

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement” or “Settlement”) is made and entered into between Plaintiff Johnny Carpenter (“Plaintiff”), acting in a private attorney general capacity, and Defendant Brad and Zoe, Inc., dba PinkBlush Maternity (“Defendant” or “PinkBlush”) (collectively, the “Parties”).

I. DEFINITIONS

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

1. “Action” means the matter titled *Johnny Carpenter v. Brad and Zoe, Inc.*, Orange County Superior Court, Case No. 30-2021-01177633-CU-E-CXC, and as set forth in Plaintiff’s correspondence to the California Labor and Workforce Development Agency (“LWDA Letter”) dated July 7, 2020.

2. “Aggrieved Employees” consist of all current and former non-exempt employees of PinkBlush in California who worked at any time during the PAGA Period. PinkBlush represents there are approximately 200 Aggrieved Employees.

3. “PinkBlush” or “Defendant” means Brad and Zoe, Inc., dba PinkBlush Maternity.

4. “Settlement Administrator” means Phoenix Settlement Administrators.

5. “Complaint” means the operative complaint in the Action, which Plaintiff filed on January 5, 2021.

6. “Court” means the Superior Court of California for the County of Orange.

7. “Individual PAGA Payment” means the amount to be paid to each Aggrieved Employee based on the formula described herein.

8. “LWDA” means the California Labor and Workforce Development Agency.

9. “Gross Settlement Amount” is the non-reversionary sum of Three Hundred Thirty-Five Thousand Dollars and Zero Cents (\$335,000.00), which represents the total amount payable under this Settlement Agreement by PinkBlush (subject to the Escalator Clause described below), including, without limitation, payments to all Aggrieved Employees, payment to the LWDA, payment of Plaintiff’s attorneys’ fees and costs, payment of Plaintiff’s enhancement payment, and payment to the Settlement Administrator for administration costs.

10. “Net Settlement Amount” is the amount remaining to distribute to the LWDA and Aggrieved Employees after the following amounts, if approved by the Court, are subtracted from the Gross Settlement Amount: (a) Plaintiff’s attorneys’ fees up to one third of the Gross Settlement Amount; (b) Plaintiff’s attorneys’ actual costs; (c) Plaintiff’s enhancement payment up to \$15,000.00; and (d) administration costs.

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

12. “PAGA Period” means the time period from November 1, 2019 through the date of approval of this settlement.

13. “PAGA Released Claims” mean all claims, rights, demands and liabilities for civil penalties brought under the PAGA, based upon the factual allegations and theories alleged by Plaintiff in the Action. The release of the PAGA Released Claims shall extend for the duration of the PAGA Period.

14. “Parties” means, collectively, Plaintiff and PinkBlush.

15. “Plaintiff’s Counsel” means Cody Payne and Kim Nguyen of Payne Nguyen, LLP.

16. “Released Parties” means PinkBlush and its former, present and future owners, parents, and subsidiaries, and all of their current, former and future officers, directors, members, managers, partners, shareholders, joint venturers, successors, assigns, accountants, insurers, or legal representatives.

17. “Effective Date” means (i) in the event that the Settlement has received approval by the Court and there were no timely objections filed, or that any timely objections have been withdrawn, then the date the Court’s order of approval of the Settlement; (ii) in the event that one or more timely objections has/have been filed and not withdrawn, then upon the passage of the applicable date for an objector to seek appellate review of the trial court’s order of approval of the Settlement, without a timely appeal having been filed; or, (iii) in the event that a timely appeal of the Court’s order of approval has been filed, then the Settlement shall be final when the applicable appellate court has rendered a final decision or opinion affirming the trial court’s approval without material modification, and the applicable date for seeking further appellate review has passed, or the date that any such appeal has been either dismissed or withdrawn by the appellant.

II. RECITALS

1. Plaintiff performed work for PinkBlush as a non-exempt employee in California during the PAGA Period and is therefore an Aggrieved Employee.

2. On July 7, 2020, Plaintiff provided written notice to the LWDA and PinkBlush asserting claims for civil penalties pursuant to PAGA stemming from alleged violations of various Labor Code sections and his intent to file a civil lawsuit under the PAGA.

3. On January 5, 2021, Plaintiff filed a representative action complaint titled *Johnny Carpenter v. Brad and Zoe, Inc.*, Orange County Superior Court, Case No. 30-2021-01177633-CU-E-CXC, asserting a single cause of action for civil penalties against PinkBlush on a representative basis pursuant to the PAGA.

5. On July 8, 2021, the Parties participated in mediation before mediator Deborah Saxe, Esq. The Parties did not reach a settlement at mediation; however, with the assistance of Ms. Saxe, the Parties continued to engage in settlement discussions and later agreed to fully and finally resolve the PAGA Released Claims as to Plaintiff and Aggrieved Employees.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

1. **Non-Admission.** Nothing in this Settlement Agreement shall be construed to be an admission by PinkBlush of any liability or wrongdoing as to Plaintiff, Aggrieved Employees or any other person, and PinkBlush specifically disclaims any such liability or wrongdoing. The Parties have entered into this Settlement Agreement with the intention of avoiding further disputes and litigation with the attendant inconvenience, 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.

2. **Gross Settlement Amount.** PinkBlush shall pay Three Hundred Thirty-Five Thousand Dollars and Zero Cents (\$335,000.00) as the non-reversionary Gross Settlement Amount. PinkBlush will not pay anymore than the Gross Settlement Amount (subject to the Escalator Clause below). PinkBlush shall deposit the Gross Settlement Amount into an account established by the Settlement Administrator agrees on the 61st day following the Effective Date.

The Gross Settlement Amount shall be used to pay: (1) Amounts distributable to the LWDA and Aggrieved Employees; (2) Plaintiff's attorneys fees and costs; (3) Plaintiff's enhancement payment; and (4) Settlement administration costs.

3. **Escalator Clause.** PinkBlush has represented that there are 200 Aggrieved Employees who worked 7,732 pay periods between November 1, 2019 and November 11, 2021. Should the qualifying pay periods worked by the Aggrieved Employees during the PAGA Period ultimately increase more than 10% (i.e. exceed 8,505 total pay periods), Defendant, at its option, can either choose to: (1) fix the end date for the PAGA release as of the date on which the number of pay periods reaches 8,505, or (2) increase the Gross Settlement Amount on a proportional basis equal to the percentage increase in number of pay periods worked by Aggrieved Employees above the 10% (i.e. if there was 6% increase in the number of pay periods during the PAGA Period, Defendant would agree to increase the Gross Settlement Amount by 1%.).

4. **Net Settlement Amount.** The Parties agree that the following amounts should be subtracted from the Gross Settlement Amount, if approved by the Court, resulting in a Net Settlement Amount to distribute to the LWDA and Aggrieved Employees:

a. **Plaintiff's Attorneys' Fees and Costs.** PinkBlush will not oppose Plaintiff's request for attorneys' fees in the amount up to one third of the Gross Settlement Amount (currently estimated to be \$111,666.66) and actual costs incurred in prosecuting this Action. In the event the Court approves less than these amounts, the difference will be added to the Net Settlement Amount (although Plaintiff may appeal an order granting less than the full amount sought for attorneys' fees and costs). PinkBlush, via the Settlement Administrator, will report these payments on IRS Form 1099 issued to Plaintiff's Counsel.

b. **Plaintiff's Enhancement Payment.** PinkBlush will not oppose Plaintiff's request for an enhancement payment of up to \$15,000.00 for serving as the representative plaintiff in this Action. In the event the Court approves a payment of less than the requested amount, the difference will be added to the Net Settlement Amount (although Plaintiff may appeal an order

granting less than the full amount sought for Plaintiff's enhancement payment). PinkBlush, via the Settlement Administrator, will report this payment on IRS Form 1099 issued to Plaintiff.

c. Administration Costs. PinkBlush will not oppose the Settlement Administrator's actual costs for administering the settlement. In the event the Court approves a payment of less than this amount, the difference will be added to the Net Settlement Amount. PinkBlush, via the Settlement Administrator, will report this payment on IRS Form 1099 issued to the Settlement Administrator.

5. Allocation of Net Settlement Amount. One hundred percent (100%) of the Net Settlement Amount shall be designated as "civil penalties" and shall be distributed 75% to the LWDA and 25% to Aggrieved Employees, pursuant to Lab. Code § 2699(i).

The 25% portion to be paid to Aggrieved Employees (the "Aggrieved Employees Portion") shall be distributed to all Aggrieved Employees pro rata based on the number of pay periods worked by each Aggrieved Employee during the PAGA Period.

The Parties agree that should the Court deny approval of the Settlement based on the allocation of the Gross Settlement Amount or the Net Settlement Amount, the Parties agree to re-negotiate in good faith in an effort to obtain approval of the Settlement.

6. PAGA Released Claims. Upon (i) entry of the Court's Order approving the Settlement and (ii) the Settlement being fully funded, Plaintiff, the State of California, and all Aggrieved Employees will release the PAGA Released Claims against the Released Parties that arose during the PAGA Period. Upon entry of the Order approving the settlement and judgment entered thereon and the Settlement being fully funded, Plaintiff, the State of California, and all Aggrieved Employees will be forever barred from pursuing any and all of the PAGA Released Claims that arose during the PAGA Period against the Released Parties.

7. Confidentiality. Except as provided below to the extent necessary to effectuate the settlement or as required by court or legal process, Plaintiff and Plaintiff's Counsel will keep the terms of this Settlement Agreement confidential. Neither Plaintiff nor Plaintiff's Counsel shall issue a press release, hold a press conference, publish information about the settlement on any website or through any social media or otherwise publicize the settlement or communicate its terms in public or in private, unless ordered by the Court. However, for the limited purpose of establishing adequacy of counsel in future actions, Plaintiff's Counsel may reference the Action by name and case number in a declaration establishing adequacy as class or representative counsel.

To permit judicial review and approval of the Settlement, and as required by Labor Code section 2698, *et seq.*, Plaintiff's Counsel will file the Settlement Agreement with the Court and submit the Settlement to the LWDA as part of the parties' seeking Court approval of the Settlement, per Labor Code § 2699(1)(2).

8. Filing of Motion for Approval of PAGA Settlement by Plaintiff's Counsel. Plaintiff's Counsel shall be responsible for preparing and filing the Motion for Approval of the PAGA Settlement. Plaintiff will prepare the motion for approval of the PAGA settlement, which Defendant will be given at least ten (10) calendar days to review prior to filing.

9. **Termination of Settlement Agreement.** If the Court does not approve this settlement, if the Court does not enter judgment as provided for in this Settlement Agreement, or if appellate review is sought and, on such review, the Court's decision is materially modified or reversed, or if one or more of the material terms of the Settlement Agreement is not approved or is materially modified or reversed or found to be invalid, then either of the Parties shall have the right within 10 Court days of written notice thereof to elect to terminate the Settlement Agreement, in which case the Settlement Agreement 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. However, if the Court declines to approve the settlement, the Parties agree to meet and confer in good faith in order to amend this Settlement Agreement to obtain Court approval.

10. **Judgment.** As part of the Motion to approve the Settlement, Plaintiff shall submit a proposed judgment which enters judgment in the Action in accordance with the terms of the Settlement, retains jurisdiction over the Action under Cal. Code Civ. Proc. § 664.6 for the purpose of enforcing the terms of the Settlement following approval of the Settlement, and enjoins the prosecution of any of the PAGA Released Claims against any of the Released Parties upon the judgment being entered and the Settlement being fully funded. This Settlement Agreement is expressly conditioned upon the Court entering judgment as set forth herein. The judgment will not release or bar any claims other than the PAGA Released Claims as to Plaintiff and Aggrieved Employees.

IV. ADMINISTRATION OF SETTLEMENT

1. **Settlement Administrator.** The Parties agree to engage Phoenix Settlement Administrators to handle the administration of this settlement.

2. **Provision of Information for Aggrieved Employees.** Within ten (10) business days after entry of an order approving the settlement, PinkBlush shall provide the Settlement Administrator with information for Aggrieved Employees. PinkBlush will in good faith compile from its records a list of Aggrieved Employees that will be in a computer-readable format, such as a Microsoft Excel spreadsheet, and shall include each Aggrieved Employee's: full name; last known mailing address; Social Security number; number of pay periods worked during the PAGA Period. Because Social Security numbers are included in the list, the Settlement Administrator will maintain the list in confidence, and access shall be limited to those with a need to use the list as part of the administration of the Settlement. Within the same 10 business-day period, PinkBlush shall also send Plaintiff's Counsel a redacted list of Aggrieved Employees with pay period information, so that Plaintiff's Counsel can determine whether the Escalator Clause has been triggered. Within 7 business days of receiving the Aggrieved Employees' information from PinkBlush, the Settlement Administrator will circulate to counsel for both Parties an anonymized spreadsheet containing the Individual PAGA Payments to each Aggrieved Employee and the data used to calculate said payments. The Settlement Administrator shall obtain approval from all counsel of the calculations before mailing Individual PAGA Payments.

3. **Explanatory Letter and Individual PAGA Payments.** Upon receipt of the information for Aggrieved Employees, the Settlement Administrator will perform a search on the National Change of Address database to update the Aggrieved Employees' addresses. Within twenty-one (21) calendar days after the Settlement has been fully funded and after receiving

approval from Plaintiff's Counsel and Defendant's counsel of the payment calculations as provided above, the Settlement Administrator shall mail copies of the explanatory letter, which has been mutually approved by the Parties and is attached hereto as **Exhibit A**, along with Individual PAGA Payments to all Aggrieved Employees via regular First Class U.S. Mail.

The Settlement Administrator will calculate the amount to be received by each Aggrieved Employee, which will be based on the formula set forth in Section III.5., *supra*. The Settlement Administrator will send each Aggrieved Employee a check for his or her Individual PAGA Payment along with the explanatory letter. Checks will remain negotiable for 90 days. Each Individual PAGA Payment shall be deemed penalties and reported using IRS Form 1099, with no withholdings taken.

4. **Undeliverable Notices.** The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Aggrieved Employee. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Aggrieved Employee.

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 reputable search method using the name, address and/or Social Security number of the Aggrieved Employee involved, and will perform up to a single re-mailing if a new address is located.

Funds represented by checks returned as undeliverable after a re-mailing, checks for whom the Settlement Administrator could not locate an updated address after performing a skip trace, and funds represented by checks remaining un-cashed more than 90 days after issuance (collectively, "Uncashed Checks"), shall escheat to the California State Controller's Office for deposit in the Unclaimed Property Fund, in the name of the Aggrieved Employee.

5. **Distribution of Other Payments.** The Settlement Administrator shall distribute payments to (1) the LWDA; (2) Plaintiff's Counsel for Plaintiff's Counsel's Court-approved attorneys' fees and litigation costs and expenses; (3) Plaintiff for the Court-approved enhancement payment; and (4) the Settlement Administrator for Court-approved Settlement administration costs incurred in connection with the Settlement, at the same time it makes payments to Aggrieved Employees pursuant to Section IV.3, *supra*.

6. **Accounting.** Within 45 days after all payments have been made under the Settlement, the Settlement Administrator will provide an accounting under oath to the Parties of the amounts paid from the settlement.

7. **Tax Consequences.** Neither Plaintiff nor PinkBlush, nor counsel for either of the Parties, makes any representations or warranties with respect to tax consequences of any payment under this Settlement Agreement.

V. MISCELLANEOUS PROVISIONS

1. **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.

2. **Successors.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators and successors.

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

4. **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 Los Angeles, 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 is necessary to enforce the terms of this Settlement Agreement, it shall be brought in the State of California, County of Orange.

5. **Complete Agreement.** The Parties each acknowledge and represent that no promise or representation not contained in this Settlement Agreement has been made to them with respect to the subject matter of this Settlement Agreement, 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 PAGA claim in the Action.

6. **Nullification of Settlement Agreement.** In the event that: (i) the Court does not approve the settlement as provided herein; (ii) the settlement does not become final for any other reason, or (iii) any Party exercises the right to nullify the Settlement as provided hereinabove 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 respective positions before the Settlement was executed.

7. **Judgment and Continued Jurisdiction.** As noted above, after approval of this settlement, the Court will have continuing jurisdiction under Cal. Code Civ. Proc. § 664.6 for purposes of addressing: (i) the interpretation and enforcement of the terms of the settlement, (ii) settlement administration matters, and (iii) such post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement Agreement.

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

9. **Authorization to Enter into Settlement Agreement.** Counsel for all Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to affect the

implementation of the settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this settlement, the Parties may seek the assistance of the mediator (Ms. Saxe) or the Court to resolve such disagreement.

10. **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 facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

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

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

13. **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 Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

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

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

17. **Cooperation and Execution of Necessary Documents.** All Parties will cooperate in good faith and execute all documents to the extent reasonably 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, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

[SIGNATURES ON FOLLOWING PAGE]

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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: 12/21/2021 16:31 UTC

Johnny Carpenter

Johnny Carpenter, Plaintiff


BRAD AND ZOE, INC.

Dated: 01/11, 2022



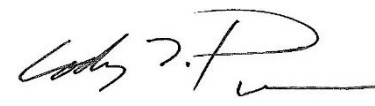
By: Nicholas P. Wong

Its: Chief Financial Officer

APPROVED AS TO FORM:

Dated: December 21, 2021

PAYNE NGUYEN, LLP

By: 

Cody Payne

Attorneys for Plaintiff, Johnny Carpenter

Dated: January 11, 2022

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: Armine Antonyan

Armine Antonyan

Attorneys for Defendant, Brad and Zoe, Inc.