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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

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

JOINT STIPULATION OF CLASS AND PAGA ACTION SETTLEMENT AND RELEASE

This Joint Stipulation of Class and PAGA Action Settlement and Release (“Settlement” or “Settlement Agreement”) is made and entered into by and between Plaintiff Jose Hernandez, individually and on behalf of all others similarly situated, and Defendant Euromarket Designs, Inc.

DEFINITIONS

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

1. “Action” means *Hernandez v. Euromarket Designs, Inc.*, No. 20CV370922 (Santa Clara County Superior Court).

2. “Attorneys’ Fees and Costs” means attorneys’ fees agreed upon by the Parties and approved by the Court for Class Counsel’s litigation and resolution of the Action, and all out-of-pocket costs incurred and to be incurred by Class Counsel in the Action, including but not limited to expert/consultant fees, investigation costs, and costs associated with documenting the Settlement, providing any notices required as part of the Settlement or Court order, securing the Court’s approval of the Settlement, administering the Settlement, and obtaining entry of a Judgment terminating the Action. Class Counsel will request attorneys’ fees not in excess of one-third (1/3) of the Gross Settlement Amount, or Three Hundred Sixty Six Thousand Six Hundred Sixty Seven Dollars (\$366,667). The Attorneys’ Fees and Costs will also mean and include the additional reimbursement of any costs and expenses associated with Class Counsel’s litigation and settlement of the Action, up to Thirty Thousand Dollars (\$30,000), subject to the Court’s approval. Defendant has agreed not to oppose Class Counsel’s request for fees and reimbursement of costs as set forth above.

3. “Class Counsel” means Capstone Law APC and James Hawkins, APLC.

4. “Class List” means a complete list of all Class Members that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator within twenty (20) calendar days after Preliminary Approval of this Settlement. The Class List will be formatted in Microsoft Office Excel and will include each Class Member’s full name; most recent mailing address and telephone number (if available); Social Security number; the respective number of Workweeks that each Class Member worked during the Class Period; the respective number of Workweeks that each

1 PAGA Member worked during the PAGA Period; and any other relevant information needed to
2 calculate settlement payments. The Class List will be treated as confidential, disclosed only to the
3 Settlement Administrator and used for only for purposes of implementing the Settlement.

4 5. "Class Members" or "Settlement Class" means all persons who worked for Defendant
5 as non-exempt, hourly paid employees at one of Defendant's distribution centers in California (to include
6 housewares and furniture buildings located in Tracy (Locations #491 &499) and an LA cross-dock
7 located in Santa Fe Springs (Location # 591)) at any time from September 28, 2016 to December 31,
8 2021, inclusive.

9 6. "Class Period" means the period from September 28, 2016 to December 31, 2021,
10 inclusive.

11 7. "Class Representative Enhancement Payment" means the amount to be paid to Plaintiff
12 in recognition of his effort and work in prosecuting the Action on behalf of Class Members, and for his
13 general release of claims, including a Civil Code section 1542 waiver. Subject to the Court granting final
14 approval of this Settlement Agreement and subject to the exhaustion of any and all appeals, Plaintiff will
15 request Court approval of a Class Representative Enhancement Payment of Ten Thousand Dollars
16 (\$10,000).

17 8. "Court" means the Santa Clara County Superior Court.

18 9. "Defendant" means Defendant Euromarket Designs, Inc.

19 10. "Effective Date" means the later of: (i) if no timely objections are filed, or are withdrawn
20 prior to Final Approval, then the date on which Plaintiff serves notice of entry of the order granting Final
21 Approval; or (ii) if a Class Member files an objection to the Settlement, the sixty-first (61st) calendar day
22 after the date of Final Approval, provided no appeal is initiated by an objector; or (iii) if a timely appeal
23 is initiated by an objector, then the Effective Date will be the date of final resolution of that appeal
24 (including any requests for rehearing and/or petitions for certiorari and expiration of any time to seek
25 reconsideration or further review).

26 11. "Final Approval Date" means the date on which the Court enters an order granting final
27 approval of the Settlement Agreement.

28 12. "Gross Settlement Amount" means the Gross Settlement Amount of One Million One

1 Hundred Thousand Dollars (\$1,100,000), to be paid by Defendant in full satisfaction of all Released
2 Class Claims and Released PAGA Claims, which includes Attorneys' Fees and Costs, the Class
3 Representative Enhancement Payment, the PAGA Settlement Amount, Settlement Administration
4 Costs, and the Net Settlement Amount. This Gross Settlement Amount has been agreed to by Plaintiff
5 and Defendant based on the aggregation of the agreed-upon settlement value of individual claims. In no
6 event will Defendant be liable for more than the Gross Settlement Amount except as otherwise explicitly
7 set forth herein. There will be no reversion of the Gross Settlement Amount to Defendant. Defendant
8 will be separately responsible for any employer payroll taxes required by law, including the employer
9 FICA, FUTA, and SDI contributions, which shall not be paid from the Gross Settlement Amount.

10 13. "Individual Class Settlement Payment" means each Participating Class Member's
11 respective share of the Net Settlement Amount, to be calculated as described herein.

12 14. "Individual PAGA Settlement Payment" means each PAGA Member's respective share
13 of the PAGA Settlement Amount, to be calculated as described herein.

14 15. "Individual Settlement Payment" means the sum of the Individual PAGA Settlement
15 Payment and the Individual Class Settlement Payment.

16 16. "Net Settlement Amount" means the portion of the Gross Settlement Amount remaining
17 after deducting the Attorneys' Fees and Costs, the Class Representative Enhancement Payment, the
18 PAGA Settlement Amount, and Settlement Administration Costs. The Net Settlement Amount will be
19 distributed to Participating Class Members. There will be no reversion of the Net Settlement Amount to
20 Defendant.

21 17. "Notice of Objection" means a Class Member's valid and timely written objection to the
22 Settlement Agreement. For the Notice of Objection to be valid, it must include: (i) the objector's full
23 name, signature, address, and telephone number, (ii) a written statement of all grounds for the objection
24 accompanied by any legal support for such objection; (iii) copies of any papers, briefs, or other
25 documents upon which the objection is based; and (iv) a statement whether the objector intends to appear
26 at the final fairness hearing. Any Class Member who does not submit a timely written objection to the
27 Settlement, or who fails to otherwise comply with the specific and technical requirements of this section,
28 will be foreclosed from objecting to the Settlement and seeking any adjudication or review of the

1 Settlement, by appeal or otherwise.

2 18. "Notice Packet" means the Notice of Class Action Settlement, substantially in the form
3 attached as Exhibit A.

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

8 20. "PAGA Period" means the period from October 7, 2019 to December 31, 2021,
9 inclusive.

10 21. "PAGA Settlement Amount" means the amount that the Parties have agreed to pay to
11 the California Labor and Workforce Development Agency ("LWDA") and PAGA Members in
12 connection with Plaintiff's claims under the Labor Code Private Attorneys General Act of 2004
13 (including any claims under Cal. Lab. Code §§ 558 and/or 2698, *et seq.*, "PAGA") ("PAGA
14 Settlement"). The Parties have agreed that One Hundred Thousand Dollars (\$100,000) of the Gross
15 Settlement Amount will be allocated to the PAGA Settlement Amount. Pursuant to PAGA, Seventy-
16 Five Percent (75%), or Seventy Five Thousand Dollars (\$75,000), of the PAGA Settlement Amount will
17 be paid to the LWDA ("LWDA Payment"), and Twenty-Five Percent (25%), or Twenty Five Thousand
18 Dollars (\$25,000), of the PAGA Settlement Amount will be disbursed to PAGA Members, regardless of
19 whether they request to be excluded from the Settlement Class.

20 22. "Parties" means Plaintiff and Defendant collectively.

21 23. "Participating Class Members" means all Class Members who do not submit timely and
22 valid Requests for Exclusion.

23 24. "Plaintiff" means Plaintiff Jose Hernandez.

24 25. "Preliminary Approval Date" means the date on which the Court enters an order
25 granting preliminary approval of the Settlement Agreement.

26 26. "Released Class Claims" means all claims, rights, demands, liabilities, and causes of
27 action, arising from, or reasonably related to, the same set of operative facts as those set forth in the
28 Second Amended Complaint during the Class Period, including: (i) all claims for unpaid overtime; (ii)

1 all claims for meal and rest break violations; (iii) all claims for unpaid minimum wages; (iv) all claims
2 for the failure to timely pay wages upon termination based on the preceding claims; (v) all claims for the
3 failure to timely pay wages during employment based on the preceding claims; (vi) all claims for the
4 failure to provide reporting time pay; (vii) all claims for the failure to reimburse for necessary business
5 expenses; (viii) all claims for wage statement violations based on the preceding claims; and (ix) all
6 claims asserted through California Business & Professions Code §§ 17200, *et seq.*, and including all
7 claims, both potential and actual, that could reasonably have been alleged in the Action based on the
8 facts alleged in the Second Amended Complaint.

9 27. “Released PAGA Claims” means all claims for civil penalties under the Private
10 Attorneys’ General Act (“PAGA”), including under California Labor Code, sections 558 and/or 2698, *et*
11 *seq.*, predicated on any Labor Code violations alleged or could reasonably have been alleged in the
12 Action based on the same set of operative facts as those set forth in the Second Amended Complaint
13 during the PAGA Period, the October 7, 2020 PAGA Notice submitted on behalf of Plaintiff Hernandez
14 (LWDA-CM-808930-20), and/or the September 8, 2021 PAGA Notice submitted on behalf of Class
15 Member Foster (LWDA-CM-843829-21).

16 28. “Released Parties” means Defendant, its past or present officers, directors, shareholders,
17 employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and
18 reinsurers, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents, and
19 attorneys, if any.

20 29. “Request for Exclusion” means a timely letter submitted by a Class Member indicating a
21 request to be excluded from the Settlement Class. The Request for Exclusion must: (i) set forth the name,
22 address, telephone number and last four digits of the Social Security Number of the Class Member
23 requesting exclusion; (ii) be signed by the Class Member; (iii) be returned to the Settlement
24 Administrator; (iv) clearly state that the Class Member does not wish to be included in the Settlement;
25 and (v) be faxed or postmarked on or before the Response Deadline. A Class Member who does not
26 submit a valid Request for Exclusion will be deemed a Participating Class Member and will be bound by
27 all terms of the Settlement Agreement if the settlement is granted Final Approval by the Court. Any
28 Class Member who submits a Request for Exclusion will still remain bound by the PAGA portion of the

1 Settlement Agreement, including the Released PAGA Claims, to the extent the Class Member also is an
2 PAGA Member.

3 30. "Response Deadline" means the deadline by which Class Members must postmark or
4 fax to the Settlement Administrator Requests for Exclusion, postmark or fax disputes concerning the
5 calculation of Individual Settlement Payments, or postmark Notices of Objection to the Settlement
6 Administrator. The Response Deadline will be forty-five (45) calendar days from the initial mailing of
7 the Notice Packet by the Settlement Administrator, unless the forty-fifth (45th) calendar day falls on a
8 Sunday or federal or state holiday, in which case the Response Deadline will be extended to the next day
9 on which the U.S. Postal Service is open.

10 31. "Settlement Administration Costs" means the fees, costs, and expenses as approved by
11 the Court and payable from the Gross Settlement Amount to the Settlement Administrator for
12 administering this Settlement, including, but not limited to, printing, distributing, and tracking documents
13 for this Settlement, tax reporting, distributing the Gross Settlement Amount, and providing necessary
14 reports and declarations, as requested by the Parties. The Settlement Administration Costs will be paid
15 from the Gross Settlement Amount, including, if necessary, any such costs in excess of the amount
16 represented by the Settlement Administrator as being the maximum costs necessary to administer the
17 Settlement. Based on an estimated Settlement Class of approximately 1,225 Class Members, the
18 Settlement Administration Costs are currently estimated to be Fifteen Thousand Dollars (\$15,000).

19 32. "Settlement Administrator" means CPT Group, Inc. or any other third-party class action
20 settlement administrator agreed to by the Parties and approved by the Court for the purposes of
21 administering this Settlement. The Parties each represent that they do not have any financial interest in
22 the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that
23 could create a conflict of interest.

24 33. "Workweeks" means the number of days of employment for an individual during the
25 relevant period, subtracting days on leave of absence (if any), dividing by seven (7), and rounding up to
26 the nearest whole number. The relevant period for Class Members is the Class Period. The relevant
27 period for PAGA Members is the PAGA Period. All Class Members will be credited with at least one
28 Workweek during the Class Period, and all PAGA Members will be credited with at least one

1 Workweek during the PAGA Period.

2 **TERMS OF AGREEMENT**

3 Plaintiff, on behalf of himself and the Settlement Class, and Defendant agree as follows:

4 34. Funding of the Gross Settlement Amount. Defendant will make a one-time deposit of
5 the Gross Settlement Amount of One Million One Hundred Thousand Dollars (\$1,100,000) into a
6 Qualified Settlement Account to be established by the Settlement Administrator. Defendant will pay the
7 employer's share of payroll taxes separately. After the Effective Date, the Gross Settlement Amount will
8 be used for: (i) Attorneys' Fees and Costs; (ii) Class Representative Enhancement Payment; (iii) the
9 LWDA Payment; (iv) Settlement Administration Costs; (v) Individual PAGA Settlement Payments; and
10 (vi) Individual Class Settlement Payments. Defendant will deposit the Gross Settlement Amount and the
11 employer's share of payroll taxes within thirty (30) calendar days after the Effective Date ("Funding
12 Date").

13 35. Attorneys' Fees and Costs. Defendant agrees not to oppose or impede any application or
14 motion by Class Counsel for Attorneys' Fees and Costs of not more than Three Hundred Sixty Six
15 Thousand Six Hundred Sixty Seven Dollars (\$366,667), plus the reimbursement of all out-of-pocket
16 costs and expenses associated with Class Counsel's litigation and settlement of the Action (including
17 expert/consultant fees, investigations costs, etc.), not to exceed Thirty Thousand Dollars (\$30,000), both
18 of which will be paid from the Gross Settlement Amount. Class Counsel will divide any fee award,
19 including any multiplier, as follows: Ninety Percent (90%) to Capstone Law APC and Ten Percent
20 (10%) to James Hawkins, APLC.

21 36. Class Representative Enhancement Payment. In exchange for a general release, and in
22 recognition of his effort and work in prosecuting the Action on behalf of Class Members, Defendant
23 agrees not to oppose or impede any application or motion for a Class Representative Enhancement
24 Payment of Ten Thousand Dollars (\$10,000). The Class Representative Enhancement Payment will be
25 paid from the Gross Settlement Amount and will be in addition to any Individual Class Settlement
26 Payment and Individual PAGA Settlement Payment to be paid to Plaintiff pursuant to the Settlement.
27 Plaintiff will be solely and legally responsible to pay any and all applicable taxes on the Class
28 Representative Enhancement Payment.

1 37. Settlement Administration Costs. The Settlement Administrator will be paid for the
2 reasonable costs of administration of the Settlement and distribution of payments from the Gross
3 Settlement Amount, which is currently estimated to be Fifteen Thousand Dollars (\$15,000). These costs,
4 which will be paid from the Gross Settlement Amount, will include, *inter alia*, the required tax reporting
5 on the Individual Settlement Payments, the issuing of 1099 and W-2 IRS Forms, distributing Notice
6 Packets, calculating and distributing the Gross Settlement Amount, and providing necessary reports and
7 declarations.

8 38. PAGA Settlement Amount. Subject to Court approval, the Parties agree that the amount
9 of One Hundred Thousand Dollars (\$100,000) from the Gross Settlement Amount will be designated for
10 satisfaction of the LWDA and the Released PAGA Claims. Pursuant to PAGA, Seventy-Five Percent
11 (75%), or Seventy Five Thousand Dollars (\$75,000), of this sum will be paid to the LWDA and Twenty-
12 Five Percent (25%), or Twenty Five Thousand Dollars (\$25,000), will be paid to PAGA Members in
13 proportion to the number of Workweeks each PAGA Member worked during the PAGA Period.

14 39. No Right to Exclusion or Objections by Representative Action Members. Because this
15 settlement resolves claims and actions brought pursuant to PAGA by Plaintiff acting as a proxy and as a
16 Private Attorney General of, and for, the State of California and the LWDA, the Parties agree that no
17 PAGA Member has the right to exclude himself or herself from the PAGA portion of the Settlement
18 Agreement, including the Released PAGA Claims. PAGA Members will be bound by the terms of the
19 PAGA portion of the Settlement Agreement, upon its approval by the Court, regardless of whether he or
20 she cashes any payment received as a result of this Settlement. The Parties also agree that no PAGA
21 Member has the right to object to the terms of the PAGA portion of the Settlement Agreement.

22 40. Net Settlement Amount. The entire Net Settlement Amount will be distributed to
23 Participating Class Members. No portion of the Net Settlement Amount will revert to or be retained by
24 Defendant.

25 41. PAGA Settlement Amount. The entire PAGA Settlement Amount will be distributed
26 proportionately to the LWDA and all PAGA Members, as described herein. No portion of the PAGA
27 Settlement Amount will revert to or be retained by Defendant.

28 42. Individual Settlement Payment Calculations. Individual Settlement Payments will be

1 calculated and apportioned from the PAGA Settlement Amount and the Net Settlement Amount based
2 on the number of Workweeks a Class Member worked during the PAGA Period and Class Period.

3 Specific calculations of Individual Settlement Payments will be made as follows:

4 42(a) Individual PAGA Settlement Payments. Defendant will calculate the total number of
5 Workweeks worked by each PAGA Member during the PAGA Period and the
6 aggregate total number of Workweeks worked by all PAGA Members during the
7 PAGA Period. To determine each PAGA Member's estimated Individual PAGA
8 Settlement Payment, the Settlement Administrator will use the following formula: The
9 LWDA Payment will be deducted from the PAGA Settlement Amount, and the
10 remaining funds in the PAGA Settlement Amount will be divided by the aggregate total
11 number of Workweeks, resulting in the "PAGA Workweek Value." Each PAGA
12 Member's Individual PAGA Settlement Payment will be calculated by multiplying each
13 individual PAGA Member's total number of Workweeks by the PAGA Workweek
14 Value. The entire PAGA Settlement Amount will be disbursed to all PAGA Members.

15 42(b) Individual Class Settlement Payments. Defendant will calculate the total number of
16 Workweeks worked by each Class Member during the Class Period and the aggregate
17 total number of Workweeks worked by all Class Members during the Class Period. To
18 determine each Class Member's estimated Individual Class Settlement Payment from
19 the Net Settlement Amount, the Settlement Administrator will use the following
20 formula: The Net Settlement Amount will be divided by the aggregate total number of
21 Workweeks, resulting in the "Workweek Value." Each Class Member's Individual
22 Class Settlement Payment will be calculated by multiplying each individual Class
23 Member's total number of Workweeks by the Workweek Value. The Individual Class
24 Settlement Payment will be reduced by any required deductions for each Participating
25 Class Member as specifically set forth herein, including employee-side tax withholdings
26 or deductions. The entire Net Settlement Amount will be disbursed to all Class Members
27 who do not submit timely and valid Requests for Exclusion. If there are any valid and
28 timely Requests for Exclusion, the Settlement Administrator shall proportionately

1 increase the Individual Class Settlement Payment for each Participating Class Member
2 according to the number of Workweeks worked, so that the amount actually distributed
3 to the Settlement Class equals 100% of the Net Settlement Amount.

4 43. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
5 Participating Class Members under this Settlement, as well as any other payments made pursuant to this
6 Settlement, will not be utilized to calculate any additional benefits under any benefit plans to which any
7 Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k)
8 plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan.
9 Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions,
10 or amounts to which any Class Members may be entitled under any benefit plans.

11 44. Administration Process. The Parties agree to cooperate in the administration of the
12 settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in
13 administration of the Settlement.

14 45. Delivery of the Class List. Within twenty (20) calendar days after Preliminary Approval,
15 Defendant will provide the Class List to the Settlement Administrator.

16 46. Notice by First-Class U.S. Mail. Within ten (10) calendar days after receiving the Class
17 List from Defendant, the Settlement Administrator will mail a Notice Packet to all Class Members via
18 regular First-Class U.S. Mail, using the mailing addresses identified in the Class List or such other
19 address as may be identified through the procedure in the following paragraph.

20 47. Confirmation of Contact Information in the Class List. Prior to mailing, the Settlement
21 Administrator will perform a search based on the National Change of Address Database for information
22 to update and correct for any known or identifiable address changes. Any Notice Packets returned to the
23 Settlement Administrator as non-deliverable on or before the Response Deadline will be sent promptly
24 via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement
25 Administrator will indicate the date of such re-mailing on the Notice Packet. If no forwarding address is
26 provided, the Settlement Administrator will promptly attempt to determine the correct address using a
27 skip-trace, or other search using the name, address and/or Social Security number of the Class Member
28 involved, and will then perform a single re-mailing. Those Class Members who receive a re-mailed

1 Notice Packet, whether by skip-trace or by request, will have either (i) an additional fifteen (15) calendar
2 days or (ii) until the Response Deadline, whichever is later, to submit a Request for Exclusion or an
3 objection to the Settlement.

4 48. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice Packet
5 will provide: (i) information regarding the nature of the Action; (ii) a summary of the Settlement's
6 principal terms; (iii) the Settlement Class and PAGA Member definitions; (iv) the total number of
7 Workweeks each respective Class Member and PAGA Member worked for Defendant during the Class
8 Period and during the PAGA Period (if any); (v) each Class Member's estimated Individual Settlement
9 Payment and the formula for calculating Individual Settlement Payments; (vi) the dates which comprise
10 the Class Period and PAGA Period; (vii) instructions on how to submit Requests for Exclusion or
11 Notices of Objection; (viii) the deadlines by which the Class Member must postmark or fax Request for
12 Exclusions, or postmark Notices of Objection to the Settlement; and (ix) the claims to be released.

13 49. Disputed Information on Notice Packets. Class Members will have an opportunity to
14 dispute the information provided in their Notice Packets. To the extent Class Members dispute their
15 employment dates or the number of Workweeks on record, Class Members may produce evidence to the
16 Settlement Administrator showing that such information is inaccurate. Defendant's records will be
17 presumed correct, but the Settlement Administrator shall contact the Parties regarding the dispute and the
18 Parties will work in good faith to resolve it. All disputes must be submitted by the Response Deadline,
19 and will be decided within ten (10) business days after the Response Deadline.

20 50. Defective Submissions. If a Class Member's Request for Exclusion is defective as to the
21 requirements listed herein, that Class Member will be given an opportunity to cure the defect(s). The
22 Settlement Administrator will mail the Class Member a cure letter within three (3) business days of
23 receiving the defective submission to advise the Class Member that his or her submission is defective
24 and that the defect must be cured to render the Request for Exclusion valid. The Class Member will have
25 until (i) the Response Deadline or (ii) fifteen (15) calendar days from the date of the cure letter,
26 whichever date is later, to postmark or fax a revised Request for Exclusion. If the revised Request for
27 Exclusion is not postmarked or received by fax within that period, it will be deemed untimely.

28 51. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the

1 Settlement Agreement must sign and fax or postmark a written Request for Exclusion to the Settlement
2 Administrator within the Response Deadline. In the case of Requests for Exclusion that are mailed to the
3 Settlement Administrator, the postmark date will be the exclusive means to determine whether a Request
4 for Exclusion has been timely submitted.

5 52. Escalator. The Gross Settlement Amount was calculated with, and is premised on, the
6 understanding that there are approximately 1,225 Class Members eligible to participate in the Settlement.
7 If the actual number of Class Members eligible to participate in the Settlement exceeds this estimate by
8 more than ten percent (10%), then the Gross Settlement Amount will be increased by the same
9 proportion above one hundred and ten percent (110%) of the estimate, *i.e.*, according to the following
10 formula: Proportionally Increased Gross Settlement Amount = Total Number of Class Members ÷ 1,348
11 Class Members × \$1,100,000.

12 53. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class Member
13 who does not affirmatively opt-out of the Settlement Agreement by submitting a timely and valid
14 Request for Exclusion will be bound by all of its terms, including those pertaining to the Released Class
15 Claims, as well as any Judgment that may be entered by the Court if it grants final approval to the
16 Settlement.

17 54. Releases by Participating Class Members. Upon the Funding Date, and except as to such
18 rights or claims as may be created by this Settlement Agreement, each Participating Class Member,
19 together and individually, on their behalf and on behalf of their respective heirs, executors,
20 administrators, agents, and attorneys, shall fully and forever release and discharge all of the Released
21 Parties, or any of them, from each of the Released Class Claims arising during the Class Period.

22 55. Releases by PAGA Members. Upon the Funding Date, and except as to such rights or
23 claims as may be created by this Settlement Agreement, each PAGA Member, together and individually,
24 on their behalf and on behalf of their respective heirs, executors, administrators, agents, and attorneys,
25 shall fully and forever release and discharge all of the Released Parties, or any of them, from each of the
26 Released PAGA Claims arising during the PAGA Period.

27 56. Defendant's Right to Rescind. Defendant will have, in its sole discretion, the right to
28 void and withdraw from the Settlement if, at any time prior to Final Approval, five percent (5%) or more

1 of Class Members opt out of the Settlement. Defendant must exercise this right of rescission in writing to
2 Class Counsel within fourteen (14) calendar days after the Response Deadline. If the option to rescind is
3 exercised, then Defendant will be solely responsible for all Settlement Administration Costs incurred to
4 the date of rescission.

5 57. Objection Procedures. To object to the Settlement Agreement, a Class Member may
6 either postmark a valid Notice of Objection to the Settlement Administrator on or before the Response
7 Deadline, or appear in person at the Final Approval Hearing. Class Members who fail to object either by
8 submitting a valid Notice of Objection or appearing in person at the Final Approval Hearing will be
9 deemed to have waived all objections to the Settlement and will be foreclosed from making any
10 objections, whether by appeal or otherwise, to the Settlement Agreement. At no time will any of the
11 Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written
12 objections to the Settlement Agreement or appeal from the final approval order and judgment. Class
13 Counsel will not represent any Class Members with respect to any such objections to this Settlement. If a
14 Class Member timely submits both a Notice of Objection and a Request for Exclusion, the Request for
15 Exclusion will be given effect and considered valid, the Notice of Objection shall be rejected, and the
16 Class Member shall not participate in or be bound by the Settlement.

17 58. Certification Reports Regarding Individual Settlement Payment Calculations. The
18 Settlement Administrator will provide Defendant's counsel and Class Counsel a weekly report that states
19 the number of Class Members who have submitted valid Requests for Exclusion or objections to the
20 Settlement, and whether any Class Member has submitted a challenge to any information contained in
21 their Notice Packet. Additionally, the Settlement Administrator will provide to counsel for both Parties
22 any updated reports regarding the administration of the Settlement Agreement as needed or requested;
23 any such updated reports will be provided simultaneously to Defendant's counsel and Class Counsel.

24 59. Distribution Timing of Individual Settlement Payments. Within ten (10) calendar days
25 of the Funding Date, the Settlement Administrator will issue payments to: (i) Participating Class
26 Members and PAGA Members; (ii) the LWDA; (iii) Plaintiff; and (iv) Class Counsel. The Settlement
27 Administrator will also issue a payment to itself for Court-approved services performed in connection
28 with the Settlement.

60. Un-cashed Settlement Checks. Funds represented by Individual Settlement Payment checks returned as undeliverable and Individual Settlement Payment checks remaining un-cashed for more than one hundred and eighty (180) calendar days after issuance will be tendered to California Rural Legal Assistance (“CRLA”). The Parties do not have a connection to or a relationship with CRLA that could reasonably create the appearance of impropriety as between the selection of CRLA as the recipient of the unclaimed residuals and the interests of the class.

61. Certification of Completion. Upon completion of administration of the Settlement, the Settlement Administrator will provide a written declaration under oath to certify such completion to the Court and counsel for all Parties.

62. Treatment of Individual Settlement Payments. All Individual Settlement Payments will be allocated as follows: (i) Twenty-Five Percent (25%) of each Individual Settlement Payment will be allocated as wages for which IRS Forms W-2 will be issued; and (ii) Seventy-Five (75%) will be allocated as non-wages for which IRS Forms 1099-MISC will be issued.

63. Administration of Taxes by the Settlement Administrator. The Settlement Administrator will be responsible for issuing to Plaintiff, Participating Class Members, PAGA Members, and Class Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to this Settlement. The Settlement Administrator will also be responsible for forwarding all payroll taxes and penalties to the appropriate government authorities.

64. Tax Liability. Defendant makes no representation as to the tax treatment or legal effect of the payments called for hereunder, and Plaintiff and Participating Class Members are not relying on any statement, representation, or calculation by Defendant or by the Settlement Administrator in this regard.

65. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR

1 WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED
2 OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
3 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
4 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS
5 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
6 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS
7 AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY
8 ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY
9 UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO
10 ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
11 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
12 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF
13 ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER
14 SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
15 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
16 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
17 AGREEMENT.

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

22 67. Nullification of Settlement Agreement. In the event that: (i) the Court does not finally
23 approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other
24 reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null
25 and void and the Parties shall be returned to their respective original positions. The Parties agree that
26 Plaintiff's motion for preliminary approval will seek, *inter alia*, certification of a class, and that this
27 certification is for purposes of the Settlement only. If, for any reason, the Settlement is not approved, the
28 stipulation to certification will have no force or effect. The Parties further agree that certification for

1 purposes of the Settlement is in no way an admission that class certification is proper under the standard
2 applied to contested certification motions and that this Settlement will not be admissible in this or any
3 other proceeding as evidence that (i) a class should be certified as Plaintiff proposed or (ii) Defendant is
4 liable to Plaintiff or the Class as Plaintiff alleged. Any order or judgment entered by the Court in
5 furtherance of this Settlement Agreement will likewise be treated as void from the beginning.

6 68. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to
7 request the Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary Approval
8 Order for: (i) conditional certification of the Settlement Class for settlement purposes only, (ii)
9 preliminary approval of the proposed Settlement Agreement, (iii) setting a date for a final fairness
10 hearing. The Preliminary Approval Order will provide for the Notice Packet to be sent to all Class
11 Members as specified herein. In conjunction with the Preliminary Approval hearing, Plaintiff will submit
12 this Settlement Agreement, which sets forth the terms of this Settlement, and will include the proposed
13 Notice of Class Action Settlement, attached as Exhibit A. Class Counsel will be responsible for drafting
14 all documents necessary to obtain preliminary approval and will provide Defendant's Counsel a copy of
15 all documents at least four (4) business days prior to filing.

16 69. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the
17 deadlines to postmark Requests for Exclusion or objections to the Settlement Agreement, and with the
18 Court's permission, a final fairness hearing will be conducted to determine the Final Approval of the
19 Settlement Agreement along with the amounts properly payable for: (i) Attorneys' Fees and Costs; (ii)
20 the Class Representative Enhancement Payment; (iii) the LWDA Payment; (iv) all Settlement
21 Administration Costs; and (v) Individual Settlement Payments. The final fairness hearing will not be held
22 earlier than thirty (30) calendar days after the Response Deadline. Class Counsel will be responsible for
23 drafting all documents necessary to obtain final approval and will provide Defendant's Counsel a copy
24 of all documents at least four (4) business days prior to filing. Class Counsel will also be responsible for
25 drafting the attorneys' fees and costs application to be heard at the final approval hearing.

26 70. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by the
27 Court or after the final fairness hearing, the Parties will present the Judgment to the Court for its
28 approval. After entry of the Judgment, the Court will have continuing jurisdiction solely for purposes of

1 addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) Settlement
2 administration matters, and (iii) such post-Judgment matters as may be appropriate under court rules or
3 as set forth in this Settlement Agreement. A copy of the Judgment will be posted to the Settlement
4 Administrator's website.

5 71. Release by Plaintiff. Upon the Funding Date, in addition to the claims being released by
6 all Participating Class Members, Plaintiff will release and forever discharge the Released Parties, to the
7 fullest extent permitted by law, of and from any and all claims, known and unknown, asserted and not
8 asserted, which Plaintiff have or may have against the Released Parties as of the date of execution of this
9 Settlement Agreement. To the extent the foregoing release is a release to which Section 1542 of the
10 California Civil Code or similar provisions of other applicable law may apply, Plaintiff expressly waives
11 any and all rights and benefits conferred upon him by the provisions of Section 1542 of the California
12 Civil Code or similar provisions of applicable law which are as follows:

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

19 72. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include the
20 terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth
21 herein. Any Exhibits to this Settlement Agreement are an integral part of the Settlement.

22 73. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the
23 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements
24 may be deemed binding on the Parties. The Parties expressly recognize California Civil Code section
25 1625 and California Code of Civil Procedure section 1856(a), which provide that a written agreement is
26 to be construed according to its terms and may not be varied or contradicted by extrinsic evidence, and
27 the Parties agree that no such extrinsic oral or written representations or terms will modify, vary or
28 contradict the terms of this Settlement Agreement.

74. Amendment or Modification. No amendment, change, or modification to this Settlement Agreement will be valid unless in writing and signed, either by the Parties or their counsel.

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

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

77. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto will be governed by and interpreted according to the laws of the State of California.

78. Execution and Counterparts. This Settlement Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including electronic (e.g., DocuSign), facsimile, and scanned copies of the signature page, will be deemed to be one and the same instrument.

79. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into account all relevant factors, present and potential. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

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

1 valid and enforceable.

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

6 82. Class Action Certification for Settlement Purposes Only. The Parties agree to stipulate to
7 class action certification for purposes of the Settlement only. If, for any reason, the Settlement is not
8 approved, the stipulation to certification will be void. The Parties further agree that certification for
9 purposes of the Settlement is not an admission that class action certification is proper under the standards
10 applied to contested certification motions and that this Settlement Agreement will not be admissible in
11 this or any other proceeding as evidence that either (i) a class action should be certified or (ii) Defendant
12 is liable to Plaintiff or any Class Member, other than according to the Settlement's terms.

13 83. No Admission of Liability. The Parties enter into this Settlement to resolve the dispute
14 that has arisen between them and to avoid the burden, expense, and risk of continued litigation. In
15 entering into this Settlement, Defendant does not admit, and specifically denies, that it violated any
16 federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or
17 any other applicable laws, regulations, or legal requirements; breached any contract; violated or breached
18 any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with
19 respect to its employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any
20 of the negotiations connected with it, will be construed as an admission or concession by Defendant of
21 any such violations or failures to comply with any applicable law. Except as necessary in a proceeding to
22 enforce the terms of this Settlement, this Settlement Agreement and its terms and provisions will not be
23 offered or received as evidence in any action or proceeding to establish any liability or admission on the
24 part of Defendant or to establish the existence of any condition constituting a violation of, or a non-
25 compliance with, federal, state, local or other applicable law.

26 84. No Public Comment: The Parties and their counsel agree that they will not issue any
27 press releases, initiate any contact with the press, respond to any press inquiry, or have any
28 communication with the press about the fact, amount, or terms of the Settlement. Plaintiff and Class

1 Counsel agree not to issue a press release or otherwise notify the media about the terms of the Settlement
2 or advertise or market any of the terms of the Settlement through written, recorded, or electronic
3 communications. Plaintiff and Class Counsel further agree that if contacted regarding this case, they will
4 state only that the lawsuit exists and has been resolved. This provision is not intended to, and does not,
5 limit Class Counsel from responding to questions from and providing advice to Class Members
6 regarding the settlement after Preliminary Approval is granted.

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

10 86. Enforcement Actions. In the event that one or more of the Parties institutes any legal
11 action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement
12 or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be
13 entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including
14 expert witness fees incurred in connection with any enforcement actions.

15 87. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
16 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed
17 more strictly against one party than another merely by virtue of the fact that it may have been prepared
18 by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations
19 between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

20 88. Representation By Counsel. The Parties acknowledge that they have been represented
21 by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and
22 that this Settlement Agreement has been executed with the consent and advice of counsel. Further,
23 Plaintiff and Class Counsel warrant and represent that there are no liens on the Settlement Agreement.

24 89. All Terms Subject to Final Court Approval. All amounts and procedures described in
25 this Settlement Agreement herein will be subject to final Court approval.

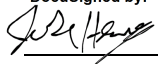
26 90. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good
27 faith and execute all documents to the extent reasonably necessary to effectuate the terms of this
28 Settlement Agreement.

91. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement Agreement, 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.

READ CAREFULLY BEFORE SIGNING

PLAINTIFF

Dated: 5/17/2022

DocuSigned by:

Jose Hernandez

**DEFENDANT EUROMARKET DESIGNS,
INC.**

Dated: 5/17/2022

By: 
Victoria Donati

APPROVED AS TO FORM

CAPSTONE LAW APC

Dated: 5/16/2022

By: 
Raul Perez
Attorneys for Plaintiff and the Settlement Class

JAMES HAWKINS, APLC

Dated: 5/16/2022

By: 
James Hawkins
Attorneys for Plaintiff and the Settlement Class

ORRICK, HERRINGTON & SUTCLIFFE LLP

Dated: 5/17/2022

By: 
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.**

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 [REDACTED] :00 .m. on [REDACTED], 2022 in Department 1 of the Santa Clara County Superior Court located at 191 North First Street, San Jose, California 95113.

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].

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].

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

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 Second 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 Second 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 Second Amended Complaint during the PAGA Period, the October 7, 2020 PAGA Notice submitted on behalf of Plaintiff Hernandez (LWDA-CM-808930-20), and/or the September 8, 2021 PAGA Notice submitted on behalf of Class Member Foster (LWDA-CM-843829-21).

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

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. The written request for exclusion must include your name, signature, address, telephone number, and last four digits of your Social Security Number. 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 _____, 2022. If you submit a Request for Exclusion which is not postmarked or faxed by _____, 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, signature, address, and telephone number, (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 _____, 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 _____ at _____ a.m./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 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.scscourt.org>, or (b) in person at Records, Superior Court of California, County of Santa Clara, 191 North

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

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: Number	<u>Settlement Class Counsel</u> James Hawkins James Hawkins APLC 9880 Research Drive, Suite 200 Irvine, CA 92618 Phone: Number	<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-*-***-******