

**HAINES LAW GROUP, APC**

Paul K. Haines (SBN 248226)  
phaines@haineslawgroup.com  
Fletcher W. Schmidt (SBN 286462)  
fschmidt@haineslawgroup.com  
Alexandra R. McIntosh (SBN 320904)  
amcintosh@haineslawgroup.com  
2155 Campus Drive, Suite 180  
El Segundo, California 90245  
Tel: (424) 292-2350  
Fax: (424) 292-2355

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES**

JANELLE BASICH-MUSTAFA, as an  
individual and on behalf of all others similarly  
situated,

Plaintiff,

vs.

DESIGNER FRAGRANCES & COSMETICS  
COMPANY, a California corporation d/b/a  
NYX Professional Makeup; and DOES 1  
through 100,

Defendants.

Case No. 20STCV16314

*[Case assigned for all purposes to the Hon.  
William F. Highberger, Dept. 10]*

**DECLARATION OF FLETCHER W.  
SCHMIDT IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

Date: June 2, 2022  
Time: 10:00 a.m.  
Dept.: 10

Action Filed: April 28, 2020  
Trial Date: None Set

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

I, Fletcher W. Schmidt, declare as follows:

1. I am a Partner at the Haines Law Group, APC, and counsel for the named Plaintiff Janelle Basich-Mustafa (“Plaintiff”) in the above-captioned matter. I am a member in good standing of the bar of the State of California and am admitted to practice in this Court. I have personal knowledge of the facts stated in this declaration and could testify competently to them if called upon to do so.

2. I am a 2012 graduate of Loyola Law School, Los Angeles, where I graduated *cum laude* and was awarded membership in the Order of the Coif. Since graduating from law school, I worked as a law clerk for the law firm of Tredway, Lumsdaine & Doyle, where I was part of the defense team for two class actions, including one wage and hour class action in Los Angeles County Superior Court. From August 2013 to March 2016, I worked as an associate attorney at Boren, Osher & Luftman LLP. Since March 2016 I have worked at my current firm, Haines Law Group, APC, where, in 2018, I became a Partner.

3. During my time with Boren, Osher & Luftman LLP and Haines Law Group, APC, my practice has been solely devoted to litigating plaintiff-side wage and hour class actions in California state and federal court. I am currently responsible for managing a caseload of over seventy-five (75) active wage and hour class actions in which I am integrally involved in all aspects of the litigation.

4. The following is a non-exhaustive list of class action settlements in which I have been named as Class Counsel, and which have been granted final approval: *Julio v. Anthony, Inc.*, Case No. CV14-03172 AB (SHx), United States District Court, Central District of California, Honorable Judge Andre Birotte, Jr. presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015); *Litt v. Western Stone & Metal Corp.*, Case No. 3:14-cv-02804-PJH, United States District Court, Northern District of California, Honorable Judge Phyllis J. Hamilton presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015); *Rubalcava v. United Towing and Transport Burbank, et al.*, Case No. BC518468, California Superior Court, County of Los Angeles, Honorable Judge Kenneth Freeman presiding (approving

an hourly rate of \$350 for work performed in 2013, 2014 and 2015); *Rivera Regalado v. Jaguar Farm Labor Contracting*, Case No. CV 130569, California Superior Court, County of San Luis Obispo, Honorable Martin J. Tangeman presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015); *Sanchez v. Res-Care, Inc.*, Case No. BC526175, California Superior Court, County of Los Angeles, Honorable John S. Wiley presiding (approving an hourly rate of \$350 for work performed in 2013, 2014 and 2015); *Rodas v. Gateways Hospital and Mental Health Center*, Case No. BC503179, California Superior Court, County of Los Angeles, Honorable Judge Amy D. Hogue presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015); *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States District Court, Central District of California, Honorable Judge John F. Walter presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015); *Shaw v. Conant Auto Retail, San Diego*, Case No. 37-2014-00044052-CU-OE-CTL, California Superior Court, County of San Diego, Honorable Judge Joan M. Lewis presiding (approving an hourly rate of \$375 for work performed in 2014, 2015, and 2016); *Tirado v. Ricon Corp.*, Case No BC537042, California Superior Court, County of Los Angeles, Honorable Judge John Shepard Wiley, Jr. presiding (approving an hourly rate of \$375 for work performed in 2014, 2015, and 2016); *Tesla Motors Wage and Hour Litigation*, JCCP 4792, California Superior Court, County of Santa Clara, Honorable Peter H. Kirwan presiding (approving an hourly rate of \$375 for work performed in 2013, 2014, 2015, and 2016); *Lopez v. RM HQ LLC, et al.*, Case No. BC525592, California Superior Court, County of Los Angeles, Honorable Elihu M. Berle presiding (approving an hourly rate of \$375 for work performed in 2013, 2014, 2015, and 2016); *Horta v. Searles Valley Minerals, Inc.*, Case No. CIVDS 1507615, California Superior Court, County of San Bernardino, Honorable Donald Alvarez presiding (approving an hourly rate of \$375 for work performed in 2015 and 2016); *Mansilla v. Haeco Americas Line Services, LLC, et al*, Case No. BC615310, Superior Court of California, County of Los Angeles, Honorable Judge Elihu M. Berle presiding (approved at an hourly rate of \$425 for work performed in 2016 and 2017); *Khosravi v. Enterprise Rent-A-Car Company of Los Angeles, LLC, et al.*, Case No. 30-2016-00829923-CU-OE-CXC, Superior Court of California, County of Orange, Honorable Judge Thierry Patrick Colaw

presiding (approved at an hourly rate of \$425 for work performed in 2016 and 2017); *Nieves v. Ta Chen International, Inc.*, Case No. BC609005, Superior Court of California, County of Los Angeles, Honorable Judge Kenneth R. Freeman presiding (approved at an hourly rate of \$425 for work performed in 2016 and 2017); *Berkel v. Pride Bakeries, LLC*, Case No. 30-2017-00923148-CU-OE-CXC, Superior Court of California, County of Orange, Honorable Judge William Claster presiding (approved at an hourly rate of \$425 for work performed in 2017 and 2018); *Ruvalcaba Quiroz v. Circle M Contractors, Inc.*, Case No. 30-2016-00885065-CU-OE-CXC, Superior Court of California, County of Orange, Honorable William D. Claster presiding (approving an hourly rate of \$425 for work performed in 2016, 2017 and 2018); *Armenta, et al., v. California Friends Homes d/b/a Quaker Gardens*, Case No. 30-2016-00883282-CU-OE-CXC, Superior Court of California, County of Orange, Honorable Randall J. Sherman presiding (approving an hourly rate of \$425 for work performed in 2016, 2017 and 2018); *Sandra Zinnerman v. Tumbleweed Educational Enterprises, Inc.*, Case No. BC673708, Superior Court of California, County of Los Angeles, Honorable Maren E. Nelson presiding (approving an hourly rate of \$425 for work performed in 2016, 2017, and 2018); *Tina Arellano v. Williams Sonoma Stores, Inc.*, Case No. BC693760, Los Angeles County Superior Court, Honorable Daniel J. Buckley, presiding; *William Cuellar v. UMA Enterprises, Inc.*, Case No. BC657146, Los Angeles County Superior Court, Honorable Maren E. Nelson, presiding (approving an hourly rate of \$475 for work performed in 2017, 2018 and 2019); *Maria C. Garcia, et al. v. Simplified Labor Staffing Solutions, Inc.*, Case No. BC696898, Los Angeles County Superior Court, Honorable Elihu M. Berle, presiding (approving an hourly rate of \$475 for work performed in 2018 and 2019); *Arturo Delgado v. Spears Manufacturing Co.*, Case No. BC709665, Los Angeles County Superior Court, Honorable Maren E. Nelson, presiding (approving an hourly rate of \$595 for work performed in 2018, 2019 and 2020); *Soto v. L I Metal Systems*, Case No. 37-2017-00009607-CU-OE-CTL, San Diego County Superior Court, Honorable Timothy Taylor, presiding (approving an hourly rate of \$595 for work performed in 2017-2020); *Michael Fishback v. Paragon Framing, Inc.*, Case No. CIVDS1906610, San Bernardino County Superior Court, Honorable David Cohn, presiding (approving an hourly rate of \$595 for work performed in 2019 and 2020); *Francisco Garcia v.*

1 *Searing Industries, Inc.*, Case No. CIVDS1932477, San Bernardino County Superior Court,  
2 Honorable David Cohn, presiding (approving an hourly rate of \$595 for work performed in 2019  
3 and 2020); *David Hasler, et al. v. Anheuser-Busch, LLC*, Case No. 19STCV00802, Los Angeles  
4 County Superior Court, Honorable Daniel J. Buckley, presiding; and *Angel Ochoa v. Fonseca*  
5 *Construction, Inc.*, Case No. CIVDS1928625, San Bernardino County Superior Court, Honorable  
6 David Cohn, presiding (approving an hourly rate of \$595 for work performed in 2019 to 2021);  
7 *William Chang v. Avcorp Composite Fabrication, Inc.*, Case No. BC715159, Los Angeles County  
8 Superior Court, Honorable Amy D. Hogue, presiding (approving an hourly rate of \$595 for work  
9 performed in 2018 to 2021); and *David Alvarado, et al. v. J.G. Boswell Company*, Case No.  
10 19STCV19033, Los Angeles County Superior Court, Honorable Daniel J. Buckley, presiding  
11 (approving an hourly rate of \$595 for work performed in 2019 to 2021).

12         5.       I have also moved to certify and have received an order certifying a class action  
13 and/or conditionally certifying a collective action as Class Counsel in the following cases:  
14 *Medeiros v. Vortex Financial Management Inc.*, Case No. 30-2013-00644741-CU-OE-CXC,  
15 California Superior Court, County of Orange, Honorable Judge Gail A. Andler presiding  
16 (certifying a class of employees who were misclassified as independent contractors); *Javine v.*  
17 *San Luis Ambulance Service, Inc.*, Case No. CV13-07480 BRO (SSx), United States District  
18 Court, Central District of California, Honorable Judge Beverly Reid O'Connell presiding  
19 (conditionally certifying an unpaid FLSA overtime wage class); *Prado v. Warehouse Demo*  
20 *Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States District Court, Central District of  
21 California, Honorable Judge John F. Walter presiding (certifying a rest period violation class and  
22 conditionally certifying a FLSA unpaid overtime wage class); *Bower v. Cycle Gear, Inc.*, Case  
23 No. CV14-2712 HSG, United States District Court, Northern District of California, Honorable  
24 Judge Haywood S. Gilliam, Jr. presiding (conditionally certifying an unpaid FLSA overtime wage  
25 class); *Vega v. Weatherford U.S., Limited Partnership*, Case No. CV14-1790-JLT, United States  
26 District Court, Eastern District of California, Honorable Judge Jennifer L. Thurston presiding  
27 (conditionally certifying an unpaid FLSA overtime wage class); *Galvan v. AMVAC Chemical*  
28 *Corporation*, Case No. 30-2014-00716103-CU-OE-CXC, California Superior Court, County of

1 Orange, Honorable Judge William Claster presiding (certifying unpaid overtime wage class and  
2 waiting time penalty class); *Camacho v. Residential Fire Systems, Inc.*, Case No. 30-2015-  
3 00775372-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge Glenda  
4 Sanders presiding (certifying five separate classes for claims for unpaid wages, unreimbursed  
5 expenses, failure to authorize and permit rest periods, and derivative claims); *Ontiveros v. Safelite*  
6 *Fulfillment, Inc., et al*, Case No. CV 15-7118-DMG (RAOx), United States District Court, Central  
7 District of California, Honorable Dolly M. Gee presiding (certifying six classes of employees for  
8 rest period violations, wage statement violations, meal period violations, and overtime and  
9 double-time violations); *Staublein v. Wells Fargo Bank, National Association*, Case No.  
10 CIVDS1712267, San Bernardino Superior Court, Honorable David Cohn presiding (certifying a  
11 wage statement class); and *Danica N. Keich, et al. v. U.S. Healthworks, Inc., et al.*, Case No. 37-  
12 2017-00015343-CU-OE-CTL, San Diego County Superior Court, Honorable Eddie C. Sturgeon,  
13 presiding (certifying classes for rest period violations, meal period violations, on-call pay  
14 violations, wage statement violations, and waiting time violations).

15 6. In 2018-2022, Thomson Reuters and Los Angeles Magazine recognized me as a  
16 Top Young Attorney in Southern California in the annual Rising Star Edition of Super Lawyers.  
17 This is an honor awarded to no more than two-and-a-half percent (2.5%) of attorneys under the  
18 age of forty in Southern California each year.

19 7. As counsel for Plaintiff, I have been intimately involved in all aspects of this  
20 litigation from its inception and believe that the proposed Settlement is a fair and reasonable result  
21 for the Class Members.

22 8. Defendant is a subsidiary of L'Oreal USA, Inc. and the parent company of five  
23 retail store brands in California, including NYX Professional Makeup, Urban Decay Cosmetics,  
24 Atelier Cologne, Kiehl's, and Luxury Beauty Store. According to Defendant, in July 2020  
25 Defendant permanently closed a number of its California retail locations, including all California  
26 NYX, Atelier, and Urban Decay Cosmetics retail locations. In connection with its closing,  
27 Defendant offered a number of its employees severance and release agreements. Plaintiff was  
28 employed by Defendant as a non-exempt Sales Associate/Key Holder from approximately

February 2019 to August 1, 2019 at a NYX retail store in Sherman Oaks, California. Like all Settlement Class Members, Plaintiff was subject to Defendant's wage and hour policies and practices.

9. On April 28, 2020, Plaintiff filed the initial Complaint in this action, alleging Defendant failed to: (i) pay all minimum wages owed; (ii) pay all overtime wages owed; (iii) provide all meal periods; (iv) authorize and permit all rest periods; (v) issue accurate and itemized wage statements; and (vi) comply with California's Unfair Competition laws. On July 14, 2020, after exhausting her administrative requirements, Plaintiff filed her First Amended Complaint ("FAC"), adding a cause of action for civil penalties under PAGA, premised on the underlying Labor Code violations. Attached hereto as **Exhibit 2** is a true and correct copy of Plaintiff's PAGA letter.

10. In connection with mediation, Defendant produced timekeeping and payroll records for approximately 10% of the putative class members. Defendant also provided relevant policies and procedures in effect during the Class Period as well as a class list with employee start dates and end dates, if applicable. Plaintiff, with the help of her expert, conducted an analysis of this data and created a comprehensive damages model to calculate the likely exposure that Defendant faced on each claim.

11. On August 16, 2021, the Parties participated in a mediation with Tripper Ortman, Esq., a highly respected wage and hour class action mediator. During mediation, the Parties exchanged divergent views on Defendant's liability and exposure valuations, their legal positions, and the likelihood of certification of Plaintiff's claims. Although the Parties did not settle at mediation, they continued their settlement discussions for several months, eventually arriving at a settlement in principle which was ultimately formalized in the Settlement.

12. Attached hereto as **Exhibit 1** is a true and correct copy of the Parties' Class Action Settlement Agreement and Release of Claims ("Settlement Agreement"). Attached as **Exhibit A** to the Settlement Agreement is a true and correct copy of the Notice of Class Action Settlement ("Class Notice"), Notice of Settlement Award, and Opt-Out Form (collectively, "Notice Packet").

13. Plaintiff alleges that Defendant failed to pay Plaintiff and other employees for all

1 hours worked as a result of its alleged policy and practice of requiring employees to undergo  
2 security checks off-the-clock. Specifically, at the end of each shift and before employees were  
3 allowed to leave the facility, Plaintiff alleges that she and other employees were required to clock  
4 out and then have their bag checked by a manager under a security camera. In response, Defendant  
5 contends that it has always maintained a compliant bag check policy whereby employees are  
6 required to undergo a bag check prior to clocking out for their shift and that there was never a  
7 line or excessive wait time before an employee could receive a bag check. Instead, Defendant  
8 maintains that its bag check process was quick and streamlined and typically lasted no more than  
9 15-20 seconds. Defendant further contends that Plaintiff's bag check claim is not suited for class  
10 certification as individual inquiries would be required to assess which employees underwent bag  
11 checks off-the-clock, how often, and how long each bag check lasted.

12 14. Plaintiff alleges that Defendant failed to provide employees with full,  
13 uninterrupted 30-minute meal periods before the end of the fifth hour of work as well as duty-  
14 free 10-minute rest periods for every four hours worked. Specifically, Plaintiff alleges that  
15 Defendant's policy and practice of requiring its employees to undergo bag checks off-the-clock  
16 prior to leaving the premises, including for meal and rest periods, violates California law because  
17 it operates as a de facto on-premises meal and rest period policy which forces employees to choose  
18 between an on-premises 30-minute meal period/10-minute rest period or an off-premises meal  
19 period of less than 30-minutes or rest period of less than 10-minutes as some of the break will  
20 necessarily be spent going through the bag check.

21 15. In response, Defendant contends that it has always provided employees with  
22 legally-compliant meal and rest periods and that any meal or rest periods that did not meet that  
23 standard were solely the result of employee choice (not Defendant's policy/practice). Defendant  
24 further argues that according to its written policy, bag checks were to be conducted prior to the  
25 employee clocking out, including prior to meal periods. Additionally, Defendant argues that in  
26 practice, bag checks were only conducted at the end of the employee's shift and were not  
27 conducted prior to meal and rest periods where employees rarely left the store with a bag. Lastly,  
28 Defendant further contends that it pays meal period premium wages to employees who are not

1 provided full, uninterrupted meal periods, per Labor Code section 226.7. Lastly, Defendant  
2 contends that Plaintiff's meal and rest period claims are not suited for class certification as  
3 individual inquiries would be required to assess which employees received non-compliant meal  
4 and/or rest periods, how many meal and/or rest periods were non-compliant or missed, and the  
5 reasons why a particular individual recorded a non-compliant meal period or missed a meal period  
6 on a particular shift.

7 16. As a result of these alleged substantive violations, Plaintiff contends that  
8 Defendant is liable for derivate wage statement violations, waiting time penalties for its failure to  
9 pay employees all final wages upon their separation of employment, and civil penalties under  
10 PAGA, Labor Code section 2698 *et seq.* Defendant argues that the alleged wage statement  
11 violations were not "knowing and intentional," and that Plaintiff could not show she "suffer[ed]  
12 injury," as required by Labor Code section 226(e) for imposition of penalties. Defendant further  
13 contends that it possesses strong, good faith defense to Plaintiff's underlying claims, thus  
14 precluding recovery of waiting time penalties (which are only available for the "willful" failure  
15 to pay wages). Defendant also contends that Plaintiff's meal and rest period claims cannot support  
16 a claim for waiting time penalties. Defendant also maintains that, given its good-faith defenses,  
17 this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to  
18 find Defendant liable for any of Plaintiff's underlying claims.

19 17. If the Court preliminarily approves this settlement, Defendant will pay a Gross  
20 Settlement Amount ("GSA") of \$1,750,000. Defendant's records indicate that there are  
21 approximately 1,587 Class Members who worked a combined 82,594 workweeks during the time  
22 period of April 28, 2016 through November 11, 2021. Based on the allocations of the Net  
23 Settlement Amount, participating employees will receive, on average, a payment of  
24 approximately \$673.07.

25 18. At the time of seeking final settlement approval, Plaintiff will apply for an  
26 enhancement payment in the amount of \$7,500.00 for her services to the Settlement Class and her  
27 general release of all claims. Plaintiff's requested enhancement payment is intended to recognize  
28 the significant time and effort that she expended on behalf of the Settlement Class, including

1 searching through voluminous employment records and providing all potentially relevant  
2 documents to her attorneys, assisting her attorneys in identifying other employees of Defendant  
3 who could serve as witnesses, discussing the case and proposed settlement with her attorneys on  
4 multiple occasions, the significant risks Plaintiff undertook by serving as the named plaintiff, and  
5 the fact that she agreed to a general release of all claims subject to a waiver of Civil Code § 1542.

6       19. My firm will also apply for an attorneys' fee award of up to one third of the GSA  
7 (currently estimated at \$583,333.33), and up to \$35,000 in reimbursement for actual litigation  
8 costs. Plaintiff submits that the requested fee is fair compensation for undertaking complex, risky,  
9 expensive, and time-consuming litigation on a purely contingent fee basis. Class Counsel incurred  
10 substantial attorneys' fees conducting pre-filing investigation, analyzing Plaintiff's claims,  
11 conducting legal research and analysis, reviewing documents and data produced by Defendant,  
12 propounding discovery, building a comprehensive damages model, preparing for and attending  
13 mediation, negotiating and preparing the long-form Settlement Agreement, preparing this motion  
14 for preliminary approval, and otherwise litigating the case. My firm will also expend future  
15 attorney time attending the hearing on this Motion, overseeing the Notice process, drafting the  
16 Final Approval Motion and supporting documents, attending the Final Approval hearing, and  
17 completing other tasks, such as fielding questions from Settlement Class Members.

18       20. Class Counsel carefully vetted the claims at issue, reviewed a representative  
19 sampling of Settlement Class Member data and all relevant policy documents, and created a  
20 comprehensive damages model for Defendant's liability. Although Plaintiff steadfastly maintains  
21 that her claims are meritorious, Plaintiff acknowledges that there were substantial risks and  
22 uncertainty in proceeding with class certification and trial. Absent settlement, the Parties will be  
23 required to expend substantial time and resources conducting extensive formal written and  
24 deposition discovery. Moreover, Plaintiff has not yet filed for class certification, and thus, absent  
25 settlement, the Parties would face the prospect of appeals in the wake of a disputed class  
26 certification ruling and/or an adverse summary judgment ruling. Even if Plaintiff succeeded in  
27 certifying one or more classes, the Parties would incur considerably more attorneys' fees and  
28 costs through a possible decertification motion, trial, and possible appeal.

1           21.     Plaintiff alleges that Defendant failed to pay putative class members for all hours  
2 worked as a result of its practice of requiring putative class members to undergo bag checks off-  
3 the-clock. Based on Plaintiff's testimony and a conservative estimate that employees were  
4 underpaid 4-minutes per shift due to Defendant's bag check policy, Plaintiff estimated  
5 Defendant's potential exposure for unpaid wages at \$578,158 (calculated as follows:  $412,970 * 4$   
6  $\text{min}/60 \text{ min} * \$21.00$  avg rate). However, as stated above, Defendant maintains that it pays its  
7 employees for all hours recorded and that its written policies inform employees that any bag  
8 checks are to be conducted on the clock. Defendant further argues that in any event, the bag check  
9 process is streamlined and that it only takes mere seconds for employees to undergo a bag check.  
10 Defendant further contends that Plaintiff's bag check claim is not suited for class certification as  
11 individual inquiries would be required to assess which employees underwent bag checks off-the-  
12 clock, how often, and how long each bag check lasted. Given these potential defenses, Plaintiff  
13 discounted Defendant's maximum exposure by 40% for the risk of non-certification and 60% for  
14 the risk of being unsuccessful on the merits or obtaining reduced damages, to arrive at an  
15 estimated exposure of \$138,758.

16           22.     Plaintiff alleges that as a result of Defendant's policy and practice of requiring its  
17 non-exempt employees to undergo a bag check off-the-clock prior to leaving the store's premises,  
18 including during employee meal periods, Defendant failed to provide its employees with off-duty  
19 30-minute meal periods. Based on Plaintiff's expert's analysis of Defendant's records, Plaintiff  
20 estimated Defendant's potential exposure for meal periods at \$2,436,336 (calculated as follows:  
21  $(127,212 \text{ non-compliant meal periods} - 11,196 \text{ meal period premiums paid}) * \$21.00$  average  
22 premium). However, Defendant maintains that it provided all legally compliant meal periods to  
23 employees and that any missed or non-compliant meal periods were the result of employee choice,  
24 not Defendant's policy. Defendant also argues that according to its written policy bag checks  
25 were to be conducted prior to the employee clocking out, including prior to meal periods, and that  
26 in practice, bag checks were only conducted at the end of the employee's shift and were not  
27 conducted prior to meal and rest periods where employees rarely left the store with a bag. Lastly,  
28 Defendant maintains Plaintiff's meal period claim is not suited for class certification, since

individual inquiries would be required to assess whether a bag check was conducted, whether the bag check was conducted on-the-clock, as well as any other potential reasons why a particular employee recorded a non-compliant meal period or missed a meal period on a particular shift. Given these potential defenses, Plaintiff discounted Defendant's maximum exposure by 50% for the risk of non-certification and 70% for the risk of being unsuccessful on the merits or obtaining reduced damages, to arrive at an estimated exposure of \$365,450.

23. Similar to meal periods, Plaintiff alleges that Defendant failed to authorize and permit all duty-free 10-minute rest periods for every four hours worked due to its policy and practice of requiring employees to undergo bag checks off-the-clock. Based on Plaintiff's expert's analysis of Defendant's records, Plaintiff estimated Defendant's potential exposure for rest periods at \$8,395,611 (calculated as follows: (399,791 3.5+ shifts x \$21.00 average premium). However, Defendant contends it authorized employees to take all required rest periods and argues that its bag check policy did not discourage or impede employees from taking rest periods off-premises as bag checks were rarely conducted in connection with employee rest periods. Defendant further argues that Plaintiff's rest period claim is inherently unsuited for class treatment as it would require individualized inquiries to determine whether a certain rest period was denied on a given shift, whether a missed rest period was the result of individual employee choice, and/or whether a bag check was even conducted during a rest period, which would devolve into an unmanageable series of mini-trials. Based on these defenses, Plaintiff discounted Defendant's maximum exposure by 60% for risk of non-certification and 80% for risk of being unsuccessful on the merits, to arrive at an estimated exposure of \$671,648.

24. According to the data produced by Defendant, approximately 1,165 putative class members separated their employment with Defendant during the relevant time period. Plaintiff therefore calculated Defendant's maximum waiting time penalty exposure at \$5,871,600 (1,165 former employees x \$21.00 average hourly rate x 8 hours per day x 30 days). However, Defendant maintains that waiting time penalties are not appropriate in this matter as meal and rest period claims cannot support such penalties. Defendant also argues it attempted to pay its employees all final wages owed in good faith upon their separation, therefore precluding a finding of wilfulness

1 which is necessary to obtain waiting time penalties under 8 Cal. Code Regs. section 13520. Lastly,  
2 Defendant argues that at least 160 employees signed release agreements when Defendant closed  
3 a number of retail locations in June 2020. Given these defenses, Plaintiff discounted the value of  
4 this claim by 60% for the risk of non-certification of the underlying claims, and 80% for a risk of  
5 being unsuccessful on the merits (including a failure to establish wilfulness), for an estimated  
6 recovery on this claim of \$469,728.

7 25. According to Defendant's data at mediation, 710 putative class members received  
8 21,227 wage statements during the 1-year time period associated with wage statement penalties.  
9 Plaintiff calculated Defendant's maximum wage statement exposure at \$2,087,200 (calculated as  
10 follows: ((710 "initial" violations x \$50) + (1,840 "subsequent" violations x \$100)). Defendant  
11 argues that meal and rest period violations (Plaintiff's primary claims) cannot support derivative  
12 wage statement penalties. Defendant argues that employees could not show they "suffer[ed]  
13 injury" as a result of these violations, as required by Labor Code § 226(e). Defendant further  
14 argues that a number of former employees have signed releases and therefore, Plaintiff's damage  
15 calculation is overstated. In light of all of these arguments, as well as the potential failure to prove  
16 that the violations were "knowing and intentional" as required by Labor Code § 226(e), Plaintiff  
17 discounted the value of this claim by 75% for the risk of non-certification of the underlying claims  
18 and discounted 80% for a risk of being unsuccessful on the merits, for an estimated exposure of  
19 \$104,360.

20 26. The success of Plaintiff's PAGA claim is wholly dependent upon the success of  
21 her underlying claims occurring within the one-year statute of limitations applicable to the PAGA.  
22 Assuming that Plaintiff could prove at least one underlying Labor Code violation in each pay  
23 period within the PAGA period, Plaintiff estimates Defendant's maximum PAGA exposure at  
24 \$2,122,700 (calculated from 21,227 pay periods at \$100 per violation). However, these penalties  
25 derived from the underlying wage and hour violations discussed above, which Defendant  
26 disputes. Plaintiff also recognizes that the Court has discretion to reduce any award of PAGA  
27 penalties where it views them as duplicative. Plaintiff therefore discounted the maximum figure  
28 by 50% for the risk of being unable to proceed on a representative basis and an additional 75% to

1 account for the likelihood of this Court reducing penalties, to arrive at an estimated exposure of  
2 \$265,338.

3 27. Using these estimated figures, Plaintiff predicted the realistic total recovery for the  
4 Settlement Class would be approximately \$2,015,283. The proposed settlement of \$1,750,000  
5 therefore represents over 87% of Plaintiff's reasonably forecasted classwide recovery.

6 28. I have confirmed that neither Plaintiff nor my firm have any interest, relationship,  
7 or involvement with the proposed *cy pres* recipient, CARECEN.

8 29. Concurrently with the filing of this motion, Plaintiff provided notice of the  
9 proposed Settlement, as well as copies of the Motion for Preliminary Approval and all papers  
10 filed in support hereof, to the LWDA. Attached hereto as **Exhibit 3** are true and correct copies of  
11 Plaintiff's Settlement submission and the LWDA's confirmation of receipt.

12 I declare under penalty of perjury under the laws of California and the United States that  
13 the foregoing is true and correct. Executed on May 11, 2022, at El Segundo, California.

14   
15 \_\_\_\_\_  
16 Fletcher W. Schmidt  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# EXHIBIT 1

## CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Class Action Settlement Agreement (“Agreement”) is made by and between plaintiff Janelle Basich-Mustafa (“Plaintiff”), on behalf of herself and on behalf of the State of California, all similarly-situated individuals, and all allegedly aggrieved employees, and defendant Designer Fragrances and Cosmetics Company (“Defendant”), subject to the approval of the Court, that the Settlement of the Action (as defined below) shall be effectuated upon and subject to the following terms and conditions to be filed for approval by the Court. Plaintiff and Defendant collectively are referred to in this Agreement as the “Parties.”

### I. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

- A. “Action” means the Class Action and PAGA Complaint filed in California state court and any amendments thereto, which are captioned *Janelle Basich-Mustafa v. Designer Fragrances & Cosmetics Company*, Case No. 20STCV16314, pending in Superior Court of the State of California, County of Los Angeles.
- B. “Aggrieved Employees” means all employees of Defendant who were classified as non-exempt and worked within the State of California during the PAGA Period. Defendant represents there were approximately 686 Aggrieved Employees as of November 11, 2021.
- C. “Class” means all employees of Defendant who were classified as non-exempt and worked within the State of California during the Class Period. Defendant represents there were approximately 1,587 Class Members as of November 11, 2021.
- D. “Class Counsel” means Paul K. Haines, Fletcher W. Schmidt, and Alexandra R. McIntosh of Haines Law Group, APC and Joseph Tojarieh of Tojarieh Law Firm, PC.
- E. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts to be paid to Class Counsel for fees and expenses, respectively, as approved by the Court, to compensate Class Counsel for their legal work in connection with the Action, including their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement work, all post-Settlement compliance procedures, and related litigation expenses billed in connection with the Action.
- F. “Class Data” means, for each Class Member, his or her name; last-known mailing address; Social Security number; his or her personal email address (if known); and his or her dates of employment and/or number of workweeks worked during the Class Period as a Class Member and as an Aggrieved Employee.
- G. “Class Member” is a member of the Class.
- H. “Class Notice” or “Class Notice Packet” means the Notice of Proposed Settlement of Class Action and Hearing Date and the Opt Out Form to be provided to the Class Members by the Settlement Administrator in the forms set forth as Exhibit A to this

Agreement (other than formatting changes to facilitate printing by the Settlement Administrator).

- I. “Class Period” means the period of time from April 28, 2016, through the date of Preliminary Approval of the Settlement, unless shortened at Defendant’s option pursuant to Paragraph III.C.5, *infra*.
- J. “Class Representative Service Payment” means the service payment made to Plaintiff in her capacity as Class Representative in order to compensate her for initiating the Action, performing work in support of the Action, undertaking the risk of liability for Defendant’s expenses in the event Plaintiff was unsuccessful in the prosecution of the Action, and as consideration for the general release of all claims by the Plaintiff.
- K. “Court” means the Superior Court of California, County of Los Angeles.
- L. “Defendant” means Designer Fragrances & Cosmetics Company.
- M. “Defendant’s Counsel” means Angela J. Rafoth and Emily A. Mertes of Littler Mendelson, P.C.
- N. “Effective Date” means the date by which all of the following have occurred:
  - 1. This Agreement and the contemplated settlement receive final approval from the Court; and
  - 2. The Judgment becomes Final as defined in Section I.P of this Agreement.
- O. “Election Not to Participate in Settlement” means the completed Opt Out Form submitted by a Class Member to exclude himself or herself from the Class Settlement submitted in accordance with the instructions in the Class Notice. Such a written request will have no effect on one’s inclusion in the PAGA Settlement.
- P. “Final” means the last of the following dates, as applicable:
  - 1. The first business day following the last date on which a notice of appeal from the Judgment may be filed and none is filed.
  - 2. If Judgment is entered and a timely appeal from the Judgment is filed, the date the Judgment is affirmed and is no longer subject to appeal.
- Q. “Final Approval Hearing” means the hearing to be conducted by the Court to determine whether to approve finally and implement the terms of this Agreement and enter the Judgment.
- R. “Gross Settlement Amount” means One Million Seven Hundred Fifty Thousand Dollars and No Cents (\$1,750,000.00) to be paid by Defendant as provided by this Agreement. This amount is an all-in amount without any reversion to Defendant or any of the Released Parties and shall be inclusive of all payments of Settlement Shares to the Participating Class Members, Settlement Administration Expenses, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class

Representative Service Payment and the PAGA Payment contemplated in this resolution in this Agreement, and excluding any employer payroll taxes, if any, due on the portion of the Settlement Shares allocated to wages which shall not be paid from the Gross Settlement Amount and shall be the separate additional obligation of Defendant.

- S. “Judgment” means the Final Approval Order and Judgment entered by the Court substantially in the forms attached hereto as Exhibit C to this Agreement and incorporated by reference into this Agreement.
- T. “LWDA Payment” means the 75% portion of the PAGA Payment payable to the California Labor and Workforce Development Agency (“LWDA”) as the LWDA’s share of the settlement of civil penalties paid under this Agreement pursuant to the PAGA.
- U. “Net Settlement Amount” means the Gross Settlement Amount less the Court-approved amount for the Class Representative Service Payment, the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the LWDA Payment, and the Settlement Administration Expenses.
- V. “Non-Participating Class Member” means a Class Member who submits a valid and timely Election Not to Participate in Settlement.
- W. “PAGA Payment” means the portion of the Gross Settlement Amount, as described below in Section III.B.3., which shall be allocated 75% to the LWDA (the “LWDA Payment”) as the LWDA’s share of the settlement of civil penalties paid under this Agreement pursuant to the PAGA and 25% to remain in the Net Settlement Amount for distribution to the Aggrieved Employees based upon their respective workweeks worked during the PAGA Period.
- X. “PAGA Period” means the period of time from April 28, 2019 through the date of Preliminary Approval of the Settlement.
- Y. “PAGA Share” means each Aggrieved Employee’s individual share of the 25% share of the PAGA Payment that is to remain in the Net Settlement Amount for distribution to Aggrieved Employees based on their respective workweeks worked during the PAGA Period, as provided by this Agreement, and described in Section III.B.3.
- Z. “Participating Class Member” means a Class Member who does not submit a valid and timely Election Not to Participate in Settlement.
- AA. “Preliminary Approval of the Settlement” means the Court’s Order Granting Preliminary Approval of the Settlement substantially in the form attached hereto as Exhibit B to this Agreement and incorporated by this reference herein.
- BB. “Released Parties” means (1) Defendant Designer Fragrances & Cosmetics Company; (2) any predecessors and successors in interest, companies acquiring any or all of Defendant’s assets or capital stock, current or former officers, directors, shareholders, agents, representatives, and employees of Defendant, any client

companies of Defendant for which the Class Members serviced while employed by Defendant, any current or former parent corporations, subsidiary corporations, affiliates, and assigns, including but not limited to NYX Professional Makeup, Urban Decay Cosmetics, Luxury Beauty Store, Atelier Cologne, and Kiehl's since 1851; (3) current or former officers, directors, shareholders, agents, representatives, and employees of Defendant; and (4) insurers of any of the foregoing persons or entities.

- CC. "Settlement" means the disposition of the Action and all related claims effectuated by this Agreement.
- DD. "Settlement Administrator" means the administrator proposed by the Parties and appointed by the Court to administer the Settlement. The determination of the Settlement Administrator will be by a not to exceed bid and shall be agreed to by all counsel.
- EE. "Settlement Share" means each Participating Class Member's share of the Net Settlement Amount as provided by this Agreement.

## **II. RECITALS**

- A. On April 28, 2020, Plaintiff filed a putative class action Complaint in Los Angeles Superior Court (Case No. 20STCV16314) on behalf of herself and all allegedly similarly situated individuals, asserting causes of action for (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Breaks; (5) Failure to Provide Accurate Wage Statements; (6) Failure to Timely Pay Wages Upon Separation; and (7) Unfair Competition (the "Action");
- B. On or about May 6, 2020, Plaintiff notified the Labor Workforce Development Agency ("LWDA") of her intent to file actions under California's Private Attorneys General Act, California Labor Code § 2698 et seq. ("PAGA");
- C. On July 14, 2020, Plaintiff filed a First Amended Complaint adding an Eighth Cause of Action for alleged violation of the PAGA;
- D. During the course of the litigation of the Action, the Parties engaged in informal discovery, including Defendant producing hundreds of pages of policies and other relevant documents, pay and time data, and wage statements for Plaintiff and the putative Class Members.
- E. On August 16, 2021, the Parties participated in an all-day mediation with neutral Tripper Ortman, a respected mediator of wage and hour class actions, but failed to reach a resolution. Following the mediation, each side, represented by its respective counsel, continued to negotiate with the assistance of Mr. Ortman. Defendant subsequently engaged in further investigation of the claims asserted at mediation and disclosed the results of this investigation to Plaintiff and her counsel. On November 11, 2021, the Parties were able to agree to reach an agreement to settle the Action, which was memorialized in a Memorandum of Understanding. This

Agreement replaces and supersedes the Memorandum of Understanding and any other agreements, understandings, or representations between the Parties.

- F. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that the claims in the Action of Plaintiff or the Class have merit or that Defendant or any Related Entity bears any liability to Plaintiff or the Class on those claims or any other claims, or as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the settlement does not become effective, Defendant reserves the right to contest certification of any class for any reason and reserves all available defenses to the claims in the Action.

Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

### III. SETTLEMENT TERMS AND CONDITIONS

- A. **Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Gross Settlement Amount that Defendant will pay under this Settlement is One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000). This amount is all-inclusive of all payments contemplated in this resolution, excluding any employer-side payroll taxes on the portion of the Settlement Shares allocated to wages which shall be separately paid by Defendant (or the Related Entities, as applicable) to the Settlement Administrator. All of the Gross Settlement Amount will be disbursed pursuant to this Agreement without the need to submit a claim form and none of the Gross Settlement Amount will revert to Defendant.
- B. **Payments from the Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Settlement Administrator shall first deduct from the Gross Settlement Amount the amounts approved by the Court for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel's Litigation Expenses, the LWDA Payment, and the Settlement Administration Expenses. The remaining amount shall be known as the "Net Settlement Amount." The Settlement Administrator will make the following payments out of the Gross Settlement Amount:
1. **To Plaintiff:** In addition to the Settlement Share to be paid to Plaintiff, Plaintiff will apply to the Court for an award of not more than \$7,500 for the Class Representative Service Payment. The Settlement Administrator will pay the Class Representative Service Payment approved by the Court out of the Gross Settlement Amount. If the Court approves a Class Representative Service Payment of less than \$7,500 for Plaintiff, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. To receive the payment, Plaintiff will agree to a 1542 waiver and a general release of all claims as set forth below. The Class Representative Service Payment is in settlement of claims for interest and for penalties allegedly due and shall not be subject to wage withholdings and shall be reported on IRS Form 1099-MISC form. Plaintiff will be solely responsible for any tax payments associated with the Class Representative Service Payment.

2. **To Class Counsel:** Class Counsel will apply to the Court for an award of not more than One-Third of the Gross Settlement Amount, which is presently \$583,333.33, as their Class Counsel Fees Payment and an amount not more than \$35,000.00 for all expenses incurred as documented in Class Counsel's billing records as their Class Counsel Litigation Expenses Payment. The Settlement Administrator will pay the amounts approved by the Court out of the Gross Settlement Amount. If the Court approves a Class Counsel Fees Payment or a Class Counsel Litigation Expenses Payment of less than these amounts, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. Payroll tax withholding and deductions, if any, will not be taken from the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment and instead one or more Forms 1099 will be issued to Haines Law Group, APC with respect to those payments. The Parties explicitly agree and recognize that Defendant incurs no obligation in this Settlement to ensure any particular allocation of these payments between Class Counsel and has no obligation other than to tender these amounts to the Settlement Administrator for distribution as part of the Gross Settlement Amount.
  3. **The PAGA Payment.** The Parties will seek approval from the Court for the PAGA Payment of \$50,000, which shall be allocated 75% (\$37,500) to the LWDA (the "LWDA Payment") as the LWDA's share of the settlement of civil penalties paid under this Agreement pursuant to the PAGA, and taken out of the Gross Settlement Amount, and 25% (\$12,500) will remain in the Net Settlement Amount for distribution to the Aggrieved Employees based upon their respective workweeks worked during the PAGA Period ("PAGA Shares"). The portion of the PAGA Payment distributed to Aggrieved Employees shall not be subject to wage withholdings and shall be reported on IRS Form 1099. Each Aggrieved Employee will be bound by the PAGA portion of the release contemplated in this agreement and will receive their respective PAGA Share regardless of whether they exclude themselves from the class action settlement. If the Court approves a PAGA Payment of less than \$50,000, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. Class Counsel shall notify the Labor and Workforce Development Agency of this Settlement as required by statute.
  4. **To the Settlement Administrator.** The Settlement Administrator will pay out of the Gross Settlement Amount to itself its reasonable fees and expenses that are documented and approved by the Court in an amount not to exceed \$18,500 ("Settlement Administration Expenses"). To the extent the Settlement Administration Expenses that are documented and approved by the Court are less than \$18,500, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members.
- C. **Payments From the Net Settlement Amount.** The Net Settlement Amount shall include the following payments after the deductions have been made from the Gross Settlement Amount as described in Paragraph III.B.. The Net Settlement Amount shall include the following:

1. **Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay a Settlement Share from the Net Settlement Amount to each Participating Class Member. The submission of a claim form is not required to be paid.
2. **Calculation.** Settlement Shares will be determined and paid as follows:
  - a. From the Net Settlement Amount, the Settlement Administrator will calculate each Participating Settlement Class Member's Settlement Share based on the following formula:
    - i. Wage Statement Amount: 10% of the Net Settlement Amount shall be designated as the "Wage Statement Amount." Each Participating Settlement Class Member who was employed by Defendant at any time between April 28, 2019, to the end of the Class Period, shall receive a portion of the Wage Statement Amount proportionate to the number of workweeks that he or she worked during the aforementioned time period.
    - ii. Waiting Time Amount: 10% of the Net Settlement Amount shall be designated as the "Waiting Time Amount." The Waiting Time Amount shall be distributed in equal, pro-rata shares to each participating Settlement Class member who separated their employment from Defendant at any time from April 28, 2017, to the end of the Class Period.
    - iii. The remainder (80%) of the Net Settlement Amount will be distributed to each Participating Settlement Class Member based on their proportionate number of workweeks worked during the Class Period, by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is the Participating Settlement Class member's total workweeks worked during the Class Period, and the denominator of which is the total number of workweeks worked by all Participating Settlement Class members during the Class Period.
    - iv. Defendant's payroll records shall control, but Participating Class Members will have the right to challenge the number of workweeks. The Parties agree that for administrative purposes workweeks may, but need not, be determined by determining the number of days between an employee's hire and termination dates, dividing by 7, and rounding up to the nearest whole number.
3. **Withholding.**
  - a. Subject to approval by the Court, 33.4% of each Participating Class Member's Settlement Share is in settlement of wage claims (the "Wage Portion"). Accordingly, the Wage Portion is subject to wage withholdings, and shall be reported on IRS Form W-2 and shall be paid for from the Gross Settlement Amount. Defendant (or

the Related Entities, as applicable) shall be separately responsible for the employer share of payroll taxes on the Wage Portion of each Settlement Share distributed to the Participating Class Members.

- b. Subject to approval by the Court, 33.3% of each Participating Class Member's Settlement Share is in settlement of claims for interest and 33.3% of each Participating Class Member's Settlement Share is in settlement of claims for penalties allegedly due to employees (collectively the "Non-Wage Portion"). The Non-Wage Portion shall not be subject to wage withholdings and shall be reported on IRS Form 1099.
- 4. **Effect of Non-Participating Class Members.** Non-Participating Class Members will receive no Settlement Share, and their Election Not to Participate in Settlement will reduce neither the Gross Settlement Amount nor the Net Settlement Amount. Their respective Settlement Shares will remain a part of the Net Settlement Amount for distribution to Participating Class Members on a *pro rata* basis relative to their Settlement Shares.
- 5. **Class Size Modification.** Defendant has represented that the class consists of an estimated total of 1,587 Class Members, during the time period of April 28, 2016 through November 11, 2021, who collectively worked approximately 82,594 workweeks during that period. Defendant will verify the updated number of Class Members and workweeks covered by this Settlement based on the best data reasonably available to Defendant at the time of Preliminary Approval. If the verified number of workweeks exceeds 90,853 (110% of the estimated number), at the time of preliminary approval, Defendant, at its option, shall have the option to either (1) shorten the Class Period to reduce the number of workweeks below 90,853, or (2) pay a proportionate increase in the Gross Settlement Amount for workweeks in excess of 90,853 (110%). This election shall be made by Defendant prior to the class notice being delivered to the class, and in no event later than 10 days after the court grants preliminary approval.

For example, and to illustrate the intended operation of this Paragraph, if Defendant's verified workweek total covering the Class Period through February 30, 2022 (assuming preliminary approval is granted at a date thereafter) is 103,243, Defendant would have the option to either (1) add an additional \$262,500 (15%) to the Gross Settlement Fund; or (2) limit the end date of the Class Period to a date on which the total number of workweeks would not exceed 90,853.

- D. **Appointment of Settlement Administrator.** After obtaining a quote from mutually acceptable and qualified settlement administrators, the Parties have mutually agreed to ask the Court to appoint Phoenix Settlement Administrators as the qualified administrator, to serve as the Settlement Administrator, which, as a condition of appointment, will agree to be bound by this Agreement with respect to the performance of its duties and its compensation. The Settlement Administrator's duties will include preparing, printing, and mailing the Class Notice Packet to all Class Members; conducting a National Change of Address search to update Class

Member addresses before mailing the Class Notice Packets; re-mailing Class Notice Packets that are returned to the Class Member's new address; setting up a toll-free telephone number to receive calls from Class Members; receiving and reviewing for validity completed Elections Not to Participate in Settlement; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of completed Elections Not to Participate in Settlement; calculating Settlement Shares; issuing the checks to effectuate the payments due under the Settlement; issuing the tax reports required under this Settlement; and otherwise administering the Settlement pursuant to this Agreement. The Settlement Administrator will have the authority to resolve all disputes concerning the calculation of a Participating Class Member's Settlement Share, subject to the dollar limitations and calculations set forth in this Agreement. The Settlement Administration Expenses, including the cost of printing and mailing the Class Notice Packet, will be paid out of the Gross Settlement Amount.

The Settlement Administrator shall have its own Employer Identification Number under Internal Revenue Service Form W-9 and shall use its own Employer Identification Number in calculating payroll withholdings for taxes and shall transmit the required employers' and employees' share of the withholdings to the appropriate state and federal tax authorities. The Settlement Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

**E. Procedure for Approving Settlement.**

**1. Motion for Preliminary Approval of Settlement by the Court.**

- a. After Execution of this Settlement Agreement, Plaintiff will file a Preliminary Approval Motion with the Court for an order giving Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice (the "Motion for Preliminary Approval"). Any disagreement among the Parties concerning the Class Notice, the proposed orders, or other documents necessary to implement the Settlement will be referred to the mediator for resolution.
- b. At the hearing on the Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the motion, and submit an Order Granting Preliminary Approval of the Settlement substantially in the form evidenced by Exhibit B to this Agreement and incorporated by reference into this Agreement.
- c. Should the Court decline to preliminarily approve material aspects of the Settlement (including but not limited to the scope of release to be granted by Participating Class Members or the binding effect of the Settlement on Participating Class Members), the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court's approval.

2. **Notice to Class Members.** After the Court enters an Order Granting Preliminary Approval of the Settlement, every Class Member will be sent the Class Notice Packet (which will include the Class Notice completed to reflect the Order Granting Preliminary Approval of the Settlement and showing the Class Member's Settlement Share) as follows:
- a. No later than 20 business days after the Court enters an Order Granting Preliminary Approval of the Settlement, Defendant will provide to the Settlement Administrator an electronic database containing each Class Member's Class Data. If any or all of the Class Data is unavailable to Defendant, Defendant will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon the Class Data prior to when it must be submitted to the Settlement Administrator. This information will otherwise remain confidential and will not be disclosed to anyone, except as required to applicable taxing authorities, in order to carry out the reasonable efforts described in section III.E.2.c., or pursuant to Defendant's express written authorization or by order of the Court. All Class Data will be used for settlement notification and settlement administration and shall not be used for any other purpose by Class Counsel.
  - b. The Settlement Administrator shall update the Class Data using the National Change of Address database prior to mailing the Class Notice Packets. Using best efforts to mail it as soon as possible, and in no event later than 14 days after receiving the Class Data, the Settlement Administrator will mail the Class Notice Packets to all Class Members via first-class regular U.S. Mail using the mailing address information provided by Defendant, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement.
  - c. If a Class Notice Packet is returned because of an incorrect address, the Settlement Administrator will promptly, and not longer than fourteen (14) days from receipt of the returned packet, search for a more current address for the Class Member and re-mail the Class Notice Packet to the Class Member. The Settlement Administrator will use the Class Data to find a more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, Court orders, and fee, as agreed to with Class Counsel and according to the following deadlines, to trace the mailing address of any Class Member for whom a Class Notice Packet is returned by the U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address using available email addresses, phone numbers, social security numbers, credit reports, LinkedIn, and Facebook; and promptly re-mailing to Class Members for whom new addresses are

found. If the Class Notice Packet is re-mailed, the Settlement Administrator will note for its own records and notify Class Counsel and Defendant's Counsel of the date and address of each such re-mailing as part of a weekly status report provided to the Parties.

- d. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendant's Counsel of the number of Elections Not to Participate in Settlement it receives (including the numbers of valid and deficient), and number of objections received.
- e. Not later than 10 days before the date by which Plaintiff files the motion for final approval of the Settlement, the Settlement Administrator will provide the Parties for filing with the Court a declaration of due diligence setting forth its compliance with its obligations under this Agreement and detailing the Elections Not to Participate in Settlement it received (including the numbers of valid and deficient Elections) and objections received. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

3. **Objections to Settlement; Disputes as to Workweeks Allocated to Class Members; Elections Not to Participate in Settlement.** Participating Class Members may submit objections to the Settlement and/or objections to the Class Counsel Fees Payment and/or Class Counsel Litigation Expenses Payment. Class Members may also submit disputes as to workweeks allocated to them and Elections Not to Participate in Settlement pursuant to the following procedures:

- a. **Objections to Settlement.** The Class Notice will provide that only Participating Class Members who wish to object to the Settlement, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or the Class Representative Service Payment may object to the proposed Settlement, either in writing or orally at the Final Approval Hearing. Objections in writing must be submitted to the Settlement Administrator with copies to Class Counsel and Defendant's Counsel, postmarked not later than sixty (60) calendar days after the Settlement Administrator mails the Class Notice Packets. Written objections must set forth the grounds for the objection(s) and comply with the instructions in the Class Notice. Alternatively, Class Members shall be entitled to be heard at the Final Approval Hearing (whether individually or through separate counsel) to orally object to the Settlement, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or the Class Representative Service Payment. A Participating Class Member who does not submit an objection in the manner and by the deadline specified above and in the Class Notice will be deemed to have waived any objection and will be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement, Class Counsel Fees Payment, Class Counsel Litigation Expenses

Payment, and the Class Representative Service Payment. Non-Participating Class Members shall have no ability to comment on or object to the Settlement, except as provided in Paragraph III.E.3.c *infra* with regard to objections made to the PAGA portion of the Settlement.

- b. **Disputes as to Workweeks.** Each Class Member shall also have sixty (60) calendar days after the Settlement Administrator mails the Class Notice Packets in which to dispute the number of workweeks the Class Notice allocates to them during the Class Period. Any notice of dispute shall be directed to the Settlement Administrator. Any dispute as to this allocation shall be resolved by the Settlement Administrator, with input and assistance from Defendant's Counsel, where applicable.
- c. **Election Not to Participate in Settlement.** The Class Notice also will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator postmarked not later than sixty (60) calendar days after the Settlement Administrator mails the Class Notice Packets, a signed Election Not to Participate in Settlement. An Opt Out Form to effectuate the Election Not to Participate in Settlement will be included in the Class Notice Packet. To be valid, an Election Not to Participate in Settlement must be timely and must comply with the instructions in the Class Notice. If a question is raised about the authenticity of a signed Election Not to Participate in Settlement, the Settlement Administrator will have the right to demand additional proof of the Class Member's identity. The Parties acknowledge and agree that for purposes of the PAGA and Judgment, all Aggrieved Employees were allegedly aggrieved in the same manner pursuant to Labor Code § 2698, *et. seq.*, in that each Aggrieved Employee allegedly suffered at least one of the alleged Labor Code violations asserted in the Amended Complaint for which the PAGA provides an available remedy. In light of the binding nature of a PAGA judgment on non-party employees pursuant to *Arias v. Superior Ct. (Dairy)*, 46 Cal. 4th 969, and *Cardenas v. McLane Foodservice, Inc.*, 2011 WL 379413 at \*3 (C.D. Cal. Jan. 31, 2011), individuals otherwise meeting the definition of Aggrieved Employees who exclude themselves from the Class Settlement, nonetheless shall be bound by the Judgment of the PAGA claim and will receive their proportionate share of the PAGA Payment. A Non-Participating Class Member will otherwise not participate in or be bound by the Settlement and the Judgment. Defendant will remain free to contest any claim brought by any Class Member that would have been barred by this Agreement, and nothing in this Agreement will constitute or be construed as a waiver of any defense Defendant has or could assert against such a claim. A Class Member who does not complete and mail a timely Election Not to Participate in Settlement in the manner and by the deadline specified above and in the Class

Notice will automatically become a Participating Class Member and will be bound by all terms and conditions of the Settlement, including the Released Class Claims by the Class, if the Settlement is approved by the Court, and by the Judgment, regardless of whether he or she has objected to the Settlement. Persons who submit an Election Not to Participate in Settlement shall not be permitted to file objections to the Settlement or appear at the Final Approval Hearing to voice any objections to the Settlement except as to the right of any Aggrieved Employee, to the extent required by law, to object to the terms of the PAGA portion of this Settlement.

All Participating Class Members who do not submit a valid and timely Election Not to Participate in Settlement will receive a Settlement Share, without the need to file a claim form, and will be bound by all of the terms of the Settlement, including without limitation, the release of the Released Class Claims by the Participating Class Members set forth in this Agreement.

- d. **Report.** Not later than ten (10) calendar days after the deadline for submission of Elections Not to Participate in Settlement, the Settlement Administration will provide Class Counsel and Defendant's Counsel with a complete and accurate list of all Participating Class Members and all Non-Participating Class Members.
4. **Right of Defendant to Reject Settlement.** If more than five percent (5%) of the Class Members timely submit valid Elections Not to Participate in Settlement, Defendant will have the sole right, but not the obligation, to void the Settlement, in which case the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount, or any amounts that otherwise would have been owed under this Agreement, except that Defendant will be solely responsible for all Settlement Administration Expenses incurred as of the date that Defendant exercises the right to void the Settlement pursuant to this Paragraph. Defendant must notify Class Counsel and the Court whether it is exercising its right pursuant to this Paragraph not later than seven (7) calendar days after the Settlement Administrator notifies the Parties of the number of valid Elections Not to Participate in Settlement it has received.
5. **No Solicitation.** The Parties and their counsel represent that neither the Parties nor their respective counsel have or will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, appeal from the Judgment, or elect not to participate in the Settlement. If a Class Member submits an Election Not to Participate in Settlement, Class Counsel will not solicit, represent, or otherwise encourage that Non-Participating Class Member to participate in separate litigation against Defendant. The parties agree that this clause does not, however, preclude Defendant from requiring an individual to exclude themselves from the Settlement as part of a separately negotiated individual settlement and release agreement that includes the claims covered by this Settlement.

6. **Additional Briefing and Final Approval.**

- a. Unless otherwise ordered by the Court, Class Counsel will file with the Court their motion for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment no later than the date Plaintiff files the Motion for Final Approval, and the application will be scheduled to be heard by the Court at the Final Approval Hearing.
- b. Not later than sixteen (16) court days before the Final Approval Hearing, the Plaintiff will file with the Court a motion for final approval of the Settlement, the PAGA Payment, and payment of the Settlement Administration Expenses.
- c. If any opposition is filed to the motion for final approval and/or the motion for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, and the PAGA Payment, then not later than five (5) court days before the Final Approval Hearing, both Parties may file a reply in support of the motion for final approval, and Plaintiff and Class Counsel may also file a reply in support of their motion for the Class Representative Service Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation Expenses Payment.
- d. If the Court does not grant final approval of the Settlement or grants final approval conditioned on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), then the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court's approval. However, an award by the Court of a lesser amount than that sought by Plaintiff and Class Counsel for the PAGA Payment, Class Representative Service Payment, the Class Counsel Fees Payment, or the Class Counsel Litigation Expenses Payment, will not constitute a material modification to the Settlement within the meaning of this Paragraph.
- e. Upon final approval of the Settlement by the Court at or after the Final Approval Hearing, the Parties will present for the Court's approval and entry the Judgment substantially in the form attached hereto as Exhibit C. After entry of the Judgment, the Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable law.

7. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, Plaintiff and Participating Class Members who did not timely submit an objection to the Settlement, Defendant, and its respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights to any post-judgment

proceeding and appellate proceeding, such as, but not limited to, a motion to vacate judgment, a motion for new trial, and any extraordinary writ. The Judgment therefore will become nonappealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. If an appeal is taken from the Judgment, the time for consummation of the Settlement (including making payments under the Settlement) will be suspended until such time as the appeal is finally resolved and the Judgment becomes Final.

8. **Vacating, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other motion, petition, or application, the reviewing Court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), and that Court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher Court, then the Parties shall work together in good faith to address any concerns raised by the reviewing Court and propose a revised Settlement for the approval of the Court not later than fourteen days after the reviewing Court's decision vacating, reversing, or materially modifying the Judgment becomes Final. A vacation, reversal, or modification of the Court's award of the Class Representative Service Payment or the Class Counsel Fees Payment or Class Counsel Litigation Expenses Payment will not constitute a vacation, reversal, or material modification of the Judgment within the meaning of this Paragraph, provided that Defendant's obligation to make payments under this Settlement will remain limited by the Gross Settlement Amount.
9. **Timing of Settlement Funding and Provision of Settlement Shares and Other Payments.** Defendant shall fund the Gross Settlement Amount by depositing the money with the Settlement Administrator. Defendant shall fund the Gross Settlement Amount and the amount necessary to pay Defendant's share of payroll taxes within fourteen (14) days of the Effective Date. Within fourteen (14) days after Defendant funds the Gross Settlement Amount, the Settlement Administrator will make payment of all Settlement Shares to Participating Class Members, as well as payment of Settlement Administration Expenses, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, the Class Representative Service Payment and the LWDA Payment in accordance with this Agreement.
10. **Uncashed Settlement Share Checks.** A Participating Class Member must cash his or her Settlement Share check within 180 days after it is mailed to him or her. If a check is returned to the Settlement Administrator or not cashed within 120 days after the last mailing, the Settlement Administrator will make all reasonable efforts to re-mail it to the affected Participating Class Member at his or her correct address by use of available email addresses, phone numbers, social security numbers, credit reports, LinkedIn and Facebook. If a Participating Class Member's Settlement Share check is not cashed within 120 days after its last mailing to the Participating Class

Member, the Settlement Administrator will also send the affected Participating Class Member a notice informing him or her that unless the check is cashed in the next 60 days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed. If the check remains uncashed by the expiration of the 60-day period after this notice, the funds from such uncashed checks will be paid to *cy pres* recipient, Central American Resource Center – CARECEN – of California, a 501(c)(3) organization dedicated to providing legal services to children and the indigent. The Parties agree that this disposition results in no “unpaid residue” within the meaning of California Code of Civil Procedure Section 384, as the entire Net Settlement Amount will be paid out to Participating Class Members, whether or not they all cash their Settlement Share checks.

11. **Final Report by Settlement Administrator to Court.** Within ten days after final disbursement of all funds from the Gross Settlement Amount, the Settlement Administrator will provide the Parties with a declaration providing a final report on the disbursements of all funds from the Gross Settlement Amount.

**F. Release of Claims.**

1. **Participating Class Members.** Upon entry of final judgment and payment by Defendant of the Gross Settlement Amount in accordance with Paragraph III.E.9 of this Agreement, Defendant and the Released Parties shall be entitled to a release from the Participating Class Members for any and all claims that were alleged in the Complaint or could have been asserted based on the factual allegations asserted in the Action. Specifically, without limitation, Participating Class Members will release claims under Cal. Lab. Code §§ 201, 202, 203, 204, 223, 226, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, and the IWC Wage Orders, and the federal Fair Labor Standards Act (“Released Class Claims”), as well as claims by or on behalf of the State of California or any of its divisions, including the LWDA, under the Private Attorney General Act, Cal. Lab. Code § 2698, *et seq.* and for unlawful and/or unfair business practices under Cal. Bus. & Prof Code § 17200 *et seq.*, to the extent such claims are predicated on the Released Class Claims; and any claim for attorneys’ fees and costs related to the above-referenced Released Class Claims. The doctrines of res judicata, claim preclusion, issue preclusion, primary rights, and collateral estoppel shall fully and broadly apply to Released Class Claims and the release in this Settlement to the greatest effect and extent permitted by law.
2. **Plaintiff.** Upon the occurrence of the Effective Date, Plaintiff generally, unconditionally, irrevocably and absolutely releases and discharges the Released Parties from any and all claims, transactions or occurrences between them that occurred during the Class Period, to the fullest extent permitted by law (“Plaintiff’s Released Claims”). This release of Plaintiff’s Released Claims unconditionally, irrevocably and absolutely releases and discharges the Released Parties from any claim that Plaintiff could maintain

in any action against any Released Party that occurred during the Class Period. Notwithstanding the foregoing, nothing in this Settlement Agreement waives or releases any rights which as a matter of law cannot be waived and released by private agreement, including rights to sue to enforce this Agreement and rights to unemployment benefits and workers' compensation benefits and claims outside the Class Period.

Plaintiff acknowledges that she may discover facts or law different from, or in addition to the facts or law that she knows or believes to be true with respect to the claims and matters released by way of this Agreement and agrees, nonetheless, that this Agreement and the releases contained in it shall be and remain effective in all respects, notwithstanding such different or additional facts or the discovery of them. The Parties declare and represent that they intend this Agreement to be complete and not subject to any claim of mistake, and that the releases herein express full and complete releases, and that they intend that the releases herein shall be final and complete. The Parties execute this release with the full knowledge that this release of the Plaintiff's Released Claims cover all possible claims by Plaintiff against the Released Parties, to the fullest extent permitted by law. To the extent permitted by law, Plaintiff expressly waives her right to recovery of any type, including damages, penalties, or reinstatement, in any administrative or court action, whether state or federal, and whether brought by Plaintiff or on Plaintiff's behalf, related in any way to the matters released herein.

Notwithstanding the provisions of section 1542, and for the purpose of implementing a full and complete release and discharge of all of Plaintiff's Released Claims, Plaintiff expressly acknowledges that this settlement is intended to include in its effect, without limitation, all Plaintiff's Released Claims which Plaintiff does not know or suspect to exist in her favor at the time of execution hereof, and that the Settlement contemplates the extinguishment of all such Plaintiff's Released Claims.

Plaintiff and Defendant acknowledge that it is their mutual intent not only to resolve all matters presently in dispute between them, but also by this Agreement to forever prevent the reoccurrence of any question, dispute, or claim regarding the past employment or future consideration for employment of Plaintiff by Defendant or Released Parties.

3. **Plaintiff's Waiver of Rights Under California Civil Code Section 1542.** As partial consideration for the Class Representative Service Payment, the Plaintiff's Released Claims shall include all such claims, whether known or unknown by the releasing party. Thus, even if Plaintiff discover facts and/or claims in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Plaintiff's Released Claims, those claims will remain released and forever barred. Therefore, with respect to Plaintiff's Released Claims, Plaintiff expressly waives and relinquishes the provisions, rights and benefits of section 1542 of the California Civil Code, which reads:

**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.**

4. **Class Counsel.** As of the date the Judgment becomes Final and payment by Defendant of the Gross Settlement Amount in accordance with Paragraph III.E.9 of this Agreement, and except as otherwise provided by this Agreement and the Judgment, Class Counsel and any counsel associated with Class Counsel waive any claim to costs and attorneys' fees and expenses against the Released Parties arising from or related to the Action.
- G. **No Effect on Other Benefits.** The Settlement Shares will not result in any additional benefit payments (such as 401(k) or bonus) beyond those provided by this Agreement to Plaintiff or Participating Class Members, and Plaintiff and Participating Class Members will be deemed to have waived all such claims, whether known or unknown by them, as part of their release of claims under this Agreement.
- H. **Limitation on Public Statements About Settlement.** The Parties agree that Plaintiff and Class Counsel will not publish the fact of, or terms of, this Settlement to members of the press, including to Verdicts and Settlements. Plaintiff and Class Counsel will not publish the fact of, or terms of, this Settlement or any related information on any website, for advertising purposes and/or in publication materials generally available to the public. Further, Class Counsel and Plaintiff agree not to issue press releases or initiate any public statements regarding the Settlement, including but not limited to in the media or on the Internet, with the exception of the Class Notice. This provision shall not prohibit Class Counsel from communicating with Class Members after preliminary approval is granted for the sole purpose of administering the Settlement. This provision also does not limit Class Counsel from complying with ethical obligations. Plaintiff and Class Counsel agree not to respond to any media inquiries except to refer reporters to the papers filed with the court. The Parties may make public statements to the Court as necessary to obtain preliminary or final approval of the Settlement. The Parties and their counsel shall refrain from publicly disparaging any of the other parties or counsel, including the Released Parties, or taking any public action designed or reasonably foreseeable to cause harm to the public perception of any of the Released Parties regarding any issue related in any way to the Action or the Settlement, but nothing herein is intended to prevent any party or their counsel, should it be required in connection with official court proceedings in other actions, from discussing the Settlement.
- I. **Miscellaneous Terms.**
  1. **No Admission of Liability or Class Certification for Other Purposes.**
    - a. Defendant and the Released Parties deny that they have engaged in any unlawful activity, have failed to comply with the law in any

respect, have any liability to anyone under the claims asserted in the Action, or that but for the Settlement a class should be certified in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by Defendant or the Released Parties, or an admission by Plaintiff that any of the claims were non-meritorious or any defense asserted by Defendant was meritorious. This Settlement and the fact that Plaintiff and Defendant were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with effectuating the Settlement pursuant to this Agreement). Nothing in this Agreement shall be construed as an admission by Defendant of any liability or wrongdoing as to Plaintiff, Class Members, or any other person, and Defendant specifically disclaims any such liability or wrongdoing. Moreover, it is not, and it should not be construed as, any admission of fact or law in this matter or any other matter that a class action is appropriate, and that settlement of this Action by way of a class action in no way waives Released Parties' defenses in another action with respect to an individual's waiver of rights to file a class and/or collective action. The parties have entered into this settlement with the intention of avoiding further disputes and litigation with the attendant inconvenience, expenses and risks. Nothing in this Agreement shall be construed as an admission by Plaintiff that Plaintiff's claims do not have merit or that class action is inappropriate.

- b. Whether or not the Judgment becomes Final, neither the Settlement, this Agreement, any document, statement, proceeding or conduct related to the Settlement or the Agreement, nor any reports or accounting of those matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Plaintiff or Defendant or any of the Released Parties, including, but not limited to, evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence against any of the Released Parties, in any further proceeding in the Action, or any other civil, criminal or administrative action or proceeding except for purposes of effectuating the Settlement pursuant to this Agreement.
- c. This section and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may be admitted in evidence and otherwise used in any and all proceedings for the limited purpose of enforcing any or all terms of this Agreement or defending any claims released or barred by this Agreement.

2. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this Agreement or its exhibits other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
3. **Attorney Authorization.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement including any amendments to this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the mediator for resolution.
4. **No Prior Assignments:** The Parties represent, covenant and warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.
5. **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.
6. **Modification of Agreement.** Except as set forth in III.I.3 hereinabove this Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives.
7. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
8. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California.
9. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

10. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.
11. **Use and Return of Documents and Data.** All originals, copies, and summaries of documents and data provided to Class Counsel by Defendant in connection with the mediation or other settlement negotiations in this matter may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule. Within thirty days after the Judgment becomes Final, Class Counsel will return or destroy and confirm in writing to Defendant the destruction of all such documents and data.
12. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
13. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, addressed as follows:

*To Plaintiff and the Class:*

HAINES LAW GROUP, APC  
Paul K. Haines  
Fletcher W. Schmidt  
Alexandra R. McIntosh  
2155 Campus Drive, Suite 180  
El Segundo, California 90245  
Tel: (424) 292-2350  
Fax: (424) 292-2355  
E-Mail: [phaines@haineslawgroup.com](mailto:phaines@haineslawgroup.com)  
[fschmidt@haineslawgroup.com](mailto:fschmidt@haineslawgroup.com)  
[amcintosh@haineslawgroup.com](mailto:amcintosh@haineslawgroup.com)

*To Defendant:*

LITTLER MENDELSON, P.C.

Angela J. Rafoth

Emily A. Mertes

333 Bush Street, 34<sup>th</sup> Floor

San Francisco, CA 94104

Tel.: (415) 433-1940

Fax: (415) 399-8490

E-Mail: [arafoth@littler.com](mailto:arafoth@littler.com)

[emertes@littler.com](mailto:emertes@littler.com)

14. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts by facsimile, electronically or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
15. **Stay of Litigation.** The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process from the mediation with Tripper Ortman on August 16, 2021 until the earlier of the Effective Date or the reopening of renewed discovery.
16. **Continuing Jurisdiction.** The Court shall retain continuing jurisdiction over the Action under CCP section 664.6 to ensure the continuing implementation of this Agreement and enforcement of the Settlement until performance in full of the terms of this Settlement.

#### IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

5/10/2022

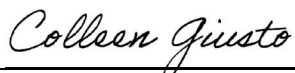
Date

  
Janelle Basich-Mustafa (May 10, 2022 14:23 EDT)

Plaintiff Janelle Basich-Mustafa

5/9/22

Date

  
Defendant Designer Fragrances & Cosmetics Company

May 10, 2022

Date



---

Haines Law Group, APC  
Counsel for Plaintiff

May 9, 2022

Date



---

Littler Mendelson, P.C.  
Counsel for Defendant

**EXHIBIT A**

[NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION AND HEARING DATE FOR  
FINAL COURT APPROVAL AND OPT OUT FORM]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

JANELLE BASICH-MUSTAFA, as an individual and  
on behalf of all others similarly situated,

Plaintiff,

vs.

DESIGNER FRAGRANCES & COSMETICS  
COMPANY, a California Corporation, d/b/a NYX  
Professional Makeup; and DOES 1 through 100,

Defendants.

Case No. 20STCV16314

**NOTICE OF CLASS ACTION SETTLEMENT**

To: All current and former non-exempt employees of Designer Fragrances & Cosmetics Company (“Designer Fragrances & Cosmetics Company”); in California who worked at any time between April 28, 2016 and <<PRELIM APPROVAL DATE>>, (the “Class Period”).

**PLEASE READ THIS NOTICE CAREFULLY  
THIS NOTICE IS BEING PROVIDED TO YOU IN ENGLISH AND SPANISH  
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

You may be entitled to money from this Settlement. Designer Fragrances & Cosmetics Company’s records show that you were employed by Designer Fragrances & Cosmetics Company as a non-exempt employee in California between April 28, 2016 and the <<PRELIM APPROVAL DATE>>. The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment. Notice of the final judgment will be posted online at <<ADMIN WEBSITE URL>>.

***What is this case about?***

Plaintiff Janelle Basich-Mustafa (“Plaintiff”) brought this lawsuit against Designer Fragrances & Cosmetics Company, asserting claims on behalf of all Participating Class Members. Plaintiff is known as the “Class Representative,” and her attorneys, who also represent the interests of all Participating Class Members, are known as “Class Counsel.”

In the Lawsuit, Plaintiff alleged that Designer Fragrances & Cosmetics Company: (1) failed to pay all minimum wages; (2) failed to pay all overtime wages; (3) failed to provide all meal periods; (4) failed to authorize and permit all rest periods; (5) failed to maintain accurate records and issue accurate, itemized wage statements; (6) failed to pay all final wages at termination; (7) engaged in unfair business practices; and (8) is liable for civil penalties under the Private Attorneys General Act (Labor Code section 2698) (“PAGA”).

Designer Fragrances & Cosmetics Company denies that it has done anything wrong. Designer Fragrances & Cosmetics Company denies that it owes Participating Class Members any wages, restitution, penalties, or other damages. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Designer Fragrances & Cosmetics Company, which expressly denies all liability.

The Court has not ruled on the merits of Plaintiff’s claims. However, to avoid additional expense, inconvenience, and interference with business operations, the parties concluded that it is in Designer Fragrances & Cosmetics Company’s best interests and the interests of Participating Class Members to settle the Lawsuit on the terms summarized in this Notice. After Designer Fragrances & Cosmetics Company provided relevant information to Class Counsel, the Settlement was reached after mediation and negotiations between the parties.

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Designer Fragrances & Cosmetics Company, the risk of denial of class certification, the inherent risks of trial on the merits, and the delays and uncertainties associated with ongoing litigation.

**If you are still employed by Designer Fragrances & Cosmetics Company, your decision about whether to participate in the Settlement will not affect your employment. California law and Designer Fragrances & Cosmetics Company's policies strictly prohibit unlawful retaliation.** Designer Fragrances & Cosmetics Company will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Participating Class Member because of his or her decision to either participate or not participate in the Settlement.

#### ***Who are the Attorneys?***

|                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Attorneys for Plaintiff / Participating Class Members:</p> <p><b>HAINES LAW GROUP, APC</b><br/>Paul K. Haines (SBN 248226)<br/>phaines@haineslawgroup.com<br/>Fletcher W. Schmidt (SBN 286462)<br/>fschmidt@haineslawgroup.com<br/>Alexandra R. McIntosh (SBN 320904)<br/>amcintosh@haineslawgroup.com<br/>2155 Campus Drive, Suite 180<br/>El Segundo, California 90245<br/>Tel: (424) 292-2350<br/>Fax: (424) 292-2355<br/>haineslawgroup.com</p> | <p>Attorneys for Designer Fragrances &amp; Cosmetics Company:</p> <p><b>LITTLER MENDELSON P.C.</b><br/>Angela Rafoth (SBN 241966)<br/>arafoth@littler.com<br/>Emily Mertes (SBN 296743)<br/>emertes@littler.com<br/>333 Bush Street, Floor 34<br/>San Francisco, CA 94104-2842<br/>Tel: (415) 433-1940<br/>Fax: (415) 399-8490<br/>littler.com</p> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

#### ***What are the terms of the Settlement?***

On <<PRELIM APPROVAL DATE>>, the Court preliminarily certified a class – for settlement purposes only – of all current and former non-exempt employees of Designer Fragrances & Cosmetics Company in California who worked at any time during the Class Period. Participating Class Members who do not submit a valid and timely Opt-Out Request from the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Designer Fragrances & Cosmetics Company, as described below in the “Release” section.

Designer Fragrances & Cosmetics Company agreed to pay \$1,750,000.00 (the “Gross Settlement Amount”) to fully resolve all claims in the Lawsuit, including payments to Participating Class Members, attorneys’ fees and expenses, settlement administration costs, payment to the California Labor and Workforce Development Agency (“LWDA”) for its share of PAGA civil penalties, and the Class Representative Service Payment. Designer Fragrances & Cosmetics Company will fund the Gross Settlement Amount no later than 14 days after the final approval of the settlement (assuming no objections or appeals).

The following deductions from the Gross Settlement Amount will be requested by the parties:

Settlement Administration Costs. The Court has approved Phoenix Settlement Administrators to act as the “Settlement Administrator,” who is sending this Notice to you and who will perform other duties relating to the Settlement. The Court has approved setting aside up to \$25,000.00 from the Gross Settlement Amount to pay the Settlement administration costs.

Attorneys’ Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of the Participating Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Gross Settlement Amount. Participating Class Members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will ask for fees of up to one-third of the Gross Settlement Fund (which is currently estimated to be \$583,333.33) as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through

Settlement finalization. Class Counsel also will ask for reimbursement of up to \$35,000.00 for verified costs which were incurred by Class Counsel in connection with the Lawsuit.

Class Representative Service Payment. Class Counsel will ask the Court to award \$7,500.00 to Plaintiff as a Class Representative Service Payment. This is meant to compensate Plaintiff for her service and extra work provided on behalf of the Participating Class Members.

PAGA Payment to the State of California. The parties have agreed to allocate \$50,000.00 of the Gross Settlement Amount as PAGA civil penalties. Per Labor Code section 2699(i), 75% of such penalties (\$37,500.00) will be payable to the LWDA for its share of PAGA penalties, and the remaining 25% (\$12,500.00) will be payable to the individuals with PAGA standing (“aggrieved employees”) as part of the Net Settlement Amount.

Calculation of Participating Class Members’ Settlement Share. After deducting the Court-approved amounts above, the balance of the Gross Settlement Amount will form the Net Settlement Amount, which will be distributed to all Participating Class Members who do not submit a valid and timely Opt-Out Request (described below). The Net Settlement Amount will be divided as follows:

- (i) PAGA Amount: The \$12,500.00 payable to PAGA Members as PAGA civil penalties will be designated as the “PAGA Amount.” Each employee who was employed by Designer Fragrances & Cosmetics Company in California any time between April 28, 2019 and <<PRELIM APPROVAL DATE>>, will receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked during the aforementioned time period.
- (ii) Wage Statement Amount: Ten percent (10%) of the Net Settlement Amount will be designated as the “Wage Statement Amount.” Each employee who was employed by Designer Fragrances & Cosmetics Company in California any time between April 28, 2019 and <<PRELIM APPROVAL DATE>>, will receive a portion of the Wage Statement Amount proportionate to the number of workweeks that he or she worked during the aforementioned time period.
- (iii) Waiting Time Amount: Ten percent (10%) of the Net Settlement Amount will be designated as the “Waiting Time Amount.” The Waiting Time Amount will be distributed in equal shares to each Participating Class Member who separated their employment with Designer Fragrances & Cosmetics Company on or after April 28, 2017.
- (iv) The remainder of the Net Settlement Amount will be distributed to each Participating Class Member based on their proportionate number of workweeks worked during the Class Period, by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is the Participating Class Member’s total workweeks worked during the Class Period, and the denominator of which is the total number of workweeks worked by all Participating Class Members during the Class Period.

Settlement Shares to Participating Class Members. If the Court grants final approval of the Settlement, Settlement Shares will be mailed to Participating Class Members who did not submit a valid and timely Opt-Out Request. Each Participating Class Member who receives a Settlement Share must cash that check within 180 days from the date the Settlement Administrator mails it. Any funds payable to Participating Class Members whose checks are not cashed within 180 days after mailing will be distributed to Central American Resource Center (“CARECEN”) of California, an organization dedicated to providing legal services to children and the indigent. CARECEN is a 501 (c)(3) nonprofit recognized by the IRS (Tax ID Number: 95-3867724).

Allocation and Taxes. Each Settlement Share will be allocated as 66.6% penalties and interest and 33.4% wages. The Settlement Administrator will be responsible for issuing to Participating Class Members an IRS Form 1099 (for amounts paid as penalties and interest) and IRS Form W2 (for amounts paid as wages). Amounts paid to PAGA Members for their share of civil penalties under PAGA will be allocated as 100% penalties. The Settlement Administrator will issue PAGA Members an IRS Form 1099 for these payments. The Settlement Administrator will be responsible for calculating and withholding all employee-share employment taxes and other legally required withholdings from each Settlement Share.

Release. If the Court approves the Settlement, each Participating Class Member who has not submitted a timely and valid Opt-Out Request will fully release and discharge Designer Fragrances & Cosmetics Company, any predecessors and successors in interest, companies acquiring any or all of Defendant’s assets or capital stock, current or former officers, directors, shareholders, agents, representatives, and employees of Defendant, any client companies of Defendant for which the Class Members serviced while employed by Defendant, any current or former parent

corporations, subsidiary corporations, affiliates, and assigns, including but not limited to NYX Professional Makeup, Urban Decay Cosmetics, Luxury Beauty Store, Atelier Cologne, and Kiehl's since 1851; current or former officers, directors, shareholders, agents, representatives, and employees of Defendant; and insurers of any of the foregoing persons or entities (collectively the "Released Parties"), from any and all claims that were alleged in the Complaint or could have been asserted based on the factual allegations asserted in the Action. Specifically, without limitation, Participating Class Members will release claims under Cal. Lab. Code §§ 201, 202, 203, 204, 223, 226, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, and the IWC Wage Orders, and the federal Fair Labor Standards Act ("Released Class Claims"), as well as claims by or on behalf of the State of California or any of its divisions, including the LWDA, under the Private Attorney General Act, Cal. Lab. Code § 2698, *et seq.* and for unlawful and/or unfair business practices under Cal. Bus. & Prof Code § 17200 *et seq.*, to the extent such claims are predicated on the Released Class Claims; and any claim for attorneys' fees and costs related to the above-referenced Released Class Claims. The doctrines of res judicata, claim preclusion, issue preclusion, primary rights, and collateral estoppel shall fully and broadly apply to Released Class Claims and the release in this Settlement to the greatest effect and extent permitted by law. This release will apply to claims arising during the Class Period and become effective upon the date that Designer Fragrances & Cosmetics Company deposits the entire Gross Settlement Amount with the Settlement Administrator.

Conditions of Settlement. The Settlement is conditioned upon the occurrence of all of the following events: (a) if no timely objections are filed or if all objections are withdrawn, the date upon which the Court enters Final Approval; (b) the first business day following the last date on which a notice of appeal from the Judgment may be filed and none is filed; (c) if Judgment is entered and a timely appeal from the Judgment is filed, the date the Judgment is affirmed and is no longer subject to appeal (the "Effective Date").

#### ***How can I claim money from the Settlement?***

Do Nothing. If you do nothing, you will be entitled to your Settlement Share, which has been calculated for you based on the formula set forth above, as stated in the accompanying Notice of Settlement Award. You also will be bound by the Settlement, including the release of claims stated above.

#### ***What other options do I have?***

Dispute Information in Notice of Settlement Award. Your award is based on the proportionate number of workweeks that you worked during the Class Period and PAGA Period as well as whether you are entitled to a share of the Wage Statement and/or Waiting Time Amount. The information contained in Designer Fragrances & Cosmetics Company's records regarding this information, along with your estimated Settlement Share, is listed on the accompanying Notice of Settlement Award. If you disagree with the information in your Notice of Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than **<<RESPONSE DEADLINE>>**. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Participating Class Members. Should a consensus not be reached, any outstanding disputes will be submitted to the Court for a final determination.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator a timely Opt-Out Request Form.

Send the Opt-Out Request directly to the Settlement Administrator at **<<ADMINISTRATOR CONTACT INFO>>**. Any person who submits a timely Opt-Out request from the Settlement will, upon receipt by the Settlement Administrator, no longer be a Participating Class Member, will be barred from participating in any portion of the Settlement, and will receive no benefits from the Settlement. **Do not submit both a Dispute and Opt-Out Request.** If you do, the Opt-Out request will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you may mail a written objection to the Settlement Administrator. Your written objection should include your name, address, as well as contact information for any attorney representing you regarding your objection, the case name and number, each specific reason in support of your objection, and any legal or factual support for each objection together with any evidence in support of your objection. All objections or other correspondence must state

the name and number of the case, which is *Janelle Basich-Mustafa v. Designer Fragrances & Cosmetics Company, et al.*, Los Angeles County Superior Court, Case No. 20STCV16314. Objections in writing must be postmarked on or before <<RESPONSE DEADLINE>>.

You may also appear at the Final Approval Hearing scheduled for <<FINAL APPROVAL HEARING DATE/TIME>> in Department 10 of the Los Angeles County Superior Court, Spring Street Courthouse, located at 312 North Spring Street, Los Angeles, California 90012. The location, date, and time of the Final Approval Hearing may be moved without further notice to you. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing if you wish to appear in person. You have the right to appear either in person or through your own attorney at this hearing, whether or not you submit a written objection. If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Participating Class Members who do not object.

#### ***What is the next step?***

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department 10 of the Los Angeles County Superior Court, Spring Street Courthouse, located at 312 North Spring Street, Los Angeles, California 90012. The location, date, and time of the Final Approval Hearing may be moved without further notice to you. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses, the Service Payment to the Class Representative, the Settlement Administrator's costs, and the amount related to the PAGA civil penalties. **You are not required to attend the Final Approval Hearing.**

#### ***How can I get additional information?***

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Clerk's Office at the Los Angeles County Courthouse, located at the Los Angeles County Superior Court, Spring Street Courthouse, located at 312 North Spring Street, Los Angeles, California 90012, during regular business hours. You may also contact Class Counsel using the contact information listed above for more information.

**PLEASE DO NOT CALL OR WRITE THE COURT, DESIGNER FRAGRANCES & COSMETICS COMPANY, OR ITS ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS**

#### ***REMINDER AS TO TIME LIMITS***

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is <<RESPONSE DEADLINE>>.

## **NOTICE OF SETTLEMENT AWARD**

*JANELLE BASICH-MUSTAFA v. DESIGNER FRAGRANCES & COSMETICS COMPANY, et al.*  
LOS ANGELES COUNTY SUPERIOR COURT, CASE NO. 20STCV16314

Please complete, sign, date and return this Form to <<ADMINISTRATOR CONTACT INFO>> **ONLY IF** (1) your personal contact information has changed, and/or (2) you wish to dispute any of the information listed in Section (III), below. It is your responsibility to keep a current address on file with the Settlement Administrator.

**(I) Please type or print your name:**

\_\_\_\_\_  
(First, Middle, Last)

**(II) Please type or print the following identifying information if your contact information has changed:**

\_\_\_\_\_  
Former Names (if any)

\_\_\_\_\_  
New Street Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

**(III) Information Used to Calculate Your Settlement Share:**

According to Designer Fragrances & Cosmetics Company's records:

- (a) You worked \_\_\_\_\_ workweeks for Designer Fragrances & Cosmetics Company in California between April 28, 2016, and <<PRELIM APPROVAL DATE>>;
- (b) There were \_\_\_\_\_ total workweeks worked by employees of Designer Fragrances & Cosmetics Company in California between April 28, 2016, and <<PRELIM APPROVAL DATE>>;
- (c) You worked \_\_\_\_\_ workweeks for Designer Fragrances & Cosmetics Company in California between April 28, 2019, and <<PRELIM APPROVAL DATE>>;
- (d) There were \_\_\_\_\_ total workweeks worked by employees of Designer Fragrances & Cosmetics Company in California between April 28, 2019, and <<PRELIM APPROVAL DATE>>; and
- (e) You <<DID/DID NOT>> separate your employment with Designer Fragrances & Cosmetics Company on or after April 28, 2017.

**Based on the above, your Settlement Share is estimated to be \$\_\_\_\_\_ and your PAGA Amount is estimated to be \$\_\_\_\_\_.**

**(IV) If you disagree with items (a) - (e) in Section (III) above, please explain why in the space provided below and include copies of any supporting evidence or documentation with this form:**

\_\_\_\_\_  
\_\_\_\_\_  
If you dispute the above information from Designer Fragrances & Cosmetics Company's records, those records will control unless you are able to provide documentation that establishes that Designer Fragrances & Cosmetics Company's records are mistaken. If there is a dispute about whether Designer Fragrances & Cosmetics Company's information or yours is accurate, and the dispute cannot be resolved informally, the Parties and the Settlement Administrator will resolve the dispute as described in the Class Notice that accompanies this Form. Any unresolved disputes will be submitted to the Court for a final determination.

**ANY DISPUTES, ALONG WITH ANY SUPPORTING DOCUMENTATION, MUST BE POSTMARKED  
NO LATER THAN <<RESPONSE DEADLINE>>.**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## **OPT-OUT FORM**

*JANELLE BASICH-MUSTAFA v. DESIGNER FRAGRANCES & COSMETICS COMPANY, et al.*  
LOS ANGELES COUNTY SUPERIOR COURT, CASE NO. 20STCV16314

**IF YOU DO NOT WISH TO BE PART OF THE CLASS ACTION SETTLEMENT, YOU MUST COMPLETE, SIGN AND MAIL THIS FORM, POSTMARKED ON OR BEFORE [INSERT DATE], ADDRESSED AS FOLLOWS:**

**PHOENIX SETTLEMENT ADMINISTRATORS  
*BASICH-MUSTAFA V. DESIGNER FRAGRANCES & COSMETICS COMPANY*  
SETTLEMENT ADMINISTRATOR**

**ADDRESS**

**ADDRESS**

**PHONE**

**FAX**

**DO NOT SUBMIT THIS FORM IF YOU WISH TO RECEIVE A PAYMENT UNDER THE SETTLEMENT. PLEASE NOTE THAT EMPLOYEES MAY NOT EXCLUDE THEMSELVES FROM THEIR SHARE OF PAGA CIVIL PENALTIES.**

By signing, filling out, and returning this form, I confirm that I **do not** want to be included in the Settlement of the lawsuit entitled *Janelle Basich-Mustafa v. Designer Fragrances & Cosmetics Company*, Los Angeles County Superior Court Case No. 20STCV16314.

I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *BASICH-MUSTAFA V. DESIGNER FRAGRANCES & COSMETICS COMPANY* LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THE CLASS CLAIMS IN THIS LAWSUIT.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Address

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

Last Four Digits of Social Security Number: \_\_\_\_ \_\_\_\_ \_\_\_\_ \_\_\_\_

**EXHIBIT B**

[ORDER GRANTING PRELIMINARY APPROVAL OF THE SETTLEMENT]

**HAINES LAW GROUP, APC**  
Paul K. Haines (SBN 248226)  
phaines@haineslawgroup.com  
Fletcher W. Schmidt (SBN 286462)  
fschmidt@haineslawgroup.com  
Alexandra R. McIntosh (SBN 320904)  
amcintosh@haineslawgroup.com  
2155 Campus Drive, Suite 180  
El Segundo, California 90245  
Tel: (424) 292-2350  
Fax: (424) 292-2355

**TOJARIEH LAW FIRM, PC**  
Joseph Tojarieh (SBN 265492)  
10250 Constellation Blvd., Suite 100  
Los Angeles, CA 90067  
Tel: (310) 553-5533  
Fax: (310) 553-5536

*Attorneys for Plaintiff*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

JANELLE BASICH-MUSTAFA, as an  
individual and on behalf of all others  
similarly situated,

Plaintiff,

v.

DESIGNER FRAGRANCES &  
COSMETICS COMPANY, a California  
corporation d/b/a NYX Professional  
Makeup; and DOES 1 through 100,

Defendants.

CASE NO. 20STCV16314

*[Case assigned for all purposes to the Hon.  
William F. Highberger, Dept. 10]*

**[PROPOSED] ORDER GRANTING  
PLAINTIFF'S MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

Date: June 2, 2022  
Time: 11:00 a.m.  
Dept.: 10

Action Filed: April 28, 2020  
Trial Date: None Set

1 The Motion of Plaintiff Janelle Basich-Mustafa (“Plaintiff”) for Preliminary Approval of  
2 Class Action Settlement came regularly for hearing before this Court on May 5, 2022, at 11:00  
3 a.m. The Court, having considered the proposed Stipulation of Settlement (the “Settlement”),  
4 attached as Exhibit 1 to the Declaration of Fletcher W. Schmidt filed concurrently herewith;  
5 having considered Plaintiff’s Motion for Preliminary Approval of Class Action Settlement,  
6 Memorandum of Points and Authorities in support thereof, and supporting declarations filed  
7 therewith; and good cause appearing, HEREBY ORDERS THE FOLLOWING:

8 1. The Court GRANTS preliminary approval of the class action settlement as set  
9 forth in the Settlement and finds its terms to be within the range of reasonableness of a settlement  
10 that ultimately could be granted approval by the Court at a Final Approval Hearing. For purposes  
11 of the Settlement, the Court finds that the proposed Settlement Class is ascertainable and that  
12 there is a sufficiently well-defined community of interest among the members of the Settlement  
13 Class in questions of law and fact. Therefore, for settlement purposes only, the Court grants  
14 conditional certification of the following Settlement Class:

15 All current and former non-exempt employees of Defendant  
16 Designer Fragrances & Cosmetics Company (“Defendant” or  
17 “Designer Fragrances & Cosmetics Company”) in California who  
18 worked at any time between April 28, 2016 and the date of  
preliminary approval (the “Class Period”).

19 2. For purposes of the Settlement, the Court designates named Plaintiff Janelle  
20 Basich-Mustafa as Class Representative and designates Paul K. Haines, Fletcher W. Schmidt, and  
21 Alexandra R. McIntosh of Haines Law Group, APC as Class Counsel.

22 4. The Court designates Phoenix Settlement Administrators as the third-party  
23 Settlement Administrator for mailing notices.

24 5. The Court approves, as to form and content, the Class Notice, Notice of  
25 Settlement, and Opt-Out Form attached as a combined Exhibit A to the Class Action Settlement  
26 Agreement and submitted concurrently with Plaintiff’s Motion.  
27  
28

1           6.       The Court finds that the form of notice to the Settlement Class regarding the  
2 pendency of the action and of the Settlement, and the methods of giving notice to members of the  
3 Settlement Class constitute the best notice practicable under the circumstances, and constitute  
4 valid, due, and sufficient notice to all members of the Settlement Class. The form and method of  
5 giving notice complies fully with the requirements of California Code of Civil Procedure § 382,  
6 California Civil Code § 1781, California Rules of Court 3.766 and 3.769, the California and  
7 United States Constitutions, and other applicable law.

8           7.       The Court further approves the procedures for Settlement Class members to opt  
9 out of or object to the Settlement, as set forth in the Opt-Out Form.

10          8.       The procedures and requirements for filing objections in connection with the Final  
11 Fairness Hearing are intended to ensure the efficient administration of justice and the orderly  
12 presentation of any Class Member's objection to the Settlement, in accordance with the due  
13 process rights of all Settlement Class members.

14          9.       The Court directs the Settlement Administrator to mail the Class Notice, Notice of  
15 Settlement Award, and Opt-Out Form (collectively the "Notice Packet") to the members of the  
16 Settlement Class in accordance with the terms of the Settlement. The Court directs the Settlement  
17 Administrator to carry out all duties as required by the Settlement.

18          10.      The Class Notice shall provide at least 60 calendar days' notice for members of  
19 the Settlement Class to opt out of, or object to the Settlement. Any Opt-Out Form or Objection  
20 shall be submitted directly to the Settlement Administrator and not filed with the Court. Upon  
21 receipt of any Opt-Out Form or Objections, the Settlement Administrator shall forward copies of  
22 all Opt-Out Forms and Objections to counsel for all parties. The Settlement Administrator shall  
23 file a declaration concurrently with the filing of the Motion for Final Approval of Class Action  
24 Settlement which authenticates a copy of every Request for Exclusion and Objection received by  
25 the Settlement Administrator. The Settlement Administrator shall give notice to any objecting  
26 Settlement Class member of any continuance of the hearing on Plaintiff's Motion for Final  
27 Approval of Class Action Settlement.

11. The Final Fairness Hearing on the question of whether the Settlement should be finally approved as fair, reasonable, and adequate is scheduled in Department 10 of this Court, located at 312 North Spring Street, Los Angeles, California 90012, on \_\_\_\_\_, 2022, at \_\_\_\_\_ a.m./p.m.

12. At the Final Approval Hearing, the Court will consider: (a) whether the Settlement should be finally approved as fair, reasonable, and adequate for the Settlement Class; (b) whether a judgment granting final approval of the Settlement should be entered; and (c) whether Plaintiff's application for reasonable attorneys' fees, reimbursement of litigation expenses, enhancement payments to Plaintiff, settlement administration costs, and payment to the Labor and Workforce Development Agency ("LWDA") for penalties under the Labor Code Private Attorneys General Act ("PAGA") should be granted.

13. Counsel for the parties shall file memoranda, declarations, or other statements and materials in support of their request for final approval of the Settlement, attorneys' fees, litigation expenses, Plaintiff's enhancement payment, settlement administration costs, and payment to the LWDA for PAGA penalties prior to the Final Approval Hearing according to the time limits set by the Code of Civil Procedure and the California Rules of Court.

14. The implementation schedule is provided below (assuming the Court signs this Order on June 2, 2022):

| Event                                                                                                                                               | Date                                                   |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------|
| Defendant to provide Class Member information to the Settlement Administrator no later than [20 business days after preliminary approval]:          | July 1, 2022                                           |
| Settlement Administrator to mail Notice Packet to Class Members no later than [14 days from receipt of Class Member information]:                   | July 15, 2022                                          |
| Deadline for Class Members to request exclusion from, submit dispute, or object to the Settlement [60 calendar days from mailing of Notice Packet]: | September 13, 2022                                     |
| Deadline for Plaintiff to file Motion for Final Approval of Class Action Settlement:                                                                | At least 16 court days prior to Final Approval Hearing |
| Final Approval Hearing:                                                                                                                             | _____, 2022, at _____ a.m. / p.m.                      |

1 ///

2 ///

3 15. Pending the Final Approval Hearing, all proceedings in this action, other than  
4 proceedings necessary to carry out or enforce the terms and conditions of the Settlement and this  
5 Order, are stayed.

6 16. Counsel for the parties are hereby authorized to utilize all reasonable procedures  
7 in connection with the administration of the Settlement which are not materially inconsistent with  
8 either this Order or the terms of the Settlement.

9 **IT IS SO ORDERED.**

10 Dated: \_\_\_\_\_, 2022

11 \_\_\_\_\_  
12 Honorable William F. Highberger  
13 Judge of the Superior Court  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## **EXHIBIT C**

[FINAL APPROVAL ORDER AND JUDGMENT]

**HAINES LAW GROUP, APC**  
Paul K. Haines (SBN 248226)  
phaines@haineslawgroup.com  
Fletcher W. Schmidt (SBN 286462)  
fschmidt@haineslawgroup.com  
Alexandra R. McIntosh (SBN 320904)  
amcintosh@haineslawgroup.com  
2155 Campus Drive, Suite 180  
El Segundo, California 90245  
Tel: (424) 292-2350  
Fax: (424) 292-2355

**TOJARIEH LAW FIRM, PC**  
Joseph Tojarieh (SBN 265492)  
10250 Constellation Blvd., Suite 100  
Los Angeles, CA 90067  
Tel: (310) 553-5533  
Fax: (310) 553-5536

*Attorneys for Plaintiff*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

JANELLE BASICH-MUSTAFA, as an  
individual and on behalf of all others  
similarly situated,

Plaintiff,

v.

DESIGNER FRAGRANCES &  
COSMETICS COMPANY, a California  
corporation d/b/a NYX Professional  
Makeup; and DOES 1 through 100,

Defendants.

CASE NO. 20STCV16314

*[Case assigned for all purposes to the Hon.  
William F. Highberger, Dept. 10]*

**[PROPOSED] JUDGMENT AND ORDER  
GRANTING PLAINTIFF'S MOTION FOR  
FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT, ATTORNEYS' FEES AND  
COSTS, AND CLASS REPRESENTATIVE  
ENHANCEMENT PAYMENT**

Date:  
Time:  
Dept.: 10

Action Filed: April 28, 2020  
Trial Date: None Set

1 **[PROPOSED] JUDGMENT AND ORDER**

2 The Motion of Plaintiff Janelle Basich-Mustafa (“Plaintiff”) for Final Approval of Class  
3 Action Settlement, Attorneys’ Fees and Costs, and Class Representative Enhancement Payment  
4 (“Final Approval Motion”) came on regularly for hearing before this Court on TBD, 2022, at  
5 TBD a.m., pursuant to California Rule of Court 3.769 and the prior Order Granting Preliminary  
6 Approval of Class Action Settlement. Having considered the parties’ Stipulation of Settlement  
7 (“Settlement”) and the documents and evidence presented in support thereof, and recognizing the  
8 sharply disputed factual and legal issues involved in this case, the risks of further prosecution,  
9 and the substantial benefits to be received by the Settlement Class, as defined herein, pursuant to  
10 the Settlement, the Court hereby makes a final ruling that the proposed Settlement is fair,  
11 reasonable, and adequate, and is the product of good faith, arm’s-length negotiations between the  
12 parties. Good cause appearing therefor, the Court hereby GRANTS Plaintiff’s Final Approval  
13 Motion and HEREBY ORDERS THE FOLLOWING:

14 1. Final judgment is hereby entered in conformity with the Settlement and this Final  
15 Approval Order.

16 2. The conditional class certification is hereby made final, and the Court thus  
17 certifies, for purposes of the Settlement, the following Settlement Class:

18 All current and former non-exempt employees of Defendant Designer  
19 Fragrances & Cosmetics (“Defendant” or “Designer Fragrances &  
20 Cosmetics Company”) in California who worked at any time between April  
21 28, 2016 and <<PRELIM APPROVAL DATE>>, (the “Class Period”).

22 3. As of the date that this Judgment becomes final, all Settlement Class members, by  
23 virtue of this Judgment, will fully release and discharge Defendant Designer Fragrances &  
24 Cosmetics Company, any predecessors and successors in interest, companies acquiring any or all  
25 of Defendant’s assets or capital stock, current or former officers, directors, shareholders, agents,  
26 representatives, and employees of Defendant, any client companies of Defendant for which the  
27 Class Members serviced while employed by Defendant, any current or former parent  
28 corporations, subsidiary corporations, affiliates, and assigns, including but not limited to NYX  
Professional Makeup, Urban Decay Cosmetics, Luxury Beauty Store, Atelier Cologne, and  
Kiehl’s since 1851; current or former officers, directors, shareholders, agents, representatives,

1 and employees of Defendant; and insurers of any of the foregoing persons or entities (collectively  
2 the “Released Parties”) from any and all claims that were pled in the Action, titled *Janelle Basich-  
3 Mustafa v. Designer Fragrances & Cosmetics Company*, Los Angeles County Superior Court  
4 Case No. 20STCV16314, or claims which could have been pled based on the factual allegations  
5 in the Action, that arose during the Class Period (the “Released Claims”). The time period for the  
6 Released Claims will be from April 28, 2016 through the date of preliminary approval.

7 4. Plaintiff Janelle Basich-Mustafa is hereby confirmed as Class Representative. Paul  
8 K. Haines, Fletcher Schmidt, and Alexandra R. McIntosh of Haines Law Group, APC are hereby  
9 confirmed as Class Counsel.

10 5. Notice was mailed to the Settlement Class members for whom addresses were  
11 obtained in English and Spanish as set forth in the Settlement, which was approved by the Court  
12 on May 5, 2021. The notice process has been completed in conformity with the Settlement and  
13 with this Court’s orders. The notice provided due and adequate notice of the proceedings and  
14 matters set forth therein, informed Settlement Class members of their rights, and fully satisfied  
15 the requirements of California Code of Civil Procedure § 1781(e), California Rule of Court 3.769,  
16 and due process.

17 6. The Court finds that \_\_\_\_ members of the Settlement Class objected to or opt-ed  
18 out of the Settlement, and that the \_\_\_\_% participation rate in the Settlement supports final  
19 approval.

20 7. The Court hereby approves the Settlement as set forth in the Settlement Agreement  
21 as fair, reasonable, and adequate, and directs the parties to effectuate the Settlement Agreement  
22 according to its terms.

23 8. For purposes of settlement only, the Court finds that: (a) the members of the  
24 Settlement Class are ascertainable and so numerous that joinder of all members is impracticable;  
25 (b) there are questions of law or fact common to the Settlement Class and there is a well-defined  
26 community of interest among members of the Settlement Class with respect to the subject matter  
27 of the litigation; (c) the claims of the Class Representative are typical of the claims of the members  
28 of the Settlement Class; (d) the Class Representative has fairly and adequately protected the

interests of the Settlement Class members; (e) a class action is superior to other available methods for an efficient adjudication of this controversy; and (f) Class Counsel are qualified to serve as counsel for the Class Representative and the Settlement Class.

9. The Court finds that given the absence of objections, and objections being a prerequisite to appeal, this Order will be considered final as of the date it is signed by this Court.

10. The Court orders that within thirty (14) calendar days after the Effective Date, as that term is defined in the Settlement Agreement, Defendant shall deposit the Gross Settlement Amount of One Million Seven Hundred Fifty Thousand Dollars and No Cents (\$1,750,000.00) into a Qualified Settlement Fund held by the Settlement Administrator, as provided for in the Settlement.

11. The Court finds that the Settlement Awards, as defined and provided for in the Settlement, are fair, reasonable, and adequate, and orders the Settlement Administrator to distribute the individual payments in conformity with the terms of the Settlement.

12. The Court finds that the payment to the State of California Labor and Workforce Development Agency ("LWDA") in the amount of \$37,500.00 for its 75% share of civil penalties under the California Labor Code Private Attorneys General Act ("PAGA") is fair, reasonable and adequate, and orders the Settlement Administrator to distribute this payment to the LWDA in conformity with the terms of the Settlement.

13. The Court finds that the Class Representative Enhancement Payment in the amount of \$7,500.00 to Plaintiff is appropriate in recognition of the risks undertaken by Plaintiff and for Plaintiff's service to the Settlement Class; for the amount of time and effort spent by Plaintiff as the Class Representative; for Plaintiff's general release of claims provided as part of the Settlement Agreement; and for serving the interests of the Class Members. The Court finds that this amount is fair, reasonable, and adequate, and orders that the Settlement Administrator make this payment in conformity with the terms of the Settlement.

14. The Court finds that attorneys' fees in the total amount of \$583,333.33, and actual litigation costs of \$\_\_\_\_, are fair, reasonable, and adequate in light of the common fund provided for the benefit of the Settlement Class, and orders that the Settlement Administrator distribute

1 these payments to Class Counsel in conformity with the terms of the Settlement. The Court finds  
2 that the time devoted to the matter by Class Counsel was reasonably necessary in the investigation  
3 and prosecution of this action and that the fees are appropriately awarded in light of the benefit  
4 provided to the Settlement Class by Class Counsel's efforts.

5 15. The Court orders that the Settlement Administrator shall be paid \$\_\_\_\_\_ from the  
6 Gross Settlement Amount for all of its work done and to be done until the completion of this  
7 matter and finds that sum appropriate.

8 16. Any funds from Individual Settlement Payment checks remaining uncashed after  
9 the 180-day check-cashing deadline shall be transferred to Central American Resource Center  
10 (CARECEN), the parties' agreed-upon *cy pres* designee.

11 17. Pursuant to California Code of Civil Procedure section 664.6 and Rule 3.769(h) of  
12 the California Rules of Court, the Court will retain jurisdiction over this action and the Parties  
13 until final performance of the Settlement Agreement.

14 18. This document will constitute a final judgment pursuant to California Rule of  
15 Court 3.769(h), which provides, "If the court approves the settlement agreement after the final  
16 approval hearing, the court must make and enter judgment. The judgment must include a  
17 provision for the retention of the court's jurisdiction over the parties to enforce the terms of the  
18 judgment. The court may not enter an order dismissing the action at the same time as, or after,  
19 entry of judgment." The Court will retain jurisdiction to enforce the Settlement and this Final  
20 Approval Order and Judgment.

21 19. The Settlement Administrator will make a final report of the Settlement  
22 disbursement and Plaintiff will file the report by \_\_\_\_\_. The Court sets a final distribution  
23 hearing for \_\_\_\_\_, at \_\_\_\_\_ a.m./p.m.

24 **IT IS SO ORDERED.**

25  
26 Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Honorable William F. Highberger  
Judge of the Superior Court

# EXHIBIT 2

**HAINES LAW GROUP**  
**EMPLOYMENT ATTORNEYS**

May 6, 2020

**VIA LWDA WEBSITE**

Labor and Workforce Development Agency  
Attn. PAGA Administrator  
1515 Clay Street, Ste. 801  
Oakland, CA 94612

Re: *Janelle Basich-Mustafa v. Designer Fragrances & Cosmetics Company  
dba NYX Professional Makeup*

To Whom It May Concern:

Please be advised that this law firm represents Janelle Basich-Mustafa in claims arising from her employment with Designer Fragrances & Cosmetics Company dba NYX Professional Makeup, and Does 1 through 100 (collectively “Defendants”). Ms. Basich-Mustafa is an “aggrieved employee” as defined by Labor Code Section 2698 *et seq.*, due to Defendants’ numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Sections 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, “aggrieved employees” includes all of Defendants’ non-exempt employees who worked for Defendants in California during the one year immediately preceding the date of this letter through the present.

Defendants operate a cosmetics brand with several retail stores, warehouse(s) and offices throughout California. Ms. Basich-Mustafa was employed by Defendants as a non-exempt Sales Associate/Key Holder from approximately February 2019 to August 1, 2019 at its retail store located in Sherman Oaks, California.

During Ms. Basich-Mustafa and other aggrieved employees’ employment with Defendants, Defendants required Ms. Basich-Mustafa and other aggrieved employee to undergo security and bag checks off-the-clock. Specifically, at the end of each shift and before employees were allowed to leave the facility, Ms. Basich-Mustafa and other aggrieved employees were required to clock out and then have their bag checked by a manager under a security camera. As the employees’ shifts often ended at around the same time and there were limited managers/security cameras, these security and bag checks often took between 4 to 5 minutes. Defendants did not compensate Ms. Basich-Mustafa and other aggrieved employees for this time that they were subject to the control of the employer. On information and belief, employees working in the warehouse(s) and offices were similarly required to undergo security and bag checks off-the-clock and were not compensated for this time. As a result of Defendants’ failure to compensate for time spent

undergoing security and bag checks, Defendants failed to compensate Ms. Basich-Mustafa and other aggrieved employees all wages owed, including minimum wages and overtimes wages.

Defendants also failed to provide Ms. Basich-Mustafa and other aggrieved employees with all legally compliant meal periods due to Defendants' meal period policies/practices of requiring Ms. Basich-Mustafa and other aggrieved employees to assist its customers without adequately staffing their stores. As a result of these policies/practices, Ms. Basich-Mustafa and other aggrieved employees occasionally were required to take their meal periods after the fifth hour of work and/or were not able to take a full 30-minute meal period. Additionally, due to Defendants' policy/practice of requiring at least one manager and/or one key holder employee to be present at the store at all times, Ms. Basich-Mustafa and other aggrieved key holder employees and managers were required to remain on-premises at all times during their shift, and therefore remain on duty during meal periods. Defendants did not compensate their employees for this time spent working off-the-clock during their meal periods. Moreover, on those occasions when Ms. Basich-Mustafa and other aggrieved employees were not provided with all legally-required and compliant meal periods to which they were entitled, Defendants failed to compensate them with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief, during at least a portion of the relevant time period, Defendants failed to maintain pay codes for the payment of meal period premium payments as required by Labor Code section 226.7.

Defendants failed to permit and authorize Ms. Basich-Mustafa and other key holder and management level aggrieved employees to take all required and legally-compliant rest periods due to Defendants' policy and practice of requiring at least one key holder employee to remain at the store at all times. As Ms. Basich-Mustafa and other aggrieved employees were often the only key holder staffed during their shift, Ms. Basich-Mustafa and other aggrieved employees were required to remain at the store during the entirety of their shift and were unable to take off-duty rest periods of at least ten minutes. On occasions when Ms. Basich-Mustafa and other aggrieved employees were not permitted to take all legally-required and compliant rest periods to which they were entitled, Defendants failed to compensate them with the required rest period premium for each workday in which they experienced a rest period violation as mandated by Labor Code § 226.7. Upon information and belief, during at least a portion of the putative class period, Defendants maintained no payroll code for paying rest period premiums under Labor Code § 226.7.

As a result of Defendants' failure to pay all minimum wages owed, overtime wages owed, and meal and rest period premium wages owed, Defendants failed to timely pay Ms. Basich-Mustafa and other aggrieved employees all wages owed at the time of their respective separations from employment, maintained inaccurate payroll records, and issued inaccurate wage statements to Ms. Basich-Mustafa and other aggrieved employees.

Additionally, Defendants failed to provide Ms. Basich-Mustafa and other aggrieved employees with suitable seats when the nature of their work reasonably permitted use of seats. During Ms. Basich-Mustafa's employment with Defendants, Defendants did not provide Ms. Basich-Mustafa and other aggrieved employees with any seats in the front of the store. As a result, Ms. Basich-Mustafa and other aggrieved employees were required to stand during the entirety of their shift.

As described above, Defendants committed the following violations of the Labor Code, and Industrial Welfare Commission Wage Order 7 ("Wage Order 7"):

#### Minimum Wage Violations

Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes Defendants' failure to pay Ms. Basich-Mustafa and other aggrieved employees for all hours worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 7. Wage Order 7, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. California Labor Code § 1198 makes unlawful the employment of an employee under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

#### Overtime Wage Violations

Defendants were required to pay Ms. Basich-Mustafa and other aggrieved employees overtime wages for all overtime hours worked, as defined in Wage Order 7, § 3. As alleged above, Defendants caused Ms. Basich-Mustafa and other aggrieved employees to work overtime hours but did not properly compensate Ms. Basich-Mustafa and other aggrieved employees for such hours.

#### Meal Period Violations

As alleged above, Defendants failed to provide Ms. Basich-Mustafa and other aggrieved employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 7, § 11. As a result, Ms. Basich-Mustafa and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.").

#### Rest Period Violations

As alleged above, Defendants also failed to authorize and permit Ms. Basich-Mustafa and other aggrieved employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 7, § 12. As a result, Ms. Basich-Mustafa and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest period is not provided.”)

#### Wage Statement Violations

Defendants were required to furnish Ms. Basich-Mustafa and other aggrieved employees with complete and accurate itemized wage statements that showed, among other things, all minimum and overtime wages earned, and all meal and rest period premium wages earned, and the total hours and rates of pay associated with commission overtime payments. *See* Labor Code §§ 226(a). Defendants failure to furnish Ms. Basich-Mustafa and other aggrieved employees with complete and accurate, itemized wage statements resulted in actual injury, and said failures led to, among other things, the non-payment of all wages earned, and deprived them of the information necessary to identify discrepancies in Defendants’ reported data. Defendants’ failure to comply with its wage statement obligations was knowing and intentional, and Ms. Basich-Mustafa and other aggrieved employees have suffered injury as a result.

#### Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Defendants failed to timely pay Ms. Basich-Mustafa and other aggrieved employees all of their final wages at the time of separation, which included all overtime, and minimum wages as well as all meal and rest period premium wages. Pursuant to Labor Code § 203, Defendant’s failure to pay all final wages due to Ms. Basich-Mustafa and other aggrieved employees was willful and, consequently, entitles Ms. Basich-Mustafa and other aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Defendants failed to pay their final wages after their separation, up to a maximum of thirty days.

#### Suitable Seating Violation

Labor Code § 1198 and IWC Wage Order 7 § 14 requires that all working employees be provided with suitable seats when the nature of the work reasonably permits the use of seats. Despite the nature of Ms. Basich-Mustafa’s and other aggrieved

employees' work permitting the use of suitable seats, Defendants failed to provide any suitable seating for its employees.

As an "aggrieved employee," Ms. Basich-Mustafa will initiate a civil action on behalf of herself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Ms. Basich-Mustafa's own investigation, and on information and belief, Defendants committed and continue to commit the following Labor Code violations:

- a. Defendants violated Labor Code §§ 1182.12, 1194, 1194.2, 1197 by failing to pay Ms. Basich-Mustafa and other aggrieved employees the statutory minimum wage for all hours worked;
- b. Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Ms. Basich-Mustafa and other aggrieved employees all overtime compensation earned;
- c. Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide meal periods as required by law and failing to pay meal period premiums to Ms. Basich-Mustafa and other aggrieved employees at the employees' respective regular rates of compensation for meal period violations;
- d. Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to authorize and permit Ms. Basich-Mustafa and other aggrieved employees all required rest periods and failing to pay rest period premiums to Ms. Basich-Mustafa and other aggrieved employees at these employees' respective regular rates of compensation for rest period violations;
- e. Defendants violated Labor Code § 226 by failing to furnish Ms. Basich-Mustafa and other aggrieved employees with accurate and compliant itemized wage statements;
- f. Defendants violated Labor Code §§ 201, 202, and 203 by failing to timely pay all final wages due to Ms. Basich-Mustafa and other aggrieved employees;
- g. Defendants violated Labor Code § 204 by failing to pay Ms. Basich-Mustafa and other aggrieved employees all wages earned at least twice during each calendar month; and
- h. Defendants violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Ms. Basich-Mustafa and other aggrieved employees.
- i. Defendants violated Labor Code § 1198 by failing to provide suitable seats to Ms. Basich-Mustafa and other aggrieved employees.

LWDA  
May 6, 2020  
Page 6 of 6

Pursuant to Labor Code Section § 2699.3(a)(2)(A), please notify us and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,  
HAINES LAW GROUP, APC

A handwritten signature in blue ink, appearing to read "F. W. Schmidt", is centered below the typed name.

Fletcher W. Schmidt

cc: Designer Fragrances & Cosmetics Company dba NYX Professional Makeup (via certified mail)

7019 2280 0000 7680 2848

U.S. Postal Service<sup>TM</sup>  
**CERTIFIED MAIL<sup>®</sup> RECEIPT**  
Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)<sup>®</sup>.

**SACRAMENTO, CA 95833**

**OFFICIAL USE**

Certified Mail Fee  
\$ **\$3.55**

Extra Services & Fees (check box, add fee to postage)

☐ Return Receipt (hardcopy)

\$ **\$0.00**

☐ Return Receipt (electronic)

\$ **\$0.00**

☐ Certified Mail Restricted Delivery

\$ **\$0.00**

☐ Adult Signature Required

\$ **\$0.00**

☐ Adult Signature Restricted Delivery

\$ **\$0.00**

Postage  
\$ **\$0.70**

Total Postage  
\$ **\$4.25**

Postmark  
Here  
6 JUN 2010  
EL SEGUNDO, CA  
95745-9998

Sent To  
Company  
c/o CSC - Lawyers Incorporation Service  
Street and Ap  
2710 Gateway Oaks Dr., Ste. 150N  
City, State, Zi  
Sacramento, CA 95833 (JR)

PS Form 3800, April 2010 PSN 7530-02-000-9047 See Reverse for Instructions

# EXHIBIT 3