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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – SPRING STREET

CLAUDIA AVILES, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

ALSICO HI TEC, INC., a California
corporation dba ACME LAUNDRY
PRODUCTS; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 20STCV09874

CLASS ACTION

[Hon. Elihu M. Berle, Dept. 6]

**JOINT STIPULATION OF CLASS ACTION
SETTLEMENT**

Complaint filed: May 20, 2019
Trial date: Not set

1 **JOINT STIPULATION OF CLASS ACTION SETTLEMENT**

2 This Joint Stipulation of Class Action Settlement (“Joint Stipulation of Settlement” or
3 “Settlement” or “Agreement”) is made and entered into by and between Plaintiff CLAUDIA AVILES,
4 individually, and on behalf of all others similarly situated, (“Plaintiff” or “Class Representative”), and
5 Defendant ALSICO HI TEC, INC. dba ACME LAUNDRY PRODUCTS (“Defendant”). Plaintiff and
6 Defendant are collectively referred to herein as “the Parties.”

7
8 THE PARTIES STIPULATE AND AGREE as follows:

9 **DEFINITIONS**

10 1. For purposes of this Settlement, “Complaint” refers to the operative complaint at the time
11 the Court grants Preliminary Approval of this Settlement.

12 2. For purposes of this Settlement, this matter, entitled *Aviles v. Alsico Hi Tec, Inc.*, Case No.
13 20STCV09874, is referred to herein as the “Action.”

14 3. For purposes of this Settlement, the “Class Period” is March 11, 2016 through January 31,
15 2021.

16 4. For purposes of this Settlement, the “Class” or “Class Members” consist of: All non-
17 exempt employees of Defendant who worked for Defendant in California during the Class Period.
18 “Settlement Class Members” are those Class Members who do not submit timely exclusion requests to the
19 Settlement Administrator. Defendant’s best estimate is that the Class included approximately 575
20 individuals on November 20, 2020

21 5. For purposes of this Settlement, “Class Counsel” means MOON & YANG, APC.

22 6. For purposes of this Settlement, “Covered Workweeks” means the number of weeks a
23 Class Member worked at Defendant’s locations in California during the Class Period.

24 7. For purposes of this Settlement, “Response Deadline” means the date sixty (60) days after
25 the Settlement Administrator initially mails the Notice to Settlement Class Members and the last date on
26 which Settlement Class Members may submit a request for exclusion or written objection to the
27 Settlement. In the case of a re-mailed Notice, the Response Deadline will be the later of 60 calendar days
28 after initial mailing or 14 calendar days from re-mailing. The Response Deadline may be extended only as

1 expressly described herein.

2 8. For purposes of the Settlement, “Defendant’s Counsel” means POOLE, SHAFFERY &
3 KOEGLE, LLP.

4 9. For purposes of this Settlement, “PAGA” means the Labor Code Private Attorneys
5 General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*).

6 10. For purposes of this Settlement, “PAGA Allocation” means the portion of the Gross
7 Settlement Amount that the Parties have agreed to allocate to resolution of the Released PAGA Claims.
8 The Parties have agreed that the PAGA Allocation will be \$60,000 from the Gross Settlement Amount.
9 Pursuant to PAGA, Seventy Five Percent (75%), or \$45,000, of the PAGA Allocation will be paid to the
10 Labor and Workforce Development Agency (“LWDA”) (“PAGA Penalty Payment”), and Twenty Five
11 Percent (25%), or \$15,000, of the PAGA Allocation will be included in the Net Settlement Amount for
12 PAGA Employees (“PAGA Settlement Payment”).

13 11. For purposes of this Settlement, “PAGA Period” means the period between March 11,
14 2019 through January 31, 2021.

15 12. For purposes of this Settlement, “PAGA Employee” means all Class Members that worked
16 during the PAGA Period. It is stipulated by the Parties that, for purposes of this Settlement, all PAGA
17 Employees are “aggrieved employees” as defined pursuant to PAGA.

18 13. For purposes of this Settlement, “PAGA Pay Periods” means the number of pay periods
19 each PAGA Employee worked during the PAGA Period.

20 14. For purposes of this Settlement, “PAGA Representative” means Plaintiff.

21 15. For purposes of this Settlement, “Released PAGA Claims” means all claims for penalties
22 and any other available relief pursuant to PAGA, to the extent asserted in Plaintiff’s administrative
23 exhaustion letter submitted to the LWDA in this Action, arising during the PAGA Period.

24 16. For purposes of this Settlement, “Settlement Payments” means all of the payments to
25 Settlement Class Members (the “Settlement Class Payments”) and all of the payments to PAGA
26 Employees (the “PAGA Settlement Payment”).

27 **STIPULATED BACKGROUND**

28 17. On March 11, 2020, Plaintiff filed a putative Class Action alleging the following labelled

causes of action: (1) Failure to Pay Minimum Wage and Straight Time Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197]; (2) Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198]; (3) Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512]; (4) Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7]; (5) Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203]; (6) Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226]; and (7) Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, *et seq.*]. (The “Action.”) In the Complaint, Plaintiff sought to represent all persons that worked for Defendant in California as an hourly-paid, non-exempt employee at any time during the period beginning four years before the filing of the initial complaint and ending when Notice to the Class is sent. The original complaint incorrectly identified the Defendant, and Plaintiff filed a First Amended Complaint on March 30, 2020 to correct the error.

18. Plaintiff satisfied the administrative exhaustion requirement that is a prerequisite to filing a claim for Civil Penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, *et seq.*] (“PAGA”). On July 21, 2020, Plaintiff filed a First Amended Complaint adding a cause of action for Civil Penalties Under PAGA [Cal. Lab. Code § 2699, *et seq.*].

19. Solely for purposes of settling this case, the Parties and their respective counsel stipulate and agree that the requisites for establishing class certification with respect to the Class Members have been met and are met. More specifically, the Parties stipulate and agree that:

- (a) The Class is ascertainable and so numerous as to make it impracticable to join all Class Members.
- (b) There are common questions of law and fact including, but not limited to, the following:
 - 1) Whether or not Defendant paid proper wages to the Class;
 - 2) Whether or not Defendant provided meal periods to the Class;
 - 3) Whether or not Defendant provided rest periods to the Class;
 - 4) Whether or not Defendant paid compensation timely upon separation of employment to former Class Members;
 - 5) Whether or not Defendant paid compensation timely throughout Class Members’ employment;

- 1 6) Whether or not Defendant provided accurate itemized statements to the
2 Class;
3 7) Whether or not waiting-time penalties are available to the Class for
4 violation of California Labor Code § 203;
5 8) Whether or not Defendant maintained requisite records;
6 9) Whether or not Defendant paid proper meal period pay or rest period pay to
7 the Class; and,
8 10) Whether or not Defendant engaged in unlawful or unfair business practices
9 affecting the Class in violation of California Business and Professions
10 Code §§ 17200-17208.
11 (c) Plaintiff's claims are typical of the claims of the Class Members.
12 (d) Plaintiff and Class Counsel will fairly and adequately protect the interests of the
13 Class.
14 (e) The prosecution of separate actions by individual members of the Class would
15 create the risk of inconsistent or varying adjudications, which would establish
16 incompatible standards of conduct.
17 (f) With respect to the Class, questions of law and fact common to the members of the
18 Class predominate over any questions affecting any individual member in such
19 Class, and that a class action is superior to other available means for the fair and
20 efficient adjudication of the controversy.

21 20. Should, for whatever reason, the Settlement not become effective, the fact that the Parties
22 were willing to stipulate to certification as part of the Settlement shall have no bearing on, and shall not be
23 admissible in connection with, the issue of whether the Class Members and/or the Class Claims should be
24 certified in a non-Settlement context in this Action or in any other lawsuit. Defendant expressly reserves
25 its right to oppose claim or class certification in this or any other action should this Settlement not become
26 effective.

27 21. Defendant denies any liability or wrongdoing of any kind whatsoever associated with the
28 claims alleged in the Complaint, and Defendant further denies that, for any purpose other than settling this

lawsuit, the action is appropriate for class or representative treatment. With respect to Plaintiff's claims, Defendant contends, among other things, that Plaintiff and the Class Members have been paid proper wages, have been provided meal periods, have been provided rest periods, have been paid timely wages upon separation of employment, and have been provided with accurate itemized wage statements. Defendant contends, among other things, that it has complied at all times with the California Labor Code and the applicable Wage Orders of the Industrial Welfare Commission. Furthermore, with respect to all claims, Defendant contends that it has complied at all times with the California Business and Professions Code.

22. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all disputes and claims arising from or related to the Complaint.

23. Class Counsel has conducted a thorough investigation into the facts of this Action, including an extensive review of relevant documents, and has diligently pursued an investigation of the claims of the Class against Defendant. Based on its own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement with Defendant for the consideration and on the terms set forth in this Joint Stipulation of Settlement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known facts and circumstances, including the risk of significant delay, the risk the Class will not be certified by the Court, defenses asserted by Defendant, and numerous potential appellate issues. Defendant and Defendant's Counsel also agree that the Settlement is fair and in the best interest of the Class.

24. The Parties agree to cooperate and take all steps necessary and appropriate to obtain preliminary and final approval of this Settlement.

25. The Parties agree to stay all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Court.

PRIMARY TERMS OF SETTLEMENT

26. NOW THEREFORE, in consideration of the mutual covenants, promises and agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

(a) It is agreed by and among the Class and Defendant that this case and any claims,

1 damages, or causes of action arising out of the disputes which are the subject of
2 this case, be settled and compromised as between the Class and Defendant, subject
3 to the terms and conditions set forth in this Settlement and the approval of the
4 Court.

5 (b) Effective Date: The terms of settlement embodied in this Settlement shall become
6 effective when all of the following events have occurred: (i) this Joint Stipulation
7 of Settlement has been executed by all Parties and their respective counsel; (ii) the
8 Court has given preliminary approval to the Settlement; (iii) the Notice has been
9 given to the Class, providing them with an opportunity to dispute information
10 contained in the Notice, to opt out of the Settlement, or to object to the Settlement;
11 (iv) the Court has held a final approval hearing and entered a final order and
12 judgment certifying the Class and approving this Settlement; and (v) the later of the
13 following events: (a) five (5) calendar days have passed since final approval is
14 granted if there are no objections to the settlement; (b) sixty-five (65) days
15 following notice of entry of the Court's final order approving the Settlement if
16 there are any objections by any Class Member; (c) or if any appeal, writ or other
17 appellate proceeding opposing this Settlement has been filed within sixty-five (65)
18 days following notice of entry of the Court's final order approving the Settlement,
19 then twenty (20) days after when any appeal, writ or other appellate proceeding
20 opposing the Settlement has been resolved finally and conclusively with no right to
21 pursue further remedies or relief. In this regard, it is the intention of the Parties that
22 the Settlement shall not become effective until the Court's order approving the
23 Settlement is completely final, and there is no further recourse by an appellant or
24 objector who seeks to contest the Settlement.

25 (c) Gross Settlement Amount: Defendant's maximum total payment under the
26 Settlement, including all attorney's fees and costs, the Service Payment to the
27 named Plaintiff, the costs of settlement administration, the PAGA Allocation, and
28 any other payments provided by this Settlement, is \$1,100,000.00 ("Gross

Settlement Amount”), subject to the Escalator Clause and except that, to the extent that any portions of the Class Members’ Settlement Payments constitute wages, Defendant will be separately responsible for any employer payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions.

(d) Escalator Clause: In the event of an increase in workweeks or class members of more than 10% from original estimates of 575 class members and 72,472 workweeks. Specifically, if the number class members is 633 or more, or the number of workweeks is 79,720 or more, the settlement amount shall be increased by the percentage that that actual number of class members or workweeks exceed a 10% increase from the original estimates, i.e. if the class size is 11% larger, the settlement amount shall be increased by 1% (the “Escalator Clause”). The Gross Settlement Amount will not be reduced for any reason.

(e) Non-reversionary Settlement: No portion of the Gross Settlement Amount will revert to Defendant.

(f) No Claims Required: Class Members will not be required to submit a claim to receive their Settlement payment.

(g) Net Settlement Amount: The Net Settlement Amount shall be calculated by deducting from the Gross Settlement Amount (\$1,100,000.00) the following sums, subject to approval by the Court: (1) attorney’s fees (not to exceed 33 1/3% of the Gross Settlement Amount, or \$366,666.66); (2) reasonable litigation costs (not to exceed \$25,000.00); (3) the Service Payment (not to exceed \$10,000.00 to the named Plaintiff); (4) the PAGA Penalty Payment in the amount of \$45,000.00 (which is 75% of the PAGA Allocation); and (5) costs of settlement administration (estimated not to exceed \$20,000). Settlement Payments to the Class Members will be calculated by the Settlement Administrator and paid out of the Net Settlement Amount as set forth below.

(h) Payroll Taxes and Required Withholdings: To the extent that any portions of the Settlement Class Members’ Settlement Payments constitute wages, Defendant will

1 be separately responsible for any **employer** payroll taxes required by law,
2 including the employer FICA, FUTA, and SDI contributions. Except for any
3 employer payroll taxes, it is understood and agreed that Defendant's maximum
4 total liability under this Settlement shall not exceed the Gross Settlement Amount.
5 The Settlement Administrator will calculate and submit the Defendant's employer
6 share of payroll taxes after advising Defendant of the total amount owed, in
7 aggregate, as employer-side payroll taxes and receiving a lump sum payment from
8 Defendant in that amount when the Gross Settlement Amount is delivered to the
9 Settlement Administrator.

10 (i) Settlement Class Payments (Excludes PAGA Payments): Settlement Class
11 Payments will be paid out of the Net Settlement Amount. Each Settlement Class
12 Member will be paid a pro-rata share of the Net Settlement Amount (less the
13 PAGA Settlement Payments), as calculated by the Settlement Administrator. The
14 pro-rata share will be determined by comparing the individual Settlement Class
15 Member's Covered Workweeks employed during the Class Period in California to
16 the total Covered Workweeks of all the Settlement Class Members during the
17 Class Period as follows:
$$\frac{[\text{Workweeks worked by a Settlement Class Member}]}{[\text{Sum of all Covered Workweeks worked by all Settlement Class Members}]} \times [\text{Net Settlement Amount} - \text{all PAGA Settlement Payments}] = \text{individual Settlement Payment for a Settlement Class Member.}$$

18 Settlement Class Payments in the
19 appropriate amounts will be distributed by the Settlement Administrator by mail to
20 the Settlement Class Members. Un-cashed, unclaimed or abandoned checks, shall
21 be transmitted to the California Controller's Office, as set forth below.

22 (j) PAGA Payments: PAGA Settlement Payments will be paid out of the Net
23 Settlement Amount. Each PAGA Employee will be paid a pro-rata share of the
24 PAGA Employees' PAGA Settlement Payment, as calculated by the Settlement
25 Administrator. Class Members will not be permitted to exclude themselves from
26 this portion of the Settlement. The pro-rata share will be determined by comparing
27
28

1 the individual PAGA Employees' PAGA Pay Periods during the PAGA Period to
2 the total PAGA Pay Periods of all the PAGA Employees during the PAGA Period
3 as follows: [PAGA Pay Periods worked by a PAGA Employee] ÷ [Sum of all
4 PAGA Pay Periods worked by all PAGA Employees] × [PAGA Settlement
5 Payment] = individual PAGA Employee's portion of the PAGA Settlement
6 Payment. PAGA Settlement Payments to PAGA Employees in the appropriate
7 amounts will be distributed by the Settlement Administrator by mail to the PAGA
8 Employees at the same time Settlement Class Payments issue to the Settlement
9 Class. Un-cashed, unclaimed or abandoned checks, shall be transmitted to the
10 California Controller's Office, as set forth below. The LWDA's PAGA Penalty
11 Payment will issue to the LWDA at the same time Settlement Payments issue to
12 the Settlement Class.

13 (k) Allocation of Settlement Payments: The Parties have agreed that Settlement Class
14 Payments will be allocated as follows: 33 1/3% to wages, 33 1/3% to penalties, and
15 33 1/3% to interest. The PAGA Settlement Payment shares to PAGA Employees
16 will be entirely allocated to penalties. Appropriate federal, state and local
17 withholding taxes will be taken out of the wage allocations, and each Class
18 Member will receive an IRS Form W-2 with respect to this portion of the
19 Settlement Payment. The employer's share of payroll taxes and other required
20 withholdings will be paid as set forth above, including but not limited to the
21 Defendant's FICA and FUTA contributions, based on the payment of claims to the
22 Class Members. IRS Forms 1099 will be issued to each Class Member reflecting
23 the payments for penalties and interest. Class Members are responsible to pay
24 appropriate taxes due on the Settlement Payments they receive. To the extent
25 required by law, IRS Forms 1099 and W-2 will be issued to each Class Member
26 with respect to such payments.

27 (l) Settlement Payments Do Not Give Rise to Additional Benefits: All Settlement
28 Payments to individual Class Members shall be deemed to be paid to such Class

1 Member solely in the year in which such payments actually are received by the
2 Class Member. It is expressly understood and agreed that the receipt of such
3 Settlement Payments will not entitle any Class Member to additional compensation
4 or benefits under any company bonus, contest or other compensation or benefit
5 plan or agreement in place during the period covered by the Settlement, nor will it
6 entitle any Class Member to any increased retirement, 401(k) benefits or matching
7 benefits or deferred compensation benefits. It is the intent that the Settlement
8 Payments provided for in this Settlement are the sole payments to be made by
9 Defendant to the Class Members, and that the Class Members are not entitled to
10 any new or additional compensation or benefits as a result of having received the
11 Settlement Payments (notwithstanding any contrary language or agreement in any
12 benefit or compensation plan document that might have been in effect during the
13 period covered by this Settlement).

- 14 (m) Attorney's Fees and Costs: Subject to approval by the Court, Defendant will not
15 object to Class Counsel's application for attorney's fees not to exceed 33 1/3% of
16 the Gross Settlement Amount (\$366,666.66) and reimbursement of litigation costs
17 and expenses not to exceed \$25,000.00.
- 18 (n) Service Payment: Subject to Court approval, and in exchange for a general release,
19 Defendant will not object to Class Counsel's application for an additional payment
20 of up to \$10,000.00 to Plaintiff for service as a Class Representative ("Service
21 Payment"). It is understood that the Service Payment is in addition to the individual
22 Settlement Payment to which a Class Representative is entitled to along with the
23 other Class Members. In exchange, Plaintiff has agreed to release all claims,
24 whether known or unknown, under federal law or state law against the
25 Releasees, to the extent permitted by law, through the Class Period ("Plaintiff's
26 Released Claims"). Plaintiff understands that this release includes unknown
27 claims and that she is, as a result, waiving all rights and benefits afforded by
28 Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Specifically excluded from Plaintiff's Released Claims are any claims for workers' compensation benefits. The Service Payment will issue at the same time all Settlement Payments are mailed to the Settlement Class.

- (o) The Settlement Administrator will issue an IRS Form 1099 for the Service Payment to the Plaintiff. The Plaintiff will be individually responsible for correctly characterizing this compensation on personal income tax returns for tax purposes and for paying any taxes on the amounts received. Should the Court approve a Service Payment in an amount less than that set forth above, the difference between the lesser amount(s) approved by the Court and the Service Payment amount(s) set forth above shall be added to the Net Settlement Amount. Plaintiff agrees not to opt out or object to the Service Payment as the Class Representative.
- (p) Settlement Administrator: The Settlement Administrator will be ILYM Group, Inc., or such Settlement Administrator as may be mutually agreeable to the Parties and approved by the Court. Settlement Administration Costs are estimated not to exceed \$20,000. The costs of the Settlement Administrator for work done shall be paid regardless of the outcome of this Settlement.
- (q) Funding of Settlement Account: Defendant will fund the settlement account 12 months from preliminary approval, but no earlier than 18 months from November 20, 2020.
- (r) Mailing of Settlement Payments: The Settlement Administrator shall cause the Settlement Payments to be mailed to the Class Members within 14 calendar days of the receipt of funding.
- (s) Notice of Settlement: Each Class Member will be mailed a notice setting forth the material terms of the proposed Settlement, along with instructions about how to object or request exclusion from the proposed class action Settlement ("Notice").

For each Class Member, there will be pre-printed information on the mailed Notice, based on Defendant's records, stating the Class Member's Covered Workweeks during the Class Period and the estimated total Settlement Payment under the Settlement, including the Settlement Class Payment and the PAGA Settlement Payment that will be distributed irrespective of any exclusion request. The pre-printed information based on Defendant's records shall be presumed to be correct. A Class Member may dispute the pre-printed information on the Notice as to his or her Covered Workweeks during the Class Period. Class Members must submit any dispute regarding the information on the Notice as to his or her Covered Workweeks within the Response Deadline. Unless a disputing Class Member submits documentary evidence in support of his or her dispute, the records of the Defendant will be determinative.

(t) Settlement Notice Language: The Notice will issue in English and Spanish.

(u) Class Members Cannot Exclude Themselves from the Released PAGA Claims:

Class Members submitting a Request for Exclusion will nevertheless receive their pro-rata share of the PAGA Settlement Payment. If the Court approves the compromise of the PAGA Claim, all Class Members are bound by the Court's resolution of that Claim. Plaintiff shall serve a notice of settlement on the California Labor and Workforce Development Agency at or before the time Plaintiff files the motion for preliminary approval.

(v) Resolution of Workweek Disputes: If a Class Member disputes the accuracy of Defendant's records used to calculate Covered Workweeks, and the Parties' counsel cannot resolve the dispute informally, the matter will be referred to the Settlement Administrator. The Settlement Administrator will review Defendant's records and any information or documents submitted by the Class Member and issue a non-appealable decision regarding the dispute. The Class Member must submit information or documents supporting his or her position to the Settlement Administrator prior to the expiration of the Response Deadline. Information or

documents submitted after the expiration of the Response Deadline will not be considered by the Settlement Administrator, unless otherwise agreed to by the Parties.

- (w) Right of Class Member to Request Exclusion from the Settlement: Any Class Member may request to be excluded from the Class by mailing a “Request for Exclusion” from the Settlement within the Response Deadline, stating, as follows or in substantially similar terms:

“I WISH TO BE EXCLUDED FROM THE CLASS IN THE
AVILES V. ALSICO HI TEC, INC., CLASS ACTION
LAWSUIT, LOS ANGELES COUNTY SUPERIOR COURT
CASE NO. 20STCV09874. I UNDERSTAND THAT IF I ASK
TO BE EXCLUDED FROM THE CLASS, I WILL NOT
RECEIVE ANY MONEY FROM THE SETTLEMENT
OTHER THAN MY SHARE OF THE PAGA PAYMENT.”

Any Request for Exclusion must include the name, address, telephone number, last four digits of the Class Member’s Social Security Number, and the signature of the Class Member requesting exclusion. Any such request must be made in accordance with the terms of the Notice, and the Notice will advise Class Members of these requirements. Any Class Member who timely requests exclusion in compliance with these requirements (i) shall not have any rights under this Settlement other than a right to receive a pro-rata share of the portion of the PAGA payment allocated to the Class Members if the Class Member is also PAGA Employee; (ii) shall not be entitled to receive any Settlement Payments under this Settlement other than as stated in Paragraph 26(j); and (iii) shall not be bound by this Settlement or the Court’s Order and Final Judgment other than as it applies to the PAGA Claim.

- (x) Right of Settlement Class Member to Object to The Settlement: Any Class Member may object to the Settlement. To object, the Class Member may (1) appear at the Final Approval Hearing, remotely or in person, to explain any objection, (2) have an attorney object for the Class Member, or (3) submit a simple written brief or statement of objection to the Settlement Administrator. If any

1 Class Member chooses to submit a written objection, the written objection should
2 contain sufficient information to confirm the identity of the objector and the basis
3 of the objection, including (1) the full name of the Settlement Class Member; (2)
4 the signature of the Settlement Class Member; (3) the grounds for the objection;
5 and (4) be postmarked within the Response Deadline to permit adequate time for
6 processing and review by the Parties of the written statement or objection. Class
7 Counsel shall ensure that any written objections are transmitted to the Court for the
8 Court's review (either by Class Counsel or as an attachment to declaration from the
9 Settlement Administrator). Regardless of the form, an objection alone will not
10 satisfy the requirement that a Settlement Class Member must either make a timely
11 complaint in intervention before final judgment or by file a motion to set aside and
12 vacate the class judgment under Code of Civil Procedure § 663 to have standing to
13 appeal entry of judgment approving this Settlement, as is required under the
14 California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal.
15 5th 260 (2018). A Class Member who does not object prior to or at the Final
16 Approval Hearing, will be deemed to have waived any objections and will be
17 foreclosed from making any objections (whether at the Final Approval Hearing, by
18 appeal, or otherwise) to the Settlement. If the objecting Class Member does not
19 formally intervene in the action or move to set aside any judgment and/or the Court
20 rejects the Class Member's objection, the Class Member will still be bound by the
21 terms of this Agreement. Class Counsel and Defendant's Counsel may, at least
22 five (5) calendar days (or some other number of days as the Court shall specify)
23 before the final approval hearing, file responses to any written objections submitted
24 to the Court.

25 (y) Opt-in to Release Under Fair Labor Standards Act: Settlement Class Members will
26 be advised that they will opt in to a settlement of claims for unpaid compensation
27 under the Fair Labor Standards Act ("FLSA") by cashing or otherwise depositing
28 the check for their Settlement Class Payment. This will be set forth in the Notice.

1 **THE SETTLEMENT ADMINISTRATOR'S PRIMARY DUTIES**

2 27. Subject to the Court's approval, and subject to reconsideration by the Parties after a
3 competitive bidding process, the Parties have agreed to the appointment of ILYM Group, Inc. to perform
4 the customary duties of Settlement Administrator. The Settlement Administrator will mail the Notice,
5 both in English and Spanish, to the Class Members.

6 28. The Settlement Administrator will independently review the Covered Workweeks
7 attributed to each Class Member and will calculate the estimated amounts due to each Class Member and
8 the actual amounts due to each Settlement Class Member in accordance with this Settlement. The
9 Settlement Administrator shall report, in summary or narrative form, the substance of its findings. The
10 Settlement Administrator shall be granted reasonable access to Defendant's records in order to perform its
11 duties.

12 29. In accordance with the terms of this Settlement, and upon receipt of Gross Settlement
13 Amount from Defendant, the Settlement Administrator will issue and send out the Settlement Payment
14 checks to the Class Members. Tax treatment of the Settlement Payments will be as set forth herein, and in
15 accordance with state and federal tax laws. All disputes relating to the Settlement Administrator's
16 performance of its duties shall be referred to the Court, if necessary, which will have continuing
17 jurisdiction over the terms and conditions of this Settlement until all payments and obligations
18 contemplated by this Settlement have been fully carried out.

19 30. The Settlement Administrator will post the final judgment approving the Settlement on a
20 website maintained by the Settlement Administrator for a period of not less than 90 calendar days after the
21 final judgment is entered. The address of that website will be included in the Notice.

22 **ATTORNEY'S FEES AND COSTS**

23 31. In consideration for resolving this matter and in exchange for the release of all claims by
24 the Class Members, including Plaintiff, and subject to approval by the Court, Defendant will not object to
25 Class Counsel's application for attorney's fees not to exceed 33 1/3% of the Gross Settlement Amount
26 (\$366,666.66 of \$1,100,000.00) and litigation costs not to exceed \$25,000.00. The amounts set forth
27 above will cover all work performed and all fees and costs incurred to date, and all work to be performed
28 and all fees and costs to be incurred in connection with the approval by the Court of this Settlement and

1 administration of the Settlement. Should Class Counsel request a lesser amount and/or the Court approve
2 a lesser amount(s) of attorney's fees and/or attorneys' costs, the difference between the lesser amount(s)
3 and the maximum amount set forth above shall be added to the Net Settlement Amount. As with the
4 Settlement Payments to the Settlement Class, the attorney's fees and costs approved by the Court shall be
5 paid to Class Counsel, within 14 calendar days of the receipt of settlement funds by the Settlement
6 Administrator. In the event that the Court awards less than 25% of the Gross Settlement Amount for
7 attorney's fees, Class Counsel shall retain the right to appeal that portion of any Final Approval Order and
8 Judgment.

9 **THE NOTICE PROCESS**

10 32. A Notice in approximately the form attached hereto as Exhibit "A," and as approved by the
11 Court, shall be sent by the Settlement Administrator to the Class Members by first class mail. The Notice
12 shall be translated into Spanish so that Spanish and English language versions of the Notice are included in
13 the mailing. Any returned envelopes from this mailing with forwarding addresses will be utilized by the
14 Settlement Administrator to forward the Notices to the Class.

- 15 (a) Within 7 calendar days from the date of preliminary approval of this Settlement by
16 the Court, Defendant shall provide to the Settlement Administrator a class database
17 containing the following information for each Class Member: (1) name; (2) last
18 known address; (3) social security number; and (5) dates of employment at
19 Defendant's locations in California. This database shall be based on Defendant's
20 payroll and other business records and shall be provided in a format acceptable to
21 the Settlement Administrator. Defendant agrees to consult with the Settlement
22 Administrator prior to the production date to ensure that the format will be
23 acceptable to the Settlement Administrator. The Settlement Administrator will run
24 a check of the Class Members' addresses against those on file with the U.S. Postal
25 Service's National Change of Address List; this check will be performed only once
26 per Class Member by the Settlement Administrator. Absent mutual written
27 agreement of counsel for the Parties or Court order, the Settlement Administrator
28 will keep this database confidential and secure and use it only for the purposes

described herein, and will return this database to Defendant upon final approval of the settlement or destroy electronic records containing the database after the Settlement is final and all payments are distributed as required under this Agreement.

- (b) Within 14 calendar days after the Class database is provided to the Settlement Administrator, the Settlement Administrator will mail the Notices to the Class Members by First Class United States mail.
- (c) Notices returned to the Settlement Administrator as non-deliverable on or before the initial Response Deadline shall be resent to the forwarding address, if any, on the returned envelope. A returned Notice will be forwarded by the Settlement Administrator any time that a forwarding address is provided with the returned mail. If there is no forwarding address, the Settlement Administrator will do a computer search for a new address using the Class Member's social security number or other information. In any instance where a Notice is re-mailed, that Class Member will have until the extended Response Deadline as described above. A letter prepared by the Settlement Administrator will be included in the re-mailed Notice in that instance, stating the extended Response Deadline. Upon completion of these steps by the Settlement Administrator, Defendant and the Settlement Administrator shall be deemed to have satisfied their obligations to provide the Notice to the affected Class Member. The affected Class Member shall remain a member of the Settlement Class and shall be bound by all the terms of the Settlement and the Court's Order and Final Judgment.
- (d) Class Counsel shall provide to the Court, at least five calendar days prior to the final approval hearing, or such other date as set by the Court, a declaration by the Settlement Administrator of due diligence and confirming mailing of the Notices.

DISPOSITION OF SETTLEMENT PAYMENTS AND UNCASHED CHECKS

33. As set forth above, each Class Member will have until the expiration of the applicable Response Deadline to submit to the Settlement Administrator any challenge or dispute to the Class

1 Member's Covered Workweek information on the Notice. No disputes will be honored if they are
2 submitted after the Response Deadline, unless the Parties mutually agree to accept the untimely dispute.
3 Each Class Member is responsible to maintain a copy of any documents sent to the Settlement
4 Administrator and a record of proof of mailing.

5 34. The Settlement Administrator shall cause the Settlement Payments to be mailed to the
6 Settlement Class Members and PAGA Employees as provided herein. Settlement Class Payments and
7 PAGA Payments may be combined into one check. Settlement Payment checks shall remain valid and
8 negotiable for 180 calendar days from the date of their issuance. Settlement Payment checks will
9 automatically be cancelled by the Settlement Administrator if they are not cashed by the Class Member
10 within that time, and the Class Member's relevant claims will remain released by the Settlement.
11 Settlement Payment checks which have expired will not be reissued.

12 35. Funds from un-cashed or abandoned Settlement Payment checks, based on a 180-day void
13 date, shall be transmitted to the California State Controller's Office for Unclaimed Property in the name of
14 each Class Member who failed to cash their Settlement Payment check prior to the void date.

15 36. Upon completion of its calculation of Settlement Payments, the Settlement Administrator
16 shall provide Class Counsel and Defendant's Counsel with a report listing the amounts of all payments to
17 be made to Class Members (to be identified anonymously by employee number or other identifier). A
18 Declaration attesting to completion of all payment obligations will be provided to Class Counsel and
19 Defendant's Counsel and filed with the Court by Class Counsel.

20 **RELEASE BY THE CLASS AND PAGA EMPLOYEES**

21 37. Upon the final approval by the Court of this Settlement and Defendant's payment of all
22 sums due pursuant to this Settlement, and except as to such rights or claims as may be created by this
23 Settlement, the Class Representatives, the Class and each Class Member who has not submitted a valid
24 and timely request for exclusion as to claims other than the PAGA claim, and each PAGA Employee,
25 regardless of whether they have requested exclusion from the Settlement of Class claims, will release
26 claims as follows:

- 27 (a) **Identity of Released Parties.** The released parties are Defendant, and each of
28 its/their former and present direct and/or indirect owners, dba's, affiliates, parents,

1 subsidiaries, brother and sister corporations, divisions, related companies,
2 successors and predecessors, and current and former employees, attorneys, officers,
3 directors, shareholders, owners, trustees, attorneys, fiduciaries, beneficiaries,
4 subrogees, executors, partners, privies, agents, servants, insurers, representatives,
5 administrators, employee benefit plans, and assigns of said entities (collectively
6 “Releasees”).

7 (b) **Date Release Becomes Active.** The Released Claims and Released PAGA Claims
8 will be released upon the later of (1) the Settlement’s Effective Date, or (2) the
9 satisfaction of Defendant’s obligation to provide to the Settlement Administrator a
10 sum in the amount required to satisfy all required payments and distributions
11 pursuant to this Settlement and the Order and Judgment of final approval. Class
12 Members will not release the Released Claims or Released PAGA Claims until
13 both the Effective Date of the Settlement has occurred, **and** Defendant has paid all
14 amounts owing under the Settlement.

15 (c) **Claims Released by Settlement Class Members.** Each and every Class Member,
16 on behalf of himself or herself and his or her heirs and assigns, unless he or she has
17 submitted a timely and valid Request for Exclusion (which will not effectuate an
18 opt-out from the release of Released PAGA Claims), hereby releases Releasees
19 from the following claims for the entire Class Period:

- 20 1) any and all claims stated in the Action, or that could have been stated based
21 on the facts alleged in the Action, including but not limited to state wage
22 and hour claims (including all claims under the California Labor Code) for
23 unpaid wages, minimum wage, overtime, off-the-clock work, meal periods,
24 rest periods, wage statement violations, interest, penalties, and attorneys’
25 fees, waiting time penalties, withholding from wages and the related
26 provisions of the Labor Code including but limited to Labor Code §§ 201-
27 204, 210, 216, 218.6, 226, 226.3 , 226.7, 510, 512, 512.5, 558, 1194,
28 1194.2, 1198, derivative claims under California Business & Professions

Code §§ 17200 et seq., and all claims under the governing Wage Order (“Released Claims”);

- 2) as to any Class Member who cashes their Settlement Payment, the signing and negotiation of that check shall serve as the Class Member’s consent to join the action for purposes of releasing claims arising under the Fair Labor Standards Act that are related to the claims stated in the Action, implicitly or explicitly; and,

- (d) **Claims Released by the Class, Including PAGA Employees.** All Class Members, including all PAGA Employees, release the Released PAGA Claims, regardless of whether they have requested exclusion from the Settlement as to Class claims.

EMPLOYMENT BY DEFENDANT

38. Employment of Plaintiff by Defendant is not consideration for, or a condition of, this Settlement.

DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

39. The Parties shall submit this Joint Stipulation of Class Action Settlement to the Court in support of Plaintiff’s unopposed motion for preliminary approval for determination by the Court as to its fairness, adequacy, and reasonableness. Upon execution of this Joint Stipulation of Class Action Settlement, the Parties shall apply to the Court for the entry of an order:

- (a) Scheduling a final approval and fairness hearing on the question of whether the proposed Settlement, including payment of attorney’s fees and costs, and the Class Representatives’ service payment, should be finally approved as fair, reasonable, and adequate as to the members of the Class;
- (b) Certifying a Class;
- (c) Approving as to form and content the proposed Notice;
- (d) Directing the mailing of the Notice;
- (e) Preliminarily approving the Settlement subject only to the objections of Class Members and final review by the Court;

(f) Conditionally appointing Plaintiff and Class Counsel as representatives of the proposed Class Members; and,

(g) Appointing ILYM Group, Inc. as the Settlement Administrator, and order the Settlement Administrator to issue Notices as outlined above.

DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL

40. In conjunction with the hearing of a motion for final approval by the Court of the Settlement provided for in this Joint Stipulation of Settlement, Class Counsel will provide to Defendant's Counsel for review and approval and then submit to the Court a proposed final order and judgment containing provisions sufficient to accomplish the following:

- (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;
- (b) Approving Class Counsel's application for an award of attorney's fees and costs;
- (c) Approving the Service Payment to the Class Representatives;
- (d) Adjudging the Settlement Administrator has fulfilled its initial notice and reporting duties under the Settlement.
- (e) Adjudging Plaintiff and Class Counsel may adequately represent the Final Settlement Class for the purpose of entering into and implementing the Agreement;
- (f) Entering a final judgment in the action;
- (g) Adjudging that notwithstanding the submission of a timely request for exclusion, Class Members are still bound by the settlement and release of the Released PAGA Claims or remedies under the Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), as requests to be excluded from the Settlement do not apply to the Released PAGA Claims, and further affirms that the State's claims for civil penalties pursuant to PAGA are also extinguished;
- (h) Directing the posting of the final judgment on a website maintained by the Settlement Administrator for a period of not less than 90 calendar days after entry of final judgment.

Any revised final judgments will also be provided to Defendant's Counsel for review and approval before

1 they are submitted to the Court.

2 **NULLIFICATION AND TERMINATION**

3 41. This Settlement will be null and void if any of the following occur: (a) the Court should for
4 any reason fail to certify a class for settlement purposes; (b) the Court should for any reason fail to
5 preliminarily or finally approve of this Settlement in the form agreed to by the Parties, other than
6 adjustments made to the attorney's fees and costs or granting of Service Payments; (c) the Court should for
7 any reason fail to enter the final judgment; (d) the final judgment is reversed, modified, or declared or
8 rendered void; or (e) the Settlement does not become final for any other reason.

9 42. If 10% or more of the Class Members opt out of this Settlement, then Defendant in its sole
10 discretion may terminate, nullify and void this Settlement. The Settlement Administrator shall provide
11 Defendant's Counsel with the information necessary to effectuate this provision on a regular basis, but no
12 less frequently than on a monthly basis. To terminate this Settlement under this paragraph, Defendant's
13 Counsel must give Plaintiff's Counsel written notice, by facsimile, e-mail, or mail, no later than 10 court
14 days after the Response Deadline. If this option is exercised by Defendant, Defendant shall be solely
15 responsible for the costs incurred by the Settlement Administrator for the settlement administration.

16 43. In the event this Settlement is nullified or terminated as provided above: (i) this Settlement
17 shall be considered null and void, (ii) neither this Settlement nor any of the related negotiations or
18 proceedings shall have any force or effect and no party shall be bound by any of its terms, and (iii) all
19 Parties to this Settlement shall stand in the same position, without prejudice, as if the Settlement had been
20 neither entered into nor filed with the Court.

21 **PARTIES' AUTHORITY**

22 44. The signatories hereto hereby represent that they are fully authorized to enter into this
23 Settlement and bind the Parties hereto to the terms and conditions thereof.

24 **MUTUAL FULL COOPERATION**

25 45. The Parties agree to fully cooperate with each other to accomplish the terms of this
26 Settlement including, but not limited to, execution of such documents and taking such other action as
27 reasonably may be necessary to implement the terms of this Settlement. The Parties to this Settlement
28 shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that

1 may become necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set
2 forth herein. As soon as practicable after execution of this Settlement, Class Counsel shall, with the
3 assistance and cooperation of Defendant and Defendant's Counsel, take all necessary steps to secure the
4 Court's preliminary and final approval of this Settlement.

5 **NO PRIOR ASSIGNMENTS**

6 46. The Parties and their respective counsel represent, covenant, and warrant that they have not
7 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
8 any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein
9 released and discharged except as set forth herein.

10 **NO ADMISSION OF LIABILITY**

11 47. Nothing contained herein, nor the consummation of this Settlement, is to be construed or
12 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant.
13 Defendant denies all the claims and contentions alleged by the Plaintiff in this case. The Defendant has
14 entered into this Settlement solely with the intention to avoid further disputes and litigation with the
15 attendant inconvenience and expenses.

16 **ENFORCEMENT ACTIONS**

17 48. In the event that one or more of the Parties to this Settlement institutes any legal action or
18 other proceeding against any other party or parties to enforce the provisions of this Settlement or to declare
19 rights and/or obligations under this Settlement, the successful party or parties shall be entitled to recover
20 from the unsuccessful party or parties reasonable attorney's fees and costs, including expert witness fees
21 incurred in connection with any enforcement actions.

22 **NOTICES**

23 49. Unless otherwise specifically provided herein, all notices, demands or other
24 communications given hereunder shall be in writing and shall be deemed to have been duly given as of the
25 third business day after mailing by United States registered or certified mail, return receipt requested,
26 addressed as follows:

27 Class Counsel:

28 Kane Moon

Counsel for Defendant:

Brian E. Kogle (SBN 218800)

1 Allen Feghali
2 Enzo Nabiev
3 **MOON & YANG, APC**
4 1055 W. Seventh St., Suite 1880
5 Los Angeles, California 90017
6 Telephone: (213) 232-3128
7 Facsimile: (213) 232-3125
8 kane.moon@moonyanglaw.com
9 allen.feghali@moonyanglaw.com
10 enzo.nabiev@moonyanglaw.com

bkoegle@pooleshaffery.com
Michael R. Fostakowsky (SBN 258649)
mfostakowsky@pooleshaffery.com
Caleb A. Miller (SBN 327094)
cmiller@pooleshaffery.com
POOLE, SHAFFERY & KOEGLE,
LLP
25350 Magic Mountain Parkway
Second Floor
Santa Clarita, California 91355
Telephone: (661) 290-2991
Facsimile: (661) 290-3338

CONSTRUCTION

50. The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, intensive arms-length negotiations between the Parties, and this Settlement shall not be construed in favor of or against any party by reason of the extent to which any party or his, her or its counsel participated in the drafting of this Settlement.

CAPTIONS AND INTERPRETATIONS

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

MODIFICATION

52. This Settlement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

INTEGRATION CLAUSE

53. This Settlement contains the entire agreement between the Parties relating to the Settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

WAIVER OF APPEALS

54. The Parties agree to waive appeals and to stipulate to class certification for purposes of implementing this Settlement only, with the exception that Class Counsel retains the right to appeal the

1 amount awarded as attorney's fees in the event that the Court awards less than twenty-five percent of the
2 Gross Settlement Amount as attorney's fees.

3 **BINDING ON ASSIGNS**

4 55. This Settlement shall be binding upon and inure to the benefit of the Parties hereto and
5 their respective heirs, trustees, executors, administrators, successors and assigns.

6 **CLASS COUNSEL SIGNATORIES**

7 56. It is agreed that because the members of the Class are so numerous, it is impossible or
8 impractical to have each member of the Class execute this Settlement. The Notice will advise all Class
9 Members of the binding nature of the Released Claims and Released PAGA Claims, and the release shall
10 have the same force and effect as if this Settlement were executed by each member of the Class.

11 **COUNTERPARTS**

12 57. This Settlement may be executed in counterparts and by electronic or facsimile signatures,
13 and when each party has signed and delivered at least one such counterpart, each counterpart shall be
14 deemed an original, and, when taken together with other signed counterparts, shall constitute one
15 Settlement, which shall be binding upon and effective as to all Parties.

16 **CONFIDENTIALITY & PUBLIC COMMENT**

17 58. The Class Representative and Class Counsel agree they will not make any disparaging
18 comments about Defendant relating to this Settlement of this class action or disclose the negotiations of
19 the Settlement. The Class Representative and Class Counsel shall only disclose matters of public record
20 other than to Class Members, who may receive information about the Settlement that is not in the public
21 record after the Court has preliminarily approved the Settlement. Other than as to Class Members or as
22 expressly allowed below, the Parties and attorneys will keep the settlement confidential until the filing of
23 the motion for preliminary approval of the class settlement. Thereafter, the Parties agree to make no
24 comments to the media or otherwise publicize the terms of the Settlement, other than in court filings. To
25 the extent counsel for either Party wish to advertise this settlement, such advertising will be limited to a
26 statement that a matter was settled between a putative class and a "manufacturing business." Any
27 communication about the Settlement to Class Members prior to the Court-approved mailing will be
28 limited to (1) a statement that a settlement has been reached, (2) a statement of any of the details that

would necessarily be included in any Court-approved Notice if a Class Member requests details about the proposed Settlement, and (3) a warning that the terms of the proposed Settlement have not yet been approved by the Court. Prior to preliminary approval, the Class Representative is prohibited from discussing the terms or the fact of the settlement with third parties other than (1) a spouse, (2) accountants or lawyers as necessary for tax purposes, or (3) Class Members. At all times, the Class Representative is prohibited from communicating about the terms or the fact of the settlement on any form of social media ("Social Media Bar"). In the event of a proven breach of the Social Media Bar, the violating Plaintiff shall forfeit one-half of the class representative enhancement payment, as a form of liquidated damages. Class Counsel will take all steps necessary to ensure the Class Representative is aware of, and will adhere to, the restrictions against any public disclosure of the Settlement. Class Counsel will not include or use the settlement for any marketing or promotional purposes other than as expressly allowed above.

FINAL JUDGMENT

59. The Parties agree that, upon final approval of the Settlement, final judgment of this Action will be made and entered in its entirety. The final judgment may be included in the Order granting Final Approval of the Settlement.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Action Settlement between Plaintiff and Defendant as set forth below:

IT IS SO STIPULATED.

Plaintiff & Class Representative:

Dated: 12/23/2020

By:

DocuSigned by:

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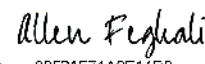
CLAUDIA AVILES

Plaintiff's Counsel:

Dated: 12/18/2020

MOON & YANG, APC

By:

DocuSigned by:

88521E71A9E17D8...

Kane Moon
Allen Feghali
Enzo Nabiev

Attorneys for Plaintiff

Defendant:

Dated: December 18, 2020

ALSICO HI TEC, INC.

By: RICHARD BYRN
Print Name


Signature

PRESIDENT
Title

Defendant's Counsel:

Dated: 12/18/2020

POOLE, SHAFFERY & KOEGLE, LLP

By: 
Brian E. Keegle
Michael R. Fostakowsky
Caleb A. Miller

Attorneys for Defendant ALSICO HI TEC, INC.

EXHIBIT A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Aviles v. Alsico Hi Tec, Inc.

Los Angeles Superior Court Case No. 20STCV09874

A court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.

IF YOU ARE OR WERE EMPLOYED BY ALSICO HI TEC, INC. (“DEFENDANT”) IN CALIFORNIA AS AN HOURLY-PAID EMPLOYEE AT ANY TIME BETWEEN MARCH 11, 2016 THROUGH JANUARY 31, 2021, THIS PROPOSED CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.

Why should you read this Notice?

A proposed settlement (the “Settlement”) has been reached in a class action lawsuit entitled *Claudia Aviles v. Alsico Hi Tec, Inc.*, Los Angeles Superior Court Case No. 20STCV09874 (the “Action”). The purpose of this Notice of Proposed Class Action Settlement (“Notice”) is to briefly describe the Action and to inform you of your rights and options in connection with the Action and the proposed Settlement. The proposed Settlement will resolve all claims in the Action.

A hearing concerning final approval of the proposed Settlement will be held before the Hon. Elihu M. Berle on <<**FA Date and Time**>> in Department SSC-6 of the Los Angeles Superior Court, Spring Street Courthouse, 312 North Spring Street, Los Angeles, CA 90012, to determine whether the Settlement is fair, adequate and reasonable. As a Class Member, you are eligible to receive an individual Settlement Payment under the Settlement and will be bound by the release of claims described in this Notice and the Settlement Agreement filed with the Court, unless you timely request to be excluded from the Settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING – GET MONEY	If you do nothing, you will be considered part of the Class and will receive settlement benefits as explained more fully below. You will also give up rights to pursue a separate legal action against Defendant for the Released Claims asserted in the Action as explained more fully below.
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS DEADLINE TO EXCLUDE YOURSELF: << RESPONSE DATE >>	You have the option to pursue separate legal action against Defendant about the claims in the Action. If you choose to do so, you must exclude yourself, in writing, from the Settlement by submitting a written Request to be Excluded. As a result, you will not receive any benefits under the Settlement.
OBJECT TO THE SETTLEMENT DEADLINE TO SUBMIT WRITTEN OBJECTIONS: << RESPONSE DATE >>	To object to the Settlement, you may mail a written explanation of why you don’t like the Settlement to the Settlement Administrator, appear at the final approval hearing, or hire an attorney at your expense to object for you. This option is available only if you do <u>not</u> exclude yourself from the Settlement. Do <u>not</u> submit a Request to be Excluded if you wish to object. <i>Written</i> objections must be submitted by << RESPONSE DATE >>.

Who is affected by this proposed Settlement?

The Court has certified, for settlement purposes only, the following class (the “Class”):

All non-exempt employees of Defendant who worked for Defendant in California during the Class Period (the “Class Period” is March 11, 2016 through January 31, 2021).

According to Defendant’s records, you are a member of the Class (“Class Member”).

What is this case about?

In the Action, Plaintiff Marcela Lopez (“Plaintiff”) alleges on behalf of herself and the Class that Defendant: (1) failed to pay minimum and straight time wages; (2) failed to pay overtime wages; (3) failed to provide meal periods; (4) failed to authorize and permit rest periods; (5) failed to timely pay all wages to terminated employees; (6) failed to furnish accurate itemized wage statements; (7) violated California’s Unfair Competition Law, California Business and Professions Code section 17200 et seq.; and (8) violated provisions of the Labor Code giving rise to civil penalty liability under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.]. Plaintiff seeks unpaid wages, actual damages, declaratory relief, statutory penalties, civil penalties under PAGA, restitution, interest, attorneys’ fees, and costs.

Defendant denies all liability and is confident that it has strong legal and factual defenses to these claims, but it recognizes the risks, distractions, and costs associated with litigation. Defendant contends that its conduct is and has been lawful at all times relevant and that Plaintiff’s claims do not have merit and do not meet the requirements for class certification.

This Settlement is a compromise reached after good faith, arm’s length negotiations between Plaintiff and Defendant (the “Parties”), through their attorneys, and is not an admission of liability on the part of Defendant. Both sides agree that this Settlement is fair, adequate and reasonable. Plaintiff also believes this Settlement is in the best interests of all Class Members.

The Court has not ruled on the merits of Plaintiff’s claims or Defendant’s defenses.

Who are the attorneys representing the Parties?

The attorneys representing the Parties in the Action are:

Class Counsel

Kane Moon
Allen Feghali
Enzo Nabiev
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125

Defendant’s Counsel

Brian E. Koegle
Michael R. Fostakowsky
Caleb A. Miller
POOLE, SHAFFERY & KOEGLE, LLP
25350 Magic Mountain Parkway
Second Floor
Santa Clarita, California 91355
Telephone: (661) 290-2991
Facsimile: (661) 290-3338

What are the Settlement terms?

Subject to final Court approval, Defendant will pay \$1,100,000 (the “Gross Settlement Amount”) for: (a) individual Settlement Payments to Settlement Class Members; (b) the Court-approved Class Representative Service Payments to Plaintiff (\$10,000 to be requested); (c) the Court-approved attorneys’ fees and costs to Class Counsel (\$366,666.66 in fees and up to \$25,000 in costs to be requested); (d) payment to the Labor and Workforce Development Agency (“LWDA”) for alleged PAGA penalties (\$45,000 of a total of \$60,000 allocated to PAGA penalties); and (e) payment to the Settlement Administrator for settlement administration services (up to an estimated maximum of \$20,000).

Individual Settlement Payments. After deduction from the Gross Settlement Amount for attorneys’ fees and costs, the Class Representative Service Payment to Plaintiff, the payment to the LWDA, and settlement administration costs, there will be a Net Settlement Amount. From this Net Settlement Amount, Defendant will make an individual Settlement Payment to each Class Member who does not request to be excluded from the Settlement (“Settlement Class Members”).

The Net Settlement Amount shall be divided among all Settlement Class Members on a pro rata basis based upon the total number of workweeks worked by each respective Settlement Class Member as a non-exempt hourly employee in the State of California during the Class Period. Your estimated individual Settlement Payment is listed below.

Your estimated minimum settlement payment is <<Estimated Payment>> and your covered Work Weeks worked during the relevant period between March 11, 2016 to January 31, 2021 are <<Work Weeks>>. To the extent you dispute the number of Work Weeks, you must make your dispute (“Work Week Dispute”) in writing and send it to the Settlement Administrator via fax or mail. Your Work Week Dispute must be postmarked or faxed no later than <<+60 days from date of mailing>> (the “Response Deadline”) to:

ILYM Group, Inc., <<mailing address>>

Your Work Week Dispute must be in writing and contain: (a) your full name, signature, address, telephone number, and the last four digits of your Social Security number; (b) the number of Work Weeks you contend is correct; and (c) any evidence supporting your contention. Defendant’s records will be presumed correct unless you prove otherwise by credible evidence. The Settlement Administrator will resolve and decide all Work Week Disputes, and its decisions will be final and non-appealable. **REMINDER:** If you believe your estimated individual Settlement Amount is incorrect because your Work Weeks (the number of total weeks you worked within the Class Period only) are wrong, the deadline to dispute the workweeks reported for you is <<RESPONSE DATE>>.

For tax reporting purposes, the payments to Settlement Class Members will be allocated 33 1/3% as wages, 33 1/3% as penalties, and 33 1/3% as interest, excluding the \$15,000 in PAGA Settlement Payments, which will be allocated as 100% penalties. The wage portion of the individual Settlement Payments shall be subject to the withholding of applicable local, state, and federal taxes, and the Settlement Administrator shall deduct applicable employee-side payroll taxes from the wage portion of the individual Settlement Payments. The portion of the Settlement Payments allocated to penalties and interest shall be classified as other miscellaneous income and reported on IRS Form 1099-MISC. Any taxes owed on that other miscellaneous income will be the responsibility of Settlement Class Members receiving those payments. The employer’s share of any payroll taxes will be separately paid by Defendant.

All checks for individual Settlement Payments paid to Settlement Class Members shall advise that the checks will remain valid and negotiable for one hundred eighty (180) days from the date of the checks’ issuance and shall thereafter automatically be void if not cashed by a participating Class Member within that time. Any individual Settlement Payment that is not cashed by a Settlement Class Member within one hundred eighty (180) days of issuance shall be transmitted to the California State Controller’s Office for Unclaimed Property in the name of each check recipient who failed to cash their check prior to the void date. The Settlement Administrator shall void any tax documents issued to Settlement Class Members who did not cash their checks within 180 days of issuance. In such event, the Settlement Class Member shall nevertheless remain bound by the Settlement.

None of the Parties or attorneys make any representations concerning the tax consequences of this Settlement or your participation in it. Settlement Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel is unable to offer advice concerning the state or federal tax consequences of payments to any Class Member.

Class Counsel Attorneys’ Fees and Costs, Class Representative Service Award, Settlement Administration Costs and Payment to the LWDA. Class Counsel will ask the Court to award attorneys’ fees up to \$366,666.66 (one third) of the Gross Settlement Amount and reimbursement of reasonable costs incurred in the Action not to exceed \$25,000. In addition, Class Counsel will ask the Court to authorize a Class Representative Service Payment of \$10,000 for Plaintiff for her efforts in bringing the case on behalf of the Class. The Parties estimate the cost of administering the Settlement will not exceed \$20,000.00. A payment in the amount of \$45,000.00 will also be made to the LWDA for PAGA penalties, which represents 75% of the \$60,000 set aside for payment under PAGA. Payment by Defendant will be paid 12 months from <<date of preliminary approval>>, but no earlier than 18 months from November 20, 2020

What claims are being released by the proposed Settlement?

Upon the final approval by the Court of this Settlement, and except as to such rights or claims as may be created by this Settlement, the Class Representatives, the Class and each Class Member who has not submitted a valid and timely request for exclusion as to claims other than the PAGA claim, will release claims as follows:

(a) Identity of Released Parties. The released parties are Defendant, and each of its/their former and present direct and/or indirect owners, dba’s, affiliates, parents, subsidiaries, brother and sister corporations, divisions, related companies, successors and predecessors, and current and former employees, attorneys, officers, directors, shareholders, owners, trustees, attorneys, fiduciaries, beneficiaries, subrogees, executors, partners, privies, agents,

servants, insurers, representatives, administrators, employee benefit plans, and assigns of said entities (collectively “Releasees”).

(b) **Date Release Becomes Active.** The Released Claims will be released upon the later of (1) the Settlement’s Effective Date, or (2) the satisfaction of Defendant’s obligation to provide to the Settlement Administrator a sum in the amount required to satisfy all required payments and distributions pursuant to this Settlement and the Order and Judgment of final approval. Class Members will not release claims until both the Effective Date of the Settlement has occurred, and Defendant has paid all amounts owing under the Settlement.

(c) **Claims Released by Specified Class Members.** Each and every Class Member, on behalf of himself or herself and his or her heirs and assigns, unless he or she has properly elected to opt out of the Class (which will not effectuate an opt-out from the PAGA claim), hereby releases Releasees from the following claims (“Released Claims”) for the entire Class Period:

1) any and all claims stated in the Action, or that could have been stated based on the facts alleged in the Action, including but not limited to state wage and hour claims (including all claims under the California Labor Code) for unpaid wages, minimum wage, overtime, off-the-clock work, meal periods, rest periods, wage statement violations, interest, penalties, and attorneys’ fees, waiting time penalties, withholding from wages and the related provisions of the Labor Code including but limited to Labor Code §§ 201-204, 210, 216, 218.6, 226, 226.3, 226.7, 510, 512, 512.5, 558, 1194, 1194.2, 1198, derivative claims under California Business & Professions Code §§ 17200 et seq., and all claims under the governing Wage Order;

2) as to any Class Member who cashes their Settlement Payment, the signing and negotiation of that check shall serve as the Class Member’s consent to join the action for purposes of releasing claims arising under the Fair Labor Standards Act that are related to the claims stated in the Action, implicitly or explicitly; and,

3) in addition, as to all Class Members, whether requesting exclusion from the Settlement or not, claims arising under the Private Attorneys General Act of 2004, Labor Code § 2698 et seq., to the extent asserted in Plaintiff’s administrative exhaustion letter submitted to the LWDA and any Complaint in this matter.

What are my options in this matter?

You have two options under this Settlement, each of which is further discussed below. You may: (A) remain in the Class and receive an individual Settlement Payment; or (B) exclude yourself from the Settlement. If you choose option (A), you may also object to the Settlement, as explained below.

If you remain in the Class, you will be represented at no cost by Class Counsel. Class Counsel, however, will not represent you for purposes of making objections to the Settlement. If you do not exclude yourself from the Settlement, you will be subject to any Judgment that will be entered in the Action, including the release of the Released Claims as described above.

OPTION A. Remain in the Class. If you wish to remain in the Class and be eligible to receive an individual Settlement Payment under the Settlement, **you do not need to take any action.** By remaining in the Class and receiving settlement monies, you consent to the release of the Released Claims as described above.

Any amount paid to Settlement Class Members will not count or be counted for determination of eligibility for, or calculation of, any employee benefits (for example, vacations, holiday pay, retirement plans, non-qualified deferred compensation plans, etc.), or otherwise modify any eligibility criteria under any employee pension benefit plan or employee welfare plan sponsored by Defendant, unless otherwise required by law.

Objecting to the Settlement: If you believe the proposed Settlement is not fair, reasonable, or adequate in any way, you have several options that you may use to object to it or express any concerns. To object, you may appear in person at the Final Approval Hearing, have an attorney object for you, or submit a written brief or statement of objection (“written objection”) to the Settlement Administrator at ILYM Group, Inc. <<insert address>>. If you submit a written objection, it should contain sufficient information to confirm the your identity and the basis of the objection, including: (1) your full name; (2) the grounds for the objection; (3) your signature; and (4) be postmarked on or before <<Response Deadline>> and returned to the Settlement Administrator at the address listed above to ensure that it is received in time to be transmitted to and considered by the Court. You can also hire an attorney at your own expense to represent you in your objection. The Parties shall file responses to any written objections before the final approval hearing. Regardless of whether you object in writing, the Court may, in its sole discretion, permit you to state any objections you may have at the Settlement Hearing. **Even if you**

submit an objection, you will be bound by the terms of the Settlement, including the release of Released Claims as set forth above, unless the Settlement is not finally approved by the Court.

Regardless of the form, an objection, alone will not satisfy the requirement that a Settlement Class Member must formally intervene and become a party of record in the action to appeal a Judgment entered following an Order finally approving this Settlement, as is required under the California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018).

OPTION B. Request to Be Excluded from the Settlement and Receive No Money from the Settlement. If you do not want to be part of the Settlement, you must submit a written request to be excluded from the Settlement to the Settlement Administrator at ILYM Group, Inc. <<insert address>>. In order to be valid, your written request to be excluded from the Settlement must be signed and include your name, address, and telephone number (to confirm your identity and make certain that only persons requesting exclusion are removed from the settlement), along with a statement like the following:

“I WISH TO BE EXCLUDED FROM THE CLASS IN THE *AVILES V. ALSICO HI-TEC, INC.*, CLASS ACTION LAWSUIT, LOS ANGELES COUNTY SUPERIOR COURT CASE NO. 20STCV09874. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OTHER THAN MY SHARE OF THE PAGA PAYMENT.”

Your written request to be excluded from the Settlement must then be signed and postmarked on or before <<Response Deadline>>. If you do not submit a written request to be excluded from the Settlement on time (as evidenced by the postmark), your written request to be excluded from the Settlement will be rejected, you will be deemed a participating Class Member, and you will be bound by the release of Released Claims as described above and all other terms of the Settlement. If you submit a written request to be excluded from the Settlement by the deadline to request exclusion, you will have no further role in the Action. **You will not be entitled to any benefit, including money**, as a result of the Action and Settlement. You will not be able to complain to the Court about any aspect of the Settlement.

What is the next step in the approval of the Settlement?

The Court will hold a Final Approval Hearing regarding the fairness, reasonableness and adequacy of the proposed Settlement, the plan of distribution, Class Counsel’s request for attorneys’ fees and costs, the Class Representative Service Payment to Plaintiff, the settlement administration costs, and the payment to the LWDA for PAGA penalties on <<FA Date and Time>> in Department SSC-6 of the Los Angeles Superior Court, Spring Street Courthouse, 312 North Spring Street, Los Angeles, CA 90012. Because of healthcare guidance and Orders of the Los Angeles Superior Court related to COVID-19, the hearing may be a telephonic hearing only. If you wish to attend the Final Approval Hearing telephonically, visit <https://www.lacourt.org/lacc/> for instructions on how to do so. The Final Approval Hearing may be continued without further notice to Class Members. You are not required to attend the Final Approval Hearing to receive an individual Settlement Payment.

If the Court grants Final Approval of the Settlement, the Order granting Final Approval and entering a Judgment will be mailed to you.

How can I get additional information?

This Notice summarizes the Action and the basic terms of the Settlement. More details are in the Joint Stipulation of Class Action Settlement attached to the Declaration of Kane Moon in Support of Plaintiff’s Motion for Preliminary Approval. The Joint Stipulation of Class Action Settlement and all other records relating to the lawsuit are available for inspection and/or copying at the Civil Records Office of the Los Angeles Superior Court. Because of the Los Angeles Superior Court’s COVID-19 pandemic procedures, in order to view documents filed in the lawsuit, Class Members may be required to make an appointment with the Court to view documents. You may also request a copy of the Settlement Agreement from Class Counsel, at the address listed above.

PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.