

1 **STIPULATION OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT**

2 IT IS HEREBY STIPULATED by and between Plaintiff Mauricio Vazquez, on behalf of
3 himself and others similarly situated, on the one hand, and Defendants Volcom, LLC, Volcom Retail,
4 LLC, and Volcom Retail Outlets, LLC, on the other hand, and subject to the approval of the Court, that
5 the Lawsuit is hereby being compromised and settled pursuant to the terms and conditions set forth in
6 this Stipulation of Class and Representative Action Settlement ("Settlement Agreement") and that the
7 Court shall make and enter judgment, subject to the continuing jurisdiction of the Court as set forth
8 below, subject to the definitions, recitals and terms set forth herein which by reference become an
9 integral part of this Settlement Agreement.

10 **DEFINITIONS**

11 1. "Administration Costs" means fees or costs of settlement administration services
12 rendered in administering the settlement.

13 2. "Attorneys' Fees and Costs" means the amount the Court authorizes to be paid to Class
14 Counsel for attorneys' fees, not to exceed 33-1/3% of the Gross Settlement Amount, and litigation costs
15 not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00), paid from the Gross
16 Settlement Amount.

17 3. "Class Counsel" means CounselOne, P.C.

18 4. "Class List" means a list of contact information, compiled by Defendants based on their
19 records, containing the following information for each Class Member: full name; last-known mailing
20 address; last-known telephone number; Social Security number; start and end dates of employment;
21 and information from which the Settlement Administrator can calculate the number of Workweeks
22 during the Class Period and the number of Pay Periods during the PAGA Period.

23 5. "Class" or "Class Member(s)" means all hourly, non-exempt warehouse and retail
24 employees employed by Defendants Volcom, LLC, Volcom Retail, LLC, and/or Volcom Retail
25 Outlets, LLC within the State of California during the Class Period.

26 6. "Class Notice" means the document to be sent via first class U.S. mail to Class
27 Members and PAGA Group Members following Preliminary Approval, in substantially the form that
28 is attached hereto as "EXHIBIT 1," or otherwise approved by the Court, which will notify Class

1 Members and PAGA Group Members of the settlement, explain the basic terms of the Settlement
2 Agreement, and inform Class Members of their options with regard to the settlement.

3 7. "Class Period" means the period beginning on November 6, 2016, and ending on the
4 date of Preliminary Approval, unless Defendants shorten the Class Period pursuant to Paragraph 54
5 below.

6 8. "Court" means the Superior Court for the State of California, County of Orange.

7 9. "Defendants" means Volcom, LLC, Volcom Retail, LLC, and Volcom Retail Outlets,
8 LLC.

9 10. "Defendants' Counsel" means Martenson, Hasbrouck & Simon LLP.

10 11. "Effective Date" means one (1) calendar day after either (a) if no objections are timely
11 filed, the final approval date; (b) if objections are filed but no appeal is filed, the expiration date of the
12 time for filing notice of any appeal from final approval date; or (c) if an appeal is filed, the latest of (i)
13 the date of final affirmance of an appeal of that Final Approval Order, (ii) the expiration of the time for
14 a petition for review or writ of certiorari with respect to the Final Approval Order and, if review or
15 certiorari is granted, the date of final affirmance of the Final Approval Order following review pursuant
16 to that grant; or (iii) the date of final dismissal of any appeal from the Final Approval Order or the final
17 dismissal of any proceeding on review or certiorari with respect to the Final Approval Order that has
18 the effect of confirming the Final Approval Order.

19 12. "Employer's Share of Payroll Taxes" means Defendants' share of all applicable
20 federal, state and local payroll taxes and customary withholdings, including the employer FICA, FUTA,
21 and SDI contributions, on the portion of the Individual Settlement Share that constitutes wages. The
22 Employer's Share of Payroll Taxes shall be separately paid by Defendants and shall not be paid from
23 the Gross Settlement Amount or Net Settlement Amount.

24 13. "Enhancement Payment" means the amount that the Court authorizes to be paid to the
25 Class Representative, in addition to his Individual Settlement Payment, in recognition of his efforts and
26 risks in assisting with the prosecution of the Lawsuit, not to exceed Ten Thousand Dollars and Zero
27 Cents (\$10,000.00).

1 14. “Final Approval Hearing” means the hearing following Preliminary Approval and
2 distribution of the Class Notice to Class Members and PAGA Group Members, at which the Court will
3 determine whether to fully and finally approve the fairness and reasonableness of this Settlement
4 Agreement, and at which Plaintiff will request that the Court enter the Final Approval Order and
5 Judgment, approve and award Attorneys’ Fees and Costs, Enhancement Payment, Individual
6 Settlement Payments, Administration Costs, and LWDA Payment, and take other appropriate or
7 necessary action as described herein.

8 15. “Final Approval Hearing Date” means the date of the Final Approval Hearing.

9 16. “Final Approval Order and Judgment” means the order or orders entered by the Court
10 that, *inter alia*, finally approve(s) this Settlement Agreement, disposes of all issues raised in the Lawsuit
11 by way of judgment in conformity with California Rules of Court 3.769, and awards and orders the
12 payment of all required amounts pursuant to the terms of this Settlement Agreement.

13 17. “Gross Settlement Amount” or “GSA” means the maximum total payment of Nine
14 Hundred Thousand Dollars and Zero Cents (\$900,000.00) payable by Defendants under this Settlement
15 Agreement, inclusive of all Individual Settlement Payments, Attorneys’ Fees and Costs, Administration
16 Costs, Enhancement Payment to the Class Representative, and the LWDA Payment. The Gross
17 Settlement Amount is non-reversionary, subject to increase pursuant to Paragraph 54, and exclusive of
18 the Employer’s Share of Payroll Taxes which shall be paid separately.

19 18. “Individual Settlement Share(s)” means a Settlement Class Member’s *pro rata* share
20 of the Net Settlement Amount, which is to be determined in conformity with Paragraph 48(f), which is
21 inclusive of the employee-side payroll taxes, contributions, and withholdings with respect to the wage
22 portion of the Individual Settlement Shares.

23 19. “Individual Settlement Payment(s)” means the sum of the Individual Settlement Share
24 and, if applicable, the individual PAGA payment.

25 20. “Lawsuit” means the action entitled *Mauricio Vazquez, et al. v. Volcom, LLC, et al.*,
26 filed on November 6, 2020, in the Orange County Superior Court and assigned case number 30-2020-
27 01169022-CU-OE-CXC.

1 21. “LWDA Payment” means the payment that is to be approved by the Court pursuant to
2 Labor Code section 2699 and distributed as follows: seventy-five (75%) of the PAGA Payment (*i.e.*,
3 \$75,000.00) to the California Labor and Workforce Development Agency (“LWDA”). Class Counsel
4 shall give timely notice of the settlement to the LWDA under Labor Code section 2699(1)(2).

5 22. “Net Settlement Amount” or “NSA” means the portion of the Gross Settlement Amount
6 that is available for distribution to Settlement Class Members, which will be the Gross Settlement
7 Amount less the amounts awarded for Attorneys’ Fees and Costs, Enhancement Award, PAGA
8 Payment, and Administration Costs.

9 23. “PAGA Group Member(s)” means all hourly, non-exempt warehouse and retail
10 employees employed by Defendants Volcom, LLC, Volcom Retail, LLC, and/or Volcom Retail
11 Outlets, LLC within the State of California during the PAGA Period.

12 24. “PAGA Group Members’ Released Claims” means all claims for civil penalties arising
13 under the PAGA during the PAGA Period that were alleged or reasonably could have been alleged
14 based on the facts or legal theories alleged in the operative complaint filed by Plaintiff in the Lawsuit
15 including, but not limited to, alleged violations of Labor Code sections Labor Code sections 201, 202,
16 203, 204, 210, 218.5, 226, 226.3, 226.7, 510, 512, 1194, 1104.2, 1174, 1174.5, 1194, 1194.2, 1197,
17 1197.1, 1198, 1199, 2802, and any claims and/or liability for interest and all attorneys’ fees and costs
18 available under the PAGA arising out of the facts asserted in the operative complaint for the
19 aforementioned Labor Code violations.

20 25. “PAGA Payment” means the payment of penalties pursuant to the Labor Code sections
21 2968 *et seq.*, the Private Attorneys General Act of 2004 (“PAGA”), that the Parties have agreed is a
22 reasonable sum to be paid in settlement of the PAGA claims encompassed by the underlying allegations
23 in the Lawsuit, which is One Hundred Thousand Dollars and Zero Cents (\$100,000.00).

24 26. “PAGA Period” means the period beginning on July 1, 2019 and ending on the date of
25 Preliminary Approval, unless Defendants shorten the PAGA Period pursuant to Paragraph 54 below.

26 27. “Parties” means Plaintiff, individually and on behalf of all Class Members and PAGA
27 Group Members as defined in Paragraphs 5 and 23 herein, and Defendants. Plaintiff and Defendants
28 may be individually referred to as a “Party.”

1 28. “Pay Period(s)” means pay periods during the PAGA Period which, based on
2 Defendants’ records, PAGA Group Members were actively employed by Defendant(s) and worked
3 during at least a portion of such pay period in an hourly, non-exempt warehouse and/or retail position
4 in California.

5 29. “Plaintiff” or “Class Representative” means Plaintiff Mauricio Vazquez.

6 30. “Preliminary Approval Order” means the order to be entered by the Court that
7 preliminarily approves the terms and conditions of this Settlement Agreement, including the content of
8 the Class Notice, and sets a Final Approval Hearing.

9 31. “Released Parties” means Defendants, and their former and present officers, directors,
10 shareholders, employees, agents, principals, representatives, consultants, attorneys, insurers,
11 predecessors, successors, parents, related entities (including Liberated Brands, LLC), and subsidiaries.

12 32. “Response Deadline” means the last date on which Class Members may submit an opt-
13 out/request for exclusion or objection to the settlement, which shall be the later of either forty-five (45)
14 calendar days after the Settlement Administrator mails the original Class Notice to Class Members or
15 thirty (30) calendar days after the Settlement Administrator re-mails any Class Notice which was
16 returned to the Settlement Administrator.

17 33. “Settlement Administrator” means CPT Group, Inc., the neutral third-party
18 administrator mutually agreed upon by the Parties, subject to approval by the Court.

19 34. “Settlement Class” or “Settlement Class Member(s)” means all hourly, non-exempt
20 warehouse and retail employees employed by Defendants Volcom, LLC, Volcom Retail, LLC, and/or
21 Volcom Retail Outlets, LLC within the State of California during the Class Period, who have not
22 submitted a timely and valid opt-out/Request for Exclusion pursuant to Paragraph 55.

23 35. “Settlement Class Members’ Released Claims” means all liabilities, causes of action
24 and and/or claims that were alleged or that could have been alleged based on the facts or legal theories
25 asserted in the operative complaint filed by Plaintiff in the Lawsuit, arising at any time during the Class
26 Period, for: (1) failure to pay minimum wages; (2) failure to pay all overtime wages; (3) failure to
27 provide meal periods; (4) failure to provide rest breaks; (5) failure to reimburse for business expenses;
28 (6) failure to provide accurate itemized employee wage statements; (7) failure to pay all wages owed

1 timely and upon separation of employment; (8) failure to maintain records in violation of Labor Code
2 section 1174(d); and (9) violation of Business & Professions Code sections 17200, *et seq.* This release
3 excludes the release of claims not permitted by law.

4 36. “Workweek(s)” means a seven-day work week during the Class Period during which,
5 based on Defendants’ records, Class Members were actively employed by Defendant(s) and worked at
6 least a portion of such workweek in a non-exempt, hourly retail and/or warehouse position in California.
7 Defendants shall certify the number of workweeks that have accrued for all Class Members during the
8 Class Period, in accordance with Paragraphs 48(f) and 54 below.

9 **RECITALS**

10 37. **Procedural History.** On November 6, 2020, Plaintiff filed his Class and
11 Representative Complaint, alleging causes of action for: (1) failure to pay minimum wages; (2) failure
12 to pay overtime wages; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) failure
13 to reimburse business expenses; (6) failure to provide accurate itemized wage statements; (7) failure to
14 pay all wages owed timely and upon separation of employment; (8) violation of Labor Code § 1174(d);
15 (9) Violation of Business & Professions Code §§ 17200, *et seq.*; and (10) civil penalties pursuant to
16 California’s Private Attorneys General Act of 2004 (Labor Code §§ 2698, *et seq.*).

17 38. **Pre-Filing PAGA Notice.** On July 1, 2020, counsel for Plaintiff provided pre-filing
18 written notice to the LWDA and by certified mail to Defendants of the above-identified allegations on
19 behalf of Plaintiff and similarly situated aggrieved employees in accord with the PAGA, Labor Code
20 sections 2698, *et seq.*

21 39. **Discovery and Investigation.** Plaintiff’s attorneys began their investigation into the
22 at-issue allegations well in advance of filing the complaint and engaged in extensive informal discovery
23 and investigation, and such was sufficient to allow the Parties to evaluate the case prior to settlement.
24 In advance of mediation, the Parties agreed to an informal exchange of information and documents.
25 For example, Class Counsel requested production of and reviewed key information and documents such
26 as the number of putative class members and aggrieved employees, relevant wage and hour policies,
27 time and payroll records, rates of pay, among other things. Class Counsel also analyzed time and payroll
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1 records and interviewed Class Members to determine violation rates. The Parties met and conferred at
2 length regarding the information and documents produced.

3 40. **Mediation.** After having performed extensive investigation and analysis of the legal
4 and factual issues and risks, the Parties participated in a full-day mediation before mediator Jeffrey
5 Krivis of First Mediation Corporation in an attempt to resolve the Lawsuit. The case did not settle at
6 the first mediation session. After exchanging additional information and documents, the Parties
7 participated in an another full-day mediation with Jeffrey Krivis. The settlement discussions were
8 conducted at arm's-length. Pursuant to a mediator's proposal, the Parties came to agreement on all
9 material terms of this settlement.

10 41. **Memorandum of Understanding.** The Parties entered into a short form Memorandum
11 of Understanding as to the material terms of the settlement.

12 42. **Benefits of Settlement to Class Members.** Plaintiff and Class Counsel recognize the
13 expense and length of continued proceedings necessary to litigate their disputes through trial and
14 through any possible appeals. Plaintiff and Class Counsel have also taken into account the uncertainty
15 and risks of the outcome of further litigation, and the difficulties and delays inherent in such litigation.
16 Further, Plaintiff and Class Counsel are aware of the burdens of proof necessary to establish liability
17 for the claims asserted in the Lawsuit, both generally and in response to Defendants' defenses thereto,
18 and the difficulties in establishing damages for Class Members. Based on the foregoing, Plaintiff and
19 Class Counsel have determined that the settlement set forth herein is a fair, adequate and reasonable
20 settlement, and is in the best interests of Class Members and PAGA Group Members.

21 43. **Defendants' Reasons for Settlement and Non-Admission.** Defendants have
22 concluded that any further defense of this litigation would be protracted and expensive for all Parties.
23 Substantial amounts of time and resources of Defendants have and, unless this settlement is made, will
24 continue to be devoted to the defense of the claims asserted by Plaintiff. Defendants have also taken
25 into account the risks of further litigation in reaching their decision to enter into this Settlement
26 Agreement. Despite continuing to contend that they are not liable for any of the claims set forth by
27 Plaintiff, Defendants have, nonetheless, agreed to settle in the manner and upon the terms set forth in
28 this Settlement Agreement to put to rest the claims alleged in the Lawsuit. Defendants have claimed

1 and continue to claim that the Settlement Class Members' Released Claims, and PAGA Group
2 Members' Released Claims have no merit and do not give rise to liability. This settlement is a
3 compromise of disputed claims.

4 44. **This Settlement Is Fair, Adequate and Reasonable.** The Parties believe this
5 settlement is a fair, adequate and reasonable settlement of the Lawsuit and have arrived at this
6 settlement after two mediations, extensive arms-length negotiations, and taking into account all relevant
7 factors, present and potential.

8 **TERMS AND CONDITIONS**

9 **NOW, THEREFORE,** in consideration of the Recitals above and the promises and warranties
10 set forth below, and intending to be legally bound and acknowledging the sufficiency of the
11 consideration and undertakings set herein, Plaintiff, individually and on behalf of Class Members and
12 PAGA Group Members, on the one hand, and Defendants, on the other hand, agree that the Lawsuit
13 shall be, and is finally and fully compromised and settled on the following terms and conditions, subject
14 to Court approval:

15 45. **Non-Admission of Liability.** The Parties enter into this Settlement Agreement to
16 resolve the Lawsuit and to avoid the burden, expense, and risk of continued litigation. In entering into
17 this Settlement Agreement, Defendants do not admit, and specifically deny, that they have: violated
18 any state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or
19 any other applicable laws, regulations or legal requirements; or engaged in any other unlawful conduct
20 or wrongdoing with respect to their employees. Neither this Settlement Agreement, nor any of its terms
21 or provisions, nor any of the negotiations connected with it, shall be construed as an admission or
22 concession by Defendants of any such violation(s) or failure(s) to comply with any applicable law.
23 Furthermore, the Parties agree that the settlement of this action on a class and representative action
24 basis shall not impact the enforceability of any agreement to arbitrate or class or representative action
25 waiver entered between Defendants and any Class Member or PAGA Group Member. Except as
26 necessary in a proceeding to enforce the terms of this Settlement Agreement, this Settlement Agreement
27 and its terms and provisions shall not be offered or received as evidence in any action or proceeding to
28 establish any liability or admission on the part of Defendants or to establish the existence of any

condition constituting a violation of, or a noncompliance with, state, local or other applicable law. In addition, as set forth herein, the Parties intend this settlement to be contingent upon the Preliminary Approval and Final Approval of this Settlement Agreement; and the Parties do not waive, and instead expressly reserve, their respective rights to prosecute and defend the Lawsuit as if this Settlement Agreement never existed in the event the settlement is not finally approved as set forth herein.

46. **Release of Claims by Settlement Class Members.** Upon the Final Approval Date, Plaintiff and all Settlement Class Members (e.g., those who do not opt-out of the settlement), for and in consideration of the Gross Settlement Amount, along with the terms and undertakings herein, the sufficiency and fairness of which are acknowledged, release and forever discharge Defendants and the Released Parties from the Settlement Class Members' Released Claims during the Class Period. This release excludes the release of claims not permitted by law.

47. **Release of Claims by PAGA Group Members.** Upon the Final Approval Date, all PAGA Group Members will release the Released Parties from the PAGA Group Members' Released Claims during the PAGA Period.

48. **Payments under the Settlement.** In consideration of the mutual covenants and promises set forth herein, Defendants agree to pay the Gross Settlement Amount of Nine Hundred Thousand Dollars and Zero Cents (\$900,000.00). Defendants shall not be required to pay any amount above the Gross Settlement Amount under this Settlement Agreement, with the exception of the Employer's Share of Payroll Taxes, and if the escalator clause is triggered by Defendants in accordance with Paragraph 54. The Parties agree that the Gross Settlement Amount will be paid by Defendants on a non-reversionary basis and no portion of the Gross Settlement Amount will revert to Defendants. At no time shall Defendants have the obligation to segregate the funds comprising the Gross Settlement Amount, and Defendants shall retain exclusive authority over, and the responsibility for, those funds through and until the date Defendants are obligated to fund the settlement through an order of final approval. The Parties agree, subject to Court approval, that the Gross Settlement Amount shall be apportioned as follows:

a. Plaintiff will apply to the Court for an award of attorneys' fees of no more than thirty-three and one-third percent (33-1/3%) of the Gross Settlement Amount (*i.e.*, \$300,000) to Class

1 Counsel (“Attorneys’ Fees”) and for an award of reimbursement of actual litigation costs and expenses
2 up to Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) to Class Counsel (“Attorneys’
3 Costs”). The Attorneys’ Fees and Attorneys’ Costs (again, in the aggregate, “Attorneys’ Fees and
4 Costs”) are included in, and will be paid from, the Gross Settlement Amount. Defendants will not
5 oppose such application.

6 b. Plaintiff will also apply to the Court for payment to the Settlement
7 Administrator for the costs of notice and settlement administration not to exceed Eighteen Thousand
8 Dollars and Zero Cents (\$18,000.00) (again, “Administration Costs”). These costs will include the
9 required tax reporting on the Individual Settlement Shares, the issuing of IRS Forms 1099 and W-2,
10 and distributing Notice Packets, calculating and distributing the Gross Settlement Amount, and
11 providing necessary reports and declarations. The Administration Costs are included in, and will be
12 paid from, the Gross Settlement Amount. Defendants will not oppose such application.

13 c. Plaintiff will apply to the Court for payment in the amount of Ten Thousand
14 Dollars and Zero Cents (\$10,000.00) to Plaintiff (again, “Enhancement Payment”), for his services and
15 responsibilities in prosecuting the Lawsuit. The Enhancement Payment is included in, and will be paid
16 from, the Gross Settlement Amount. Defendants will not oppose such application.

17 d. The amount of One Hundred Thousand Dollars and Zero Cents (\$100,000.00)
18 is allocated towards penalties pursuant to Labor Code sections 2698, *et seq.* (“PAGA Payment”), of
19 which the LWDA will be paid the amount of Seventy-Five Thousand Dollars and Zero Cents
20 (\$75,000.00) (“LWDA Payment”) and the amount of Twenty-Five Thousand Dollars and Zero Cents
21 (\$25,000.00) will be distributed on a *pro rata* Pay Period basis to all PAGA Group Members (*i.e.*,
22 individual recovery depends on each PAGA Group Member’s ratio of his or her Pay Periods relative
23 to the total Pay Periods of all PAGA Group Members) who worked during the PAGA Period, and
24 irrespective of whether he or she is a Settlement Class Member. The PAGA Payment will be included
25 in, and will be paid from, the Gross Settlement Amount.

26 e. Any of the foregoing amounts not awarded by the Court shall be added to the
27 Net Settlement Amount.

f. The Net Settlement Amount will be the amount that is available for distribution to Class Members on a *pro rata* Workweek basis. Defendants shall certify the number of Workweeks that have accrued for all Class Members during the Class Period in accordance with Paragraphs 48(f) and 54. The sum of all Class Members' individual Workweeks will be the "Total Workweeks." The Net Settlement Amount will be divided by the Total Workweeks to yield the "Workweek Value." Each Class Member's Individual Settlement Share will be determined by multiplying his or her individual Workweeks by the Workweek Value.

49. **No Credit Toward Benefit Plans.** Payments made to Plaintiff, Settlement Class Members, and PAGA Group Members under this Settlement Agreement shall not be utilized to calculate any additional benefits under any benefit plans to which they may be eligible including, but not limited to, under profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which Plaintiff, Settlement Class Members, and PAGA Group Members may be entitled under any benefit plans.

50. **Taxation of Settlement Proceeds.**

a. The Parties agree that twenty-five percent (25%) of each Individual Settlement Share will be considered taxable wages and will be reported as such to each Settlement Class Member on IRS Form W-2. The Parties agree that seventy-five percent (75%) of each Individual Settlement Share will be considered interest and penalties and will be reported as such to each Settlement Class Member on IRS Form 1099 (if required). The Parties agree that one hundred percent (100%) of each individual PAGA payment will be considered penalties and will be reported as such to each PAGA Group Member on IRS Form 1099 (if required).

b. The Settlement Administrator shall calculate and remit to applicable taxing authorities sufficient amounts for the employee and employer taxes.

c. The Settlement Administrator will issue appropriate tax forms to each Settlement Class Member and PAGA Group Member consistent with the foregoing breakdown.

d. All Parties represent that they have not received, and shall not rely on, advice or representations from Plaintiff, Class Counsel, the Released Parties, or Defendants' Counsel regarding

1 the tax treatment of payments under federal, state, or local law, and that no representations have been
2 made to them regarding the taxability of any payments under the settlement. Other than the withholding
3 and reporting requirements herein, Settlement Class Members shall be solely responsible for the
4 reporting and payment of their share of any federal, state, and/or local income or other taxes on
5 payments received under the settlement.

6 e. Class Counsel will be issued IRS Form 1099 for Attorneys' Fees and Costs awarded
7 by the Court. Except as provided herein, each of the Parties shall bear his, her, their, or its own
8 attorneys' fees, costs, and expenses incurred in the prosecution, defense, or settlement of the Lawsuit.

9 f. Plaintiff will be issued an IRS Form 1099 for his Enhancement Payment. The
10 Enhancement Payment payable to Plaintiff shall be in addition to the Individual Settlement Payment
11 he is contemplated to receive under this Settlement Agreement.

12 51. **Notice Procedure.**

13 a. The Parties shall use CPT Group, Inc. as the Settlement Administrator to distribute the
14 Class Notice, distribute payments under this Settlement Agreement, handle tax reporting, establish and
15 host a dedicated case settlement website, and field questions with a telephonic hotline.

16 b. Defendants will provide the Settlement Administrator with the Class List within ten
17 (10) calendar days following the date of Preliminary Approval. The Class List and any other data
18 provided by Defendants to the Settlement Administrator shall not be used by the Settlement
19 Administrator for any purpose other than as permitted by this Settlement Agreement. The Settlement
20 Administrator will use the Class List only for the purposes described herein, and ensure that any other
21 communications with Class Members shall not include the Class Members' Social Security numbers
22 except for the last four digits.

23 c. The Settlement Administrator shall be responsible for:

24 i. Calculating the number of Workweeks during the Class Period and the number
25 of Pay Periods during the PAGA Period;

26 ii. Mailing the Class Notice to Class Members and PAGA Group Members as
27 directed by the Court;

- 1 iii. Consulting with counsel for the Parties concerning any relevant issue, including
2 (without limitation) the estimated payments to Settlement Class Members and PAGA Group Members;
- 3 iv. Receiving and processing Workweek Disputes and rejecting untimely or
4 improper Workweek Disputes;
- 5 v. Keeping track of Requests for Exclusion, and rejecting untimely or improper
6 Requests for Exclusion;
- 7 vi. Keeping track of Objections;
- 8 vii. Distribution of payments in accordance with this Settlement Agreement and the
9 Court's orders;
- 10 viii. Providing weekly status reports to counsel for the Parties, including: (a) the
11 number of Class Notices mailed; (b) the number of Workweek Disputes received; (c) the number of
12 Objections received; and (d) the number of Requests for Exclusion received;
- 13 ix. No later than twenty-one (21) business days before the Final Approval Hearing,
14 preparing and providing to Class Counsel and Defendants' Counsel, for filing with the Court in support
15 of Plaintiff's motion for final approval of the settlement, a declaration of due diligence setting forth its
16 compliance with its obligations under this Settlement Agreement;
- 17 x. Notifying Defendants' Counsel, within three (3) business days after the
18 Effective Date, of the wiring instructions to fund the Gross Settlement Amount, which must be paid by
19 Defendants in the amounts and in accordance with the deadlines set forth herein;
- 20 xi. Issuing the following: IRS Form W-2 to each Settlement Class Member for the
21 wage portion of each Individual Settlement Share, IRS Form 1099 (if required) to each Settlement Class
22 Member for the non-wage portion of each Individual Settlement Share, IRS Form 1099 to Plaintiff for
23 his Enhancement Award, IRS Form 1099 to Class Counsel for the Attorneys' Fees and Costs award,
24 and IRS Form 1099 to the Settlement Administrator for the Administration Costs; and,
- 25 xii. Such other tasks as the Parties mutually agree or the Court orders the Settlement
26 Administrator to perform, including responding to questions from Class Members and PAGA Group
27 Members.
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1 d. Within ten (10) calendar days of receipt of the Class List, the Settlement Administrator
2 shall mail the Class Notice to all persons shown by Defendants' records to be Class Members, as
3 reflected in the Class List, via first class U.S. mail, using the most current mailing address available
4 after a National Change of Address search. The Class Notice shall state an estimate of each Class
5 Member's respective Individual Settlement Share and the number of Workweeks credited to him or her
6 along with an estimate of each PAGA Group Member's respective individual PAGA payment and the
7 number of Pay Periods credited to him or her, based on Defendants' certification pursuant to Paragraphs
8 48(d), 48(f), and 54.

9 e. Any Class Notice(s) returned to the Settlement Administrator as undelivered within
10 fifteen (15) calendar days of initial mailing and bearing a forwarding address shall be re-mailed by the
11 Settlement Administrator within three (3) business days following receipt of the returned mail. For any
12 such Class Notice returned to the Settlement Administrator without a forwarding address, the
13 Settlement Administrator shall first conduct a National Change of Address search as required for
14 undeliverable notices, followed by a computer/SSN and "skip trace" search to obtain an updated
15 address, and shall promptly re-mail the Class Notice to any newly-found address or addresses. The
16 Settlement Administrator shall also re-mail by first class U.S. mail any such Class Notice returned by
17 the Post Office with a forwarding address. It shall be conclusively presumed that those Class Members
18 whose re-mailed Class Notice is not returned to the Settlement Administrator as undeliverable within
19 five (5) calendar days after re-mailing, received the Class Notice.

20 f. Class Counsel shall provide the Court with a declaration from the Settlement
21 Administrator confirming that the Class Notice was mailed to all Class Members and PAGA Group
22 Members as required by this Settlement Agreement, as well as any additional information Class
23 Counsel deem appropriate to provide to the Court, before the Final Approval Hearing.

24 52. **Settlement Payments.** Class Members and PAGA Group Members are not required to
25 submit a claim form to receive a settlement payment.

26 53. **Submission of Workweek Disputes.**

27 a. If any Class Member disputes the Workweeks set forth on the Class Notice during the
28 Class Period ("Workweeks Dispute"), the Class Member may submit documentation supporting his or

her position by mail to the Settlement Administrator no later than forty five (45) calendar days from the date the Class Notice is originally mailed by the Settlement Administrator for those Class Members whose original mailing was not returned to the Settlement Administrator, or thirty (30) days from the date of the re-mailing to Class Members whose Class Notice was returned to the Settlement Administrator, whichever is later, ("Response Deadline"). Workweek Disputes not postmarked or confirmed received by the Settlement Administrator on or before the Response Deadline will be considered late and may be summarily rejected by the Settlement Administrator, in consultation with Class Counsel and Defendants' Counsel.

The Settlement Administrator will notify counsel for the Parties of any disputes via email. The Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Parties and the Settlement Administrator will evaluate the evidence and discuss in good faith how many Workweeks to be credited in conformity with Paragraph 48(f). If the Parties and the Settlement Administrator do not reach agreement, the Court will make the final determination as to how many Workweeks should be credited.

54. **Pro-Rata Increase of Gross Settlement Amount.** Defendants shall certify the number of Workweeks that have accrued for all Class Members during the Class Period. If at the conclusion of the Class Period, the number of Workweeks should exceed 37,025 (the amount hereby certified by Defendants) by more than five percent (5%), the Gross Settlement Amount shall be increased by the percentage difference between the certified amount and the actual number of Workweeks during the Class Period, or the release period may be shortened to the first payroll period prior to exceeding 37,025, plus 5%, at Defendants' discretion.

55. **Opt-Out Procedure.**

a. Class Members may request to opt out of the class settlement by mailing a written request for exclusion ("Request for Exclusion") to the Settlement Administrator. To be timely, Requests for Exclusion must be mailed to the Settlement Administrator, postmarked on or before the Response Deadline.

b. A Request for Exclusion should: (1) be signed by the Class Member; (2) contain the case name and case number of the Lawsuit; (3) contain the Class Member's full name, telephone

1 number, and mailing address; and (4) clearly state that the Class Member wants to opt out of the
2 settlement. No specific language is required in the Request for Exclusion provided it is sufficiently
3 clear that the Class Member desires to be excluded from the class settlement. No opt-out request may
4 be made on behalf of more than one Class Member.

5 c. Upon receipt of any timely Request for Exclusion, the Settlement Administrator shall
6 review the request to verify the information contained therein and confirm that the request complies
7 with the requirements of this Settlement Agreement.

8 d. Any Class Member who fails to submit via first class U.S. mail a timely and valid
9 Request for Exclusion shall be barred from opting out of the settlement. The Settlement Administrator
10 shall not review or consider any Request for Exclusion postmarked after the Response Deadline. Under
11 no circumstances shall the Settlement Administrator have the authority to extend the Response
12 Deadline for Class Members to file a Request for Exclusion, except as ordered by the Court or mutually
13 agreed by the Parties.

14 e. Plaintiff agrees not to request to be excluded from the settlement.

15 PAGA Group Members may not opt out of the settlement of the PAGA Group Members'
16 Released Claims.

17 56. **Defendants' Right to Cancel.** If more than ten percent (10%) of class members
18 submit a timely and valid Request for Exclusion, Defendants shall have the sole and absolute discretion
19 to withdraw from this Settlement Agreement within ten (10) calendar days after the Response Deadline
20 by providing written notice of such withdrawal to Class Counsel. In the event that Defendants elect to
21 withdraw as set forth in this provision, the withdrawal shall have the same effect as a termination of
22 this Settlement Agreement for failure to satisfy a condition of settlement and shall become null and
23 void and have no further force or effect. If Defendants exercise their option to terminate this settlement,
24 they shall pay all Administration Costs already incurred by the Settlement Administrator.

25 57. **Objections to Settlement.**

26 a. Any Settlement Class Member may object to the settlement by either mailing a written
27 objection to the Settlement Administrator ("Objection") or appearing at the Final Approval Hearing to
28 discuss the Settlement Class Member's objection with the Court and the Parties at Settlement Class

1 Member's own expense. To be timely, written Objections must be mailed to the Settlement
2 Administrator, postmarked on or before the Response Deadline.

3 b. An Objection should: (1) be signed by the Settlement Class Member; (2) contain the
4 case name and case number of the Lawsuit; (3) contain the Settlement Class Member's full name,
5 telephone number, and mailing address; (4) clearly state the factual and legal basis for objecting to the
6 settlement; (5) indicate whether the Settlement Class Member is represented by counsel and identify
7 said counsel; and (6) indicate whether the Settlement Class Member intends to appear at the Final
8 Approval Hearing and seeks to be heard at the Final Approval Hearing. The Settlement Administrator
9 will provide the Parties' counsel with any Objections received and also attach the Objections as exhibits
10 to its declaration regarding due diligence that will be filed with the Court in advance of the Final
11 Approval Hearing.

12 58. **Settlement Proceeds Distribution Deadlines.**

13 a. Defendants shall fund the Gross Settlement Amount within ten (10) business days after
14 the Effective Date, or by January 2, 2023, whichever is later. If the Gross Settlement Amount increases
15 or changes pursuant to Paragraph 54, then the amount to be paid by Defendants will proportionally
16 increase or change.

17 b. No later than ten (10) calendar days after Defendants fully fund the Gross Settlement
18 Amount, the Settlement Administrator shall distribute payments in accordance with this Settlement
19 Agreement and the Court's orders, as follows: (i) payment of the Enhancement Payment to Plaintiff;
20 (ii) payment of the LWDA Payment to the Labor and Workforce Development Agency ("LWDA");
21 (iii) payment of Individual Settlement Payments to Settlement Class Members and PAGA Group
22 Members; (iv) payment of Attorneys' Fees and Costs to Class Counsel; and (v) payment of
23 Administration Costs to the Settlement Administrator.

24 c. Settlement checks will be valid for a period of one hundred and eighty (180) calendar
25 days from the date of issuance, and after this time period, any uncashed check(s) will be cancelled, and
26 the funds associated with such cancelled checks will be transmitted to the Public Law Center of Orange
27 County as the *cy pres* beneficiary in conformity with the requirements of California Code of Civil
28 Procedure section 384.

1 d. The remittance of all Court ordered and approved payments, under this Settlement
2 Agreement, to the Settlement Administrator shall constitute the full and complete discharge of the entire
3 obligation of Defendants under this Settlement Agreement.

4 e. No person shall have any claim against the Settlement Administrator, Defendants,
5 Plaintiff, Class Counsel, Defendants' Counsel, or any other agent designated by Plaintiff or Defendants
6 based upon the distribution of payments made in accordance with this Settlement Agreement or further
7 orders of the Court.

8 f. Defendants shall not be obligated to make any payments contemplated by this
9 Settlement Agreement unless and until the Court enters the Final Approval Order and Judgment, and
10 after the Effective Date, and no amounts will be owed or payable until all appeals or other collateral
11 attack have been lapsed or have been favorably resolved in favor of the settlement and no further
12 challenge to the settlement is possible.

13 59. **Binding Effect.**

14 a. Subject to Final Approval, all Settlement Class Members and PAGA Group Members
15 shall be bound by this Settlement Agreement, the contemplated Final Approval Order and Judgment,
16 and the release of Settlement Class Members' Released Claims and PAGA Group Members' Released
17 Claims against the Released Parties.

18 b. Subject to Final Approval, all Class Members, whether or not they submit a request for
19 exclusion, employed by Defendant(s) during the PAGA Period (the "PAGA Group Members") will
20 receive a PAGA payment and will no longer be able to seek penalties under the PAGA for PAGA
21 Group Members' Released Claims.

22 c. A copy of the Final Approval Order and Judgment will be available on the Settlement
23 Administrator's website pursuant to California Rules of Court, Rule 3.771(b).

24 60. **Provisional Approval of Settlement.** After execution of this Settlement Agreement,
25 Plaintiff shall file a motion seeking preliminary approval of the settlement. Defendants shall not oppose
26 the motion for preliminary approval of the settlement so long as the motion and supporting papers are
27 consistent with the terms of this Settlement Agreement. By way of the motion, the Court will be
28 requested to enter a Preliminary Approval Order that:

- 1 a. Preliminarily approves this Settlement Agreement;
- 2 b. Conditionally certifies the Class, for purposes of settlement only;
- 3 c. Preliminarily appoints Plaintiff as representative of the Class for settlement purposes
- 4 only;
- 5 d. Preliminarily appoints Class Counsel as counsel for the Class for settlement purposes
- 6 only;
- 7 e. Approves and appoints the Settlement Administrator to administer the settlement as
- 8 required by this Settlement Agreement;
- 9 f. Approves the form of the Class Notice and requires that it be sent to Class Members
- 10 and PAGA Group Members by first class U.S. mail;
- 11 g. Schedules the Final Approval Hearing; and
- 12 h. Approves the procedure and deadlines for Class Members to submit Requests for
- 13 Exclusion, Objections, and Workweek Disputes.

14 61. **Non-Interference with Settlement Administration.** The Parties and their counsel

15 agree that they shall not seek to solicit or otherwise encourage Class Members to submit Requests for

16 Exclusion or Objections to the settlement or to appeal from the Final Approval Order and Judgment.

17 62. **Final Approval Order and Judgment.** Defendants shall not oppose the motion for

18 final approval of the settlement so long as the motion and supporting papers are consistent with the

19 terms of this Settlement Agreement. Plaintiff will request, and Defendants will concur in said request,

20 that the Court enter, after the Final Approval Hearing, a Final Approval Order and Judgment drafted

21 by Plaintiff in the form that is consistent with this Settlement Agreement and subject to prior review

22 and approval by Defendants. Plaintiff will request that the Final Approval Order and Judgment find

23 that this settlement is fair, just, equitable, reasonable, adequate and in the best interests of Settlement

24 Class Members and PAGA Group Members, enter judgment in accordance with California Rules of

25 Court, Rule 3.769, and require the Parties to carry out the provisions of this Settlement Agreement.

26 63. **Voiding of Settlement Agreement if Settlement Not Finalized or for Failure to**

27 **Satisfy Conditions.**

28

1 a. The Court may award less to Plaintiff, Class Counsel, Settlement Administrator, and/or
2 the LWDA than is provided for herein, without impacting the validity and enforceability of this
3 Settlement Agreement.

4 b. If for any reason the settlement set forth in this Settlement Agreement is terminated as
5 provided under this Paragraph or Paragraph 56, or does not otherwise become final:

6 i. The settlement shall be null and void and the orders and judgment to be entered
7 pursuant to this Settlement Agreement shall be vacated; and the Parties will be returned to the status
8 quo prior to entering this Settlement Agreement with respect to the Lawsuit, as if the Parties had never
9 entered into this Settlement Agreement.

10 ii. The Settlement Agreement and all negotiations, court orders and proceedings
11 relating thereto shall be without prejudice to the rights of any and all Parties hereto, Class Members,
12 and PAGA Group Members, whom shall be restored to their respective positions existing prior to the
13 execution of this Settlement Agreement, and evidence relating to the Settlement Agreement and all
14 negotiations shall not be admissible or discoverable in the litigation and/or Lawsuit or otherwise.

15 iii. Defendants will not have waived, and instead expressly reserve, their rights to
16 challenge the continuing propriety of class certification or representative adjudication for any purpose.

17 iv. Plaintiff and Class Counsel will not have waived, and instead expressly reserve,
18 their rights to move for collective and/or class certification and seek representative adjudication.

19 v. To the extent one exists, the Preliminary Approval Order shall be vacated in its
20 entirety and neither this Settlement Agreement, the Preliminary Approval Order, nor any other
21 document in any way relating to any of the foregoing, shall be relied upon, referred to, or used in any
22 way for any purpose in connection with any further proceedings in this or any related action, including
23 class certification proceedings.

24 64. **No Publicity.** Plaintiff and Class Counsel agree not to disclose or publicize the
25 settlement, including the fact of the settlement, its terms or contents, and the negotiations underlying
26 the settlement, in any manner or form, directly or indirectly, to any person or entity, except potential
27 Class Members and as shall be contractually required to effectuate the terms of the settlement. Plaintiff
28 and Class Counsel agree not to issue press releases, communicate with, or respond to any media or

1 publication entities, publish information in manner or form, whether printed or electronic, on any
2 medium or otherwise communicate, whether by print, video, recording or any other medium, with any
3 person or entity concerning the settlement, including the fact of the settlement, its terms or contents
4 and the negotiations underlying the settlement, except as shall be contractually required to effectuate
5 the terms of the settlement. If the Parties or their counsel are contacted by the press, media or any
6 industry association, they will respond only that the case has been amicably resolved to the parties'
7 mutual satisfaction. This provision will not prevent Plaintiff or Class Counsel from discussing the
8 allegations in the Lawsuit with Class Members.

9 65. **Notices.** All notices, requests, demands, and other communications required or
10 permitted to be given pursuant to this Settlement Agreement shall be in writing, and shall be delivered
11 by first class U.S. mail, or email, as follows:

12 For Plaintiff, Class Members, and PAGA Group Members:

13 Anthony J. Orshansky
14 Jennifer L. Connor
15 CounselOne, P.C.
16 9301 Wilshire Boulevard, Suite 650
17 Beverly Hills, California 90210
18 Anthony@counselonegroup.com
19 Jennifer@counselonegroup.com

20 For Defendants:

21 Michelle Patroni
22 Martenson, Hasbrouck & Simon LLP
23 5800 Armada Drive Suite 101
24 Carlsbad, California 92008
25 mpatroni@martensonlaw.com

26 Jeremy T. Naftel
27 Lauren Kalfsbeek
28 Martenson, Hasbrouck & Simon LLP
29 455 Capitol Mall Suite 400
30 Sacramento, California 95814
31 jnaftel@martensonlaw.com
32 lbakke@martensonlaw.com

33 66. **Modification in Writing.** This Settlement Agreement may be altered, amended,
34 modified or waived, in whole or in part, only in a writing signed by counsel for the Parties and approved
35

1 by the Court. This Settlement Agreement may not be amended, altered, modified or waived, in whole
2 or in part, orally.

3 67. **Ongoing Cooperation.** Plaintiff and Defendants and their respective counsel shall
4 execute all documents and perform all acts necessary and proper to effectuate the terms of this
5 Settlement Agreement. The executing of documents must take place prior to the Final Approval
6 Hearing.

7 68. **Binding on Successors.** This Settlement Agreement shall be binding and shall inure
8 to the benefit of the Parties and their respective successors, assigns, executors, administrators, heirs,
9 and legal representatives.

10 69. **Entire Agreement.** This Settlement Agreement constitutes the full, complete, and
11 entire understanding, agreement, and arrangement between the Parties with respect to the settlement of
12 the Lawsuit and Release of Claims. This Settlement Agreement supersedes any and all prior oral or
13 written understandings, agreements, and arrangements between the Parties with respect to the
14 settlement of the Lawsuit and Release of Claims. Except as to those set forth and included expressly in
15 this Settlement Agreement, there are no other agreements, covenants, promises, representations, or
16 arrangements between the Parties with respect to the settlement of the Lawsuit.

17 70. **Execution in Counterparts.** This Settlement Agreement may be signed in one or
18 more counterparts and electronic signatures are acceptable. All executed copies of this Settlement
19 Agreement, and photocopies thereof (including facsimile copies of the signature pages), shall have the
20 same force and effect and shall be as legally binding and enforceable as the original.

21 71. **Captions.** The captions and section numbers in this Settlement Agreement are
22 inserted for the reader's convenience and in no way define, limit, construe, or describe the scope or
23 intent of the provisions of this Settlement Agreement.

24 72. **Governing Law.** This Settlement Agreement shall be interpreted, construed,
25 enforced, and administered in accordance with the laws of the State of California, without regard to
26 conflict of law rules.

1 73. **Reservation of Jurisdiction.** Notwithstanding entry and filing of the Final Approval
2 Order and Judgment, the Court shall retain jurisdiction for purposes of interpreting and enforcing the
3 terms of this Settlement Agreement.

4 74. **Mutual Preparation.** The Parties have had a full opportunity to negotiate the terms
5 and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement shall not be
6 construed more strictly against one Party than another merely by virtue of the fact that it may have been
7 prepared by counsel for one of the Parties, it being recognized that, because of the arms-length
8 negotiations between the Parties, all Parties have contributed to the preparation of this Settlement
9 Agreement.

10 75. **Representation by Counsel.** The Parties acknowledge that they have been
11 represented by counsel throughout all negotiations that preceded the execution of this Settlement
12 Agreement and that this Settlement Agreement has been executed with the consent and advice of
13 counsel. Further, Plaintiff and Class Counsel warrant and represent, to their knowledge, that there are
14 no liens on this Settlement Agreement.

15 76. **Warranties and Representations.** With respect to themselves, each of the Parties to
16 this Settlement Agreement and/or their agents or counsel represent, covenant, and warrant that (a) they
17 have full power and authority to enter into and consummate all transactions contemplated by this
18 Settlement Agreement and have duly authorized the execution, delivery, and performance of this
19 Settlement Agreement and (b) the person executing this Settlement Agreement has the full right, power,
20 and authority to enter into this Settlement Agreement on behalf of the Party for whom he/she has
21 executed this Settlement Agreement, and the full right, power, and authority to execute any and all
22 necessary instruments in connection herewith, and to fully bind such Party to the terms and obligations
23 of this Settlement Agreement.

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

1 78. **Waiver of Certain Appeals.** The Parties agree to waive appeals and to stipulate to
2 class certification for purposes of this Settlement Agreement only; except, however, that Plaintiff or
3 Class Counsel may appeal any reduction to the Attorneys' Fees and Costs below the amount they
4 request from the Court, and either Party may appeal any court order that materially alters the Settlement
5 Agreement's terms.

6 79. **Disputes Related to the Settlement Agreement and Enforcement Actions.** The
7 Parties agree that if any disputes arise out of the finalization of the settlement documentation or of the
8 settlement itself, those disputes are to be referred first to the mediator, Jeffrey Krivis, for consultation
9 and, if still unresolved, to the Judge overseeing the Action. In the event that one or more of the Parties
10 institutes any legal action or other proceeding against any other Party or Parties to enforce the
11 provisions of this Settlement Agreement or to declare rights and/or obligations under this Settlement
12 Agreement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or
13 Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with
14 any enforcement actions.

15 80. **No Prior Assignments.** The Parties and their counsel represent, covenant, and
16 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to
17 assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
18 cause of action or right herein released and discharged.

19
20 **IT IS SO AGREED:**

21
22 Dated: 08 / 15 / 2022, 2022

Mauricio Vazquez
Plaintiff Mauricio Vazquez

23
24 Dated: 8/23/2022, 2022

[Signature]
Name: Todd Nymez
Title: CFO

On Behalf of Defendant Volcom, LLC

1 Dated: 8/23, 2022

2 Name: Todd Hymel

3 Title: CEO

4 On Behalf of Defendant Volcom Retail, LLC

5 Dated: 8/23, 2022

6 Name: Todd Hymel

7 Title: CEO

8 On Behalf of Defendant Volcom Retail Outlets, LLC

