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

WALTER CUELLAR, as an aggrieved
employee pursuant to the Private Attorneys
General Act (“PAGA”), on behalf of the State of
California and other aggrieved employees,

Plaintiff,

vs.

MOR FURNITURE FOR LESS, INC., a
California corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No. CIVDS2013280

PAGA SETTLEMENT AGREEMENT

PAGA SETTLEMENT AGREEMENT

Subject to Court approval by the Superior Court of the State of California for the County of San Bernardino (“Court”), Plaintiffs Walter Cuellar and Christopher Cuerden (collectively “Plaintiffs”) and Defendant MOR Furniture for Less, Inc. (“Defendant”) (collectively with Plaintiffs, the “Parties”) hereby agree to the following binding settlement (“Settlement” or “Settlement Agreement”) of the action entitled *Cuellar v. MOR Furniture For Less, Inc.*, No. CIVDS2013280 (San Bernardino County Superior Court).

DEFINITIONS

The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:

1. “Action” means *Cuellar v. MOR Furniture For Less, Inc.*, No. CIVDS2013280 (San Bernardino County Superior Court), including the related action *Cuerden v. MOR Furniture for Less, Inc.*, Superior Court of California for the County of San Diego No. 37-2020-0004299-CU-OE-NC.
2. “Aggrieved Employees” means all persons who were employed by Defendant as: (i) commissioned employees, who received at least one wage statement, in the State of California at any time from April 3, 2019 through January 19, 2022 (“Commissioned Employees”); or (ii) non-exempt, hourly-paid employees, who received at least one wage statement, in the State of California at any time from September 17, 2019 through January 19, 2022 (“Hourly Employees”).
3. “Court” means the Superior Court for the State of California, County of San Bernardino.
4. “General Release Payments” means the amounts to be paid to Plaintiffs as payment for a general release of all claims arising out of their employment with Defendant.
5. “LWDA” means the California Labor and Workforce Development Agency.
6. “Maximum Settlement Amount” means the maximum settlement amount of Eight Hundred Fifty Thousand Dollars (\$850,000) to be paid by Defendant in full satisfaction of all Settled Claims arising from the Action, which includes all payments to Aggrieved Employees, Plaintiffs, Plaintiffs’ Counsel, the LWDA, and the Settlement Administrator.
7. “PAGA Penalties Fund” means the Maximum Settlement Amount less the Attorneys’ Fees and Costs (defined in Section 15), Service Awards (defined in Section 16), General Release

Payments (defined in Section 17), and Settlement Administrator Costs (defined in Section 18).

8. “Plaintiffs’ Counsel” means Capstone Law APC and Potter Handy, LLP.

9. “Service Awards” means the amounts to be paid to Plaintiffs as payment for their service on behalf of the LWDA and Aggrieved Employees.

10. “Settled Claims” means any and all claims, demands, rights, liabilities, and/or causes of action for PAGA civil penalties under the California Labor Code, Wage Orders, regulations, and/or other provisions of law alleged or that reasonably could have been alleged to have been violated in the Action with respect to Aggrieved Employees based on the facts alleged in the Action during the applicable Settlement Period.

11. “Settlement Period” means the period from: (i) April 3, 2019 through January 19, 2022 for Commissioned Employees; and (ii) September 17, 2019 through January 19, 2022 for Hourly Employees.

TERMS

12. Maximum Settlement Amount. In consideration for Plaintiffs’ promises and representations described in this Settlement Agreement, and subject to all of the conditions of the Settlement being met, Defendant will to pay a maximum amount of Eight Hundred Fifty Thousand Dollars (\$850,000) (“Maximum Settlement Amount”), which represents the maximum amount payable in this Settlement by Defendant, and includes attorneys’ fees, litigation costs and expenses, consideration for Plaintiffs’ service on behalf of the LWDA and Aggrieved Employees and for general releases of all claims arising out of their employment with Defendant, Settlement Administration Costs, and payments to Aggrieved Employees and the LWDA for their share of the PAGA Penalties Fund. No portion of the Maximum Settlement Amount will be retained by, or revert to, Defendant.

13. Escalator Clause. This Settlement is entered into based on Defendant’s representation that there are approximately Five Hundred and Ninety-Two (592) Aggrieved Employees. If the total number of Aggrieved Employees during the applicable Settlement Period is greater than Six Hundred and Fifty-One (651), then Defendant will proportionally increase the Maximum Settlement Amount according to the following formula: $\text{Proportionally Increased Maximum Settlement Amount} = \text{Total Number of Employees} \div 651 \text{ Employees} \times \$850,000$.

14. PAGA Penalties Fund. The PAGA Penalties Fund will be paid to Aggrieved Employees and the LWDA in full satisfaction of all claims for PAGA civil penalties under the California Labor Code, Wage Orders, regulations, and/or other provisions of law alleged to have been violated in the Action with respect to Aggrieved Employees. Pursuant to PAGA, Seventy-Five Percent (75%) of the PAGA Penalties Fund will be paid to the LWDA, and the remaining Twenty-Five Percent (25%) will be paid to all Aggrieved Employees according to the following formula:

14(a) Defendant will calculate: (i) the total number of pay periods worked by each Aggrieved Employee during the applicable Settlement Period, and (ii) the total number of pay periods worked by all Aggrieved Employees during the Settlement Period.

14(b) To determine each Aggrieved Employee's payment from the PAGA Penalties Fund, Defendant will use the following formula: Settlement Payment = 25% of PAGA Penalties Fund $\times$ [Pay Periods Worked by Individual Aggrieved Employee During the Applicable Settlement Period $\div$ Total Pay Periods Worked by All Aggrieved Employees during the Settlement Period].

15. Attorneys' Fees and Costs. Defendant agrees not to oppose or impede any application or motion by Plaintiffs' Counsel for Attorneys' Fees and Costs of not more than Two Hundred Eighty-Three Thousand Three Hundred Thirty-Three Dollars (\$283,333), plus the reimbursement of all out-of-pocket costs and expenses associated with Plaintiffs' Counsel's litigation and settlement of the Action (including expert/consultant fees, investigations costs, etc.), not to exceed Thirty-Five Thousand Dollars (\$35,000), both of which will be paid from the Maximum Settlement Amount. Any portion of the Attorneys' Fees and Costs not awarded to Plaintiffs' Counsel will be added to the PAGA Penalties Fund. Plaintiffs' Counsel will divide the award of attorneys' fees as follows: Seventy-Five Percent (75%) to Capstone Law APC and Twenty-Five Percent (25%) to Potter Handy, LLP. The Attorneys' Fees and Costs referred to herein shall fully compensate and reimburse Plaintiffs' Counsel for any and all of the work already performed in connection with the Action and all work remaining to be performed in fully and finally resolving the Action, including but not limited to securing Court approval of the Settlement

1 Agreement, appearing at hearings, making sure that the Settlement is fairly and properly administered,
2 defending the Settlement Agreement in any challenge, appeal or other post-approval matter, all other
3 work that Plaintiffs' Counsel has performed or will perform, and all costs that Plaintiffs' Counsel has
4 incurred or will incur.

5 16. Service Awards. For their service on behalf of the LWDA and Aggrieved Employees,
6 Defendant agrees not to oppose or impede any application or motion by Plaintiffs for Service Awards of
7 up to Five Thousand Dollars (\$5,000), each, both of which will be paid from the Maximum Settlement
8 Amount.

9 17. General Release Payments. For general releases of all claims Plaintiffs may have against
10 Defendant, Defendant agrees not to oppose or impede any application or motion by Plaintiffs for General
11 Release Payments of Five Thousand Dollars (\$5,000), each, both of which will be paid from the
12 Maximum Settlement Amount. Upon execution of this Settlement Agreement, and contingent on Court
13 approval of this Settlement, Plaintiffs have agreed to a separate individual settlement agreement whereby
14 Plaintiffs will be deemed to have fully released and discharged Defendant from any and all claims,
15 demands, obligations, causes of action, rights, or liabilities of any kind which have been or could have
16 been asserted against Defendant arising out of, or relating to, Plaintiffs' employment with Defendant or
17 termination thereof, including but not limited to claims for wages, restitution, penalties, retaliation,
18 defamation, discrimination, harassment or wrongful termination of employment. This release specifically
19 includes any and all claims, demands, obligations and/or causes of action for damages, restitution,
20 penalties, interest, and attorneys' fees and costs (except provided by the Settlement) relating to or in any
21 way connected with the matters referred to herein, whether or not known or suspected to exist, and
22 whether or not specifically or particularly described herein. Specifically, Plaintiffs will be deemed to
23 have waived all rights and benefits afforded by California Civil Code Section 1542, which provides:

24 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR**
25 **OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR**
26 **HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF**
27 **KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR**
28 **HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

18. Settlement Administration Costs. The Parties will retain CPT Group, Inc. as the third-party settlement administrator (“Settlement Administrator”). The Settlement Administrator will be responsible for establishing a qualified settlement fund (“QSF”) and issuing payments and appropriate tax forms to Aggrieved Employees, the LWDA, Plaintiffs, and Plaintiffs’ Counsel. The Settlement Administration Costs will be paid from the Maximum Settlement Amount. Based on the estimate that there are between Five Hundred and Ninety-Five (595) and Six-Hundred and Fifty-One (651) Aggrieved Employees, Settlement Administration Costs are estimated at Five Thousand Five Hundred Dollars (\$5,500).

19. Court Approval of the Settlement and Distribution of Settlement Payments. Plaintiffs’ Counsel shall be responsible for preparing and presenting this Settlement Agreement to Defendant for approval, and thereafter for presenting it to the Court and the LWDA. Plaintiffs’ Counsel will request that the Court issue an order and judgment approving and incorporating by reference the terms and conditions of the Settlement Agreement (the “Order and Judgment”).

20. List of Aggrieved Employees. Within thirty (30) calendar days after entry of the Order and Judgment, Defendant will provide the Settlement Administrator a complete list of all Aggrieved Employees (“Aggrieved Employee List”). The Aggrieved Employee List will be formatted in Microsoft Office Excel and will include each Aggrieved Employees full name; most recent mailing address and telephone number; Social Security number; the respective number of pay periods during which each Aggrieved Employee worked during the Settlement Period; and any other relevant information needed to calculate settlement payments.

21. Funding of the Settlement. Within thirty (30) calendar days after entry of the Order and Judgment, Defendant will deposit the Maximum Settlement Amount into the QSF to be established by the Settlement Administrator. Within fourteen (14) calendar days of the funding of the Settlement, the Settlement Administrator will issue payments to: (a) Aggrieved Employees; (b) the Labor and Workforce Development Agency; (c) Plaintiffs; (d) Plaintiffs’ Counsel; and (e) itself. The Settlement Administrator, and not Defendant, will issue the appropriate tax forms for all payments issued under this Settlement.

22. Settlement Payments to Aggrieved Employees. The Settlement Administrator will issue

each Aggrieved Employee one check for his or her share of the PAGA Penalties Fund along with an explanatory letter which will be mutually approved by the parties. Prior to 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. Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address or Social Security number of the Aggrieved Employee involved, and will then perform a single re-mailing. Checks will remain negotiable for 180 days. Those funds represented by uncashed checks which remain outstanding 180 days after the mailing of the Settlement checks by the Settlement Administrator will be tendered to the LWDA. All settlement payments to Aggrieved Employees will be treated as miscellaneous income for which a 1099 will be issued.

23. Settled Claims. Upon entry of the Order and Judgment, Plaintiffs and all Aggrieved Employees will be forever barred, by the doctrine of res judicata, from pursuing against Defendant any and all Settled Claims during the Settlement Period. Aggrieved Employees, other than Plaintiffs, will not be deemed to have released any individual wage and hour claims by virtue of this Settlement.

24. No Right to Exclusion or Objections by Representative Action Members. Because this settlement resolves claims and actions brought pursuant to PAGA by Plaintiffs acting as proxies and as Private Attorneys General of, and for, the State of California and the LWDA, the Parties agree that no Aggrieved Employee has the right to exclude himself or herself from the Settlement. Aggrieved Employees will be bound by the terms of the Settlement Agreement, upon its approval by the Court, regardless of whether he or she cashes any payment received as a result of this Settlement. The Parties also agree that no Aggrieved Employee has the right to object to the terms of the Settlement Agreement. Upon approval by the Court, all Aggrieved Employees and the State of California, will be barred by the doctrine of res judicata from re-litigating the Settled Claims during the applicable Settlement Period.

25. No Credit Toward Benefit Plans. Payments to Aggrieved Employees as referenced herein will not be utilized to calculate any additional benefits under any benefit plans to which any Aggrieved Employee may be eligible, including, but not limited to profit-sharing plans, bonus plans,

1 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit
2 plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights,
3 contributions, or amounts to which any Aggrieved Employee may be entitled under any benefit plans.

4 26. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant
5 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
6 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of
7 action or right herein released and discharged.

8 27. Nullification of Settlement Agreement. In the event that: (i) the Court does not approve
9 the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, the
10 Parties will attempt in good faith to resolve any concerns raised by the Court. If those concerns cannot
11 be resolved after engaging in good faith negotiations, then this Settlement Agreement, and any
12 documents generated to bring it into effect, including Plaintiffs' general release agreements, will be null
13 and void, and the Parties will be returned to their original respective positions.

14 28. Judgment and Continued Jurisdiction. After entry of the Order and Judgment, the Court
15 will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement
16 of the terms of the Settlement, (ii) settlement administration matters, and (iii) such post-Judgment matters
17 as may be appropriate under court rules or as set forth in this Settlement.

18 29. Entire Agreement. This Settlement Agreement constitutes the entirety of the settlement
19 terms between Defendant and Plaintiffs (on behalf of the LWDA and Aggrieved Employees) regarding
20 the terms and conditions of settlement in this Action. Excluding the individual settlement agreements
21 executed by Plaintiffs and any arbitration, confidentiality or other agreement executed by Plaintiffs or
22 any other Aggrieved Employees, all of which will remain in full force and effect to the extent not
23 inconsistent with this Settlement Agreement, this Settlement Agreement supersedes all prior agreements,
24 written or oral, between or among the Parties regarding those claims or potential claims and the
25 resolution of those claims.

26 30. Amendment or Modification. This Settlement Agreement may be amended or modified
27 only by a written instrument, signed by either the Parties or their successors-in-interest or counsel for all
28 Parties.

1 31. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and
2 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement
3 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant
4 to this Settlement Agreement to effectuate its terms and to execute any other documents required to
5 effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each
6 other and use their best efforts to affect the implementation of the Settlement. If the Parties are unable to
7 reach agreement on the form or content of any document needed to implement the Settlement, or on any
8 supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties
9 may seek the assistance of the Court to resolve such disagreement.

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

12 33. Confidentiality. Other than information necessary to secure Court approval of this
13 Settlement Agreement and the settlement contained herein, the Parties agree to keep confidential all
14 matters relative to this Settlement Agreement, including the claims asserted by Plaintiffs in the Action
15 and PAGA Notice, and the settlement terms, including the facts and circumstances leading up to it. None
16 of the Parties will issue any press release or other disclosure regarding the Settlement Agreement and/or
17 settlement other than as necessary to obtain Court approval or effectuate the settlement and release terms.
18 Plaintiffs further agree that neither they, nor their respective counsel, will discuss the existence of this
19 Settlement Agreement except as necessary to effectuate its terms or as otherwise required by law,
20 including any and all obligations towards the LWDA and warranted responses to inquiries and/or
21 concerns from Aggrieved Employees. The Parties may, however, discuss the terms of this Settlement
22 Agreement with their spouses, attorneys, financial advisors, tax advisors, and accountants as necessary
23 for tax related purposes, or upon a valid court order, at which time the individual receiving information
24 about the terms of this Settlement Agreement shall be informed that the terms of this Settlement
25 Agreement are confidential, and the individual may not reveal or disclose to any third party the terms of
26 the Settlement Agreement. Nothing herein will restrict Plaintiffs' Counsel from including publicly
27 available information regarding this settlement in future judicial submissions regarding Plaintiffs'
28 Counsel's qualifications and experience.

34. California Law Governs. All terms of this Settlement Agreement will be governed by and interpreted according to the laws of the State of California.

35. Execution and Counterparts. This Settlement Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including electronic signatures (e.g., DocuSign), facsimiles, and scanned copies of the signature pages, will be deemed to be one and the same instrument.

36. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

37. Invalidity of Any Provision. Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

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

39. Waiver. No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

40. Enforcement Action. In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

41. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed

1 more strictly against one party merely by virtue of the fact that it may have been prepared by counsel for
2 one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties,
3 all Parties have contributed to the preparation of this Settlement Agreement.

4 42. Representation By Counsel. The Parties acknowledge that they have been represented
5 by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and
6 that this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed
7 in full.

8 43. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good
9 faith and execute all documents to the extent reasonably necessary to effectuate the terms of this
10 Settlement Agreement.

11 44. Binding Agreement. The Parties warrant that they understand and have full authority to
12 enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and
13 binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to
14 enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply
15 under federal or state law.

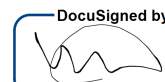
16 45. Denial of Liability. The Parties expressly recognize that the making of this agreement
17 does not in any way constitute an admission or concession of wrongdoing on the part of Defendant.
18 Nothing in this Settlement, nor any action taken in implementation thereof, nor any statements,
19 discussions or communications, nor any materials prepared, exchanged, issued or used during the
20 pendency of the Action, is intended by the Parties to, nor will any of the foregoing constitute, be
21 introduced, be used or be admissible in any way in any other judicial, arbitral, administrative,
22 investigative or other forum or proceeding, as evidence of any violation of any federal, state, or local law,
23 statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.
24 Notwithstanding the foregoing, this agreement may be used in any proceeding in the Court that has as its
25 purpose the interpretation, implementation, or enforcement of the Settlement or any orders or judgments
26 of the Court entered into in connection therewith.

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READ CAREFULLY BEFORE SIGNING

PLAINTIFF

Dated: 5/12/2022 _____

DocuSigned by:

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Walter Cuellar

PLAINTIFF

Dated: _____

Christopher Cuerden

DEFENDANT

Dated: _____

Name of Authorized Signatory
MOR Furniture for Less, Inc.

APPROVED AS TO FORM

CAPSTONE LAW APC

Dated: May 23, 2022 _____


Raul Perez

POTTER HANDY, LLP

Dated: _____

Jim Treglio

**SOLOMON WARD SEIDENWURM & SMITH,
LLP**

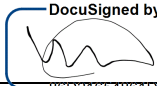
Dated: _____

Daniel E. Gardenswartz

READ CAREFULLY BEFORE SIGNING

PLAINTIFF

Dated: 5/12/2022

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Walter Cuellar

PLAINTIFF

Dated: 06/22/2022


Christopher Cuerden

DEFENDANT

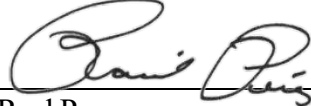
Dated: _____

Name of Authorized Signatory
MOR Furniture for Less, Inc.

APPROVED AS TO FORM

CAPSTONE LAW APC

Dated: May 23, 2022


Raul Perez

POTTER HANDY, LLP

Dated: 06/22/2022


Jim Treglio

**SOLOMON WARD SEIDENWURM & SMITH,
LLP**

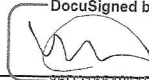
Dated: _____

Daniel E. Gardenswartz

READ CAREFULLY BEFORE SIGNING

PLAINTIFF

Dated: 5/12/2022

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Walter Cuellar

PLAINTIFF

Dated: _____

Christopher Cuerden

DEFENDANT

Dated: MAY 23, 2022

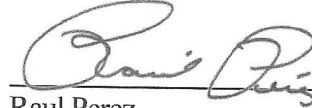


Name of Authorized Signatory
MOR Furniture for Less, Inc.

APPROVED AS TO FORM

CAPSTONE LAW APC

Dated: May 23, 2022


Raul Perez

POTTER HANDY, LLP

Dated: _____

Jim Treglio

SOLOMON WARD SEIDENWURM & SMITH,
LLP

Dated: _____

Daniel E. Gardenswartz