

BRADLEY/GROMBACHER, LLP

Marcus J. Bradley, Esq. (SBN 174156)
Kiley L. Grombacher, Esq. (SBN 245960)
Lirit A. King, Esq. (SBN 252521)
31365 Oak Crest Drive, Suite 240
Westlake Village, California 91361
Telephone: (805) 270-7100
Facsimile: (805) 270-7589
E-Mail: mbradley@bradleygrombacher.com
kgrombacher@bradleygrombacher.com
lking@bradleygrombacher.com

Attorneys for Plaintiff, JOSE A. LUGO

BARTKO, ZANKEL, BUNZEL & MILLER

An Ruda, Esq. (SBN 215453)
One Embarcadero Center, Suite 800
San Francisco, California 94111
Telephone: (415) 956-1900
Facsimile: (415) 956-1152
E-Mail: aruda@bzbm.com

Attorneys for Defendant MICHAEL NICHOLAS DESIGNS, INC.

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ORANGE**

JOSE A. LUGO, individually and on behalf of
other individuals similarly situated,

Plaintiff,

v.

MICHAEL NICHOLAS DESIGNS, INC., a
California corporation; and DOES 1-100 inclusive,

Defendants

CASE NO. 30-2020-01150039-CU-OE-CXC
[Assigned to Hon. Kirk Nakamura,

Department CX103]

**CLASS ACTION SETTLEMENT
AGREEMENT AND RELEASE OF
CLAIMS**

Complaint Filed: July 20, 2020
FAC Filed: October 5, 2020
SAC Filed: January 26, 2021

1 This Class Action Settlement Agreement and Release of Claims (“Agreement”) is between (1)
2 Plaintiffs Jose A. Lugo, on behalf of himself and other similar situated and aggrieved individuals
3 (“Plaintiff”), and (2) Michael Nicholas Designs, Inc. (“Defendant”) (collectively, the “Parties”), subject
4 to judicial approval, as provided below.

5 By this Agreement the Parties intend to settle the Action (defined below) and to fully, finally,
6 and forever resolve, discharge, and settle the Released Claims (defined below), subject to judicial
7 approval of the terms set forth herein. If this Agreement is not finally approved, or is otherwise
8 nullified, then the Parties shall return to their positions preceding this Agreement and Defendant shall
9 retain all rights to challenge the Plaintiff’s claims and the certification of any class.

10 **1. DEFINITIONS**

11 For the purposes of this Agreement, the Parties define the following terms. Each defined term
12 appears throughout in initial capital letters.

13 **1.1. “Action” and “Class Action”** refers to the following case: *Jose A. Lugo v.*
14 *Michael Nicholas Designs, Inc.*, Case No. 30-2020-01150039-CU-OE-CXC currently pending in the
15 California Superior Court, County of Orange.

16 **1.2. “Administrative Costs”** refers to all costs associated with administration of the
17 settlement contemplated by this Agreement. Administrative Costs include all fees and costs for, among
18 other things, printing, copying, formatting, postage, envelopes, computer searches to locate addresses,
19 calculation of payments to individual class members, calculation of applicable payroll withholdings and
20 payroll taxes, preparation and filing of appropriate IRS Forms, any cost associated with the process for
21 any uncashed settlement checks, and any other expenses the Settlement Administrator incurs to
22 complete the settlement process according to the terms of this Agreement. Administrative Costs are
23 borne in the first instance by the Settlement Administrator. Administrative Costs are expected to be
24 \$15,982.50, but shall not exceed \$17,500.00.

25 **1.3. “Agreement”** refers to this Class Action Settlement Agreement and Release of
26 Claims, which includes all its Recitals herein and all the attached Exhibits.

27 **1.4. “Class Action Complaint”** refers to the operative complaint containing class
28 allegations in the Class Action.

1 **1.5. “Class Counsel”** refers to Bradley/Grombacher, LLP. For purposes of providing
2 any notices required under this Agreement, Class Counsel shall refer to Marcus J. Bradley and Kiley L.
3 Grombacher at Bradley/Grombacher, LLP, 31365 Oak Crest Drive, Suite 240, Westlake Village,
4 California 91361, Telephone: (805) 270-7100, mbradley@bradleygromacher.com,
5 kgrombacher@bradleygrombacher.com.

6 **1.6. “Class Counsel Payment” or “Attorney Fees and Costs”** refers to the amount
7 of attorney’s fees and costs that the Court awards to Class Counsel in connection with the resolution of
8 the Action in accordance with this Agreement. Here, Class Counsel seek an amount of attorney’s fees
9 not to exceed 33 1/3% of the Gross Fund Value, and costs upon proof of receipt.

10 **1.7. “Class Member” or “Settlement Class Member”** refers to all persons who work
11 or worked as non-exempt employees of Defendant in California from July 21, 2016, through the date or
12 preliminary approval of the settlement or March 22, 2021 (whichever is sooner). This includes all
13 members of the Class whose employment ended during the Class Period (including any Terminated Sub-
14 Class).

15 **1.8. “Class Period”** refers to the time period from July 21, 2016, through the date or
16 preliminary approval of the settlement or March 22, 2021 (whichever is sooner).

17 **1.9. “Class Representative(s)” or “Plaintiff”** refers to plaintiff Jose A. Lugo.

18 **1.10. “Class Representative Service Award”** refers to any payment that the Court
19 awards to the Class Representative for efforts in prosecuting the Action on behalf of the Class Members.
20 Here Class Counsel seek a Class Representative Service Award or an “enhancement payment” to Class
21 Representative in an amount not to exceed \$10,000.

22 **1.11. “Class Settlement Fund”** refers to the Gross Fund Value minus the PAGA Fund.

23 **1.12. “Consideration Period”** refers to the 60 days following the date when the
24 Settlement Administrator re-mails the Notice of Class Action Settlement. The Consideration Period is
25 the period in which a Class Member can submit an Objection or a Request for Exclusion.

26 **1.13. “Court”** refers to the Judge presiding over the Class Action.

27 **1.14. “Defendant”** refers to Michael Nicholas Designs, Inc.
28

1 **1.15. “Defense Counsel”** refers to BARTKO, ZANKEL, BUNZEL & MILLER. For
2 purposes of providing any notices required under this Agreement, Defense Counsel shall refer to An
3 Ruda, aruda@bzbm.com, One Embarcadero Center, Suite 800, San Francisco, California 94111,
4 Telephone: (415) 956-1900, Facsimile: (415) 956-1152.

5 **1.16. “Effective Date”** means the later of (a) the Court’s Date of Final Approval of the
6 Agreement, if no objections have been filed, (b) the expiration of the time of appeal if an objection has
7 been filed and no appeal was filed, or (c) the final resolution of any appeal that has been filed.

8 **1.17. “Fairness Hearing”** refers to the hearing at which the Court decides whether the
9 terms of the Agreement are fair, reasonable, and adequate for the Class Members and meet all
10 requirements for final approval.

11 **1.18. “Date of Final Approval”** refers to the date the Court enters an order granting
12 final approval of the Settlement (the “Final Approval Order”).

13 **1.19. “Gross Fund Value”** refers to the payment Defendant is obligated to make in
14 connection with the Agreement. The Gross Fund Value shall not exceed the sum of Two Million Dollars
15 and No Cents (\$2,000,000.00). This sum shall include all payments to the Settlement Class Members for
16 wages, penalties, interest, and liquidated damages; Attorneys’ Fees and Costs; Administrative Costs; any
17 enhancement payment for the Class Representative; and the payments to the LWDA. Defendant’s
18 portion of employer payroll taxes on the settlement payments will be made separate from the Gross
19 Fund Value. Other than the Gross Fund Value and Defendant’s portion of employer taxes, Defendant
20 shall have no further monetary obligation related to the settlement and shall not be required to make any
21 other payment.

22 **1.20. “Judgment”** refers to the final judgment entered by the Court in this Class Action
23 following the Fairness Hearing and issuance of the Final Approval Order.

24 **1.21. “LWDA”** refers to the California Labor & Workforce Development Agency,
25 which helps to enforce the Private Attorney General Act (“PAGA”), and which will receive the LWDA
26 portion of the PAGA Payment.

27 **1.22. “PAGA Fund”** means the payment to the LWDA in settlement of claims for civil
28 penalties under the Private Attorneys General Act (“PAGA”), and the pro rata portion paid to the Class

Members (Distribution of PAGA Fund), in an amount not to exceed \$100,000. The PAGA Fund shall be drawn from the Gross Fund Value.

1.23. “Distribution of Class Settlement Fund” means the pro rata portion of the Class Settlement Fund that will be determined by dividing the total number of pay periods worked by all Class Members during the Class Period into the Net Settlement Amount to arrive at a value per pay period for each eligible Settlement Class Member. The value per pay period shall be multiplied by the number of pay periods worked by each Settlement Class Member during the Class Period.

1.24. “Distribution of PAGA Fund” means the pro rata portion of the PAGA Fund that remains after the payment to the LWDA, determined by dividing the total number of pay periods worked by all Class Members during the Class Period into the remaining PAGA Fund to arrive at a value per pay period for each eligible Class Member. The value per pay period shall be multiplied by the number of pay periods worked by each Class Member during the Class Period. For purposes of this Settlement, 100% of the pro rata portion paid to Class Members as the Distribution of PAGA Fund will be allocated to 1099 income.

1.25. “Net Settlement Amount” refers to the Class Settlement Fund minus all Administrative Costs, Class Counsel Payment, and Class Representative Service Award.

1.26. “Notice of Class Action Settlement” refers to the Notice of Class Action Settlement, substantially in the form attached as Exhibit A.

1.27. “Objection” refers to a written statement submitted timely by a Class Member to the Settlement Administrator that contains (1) the name and case number of the Action (or reasonable portion thereof), (2) the full name, last four digits of their social security number, and current address of the Class Member making the Objection, (3) the specific reason(s) for the Objection, and (4) all evidence and supporting papers (including, without limitation, all briefs, written evidence, and declarations) for the Court to consider. The Objection Form shall be substantially in the form attached as Exhibit B.

1.28. “Objector” refers to a Settlement Class Member who has submitted an Objection.

1 **1.29. “Parties”** refers collectively to (1) Plaintiff Jose A. Lugo, and (2) Defendant
2 Michael Nicholas Designs Inc.

3 **1.30. “Preliminary Approval Order”** refers to the order entered by the Court granting
4 the Motion for Preliminary Approval of the Agreement.

5 **1.31. “Qualified Settlement Fund (QSF)”** refers to a Qualified Settlement Fund
6 pursuant to U.S. Treasury Regulation Section 468B-1. The Gross Fund Value in this case shall be
7 deposited into a QSF established by the Settlement Administrator. The Parties agree, subject to Court
8 approval, that all payments will be allocated as recommended by the Settlement Administrator in
9 conformance with applicable tax laws with IRS Forms issued accordingly, as required by law. The
10 Settlement Administrator will calculate the gross and net amounts to be paid to the Settlement Class
11 Members in accordance with the terms and provisions of this Agreement and applicable tax law. The
12 Parties understand and agree that: (1) the Gross Fund Value will qualify and be characterized as a QSF
13 under the provisions of Treasury Regulation Sections 1.468B-1 and 1.468B-5 with the purpose of
14 resolving and/or satisfying the claims raised in this Agreement, (2) the QSF will be taxed as a separate
15 entity for purposes of all federal, state, and local taxes, (3) the Parties shall treat the QSF on a basis
16 consistent therewith for all tax purposes (and, for the avoidance of doubt, this Agreement shall be
17 interpreted consistently therewith), (4) the QSF will be characterized as the employer of all participating
18 Settlement Class Members for the purposes of determining all tax obligations (including withholding
19 obligations) and/or benefits obligations, if any, associated with any and all payments under this
20 Agreement, and (5) the QSF will bear full and sole responsibility (including the preparation and
21 submission of necessary tax forms) for all withholding taxes and benefits (if any) associated with the
22 QSF and Settlement Funds under this Agreement, in addition to any income taxes with respect to the
23 earnings within the QSF and tax requirements relating to payments from the QSF. All taxes and benefits
24 (if any) (including any interest and penalties) arising with respect to income earned by the QSF shall be
25 paid from the QSF. All expenses and costs incurred in connection with the operation and
26 implementation of the QSF (including without limitation, expenses of attorneys and/or accountants and
27 mailing and distribution of expenses related to filing (or failing to file) any necessary tax returns or
28

1 making (or failing to make) any necessary benefits payments) shall be paid from the QSF. For the
2 avoidance of doubt, Defendant shall have no obligations with respect to the administration of the QSF.

3 **1.32. “Released Claims”** refers to all claims that will be extinguished by operation of
4 this Agreement, including any and all claims, debts, penalties, liabilities, demands, obligation,
5 guarantees, costs, expenses, attorneys’ fees, damages, restitution, injunctive relief, remedy of any type,
6 or causes of action which that were pled or could have been pled, based on, or which arise out of the
7 facts alleged in the complaints in the Action, arising during the Class Period. This includes known and
8 unknown claims arising under California Labor Code sections 200-204, 226, 226.7, 510, 512, 1194,
9 1194.2, 1174, 1197, 1197.1, 1198, 2698-2699.5, IWC Wage Order 1, the California Unfair Competition
10 Law, Business and Professions Code section 17200 *et seq.*, and any other applicable provisions of state
11 or federal law The Released Claims shall apply to all Class Members who do not timely opt-out.

12 **1.33. “Released Parties”** refers to Michael Nicholas Designs Inc., and all of its present
13 and former members, parent companies, subsidiaries, affiliates, joint ventures, and licensees, and all of
14 their shareholders, officers, directors, employees, agents, servants, registered representatives, attorneys,
15 insurers, successors and assigns, and any other persons acting by through, under or in concert with any
16 of them.

17 **1.34. “Request for Exclusion”** refers to a timely, written, opt-out request signed by a
18 Class Member who thereby elects to be excluded from this Agreement. The Request for Exclusion shall
19 be substantially in the form attached as Exhibit C. Settlement Class Members who request an exclusion
20 shall not be Objectors.

21 **1.35. “Settlement Administrator”** refers to the settlement administrator the Parties
22 mutually select. Here, the Parties have selected ILYM Group, Inc. located at 14771 Plaza Drive, Unit L,
23 Tustin, CA 92780 (Phone: 888-250-6810; Fax: 888-845-6185) as the Settlement Administrator.

24 **1.36. “Settlement Class” or “Settlement Class Members”** refers to all Class
25 Members who do not file a timely and valid Request for Exclusion.

26 **1.37. “Settlement Payment”** refers to payments made to Settlement Class Members.
27
28

2. RECITALS AND PROCEDURAL HISTORY

2.1. Allegations in Class Action Complaint. On July 20, 2020, Jose A. Lugo filed a Class Action Complaint in the Superior Court for the County of Orange entitled, *Jose A. Lugo v. Michael Nicholas Designs, Inc.*, Case No. 30-2020-011500-CU-OE-CXC. Plaintiff filed a First Amended Complaint on October 5, 2020. The First Amended Complaint alleged five causes of action against Defendant for: (1) Failure to pay all wages; (2) Failure to pay all overtime; (3) Failure to furnish an accurate wage statement; (4) Unfair Business Practices under Business and Professions Code § 172000; and (5) Violation of Labor Code § 2698-2699.

Plaintiff will file a Second Amended Complaint by January 26, 2021, adding the following three additional causes of action: (1) Meal break violations; (2) Rest break violations; and (3) Failure to pay all wages at termination. The inclusion of these three additional causes of action in the Released Claims is a material term of this Agreement and has been relied upon by the Parties in entering into this Agreement, pursuant to section 8.1, below. If Class Counsel fails to file, or the Court does not permit the filing of, a Second Amended Complaint including these three additional causes of action, then the entire Agreement will be, at Defendant's sole discretion, void and unenforceable.

2.2. Defendant's Denials. Defendant denies (1) all the material allegations in the Action, (2) that it violated any applicable laws, (3) that it is liable for damages, penalties, interest, restitution, attorneys' fees, or costs, or for any other compensation or remedy with respect to anyone on account of the claims asserted in the Action, and (4) that class certification or representative treatment is appropriate as to any claim in the Action. Defendant contends that its policies, procedures, and practices comply with all applicable laws asserted in the Action. Nonetheless, without admitting any liability or wrongdoing whatsoever and without admitting that class or representative treatment is appropriate for any purpose other than for settlement purposes alone, Defendant has agreed to settle the Action on the terms set forth in this Agreement, to avoid the burden, expense, and uncertainty of litigation. Any statements by Defendant in this Agreement are made for settlement purposes only.

2.3. Class Counsel's Investigation. Class Counsel represent that they have conducted a sufficiently thorough investigation into the claims of the Settlement Class. Based on their own independent investigation and evaluation and all known facts and circumstances, including the risk

1 of significant defenses asserted by Defendant, Class Counsel are of the opinion that the Settlement is
2 fair, reasonable, and adequate and is in the best interests of the Settlement Class.

3 **2.4. Negotiation of Settlement.** Class Counsel engaged in intensive negotiations with
4 Defendant with a view toward achieving substantial benefits for the Class Members, while avoiding the
5 cost, delay, and uncertainty of further litigation. Plaintiff and Class Counsel urge approval of this
6 Agreement after considering (1) the factual and legal defenses to the claims asserted, which render
7 uncertain the ultimate outcome of the Action and class certification, (2) the potential difficulties Plaintiff
8 and Class Members would encounter in establishing their claims and maintaining class or representative
9 treatment, (3) the substantial benefits that Class Members would receive under this Agreement, (4) that
10 this Agreement provides Class Members relief in an expeditious and efficient manner, compared to any
11 manner of recovery possible after litigation and potential appeal, and (5) that this Agreement allows
12 Class Members to opt out of the settlement and individually pursue the claims alleged in the Class
13 Action.

14 **2.5. Certification of Settlement Class.** The Parties stipulate to provisional class
15 certification for purposes of settlement only. Absent final approval of the Agreement, the Parties will not
16 stipulate to class certification, and no party will be estopped as a result of any motion for settlement
17 approval. In the event that final approval of the Agreement is not granted, Defendant may reserve all
18 rights to oppose class certification, and the Parties will revert to the positions they held before this
19 Agreement. The Parties stipulate to the payments set forth in this Agreement for purposes of settlement
20 only. If there is no judicial approval for the entirety of the settlement, then this Agreement shall be null
21 and void, and no party will be estopped as a result of any motion for settlement approval. Additionally,
22 neither the Agreement nor the settlement, nor any act performed or document executed pursuant to, or in
23 furtherance of, the Agreement or the settlement: (a) is or may be deemed to be or may be used as an
24 admission or evidence of the validity of any Released Claim, or of any wrongdoing or liability of the
25 Released Parties, or any of them; or (b) is or may be deemed to be or may be used as an admission or
26 evidence of any fault or omission of the Released Parties, or any of them, in any civil, criminal, or
27 administrative proceeding in any court, administrative agency, or other tribunal.
28

Now therefore, in consideration of the agreements set forth herein, and of the release of all Released Claims, the Parties agree to the terms of this Agreement, subject to the approval of the Court.

3. NOTICE TO CLASS MEMBERS

3.1. Content of Class Notice. The Class Notice shall be substantially in the form attached as Exhibit A and include the amount of the Settlement, a calculation of the Class Members' anticipated share of the Net Settlement Amount and the full amounts of the Class Counsel Payment, Class Representative Service Awards, and Administrative Costs to be awarded, the terms of the release, the procedure to opt out of the Settlement through the Request for Exclusion Form, the procedure to Object to the Settlement through the Objection Form, and the date of the Fairness Hearing. No claim form will be required to participate in the Settlement. The Objection Form shall be substantially in the form attached as Exhibit B, and the Request for Exclusion Form shall be substantially in the form attached as Exhibit C. Class Notices and the accompanying Request for Exclusion and Objection Forms will be sent out by the Settlement Administrator 45 days after the Preliminary Approval Order, and no earlier than July 15, 2021.

3.2. Settlement Administrator. The Parties select ILYM Group, Inc., as the Settlement Administrator. The duties of the Settlement Administrator shall include, without limitation, mailing and re-mailing notices to Class Members, establishing a QSF, obtaining appropriate tax identification number(s), calculating individual Distribution of Class Settlement Fund amounts and individual Distribution of PAGA Settlement Fund amounts (including all required tax withholdings and payments), mailing individual Settlement Payments and tax forms to Settlement Class Members, remitting all tax payments and requisite reporting documentation to taxing authorities, filing any required reports with the Court, and the other duties associated with settlement administration, including specified in this Agreement. Any dispute relating to the settlement administration will, after good-faith efforts by the Parties to resolve the dispute, be referred to the Court.

3.3. Class Data for the Settlement Administrator. Two weeks after the Preliminary Approval Order, and no earlier than June 1, 2021, Defendant shall provide to the Settlement Administrator a confidential class list containing: (1) the names of Settlement Class Members; (2) their last known address and telephone number(s), if available; (3) their dates of active employment during

1 the Class Period; and (4) their social security numbers. This information shall be used to facilitate the
2 administration of this Agreement. The Settlement Administrator shall keep the class data provided by
3 Defendant strictly confidential, shall use the class data only for the purposes described in this
4 Agreement, and shall return the class data to Defendant or confirm the destruction of the same upon
5 completing the settlement administration called for by this Agreement. Under no circumstances will the
6 class data be provided to Class Counsel.

7 **4. CLASS MEMBERS' OPTIONS TO RESPOND**

8 **4.1. Consideration Period.**

9 **4.1.1. Submission of Objections and Requests for Exclusion.** Class Members
10 will have sixty (60) days (the Consideration Period) from the later of the date of the mailing or of the re-
11 mailing of the Notices to postmark their Objections or written Requests for Exclusion to the Settlement
12 Administrator. Requests for Exclusion must state, in effect, that the Class Member does not wish to
13 participate in the settlement of this Action. In addition, any Request for Exclusion or Objection must
14 include the Class Member's first and last name, signature, address, phone number, and last four digits of
15 the Class Member's Social Security number for verification purposes. A Class Member who excludes
16 himself or herself from the Settlement shall lose standing to object. Except as specifically provided
17 herein, no Class Member response of any kind that is postmarked after the Consideration Period shall be
18 considered absent agreement of the Parties.

19 **4.2. Requests for Exclusion and Opt-Out Rights.** Class Members shall be given the
20 opportunity to opt out of the Settlement.

21 **4.2.1. Opt-Out Procedure.** Class Members may opt out of this Settlement by
22 mailing the Settlement Administrator a Request for Exclusion during the Consideration Period. A
23 Request for Exclusion, to be valid, must include the Class Member's name, current address, current
24 telephone number, and the last four digits of the Class Member's Social Security number. Any Request
25 for Exclusion that does not include all of the required information or that is not submitted in a timely
26 manner will be deemed ineffective. If there is a dispute regarding the timeliness or validity of a Request
27 for Exclusion, then the Settlement Administrator shall make the determination, after consultation with
28 Class Counsel and Defense Counsel.

1 **4.2.2. Effect of Exclusion Through Opting Out.** Any Class Member who opts
2 out of this Settlement may not submit an Objection and shall not receive any Individual Settlement
3 Payment, and shall not be bound by the releases set forth in this Agreement. If a Class Member submits
4 both a Request for Exclusion and an Objection, then the Request for Exclusion will be valid and will
5 invalidate the Objection. Each Class Member who does not submit a timely, valid Request for
6 Exclusion shall be bound by the releases for which this Agreement provides.

7 **4.2.3. Tolerance of Opt-Outs—Defendant’s Right to Withdraw.** Defendant
8 will retain the right, in the exercise of its sole discretion, to nullify the Agreement within 15 days after
9 expiration of the Consideration Period, if five percent (5%) or more of the Class Members opt out of the
10 Agreement. At the close of the Consideration Period, the Settlement Administrator shall provide
11 Defendant with notice of the total number of Class Members who have chosen to opt out of the
12 Settlement. The Parties shall do nothing to encourage or solicit Settlement Class Members to opt out or
13 object to the settlement, including pursuant to section 4.5, below. If Defendant exercises the right to
14 nullify the Agreement, then Defendant shall pay the Administrative Costs for the settlement
15 administration up to the date the Agreement is nullified.

16 **4.3. Objections.** Class Members who do not submit a Request for Exclusion shall be
17 entitled to object to the terms of the Agreement.

18 **4.3.1. Objection Procedures.** Any Objection to this Agreement must contain
19 (1) the name and case number of this Action (or reasonable portion thereof), (2) the full name, last four
20 digits of their social security number, and current address of the Class Member making the Objection,
21 (3) the specific reason(s) for the Objection, and (4) all evidence and supporting papers (including,
22 without limitation, all briefs, written evidence, and declarations) for the Court to consider. Class
23 Members who submit an Objection remain bound by this Agreement if it is approved by the Court. Class
24 Counsel shall file any and all Objections with the Court.

25 **4.3.2. Waiver of Objection Rights.** Class Members who fail to submit during
26 the Consideration Period an Objection in the manner specified in the Notice of Class Action Settlement
27 shall be deemed to have waived any objection and shall be foreclosed from objecting to this Agreement,
28 whether by appeal or otherwise.

1 **4.4. Binding Effect of Settlement.** Although a Class Member might not receive the
2 Notice of Class Action Settlement, and might not timely submit an Objection or a Request for Exclusion
3 because of inability to locate the Class Member's current address, that Class Member shall nonetheless
4 be bound by this Agreement.

5 **4.5. No Interference with Class Member Responses.** Each Party agrees not to
6 encourage any Class Member to submit an Objection or a Request for Exclusion and agrees not to
7 retaliate against any Class Member for participating or not participating in the settlement that this
8 Agreement contemplates.

9 **5. DISTRIBUTION OF SETTLEMENT PROCEEDS**

10 **5.1. Class Counsel Payment.** Class Counsel intend to request—and Defendant
11 agrees not to oppose—that the Court award a Class Counsel Payment, to be drawn from the Gross Fund
12 Value, for (a) attorneys' fees in an amount not to exceed 33 1/3% of the Gross Fund Value, and costs
13 upon proof of receipt.

14 **5.1.1. Approval of Class Counsel Payment Not Material.** The Court's
15 approval of the Class Counsel Payment in the amount requested is not a material term of this
16 Agreement. If the Court approves only a lesser amount, then the other terms of this Agreement shall still
17 remain in effect and the difference will remain part of the Net Settlement Amount.

18 **5.1.2. Timing of Class Counsel Payment.** The Settlement Administrator shall
19 issue the Class Counsel Payment within the later of thirty (30) days after the Effective Date or January
20 11, 2022. Within fifteen (15) days after the Effective Date, Class Counsel shall transmit instructions to
21 the Settlement Administrator as to how any approved attorneys' fees and costs shall be paid. The
22 Settlement Administrator shall issue appropriate Internal Revenue Service Forms 1099 to Class Counsel.
23 Class Counsel shall be solely responsible for paying all applicable taxes on any Class Counsel payment
24 and shall indemnify and hold harmless Defendant from any claim or liability for taxes, penalties, or
25 interest arising as a result of the Class Counsel payment.

26 **5.2. Enhancement Award.** Class Counsel intends to request—and Defendant agrees
27 not to oppose—that the Court award a Class Representative Service Award to Class Representative Jose
28 A. Lugo in an amount not to exceed Ten Thousand Dollars And No Cents (\$10,000.00). To the extent

1 that the Court approves less than the amount of Class Representative Service Award that Class Counsel
2 request, the difference between the requested and awarded amounts will be distributed to Settlement
3 Class Members on a proportional basis relative to the size of their claims as set forth in Sections 5.5.1
4 and 5.5.2, below.

5 **5.2.1. Class Representative Service Awards Not Material.** The Court's
6 approval of the Class Representative Service Award is not a material term of this Agreement. If the
7 Court does not approve or approves only a lesser amount than that requested for a Class Representative
8 Service Award, then the other terms of this Agreement shall still remain in effect.

9 **5.2.2. Timing of Class Representative Service Awards.** The Settlement
10 Administrator shall pay any Class Representative Service Award within the later of thirty (30) days after
11 the Effective Date or January 11, 2022, and shall issue IRS Form 1099 to the Class Representative. The
12 Class Representative shall be solely responsible for paying all applicable taxes on any Class
13 Representative Service Award and shall indemnify and hold harmless Defendant from any claim or
14 liability for taxes, penalties, or interest arising as a result of the Class Representative Service Award.

15 **5.3. PAGA Fund, LWDA Payment, and Distribution of PAGA Fund.** The PAGA
16 Fund shall not exceed \$100,000, and this PAGA Allocation shall be drawn from the Gross Settlement
17 Fund. 75% of the PAGA Fund shall constitute the LWDA Payment, and the remaining 25% shall
18 constitute the total Distribution of PAGA Fund to the Class Members.

19 **5.3.1. Amount of PAGA Payment Not Material.** Any change in the requested
20 PAGA Allocation is not a material term of this Agreement. If the Court approves a lesser or greater
21 amount than that requested, the other terms of this Agreement shall still remain in effect. However,
22 some approval of a PAGA Allocation is a material term of the Settlement and this Agreement. If the
23 Court does not approve a PAGA Allocation, then the entire Agreement will be, at Defendant's sole
24 discretion, void and unenforceable. In the event Defendant exercises this option, the Administrative
25 Costs for the administration of the Settlement up to the date that Defendant exercises this option shall
26 be borne by Defendant.

27 **5.3.2. Timing of PAGA Payment.** The Settlement Administrator shall pay 75%
28 of any approved PAGA Allocation to the LWDA within the later of thirty (30) days after the Effective

1 Date or January 11, 2022. The remainder of the PAGA Fund following the LWDA payment shall be
2 distributed at the same time to the Class Members as a Distribution of PAGA Fund, based on pro-rata
3 share, as defined.

4 **5.4. Individual Settlement Payments.** Each Settlement Class Member shall be
5 entitled to an individual Settlement Payment consisting of a share of the Net Settlement Amount, as set
6 forth below.

7 **5.4.1. Calculation of Wage and Hour Settlement Share.** The pro rata portion
8 of the Class Settlement Fund for each individual Class Member shall be determined by dividing the total
9 number of pay periods worked by all Class Members during the Class Period into the Class Settlement
10 Fund to arrive at a value per pay period for each eligible Settlement Class Member. The value per pay
11 period shall be multiplied by the number of pay periods worked by each Settlement Class Member
12 during the Class Period. These individual payments to each Class Member shall be drawn from the
13 Gross Settlement Fund, with 75% of the individual pro-rata payment allocated to 1099 income and the
14 remaining 25% allocated to W-2 income and subject to withholding.

15 **5.4.2. Timing of Individual Settlement Payments.** The Settlement
16 Administrator shall issue individual Settlement Payments the later of thirty (30) days after the Effective
17 Date or January 11, 2022. Any checks from this distribution that are not cashed within one-hundred-
18 eighty (180) days from the date of the mailing of the checks shall be cancelled and said cancellation
19 shall not affect the validity of the Release of claims provided for herein and the Settlement Class
20 Member shall be deemed to, nevertheless, be bound by the Release of claims provided herein. After one-
21 hundred and eighty (180) days from the date of mailing the checks, funds from undeposited checks will
22 be held by the Settlement Administrator; if the Class Member to whom the undeposited check is issued
23 does not contact the Settlement Administrator concerning his or her settlement payment within either the
24 one-hundred and eighty (180) days from the date of mailing the checks, including if a Settlement
25 Payment is returned undeliverable and a valid mailing address cannot be ascertained, or within 30 days
26 thereafter (while the Settlement Administrator continues to hold the undeposited checks), then the
27 Settlement Class Member's individual Settlement Payment that has remained uncashed or undistributed
28

as of that time, including any accrued interests thereon, shall be distributed to the California Unclaimed Property Fund in the name of the Settlement Class Member.

5.4.3. Characterization of and Taxes on Proceeds. In accordance with law, the Settlement Administrator will make required tax withholdings from each individual Settlement Payment on the portion designated as wages and will remit the withholding to the appropriate taxing authorities. The Settlement Administrator shall issue any necessary Form W-2 and 1099 statements to Settlement Class Members for their respective individual Settlement Payments. Settlement Class Members shall be solely responsible for paying all other applicable taxes on their respective individual Settlement Payments and shall indemnify and hold harmless Defendant and the Released Parties from any claim or liability for taxes, penalties, or interest arising as a result of individual Settlement Payments.

5.4.4. Tax Allocations of Individual Settlement Payments Not Material. The Court's approval of the allocation of individual Settlement Payments set forth above is not a material term of this Agreement. If the Court does not approve or approves a different allocation of the individual Settlement Payments, then the other terms of this Agreement shall still remain in effect.

5.5. Funding of Gross Settlement Amount. First payment shall be due into the QSF at the time of the Preliminary Approval Order or June 1, 2021, whichever is later. The remaining funds shall be due the later of six months after the Date of Final Approval or January 3, 2022. The payments in this settlement shall be distributed pursuant to the terms above, and following the second payment into the QSF.

6. RELEASES

6.1. Releases by Plaintiff and Settlement Class Members. Upon the final approval by the Court of this settlement, and except as to the right to enforce the terms and conditions of this settlement, all Class Members who have not opted out of the settlement shall fully release Defendant and all of their present and former parent companies, subsidiaries, affiliates and joint ventures, and all of their officers, directors, employees, agents, servants, registered representatives, attorneys, insurers, successors and assigns, and any other persons acting by through, under or in concert with any of them ("Releasees"), from any and all claims that were pled or could have been pled, based on, or which arise out of the facts alleged in the complaints in the Action, arising during the Class Period. This includes

known and unknown claims arising under California Labor Code sections 200-204, 226, 226.7, 510, 512, 1194, 1194.2, 1174, 1197, 1197.1, 1198, 2698-2699.5, IWC Wage Order 1, the California Unfair Competition Law, Business and Professions Code section 17200 *et seq.*, and any other applicable provisions of state or federal law.

6.2. Additional Releases by Plaintiff. In addition to the release given by each Settlement Class Member, Plaintiff also generally releases claims against each Releasee. This general release includes claims arising from each Class Representative's relationship with Defendant. This general release by the Class Representatives also includes a waiver of rights under California Civil Code Section 1542, which states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

These releases from the Class Representatives are effective only upon the Court granting final approval of the Settlement and apply only to claims that may be released as a matter of law.

6.3. Settlement is Contingent Upon Release of Claims. This Agreement is conditioned upon the releases by the Settlement Class Members and Class Representative(s) as described herein, and upon covenants by the Settlement Class Members and Class Representative(s) that they will not participate in any actions, lawsuits, proceedings, complaints, or charges in any court or before any administrative body related to any claims they have released under this Settlement.

6.4. Unclaimed Funds. The failure by a Settlement Class Member or Class Representative(s) to deposit any check issued by the Settlement Administrator shall have no effect on that Settlement Class Member's or Class Representative(s)'s release of all Released Claims as set forth herein.

6.5. Inadmissibility of Settlement Documents. The Parties agree that this Agreement and all exhibits thereto shall be inadmissible in any proceeding, except an action or proceeding to approve, interpret, or enforce this Agreement. The Parties agree that, to the extent

permitted by law, this Agreement will operate as a complete defense to—and may be used as the basis for an injunction against—any action, suit, or other proceeding attempted in breach of this Agreement.

7. SETTLEMENT APPROVAL PROCEDURE

7.1. Preliminary Approval. Plaintiff shall submit to the Court a Motion for Preliminary Approval of Class Action Settlement. This motion shall seek an order to preliminarily approve this Agreement according to the terms in this Agreement and provide for the Notice of Class Action Settlement and Objection and Exclusion forms to be sent to Class Members as specified in this Agreement, substantially in the form attached hereto as Exhibits A-C. This motion shall include the basis for demonstrating that settlement amounts are reasonable in light of the facts and controlling authorities pertaining to the claims alleged. The motion shall also be accompanied by a declaration of Class Counsel discussing the risks of continued litigation and the decision that the best interests of the Class Members are served by the terms of this Agreement. Defense counsel shall have the opportunity to review and comment on a draft of the motion before it is filed, two or more weeks before it is filed.

7.2. Final Approval. Plaintiff shall submit to the Court a Motion for Final Approval Order, which shall include findings and orders (a) approving the Agreement, (b) adjudging the terms to be fair, reasonable, and adequate, (c) reciting the Released Claims in full, (d) directing that the terms of the Agreement be carried out, and (e) retaining jurisdiction to oversee enforcement of this Agreement and the Court's orders. Defense counsel shall have the opportunity to review and comment on a draft of the motion before it is filed, two or more weeks before it is filed.

7.3. Motion for Class Counsel Payment. Along with the Motion for Final Approval, Class Counsel may file a motion for Court approval of an attorneys' fees award in the amount of up to thirty-three and one-third percent (33 1/3 %) of the Gross Fund Value. Class Counsel will file any such motion no later than two weeks before the Fairness Hearing.

7.4. Motion for Class Representative Service Award. Along with the Motion for Final Approval, Class Counsel may file a motion for Court approval of an Class Representative Service Award in the amount of Ten Thousand Dollars And No Cents (\$10,000.00) to Plaintiff. Class Counsel will file any such motion no later than two weeks before the Fairness Hearing.

1 **7.5. Timing of Judgment.** After the Final Approval Order, Plaintiff shall request that
2 the Court (a) enter Judgment in accordance with this Agreement, without further fees or costs, and (b)
3 enter an order permanently enjoining all members of the Settlement Class from pursuing or seeking to
4 reopen claims that have been released by this Agreement.

5 **7.6. Appeal Rights.** Only an Objector has the right to appeal the Judgment, if the
6 Judgment is in accord with this Agreement. Each Class Representative and Class Counsel hereby waive
7 any right to appeal any judgment, ruling, or order in this Action, including, without limitation, any Final
8 Approval Order and any Judgment in the Action. This waiver includes all rights to any post-judgment
9 proceeding and appellate proceeding, such as, but not limited to, a motion to vacate judgment, a motion
10 for new trial, and any extraordinary writ, and the Judgment therefore will become non-appealable at the
11 time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal,
12 appellate proceedings, or post-judgment proceedings.

13 **8. MISCELLANEOUS**

14 **8.1. Materiality of Terms.** Except as otherwise stated herein, each substantive term
15 of this Agreement is material and has been relied upon by the Parties in entering into this Agreement. If
16 the Court does not approve any substantive term, or if the Court effects a material change to the
17 Agreement—such as increasing any amount that Defendant must pay—then the entire Agreement will
18 be, at Defendant’s sole discretion, void and unenforceable. Where this Agreement states that a term is
19 not material, then the Court’s refusal to approve that term leaves all the other terms of the Agreement in
20 effect, and does not give Class Counsel, Class Representative(s) or any Settlement Class Member any
21 basis to abrogate this Agreement.

22 **8.2. No Tax Advice.** The Parties and their counsel are not giving any tax advice in
23 connection with the settlement or any payments to be made pursuant to the Agreement. Each Settlement
24 Class Member will agree to indemnify and hold harmless the Parties from any liability for taxes, fees,
25 costs, or assessments resulting from the failure of any particular Settlement Class Member to timely pay
26 taxes, interest, fees, or penalties owed. Neither Class Counsel nor Defense Counsel intend anything
27 contained in this Agreement to constitute legal advice regarding the taxability of any amount paid
28 hereunder, nor shall anything in this Agreement be relied upon as such.

1 **8.3. No Impact on Employee Benefits.** Payments made under the Agreement shall
2 not have any effect on the eligibility for—or calculation of—any employee benefit provided by
3 Defendant. The Parties agree these payments do not affect credited hours of service or other eligibility
4 criteria under any employee pension benefit plan, employee welfare benefit plan, or other program or
5 policy. These payments also will not be considered wages, compensation, or annual earnings for benefits
6 in any year for purposes of determining eligibility for, or benefit accrual within, any employee pension
7 benefit plan, employee welfare benefit plan or other program or policy.

8 **8.4. Language of Settlement Documents.** All Settlement-related documents to be
9 filed with the Court or sent to Class Members must be approved by all Parties before being filed or sent.

10 **8.5. Parties' Authority.** The signatories hereto represent that they are fully
11 authorized to bind the Parties to all the terms of this Agreement. The Parties agree that Settlement Class
12 Members are so numerous that it is impossible or impractical to have each execute this Agreement. This
13 Agreement may be executed on behalf of Settlement Class Members by the proposed Class
14 Representative(s) and by Class Counsel.

15 **8.6. Entire Agreement.** This Agreement, which includes its Definitions, Recitals,
16 and all Exhibits attached hereto, constitutes the entire agreement on its subject matter, and supersedes all
17 prior and contemporaneous negotiations and understandings between the Parties.

18 **8.7. Counterparts.** This Agreement may be executed in counterparts, and each
19 counterpart signed and delivered shall be deemed an original, and when taken together with other signed
20 counterparts, signed and delivered shall constitute one signed Agreement, which shall be binding upon
21 and effective as to all Parties.

22 **8.8. Facsimile or Scanned Signatures.** A Party may sign and deliver this Agreement
23 by signing on the designated signature block and transmitting that signature page via facsimile or as an
24 attachment to an email to counsel for the other Party. Any such signature shall be deemed an original for
25 purposes of this Agreement and shall be binding upon the Party who transmits the signature page.

26 **8.9. Waivers and Modifications to Be in Writing.** No waiver, modification, or
27 amendment of this Agreement—whether purportedly made before or after the Court's approval of this
28 Agreement—shall be valid unless it appears in a writing signed by or on behalf of all Parties, and then

1 shall be valid subject to any required Court approval. Any failure by any Party to insist upon the strict
2 performance by the other Party of any provision of this Agreement shall not be deemed a waiver of
3 future performance of the same provisions or of any other provision of this Agreement, and such Party,
4 notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of
5 any provision of this Agreement. The time periods and dates provided in this Agreement with respect to
6 giving of notices and hearings are subject to Court approval and modification by the Court or by written
7 stipulation of Class Counsel and Defense Counsel.

8 **8.10. Construction.** Each Party participated jointly in the drafting of this Agreement,
9 and its terms are not intended to be, and shall not be, construed against any party by virtue of
10 draftsmanship.

11 **8.10.1. Exhibits Incorporated by Reference.** This Agreement includes the
12 terms set forth in any attached exhibit. Any exhibit to this Agreement is an integral part of it.

13 **8.10.2. Headings.** The headings within this Agreement appear for convenience of
14 reference only and shall have no effect upon the construction or interpretation of any part of this
15 Agreement.

16 **8.10.3. Invalidity of Any Provision.** Before declaring any provision of this
17 Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent
18 possible so as to render all provisions of this Agreement enforceable.

19 **8.11. Duty to Cooperate.** Each Party, upon the request of another, agrees to perform
20 such acts and to execute and to deliver such documents as are reasonably necessary to carry out this
21 Agreement. In the same spirit, the Parties agree to make all reasonable efforts to avoid unnecessary
22 Administrative Costs.

23 **8.12. No Prior Assignments or Undisclosed Liens.** The Class Representative(s) and
24 Class Counsel represent that they have not assigned, transferred, conveyed, or otherwise disposed of any
25 Released Claim or claim to attorneys' fees and costs award to be paid under this Agreement. The Class
26 Representative(s) and Class Counsel further represent and warrant that there are not any liens or claims
27 against any amount that Defendant is to pay under this Agreement. The Class Representative(s) and
28 Class Counsel agree to defend, to indemnify, and to hold Defendant harmless from any liability, losses,

claims, damages, costs, or expenses, including reasonable attorneys' fees, resulting from a breach of these representations or from any lien or assignment.

8.13. Waiver of Right to Request Exclusion by Class Representative(s). The Class Representative(s), by signing this Agreement, agree not to request exclusion from the Settlement. The Class Representative(s), by signing this Agreement, further represent that they have no objection to the terms of the Agreement and believe the terms to be fair, reasonable and adequate.

8.14. Confidential Information. Class Counsel will destroy all confidential documents and information provided by Defendant within 60 days after the completion of the administration of this Agreement. Class Counsel further agree that none of the information provided by Defendant shall be used for any purpose other than prosecution of this Action.

8.15. Publicity. Neither Plaintiff nor Class Counsel shall cause to be publicized, directly or indirectly, any discussion resulting in or the existence of this Agreement or its terms in any type of mass media, including, but not limited to, speeches, press conferences, press releases, interviews, television or radio broadcasts, newspapers, website postings, messages on the Internet, Facebook, Twitter or any other social media. Breach of this provision shall entitle Defendant, in the exercise of its sole discretion, to nullify this Agreement at any time before the Effective Date. Plaintiff agrees that they shall not make any comments regarding the claims in this matter or settlement thereof unless asked, and, if asked, they shall respond only that the matter has settled. Should any Plaintiff or Class Counsel at any time breach this provision, Plaintiff shall forfeit to Defendant the full amount of his Class Representative Service Award. Without limitation by the foregoing, Defendant also may enforce this provision through an action for injunctive relief. Plaintiff waives any obligation by Defendant to file a bond in connection with any such action. This provision does not apply to any publications ordered by the Court.

8.16. Continuing Jurisdiction. The Court shall retain continuing jurisdiction to ensure the continuing implementation of the provisions of the Agreement.

8.17. Disputes. The Parties agree to mediate in good faith any dispute as to the terms of this Agreement. Any such dispute will be submitted to Marc Feder for mediation.

8.18. No Admission of Liability. By settling this matter, Defendant does not admit liability of any kind. This Agreement shall not constitute an admission of any liability or the accuracy of

1 any charging allegation. This Agreement reflects the Parties' good faith compromise of the claims raised
2 in this Action, based upon their assessment of the mutual risks and costs of further litigation.

3 **8.19. Failure to Approve.** If the Court does not approve either preliminarily or finally
4 any material term or condition of the Agreement, or if the Court effects a material change, then this
5 entire Agreement will be voidable and unenforceable, subject to the Parties' agreement to the contrary,
6 and the costs of administration shall be split equally between the Plaintiff, on one side, and Defendant,
7 on the other.

8 **8.20. Governing Law.** All terms of this Agreement shall be governed by and
9 interpreted according to California law.

10
11 SO AGREED:

12
13 Dated: February 8, 2021

Jose A. Lugo
Plaintiff Jose A. Lugo

14
15
16 Dated: February 17, 2021

17 By Mike Cimarusti
18 Michael Nicholas Designs, Inc.

19
20 Approval As To Form And Content By Counsel:

21
22 Dated: February 8, 2021

23 BRADLEY/GROMBACHER, LLP

24
25 By

Marcus J. Bradley
Attorney for Plaintiff Jose A. Lugo

1
2 Dated: February 17, 2021

BARTKO, ZANKEL, BUNZEL & MILLER

3
4 By


An Ruda

Attorney for Defendant Michael Nicholas Designs, Inc.

EXHIBIT A

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE**

JOSE LUGO, an individual, on his own
behalf and on behalf of all others similarly
situated,

Plaintiffs,

v.

MICHAEL NICHOLAS DESIGNS, INC., a
California Corporation; and DOES 1-100,
inclusive,

Defendants.

CASE NO. 30-2020-01150039-CU-OE-CXC

**NOTICE OF PROPOSED CLASS
ACTION SETTLEMENT**

To: All persons who work or worked as non-exempt employees of Michael Nicholas Designs, Inc. ("Michael Nicholas") in California at any time between July 21, 2016 and [date of preliminary approval or March 22, 2021] ("Class Period"). If you fall within this definition, you are a "Class Member."

**PLEASE READ THIS NOTICE CAREFULLY
IT MAY AFFECT YOUR LEGAL RIGHTS
YOU MAY BE ENTITLED TO MONEY FROM THIS SETTLEMENT**

I. INTRODUCTION

A proposed class action settlement (the "Settlement") of the above-captioned action (the "Action") pending in the California Superior Court for the County of Orange (the "Court"), has been reached by the parties and has been granted preliminary approval by the Court supervising the Action.

A final fairness hearing regarding the settlement will be held on [redacted] to determine whether the Settlement should be granted final approval.

Records of Michael Nicholas show that you are or were employed by Michael Nicholas as a non-exempt employee in California during the Class Period, as defined above, and therefore may be eligible to participate in this Settlement.

As a Class Member, you are entitled to money under the Settlement, and you will be sent checks, unless you "opt out" of participating in the settlement. The settlement affects your legal rights, and the purpose of this Notice is to: (1) describe the Action, (2) inform you of the terms of the

PAGE 1 of 7

NOTICE OF CLASS ACTION SETTLEMENT

Settlement, and (3) inform you of your rights and options in connection with the Settlement. You are encouraged to carefully read this Notice and understand your rights.

Michael Nicholas will not retaliate against, or view in disfavor, any employee who participates in this Settlement. Michael Nicholas has agreed to pay the full amount of the Settlement even if some employees opt out of participating in the settlement. Accordingly, Michael Nicholas will not pay less if you opt out.

II. SUMMARY OF THE ACTION

In the Action, Plaintiff Jose Lugo (“Plaintiff”) contends that: (1) non-exempt employees of Michael Nicholas were not paid all earned wages under California law, (2) non-exempt employees of Michael Nicholas were not paid overtime under California law; (3) employees were not furnished accurate and itemized wage statements, and Michael Nicholas failed to maintain accurate payroll records; (4) non-exempt employees of Michael Nicholas were not provided adequate meal periods, (5) non-exempt employees of Michael Nicholas were not provided adequate rest periods, (6) Michael Nicholas failed to pay wages due to employees upon discharge or quitting, (7) Michael Nicholas committed unfair business practices based on the foregoing; (8) Michael Nicholas violated California Labor Code §§ 2698-2699, the Private Attorneys General Act of 2004 (“PAGA”).

Plaintiff sought to maintain a class action for claims on behalf of himself and all persons who are, or have been, employed by Michael Nicholas as a non-exempt employee in the State of California beginning July 21, 2016 through [date of preliminary approval/ March 22, 2021].

Michael Nicholas denies any liability or wrongdoing of any kind arising out of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Action. Michael Nicholas also denies, *inter alia*, that the Plaintiff or the Class Members were harmed by the conduct alleged in the Action. Michael Nicholas further denies that the litigation is properly maintainable as a class action.

The Court has not ruled on the merits of Plaintiff’s claims, and has not expressed any opinion regarding whether Plaintiff’s claims are correct.

The Parties to this Action have voluntarily agreed upon a tentative settlement of the claims asserted by Plaintiff. By agreeing to this Settlement, Michael Nicholas has not admitted to any wrongdoing and continues to dispute that any of Plaintiff’s allegations have any merit or factual support. The Parties have agreed to this Settlement solely to avoid the legal expense of litigation. The Parties have stipulated to class certification solely for the purpose of effectuating this Settlement and, should the Settlement not be approved by the Court or effectuated, the stipulation for class certification for settlement purposes shall have no effect and be null and void.

The Court granted preliminary approval of the Settlement on [REDACTED]. At that time, the Court also preliminarily approved Plaintiff to serve as Class Representative, and the law firm of Bradley Grombacher, LLP to serve as Class Counsel.

The Court also scheduled a Final Fairness Hearing on the Settlement at [REDACTED] on [REDACTED], in Department CX105, Orange County Superior Court, at which time the Court will decide whether to grant final approval of the Settlement.

III. SUMMARY OF SETTLEMENT TERMS

Settlement Amount. Michael Nicholas has agreed to pay Two Million U.S. Dollars (\$2,000,000.00) (the “Settlement Amount”) to fully resolve the claims in the Action. This Settlement Amount includes settlement administration costs, attorneys’ fees, litigation expenses, a Class Representative service enhancement, and a payment to the California Labor and Workforce Development Agency as outlined below. The Court has tentatively approved certain payments to be made from the Settlement Amount as follows, which will be subject to final Court approval:

- Settlement administration. Payment to the Settlement Administrator, which is estimated to be approximately \$15,982.50, for the expense of notifying the Class Members of the Settlement and processing payments and opt-outs submitted by Class Members.
- Attorneys’ Fees and Expenses. Payment to Plaintiff’s Counsel of reasonable attorneys’ fees not to exceed \$666,666 and litigation costs as compensation for the work Plaintiff’s Counsel performed in this Action, and will continue to perform through settlement finalization. Plaintiff’s Counsel have been prosecuting the Action on behalf of Plaintiff and the Class on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses.
- Class Representative Service Payment. A Service Payment not to exceed \$10,000 to Plaintiff Jose Lugo to compensate him for his services on behalf of the Class Members in initiating and prosecuting the Action. This payment is in addition to whatever payments Plaintiff otherwise is entitled to as a Class Member.
- Payment to the LWDA. A payment to the California Labor & Workforce Development Agency in the amount of \$100,000 to settle claims under the California Labor Code Private Attorneys General Act.

What remains after the above deductions from the Settlement Amount is referred to as the Net Settlement Amount, which will be apportioned amongst the Class Members on a pro rata basis based upon length of employment during the Class Period.

Calculation of Class Member Awards. The Net Settlement Amount shall be apportioned among each individual Class Member by dividing the total number of pay periods worked by all Class Members during the Class Period of July 21, 2016 to [date of Preliminary Approval] into the Class Settlement Fund to arrive at a value per pay period for each eligible Settlement Class Member. The value per pay period shall be multiplied by the number of pay periods worked by each Settlement Class Member during the Class Period.

Automatic Payments to Class Members. You are not required to submit a claim form in order receive money pursuant to this Settlement. Presuming the Court grants final approval of the

Settlement, you will thereafter receive your share of the settlement in the mail, unless you timely opt out. Based upon Michael Nicholas's records that reflect [redacted] weeks of employment as a non-exempt employee during the period July 21, 2016 through [date of preliminary approval], it is estimated that **Your Share of the Settlement will be the gross amount of \$ [redacted]**. The sum of the checks that you receive will be less than the Estimated Payment because there will be withholding for payroll and employment taxes. Uncashed settlement checks will be paid to the California Unclaimed Property Fund in the name of the Settlement Class Member.

If you disagree with the information in the preceding paragraph regarding your Weeks and employment status, you may produce evidence to the Settlement Administrator supporting your disagreement. Michael Nicholas's records will be presumed determinative absent evidence which rebuts those records, but the Settlement Administrator shall evaluate the evidence submitted and make the final decisions as to which data should be applied. Any evidence supporting any disagreement with the information regarding your Weeks and employment status must be submitted by you to the Settlement Administrator no later than 30 calendar days after this Notice was mailed to you by the Settlement Administrator.

Tax Matters. The individual payments to each Class Member shall be drawn from the Gross Settlement Fund, with 75% of the individual pro-rata payment allocated to 1099 income and the remaining 25% allocated to W-2 income and subject to withholding. In accordance with law, the Settlement Administrator will make required tax withholdings from each individual Settlement Payment on the portion designated as wages and will remit the withholding to the appropriate taxing authorities. The Settlement Administrator shall issue any necessary Form W-2 and 1099 statements to Settlement Class Members for their respective individual Settlement Payments. Class Members who receive any settlement payment should consult their tax advisors concerning the tax consequences of the settlement payments they receive pursuant to the proposed Settlement.

Settlement Class Members shall be solely responsible for paying all other applicable taxes on their respective individual Settlement Payments and shall indemnify and hold harmless Defendant and the Released Parties from any claim or liability for taxes, penalties, or interest arising as a result of individual Settlement Payments.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order finally approving the Settlement.

IV. RECEIVING MONEY FROM THE SETTLEMENT

As explained above, Class Members do not need to do anything to claim money from the Settlement. Rather, they will receive their money unless they affirmatively opt-out of the Settlement.

Class Members who do not opt-out will receive one check will be for the portion relating to the claims ("Check"). If you do not opt out, you still will be bound by the terms of the Release set forth in Section VII of this Notice. The only way not to be bound by the Settlement is to opt out.

V. RIGHT TO OPT OUT

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement by “opting out.” **If you opt out, you will receive no money from the Settlement, and you will not be bound by its terms.** If you opt out of the Settlement, you will no longer be a Class Member, you will be barred from participating in this Settlement, and you will receive no benefit from this Settlement. By opting out of the Settlement, you will retain whatever rights or claims you may have, if any, against Michael Nicholas, and you will be free to attempt to pursue them on an individual basis at your own cost, if you choose to do so. Employees who opt out will have their portion of the settlement re-distributed to the Net Settlement Amount, which will go to the Settlement Class Members who do not opt out.

If you wish to opt-out of participating in this Settlement, you must send a written request to the Settlement Administrator which must: (a) contain your name, address, telephone number, and last four digits your Social Security Number; (b) state that “I understand that I am requesting to be excluded from the class monetary settlement and that I will receive no money from the Class Settlement Amount. I understand that if I am excluded from the Settlement Class, I may bring a separate action, but I might lose my separate action or win and recover nothing or less than what I would have recovered under the class monetary provisions in this case”; (c) be addressed to the Settlement Administrator at the address indicated below; and (d) be **signed** by you. The opt out request must be **postmarked** no later than [REDACTED].

The name, address, phone, and fax number of the Settlement Administrator is: ILYM GROUP, INC. at 14771 Plaza Drive, Unit L, Tustin, CA 92780 (Phone: 888-250-6810; Fax: 888-845-6185)

VI. RIGHT TO OBJECT

If you are a Class Member who has **not** opted out and believe that the Settlement should not be finally approved by the Court for any reason, you may object to the proposed Settlement. Objections to the terms of the Settlement must be in writing, state the basis for any objection, and must be sent to the Settlement Administrator on or before [REDACTED], 2021. Objections that pertain solely to the attorney’s fees sought by Class Counsel must be filed with the Court, with a copy sent to the Administrator, no later than [REDACTED].

Objections not previously sent in writing in a timely manner as described above will not be considered by the Court. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before [REDACTED], 2021 at the following addresses:

<u>Plaintiff's Counsel:</u>	<u>Counsel for Michael Nicholas:</u>
BRADLEY/ GROMBACHER, LLP	BARTKO, ZANKEL, BUNZEL & MILLER
Marcus J. Bradley, Esq. Kiley L. Grombacher, Esq. 31365 Oak Crest Drive, Suite 240 Westlake Village, CA 91361	An Ruda, Esq. One Embarcadero Center, Suite 800 San Francisco, California 94111
Telephone: (805) 212-5124	Telephone: (415) 956-1900 Facsimile: (415) 956-1152
E-Mail: mbradley@bradleygrombacher.com kgrombacher@bradleygrombacher.com	E-Mail: aruda@bzbm.com

All objections or other correspondence must state the name and number of the case, which is *Lugo v. Michael Nicholas Corporation*, Orange County Superior Court, Case No. 30-2020-01150039-CU-OE-CXC. If you object to the Settlement, you will remain a Class Member, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided above shall have waived any objection to the Settlement, whether by appeal or otherwise.

VII. RELEASES

Class Members who do not opt out, will be bound by the following release:

By operation of the entry of the Final Approval Order and judgment, and except as to such rights or claims as may be created by this Agreement, each Class Member, and each of their respective executors, administrators, representatives, agents, heirs, successors, assigns, trustees, spouses, or guardians, will release Michael Nicholas—and its current or former officers, directors, employees and agents—of and from any and all claims, rights, demands, charges, complaints, causes of action, obligations, or liability of any and every kind, known or unknown, that were or could have been asserted in any version of the complaints filed in this Action or are based on or arise out of the facts alleged in any version of the complaints filed in this Action, including, California Labor Code sections 200-204, 226, 226.7, 510, 512, 1194, 1194.2, 1174, 1197, 1197.1, 1198, 2698-2699.5, IWC Wage Order 1, the California Unfair Competition Law, Business and Professions Code section 17200 *et seq.*, and any other applicable provisions of state or federal law arising at any time between July 21, 2016 and [date of preliminary approval] including claims for restitution and other equitable relief, liquidated damages, punitive damages, waiting time penalties, and any other penalties of any nature whatsoever.

VIII. HEARING ON THE SETTLEMENT

The Final Approval Hearing on the adequacy, reasonableness and fairness of the Settlement will be held on [REDACTED] in Department CXXXX, Orange County Superior Court, 751 W. Civic Center Drive, Santa Ana, 92701. The Hearing may be continued without further notice. **You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend the hearing.**

IX. ADDITIONAL INFORMATION

This Notice is only a summary of the Action and the Settlement. Class Members should contact the Settlement Administrator with any concerns or questions regarding the Settlement. You may also refer to the pleadings, the Joint Stipulation of Settlement and Release of Claims, and other papers filed in the Action, which will be posted on the following website maintained by the Settlement Administrator: [REDACTED]. These papers may be inspected at the Office of the Clerk for the Orange County Superior Court, 700 W. Civic Center Drive, Santa Ana, 92701, during regular business weeks of each court day. You may also contact the Settlement Administrator by calling toll free 1-888-250-6810.

PLEASE DO NOT CONTACT THE CLERK OF THE COURT OR THE JUDGE WITH QUESTIONS.

EXHIBIT B

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

JOSE LUGO, an individual, on his own behalf and on behalf of
all others similarly situated,

Plaintiffs,

v.

MICHAEL NICHOLAS DESIGNS, INC., a California
Corporation; and DOES 1-100, inclusive,
Defendants

Case No. 30-2020-01150039-CU-OE-CXC

OBJECTION FORM

**DO NOT SIGN OR SEND THIS DOCUMENT UNLESS YOU WISH TO OBJECT TO THE CLASS
ACTION SETTLEMENT.**

If you want to participate in the settlement, but you object to some or all of its terms, you **must complete this form, sign it, and mail it to the Settlement Administrator postmarked no later than** **2021**, **at the following address:**

Michael Nicholas Designs, Inc. Class Action Settlement
c/o ILYM Group, Inc.
14771 Plaza Drive, Unit L
Tustin, CA 92780

The Court will consider your objection at the Final Approval Hearing if you timely submit this form. All of the sections must be filled out.

I. BASIS FOR YOUR OBJECTION

I object to the settlement on the following legal and/or factual grounds (if you need more room, you may attach pages):

II. YOUR IDENTIFICATION INFORMATION

Name: _____ Telephone Number: _____

Address: _____ City, State ZIP Code: _____

Employee ID or last four digits of Social Security Number: _____

III. SIGNATURE

Dated: _____

Signature

EXHIBIT C

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

JOSE LUGO, an individual, on his own behalf and on behalf of
all others similarly situated,

Plaintiffs,

v.

MICHAEL NICHOLAS DESIGNS, INC., a California
Corporation; and DOES 1-100, inclusive,
Defendants

Case No. 30-2020-01150039-CU-OE-CXC

REQUEST FOR EXCLUSION FORM

DO NOT SIGN OR SEND THIS DOCUMENT UNLESS YOU WISH TO EXCLUDE YOURSELF FROM THE CLASS ACTION SETTLEMENT. IF YOU EXCLUDE YOURSELF, YOU WILL NOT RECEIVE ANY PAYMENT FROM THE SETTLEMENT.

If you wish to exclude yourself from the settlement, this document **must be completed, signed, and submitted to the Settlement Administrator**, postmarked no later than , 2021. It must be sent via U.S. mail to:

Michael Nicholas, Inc. Class Action Settlement
c/o ILYM Administration
14771 Plaza Drive, Unit L
Tustin, CA 92780

BY SIGNING BELOW, I CONFIRM THAT I UNDERSTAND THAT I AM REQUESTING TO BE EXCLUDED FROM THE CLASS MONETARY SETTLEMENT AND THAT I WILL RECEIVE NO MONEY FROM THE CLASS SETTLEMENT AMOUNT. I UNDERSTAND THAT IF I AM EXCLUDED FROM THE SETTLEMENT CLASS, I MAY BRING A SEPARATE ACTION, BUT I MIGHT LOSE MY SEPARATE ACTION OR WIN AND RECOVER NOTHING OR LESS THAN WHAT I WOULD HAVE RECOVERED UNDER THE CLASS MONETARY PROVISIONS IN THIS CASE.

Dated: _____

(Signature)

(Employee ID or Last Four Digits of Social
Security Number)

(Type or print name and former name(s))

(Telephone Number)

(Address)
