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Attorneys for Plaintiff, BOBBY RAY MCCOY
on behalf of herself and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

BOBBY RAY MCCOY on behalf of herself
and all others similarly situated

Plaintiff,

vs.

JO-ANN STORES, LLC, a California
corporation, and DOES 1 through 50, inclusive,

Defendants.

Case No. RG20061158

ASSIGNED FOR ALL PURPOSES TO:

JUDGE: Hon. Brad Seligman

DEPT: 23

**DECLARATION OF JAMES R.
HAWKINS IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Reservation Number R-2273646

DECLARATION OF JAMES R. HAWKINS

I, JAMES R. HAWKINS, declare as follows:

1. I am an individual over the age of 18. I am a partner at the Law Firm of James Hawkins APLC. I am one of the attorneys of record for Plaintiff Bobby Ray McCoy (hereinafter referred to as "Plaintiff"). I have personal knowledge of the facts set forth below and if called to testify I could and would do so competently.

2. On May 11, 2020, Plaintiff Bobby Ray McCoy initiated this action in the Superior Court for the County of Los Angeles, on behalf of herself and all others similarly situated, styled *Bobby Ray McCoy v. Jo-Ann Stores, LLC*, Case No. RG20061158. The Complaint asserts causes of action for; (1) failure to pay lawful wages owed; (2) failure to provide lawful meal periods or compensation in lieu thereof; (3) failure to provide lawful rest periods or compensation in lieu thereof; (4) failure to pay timely wages; (5) knowing and intentional failure to comply with itemized employee wage statement provisions; (6) failure to indemnify employees; and (7) violations of the unfair competition law (Bus. & Prof. Code § 17200 *et seq.*) (the "Action"). On June 9, 2020, Plaintiff filed a First Amended Complaint adding a claim under PAGA.

3. This Action was subsequently removed to Federal Court on July 9, 2020. Pursuant to the Parties' agreement, this case was remanded back to Alameda Superior Court on March 15, 2021.

4. Throughout this litigation, Jo-Ann Stores has vigorously denied Plaintiff's allegations and raised defenses to the claims, individually and on a class wide basis. Jo-Ann Stores maintains that its employment policies and practices meet the requirements of the Labor Code and applicable Wage Orders.

5. To date, no motion for class certification has been filed, no class has been certified and the court has not made any findings that Jo-Ann Stores engaged in any wrongdoing or in violation of any state law, rule or regulation, with respect to the issues presented in the litigation.

6. Through informal discovery, Plaintiff and Jo-Ann Stores have exchanged extensive documents and information related to the claims asserted. Defendant has produced

1 thousands of pages of information, including timecard records and wage reports of putative class
2 members.

3 7. Defendant also provided to Plaintiff his complete personnel file, information
4 regarding the number of non-exempt employees during the relevant time period, and corporate
5 documents reflecting Defendant's wage and hour policies and practices.

6 8. After conducting extensive informal discovery, exchanging relevant information
7 and engaging in numerous discussions regarding the claims alleged, on January 19, 2021, the
8 parties participated in a private mediation with Mediator Lou M. Marlin. During the course of the
9 mediation, the parties exchanged further information and documentation concerning Plaintiff's
10 claims Jo-Ann Stores' defenses and aggressively advocated for their respective positions.

11 9. At the conclusion of the mediation, the parties reached a settlement this action for
12 a maximum settlement amount of \$1,500,000.00. The parties exchanged multiple drafts of the
13 proposed settlement release agreement and class notice documents and engaged in
14 communications regarding the settlement terms.

15 10. The final terms and provisions of the settlement agreement were approved and
16 executed by all the parties on or about June 1, 2021. (A true and correct copy of the Joint
17 Stipulation of Class Action and PAGA Settlement Agreement ("Settlement Agreement") is
18 attached hereto as Exhibit 1.)

19 11. Based on their own respective independent investigations and evaluations and
20 after taking into account the sharply disputed factual and legal issues involved in this matter, the
21 risks attending further prosecution in light of certification issues faced due to the *Brinker Rest.*
22 *Corp. v. Super. Ct.*, (2012) 53 Cal. 4th 1004 ("*Brinker*") decision, the discovery and investigation
23 conducted to date, Plaintiff and his counsel are of the opinion that settlement for the
24 consideration and on the terms set forth in the Settlement Agreement is fair, reasonable and
25 adequate and is in the best interests of the named Plaintiff and Class Members.

26 12. Counsel for Plaintiff has represented, mediated and settled other employee class
27 actions in wage and hour litigation and have knowledge of the strengths and weaknesses of the
28 claims against Jo-Ann Stores and the benefits of the proposed Settlement under the

circumstances of the case. Plaintiff's counsel has been certified and approved as class counsel in other wage/hour class actions and is currently litigating numerous others, including; *Mancel v. United Parcel Service, Inc. dba UPS*, LASC No. BC 325902 [Wage and Hour Class Action]; *Acosta v. Fleetwood Travel Trailers of California, Inc., et al.*, RSC, No. RIC 440630 [Wage and Hour Class Action]; *Adame v. Pacific Messenger Service, Inc.*, OCSC No. 05CC00013 [Wage and Hour Class Action]; *Chandler v. Mi Piacce, LLP, et al.*, LASC No. BC 337780 [Wage and Hour Class Action]; *Defries v. Domain Restaurants, et al.*, OCSC No. 05CC00128 [Wage and Hour Class Action]; *Denton v. BLB Enterprises, Inc., et al.*, OCSC No. 07CC01292 [Wage and Hour Class Action]; *Maciel v. Orkin Exterminating Company, Inc.*, LASC No. BC 357911 [Wage and Hour Class Action]; *Martinez v. Securitas Security Services USA, et al.*, SCSC No. 105-CV047499, et al. J.C.C.P. No. 4460 [Wage and Hour Class Action]; *Martinez v. Saint-Gobain Containers*, USDC CD Cal. No. SA CV06-00690-CJC [Wage and Hour Class Action]; *McMurray v. Dave and Busters, Inc.*, OCSC No. 06CC00099 [Wage and Hour Class Action]; *Osuna v. DFG Restaurants, Inc., et al.*, LASC No. BC 330145 [Wage and Hour Class Action]; *Padron v. Universal Protection Service*, OCSC No. 05CC00013 [Wage and Hour Class Action]; *Ortiz v. Kmart*, USDC CD Cal. No. SACV 06-638 ODW (Anx) [Wage and Hour Class Action]; *Willems v. Diedrich Coffee, Inc.*, OCSC No. 07CC00015

13. Even without the presumption of fairness and reasonableness, the Settlement clearly is within the range of reasonableness. Based on documents and information produced by Defendant in informal discovery, in preparation for mediation and during settlement negotiations and taking into account the nature of the claim and Defendant's defenses thereto, Plaintiff's counsel estimated the maximum potential liability of \$8,198,062 that may be owed to the putative class, assuming Plaintiff and the Class were able to obtain an order certifying the class and were also able to prove their claims.

a. Meal Period Claim

The meal period violation claim is based primarily on Jo-Ann Stores alleged failure to provide an uninterrupted 30-minute meal break by the end of the fifth hour. Specifically, Plaintiff alleges that due to the scheduling and work load requirements, he and class members

1 were frequently required to take on duty meal breaks and/or had their meal breaks interrupted,
2 with 30-minute deductions being made from their recorded time regardless of whether or not the
3 full 30 minute meal period was actually taken. Plaintiff also alleges that due to the work load
4 requirements, he and class members were unable to take a timely meal periods and that
5 Defendant did not provide a second 30 minute meal period for shifts worked in excess of 10
6 hours and/or 12 hours.

7 Jo-Ann Stores adamantly denies Plaintiff's allegations and maintains that he and class
8 members were provided with the opportunity to take all meal and rest periods to which they were
9 entitled. Further, Defendant contends that Plaintiff and putative class member were paid meal
10 break premiums during the class period when, do the demands of the work shift, they were
11 unable to take compliant meal breaks. Jo-Ann Stores also maintained that Plaintiff's claims were
12 improper for class treatment. Plaintiff's review of the documents and information provided in
13 anticipation of mediation, including a random sample of time records, and taking into
14 consideration the nature of the claim, Defendant's defenses, the meal break premiums paid by
15 Defendant during the liability period and certification issues faced due to Brinker, for purposes of
16 settlement, the meal break claim was valued between an estimated maximum of \$440,000 and
17 \$300,000.

18 b. Rest Period Claim

19 The rest period violation claim is primarily based on allegations that Plaintiff and class
20 members were not provided a net 10 minute rest period during their work shifts. Specifically,
21 Plaintiff alleges that due to the work load requirements, he and putative class members were
22 unable to take minimum ten minute rest break for every four hours or major fraction thereof
23 worked during their shifts. Jo-Ann Stores contends that class members were allowed to take the
24 full 10-minute rest periods and regularly took such breaks. Taking into consideration the nature
25 of the claim, Defendant's defenses and certification issues faced due to Brinker, for purposes of
26 settlement, the rest break claim was valued between estimated maximum of \$2,500,000 and
27 \$1,250,000.

28 c. Lab. Code § 2802 Claim (failure to reimburse employee expenses)

1 The business expense reimbursement claim is based on allegations that Plaintiff and class
2 members were frequently required to use their personal phones in the performance of their job
3 duties and were not reimbursed for the use of the phones. Defendant maintains that employees
4 were not required to use their phones. Additionally, in 2019, Defendant implemented a
5 reimbursement policy for personal devices in which ranged from \$25 for manager to \$5 for non-
6 exempt employees. Plaintiff did not receive reimbursement during his employment and also
7 contends that the \$5 monthly reimbursement is insufficient. This claim would be difficult to
8 certify given the predominance of the individualized inquiry as to the whether and to what extent
9 each class member used their personal phones in the performance of their job duties. As such, for
10 purposes of settlement, this claim was valued between an estimated maximum \$500,000 and
11 \$100,000.

12 d. Lab. Code § 226 Claim (failure to provide accurate itemized wage statements)

13 Under Lab. Code § 226(e), an employee suffering “injury as a result of a knowing and
14 intentional failure by an employer” to provide accurate wage statements is entitled to \$50 for the
15 initial violation and \$100 for each subsequent violation up to \$4,000. Jo-Ann Stores denies that it
16 provided inaccurate wage statements. Further, Jo-Ann Stores argues that, if any wage statements
17 were in fact inaccurate, they did not “knowingly and intentionally” fail to provide accurate
18 statements and that Plaintiff and the class did not suffer any “injury” from such inaccurate wage
19 statements. For purposes of settlement negotiations, said claim was valued between \$1,267,950
20 and \$380,385.

21 e. Failure to Pay Lawful Wages Claims

22 Plaintiff’s claim for failure to pay wages owed is based on allegations that, due to the
23 demands of the work shift, he and Class Members had their meal breaks interrupted and worked
24 off the clock during said breaks for which they did not receive compensation. Jo- Ann Stores
25 disputes this claim and asserts that its policies prohibits employees from working off the clock.
26 This claim would be face certain challenges to certify given the predominance of the
27 individualized inquiry as to the whether, and to what extent, each class member performed work
28

1 off the clock and without compensation. Nevertheless, for purposes of settlement negotiations,
2 this claims was valued between a maximum \$600,000 and \$150,000.

3 f. Lab. Code § 203 Claim (failure to timely pay wages)

4 With respect to Lab. Code §203 claim, there were an estimated 630 former class members
5 to whom this claim applied. The estimated maximum value was calculated at \$2,044, 781.
6 However, faced with the willful intent requirement of the enabling statute along with
7 Defendant's position that Lab. Code §203 does not apply to rest and meal break claims, for
8 settlement purposes this claim was valued between \$817,912 and \$204,478.

9 g. Bus. & Prof. Code § 17200 Claim

10 Plaintiff's cause of action for violation of Business and Professions Code Section 17200
11 is based on the above-mentioned claims and is therefore duplicative of those claims.
12 Accordingly, Class Counsel assigned a zero dollar value to this claim.

13 h. Lab. Code § 2699 (PAGA Claim)

14 Any Plaintiff's claims under PAGA are primarily predicated on or derivative of the rest
15 and meal break claims. The estimated maximum PAGA penalty was calculated as \$2,072,200.
16 This figure attributes a \$100 penalty to each of the estimated 20,722 pay periods in scope during
17 the PAGA period. The figure also assumes that there is a 100% violation rate during the PAGA
18 period, such that every single pay period in question involved at least one Labor Code violation,
19 despite disputes regarding Defendant's liability. However, PAGA claims under the facts and
20 circumstance of this case may result in no award or at best a very minimal award by the trial
21 court. See specifically §2699(e)(2) which states in its pertinent part:

22 "... a court may award a lesser amount than the maximum civil penalty amount
23 specified by this part if, based on the facts and circumstances of the particular case, to do
24 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."

25 Given the nature of these claims, Class Counsel believes it to be likely that if there
26 would be any award it would be a minimal amount. Therefore, the amount of \$100,000 (which
27 has been reserved for the PAGA claim) is both fair and reasonable.

1 14. Through his counsel, Plaintiff took into consideration the significant risks that
2 class certification could be denied on the central claim, or that a merits decision on the central
3 claim would not favor the Class. Plaintiff has considered the expense and length of continued
4 proceedings necessary to continue the Action against Jo-Ann Stores through trial and any
5 possible appeals. Plaintiff is also aware of the burdens of proof necessary to establish liability for
6 the claims asserted in the Action, Jo-Ann's defenses thereto, and the difficulties in establishing
7 Plaintiff's damages.

8 15. The proposed Settlement requires Defendant to pay each Class Member who does
9 not opt out a portion of the Net Settlement Amount as specifically set forth in the Settlement
10 Agreement. The amount to be paid to the Class is undoubtedly fair, adequate and reasonable
11 especially in light of the significant risk to Plaintiff and Class Members in continuing with the
12 litigation and not prevailing on class certification or at trial.

13 16. The Settlement Agreement provides for an award to be paid to the Class
14 Representative. The primary purpose is to provide Plaintiff Bobby Ray McCoy an enhancement
15 payment, taking into consideration the risks, time, effort and expenses incurred by him in coming
16 forward to provide invaluable information and negotiate and litigate this matter on behalf of all
17 Class Members. Plaintiff has actively participated in this litigation by providing significant
18 supporting documents and information and assisting counsel in developing information necessary
19 to litigate and settle this case which has resulted in a favorable settlement for the putative Class
20 Members.

21 17. Attached to the Settlement Agreement as Exhibit A is a true and correct copy of
22 the Notice of Class Action Settlement. ("Class Notice")

23 I declare under penalty of perjury that the foregoing is true and correct. Executed on this
24 27 day of July, 2021 at Irvine, California.

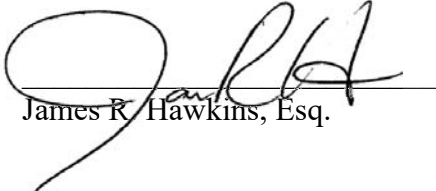
25 
26 James R. Hawkins, Esq.
27
28

EXHIBIT 1

JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

McCoy v. Jo-Ann Stores, LLC

Case No. Alameda County Superior Court Case No. RG20061158

Subject to the Court's approval, the Parties have entered into this Agreement pursuant to the terms and conditions in this Joint Stipulation of Class Action and PAGA Settlement Agreement ("Agreement" or "Settlement Agreement") between the Plaintiff Bobby Ray McCoy, individually and on behalf of the Settlement Class, and Defendant Jo-Ann Stores, L.L.C. ("Defendant").

I. DEFINITIONS

1. "Action" means the action entitled *McCoy v. Jo-Ann Stores, LLC*, Case No. **RG20061158**, Superior Court of the State of California for the Country of Alameda. The pleading of this Action is the First Amended Complaint filed on June 9, 2020 in Alameda Superior Court
2. "Class" is defined as all current and former non-exempt, hourly paid employees of Defendant who occupied the positions of key holders, assistant managers, store managers, and freight supervisors at any time in the State of California from May 11, 2016 through the date of the Court's order granting preliminary approval of this Agreement.
3. "Class Counsel" means James Hawkins APLC.
4. "Class Counsel Award" means an award of attorneys' fees and reimbursement of litigation expenses and costs to Class Counsel and paid from the Maximum Settlement Amount.
5. "Class Data" means information regarding Class Members that Defendant provides to the Settlement Administrator from its records. It shall be formatted as a Microsoft Excel spreadsheet and shall include each Class Member's full name, last known address, last known telephone number, and Social Security number; as well as information sufficient to allow the Settlement Administrator to calculate the number of Workweeks for all Class Members during the Class Period.
6. "Class Members" means members of the Class.
7. "Class Period" means the time period from May 11, 2016 until the Preliminary Approval Date.
8. "Class Representative" or "Plaintiff" means Bobby Ray McCoy.
9. "Class Representative Service Award" or "Service Award" means the amount that the Court authorizes to be paid to the Class Representative from the Maximum Settlement Amount, which is in addition to his Individual Settlement Payment.
10. "Complaint" means the First Amended Complaint filed on June 9, 2020 in the Superior Court of the State of California for the Country of Alameda,.
11. "Court" means the Superior Court of the State of California for the Country of Alameda.
12. "Defendant" means Jo-Ann Stores, LLC.
13. "Defense Counsel" or "Counsel for Defendant" means Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

14. “Effective Date” is the later of the following: (a) if no objections to the settlement are filed, then the date the Court enters judgment granting Final Approval; (b) if an objection to the settlement is filed, then the date when the time expires to file an appeal of the Court’s Final Approval Order; or (c) if an objection is filed, as well as a timely Notice of Appeal of the Court’s Final Approval Order, then the date the appeal is finally resolved, with the final approval unaffected.
15. “Final Approval Order” means the Court’s order granting final approval of the Settlement.
16. “Settlement Class” is defined as all Class Members who do not request to be excluded from the Settlement Agreement.
17. “Individual Settlement Payment” means the amount payable from the Net Settlement Amount to each Settlement Class Member.
18. “Maximum Settlement Amount” means the maximum sum to be paid by Defendant pursuant to this Settlement, which is one-million five hundred thousand dollars (\$1,500,000). The Maximum Settlement Amount shall include all payments contemplated by this Settlement Agreement, including all Individual Settlement Payments to Settlement Class Members, the Service Award to Plaintiff, the Class Counsel Award to Class Counsel, the PAGA Penalties, and the Settlement Administration Costs to the Settlement Administrator. The Maximum Settlement Amount shall not include Defendant’s share of taxes on the wages portion of Individual Settlement Payments, which will be paid by Defendant separately and in addition to the Maximum Settlement Amount.
19. “Net Settlement Amount” means the Maximum Settlement Amount minus the Service Award, the Class Counsel Award, the LWDA Payment, and the Settlement Administration Costs.
20. “Notice” means the Notice of Proposed Class Action and PAGA Settlement in a form substantially similar to the form attached as **Exhibit 1**. “PAGA” means the Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.*
21. “PAGA Letter” means Plaintiff’s April 3, 2020 letter to the Labor & Workforce Development Agency.
22. “PAGA Penalties” is the amount of \$100,000, which shall be deducted from the Maximum Settlement Amount. The PAGA Penalties shall be allocated as follows: twenty-five percent (25%) to the Net Settlement Amount for distribution to Settlement Class Members on a *pro rata* basis, and seventy-five percent (75%) to the LWDA pursuant to Cal. Lab. Code § 2699(i).
23. “Parties” mean the Plaintiff and Defendant collectively, and “Party” shall mean either Plaintiff or Defendant, individually.
24. “Payment Ratio” means the respective Workweeks for each Settlement Class Member divided by the total Workweeks for all Settlement Class Members.
25. “Preliminary Approval Date” means the date the Court enters the Preliminary Approval Order.
26. “Preliminary Approval Order” means the Order granting preliminary approval of the Settlement.
27. “Qualified Settlement Fund” means the fund set up by the Settlement Administrator into which the Maximum Settlement Amount shall be deposited and disbursements from it shall be made.

28. “Released Claims” by Settlement Class Members means all claims and causes of action alleged in the Action and the PAGA Letter, as well as all predicate claims based on the factual or legal theories alleged in the Action and the PAGA Letter, or reasonably could have been alleged based on the facts and legal theories alleged in the Action and the PAGA Letter, including all of the following legal claims: any and all claims for unpaid wages, including, but not limited to, claims for minimum, overtime, and double-time wages, the alleged failure to pay for all time worked, the alleged failure to pay for all hours worked at correct rates, including overtime at the correct rates, and alleged improper rounding of time entries that allegedly resulted in unpaid wages; any and all claims for meal period violations, including claims for late, short, interrupted and/or missed meal periods and/or the failure to pay premiums, and the alleged failure to properly record meal periods; any and all claims for rest break violations, including claims for late, short, interrupted, missed, or otherwise improperly controlled rest breaks and/or the failure to pay premiums; any and all claims for unreimbursed expenses, including, but not limited to, expenses incurred for personal cell phone usage and mileage; any and all claims for improper or inaccurate itemized wage statements, including any alleged violations of Labor Code Section 226(a)(1)-(9) based on the facts and legal theories contained in the Action and the PAGA Letter, including the allegation that the wage statements lacked the total number of hours worked, and including claims for injuries suffered therefrom; any and all claims for the untimely payment of final wages and associated waiting time penalties under Labor Code Section 203 based on the facts, claims, causes of action, or legal theories alleged in the Action and the PAGA Letter; any and all claims regarding the alleged failure to maintain required records in violation of Labor Code §§ 226, 1174, 1198 and the applicable IWC Wage Order provisions; any and all claims for civil penalties under the Labor Code Private Attorneys General Act of 2004, Labor Code Section 2699 et seq. (“PAGA”) premised on the facts, claims, causes of action, or legal theories described herein or in the Action, including under Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 558, 1194, 1198, and 2802; any and all claims under the Business & Professions Code (including Section 17200 et seq.) premised on the facts, claims, or legal theories described herein or in the Action; any other claims or penalties under the wage and hour laws pleaded in the Action and the PAGA Letter under California and federal law, including the California Labor Code and the applicable Wage Orders as to the facts and theories alleged in the Action and the PAGA Letter (collectively, the “Released Claims.”) The period of the Release shall extend to the limits of the Covered Period. The res judicata effect of the Judgment will be the same as that of the Release.
29. “Released Parties” means Defendant and their past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, and assigns.
30. “Request for Exclusion” means a formal request to be excluded from the Settlement as described herein.
31. “Response Deadline” means forty-five (45) days after the Settlement Administrator initially mails the Notice to Class Members, and the last date on which Class Members may submit Requests for Exclusion, objections to the Settlement, and/or Disputes.
32. “Settlement” means the settlement and resolution of the Action in accordance with this Agreement.
33. “Settlement Administrator” means Simpluris, as approved by the Court.
34. “Settlement Administration Costs” means the amount to be paid to the Settlement Administrator from the Maximum Settlement Amount for administration of this Settlement, which is estimated to be not more than \$15,000.

35. “Settlement Class Member” or “Settlement Class” means Class Members who do not submit a timely and valid Request for Exclusion and will be bound by the terms of the Agreement, including the Released Claims, and any final judgment entered in the Action.
36. “Workweek” means a consecutive seven (7) day period starting on and including Monday through and including Sunday during which time the Class Data reflects that a given Settlement Class Member worked any amount of time, and does not include weeks when a Settlement Class Member was on PTO, leaves of absence, jury duty, or the like for the entire 7-day period. Each Class Member will be credited with at least one (1) Workweek.

II. RECITALS

37. Class Certification. The Parties stipulate and agree to certification of the Settlement Class for the purposes of this Settlement Agreement only and to agree that the Plaintiff shall be appointed as Class Representative, and that James Hawkins APLC shall be appointed Class Counsel. Should the Settlement Agreement not obtain Court approval and become final and effective, class certification shall immediately be set aside and any order to certify the Settlement Class for settlement purposes shall be vacated. The Parties’ stipulation to class certification as part of the Settlement Agreement shall not be considered in connection with the issue of whether a class should be certified in this Action, and shall not be admissible in any such proceeding other than in the context of this Settlement Agreement.
38. Procedural History. On April 3, 2020, Plaintiff filed a Class Action Complaint in the Superior Court of the State of California for the County of Alameda. On June 9, 2020, Plaintiff filed a First Amended Class Action Complaint, which was subsequently removed to federal court. Pursuant to the Parties’ agreement, this case has since been remanded back to Alameda Superior Court.
39. Mediation and Benefits of Settlement Agreement to Settlement Class Members. On January 19, 2021, the Parties participated in a mediation with Louis Marlin, Esq., an experienced wage and hour class action mediator, and with the aid of the mediator’s evaluation, the Parties agreed to settle the Action. Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to litigate this Action through trial and potential appeals. Plaintiff has also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such proceedings. Plaintiff and Class Counsel are also aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, both generally and in response to Defendant’s defenses, and the difficulties in establishing damages for Class Members. Thus, Plaintiff and Class Counsel have determined that the terms set forth in this Settlement Agreement are fair, adequate and reasonable, and in the best interests of the Settlement Class Members.
40. Defendant’s Reasons for Settlement Agreement. Defendant has concluded that further defense of this Action would be protracted and expensive for all Parties. Substantial amounts of Defendant’s time and resources have been, and unless this Settlement Agreement is completed, will continue to be devoted to the defense of the Action. Defendant has also taken into account the risks of further litigation in reaching their decision to enter into this Settlement Agreement. Defendant firmly contends that they are not liable for any of Plaintiff’s claims, but have agreed to settle along the terms set forth in this Settlement Agreement to fully resolve the Action.
41. Class Members’ Claims. The Class Representative claims that his allegations have merit in regards to the Class Members. Defendant claims that the Released Claims have no merit. This Settlement Agreement is a compromise and settlement of disputed claims. The amount to be paid by way of this Settlement Agreement is genuinely disputed and the Parties agree that the provisions of California Labor Code section 206.5 do not apply to this Settlement Agreement.

Nothing in this Settlement Agreement or its exhibit, and no action taken to carry out this Settlement Agreement may be construed or used as an admission by or against the Class Members or Class Counsel as to the merits of the claims asserted.

III. TERMS OF SETTLEMENT AGREEMENT

42. Settlement Agreement Consideration by Defendant. Notwithstanding the Modification section below, Defendant shall pay the Maximum Settlement Amount and nothing more than the Maximum Settlement Amount, in the total amount of one-million five hundred thousand dollars (\$1,500,000.00).
43. Maximum Settlement Amount Modification. Defendant represented at the mediation that an extrapolation of the workweeks among the Class is 102,808 workweeks from May 11, 2016 to January 18, 2021 (the "Extrapolation Period"). The Parties agree that if, once the actual data from the Extrapolation Period is reviewed, the actual number of workweeks is more than five percent more than 102,808, or more than 107,948, then for each additional week worked by Settlement Class Members over that amount during the Extrapolation Period, the MSA will increase by \$14.60 per workweek. For example, if the actual number of workweeks is 107,950, during the Extrapolation Period, then the MSA shall increase by the total amount of \$29.20. If the total amount of actual data shows that the total number of workweeks is 107,948 or less, then the MSA amount will not be modified.
44. Release By Settlement Class Members. Upon the Effective Date, Plaintiff and all Class Members who do not submit a timely and valid Request for Exclusion (i.e., Settlement Class Members) will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Claims.
45. General Release of Claims By the Named Plaintiff. As of the Effective Date, in exchange for the consideration in this Settlement Agreement, Plaintiff, for himself and his heirs, successors and assigns, hereby waives, releases, acquits and forever discharges the Released Parties from any and all Released Claims as well as any and all claims, actions, charges, complaints, grievances and causes of action, of whatever nature, whether known or unknown, which exist or may exist on Plaintiff's behalf as of the date he signs this Settlement Agreement, including but not limited to, any and all tort claims, contract claims, claims for unpaid wages, wrongful termination claims, disability claims, benefit claims, public policy claims, retaliation claims, statutory claims, personal injury claims, emotional distress claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit claims, and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance, including, but not limited to, claims for violation of the Fair Labor Standards Act, the California Labor Code, the Wage Orders of California's Industrial Welfare Commission, other state wage and hour laws, the Americans with Disabilities Act, the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, the California Family Rights Act, the Family Medical Leave Act, California's Whistleblower Protection Act, California Business & Professions Code Section 17200 *et seq.* Plaintiff expressly waives and relinquishes any and all claims, rights or benefits they may have under California Civil Code § 1542, which provides as follows: **"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."** Plaintiff may later discover claims or facts in addition to, or different from, those which he knows or believes to exist, but he expressly agrees to fully, finally and forever settle and release any and all claims against the Released Parties, known or unknown, suspected or unsuspected, which exist or may exist at the time he signs this Settlement Agreement, including, but not limited to, any and all claims relating to or arising from Plaintiff's employment with Defendant. The

Parties further acknowledge, understand and agree that this Settlement Agreement would not have been finalized without this representation and commitment from the Plaintiff.

46. Conditions Precedent: This Settlement Agreement will become final and effective only upon the occurrence of all of the following events: (a) the Court enters an order and judgment granting preliminary approval of the Settlement Agreement; (b) the Court enters an order granting final approval of the Settlement Agreement and a Final Judgment; and (c) the Effective Date occurs.
47. Nullification of Settlement Agreement. In the event that this Settlement Agreement is not finally approved by the Court, fails to become effective, or is reversed, withdrawn or modified by the Court, or in any way prevents or prohibits Defendant from obtaining a complete resolution of the claims as described herein, then (a) this Settlement Agreement shall be void and inadmissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; (b) the conditional class certification for settlement purposes shall be void and not admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; and (c) none of the Parties to this Settlement Agreement will be deemed to have waived any claims, objections, defenses or arguments in the Action, including with respect to the issue of class certification.
48. Tax Liability. The Parties make no representations as to the tax treatment or legal effect of the payments in this Agreement. Settlement Class Members understand and agree that they will be responsible for the payment of any taxes assessed on the Individual Settlement Payments that they receive.
49. No Tax Advice. Neither Class Counsel nor Defendant's Counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
50. Preliminary Approval Motion. Class Counsel shall file with the Court a motion for preliminary approval of the Settlement and supporting papers, which shall include this Settlement Agreement. Class Counsel shall provide a courtesy draft of these papers to Defense Counsel at least five (5) court days before filing the documents.
51. Settlement Administrator. By accepting the role as Settlement Administrator, the Settlement Administrator is bound to all of the terms, conditions and obligations described in this Settlement Agreement. Among these obligations, the Settlement Administrator shall have sole and exclusive responsibility for: (a) calculating the Workweeks, Payment Ratio, and the Individual Settlement Payment for each Settlement Class Member; (b) processing and mailing payments to the Class Representative, Class Counsel, the LWDA, and the Settlement Class Members; (c) printing and mailing the Notices to the Class Members as directed by the Court; (d) receiving and reporting objections, Requests for Exclusion, and disputes about the number of Workweeks applicable to individual settlement Class Members; (e) deducting all legally required taxes from the Individual Settlement Payments and distributing tax forms; (f) processing and mailing any tax payments to the appropriate state and federal taxing authorities; (g) providing declaration(s) as necessary in support of preliminary and/or final approval of this Settlement Agreement; and (h) other tasks that the Parties mutually agree on, or the Court orders the Settlement Administrator to perform. The Settlement Administrator shall keep the Parties timely apprised of the performance of its duties. Defendant and their Counsel shall have no responsibility for validating or ensuring the accuracy of the Settlement Administrator's work. Plaintiff, Class Counsel, Defendant and Defendant's Counsel shall not bear any responsibility for errors or omissions in the calculation or distribution of the Individual

Settlement Payments or any other distribution of monies contemplated by this Settlement Agreement.

52. Notice Procedure.

- a. Class Data. The Class Data shall be confidential. The Settlement Administrator shall not provide the Class Data to Class Counsel or Plaintiff or any third party, or use the Class Data for any purpose other than to administer this Settlement Agreement. Defendant shall provide the Settlement Administrator with the Class Data within twenty (20) calendar days after the Preliminary Approval Date. Within fourteen (14) calendar days of receiving the Class Data, the Settlement Administrator shall prepare and mail the Notices to the Settlement Class Members
- b. Notices.
 - i. The Notice that is mailed out to Class Members shall be in a form substantially similar to the form attached as **Exhibit 1**. The Notice shall inform Class Members to notify the Settlement Administrator of their current mailing address and the address where their Individual Settlement Payment should be mailed following the Effective Date, if the addresses are different from the address that the Notice is initially mailed. The Notice shall include the release to be given by each Settlement Class Member in exchange for the Individual Settlement Payment.
 - ii. The Notice shall also provide each Settlement Class Member's number of Workweeks and each Settlement Class Member's estimated Individual Settlement Payment calculated by the Settlement Administrator.
- c. Notice By First Class U.S. Mail. After receiving the Class Data from Defendant as provided herein, the Settlement Administrator shall mail copies of the Notice to all Class Members via First Class U.S. Mail. The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Class Member.
- d. Undeliverable Notices. Any Notices returned to the Settlement Administrator as undeliverable on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine a correct address by lawful use of standard search techniques (e.g., skip trace search), and shall then perform a re-mailing if another mailing address is identified by the Settlement Administrator. If any Notices sent to Settlement Class Members currently employed by Defendant are returned to the Settlement Administrator as undeliverable and no forwarding address is provided, the Settlement Administrator shall notify Defendant. Defendant will request that the currently employed Settlement Class Member provide an updated address to the Defendant to forward to the Settlement Administrator. Class Members who received a re-mailed Notice shall have their Response Deadline extended fifteen calendar (15) days from the original Response Deadline.
- e. Disputes Regarding Individual Settlement Payments. Settlement Class Members will have the opportunity, should they disagree with the estimated number of Workweeks stated on their Notice, to provide documentation and/or

an explanation to show contrary employment dates. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Payment under the terms of this Settlement Agreement, and that determination shall be binding upon the Settlement Class Member and the Parties.

- f. Disputes Regarding Administration of Settlement Agreement. Any disputes not resolved by the Settlement Administrator concerning the administration of the Settlement Agreement will be resolved by the Court under the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties will confer in good faith to resolve the disputes without the necessity of involving the Court.
- g. Requests for Exclusion.
 - i. The Notice shall include an explanation that Class Members who wish to exclude themselves from the Settlement Agreement must submit a timely written request to the Settlement Administrator by the Response Deadline. The written Request for Exclusion must: (1) state the case name and number of the Action (*McCoy v. Jo-Ann Stores, LLC*, Case No. RG20061158; (2) state that the Class Member requests to be excluded from the Settlement; (3) contain the name, address, and the last four digits of the Social Security number and/or Employee ID number of the person requesting exclusion; (4) be signed by the Class Member; and (5) be mailed to the Settlement Administrator, postmarked by the Response Deadline at the address specified in the Notice
 - ii. The Request for Exclusion will not be valid if it is not timely submitted, or if it is not signed by the Class Member, or if it does not contain the information requested. The date of the postmark on the ~~return~~-mailing envelope for the Request for Exclusion or date fax-stamped if submitted via facsimile shall be the exclusive means used to determine whether the Request for Exclusion was timely submitted. Class Members who fail to submit a valid and timely written Request for Exclusion form on or before the Response Deadline shall be Settlement Class Members who are bound by all terms of the Settlement Agreement, and any final judgment entered in this Action.
 - iii. Any Class Member who requests to be excluded from the Settlement Agreement will not be entitled to any recovery under the Settlement Agreement and will not be bound by its terms or have any right to object, appeal or comment on it. Nothing in this Settlement Agreement can be construed as a waiver of any defense that Defendant or the Released Parties have or could assert against anyone who timely serves a Request for Exclusion.
 - iv. No later than five (5) court days after the Response Deadline, the Settlement Administrator shall provide counsel for the Parties with a final list of the Class Members who have timely submitted written Requests for Exclusion.
 - v. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit Requests for Exclusion.

h. Objections.

- i. The Notice shall state that Settlement Class Members who wish to object to the Settlement Agreement may mail to the Settlement Administrator a written statement of objection (“Notice of Objection”) by the Response Deadline. The postmark date of the mailing shall be deemed the exclusive means for determining that a Notice of Objection was served timely.
- ii. Settlement Class Members have a right to appear at the Final Approval Hearing to have their objections heard by the Court. A Notice of Objection should: (1) be signed by the Settlement Class Member; (2) state the case name and number of the Action, the name and address of the Settlement Class Member, and the last four digits of the Settlement Class Member’s Social Security number and/or Employee ID number; (3) contain the basis and/or grounds for the objection; and (4) state whether the Settlement Class Member intends to appear at the Final Approval Hearing.
- iii. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class Members to object to the Settlement Agreement or appeal from the Final Approval Order and Final Judgment.
- iv. Class Members who submit a written Request for Exclusion are not entitled to object to the Settlement Agreement.
- v. The Settlement Administrator shall send all objections to Class Counsel and Defense Counsel. Class Counsel will be responsible for filing the Notices of Objection with the Court in advance of the Final Approval Hearing. Plaintiff and/or Defendant may file oppositions to Notices of Objection..
- vi. Defendant, Plaintiff and Class Counsel shall not be responsible for the fees, costs, or expenses incurred by Settlement Class Members arising from or related to any objection to the Settlement Agreement.

53. Funding and Allocation of the Maximum Settlement Amount. Upon satisfaction of the preconditions described in this Settlement Agreement, and pursuant to the timeline and instructions below, Defendant will deposit the Maximum Settlement Amount into a Qualified Settlement Fund to be established by the Settlement Administrator.

- a. Funding Due Date. No later than thirty (30) days after the Effective Date, Defendant shall provide the Maximum Settlement Amount to the Settlement Administrator to fund the Settlement Agreement.
- b. Individual Settlement Payments. Individual Settlement Payments shall be paid from the Net Settlement Amount and shall be paid pursuant to the following formula:
 - i. Calculation of Individual Settlement Payments. Using the Class Data, the Settlement Administrator will calculate the total Workweeks for all Settlement Class Members. The respective Workweeks for each Settlement Class Member will be divided by the total Workweeks for

all Settlement Class Members, resulting in the Payment Ratio for each individual Settlement Class Member. Each Settlement Class Member's Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each Settlement Class Member's estimated Individual Settlement Payment. The Individual Settlement Payment will be provided only to the individual Settlement Class Member. Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.) on the wages portion of the Individual Settlement Payment. The Individual Settlement Payment checks will include an endorsement confirming that by cashing the check, each Settlement Class Member is releasing the Released Claims.

- ii. Tax Allocation. The Settlement Administrator will be responsible for issuing to Settlement Class Members an IRS Form W-2 for any amounts deemed "wages" and an IRS Form 1099 for the portions allocated to non-wage amounts, including penalties and interest. For tax purposes, each Individual Settlement Payment shall be allocated as follows: (a) 25% as wages subject to IRS Form W-2 reporting and applicable taxes/withholdings; and (b) 75% as non-wage income, penalties, and interest for which an IRS Form 1099 will be issued.
- iii. Mailing. Individual Settlement Payments shall be mailed by First Class U.S. Mail to each Settlement Class Member no later than fourteen (14) calendar days after Defendant provide funds to the Settlement Administrator for disbursement under this Settlement Agreement.
- iv. Uncashed Checks. Any checks issued to Settlement Class Members shall remain valid and negotiable for one hundred and eighty (180) calendar days after the date they are issued. In the event that an Individual Settlement Payment check has not been cashed within one hundred and eighty (180) calendar days, then such funds, plus any accrued interest, will be tendered to the State Controller's Office Unclaimed Property Fund in the name of Settlement Class Members who did not cash their settlement checks. The Parties agree that this disposition results in no unpaid residue under California Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out to participating Settlement Class Members, whether or not they all cash their individual settlement payment checks. Therefore, Defendant will not be required to pay any interest set amount. The Settlement Administrator shall prepare a report regarding the extent of unclaimed funds, and the report shall be presented to the Court by Class Counsel.
- c. Class Representative Service Award ("Service Award"). Defendant agrees not to oppose or object to a Class Representative Service Award in an amount not to exceed \$10,000 in exchange for Class Representative's general release of claims, including the Released Claims, and for his time, effort and risk in bringing and prosecuting this matter. The Service Award shall be in addition to the Class Representative's Individual Settlement Payment as a Settlement Class.
 - i. The Settlement Administrator shall pay the Service Award to Class Representative from the Maximum Settlement Amount within fourteen (14) calendar days after Defendant funds the Maximum Settlement

Amount. Any portion of the requested Service Award that is not awarded to the Class Representative shall become part of the Net Settlement Amount.

- ii. The Settlement Administrator shall issue an IRS Form 1099 - MISC to the Class Representative for the Service Award. The Class Representative shall be solely and legally responsible to pay any and all applicable taxes on the Service Award and shall hold harmless Defendant and the Released Parties from any claim or liability for taxes, penalties, or interest arising as a result of the Service Award.
 - iii. If the Court reduces or does not approve the requested Service Award, Plaintiff shall not have the right to revoke the Settlement Agreement, which shall remain binding.
- d. Class Counsel Award.
- i. Plaintiff shall seek and Defendant will not oppose an application for an award of attorneys' fees not to exceed \$500,000 (33.33% of the Maximum Settlement Amount), and reimbursement of actual costs and expenses as supported by declaration not to exceed \$18,000. The Court-approved amount for the Class Counsel Award will be issued out of the Maximum Settlement Amount.
 - ii. Class Counsel, Plaintiff and the Settlement Class Members will not apply to the Court for any additional payment of attorneys' fees and costs, or for an increase in the Maximum Settlement Amount. The Parties agree that, over and above the Court-approved Class Counsel Award, each of the Parties shall bear their own fees and costs, including, but not limited to, those related to the investigation, filing, or prosecution of the Action; the negotiation, execution, or implementation of this Settlement Agreement; and/or the process of obtaining, administering, or challenging a Preliminary Approval Order and/or Final Approval Order.
 - iii. Any portion of the requested Class Counsel Award that is not awarded to Class Counsel shall be part of the Net Settlement Amount and shall be distributed to Settlement Class Members as provided in this Settlement Agreement.
 - iv. The Settlement Administrator shall pay the Class Counsel Award to Class Counsel from the Maximum Settlement Amount within fourteen (14) calendar days after the Maximum Settlement Amount is funded.
 - v. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the Class Counsel Award. The Settlement Administrator shall issue an IRS Form 1099 - MISC to Class Counsel for the payment.
 - vi. In the event that the Court reduces or does not approve the requested Class Counsel Award, Plaintiff and Class Counsel shall not have the right to modify or revoke the Settlement Agreement, although Plaintiff shall retain the right to appeal any reduction to the Class Counsel Award.

- e. PAGA Penalties. The amount of \$100,000 shall be allocated from the Maximum Settlement Amount for the release of claims for civil penalties under the Private Attorneys General Act of 2004. The Settlement Administrator shall pay seventy-five percent (75%) of the PAGA Penalties, or \$75,000, to the California Labor and Workforce Development Agency (the “LWDA Payment”) within fourteen (14) calendar days after Defendant provide funds to the Settlement Administrator for disbursement under this Settlement Agreement. Twenty-five (25%) of the PAGA Penalties, or \$25,000, will remain part of the Net Settlement Amount and distributed to Settlement Class Members as described in this Settlement Agreement. Plaintiff will take all actions required by California Labor Code section 2699(l).
 - f. Settlement Administrator Costs. The Settlement Administrator shall be paid for the costs of administration of the Settlement Agreement from the Maximum Settlement Amount. Based upon estimates received, the Settlement Administrator Costs shall not exceed [amount]. The Settlement Administrator shall be paid the Settlement Administrator Costs within fourteen (14) calendar days after Defendant provides funds to the Settlement Administrator for disbursement under this Settlement Agreement.
54. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, the execution of necessary documents and to take such other action as may be reasonably necessary to implement the terms of this Settlement Agreement. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and Defense Counsel, take all necessary steps to secure the Court’s Preliminary and Final Approval of this Settlement Agreement. The Parties also agree to cooperate in the Settlement Administration process. The Parties each represent they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.
55. Preliminary Approval Hearing. Plaintiff shall obtain a hearing before the Court to request the preliminary approval of the Settlement Agreement, and the setting of a date for a Final Approval Hearing. The Preliminary Approval Order shall provide for the Notice to be sent to all Class Members as specified herein. In conjunction with the Preliminary Approval Hearing, Plaintiff shall submit this Settlement Agreement and the proposed Notice. Plaintiff shall provide drafts of all papers filed in support of preliminary approval to Defense Counsel at least five (5) court days before filing the documents.
56. Final Approval Motion. After the expiration of the Response Deadline, Plaintiff shall file with the Court a motion for final approval of the Settlement, requesting final approval of the Settlement Agreement and a determination of the amounts payable for the Service Award, the Class Counsel Award, the PAGA Payment, and the Settlement Administration Costs. Plaintiff shall provide drafts of these papers to Defense Counsel at least five (5) court days before filing the documents.
- a. Declaration by Settlement Administrator. The Settlement Administrator shall submit a declaration in support of Plaintiff’s motion for final approval of this Settlement Agreement detailing the number of Notices mailed and re-mailed to Class Members, the number of undeliverable Notices, the number of Requests for Exclusion received, the number of Notices of Objections received, the number of disputes received about the Workweek counts, the amount of the average Individual Settlement Payment, the Settlement Administration Costs,

and any other information as the Parties mutually agree on, or that the Court orders the Settlement Administrator to provide.

- b. Final Approval Order and Judgment. The Parties shall present a proposed Final Approval Order to the Court for its approval, and Judgment thereon consistent with the terms and conditions of this Settlement Agreement.
57. Review of Motions for Preliminary and Final Approval. Class Counsel will provide an opportunity for Defense Counsel to review the Motions for Preliminary and Final Approval prior to filing with the Court. The Parties and their counsel will cooperate and use their best efforts to effect the Court's approval of the Motions for Preliminary and Final Approval of the Settlement Agreement, and entry of Judgment.
58. Nullification of Settlement Agreement. In the event that the Court does not grant final approval, or the Court does not enter a final judgment as provided herein, or the Settlement Agreement does not become final for any other reason, this Settlement Agreement shall be null and void and any order or judgment entered by the Court in furtherance of this Settlement Agreement shall be treated as void from the beginning. In such a case, the entire Maximum Settlement Amount shall be returned to Defendant; the Parties shall proceed in all respects as if this Settlement Agreement had not been executed, except that any costs already incurred by the Settlement Administrator shall be paid by equal apportionment among the Parties; and this Agreement and its terms, and the communications, negotiations, and settlement discussions related to the Action, shall be inadmissible and treated as confidential to the fullest extent allowed by law. In the event an appeal is filed from the Court's final judgment, or any other appellate review is sought, administration of the Settlement Agreement shall be stayed pending final resolution of the appeal or other appellate review, but any fees incurred by the Settlement Administrator prior to being notified of the filing of an appeal from the Court's Final Judgment, or any other appellate review, shall be paid to the Settlement Administrator within thirty (30) days of said notification.
59. Defendant's Option To Terminate Settlement. If the number of Class Members who submitted timely and valid written requests for exclusion from the Settlement is at least five percent (5%) of all Class Members, Defendant shall have, in its sole discretion, the option to terminate this Settlement and its stipulation to class certification before the Final Approval Hearing. If Defendant exercise the option to terminate this Settlement, Defendant shall: (a) provide written notice by certified mail to Class Counsel prior to the Final Approval Hearing and no later than seven (7) calendar days after receiving notice from the Settlement Administrator of the number of Class Members who have submitted timely and valid requests for exclusion; (b) pay all Settlement Administration Costs incurred up to the date or as a result of the termination; and (c) the Parties shall proceed in all respects as if this Agreement had not been executed.
60. No Effect on Employee Benefits. Amounts paid to the Plaintiff or other Settlement Class Members pursuant to this Settlement Agreement shall not be deemed pensionable earnings or have any effect on the eligibility for, or calculation of, any employee benefits (e.g., vacations, holiday pay, retirement plans, etc.) of the Plaintiff or Settlement Class Members.
61. Exhibits and Headings. The terms of this Settlement Agreement include the terms set forth in the attached Exhibit. The descriptive headings of any paragraphs or sections of this Settlement Agreement are inserted for ease of reference only and do not constitute a part of this Settlement Agreement.
62. Amendment or Modification. With Court approval, this Settlement Agreement may be amended or modified only by a written instrument that is signed by counsel for all Parties or their successors-in-interest, and signed by the Parties or their successors-in-interest.

63. Entire Settlement Agreement. This Settlement Agreement and its exhibit constitute the entire Settlement Agreement among the Parties, and no oral or written representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its exhibit other than the representations, warranties and covenants contained and memorialized in the Settlement Agreement and its exhibit.
64. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate actions needed by this Settlement Agreement to effectuate its terms. The person signing this Settlement Agreement on behalf of Defendant represent and warrant that he or she is authorized to sign this Settlement Agreement on behalf of Defendant. Plaintiff represents that he is authorized to sign this Settlement Agreement and that he has not assigned, transferred, or encumbered any claim, or part of a claim, demand, cause of action or any rights herein released and discharged or covered by this Settlement Agreement to any third-party.
65. Binding on Successors and Assigns. The provisions of this Settlement Agreement shall run in perpetuity. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties.
66. California Law Governs. All terms of this Settlement Agreement and its exhibit, and any disputes arising hereunder shall be governed by and interpreted according to the laws of the State of California.
67. Counterparts. This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Settlement Agreement shall exchange among themselves copies or originals of the signed counterparts.
68. This Settlement Agreement Is Fair, Adequate and Reasonable. The Parties believe that this Settlement Agreement is a fair, adequate and reasonable Settlement Agreement of this Action and have arrived at this Settlement Agreement after extensive arm's-length negotiations, taking into account all relevant factors, present and potential. The Parties further agree that this Settlement Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or their counsel participated in the drafting of this Settlement Agreement.
69. Jurisdiction of the Court. The Parties agree that, pursuant to California Code of Civil Procedure Section 664.6, the Court shall retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this Settlement Agreement and all orders and judgments entered in connection to it, and the Parties and their counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the Settlement Agreement and all orders and judgments entered in connection to it.
70. Publicity. Plaintiff and Class Counsel agree not to disclose or publicize the Settlement, including the fact of the Settlement, its terms or contents, and the negotiations underlying the Settlement, in any manner or form, directly or indirectly, to any person or entity, except as may be strictly required to effectuate the terms of the Settlement. For the avoidance of doubt, this section includes Plaintiff and Class Counsel's agreement not to issue press releases, communicate with, or respond to any media or publication entities, publish information in manner or form, whether printed or electronic, on any medium or otherwise communicate, whether by print, video, recording or any other medium, with any person or entity concerning the Settlement, including the fact of the Settlement, its terms or contents and the negotiations underlying the Settlement, except as shall be contractually required to effectuate the terms of

the Settlement. However, Class Counsel may disclose the name of the Parties in this action, the venue/case number, and settlement details available in the public record, for the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other actions.

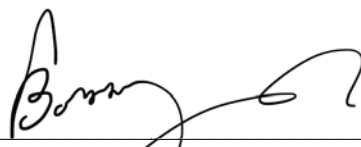
71. Waiver of Certain Appeals. Except as provided herein, the Parties agree to waive all appeals from the Court's final approval of the Settlement Agreement, unless the Court modifies the Settlement Agreement.
72. Denial of Liability. The Parties expressly recognize that the making of this Settlement Agreement does not in any way constitute an admission or concession of wrongdoing on the part of Defendant. The Settlement and any related statements, discussions, communications, or materials cannot be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this Agreement may be used in any proceeding in the Court that has as its purpose the interpretation, implementation, or enforcement of the Settlement or any orders or judgments of the Court entered into in connection therewith.
73. Notice of Settlement Agreement to LWDA. Plaintiff shall provide notice of this Settlement Agreement to the Labor Workforce Development Agency ("LWDA") as required by Labor Code Section 2699(1)(2).

(signature page follows)

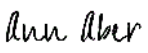
IN WITNESS WHEREOF, this Joint Stipulation of Class Action and PAGA Settlement Agreement and Release of Claims is voluntarily executed by the Parties and their attorneys as of the dates noted.

IT IS SO AGREED:

Dated: 5-28-21

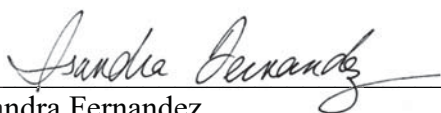

Bobby Ray McCoy, Plaintiff

Dated: 6/2/2021

DocuSigned by:

44D1EA88AE7A4F3...
Ann Aber
As authorized agent for Defendant

APPROVED AS TO FORM ONLY:

Dated: 06-01-2021


Isandra Fernandez
James Hawkins APLC
Attorneys for Plaintiff and Proposed Class
Counsel

Dated: 6/3/2021

DocuSigned by:

CBBB5405BB794CA...
Michael J. Nader
Rabia Z. Reed
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART
Attorneys for Defendant

11665429.2

EXHIBIT A

NOTICE OF PROPOSED CLASS ACTION AND PAGA SETTLEMENT

McCoy v. Jo-Ann Stores, LLC
Alameda County Superior Court Case No. RG20061158

**THIS IS A COURT-AUTHORIZED NOTICE.
IT IS NOT A SOLICITATION.
PLEASE READ THIS NOTICE CAREFULLY ABOUT YOUR LEGAL RIGHTS.**

To: All current and former non-exempt, hourly paid employees of Jo-Ann Stores, LLC who occupied the positions of key holders, assistant managers, store managers, and freight supervisors at any time in the State of California from May 11, 2016 through [date].

GENERAL INFORMATION

Why did I get this notice?

The Court has preliminarily approved a settlement of the lawsuit, McCoy v. Jo-Ann Stores, Alameda County Superior Court Case No. RG20061158 (the “Lawsuit”). The Settlement is on behalf of the following proposed “Class Members” defined as:

All current and former non-exempt, hourly paid employees of Jo-Ann Stores, LLC (the “Defendant”) who occupied the positions of key holders, assistant managers, store managers, and freight supervisors at any time in the State of California from May 11, 2016 through [date].

You received this notice because Defendant’s records show that you worked for Defendant as a key holder, assistant manager, store manager, or freight supervisor at some period of time during May 11, 2016 through [date] (the Class Period”). This notice explains the Lawsuit, the settlement, your legal rights, the benefits available for you, your eligibility for benefits, and how you obtain them. As further explained below, if you do nothing, you will receive your share of the settlement.

What is this Lawsuit about?

On May 11, 2020, Plaintiff Bobby Ray McCoy filed a putative wage and hour class action Defendant Jo-Ann Stores. The Lawsuit claims that Defendant violated sections of the California Labor Code and the California Business and Professions Code. Specifically, Plaintiff alleges that Defendant failed to pay all minimum and overtime wages due, failed to provide compliant meal and rest breaks, failed to pay all due final wages upon termination, failed to provide compliant wage statements, failed to keep requisite payroll records, failed to reimburse for all business expenses, and maintained unfair business practices. The settlement also seeks to recover civil penalties pursuant to the California Private Attorneys General Act (“PAGA”). Defendant denies the allegations in the Lawsuit and contends that it complied with the law. The Court has not made a ruling on the merits of the case.

Why is this a class action?

In a class action, one or more people called Class Representatives (in this case the Plaintiff), sues on behalf of people who appear to have similar claims, in this case the “Class Members” defined above. One court resolves the issues for all Class Members in one lawsuit, except for those who exclude themselves from the Class. The Lawsuit is before the Alameda County Superior Court (the “Court”).

How do I know if I am part of the settlement?

You are part of the Settlement, and a Class Member, if you are included in the definition of Class Members set forth above.

What is the settlement amount and how will the Individual Settlement Payment be calculated?

The Settlement provides that Defendant will pay a maximum of One Million, Five Hundred Thousand Dollars and Zero Cents (\$1,500,000.00)(the “Maximum Settlement Amount”). The “Net Settlement Amount” is the portion of the Maximum Settlement Amount that will be available for distribution to Class Members who do not submit timely and valid requests for exclusion (“Settlement Class Members”). The Net Settlement Amount is the Maximum Settlement Amount less the following amounts which are subject to Court approval:

- A. **Attorneys’ Fees to Class Counsel** not to exceed \$500,000.00,
- B. **Litigation Costs/Expenses to Class Counsel** not to exceed Eighteen Thousand Dollars (\$18,000);
- C. **Service Payment to the Class Representative** Bobby Ray McCoy of up to ten thousand dollars (\$10,000).
- D. **Settlement Administration Costs** which are currently estimated to be Fifteen Thousand Dollars (\$15,000)
- E. **PAGA Payment to the LWDA** of One-Hundred Thousand Dollars (\$75,000). This represents 75% of the \$100,000 allocated to PAGA penalties, the remainder in the amount of \$25,000 (25%) will be included in the Net Settlement Amount and distributed to participating Class Members.

The portion of the Net Settlement Amount that you are eligible to claim (“Individual Settlement Payment”) will be determined on a pro rata basis, based on the number workweeks you worked in California as a Class member during the Class Period (“Workweeks”). More specifically, “Workweek” means a consecutive seven (7) day period starting on and including Monday through and including Sunday during which time the Class Data reflects that you (a Class Member) worked any amount of time, and does not include weeks when a you (a Class Member) was on PTO, a leave of absence, jury duty, or the like for the entire 7-day period. Each Class Member will be credited with at least one (1) Workweek.

Your Settlement Payment will be apportioned as twenty-five percent (25%) for wages and seventy-five percent (75%) for penalties and interest. The wage portion of the Individual Settlement Payment will be subject to withholding for the employee and will be reported on a W-2 Form. Employer-side payroll taxes will be paid separately by the Defendant. The penalties and interest portions of each Settlement Payment will not be subject to any withholdings and will be reported on an IRS Form 1099.

How much will my Individual Settlement Payment be?

You worked XXX Workweeks during the Class Period from Hourly Class Period from May 11, 2016 to [date]. Your estimated Settlement Payment is \$XXX.XX. The amount of your Settlement Payment may change depending on the number of timely and valid Requests for Exclusion submitted in the Settlement, if any. This amount is only an estimate. The actual Individual Settlement Payment you receive may be slightly more or less than the estimated amount shown.

Your estimated Settlement Payment was determined based on Defendant’s record of your employment during the relevant class period.

What can I do if I think that the calculation of my workweeks is wrong?

If you dispute the accuracy of the calculation of the number of Workweeks that you worked during the Class Period, you must contact the Settlement Administrator and provide any documentation you have supporting your challenge of the calculation, and supporting your calculation. Submission of this information and documents

must be postmarked before [45 calendar days from the date of mailing]. All disputes regarding your Workweeks will be resolved and decided by the Settlement Administrator, and the Settlement Administrator's decision on all disputes will be final. The Settlement Administrator's contact information is listed below:

[Settlement Administrator]

[Address]

[Telephone No.]

WHAT ARE MY OPTIONS INCLUDING HOW CAN I GET A PAYMENT?

What are my options as a Class Member?

Your options as a Class Member, which are described in further detail below, are summarize as follows:

1) Participate in the Settlement and receive an Individual Settlement Payment which means you will also release certain claims against Jo-Ann; 2) Exclude yourself from the Settlement which means you will not receive any money from the Settlement and you will not be bound by this Settlement; and 3) Object to the Settlement if you believe the Settlement is unfair or inadequate in any respect.

How do I participate in the Settlement and get my Individual Settlement Payment

If you want to participate in the Settlement and receive money from the settlement, you do not have to do anything. You will automatically receive your Individual Settlement Payment after the Court approves the Settlement unless you choose to exclude yourself. Also, you must notify the Settlement Administrator of any change or correction in your contact information. **It is your responsibility to keep the Settlement Administrator informed of any change in your address.**

What Claims am I releasing if I participate in the Settlement?

Unless you exclude yourself from the Settlement, you will receive your Individual Settlement Payment and you remain in the Class, which means that you will not be able to sue or be part of any other lawsuit against the "Released Parties" for any of the "Released Claims" in this Lawsuit. Specifically, you will be giving up or "releasing" the "Released Claims" described below:

"Released Claims" means all claims and causes of action alleged in the Lawsuit and the PAGA Letter, as well as all predicate claims based on the factual or legal theories alleged in the Lawsuit and the PAGA Letter, or reasonably could have been alleged based on the facts and legal theories alleged in the Lawsuit and the PAGA Letter, including all of the following legal claims: any and all claims for unpaid wages, including, but not limited to, claims for minimum, overtime, and double-time wages, the alleged failure to pay for all time worked, the alleged failure to pay for all hours worked at correct rates, including overtime at the correct rates, and alleged improper rounding of time entries that allegedly resulted in unpaid wages; any and all claims for meal period violations, including claims for late, short, interrupted and/or missed meal periods and/or the failure to pay premiums, and the alleged failure to properly record meal periods; any and all claims for rest break violations, including claims for late, short, interrupted, missed, or otherwise improperly controlled rest breaks and/or the failure to pay premiums; any and all claims for unreimbursed expenses, including, but not limited to, expenses incurred for personal cell phone usage; any and all claims for improper or inaccurate itemized wage statements, including any alleged violations of Labor Code Section 226(a)(1)-(9) based on the facts and legal theories contained in the Lawsuit and the PAGA Letter, including the allegation that the wage statements lacked the total number of hours worked, and including claims for injuries suffered therefrom; any and all claims for the untimely

payment of final wages and associated waiting time penalties under Labor Code Section 203 based on the facts, claims, causes of action, or legal theories alleged in the Lawsuit and the PAGA Letter; any and all claims regarding the alleged failure to maintain required records in violation of Labor Code §§ 226, 1174, 1198 and the applicable IWC Wage Order provisions; any and all claims for civil penalties under the Labor Code Private Attorneys General Act of 2004, Labor Code Section 2699 et seq. ("PAGA") premised on the facts, claims, causes of action, or legal theories described herein or in the Lawsuit, including under Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 558, 1194, 1198, and 2802; any and all claims under the Business & Professions Code (including Section 17200 et seq.) premised on the facts, claims, or legal theories described herein or in the Lawsuit; any other claims or penalties under the wage and hour laws pleaded in the Lawsuit and the PAGA Letter under California and federal law, including the California Labor Code and the applicable Wage Orders as to the facts and theories alleged in the Lawsuit and the PAGA Letter (collectively, the "Released Claims.") The period of the Release shall extend to the limits of the Covered Period.

"Released Parties" shall mean Defendant and their past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors and assigns.

How do I exclude myself from the Settlement?:

If you do not wish to participate in the Settlement described in this Notice and want to keep the right to sue or continue to sue Defendant with respect to the Released Claims, then you must submit a Request for Exclusion in conformity with the requirements described here. **If you exclude yourself, you will not receive a settlement payment.**

To exclude yourself from the Settlement, you must submit a written Request for Exclusion which **must** state the following: (1) the case name and number of the Action (*McCoy v. Jo-Ann Stores, LLC*, Case No. RG20061158; (2) state that you request to be excluded from the Settlement; (3) state your name, address, and the last four digits of your Social Security number and/or Employee ID; **and** (4) **you must sign it**. The Request for Exclusion must be mailed to the Settlement Administrator at the address listed below, post-marked by [DATE] or sent via facsimile to the number listed below by [DATE]. You cannot exclude yourself by phone.

[Settlement Administrator]

[Address]

[Telephone No. and Fax Number]

Requests for exclusion which are postmarked or fax-stamped after the Response Deadline may not be accepted.

If I don't exclude myself, can I sue Defendant for the same thing later?

No. Unless you timely submit a Request for Exclusion, you give up the right to sue Defendant and the Released Parties for the Released Claims. If you have a pending lawsuit involving the Released Claims, speak to your lawyer immediately.

How do I Object to the Settlement?

If you are a Class Member, you can object to the Settlement and give your reasons to the Court for why you think the Court should not approve it. To make a written objection, you must mail your objection to the Settlement Administrator no later than [DATE]. Your objection must be signed and must include your full name, address, the name of this case and case number (provided above), the last four digits of your social security

number or employee ID number, and the specific reason for your objection. You may also appear at the Final Approval Hearing on [DATE] if you wish to make an objection, even if you do not submit a written objection.

What is the difference between objecting and being excluded?

Objecting is telling the Court that you do not like something about the Settlement. You may only object if you remain a Settlement Class Member. Excluding yourself is telling the Court that you do not want to be a Settlement Class Member. If you exclude yourself, you cannot object.

THE COURT'S FINAL APPROVAL HEARING

When and where will the Court decide whether to approve the Settlement?

The Court will hold the Final Approval Hearing at [] a.m./p.m. on [], 2021], at the [add court] located at [add details].

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate, and determine whether to grant final approval of the Settlement. If there are objections, the Court will consider them. The hearing may be postponed without further notice to the class.

Do I have to appear at the hearing?

No. If you agree to the Settlement, then you do not have to appear at the Final Approval Hearing. However, you may attend if you wish. You may also retain your own lawyer at your expense to attend on your behalf.

How will I learn if the settlement is approved.

A notice of final judgment will be posted on the Settlement Administrator website located at [www.\[\]com](http://www.[]com).

With limited exceptions, all court proceedings are being conducted remotely via video or telephone conference during the COVID-19 pandemic.

- For in-person proceedings, social distancing generally requires that physical courtroom access be limited to Court personnel, parties, counsel, witnesses, and jurors.
- All non-confidential, on-the-record proceedings may be accessed through the Court's livestream audio system at <http://www.alameda.courts.ca.gov/Pages.aspx/Live-Stream>.
- Court records are available online through DomainWeb at <https://publicrecords.alameda.courts.ca.gov/prs>.
- For questions regarding public access to court proceedings or records, please contact MediaRequest@alameda.courts.ca.gov or call (510) 891-6012

GETTING MORE INFORMATION

Who may I contact if I have questions about the Settlement?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by contacting the Settlement Administrator or by reviewing the Settlement Agreement and other documents filed in this matter online by entering the case number above on the Court's website: [please add here]. You can also contact Class Counsel for more information on the Lawsuit and/or the proposed Settlement:

Class Counsel:
James Hawkins
Isandra Fernandez
JAMES HAWKINS APLC

9880 Research Drive, Suite 200
Irvine, CA 92618
Tel: (949) 387-7200
Fax: (949) 387-6676
Isandra@jameshawkinsaplc.com

Please **do not** contact the clerk of the Court, the Judge, or Jo-Ann's managers, supervisors, or their attorneys for information.

ADDITIONAL IMPORTANT INFORMATION

The Defendant supports the Settlement, and will not retaliate in any manner whatsoever against any Class Member, whether they choose to stay in the Class as a Settlement Class Member and receive an Individual Settlement Payment, or request to be excluded from the Settlement, or object to the Settlement.

It is your responsibility to ensure that the Settlement Administrator has your current mailing address and telephone number on file, as this will be the address to which your Individual Settlement Payment installments will be sent.

Individual Settlement Payment checks must be cashed soon after receipt. If the Settlement is approved, you will be mailed your Individual Settlement Payment. The check will remain valid for 180 days after the date it is issued. If you do not cash the check sent for your Individual Settlement Payment within 180 days, these funds will be sent to the California State Controller and held by the State Controller's Office Unclaimed Property Fund on your behalf.