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11 Attorneys for Plaintiffs KATHERINE BOOKOUT-VARNER, SARA LASHKARI, and JENNIFER
12 CORDEAU, in a Representative capacity only, and on behalf of other members of the general public
13 similarly situated

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **COUNTY OF SAN DIEGO**

16 KATHERINE BOOKOUT-VARNER,
17 SARA LASHKARI, and JENNIFER
18 CORDEAU, in a Representative capacity
19 only, and on behalf of other members of the
20 general public similarly situated,

21 Plaintiff

22 v.

23 STITCH FIX, INC., a Delaware Corporation;
24 and DOES 1-10, inclusive

25 Defendants

CASE NO. 37-2020-00027926-CU-OE-CTL

(Representative Action only)

**DECLARATION OF ERIC K. YAECKEL
IN SUPPORT OF PLAINTIFF'S
UNOPPOSED EX PARTE APPLICATION
RE: PAGA SETTLEMENT APPROVAL**

Date: November 17, 2020

Time: 9:00 a.m.

Judge: Hon. Katharine Bacal

Dept.: C-69

1 I, Eric K. Yaeckel, hereby declare as follows:

- 2 1. I am an attorney licensed to practice law before this Court and am an employed at the law firm
3 of Sullivan Law Group, APC, attorneys of record for Plaintiffs in the above-captioned matter.
4 I make this declaration regarding Plaintiffs' **Unopposed Ex Parte** Request re Settlement
5 Approval.
6 2. I have personal knowledge of the facts set forth in this declaration and, if called to testify as
7 a witness, I could and would do so.

8 **Summary of Application**

- 9 3. As this is a "PAGA" action only, the Limitations Period begins on June 3, 2019. There are a
10 total of approximately 1,820 PAGA Settlement Employees at issue.
11 4. Following the exchange of informal discovery, analysis of numerous sets of time and wage
12 data, and a full day Mediation presided over by Tripper Ortman, Esq., the parties reached a
13 proposed settlement that includes a settlement payment to the LWDA to resolve the PAGA
14 claims. Attached hereto as **Exhibit 1** is a true and correct copy of the PAGA Settlement
15 Agreement.
16 5. On **October 30, 2020**, Plaintiff's counsel first notified the LWDA of the settlement proposal
17 by filing the parties Memorandum of Understanding. As with all uploads to this filing portal,
18 Plaintiff's counsel immediately received an auto-generated email that its submission was
19 received. Attached hereto as **Exhibit 2** is a true and correct is a true and correct copy of the
20 auto-generated E-Mail.
21 6. On **November 9, 2020**, at approximately 3:10 p.m., Plaintiff's counsel uploaded via the
22 LWDA's electronic filing portal the Settlement Agreement that is being presented to this
23 Court. Our office also provided notice of this hearing at that time. As with all uploads to this
24 filing portal, Plaintiff's counsel immediately received an auto-generated email that its
25 submission was received. Attached hereto as **Exhibit 3** is a true and correct is a true and
26 correct copy of the auto-generated E-Mail.
27 7. Finally, on **November 13, 2020**, at approximately 2:45 p.m., Plaintiff's counsel uploaded via
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the LWDA's electronic filing portal copies of this entire ex parte application. As with all uploads to this filing portal, Plaintiff's counsel immediately received an auto-generated email that its submission was received. Attached hereto as **Exhibit 4** is a true and correct copy of the auto-generated E-Mail.

8. As is reflected in the Settlement Agreement, the Total Value of the proposed Settlement is **\$600,000.00** which is broken down as follows:

- * **\$8,000** Settlement Administrator Fees;
- * **\$200,000** Attorneys' Fees (1/3 of total settlement value);
- * **\$12,500** Costs of Litigation.¹
- * Sub-Total of **\$379,500.**
- 75% (**\$284,625**) shall be assigned/paid to the LWDA as penalties.
- 25% (**\$94,855**) shall be assigned and disbursed among all nonexempt employees based on work weeks employed during the PAGA period.

Given the above, the average payment to each individual employee will be approximately **\$52.12**. This average was taken by dividing the 25% share by the total number of employees. Pursuant to the Settlement Terms employees actual shares will vary, as they are determined by the amount of pay periods worked within the limitations period. (See Ex. 1: § (IV)(2)).

9. The release of claims is limited to PAGA claims only. Additionally, as was confirmed in an exchange prior to mediation, the vast majority of these employees had already signed severance agreements which prevented them from filing individual claims.

10. Plaintiff's Counsel is cognizant of Her Honor's concerns regarding adequate notice to the LWDA of the hearing. Plaintiff's Counsel contacted the Court Clerk for Department C-69, who graciously informed Plaintiff's Counsel that the first or second available *Ex Parte* date must be taken. The furthest date Plaintiff could schedule was this November 17, 2020 date for purposes of provided notice to the LWDA. The notice given on November 9, 2020 afforded

¹ While the Settlement Agreement calls for up to \$13,000 in costs, Plaintiffs limit their request to actual costs incurred in the amount of \$12,500.

the LWDA with 8 days of notice of the hearing.

Basis for *Ex Parte* Application

11. The instant *Ex Parte* request is based on the fact that (1) the PAGA period “cutoff date” is contingent on Court approval, any delay diminishes the amounts received by the impacted employees; (2) Notice to certain ex-employees may be adversely impacted by further delay (*i.e.* recent layoffs accrued which means the entire employee group are ex-employees who may change their mailing address without providing any notice to the employer of a new address and may fail to file a proper “forwarding address”).
12. An expedient approval of this settlement will provide a direct benefit to the impacted employees at issue. There is no risk of future Labor Code non-compliance and employees and the state receive an immediate monetary benefit. It also allows Defendant the opportunity to move on, and focus on future business

The Nature And Scope Of The Alleged Violations

13. The Complaint on file (along with the attached LWDA letter) specifies the broad allegations. (See ROA # 1.) To summarize, Plaintiffs alleged that they - and other Stylists- were pressured to work “off the clock” and work through and during meal and rest breaks due to company metrics which they alleged required Stylists to complete a certain amount of tasks per hour. Plaintiffs also alleged, inter alia, that the reimbursement provided for the remote work set up, was insufficient to cover all actual costs incurred.

Analysis of Potential Liability, On A Representative Basis

14. The catalyst of this litigation concerned allegations that Plaintiffs were forced to work off the clock and were forced to work through their breaks.
15. Investigations completed by our office revealed some instances of uncompensated work time. However, these investigations also revealed that the "rate of violation" by Defendant was significantly less than 100%. On many of those occasions, it appears that Defendant did, in fact, comply with the law. Further, Defendant contends that it maintained compliant policies, compensated employees for all time worked, paid meal break premiums, and did not require

1 or permit off the clock work for any reason. Further, Defendant contends that to the extent off
2 the clock work occurred, there is no evidence that it knew or should have known about the
3 alleged off the clock work.

4 16. Based on the above, the maximum liability in a case of this type would be in the range of
5 **\$600,000.00 to \$900,000.00.**

6 17. Our office is aware of the Court's discretion to significantly reduce the award of PAGA
7 penalties pursuant to California Labor Code section 2699(e)(2). To confirm, Plaintiffs'
8 counsel experienced the mitigation of "PAGA" penalties in *Carrington v. Starbucks Corp.*
9 (2018) 30 Cal.App.5th 504. In *Carrington*, Her Honor significantly mitigated PAGA penalties
10 (\$5 per violation), due to the efforts made by the employer to comply with the law.

11 18. Our office agrees with Her Honor, and with the provision of the Labor Code, that penalties
12 should be mitigated where violations are minimal, or where the employer makes significant
13 efforts to comply with the Labor Code.

14 19. The above exists in this case, it is the opinion of myself and our office that the settlement is
15 fair, adequate, and reasonable. Moreover, upon notice of the potential violations, Defendant
16 immediately stepped up to address the claims and participate in an early mediation.

17 **Experience of Counsel**

18 20. Plaintiffs' counsel, William B. Sullivan has approximately 27 years of experience in "class
19 action" and representative action litigation, both as plaintiff and defense counsel. I personally,
20 have over 9 years experience prosecuting class and representative action claims under the
21 California Labor Code. Counsel are the attorneys of record in a matter currently pending before
22 the California Supreme Court titled *Donohue v. AMN Services* (S253677). The *Donohue* matter
23 is a certified class and PAGA action. Plaintiffs', are currently lead counsel on approximately
24 40 employment "wage and hour" claims with class action, or representative actions allegations.
25 Based on said experience, it is the opinion of Plaintiffs' counsel that this settlement represents
26 a fair and adequate payment.

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Exhibit 1

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement”) is made and entered into between Plaintiffs Katherine Bookout-Varner, Sara Lashkari and Jennifer Cordeau (“Plaintiffs”), acting in their capacity as private attorneys general, and Defendant Stitch Fix, Inc. (“Defendant”).

I. DEFINITIONS

The following terms, when used in this Settlement Agreement, shall have the following meanings:

1. “Action” means the action filed in San Diego County Superior Court entitled *Katherine Bookout-Varner et al. v. Stitch Fix, Inc.*, Case No. 37-2020-00027926.

2. “Attorneys’ Fees and Costs” means the total amount of Two Hundred Thousand Dollars (\$200,000) (33 & 1/3 % of the Gross Settlement Amount) which shall be paid to Plaintiffs’ Counsel for payment of attorneys’ fees, and Thirteen Thousand Dollars (\$13,000) which shall be paid to Plaintiffs’ Counsel as reimbursement for their actual out-of-pocket costs incurred in prosecuting the Action.

3. “Court” means San Diego County Superior Court.

4. “Date of Settlement Approval” means the date the Court issues an order approving the settlement terms and enters Judgment in the Action.

5. “Effective Date” means the date of the Notice of Entry of Order approving the settlement terms and entering Judgment in the Action.

6. “Individual PAGA Payment” means the proportional pro rata share to be paid to each of the PAGA Settlement Employees out of 25% of the PAGA Payment attributable to civil penalties under Labor Code section 2699, with such individual shares to be based on the number of pay periods during which a PAGA Settlement Employee worked during the PAGA Period. The PAGA Settlement Employees will be issued an IRS Form 1099 for their Individual PAGA Payments.

7. “LWDA” means the California Labor Workforce Development Agency.

8. “Gross Settlement Amount” means the total of Six Hundred Thousand Dollars (\$600,000). The Gross Settlement Amount is the maximum amount that Defendant may be required to pay under this Settlement Agreement. The Gross Settlement Amount will pay Administration Costs, Attorneys’ Fees and Costs, and the PAGA Payment. The Gross Settlement Amount shall be all-in with no reversion to Defendant.

9. “PAGA” means the California Labor Code Private Attorneys General Act, California Labor Code sections 2698 *et seq.*

10. “PAGA Payment” means the Gross Settlement Amount less Attorneys’ Fees and Costs and the Administration Costs. The entirety of the PAGA Payment shall be allocated to civil

penalties under Labor Code section 2699, with 75% of the PAGA Payment going to the LWDA and 25% going to the Individual PAGA Payments.

11. “PAGA Period” means the time period from June 3, 2019 through the Date of Settlement Approval.

12. “PAGA Settlement Employees” consists of all current and former non-exempt Stylists (and similar roles) who worked in the Styling Organization in California during the PAGA Period.

13. “Parties” means Plaintiffs Katherine Bookout-Varner, Sara Lashkari and Jennifer Cordeau and Defendant Stitch Fix, Inc.

14. “Plaintiffs’ Counsel” means the law firm of Sullivan & Yaeckel Law Group, APC.

15. “Released Parties” means Defendant, including past, present, and future divisions, affiliates, parents, subsidiaries, predecessors, successors, assigns, shareholders, members, owners, officers, directors, managers, employees, agents, principals, trustees, attorneys, accountants, representatives, administrators, fiduciaries, beneficiaries, subrogees, executors, partners, insurers and privies.

16. “Settlement Administrator” means Simpluris, which will administer the settlement and shall be paid for settlement administration costs (“Administration Costs”), which are estimated to be up to Eight Thousand Dollars (\$8,000).

II. RECITALS

1. Plaintiffs were employed by Defendant as non-exempt Stylists during the PAGA Period.

2. On June 3, 2020, Plaintiffs’ Counsel, on behalf of Plaintiffs, sent a letter to the LWDA notifying the LWDA that Plaintiffs intended to pursue claims against Defendant under PAGA for violation of California Labor Code Sections 201-203, 221, 226, 226(a), 226.7, 510, 512, 1194 and 2802, as well as IWC Wage Order 7, codified as Title 8, California Code of Regulations Section 11070, or any other applicable Wage Order.

3. On August 10, 2020, Plaintiffs filed their representative action Complaint in San Diego County Superior Court, which asserted claims for penalties under PAGA for alleged meal and rest break, minimum wage, overtime compensation, wage statement, unreimbursed business expenses and final pay violations.

4. On October 27, 2020, following a mediation with respected neutral mediator Tripper Ortman, the Parties agreed to fully and finally resolve the Action.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

1. **Non-Admission and Denial of Liability.** Nothing in this Settlement Agreement shall be construed to be an admission by Plaintiffs that their representative claims do not have merit or by Defendant of any liability or wrongdoing as to Plaintiffs, the PAGA Settlement Employees, or any other person. Defendant specifically disclaims and denies any such liability or wrongdoing alleged in the Action. Further, it is Defendant's position that if this Action were to be litigated, a representative action would be inappropriate. The Parties have entered into this Settlement Agreement solely to avoid further disputes and litigation with the attendant inconvenience, nuisance, expenses, and risks. This Settlement Agreement and any related court documents or orders are not and may not be cited or admitted as evidence of liability or wrongdoing by Defendant. The Parties agree that an express condition of this Settlement Agreement is that there has been no finding of liability on the merits, and that this Settlement Agreement therefore cannot be a basis to assert offensive collateral estoppel against Defendant. Notwithstanding the foregoing, nothing in this Settlement Agreement shall limit Defendant's use of the Judgment to establish res judicata and/or collateral estoppel in any other action.

2. **Deposit of Gross Settlement Amount; Verification.** Within seven (7) business days after the Effective Date, Defendant shall deposit with the Settlement Administrator the Gross Settlement Amount.

3. **Components of the Gross Settlement Amount.** The Parties agree to the following allocations to be paid from the Gross Settlement Amount:

a. **PAGA Payment:** The PAGA Payment shall be paid in settlement of the PAGA Released Claims. Should the amount of the PAGA Payment increase or decrease, the amount to be distributed shall be adjusted accordingly. The PAGA Payment will be subject to Court approval consistent with Labor Code section 2699. The PAGA Payment shall be distributed as follows:

- (1) The LWDA shall receive 75% of the PAGA Payment; and
- (2) The PAGA Settlement Employees shall receive 25% of the PAGA Payment, which shall be allocated pursuant to the method identified in Paragraph IV.2 below.

b. **Attorneys' Fees and Costs.** The Attorneys' Fees and Costs payment shall be paid in accordance with the approval of the Court. This payment of Attorneys' Fees and Costs constitutes full satisfaction of any obligation to pay any amounts to any attorney or law firm for attorneys' fees, expenses or costs incurred by any attorney on behalf of Plaintiffs, PAGA Settlement Employees and/or the State of California in connection with the Action, and shall relieve Defendant and Defendant's counsel of any other claims or liability to any other attorney or law firm for attorneys' fees, expenses and/or costs to which any of them may claim to be entitled on behalf of Plaintiffs, PAGA Settlement Employees and/or the State of California in connection with the Action. Defendant shall take no position with respect to Plaintiffs' request for Attorneys' Fees and Costs. If the Court approves a lower amount in fees or costs, the difference will be added to the PAGA Payment. This payment will be reported on an IRS Form 1099 issued to Plaintiffs' Counsel. Except as set forth herein, each Party shall bear their own costs and fees of this Action.

c. **Administration Costs.** Administration Costs shall include the cost of the Settlement Administrator selected by the Parties to administer the settlement in the amount of up to \$8,000. In the event that Court approval of these payments is required and a payment of less than \$8,000 is approved, or if the actual cost to administer the settlement is less than \$8,000, the difference will be added to the PAGA Payment.

4. **Release.**

a. **Release by Plaintiffs on Behalf of the LWDA.** In their capacities as private attorneys general “aggrieved employees” acting on behalf of themselves and as proxies or agents of the LWDA, Plaintiffs agree to release Defendant and the other Released Parties, from any and all PAGA Released Claims that arose during the PAGA Period. The express purposes of this Settlement Agreement and the Judgment to be entered by the Court following approval of this Settlement Agreement is to forever bar Plaintiffs, the LWDA, and any other individual or entity acting on behalf of or purporting to act on behalf of the LWDA from asserting any of the PAGA Released Claims in any future litigation. It is the intent of the Parties that, to the greatest extent provided by law, including under the holding of *Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009), the ability of Plaintiffs, the State of California and any PAGA Settlement Employee (which includes any legal heirs and/or successors in interest of each and every PAGA Settlement Employee, including Katherine Bookout-Varner, Sara Lashkari and Jennifer Cordeau) to bring a PAGA Released Claim on behalf of the LWDA is completely and forever foreclosed. Any Party to this Settlement Agreement may use the Settlement Agreement to assert that this Settlement Agreement and the Judgment to be entered by the Court following approval of this Settlement Agreement bars any later-filed action asserting any of the PAGA Released Claims against any of the Released Parties. The provisions of this paragraph apply regardless of whether Plaintiffs and/or the PAGA Settlement Employees cash their Individual PAGA Payment checks, so long as the Gross Settlement Amount is administered and carried out according to this Settlement Agreement.

b. **PAGA Released Claims.** “PAGA Released Claims” means any and all claims or causes of action for civil penalties, attorneys’ fees, or costs under PAGA alleged in the Action, or that could have been alleged in the Action, that are based on the alleged meal and rest break, minimum wage, overtime compensation, wage statement, unreimbursed business expenses and final pay violations, and any resulting claim for penalties as alleged in the Complaint and/or in Plaintiffs’ pre-litigation notice to the LWDA through the Date of Settlement Approval. The Parties agree that, beyond the Gross Settlement Amount, Defendant shall not owe any further monies to the PAGA Settlement Employees, the LWDA, or to Plaintiffs’ counsel based on the PAGA Released Claims.

5. **Covenants and Representations by Plaintiffs.**

a. Plaintiffs represent and warrant that they have not assigned or transferred or purported to assign or transfer to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Settlement Agreement.

b. Plaintiffs acknowledge that they have read this Settlement Agreement, that they fully understand their rights, privileges and duties under the Settlement Agreement, and enter

into this Settlement Agreement freely and voluntarily. Plaintiffs further acknowledge that they have had the opportunity to consult with their attorneys to explain the terms of this Settlement Agreement and the consequences of signing this Settlement Agreement.

6. **No Press Releases.** Neither Party nor its/their counsel shall issue a press release concerning the settlement and/or this Settlement Agreement except as required by law. This does not preclude the Parties from filing with the Court documents (including this Settlement Agreement) necessary to obtain Court approval pursuant to PAGA.

7. **Court Approval.** Subject to Defendant's review and approval prior to filing, Plaintiffs' Counsel shall be responsible for preparing and filing an *Ex Parte* Application for Approval of the Settlement Agreement and taking any steps necessary for the Court to enter Judgment and Dismissal of the Action. Plaintiffs' Counsel will provide Defendant's counsel with a draft of that *Ex Parte* Application at least two business days prior to filing to provide Defendant with an opportunity to comment on and propose revisions to that Application before it is filed. That Application shall also be served on the LWDA when it is filed with the Court. The *Ex Parte* Hearing shall be scheduled for a mutually available date for the Parties. Plaintiffs agree to undertake any efforts necessary for the Court to enter Judgment. Within ten (10) days of the Judgment, Plaintiffs shall submit a copy of the Judgment to the LWDA consistent with Labor Code section 2699(1)(3).

8. **Non-Approval of Settlement Agreement.** Because settlement of the Action requires Court approval pursuant to Labor Code section 2699(1)(2), the Settlement Agreement is conditional and contingent upon approval and entry of Judgment. If the Court does not approve this Settlement Agreement, or if appellate review is sought and on such review the Court's decision is materially modified or reversed, then each of the Parties by and through Counsel, will cooperate with each other and use their best efforts to revise the affected term(s) of the Settlement Agreement. If, however, the Court does not approve the Gross Settlement Amount or any language in Paragraph III.4, either Party shall have the right within ten (10) days of written notice thereof to elect to terminate the Settlement Agreement, in which event it shall have no force or effect, and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of this Settlement Agreement. A reduction by the Court or on appeal as to the amount of Attorneys' Fees and Costs allocated herein does not provide a basis for terminating this Settlement Agreement.

IV. ADMINISTRATION OF SETTLEMENT

1. **Settlement Administrator.** Simpluris will administer the settlement and shall be paid for Administration Costs, which are estimated to be up to \$8,000. The Settlement Administrator's duties shall include the following: update addresses for PAGA Settlement Employees via the USPS National Change of Address database and perform a skip tracing process to determine the best, most recent address prior to distribution of the Gross Settlement Amount; determine Individual PAGA Payment amounts for each PAGA Settlement Employee; distribute Individual PAGA Payments to PAGA Settlement Employees; re-mail undeliverable Individual PAGA Payment checks; distribute payments for Attorneys' Fees and Costs to Plaintiffs' Counsel;

make payment to the LWDA for its 75% share of the PAGA Payment; and perform related tax, accounting, and administration services.

2. **Individual PAGA Payments.** The Settlement Administrator will pay PAGA Settlement Employees 25% of the PAGA Payment as their portion of the recovery of civil penalties under PAGA. Each PAGA Settlement Employee's Individual PAGA Payment will be calculated and apportioned based on the number of Pay Periods a PAGA Settlement Employees worked during the PAGA Period. Specific calculations of Individual PAGA Payments will be made as follows:

a. Based on its records, Defendant will calculate the total number of Pay Periods worked by each PAGA Settlement Employee during the PAGA Period and the aggregate total number of Pay Periods worked by all PAGA Settlement Employees during the PAGA Period.

b. The Settlement Administrator will use the following formula: 25% of the PAGA Payment will be divided by the aggregate total number of Pay Periods, resulting in the "Pay Period Value". Each PAGA Settlement Employee's Individual PAGA Payment will be calculated by multiplying each PAGA Settlement Employee's total number of Pay Periods by the Pay Period Value.

3. **PAGA Settlement Employee Information.** Defendant will provide the necessary information about the PAGA Settlement Employees (i.e., full name, last known address, social security number, and number of Pay Periods worked during the PAGA Period) to the Settlement Administrator within fourteen (14) calendar days of the Effective Date.

4. **Distribution of Gross Settlement Amount.**

a. Within ten (10) business days after receipt of the Gross Settlement Amount from Defendant, the Settlement Administrator will issue to each PAGA Settlement Employee at their last known address a check for their Individual PAGA Payment, along with an explanatory letter (the Parties have agreed on the form of the letter, which is attached as Exhibit A and incorporated herein by reference). Checks will remain negotiable for one hundred eighty (180) days. Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address or Social Security number of the PAGA Settlement Employee involved, and will then perform a single re-mailing. The Settlement Administrator shall mail a check-cashing reminder postcard to those PAGA Settlement Employees who have not negotiated their Individual PAGA Payment checks within ninety (90) days of mailing. Funds represented by settlement checks returned as undeliverable and those settlement checks remaining uncashed for more than 180 days after issuance shall be deposited by the Settlement Administrator with the California State Controller to be deposited in the Unclaimed Property Fund in the name of the PAGA Settlement Employee. A PAGA Settlement Employee's failure to claim or deposit any check issued by the Settlement Administrator shall

have no effect on that PAGA Settlement Employee's release of all Released Claims set forth herein.

b. Within five (5) business days after receipt of the Gross Settlement Amount from Defendant, the Settlement Administrator will pay from the Gross Settlement Amount to the LWDA the amount allocated to the LWDA, and will pay to Plaintiffs' Counsel the Attorneys' Fees and Costs as approved by the Court. The Settlement Administrator shall use the Administration Costs to pay for any fees and costs associated with the administration of this settlement and distribution of the Gross Settlement Amount.

c. No person shall have any claim against Defendant, Defendant's counsel, Plaintiff, the PAGA Settlement Employees, Plaintiff's Counsel or the Settlement Administrator based on mailings, distributions and payments made in accordance with this Settlement Agreement.

5. **No Right to Object.** Because the Action is a PAGA action and Plaintiffs are pursuing the Action on behalf of the State of California, the Parties agree that PAGA Settlement Employees have no right to object to the Settlement.

6. **No Right to Opt Out.** Because the Action is a PAGA action and Plaintiffs are pursuing the Action on behalf of the State of California, the Parties agree that no PAGA Settlement Employee has the right to opt out of the Settlement.

7. **Accounting.** The Settlement Administrator will provide an accounting under oath to the Parties of the amounts paid out.

8. **No Change in Benefits.** The Individual PAGA Payments paid to PAGA Settlement Employees shall be deemed not to be "pensionable" earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (*i.e.* vacation, retirement plans, etc.) of the PAGA Settlement Employees. The Parties agree that any Individual PAGA Payments under the terms of this Settlement Agreement do not represent any modification of PAGA Settlement Employees' previously credited hours of service or other eligibility criteria under any employee pension benefit plan, employee welfare benefit plan, or any other plan or program. Further, any Individual PAGA Payments paid hereunder shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan, employee welfare benefit plan, or any other plan or program sponsored by Defendant. No benefit, including but not limited to 401k benefits, shall increase or accrue as a result of any payment made as a result of this Settlement.

9. **No Tax Representations.** The Parties agree that all tax obligations, if any, which may arise from the payments set forth above shall be the sole obligation of Plaintiffs and/or PAGA Settlement Employees. Plaintiffs acknowledge that Defendant makes no representations or warranties with respect to any tax consequences or characterization of the nature of any payment under this Settlement Agreement.

V. MISCELLANEOUS PROVISIONS

1. **Stay of Litigation.** The Parties agree to stay this litigation, except to the extent necessary to complete, finalize and implement this Settlement Agreement.

2. **Drafting.** The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that neither Party shall be considered the "drafter" of this Settlement Agreement for purposes of having terms construed against that Party.

3. **Successors.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and her/its respective heirs, trustees, executors, administrators, successors, and assigns.

4. **Costs and Fees.** The Parties shall each bear their own costs, attorneys' fees, and other fees incurred in connection with this Settlement Agreement and in connection with the Action, except as otherwise set forth specifically herein.

5. **Privacy of Documents and Information.** Plaintiffs and Plaintiffs' Counsel agree that they will destroy all confidential documents and information provided to them by Defendant within thirty (30) days of the Effective Date, except for documents that must be saved for malpractice purposes or ethical rules governing attorney conduct in California and the United States. Plaintiffs and Plaintiffs' Counsel further agree that none of the documents and information provided to them by Defendant shall be used for any purpose other than prosecution of this Action or the defense or prosecution of a malpractice action or defense of any state bar complaint.

6. **Authority.** Defendant represents and warrants that the undersigned has the authority to act on behalf of Defendant and to bind Defendant to the terms of this Settlement Agreement. Plaintiffs represent and warrant that they have the capacity to act on their own behalf and on behalf of all who might claim through them to bind them to the terms and conditions of this Settlement Agreement, including each and every PAGA Settlement Employee (which includes any legal heirs and/or successors-in-interest of each and every PAGA Settlement Employee) and the LWDA.

7. **Governing Law.** This Settlement Agreement shall be construed under and governed by the laws of the State of California. This Settlement Agreement shall be deemed to have been entered into in California and all questions of validity, interpretation or performance of any of its terms or of any rights or obligations of the parties to this Settlement Agreement shall be governed by California law. If any legal or equitable action or arbitration is necessary to enforce the terms of this Settlement Agreement, it shall be brought in the Court.

8. **Complete Agreement.** The Parties each acknowledge and represent that no promise or representation not contained in this Settlement Agreement has been made to them and acknowledge and represent that this Settlement Agreement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the claims. This Settlement Agreement cannot be amended or modified except by a writing

signed by the Parties hereto or their successors-in-interest.

9. **Nullification of Settlement Agreement.** In the event that: (i) the Court does not approve the Settlement Agreement and enter Judgment as provided herein; or (ii) the Settlement Agreement does not become final for any other reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their original respective positions.

10. **Judgment and Continued Jurisdiction.** Following the Judgment, the Court will have continuing jurisdiction solely for purposes of enforcing the Judgment.

11. **Execution and Counterparts.** This Settlement Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including electronic, facsimile, and scanned copies of the signature page, will be deemed to be one and the same instrument.

12. **Acknowledgement That the Settlement is Fair and Reasonable.** The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action, acknowledging that the Court “may award a lesser amount than the maximum civil penalty amount specified by” PAGA “if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code § 2699(e)(2). The Parties have arrived at this Settlement Agreement after arm’s-length negotiations by experienced counsel during mediation with an experienced mediator. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement Agreement.

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

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

15. **Severability.** If any term or provision of this Settlement Agreement is held to be invalid or unenforceable, the remaining portions of this Settlement Agreement will continue to be valid and will be performed, construed, and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Settlement Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

16. **Representation by Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement

Agreement, and that this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

17. **Cooperation, Execution of Necessary Documents and Disputes.** The Parties and their counsel will cooperate with each other in good faith and use their best efforts to effect the implementation of the Settlement Agreement and receive approval from the Court. The Court will retain continuing jurisdiction as to the implementation of the Settlement Agreement, interpretation of the Settlement Agreement, the form or content of any document needed to implement the Settlement Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement Agreement.

18. **Binding Agreement.** The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms. The Parties further agree that, as of the Effective Date, Plaintiffs, all other PAGA Settlement Employees, the LWDA, and Defendant shall be bound by this Settlement Agreement as to the Action.

19. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of the Settlement Agreement, Plaintiffs, PAGA Settlement Employees, the LWDA, and Defendant, inclusive, hereby waive any and all rights to appeal in connection with the Judgment, with the exception that Plaintiffs and/or Plaintiffs' Counsel may appeal any order denying or reducing their requested Attorneys' Fees and Costs.

IN WITNESS THEREOF, the Parties each acknowledge that she/it has read the foregoing Settlement Agreement, accepts and agrees to the provisions contained in this Settlement Agreement and hereby executes it voluntarily and with full understanding of its consequences.

Dated: 11/13/2020

KATHERINE BOOKOUT-VARNER

By: 
Plaintiff

Dated: _____

SARA LASHKARI

By: _____
Plaintiff

Dated: _____

JENNIFER CORDEAU

By: _____
Plaintiff

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Dated: _____

KATHERINE BOOKOUT-VARNER

By: _____
Plaintiff

Dated: _____

SARA LASHKARI

By: _____
Plaintiff

Dated: 11/13/20

JENNIFER CORDEAU

By: _____
Plaintiff

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Dated: _____

KATHERINE BOOKOUT-VARNER

By: _____
Plaintiff

Dated: _____

SARA LASHKARI

By: Sara Lashkari
Plaintiff

Dated: _____

JENNIFER CORDEAU

By: _____
Plaintiff

Dated: _____

STITCH FIX, INC.

By: _____

Casey O'Connor
Vice President, Legal of Stitch Fix, Inc.

APPROVED AS TO FORM:

Dated: _____

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: _____

Jessica R. Perry
Allison Riechert Giese
Attorneys for Defendant

Dated: _____

SULLIVAN & YAECKEL LAW GROUP, APC

By: _____

Eric Yaeckel
Attorneys for Plaintiffs

Signature: Sara Lashkari
Sara Lashkari (Nov 13, 2020 12:59 PST)

Email: lashkar13@gmail.com

Stitch Fix.Bookout - FINAL PAGA-Only Settlement Agreement FOR SIGNATURE (002)

Final Audit Report

2020-11-13

Created:	2020-11-13
By:	Eric Yaeckel (yaeckel@gmail.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAASrFXBa_xomB2ZGLHC2XzUo3j7xgs7C1k

"Stitch Fix.Bookout - FINAL PAGA-Only Settlement Agreement FOR SIGNATURE (002)" History

-  Document created by Eric Yaeckel (yaeckel@gmail.com)
2020-11-13 - 7:23:46 PM GMT- IP address: 174.79.253.239
-  Document emailed to Sara Lashkari (lashkar13@gmail.com) for signature
2020-11-13 - 7:24:23 PM GMT
-  Email viewed by Sara Lashkari (lashkar13@gmail.com)
2020-11-13 - 8:59:29 PM GMT- IP address: 66.249.84.193
-  Document e-signed by Sara Lashkari (lashkar13@gmail.com)
Signature Date: 2020-11-13 - 8:59:54 PM GMT - Time Source: server- IP address: 172.89.168.104
-  Agreement completed.
2020-11-13 - 8:59:54 PM GMT

Dated: 11.9.2020

STITCH FIX, INC.

By: 
Casey O'Connor
Vice President, Legal of Stitch Fix, Inc.

APPROVED AS TO FORM:

Dated: 11/10/2020

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: 
Jessica R. Perry
Allison Riechert Giese
Attorneys for Defendant

Dated: 11/13/2020

SULLIVAN & YAECKEL LAW GROUP, APC

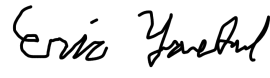
By: 
Eric Yaeckel
Attorneys for Plaintiffs

Exhibit 2

From: [FormAssembly](#) on behalf of [DIR PAGA Unit](#)
To: [Eric Yaeckel](#)
Subject: Thank you for your Proposed Settlement Submission
Date: Friday, October 30, 2020 11:28:48 AM

10/30/2020 11:28:36 AM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

Exhibit 3

From: [FormAssembly](#) on behalf of [DIR PAGA Unit](#)
To: [Eric Yaeckel](#)
Subject: Thank you for your Proposed Settlement Submission
Date: Monday, November 9, 2020 3:08:14 PM

11/09/2020 03:08:03 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

Exhibit 4