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14
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF LOS ANGELES
17

18 SAMUEL PASCUAL, individually, and on behalf
19 of all others similarly situated,

20 Plaintiff,

21 vs.

22 COLOR CONCEPTS, INC., a California
23 corporation; and DOES 1 through 10, inclusive,

24 Defendants.
25
26
27
28

Case No.: 20STCV34374

PAGA REPRESENTATIVE ACTION

Assigned for all purposes to Robert S. Draper,
Department 78

**JOINT STIPULATION OF SETTLEMENT
AND RELEASE OF PAGA CLAIMS**

Complaint filed: September 4, 2020
Trial date: Not set

1 **JOINT STIPULATION OF SETTLEMENT AND RELEASE OF PAGA CLAIMS**

2 Plaintiff SAMUEL PASCUAL ("Plaintiff"), individually and in his capacity as a representative
3 of the State of California on behalf of other aggrieved employees, and Defendant RTE ENTERPRISES,
4 INC. DBA COLOR CONCEPTS ("Defendant"), hereby enter into this Settlement Agreement and
5 Release of Private Attorneys General Act of 2004 ("PAGA") Claims ("Settlement Agreement") as
6 follows:

7 **I. DEFINITIONS**

8 In addition to the other terms defined in this Settlement, the terms below shall have the following
9 meanings:

10 "Action" means the operative complaint filed in *Samuel Pascual v. Color Concepts, Inc.*, Los
11 Angeles County Superior Court, Case No. 20STCV34374.

12 "Court" means the Superior Court of California for the County of Los Angeles.

13 "Defendant" shall mean RTE Enterprises, Inc. dba Color Concepts.

14 "Defendant's Counsel" shall mean James A. Bowles, Esq. and Elissa L. Gysi, Esq. of Hill, Farrer
15 & Burrill LLP.

16 "Effective Date" refers to the date upon which the Settlement (or similar long-form Settlement
17 Agreement), is approved by the Superior Court of California for the County of Los Angeles.

18 "LWDA" refers to the California Labor and Workforce Development Agency.

19 "PAGA" refers to the Labor Code Private Attorneys General Act of 2004, California Labor Code
20 sections 2698 *et seq.*

21 "PAGA Period" means the period from September 1, 2019, through September 30, 2021.

22 "Plaintiff" refers to Samuel Pascual.

23 "Plaintiff's Counsel" means Kane Moon, Esq. and Lilit Ter-Astvatsatryan, Esq. of Moon & Yang,
24 APC.

25 "PAGA Released Claims" means any and all claims, whether known or unknown, to recover civil
26 penalties pursuant to PAGA alleged in the operative complaint in the Action and in Plaintiff's September
27 1, 2020 notice to the LWDA for civil penalties during the PAGA Period, and any and all claims that could
28 have been premised on the facts, claims, or legal theories described in the operative complaint in the

1 Action, including without out limitation the failure to pay minimum wages, failure to pay overtime
2 compensation, failure to provide meal periods or compensation in lieu thereof, failure to authorize
3 and permit rest breaks or compensation in lieu thereof, failure to reimburse business expenses,
4 failure to timely pay final wages at termination, failure to provide accurate itemized wage
5 statements and unfair business practices.

6 "PAGA Settlement Members" shall mean all current and former non-exempt employees who
7 worked at least one pay period for Defendant in California at any time during the PAGA Period. For
8 purposes of this Settlement Agreement only, and not otherwise as an admission of any misconduct or
9 wrongdoing by Defendant, Defendant and Plaintiff stipulate that all PAGA Settlement Members are
10 aggrieved employees pursuant to PAGA.

11 "Released Parties" means RTE Enterprises, Inc., Color Concepts, Inc. and their past, present, and
12 future owners, officers, directors, employees, board members, shareholders, attorneys, insurers, reinsurers,
13 customers, partners, investors, members, representatives, predecessors, parent companies, subsidiaries,
14 affiliates, divisions, successors, agents and principals, and their heirs, estates, executors, administrators,
15 servants, insurers, attorneys, and assigns.

16 "Settlement Administrator" means ILYM Group, Inc., a third-party administrator who shall
17 administer the settlement, subject to approval by the Court, in accordance with this Settlement Agreement.

18 **II. RECITALS**

19 1. On September 1, 2020, Plaintiff provided written notice to the LWDA and Defendant
20 asserting claims for civil penalties pursuant to PAGA stemming from alleged violations of California
21 Labor Code sections 201, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174.5, 1194, 1197, 1198, 2802, and
22 the applicable Industrial Welfare Commission Wage Order.

23 2. On September 4, 2020, Plaintiff filed a Class Action Complaint in the Superior Court
24 of California, County of Los Angeles, entitled *Samuel Pascual v. Color Concepts, Inc.*, Case No.
25 20STCV34374, individually and on behalf of all others similarly situated. On July 6, 2021, the
26 Parties filed a joint stipulation requesting that Plaintiff be allowed to file a First Amended
27 Complaint to add a cause of action for civil penalties under PAGA. The First Amended
28 Complaint alleged class action claims, a PAGA claim, and an unfair competition claim under

1 California Business and Professions Code sections 17200, *et seq.* Plaintiff then dismissed his
2 class action claims and the unfair competition claim. Plaintiff's operative complaint alleges a
3 single cause of action under PAGA for civil penalties for: (1) failure to pay minimum wages; (2)
4 failure to pay overtime compensation; (3) failure to provide meal periods; (4) failure to authorize
5 and permit rest breaks; (5) failure to indemnify necessary business expenses; (6) failure to timely
6 pay final wages at termination; and (7) failure to provide accurate itemized wage statements.

7 3. On July 16, 2021, the Parties participated in a day-long mediation with mediator
8 Steven Serratore, Esq. In preparation for the mediation, Plaintiff's counsel requested and
9 Defendant's counsel provided sample time and payroll data for the purported aggrieved
10 employees, personnel and employment documents, and relevant company policies. With Mr.
11 Serratore's assistance, the Parties agreed to fully and finally resolve the Action and the PAGA
12 Released Claims as to Plaintiff, the State of California, and the PAGA Settlement Members.

13 4. Counsel for all Parties have thoroughly investigated the facts relating to the claims alleged
14 in the operative complaint and have made a thorough study of the legal principles applicable to the claims
15 asserted against Defendant. Based on their investigation and evaluation of this case, Plaintiff's Counsel
16 has concluded that the settlement is fair, reasonable, and adequate in light of all known facts and
17 circumstances, including the defenses asserted by Defendant, potential adverse findings regarding liability,
18 and numerous potential appellate issues.

19 **III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT**

20 **NOW, THEREFORE**, in consideration of the mutual covenants, promises, and conditions set
21 forth, the Parties agree as follows:

22 1. **Non-Admission.** Nothing in this Settlement Agreement nor action taken in
23 implementation thereof shall be construed to be an admission or concession by Plaintiff that his
24 claims do not have merit or by Defendant of any liability or wrongdoing as to Plaintiff, PAGA
25 Settlement Members, or any other person, and Defendant specifically disclaims any such liability
26 or wrongdoing. Nor will any of the foregoing be used in any way in any other judicial, arbitral,
27 administrative, investigative or other forum or proceeding, as evidence of any violation of any
28 federal, state or local law, statute, ordinance, regulation, rule or executive order, or any obligation

1 or duty at law or in equity. Notwithstanding the foregoing, this Settlement Agreement may be
2 used in any court proceeding that has as its purpose the interpretation, implementation, or
3 enforcement of the settlement or any orders or judgments of the Court entered into in connection
4 therewith. The Parties have entered into this Settlement Agreement with the intention to avoid
5 further disputes and litigation with the attendant inconvenience, expenses, and risks. This
6 Settlement Agreement and any related Court documents or orders are not and may not be cited or
7 admitted as evidence of liability.

8 2. **Gross Settlement Amount.** Defendant shall pay a settlement payment in a total amount
9 not to exceed \$375,000 ("GSA"). Defendant will not pay more than the GSA. Defendant represents
10 that there are approximately 17,477 pay periods during the PAGA Period. In the event that the actual
11 number of pay periods worked by the PAGA Settlement Members during the PAGA Period is more than
12 20,000 pay periods, Defendant shall increase the GSA in proportion to the increase in Affected Pay
13 Periods over 20,000 (e.g., if the number of Affected Pay Periods in the PAGA Period is 2%
14 greater than 20,000, Defendant will increase the GSA by 2%). After the amounts for attorneys'
15 fees, litigation costs, administration costs, and enhancement payment are deducted from the GSA,
16 the remaining amount shall be known as the "PAGA Fund."

17 3. **PAGA Fund** The Parties agree that the PAGA Fund shall be distributed to the
18 LWDA and PAGA Settlement Members as follows: Seventy-five percent (75%) of the PAGA
19 Fund shall be distributed to the LWDA (i.e., the LWDA Payment) and twenty-five percent (25%)
20 of the PAGA Fund shall be distributed to the PAGA Settlement Members as set forth below.

21 4. **Attorneys' Fees Payment and Litigation Costs Payment.** Plaintiff's Counsel will
22 apply to the Court for an award of attorneys' fees not to exceed forty percent (40%) of the GSA
23 ("Attorneys' Fees") and reasonable attorneys' costs and expenses up to maximum amount of \$15,000
24 ("Litigation Costs"). The payment of Attorneys' Fees and Litigation Costs to Plaintiff's Counsel shall be
25 paid from the GSA. Defendant will not oppose or object to Plaintiff's Counsel's application for
26 Attorneys' Fees and Litigation Costs. In the event the Court approves a payment of less than 40%
27 for Attorneys' Fees and/or less than \$15,000 for Litigation Costs to Plaintiff's Counsel, any
28 reductions shall revert to the PAGA Fund. Plaintiff's Counsel agrees not to seek additional review of

1 the Court's decision regarding Attorneys' Fees or Litigation Costs, and this Settlement Agreement will be
2 enforceable. The Attorneys' Fees and Litigation Costs payments will be reported on an IRS Form
3 1099 issued to Plaintiff's Counsel. Except as set forth in this Paragraph, the Parties shall each
4 bear their own attorneys' fees and costs.

5 5. **Settlement Administration Costs.** Settlement administration shall be done by a qualified,
6 third-party settlement administrator agreed to by the Parties and approved by the Court ("Settlement
7 Administrator"). The Parties agree that the costs of administering the settlement shall be paid from the
8 GSA. This includes all fees and costs for postage, envelopes, and computer searches to locate addresses;
9 and expenses of the Settlement Administrator to implement and complete the settlement process according
10 to the terms of this Settlement Agreement, to calculate payments to individual PAGA Settlement Members,
11 any cost associated with the escheatment process for any uncashed or undeliverable settlement checks, to
12 prepare any necessary tax documents for PAGA Settlement Members, and any other related fees and costs
13 ("Settlement Administration Costs"). Defendant will not oppose Plaintiff's request for payment of
14 Settlement Administration Costs in an amount up to \$15,000 to the Settlement Administrator for
15 administering the settlement. In the event the Court approves a payment of less than \$15,000 for
16 Settlement Administration Costs, the difference shall revert to the PAGA Fund. Settlement
17 Administration Costs will be reported on an IRS Form 1099 issued to the Settlement
18 Administrator.

19 6. **Plaintiff's Individual Release of All Claims.** Defendant will not oppose
20 Plaintiff's request for an enhanced payment in an amount up to \$10,000 for Plaintiff's release of
21 claims set forth below ("Enhanced Payment"). In the event the Court approves an Enhanced
22 Payment of less than \$10,000, the difference shall revert to the PAGA Fund. The enhanced
23 payment to Plaintiff will be reported on an IRS Form 1099 issued to Plaintiff.

24 7. **Plaintiff's Release of Claims.** In consideration of payment under this settlement, and
25 upon approval of this Settlement Agreement by the Court and payment of all funds due under this
26 Settlement Agreement, Plaintiff Samuel Pascual shall be deemed to release the Released Parties from any
27 and all complaints, claims, promises, agreements, controversies, suits, demands, costs, losses, debts,
28 actions, causes of action, damages, judgments, obligations, liabilities, and expenses of whatever kind and

1 character, known or unknown, suspected or unsuspected, including without limitation any claims for
2 attorneys' fees and costs, under federal, state and/or local law, statute, ordinance, regulation, common law,
3 or other source of law, including but not limited to claims arising from or related to Plaintiff's employment
4 with Defendant ("Released Claims").

5 The Released Claims include, but are not limited to, all claims by Plaintiff for disability
6 discrimination, associational disability discrimination, failure to engage in the interactive process, failure
7 to provide reasonable accommodation, retaliation, failure to prevent discrimination or retaliation, wrongful
8 termination in violation of public policy, and any other claims arising under the California Labor Code,
9 the Industrial Welfare Commission Wage Orders, Business & Professions Code Section 17200 *et seq.*,
10 Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1866, the Civil Rights Act
11 of 1991, the Americans with Disabilities Act, the Family and Medical Leave Act, the Employee Retirement
12 Income Security Act, the Worker Adjustment and Retraining Notification Act, the California Fair
13 Employment and Housing Act, the California Family Rights Act; and any actual or potential claims arising
14 under any federal, state, or local laws or statutes not specifically identified herein.

15 The Released Claims include all claims, whether known or unknown. Even if Plaintiff discovers
16 facts in addition to or different from those that he now knows or believes to be true with respect to the
17 subject matter of the Released Claims, those claims will remain released and forever barred. Thus, Plaintiff
18 expressly waives and relinquishes the provisions, rights and benefits of section 1542 of the California Civil
19 Code, which reads:

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

26 Plaintiff represents that he is not aware of any claims he may have against the Released Parties
27 other than the PAGA Released Claims. Plaintiff waives any and all rights and benefits conferred by the
28 provisions of section 1542 of the California Civil Code and any similar law of any state or territory of the

1 United States or other jurisdiction. Plaintiff acknowledges that he may discover facts or law different from,
2 or in addition to the facts or law that he knows or believes to be true with respect to the claims and matters
3 released by way of this settlement and agrees, nonetheless, that this Settlement Agreement and the releases
4 contained in it shall be and remain effective in all respects, notwithstanding such different or additional
5 facts or the discovery of them.

6 8. **PAGA Released Claims.** Upon approval of the Settlement Agreement by the Court and
7 Defendant's fully funding of the Gross Settlement Amount, as described below, Plaintiff, PAGA
8 Settlement Members, and the State of California will be forever barred from pursuing any and all claims
9 against the Released Parties, whether known or unknown, to recover civil penalties pursuant to PAGA
10 based on claims alleged in the operative complaint in the Action and in Plaintiff's notice to the LWDA
11 during the PAGA Period, and any and all claims that could have been premised on the facts, claims, or
12 legal theories described in the operative complaint in the Action including without limitation the failure to
13 pay minimum wages, failure to pay overtime compensation, failure to provide meal periods or
14 compensation in lieu thereof, failure to authorize and permit rest breaks or compensation in lieu thereof,
15 failure to reimburse business expenses, failure to timely pay final wages at termination, failure to provide
16 accurate itemized wage statements and unfair business practices.

17 **IV. ADMINISTRATION OF SETTLEMENT**

18 1. **Settlement Administrator.**

19 The Settlement Administrator shall establish a Qualified Settlement Fund pursuant to Section
20 468B(g) of the Internal Revenue Code for purposes of administering the Settlement. There are no payroll
21 deductions to be calculated under this Settlement Agreement, since no part of the settlement will be
22 classified as wages. Subject to Court approval, the Parties have mutually selected ILYM Group, Inc. as
23 the Settlement Administrator to handle the administration of this settlement, subject to approval by the
24 Court.

25 2. **PAGA Settlement Members Data.**

26 No later than fourteen (14) days after the Court issues an order approving this Settlement
27 Agreement, Defendant shall provide the Settlement Administrator with a list of each PAGA Settlement
28 Member's name, last known address and Social Security number, and the number of pay periods worked

1 by each of the PAGA Settlement Members ("PAGA Settlement Members Data") during the PAGA Period.
2 Defendant is providing the information confidentially to the Settlement Administrator only, and the
3 Settlement Administrator shall treat the information as private and confidential and take all necessary
4 precautions to maintain the confidentiality of the information being provided by Defendant regarding the
5 PAGA Settlement Members. This information is to be used only to carry out the Settlement
6 Administrator's duties as set forth in this Settlement Agreement. Because Social Security numbers are
7 included in the list, the Settlement Administrator will maintain the list in confidence, and shall only access
8 and use the list to administer the settlement in conformity with the Court's orders. Defendant will in good
9 faith compile from its records the PAGA Settlement Members Data and provide it to the Settlement
10 Administrator in a computer-readable format, such as a Microsoft Excel spreadsheet.

11 3. **Defendant's Deposit of Gross Settlement Amount with the Settlement Administrator.**

12 The payment of the Gross Settlement Amount shall be deposited by Defendant with the Settlement
13 Administrator in two payments as follows: (a) \$200,000 within thirty (30) days of the Effective Date; and
14 (b) \$175,000 on or before February 1, 2022.

15 4. **Distribution of Gross Settlement Amount by the Settlement Administrator.**

16 The Settlement Administrator shall distribute payments for the Attorneys' Fees and Litigation
17 Costs to Plaintiff's Counsel, payment of the Enhanced Payment to Plaintiff, and payments to the LWDA
18 and PAGA Settlement Members within 21 days of the final payment by Defendant. All payments
19 provided for by this Settlement Agreement shall be made by the Settlement Administrator in accordance
20 with this Settlement Agreement and the Court's order approving this Parties' settlement.

21 5. **Distribution of Payments to PAGA Settlement Members.**

22 The Settlement Administrator will send the payments to the PAGA Settlement Members,
23 calculated as set forth below, by postmarked First Class U.S. Mail, along with a letter in English and
24 Spanish explaining the settlement in substantially the same form as Exhibit A attached hereto. To provide
25 the best notice and delivery of the payments to the PAGA Settlement Members, any payment to a PAGA
26 Settlement Member returned to the Settlement Administrator as non-delivered shall be sent by post-marked
27 First Class U.S. Mail to the forwarding address affixed thereto, if any. If no forwarding address is provided
28 for payment to a PAGA Settlement Member that is returned as non-deliverable, the Settlement

1 Administrator shall use the best available technology accessible (e.g. skip tracing, address verification,
2 etc.) to the Settlement Administrator or other mutually agreeable method to locate PAGA Settlement
3 Members and will then mail the payment to the address identified by the best available technology
4 accessible to the Settlement Administrator or other mutually agreeable method. If no current address is
5 located, the payment for that individual will be deemed undeliverable. If any PAGA Settlement Member
6 cannot be located within two attempts at mailings by the Settlement Administrator, the payment for that
7 Settlement Member will be deemed undeliverable.

8 The Settlement Administrator shall maintain a list of the postmark date for the original mailing of
9 the payment to the PAGA Settlement Members, the postmark date of any subsequent mailing to any PAGA
10 Settlement Member, and a list of PAGA Settlement Members who did not receive their payments due to
11 the inability to locate a valid address using the procedures described herein or who otherwise could not be
12 located within two attempts at mailing.

13 All settlement checks to PAGA Settlement Members will remain valid and negotiable for 180 days
14 from the date of their mailing by the Settlement Administrator. After 180 days from the date of their
15 mailing by the Settlement Administrator, any uncashed checks will be void and escheat to the California
16 State Controller's Office in the name of the individual Settlement Member who did not cash his or her
17 check.

18 No later than January 31 of the year following payment of their individual portion of the PAGA
19 Fund, the Settlement Administrator will prepare and issue an IRS Form 1099 to PAGA Settlement
20 Members who received a payment.

21 PAGA Settlement Members will assume any tax obligations or consequences which may arise
22 from this Settlement. If a PAGA Settlement Member has questions about any liability to any state or
23 federal taxing authority, he/she shall contact the Settlement Administrator. The PAGA Settlement
24 Members shall not contact Defendant, any of the Released Parties, or Defendant's Counsel.

25 **6. Formula for Calculating Payments to PAGA Settlement Members.**

26 The Settlement Administrator shall pay each PAGA Settlement Member according to
27 his or her proportional share, which will be based upon the total number of pay periods he or
28 she worked during the PAGA Period.

1 A PAGA Settlement Members individual PAGA payment is calculated based on each
2 PAGA Settlement Members pro rata share of the PAGA Fund allocated to the PAGA
3 Settlement Members based on pay periods during the PAGA Period as follows: (i) the number
4 of pay periods he or she worked as a hourly-paid or non-exempt employee during the PAGA
5 Period, divided by (ii) the total number of pay periods worked by all PAGA Settlement
6 Members collectively during the PAGA Period, which is then multiplied by the PAGA Fund
7 allocated to the PAGA Settlement Members. The Settlement Administrator will use the
8 PAGA Settlement Members Data to calculate the number of periods worked by each PAGA
9 Settlement Member during the PAGA Period for purposes of this calculation, and partial pay
10 periods worked will be counted.

11 **V. MISCELLANEOUS PROVISIONS**

12 A. **Tax Consequences.** Plaintiff and PAGA Settlement Members Employees will be solely
13 responsible for correctly characterizing any compensation received under the settlement on his/her
14 personal income tax returns for tax purposes, and paying all appropriate taxes due for any and all amounts
15 paid to them under the settlement. Plaintiff, Defendant, Plaintiff's Counsel, and Defendant's Counsel
16 make no representations or warranties with respect to tax consequences of any payment under this
17 Settlement Agreement, do not intend anything contained in this Settlement Agreement to constitute advice
18 regarding taxes or taxability, nor shall anything in this Settlement Agreement be relied upon as such.

19 B. **Governing Law.** This Settlement Agreement shall be construed under and governed by
20 the laws of the State of California. This Settlement Agreement shall be deemed to have been entered into
21 in California, and all questions of validity, interpretation, or performance of any of its terms or of any rights
22 or obligations of the Parties to this Settlement Agreement shall be governed by California law. If any legal
23 or equitable action or arbitration is necessary to enforce the terms of this Settlement Agreement, it shall be
24 brought in the State of California, County of Los Angeles.

25 C. **Entire Agreement.** This Settlement Agreement constitutes the entirety of the Parties'
26 settlement terms. No other prior or contemporaneous written or oral agreements may be deemed binding
27 on the Parties. The Parties each acknowledge and represent that no promise or representation not contained
28 in this Settlement Agreement has been made to them, and acknowledge and represent that this Settlement

1 Agreement contains the entire understanding between them and contains all terms and conditions
2 pertaining to the compromise and settlement of the Action and PAGA Released Claims.

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

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

16 F. **Filing of Motion for Approval of PAGA Settlement by Plaintiff's Counsel.** Plaintiff's
17 Counsel shall be responsible for preparing the Motion for Approval of the PAGA Settlement and providing
18 defense counsel with an opportunity to propose revisions to the Motion prior to filing.

19 G. **Termination of Settlement Agreement.** If the Court does not approve the settlement, if
20 the Court does not enter judgment as provided for in this Settlement Agreement, or if appellate review is
21 sought and, on such review, the Court's decision is materially modified or reversed, or if one or more of
22 the material terms of the Settlement Agreement is not approved or is materially modified or reversed or
23 found to be invalid, then either of the Parties shall have the right within 10 days of written notice thereof
24 to elect to terminate the Settlement Agreement, in which case the Settlement Agreement shall have no
25 force or effect, and the Parties shall be deemed to have reverted to their respective status as of the date and
26 time immediately prior to the execution of this Settlement Agreement. However, if the Court declines to
27 approve the Settlement Agreement as drafted, the Parties agree to attempt in good faith to amend the
28 Settlement Agreement to resolve the Court's concerns with the Settlement Agreement, before either Party

1 terminates the Settlement Agreement.

2 H. **Judgment and Continued Jurisdiction.** As part of the Motion to approve the
3 Settlement Agreement, Plaintiff shall submit a proposed order and judgment which enters
4 judgment in the Action in accordance with the terms of the Settlement, retains jurisdiction over
5 the Action for the purpose of enforcing the terms of the Settlement following approval of the
6 Settlement, and enjoins the prosecution of any of the PAGA Released Claims against Defendant.

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

10 J. **Authorization to Enter into Binding Settlement Agreement.** Defendant represents and
11 warrants that the undersigned has the authority to act on behalf of Defendant and to bind Defendant to the
12 terms of this Settlement Agreement. Plaintiff represents and warrants that he has the capacity to act on his
13 own behalf and on behalf of all who might claim through him to bind him to the terms and conditions of
14 this Settlement Agreement. Counsel for all Parties warrant and represent that they are expressly authorized
15 by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate
16 action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate
17 its terms, and to execute any other documents required to effectuate the terms of this Settlement
18 Agreement. The Parties warrant that they understand and have full authority to enter into this settlement,
19 and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and
20 agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms,
21 notwithstanding any settlement and/or mediation privileges and/or confidentiality provisions that
22 otherwise might apply under federal or state law.

23 K. **Binding on Successors and Assigns.** This Settlement Agreement will be binding upon,
24 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

25 L. **Execution and Counterparts.** This Settlement Agreement may be executed in one or
26 more counterparts. All executed counterparts, and each of them, including facsimile and scanned copies
27 of the signature page, will be deemed to be one and the same instrument. Any executed counterpart will
28 be admissible in evidence to prove the existence and contents of this Settlement Agreement.

1 M. **Acknowledgement of Mutual Drafting and that the Settlement is Fair, Adequate, and**
2 **Reasonable.** The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement,
3 and have arrived at this settlement after arm's-length negotiations by experienced counsel. The Parties
4 further acknowledge that they are each represented by competent counsel and that they have had an
5 opportunity to consult with their counsel regarding the fairness and reasonableness of this settlement. The
6 Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive,
7 arm's-length negotiations and that neither Party shall be considered the "drafter" of this Settlement
8 Agreement for purposes of having terms construed against that Party. The Parties have had a full
9 opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this
10 Settlement Agreement will not be construed more strictly against one Party merely by virtue of the fact
11 that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the
12 arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this
13 Settlement Agreement.

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

18 O. **Severability.** If any term or provision of this Settlement Agreement is held to be invalid or
19 unenforceable, provided that the essential terms and conditions of this Settlement Agreement for each Party
20 remain valid, binding and enforceable, the remaining portions of this Settlement Agreement will continue
21 to be valid, and will be performed, construed, and enforced to the fullest extent permitted by law, and the
22 invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the
23 Parties, as determined from the face of the Settlement Agreement, to the extent necessary to permit the
24 maximum enforceability or validation of the term or provision.

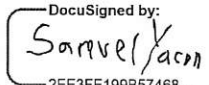
25 P. **No Waiver.** No waiver of any condition or covenant contained in this Settlement
26 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply
27 or constitute a further waiver by such Party of the same or any other condition, covenant, right,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

28 Q. **Cooperation and Execution of Necessary Documents.** All Parties will cooperate in good

1 faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement
2 Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to
3 implement the settlement. If the Parties are unable to reach agreement on the form or content of any
4 document needed to implement the settlement, or on any supplemental provisions that may become
5 necessary to effectuate the terms of this settlement, the Parties may seek the assistance of the Court to
6 resolve such disagreement.

7
8
9 **VI. EXECUTION BY PARTIES AND COUNSEL**

10
11 Dated: 9/10/2021

By: 
2EE3FE199B5746B
Samuel Pascual

12
13
14
15 Dated: _____

By: _____
RTE Enterprises, Inc. dba Color Concepts

16
17 Dated: 09/13/2021

MOON & YANG, APC

18
19
20 By: 
Kane Moon
Lilit Ter-Astvatsatryan
Attorneys for Plaintiff Samuel Pascual,
on behalf of Plaintiff and all other aggrieved
employees

21
22
23
24 Dated: _____

HILL, FARRR & BURRILL LLP

25
26 By: _____
James A. Bowles
Elissa L. Gysi
Attorneys for RTE Enterprises, Inc. dba
Color Concepts

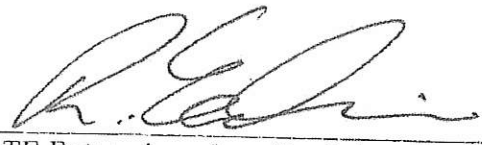
1 faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement
2 Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to
3 implement the settlement. If the Parties are unable to reach agreement on the form or content of any
4 document needed to implement the settlement, or on any supplemental provisions that may become
5 necessary to effectuate the terms of this settlement, the Parties may seek the assistance of the Court to
6 resolve such disagreement.

7
8
9 **VI. EXECUTION BY PARTIES AND COUNSEL**

10
11 Dated: _____

12 By: _____
13 Samuel Pascual

14
15 Dated: 9-10-2021

16 By: 
17 RTE Enterprises, Inc. dba Color Concepts

18 Dated: _____

MOON & YANG, APC

19
20 By: _____
21 Kane Moon
22 Lilit Ter-Astvatsatryan
23 Attorneys for Plaintiff Samuel Pascual,
24 on behalf of Plaintiff and all other aggrieved
25 employees

26 Dated: 9/10/21

HILL, FARRR & BURRILL LLP

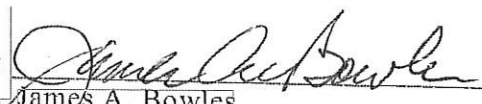
27 By: 
28 James A. Bowles
Elissa L. Gysi
Attorneys for RTE Enterprises, Inc. dba
Color Concepts

Exhibit A

[CLAIMS ADMINISTRATOR LETTERHEAD]

Mailing Date

NOTICE OF SETTLEMENT

Re: SAMUEL PASCUAL, an individual, on behalf of the State of California, as a private attorney general, Plaintiff v. COLOR CONCEPTS, INC. Defendant, Los Angeles County Superior Court, Case No. 20STCV34374 filed on September 4, 2020 (the "Lawsuit")

[claims admin info]

A settlement has been reached in the above-referenced lawsuit.

On XXXX, the Los Angeles County Superior Court issued an Order approving the settlement of claims brought pursuant to the Private Attorneys General Act of 2004 ("PAGA"). A portion of the settlement amount goes to the State of California's Labor and Workforce Development Agency ("LWDA"). Another portion of the settlement amount goes to current and former non-exempt employees of RTE Enterprises, Inc. dba Color Concepts ("RTE") who worked for RTE within the State of California between September 1, 2019 and September 30, 2021.

By way of the settlement, you and the State of California will be forever barred from pursuing any and all claims, whether known or unknown, to recover civil penalties pursuant to PAGA based on claims alleged in the operative complaint in the Lawsuit and in Plaintiff's September 1, 2020 notice to the LWDA during the period from September 1, 2019 through September 30, 2021, and any and all claims that could have been premised on the facts, claims, or legal theories described in the operative complaint in the Lawsuit. This includes the failure to pay minimum wages, failure to pay overtime compensation, failure to provide meal periods or compensation in lieu thereof, failure to authorize and permit rest breaks or compensation in lieu thereof, failure to reimburse business expenses, failure to timely pay final wages at termination, failure to provide accurate itemized wage statements and unfair business practices. Defendant denies any liability or wrongdoing and contends, among other things, that it has complied at all times with the California Labor Code, the related California Wage Orders, and all other state and federal wage laws, and further contends that the Lawsuit is without merit.

You are receiving money under the Settlement because you have been identified as an employee of RTE within the State of California who worked one or more pay periods from September 1, 2019 through September 30, 2021. Your settlement amount is <<\$ Amount>>. Your enclosed check is valid for 180 days from the date of its issuance. After that date, you cannot cash the check and it will be null and void. Funds attributable to such uncashed checks will be sent to the State of California Unclaimed Property Fund in your name. **EVEN IF YOU FAIL TO CASH THE ENCLOSED CHECK, YOU WILL STILL BE BOUND BY THE SETTLEMENT AND DEEMED TO HAVE WAIVED ALL CLAIMS ARISING FROM THE LAWSUIT, INCLUDING ALL CLAIMS SET FORTH IN THE RELEASE OF CLAIMS DESCRIBED ABOVE.**

If you have any questions, you can contact _____, the Settlement Administrator, at _____