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

JOSE HERNANDEZ, individually, and on
behalf of other members of the general public
similarly situated,

Plaintiff,

v.

EUROMARKET DESIGNS, INC., an Illinois
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 20CV370922

**AMENDMENT TO JOINT STIPULATION
OF CLASS AND PAGA ACTION
SETTLEMENT AND RELEASE**

**AMENDMENT TO THE JOINT STIPULATION OF
CLASS AND PAGA ACTION SETTLEMENT AND RELEASE**

This amendment (“Amendment”) to the Joint Stipulation of Class and PAGA Action Settlement and Release (“Settlement Agreement”) is made and entered into by and between Plaintiff Jose Hernandez (“Plaintiff” or “Class Representative”), as an individual and on behalf of the proposed Settlement Class, and Defendant Euromarket Designs, Inc. (“Defendant”) (collectively with Plaintiff, the “Parties”), pursuant to Paragraph 74 of the Settlement Agreement, which provides: “No amendment, change, or modification to this Settlement Agreement will be valid unless in writing and signed, either by the Parties or their counsel.”

This Amendment incorporates by reference all terms and conditions of the Settlement Agreement. But for those specific terms and conditions that this Amendment modifies, all Settlement terms and conditions will remain effective and enforceable. Any inconsistencies or differences between this Amendment and the Settlement will be interpreted and construed in favor of this Amendment.

AMENDMENTS

Amended Paragraph 26: “Released Class Claims” means all claims, rights, demands, liabilities, and causes of action, arising from, or reasonably related to, the same set of operative facts as those set forth in the First Amended Complaint during the Class Period, including: (i) all claims for unpaid overtime; (ii) all claims for meal and rest break violations; (iii) all claims for unpaid minimum wages; (iv) all claims for the failure to timely pay wages upon termination based on the preceding claims; (v) all claims for the failure to timely pay wages during employment based on the preceding claims; (vi) all claims for the failure to provide reporting time pay; (vii) all claims for the failure to reimburse for necessary business expenses; (viii) all claims for wage statement violations based on the preceding claims; and (ix) all claims asserted through California Business & Professions Code §§ 17200, et seq., and including all claims, both potential and actual, that could reasonably have been alleged in the Action based on the facts alleged in the First Amended Complaint.

Amended Paragraph 27: “Released PAGA Claims” means all claims for civil penalties under the Private Attorneys’ General Act (“PAGA”), including under California Labor Code, sections 558 and/or 2698, et seq., predicated on any Labor Code violations alleged or could reasonably have been alleged in

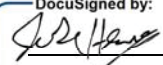
the Action based on the same set of operative facts as those set forth in the First Amended Complaint during the PAGA Period and/or the October 7, 2020 PAGA Notice submitted on behalf of Plaintiff Hernandez (LWDA-CM-808930-20).

Amended Notice of Class Action Settlement. The amended Notice of Class Action Settlement is attached as Exhibit A.

IT IS SO STIPULATED.

PLAINTIFF

Dated: 8/19/2022

DocuSigned by:

 Jose Hernandez

DEFENDANT EUROMARKET DESIGNS, INC.

Dated: 8/22/2022

By: Victoria Donati
 Victoria Donati

APPROVED AS TO FORM

CAPSTONE LAW APC

Dated: August 19, 2022

By: 
 Raul Perez
 Attorneys for Plaintiff and the Settlement Class

JAMES HAWKINS, APLC

Dated: August 22, 2022

By: 
 James Hawkins
 Attorneys for Plaintiff and the Settlement Class

ORRICK, HERRINGTON & SUTCLIFFE LLP

Dated: 8/19/2022

By: Jessica Perry
 Jessica R. Perry
 Attorneys for Defendant Euromarket Designs, Inc.

Exhibit A

Hernandez v. Euromarket Designs, Inc., Case No. 20CV370922 (Santa Clara Superior Court)
SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF SANTA CLARA
NOTICE OF CLASS ACTION SETTLEMENT

You are not being sued. This notice affects your rights. Please read it carefully

To: All persons who worked for Defendant Euromarket Designs, Inc. (“Defendant”) as non-exempt, hourly paid employees at one of Defendant’s distribution centers in California (to include housewares and furniture buildings located in Tracy (Locations #491 &499) and an LA cross-dock located in Santa Fe Springs (Location # 591)) at any time from September 28, 2016 to December 31, 2021 (“Class Members”).

All persons who worked for Defendant as non-exempt, hourly paid employees at one of Defendant’s distribution centers in California (to include housewares and furniture buildings located in Tracy (Locations #491 &499) and an LA cross-dock located in Santa Fe Springs (Location # 591)) at any time from October 7, 2019 to December 31, 2021 (“PAGA Members”).

On [REDACTED], the Honorable Sunil R. Kulkarni of the Santa Clara County Superior Court granted preliminary approval of this class action settlement and ordered the litigants to notify all Class Members of the settlement. **You have received this notice because Defendant’s records indicate that you are a Class Member, and therefore entitled to a payment from the settlement.**

According to Defendant’s records, you worked during the period from September 28, 2016 to December 31, 2021 in a non-exempt position for a total of [REDACTED] Workweeks. Accordingly, your estimated payment from the settlement is approximately \$ [REDACTED].

Unless you choose to opt out of the settlement by following the procedures described below, you will be deemed a Class Member and, if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement fund. The Final Fairness Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at 1:30 p.m. on January 12, 2023 in Department 1 of the Santa Clara County Superior Court located at 191 North First Street, San Jose, California 95113. If the Court approves the settlement at the Final Fairness Hearing, copies of the Court’s order and judgment approving the settlement will be made available at [settlement administrator’s website].

Hearings before the judge overseeing this case will be conducted remotely. (As of August 15, 2022, the Court’s remote platform is Microsoft Teams.) Class members who wish to appear should contact class counsel at least three days before the hearing if possible. Instructions for appearing remotely are provided at https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml and should be reviewed in advance. Class Members may appear remotely using the Microsoft Teams link for Department 1 (Afternoon Session) or by calling the toll free conference call number for Department 1, which is 669-245-6247 (access code 399 396 192#).

If you move, you must send the Settlement Administrator your new address; otherwise, you may never receive your settlement payment. It is your responsibility to keep a current address on file with the Settlement Administrator.

Summary of the Litigation

Plaintiff Jose Hernandez, on his behalf and on behalf of other current and former non-exempt employees, alleges that Defendant violated California state labor laws as a result of its alleged failure to, among other things: (1) pay minimum and overtime wages to employees for all hours worked; (2) provide employees with meal and rest breaks; (3) timely pay all wages owed to employees during each pay period and upon termination of their employment; (4) pay reporting time

pay; (5) reimburse for necessary business expenses; (6) provide employees with accurate, itemized wage statements; and (7) comply with unfair competition law. Defendant denies these allegations.

After the exchange of relevant information and evidence, the parties agreed to enter into settlement negotiations in an attempt to informally resolve the claims in the case. On December 7, 2021, the parties participated in a mediation with Michael Dickstein, Esq., an experienced and well-respected class action mediator. With Mr. Dickstein's guidance, the parties were able to negotiate a complete settlement of Plaintiff's claims.

Counsel for Plaintiff, who have been appointed by the Court to represent the class for the purposes of this Settlement – Capstone Law APC and James Hawkins, APLC (together, "Settlement Class Counsel") – have investigated and researched the facts and circumstances underlying the issues raised in the case and the applicable law. While Settlement Class Counsel believe that the claims alleged in this lawsuit have merit, Settlement Class Counsel also recognize that the risk and expense of continued litigation justify settlement. Based on the foregoing, Settlement Class Counsel believe the proposed settlement is fair, adequate, reasonable, and in the best interests of Class Members.

Defendant has denied, and continues to deny the factual and legal allegations in the case and believes that it has valid defenses to Plaintiff's claims. By agreeing to settle, Defendant is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action. Defendant has agreed to settle the case as part of a compromise with Plaintiff.

Summary of The Proposed Settlement Terms

Plaintiff and Defendant have agreed to settle the underlying class claims in exchange for a Gross Settlement Amount of \$1,100,000. This amount is inclusive of: (1) individual settlement payments to all Participating Class Members; (2) a Class Representative Enhancement Payment of \$10,000 to Jose Hernandez for his services on behalf of the class, and for a release of all claims arising out of his employment with Defendant; (3) up to \$366,667 in attorneys' fees and up to \$30,000 in litigation costs and expenses; (4) a \$100,000 settlement of claims under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), inclusive of a \$75,000 payment to the California Labor and Workforce Development Agency ("LWDA") in connection with the PAGA, and a \$25,000 payment (the "PAGA Settlement Amount") to all PAGA Members; and (5) reasonable Settlement Administrator's fees and expenses currently estimated at \$ [REDACTED]. After deducting the above payments, a total of approximately \$ [REDACTED] will be allocated to Class Members who do not opt out of the Settlement Class ("Net Settlement Amount"). Additionally, all PAGA Members will receive a proportional share of the \$25,000 PAGA Amount, regardless of whether they opt out of the Settlement Class.

Payments from Net Settlement Amount. Defendant will calculate the total number of Workweeks worked by each Class Member from September 28, 2016 to December 31, 2021 ("Class Period") and the aggregate total number of Workweeks worked by all Class Members during the Class Period. To determine each Class Member's estimated share of the Net Settlement Amount, the Settlement Administrator will use the following formula: The Net Settlement Amount will be divided by the aggregate total number of Workweeks, resulting in the "Workweek Value." Each Class Member's share of the Net Settlement Amount will be calculated by multiplying each individual Class Member's total number of Workweeks by the Workweek Value. The Individual Settlement Payment will be reduced by any required deductions for each Class Members as specifically set forth herein, including employee-side tax withholdings or deductions. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionately increase each Participating Class Member's share of the Net Settlement Amount according to the number of Workweeks worked, so that the amount actually distributed to the Settlement Class equals 100% of the Net Settlement Amount.

According to Defendant's records, you worked during the Class Period in a non-exempt position for a total of [REDACTED] Workweeks. Accordingly, your estimated payment from the Net Settlement Amount is approximately \$ [REDACTED].

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

Payments from PAGA Settlement Amount. Defendant will calculate the total number of Workweeks worked by each PAGA Member from October 7, 2019 to December 31, 2021 (“PAGA Period”) and the aggregate total number of Workweeks worked by all PAGA Members during the PAGA Period. To determine each PAGA Member’s estimated share of the PAGA Settlement Amount, the Settlement Administrator will use the following formula: The PAGA Members share of the PAGA Settlement Amount (\$25,000) will be divided by the aggregate total number of Workweeks, resulting in the “PAGA Workweek Value.” Each PAGA Member’s share of the PAGA Settlement Amount will be calculated by multiplying each individual Participating PAGA Member’s total number of Workweeks by the PAGA Workweek Value. A Request for Exclusion does not exclude a PAGA Member from the release of claims under California Labor Code §§ 2698, *et seq.* and the PAGA Member will receive their portion of the PAGA Settlement Amount even if he or she submits a valid Request for Exclusion.

According to Defendant’s records, you worked during the PAGA Period in a non-exempt position for a total of [REDACTED] Workweeks. Accordingly, your estimated payment from the PAGA Settlement Amount is approximately \$ [REDACTED] .

Your Estimated Payment: Based on the above, your estimated payment from the settlement is approximately \$ [REDACTED] . If you believe the Workweek information provided above is incorrect, please contact the Settlement Administrator to dispute the calculation. You must attach all documentation in support of your dispute (such as check stubs, W2s, or letters from HR). All disputes must be postmarked or faxed on or before [insert date of Response Deadline] and must be sent to:

Settlement Administrator
c/o [REDACTED]
Fax No. [REDACTED]

If you dispute the information stated above, Defendant’s records will control unless you are able to provide documentation that establishes otherwise.

Taxes on Settlement Payments. IRS Forms W-2 and 1099 will be distributed to participating Class Members and the appropriate taxing authorities reflecting the payments they receive under the settlement. Class Members should consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement. For purposes of this settlement, 25% of each settlement payment will be allocated as wages for which IRS Forms W-2 will be issued, and 75% will be allocated as non-wages for which IRS Forms 1099-MISC will be issued.

Your Options Under the Settlement

Option 1 – Automatically Receive a Payment from the Settlement

If want to participate in the Settlement, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if and when the Settlement receives final approval by the Court.

If you choose **Option 1**, and if the Court grants final approval of the settlement, you will be mailed a check for your share of the Settlement Amount. In addition, you will be deemed to have released or waived the Released Class Claims and Released PAGA Claims:

Released Class Claims: All claims, rights, demands, liabilities, and causes of action, arising from, or reasonably related to, the same set of operative facts as those set forth in the First Amended Complaint during the Class Period, including: (i) all claims for unpaid overtime; (ii) all claims for meal and rest break violations; (iii) all claims for unpaid minimum wages; (iv) all claims for the failure to timely pay

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

wages upon termination based on the preceding claims; (v) all claims for the failure to timely pay wages during employment based on the preceding claims; (vi) all claims for the failure to provide reporting time pay; (vii) all claims for the failure to reimburse for necessary business expenses; (viii) all claims for wage statement violations based on the preceding claims; and (ix) all claims asserted through California Business & Professions Code §§ 17200, et seq., and including all claims, both potential and actual, that could reasonably have been alleged in the Action based on the facts alleged in the First Amended Complaint.

Released PAGA Claims: All claims for civil penalties under the Private Attorneys' General Act ("PAGA"), including under California Labor Code, sections 558 and/or 2698, et seq., predicated on any Labor Code violations alleged or could reasonably have been alleged in the Action based on the same set of operative facts as those set forth in the First Amended Complaint during the PAGA Period and/or the October 7, 2020 PAGA Notice submitted on behalf of Plaintiff Hernandez (LWDA-CM-808930-20).

Option 2 – Opt Out of the Settlement

If you do not wish to participate in the settlement, you may exclude yourself from participating by submitting a written request to the Settlement Administrator expressly and clearly indicating that you have received this Notice of Class Action Settlement, decided not to participate in the settlement, and desire to be excluded from the settlement. Print your name, sign, date, and mail the request for exclusion by First Class U.S. Mail or equivalent, to the address below.

Settlement Administrator

c/o

The Request for Exclusion must be postmarked or faxed not later than [REDACTED], 2022. If you submit a Request for Exclusion which is not postmarked or faxed by [REDACTED], 2022, your Request for Exclusion will be rejected, and you will be included in the settlement class.

If you choose **Option 2**, you will no longer be a Class Member, and you will:

- Not receive a payment from the Net Settlement Amount.
- Not release the Released Class Claims.
- If you are a PAGA Member, you will still release the Released PAGA Claims and will receive payment from the PAGA Settlement Amount.

Option 3 – Object to the Settlement

If you decide to object to the settlement because you find it unfair or unreasonable, you may submit a written objection stating why you object to the settlement, or you may instead appear at the Final Fairness Hearing to object to the Settlement. Written objections must provide : (1) your full name; (2) a written statement of all grounds for the objection accompanied by any legal support for such objection; (3) copies of any papers, briefs, or other documents upon which the objection is based; and (4) a statement about whether you intend to appear at the Fairness Hearing. The objection must be mailed to the administrator at [administrator's address].

All written objections must be received by the administrator by not later than [REDACTED], 2022. By submitting an objection, you are not excluding yourself from the settlement. To exclude yourself from the settlement, you must follow the directions described above. Please note that you cannot both object to the settlement and exclude yourself. You must choose one option only.

You may also, if you wish, appear at the Final Fairness Hearing set for January 12, 2023 at 1:30 p.m. in Department 1 of the Santa Clara County Superior Court located at 191 North First Street, San Jose, California 95113 and discuss your

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

objection with the Court and the Parties at your own expense. You may also retain an attorney to represent you at the hearing.

If you choose **Option 3**, you will still be entitled to the money from the settlement. If the Court overrules your objection, you will be deemed to have released the Released Class Claims (in addition to the Released PAGA Claims).

Additional Information

This Notice of Class Action Settlement is only a summary of the case and the settlement. For the precise terms and conditions of the Settlement, you are referred to the detailed Settlement Agreement, which is on file with the Clerk of the Court. The pleadings and other records in this litigation, including the Settlement Agreement, may be examined (a) online on the Superior Court of California, County of Santa Clara's Electronic Filing and Service Website at <https://portal.sccscourt.org>, or (b) in person at Records, Superior Court of California, County of Santa Clara, 191 North First Street, San Jose, California 95113, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays and closures.

All other inquiries by Class Members regarding this Class Notice and/or the settlement can be directed to the Settlement Administrator. In addition, contact information for Settlement Class Counsel, as well as Defendant's attorneys, are as follows:

<u>Settlement Class Counsel</u> Raul Perez Capstone Law APC 1875 Century Park E., Suite 1000 Los Angeles, CA 90067 Phone: (877) 613-2069	<u>Settlement Class Counsel</u> James Hawkins James Hawkins APLC 9880 Research Drive, Suite 200 Irvine, CA 92618 Phone: (949) 387-7200	<u>Counsel for Defendant Euromarket Designs, Inc.</u> Kathryn G. Mantoan Orrick, Herrington & Sutcliffe LLP 405 Howard Street San Francisco, CA 94105 Phone: (415) 773-5700
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PLEASE DO NOT CONTACT THE CLERK OF THE COURT OR THE JUDGE, WITH INQUIRIES.

Questions? Contact the Settlement Administrator toll free at 1-*-***-******