

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 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.

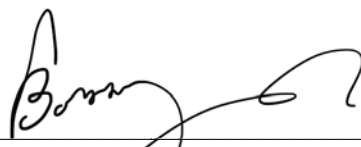
71. Waiver of Certain Appeals. Except as provided herein, the Parties agree to waive all appeals from the Court's final approval of the Settlement Agreement, unless the Court modifies the Settlement Agreement.
72. Denial of Liability. The Parties expressly recognize that the making of this Settlement 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)

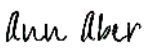
IN WITNESS WHEREOF, this Joint Stipulation of Class Action and PAGA Settlement Agreement and Release of Claims is voluntarily executed by the Parties and their attorneys as of the dates noted.

IT IS SO AGREED:

Dated: 5-28-21

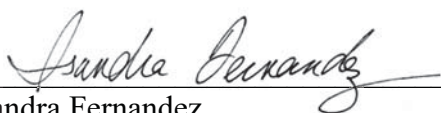

Bobby Ray McCoy, Plaintiff

Dated: 6/2/2021

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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

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5 Attorneys for Plaintiff, BOBBY RAY MCCOY
on behalf of himself and all others similarly situated
6

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF ALAMEDA**
9

10 BOBBY RAY MCCOY on behalf of
11 himself and all others similarly situated
12 Plaintiff,

13 vs.

14 JO-ANN STORES, LLC, and DOES 1
15 through 50, inclusive,
16 Defendants.
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Case No. RG20061158
ASSIGNED FOR ALL PURPOSES TO:
JUDGE: Hon. Brad Seligman
DEPT.: 23

**AMENDMENT TO JOINT STIPULATION OF
CLASS ACTION AND PAGA SETTLEMENT
AGREEMENT**

1 **AMENDMENT TO JOINT STIPULATION OF CLASS ACTION AND PAGA**
2 **SETTLEMENT**

3 In accordance with the Court's September 17, 2021 Tentative Rulings on Plaintiffs'
4 Motion for Preliminary Approval of Class Action Settlement, Plaintiff BOBBY RAY MCCOY
5 ("Plaintiff" or "Class Representatives"), individually and on behalf of all others similarly situated,
6 and Defendant JO-ANN STORES, LLC,. ("Defendant") (collectively, the "Parties") hereby
7 agree, by and through their attorneys of record, to be bound by this Amendment to the Joint
8 Stipulation of Class Action and PAGA Settlement ("Amendment") which is intended to replace
9 and supersede the sections of the Joint Stipulation of Class Action and PAGA Settlement
10 ("Settlement Agreement") specifically set forth below:

11 Terms used herein shall have the same meaning as in the Settlement Agreement unless
12 defined differently in this Amendment. Except as specifically provided herein, the Settlement
13 Agreement shall remain in full force and effect. The Settlement Agreement shall be modified as
14 follows:

15 **Section Heading: "Uncashed Checks"**

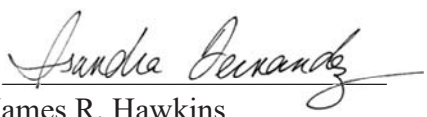
16 Paragraph 53 (b)(iv.) is amended as follows:

17 **Delete:** In the event that an Individual Settlement Payment check has not been cashed
18 within one hundred and eighty (180) calendar days, then such funds, plus any accrued interest,
19 Delete: will be tendered to the State Controller's Office Unclaimed Property Fund in the name of
20 Settlement Class Members who did not cash their settlement checks.

21 **Replace With:** In the event that an Individual Settlement Payment check has not been
22 cashed within one hundred and eighty (180) calendar days, then such funds, plus any accrued
23 interest, will be distributed pursuant to California Code of Civil Procedure, section 384(b). The
24 Parties agree that these distributions will be provided to the following cy pres beneficiary:
25 Homeboy Industries."

26 Dated: October 18, 2021

27 JAMES HAWKINS, APLC

28 By: 
 James R. Hawkins
 Isandra Y. Fernandez
 Attorneys for Plaintiff
 BOBBY RAY MCCOY

1
2 Dated: October 18, 2021

3 OGLETREE, DEAKINS, NASH, SMOAK &
4 STEWART, P.C.

5
6 By: 
7 Michael J. Nader
8 Rabia Z. Reed
9 Attorneys for Defendant
10 JO-ANN STORES, LLC.
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