero Cents
13 (\$700,000.00) ("Gross Settlement Amount") on a non-reversionary basis to settle and release all
14 claims asserted by Plaintiff in the Second Amended Complaint on behalf of the proposed Class.
15 (Exh. 1, §43)

16 18. The Settlement Agreement defines the "Class" or "Class Members" as "all non-exempt
17 employees who worked for Torrid LLC at any of its retail store locations in the State of California
18 at any time from February 11, 2016 through December 31, 2020." (Exh. 1, §4) "Class Period"
19 means the period from February 11, 2016 through December 31, 2020. (Exh. 1, §6.)

20 19. The "Net Settlement Amount" shall be the Gross Settlement Amount, less the
21 Attorneys' Fees and Costs, the Class Representative Enhancement Payment, Settlement
22 Administration Costs, and seventy-five percent (75%) of the LWDA Payment. (Exh. 1, §16)
23 These amounts are detailed as follows:

- 24 • not more than Two Hundred Thirty Three Thousand Three Hundred Thirty Three
25 Dollars and Thirty Three Cents (\$233,333.33) to Class Counsel for attorneys' fees,
26 and not more than Seventeen Thousand Dollars and Zero Cents (\$17,000.00) in
27 reasonable litigation costs; (Exh. 1, §43(a))
- 28 • not more than Twenty Six Thousand Dollars and Zero Cents (\$26,000.00) for the

Settlement Administration Costs; (Exh. 1, §43(b))

- not more than Ten Thousand Dollars and Zero Cents (\$10,000.00) for a Class Representative Enhancement Payment; and; (Exh. 1, §43(c))
- Fifty Thousand Dollars and Zero Cents (\$50,000.00) for civil penalties under the PAGA, where 75% (\$37,500.00) will be paid to the LWDA and 25% (\$12,500.00) will be included in the Net Settlement Amount and distributed to Settlement Class Members). (Exh. 1, §43(d))

20. The “Class Member Payment of Net Settlement Amount,” which is each Class Member’s share of the Net Settlement Amount, will be calculated and apportioned from the Net Settlement Amount based on the number of workweeks a Class Member worked during the Class Period as a non-exempt employee in California. (Exh. 1, §43(e))

21. Defendant’s corporate payroll tax obligations shall be paid in addition to the Gross Settlement Amount, and none of the Gross Settlement Amount will revert to Defendant. (Exh. 1, §43)

22. The settlement amount was a compromise figure, factoring in the inherent risks related to certification, liability and damages. However, taking into account all of the circumstances of the action and the defenses raised by Defendant against certification, liability and damages, Class Counsel believes that the settlement is fair and reasonable.

23. Class Members shall each receive a Notice of Class Action Settlement, Opt-out Form and Dispute Form (“Notice Packet”) via regular First Class U.S. Mail, using the most current, known mailing addresses identified in the Class List. (Exh. 1, §46) Before mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. (Exh. 1, §46) If a new address is obtained by way of a returned Notice Packet, then the Settlement Administrator will promptly forward the original Notice Packet to the updated address via first-class regular U.S. mail, indicating on the original packet the date of such re-mailing. (Exh. 1, §46). The Notice Packet will be in English only.

24. Class Members will have an opportunity to dispute the information provided in their

1 Notice Packet and they must timely produce evidence to support the information is inaccurate.
2 (Exh. 1, §47) Defendant shall have the right to respond to the challenge by any Class Member.
3 (Exh. 1, §47) The Settlement Administrator will resolve the challenge and make a final and
4 binding determination without hearing or right of appeal. (Exh. 1, §47)

5 25. Class Members wishing to opt-out from the Settlement Agreement must sign and
6 postmark a written Request for Exclusion to the Settlement Administrator within the “Notice
7 Period.” (Exh. 1, §48). The Notice Period will be sixty (60) calendar days after the date the
8 Notice Packet was mailed. (*Id.*) The delivery date is deemed to be the date the Opt-Out request is
9 deposited in the U.S. Mail as evidenced by the postmark. (*Id.*)

10 26. Class Members will also have the opportunity to object to the Settlement Agreement,
11 by mailing a written objection to the Settlement Administration within the Notice Period. (Exh. 1,
12 §49) All objections must be served within sixty (60) calendar days of first mailing of the Notice
13 Packet. (*Id.*) Class Members who do not serve written objections may not object to the settlement
14 by way of appeal. (*Id.*)

15 **THE STRENGTH OF PLAINTIFF’S CASE**

16 **IN LIGHT OF THE SETTLEMENT AMOUNT**

17 27. Because the class consists of numerous employees, it was unlikely that the potential
18 monetary claims of individual Class Members would have proved viable without the class-action
19 mechanism. The Settlement Agreement should be approved in light of two California appellate
20 decisions: *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785 and *Kullar v.*
21 *Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116.

22 28. The strength of the Plaintiff’s case in light of the settlement amount is deemed by
23 courts to be the “most important.” *Clark v. American Residential Services, LLC* (2009) 175
24 Cal.App.4th 785, 799 (citing *Kullar*). Here, Plaintiff alleges that Defendant failed to pay
25 minimum wages and overtime, failed to provide proper meal breaks or provide premium pay in
26 lieu thereof, failed to provide proper rest breaks or provide premium pay in lieu thereof, failed to
27 provide accurate wage statements, failed to pay all wages including upon termination, failed to
28 reimburse for necessary business expenditures, failed to maintain accurate records, failed to

1 provide required paid sick days, failed to provide suitable seating all in violation of California
2 law. Plaintiff seeks related violations of California's Business & Professions Code, and penalties
3 pursuant to Labor Code § 2699 *et seq.* Plaintiff conducted discovery and investigated each of the
4 claims they alleged. Specifically, Defendant produced the following: (a) all versions of
5 Defendant's employee handbook in effect during the Class Period; (b) all versions of Defendant's
6 policies and procedures pertaining to minimum wages, overtime, meal breaks, rest breaks, and
7 reimbursement of business expenses, which were in effect during the Class Period; (c) Plaintiff's
8 personnel files; (d) Plaintiff's timekeeping and payroll records; (e) sampling of timekeeping and
9 payroll records; and (f) information on the class demographics including the total number of
10 Class Members during the Class Period, total number of Class Members during the PAGA
11 Period, total number of current employees, total number of former employees in the relevant time
12 period, average hourly rate of pay, total number of workweeks worked during the Class Period,
13 and the total number of paychecks issued during the relevant time period. The merits of each of
14 these claims will be addressed separately below.

15 29. Based on the data provided, Plaintiff believes that the maximum award the class could
16 have obtained is approximately \$13,231,425. Class Counsel estimated the following maximum
17 exposures: unpaid wage claim at \$754,309, meal period claim at \$1,035,854, rest period claim at
18 \$1,035,854, wage statement claim at \$1,996,000, waiting time penalties at \$6,145,958,
19 reimbursement of business expenses claim at \$187,750, and on PAGA, Plaintiff estimated the
20 maximum exposure at \$2,075,700. Defendant contended, however, that that its policies and
21 practices complied with California law, and that a majority of putative class members signed
22 arbitration agreements with class action waivers which would preclude certification.

23 30. However, taking into account the difficulties of proof, the Defendant's defenses, and
24 other attendant risks, Plaintiff estimates that the total amount of damages, monetary penalties, or
25 other relief that the class could reasonably expect to be awarded at trial is significantly less than
26 the maximum exposure.

27 31. Plaintiff believes they would be awarded approximately \$2.8 million at trial. Class
28 Counsel estimates they would recover the following amount in damages at trial: unpaid wage

claim at \$388,229, meal period claim at \$517,927, rest period claim at \$0, wage statement claim at \$698,600, waiting time penalties at \$1,229,191, reimbursement of business expenses claim at \$0, and on PAGA, Plaintiff estimates they would recover anywhere from \$25,000-50,000.

Minimum Wages and Overtime

32. Plaintiff alleged that Defendant failed to pay Plaintiff and Class Members minimum wages for all hours worked, in violation of minimum wage laws. Plaintiff contended that Class Members were forced to work off the clock in part due to pre-shift off the clock work, post-shift off the clock work, and time spent working through meal periods. Moreover, Plaintiff contended Class Members were paid bonuses and/or commissions each week which were tied directly to the daily or weekly performance of their jobs and Defendant failed to incorporate the non-discretionary, performance based bonuses and/or commissions into the overtime rate calculation.

33. Defendant contended that they paid for all reported hours worked, that Class Members were trained to record all hours worked, and that they paid proper minimum wages. Defendant contended that its no off-the-clock work written policy was, in fact, complied with throughout the class period. Defendant also maintained that the allegations regarding failure to pay wages for hours worked in excess of eight hours in a day did not constitute a basis for violation of Labor Code § 510. Defendant argued that given their written policies and practices, any unrecorded hours were likely subject to individualized inquiry and unlikely to be certified. Defendant also argued Class Members did not work off the clock and their policy states that working off the clock is strictly prohibited. Given the difficulty in certifying this claim, Class Counsel had to apply a significant discount to damages based on this theory.

34. Based on the above detailed facts, Class Counsel estimated Defendant's exposure on unpaid wages claims to be approximately \$754,309 (Plaintiff's expert calculated 5 minutes of unpaid wages due to off the clock work per shift which is \$732,159. Plaintiff's expert also calculated the unpaid wages due to the regular rate of pay issue which is \$22,150). Class Counsel estimates they would be awarded approximately \$366,079 for the off the clock work which is 2.5 of off the clock work per shift and \$22,150 for the regular rate of issue claim because the off the clock claim is subject to many individualized issues and would be difficult to certify (total

1 \$388,229).

2 **Meal Periods and Rest Breaks**

3 35. Plaintiff alleged that Defendant consistently failed to provide timely and uninterrupted
4 meal breaks to Class Members. *See Brinker Restaurant Corp. v. Super. Ct.* (2012) 53 Cal.4th
5 1004, 1040 (“[T]he wage order’s meal period requirement is satisfied if the employee (1) has at
6 least 30 minutes uninterrupted, (2) is free to leave the premises, and (3) is relieved of all duty for
7 the entire period.”).

8 36. Plaintiff argued that Defendant had a common practice and policy of denying
9 compliant meal periods and that Defendant’s meal policies were facially defective. Specifically,
10 Plaintiff and Class Members were regularly required to work through their meal periods, never
11 being provided the opportunity to take uninterrupted thirty (30) minute meal periods in
12 accordance with California law. Moreover, what meal periods Class Members did receive were
13 provided well after their fifth consecutive hour of work. This practice of providing untimely and
14 late meal periods comports with Defendant’s defective meal period policy (requiring Class
15 Members to take their meal periods after their fifth hour of work) uniformly applicable to all
16 Class Members. For each meal period missed, of less than 30 minutes, or taken late for which the
17 employee was not provided a reasonable opportunity to take a complete and timely meal period,
18 an employer must pay the employee an additional one hour of compensation. Labor Code §
19 226.7. This additional hour of compensation is referred to as “premium pay.” To comply with
20 these laws, every employer must keep, for each employee, accurate time records showing when
21 the employee begins and ends each work period and takes his or her meal periods. *See Wage*
22 *Order 1-2001(7)(A)(3)*.

23 37. Defendant disagreed with Class Counsel’s interpretation of the law and facts.
24 Defendant contended that Class Members signed meal period waivers, were given a reasonable
25 opportunity to take their meal periods, and in fact received their meal periods most of the time.
26 Moreover, Defendant contended and the payroll data confirmed that Defendant consistently paid
27 meal period premium payments for alleged meal period violations.

28 38. Class Counsel estimated Defendant’s maximum total exposure on the meal break claim

1 at approximately \$1,035,854 (137,930 workweeks x .5 (1 meal break violation for every 2 weeks)
2 x \$15.02 average hourly pay). Class Counsel estimates they would be awarded approximately
3 \$517,927 for the meal break claim. Class Counsel applied a 50% discount on the meal break
4 claim due to the fact that Defendant's meal break policy was valid. Class Counsel estimates it
5 would recover 50% of the damages on the meal break claim based on its review of the
6 timekeeping and payroll records evidencing that many meal break violations occurred. Therefore,
7 many individualized issues would apply making certification of this claim difficult to achieve.

8 39. The same argument applied to rest breaks. Plaintiff contended that Defendant did not
9 provide Class Members with paid 10-minute rest breaks for every four hours or major fraction
10 thereof. Class Members consistently worked in excess of consecutive four-hour shifts and were
11 entitled to paid rest breaks of not less than ten minutes for each consecutive four hour shift which
12 they were denied. Class Members were required to work through their rest breaks, and through
13 their entire shifts.

14 40. Defendant maintained that they did provide the reasonable opportunity for Class
15 Members to take duty-free rest breaks. Defendant also pointed out that, unlike meal periods, rest
16 breaks need not be recorded and employees need not be allowed to leave the premises. Again,
17 Defendant maintained that the rest periods were implemented through a bell system where all
18 Class Members took their rest breaks at the same time. As these considerations would likely
19 depress the damages *vel non* ultimately awarded, Class Counsel applied significant and
20 appropriate discounts to the rest-break claim.

21 41. Class Counsel estimated Defendant's maximum total exposure on the rest break claim
22 at approximately \$1,035,854 (137,930 workweeks x (1 meal break violation every 2 weeks) x
23 \$15.02 average hourly pay). Class Counsel estimates they would be awarded \$0 for the rest break
24 claim due to the fact that Defendant's rest break policy was valid and rest breaks need not be
25 recorded and can be waived by the employees,. Therefore, many individualized issues would
26 apply making certification of this claim difficult to achieve.

27 **Paystub Violations**

28 42. Plaintiff also contended that Defendant failed to provide Class Members with accurate,

1 itemized wage statements in writing as required by California Labor Code § 226(a). Plaintiff
2 contended the wage statements given to Class Members failed to incorporate non-discretionary
3 bonuses into the regular rate of pay used to calculate and pay overtime compensation and
4 therefore did not provide accurate hourly rates for overtime. Additionally, Plaintiff contended the
5 wage statements given to Class Members failed to accurately account for unpaid wages and
6 overtime due to the off the clock work, miscalculating of proper overtime pay, and premium pay
7 for deficient meal periods and rest breaks which Defendant knew or reasonably should have
8 known were owed to Plaintiff and Class Members. As a direct and proximate cause of
9 Defendant's violation of Labor Code § 226(a), the Class Members suffered injuries, including
10 among other things confusion over whether they received all wages owed them. Pursuant to
11 Labor Code §§ 226(a) and 226(e), employees are entitled to recover the greater of all actual
12 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
13 hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate
14 penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and
15 reasonable attorneys' fees.

16 43. Defendant contended that Plaintiff's claim for further Labor Code § 226(e) penalties
17 would depend in large part on their underlying meal and rest period and wage claims, and thus be
18 subject to the same defenses. Additionally, Defendant argued this claim has little or no value. *See*
19 *e.g., Naranjo v. Spectrum Security Services, Inc.*, 40 Cal. App. 5th 444 (2019), *rev. granted*
20 *Naranjo v. Spectrum Security Services, Inc.*, No. S258966, 2020 Cal. LEXIS 167 (Jan. 2, 2020)
21 ((noting, for example, that the remedy for a meal period/rest break violation is an extra hour of
22 pay, but that does not transform the remedy into a wage for triggering section 203 waiting time
23 penalties; similar analysis applied in rejecting a derivative claim for paystub penalties); *see also*
24 *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308, 1336-1337 (2018) (wage statements
25 that accurately report wages paid to employees do not violate Labor Code § 226, even if it is later
26 determined that employer did not properly pay all wages due). Defendant further contended that
27 meal break violations, even if established, could not be the predicate for a Labor Code § 226
28 wage statement claims. *See, e.g. Culley v. Lincare Inc.* (E.D. Cal. 2017) 236 F.Supp.3d 1184,

1 1195-96; *Soto v. Motel 6 Operating, L.P.* (2016) 4 Cal.App.5th 385, 392-393 (noting wage
2 statement need only document compensation actually received and the hours used to calculate
3 that compensation). Defendant further contended that Labor Code § 226(e) penalties are not
4 automatic. Rather, the employee must show (1) that he or she “suffered injury” from the
5 employer’s failure to provide compliant wage statements, *see Elliot v. Spherion Pacific Work,*
6 *LLC* (2008) 572 F.Supp.2d 1169, 1181 (applying California law) (holding employee was not
7 entitled to penalties because no injury was shown), and (2) Defendant’s noncompliance was
8 “knowing and intentional.” Finally, because the damages for this cause of action are penalties, the
9 statute of limitations only runs from one year prior to the filing of the original complaint. *See Cal.*
10 *Civ. Pro.* § 340.

11 44. Class Counsel estimated Defendant’s maximum total exposure on the section 226 claim
12 at approximately \$1,996,000 (\$50/\$100 x 20,757 number of paystubs from February 11, 2019 to
13 September 8, 2020 with a \$4,000 employee maximum; based on 1,594 employees). Class Counsel
14 estimates they would be awarded approximately \$698,600 for the wage statement penalties. Class
15 Counsel applied a 65% discount on the wage statement penalties due to the fact that Plaintiff
16 would need to show that they suffered an injury and that Defendant’s noncompliance was
17 knowing and intentional. Class Counsel estimates it would recover 35% of the penalties because
18 Plaintiff believes they would prevail on the claim that Class Members are owed unpaid wages due
19 to the regular rate of issue claim. The wage statement penalties not only derive from those claims
20 but Plaintiff also believes they would prevail on the claim that the paystubs were facially
21 defective.

22 **Failure to Pay Final Wages**

23 45. In failing to pay the California Class Members their minimum wages, overtime wages,
24 and premium pay for deficiently provided meal periods and rest breaks, all discussed above,
25 Defendant willfully failed to pay these the California Class Members all wages due and certain at
26 the time of termination or within seventy-two (72) hours of resignation, as required under Labor
27 Code § 203. Additionally, Plaintiff argued Defendant failed to pay her for all wages due and
28 certain within seventy-two (72) hours of resignation in compliance with Labor Code §§ 201-203.

1 Instead, Defendant waited until the next scheduled pay date to give Plaintiff her final check.

2 46. Labor Code § 203 provides that if an employer willfully fails to pay an employee all
3 wages due at termination or within 72 hours of resignation, then that employee's wages shall
4 continue as a penalty until paid for a period of up to thirty (30) days from the date they were due.
5 Because Class Members stopped working for Defendant but again were not paid their full
6 compensation for the reasons discussed above, Class Members did not receive all wages due upon
7 termination of employment.

8 47. Defendant argued that, under Labor Code § 203, employers are only obligated to pay
9 waiting-time penalties if they "willfully" fail to pay wages due and owing at the time of
10 termination or resignation. As Title 8, California Code of Regulations, § 13520 states:

11 A willful failure to pay wages within the meaning of Labor Code Section 203
12 occurs when an employer intentionally fails to pay wages to an employee when
13 those wages are due. However, a good faith dispute that any wages are due will
preclude imposition of waiting time penalties under Section 203.

14 A "good faith dispute" that any wages are due occurs when an employer presents
15 a defense, based in law or fact, which, if successful, would preclude any recovery
16 on the part of the employee. The fact that a defense is ultimately unsuccessful will
17 not preclude a finding that a good faith dispute did exist. Defenses presented
which, under all the circumstances, are unsupported by any evidence, are
unreasonable, or are presented in bad faith, will preclude a finding of a "good
faith dispute."

18 Defendant maintained that because they had viable defenses in both law and fact, especially in
19 light of the *Brinker* holding, that waiting-time penalties could not be awarded and, in any case,
20 such penalties were subject to a three-year limitations period under Labor Code § 203(b).

21 Defendant also argued that there is no liability under Labor Code § 203 for violations of meal and
22 rest break claims alone. *Ling v. P.F. Chang's China Bistro* (2016) 245 Cal.App.4th 1242; *Kirby v.*
23 *Immoos Fire Protection, Inc.* (2016) 53 Cal.4th 1244.

24 48. Class Counsel estimated Defendant's maximum total exposure on the section 203 claim
25 at approximately \$6,145,958 (3,031 terminated employees from February 11, 2017 to September
26 8, 2020 x 30 days x \$15.02 average rate of pay x 4.5 hours in a work day). Class Counsel
27 estimates they would be awarded approximately \$1,229,191 in waiting time penalties. Class
28 Counsel applied a 80% discount on the waiting time penalties due to the fact that Plaintiff would

1 need to show that willfulness can be proved. Class Counsel estimates that it would recover 20%
2 of the penalties because Plaintiff believes it would prevail on the claim that Class Members are
3 owed unpaid wages due to the regular rate of pay issue and waiting time penalties derive from
4 those claims.

5 **Failure to Reimburse for Necessary Business Expenditures**

6 49. Labor Code § 2802 provides that an employer must reimburse employees for all
7 necessary expenditures incurred in the performance of their job duties. Plaintiff worked for
8 Defendant and in the course of performing their job duties, incurred necessary business related
9 expenses, including, cellular telephone expenses, the purchase of supplies, and mileage.
10 Defendant maintained that Plaintiff and the Class members were not required to use their personal
11 cell phones.

12 50. Class Counsel estimated Defendant's maximum total exposure for failing to reimburse
13 business expenses at approximately \$187,750 (\$50 x 3,755 total number of employees). Class
14 Counsel estimates they would be awarded \$0 for the reimbursement claim because Defendant did
15 not require Class Members to use their personal cell phones, purchase supplies, or incur mileage
16 and it is an individualized claim that only applies to Plaintiff and it would be difficult to certify.

17 **PAGA Penalties**

18 51. The Labor Code Private Attorneys General Act, Labor Code § 2699 et seq., allows
19 Plaintiff to obtain civil penalties on behalf of themselves and other Class Members for
20 Defendant's violation of any provision of the Labor Code enumerated under Labor Code §
21 2699.5. Where civil penalties are provided in the statute, those civil penalties are recoverable;
22 where no civil penalties are recoverable, Labor Code § 2699(f) establishes civil penalties of one
23 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and
24 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
25 violation. Pursuant to Labor Code § 2699(i), seventy-five (75) percent of the penalties recovered
26 must be allocated to the Labor and Workforce Development Agency (LWDA), with the
27 remaining twenty-five (25) percent allocated to the affected employees. The limitations period as
28 for all penalties is one year prior to the filing of the complaint.

1 52. The provisions of the Labor Code potentially triggering PAGA penalties in this case
2 include but are not limited to Labor Code §§ 203, 204, 226(a), 226.2, 226.7, 510, 1194, and 2802.
3 Defendant asserted that if PAGA penalties were mandatory, an employer’s PAGA liability would
4 be huge because of the possibility of collecting multiple civil penalties for a single violation, and
5 thus such penalties would almost always dwarf the damages available under the causes of action
6 proper. However, PAGA penalties are not mandatory but permissive. Labor Code § 2699(e)(2)
7 states that “a court may award a lesser amount than the maximum civil penalty amount specified
8 by this part if, based on the facts and circumstances of the particular case, to do otherwise would
9 result in an award that is unjust, arbitrary and oppressive, or confiscatory.” *See, e.g., Lopez v.*
10 *Friant & Assocs., LLC*, 15 Cal. App. 5th 773, 788 (2017), *rev. denied* (2018), (recognizing
11 court’s ability to reduce PAGA penalties). Courts have held that situations similar to the current
12 one (e.g. injuryless violations, technical errors, and substantial compliance) should lead to
13 reductions in penalties. *See Thurman v. Bayshore Transit Management, Inc.*, 203 Cal. App. 4th
14 1112, 1134-1135 (2012) (holding that reduction was justified when employer “attempted to
15 comply with the law”); *Fleming v. Covdien, Inc.*, No. ED CV10-01487 RGK (OPx), 2011 U.S.
16 Dist. LEXIS 154590 at *8-9 (C.D. Cal. August 12, 2011) (reducing PAGA penalties more than
17 80% – from \$2.8 million to \$500,000 – when “employees suffered no injury” employers were
18 “not aware” of the violation and “took prompt steps to correct all violations once notified”).
19 Defendant here maintained that it had a strong argument that it would be unjust to award
20 maximum PAGA penalties.

21 53. Furthermore, PAGA penalties are also derivative of each and every other claim, and
22 Defendant therefore argued the PAGA claims would be subject to the same defenses to the
23 underlying claims. Finally, under *Amaral v. Cintas Corp.* (2008) 163 Cal.App.4th 1157, it can be
24 argued that penalties under PAGA could, at best, be awarded only at the rates obtainable for
25 initial violations under the applicable statutes, because Defendant had never been notified of the
26 alleged violations. *Id.* at 1208-1209. Moreover, Section 2699(e)(1) authorizes the Court to
27 exercise the same discretion as the DLSE whether to award civil penalties. *Amaral* 163 Cal. App.
28 4th 1157, 1211-12. Therefore if Labor Commissioner - on whose behalf Plaintiff is prosecuting

1 this action for civil penalties - would not impose civil penalties in a case like this, the Court may
2 not award civil penalties. Moreover, in *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203
3 Cal.App.4th 1112, 1136, the Court of Appeal affirmed the trial court's reduction of PAGA civil
4 penalties by 30 percent, finding that awarding the full penalties would have been "unjust" because
5 "...a court may award a lesser amount than the maximum civil penalty amount specified by this
6 part if, based on the facts and circumstances of the particular case, to do otherwise would result in
7 an award that is unjust, arbitrary and oppressive, or confiscatory."

8 54. Class Counsel estimated Defendant's maximum total exposure on the PAGA claim at
9 approximately \$2,075,700 (\$100 x 20,757 number of paystubs from February 11, 2019 to
10 September 8, 2020). However, Class Counsel reasonably estimates they would be awarded a
11 nominal amount of approximately \$25,000-\$50,000 for their PAGA claims. Class Counsel applied
12 discounts in light of the countervailing arguments with regard to the other causes of action, and
13 moreover the Court's power to award "a lesser amount than the maximum civil liability." The
14 parties also considered that the purpose of PAGA is to "achieve maximum compliance with state
15 labor laws,". *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal. 4th 348, 379. This makes
16 the settlement's contemplated PAGA payment of \$50,000 appropriate.

17 **Unfair Business Practices**

18 55. Plaintiff pleads this cause of action in order to augment their other causes of action and
19 aid in their prosecution. Business & Professions Code § 17208 extends the statute of limitations
20 on Plaintiff's wage claims, which qualify as unfair business practices, to four years rather than the
21 three years provided by statute.

22 **Other Claims**

23 56. Plaintiff also pled claims for failure provide required paid sick days and failure to
24 provide suitable seating.

25 57. Plaintiff argued that Defendant failed to provide required California paid sick days and
26 further failed to distribute and maintain required documentation concerning how many sick dates
27 were available, in violation of Labor Code §§ 246, 246(a), 246(b)(1), and 247.5. After
28 investigating this claim, Plaintiff determined it was valueless because Class Members were

1 provided with paid sick days and were provided with the required documentation.

2 58. Plaintiff also argued that Defendant failed to provide Class Members suitable seating
3 when the nature of the Class Members' work reasonably permitted sitting. After investigating this
4 claim, Plaintiff determined that it was valueless because Class Members were in fact provided
5 with suitable seating.

6 **Summary**

7 59. The foregoing discussion has sought to explain how the settlement amount is adequate
8 in light of the merits of Plaintiff's case. It has done this by explaining the legal basis for each of
9 Plaintiff's causes of action, summarizing the evidence that Class Counsel gathered in support of
10 those causes of action, and relating Defendant's legal and factual arguments that worked to
11 derogate from the strength of Plaintiff's case.

12 60. Class Counsel had to apply appropriate discounts in light of the facts and law as
13 discussed above. In addition, meal period liability exposure is limited by the fact that not all Class
14 Members worked on the same schedule and under the same supervisors, making the certification
15 of all Class Members across all locations less than a certainty. Thus, this settlement, like most
16 others, was the product of compromise. Because of these and other risks, a recovery of
17 \$700,000.00 under the Settlement Agreement is an excellent result. Under the Settlement, each of
18 the approximately 3,755 Class Members will receive on average \$100 after expenses.

19 **THE RISK, EXPENSE, AND LIKELY DURATION OF FURTHER LITIGATION,**

20 **AS WELL AS THE RISK OF MAINTAINING CLASS ACTION**

21 **STATUS THROUGH TRIAL**

22 61. The next *Clark/Kullar* factors recognize that settlements take into consideration the
23 risks and expenses posed by further litigation and, in the class-action context, the risk of non-
24 certification. Consequently, it is proper that trial courts should keep these considerations in mind
25 when judging the adequacy of class action settlements.

26 62. Further litigation of this case posed real risks for a number of reasons. First, there were
27 the risks of unfavorable rulings on the merits of the various indeterminate legal issues outlined in
28 the previous section. In that section, it was observed that almost every cause of action was subject

1 to some unique indeterminacy of its own, and that the derivative causes of action were thus
2 subject to a double indeterminacy, both their own and those of the causes of action on which they
3 were based.

4 63. The parties disputed the effect of these and other issues on class certification and
5 decertification. Class Counsel maintained that there were several legal and factual questions at
6 issue in the case that could best be decided on a class wide basis. Class Counsel contended that
7 the same policies and practices applied to all Class Members and therefore common questions
8 obtained and were likely to predominate over individual inquiries. Defendant disputed these
9 contentions and insisted that the *Brinker* decision called into question the certifiability of cases
10 such as this one. Defendant also argued that its policies were compliant with the law, while
11 Plaintiff disputed that the policies were lawful, and argued the lawfulness of such policies would
12 give rise to common questions amenable to certification. Thus the parties had set positions on the
13 propriety of certifiability and liability that did not admit of an easy resolution.

14 64. Finally, it is always preferable to reach a relatively early resolution of a dispute
15 because, in addition to what has already been said, such resolutions save time and money that
16 would otherwise go to litigation. In light of the risk and expense of the lawsuit proceeding to trial
17 there was a need to resolve this matter soon than later. Most cases settle sooner or later. If this
18 case settled after further litigation, the settlement amount would have taken into account the
19 additional costs incurred, and there might have been less available for Class Members after all
20 was said and done. This is not just an abstract contention. The parties were moving into the phase
21 of this litigation where they would have had to depose a number of people such as managers,
22 supervisors, and employees in order to establish liability for trial. Discovery disputes would have
23 been in the offing. The parties were also aware that a class action trial would be a complicated
24 and expensive proceeding, and then there was the likelihood of a long, drawn-out appeals process.
25 In contrast, the settlement provides real benefits for Class Members in the immediate future. The
26 benefits are not insignificant for anyone, especially given the current economic climate.
27 Consequently, the risk and expense of further litigation outweighed any benefit that might have
28 been gained otherwise.

NOTICE TO AND REACTION OF CLASS MEMBERS
TO THE PROPOSED SETTLEMENT

65. It is premature to address this factor now, at the preliminary approval stage; however, some observations are in order. First, the notification procedure set out in the Settlement Agreement provides the greatest likelihood that each and every Class Member will receive the Notice of Class Action Settlement, Opt-out Form, and Dispute Form (“Class Notice” or “Notice”), attached to the Settlement Agreement as Exhibit A. Under the Settlement Agreement, the Settlement Administrator will send the Notice to each Class Member via First Class U.S. mail. (Exh. 1, §46). Before mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. (Exh. 1, §46) If a new address is obtained by way of a returned Notice, then the Settlement Administrator will promptly forward the original Notice to the updated address via first-class regular U.S. mail, indicating on the original packet the date of such re-mailing. (Exh. 1, §46) Thus, most, if not all, Class Members will likely receive the Notice.

66. The Class Notice itself fully apprises Class Members of the nature of the lawsuit, the claims involved, the terms of the settlement, and their options thereunder. They provide for a specific procedure to seek exclusion from the Class, and for lodging objections to the settlement. The efforts taken to ensure that Class Members receive the Notice and are well informed about the settlement augur a favorable response rate.

67. All Class Members will benefit because Defendant who has been sued is generally more likely to comply with the law in the future. If a Class Member disputes the number of workweeks stated for that Class Member in the Class Notice, the Class Member must ask the Settlement Administrator to resolve the matter by submitting in writing under penalty of perjury the workweeks that the Class Member claims to have actually worked for Defendant during the Class Period. (Exh. 1, §47). Defendant’s records shall have a rebuttable presumption of correctness. After consultation with Class Counsel and Defendant’s Counsel, the Class Action Administrator will make a determination of the Class Member’s total workweeks during the applicable period. *Id.*

1 **CONCLUSION OF THE CLARK/KULLAR ANALYSIS**

2 68. The foregoing discussion establishes the fairness of the class-action settlement in the
3 instant case. It has done this by analyzing the settlement in light of the appellate decisions in
4 *Clark* and *Kullar*. This analysis has concluded that the settlement is fair, reasonable, and
5 adequate. Class Counsel conducted a thorough investigation of the subject wage-and-hour
6 practices and engaged in non-collusive, arm's-length negotiations in order to reach a settlement.
7 Defendant has agreed to pay fair value to settle Plaintiff's claims given the existence of legal
8 uncertainty, particularly with regard to Plaintiff's claim for failure to provide proper meal periods.
9 From Class Counsel's substantial experience with wage-and-hour class action lawsuits Class
10 Counsel believe that this case could not have settled on better terms under the circumstances.
11 Request therefore is made that the settlement be granted preliminary approval so that those
12 persons whom it was intended to benefit shall be afforded the opportunity to determine its
13 adequacy.

14 **REQUEST FOR ATTORNEYS' FEES**

15 69. Under the Settlement, Class Counsel also requests, without opposition from Defendant,
16 an award of Attorneys Fees and Costs consisting of: (1) no more than Two Hundred Thirty Three
17 Thousand Three Hundred Thirty Three Dollars and Thirty Three Cents (\$233,333.33) in
18 Attorneys; Fees and (2) Seventeen Thousand Dollars and Zero Cents (\$17,000.00) for
19 reimbursement of Class Counsel's costs. (Exh. 1, §43). This request is fair, reasonable, and
20 adequate to compensate Class Counsel for the substantial work they have put into this case and,
21 moreover, the risk they assumed by taking it in the first place. The attorneys' fees award is
22 intended to reimburse Class Counsel for all uncompensated work that they have already done and
23 for all the work they will continue to do in carrying out and overseeing the notification to Class
24 Members, communicating with Class Members regarding their claims, and assisting in the
25 administration of the settlement if it is preliminarily approved.

26 70. My firm took this case on a contingent-fee basis against a business represented by a
27 reputable defense firm. When we take contingent cases, we must pay careful attention to the
28 economics involved or one bad case can destroy years of work. Accordingly, when we take

1 contingency cases, we anticipate that we shall, if successful, receive a fee that exceeds our normal
2 hourly rate; otherwise, the risk is often too great to bear. Even when we work long hours, the
3 number of hours in a day is limited. Because of this, when we take on one particular matter, we
4 are unable to take on other matters. When Class Counsel became involved in this case, we
5 realized the time commitment that it would entail and we were forced to turn down matters that
6 we otherwise should have been able to handle. In sum, this case claimed a significant portion of
7 Class Counsel's time and attention throughout its pendency.

8 71. The requested fee is reasonable for the services provided to Class Members and for the
9 benefits they are to receive. Indeed, even with a modest multiplier under the lodestar theory, *see*
10 *Bihun v. AT&T Information System* (1993) 13 Cal.App.4th 976, 997, Class Counsel's fees would
11 still be justified. Here, lodestar will substantially exceed the requested fees. Class Counsel will
12 more fully brief the Court on its lodestar in the motion for final approval.

13 **ENHANCEMENT TO PLAINTIFF AS THE CLASS REPRESENTATIVE**

14 72. Plaintiff herein is entitled to reasonable service payment for her efforts and initiative in
15 bringing and helping to prosecute this action. Plaintiff spent a considerable amount of time better
16 apprising themselves of her rights, deciding whether remedial action should be taken, how it
17 should be taken, searching for attorneys, and finally contacting Class Counsel, who spent many
18 hours with Plaintiff discussing the case and the law. In the end, Plaintiff decided to vindicate not
19 only her own rights but also those of her co-workers by filing a class action lawsuit.

20 73. The courage it took to stand up to Defendant by filing and litigating this action in this
21 way should not be underestimated. By suing Defendant, Plaintiff increased her risk of retaliation
22 by prospective employers. Plaintiff's lawsuit has now required Defendant to expend considerable
23 resources, and Plaintiff justifiably fear the fact that she served as class representatives in a wage
24 and hour class action will not be lost on a prospective employer who has to choose between an
25 applicant who has never sued a prior employer and one who has. Plaintiff contend this risk is
26 particularly real in the information age, where employers can, more easily than ever, perform
27 background checks of prospective employees, sometimes with the stroke of a key. It is common
28 for employers to screen employee candidates to determine whether she have ever filed suit, and

1 employee candidates who might be branded “litigious” are likely to be screened out of the
2 process. In fact, an entire industry has developed for providing employers with background
3 information on employee candidates.

4 74. But Plaintiff did not allow her fears of the potential repercussions of being class
5 representatives to deter her from acting for the benefit of Class Members. To the contrary,
6 Plaintiff has been intimately involved in this case since its inception. She has devoted a
7 substantial amount of time to helping Class Counsel effectively develop and prosecute this action
8 at every stage of the litigation. Both before and after the filing of this lawsuit, Plaintiff conferred
9 with Class Counsel on numerous occasions to discuss every aspect of her case. Plaintiff provided
10 Class Counsel with information about Defendant and about the industry generally, reviewed
11 documents, identified witnesses, consulted Class Counsel throughout the litigation repeatedly and
12 at length, participated in the mediation process, monitored the progress of the litigation with Class
13 Counsel, and reviewed and signed the Settlement Agreement.

14 75. Plaintiff has spent a significant amount of time with Class Counsel detailing her
15 knowledge of Defendant’s practices and helping Class Counsel with the prosecution of this
16 action. She has diligently, adequately, and fairly represented Class Members, and have not placed
17 her interests above any member of the putative class. The payment to Plaintiff is intended to
18 recognize her time and effort on behalf of the Class. The amount requested is fair and appropriate
19 based on her contribution and involvement. For example, Plaintiff instigated the lawsuit by
20 bringing these violations to the attention of Class Counsel. She spent several hours answering
21 questions and providing information to Class Counsel throughout the pendency of this action. She
22 identified witnesses, explained to Class Counsel day to day business practices of Defendant with
23 regard to work schedules and meal breaks, etc. The parties are in agreement that Plaintiff is
24 entitled to an enhancement for her time and effort in this matter. This sort of payment to a class
25 representative has been a common feature of settlements negotiated by Class Counsel and has
26 been routinely approved by trial courts.

27 76. In light of the foregoing, Class Counsel believes that the Class Representative
28 Enhancement Payment in the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00) to

1 the Class Representative is fair and reasonable. This amount is a far cry from the \$50,000 of
2 enhancement awards to the two named plaintiffs approved by the trial court in *Clark*. See *Clark*,
3 *supra*, 175 Cal.App.4th at 807. Although Class Counsel appreciate that the Court has a duty to
4 ensure that class representatives are not overcompensated at the expense of the class, modest
5 incentive awards in employment class actions, such as the one here, are necessary not only to
6 compensate class representatives for the time she spent in the case, but also, and more
7 importantly, to encourage aggrieved employees to challenge questionable employment practices
8 notwithstanding the very real consequences she may face.

9 **CRITERIA SATISFIED FOR CERTIFICATION OF SETTLEMENT CLASS**

10 77. The proposed Classes satisfy the criteria for certification of a settlement class under
11 California law, as embodied in California Code of Civil Procedure § 382. Defendant has agreed to
12 the certification of the class for settlement purposes. In general, courts may take a proposed
13 settlement into account in evaluating the propriety of class certification. See *Dunk v. Ford Motor*
14 *Co.* (1996) 48 Cal.App.4th 1794, 1807 fn. 19. Indeed, a “lesser standard” of scrutiny applies in
15 certifying classes for settlement purposes. *Ibid.* Therefore the Court should take into
16 consideration the fact that the parties have settled their claims and stipulated to certification for
17 settlement purposes when assessing typicality and adequacy.

18 a. Numerosity. The putative classes are so numerous that joinder of all members is
19 impractical. Class Members are “all non-exempt employees who worked for Torrid LLC at any of
20 its retail store locations in the State of California at any time from February 11, 2016 through
21 December 31, 2020.” There are approximately 3,755 persons answering to this definition. Thus,
22 there are a sufficient number of Class Members to warrant certifying this as a class action for
23 settlement purposes.

24 b. Ascertainability. The putative classes are defined in a manner that is precise,
25 objective, and ascertainable. The Class Members have already been identified by reference to
26 Defendant’s payroll and personnel records.

27 c. Typicality. A class representative’s claims are typical when they arise from the
28 same event, practice, or course of conduct that gives rise to the claims of other putative class

1 members, and if their claims rest on the same legal theories. The class representative's claims
2 must be "typical" but not necessarily identical to the claims of other class members. It is
3 sufficient that the representative is similarly situated so that he or she will have the motive to
4 litigate on behalf of all Class Members. *Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I.*
5 *Custom Kitchens v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 ("[I]t has never been
6 the law in California that the class representative must have identical interests with the class
7 members."). Thus, it is not necessary that the class representative should have personally incurred
8 all of the damages suffered by each of the other class members. *Wershba v. Apple Computer, Inc.*
9 (2001) 91 Cal.App.4th 224, 228.

10 Plaintiff's claims are typical of Class Members' claims because they arose from the same
11 factual basis and are based on the same legal theories. Plaintiff was employed by Defendant
12 during the Class Period subject to the allegedly unlawful meal and rest break policies and pay
13 practices at issue in this litigation. Accordingly, Plaintiff is a member of the class. The central
14 issues of this litigation (whether Defendant failed to pay all wages, whether Defendant failed to
15 provide meal and rest periods etc.), which would arise if this were an individual action brought by
16 Plaintiff, apply to the other Class Members as well, and the answer to these questions would
17 determine Defendant's liability to the entire putative class. Thus, Plaintiff's claims are typical of
18 the claims of the putative class. Accordingly, the typicality requirement is satisfied.

19 d. Adequacy. A class representative must possess the same interest and suffer the
20 same injury as the class members. "To assure 'adequate' representation, the class representative's
21 personal claim must not be inconsistent with the claims of other members of the class." *J.P.*
22 *Morgan & Co., Inc. v. Sup.Ct. (Heliotrope General, Inc.)* (2003) 113 Cal.App.4th 195, 212. Thus,
23 the adequacy requirement is satisfied when the class representative's interests are not antagonistic
24 to those of the class. *McGhee v. Crocker-Citizens Nat. Bank* (1976) 60 Cal.App.3d 442, 451.

25 Plaintiff does not have any conflicts with the class and in fact their interests are aligned
26 with those of the class. Because Plaintiff's claims are identical to those that would be asserted by
27 the unnamed Class Members were they before the Court, Plaintiff has every interest in zealously
28 representing the unnamed class members. Plaintiff has not shrunk from this responsibility.

1 Indeed, Plaintiff has devoted a substantial amount of time and energy to litigating this action and
2 effecting a settlement. Furthermore, as detailed above, Class Counsel are experienced in wage-
3 and-hour litigation, especially class actions, and have zealously represented the interests of the
4 class in litigating this case. *See infra* ¶¶3-9. Accordingly, the adequacy requirement is satisfied.

5 e. Commonality. Common questions of law or fact in this case predominate over
6 individual questions. This action involves, *inter alia*, a determination about Defendant's alleged
7 failure to provide meal and rest periods, failure to pay minimum wages, failure to pay all wages
8 due to allegedly common and unlawful policies, failure to pay final wages when required, failure
9 to provide accurate wage statements, failure to maintain accurate records, failure to reimburse for
10 necessary business expenditures, and largely derivative claims under the Business & Professions
11 Code and PAGA. Plaintiff contends these practices, including an alleged practice of failing to
12 provide complete meal periods, related meal period policies applicable to the class, and the
13 alleged failure to provide corresponding premium payments, that affected class members in the
14 same way. All class members were employed during the Class Period. Therefore, the operative
15 complaint delineates a common course of conduct applicable to all Class Members. Therefore,
16 based on Class Counsel's investigation, the review of the discovery produced by Defendant, and
17 their discussions with Plaintiff, Plaintiff contends the evidence supports their position that the
18 employment practices and policies of Defendant's business were consistent and uniform.

19 f. Predominance. Individualized issues do not predominate over the issues of law and
20 fact that are common to the class as a whole. The principal issues of controversy are whether
21 Class Members were paid for all hours worked and provided lawful meal breaks. As explained,
22 *supra*, there are common issues of law and fact given that Plaintiff and all Class Members were
23 subjected to the same policies and pay practices during the relevant time period. Plaintiff and
24 Class Members seek meal and rest break premiums, unpaid wages and overtime, reimbursement
25 for business expenditures, and penalties for work performed as non-exempt employees for
26 Defendant. These issues are suitable for common adjudication because all Class Members were
27 subject to the same employment policies and Plaintiff contends the practices applied uniformly to
28 all Class Members.

1 g. Superiority. Class resolution is superior to other available methods for the fair and
2 efficient adjudication of the controversy. There is little interest or incentive for Class Members to
3 individually control the prosecution of separate actions. Although the injury resulting from
4 Defendant's policies and practices are real and significant, the cost of individually litigating each
5 such case against Defendant would easily exceed the value of any relief that could be obtained by
6 any one Class Member individually. If Class Members are forced to litigate their claims
7 individually this would result in about 3,755 individual actions against Defendant. Here, the
8 alternative methods of resolution are individual suits for relatively small amounts. Hence, an
9 individual suit would prove uneconomical for potential plaintiffs because litigation costs would
10 dwarf a potential recovery.

11 h. Except for Plaintiff's case before this Court, Plaintiff is not aware of one other
12 action against Defendant asserting similar claims as here. Furthermore, San Diego County is a
13 compelling forum for this action given that Defendant's location is in San Diego County and
14 numerous Class Members work in this County.

15 i. There are no serious manageability difficulties presented by preliminarily
16 approving the case for settlement purposes. As this case will not go to trial if finally approved, all
17 that would remain is settlement administration and responding to possible objectors.

18 78. On March 9, 2021, Plaintiff uploaded the Class and PAGA Action Settlement
19 Agreement and Stipulation and the Memorandum of Points and Authorities in Support of
20 Plaintiff's Motion for an Order Preliminarily Approving the Class Action Settlement, Approving
21 Notice of Class Action Settlement, and Setting Hearing for Final Approval. A true and correct
22 copy of the confirmatory email from the LWDA is attached hereto as **Exhibit 4**.

23 I declare under penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct.

25 Executed this 9th day of March, at Glendale, California.

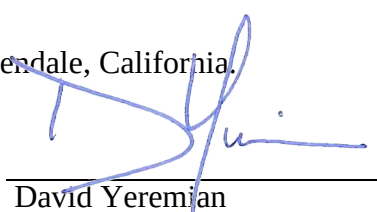
26
27 
28 _____
David Yeremian

EXHIBIT 1

1 RUTAN & TUCKER, LLP
Maria Z. Stearns (State Bar No. 230649)
2 mstearns@rutan.com
Kenneth J. Zielinski (State Bar No. 258555)
3 kzielinski@rutan.com
611 Anton Boulevard, Suite 1400
4 Costa Mesa, California 92626-1931
Telephone: 714-641-5100
5 Facsimile: 714-546-9035

6 Attorneys for Defendant
TORRID LLC

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN DIEGO

11 ROSALINDA MARCHBANKS-POWELL, an
individual on behalf of herself and all others
12 similarly situated,

13 Plaintiff,

14 vs.

15 TORRID ADMINISTRATION, INC., a
California corporation; TORRID
16 MERCHANDISING, INC., a California
corporation; TORRID PARENT, INC., a
17 Delaware corporation; TORRID LLC, a
California limited liability company; HOT
18 TOPIC ADMINISTRATION, INC., a
California corporation; HOT TOPIC
19 MERCHANDISING, INC., a California
corporation; HOT TOPIC TENNESSEE, INC.,
20 a California corporation; HOT TOPIC, INC., a
California corporation; and DOES 1 through 50,
21 inclusive,

22 Defendants.

Case No. 37-2020-00008179-CU-OE-NC

ASSIGNED FOR ALL PURPOSES TO
HON. TIMOTHY M. CASSERLY, DEPT. N-31

**CLASS AND PAGA ACTION
SETTLEMENT AGREEMENT AND
STIPULATION**

Date Action Filed: February 11, 2020
Trial Date: None Set

23
24 This Class and PAGA Action Settlement Agreement and Stipulation (the “Agreement” or
25 “Settlement”) is entered into by and between Plaintiff Rosalinda Marchbanks-Powell, on the one
26 hand, and Defendant Torrid LLC, on the other hand, in full settlement of the action styled
27 *Marchbanks-Powell v. Torrid Administration, Inc. et al.*, San Diego Superior Court, Case No. 37-
28 2020-00008179-CU-OE-NC.

DEFINITIONS

1. Action. Action means the lawsuit entitled *Marchbanks-Powell v. Torrid Administration, Inc. et al.*, San Diego Superior Court, Case No. 37-2020-00008179-CU-OE-NC.

2. Aggrieved Employees. Aggrieved Employees means Class Members who worked from March 23, 2019 through December 31, 2020.

3. Class Counsel. Class Counsel means David Yeremian & Associates, Inc. and Davtyan Law Firm, Inc.

4. Class or Class Members. Class or Class Members means anyone who was employed as a non-exempt employee by Torrid LLC at any of its retail store locations in the State of California at any time during the Class Period.

5. Class Notice. Class Notice means the Notice of Class Action Settlement attached as **Exhibit A** to this Agreement, or a substantially similar notice approved by the Court.

6. Class Period. Class Period means the period beginning on February 11, 2016 and extending through December 31, 2020.

7. Class Settlement Payment. Class Settlement Payment means the individual settlement payment paid to a Participating Class Member based on the Participating Class Member's *pro rata* share of the Net Settlement Amount.

8. Defendant. Defendant means Torrid LLC.

9. Effective Date. Effective Date of this Agreement means the date when all of the conditions set forth in Section 56 have occurred.

10. Final Hearing Date. Final Hearing Date means the date set by the Court for the hearing on final approval of the class action settlement embodied in this Agreement.

11. Final Order. Final Order means the proposed order granting final approval of the Parties' settlement, in a form substantially similar to the Final Order attached as **Exhibit B** to this Agreement.

12. Final Judgment. Final Judgment means the proposed judgment in a form substantially similar to the Final Judgment attached as **Exhibit C** to this Agreement.

13. Gross Settlement Amount. Gross Settlement Amount means the total settlement

1 payment Defendant agreed to make under this Agreement.

2 14. LWDA Payment. LWDA Payment means the amount of \$37,500.00, which the
3 Parties have agreed to pay the California Labor & Workforce Development Agency (“LWDA”) out
4 of the Gross Settlement Amount in connection with settlement of the PAGA Claim.

5 15. Named Plaintiff. Named Plaintiff means Rosalinda Marchbanks-Powell.

6 16. Net Settlement Amount. Net Settlement Amount means the settlement amount to be
7 distributed to Participating Class Members after payment of Class Counsel’s attorneys’ fees and
8 costs, any enhancement payment to Named Plaintiff, the PAGA Amount, and settlement
9 administration costs.

10 17. Notice Period. Notice Period means the time period commencing on the date the
11 Class Notice is mailed to Class Members and ending 60 days thereafter.

12 18. PAGA Aggrieved Employee Payment. PAGA Aggrieved Employee Payment means
13 the amount of \$12,500.00, which the Parties have agreed to pay the Aggrieved Employees out of
14 the Gross Settlement Amount in connection with the settlement of the PAGA Claim.

15 19. PAGA Amount. PAGA Amount means the payment of \$50,000.00 to resolve the
16 claim for civil penalties under PAGA. The PAGA Amount is paid from the Gross Settlement
17 Amount and is comprised of the LWDA Payment and PAGA Aggrieved Employee Payment.

18 20. PAGA Claim. PAGA Claim means the claim for civil penalties under the California
19 Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code sections 2698 *et seq.*, “PAGA”)
20 alleged in the Action.

21 21. PAGA Period. PAGA Period means the period beginning on March 23, 2019 and
22 extending through December 31, 2020.

23 22. PAGA Settlement Payment. PAGA Settlement Payment means the individual
24 settlement payment paid to an Aggrieved Employee based on the Aggrieved Employee’s *pro rata*
25 share of the PAGA Aggrieved Employee Payment.

26 23. Parties. Parties means the Named Plaintiff, individually and on behalf of all Class
27 Members, and Defendant.

28 24. Participating Class Member. Participating Class Member means each Class Member

1 who has not timely opted out of this Settlement pursuant to Section 48.

2 25. Preliminary Approval Order. Preliminary Approval Order means an order from the
3 Court preliminarily approving this Settlement. A copy of a proposed Preliminary Approval Order
4 is attached as **Exhibit D** to this Agreement.

5 26. Released Parties. Released Parties means and includes Torrid LLC and its past,
6 present, and future predecessors, successors, assigns, shareholders, members, owners, officers,
7 directors, employees, managers, partners, agents, staffing companies, attorneys, representatives,
8 insurers, and administrators.

9 27. Settled Claims or Released Claims. Settled Claims or Released Claims means any
10 and all claims, known or unknown, contingent or accrued, against Defendant and the Released
11 Parties that have been, or could have been, asserted against Defendant and the Released Parties in
12 the Action based on the facts alleged in the Action that arose during the Class Period. Without
13 limiting the foregoing, and in addition to the foregoing, the Settled Claims include claims for: failure
14 to pay minimum wages including, but not limited to pre and post shift work; failure to pay wages
15 and overtime; failure to provide meal periods or premium payments; failure to provide rest breaks
16 or premium payments; failure to provide accurate, itemized wage statements; failure to timely pay
17 wages during employment or at the time of termination; failure to maintain payroll records; failure
18 to reimburse necessary business expenses; failure to provide paid sick leave; failure to provide
19 suitable seating; alleged violations of Labor Code §§ 201-204, 210, 218.6, 226, 226.3, 226.7, 246,
20 247.5, 248.5, 510, 512, 558, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1199,
21 and 2802, the applicable California Wage Orders and California Business and Professions Code
22 Section 17200 *et seq.*; and relief under California Labor Code Section 2698 *et seq.*

23 28. Settlement Administrator. Settlement Administrator shall mean CPT Group, Inc., a
24 neutral third-party administrator chosen by the Parties, subject to approval by the Court.

25 29. Settlement Hearing. Settlement Hearing means the hearing on the Final Hearing
26 Date at which the Court will determine whether to fully and finally approve the fairness and
27 reasonableness of this Agreement.

RECITALS

30. On February 11, 2020, plaintiff Rosalinda Marchbanks-Powell filed a class action complaint against Torrid Administration, Inc.; Torrid Merchandising, Inc.; Torrid Parent, Inc.; Torrid LLC; Hot Topic Administration, Inc.; Hot Topic Merchandising, Inc.; Hot Topic Tennessee, Inc.; and Hot Topic, Inc. in San Diego County Superior Court, Case No. 37-2020-00008179-CU-OE-NC, alleging the following claims: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal Period Liability Under Labor Code § 226.7; (4) Rest-Break Liability Under Labor Code § 226.7; (5) Violation of Labor Code § 226(a); (6) Violation of Labor Code § 203; (7) Violation of Labor Code § 204; (8) Failure to Keep Required Payroll Records under Labor Code §§ 1174 and 1174.5; (9) Failure to Reimburse Necessary Business Expenses § 2802; (10) Violation of Labor Code § 246; (11) Violation of Business & Professions Code § 17200 *et seq.*

31. On February 10, 2020, Marchbanks-Powell submitted a PAGA Notice to the LWDA. On May 26, 2020, Marchbanks-Powell filed a First Amended Complaint adding a PAGA claim.

32. On July 9, 2020, Marchbanks-Powell filed a Request for Dismissal as to Defendants Torrid Administration, Inc., Torrid Merchandising, Inc., Torrid Parent, Inc., Hot Topic Administration, Inc., Hot Topic Merchandising, Inc., Hot Topic Tennessee, Inc., and Hot Topic, Inc. On July 15, 2020, the Court dismissed, without prejudice, Defendants Torrid Administration, Inc., Torrid Merchandising, Inc., Torrid Parent, Inc., Hot Topic Administration, Inc., Hot Topic Merchandising, Inc., Hot Topic Tennessee, Inc., and Hot Topic, Inc. for the reasons set forth in Marchbanks-Powell's Request for Dismissal.

33. On August 20, 2020, Defendant filed an Answer to the First Amended Complaint denying all allegations.

34. On October 8, 2020, Marchbanks-Powell submitted an Amended PAGA Notice to the LWDA. On October 28, 2020, Marchbanks-Powell filed a Second Amended Complaint adding a claim for failure to provide suitable seating.

35. Defendant denies that it engaged in any misconduct in connection with the wage-and-hour practices associated with the Class Members. Defendant further denies that it has any

1 liability or engaged in wrongdoing of any kind associated with the claims alleged in the Action.
2 Defendant contends that it has complied with both federal and state wage-and-hour laws, and all
3 other laws regulating its relationship with the Class Members, including the Named Plaintiff.

4 36. During a mediation with mediator Hon. Carl J. West (Ret.), the Parties agreed to a
5 settlement of the Action, subject to Court approval. The Parties further agreed to enter into this
6 Agreement to memorialize their settlement of the Action.

7 37. Class Counsel has investigated the facts relating to the Action. Class Counsel are of
8 the opinion that the settlement documented by this Agreement is fair, reasonable, and adequate, and
9 in the best interest of the Class in light of all known facts and circumstances. While Defendant
10 specifically denies any liability in the Action, Defendant has agreed to enter into this Settlement to
11 avoid the costs associated with defending the Action.

12 **TERMS AND CONDITIONS**

13 NOW, THEREFORE, in consideration of the recitals listed above and the promises and
14 warranties set forth below, and intending to be legally bound and acknowledging the sufficiency of
15 the consideration and undertakings set forth below, Named Plaintiff, individually and on behalf of
16 the Class Members, and Defendant agree that the Action shall be and are finally and fully
17 compromised and settled on the following terms and conditions:

18 38. Non-Admission Of Liability. The Parties enter into this Agreement to resolve the
19 dispute that has arisen between them and to avoid the burden, expense and risk of continued
20 litigation. In entering into this Agreement, Defendant does not admit, and specifically denies, that
21 it has violated any federal, state, or local law; violated any regulations or guidelines promulgated
22 pursuant to any statute or any other applicable laws, regulations or legal requirements; breached any
23 contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged
24 in any other unlawful conduct with respect to the Class. Neither this Agreement, nor any of its terms
25 or provisions, nor any of the negotiations connected with it, shall be construed as an admission or
26 concession by Defendant of any such violations or failures to comply with any applicable law.
27 Except as necessary in a proceeding to enforce the terms of this Agreement, this Agreement and its
28 terms and provisions shall not be offered or received as evidence in any action or proceeding to

1 establish any liability or admission on the part of Defendant or to establish the existence of any
2 condition constituting a violation of, or a non-compliance with, federal, state, local or other
3 applicable law.

4 39. Conditional Nature Of Class Settlement. For settlement purposes *only*, the Parties
5 agree that (a) a class may be certified in the Action pursuant to California Code of Civil Procedure
6 Section 382, and (b) the Action may proceed as PAGA representative action.

7 (a) The Parties intend their Settlement to be contingent upon the preliminary and
8 final approval of each and every term of this Agreement, without material modification. If the Court
9 does not so approve this Agreement, the Parties intend this Agreement to become null and void, and
10 unenforceable, in which event the Settlement terms set forth in this Agreement, including any
11 modifications made with the consent of the Parties, and any action taken or to be taken in connection
12 with this Agreement shall be terminated and shall become null and void and have no further force
13 or effect, and the class certified pursuant to this Agreement will be decertified for all purposes.

14 (b) In the event that the Court does not grant preliminary or final approval of the
15 Parties' Settlement, or in the event that this Agreement shall terminate or the Settlement embodied
16 in this Agreement does not become effective for any reason, the Agreement and all negotiations,
17 court orders and proceedings relating the Agreement shall be without prejudice to the rights of the
18 Named Plaintiff, Class Members and Defendant, each of whom shall be restored to their respective
19 positions existing prior to the execution of this Agreement, and evidence relating to the Agreement
20 and all negotiations shall not be discoverable or admissible in the Action or any other litigation.
21 Defendant does not waive, and instead expressly reserves, its right to challenge the propriety of class
22 certification for any purpose should the Court not grant preliminary or final approval of the Parties'
23 Settlement.

24 (c) If the Court grants the Preliminary Approval Order, but does not grant final
25 approval of the Settlement, then the Preliminary Approval Order will be vacated in its entirety. In
26 addition, if the Court does not grant final approval of the Settlement, neither this Agreement, the
27 Preliminary Approval Order, nor any other document in any way relating to the foregoing, shall be
28 relied upon, referred to, or used in any way for class certification proceedings or representative

1 action proceedings in the Action or any other action. Defendant does not waive, and instead
2 expressly reserves, its right to challenge the propriety of class certification for any purpose should
3 the Court not grant final approval of the Settlement.

4 40. Participating Class Member Release Of Claims. As of the occurrence of the
5 Effective Date, the Named Plaintiff and all Participating Class Members do and shall be deemed to
6 have fully, finally, and forever released, settled, compromised, relinquished and discharged any and
7 all of the Released Parties of and from any and all Settled Claims.

8 (a) This release by the Named Plaintiff and each Participating Class Member is
9 intended to settle any and all of the Settled Claims, whether known or unknown, that any of them
10 may have against the Released Parties during the Class Period.

11 (b) As of the occurrence of the Effective Date, the Named Plaintiff and the
12 Participating Class Members shall be permanently enjoined and forever barred from prosecuting
13 any and all Settled Claims released pursuant to this Section 40 against the Released Parties. Thus,
14 subject to and in accordance with this Agreement, even if the Named Plaintiff or any Participating
15 Class Member may hereafter discover facts in addition to or different from those they now know or
16 believe to be true with respect to the subject matter of the Released Claims, they shall be deemed to
17 have, and by operation of the Final Judgment shall have, fully, finally, and forever settled and
18 released any and all Settled Claims, whether known or unknown, suspected or unsuspected,
19 contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore
20 have existed upon any theory of law or equity now existing or coming into existence in the future,
21 including, but not limited to, conduct that is negligent, intentional, with or without malice, or a
22 breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such
23 different or additional facts.

24 (c) The Parties agree for settlement purposes only that, because the Class
25 Members are so numerous, it is impossible or impracticable to have each Class Member execute
26 this Agreement. Accordingly, the Class Notice will advise all Class Members of the binding nature
27 of the release and such notice will have the same force and effect as if the Agreement were executed
28 by each Class Member.

1 (d) The Named Plaintiff and Class Counsel represent, covenant, and warrant that
2 they have not directly or indirectly assigned, transferred, encumbered or purported to assign,
3 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
4 cause of action, or rights released and discharged by this Agreement, except as set forth in this
5 Agreement.

6 41. Aggrieved Employees Release of PAGA Claim: In exchange for the PAGA Amount
7 recited in this Agreement, Named Plaintiff, as the representative for the State of California and all
8 Aggrieved Employees, and on behalf of their current, former, and future heirs, executors,
9 administrators, attorneys, agents, and assigns will forever completely release and discharge the
10 Released Parties from the PAGA Claim. The Aggrieved Employees and the State of California are
11 deemed by operation of the Final Order and Final Judgment to have agreed not to sue or otherwise
12 make a claim against any of the Released Parties for the PAGA Claim.

13 42. Full Release By Named Plaintiff. As of the occurrence of the Effective Date, the
14 Named Plaintiff fully releases and discharges Defendant and the other Released Parties from the
15 Released Claims and any other claims that the Named Plaintiff ever had against the Released Parties
16 through the date of execution of the Agreement. Without limiting the generality of the foregoing,
17 Named Plaintiff specifically and expressly releases to the maximum extent permitted by law any
18 claims against the Released Parties, arising out of or relating to the Named Plaintiff's employment
19 or the termination of her employment with Defendant and any other Released Party. This general
20 release by the Named Plaintiff includes a waiver of her rights under Civil Code Section 1542, which
21 provides: "A general release does not extend to claims that the creditor or releasing party does not
22 know or suspect to exist in his or her favor at the time of executing the release and that, if known
23 by him or her, would have materially affected his or her settlement with the debtor or released party."

24 43. Settlement Payments And Calculation Of Claims. The following table summarizes
25 the allocation of the Gross Settlement Amount:

26 ///

27 ///

28 ///

Gross Settlement Amount of \$ 700,000.00 Is Broken Down As Follows:

- **Approximately \$363,666.67** paid to Class Members on a *pro rata* basis
- **\$50,000.00** for the PAGA Amount
 - **\$37,500.00** for the LWDA Payment
 - **\$12,500.00** for the PAGA Aggrieved Employee Payment
- Class Counsel Attorneys' Fees not to exceed **\$233,333.33**
- Class Counsel Costs not to exceed **\$17,000.00**
- **Up to \$ 10,000.00** for an Enhancement Award for Named Plaintiff Rosalinda Marchbanks-Powell
- Settlement Administration Costs, not to exceed **\$26,000.00**

Subject to final Court approval and the conditions specified in this Agreement, and in consideration of the mutual covenants and promises set forth in this Agreement, Defendant agrees to pay the Gross Settlement Amount of Seven Hundred Thousand Dollars and Zero Cents (\$700,000.00). The Gross Settlement Amount includes, but is not limited to, payments to be made to Participating Class Members, Class Counsel's attorneys' fees and costs, any enhancement payment to the Named Plaintiff, PAGA Amount, settlement administration fees and costs, and the employees' share of the payroll taxes. The employer's share of payroll taxes will be paid separately by Defendant. The Parties agree, subject to Court approval, that the Gross Settlement Amount shall be apportioned as follows:

(a) Class Counsel Fees/Costs: At the final approval hearing, Class Counsel will apply to the Court for an award of attorneys' fees of no more than 33⅓% of the Gross Settlement Amount, which equals Two Hundred Thirty Three Thousand Dollars and Thirty Three Cents (\$233,333.33). Class Counsel will also apply to the Court for an award of costs incurred by Class Counsel not to exceed the amount of Seventeen Thousand Dollars and Zero Cents (\$17,000.00). These fees and costs are included in, and shall come from, the Gross Settlement Amount. Class Counsel will be issued an IRS Form 1099 for any fees and costs awarded by the Court pursuant to this Section 43(a). Defendant will not oppose such application for attorneys' fees and costs pursuant to this Section 43(a). Except as provided in this Section 43(a), each party will bear his, her, or its own attorneys' fees, costs, and expenses incurred in the prosecution, defense, or settlement of the Action.

///

1 (b) Settlement Administrator Costs: At the final approval hearing, Class Counsel
2 will apply to the Court for approval of settlement administration costs not to exceed the amount of
3 Twenty Six Thousand Dollars and Zero Cents (\$26,000.00). These costs are included in, and shall
4 come from, the Gross Settlement Amount.

5 (c) Enhancements: At the final approval hearing, Class Counsel will apply to
6 the Court for an award of Ten Thousand Dollar and Zero Cents (\$10,000.00) to be paid to the Named
7 Plaintiff as an enhancement award for her services and for assuming the risks associated with this
8 litigation, and as consideration for providing a general release. Defendant will not oppose such
9 application. The enhancement award is included in, and shall come from, the Gross Settlement
10 Amount. Named Plaintiff will be issued an IRS Form 1099 for any enhancement award approved
11 by the Court pursuant to this Section. The enhancement award payable to the Named Plaintiff shall
12 be in addition to any payment she may receive pursuant to Section 43(e), below.

13 (d) PAGA Payment: At the final approval hearing, Class Counsel will apply to
14 the Court for approval of the PAGA Amount of Fifty Thousand Dollars and Zero Cents (\$50,000.00)
15 for claims for civil penalties asserted under PAGA. Class Counsel will submit notice of this
16 Settlement to the LWDA, as required by Labor Code § 2699(l)(2). The Parties agree that 75% of
17 the PAGA Amount (\$37,500.00) will be paid to the LWDA as the LWDA Payment, and the
18 remaining 25% (\$12,500.00) of civil penalties will be allocated to the Aggrieved Employees as the
19 PAGA Aggrieved Employee Payment. The PAGA Aggrieved Employee Payment allocated to
20 Aggrieved Employees will be paid using the same formula as set forth in Section 43(e), but will be
21 limited to pay periods worked during the PAGA Period. Any Class Members who worked during
22 the PAGA Period and who opt out of the Settlement will still be considered Aggrieved Employees
23 for purposes of this Section 43(d) and, therefore, will (i) receive their portion of the PAGA
24 Aggrieved Employee Payment; and (ii) be bound by the release provision of Sections 41 of this
25 Agreement.

26 (e) Class Member Payments of Net Settlement Amount: After deducting the
27 approved amounts specified in Sections 43(a)-(d) above, each Participating Class Member will be
28 entitled to a *pro rata* portion of the remaining amount, which is the Net Settlement Amount. Class

1 Settlement Payments will be awarded from the Net Settlement Amount based on the respective
2 number of “work weeks” worked by each Participating Class Member during the Class Period. Each
3 Participating Class Member’s share of the Net Settlement Amount will be calculated by dividing
4 the Participating Class Member’s work weeks by the total number of work weeks worked by all
5 Class Members during the Class Period and multiplying this figure by the Net Settlement Amount.
6 The Class Notice will include the number of work weeks that the Class Member worked during the
7 Class Period and the amount the Class Member is estimated to receive under the terms of the
8 Settlement.

9 Example:

10 Participating Class Member A was actively employed during the Class Period for 25 work
11 weeks. All Participating Class Members were actively employed a combined total of 100,000 work
12 weeks during the Class Period. Participating Class Member A’s Class Settlement Payment would
13 be calculated as follows:

- 14 ➤ 25 work weeks for Participating Class Member A ÷ 100,000 total work weeks for all
15 Participating Class Members = 0.025%.
- 16 ➤ Participating Class Member A is entitled to a Class Settlement Payment in an amount that is
17 0.025% of the Net Settlement Amount.¹

18 (f) Class Settlement Payments shall be distributed only to Participating Class
19 Members. PAGA Settlement Payments will be distributed to all Aggrieved Employees. The Class
20 Settlement Payments allocated to Class Members who opt out of the Settlement will be distributed
21 to Participating Class Members on a *pro rata* basis based on the formula set forth in Section 43(e).

22 (g) The Parties agree that, under no circumstances shall Defendant be obligated
23 to pay any amount under this Agreement to any Class Member other than Participating Class
24 Members, with the exception of the PAGA Settlement Payments. In addition, the Parties agree that
25 under no circumstances shall Defendant be obligated to pay more than the Gross Settlement Amount
26 in full settlement of the Action, except for the employer’s share of payroll taxes, which Defendant
27

28 ¹ The Class Settlement Payment will be rounded to the nearest penny with .5 rounded up.

1 will pay separately. The Parties further agree that no amount of the Gross Settlement Amount shall
2 revert to Defendant.

3 44. No Credit Toward Benefit Plans. The Class Settlement Payments made to
4 Participating Class Members under this Agreement and the PAGA Settlement Payments made to
5 Aggrieved Employees will not be utilized to calculate any additional benefits under any benefit
6 plans to which any Participating Class Member or Aggrieved Employee may be eligible including,
7 but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation
8 plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention
9 that this Agreement will not affect any rights, contributions, or amounts to which any Participating
10 Class Member or Aggrieved Employee may be entitled under any benefit plans.

11 45. Taxation Of Settlement Proceeds. All settlement payments paid to Participating
12 Class Members, Aggrieved Employees, and the Named Plaintiff, will be paid in a net amount after
13 applicable state and federal tax withholdings, including payroll taxes, have been deducted.

14 (a) The Class Settlement Payment shall be reported as follows: (i) 20% of the
15 amount distributed to each Participating Class Member will be considered wages, and will be
16 reported as such to each Participating Class Member on a W-2 Form; (ii) 80.00% of the Class
17 Settlement Payment amount distributed to each Participating Class Member will be considered as
18 penalties and interest on the wages, and will be reported as such to each Participating Class Member
19 on an IRS Form 1099.

20 (b) The PAGA Settlement Payments will be considered penalties and will be
21 reported on an IRS Form 1099.

22 (c) Prior to mailing Class Settlement Payments to Participating Class Members,
23 the Settlement Administrator will calculate, withhold from the Class Settlement Payment, and remit
24 to applicable governmental agencies sufficient amounts as may be owed by Participating Class
25 Members for required withholdings and taxes, including all payroll taxes. The Settlement
26 Administrator will issue appropriate tax forms to each Participating Class Member consistent with
27 the foregoing breakdown. The Parties understand that the Named Plaintiff and Participating Class
28 Members who receive a Class Settlement Payment pursuant to this Agreement shall be solely

1 responsible for any and all tax obligations associated with such receipt.

2 (d) The Parties stipulate that the Settlement Fund (as defined at Section 50) will
3 qualify as a settlement fund pursuant to the requirements of Section 468(B)(g) of the Internal
4 Revenue Code of 1986, as amended, and Section 1.468B-1 *et seq.* of the income tax regulations.
5 Furthermore, the Settlement Administrator is hereby designated as the “Administrator” of the
6 qualified settlement funds for purposes of Section 1.468B-2(k) of the income tax regulations. As
7 such, all taxes imposed on the gross income of the Settlement Fund and any tax-related expenses
8 arising from any income tax return or other reporting document that may be required by the Internal
9 Revenue Service or any state or local taxing body will be paid from the Settlement Fund.

10 (e) All Parties represent and acknowledge that nothing in this Agreement
11 constitutes tax advice regarding the tax treatment of payments under federal, state, or local law.

12 46. Notice Procedure. Within 15 calendar days after entry of the Preliminary Approval
13 Order, Defendant will provide to the Settlement Administrator a list of Class Members that identifies
14 for each Class Member their name, Social Security Number, last-known address, and the number of
15 work weeks worked by each Class Member (the “Class List”) during the Class Period and the PAGA
16 Period. Defendant agrees to provide the Class List in an Excel file or other format reasonably
17 acceptable to the Settlement Administrator. The Settlement Administrator will keep the list
18 confidential and use it only for the purposes described in this Agreement.

19 (a) Upon receipt of the Class List, the Settlement Administrator shall perform a
20 search based upon the National Change of Address Database to update and correct any known or
21 identifiable address changes. The Settlement Administrator shall exercise its best judgment to
22 determine the current mailing address for each Class Member. Within 15 calendar days after receipt
23 of the Class List from Defendant, the Settlement Administrator will send the Class Notice, in
24 English, to each Class Member via First Class U.S. Mail. It shall be presumed that each and every
25 Class Member whose Class Notice is not returned to the Settlement Administrator as undeliverable
26 within 15 calendar days after mailing received the Class Notice.

27 (b) The Settlement Administrator will re-mail any notice packet returned by the
28 United States Postal Service with a forwarding address on or before the expiration of the Notice

1 Period. It shall be conclusively presumed that those Class Members whose re-mailed Class Notice
2 is not returned to the Settlement Administrator as undeliverable within 15 calendar days after re-
3 mailing, received the Class Notice. Class Members who receive a re-mailed Class Notice shall have
4 their Notice Period extended 15 calendar days.

5 (c) The Settlement Administrator will use the appropriate skip tracing and
6 National Change of Address searches to increase the likelihood of delivery of the Class Notice to
7 Class Members, and to re-mail the notice packets returned by the post office without a forwarding
8 address upon locating new or alternate addresses after a reasonable search.

9 (d) Class Counsel will provide to the Court, in connection with seeking final
10 approval of the Settlement, a declaration from the Settlement Administrator confirming that the
11 Class Notice was mailed to all Class Members as required by this Agreement, as well as any
12 additional information Class Counsel deems appropriate to provide to the Court.

13 47. Challenge Procedure. The Class Notice will include a procedure by which a Class
14 Member may challenge the work weeks allocated to the Class Member by submitting a written
15 challenge sent via U.S. Mail to the Settlement Administrator postmarked no later than the expiration
16 of the Notice Period. A Class Member challenging the work weeks must also submit documentary
17 evidence sufficient to prove that Defendant's calculation of the work weeks for the Class Member
18 is incorrect. Upon receipt of notice of any such dispute, the Settlement Administrator shall promptly
19 serve Class Counsel and Defendant's counsel with a copy of the notice of dispute and any
20 accompanying papers. No such notice of dispute shall be effective or considered for any purpose
21 unless it is timely mailed by U.S. mail to and received by the Settlement Administrator as provided
22 above. Defendant shall have the right to respond to the challenge by any Class Member. All
23 information and documents relating to any such disputes will be provided to Class Counsel. The
24 Settlement Administrator will resolve the challenge and make a final and binding determination
25 without hearing or right of appeal. The Settlement Administrator's determination will be subject to
26 review by the Court at the time of the Final Approval Hearing so long as the Participating Class
27 Member submits an objection to the Settlement Administrator's determination at or before the Final
28

1 Approval Hearing.

2 (a) Within 21 calendar days after the close of the Notice Period, the Settlement
3 Administrator will provide Class Counsel and Defendant's counsel with a report listing the amount
4 of all Class Settlement Payments and PAGA Settlement Payments to be made to Participating Class
5 Members and Aggrieved Employees. The report to Class Counsel will not include the names or
6 contact information of Participating Class Members and Aggrieved Employees. After receiving the
7 Settlement Administrator's report, Class Counsel and Defendant's counsel shall review the same to
8 determine if the calculation of payments to Participating Class Members and Aggrieved Employees
9 is consistent with this Settlement Agreement.

10 48. Opt-Out Procedure. Unless a Class Member opts out of the Settlement described in
11 this Agreement, the Class Member will be bound by the terms and conditions of this Agreement,
12 including the release provisions and the Court's Order enjoining all Participating Class Members
13 from pursuing, or seeking to re-open, any of the Settled Claims against the Released Parties. A
14 Class Member will not be entitled to opt out of the Settlement established by this Agreement unless
15 the Class Member does all of the following: (i) makes a written request expressing the Class
16 Member's desire to be excluded (or opt out) of the Settlement; (ii) signs the opt-out request; and
17 (iii) returns the opt-out request so that it is postmarked on or before the expiration of the Notice
18 Period.

19 (a) Upon receipt of any opt-out request within the Notice Period, the Settlement
20 Administrator shall review the request to confirm that the request complies with the opt-out
21 requirements of this Agreement.

22 (b) Any Class Member who fails to submit a timely, complete and valid request
23 to opt out of the Settlement will be barred from opting out of this Agreement or the Settlement,
24 unless otherwise ordered by the Court. The Settlement Administrator will not review or consider
25 any opt-out request postmarked after the end of the Notice Period, but will report its receipt of any
26 such requests to Class Counsel and counsel for Defendant. It shall be presumed that, if an opt-out
27 request is not postmarked on or before the end of the Notice Period, the Class Member did not make
28 the request in a timely manner, unless the Class Member's Notice Period was extended pursuant to

1 Section 46(b) above. A declaration submitted by any Class Member attesting to the mailing of an
2 opt-out request on or before the expiration of the Notice Period in and of itself shall be insufficient
3 to overcome the conclusive presumption that the opt-out request was not postmarked on or before
4 the expiration of the Notice Period. Under no circumstances shall the Settlement Administrator
5 have the authority to extend the deadline for Class Members to submit a request to opt out of the
6 Settlement without Defendant's written consent, except for the 15-day extension of a Class
7 Member's Notice Period due to a re-mailed Class Notice, as set forth in Section 46(b) above.

8 (c) If 5% or more of the Class Members timely opt out of the Settlement,
9 Defendant will have the sole and absolute discretion to withdraw from this Agreement within 15
10 business days after expiration of the Notice Period by providing written notice of such withdrawal
11 to Class Counsel. In the event that Defendant elects to so withdraw, the withdrawal shall have the
12 same effect as a termination of this Agreement for failure to satisfy a condition of settlement, and
13 the Agreement shall become null and void and have no further force or effect, and the class certified
14 pursuant to this Agreement will be decertified for all purposes. If Defendant chooses to terminate
15 this Settlement Agreement under this provision, it shall be responsible to pay the Settlement
16 Administrator's fees and costs. If the Settlement Agreement is terminated for any other reason,
17 including the Court's failure to grant final approval of the Parties' Settlement, then Class Counsel
18 and Defendant will be jointly responsible for the Settlement Administrator's fees and costs.

19 49. Objections To Settlement. Any Class Member may object to the Settlement. Any
20 written objection must be mailed to the Settlement Administrator (who shall promptly provide a
21 copy to Class Counsel and counsel for Defendant) by the close of the Notice Period. Class Counsel
22 will ensure that any written objections get filed with the Court concurrently with the final approval
23 documents. Class Members may also appear at the final fairness hearing to object to the Settlement,
24 whether or not they have objected in writing or notified the Parties that they intend to appear. If a
25 Class Member does not submit a written objection or appear in person to object, either personally
26 or through counsel, such objection shall be deemed waived, unless otherwise ordered by the Court.

27 (a) Written objections to the Settlement must contain at least the following:
28 (i) the objecting Class Member's full name, current address, and signature; (ii) a clear reference to

1 the Action; and (iii) a statement of the specific reasons why the objector believes the Settlement is
2 unfair or objects to the Settlement. All objections shall be signed by the objecting Class Member
3 or the Class Member's legally authorized representative.

4 (b) Class Counsel or Defendant's counsel may, before the final approval hearing,
5 file responses to any written objections submitted to the Court.

6 (c) Unless they opt out of the Settlement as specified in Section 48, Class
7 Members who object to the proposed settlement or the Agreement will remain Participating Class
8 Members, and shall be deemed to have voluntarily waived their right to pursue an independent
9 remedy against Defendant and the other Released Parties. To the extent any Participating Class
10 Member objects to the proposed settlement or Agreement and such objection is overruled in whole
11 or in part, such individuals will be bound by the Court's Final Approval Order.

12 (d) In the event that any person objects to or opposes this proposed settlement or
13 the Agreement, or attempts to intervene in or otherwise enter the Action, the Parties and Class
14 Counsel will use their best efforts to defend the Settlement.

15 50. Funding And Distribution Of Settlement. Within 21 calendar days of the close of
16 the Notice Period, the Settlement Administrator will provide written notice to Class Counsel and
17 Defendant's counsel of the number of Participating Class Members, the total amount payable to all
18 Participating Class Members, the PAGA Aggrieved Employee Payment, the LWDA Payment,
19 attorneys' fees, costs, the enhancement award, and the costs of settlement administration. Within
20 five business days after the Effective Date, Defendant shall remit to the Settlement Administrator
21 the Gross Settlement Amount of \$700,000.00 (the "Settlement Fund"). The delivery by Defendant
22 of the Settlement Fund to the Settlement Administrator will constitute full and complete discharge
23 of the entire obligation of Defendant under this Agreement. No Released Party will have any further
24 obligation or liability to the Named Plaintiff, Participating Class Members, Aggrieved Employees,
25 or Class Counsel under this Agreement, regardless of whether the Named Plaintiff, Participating
26 Class Members, Aggrieved Employees, or Class Counsel receive the payments set forth in this
27 Agreement.

28 ///

1 (a) The distribution of Class Settlement Payments to Participating Class
2 Members and PAGA Settlement Payments to Aggrieved Employees will occur no later than 15
3 calendar days after receipt of the Settlement Fund from the Defendant (“Settlement Proceeds
4 Distribution Deadline”). The Settlement Administrator shall be deemed to have timely distributed
5 Class Settlement Payments and PAGA Settlement Payments if it places in the mail Class Settlement
6 Payments for all Participating Class Members and PAGA Settlement Payments for all Aggrieved
7 Employees by the Settlement Proceeds Distribution Deadline. No person will have any claim
8 against the Settlement Administrator, Defendant, Class Counsel, Defendant’s counsel, or any other
9 agent designated by the Named Plaintiff or Class Counsel based upon the distribution of Class
10 Settlement Payments and PAGA Settlement Payments made substantially in accordance with this
11 Agreement or further orders of the Court.

12 (b) The distribution of the LWDA Payment, attorneys’ fees, costs, and the
13 enhancement award shall occur no later than 15 calendar days after the Settlement Administrator
14 receives the Gross Settlement Amount.

15 (c) If a Participating Class Member’s or Aggrieved Employee’s check is returned
16 to the Settlement Administrator, the Settlement Administrator will make reasonable efforts to re-
17 mail it to the Participating Class Member or Aggrieved Employee at the correct address. It is
18 expressly understood and agreed that the checks for the Class Settlement Payments and PAGA
19 Settlement Payments will become void and no longer available if not cashed within 150 days after
20 mailing. The Settlement Administrator shall report to the Court the total amount that was actually
21 paid to all Participating Class Members and Aggrieved Employees. After the report is received,
22 pursuant to Code of Civil Procedure § 384(b), the Plaintiffs shall request the Court to amend the
23 Final Judgment to direct the Settlement Administrator to pay the sum of the unpaid residue or
24 unclaimed class member funds, plus any accrued interest to the following charity: Voices for
25 Children of San Diego, a nonprofit organization that that recruits, trains, and supports volunteers
26 who speak up for the needs and well-being of children in foster care.

27 (d) Defendant will not be obligated to make any payments contemplated by this
28 Agreement unless and until the Court enters the Final Order and Final Judgment, and after the

1 Effective Date of the Agreement.

2 51. Binding Effect Of Agreement On Class Members. Subject to final Court approval
3 and the occurrence of the Effective Date, and unless otherwise provided in this Agreement, all
4 Participating Class Members will be bound by this Agreement. In addition, unless a Class Member
5 opts out of the settlement described in this Agreement, the Class Member shall be bound by the
6 Court's Order enjoining all Class Members from pursuing, or seeking to reopen, Settled Claims
7 against the Released Parties.

8 52. Binding Effect Of Agreement On Aggrieved Employees and State of California. The
9 Aggrieved Employees and the State of California are deemed by operation of the Final Order and
10 Final Judgment to have agreed not to sue or otherwise make a claim against any of the Released
11 Parties for civil penalties under Labor Code § 558 and Labor Code §§ 2698 *et seq.* for the Released
12 Claims.

13 53. Provisional Approval Of Settlement. Upon execution of this Agreement, the Named
14 Plaintiff will promptly file a motion in the Action requesting that the Court enter the Preliminary
15 Approval Order, in the form substantially similar to that attached as **Exhibit D** to this Agreement.
16 Defendant will not oppose Class Counsel's motion for preliminary approval of the Settlement so
17 long as the motion and supporting papers are consistent with the terms of this Agreement. Class
18 Counsel will provide Defendant's counsel with a reasonable opportunity to review, and provide
19 comments to, the motion for preliminary approval of the Settlement before the motion and
20 supporting papers are filed with the Court. Notwithstanding the foregoing, Defendant may, without
21 opposing the preliminary approval motion, advise the Court if Defendant disagrees with any of the
22 factual statements included by the Named Plaintiff in the motion and supporting papers.
23 Defendant's counsel will meet and confer with Class Counsel regarding any factual statements it
24 disputes before notifying the Court of any disputes.

25 54. Non-Interference With Claims Procedure. The Parties and their counsel agree that
26 they will not seek to solicit or otherwise encourage Class Members to submit requests for exclusion
27 or objections to the Settlement or to appeal from the Final Order or Final Judgment.

28 55. Final Order and Judgment. Named Plaintiff will request, and Defendant will concur

1 in the request, that the Court enter, after the Settlement Hearing finally approving this Agreement,
2 a Final Order and Final Judgment in the forms substantially similar to those attached as **Exhibits B**
3 **and C** to this Agreement. Named Plaintiff will request that the Final Order certify the Participating
4 Class; find that this Agreement is fair, just, equitable, reasonable, adequate and in the best interests
5 of the Class and the Aggrieved Employees; permanently enjoin all Participating Class Members
6 from pursuing, or seeking to reopen, Settled Claims against the Released Parties; permanently enjoin
7 the Aggrieved Employees and the State of California from pursuing a PAGA Claim against the
8 Released Parties for any of the Released Claims; and require the Parties to carry out the provisions
9 of this Agreement.

10 56. Effective Date Of Agreement. The “Effective Date” of this Agreement will be the
11 later of (i) if no objection to the Settlement is made by a Class Member, then the date that the Court
12 enters the Final Judgment; (ii) the 61st day after service of notice of entry of the Final Order and
13 Final Judgment, if no appeal, review, or writ has been filed but an objection to the Settlement is
14 made by a Class Member; or (iii) if an appeal, review, or writ is timely sought from the Final Order
15 or Final Judgment, the day after the Final Order and Final Judgment are affirmed or the appeal,
16 review, or writ is dismissed or denied, and the Final Order and Final Judgment are no longer subject
17 to further judicial review. The Effective Date is conditioned upon the Court’s having entered a Final
18 Order and Final Judgment (**Exhibits B and C**).

19 57. Automatic Voiding Of Agreement If Settlement Not Finalized. If for any reason the
20 settlement set forth in this Agreement does not become final, the Settlement will be null and void
21 and the orders, judgment, and dismissal to be entered pursuant to this Agreement shall be vacated,
22 and the Parties will be returned to the status quo prior to entering this Agreement with respect to the
23 Action, as if the Parties had never entered into this Agreement, and the class certified pursuant to
24 this Agreement will be decertified for all purposes. In addition, in such event, the Agreement and
25 all negotiations, court orders and proceedings relating to this Agreement shall be without prejudice
26 to the rights of any and all parties to this Agreement, and evidence relating to the Agreement and all
27 negotiations shall not be admissible or discoverable in the Action or otherwise.

28 58. No Double Recovery. No person who has already released, assigned, or otherwise

1 forfeited the claims asserted in the Action will be considered a Class Member or entitled to recover
2 under this Agreement.

3 59. No Publicity.

4 (a) Named Plaintiff and Class Counsel agree that they shall not discuss, answer
5 questions about, promote, or publicize the filing of the Action, the Parties' Settlement, this
6 Agreement and its terms, or the negotiations leading to this Agreement with anyone other than the
7 Court or those individuals necessary to effectuate the terms of the Agreement. The prohibition set
8 forth in this Section 59 includes, but is not limited to: (i) publications on any website (including,
9 without limitation, publishing on any Twitter account, Facebook, or blog) of the amount or terms of
10 the Settlement, with or without identifying information; and (ii) the submission of information to
11 Verdicts & Settlements or any other publication that summarizes the results of jury verdicts and
12 settlements.

13 (b) In addition, Class Counsel may respond to questions received from, and
14 discuss any aspect of this Agreement with, Class Members regarding the Settlement.

15 (c) Named Plaintiff and Class Counsel agree that all data and information
16 informally produced by Defendant in connection with the settlement of the Action, including
17 financial information, will be maintained in confidence, and will not be shared with any other
18 persons or entities.

19 60. Invalidation Of Agreement For Failure To Satisfy Conditions. If the Court makes
20 material changes to the material terms or conditions of Sections 1 through 59 of this Agreement that
21 are not agreed to by the Defendant, Defendant shall have the right to terminate this Agreement, in
22 which case Defendant would not be obligated to make any payments to any Class Member, to Class
23 Counsel, or to the Named Plaintiff.

24 61. Modification In Writing. This Agreement may be altered, amended, modified or
25 waived, in whole or in part, only in a writing signed by Class Counsel and Defendant's counsel.
26 This Agreement may not be amended, altered, modified or waived, in whole or in part, orally.

27 62. Ongoing Cooperation. The Named Plaintiff and Defendant will execute all
28 documents and perform all acts necessary and proper to effectuate the terms of this Agreement. The

1 executing of documents must take place prior to the Final Hearing Date. In the event the Parties are
2 unable to reach agreement on the form or content of any document needed to implement the
3 Settlement, or any supplemental provisions that may become necessary to effectuate the terms of
4 the Settlement, the Parties agree to seek the assistance of the Court.

5 63. Notices. All notices, requests, demands and other communications required or
6 permitted to be given pursuant to this Agreement shall be in writing, and shall be delivered
7 personally or by first class mail to the Settlement Administrator approved by the Court and the
8 undersigned persons at their respective addresses as set forth below:

9 **Class Counsel**

10 David Yeremian, Esq.
David Yeremian & Associates, Inc.
11 535 N. Brand Blvd., Suite 705
Glendale, California 91203
12 Telephone: (818) 230-8380

13 and

14 Emil Davtyan, Esq.
Davtyan Law Firm, Inc.
15 880 E. Broadway
Glendale, California 91205
16 (818) 875-2008

17 **Counsel For Defendant**

18 Maria Z. Stearns, Esq.
19 Kenneth J. Zielinski, Esq.
RUTAN & TUCKER, LLP
20 611 Anton Boulevard, Fourteenth Floor
Costa Mesa, California 92626-1931
21 Telephone: (714) 641-5100

22
23 64. Binding on Successors. This Agreement shall be binding and shall inure to the
24 benefit of the Parties and their respective successors, assigns, executors, administrators, heirs and
25 legal representatives.

26 65. Entire Agreement. This Agreement constitutes the full, complete and entire
27 understanding, agreement and arrangement between the Named Plaintiff and the Class Members,
28 on the one hand, and Defendant, on the other hand, with respect to the settlement of the Action and

1 the Settled Claims against the Released Parties. This Agreement supersedes any and all prior oral
2 or written understandings, agreements and arrangements between the Parties with respect to the
3 settlement of the Action and the Settled Claims against the Released Parties. Except those set forth
4 expressly in this Agreement, there are no other agreements, covenants, promises, representations or
5 arrangements between the Parties with respect to the settlement of the Action and the Settled Claims
6 against the Released Parties. The Parties explicitly recognize California Civil Code Section 1625
7 and California Code of Civil Procedure Section 1856(a), which provide that a written agreement is
8 to be construed according to its terms, and may not be varied or contradicted by extrinsic evidence,
9 and agree that no such extrinsic oral or written representations or terms shall modify, vary, or
10 contradict the terms of this Agreement.

11 66. Execution In Counterparts. This Agreement may be signed in one or more
12 counterparts. All executed copies of this Agreement, and photocopies thereof (including facsimile
13 and e-mail copies of the signature pages), shall have the same force and effect and shall be as legally
14 binding and enforceable as the original.

15 67. Captions. The captions and section numbers in this Agreement are inserted for the
16 reader's convenience, and in no way define, limit, construe, or describe the scope or intent of the
17 provisions of this Agreement.

18 68. Governing Law. This Agreement shall be interpreted, construed, enforced, and
19 administered in accordance with the laws of the State of California, without regard to conflict of law
20 rules.

21 69. Reservation Of Jurisdiction. Notwithstanding the dismissal of the Action and entry
22 of Final Judgment, the Court shall retain jurisdiction for purposes of interpreting and enforcing the
23 terms of this Agreement.

24 70. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
25 and conditions of this Agreement. Accordingly, this Agreement will not be construed more strictly
26 against one party than another merely by virtue of the fact that it may have been prepared by counsel
27 for one of the Parties, it being recognized that, because of the arm's-length negotiations between the
28

1 Parties, all Parties have contributed to the preparation of this Agreement.

2 71. Severability. The Parties to this Agreement agree, covenant, and represent that each
3 and every provision of this Agreement shall be deemed to be contractual, and that they shall not be
4 treated as mere recitals at any time or for any purpose. Therefore, the Parties further agree, covenant,
5 and represent that each and every provision of this Agreement shall be considered severable, except
6 for the release provisions of Sections 27, 40, and 41 of this Agreement. If a court of competent
7 jurisdiction finds the release provisions of Sections 27, 40, or 41 of this Agreement to be
8 unenforceable or invalid, then this Agreement shall become voidable and all payments made
9 pursuant to this Agreement shall be returned to Defendant. If a court of competent jurisdiction finds
10 any provision other than the release provisions of Sections 27, 40, or 41 , or part thereof, to be
11 invalid or unenforceable for any reason, that provision, or part thereof, shall remain in full force and
12 effect to the extent allowed by law, and all of the remaining provisions of this Agreement shall
13 remain in full force and effect.

14 72. Representation and Warranties. Class Counsel, Named Plaintiff, and the Class
15 jointly and severally represent and warrant to Defendant that there are no attorneys beyond those
16 named as Class Counsel who have claims for fees arising out of the Action or the contemplated
17 Settlement. To the extent those representations are false or other attorneys do have claims for fees
18 arising out of the Action or this Settlement, Class Counsel and the Class jointly and severally agree
19 to fully indemnify Defendant for any damages it incurs as a result of those claims, including, but
20 not limited to, all attorneys' fees and costs.

21 73. Authorization to Act. With respect to themselves, each of the Parties to this
22 Agreement and their agents or counsel represents, covenants and warrants that (a) they have full
23 power and authority to enter into and consummate all transactions contemplated by this Agreement
24 and have duly authorized the execution, delivery and performance of this Agreement; and (b) the
25 person executing this Agreement has the full right, power and authority to enter into this Agreement
26 on behalf of the party for whom they have executed this Agreement, and the full right, power and
27 authority to execute any and all necessary instruments in connection with this Agreement, and to
28

1 fully bind such party to the terms and obligations of this Agreement.

2 74. Representation By Counsel. The Parties acknowledge that they have been
3 represented by counsel throughout all negotiations that preceded the execution of this Agreement,
4 and that this Agreement has been executed with the consent and advice of counsel. Further, the
5 Named Plaintiff and Class Counsel warrant and represent that there are no liens on the Agreement,
6 and that after entry by the Court of the Final Order and Final Judgment, the Settlement Administrator
7 may distribute funds to Participating Class Members, Aggrieved Employees, Class Counsel, and the
8 Named Plaintiff as provided by this Agreement.

9 75. Authorization By Named Plaintiff. The Named Plaintiff authorizes Class Counsel to
10 sign this Agreement and further agree not to request to be excluded from the Class and not to object
11 to any terms of this Agreement. Any such request by Named Plaintiff for exclusion or objection
12 shall therefore be void and of no force or effect.

13 76. Attorneys' Fees and Costs. No Participating Class Member, Aggrieved Employee,
14 or Class Counsel, or any other attorney acting for any Participating Class Member or Aggrieved
15 Employee, may recover or seek to recover any amounts for fees, costs, or disbursements from the
16 Released Parties or the Net Settlement Amount except as expressly provided in this Agreement.

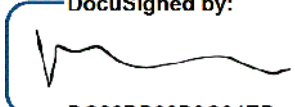
17 77. No Reliance on Representations. The Parties have made such investigations of the
18 facts and the law pertaining to the matters described in this Agreement as they deem necessary, and
19 have not relied, and do not rely, on any statement, promise, or representation of fact or law, made
20 by any of the other Parties, or any of their agents, employees, attorneys, or representatives, with
21 regard to any of their rights or asserted rights, or with regard to the advisability of making and
22 executing this Agreement, or with respect to any such matters. No representations, warranties, or
23 inducements have been made to any party concerning this Agreement.

24 78. No Collateral Attack. This Agreement shall not be subject to collateral attack by any
25 Class Member or any recipient of the Class Notice after the Final Order, Final Judgment and
26 dismissal. Such prohibited collateral attacks shall include but not be limited to claims that the Class
27 Member failed for any reason to receive timely notice of the procedure for disputing the calculation
28

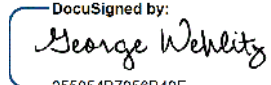
1 of the Class Settlement Payment or PAGA Settlement Payment, or for opting out of the Settlement.

2 IT IS SO AGREED:

3
4 Dated: December 29, 2020

DocuSigned by:

By: DC62DB80B8C04ED...
Rosalinda Marchbanks-Powell
Plaintiff/Class Representative

5
6
7 Dated: 1/27/2021, 2020

Torrid LLC
DocuSigned by:

By: 255054B7956B49E...
George Wehlitz
Title: CFO

8
9
10 APPROVED AS TO FORM AND CONTENT

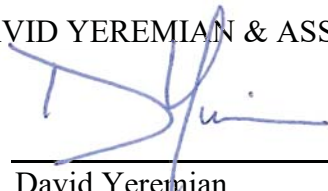
11
12 Dated: January 27, 2021

RUTAN & TUCKER, LLP

By:
Maria Z. Stearns
Attorneys for Defendant Torrid LLC

13
14
15
16 APPROVED AS TO FORM AND CONTENT AND
17 AGREE TO BE BOUND BY SECTION 59:

18 Dated: 1/7/2021, 2020

DAVID YEREMIAN & ASSOCIATES, INC.

By:
David Yeremian
Attorneys for Plaintiff Rosalinda
Marchbanks-Powell

19
20
21
22
23 Dated: 1/4/2021, 2020

DAVTYAN LAW FIRM, INC.

By:
Emil Davtyan
Attorneys for Plaintiff Rosalinda
Marchbanks-Powell

Exhibit “A”

Exhibit “A”

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

ROSALINDA MARCHBANKS-POWELL; *et al.*

Plaintiff,

vs.

TORRID ADMINISTRATION, INC., *et al.*,

Defendants.

Case No. 37-2020-00008179-CU-OE-NC

ASSIGNED FOR ALL PURPOSES TO
HON. TIMOTHY M. CASSERLY, DEPT. N-31

NOTICE OF PROPOSED CLASS ACTION
SETTLEMENT AND FINAL FAIRNESS
HEARING

YOU MAY BE ENTITLED TO BENEFITS FROM THIS SETTLEMENT. YOUR ESTIMATED SETTLEMENT AMOUNT IS \$ [REDACTED]. PLEASE CONTINUE READING TO LEARN HOW THIS SETTLEMENT AFFECTS YOUR RIGHTS.

Notice is given that a proposed class action settlement (the “Class Settlement”) has been reached between plaintiff Rosalinda Marchbanks-Powell (“Plaintiff”) and defendant Torrid LLC (“Defendant”). The lawsuit is a class action lawsuit entitled *Marchbanks-Powell v. Torrid Administration, Inc. et al.* (the “Litigation” or “Action”).

The Class Settlement will resolve all Settled Claims made against Defendant and other Released Parties, as that term is defined in the Settlement Agreement, on behalf of the Class, i.e., all non-exempt employees who worked for Torrid LLC at any of its retail store locations in the State of California during the period between February 11, 2016 and December 31, 2020 (the “Class Period”).

A. PURPOSE OF THIS NOTICE

The Court has ordered that this Class Notice be sent to you because Defendant’s records reflect that you are a potential member of the Class. The purpose of this Notice is to: (a) provide a brief description of the Litigation; (b) inform you of the proposed Settlement; and (c) discuss your rights and options with respect to the Litigation and the Settlement.

B. DESCRIPTION OF THE LITIGATION

The Action was filed by Plaintiff on behalf of all non-exempt employees who worked for Defendant during the Class Period. As alleged in the Action, Plaintiff claims that Class Members were wrongfully denied wages and overtime compensation, meal and rest breaks, accurate wage statements, reimbursement of business expenses, reporting time pay, and other rights guaranteed under the California Labor Code.

The Action alleges claims against Defendant for (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal Period Liability Under Labor Code § 226.7; (4) Rest-Break Liability Under Labor Code § 226.7; (5) Violation of Labor Code § 226(a); (6) Violation of Labor Code § 203; (7) Violation of Labor Code § 204; (8) Failure to Keep Required Payroll Records under Labor Code §§ 1174 and 1174.5; (9) Failure to Reimburse Necessary Business Expenses § 2802; (10) Violation of Labor Code § 246; (11) Violation of Business & Professions Code § 17200 *et seq.*; (12) Penalties Pursuant to Labor Code § 2698 *et seq.*; and (13) Failure to Provide Suitable Seating. Defendant denies each and all of the claims and contentions alleged by the Plaintiff.

The Court has made no ruling on the merits of Plaintiff's class claims or Defendant's defenses. The Court will decide whether to give final approval to the Class Settlement at a hearing scheduled for [REDACTED], 2021, at [REDACTED] a.m., in Department N-31 of the San Diego County Superior Court, located at The North County Regional Center, 325 South Melrose Dr., Vista, CA 92081.

Attorneys for the Class ("Class Counsel") in the Litigation are:

CLASS COUNSEL

David Yeremian, Esq.
David Yeremian & Associates, Inc.
535 N. Brand Blvd., Suite 705
Glendale, California 91203
Telephone: (818) 230-8380

and

Emil Davtyan, Esq.
Davtyan Law Firm, Inc.
880 E. Broadway
Glendale, California 91205
(818) 875-2008

Defendant's counsel in the Litigation are:

Maria Z. Stearns, Esq.
Kenneth J. Zielinski, Esq.
RUTAN & TUCKER, LLP
611 Anton Boulevard, Fourteenth Floor
Costa Mesa, California 92626-1931
Telephone: (714) 641-5100
Facsimile: (714) 546-9035

C. YOUR OPTIONS

If you fit within the above description of the Class, you have several options. Your rights regarding each option, and the procedure you must follow to select each option, are explained below.

1. OPTION 1: Do Nothing and Remain a Member of the Class and Participate in the Settlement.

If you want to participate in the Class Settlement and receive a Settlement Payment, DO NOT TAKE ANY ACTION. You will automatically be included in the Settlement and will receive the Settlement Payment as detailed below. If you move, make sure you contact the Settlement Administrator at the following address or phone number:

TORRID LLC SETTLEMENT ADMINISTRATOR
[REDACTED]

YOUR ESTIMATED SETTLEMENT AMOUNT IS \$_____. This amount is based on the number of work weeks during which you worked in a non-exempt position during the Class Period, which is _____ work weeks. The settlement amount is just an estimate of your individual class settlement payment (“Settlement Payment”). The exact Settlement Payment allocated to you will not be determined until the class notice process is completed and the Court grants final approval of the Class Settlement.

If you believe the number of work weeks stated above is incorrect and you wish to challenge it, you must send the enclosed dispute form to the Settlement Administrator, stating that you believe the number of work weeks is incorrect. This form must be postmarked no later than [date]. You must include documentary evidence sufficient to prove that Defendant’s calculation of work weeks for you is incorrect. You must also provide your name and telephone number. Defendant will have the right to respond to the challenge by any Class Member. The Settlement Administrator will resolve the challenge and make a final and binding determination without hearing or right of appeal. The Settlement Administrator’s determination will be subject to review by the Court at the time of the final approval hearing. If you want confirmation that your correspondence has been received by the Settlement Administrator, you may send your letter by certified U.S. Mail with a return receipt request.

If you choose to participate in the Class Settlement, you will be bound by all the terms set forth in the Class Settlement, including a full release of claims for the matters being settled in the Action.

2. OPTION 2: Opt Out of the Class and Receive Nothing Under the Class Settlement

If you do not want to remain a member of the Class, you can request exclusion from the Class (i.e., “opt out”). You can opt out of the Class by completing the Opt-Out Form included with this notice and sending it to the Settlement Administrator at the above-stated address, such that it is **postmarked** no later than [date]. This Opt-Out Form must be **signed** by you.

If you opt out of the Class, you will no longer be a member of the Class, you will be barred from participating in this Class Settlement, you will receive NO Settlement Payment or other benefit from this Class Settlement. By opting out of the Class, you will retain whatever individual rights or claims you may have, if any, against Defendant, and you will be free to pursue them on an individual basis, if you choose to do so.

3. OPTION 3: Object to the Settlement

If you are a Class Member who does not opt out of the Class Settlement, you may object to the Class Settlement, personally or through an attorney, by submitting your objection to the Settlement Administrator (**TBD**), at the address set forth above. All written objections must be signed and must contain your address, telephone number and a reference to the case name and number. All objections must be sent to the Settlement Administrator at the above-stated address, such that it is **postmarked** no later than [date]. Your written objection should clearly explain why you object to the Class Settlement and must state whether you (or someone on your behalf) intend to appear at the final fairness hearing on [date]. Your failure to timely submit your objection to the Settlement Administrator may preclude your objection from being heard at the final fairness hearing. If you object to the Class Settlement and if the Court approves the Class Settlement as set forth in the Settlement Agreement, you will be bound by the terms of the Class Settlement in the same way as a Class Member who does not object.

D. SUMMARY OF TERMS OF SETTLEMENT

The principal terms of the Class Settlement reached between Plaintiff and Defendant are summarized below.

1. Settlement Terms

The Settlement provides that (a) Defendant will pay \$700,000 (the “Settlement Amount”) to resolve all class and PAGA claims asserted in the Action, enhancement awards, and Class Counsel’s attorneys’ fees and costs, as described more fully below; and (b) Defendant will stipulate to the certification of the Class for settlement purposes only, conditioned upon the Court granting final approval of the Settlement.

- Attorneys’ Fees and Costs. Class Counsel will apply to the Court for an award of attorneys’ fees of no more than \$233,333.33, which is approximately 33⅓% of the Settlement Amount. In addition, Class Counsel will seek reimbursement of costs of no more than \$17,000, as well as settlement administration costs of \$26,000. The attorneys’ fees and costs will be paid out of the Settlement Amount.
- Class Representative Enhancement Award. Plaintiff will request an enhancement award of \$10,000. The enhancement award will be paid out of the Settlement Amount.
- PAGA Payment. Plaintiff will request a payment pursuant to the Private Attorneys General Act (“PAGA”) of \$50,000, of which 75% (or \$37,500) will be paid to the Labor & Development Workforce Agency, and 25% (or \$12,500) will be paid to Aggrieved Employees, as defined by the Settlement Agreement. This PAGA payment will be paid out of the Settlement Amount.
- Payments To Participating Class Members. After the deductions from the total Settlement Amount, the remaining amount of approximately \$363,666.67 will remain to be distributed to Participating Class Members based on each Class Member’s work weeks during which the Class Member worked during the Class Period.

Settlement Payment To You: Section C of this Notice includes the estimated amount that you are entitled to receive under the Class Settlement. The individual settlement payments to Class Members will vary based on a number of factors, including the number of Class Members who participate. The Settlement Payment will be mailed to you within approximately 90 days of the Court’s Order granting final approval of the Class Settlement. If you change your address, please notify the Settlement Administrator.

Taxes: For purposes of this settlement, 20% of your Settlement Payment will be considered wages, 80% of your Settlement Payment will be considered penalties and interest. Prior to mailing your Settlement Payment, the Settlement Administrator will calculate and deduct from your Settlement Payment an amount necessary to pay the required withholdings and taxes, including all payroll taxes. The Settlement Administrator will remit that money to the appropriate governmental agencies. The Settlement Administrator will also issue you appropriate tax forms, including an IRS Form 1099 and W-2 Form. Class Members should consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement.

2. Release

The Settlement provides that each Class Member who does not opt out of the Settlement fully releases and discharges Defendant and the Released Parties (as defined in the Settlement Agreement) from any and all claims, known or unknown, contingent or accrued, against Defendant and the Released Parties that arose during the Class Period and have been, or could have been, asserted against Defendant or any of the other Released

Parties and that arise from the facts, matters, transactions or occurrences alleged in the Action. Without limiting the foregoing, and in addition to the foregoing, the Settled Claims include claims for: failure to pay minimum wages; failure to pay wages and overtime; failure to provide meal periods; failure to provide rest breaks; failure to provide accurate, itemized wage statements; failure to provide wages upon termination (waiting time penalties); failure to pay wages on time; failure to maintain payroll records; failure to reimburse necessary business expenses; failure to provide paid sick leave; alleged violations of Labor Code §§ 201-204, 210, 218.6, 226, 226.3, 226.7, 246, 247.5, 248.5, 510, 512, 558, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802, the applicable California Wage Orders and California Business and Professions Code Section 17200 *et seq.* In addition, with respect to Aggrieved Employees, the Settled Claims include claims under California Labor Code sections 2698 *et seq.* that arose during the PAGA Period.

A complete statement of the release of claims is contained in the Settlement Agreement and is binding on all Class Members who do not opt out of the Class Settlement. A copy of the Settlement Agreement may be obtained from the Settlement Administrator.

3. Conditions Of The Settlement

The Class Settlement is conditioned upon the Court entering an Order at or following the final fairness hearing approving the Class Settlement as fair, reasonable, and adequate and in the best interests of the Class.

4. No Admission Of Liability

Defendant does not admit any wrongdoing or liability, and specifically denies any liability or wrongdoing. The Class Settlement reflects a compromise of disputed claims and does not mean that Defendant violated any state wage requirements or is liable for any of the allegations made by Plaintiff.

E. FAIRNESS HEARING ON PROPOSED SETTLEMENT

You are not required to attend the final fairness hearing or file an objection, although you may do both. The final fairness hearing on the fairness and adequacy of the Class Settlement, the plan of distribution, costs of administration, the enhancement awards to Plaintiff, and Class Counsel's request for attorneys' fees and costs will be held on [REDACTED] a.m., in Department N-31 of the San Diego County Superior Court, located at The North County Regional Center, 325 South Melrose Dr., Vista, CA 92081. The final fairness hearing may be continued to another date without further notice. If you plan to attend the final fairness hearing, you may contact Class Counsel to confirm the date and time.

Any Class Member who does not object in the manner provided above shall be deemed to have approved the Settlement and to have waived any objections, and shall be forever foreclosed from objecting to the fairness or adequacy of the proposed Settlement, the plan of distribution, the payment of attorneys' fees and costs, the administration process, the enhancement award to Named Plaintiff, or any other aspect of the Settlement. If the Settlement is not approved, the Action will continue to be prepared for class certification, trial, or other judicial resolution.

F. ADDITIONAL INFORMATION

This Notice only summarizes the Action and the Class Settlement. For more information, you may inspect the Court files at the San Diego County Superior Court, located at The North County Regional Center, 325 South Melrose Dr., Vista, CA 92081, from 8:30 a.m. to 4:00 p.m., Monday through Friday or you can view the case records online at the court's website: <http://courtindex.sdcourt.ca.gov/CISPublic/enter>. Any questions regarding

this Class Notice or the Action may be directed to the Settlement Administrator at the above address and telephone number. Alternatively, you may contact your own attorney, at your own expense, to advise you, or you may contact Class Counsel at the address and telephone number set forth above. If your address changes or is different from the address on the envelope enclosing this Notice, please promptly notify the Settlement Administrator.

PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE.

Marchbanks-Powell v. Torrid Administration, Inc., et al.
San Diego Superior Court, Case No. 37-2020-00008179-CU-OE-NC

OPT-OUT FORM

MAIL OR FAX TO:
c/o CPT Group, Inc.

Fax: (***) ***-****

IF YOU WISH TO PARTICIPATE IN THE SETTLEMENT AND RECEIVE THE PAYMENT SPECIFIED IN THE CLASS NOTICE THAT YOU RECEIVED, **DO NOT** FILL OUT THIS FORM.

COMPLETE THIS FORM **ONLY IF** YOU WISH TO EXCLUDE YOURSELF FROM THE CLASS SETTLEMENT. IF YOU EXCLUDE YOURSELF, YOU **WILL NOT** RECEIVE THE PAYMENT SPECIFIED IN THE CLASS NOTICE.

I request to be excluded from the Class Settlement in the matter of *Marchbanks-Powell v. Torrid Administration, Inc., et al.*, San Diego Superior Court, Case No. 37-2020-00008179-CU-OE-NC. I understand that, by submitting this Opt-Out Form, I will no longer be eligible for the payment specified in the Class Notice that I received.

Sign your name here

Date

Print your name here

IF YOU WISH TO BE EXCLUDED FROM THE CLASS SETTLEMENT, YOU MUST MAIL OR FAX THIS OPT-OUT FORM BY _____, 2021 TO THE FOLLOWING ADDRESS OR FAX:

c/o CPT Group, Inc.

Fax: (***) ***-****

[BAR CODE OR CLASS MEMBER ID WILL BE INCLUDED HERE]

Marchbanks-Powell v. Torrid Administration, Inc., et al.
San Diego Superior Court, Case No. 37-2020-00008179-CU-OE-NC

DISPUTE FORM

Claim #:
«First1» «Last1»
«c/o»
«Address1» «Address2»
«City», «ST» «Zip» «Country»

Name/Address Changes (if any):

First Name	Last Name
Address	
City	State
Zip	

If your name or address is different from those shown above, print corrections on the lines to the right.

Your estimated settlement amount (shown below) is based on your work weeks worked during the Class Period. Your estimated settlement amount is a proportion of the total number of work weeks worked by all Class Members.

Class Period:	Covered Period Start Date – Covered Period End Date
Work weeks	«Work weeks»
Estimated Settlement Amount:	«Estimated Amount»

Your actual settlement amount may be higher or lower based on the number of Class Members who opt-out, the Court's rulings related to fees, costs, incentive payments, and other factors. Unless you believe that any information above is inaccurate, you do not need to do anything to receive your settlement amount.

DO NOT fill out the portion below or return this form *UNLESS* you believe any of the information above is not accurate or your address is incorrect. If you would like to dispute the above information, please sign and date the below, and mail it to the Settlement Administrator along with supporting evidence or information on or before **Response Date**.

OPTION TO DISPUTE

☐ I wish to dispute the number of work weeks worked during the Class Period. I believe that I worked _____ work weeks for Torrid LLC during the Class Period. I have enclosed documentation substantiating my dispute. **I recognize that my dispute will not be reviewed without documentary evidence to support my dispute.** I understand that by submitting this dispute, the Settlement Administrator will review the Defendant's records and make a determination based on those records and the records I submit, and that this determinations will be final and binding.

Sign your name here	Date
Print your name here	Telephone Number

YOU MUST MAIL OR FAX THIS DISPUTE FORM BY _____, 2021 TO THE FOLLOWING ADDRESS OR FAX:

c/o CPT Group, Inc.

Fax: (***) ***-****

If you want confirmation that your correspondence has been received by the Settlement Administrator, you may send your letter by certified U.S. Mail with a return receipt request.

Exhibit “B”

Exhibit “B”

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

ROSALINDA MARCHBANKS-POWELL, an individual on behalf of herself and all others similarly situated,

Plaintiff,

vs.

TORRID ADMINISTRATION, INC., a California corporation; TORRID MERCHANDISING, INC., a California corporation; TORRID PARENT, INC., a Delaware corporation; TORRID LLC, a California limited liability company; HOT TOPIC ADMINISTRATION, INC., a California corporation; HOT TOPIC MERCHANDISING, INC., a California corporation; HOT TOPIC TENNESSEE, INC., a California corporation; HOT TOPIC, INC., a California corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2020-00008179-CU-OE-NC

ASSIGNED FOR ALL PURPOSES TO
HON. TIMOTHY M. CASSERLY, DEPT. N-31

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT, AWARD OF
FEES, COSTS, AND INCENTIVE AWARD**

Hearing

Reservation No. [redacted]

Date: [redacted]

Time: [redacted]

Dept.: N-31

Date Action Filed: February 11, 2020

Trial Date: None Set

1 This matter having come before the Court on [REDACTED], 2021 for a scheduled
2 Final Hearing and entry of an Order Granting Final Approval of Class Action Settlement and
3 Stipulation (“Final Order”) consistent with the Court’s [REDACTED], 2021 Preliminary
4 Approval Order, and as set forth in the Parties’ Class Action Settlement Agreement (“Settlement
5 Agreement” or “Settlement”), and due and adequate notice having been given to Class Members
6 as required by the Preliminary Approval Order, and the Court having considered all papers filed
7 and proceedings, and having received no objections to approval of the Settlement, and determining
8 that the Settlement is fair, adequate and reasonable, and otherwise being fully informed and good
9 cause appearing,

10 **IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

11 1. This Final Order incorporates the Settlement Agreement. Unless otherwise
12 provided, all capitalized terms used in this Final Order shall have the same meaning as defined in
13 the Settlement Agreement. For purposes of this Final Order and the accompanying Judgment, the
14 term “Defendant” means Torrid LLC.

15 2. Consistent with the definitions provided in the Settlement Agreement, the Class
16 consists of all non-exempt employees who worked for Torrid LLC at any of its retail store
17 locations in the State of California during the Class Period. [The following individuals have
18 excluded themselves from the Settlement and, therefore, are not part of the Plaintiff Class: list
19 individuals.]

20 3. Because adequate notice has been disseminated and all potential Class Members
21 have been given an opportunity to opt out of the Action, the Court has jurisdiction over the subject
22 matter of this proceeding and over all parties to this proceeding, including all Class Members. In
23 addition, the Court has personal jurisdiction over all Class Members with respect to the Action and
24 the Settlement.

25 4. Distribution of the Class Notice directed to the Class Members, as set forth in the
26 Settlement Agreement, has been completed in conformity with the Preliminary Approval Order,
27 including individual notice to all Class Members who could be identified through reasonable effort,
28 and the best notice practicable under the circumstances. The Class Notice provided due and

1 adequate notice of the proceedings and of the matters set forth in the Preliminary Approval Order,
2 including the proposed Settlement as set forth in the Settlement Agreement and fully satisfied the
3 requirements of California law, the California and United States Constitutions (including the Due
4 Process Clause), the requirements of Code of Civil Procedure § 382 and California Rules of Court
5 rule 3.766, and any other applicable law. The Class Notice also provided due and adequate notice
6 to Class Members of their right to exclude themselves from the Settlement, as well as their right to
7 object to any aspect of the proposed Settlement.

8 5. For the reasons set forth in the Preliminary Approval Order and in the transcript of
9 the proceedings of the preliminary approval hearing, which are adopted and incorporated by
10 reference, the Court finds the Settlement was entered into in good faith and further finds that the
11 Settlement is fair, reasonable, and adequate, and in the best interests of each of the parties and the
12 Participating Class Members. Named Plaintiff has satisfied the standards and applicable
13 requirements for final approval of this class action Settlement under California law, including the
14 provisions of California Code of Civil Procedure section 382, California Rule of Court 3.769, and
15 Federal Rule of Civil Procedure 23, approved for use by the California state courts in *Vasquez v.*
16 *Superior Court*, 4 Cal. 3d 800, 821 (1971).

17 6. The Court approves the Settlement as set forth in the Settlement Agreement and
18 finds that the Settlement is, in all respects, fair, adequate, and reasonable, and directs the Parties to
19 effectuate the Settlement according to the terms outlined in the Settlement Agreement. The Court
20 finds that the Settlement was reached as a result of intensive, serious, and non-collusive arms-
21 length negotiations. In granting final approval of the Settlement Agreement, the Court considered
22 the nature of the claims, the amounts and kinds of benefits paid in settlement, the allocation of
23 settlement proceeds among the Participating Class Members, and the fact that a settlement
24 represents a compromise of the parties' respective positions rather than the result of a finding of
25 liability at trial. Additionally, the Court finds that the terms of the Settlement Agreement had no
26 obvious deficiencies and did not improperly grant preferential treatment to any individual Class
27 Member. Accordingly, the Court finds that the Settlement Agreement was entered into in good
28 faith. The Court makes final its earlier provisional certification of the Class, as set forth in the

1 Preliminary Approval Order.

2 7. As of the date of this Final Order, the Named Plaintiff and all Participating Class
3 Members shall be bound by the releases set forth in the Settlement Agreement. Except as to such
4 rights or claims that may be created by the Settlement, all Class Members as of the date of this
5 Final Order who did not timely opt-out are forever barred and enjoined from prosecuting or seeking
6 to reopen the Settled Claims, and any other claims released by the Settlement Agreement, against
7 the Released Parties.

8 8. Neither the Settlement nor any of the terms set forth in the Settlement Agreement
9 are admissions by Defendant, or any of the other Released Parties, of liability on any of the
10 allegations alleged in the Action, nor is this Final Order a finding of the validity of any claims in
11 the Action, or of any wrongdoing by Defendant or any of the other Released Parties.

12 9. The Court confirms David Yeremian & Associates, Inc. and Davtyan Law Firm,
13 Inc. as Class Counsel, and finds that Class Counsel has adequately represented the Class for
14 purposes of entering into and implementing the Settlement.

15 10. The Court finds the \$700,000 Gross Settlement Amount provided for under the
16 Settlement to be fair and reasonable. Defendant is required to make all payments necessary to fund
17 the Settlement in accordance with the terms of the Settlement Agreement.

18 11. Pursuant to the terms of the Settlement, and the authorities, evidence, and argument
19 set forth in Class Counsel's application, an award of attorneys' fees in the amount of \$233,333.33
20 and for costs and expenses in the amount of \$17,000 as final payment for and complete satisfaction
21 of any and all attorneys' fees and costs incurred by and/or owed to Class Counsel is hereby granted.
22 The Court finds that Class Counsel's request falls within the range of reasonableness and that the
23 result achieved justifies the award and that the requested expenses were reasonably incurred. The
24 payment of fees and costs to Class Counsel shall be made from the Gross Settlement Amount in
25 accordance with the terms of the Settlement Agreement. The Court shall examine the final
26 accounting at a Compliance Hearing set on [REDACTED], 2021. (Note: This will be no
27 sooner than 190 days after the settlement becomes final, as the checks will be valid at least 150
28 days, plus a reasonable number of days for administration of the mailings by the administrator.)

1 12. It is ordered that an enhancement award of \$10,000 for the Named Plaintiff
2 Rosalinda Marchbanks-Powell is fair and reasonable as a service award for her service to the class.

3 13. The Court also approves a payment of \$50,000 for claims asserted under
4 California's Private Attorneys General Act ("PAGA Payment"), with 75% of the PAGA Payment
5 (\$37,500) paid to the California Labor & Workforce Development Agency and the other 25%
6 (\$12,500) added to the Net Settlement Amount to be paid to the Aggrieved Employees (as defined
7 in the Settlement Agreement). The PAGA Payment is included in, and shall come from, the Gross
8 Settlement Amount. The PAGA Payment shall be made from the Gross Settlement Amount in
9 accordance with the terms of the Settlement Agreement.

10 14. The Court further approves the payment of \$26,000 to CPT Group, Inc. to cover the
11 costs of administration as provided for in the Settlement Agreement. The payment authorized by
12 this paragraph shall be made in accordance with the terms of the Settlement Agreement.

13 15. The Court finds the settlement payments from the Net Settlement Amount provided
14 for under the Settlement Agreement to be fair and reasonable. Accordingly, the Court approves
15 and orders the calculations and the payments to be made and administered to the Participating
16 Class Members in accordance with the terms of the Settlement Agreement. The settlement
17 payments authorized by this paragraph shall be made in accordance with the terms of the
18 Settlement Agreement. It is also ordered that, after 180 days from the date of distribution of
19 settlement funds to the Class, the funds from any uncashed and voided checks will be tendered to
20 Voices for Children of San Diego, a nonprofit organization that that recruits, trains, and supports
21 volunteers who speak up for the needs and well-being of children in foster care.

22 16. Paragraphs 10-16 of this Final Order cover all settlement payments, claims for
23 attorneys' fees and expenses, costs or disbursements incurred by Class Counsel or any other
24 counsel representing Named Plaintiff or other Class Members, or incurred by Named Plaintiff or
25 the Class Members, or any of them, in connection with or related in any manner to the Action, the
26 Settlement, the administration of the Settlement, and the Settled Claims. Defendant shall not be
27 required to pay any additional amounts in connection with the Settlement other than those amounts
28 specifically set forth in the Settlement Agreement.

1 17. If the Settlement does not become final and effective in accordance with the terms
2 of the Settlement Agreement, then this Final Order and all orders entered in connection with the
3 Final Order, including the accompanying Judgment, shall be rendered null and void and shall be
4 vacated.

5 18. Without affecting the finality of the Settlement, this Order, or accompanying
6 Judgment, this Court shall, pursuant to California Rule of Court 3.769(h), retain exclusive and
7 continuing jurisdiction over the above-captioned action and the Parties, including all Participating
8 Class Members, relating to the Action and the administration, consummation, enforcement and
9 interpretation of the Settlement Agreement, this Final Order, and for any other necessary purpose.

10 19. The terms of the Settlement Agreement and this Final Order are binding on the
11 Named Plaintiff and all other Participating Class Members and Aggrieved Employees, as well as
12 their heirs, executors and administrators, successors and assigns, and those terms shall have *res*
13 *judicata* and other preclusive effect in all pending and future claims, lawsuits or other proceedings
14 maintained by or on behalf of any such persons, to the extent those claims, lawsuits or other
15 proceedings assert Settled Claims, whether known or unknown, as set forth in Paragraphs 37
16 through 39 of the Settlement Agreement.

17 20. Neither this Final Order nor the Settlement Agreement (nor any other document
18 referred to in this Final Order, nor any action taken to carry out this Final Order) is, may be
19 construed as, or may be used as, an admission or concession by or against the Defendant or the
20 Released Parties of the validity of any claim or any actual or potential fault, wrongdoing or liability.
21 Entering into or carrying out the Settlement Agreement, and any negotiations or proceedings
22 related to it, shall not be construed as, or deemed evidence of, an admission or concession as to the
23 Defendant's denials or defenses and shall not be offered or received in evidence in any action or
24 proceeding against any party in any court, administrative agency or other tribunal for any purpose
25 whatsoever, except as evidence of the settlement or to enforce the provisions of this Final Order
26 and the Settlement Agreement; *provided, however*, that this Final Order and the Settlement
27 Agreement may be filed in any action against or by the Defendant or the Released Parties to support
28 a defense of *res judicata*, collateral estoppel, release, waiver, good-faith settlement, judgment bar

1 or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or
2 similar defense or counterclaim.

3 21. There is no reason to delay the enforcement of this Order and the accompanying
4 Judgment.

5
6 IT IS SO ORDERED.

7
8
9 Dated: _____, 2021

JUDGE OF THE SUPERIOR COURT

Exhibit “C”

Exhibit “C”

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

ROSALINDA MARCHBANKS-POWELL, an
individual on behalf of herself and all others
similarly situated,

Plaintiff,

vs.

TORRID ADMINISTRATION, INC., a
California corporation; TORRID
MERCHANDISING, INC., a California
corporation; TORRID PARENT, INC., a
Delaware corporation; TORRID LLC, a
California limited liability company; HOT
TOPIC ADMINISTRATION, INC., a
California corporation; HOT TOPIC
MERCHANDISING, INC., a California
corporation; HOT TOPIC TENNESSEE, INC.,
a California corporation; HOT TOPIC, INC., a
California corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2020-00008179-CU-OE-NC

ASSIGNED FOR ALL PURPOSES TO
HON. TIMOTHY M. CASSERLY, DEPT. N-31

[PROPOSED] JUDGMENT

Hearing

Reservation No.
Date:
Time:
Dept.: N-31

Date Action Filed: February 11, 2020
Trial Date: None Set

1 **PURSUANT TO THE ORDER GRANTING FINAL APPROVAL OF CLASS**
2 **ACTION SETTLEMENT ENTERED ON** [REDACTED], **2021, IT IS ORDERED,**
3 **ADJUDGED AND DECREED AS FOLLOWS:**

4 1. The Class and PAGA Action Settlement Agreement and Stipulation (the
5 “Settlement” or “Settlement Agreement”), attached as **Exhibit 1**, shall be incorporated into this
6 Judgment as though all terms are set forth in full. The capitalized terms in this Judgment shall
7 have the meanings set forth in the Settlement Agreement.

8 2. Judgment is entered pursuant to the terms of the Settlement Agreement. All Class
9 Members who did not timely opt out of the Settlement are subject to the terms of the Settlement
10 Agreement. All Aggrieved Employees and the State of California are subject to the terms of the
11 Settlement Agreement.

12 3. Without affecting the finality of the Judgment, the Court shall retain exclusive and
13 continuing jurisdiction over the above-captioned action and the parties, including all Participating
14 Class Members, for purposes of supervising, administering, implementing, enforcing, and
15 interpreting the Settlement Agreement and the Final Order.

16
17 **IT IS SO ORDERED.**

18
19
20 DATED: _____, 2021

JUDGE OF THE SUPERIOR COURT

Exhibit “D”

Exhibit “D”

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

ROSALINDA MARCHBANKS-POWELL, an
individual on behalf of herself and all others
similarly situated,

Plaintiff,

vs.

TORRID ADMINISTRATION, INC., a
California corporation; TORRID
MERCHANDISING, INC., a California
corporation; TORRID PARENT, INC., a
Delaware corporation; TORRID LLC, a
California limited liability company; HOT
TOPIC ADMINISTRATION, INC., a
California corporation; HOT TOPIC
MERCHANDISING, INC., a California
corporation; HOT TOPIC TENNESSEE, INC.,
a California corporation; HOT TOPIC, INC., a
California corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2020-00008179-CU-OE-NC

ASSIGNED FOR ALL PURPOSES TO
HON. TIMOTHY M. CASSERLY, DEPT. N-31

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT,
APPROVING FORM OF NOTICE TO
THE CLASS, CERTIFYING THE
SETTLEMENT CLASS, AND SETTING
FINAL APPROVAL HEARING**

Hearing

Reservation No. [redacted]

Date: [redacted]

Time: [redacted]

Dept.: N-31

Date Action Filed: February 11, 2020
Trial Date: None Set

1 **RECITALS**

2 On [DATE], plaintiff Rosalinda Marchbanks-Powell (the “Named Plaintiff”), individually
3 and on behalf of the Class, and Defendant entered into a class action settlement, the terms and
4 conditions of which are set forth in the parties’ Class Action Settlement Agreement and Stipulation
5 (collectively, the “Settlement” or “Settlement Agreement”). Unless otherwise provided in this
6 Order, all capitalized terms shall have the same meaning as set forth in the Settlement Agreement.

7 The motion of Named Plaintiff for an order preliminarily approving the settlement of this
8 action, approving the form of notice to the class, certifying the settlement class for settlement
9 purposes, and setting a final approval hearing came on for hearing in Department N-31 of this
10 Court on [DATE]. Appearing at the hearing were [insert name] of David Yeremian & Associates,
11 Inc. and [insert name] of Davtyan Law Firm, Inc. on behalf of Rosalinda Marchbanks-Powell and
12 the proposed Class and [insert name] of Rutan & Tucker, LLP on behalf of Defendant.

13 This Court, having fully considered Plaintiff’s Motion, the Memorandum of Points and
14 Authorities in support, the Declarations in support, the Settlement Agreement, the proposed form
15 of Class Notice, and the oral argument presented to the Court, finds that: (1) the proposed
16 settlement appears fair, reasonable and adequate, and that a final hearing should be held after notice
17 to the Class (defined below) of the proposed settlement to determine if the Settlement Agreement
18 and settlement are fair, reasonable, and adequate such that a Final Order and Judgment should be
19 entered in this action based upon the Settlement Agreement and (2) the PAGA Settlement Payment
20 is fair and adequate and the PAGA Settlement Payment should be approved.

21 **THE COURT ORDERS AND MAKES DETERMINATIONS AS FOLLOWS:**

22 **ORDER PROVISIONALLY CERTIFYING SETTLEMENT CLASS AND**
23 **APPOINTMENT OF CLASS REPRESENTATIVES AND CLASS COUNSEL**

24 1. The Court finds that certification of the following class, for settlement purposes
25 only, is appropriate:

26 All non-exempt employees who worked for Torrid LLC at any of its retail store
27 locations in the State of California during the Class Period as defined in the
28 Settlement Agreement. The Class Period means the period beginning on February

11, 2016 and extending through the date of December 31, 2020.

2 2. The Court grants preliminary approval of the terms and conditions contained in the
3 Settlement Agreement. The Court finds that the terms of the Settlement Agreement are within the
4 range of possible approval at the final approval hearing.

5 3. The Court preliminarily finds, for settlement purposes only, that the Class meets
6 (i) the ascertainability and numerosity requirements; (ii) the commonality requirement because, in
7 the absence of class certification and settlement, each individual Class Member would have to
8 litigate core common issues of law and fact, all relating to Defendant's alleged wage-and-hour
9 violations asserted in the action; (iii) the typicality requirement because the Named Plaintiff and
10 the Class Members' claims all arise from the same alleged events and course of conduct, and are
11 based on the same legal theories; and (iv) the adequacy of representation requirement because the
12 Named Plaintiff has the same interests as all members of the Class, and they are represented by
13 experienced and competent counsel.

14 4. The Court further finds, preliminarily and for settlement purposes only, that
15 common issues predominate over individual issues in this litigation and that class treatment is
16 superior to the other means of resolving this dispute. Employing the class device here will not
17 only achieve economies of scale for Class Members with individual claims, but also conserve the
18 resources of the judicial system and preserve public confidence in the integrity of the system by
19 avoiding the waste and delay of repetitive proceedings. In addition, certifying the class will prevent
20 inconsistent adjudications of similar issues and claims.

21 5. For settlement purposes only, the Court finds that the Named Plaintiff, Rosalinda
22 Marchbanks-Powell, is an adequate representative and appoints her as such. The Court further
23 finds that David Yeremian of David Yeremian & Associates, Inc. and Emil Davtyan of Davtyan
24 Law Firm, Inc. have adequately represented the Named Plaintiff and the Class in this litigation,
25 and the Court appoints them as Class Counsel.

26 6. The Court appoints CPT Group, Inc. to perform the duties of a Settlement
27 Administrator for the purpose of issuing the Class Notice and administering the Settlement.

28 7. The Court recognizes that certification under this Order is for *settlement purposes*

1 *only*, and shall not constitute or be construed as a finding by the Court, or an admission on the part
2 of Defendant, that this action is appropriate for class treatment for litigation purposes. Entry of
3 this Order is without prejudice to the rights of Defendant to oppose class certification in the action,
4 should the proposed Settlement Agreement not be granted final approval.

5 **PRELIMINARY APPROVAL OF THE SETTLEMENT AGREEMENT**

6 8. The Court has reviewed the Settlement Agreement and the proposed Class Notice,
7 which is attached as an exhibit to the Settlement Agreement. The Court finds, on a preliminary
8 basis, that the Settlement Agreement appears to be within the range of reasonableness of a
9 settlement that could ultimately be given final approval by this Court. It appears to the Court on a
10 preliminary basis that:

11 a. The settlement amount is fair and reasonable to all Class Members when
12 balanced against the probable outcome of further litigation relating to liability and damages issues;

13 b. Extensive and costly investigation and research have been conducted such
14 that counsel for the parties at this time are reasonably able to evaluate their respective positions;

15 c. Settlement at this time will avoid additional substantial costs, such as those
16 that have already been incurred by both parties, as well as avoid the delay and risks that would be
17 presented by the further prosecution of this litigation; and

18 d. The proposed settlement has been reached as the result of intensive, serious,
19 and non-collusive arm's-length negotiations.

20 9. The Court further approves the following representative group of employees as
21 governed by the Settlement Agreement with respect to the PAGA Claim: Class Members who
22 worked from March 23, 2019 through December 31, 2020.

23 10. The Court grants approval of the PAGA Settlement Payment pursuant to the terms
24 and conditions contained in the Settlement Agreement. The Court finds that the terms of the PAGA
25 settlement are fair and reasonable and approves the PAGA settlement pursuant to Labor Code
26 § 2699(1)(2).

27 11. Because a PAGA action is not a class action, Class Members may not opt out of, or
28 object to, the PAGA Settlement Payment.

1 12. If the Court does not grant final approval of the Settlement Agreement, approval of
2 the PAGA settlement will be vacated.

3 **APPROVAL OF DISTRIBUTION OF THE CLASS NOTICE**

4 **AND TIMELINE FOR SENDING CLASS NOTICE**

5 13. This Court finds that the Class Notice fairly and adequately advises the potential
6 Class Members of the terms of the Settlement and the process for the Class Members to obtain the
7 benefits available under the Settlement Agreement, as well as the right of Class Members to opt
8 out of the class, to file documentation in opposition to the proposed settlement, and to appear at
9 the settlement hearing to be conducted on the date set by the Court. The Court further finds that
10 the Class Notice and proposed distribution of such Class Notice by first-class mail to each
11 identified Class Member at their last known address comports with all constitutional requirements,
12 including those of due process under the United States and California constitutions, and meets the
13 requirements of Code of Civil Procedure § 382 and California Rules of Court rule 3.766.
14 Accordingly, good cause appearing therefore, the Court hereby approves the proposed Class
15 Notice, attached as Exhibit 1.

16 14. The Settlement Administrator shall, as soon as practicable, but no later than
17 [REDACTED], 2021 [not less than 45 days following the date of this Order], cause the Class Notice
18 to be mailed by first class mail to all known members of the Class certified by this Court in this
19 action to the most recent address in Defendant's business records for each known member of the
20 Class. The mailing of the Class Notices directed in this Order constitutes the best notice practicable
21 under the circumstances and sufficient notice to all members of the Class.

22 15. The costs of claims administration, including the cost of printing and mailing the
23 Class Notices shall be paid from the Settlement Amount. Such costs shall be withheld from the
24 Settlement Amount by the Settlement Administrator pursuant to the terms of the Settlement
25 Agreement.

26 16. Each member of the Class who wishes to be excluded from the Class must submit
27 a request to be excluded from the Settlement by the deadline set forth in the Class Notice. Any
28 Class Member who does not submit a timely request to be excluded from the Settlement consistent

1 with the terms of the Settlement Agreement shall be bound by the terms of the Settlement
2 Agreement, even if such Class Member has previously initiated or subsequently initiates individual
3 litigation against Defendant or other proceedings encompassed by the Settled Claims defined in
4 the Settlement Agreement.

5 17. If Class Members representing more than 5% of the Class timely opt out of the
6 Settlement, Defendant shall have the sole and absolute discretion to withdraw from the Settlement
7 Agreement within 15 business days after expiration of the Notice Period. Defendant will provide
8 written notice of such withdrawal to Class Counsel. In the event that Defendant elects to so
9 withdraw, the withdrawal shall have the same effect as a termination of the Settlement Agreement
10 for failure to satisfy a condition of Settlement, and the Settlement Agreement shall become null
11 and void and have no further force or effect, and the class certified pursuant to this Agreement will
12 be decertified for all purposes.

13 **OBJECTIONS TO SETTLEMENT**

14 18. Any member of the Class who has not timely elected to be excluded from the Class,
15 and who wishes to object to the fairness, reasonableness or adequacy of the Settlement Agreement
16 or the proposed settlement, or to the award of attorneys' fees and costs, shall provide to the
17 Settlement Administrator a written statement of the objection, as well as the specific reasons, if
18 any, for each objection. The Settlement Administrator will promptly transmit any objections it
19 receives to Class Counsel and Defendant's counsel.

20 19. All written objections must be signed by the Class Member or the Class Member's
21 representative and must include the information specified in the Class Notice.

22 20. A Class Member may appear either in person or through personal counsel at the
23 Final Hearing to object to the Settlement. If represented by personal counsel, the counsel will be
24 hired at the Class Member's expense.

25 21. Class Counsel and Defendant's counsel shall promptly furnish each other with
26 copies of any and all objections or written requests for exclusion that come into their possession.

27 **FINAL APPROVAL FAIRNESS HEARING**

28 22. The Court grants Plaintiff's motion to set a settlement hearing for final approval of

1 the Settlement Agreement on [REDACTED], 2021, at [REDACTED] in Department N-31 of this
2 Court ("Final Hearing"), as set forth in the Class Notice, to determine whether the proposed
3 settlement of this action is fair, reasonable and adequate and should be finally approved. The Court
4 will also consider at the Final Hearing whether applications for Plaintiff's attorneys' fees and
5 expenses and enhancement award to the Named Plaintiff should be granted and, if so, in what
6 amounts.

7 23. Members of the Class who have not timely elected to be excluded from the Class
8 and who object to the proposed Settlement may appear and present such objections at the
9 Settlement Hearing in person or by counsel, provided that the objecting Class Member complied
10 with the requirements to object to the Settlement. No person shall be heard, and no briefs or papers
11 shall be received or considered, unless the requirements to object to the Settlement have been
12 satisfied, except as this Court may permit for good cause shown.

13 24. Class Counsel shall file Plaintiff's memorandum of points and authorities in support
14 of the final approval of the Settlement Agreement and their request for approval of the attorneys'
15 fees, enhancement award, and litigation costs no later than [REDACTED] days prior to the Final
16 Hearing. After the Final Hearing, the Court may enter a Final Order and Final Judgment in
17 accordance with the Settlement Agreement that will adjudicate the rights of all Class Members.

18 25. All discovery and other pretrial proceedings in this action are stayed and suspended
19 until further order of this Court, except such actions as may be necessary to implement the
20 Settlement Agreement and this Order.

21 26. If, for any reason, the Court does not grant final approval of the Settlement, all
22 evidence and proceedings held in connection therewith shall be without prejudice to the status quo
23 ante rights of the parties to the litigation as more specifically set forth in the Settlement Agreement.

24 **IT IS SO ORDERED.**

25
26
27 DATED: _____, 2021

28 _____
JUDGE OF THE SUPERIOR COURT

EXHIBIT 2

THE LAW OFFICES OF

**DAVID YEREMIAN
& ASSOCIATES INC**

535 N BRAND BLVD STE 705
GLENDALE CA 91203

818 230 8380
818 230 0308 FAX

DAVID@YEREMIANLAW.COM;
NATALIE@YEREMIANLAW.COM

February 10, 2020

VIA ON-LINE SUBMISSION ONLY TO:

<https://dir.tfaforms.net/128> (copy by certified mail to the below listed defendants)

Torrid Administration, Inc.
CSC – Lawyers Incorporating Service, Agent for Service of Process
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833
Certified Mail Tracking Number: 7018 3090 0000 6138 4448

Torrid Administration, Inc.
18501 East San Jose Avenue
City of Industry, CA 91748
Certified Mail Tracking Number: 7018 3090 0000 6138 4455

Torrid Merchandising, Inc.
CSC – Lawyers Incorporating Service, Agent for Service of Process
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833
Certified Mail Tracking Number: 7018 3090 0000 6138 4462

Torrid Merchandising, Inc.
18501 East San Jose Avenue
City of Industry, CA 91748
Certified Mail Tracking Number: 7018 3090 0000 6138 4479

Torrid Parent, Inc.
CSC – Lawyers Incorporating Service, Agent for Service of Process
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833
Certified Mail Tracking Number: 7018 3090 0000 6138 4486

Torrid Parent, Inc.
18501 East San Jose Avenue
City of Industry, CA 91748
Certified Mail Tracking Number: 7018 3090 0000 6138 4493

Torrid LLC
CSC – Lawyers Incorporating Service, Agent for Service of Process
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833
Certified Mail Tracking Number: 7018 3090 0000 6138 4509

Torrid LLC
18501 East San Jose Avenue
City of Industry, CA 91748
Certified Mail Tracking Number: 7018 3090 0000 6138 4516

Hot Topic Administration, Inc.
Corporation Service Company, Agent for Service of Process
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833
Certified Mail Tracking Number: 7018 3090 0000 6138 4523

Hot Topic Administration, Inc.
18305 East San Jose Avenue
City of Industry, CA 91748
Certified Mail Tracking Number: 7018 3090 0000 6138 4530

Hot Topic Merchandising, Inc.
Corporation Service Company, Agent for Service of Process
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833
Certified Mail Tracking Number: 7018 3090 0000 6138 4547

Hot Topic Merchandising, Inc.
18305 East San Jose Avenue
City of Industry, CA 91748
Certified Mail Tracking Number: 7018 3090 0000 6138 4554

Hot Topic Tennessee, Inc.
Corporation Service Company, Agent for Service of Process
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833
Certified Mail Tracking Number: 7018 3090 0000 6138 4561

Hot Topic Tennessee, Inc.
18305 East San Jose Avenue
City of Industry, CA 91748
Certified Mail Tracking Number: 7018 3090 0000 6138 4578

Hot Topic, Inc.
Corporation Service Company, Agent for Service of Process
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833
Certified Mail Tracking Number: 7018 3090 0000 6138 4585

Hot Topic, Inc.
18305 East San Jose Avenue
City of Industry, CA 91748
Certified Mail Tracking Number: 7018 3090 0000 6138 4592

**Re: Labor Code § 2698, et seq. Penalties – PAGA Notice Letter
Rosalinda Marchbanks-Powell, et al. v. Torrid**

Gentlepersons:

This office represents Plaintiff Rosalinda Marchbanks-Powell (“Plaintiff”) and other aggrieved employees for, *inter alia*, violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 246, 510, 512, 558, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802 provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq.*

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et. seq.* (“the Act”). Plaintiff wishes to bring a representative action, pursuant to the Act, on behalf of herself and all other similarly situated Aggrieved Employees, and the State of California, against Defendants, Torrid Administration, Inc., and Hot Topic, Inc., and DOES 1 through 50 inclusive (all defendants being referred to herein collectively as “Defendants”).

Relevant Facts

Plaintiff was employed by Defendants as a non-exempt, hourly employee in San Diego, California. Aggrieved Employees include all non-exempt hourly employees of Defendants within the state of California from one year prior to the date of this letter and continuing through the present. Plaintiff and Aggrieved Employees are collectively referred to herein as “Aggrieved Employees.” Aggrieved Employees consistently worked at Defendants’ behest and under their control and subject to their policies and practices without being paid all wages due. Plaintiff is also informed and believes that there are other Aggrieved Employees employed by Defendants as non-exempt employees within the state of California within the statutory time period who suffer or suffered from the same wage and hour violations outlined below.

Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked. Aggrieved Employees were either not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime rates. Plaintiff also contends that Defendants failed to pay Aggrieved Employees all wages due and owing, including by requiring off the clock work, failing to incorporate non-discretionary bonuses into the regular rate of pay used to calculate and pay overtime, unlawful rounding to their detriment, failing to provide meal and rest breaks, failing to furnish accurate wage statements, failing to timely pay wages including final wages, failing to reimburse for necessary business expenses, and failing to provide required sick days, all in violation of various provisions of the California Labor Code and applicable Wage Orders.

During the course of Aggrieved Employees’ employment with Defendants, they were not paid all wages they were owed, including for all work performed resulting in off the clock work. Defendants failed to pay Aggrieved Employees for all hours worked including time spent on-duty during portions of their meal periods. More specifically, Aggrieved Employees would have to clock out of the timekeeping system during their meal breaks but were also required to continue working throughout this time period. Additionally, Plaintiff and Aggrieved Employees would work before their scheduled shifts began and also after their scheduled shifts ended, but they were required to clock in and clock out of the timekeeping system at their scheduled shift

times instead of the actual hours they worked. Defendant's policy resulted in Aggrieved Employees working off the clock. Specifically, pre-shift off the clock work included making trips to the nearest bank to deposit cash, making trips to a store to purchase supplies, and cleaning up the store. Post-shift off the clock work also included making trips to the nearest bank as well as taking out the trash and organizing new shipments that came in on a daily basis. Moreover, Defendants failed to pay Aggrieved Employees for all hours worked including time spent training.

Moreover, Defendants had a consistent policy and practice of unlawfully rounding hours worked to the detriment of Aggrieved Employees. Rather than paying Aggrieved Employees for all hours and minutes they actually worked, Defendants followed a uniform policy and practice of rounding all time entries to the nearest quarter-hour or half-hour (i.e. to the nearest 15-minute or 30-minute time increment). Generally, rounding was to the detriment of Aggrieved Employees, and Plaintiff contends this policy is not neutral and resulted, over time, in the systematic under-compensation of the Aggrieved Employees. Rather than reflecting the actual hours worked by Aggrieved Employees, the time entries were rounded and reduced to reflect the scheduled work time rather than the actual hours worked. These unlawfully rounded time entries were inputted into Defendants' payroll system from which wage statements and payroll checks were created.

Defendants also failed to pay Aggrieved Employees all wages due and owing because Defendant failed to incorporate non-discretionary, performance based bonuses into the overtime rate calculation. Contrary to the requirements of the Labor Code and IWC Wage Orders under California law, Defendants did not incorporate these non-discretionary bonuses paid to the Aggrieved Employees into the regular rate of pay Defendants used to calculate and pay overtime.

By implementing policies, programs, practices, procedures and protocols which resulted in off the clock work and also rounded down the hours worked by Aggrieved Employees, Defendants' willful actions resulted in the systematic underpayment of wages and overtime pay to Aggrieved Employees. For example, the off the clock work addressed above caused Aggrieved Employees to begin receiving overtime pay later than they should have.

As a result of the above described unlawful rounding, requirements to work off the clock, the failure to incorporate non-discretionary bonuses into the regular rate of pay used to calculate and pay overtime, and the other wage violations they endured at Defendants' hands, Aggrieved Employees were not properly paid all wages earned and all wages owed to them by Defendants, including when working more than eight (8) hours in any given day and/or more than forty (40) hours in any given week. Moreover, the uncompensated time, discussed above, was worked by Aggrieved Employees in excess of 8 hours a day and/or 40 hours a week, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code and applicable Wage Orders.

Additionally, Defendants failed to provide all the legally required unpaid, off-duty meal periods and all the legally required paid, off-duty rest periods to Aggrieved Employees, as required by the applicable Wage Order and Labor Code. Aggrieved Employees were required to perform work as ordered by Defendants for more than five (5) hours during a shift, but were often required to do so without receiving a lawful and timely meal break. In addition to untimely meal periods, Defendants also required Aggrieved Employees to respond to work demands. Defendants placed their needs over Aggrieved Employees' lawful meal and rest breaks. This

resulted in Aggrieved Employees often having to work through their scheduled meal and/or rest breaks, or otherwise taking shortened ones, because the demands of the job would not avail them the opportunity to take a lawfully uninterrupted and off duty meal and/or rest break.

On the occasions when Aggrieved Employees worked over 10 hours in a shift, Defendants also failed to provide them with a second, uninterrupted, timely and duty-free meal period. As a result, Defendants' failure to provide Aggrieved Employees with all legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest periods is and will be evidenced by Defendants' business records, or lack thereof. Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective hourly rate of pay, including their earned commission, for each meal period or rest break that Defendants failed to provide or deficiently provided.

Therefore, Defendants have regularly required Aggrieved Employees to work shifts in excess of five (5) hours without providing them with uninterrupted meal periods of not less than thirty (30) minutes, and shifts in excess of (10) hours without providing them with second meal periods of not less than thirty minutes; nor did Defendants pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective hourly rate of pay, including their earned commission, for each meal period that Defendants failed to provide or deficiently provided.

Aggrieved Employees were also not authorized and permitted to take lawful rest periods, were systematically required by Defendants to work through or during breaks, and were not provided with one (1) hour's wages in lieu thereof. To the extent Aggrieved Employees were able to take rest breaks, they were restricted from leaving the premises. Aggrieved Employees were restricted in their ability to take their full ten (10) minutes net rest time or were otherwise not provided with duty-free rest periods. Therefore, Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours; or major fraction thereof, nor did Defendant pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided.

Defendants also consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Specifically, the wage statements given to Aggrieved Employees failed to incorporate non-discretionary bonuses into the regular rate of pay used to calculate and pay overtime compensation. Thus, the wage statements do not provide accurate hourly rates for overtime and the statements do not comply with Labor Code § 226(a)(9). Additionally, the wage statements do not accurately account for unpaid wages and overtime because Defendants had unlawfully rounded time entries to the detriment of the Aggrieved Employees and their actual hours worked were under-reported and also due to off the clock work. Additionally, the wage statements given to Aggrieved Employees failed to accurately account for premium pay for deficiently provided meal periods and rest breaks.

Additionally, Defendants failed to pay Aggrieved Employees all wages owed, as detailed above, at the time of their termination or within seventy-two (72) hours of their resignation, as required under Labor Code § 203. Specifically, Defendants failed to pay Plaintiff for all wages due and certain within seventy-two hours of her resignation in compliance with Labor Code §§ 201-203. Instead, Defendants waited until the next scheduled pay date to give Plaintiff her final check.

Upon information and belief, Defendants implemented the same policy and procedure for Aggrieved Employees as well. Additionally, these Aggrieved Employees were not paid all regular and overtime wages because Defendants failed to pay for all hours worked or required off the clock work and unlawfully rounded time entries to the detriment of Aggrieved Employees, and failed to pay premium wages owed for unprovided meal periods and rest periods. Defendants' failure to pay said wages within the required time was willful within the meaning of Labor Code § 203.

Defendants also failed to reimburse Aggrieved Employees for necessary business expenses. Defendants have regularly required Plaintiff to incur business expenses in the course of performing their required job duties for Defendants, including but not limited to the following: cellular telephone services, the purchase of supplies, and mileage which Aggrieved Employees were required to use in order to execute their duties under Defendants' employ. Upon information and belief, Aggrieved Employees incurred similar costs. These expenses incurred by Plaintiff and the Aggrieved Employees were necessary and required of them in performing their assigned job duties, but Defendants failed to reimburse Plaintiff and the Aggrieved Employees for all such necessary expenditures, thus entitling them to reimbursement according to proof as required under Labor Code § 2802 and the applicable provisions of the IWC Wage Orders.

As addressed above, Aggrieved Employees complain of the following violations committed by Defendants:

Failure to Pay Minimum Wages

Defendants violated the law by failing to pay Aggrieved Employees minimum wages for all hours worked. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders. Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked. Aggrieved Employees were required to work off the clock without pay, were subject to unlawful rounding of hours, and underreporting of hours by reflecting changes to timekeeping records to reflect less time worked than was actually worked. Moreover, Defendants failed to pay Aggrieved Employees the minimum wage for all hours worked. Defendants have the ability to pay minimum wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Aggrieved Employees.

In light of the forgoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a). Aggrieved employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and the applicable IWC Wage Order, paragraph 4(A)-4(D).

Failure to Pay Wages and Overtime in Violation of Labor Code § 510

Defendants violated the law by failing to pay Aggrieved Employees earned wages and overtime. Aggrieved Employees consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week. However, Defendants failed to pay Aggrieved Employees for all hours worked and failed to pay overtime compensation at premium overtime rates. Moreover, the uncompensated time, discussed above, was worked by Aggrieved Employees in excess of 8 hours a day and/or 40 hours a week, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code § 510 and applicable IWC Wage Order, paragraph 3(A) and 4(B).

In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, and 1194 (and the relevant orders of the Industrial Welfare Commission). Defendants are liable to Aggrieved Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes and Wage Order provisions.

Meal-Period Liability Under Labor Code § 226.7

Defendants have regularly required Aggrieved Employees to work shifts in excess of five (5) hours without providing them with timely and uninterrupted meal periods of not less than thirty (30) minutes as required under Labor Code §§ 226.7, 512, and applicable Wage Orders. Defendants placed their needs over Aggrieved Employees lawful meal breaks. This resulted in Aggrieved Employees consistently having to work through their scheduled meal breaks because the demands of the job would not avail them the opportunity to take a lawfully uninterrupted and off duty meal break, in violation of the Labor Code and applicable Wage Orders. Thus, Aggrieved Employees did not receive a complaint meal break. On shifts over ten hours, second meal periods were not provided. Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided. Therefore, pursuant to Labor Code § 226.7, Aggrieved Employees are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and the applicable IWC Wage Order, paragraph 11.

Rest-Break Liability Under Labor Code § 226.7

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten (10) minutes for every work period of four (4) or more consecutive hours, as required under Labor Code § 226.7. Defendants placed their needs over Aggrieved Employees' lawful rest breaks. This resulted in Aggrieved Employees consistently having to work through their scheduled rest breaks because the demands of the job would not avail them the opportunity to take a lawfully uninterrupted and off duty rest break. Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided. Therefore, pursuant to Labor Code § 226.7, Aggrieved Employees are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor

Code, including Labor Code § 558 and other applicable statutes and the applicable IWC Wage Order, paragraph 12.

Failure to Issue Accurate Wage Statements in Violation of Labor Code § 226

California Labor Code § 226(a) requires an employer to furnish each of his or her employees with an accurate, itemized wage statements in writing. These statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a), Aggrieved Employees suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

Defendants failed to provide Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e) and the applicable IWC Wage Order, paragraph 7(B), Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

In addition, Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226." To the extent that Labor Code § 226.3 applies, Plaintiff also seeks such penalties on behalf of herself and the Aggrieved Employees.

Failure to Issue Semimonthly Payments in Violation of Labor Code § 204

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558.

Failure to Keep Records In Accordance With Labor Code § 1174

Labor Code § 1174 requires employers to keep records showing payroll data and the hours worked daily by and the wages paid to employees. By failing to pay Aggrieved Employees proper wages, overtime, premium pay, etc., all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the forgoing, Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.*

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees, including Plaintiff, no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages due and owed to Aggrieved Employees at the time of their termination or within seventy-two (72) hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558 and further specifically seek penalties and wages under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

Reimbursement of Necessary Expenditures Under Labor Code § 2802

Under Labor Code § 2802(a) an employer must indemnify its employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer. In the present case, Aggrieved Employees incurred necessary expenditures in the performance of their job duties for Defendants, including but not limited to the following: cellular telephone services, the purchase of supplies, and mileage, which Aggrieved Employees were required to use in order to execute their duties under Defendants' employ. Plaintiff and Aggrieved Employees were not reimbursed for those lawful and necessary work related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

Failure to Provide Required California Paid Sick Days

(Cal. Labor Code §§ 246, 247.5, 248.5, 2699 *et seq.*)

Plaintiff and Aggrieved Employees alleges that Defendant failed to provide required California paid sick days and further failed to distribute and maintain required documentation concerning how many sick dates were available, in violation of Labor Code §§ 246, 246(a), 246(b)(1), and 247.5. Plaintiff now seeks damages pursuant to §§248.5 and 2699 *et seq.*

Conclusion

We have been constrained to initially move forward with the filing of a complaint, alleging the causes of action discussed herein, without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

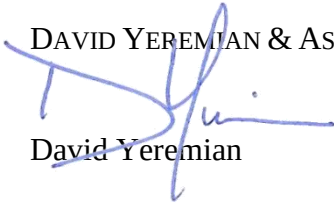
This letter therefore provides the requisite notice under the Act to the LWDA and Defendants by setting forth the specific provisions of the Labor Code and related provisions Plaintiff alleges have been violated, including the facts and relevant theories alleged against Torrid Administration, Inc., and Hot Topic, Inc. To prevent the violations described herein from occurring, and to remedy past violations, Plaintiff respectfully requests that the LWDA conduct an investigation into Defendants' employment practices in accordance with the Act.

///
///
///
///

Wherefore we request that you advise us, by certified mail within thirty (60) days of the postmark on this letter, whether you intend to proceed with these claims or whether Aggrieved Employees should include them as a Labor Code § 2698 claim under the Act in a complaint with the Superior Court.

Regards,

DAVID YEREMIAN & ASSOCIATES, INC.



David Yeremian

Cc: Defendants by Certified Mail

EXHIBIT 3

**DAVID YEREMIAN
& ASSOCIATES INC**

535 N BRAND BLVD STE 705
GLENDALE CA 91203

818 230 8380
818 230 0308 FAX

DAVID@YEREMIANLAW.COM;
NATALIE@YEREMIANLAW.COM

October 8, 2020

VIA ON-LINE SUBMISSION ONLY TO:

<https://dir.tfaforms.net/128> (copy by certified mail to the below listed defendants)

Torrid LLC

CSC – Lawyers Incorporating Service, Agent for Service of Process
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833
Certified Mail Tracking Number: 7019 2970 0000 5059 7728

Torrid LLC

18501 East San Jose Avenue
City of Industry, CA 91748
Certified Mail Tracking Number: 7019 2970 0000 5059 7711

**Re: Labor Code § 2698, *et seq.* Penalties – PAGA Notice Letter
Rosalinda Marchbanks-Powell, et al. v. Torrid
*LWDA Case No. LWDA-771841-20***

Gentlepersons:

This office represents Plaintiff Rosalinda Marchbanks-Powell (“Plaintiff”) and other aggrieved employees for, *inter alia*, violations of California Labor Code §§ 201, 202, 203, 204, 210, 218.6, 226, 226.3, 226.7, 246, 510, 512, 558, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, 2699, *et seq.*, and 2802 provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq.*

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et. seq.* (“the Act”). Plaintiff wishes to bring a representative action, pursuant to the Act, on behalf of herself and all other similarly situated Aggrieved Employees, and the State of California, against Defendants, Torrid Administration, Inc., and Hot Topic, Inc., and DOES 1 through 50 inclusive (all defendants being referred to herein collectively as “Defendants”).

Relevant Facts

Plaintiff was employed by Defendants as a non-exempt, hourly employee in San Diego, California. Aggrieved Employees include all non-exempt hourly employees of Defendants within the state of California from one year prior to the date of this letter and continuing through the present. Plaintiff and Aggrieved Employees are collectively referred to herein as “Aggrieved Employees.” Aggrieved Employees consistently worked at Defendants’ behest and under their control and subject to their policies and practices without being paid all wages due. Plaintiff is also informed and believes that there are other Aggrieved Employees employed by Defendants

as non-exempt employees within the state of California within the statutory time period who suffer or suffered from the same wage and hour violations outlined below.

Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked. Aggrieved Employees were either not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime rates. Plaintiff also contends that Defendants failed to pay Aggrieved Employees all wages due and owing, including by requiring off the clock work, failing to incorporate non-discretionary bonuses into the regular rate of pay used to calculate and pay overtime, unlawful rounding to their detriment, failing to provide meal and rest breaks, failing to furnish accurate wage statements, failing to timely pay wages including final wages, failing to reimburse for necessary business expenses, and failing to provide required sick days, all in violation of various provisions of the California Labor Code and applicable Wage Orders.

During the course of Aggrieved Employees' employment with Defendants, they were not paid all wages they were owed, including for all work performed resulting in off the clock work. Defendants failed to pay Aggrieved Employees for all hours worked including time spent on-duty during portions of their meal periods. More specifically, Aggrieved Employees would have to clock out of the timekeeping system during their meal breaks but were also required to continue working throughout this time period. Additionally, Plaintiff and Aggrieved Employees would work before their scheduled shifts began and also after their scheduled shifts ended, but they were required to clock in and clock out of the timekeeping system at their scheduled shift times instead of the actual hours they worked. Defendant's policy resulted in Aggrieved Employees working off the clock. Specifically, pre-shift off the clock work included making trips to the nearest bank to deposit cash, making trips to a store to purchase supplies, and cleaning up the store. Post-shift off the clock work also included making trips to the nearest bank as well as taking out the trash and organizing new shipments that came in on a daily basis. Additionally, after Aggrieved Employees clocked out they were required to have their bags checked by a supervisor before leaving the store. Moreover, Defendants failed to pay Aggrieved Employees for all hours worked including time spent training.

Moreover, Defendants had a consistent policy and practice of unlawfully rounding hours worked to the detriment of Aggrieved Employees. Rather than paying Aggrieved Employees for all hours and minutes they actually worked, Defendants followed a uniform policy and practice of rounding all time entries to the nearest quarter-hour or half-hour (i.e. to the nearest 15-minute or 30- minute time increment). Generally, rounding was to the detriment of Aggrieved Employees, and Plaintiff contends this policy is not neutral and resulted, over time, in the systematic under-compensation of the Aggrieved Employees. Rather than reflecting the actual hours worked by Aggrieved Employees, the time entries were rounded and reduced to reflect the scheduled work time rather than the actual hours worked. These unlawfully rounded time entries were inputted into Defendants' payroll system from which wage statements and payroll checks were created.

Defendants also failed to pay Aggrieved Employees all wages due and owing because Defendant failed to incorporate non-discretionary, performance based bonuses into the overtime rate calculation. Contrary to the requirements of the Labor Code and IWC Wage Orders under California law, Defendants did not incorporate these non-discretionary bonuses paid to the Aggrieved Employees into the regular rate of pay Defendants used to calculate and pay overtime.

By implementing policies, programs, practices, procedures and protocols which resulted in off the clock work and also rounded down the hours worked by Aggrieved Employees, Defendants' willful actions resulted in the systematic underpayment of wages and overtime pay to Aggrieved Employees. For example, the off the clock work addressed above caused Aggrieved Employees to begin receiving overtime pay later than they should have.

As a result of the above described unlawful rounding, requirements to work off the clock, the failure to incorporate non-discretionary bonuses into the regular rate of pay used to calculate and pay overtime, and the other wage violations they endured at Defendants' hands, Aggrieved Employees were not properly paid all wages earned and all wages owed to them by Defendants, including when working more than eight (8) hours in any given day and/or more than forty (40) hours in any given week. Moreover, the uncompensated time, discussed above, was worked by Aggrieved Employees in excess of 8 hours a day and/or 40 hours a week, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code and applicable Wage Orders.

Additionally, Defendants failed to provide all the legally required unpaid, off-duty meal periods and all the legally required paid, off-duty rest periods to Aggrieved Employees, as required by the applicable Wage Order and Labor Code. Aggrieved Employees were required to perform work as ordered by Defendants for more than five (5) hours during a shift, but were often required to do so without receiving a lawful and timely meal break. In addition to untimely meal periods, Defendants also required Aggrieved Employees to respond to work demands. Defendants placed their needs over Aggrieved Employees' lawful meal and rest breaks. This resulted in Aggrieved Employees often having to work through their scheduled meal and/or rest breaks, or otherwise taking shortened ones, because the demands of the job would not avail them the opportunity to take a lawfully uninterrupted and off duty meal and/or rest break.

On the occasions when Aggrieved Employees worked over 10 hours in a shift, Defendants also failed to provide them with a second, uninterrupted, timely and duty-free meal period. As a result, Defendants' failure to provide Aggrieved Employees with all legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest periods is and will be evidenced by Defendants' business records, or lack thereof. Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective hourly rate of pay, including their earned commission, for each meal period or rest break that Defendants failed to provide or deficiently provided.

Therefore, Defendants have regularly required Aggrieved Employees to work shifts in excess of five (5) hours without providing them with uninterrupted meal periods of not less than thirty (30) minutes, and shifts in excess of (10) hours without providing them with second meal periods of not less than thirty minutes; nor did Defendants pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective hourly rate of pay, including their earned commission, for each meal period that Defendants failed to provide or deficiently provided.

Aggrieved Employees were also not authorized and permitted to take lawful rest periods, were systematically required by Defendants to work through or during breaks, and were not provided with one (1) hour's wages in lieu thereof. To the extent Aggrieved Employees were able to take rest breaks, they were restricted from leaving the premises. Aggrieved Employees were restricted

in their ability to take their full ten (10) minutes net rest time or were otherwise not provided with duty-free rest periods. Therefore, Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours; or major fraction thereof, nor did Defendant pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided.

Defendants also consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Specifically, the wage statements given to Aggrieved Employees failed to incorporate non-discretionary bonuses into the regular rate of pay used to calculate and pay overtime compensation. Thus, the wage statements do not provide accurate hourly rates for overtime and the statements do not comply with Labor Code § 226(a)(9). Additionally, the wage statements do not accurately account for unpaid wages and overtime because Defendants had unlawfully rounded time entries to the detriment of the Aggrieved Employees and their actual hours worked were under-reported and also due to off the clock work. Additionally, the wage statements given to Aggrieved Employees failed to accurately account for premium pay for deficiently provided meal periods and rest breaks.

Additionally, Defendants failed to pay Aggrieved Employees all wages owed, as detailed above, at the time of their termination or within seventy-two (72) hours of their resignation, as required under Labor Code § 203. Specifically, Defendants failed to pay Plaintiff for all wages due and certain within seventy-two hours of her resignation in compliance with Labor Code §§ 201-203. Instead, Defendants waited until the next scheduled pay date to give Plaintiff her final check. Upon information and belief, Defendants implemented the same policy and procedure for Aggrieved Employees as well. Additionally, these Aggrieved Employees were not paid all regular and overtime wages because Defendants failed to pay for all hours worked or required off the clock work and unlawfully rounded time entries to the detriment of Aggrieved Employees, and failed to pay premium wages owed for unprovided meal periods and rest periods. Defendants' failure to pay said wages within the required time was willful within the meaning of Labor Code § 203.

Defendants also failed to reimburse Aggrieved Employees for necessary business expenses. Defendants have regularly required Plaintiff to incur business expenses in the course of performing their required job duties for Defendants, including but not limited to the following: cellular telephone services, the purchase of supplies, and mileage which Aggrieved Employees were required to use in order to execute their duties under Defendants' employ. Upon information and belief, Aggrieved Employees incurred similar costs. These expenses incurred by Plaintiff and the Aggrieved Employees were necessary and required of them in performing their assigned job duties, but Defendants failed to reimburse Plaintiff and the Aggrieved Employees for all such necessary expenditures, thus entitling them to reimbursement according to proof as required under Labor Code § 2802 and the applicable provisions of the IWC Wage Orders.

Defendants also failed to provide suitable seating to Aggrieved Employees. The operations at Defendant's facilities allowed for the presence and use of a stool or seat by Aggrieved Employees during the performance of their work duties. The nature of the effected job positions can reasonably be accomplished while using a seat or stool. However, Defendant failed to provide Aggrieved Employees suitable seating when the nature of these employees' work reasonably permitted sitting.

As addressed above, Aggrieved Employees complain of the following violations committed by Defendants:

Failure to Pay Minimum Wages

Defendants violated the law by failing to pay Aggrieved Employees minimum wages for all hours worked. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders. Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked. Aggrieved Employees were required to work off the clock without pay, were subject to unlawful rounding of hours, and underreporting of hours by reflecting changes to timekeeping records to reflect less time worked than was actually worked. Moreover, Defendants failed to pay Aggrieved Employees the minimum wage for all hours worked. Defendants have the ability to pay minimum wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Aggrieved Employees.

In light of the forgoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s fees and costs of suit pursuant to California Labor Code § 1194(a). Aggrieved employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code §§ 218.6, 558, 1197.1, and the applicable IWC Wage Order, paragraph 4(A)-4(D).

Failure to Pay Wages and Overtime in Violation of Labor Code § 510

Defendants violated the law by failing to pay Aggrieved Employees earned wages and overtime. Aggrieved Employees consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week. However, Defendants failed to pay Aggrieved Employees for all hours worked and failed to pay overtime compensation at premium overtime rates. Moreover, the uncompensated time, discussed above, was worked by Aggrieved Employees in excess of 8 hours a day and/or 40 hours a week, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code § 510 and applicable IWC Wage Order, paragraph 3(A) and 4(B).

In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to the California Labor Code, including Labor Code §§ 204, 210, 218.6, 510, 558, and 1194 (and the relevant orders of the Industrial Welfare Commission). Defendants are liable to Aggrieved Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys’ fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes and Wage Order provisions.

Meal-Period Liability Under Labor Code § 226.7

Defendants have regularly required Aggrieved Employees to work shifts in excess of five (5) hours without providing them with timely and uninterrupted meal periods of not less than thirty (30) minutes as required under Labor Code §§ 226.7, 512, and applicable Wage Orders. Defendants placed their needs over Aggrieved Employees lawful meal breaks. This resulted in Aggrieved Employees consistently having to work through their scheduled meal breaks because the demands of the job would not avail them the opportunity to take a lawfully uninterrupted and off duty meal break, in violation of the Labor Code and applicable Wage Orders. Thus, Aggrieved Employees did not receive a complaint meal break. On shifts over ten hours, second meal periods were not provided. Defendants also failed to pay Aggrieved Employees “premium pay,” i.e. one hour of wages at each Aggrieved Employee’s effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided. Therefore, pursuant to Labor Code § 226.7, Aggrieved Employees are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and the applicable IWC Wage Order, paragraph 11.

Rest-Break Liability Under Labor Code § 226.7

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten (10) minutes for every work period of four (4) or more consecutive hours, as required under Labor Code § 226.7. Defendants placed their needs over Aggrieved Employees’ lawful rest breaks. This resulted in Aggrieved Employees consistently having to work through their scheduled rest breaks because the demands of the job would not avail them the opportunity to take a lawfully uninterrupted and off duty rest break. Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided. Therefore, pursuant to Labor Code § 226.7, Aggrieved Employees are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and the applicable IWC Wage Order, paragraph 12.

Failure to Issue Accurate Wage Statements in Violation of Labor Code § 226

California Labor Code § 226(a) requires an employer to furnish each of his or her employees with an accurate, itemized wage statements in writing. These statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee’s wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid. As a direct and proximate cause of Defendants’ violation of Labor Code § 226(a), Aggrieved Employees suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

Defendants failed to provide Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. In light of these violations, and pursuant to Labor Code

§§ 226(a) and 226(e) and the applicable IWC Wage Order, paragraph 7(B), Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

In addition, Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226." To the extent that Labor Code § 226.3 applies, Plaintiff also seeks such penalties on behalf of herself and the Aggrieved Employees.

Failure to Issue Semimonthly Payments in Violation of Labor Code § 204

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code §§ 210 and 558.

Failure to Keep Records In Accordance With Labor Code § 1174

Labor Code § 1174 requires employers to keep records showing payroll data and the hours worked daily by and the wages paid to employees. By failing to pay Aggrieved Employees proper wages, overtime, premium pay, etc., all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the forgoing, Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.*

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees, including Plaintiff, no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages due and owed to Aggrieved Employees at the time of their termination or within seventy-two (72) hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558 and further specifically seek penalties and wages under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

Reimbursement of Necessary Expenditures Under Labor Code § 2802

Under Labor Code § 2802(a) an employer must indemnify its employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer. In the present case, Aggrieved Employees incurred necessary expenditures in the performance of their job duties for Defendants, including but not limited to the following: cellular telephone services, the purchase of supplies, and mileage, which Aggrieved Employees were required to use in order to execute their duties under Defendants' employ. Plaintiff and Aggrieved Employees were not reimbursed

for those lawful and necessary work related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

Failure to Provide Required California Paid Sick Days
(Cal. Labor Code §§ 246, 247.5, 248.5, 2699 *et seq.*)

Plaintiff and Aggrieved Employees alleges that Defendant failed to provide required California paid sick days and further failed to distribute and maintain required documentation concerning how many sick dates were available, in violation of Labor Code §§ 246, 246(a), 246(b)(1), and 247.5. Plaintiff now seeks damages pursuant to §§248.5 and 2699 *et seq.*

Failure to Provide Suitable Seating to Employees Under the Wage Orders:

Plaintiff also alleges that operations at Defendants' facilities allowed for the presence and use of a stool or seat by the Aggrieved Employees during the performance of their work duties. The nature of the effected job positions can reasonably be accomplished while using a seat or stool. California Labor Code § 1198 requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful." Paragraph (14)(A) of the applicable IWC Wage Orders provides that "[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats." Paragraph 14(B) of the applicable IWC Wage Orders provides that "[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties."

In violation of the applicable sections of the California Labor Code and the requirements of the applicable IWC Wage Order, Defendants failed to provide Aggrieved Employees suitable seating when the nature of these employees' work reasonably permitted sitting. Defendants knew or should have known that Aggrieved Employees were entitled to suitable seating and/or were entitled to sit when it did not interfere with the performance of their duties, and that Defendants did not provide suitable seating and did not allow them to sit when it did not interfere with the performance of their duties. By their conduct, Defendants have violated California Labor Code § 1198 and Paragraph 14 of the applicable IWC Wage Orders by failing to provide suitable seating to Aggrieved Employees. Defendants have violated the California Labor Code, including Section 1198, and regulations promulgated thereunder as herein alleged, including Paragraph 14 of the applicable IWC Wage Orders.

Conclusion

We have been constrained to initially move forward with the filing of a complaint, alleging the causes of action discussed herein, without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

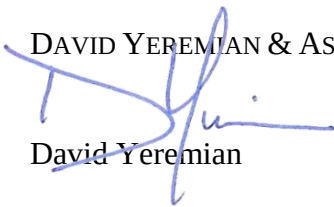
This letter therefore provides the requisite notice under the Act to the LWDA and Defendants by setting forth the specific provisions of the Labor Code and related provisions Plaintiff alleges

have been violated, including the facts and relevant theories alleged against Torrid Administration, Inc., and Hot Topic, Inc. To prevent the violations described herein from occurring, and to remedy past violations, Plaintiff respectfully requests that the LWDA conduct an investigation into Defendants' employment practices in accordance with the Act.

Wherefore we request that you advise us, by certified mail within thirty (60) days of the postmark on this letter, whether you intend to proceed with these claims or whether Aggrieved Employees should include them as a Labor Code § 2698 claim under the Act in a complaint with the Superior Court.

Regards,

DAVID YEREMIAN & ASSOCIATES, INC.



David Yeremian

Cc: Defendants by Certified Mail

EXHIBIT 3

**DAVID YEREMIAN
& ASSOCIATES INC**

535 N BRAND BLVD STE 705
GLENDALE CA 91203

818 230 8380
818 230 0308 FAX

DAVID@YEREMIANLAW.COM;
NATALIE@YEREMIANLAW.COM

October 8, 2020

VIA ON-LINE SUBMISSION ONLY TO:

<https://dir.tfaforms.net/128> (copy by certified mail to the below listed defendants)

Torrid LLC

CSC – Lawyers Incorporating Service, Agent for Service of Process
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833
Certified Mail Tracking Number: 7019 2970 0000 5059 7728

Torrid LLC

18501 East San Jose Avenue
City of Industry, CA 91748
Certified Mail Tracking Number: 7019 2970 0000 5059 7711

**Re: Labor Code § 2698, *et seq.* Penalties – PAGA Notice Letter
Rosalinda Marchbanks-Powell, et al. v. Torrid
*LWDA Case No. LWDA-771841-20***

Gentlepersons:

This office represents Plaintiff Rosalinda Marchbanks-Powell (“Plaintiff”) and other aggrieved employees for, *inter alia*, violations of California Labor Code §§ 201, 202, 203, 204, 210, 218.6, 226, 226.3, 226.7, 246, 510, 512, 558, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, 2699, *et seq.*, and 2802 provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq.*

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et. seq.* (“the Act”). Plaintiff wishes to bring a representative action, pursuant to the Act, on behalf of herself and all other similarly situated Aggrieved Employees, and the State of California, against Defendants, Torrid Administration, Inc., and Hot Topic, Inc., and DOES 1 through 50 inclusive (all defendants being referred to herein collectively as “Defendants”).

Relevant Facts

Plaintiff was employed by Defendants as a non-exempt, hourly employee in San Diego, California. Aggrieved Employees include all non-exempt hourly employees of Defendants within the state of California from one year prior to the date of this letter and continuing through the present. Plaintiff and Aggrieved Employees are collectively referred to herein as “Aggrieved Employees.” Aggrieved Employees consistently worked at Defendants’ behest and under their control and subject to their policies and practices without being paid all wages due. Plaintiff is also informed and believes that there are other Aggrieved Employees employed by Defendants

as non-exempt employees within the state of California within the statutory time period who suffer or suffered from the same wage and hour violations outlined below.

Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked. Aggrieved Employees were either not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime rates. Plaintiff also contends that Defendants failed to pay Aggrieved Employees all wages due and owing, including by requiring off the clock work, failing to incorporate non-discretionary bonuses into the regular rate of pay used to calculate and pay overtime, unlawful rounding to their detriment, failing to provide meal and rest breaks, failing to furnish accurate wage statements, failing to timely pay wages including final wages, failing to reimburse for necessary business expenses, and failing to provide required sick days, all in violation of various provisions of the California Labor Code and applicable Wage Orders.

During the course of Aggrieved Employees' employment with Defendants, they were not paid all wages they were owed, including for all work performed resulting in off the clock work. Defendants failed to pay Aggrieved Employees for all hours worked including time spent on-duty during portions of their meal periods. More specifically, Aggrieved Employees would have to clock out of the timekeeping system during their meal breaks but were also required to continue working throughout this time period. Additionally, Plaintiff and Aggrieved Employees would work before their scheduled shifts began and also after their scheduled shifts ended, but they were required to clock in and clock out of the timekeeping system at their scheduled shift times instead of the actual hours they worked. Defendant's policy resulted in Aggrieved Employees working off the clock. Specifically, pre-shift off the clock work included making trips to the nearest bank to deposit cash, making trips to a store to purchase supplies, and cleaning up the store. Post-shift off the clock work also included making trips to the nearest bank as well as taking out the trash and organizing new shipments that came in on a daily basis. Additionally, after Aggrieved Employees clocked out they were required to have their bags checked by a supervisor before leaving the store. Moreover, Defendants failed to pay Aggrieved Employees for all hours worked including time spent training.

Moreover, Defendants had a consistent policy and practice of unlawfully rounding hours worked to the detriment of Aggrieved Employees. Rather than paying Aggrieved Employees for all hours and minutes they actually worked, Defendants followed a uniform policy and practice of rounding all time entries to the nearest quarter-hour or half-hour (i.e. to the nearest 15-minute or 30- minute time increment). Generally, rounding was to the detriment of Aggrieved Employees, and Plaintiff contends this policy is not neutral and resulted, over time, in the systematic under-compensation of the Aggrieved Employees. Rather than reflecting the actual hours worked by Aggrieved Employees, the time entries were rounded and reduced to reflect the scheduled work time rather than the actual hours worked. These unlawfully rounded time entries were inputted into Defendants' payroll system from which wage statements and payroll checks were created.

Defendants also failed to pay Aggrieved Employees all wages due and owing because Defendant failed to incorporate non-discretionary, performance based bonuses into the overtime rate calculation. Contrary to the requirements of the Labor Code and IWC Wage Orders under California law, Defendants did not incorporate these non-discretionary bonuses paid to the Aggrieved Employees into the regular rate of pay Defendants used to calculate and pay overtime.

By implementing policies, programs, practices, procedures and protocols which resulted in off the clock work and also rounded down the hours worked by Aggrieved Employees, Defendants' willful actions resulted in the systematic underpayment of wages and overtime pay to Aggrieved Employees. For example, the off the clock work addressed above caused Aggrieved Employees to begin receiving overtime pay later than they should have.

As a result of the above described unlawful rounding, requirements to work off the clock, the failure to incorporate non-discretionary bonuses into the regular rate of pay used to calculate and pay overtime, and the other wage violations they endured at Defendants' hands, Aggrieved Employees were not properly paid all wages earned and all wages owed to them by Defendants, including when working more than eight (8) hours in any given day and/or more than forty (40) hours in any given week. Moreover, the uncompensated time, discussed above, was worked by Aggrieved Employees in excess of 8 hours a day and/or 40 hours a week, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code and applicable Wage Orders.

Additionally, Defendants failed to provide all the legally required unpaid, off-duty meal periods and all the legally required paid, off-duty rest periods to Aggrieved Employees, as required by the applicable Wage Order and Labor Code. Aggrieved Employees were required to perform work as ordered by Defendants for more than five (5) hours during a shift, but were often required to do so without receiving a lawful and timely meal break. In addition to untimely meal periods, Defendants also required Aggrieved Employees to respond to work demands. Defendants placed their needs over Aggrieved Employees' lawful meal and rest breaks. This resulted in Aggrieved Employees often having to work through their scheduled meal and/or rest breaks, or otherwise taking shortened ones, because the demands of the job would not avail them the opportunity to take a lawfully uninterrupted and off duty meal and/or rest break.

On the occasions when Aggrieved Employees worked over 10 hours in a shift, Defendants also failed to provide them with a second, uninterrupted, timely and duty-free meal period. As a result, Defendants' failure to provide Aggrieved Employees with all legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest periods is and will be evidenced by Defendants' business records, or lack thereof. Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective hourly rate of pay, including their earned commission, for each meal period or rest break that Defendants failed to provide or deficiently provided.

Therefore, Defendants have regularly required Aggrieved Employees to work shifts in excess of five (5) hours without providing them with uninterrupted meal periods of not less than thirty (30) minutes, and shifts in excess of (10) hours without providing them with second meal periods of not less than thirty minutes; nor did Defendants pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective hourly rate of pay, including their earned commission, for each meal period that Defendants failed to provide or deficiently provided.

Aggrieved Employees were also not authorized and permitted to take lawful rest periods, were systematically required by Defendants to work through or during breaks, and were not provided with one (1) hour's wages in lieu thereof. To the extent Aggrieved Employees were able to take rest breaks, they were restricted from leaving the premises. Aggrieved Employees were restricted

in their ability to take their full ten (10) minutes net rest time or were otherwise not provided with duty-free rest periods. Therefore, Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours; or major fraction thereof, nor did Defendant pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided.

Defendants also consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Specifically, the wage statements given to Aggrieved Employees failed to incorporate non-discretionary bonuses into the regular rate of pay used to calculate and pay overtime compensation. Thus, the wage statements do not provide accurate hourly rates for overtime and the statements do not comply with Labor Code § 226(a)(9). Additionally, the wage statements do not accurately account for unpaid wages and overtime because Defendants had unlawfully rounded time entries to the detriment of the Aggrieved Employees and their actual hours worked were under-reported and also due to off the clock work. Additionally, the wage statements given to Aggrieved Employees failed to accurately account for premium pay for deficiently provided meal periods and rest breaks.

Additionally, Defendants failed to pay Aggrieved Employees all wages owed, as detailed above, at the time of their termination or within seventy-two (72) hours of their resignation, as required under Labor Code § 203. Specifically, Defendants failed to pay Plaintiff for all wages due and certain within seventy-two hours of her resignation in compliance with Labor Code §§ 201-203. Instead, Defendants waited until the next scheduled pay date to give Plaintiff her final check. Upon information and belief, Defendants implemented the same policy and procedure for Aggrieved Employees as well. Additionally, these Aggrieved Employees were not paid all regular and overtime wages because Defendants failed to pay for all hours worked or required off the clock work and unlawfully rounded time entries to the detriment of Aggrieved Employees, and failed to pay premium wages owed for unprovided meal periods and rest periods. Defendants' failure to pay said wages within the required time was willful within the meaning of Labor Code § 203.

Defendants also failed to reimburse Aggrieved Employees for necessary business expenses. Defendants have regularly required Plaintiff to incur business expenses in the course of performing their required job duties for Defendants, including but not limited to the following: cellular telephone services, the purchase of supplies, and mileage which Aggrieved Employees were required to use in order to execute their duties under Defendants' employ. Upon information and belief, Aggrieved Employees incurred similar costs. These expenses incurred by Plaintiff and the Aggrieved Employees were necessary and required of them in performing their assigned job duties, but Defendants failed to reimburse Plaintiff and the Aggrieved Employees for all such necessary expenditures, thus entitling them to reimbursement according to proof as required under Labor Code § 2802 and the applicable provisions of the IWC Wage Orders.

Defendants also failed to provide suitable seating to Aggrieved Employees. The operations at Defendant's facilities allowed for the presence and use of a stool or seat by Aggrieved Employees during the performance of their work duties. The nature of the effected job positions can reasonably be accomplished while using a seat or stool. However, Defendant failed to provide Aggrieved Employees suitable seating when the nature of these employees' work reasonably permitted sitting.

As addressed above, Aggrieved Employees complain of the following violations committed by Defendants:

Failure to Pay Minimum Wages

Defendants violated the law by failing to pay Aggrieved Employees minimum wages for all hours worked. California Labor Code § 1197, entitled “Pay of Less Than Minimum Wage” states, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.” The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders. Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked. Aggrieved Employees were required to work off the clock without pay, were subject to unlawful rounding of hours, and underreporting of hours by reflecting changes to timekeeping records to reflect less time worked than was actually worked. Moreover, Defendants failed to pay Aggrieved Employees the minimum wage for all hours worked. Defendants have the ability to pay minimum wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Aggrieved Employees.

In light of the forgoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s fees and costs of suit pursuant to California Labor Code § 1194(a). Aggrieved employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code §§ 218.6, 558, 1197.1, and the applicable IWC Wage Order, paragraph 4(A)-4(D).

Failure to Pay Wages and Overtime in Violation of Labor Code § 510

Defendants violated the law by failing to pay Aggrieved Employees earned wages and overtime. Aggrieved Employees consistently worked in excess of eight (8) hours a day, and/or forty (40) hours a week. However, Defendants failed to pay Aggrieved Employees for all hours worked and failed to pay overtime compensation at premium overtime rates. Moreover, the uncompensated time, discussed above, was worked by Aggrieved Employees in excess of 8 hours a day and/or 40 hours a week, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code § 510 and applicable IWC Wage Order, paragraph 3(A) and 4(B).

In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to the California Labor Code, including Labor Code §§ 204, 210, 218.6, 510, 558, and 1194 (and the relevant orders of the Industrial Welfare Commission). Defendants are liable to Aggrieved Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys’ fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes and Wage Order provisions.

Meal-Period Liability Under Labor Code § 226.7

Defendants have regularly required Aggrieved Employees to work shifts in excess of five (5) hours without providing them with timely and uninterrupted meal periods of not less than thirty (30) minutes as required under Labor Code §§ 226.7, 512, and applicable Wage Orders. Defendants placed their needs over Aggrieved Employees lawful meal breaks. This resulted in Aggrieved Employees consistently having to work through their scheduled meal breaks because the demands of the job would not avail them the opportunity to take a lawfully uninterrupted and off duty meal break, in violation of the Labor Code and applicable Wage Orders. Thus, Aggrieved Employees did not receive a complaint meal break. On shifts over ten hours, second meal periods were not provided. Defendants also failed to pay Aggrieved Employees “premium pay,” i.e. one hour of wages at each Aggrieved Employee’s effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided. Therefore, pursuant to Labor Code § 226.7, Aggrieved Employees are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and the applicable IWC Wage Order, paragraph 11.

Rest-Break Liability Under Labor Code § 226.7

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten (10) minutes for every work period of four (4) or more consecutive hours, as required under Labor Code § 226.7. Defendants placed their needs over Aggrieved Employees’ lawful rest breaks. This resulted in Aggrieved Employees consistently having to work through their scheduled rest breaks because the demands of the job would not avail them the opportunity to take a lawfully uninterrupted and off duty rest break. Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided. Therefore, pursuant to Labor Code § 226.7, Aggrieved Employees are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and the applicable IWC Wage Order, paragraph 12.

Failure to Issue Accurate Wage Statements in Violation of Labor Code § 226

California Labor Code § 226(a) requires an employer to furnish each of his or her employees with an accurate, itemized wage statements in writing. These statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee’s wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid. As a direct and proximate cause of Defendants’ violation of Labor Code § 226(a), Aggrieved Employees suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

Defendants failed to provide Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. In light of these violations, and pursuant to Labor Code

§§ 226(a) and 226(e) and the applicable IWC Wage Order, paragraph 7(B), Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

In addition, Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226." To the extent that Labor Code § 226.3 applies, Plaintiff also seeks such penalties on behalf of herself and the Aggrieved Employees.

Failure to Issue Semimonthly Payments in Violation of Labor Code § 204

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code §§ 210 and 558.

Failure to Keep Records In Accordance With Labor Code § 1174

Labor Code § 1174 requires employers to keep records showing payroll data and the hours worked daily by and the wages paid to employees. By failing to pay Aggrieved Employees proper wages, overtime, premium pay, etc., all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the forgoing, Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.*

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees, including Plaintiff, no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages due and owed to Aggrieved Employees at the time of their termination or within seventy-two (72) hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558 and further specifically seek penalties and wages under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

Reimbursement of Necessary Expenditures Under Labor Code § 2802

Under Labor Code § 2802(a) an employer must indemnify its employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer. In the present case, Aggrieved Employees incurred necessary expenditures in the performance of their job duties for Defendants, including but not limited to the following: cellular telephone services, the purchase of supplies, and mileage, which Aggrieved Employees were required to use in order to execute their duties under Defendants' employ. Plaintiff and Aggrieved Employees were not reimbursed

for those lawful and necessary work related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

Failure to Provide Required California Paid Sick Days
(Cal. Labor Code §§ 246, 247.5, 248.5, 2699 *et seq.*)

Plaintiff and Aggrieved Employees alleges that Defendant failed to provide required California paid sick days and further failed to distribute and maintain required documentation concerning how many sick dates were available, in violation of Labor Code §§ 246, 246(a), 246(b)(1), and 247.5. Plaintiff now seeks damages pursuant to §§248.5 and 2699 *et seq.*

Failure to Provide Suitable Seating to Employees Under the Wage Orders:

Plaintiff also alleges that operations at Defendants' facilities allowed for the presence and use of a stool or seat by the Aggrieved Employees during the performance of their work duties. The nature of the effected job positions can reasonably be accomplished while using a seat or stool. California Labor Code § 1198 requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful." Paragraph (14)(A) of the applicable IWC Wage Orders provides that "[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats." Paragraph 14(B) of the applicable IWC Wage Orders provides that "[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties."

In violation of the applicable sections of the California Labor Code and the requirements of the applicable IWC Wage Order, Defendants failed to provide Aggrieved Employees suitable seating when the nature of these employees' work reasonably permitted sitting. Defendants knew or should have known that Aggrieved Employees were entitled to suitable seating and/or were entitled to sit when it did not interfere with the performance of their duties, and that Defendants did not provide suitable seating and did not allow them to sit when it did not interfere with the performance of their duties. By their conduct, Defendants have violated California Labor Code § 1198 and Paragraph 14 of the applicable IWC Wage Orders by failing to provide suitable seating to Aggrieved Employees. Defendants have violated the California Labor Code, including Section 1198, and regulations promulgated thereunder as herein alleged, including Paragraph 14 of the applicable IWC Wage Orders.

Conclusion

We have been constrained to initially move forward with the filing of a complaint, alleging the causes of action discussed herein, without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

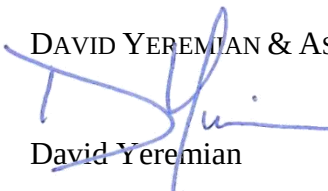
This letter therefore provides the requisite notice under the Act to the LWDA and Defendants by setting forth the specific provisions of the Labor Code and related provisions Plaintiff alleges

have been violated, including the facts and relevant theories alleged against Torrid Administration, Inc., and Hot Topic, Inc. To prevent the violations described herein from occurring, and to remedy past violations, Plaintiff respectfully requests that the LWDA conduct an investigation into Defendants' employment practices in accordance with the Act.

Wherefore we request that you advise us, by certified mail within thirty (60) days of the postmark on this letter, whether you intend to proceed with these claims or whether Aggrieved Employees should include them as a Labor Code § 2698 claim under the Act in a complaint with the Superior Court.

Regards,

DAVID YEREMIAN & ASSOCIATES, INC.



David Yeremian

Cc: Defendants by Certified Mail

EXHIBIT 4

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 535 N. Brand, Blvd. Suite 705, Glendale CA 91203.

Kenneth J. Zielinski
kzielinski@rutan.com
Maria Z. Stearns
MStearns@rutan.com
RUTAN & TUCKER, LLP
611 Anton Boulevard, 14th Floor
Costa Mesa, CA 92626

[] (COURTESY COPY BY ELECTRONIC TRANSMISSION) by use of email by scanning the documents and any and all documents and emailing them to email addresses above.

[] (BY OVERNIGHT DELIVERY) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the address above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

Executed on March 9, 2021, at Glendale, California.

Natalia Bermudes