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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CRUZ

BERTHA ZAMORA, as an aggrieved
employee pursuant to the Private Attorneys
General Act (“PAGA”), on behalf of the State of
California and other aggrieved employees,

Plaintiff,

vs.

FOX FACTORY, INC., a California
corporation; FOX FACTORY HOLDING
CORP., a Delaware corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No. 20CV02502

PAGA SETTLEMENT AGREEMENT

PAGA SETTLEMENT AGREEMENT

Subject to Court approval by the Superior Court of the State of California for the County of Santa Cruz (“Court”), Plaintiff Bertha Zamora (“Plaintiff”) and Defendants Fox Factory, Inc. and Fox Factory Holding Corp. (“Defendants”) (collectively with Plaintiff, the “Parties”) hereby agree to the following binding settlement (“Settlement” or “Settlement Agreement”) of the action entitled *Zamora v. Fox Factory, Inc.*, No. 20CV02502 (Santa Cruz County Superior Court) (the “Action”).

DEFINITIONS

The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:

1. “Action” means *Zamora v. Fox Factory, Inc.*, No. 20CV02502 (Santa Cruz County Superior Court).
2. “Aggrieved Employees” means all persons who were employed by Defendants in California as non-exempt, hourly-paid employees at any time from September 25, 2019 through November 30, 2022; provided that if the total number of Pay Periods worked by the referenced group during that time period exceeds Forty-Two Thousand Four Hundred Twenty (42,420) Pay Periods, Defendants shall have the option of: (a) adjusting the end-date of the settlement period so that no more than 42,420 Pay Periods are being settled and released; or (b) increasing the amount of the Gross Settlement Amount by Nineteen Dollars and Six Cents (\$19.06) for each Pay Period in excess of 42,420 included in the Settlement Period.
3. “Court” means the Superior Court for the State of California, County of Santa Cruz.
4. “Gross Settlement Amount” means the settlement amount (absent the adjustment pursuant to option “b” in **Paragraph 2**) of One Million Two Hundred Fifty Thousand Dollars (\$1,250,000) to be paid by Defendants in full satisfaction of all Settled Claims arising from the Action.
5. “LWDA” means the California Labor and Workforce Development Agency.
6. “PAGA Penalties Fund” means the Gross Settlement Amount less the Attorneys’ Fees and Costs, Service Award, and Settlement Administrator Costs approved by the Court.
7. “Plaintiff’s Counsel” means Capstone Law APC.
8. “Released Parties” means: (i) Fox Factory, Inc.; (ii) Fox Factory Holding Corp.; (iii) the

1 past and present parents, subsidiaries, and affiliates of Fox Factory, Inc. and/or Fox Factory Holding
2 Corp. including without limitation any corporation, limited liability company, partnership, trust,
3 foundation and non-profit entity which controls, is controlled by, or is under common control with either
4 of those entities; (iii) the shareholders, directors, officers, agents, employees, benefit plans, insurers,
5 successors and assigns of any of the foregoing; and (iv) any individual or entity that could be jointly
6 liable with any of the foregoing as to one or more Settled Claims.

7 9. "Service Award" means the amount to be paid to Plaintiff as payment for her service on
8 behalf of the LWDA and Aggrieved Employees and for a general release of all claims arising out of her
9 employment with Defendants.

10 10. "Settled Claims" means any and all claims for PAGA civil penalties under the California
11 Labor Code, Wage Orders, regulations, and/or other provisions of law that were alleged to have been
12 violated in the Action or that reasonably could have been alleged to have been violated in the Action
13 based on the facts alleged in the Complaint Plaintiff filed in the Action. This includes all claims for
14 PAGA civil penalties arising from the alleged violation of one or more of the following Labor Code
15 provisions as to Aggrieved Employees during the Settlement Period: California Labor Code sections
16 201, 202, 203, 204, 210, 222.5, 226, 226.3, 226.7, 227.3, 256, 510, 512, 516, 551, 552, 558, 1174,
17 1174.5, 1182.12, 1194, 1197, 1198, and 2802.

18 11. "Settlement Period" means September 25, 2019 through November 30, 2022 or the
19 earlier date selected by Defendants in the event they exercise option "a" in **Paragraph 2**, above.

20 TERMS

21 12. Gross Settlement Amount. In consideration for Plaintiff's promises and representations
22 described in this Settlement Agreement, and subject to all of the conditions of the Settlement being met,
23 Defendants will pay (absent the adjustment pursuant to option "b" in **Paragraph 2**) One Million Two
24 Hundred Fifty Thousand Dollars (\$1,250,000) ("Gross Settlement Amount") to settle the Action. The
25 Gross Settlement Amount includes Plaintiff's attorneys' fees, litigation costs and expenses, consideration
26 for Plaintiff's service on behalf of the LWDA and Aggrieved Employees, Settlement Administration
27 Costs, and payments to Aggrieved Employees and the LWDA for their share of the PAGA Penalties
28 Fund. No portion of the Gross Settlement Amount will be retained by, or revert to, Defendants.

13. PAGA Penalties Fund. The PAGA Penalties Fund will be paid to Aggrieved Employees and the LWDA in full satisfaction of all Settled Claims, Seventy-Five Percent (75%) of the PAGA Penalties Fund will be paid to the LWDA, and the remaining Twenty-Five Percent (25%) will be paid to all Aggrieved Employees according to the following formula:

13(a) Defendants will calculate: (a) the total number of pay periods worked by each Aggrieved Employee during the Settlement Period, and (b) the total number of pay periods worked by all Aggrieved Employees during the Settlement Period.

13(b) To determine each Aggrieved Employee's payment from the PAGA Penalties Fund, Defendants will use the following formula: Settlement Payment = 25% of PAGA Penalties Fund $\times$ [Pay Periods Worked by Individual Aggrieved Employee During the Settlement Period $\div$ Total Pay Periods Worked by All Aggrieved Employees during the Settlement Period].

14. Attorneys' Fees and Costs. Defendants agree not to oppose or impede any application or motion by Plaintiff's Counsel for Attorneys' Fees and Costs of not more than Four Hundred Sixteen Thousand Six Hundred Sixty-Seven Dollars (\$416,667), plus the reimbursement of all out-of-pocket costs and expenses associated with Plaintiff's Counsel's litigation and settlement of the Action (including expert/consultant fees, investigations costs, etc.), not to exceed Twenty-Five Thousand Dollars (\$25,000), both of which will be paid from the Gross Settlement Amount. Any portion of the Attorneys' Fees and Costs not awarded to Plaintiff's Counsel will remain a part of the PAGA Penalties Fund.

15. Service Award. For a general release of all claims Plaintiff may have against Defendants arising out of her employment, and for her service on behalf of the LWDA and Aggrieved Employees, Defendants agree not to oppose or impede any application or motion by Plaintiff for a service award of up to Ten Thousand Dollars (\$10,000) ("Service Award"). Upon receipt of the Service Award, Plaintiff will be deemed to have fully released and discharged the Released Parties from any and all claims, demands, obligations, causes of action, rights, or liabilities of any kind which have been or could have been asserted against Defendants arising out of, or relating to, Plaintiff's employment with Defendants or

1 termination thereof, including but not limited to claims for wages, restitution, penalties, retaliation,
2 defamation, discrimination, harassment or wrongful termination of employment. This release specifically
3 includes any and all claims, demands, obligations and/or causes of action for damages, restitution,
4 penalties, interest, and attorneys' fees and costs (except provided by the Settlement) relating to or in any
5 way connected with the matters referred to herein, whether or not known or suspected to exist, and
6 whether or not specifically or particularly described herein. Specifically, Plaintiff will be deemed to have
7 waived all rights and benefits afforded by California Civil Code Section 1542, which provides:

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

13 16. Plaintiff understand and agrees that this Settlement Agreement shall remain in full force
14 and effect even if the full amount of Service Award sought by Plaintiff is not ultimately awarded by the
15 Court. Any portion of the Service Award not awarded to Plaintiff will remain a part of the PAGA
16 Penalties Fund

17 17. Settlement Administration Costs. The Parties will retain CPT Group, Inc. as the third-
18 party settlement administrator ("Settlement Administrator"). The Settlement Administrator will be
19 responsible for establishing a qualified settlement fund ("QSF") and issuing payments and appropriate
20 tax forms to Aggrieved Employees, the LWDA, Plaintiff, and Plaintiff's Counsel. The Settlement
21 Administration Costs will be paid from the Gross Settlement Amount. Based on the estimate that there
22 are approximately One Thousand Five Hundred Sixty (1,560) Aggrieved Employees, Settlement
23 Administration Costs are estimated at Ten Thousand Dollars (\$10,000).

24 18. Court Approval of the Settlement and Distribution of Settlement Payments. The Parties
25 will present this Settlement Agreement to the Court and the LWDA. The Parties will request that the
26 Court issue an order and judgment approving and incorporating by reference the terms and conditions of
27 the Settlement Agreement (the "Order and Judgment").

28 19. List of Aggrieved Employees. Within fourteen (14) calendar days after entry of the

Order and Judgment, Defendants will provide the Settlement Administrator a complete list of all Aggrieved Employees (“Aggrieved Employee List”). The Aggrieved Employee List will be formatted in Microsoft Office Excel and will include each Aggrieved Employees full name; most recent mailing address and telephone number; Social Security number; the respective number of pay periods during which each Aggrieved Employee worked during the Settlement Period; and any other relevant information needed to calculate settlement payments.

20. Funding of the Settlement. Within thirty (30) calendar days after entry of the Order and Judgment, Defendant will deposit the Gross Settlement Amount into the QSF to be established by the Settlement Administrator. Within fourteen (14) calendar days of the date on which the Judgment is final and can no longer be appealed, the Settlement Administrator will issue payments to: (a) Aggrieved Employees; (b) the Labor and Workforce Development Agency; (c) Plaintiff; (d) Plaintiff’s Counsel; and (e) itself. The Settlement Administrator, and not Defendants, will issue the appropriate tax forms for all payments issued under this Settlement.

21. Settlement Payments to Aggrieved Employees. The Settlement Administrator will issue each Aggrieved Employee one check for his or her share of the PAGA Penalties Fund along with an explanatory letter, attached as Exhibit A. Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address or Social Security number of the Aggrieved Employee involved, and will then perform a single re-mailing. Checks will remain negotiable for 180 days. Those funds represented by un-cashed checks which remain outstanding 180 days after the mailing of the Settlement checks by the Settlement Administrator will be tendered to Worksafe. All settlement payments to Aggrieved Employees will be treated as miscellaneous income for which a 1099 will be issued.

22. Settled Claims. Upon entry of the Order and Judgment, Plaintiff and all Aggrieved Employees will be forever barred from pursuing against the Released Parties any and all Settled Claims

1 that arose during the Settlement Period. Aggrieved Employees, other than Plaintiff, will not be deemed
2 to have released any individual wage and hour claims by virtue of this Settlement.

3 23. No Right to Exclusion or Objections by Representative Action Members. Because this
4 settlement resolves claims and actions brought pursuant to PAGA by Plaintiff acting as a proxy and as a
5 Private Attorney General of, and for, the State of California and the LWDA, the Parties agree that no
6 Aggrieved Employee has the right to exclude himself or herself from the Settlement. Aggrieved
7 Employees will be bound by the terms of the Settlement Agreement, upon its approval by the Court,
8 regardless of whether he or she cashes any payment received as a result of this Settlement. The Parties
9 also agree that no Aggrieved Employee has the right to object to the terms of the Settlement Agreement.

10 24. No Media. No public comment, communications to media, or any form of advertising or
11 public announcement (including social media) regarding the case shall be made by Plaintiff or Plaintiff's
12 Counsel at any time.

13 25. Confidentiality. Prior to filing the motion for approval of this Settlement, neither Plaintiff
14 nor Plaintiff's Counsel shall discuss the terms of the settlement or the negotiations leading thereto with
15 any person other than each other.

16 26. No Credit Toward Benefit Plans. Payments to Aggrieved Employees as referenced
17 herein will not be utilized to calculate any additional benefits under any benefit plans to which any
18 Aggrieved Employee may be eligible, including, but not limited to profit-sharing plans, bonus plans,
19 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit
20 plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights,
21 contributions, or amounts to which any Aggrieved Employee may be entitled under any benefit plans.

22 27. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant
23 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
24 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of
25 action or right herein released and discharged.

26 28. Nullification of Settlement Agreement. In the event that: (a) the Court does not approve
27 the Settlement as provided herein; or (b) the Settlement does not become final for any other reason, then
28 this Settlement Agreement, and any documents generated to bring it into effect, will be null and void,

1 and the Parties will be returned to their original respective positions.

2 29. Judgment and Continued Jurisdiction. After entry of the Order and Judgment, the Court
3 will have continuing jurisdiction solely for purposes of addressing: (a) the interpretation and enforcement
4 of the terms of the Settlement, (b) settlement administration matters, and (c) such post-Judgment matters
5 as may be appropriate under court rules or as set forth in this Settlement.

6 30. Entire Agreement. This Settlement Agreement constitutes the entirety of the Parties'
7 settlement terms. No other prior or contemporaneous written or oral agreements may be deemed binding
8 on the Parties.

9 31. Amendment or Modification. This Settlement Agreement may be amended or modified
10 only by a written instrument, signed by either the Parties or their successors-in-interest or counsel for all
11 Parties, and approved by the Court.

12 32. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and
13 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement
14 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant
15 to this Settlement Agreement to effectuate its terms and to execute any other documents required to
16 effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each
17 other and use their best efforts to affect the implementation of the Settlement. If the Parties are unable to
18 reach agreement on the form or content of any document needed to implement the Settlement, or on any
19 supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties
20 may seek the assistance of the Court to resolve such disagreement.

21 33. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,
22 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

23 34. California Law Governs. All terms of this Settlement Agreement will be governed by
24 and interpreted according to the laws of the State of California.

25 35. Execution and Counterparts. This Settlement Agreement is subject only to the execution
26 of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All
27 executed counterparts and each of them, including electronic signatures (e.g., DocuSign), facsimiles, and
28 scanned copies of the signature pages, will be deemed to be one and the same instrument.

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

6 37. Waiver of Certain Appeals. The Parties agree to waive appeals; except, however, that
7 Plaintiff may appeal any reduction to the Attorneys' Fees and Costs below the amount they request from
8 the Court, and either party may appeal any court order that materially alters the Settlement's terms.

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

13 39. Captions. The captions and section numbers in this Settlement Agreement are inserted
14 for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the
15 provisions of this Settlement Agreement.

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

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

24 42. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
25 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed
26 more strictly against one party merely by virtue of the fact that it may have been prepared by counsel for
27 one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties,
28 all Parties have contributed to the preparation of this Settlement Agreement.

43. Representation By Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

44. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

45. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

46. Denial of Liability. The Parties expressly recognize that the making of this agreement does not in any way constitute an admission or concession of wrongdoing on the part of Defendants. Nothing in this Settlement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the pendency of the Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this agreement may be used in any proceeding in the Court that has as its purpose the interpretation, implementation, or enforcement of the Settlement or any orders or judgments of the Court entered into in connection therewith.

READ CAREFULLY BEFORE SIGNING

PLAINTIFF

Dated: 6/6/2023

Bertha Zamora

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Bertha Zamora
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DEFENDANT

Dated: _____

Dale A. Silvia
Fox Factory, Inc.

DEFENDANT

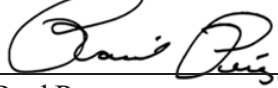
Dated: _____

Dale A. Silvia
Fox Factory Holding Corp.

APPROVED AS TO FORM

CAPSTONE LAW APC

Dated: 6/7/2023



Raul Perez

LITTLER MENDELSON, P.C.

Dated: _____

Marlene Muraco

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Dated: June 6, 2023

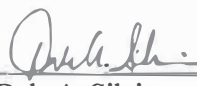
DEFENDANT



Dale A. Silva
Fox Factory, Inc.

Dated: June 6, 2023

DEFENDANT



Dale A. Silva
Fox Factory Holding Corp.

APPROVED AS TO FORM

CAPSTONE LAW APC

Dated: _____

Raul Perez

LITTLER MENDELSON, P.C.

Dated: June 9, 2023



Marlene Muraco

Exhibit A

<<DATE>>

<<FIRST_NAME>> <<LAST_NAME>>

<<ADDRESS 1>>

<<ADDRESS 2>>

Re: *Zamora v. Fox Factory, Inc.*, No. 20CV02502 (Santa Cruz County Superior Court)

Dear <<FIRST_NAME>> <<LAST_NAME>>:

Enclosed you will find a check made payable to you. This is your payment from the settlement of the lawsuit entitled *Zamora v. Fox Factory, Inc.*, No. 20CV02502 (Santa Cruz County Superior Court) (the “Action”).

The Action was filed against Defendants Fox Factory, Inc. and Fox Factory Holding Corp. (“Defendants”) pursuant to the California Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* (called “PAGA”). The Action was brought by a former employee of Defendants on behalf of the State of California and all allegedly “aggrieved employees” of Defendants. You have been identified as one of the employees on whose behalf the case was brought.

The Plaintiff in the Action claimed that Defendants owed civil penalties recoverable under PAGA for alleged violations of the California Labor Code. Defendants deny that they violated the Labor Code. Moreover, in agreeing to this settlement, Defendants do not admit that they are liable in any way for any penalties.

The Court has not ruled on the merits of the Action but it has approved the settlement of PAGA civil penalties, of which 75% will be paid to the California Labor and Workforce Development Agency as required by law, and the remaining 25% will be paid to allegedly aggrieved employees. Pursuant to the settlement, a check for your share of a portion of the civil penalties is enclosed.

This settlement prevents you and the government from pursuing any civil penalties under PAGA for the claims that were settled. However, no one other than Plaintiff has released any individual wage and hour claims that are not premised on PAGA by virtue of the Settlement.

If you have any questions, you can contact the settlement administrator (whose contact information is at the top of this letter).

Very Truly Yours,

[Administrator]