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11 on behalf of himself and others similarly situated

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **FOR THE COUNTY OF SAN DIEGO**

14 KEVIN BECERRA, on behalf of himself  
15 and others similarly situated,

16 Plaintiff,

17 vs.

18 HUGO BOSS RETAIL, INC., a Delaware  
19 Corporation; and DOES 1 through 50,  
inclusive

20 Defendants.

Case No. 37-2021-00002933-CU-OE-CTL

Judge: Hon. Ronald F. Frazier

Department: C-65

CLASS ACTION

**DECLARATION OF DAVID YEREMIAN  
IN SUPPORT OF MOTION FOR  
PRELIMINARY APPROVAL OF THE  
CLASS ACTION SETTLEMENT**

*[filed concurrently with Plaintiff's Notice of  
Motion and Motion; Memorandum of Points and  
Authorities; Declaration of Emil Davtyan; and  
[Proposed] Order]*

Date: November 19, 2021

Time: 8:30 a.m.

Dept.: C-65

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1. I am an attorney licensed and admitted to practice before all courts of the State of California, the United States District Court for the Central, Southern, Eastern, and Northern Districts of California, and the Ninth Circuit Court of Appeals. I am the managing attorney of David Yeremian & Associates, Inc., counsel for Plaintiff Kevin Becerra (“Plaintiff”) on behalf of himself and similarly situated employees of Defendant Hugo Boss Retail, Inc. (“Defendant”). I and my firm are referred to herein as Class Counsel. I have personal knowledge of the facts herein and if called as a witness, I could and would competently testify.

2. All of the matters set forth herein are within my personal knowledge, except those matters that are stated to be upon information and belief. As to such matters, I believe them to be true. I have represented Plaintiff and the putative Class since the inception of this matter. I submit this Declaration in support of the Motion for Preliminary Approval, filed by Plaintiff, on behalf of himself and other similarly situated employees of Defendant, and without opposition from Defendant, for preliminary approval of the parties' Joint Stipulation of Class Action and PAGA Settlement and Release Settlement ("Settlement Agreement" or "Settlement"), a true and correct copy of which is attached hereto as **Exhibit 1**.

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3. My firm is well qualified because of our experience, knowledge, and resources to act as counsel and represent Plaintiff and the putative class in this action. My practice is exclusively focused on employment matters, with a substantial percentage devoted to litigating wage, hour, and working-conditions violations on a class-wide basis.

4. I graduated from UC Berkeley in 1997 and received my law degree and MBA from UCLA in 2001. I am a member of the Los Angeles County Bar Association and the California Employment Lawyers Association. I have been honored as a Super Lawyers Rising Star in 2009, 2010, 2012-2015. I have been named and honored as a Super Lawyer since 2016.

5. I have been practicing law since 2003. Since 2007, I have focused almost exclusively on representing employees, including in wage-and-hour class actions. During my career I have

1 represented employees in over 100 wage-and-hour class action lawsuits as lead or co-lead counsel  
2 (including in the Central, Southern, Eastern and Northern Districts of California), and I have  
3 obtained six and seven figure settlements against a range of defendants, including Fortune 500  
4 companies. These cases have involved the gamut of wage-and-hour claims, including claims for  
5 failure to pay minimum wages, unpaid wages and overtime, inaccurate pay statements, and failure  
6 to pay timely wages - similar to claims at issue in the present matter.

7 6. I am experienced in prosecuting employment matters, particularly class actions. In  
8 addition to the present case, I am also class counsel for dozens of other putative wage-and-hour  
9 class-action lawsuits pending in various state and federal jurisdictions throughout California.

10 7. My extensive experience in litigating employment wage and hour matters has been  
11 integral in identifying legal issues, evaluating the strengths and weaknesses of a case, and  
12 generally negotiating fair and reasonable class action settlements. Practice in the narrow field of  
13 wage and hour litigation requires skill and knowledge concerning the constantly evolving  
14 substantive law (state and federal), as well as the procedural law of class action litigation. In this  
15 action, I am fully equipped to use the skills and knowledge I have developed through more than a  
16 decade of prosecuting and defending wage and hour class actions to fairly and adequately  
17 represent the interests of the Class. Therefore, on the account of my resources, experience, and  
18 knowledge, I am well qualified to act as Class Counsel and represent Plaintiff and the putative  
19 Class Members in this action.

20 8. In the last several years I have had several contested class cases certified. When  
21 necessary we pursue cases on appeal. Owing to my experience, I am well qualified to evaluate the  
22 class claims in this action, to evaluate settlement v. trial and defenses raised. I have negotiated  
23 over 100 class action settlements, including many involving the same issues presented in this  
24 case. A selection of cases wherein I have served as lead or co-lead class counsel includes: *Galavis*  
25 *v. Patina Restaurant Group, LLC* (LASC BC375225; class size approx. 10,000; co-lead counsel);  
26 *Milford v. ADT Security Services, Inc.* (CACD CV08-2236; class size approx. 2,000; lead  
27 counsel); *Carreon v. Wolfgang Puck Catering and Events, LLC* (LASC BC398569; class size  
28 approx. 1,400; lead counsel); *Fluke v. RFG Oil, Inc.* (LASC BC403354; class size approx. 1,400;

1 lead counsel); *Urena v. Camachos Restaurant* (LASC BC365913; class size approx. 887; lead  
2 counsel); *Smith v. Rio Rancho Pontiac GMC Buick Inc.* (LASC BC391187; class size approx.  
3 860; lead counsel); *Callela v. Dolce Group* (LASC BC364711; class size approx. 600; lead  
4 counsel); *Vasquez v. The Hollywood Pig n Whistle LP* (LASC BC335075; class size approx. 600;  
5 lead counsel); *Goldman v. Aorta Restaurant Operating LP* (LASC BC379688; class size approx.  
6 300; lead counsel); *Sink-Crilly v. Centex Homes* (CACD CV09-2476; class size approx. 250; lead  
7 counsel); *Utlely v. Cranbrook Partners Inc.* (LASC BC392813; class size approx. 200; lead  
8 counsel); *Garcia v. California Credits Group* (LASC BC353213; class size approx. 160; lead  
9 counsel); *Afanasyev v. Miller Infiniti, Inc.* (LASC BC350788; class size approx. 160; lead  
10 counsel); *Morris v. Gymboree, Inc.* (LASC BC393270; class size approx. 150; lead counsel);  
11 *Ortega v. AJC Sandblasting, Inc.* (LASC BC378806; class size approx. 140; lead counsel);  
12 *Lulejyan v. Jim Falk Motors of Beverly Hills, Inc.* (LASC BC398459; class size approx. 72; lead  
13 counsel); *Rylko v. The Griddle Café, Inc.* (LASC BC386126; class size approx. 70; lead counsel);  
14 *Healy v. Siemens IT Solutions and Services, Inc.* (Santa Clara Superior Court 108CV113479;  
15 class size approx 60; lead counsel).

16 9. For purposes of this motion, the “Class” or “Class Members” consist of “all current and  
17 former non-exempt employees of Defendant, who worked in California during the Class Period” ,  
18 The Class Period is the period from May 21, 2018 through the earlier of the date of preliminary  
19 approval of the Settlement Agreement or December 21, 2021. I do not believe that I have any  
20 conflicts of interest with the Class or with the Class Representative. I am not related to the Class  
21 Representative. I have not previously represented Defendant in any matter. I respectfully submit  
22 that I, and David Yeremian & Associates, Inc. are well suited to act as Class Counsel in this  
23 action, and we have and will continue to vigorously represent the interests of the Class Members.

#### 24 **PROCEDURAL HISTORY**

25 10. On November 3, 2020, Plaintiff filed a class action complaint against Defendant in the  
26 Superior Court for the State of California, in San Diego, Case Number 37-2020-00040096-CU-  
27 OE-CTL , alleging: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime  
28 Under Labor Code § 510; (3) Meal-Period Liability Under Labor Code § 226.7; (4) Rest-Period

1 Liability Under Labor Code § 226.7; (5) Failure to Keep Required Payroll Records Under Labor  
2 Code §§ 1174 and 1174.5; (6) Violation of Labor Code § 226(a); (7) Penalties Pursuant to Labor  
3 Code § 203; (8) Violation of Business & Professions Code § 17200 *et seq* and (9) Failure to  
4 Provide Suitable Seating. On January 21, 2021, Plaintiff filed a Complaint against Defendant in  
5 the Superior Court for the State of California, in San Diego, Case Number 37-2021-00002933-  
6 CU-OE-CTL. for penalties under the Private Attorneys' General Act ("PAGA"). On October 12,  
7 2021 Plaintiff amended his complaint in this matter to add to add Class Action claims and add a  
8 Fair Labor Standards Act claim.

### 9 **INVESTIGATION AND DISCOVERY**

10 11. I have participated in all discovery, mediation and negotiations since the inception of  
11 Plaintiff's case. Before filing the lawsuit, Class Counsel investigated and researched the facts and  
12 circumstances underlying the pertinent issues and the law applicable thereto. This required  
13 thorough discussions and interviews between Class Counsel and Plaintiff Kevin Becerra, as well  
14 as preliminary research into the various legal issues involved in the case. After conducting their  
15 initial investigation, Class Counsel determined that Plaintiff Kevin Becerra's claims were well-  
16 suited for class and representative action adjudication owing to what appeared to be a common  
17 course of conduct affecting a similarly situated group of employees.

18 12. After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts  
19 and claims giving rise to the action, including: (1) conducting informal and formal discovery, and  
20 meeting and conferring with defense counsel about same; (2) reviewing and analyzing time and  
21 pay records as well as employment handbooks, Plaintiff's personnel files, relevant policies and  
22 other documentation; (3) researching the applicable law and potential defenses; (4) constructing  
23 damage models based on interpretations of California law; and (5) reviewing information  
24 provided by Defendant at the mediation. The Class enumerated in this action is ascertainable  
25 because the Class Members may be readily identified by reference to Defendant's records.  
26 Defendant have agreed to share the information from these records with the Class Action  
27 Administrator in order to identify and contact the Class Members. I understand there are  
28 approximately 450 total Class Members.

1       13. Defendant, for their part, vigorously contested liability, the amount of claimed  
2 damages, and the propriety of class certification. After Class Counsel analyzed the relevant  
3 documents and other gathered data, Class Counsel believed that this case was appropriate for  
4 resolution via mediation. Given the high level of risk present for both sides, the parties elected to  
5 mediate Plaintiff's claims and explore the possibility of settlement.

6       14. On June 21, 2021, the parties mediated this case with the Ann Kotlarski, Esq., a  
7 respected and highly experienced mediator in wage and hour class actions. During mediation,  
8 Plaintiff's and Defendant's counsel discussed all aspects of the case, including the risks of  
9 litigation and the risks to both parties of proceeding with a motion for class certification as well as  
10 the law relating to off-the-clock work, meal and rest breaks, improper rate of pay, and wage  
11 statements. Defendant's counsel represented that Defendant would not be able to afford defending  
12 against the lawsuit at trial if the case did not settle. As a result of the mediation, the parties agreed  
13 to settle the lawsuit according to the terms set forth in the Settlement Agreement. From Class  
14 Counsel's review of the facts, strengths, and weaknesses of the case, the risks and delays posed  
15 by further litigation, and Class Counsel's own prior litigation experience, Class Counsel believes  
16 that the recovery for each class member is fair and reasonable taking into consideration the  
17 amounts received in other wage and hour class actions, the risks inherent in litigation of this  
18 genre, and the reasonable tailoring of each Class Member's claim to the settlement award he or  
19 she will receive. Further, and based on the settlement negotiations, which were extensive and  
20 conducted in good faith and at arm's length between attorneys with substantial experience  
21 litigating class actions and wage and hour cases, the Settlement Agreement was the product of a  
22 non-collusive settlement process in which the parties were forced to make significant  
23 compromises in the interest of reaching a full and complete settlement of the lawsuit.

#### 24                                   **SUMMARY OF SETTLEMENT**

25       15. The parties have executed a Joint Stipulation of Class Action Settlement ("Settlement  
26 Agreement" or "Settlement") attached hereto and incorporated herein as **Exhibit 1**. Defendant  
27 have agreed to pay \$350,000 ("Gross Fund") on a non-reversionary basis to settle and release all  
28 claims asserted by Plaintiff in the operative complaint on behalf of the proposed Class. (Exh. 1,

¶12, 3:22-23.)

16. The Settlement Agreement defines the “Class” or “Class Members” as “all non-exempt hourly employees who were employed by Defendant in California during the Class Period.” (Exh. 1, ¶5, 2:28, 3:1.) However, it does not include any person who submits a timely and valid request to “Opt-Out” from the Class. (Exh. 1, ¶28, 6:14-21.) “Class Period” means the period from May 21, 2018 through the earlier of the date of preliminary approval of the Settlement Agreement or December 21, 2021. (Exh. 1, ¶6, 3:2-3.)

17. The “Net Settlement Amount” shall be the Gross Fund, less the Attorneys’ Fees and Costs, the Class Representative Enhancement Payment, Settlement Administration Costs, and seventy-five percent (75%) of the PAGA Payment. (Exh. 1, ¶15, 4:15-19.) These amounts are detailed as follows:

- not more than One Hundred and Fifteen Thousand and Five Dollars (\$115,500.00) to Class Counsel for attorneys’ fees, and not more than Fifteen Thousand Dollars (\$15,000) in costs; (Exh. 1, ¶2, 2:11-19);
- not more than Seven Thousand Five Hundred dollars (\$7,500) to the Class Representative for Service Enhancement Payment; (Exh. 1, ¶7, 3:4-9);
- up to \$9,664.91 for the Settlement Administration Costs; (Exh. 1, ¶37, 9:3-9);
- Twenty-Five Thousand dollars (\$25,000.00) shall be allocated for settlement of claims for civil penalties under PAGA, where 75% (\$18,750) will be paid to the LWDA and 25% (\$6,250) will be included in the Net Settlement Amount and distributed to Settlement Class Members); (Exh. 1, ¶38, 9:10-17)

18. The “Individual Settlement Payment,” which is each Class Member’s share of the Net Settlement Amount, will be calculated and apportioned from the Net Settlement Amount based on the number of Workweeks a Class Member worked during the Class Period as a non-exempt employee in California. (Exh. 1, ¶40, 9:21-21)

19. The settlement amount was a compromise figure, factoring in the inherent risks related to certification, liability and damages. However, taking into account all of the circumstances of the action and the defenses raised by Defendant against certification, liability and damages, Class

1 Counsel believes that the settlement is fair and reasonable.

2 20. Class Members shall each receive a “Notice of Class Action Settlement” or “Notice  
3 Packet” via regular First Class U.S. Mail, using the most current, known mailing addresses  
4 identified in the Class List. (Exh. 1, ¶¶ 17,44, 4:25-26, 10:27-28, 11:1-2) Before mailing, the  
5 Settlement Administrator will perform a search based on the National Change of Address  
6 Database for information to update and correct for any known or identifiable address changes.  
7 (Exh. 1, ¶¶ 17,44, 45, 4:25-26, 10:27-28, 11:1-14) If a new address is obtained by way of a  
8 returned Notice Packet, then the Settlement Administrator will promptly forward the original  
9 Notice Packet to the updated address via first-class regular U.S. mail, indicating on the original  
10 packet the date of such re-mailing. (Exh. 1, ¶¶ 17,44, 4:25-26, 10:27-28, 11:1-2)

11 21. Class Members will have an opportunity to dispute the information provided in their  
12 Notices of Class Action Settlement and they must timely produce evidence to support the  
13 information is inaccurate. (Exh. 1, ¶47, 11:24-28, 12:1-3) The Settlement Administrator shall  
14 decide the dispute and may ask Defendant to produce the personnel and payroll files of the Class  
15 Member disputing their credited workweeks in order to resolve the dispute. (Exh. 1, ¶47, 11:24-  
16 28, 12:1-3)

17 22. Class Members wishing to opt-out from the Settlement Agreement must sign and  
18 postmark a written Request for Exclusion to the Settlement Administrator within the “Class  
19 Member Exclusion Deadline.” (Exh. 1, ¶49, 12:13-22) The Exclusion Deadline will be forty-five  
20 (45) calendar days after the date the Notice Packet was mailed. (Exh. 1, ¶29, 6:22-27) The  
21 delivery date is deemed to be the date the Opt-Out request is deposited in the U.S. Mail as  
22 evidenced by the postmark. (Exh. 1, ¶28, 6:14-27)

23 23. Class Members will also have the opportunity to object to the Settlement Agreement,  
24 by serving a copy of the objection to the Settlement Administrator at Simpluris, P.O. Box 26170,  
25 Santa Ana, CA 92799. (Exh. 1, ¶52, 13:7-15) All objections must be served within forty-five (45)  
26 calendar days of first mailing of the Class Notice. (Exh. 1, ¶29, 6:22-27).

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**THE STRENGTH OF PLAINTIFF’S CASE**  
**IN LIGHT OF THE SETTLEMENT AMOUNT**

24. Because the class consists of numerous employees, it was unlikely that the potential monetary claims of individual Class Members would have proved viable without the class-action mechanism. The Settlement Agreement should be approved in light of two California appellate decisions: *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116.

25. The strength of the Plaintiff’s case in light of the settlement amount is deemed by courts to be the “most important.” *Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785, 799 (citing *Kullar*). Here, Plaintiff alleges that Defendant failed to pay minimum wages and overtime, failed to provide accurate wage statements, failed to pay all wages upon termination, and failed to pay its employees on a semi-monthly basis, all in violation of California law. Plaintiff seeks related violations of California’s Business & Professions Code, and penalties pursuant to Labor Code § 2699 *et seq.* The merits of each of these claims will be addressed separately below.

**Minimum Wages and Overtime**

26. Plaintiff alleged that Defendants failed to pay Plaintiff and other Class Members minimum wages and overtime for all hours worked. Plaintiff contended that he and other Class Members were not paid proper overtime and minimum wages. Specifically, Plaintiff and Employees were not paid for the time that they were required to clean up the store and throw away trash at the end of the day. Moreover, Plaintiff and Employees were not paid off-the-clock work for the time they spent going through lengthy bag checks after clocking out at the end of their shifts.

27. Defendant contend that they paid for all reported hours worked, that Class Members were trained to record all hours worked, and that they paid proper minimum wages. Additionally, Defendant also maintained that the allegations regarding failure to pay wages for hours worked in excess of eight hours in a day did not constitute a basis for violation of Labor Code § 510. Defendant argued that given their written policies and practices, any unrecorded hours were likely

1 subject to individualized inquiry and unlikely to be certified. Furthermore, Defendants contended  
2 they paid overtime at the appropriate regular rate of pay. Given the difficulty in certifying this  
3 claim, Class Counsel had to apply a significant discount to damages based on this theory. Based  
4 on the above detailed facts, Class Counsel estimated Defendant's exposure on unpaid wages  
5 claims to be approximately \$720,835.50 (12,482 workweeks x 15 minutes a day for unpaid time x  
6 5 days week x \$18.48 average hourly pay x 2.5).

### 7 **Meal Periods and Rest Breaks**

8 28. Plaintiff alleged that Defendant consistently failed to provide timely and uninterrupted  
9 meal breaks to Class Members. *See Brinker Restaurant Corp. v. Super. Ct.* (2012) 53 Cal.4th  
10 1004, 1040 ("[T]he wage order's meal period requirement is satisfied if the employee (1) has at  
11 least 30 minutes uninterrupted, (2) is free to leave the premises, and (3) is relieved of all duty for  
12 the entire period.").

13 29. Plaintiff argued that Defendant had a common practice and policy of denying  
14 compliant meal periods and that Defendant's meal policies were facially defective. Specifically,  
15 Plaintiff and Class Members were regularly required to work through their meal periods, never  
16 being provided the opportunity to take uninterrupted thirty (30) minute meal periods in  
17 accordance with California law. Moreover, what meal periods Class Members did receive were  
18 provided well after their fifth consecutive hour of work. This practice of providing untimely and  
19 late meal periods comports with Defendant's defective meal period policy (requiring Class  
20 Members to take their meal periods after their fifth hour of work) uniformly applicable to all  
21 Class Members. For each meal period missed, of less than 30 minutes, or taken late for which the  
22 employee was not provided a reasonable opportunity to take a complete and timely meal period,  
23 an employer must pay the employee an additional one hour of compensation. Labor Code §  
24 226.7. This additional hour of compensation is referred to as "premium pay." To comply with  
25 these laws, every employer must keep, for each employee, accurate time records showing when  
26 the employee begins and ends each work period and takes his or her meal periods. *See Wage*  
27 *Order 4-2001(7)(A)(3)*.

28 30. Defendant disagreed with Class Counsel's interpretation of the law and facts.

1 Defendant contended that Class Members were given a reasonable opportunity to take their meal  
2 periods, and in fact received their meal periods most of the time and a meal period premium when  
3 the meal is facially non-compliant

4 31. Class Counsel estimated Defendant's maximum total exposure on the meal break claim  
5 at approximately \$230,667 (12,482 workweeks x 1 meal break violation per week x \$18.48  
6 average hourly pay). This number was discounted due to the fact that Defendant argued many  
7 individualized issues would apply making certification of this claim difficult to achieve.

8 32. The same argument applied to rest breaks. Plaintiff contended that Defendant did not  
9 provide Class Members with paid 10-minute rest breaks for every four hours or major fraction  
10 thereof. Class Members consistently worked in excess of consecutive four-hour shifts and were  
11 entitled to paid rest breaks of not less than ten minutes for each consecutive four hour shift which  
12 they were denied. Class Members were required to work through their rest breaks, and through  
13 their entire shifts.

14 33. Defendant maintained that it did provide the reasonable opportunity for Class Members  
15 to take duty-free rest breaks. Defendant also pointed out that, unlike meal periods, rest breaks  
16 need not be recorded and employees need not be allowed to leave the premises. Furthermore,  
17 Defendant also pointed out it paid rest break premiums as well. As these considerations would  
18 likely depress the damages *vel non* ultimately awarded, Class Counsel applied significant and  
19 appropriate discounts to the rest-break claim. Class Counsel estimated Defendant's maximum  
20 total exposure on the rest break claim at approximately \$230,667 (12,482 workweeks x 1 rest  
21 breaks violations per week x \$18.48 average hourly pay). Owing to the arguments above and the  
22 fact that recording of rest periods is not required, this claim was substantially discounted, and was  
23 not a major driver of exposure in this case.

#### 24 **Paystub Violations**

25 34. Plaintiff also contended that Defendant failed to provide Class Members with accurate,  
26 itemized wage statements in writing as required by California Labor Code § 226(a) because of the  
27 systematical underpaying of Employees due to the off-the-clock work, miscalculating the proper  
28 overtime pay which Defendant knew or reasonably should have known were owed to Plaintiff

1 and Class Members. As a direct and proximate cause of Defendant's violation of Labor Code §  
2 226(a), the Class Members suffered injuries, including among other things confusion over  
3 whether they received all wages owed them. Pursuant to Labor Code §§ 226(a) and 226(e),  
4 employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the  
5 initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in  
6 a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000).  
7 They are also entitled to an award of costs and reasonable attorneys' fees.

8 35. Defendant contended that Plaintiff's claim for further Labor Code § 226(e) penalties  
9 would depend in large part on their underlying wage claims, and thus be subject to the same  
10 defenses. Defendant further contended that wage claim violations, even if established, could not  
11 be the predicate for a Labor Code § 226 wage statement claims. *See, e.g. Culley v. Lincare Inc.*  
12 (E.D. Cal. 2017) 236 F.Supp.3d 1184, 1195-96; *Soto v. Motel 6 Operating, L.P.* (2016) 4  
13 Cal.App.5th 385, 392-393 (noting wage statement need only document compensation actually  
14 received and the hours used to calculate that compensation). In *Maldonado v. Epsilon Plastics,*  
15 *Inc.*, (2018) 22 Cal. App. 5th 1308, 1336-37, the court explained that the purpose of Labor Code §  
16 226 is to penalize the employer if the wage statement fails to show the employer's calculation of  
17 the hours and rates used in making the payment - distinct from showing what should have been  
18 used. Thus, imposing a Labor Code § 226 penalty merely because the values used to calculate the  
19 wages that were shown in the wage statement were wrong, but were in fact the figures used by the  
20 employer in calculating pay, would permit an impermissible "double recovery." *Id.* at 1336.  
21 Finally, because the damages for this cause of action are penalties, the statute of limitations only  
22 runs from one year prior to the filing of the original complaint. *See* Cal. Civ. Pro. § 340.

23 36. Class Counsel estimated Defendant's maximum total exposure on the section 226 claim  
24 at approximately \$671,300 (\$100 x 6,713 number of paystubs from October 21, 2019 to  
25 November 19, 2020). The parties discussed these issues, and in light of these and other  
26 considerations Class Counsel factored in a reduction of liability and damages for this cause of  
27 action.

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**Failure to Pay Final Wages**

37. In failing to pay the California Class Members their minimum wages, overtime wages, all discussed above, Defendant willfully failed to pay these the California Class Members all wages due and certain at the time of termination or within seventy-two (72) hours of resignation, as required under Labor Code § 203.

38. Labor Code § 203 provides that if an employer willfully fails to pay an employee all wages due at termination or within 72 hours of resignation, then that employee's wages shall continue as a penalty until paid for a period of up to thirty (30) days from the date they were due. Because Class Members stopped working for Defendant but again were not paid their full compensation for the reasons discussed above, Class Members did not receive all wages due upon termination of employment.

39. Defendant argued that, under Labor Code § 203, employers are only obligated to pay waiting-time penalties if they "willfully" fail to pay wages due and owing at the time of termination or resignation. As Title 8, California Code of Regulations, § 13520 states:

A willful failure to pay wages within the meaning of Labor Code Section 203 occurs when an employer intentionally fails to pay wages to an employee when those wages are due. However, a good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203.

A "good faith dispute" that any wages are due occurs when an employer presents a defense, based in law or fact, which, if successful, would preclude any recovery on the part of the employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist. Defenses presented which, under all the circumstances, are unsupported by any evidence, are unreasonable, or are presented in bad faith, will preclude a finding of a "good faith dispute."

Defendant maintained that because they had viable defenses in both law and fact, especially in light of the *Brinker* holding, that waiting-time penalties could not be awarded and, in any case, such penalties were subject to a three-year limitations period under Labor Code § 203(b).

40. Class Counsel estimated Defendant's maximum total exposure on the section 203 claim at approximately \$820,512 (185 former employees from October 21, 2019 to November 29, 2020 x 30 days x \$18.48 average rate of pay x 8 hours in a work day). Given the foregoing arguments, this claim had to be steeply discounted.

**PAGA Penalties**

41. The Labor Code Private Attorneys General Act, Labor Code § 2699 et seq., allows Plaintiff to obtain civil penalties on behalf of himself and other Class Members for Defendant's violation of any provision of the Labor Code enumerated under Labor Code § 2699.5. Where civil penalties are provided in the statute, those civil penalties are recoverable; where no civil penalties are recoverable, Labor Code § 2699(f) establishes civil penalties of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. Pursuant to Labor Code § 2699(i), seventy-five (75) percent of the penalties recovered must be allocated to the Labor and Workforce Development Agency (LWDA), with the remaining twenty-five (25) percent allocated to the affected employees. The limitations period as for all penalties is one year prior to the filing of the complaint.

42. The provisions of the Labor Code potentially triggering PAGA penalties in this case include but are not limited to Labor Code §§ 90.5, 200-204, 210, 226, 226.3, 226.7, 233, 246, 256, 510, 512, 558, 1182.12 et seq., 1174, 1174.5, 1194, 1194.2, 1197, 1198, 1199, and 2699, *et seq* and applicable IWC Wage Orders. Defendant asserted that if PAGA penalties were mandatory, an employer's PAGA liability would be huge because of the possibility of collecting multiple civil penalties for a single violation, and thus such penalties would almost always dwarf the damages available under the causes of action proper. However, PAGA penalties are not mandatory but permissive. Labor Code § 2699(e)(2) states that "a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." *See Thurman v. Bayshore* (2012) 203 Cal. App. 4th 1112 (substantially reducing PAGA penalties by 30% under this provision). Defendant here maintained that it had a strong argument that it would be unjust to award maximum PAGA penalties.

43. Furthermore, PAGA penalties are also derivative of each and every other claim, and Defendant therefore argued the PAGA claims would be subject to the same defenses to the

1 underlying claims. Finally, under *Amaral v. Cintas Corp.* (2008) 163 Cal.App.4th 1157, it can be  
2 argued that penalties under PAGA could, at best, be awarded only at the rates obtainable for  
3 initial violations under the applicable statutes, because Defendant had never been notified of the  
4 alleged violations. *Id.* at 1208-1209. Moreover, Section 2699(e)(1) authorizes the Court to  
5 exercise the same discretion as the DLSE whether to award civil penalties. *Amaral* 163 Cal. App.  
6 4th 1157, 1211-12. Therefore, if Labor Commissioner - on whose behalf Plaintiff is prosecuting  
7 this action for civil penalties - would not impose civil penalties in a case like this, the Court may  
8 not award civil penalties. Moreover, in *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203  
9 Cal.App.4th 1112, 1136, the Court of Appeal affirmed the trial court's reduction of PAGA civil  
10 penalties by 30 percent, finding that awarding the full penalties would have been "unjust" because  
11 "...a court may award a lesser amount than the maximum civil penalty amount specified by this  
12 part if, based on the facts and circumstances of the particular case, to do otherwise would result in  
13 an award that is unjust, arbitrary and oppressive, or confiscatory."

14 44. Class Counsel estimated Defendant's maximum total exposure on the PAGA claim at  
15 approximately \$671,300 (\$100 x 6,713 number of paystubs from October 21, 2019 to November  
16 29, 2020). Class Counsel then applied discounts in light of the countervailing arguments with  
17 regard to the other causes of action, and moreover the Court's power to award "a lesser amount  
18 than the maximum civil liability." The parties also considered that the purpose of PAGA is to  
19 "achieve maximum compliance with state labor laws,". *Iskanian v. CLS Transp. Los Angeles,*  
20 *LLC* (2014) 59 Cal. 4th 348, 379. This makes the settlement's contemplated PAGA payment of  
21 \$25,000 appropriate.

#### 22 **Unfair Business Practices**

23 45. Plaintiff pleaded this cause of action in order to augment their other causes of action  
24 and aid in their prosecution. Business & Professions Code § 17208 extends the statute of  
25 limitations on Plaintiff's wage claims, which qualify as unfair business practices, to four years  
26 rather than the three years provided by statute.

#### 27 **Summary**

28 46. The foregoing discussion has sought to explain how the settlement amount is adequate

1 in light of the merits of Plaintiff's case. It has done this by explaining the legal basis for each of  
2 Plaintiff's causes of action, summarizing the evidence that Class Counsel gathered in support of  
3 those causes of action, and relating Defendant's legal and factual arguments that worked to  
4 derogate from the strength of Plaintiff's case.

5 47. Class Counsel had to apply appropriate discounts in light of the facts and law as  
6 discussed above. Thus, this settlement, like most others, was the product of compromise. Because  
7 of these and other risks, a recovery of \$350,000.00 under the Settlement Agreement is an  
8 excellent result. Under the Settlement, each of the approximately 450 Class Members will receive  
9 on average \$405.75 after expenses.

10 **THE RISK, EXPENSE, AND LIKELY DURATION OF FURTHER LITIGATION,**  
11 **AS WELL AS THE RISK OF MAINTAINING CLASS ACTION**  
12 **STATUS THROUGH TRIAL**

13 48. The next *Clark/Kullar* factors recognize that settlements take into consideration the  
14 risks and expenses posed by further litigation and, in the class-action context, the risk of non-  
15 certification. Consequently, it is proper that trial courts should keep these considerations in mind  
16 when judging the adequacy of class action settlements.

17 49. Further litigation of this case posed real risks for a number of reasons. First, there were  
18 the risks of unfavorable rulings on the merits of the various indeterminate legal issues outlined in  
19 the previous section. In that section, it was observed that almost every cause of action was subject  
20 to some unique indeterminacy of its own, and that the derivative causes of action were thus  
21 subject to a double indeterminacy, both their own and those of the causes of action on which they  
22 were based.

23 50. The parties disputed the effect of these and other issues on class certification and  
24 decertification. Class Counsel maintained that there were several legal and factual questions at  
25 issue in the case that could best be decided on a class wide basis. Class Counsel contended that  
26 the same policies and practices applied to all Class Members and therefore common questions  
27 obtained and were likely to predominate over individual inquiries. Defendant disputed these  
28 contentions and insisted that the *Brinker* decision called into question the certifiability of cases

1 such as this one. Defendant also argued that its policies were compliant with the law, while  
2 Plaintiff disputed that the policies were lawful, and argued the lawfulness of such policies would  
3 give rise to common questions amenable to certification. Thus the parties had set positions on the  
4 propriety of certifiability and liability that did not admit of an easy resolution.

5 51. Finally, it is always preferable to reach a relatively early resolution of a dispute  
6 because, in addition to what has already been said, such resolutions save time and money that  
7 would otherwise go to litigation. In light of the risk and expense of the lawsuit and proceeding to  
8 trial there was a need to resolve this matter soon than later. Most cases settle sooner or later. If  
9 this case settled after further litigation, the settlement amount would have taken into account the  
10 additional costs incurred, and there might have been less available for Class Members after all  
11 was said and done. This is not just an abstract contention. The parties were moving into the phase  
12 of this litigation where they would have had to depose a number of people such as managers,  
13 supervisors, and employees in order to establish liability for trial. Discovery disputes would have  
14 been in the offing. The parties were also aware that a class action trial would be a complicated  
15 and expensive proceeding, and then there was the likelihood of a long, drawn-out appeals process.  
16 In contrast, the settlement provides real benefits for Class Members in the immediate future. The  
17 benefits are not insignificant for anyone, especially given the current economic climate.  
18 Consequently, the risk and expense of further litigation outweighed any benefit that might have  
19 been gained otherwise.

20 **NOTICE TO AND REACTION OF CLASS MEMBERS**  
21 **TO THE PROPOSED SETTLEMENT**

22 52. It is premature to address this factor now, at the preliminary approval stage; however,  
23 some observations are in order. First, the notification procedure set out in the Settlement  
24 Agreement provides the greatest likelihood that each and every Class Member will receive the  
25 Notice of Class Action Settlement (“Notice” or “Notice Packet”), attached to the Settlement  
26 Agreement as **Exhibit B**. Under the Settlement Agreement, the Settlement Administrator will  
27 send the Notice to each Class Member via First Class U.S. mail. (Exh. 1, ¶¶ 17,44, 4:25-26,  
28 10:27-28, 11:1-2). Before mailing, the Settlement Administrator will perform a search based on

1 the National Change of Address Database for information to update and correct for any known or  
2 identifiable address changes. (Exh. 1, ¶¶ 17,44, 45, 4:25-26, 10:27-28, 11:1-14) If a new address  
3 is obtained by way of a returned Notice Packet, then the Settlement Administrator will promptly  
4 forward the original Notice Packet to the updated address via first-class regular U.S. mail,  
5 indicating on the original packet the date of such re-mailing. (Exh. 1, ¶¶ 17,44, 4:25-26, 10:27-28,  
6 11:1-2) Thus, most, if not all, Class Members will likely receive the Notice.

7 53. The Class Notice itself fully apprises Class Members of the nature of the lawsuit, the  
8 claims involved, the terms of the settlement, and their options thereunder. They provide for a  
9 specific procedure to seek exclusion from the Class, and for lodging objections to the settlement.  
10 The efforts taken to ensure that Class Members receive the Class Notice and are well informed  
11 about the settlement augur a favorable response rate.

12 54. All Class Members will benefit because Defendant who have been sued are generally  
13 more likely to comply with the law in the future. If a Class Member disputes the number of  
14 workweeks stated for that Class Member in the Class Notice, the Class Member must ask the  
15 Settlement Administrator to resolve the matter by submitting in writing under penalty of perjury  
16 the workweeks that the Class Member claims to have actually worked for Defendant during the  
17 Class Period. (Exh. 1, ¶47, 11:24-28, 12:1-3). Defendant's records shall have a rebuttable  
18 presumption of correctness. After consultation with Class Counsel and Defendant's Counsel, the  
19 Class Action Administrator will make a determination of the Class Member's total workweeks  
20 during the applicable period. *Id.*

#### 21 **CONCLUSION OF THE CLARK/KULLAR ANALYSIS**

22 55. The foregoing discussion establishes the fairness of the class-action settlement in the  
23 instant case. It has done this by analyzing the settlement in light of the appellate decisions in  
24 *Clark* and *Kullar*. This analysis has concluded that the settlement is fair, reasonable, and  
25 adequate. Class Counsel conducted a thorough investigation of the subject wage-and-hour  
26 practices and engaged in non-collusive, arm's-length negotiations in order to reach a settlement.  
27 Defendant has agreed to pay fair value to settle Plaintiff's claims given the existence of legal  
28 uncertainty. From Class Counsel's substantial experience with wage-and-hour class action

1 lawsuits Class Counsel believe that this case could not have settled on better terms under the  
2 circumstances. Request therefore is made that the settlement be granted preliminary approval so  
3 that those persons whom it was intended to benefit shall be afforded the opportunity to determine  
4 its adequacy.

5 **REQUEST FOR ATTORNEYS' FEES**

6 56. Under the Settlement, Class Counsel also requests, without opposition from Defendant,  
7 an award of Attorney's Fees and Costs consisting of: (1) no more than \$115,500 and (2) \$15,000  
8 for reimbursement of Class Counsel's costs. (Exh. 1, ¶2, 2:11-19). This request is fair, reasonable,  
9 and adequate to compensate Class Counsel for the substantial work they have put into this case  
10 and, moreover, the risk they assumed by taking it in the first place. The attorneys' fees award is  
11 intended to reimburse Class Counsel for all uncompensated work that they have already done and  
12 for all the work they will continue to do in carrying out and overseeing the notification to Class  
13 Members, communicating with Class Members regarding their claims, and assisting in the  
14 administration of the settlement if it is preliminarily approved.

15 57. My firm took this case on a contingent-fee basis against a business represented by a  
16 reputable defense firm. When we take contingent cases, we must pay careful attention to the  
17 economics involved or one bad case can destroy years of work. Accordingly, when we take  
18 contingency cases, we anticipate that we shall, if successful, receive a fee that exceeds our normal  
19 hourly rate; otherwise, the risk is often too great to bear. Even when we work long hours, the  
20 number of hours in a day is limited. Because of this, when we take on one particular matter, we  
21 are unable to take on other matters. When Class Counsel became involved in this case, we  
22 realized the time commitment that it would entail and we were forced to turn down matters that  
23 we otherwise should have been able to handle. In sum, this case claimed a significant portion of  
24 Class Counsel's time and attention throughout its pendency.

25 58. The requested fee is reasonable for the services provided to Class Members and for the  
26 benefits they are to receive. Indeed, even with a modest multiplier under the lodestar theory, *see*  
27 *Bihun v. AT&T Information System* (1993) 13 Cal.App.4th 976, 997, Class Counsel's fees would  
28 still be justified. Here, lodestar will substantially exceed the requested fees. Class Counsel will

1 more fully brief the Court on its lodestar in the motion for final approval.

2 **ENHANCEMENT TO PLAINTIFF AS THE CLASS REPRESENTATIVE**

3 59. Plaintiff herein is entitled to reasonable service payment for his efforts and initiative in  
4 bringing and helping to prosecute this action. Plaintiff spent a considerable amount of time better  
5 apprising himself of his rights, deciding whether remedial action should be taken, how it should  
6 be taken, searching for attorneys, and finally contacting Class Counsel, who spent many hours  
7 with Plaintiff discussing the case and the law. In the end, Plaintiff decided to vindicate not only  
8 his own rights but also those of his co-workers by filing a class action lawsuit.

9 60. The courage it took to stand up to Defendant by filing and litigating this action in this  
10 way should not be underestimated. By suing Defendant, Plaintiff increased his risk of retaliation  
11 by prospective employers. Plaintiff's lawsuit has now required Defendant to expend considerable  
12 resources, and Plaintiff justifiably fears the fact that he served as class representatives in a wage  
13 and hour class action will not be lost on a prospective employer who has to choose between an  
14 applicant who has never sued a prior employer and one who has. Plaintiff contends this risk is  
15 particularly real in the information age, where employers can, more easily than ever, perform  
16 background checks of prospective employees, sometimes with the stroke of a key. It is common  
17 for employers to screen employee candidates to determine whether they have ever filed suit, and  
18 employee candidates who might be branded "litigious" are likely to be screened out of the  
19 process. In fact, an entire industry has developed for providing employers with background  
20 information on employee candidates.

21 61. But Plaintiff did not allow his fears of the potential repercussions of being class  
22 representatives to deter him from acting for the benefit of Class Members. To the contrary,  
23 Plaintiff has been intimately involved in this case since its inception. He has devoted a substantial  
24 amount of time to helping Class Counsel effectively develop and prosecute this action at every  
25 stage of the litigation. Both before and after the filing of this lawsuit, Plaintiff conferred with  
26 Class Counsel on numerous occasions to discuss every aspect of his case. Plaintiff provided Class  
27 Counsel with information about Defendant and about the industry generally, reviewed documents,  
28 identified witnesses, consulted Class Counsel throughout the litigation repeatedly and at length,

1 participated in the mediation process, monitored the progress of the litigation with Class Counsel,  
2 and reviewed and signed the Settlement Agreement.

3 62. Plaintiff has spent a significant amount of time with Class Counsel detailing his  
4 knowledge of Defendant's practices and helping Class Counsel with the prosecution of this  
5 action. He has diligently, adequately, and fairly represented Class Members, and has not placed  
6 his interests above any member of the putative class. The payment to Plaintiff is intended to  
7 recognize his time and effort on behalf of the Class. The amount requested is fair and appropriate  
8 based on his contribution and involvement. For example, Plaintiff instigated the lawsuit by  
9 bringing these violations to the attention of Class Counsel. He spent several hours answering  
10 questions and providing information to Class Counsel throughout the pendency of this action. He  
11 identified witnesses, explained to Class Counsel day to day business practices of Defendant with  
12 regard to work schedules, etc. The parties are in agreement that Plaintiff is entitled to an  
13 enhancement for his time and effort in this matter. This sort of payment to a class representative  
14 has been a common feature of settlements negotiated by Class Counsel and has been routinely  
15 approved by trial courts.

16 63. In light of the foregoing, Class Counsel believes that the service enhancement payment  
17 in the amount of \$7,500.00 is fair and reasonable. This amount is a far cry from the \$50,000 of  
18 enhancement awards to the two named plaintiffs approved by the trial court in *Clark*. See *Clark*,  
19 *supra*, 175 Cal.App.4th at 807. Although Class Counsel appreciate that the Court has a duty to  
20 ensure that class representatives are not overcompensated at the expense of the class, modest  
21 incentive awards in employment class actions, such as the one here, are necessary not only to  
22 compensate class representatives for the time they spend in the case, but also, and more  
23 importantly, to encourage aggrieved employees to challenge questionable employment practices  
24 notwithstanding the very real consequences they may face.

25 **CRITERIA SATISFIED FOR CERTIFICATION OF SETTLEMENT CLASS**

26 64. The proposed Classes satisfy the criteria for certification of a settlement class under  
27 California law, as embodied in California Code of Civil Procedure § 382. Defendant has agreed to  
28 the certification of the class for settlement purposes. In general, courts may take a proposed

1 settlement into account in evaluating the propriety of class certification. *See Dunk v. Ford Motor*  
2 *Co.* (1996) 48 Cal.App.4th 1794, 1807 fn. 19. Indeed, a “lesser standard” of scrutiny applies in  
3 certifying classes for settlement purposes. *Ibid.* Therefore the Court should take into  
4 consideration the fact that the parties have settled their claims and stipulated to certification for  
5 settlement purposes when assessing typicality and adequacy.

6 a. Numerosity. The putative classes are so numerous that joinder of all members is  
7 impractical. Class Members are “all non-exempt hourly employees who were employed by  
8 Defendant in California during the Class Period.” There are approximately 450 persons answering  
9 to this definition. Thus, there are a sufficient number of Class Members to warrant certifying this  
10 as a class action for settlement purposes.

11 b. Ascertainability. The putative classes are defined in a manner that is precise,  
12 objective, and ascertainable. The Class Members have already been identified by reference to  
13 Defendant’s payroll and personnel records.

14 c. Typicality. A class representative’s claims are typical when they arise from the  
15 same event, practice, or course of conduct that gives rise to the claims of other putative class  
16 members, and if their claims rest on the same legal theories. The class representative’s claims  
17 must be “typical” but not necessarily identical to the claims of other class members. It is  
18 sufficient that the representative is similarly situated so that he or she will have the motive to  
19 litigate on behalf of all Class Members. *Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I.*  
20 *Custom Kitchens v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 (“[I]t has never been  
21 the law in California that the class representative must have identical interests with the class  
22 members.”). Thus, it is not necessary that the class representative should have personally incurred  
23 all of the damages suffered by each of the other class members. *Wershba v. Apple Computer, Inc.*  
24 (2001) 91 Cal.App.4th 224, 228.

25 Plaintiff’s claims are typical of Class Members’ claims because they arose from the same  
26 factual basis and are based on the same legal theories. Plaintiff was employed by Defendant  
27 during the Class Period subject to the allegedly unlawful meal and rest break policies and pay  
28 practices at issue in this litigation. Accordingly, Plaintiff is a member of the class. The central

1 issues of this litigation (whether Defendant failed to pay all wages, whether Defendant failed to  
2 provide meal and rest periods etc.), which would arise if this were an individual action brought by  
3 Plaintiff, apply to the other Class Members as well, and the answer to these questions would  
4 determine Defendant's liability to the entire putative class. Thus, Plaintiff's claims are typical of  
5 the claims of the putative class. Accordingly, the typicality requirement is satisfied.

6 d. Adequacy. A class representative must possess the same interest and suffer the  
7 same injury as the class members. "To assure 'adequate' representation, the class representative's  
8 personal claim must not be inconsistent with the claims of other members of the class." *J.P.*  
9 *Morgan & Co., Inc. v. Sup.Ct. (Heliotrope General, Inc.)* (2003) 113 Cal.App.4th 195, 212. Thus,  
10 the adequacy requirement is satisfied when the class representative's interests are not antagonistic  
11 to those of the class. *McGhee v. Crocker-Citizens Nat. Bank* (1976) 60 Cal.App.3d 442, 451.

12 Plaintiff has no conflicts with the class and in fact his interests are aligned with those of  
13 the class. Because Plaintiff's claims are identical to those that would be asserted by the unnamed  
14 Class Members were they before the Court, Plaintiff has every interest in zealously representing  
15 the unnamed class members. Plaintiff has not shrunk from this responsibility. Indeed, Plaintiff has  
16 devoted a substantial amount of time and energy to litigating this action and effecting a  
17 settlement. Furthermore, as detailed above, Class Counsel are experienced in wage-and-hour  
18 litigation, especially class actions, and have zealously represented the interests of the class in  
19 litigating this case. *See infra* ¶¶3-9. Accordingly, the adequacy requirement is satisfied.

20 e. Commonality. Common questions of law or fact in this case predominate over  
21 individual questions. This action involves, *inter alia*, a determination about Defendant's alleged  
22 failure to pay minimum wages, failure to pay all wages due to allegedly common and unlawful  
23 policies, failure to provide meal and rest periods, the resulting failure to pay final wages when  
24 required, the failure to provide accurate paystubs, the failure to pay employees on a timely basis,  
25 and largely derivative claims under the Business & Professions Code and PAGA. Plaintiff  
26 contends these practices, including the alleged failure to provide corresponding premium  
27 payments, that affected class members in the same way. All class members were employed during  
28 the Class Period. Therefore, the operative complaint delineates a common course of conduct

1 applicable to all Class Members. Therefore, based on Class Counsel's investigation, the review of  
2 the discovery produced by Defendant, and their discussions with Plaintiff, Plaintiff contends the  
3 evidence supports his position that the employment practices and policies of Defendant's business  
4 were consistent and uniform.

5 f. Predominance. Individualized issues do not predominate over the issues of law and  
6 fact that are common to the class as a whole. The principal issues of controversy are whether  
7 Class Members were paid for all hours worked and provided lawful meal breaks. As explained,  
8 *supra*, there are common issues of law and fact given that Plaintiff and all Class Members were  
9 subjected to the same policies and pay practices during the relevant time period. Plaintiff and  
10 Class Members seek meal and rest break premiums, unpaid wages and overtime, and penalties for  
11 work performed as non-exempt employees for Defendant. These issues are suitable for common  
12 adjudication because all Class Members were subject to the same employment policies and  
13 Plaintiff contends the practices applied uniformly to all Class Members.

14 g. Superiority. Class resolution is superior to other available methods for the fair and  
15 efficient adjudication of the controversy. There is little interest or incentive for Class Members to  
16 individually control the prosecution of separate actions. Although the injury resulting from  
17 Defendant's policies and practices are real and significant, the cost of individually litigating each  
18 such case against Defendant would easily exceed the value of any relief that could be obtained by  
19 any one Class Member individually. If Class Members are forced to litigate their claims  
20 individually this would result in about 450 individual actions against Defendant. Here, the  
21 alternative methods of resolution are individual suits for relatively small amounts. Hence, an  
22 individual suit would prove uneconomical for potential plaintiffs because litigation costs would  
23 dwarf a potential recovery.

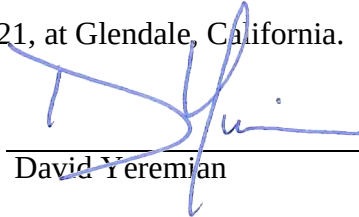
24 h. Except for Plaintiff's case before this Court, Plaintiff is unaware of any other  
25 actions by Class Members against Defendant asserting similar claims as here. Furthermore, San  
26 Joaquin County is a compelling forum for this action given that Defendant's location is in San  
27 Joaquin County and numerous Class Members work in this County.

28 i. There are no serious manageability difficulties presented by preliminarily

1 approving the case for settlement purposes. As this case will not go to trial if finally approved, all  
2 that would remain is claims administration and responding to possible objectors.

3 I declare under penalty of perjury under the laws of the State of California that the  
4 foregoing is true and correct.

5 Executed this 27<sup>th</sup> day of October 2021, at Glendale, California.

6  
7   
8 \_\_\_\_\_  
9 David Yerman

10 4864-8937-6000.1 / 110255-1001

# EXHIBIT 1

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12 HUGO BOSS RETAIL, INC.

13 SUPERIOR COURT OF CALIFORNIA

14 COUNTY OF SAN DIEGO

15 KEVIN BECERRA, on behalf of himself  
and others similarly situated,

16 Plaintiff,

17 v.

18 HUGO BOSS RETAIL, INC., a Delaware  
19 Corporation; and DOES 1 through 50,  
inclusive,

20 Defendants.  
21

Case No. 37-2021-00002933-CU-OE-CTL

JOINT STIPULATION FOR CLASS ACTION  
AND PAGA SETTLEMENT AND RELEASE

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1 employed by Defendant in California during the Class Period.

2 6. "Class Period" means the period from May 21, 2018, through the earlier of the date of  
3 preliminary approval of the Settlement Agreement or December 21, 2021 (the "Class Cut-Off").

4 7. "Class/PAGA Representative Enhancement Payment" means the amount to be paid to  
5 Plaintiff in the Action and the Related Action in recognition of his effort and work in prosecuting the  
6 Action on behalf of Class Members and PAGA Members, and for his general release of claims.  
7 Subject to the Court granting final approval of this Settlement Agreement and subject to the  
8 exhaustion of any and all appeals, Plaintiff will request Court approval of Class/PAGA  
9 Representative Enhancement Payment of Seven Thousand Five Hundred Dollars (\$7,500).

10 8. "Court" means the California Superior Court for the County of San Diego.

11 9. "Defendant" mean Hugo Boss Retail, Inc.

12 10. "Effective Date" means the latter of : (1) the last date after the final judgment by which a  
13 notice of appeal of the order granting final approval or the final judgment may be timely filed, and  
14 none is filed; or (2) if a notice of appeal from the order granting final approval or the final judgment is  
15 filed, the date on which the Superior Court's order granting final approval or final judgment is finally  
16 affirmed or upheld without any further right of appeal by any party or third party and following the  
17 expiration of any such period for such further appeal that may be available.

18 11. "First Amended Complaint" means the proposed First Amended Complaint attached hereto  
19 as **Exhibit A**, which adds putative class claims for the same alleged labor code violations as set forth  
20 in the PAGA action (and as previously alleged in the Related Action) for the period May 21, 2018 to  
21 present.

22 12. "Gross Fund" means the agreed amount of Three Hundred and Fifty Thousand Dollars  
23 (\$350,000), to be paid by Defendant in full satisfaction of all Released Claims arising from the  
24 Action, which includes all Individual Settlement Payments to Participating Class Members,  
25 Attorneys' Fees and Costs to Class Counsel, the Class/PAGA Representative Enhancement Payment  
26 to Plaintiff, the Labor and Workforce Development Agency Payment, payments to the PAGA  
27 Members, and Settlement Administration Costs to the Settlement Administrator. This Gross Fund  
28 has been agreed to by Plaintiff and Defendant based on the aggregation of the agreed-upon settlement

3. Case No. 37-2021-00002933-CU-OE-CTL

1 value of individual claims in the Action. In no event will Defendant be liable for more than the Gross  
2 Fund. There will be no reversion of the Gross Fund to Defendant. Defendant will be separately  
3 responsible for any employer payroll taxes required by law, which shall not be paid from the Gross  
4 Fund.

5 13. "Individual Settlement Payment" means each Participating Class Member's respective share  
6 of the Net Settlement Amount.

7 14. "Labor and Workforce Development Agency Payment" means the amount that the Parties  
8 have agreed to pay to the Labor and Workforce Development Agency ("LWDA") in connection with  
9 the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, "PAGA").  
10 The Parties have agreed that Twenty-Five Thousand Dollars (\$25,000) of the Gross Fund will be  
11 allocated to the resolution of claims arising under PAGA. Pursuant to PAGA, Seventy-Five Percent  
12 (75%) of the PAGA Settlement Amount or \$18,750 will be paid to the California Labor and  
13 Workforce Development Agency, and Twenty-Five Percent (25%) of the PAGA Settlement Amount  
14 or \$6,250 (the PAGA Payments) will be paid to PAGA Members.

15 15. "Net Settlement Amount" means the portion of the Gross Fund remaining after deducting the  
16 Attorneys' Fees and Costs, the Class Representative Enhancement Payments, the Labor and  
17 Workforce Development Agency Payment, the PAGA Payment, and Settlement Administration  
18 Costs. The Net Settlement Amount will be distributed to Participating Class Members. There will be  
19 no reversion of the Net Settlement Amount to Defendant if any funds cannot be distributed.

20 16. "Notice of Objection" means a Class Member's valid and timely written objection to the  
21 Settlement Agreement. For the Notice of Objection to be valid, it must include: (i) the objector's full  
22 name, signature, address, and telephone number, (ii) a written statement of all grounds for the  
23 objection accompanied by any legal support for such objection; and (iii) copies of any papers, briefs,  
24 or other documents upon which the objection is based, if any documents are a basis of the objection.

25 17. "Notice Packet" means the Notice of Class Action Settlement, substantially in the form  
26 attached as **Exhibit B**.

27 18. "PAGA Members" are the individual Class Members who were employed in California at  
28 any point from November 2, 2019, through Preliminary Approval or the Class Cut-Off Date,

whichever comes first.

19. “PAGA Period” means the time from November 2, 2019 through Preliminary Approval or the Class Cut-Off Date, whichever comes first.

20. “Parties” means Plaintiff and Defendant collectively.

21. “Participating Class Members” means all Class Members who do not submit timely and valid Requests for Exclusion from the Settlement Class.

22. "Plaintiff" means Kevin Becerra.

23. “Preliminary Approval” means the Court order granting preliminary approval of the Settlement Agreement.

24. “Related Action” means the separate action filed by Plaintiff in San Diego County Superior Court Case No. 37-2020-00040096-CU-OE-CTL.

25. “Released Claims” means all claims, rights, demands, liabilities, and causes of action, arising from, or related to, the claims that were alleged in the operative complaint and the LWDA letters or that could have been alleged based on the facts asserted in the operative complaint or LWDA letters, (including the proposed First Amended Complaint and amended LWDA letters), which included claims for unpaid wages, minimum wage, overtime premiums, meal and rest breaks (and related premiums), suitable seating claims, failure to maintain records, timely wages, inaccurate wage statements, waiting time penalties, and unfair business practices / PAGA based upon the same, and includes claims under Labor Code sections 90.5, 200-204, 210, 226, 226.3, 226.7, 233, 246, 256, 510, 512, 558, 1182.12 et seq., 1174, 1174.5, 1194, 1194.2, 1197, 1198, 1199, and 2698 et seq., and the applicable CA wage orders, and Bus. & Prof. Code sections 17200 et seq., as well as any claims that could have been pled which relate to such claims or arise from the same or similar facts concerning the Plaintiff and Covered Class Members, as well as any claims under the FLSA, California Labor Code and California Industrial Welfare Commission Wage Orders that were alleged or which could have been alleged under the same or similar facts, allegations and/or claims pleaded in the Action and Related Action or any of Plaintiff’s letters (or attachment(s)) to the LWDA arising during the Class Period or PAGA Period In addition, to the extent required by law, the cashing of the settlement check by the Settlement Class Members shall be deemed to be an opt-in for purposes of releasing releasees

5. Case No. 37-2021-00002933-CU-OE-CTL

1 from any claims predicated under the FLSA that could have been alleged under the same or similar  
2 facts, allegations and/or claims pled in the Action, the Related Action, and/or alleged in any of the  
3 letters (or attachment(s)) sent to the LWDA by or on behalf of Plaintiff. The Settlement Administrator  
4 shall include a legend on the settlement check stating "By cashing this check, I am to the extent  
5 required by law opting into the settlement in Becerra v. Hugo Boss, San Diego County Superior  
6 Court Case number 37-2021-00002933-CU-OE-CTL, under FLSA, 29 U.S.C. § 216(b), and  
7 releasing all claims under the FLSA described in the Settlement Agreement." The claims set forth in  
8 this paragraph shall be collectively referred to as the "Released Claims."

9 26. "Released Parties" means Defendant and each of its respective former and present parents,  
10 subsidiaries, divisions, and affiliated corporations and entities and each of their respective former and  
11 present officers, directors, employees, partners, shareholders, principals, agents, attorneys, insurers,  
12 and any other assigns or legal representatives.

13 27. "Release Period" means May 21, 2018 through the Effective Date.

14 28. "Request for Exclusion" means a timely letter submitted by a Class Member indicating a  
15 request to be excluded from the non-PAGA portion of the Settlement. The Request for Exclusion  
16 must: (i) set forth the name, address, telephone number and last four digits of the Social Security  
17 Number of the Class Member requesting exclusion; (ii) be signed by the Class Member; (iii) be  
18 returned to the Settlement Administrator; (iv) clearly state that the Class Member does not wish to be  
19 included in the Settlement; and (v) be faxed or postmarked on or before the Response Deadline.

20 Even if a Class Member submits a valid Request for Exclusion and regardless of any other provision  
21 in this Agreement, the Class Member will still release all PAGA claims within the Released Claims.

22 29. "Response Deadline" means the deadline by which Class Members must postmark or fax to  
23 the Settlement Administrator Requests for Exclusion, Notices of Objection or workweek disputes.  
24 The Response Deadline will be forty-five (45) calendar days from the initial mailing of the Notice  
25 Packet by the Settlement Administrator, unless the forty-fifth (45th) calendar day falls on a Sunday or  
26 State holiday, in which case the Response Deadline will be extended to the next day on which the  
27 U.S. Postal Service is open.

28 30. "Settlement Administration Costs" means the costs payable from the Gross Fund to the

1 Settlement Administrator for administering this Settlement, including, but not limited to, printing,  
2 distributing, and tracking documents for this Settlement, tax reporting, distributing the Gross Fund,  
3 and providing necessary reports and declarations, as requested by the Parties. The Settlement  
4 Administration Costs will be paid from the Gross Fund, including, if necessary, any such costs in  
5 excess of the amount represented by the Settlement Administrator as being the maximum costs  
6 necessary to administer the Settlement.

7 31. "Settlement Administrator" means Simpluris or any other third-party class action settlement  
8 administrator agreed to by the Parties and approved by the Court for the purposes of administering  
9 this Settlement. The Parties each represent that they do not have any financial interest in the  
10 Settlement Administrator or otherwise have a relationship with the Settlement Administrator that  
11 could create a conflict of interest.

12 32. "Unknown Claims" means any and all actions, suits, claims, demands, rights, liabilities, and  
13 causes of action which specifically relate to the Released Claims that Plaintiff or the Participating  
14 Class Members do not know of or suspect to exist in their favor, which, if known by any of them,  
15 might have affected their agreement to the Settlement. With respect to Unknown Claims, as of Final  
16 Approval, Participating Class Members hereby **only** expressly waive and relinquish, to the fullest  
17 extent permitted by law, **insofar as the claims arise from, or are related to, the Released Claims,**  
18 the benefits of section 1542 of the California Civil Code (as well as any and all provisions, rights, and  
19 benefits of any similar state or federal law), which states:

20  
21 A general release does not extend to claims that the creditor or releasing party  
22 does not know or suspect to exist in his or her favor at the time of executing the  
23 release, and that, if known by him or her would have materially affected his or  
24 her settlement with the debtor or released party.

25 Thus, if the facts relating to this Settlement are found hereafter to be different from the facts now  
26 believed to be true, the Release set forth in this Agreement will remain fully effective. The provisions  
27 of this paragraph also apply to the PAGA claims that are released by Class Members who opt-out of  
28 the non-PAGA portions of the settlement.

33. "Workweeks" means each full or partial week that each Class Member during the Class

1 Period performed work for Defendant. All Class Members will be credited with at least one  
2 Workweek.

### 3 TERMS OF AGREEMENT

4 Plaintiff, on behalf of themselves and the Settlement Class, and Defendant agree as follows:

5 34. Funding of the Gross Fund. Defendant will send a one-time check or wire transfer in the  
6 amount of the Gross Fund of Three Hundred and Fifty Thousand Dollars (\$350,000) to the  
7 Settlement Administrator, which will be deposited into a Qualified Settlement Account to be  
8 established by the Settlement Administrator. Defendant will pay the employer's share of payroll  
9 taxes separately. After the Effective Date, the Gross Fund will be used for: (i) Individual Settlement  
10 Payments; (ii) the Labor and Workforce Development Agency Payment; (iii) the PAGA Payment;  
11 (iv) the Class Representative Enhancement Payment; (v) Attorneys' Fees and Costs; and (vi)  
12 Settlement Administration Costs. Defendant will send a check in the amount of the Gross Fund  
13 within ten (10) business days of the Effective Date. Defendant shall submit any additional payroll  
14 taxes within ten (10) business days following calculations from the Settlement Administrator.

15 35. Attorneys' Fees and Costs. Class Counsel will file a motion for Attorneys' Fees and Costs of  
16 not more than One Hundred Fifteen Thousand Five Hundred Dollars (\$115,500), plus the  
17 reimbursement of costs and expenses associated with Class Counsel's litigation and settlement of the  
18 Action, not to exceed Fifteen Thousand Dollars (\$15,000), both of which will be paid from the Gross  
19 Fund. These amounts satisfy all of the claims for attorney's fees and costs in the Action and the  
20 Related Action. A reduction in these amounts by the Court is not grounds to void the Agreement and  
21 the amount of the reduction will revert to the Net Settlement Fund.

22 36. Class Representative Enhancement Payments. In exchange for a general and complete  
23 release, and in recognition of his efforts and work in prosecuting the Action and Related Action on  
24 behalf of Class Members, Defendant agrees not to oppose or impede any application or motion for a  
25 Class Representative Enhancement Payment of Seven Thousand Five Hundred Dollars (\$7,500). A  
26 reduction in this amount by the Court is not grounds to void the Agreement. The Class  
27 Representative Enhancement Payment will be paid from the Gross Fund and will be in addition to  
28 Plaintiff's Individual Settlement Payment paid pursuant to the Settlement. Plaintiff will be solely and

1 legally responsible to pay any and all applicable taxes on the Class Representative Enhancement  
2 Payment.

3 37. Settlement Administration Costs. The Settlement Administrator will be paid for the  
4 reasonable costs of administration of the Settlement and distribution of payments from the Gross  
5 Fund, which is currently estimated to be Nine Thousand Six Hundred and Sixty-Four Dollars and  
6 Ninety-One (\$9,664.91). These costs, which will be paid from the Gross Fund, will include, *inter*  
7 *alia*, the required tax reporting on the Individual Settlement Payments, the issuing of 1099 and W-2  
8 IRS Forms, distributing Notice Packets, calculating and distributing the Gross Fund, and providing  
9 necessary reports and declarations.

10 38. Labor and Workforce Development Agency Payment. Subject to Court approval, the Parties  
11 agree that the amount of Twenty-Five Thousand Dollars (\$25,000) from the Gross Fund will be  
12 designated for satisfaction of Plaintiff's and Class Members' PAGA claims. Pursuant to PAGA,  
13 Seventy-Five Percent (75%), or Eighteen Thousand Seven Hundred and Fifty Dollars (\$18,750), of  
14 this sum will be paid to the LWDA and Twenty-Five Percent (25%), or Six Thousand Two Hundred  
15 and Fifty Dollars (\$6,250), will be paid to PAGA Members (regardless of whether PAGA Members  
16 object to the Settlement or are excluded from the Class Settlement), based upon workweeks worked  
17 during the PAGA period.

18 39. Net Settlement Amount. The entire Net Settlement Amount will be distributed to  
19 Participating Class Members. No portion of the Net Settlement Amount will revert to or be retained  
20 by Defendant.

21 40. Individual Settlement Payment Calculations. Individual Settlement Payments will be  
22 calculated and apportioned from the Net Settlement Amount based on the number of Workweeks a  
23 Class Member worked during the Class Period. Specific calculations of Individual Settlement  
24 Payments will be made as follows:

25 40(a) The Claims Administrator will calculate the total number of Workweeks worked  
26 by each Class Member during the Class Period and the aggregate total number of  
27 Workweeks worked by all Class Members during the Class Period.

28 40(b) 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."

40(c) 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.

40(d) The entire Net Settlement Amount will be disbursed to all Class Members who do not submit timely and valid Requests for Exclusion. 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.

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

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

43. Delivery of the Class List. Within thirty (30) calendar days of Preliminary Approval, Defendant will provide the Class List to the Settlement Administrator.

44. Notice by First-Class U.S. Mail. Within fifteen (15) calendar days after receiving the Class List from Defendant, the Settlement Administrator will mail a Notice Packet to all Class Members via

1 regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class  
2 List as updated by the process in Paragraph 44, below.

3 45. Confirmation of Contact Information in the Class Lists. Prior to mailing, the Settlement  
4 Administrator will perform a search based on the National Change of Address Database for  
5 information to update and correct for any known or identifiable address changes. Any Notice Packets  
6 returned to the Settlement Administrator as non-deliverable on or before the Response Deadline will  
7 be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the  
8 Settlement Administrator will indicate the date of such re-mailing on the Notice Packet. If no  
9 forwarding address is provided, the Settlement Administrator will promptly attempt to determine the  
10 correct address using a skip-trace, or other search using the name, address and/or Social Security  
11 number of the Class Member involved, and will then perform a single re-mailing. Those Class  
12 Members who receive a re-mailed Notice Packet, whether by skip-trace or by request, will have  
13 between the later of (i) an additional fifteen (15) calendar days or (ii) the Response Deadline to  
14 submit a Request for Exclusion or an objection to the Settlement.

15 46. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice Packet will  
16 provide: (i) information regarding the nature of the Action; (ii) a summary of the Settlement's  
17 principal terms; (iii) the Settlement Class definition; (iv) the total number of Workweeks each  
18 respective Class Member worked for Defendant during the Class Period; (v) each Class Member's  
19 estimated Individual Settlement Payment and the formula for calculating Individual Settlement  
20 Payments; (vi) the dates which comprise the Class Period; (vii) instructions on how to submit  
21 Requests for Exclusion, Notices of Objection or Workweek disputes; (viii) the deadlines by which the  
22 Class Member must postmark or fax Request for Exclusions, Notices of Objection or Workweek  
23 disputes; and (ix) the claims to be released.

24 47. Disputed Information on Notice Packets. Class Members will have an opportunity to dispute  
25 the Workweek information provided in their Notice Packets. To the extent Class Members dispute  
26 their employment dates or the number of Workweeks on record, Class Members may produce  
27 evidence to the Settlement Administrator showing that such information is inaccurate. The  
28 Settlement Administrator will decide the dispute. Defendant's records will be presumed correct, but

1 the Settlement Administrator will evaluate the evidence submitted by the Class Member and will  
2 make the final decision as to the merits of the dispute. All disputes will be decided within ten (10)  
3 business days of the Response Deadline.

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

13 49. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the non-  
14 PAGA portion of the Settlement Agreement must sign and fax or postmark a written Request for  
15 Exclusion to the Settlement Administrator within the Response Deadline. In the case of Requests for  
16 Exclusion that are mailed to the Settlement Administrator, the postmark date will be the exclusive  
17 means to determine whether a Request for Exclusion has been timely submitted. Any potential Class  
18 Member who validly requests to be excluded from the Settlement will no longer be a Participating  
19 Class Member, will not be entitled to any recovery under this Settlement Agreement (except to the  
20 extent the PAGA Settlement is approved and the Class Member is entitled to receive a share of the  
21 PAGA Payment), and will not be bound by the terms of the Settlement or have any right to object,  
22 appeal, or comment thereon.

23 50. Class Size. The Gross Fund was calculated based on the understanding that there were  
24 approximately 15,000 estimated pay periods through the date of mediation. In the event the total pay  
25 periods on the final class list is more than 10% larger, at the option of the Defendant, the Defendant  
26 shall either increase the Gross Settlement Amount pro rata, with a 10% grace margin (i.e. if the  
27 numbers increase by 12%, the Gross Settlement Amount shall increase by 2%), or elect to limit the  
28 date for determining class membership so as to limit the class size to a maximum of no more than

1 10% of the estimated class.

2 51. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class Member who  
3 does not affirmatively opt-out of the Settlement Agreement by submitting a timely and valid Request  
4 for Exclusion will be bound by all of its terms, including those pertaining to the Released Claims  
5 during the Release Period, as well as any Judgment that may be entered by the Court if it grants final  
6 approval to the Settlement.

7 52. Objection Procedures. To object to the Settlement Agreement, a Class Member must fax or  
8 postmark a valid Notice of Objection to the Settlement Administrator on or before the Response  
9 Deadline. The Notice of Objection must be signed by the Class Member and contain all information  
10 required by this Settlement Agreement. At no time will any of the Parties or their counsel seek to  
11 solicit or otherwise encourage Class Members to submit written objections to the Settlement  
12 Agreement or appeal from the Order and Judgment. Class Counsel will not represent any Class  
13 Members with respect to any such objections to this Settlement. If a Class Member submits both a  
14 valid Request for Exclusion and a Notice of Objection, the Notice of Objection shall be void and the  
15 Class Member will be deemed to have opted out of the non-PAGA portions of the Settlement.

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

23 54. Distribution Timing of Settlement Payments. Within fifteen (15) calendar days of the  
24 Effective Date, the Settlement Administrator will issue payments to: (i) Participating Class Members;  
25 (ii) the Labor and Workforce Development Agency; (iii) PAGA payments to Class Members who  
26 opted out of the non-PAGA portions of the settlement; (iv) Plaintiff; and (v) Class Counsel. The  
27 Settlement Administrator will also issue a payment to itself for Court-approved services performed in  
28 connection with the Settlement.

1       55.     Un-cashed Settlement Checks. Funds represented by Individual Settlement Payment checks  
2       returned as undeliverable and Individual Settlement Payment checks remaining un-cashed for more  
3       than one hundred and eighty (180) calendar days after issuance will be tendered to CASA of San  
4       Diego County, a child advocacy program that places Court Appointed Special Advocates For  
5       Children.

6       56.     Certification of Completion. Upon completion of administration of the Settlement, the  
7       Settlement Administrator will provide a written declaration under oath to certify such completion to  
8       the Court and counsel for all Parties. The Settlement Administrator will be solely responsible for  
9       preparation of the declaration, and the Settlement Administrator's failure to comply with this  
10      requirement will not affect the settlement's validity.

11      57.     Treatment of Individual Settlement Payments. All Individual Settlement Payments will be  
12      allocated as follows: (i) Thirty-three Percent (33%) of each Individual Settlement Payment will be  
13      allocated as wages for which IRS Forms W-2 will be issued; and (ii) Sixty-Seven (67%) will be  
14      allocated as non-wages (for alleged interest and penalties) for which IRS Forms 1099-MISC will be  
15      issued. Each Class Member's Labor and Workforce Development Agency Payment will be allocated  
16      as non-wages (for alleged interest and penalties) for which IRS Forms 1099-MISC will be issued.

17      58.     Administration of Taxes by the Settlement Administrator. The Settlement Administrator will  
18      be responsible for issuing to Plaintiff, Participating Class Members, Class Members receiving  
19      payments from the Labor and Workforce Development Agency Payment, and Class Counsel any W-  
20      2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to this  
21      Settlement. The Settlement Administrator will also be responsible for forwarding all payroll taxes  
22      and penalties to the appropriate government authorities.

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

27      60.     Circular 230 Disclaimer. Each party to this agreement (for purposes of this section, the  
28      "acknowledging party" and each party to this agreement other than the acknowledging party, an

1 “other party”) acknowledges and agrees that (1) no provision of this agreement, and no written  
2 communication or disclosure between or among the parties or their attorneys and other advisers, is or  
3 was intended to be, nor will any such communication or disclosure constitute or be construed or be  
4 relied upon as, tax advice within the meaning of United States Treasury Department circular 230  
5 (31 CFR part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her,  
6 or its own, independent legal and tax counsel for advice (including tax advice) in connection with this  
7 agreement, (b) has not entered into this agreement based upon the recommendation of any other party  
8 or any attorney or advisor to any other party, and (c) is not entitled to rely upon any communication  
9 or disclosure by any attorney or advisor to any other party to avoid any tax penalty that may be  
10 imposed on the acknowledging party; and (3) no attorney or advisor to any other party has imposed  
11 any limitation that protects the confidentiality of any such attorney’s or adviser’s tax strategies  
12 (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party  
13 of the tax treatment or tax structure of any transaction, including any transaction contemplated by this  
14 agreement.

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

19 62. Nullification of Settlement Agreement. In the event that: (i) the Court does not finally  
20 approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other  
21 reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be  
22 null and void. Any order or judgment entered by the Court in furtherance of this Settlement  
23 Agreement will likewise be treated as void from the beginning. Furthermore, in the event that 4% or  
24 more of the Class Members opt-out of the Settlement, or Class Members who represent more than  
25 4% of the aggregate Workweeks opt-out of the Settlement, then Defendant shall have in their sole  
26 discretion the option to nullify the Settlement Agreement which shall thereafter be null and void. The  
27 amount of the Gross Fund is deemed a material term and Defendant may revoke the agreement if the  
28 Court insists on a change that increases the obligation of Defendant to pay an amount in excess of the

1 Gross Fund. Changes requested by the Court to the allocation of funds between PAGA and the  
2 remaining class claims, or changes in the amount of attorney's fees and costs or enhancement awards  
3 to Plaintiff, or changes to the procedures accompanying the administration of the Settlement will not  
4 form the basis for any party in the Action and Related Actions to revoke this Agreement.

5 63. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to request the  
6 Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary Approval Order  
7 for: (i) conditional certification of the Settlement Class for settlement purposes only, (ii) preliminary  
8 approval of the proposed Settlement Agreement, (iii) setting a date for a Final Approval/Settlement  
9 Fairness Hearing. The Preliminary Approval Order will provide for the Notice Packet to be sent to all  
10 Class Members as specified herein. In conjunction with the Preliminary Approval hearing, Plaintiff  
11 will submit this Settlement Agreement, which sets forth the terms of this Settlement, and will include  
12 the proposed Notice Packet, which will include both the proposed Notice of Class Action Settlement  
13 document, attached as Exhibit A. Class Counsel will be responsible for drafting all documents  
14 necessary to obtain preliminary approval, but Defendant's counsel will have the right to review the  
15 drafts prior to filing.

16 64. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the deadlines  
17 to postmark Requests for Exclusion or objections to the Settlement Agreement, and with the Court's  
18 permission, a Final Approval/Settlement Fairness Hearing will be conducted to determine the Final  
19 Approval of the Settlement Agreement along with the amounts properly payable for: (i) Attorneys'  
20 Fees and Costs; (ii) the Class Representative Enhancement Payments; (iii) Individual Settlement  
21 Payments; (iv) the Labor and Workforce Development Agency Payment; and (v) all Settlement  
22 Administration Costs. The Final Approval/Settlement Fairness Hearing will not be held earlier than  
23 thirty (30) calendar days after the Response Deadline. Class Counsel will be responsible for drafting  
24 all documents necessary to obtain final approval. Class Counsel will also be responsible for drafting  
25 the attorneys' fees and costs application to be heard at the final approval hearing, but Defendant's  
26 counsel will have the right to review the drafts.

27 65. Dismissal of Related Action. Upon Final Approval, Plaintiff shall dismiss, with prejudice,  
28 the Related Action.

1           66.     Judgment and Continued Jurisdiction. Upon final approval of the Settlement by the Court or  
2 after the Final Approval/Settlement Fairness Hearing, the Parties will present the Judgment to the  
3 Court for its approval. After entry of the Judgment, the Court will have continuing jurisdiction solely  
4 for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii)  
5 Settlement administration matters, and (iii) such post-Judgment matters as may be appropriate under  
6 court rules or as set forth in this Settlement Agreement.

7           67.     Release by Plaintiff. Upon the Effective Date, in addition to the claims being released by all  
8 Participating Class Members, Plaintiff will release and forever discharge the Released Parties, to the  
9 fullest extent permitted by law, of and from any and all claims, known and unknown, asserted and not  
10 asserted, which Plaintiff have or may have against the Released Parties as of the date of execution of  
11 this Settlement Agreement. To the extent the foregoing release is a release to which Section 1542 of  
12 the California Civil Code or similar provisions of other applicable law may apply, Plaintiff expressly  
13 waive any and all rights and benefits conferred by the provisions of Section 1542 of the California  
14 Civil Code or similar provisions of applicable law which are as follows: A general release does not  
15 extend to claims that the creditor or releasing party does not know or suspect to exist in his or her  
16 favor at the time of executing the release, and that, if known by him or her would have materially  
17 affected his or her settlement with the debtor or released party.

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

21           69.     Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the  
22 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral  
23 agreements may be deemed binding on the Parties, and no Party is relying on any representation not  
24 contained in this agreement.

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

27           71.     Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and  
28 represent they are expressly authorized by the Parties whom they represent to negotiate this

1 Settlement Agreement and to take all appropriate action required or permitted to be taken by such  
2 Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other  
3 documents required to effectuate the terms of this Settlement Agreement. The Parties and their  
4 counsel will cooperate with each other and use their best efforts to effect the implementation of the  
5 Settlement. If the Parties are unable to reach agreement on the form or content of any document  
6 needed to implement the Settlement, or on any supplemental provisions that may become necessary  
7 to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve  
8 such disagreement.

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

11 73. California Law Governs. All substantive terms of this Settlement Agreement and Exhibits  
12 hereto will be governed by and interpreted according to the laws of the State of California, except to  
13 the extent Federal Law applies.

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

18 75. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this  
19 Settlement Agreement is a fair, adequate and reasonable settlement of the Action and Related Actions  
20 and have arrived at this Settlement after arm's-length negotiations with the assistance of an  
21 experienced wage/hour mediator and in the context of adversarial litigation, taking into account all  
22 relevant factors, present and potential. The Parties further acknowledge that they are each represented  
23 by competent counsel and that they have had an opportunity to consult with their counsel regarding  
24 the fairness and reasonableness of this Settlement.

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

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

5        78.     Class Action Certification for Settlement Purposes Only. The Parties agree to stipulate to  
6        class action certification for purposes of the Settlement only. If, for any reason, the Settlement is not  
7        approved, the stipulation to certification will be void. The Parties further agree that certification for  
8        purposes of the Settlement is not an admission that class action certification is proper under the  
9        standards applied to contested certification motions and that this Settlement Agreement will not be  
10       admissible in this or any other proceeding as evidence that either (i) a class action should be certified,  
11       or (ii) Defendant is liable to Plaintiff or any Class Member or any other person or entity, other than  
12       according to the Settlement's terms. The Parties are not certifying any PAGA claims. In support of  
13       this Settlement Agreement, Plaintiff will request that the Court certify, for settlement purposes only,  
14       all non-PAGA claims that have been asserted as to the Class Members, to which Defendant does not  
15       oppose or object.

16       79.     Non-Admission of Liability. The Parties enter into this Settlement to resolve the dispute that  
17       has arisen between them and to avoid the burden, expense and risk of continued litigation. In entering  
18       into this Settlement, Defendant does not admit, and specifically denies, that it violated any federal,  
19       state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any  
20       other applicable laws, regulations or legal requirements; breached any contract; violated or breached  
21       any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct  
22       with respect to its employees or anyone else. Neither this Settlement Agreement, nor any of its terms  
23       or provisions, nor any of the negotiations connected with it, will be construed as an admission or  
24       concession by Defendant of any such violations or failures to comply with any applicable law.  
25       Except as necessary in a proceeding to enforce the terms of this Settlement, this Settlement  
26       Agreement and its terms and provisions will not be offered or received as evidence in any action or  
27       proceeding to establish any liability or admission on the part of Defendant or to establish the existence  
28       of any condition constituting a violation of, or a non-compliance with, federal, state, local or other

1 applicable law.

2 80. Injunction Against Duplicative Claims: Upon Preliminary Approval of the Settlement  
3 Agreement, all Class Members who do not opt out of the Settlement Class shall be enjoined from  
4 filing, joining, or becoming a party, member or representative in any actions, claims, complaints, or  
5 proceedings in any state or federal court on an individual, representative, collective or class action  
6 basis, or with the California Department of Industrial Relations' Division of Labor Standards  
7 Enforcement ("DLSE") or the United States Department of Labor ("DOL"), or from initiating any  
8 other proceedings, regarding any of the Released Claims defined hereinabove. Any related pending  
9 actions, claims, complaints, or proceedings in any state or federal court or with the DLSE or DOL,  
10 shall be stayed until the Class Members have had an opportunity to decide to participate, object or file  
11 a request for exclusion from this Settlement. In addition, Upon Preliminary Approval of the  
12 Settlement Agreement, all Class Members (regardless of whether they opt-out) shall be enjoined from  
13 filing, joining, or becoming a party, member or representative in any actions, claims, complaints, or  
14 proceedings in any state or federal court on an individual, representative, collective or class action  
15 basis, or with the California Department of Industrial Relations' Division of Labor Standards  
16 Enforcement ("DLSE") or the United States Department of Labor ("DOL"), or from initiating any  
17 other proceedings, regarding any of the Released Claims defined hereinabove to the extent the such  
18 actions, claims, complaints, or proceedings are based on the PAGA claims released via this  
19 Settlement.

20 81. No Public Comment: Neither the Parties nor their counsel Parties shall make or issue any  
21 public statements to the press or any other third party, nor post any information on websites or other  
22 public forums, concerning this Action in any way.

23 82. Encouragement of Class Members: The Parties to this Agreement and the counsel representing  
24 such Parties shall not, directly or indirectly, through any person, encourage or solicit any Class Member  
25 to exclude himself or herself from this Settlement (opt out) or to object to it. However, Class Counsel  
26 and Defendant may respond to inquiries from Class Members. Class Counsel represents, through its  
27 signature below, that it has not taken any action prior to signing this Agreement that would encourage  
28 any Class Member to exclude himself or herself from this Settlement, or to object to it. Class Counsel

20.

Case No. 37-2021-00002933-CU-OE-CTL

1 represents and warrants that at the time of signing this Agreement, it has no clients or prospective clients  
2 who are potential plaintiffs with potential or actual causes of action against Defendant.

3 83. Waiver. No waiver of any condition or covenant contained in this Settlement Agreement or  
4 failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or  
5 constitute a further waiver by such Party of the same or any other condition, covenant, right or  
6 remedy.

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

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

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

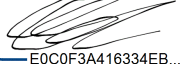
22 87. All Terms Subject to Final Court Approval. All amounts and procedures described in this  
23 Settlement Agreement will be subject to final Court approval.

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

27 89. Binding Agreement. The Parties warrant that they understand and have full authority to enter  
28 into this Settlement Agreement, and further intend that this Settlement Agreement will be fully

enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

Dated: \_\_\_\_\_

DocuSigned by:  
  
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Kevin Becerra  
Plaintiff/Class Representative

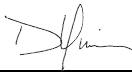
Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Hugo Boss Retail, Inc.

APPROVED AS TO FORM

DAVID YEREMIAN & ASSOCIATES, INC.

Dated: \_\_\_\_\_

By:  \_\_\_\_\_  
David Yeremian  
Attorneys for Plaintiff and the Class

LITTLER MENDELSON, P.C.

Dated: \_\_\_\_\_

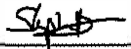
By: \_\_\_\_\_  
Gregory Iskander  
Elisa Nadeau  
Attorneys for Defendant

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.

Dated: \_\_\_\_\_

Kevin Becerra  
Plaintiff/Class Representative

Dated: 02-Aug-2021

  
Stephan Born (Aug 2, 2021 19:46 GMT+2)

By: \_\_\_\_\_

Hugo Boss Retail, Inc.

APPROVED AS TO FORM

DAVID YEREMIAN & ASSOCIATES, INC.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
David Yeremian  
Attorneys for Plaintiff and the Class

LITTLER MENDELSON, P.C.

Dated: 8/6/2021

  
By: \_\_\_\_\_  
Gregory Iskander  
Elisa Nadeau  
Attorneys for Defendant

# EXHIBIT A

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Attorneys for Plaintiff KEVIN BECERRA,  
on behalf of himself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO

KEVIN BECERRA, on behalf of himself and  
others similarly situated,

Plaintiff,

vs.

HUGO BOSS RETAIL, INC., a Delaware  
Corporation; and DOES 1 through 50,  
inclusive,

Defendants.

Case No. 37-2021-00002933-CU-OE-CTL

**CLASS ACTION**

**Assigned for All Purposes To:**

Hon. Ronald F. Frazier

Dept.: C-65

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages Under the FLSA,  
29 USC §§ 206, 207;
3. Failure to Pay Wages and Overtime  
Under Labor Code § 510;
4. Meal-Period Liability Under Labor Code  
§ 226.7;
5. Rest-Break Liability Under Labor Code §  
226.7;
6. Violation of Labor Code § 226(a);
7. Failure to Keep Required Payroll  
Records Under Labor Code §§ 1174 and  
1174.5
8. Penalties Pursuant to Labor Code § 203;
9. Failure to Provide Suitable Seating;
10. Violation of Business & Professions Code §  
17200 et seq.; and
11. Penalties Pursuant to Labor Code § 2699,

**DEMAND FOR JURY TRIAL**

1 Plaintiff KEVIN BECERRA, (hereinafter “Plaintiff”) on behalf of himself and all others  
2 similarly situated (collectively, “Employees”; individually, “Employee”) complains of  
3 Defendants, and each of them, as follows:

#### 4 INTRODUCTION

5 1. Plaintiff brings this action on behalf of himself and all current and former  
6 Employees within the State of California who, at any time four (4) years prior to the filing of this  
7 lawsuit, are or were employed as non-exempt, hourly employees by Defendants HUGO BOSS  
8 RETAIL, INC. , and DOES 1 through 50 (all defendants being collectively referred to herein as  
9 “Defendants”). Plaintiff alleges that Defendants, and each of them, violated various provisions of  
10 the California Labor Code, relevant orders of the Industrial Welfare Commission (IWC) and  
11 California Business & Professions Code, and seeks redress therefore.

12 2. Plaintiff is a resident of California and during the time period relevant to this  
13 Complaint was employed by Defendants as a non-exempt hourly employee within the State of  
14 California. Plaintiff and the other Class members worked for Defendants throughout California  
15 and/or San Diego County, and in other nonexempt positions, throughout California, and  
16 consistently worked at Defendants’ behest without being paid all wages due. More specifically,  
17 Plaintiff and the other similarly situated Class members were employed by Defendants and  
18 worked at Defendants’ offices and other facilities where the conduct giving rise to the allegations  
19 in this Class Action Complaint occurred. Upon information and belief, Plaintiff was employed by  
20 Defendants and (1) shared similar job duties and responsibilities, (2) was subjected to the same  
21 policies and practices, and (3) endured similar violations at the hands of Defendants as the other  
22 Employee Class members who served in similar and related positions.

23 3. Defendants required Plaintiff and the Employees in the Class to perform work  
24 while remaining under Defendants’ control before being on the clock for their daily work shift.  
25 Defendant also required Plaintiff and the Employees in the Class to work off the clock and to  
26 perform work and remain under Defendants’ control during their meal and rest breaks. Defendants  
27 also failed to provide Plaintiff and the Class with lawful meal periods and failed to authorize and  
28 permit them to take all required rest breaks, as Employees were not provided with the opportunity

1 to take uninterrupted and duty-free rest breaks and meal breaks or Defendants failed to timely  
2 provide them as required by the Labor Code and applicable IWC Wage Orders. Plaintiff and the  
3 Class members were also compelled to clock out for meal periods and return to work off the clock  
4 or to otherwise work through meal periods and rest breaks while remaining under Defendants'  
5 control due to the difficult work requirements and management demands placed upon them.  
6 Defendants thus failed to pay Plaintiff and the Class members for all hours worked, and provided  
7 them with inaccurate wage statements that prevented Plaintiff and the Class from learning of these  
8 unlawful pay practices.

### 9 **THE PARTIES**

#### 10 **A. The Plaintiff**

11 4. Plaintiff KEVIN BECERRA has resided in California and during the time period  
12 relevant to this Complaint was employed by Defendants as a non-exempt hourly employee within  
13 the State of California.

#### 14 **B. The Defendants**

15 5. Defendant HUGO BOSS RETAIL, INC., ("HBR") is a Delaware Corporation, with  
16 its principle executive offices in New York, New York and has been listed as the employer on the  
17 wage statements issued to Plaintiff during the relevant time period. HBR does not list a California  
18 address with the California Secretary of State but employs Plaintiff and the Class members in  
19 California and/or San Diego County, including at Defendants' offices and facilities in San Diego,  
20 California, and/or throughout California and conducts business throughout California.

21 6. The true names and capacities, whether individual, corporate, associate, or  
22 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently  
23 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of  
24 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants  
25 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in  
26 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend  
27 this Complaint to reflect the true names and capacities of the Defendants designated herein as  
28 Does 1 through 50 when their identities become known.

7. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, that Defendants carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in all respects as the employers or joint employers of Employees. Defendants, and each of them, exercised control over the wages, hours or working conditions of Employees, or suffered or permitted Employees to work, or engaged, thereby creating a common law employment relationship, with Employees. Therefore, Defendants, and each of them, employed or jointly employed Employees.

## JURISDICTION AND VENUE

8. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the obligations and liabilities giving rise to this lawsuit occurred at least in part in San Diego County and Defendants maintain and operate company offices and facilities in San Diego County, and employ Plaintiff and other Class members in San Diego County and/or throughout California.

## FACTUAL BACKGROUND

9. The Employees who comprise the Class and Collective, including Plaintiff, are nonexempt employees pursuant to the applicable Wage Order of the IWC. Defendants hire Employees who work in nonexempt positions at the direction of Defendants in the State of California. Plaintiff and the Class members were either not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime rates. Plaintiff contends that Defendants failed to pay Plaintiff and the Class members all wages due and owing, and failed to furnish accurate wage statements, all in violation of various provisions of the California Labor Code and applicable Wage Orders.

10. During the course of Plaintiff and the Class members' employment with

1 Defendants, they were not paid all wages they were owed, including for all work performed and  
2 for all overtime hours to keep labor budgets low. Plaintiff and Class members were forced to  
3 work off the clock by going through lengthy security checks each day before clocking in, as part  
4 of their duties under Defendants' employ, for which they were never compensated. Defendants  
5 did so with the ostensible intent of paying Class members only for the hours they were scheduled  
6 to work, rather than the hours they were actually under Defendants' control. In additional  
7 Employees were required to work "post-shift" without compensation by continuing to work after  
8 clocking out by performing various duties such as throwing out the trash.

9 11. Furthermore, Defendants paid Plaintiff and Employees nondiscretionary  
10 commissions, incentive pay, and/or nondiscretionary bonuses. However, upon information and  
11 belief, Defendants failed to incorporate all remunerations, including nondiscretionary  
12 commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular  
13 rate of pay for purposes of calculating the overtime wage rate premium pay for missed meal and  
14 rest breaks . Therefore, during times when Plaintiff and Employees worked overtime and/or were  
15 entitled to premium pay and received nondiscretionary commissions, incentive pay, and/or  
16 nondiscretionary bonuses, Defendants failed to pay all overtime wages and premium pay by  
17 paying a lower overtime rate and premium pay than required.

18 12. As a matter of uniform Company policy, not compensated by Defendants in  
19 violation of the California Labor Code and the Fair Labor Standards Act of 1938, as amended, 29  
20 U.S.C. §§ 201 *et seq.* Plaintiff and the Class members were also not paid regular wages and  
21 overtime for the time they were required to comply with other requirements imposed upon them,  
22 by going through lengthy security checks each day before clocking in, as part of their duties  
23 under Defendants' employ, for which they were never compensated. As a result Plaintiff and the  
24 Class members worked shifts over eight (8) hours in a day and over forty (40) hours in a work  
25 week, but they were not paid at the appropriate overtime rate for all such hours. As a result,  
26 Plaintiff and the Class members worked substantial overtime hours during their employment with  
27 Defendants for which they were not compensated, in violation of the California Labor Code and  
28 the FLSA.

1           13.     Moreover, Plaintiff contends that Defendants failed to pay Plaintiff and the Class  
2 members all wages due and owing, by making unlawful deductions from their pay, failed to  
3 provide meal and rest breaks, and failed to furnish accurate wage statements, all in violation of  
4 various provisions of the California Labor Code and applicable Wage Order provisions.

5           14.     During the course of Plaintiff and the Class members' employment with  
6 Defendants, they were not paid all wages they were owed, including for all work performed and  
7 for all overtime hours worked, and they were forced to work during their meal and rest breaks to  
8 keep labor budgets low.

9           15.     Defendants had also either failed to maintain timekeeping records for Plaintiff that  
10 would permit him to discover the nature and extent of Defendants' unlawful practices or has  
11 refused to produce them to Plaintiff in response to his timely request to be provided with them.

12           16.     As a matter of uniform and unlawful Company policy, Plaintiff and the Class  
13 members were required to work during their meal periods and rest breaks, and they were again  
14 not compensated for this off the clock work, in violation of the California Labor Code. Plaintiff  
15 and the Class members were also not paid regular wages and overtime for the time they were  
16 required to comply with other work demands and requirements imposed upon them, which they  
17 often had to complete while working through their meal and rest breaks and without  
18 compensation. As a result Plaintiff and the Class members worked shifts over eight (8) hours in a  
19 day and over forty (40) hours in a work week, but they were not paid at the appropriate overtime  
20 rate for all such hours, including by being required to perform work duties and tasks without pay  
21 and while off-the-clock which caused overtime to begin accruing before it did in Defendants'  
22 timekeeping and payroll systems. As a result, Plaintiff and the Class members worked substantial  
23 overtime hours during their employment with Defendants for which they were not compensated,  
24 in violation of the California Labor Code and applicable IWC Wage Orders.

25           17.     As a result of the above described practices, the daily work demands and pressures  
26 to work through breaks, and the other wage violations they endured at Defendants' hands, Plaintiff  
27 and the Class members were not properly paid for all wages earned and for all wages owed to  
28 them by Defendants, including when working more than eight (8) hours in any given day and/or

1 more than forty (40) hours in any given week.

2 18. Therefore, from at least four (4) years prior to the filing of this lawsuit and  
3 continuing to the present, Defendants had a consistent policy or practice of failing to pay  
4 Employees for all hours worked, and failing to pay minimum wage for all time worked as required  
5 by California Law.

6 19. Additionally from at least four (4) years prior to the filing of this lawsuit and  
7 continuing to the present, Defendants had a consistent policy or practice of failing to pay  
8 Employees overtime compensation at premium overtime rates for all hours worked in excess of  
9 eight (8) hours a day and/or forty (40) hours a week, and double-time rates for all hours worked in  
10 excess of twelve (12) hours a day, in violation of Labor Code § 510 and the corresponding  
11 sections of IWC Wage Orders.

12 20. Additionally, from at least four (4) years prior to the filing of this lawsuit and  
13 continuing to the present, Defendants have regularly required Employees to work shifts in excess  
14 of five (5) hours without providing them with uninterrupted meal periods of not less than thirty  
15 (30) minutes, and shifts in excess of ten (10) hours without providing them with second meal  
16 periods of not less than thirty minutes; nor did Defendants pay Employees “premium pay,” i.e. one  
17 hour of wages at each Employee’s effective hourly rate of pay, for each meal period that  
18 Defendants failed to provide or deficiently provided.

19 21. From at least four (4) years prior to the filing of this lawsuit and continuing to the  
20 present, Defendants have consistently failed to provide Employees with paid rest breaks of not less  
21 than ten (10) minutes for every work period of four (4) or more consecutive hours; nor did  
22 Defendant pay Employees premium pay for each day on which requisite rest breaks were not  
23 provided or were deficiently provided.

24 22. Additionally, from at least four (4) years prior to the filing of this lawsuit, and  
25 continuing to the present, Defendants have consistently failed to provide Employees with timely,  
26 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws.

27 23. Additionally, from at least three (3) years prior to the filing of this lawsuit, and  
28 continuing to the present, Defendants have consistently failed to keep accurate time and wage

1 records as required by California wage-and-hour laws.

2 24. Additionally from at least four (4) years prior to filing this lawsuit and continuing  
3 to the present, Defendants have had a consistent policy of failing to pay all wages fur and owed to  
4 Employees at the time of their termination of within seventy-two (72) hours of their resignation, as  
5 required by California wage-and-hour laws.

6 25. Defendants also failed to provide suitable seating to Class Members. The  
7 operations at Defendant's facilities allowed for the presence and use of a stool or seat by Class  
8 Members during the performance of their work duties. The nature of the effected job positions can  
9 reasonably be accomplished while using a seat or stool. However, Defendant failed to provide  
10 Class Members suitable seating when the nature of these employees' work reasonably permitted  
11 sitting.

12 26. In light of the foregoing, Employees bring this action pursuant to, inter alia, Labor  
13 Code §§ 90.5, 200-204, 210, 226, 226.3, 226.7, 233, 246, 256, 510, 512, 558, 1182.12 et seq.,  
14 1174, 1174.5, 1194, 1194.2, 1197, 1198, 1199, and 2699, *et seq.*

15 27. Furthermore, pursuant to Business and Professions Code §§ 17200-17208,  
16 Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have  
17 enjoyed from their violations of Labor Code.

18 28. The Fair Labor Standards Act: The Fair Labor Standards Act of 1938, as amended,  
19 29 U.S.C. §§ 201 *et seq.* (hereinafter referred to as "FLSA"), provides for minimum standards for  
20 both minimum and regular wages and overtime entitlement, and details administrative procedures  
21 by which covered work time must be compensated. The enactment of the provisions of the FLSA  
22 provide the Courts with substantial authority to stamp out abuses and enforce the minimum wage  
23 and overtime pay provisions at issue in this Complaint. According to Congressional findings, the  
24 existence of labor conditions detrimental to the maintenance of the minimum standard of living  
25 engenders unfair commercial competition, labor disputes, and barriers to commerce and the free  
26 flow of goods in commerce, and interferes with the orderly and fair marketing of goods.  
27 Defendants violated the FLSA with the above described unlawful wage payment practices.

28 ///

1 **CLASS ALLEGATIONS**

2 29. Plaintiff brings this class action on behalf of himself and all others similarly  
3 situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a class defined as  
4 follows: all individuals employed by Defendants, at any time within four (4) years of the filing of  
5 this lawsuit, and have been employed by Defendants within the State of California.

6 30. Further, plaintiff seeks to represent the following Subclasses composed of and  
7 defined as follows:

8 a. Subclass 1. Minimum Wages Subclass. All Class members who were not  
9 compensated for all hours worked for Defendants at the applicable minimum wage.

10 b. Subclass 2. Wages Subclass under FLSA. All Class members who were not  
11 compensated for all hours worked for Defendants at the applicable minimum wage under FLSA.

12 c. Subclass 3. Wages and Overtime Subclass. All Class members who were not  
13 compensated for all hours worked for Defendants at the required rates of pay, including for all  
14 hours worked in excess of eight in a day and/or forty in a week.

15 d. Subclass 4. Meal Period Subclass. All Class members who were subject to  
16 Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty  
17 free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.

18 e. Subclass 5. Rest Break Subclass. All Class members who were subject to  
19 Defendants' policy and/or practice of failing to authorize and permit Employees to take  
20 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction  
21 thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.

22 f. Subclass 6. Wage Statement Subclass. All Class members who, within the  
23 applicable limitations period, were not provided with accurate itemized wage statements.

24 g. Subclass 7. Payroll Records Subclass. All Class members who were subject to  
25 Defendants' policy and/or practice of failing to keep accurate time and wage records as required  
26 by California wage-and-hour laws.

27 h. Subclass 8. Termination Pay Subclass. All Class members who, within the  
28 applicable limitations period, either voluntarily or involuntarily separated from their employment

1 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon  
2 termination.

3 i. Subclass 9. UCL Subclass. All Class members who are owed restitution as a  
4 result of Defendants' business acts and practices, to the extent such acts and practices are found to  
5 be unlawful, deceptive, and/or unfair.

6 j. Subclass 10. Suitable Seating Subclass. All Class Members who within the  
7 applicable limitations period were not provided with suitable seating.

8 31. Plaintiff reserves the right under California Rule of Court 3.765 to amend or  
9 modify the class description with greater particularity or further division into subclasses or  
10 limitation to particular issues.

11 32. This action has been brought and may properly be maintained as a class action  
12 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community  
13 of interest in litigation and proposed class is easily ascertainable.

14 **A. Numerosity**

15 33. The potential members of the class as defined are so numerous that joinder of all  
16 the member of the class is impracticable. While the precise number of class member has not been  
17 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the  
18 time period relevant to this lawsuit, employed more than 100 individuals were employed by  
19 Defendant's within the State of California.

20 34. Accounting for employee turnover during the relevant time period increases this  
21 number substantially. Plaintiff alleges that Defendants' employment records will provide  
22 information as to the number and location of all class members.

23 **B. Commonality**

24 35. There are questions of law and fact common to the class that predominate over any  
25 questions affecting only individual class members. These common questions of law and fact  
26 include:

- 27 a. Whether Defendants failed to pay Employees minimum wages;
- 28 b. Whether Defendants failed to pay Employees wages for all hours worked;

- 1 c. Whether Defendants failed to pay Employees overtime as required under Labor  
2 Code § 510;
- 3 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable  
4 IWC Wage Orders, by failing to provide Employees with requisite meal periods or  
5 premium pay in lieu thereof;
- 6 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage  
7 Orders, by failing to provide Employees with requisite rest breaks or premium pay  
8 in lieu thereof;
- 9 f. Whether Defendants violated Labor Code § 226(a);
- 10 g. Whether Defendants violated Labor Code §§ 1174 and 1174.5;
- 11 h. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay  
12 wages and compensation due and owing at the time of termination of employment;
- 13 i. Whether Defendants are liable for penalties under Labor Code § 2699, *et seq*; and
- 14 j. Whether Defendants violated Business and Professions Code § 17200 *et seq*.;
- 15 k. Whether Employees are entitled to equitable relief pursuant to Business and  
16 Professions Code § 17200 *et seq*.; and
- 17 l. Whether Defendants failed to provide Class Members with suitable seating.

18 **C. Typicality**

19 36. The claims of the named plaintiff are typical of those of the other Employees.  
20 Employees all sustained injuries and damages arising out of and caused by Defendant's common  
21 course of conducts in violation of statutes, as well as regulations that have the force and effect of  
22 law, as alleged herein.

23 **D. Adequacy of Representation**

24 37. Plaintiff will fairly and adequately represent and protect the interest of Employees.  
25 Counsel who represents Employees are experienced and competent in litigating employment class  
26 actions.

27 **E. Superiority of Class Action**

28 38. A class action is superior to other available means for the fair and efficient

1 adjudication of this controversy. Individual joinder of all Employees is not practicable, and  
2 questions of law and fact common to all Employees predominate over any questions affecting only  
3 individual Employees. Each Employee has been damaged and is entitled to recovery by reason of  
4 Defendants' illegal policies or practices of failing to compensate Employees properly.

5 39. Class action treatment will allow those persons similarly situated to litigate their  
6 claims in the manner that is most efficient and economical for the parties and the judicial system.  
7 Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

8 **FIRST CAUSE OF ACTION**

9 **FAILURE TO PAY MINIMUM WAGES**

10 **(Against All Defendants)**

11 40. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in  
12 full herein.

13 41. Defendants failed to pay Employees minimum wages for all hours worked.  
14 Defendants had a consistent policy of misstating Employees time records and failing to pay  
15 Employees for all hours worked. Specifically, Defendants had a consistent policy of failing to  
16 pay Employees for hours worked during alleged meal periods for which Employees were  
17 consistently denied as they had to assist customers during their meal periods. (see infra).  
18 Moreover, Employees would work hours and not receive wages, including as alleged above in  
19 connection with requiring employees to go through lengthy security checks each day before  
20 clocking in, as part of their duties under Defendants' employ, for which they were never  
21 compensated. In addition Employees were required to work "post-shift" without compensation  
22 by continuing to work after clocking out by performing various duties such as throwing out the  
23 trash. This caused Employees to work without compensation in excess of their eight-hour shift in  
24 a given work day. Defendants' uniform pattern of unlawful wage and hour practices manifested,  
25 without limitation, applicable to Employees, as a result of implementing a uniform policy and  
26 practice that denied accurate compensation to Plaintiff and the other members of the Employees  
27 as to minimum wage pay.

28 42. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"

1 states:

2 The minimum wage for employees fixed by the commission is the  
3 minimum wage to be paid to employees, and the payment of a less  
4 wage than the minimum so fixed is unlawful.

4 43. The applicable minimum wages fixed by the commission for work during the  
5 relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are  
6 therefore entitled to double the minimum wage during the relevant period.

7 44. The minimum wage provisions of California Labor Code are enforceable by private  
8 civil action pursuant to California Labor Code § 1194(a) which states:

9 Notwithstanding any agreement to work for a lesser wage, any  
10 employee receiving less than the legal minimum wage or the legal  
11 overtime compensation applicable to the employee is entitled to  
12 recover in a civil action the unpaid balance of the full amount of  
13 this minimum wage or overtime compensation, including interest  
14 thereon, reasonable attorney's fees and costs of suit.

13 45. As described in California Labor Code §§ 1185 and 1194.2, any action for wages  
14 incorporates the applicable Wage Order of the California Industrial Welfare Commission.

15 46. California Labor Code § 1194.2 also provides for the following remedies:

16 In any action under Section 1194 . . . to recover wages because of  
17 the payment of a wage less than the minimum wages fixed by an  
18 order of the commission, an employee shall be entitled to recover  
19 liquidated damages in an amount equal to the wages unlawfully  
20 unpaid and interest thereon.

19 47. Defendants have the ability to pay minimum wages for all time worked and have  
20 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this  
21 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

22 48. Wherefore, Employees are entitled to recover the unpaid minimum wages  
23 (including double minimum wages), liquidated damages in an amount equal to the minimum  
24 wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant  
25 to California Labor Code § 1194(a).

26 **SECOND CAUSE OF ACTION**  
27 **FOR FAILURE TO PAY WAGES UNDER THE FLSA**  
28 **(Against All Defendants)**

49. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth

1 in full herein.

2 50. At all relevant times hereto, Defendants have been an “enterprise engaged in  
3 commerce or in the production of goods for commerce,” as defined under 29 U.S.C. § 203(s)(1).

4 51. Plaintiff is informed and believes, and thereon alleges, that Defendants have  
5 required the Plaintiff and FLSA collective Employees as part of their employment to work off the  
6 clock and for less than minimum wage under 29 U.S.C. § 206(a)(1). That Section provides the  
7 following:

8 Every employer shall pay to each of his employees who in any  
9 workweek is engaged in commerce or in the production of goods for  
10 commerce, or is employed in an enterprise engaged in commerce or  
11 in the production of goods for commerce, wages at the following  
12 rates:

13 (1) except as otherwise provided in this section, not less than—

14 (A) \$5.85 an hour, beginning on the 60th day after May 25, 2007;

15 (B) \$6.55 an hour, beginning 12 months after that 60th day; and

16 (C) \$7.25 an hour, beginning 24 months after that 60th day;...

17 52. Plaintiff is informed and believes, and thereon alleges, that certain or all of the  
18 Employees were not exempt employees under the FLSA’s overtime provisions and that  
19 Defendants also required Plaintiff and require the FLSA collective Employees to work without  
20 overtime in excess of the forty (40) hours per week maximum under 29 U.S.C. § 207(a)(I). That  
21 Section provides the following:

22 Except as otherwise provided in this section, no employer shall  
23 employ any of his employees ... for a workweek longer than forty  
24 hours unless such employee receives compensation for his  
25 employment in excess of the hours above specified at a rate which is  
26 not less than one and one-half times the regular rate at which he is  
27 employed.

28 53. In the performance of their duties for Defendants, Employees as members of the  
FLSA collective did not receive minimum wages and other required compensation for the work,  
labor and services they provided to Defendants, as required by the FLSA, 29 U.S.C. §§ 206 and  
207.

54. At all times relevant to this action, Plaintiff was an “employee” of Defendants  
within the meaning of 29 U.S.C. § 203(e)(1) of the FLSA. At all times relevant to this action,

1 Defendants “suffered or permitted” Plaintiff and the FLSA Collective Members to work and thus  
2 “employed” them within the meaning of 29 U.S.C. § 203(g) of the FLSA. At all times relevant to  
3 this action, Defendants required Plaintiff and FLSA Collective Members to perform work under  
4 Defendants employ but failed to pay them the federally mandated wages and overtime  
5 compensation for all services performed.

6 55. The precise amount of unpaid wages and unpaid hours will be proven at trial, as  
7 will the extent of the geographic scope of the FLSA Collective, as Defendants maintain  
8 operations in California but also in other states throughout the United States. Upon information  
9 and belief, Employees of Defendants in other states besides California were also subject to the  
10 same uniform and unlawful company policies and practices as were the members of the FLSA  
11 Collective employed in California, as addressed herein.

12 56. The FLSA also imposes a record-keeping requirement on employers, including  
13 the obligation to keep accurate records of all hours worked by employees. Defendants have  
14 knowingly and willfully failed and continue to willfully fail to record, report, and/or preserve  
15 accurate records of all hours worked by Plaintiff and FLSA Collective Members. By failing to  
16 record, report, and/or preserve records of all hours worked by Plaintiff and the FLSA Collective  
17 Members, and by rounding timekeeping entries down to reflect less hours than were actually  
18 worked, Defendants have violated, and continue to violate, the FLSA, 29 U.S.C. §§ 201, *et seq*

19 57. Plaintiff proposes to undertake appropriate proceedings to have such FLSA Class  
20 members aggrieved by Defendants’ unlawful conduct notified of the pendency of this action and  
21 to provide them with the opportunity to join this action as plaintiffs, pursuant to 29 U.S.C. §  
22 216(b), by filing written consents to joinder with the Court.

23 58. Defendants’ violations of the FLSA were willful within the meaning of the statute  
24 and interpretive case law and decisions.

25 59. Plaintiff seeks judgment against Defendants on her own behalf and on behalf of  
26 those FLSA collective employees similarly situated who file written consents to joinder in this  
27 action, for all unpaid wages, including minimum and overtime wages owed by Defendants,  
28 pursuant to 29 U.S.C. §§ 206 and 207, together with an award of an additional equal amount as

1 liquidated damages, and costs, interest, and reasonable attorneys' fees, as provided for under 29  
2 U.S.C. § 216(b) and which may be brought in "any Federal or State court of competent  
3 jurisdiction by any one or more employees for and in behalf of himself or themselves and other  
4 employees similarly situated."

5 **THIRD CAUSE OF ACTION**

6 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

7 **(Against All Defendants)**

8 60. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in  
9 full herein.

10 61. By their conduct, as set forth herein, Defendants violated California Labor Code §  
11 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees:  
12 (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a  
13 workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked  
14 on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours  
15 worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight  
16 (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not  
17 paying Employees wages for all hours worked. Defendants had a consistent policy of not paying  
18 Employees wages for all hours worked, including by requiring off the clock work as addressed  
19 above.

20 62. Defendants' failure to pay compensation in a timely fashion also constituted a  
21 violation of California Labor Code § 204, which requires that all wages shall be paid  
22 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct  
23 violation of that provision of the California Labor Code, Defendants have failed to pay all wages  
24 and overtime compensation earned by Employees. Each such failure to make a timely payment of  
25 compensation to Employees constitutes a separate violation of California Labor Code § 204.

26 63. Furthermore, on information and belief, Defendants did not pay Plaintiff and  
27 Employees the correct overtime rate for the recorded overtime hours that they generated. In  
28 addition to an hourly wage, Defendants paid Plaintiff and Employees nondiscretionary

1 commissions, incentive pay, and/or nondiscretionary bonuses. However, upon information and  
2 belief, Defendants failed to incorporate all remunerations, including nondiscretionary  
3 commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular  
4 rate of pay for purposes of calculating the overtime wage rate.

5 64. Therefore, during times when Plaintiff and Employees worked overtime and  
6 received nondiscretionary commissions, incentive pay, and/or nondiscretionary bonuses,  
7 Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

8 65. Employees have been damaged by these violations of California Labor Code §§  
9 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

10 66. Consequently, pursuant to California Labor Code §§ 204, 510, and 1194 (and the  
11 relevant orders of the Industrial Welfare Commission), Defendants are liable to Employees for  
12 the full amount of all their unpaid wages and overtime compensation, with interest, plus their  
13 reasonable attorneys' fees and costs.

#### 14 **FOURTH CAUSE OF ACTION**

##### 15 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

##### 16 **(Against All Defendants)**

17 67. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in  
18 full herein.

19 68. Employees regularly worked shifts greater than five (5) hours and greater than ten  
20 (10) hours. Pursuant to Labor Code § 512 an employer may not employ someone for a shift of  
21 more than five (5) hours without providing him or her with a meal period of not less than thirty  
22 (30) minutes or for a shift of more than ten (10) hours without providing him or her with a second  
23 meal period of not less than thirty (30) minutes.

24 69. Defendants failed to provide Employees with meal periods as required under the  
25 Labor Code. Employees were consistently required to work through their meal periods which they  
26 were consistently denied. Employees were also required to take meal periods after working well  
27 beyond the five (5) hour shifts. Furthermore, Employees were regularly required to work for more  
28 than 10 hours in a given shift without receiving a second uninterrupted thirty (30) minute meal

1 period as required by law.

2 70. Moreover, Defendants failed to compensate Employees for each meal period not  
3 provided or inadequately provided, as required under Labor Code § 226.7.

4 71. Furthermore, Defendants paid Plaintiff and Employees nondiscretionary  
5 commissions, incentive pay, and/or nondiscretionary bonuses. However, upon information and  
6 belief, Defendants failed to incorporate all remunerations, including nondiscretionary  
7 commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular  
8 rate of pay for purposes of calculating the premium pay for meal breaks. Therefore, during times  
9 when Plaintiff and Employees were entitled to premium pay and received nondiscretionary  
10 commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed to pay all  
11 premium pay by paying a lower premium pay than required.

12 72. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in  
13 an amount equal to one (1) hour of wages at their effective regular rates of pay for each meal  
14 period not provided or deficiently provided, a sum to be proven at trial.

15 **FIFTH CAUSE OF ACTION**

16 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

17 **(Against All Defendants)**

18 73. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in  
19 full herein.

20 74. Employees consistently worked consecutive four (4) hour shifts. Pursuant to the  
21 Labor Code and the applicable IWC Wage Order, Employees were entitled to paid rest breaks of  
22 not less than ten (10) minutes for each consecutive four (4) hour shift.

23 75. Defendants failed to provide Employees with timely rest breaks of not less than ten  
24 (10) minutes for each consecutive four (4) hour shift.

25 76. Moreover, Defendants did not compensate Employees with an additional hour of  
26 pay at each Employee's effective regular rate for each day that Defendants failed to provide them  
27 with adequate rest breaks, as required under Labor Code § 226.7.

28 77. Furthermore, Defendants paid Plaintiff and Employees nondiscretionary

1 commissions, incentive pay, and/or nondiscretionary bonuses. However, upon information and  
2 belief, Defendants failed to incorporate all remunerations, including nondiscretionary  
3 commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular  
4 rate of pay for purposes of calculating the premium pay for rest breaks. Therefore, during times  
5 when Plaintiff and Employees were entitled to premium pay and received nondiscretionary  
6 commissions, incentive pay, and/or nondiscretionary bonuses, Defendants failed to pay all  
7 premium pay by paying a lower premium pay than required.

8 78. Therefore, pursuant to Labor Code § 226.7, Employees are entitled to damages in  
9 an amount equal to one (1) hour of wages at their effective hourly rates of pay for each day  
10 worked without the required rest breaks, a sum to be proven at trial.

11 **SIXTH CAUSE OF ACTION**  
12 **VIOLATION OF LABOR CODE § 226(a)**  
13 **(Against All Defendants)**

14 79. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in  
15 full herein.

16 80. California Labor Code § 226(a) requires an employer to furnish each of his or her  
17 employees with an accurate, itemized statement in writing showing the gross and net earnings,  
18 total hours worked, and the corresponding number of hours worked at each hourly rate; these  
19 statements must be appended to the detachable part of the check, draft, voucher, or whatever else  
20 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these  
21 statements may be given to the employee separately from the payment of wages; in either case the  
22 employer must give the employee these statements twice a month or each time wages are paid.

23 81. Defendants failed to provide Employees with accurate itemized wage statements in  
24 writing, as required by the Labor Code. Specifically, the wage statements given to Employees by  
25 Defendants failed to accurately account for wages, overtime, failed to account for actual hours  
26 worked and premium pay for deficient meal periods and rest breaks, and automatically deducted  
27 wages for alleged meal periods, all of which Defendants knew or reasonably should have known  
28 were owed to Employees, as alleged hereinabove. Additionally, Defendants failed in their

1 affirmative obligation to keep accurate records of the correct overtime wages based on proper  
2 regular rate calculations that included nondiscretionary commissions, incentive pay, and/or  
3 nondiscretionary bonuses earned, and the total amount of compensation of their Employees.

4 82. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a),  
5 Employees suffered injuries, including among other things confusion over whether they received  
6 all wages owed them, the difficulty and expense involved in reconstructing pay records, and  
7 forcing them to make mathematical computations to analyze whether the wages paid in fact  
8 compensated them correctly for all hours worked.

9 83. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover  
10 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation  
11 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not  
12 exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an  
13 award of costs and reasonable attorneys' fees.

14 **SEVENTH CAUSE OF ACTION**

15 **FAILURE TO KEEP REQUIRED PAYROLL RECORDS UNDER LABOR CODE § 1174**  
16 **AND 1174.5**

17 **(Against All Defendants)**

18 84. Plaintiff re-allege and incorporate all preceding paragraphs, as though set forth in  
19 full herein.

20 85. California Labor Code § 1174 requires that all employers shall keep accurate time  
21 and wage records for all employees. California Labor Code § 1174.5 further requires that any  
22 employee suffering injury due to a willful violation of the aforementioned obligations may seek  
23 damages, including civil penalties, from the employer.

24 86. During the course of Plaintiff's and Employees' employment, Defendants  
25 consistently failed to maintain accurate time and wage records for Plaintiff and Employees as  
26 required by California Labor Code § 1174 by failing to pay Plaintiff and Employees proper wages,  
27 overtime, and premium pay as discussed above.

28 87. Accordingly, Defendants are liable for civil penalties pursuant to the California

1 Labor Code §§ 1174.5 for the three (3) years prior to the filing of this Complaint.

2 **EIGHTH CAUSE OF ACTION**

3 **VIOLATION OF LABOR CODE § 203**

4 **(Against All Defendants)**

5 88. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in  
6 full herein.

7 89. Numerous Employees are no longer employed by Defendants; they either quit  
8 Defendants' employ or were fired therefrom.

9 90. Defendants failed to pay these Employees all wages due and certain at the time of  
10 termination or within seventy-two (72) hours of resignation.

11 91. The wages withheld from these Employees by Defendants remained due and owing  
12 for more than thirty (30) days from the date of separation of employment.

13 92. Defendants' failure to pay wages, as alleged above, was willful in that Defendants  
14 knew wages to be due but failed to pay them; this violation entitles these Employees to penalties  
15 under Labor Code § 203, which provides that an employee's wages shall continue until paid for up  
16 to thirty (30) days from the date they were due.

17 **NINTH CAUSE OF ACTION**

18 **FAILURE TO PROVIDE SUITABLE SEATING**

19 **(Against All Defendants)**

20 93. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in  
21 full herein.

22 94. Section 14(A) of the applicable IWC Wage Orders provides that '[a]ll working  
23 employees shall be provided with suitable seats when the nature of the work reasonably permits  
24 the use of seats.' Additionally, Section 14(B) of the applicable IWC Wage Orders provides that  
25 '[w]hen employees are not engaged in the active duties of their employment and the nature of the  
26 work requires standing, an adequate number of suitable seats shall be placed in reasonable  
27 proximity to the work area and employees shall be permitted to use such seats when it does not  
28 interfere with the performance of their duties.'

1           95.     As addressed above, Defendants failed to provide Class Members suitable seating  
2 when the nature of these employees' work reasonably permitted sitting. Defendants knew or  
3 should have known that Class Members were entitled to suitable seating and/or were entitled to sit  
4 when it did not interfere with the performance of their duties, and that Defendants did not provide  
5 suitable seating and did not allow them to sit when it did not interfere with the performance of  
6 their duties.

7           96.     By their conduct, Defendants have violated California Labor Code § 1198 and  
8 Paragraph 14 of the applicable IWC Wage Orders by failing to provide suitable seating to Class  
9 Members. Defendants have violated the California Labor Code, including Section 1198, and  
10 regulations promulgated thereunder as herein alleged, including Paragraph 14 of the applicable  
11 IWC Wage Orders.

12           97.     Accordingly, Plaintiff seeks to recover civil penalties pursuant to Section 14 of the  
13 applicable IWC Wage Orders and Labor Code § 2699(f) and attorneys' fees and costs as may be  
14 authorized.

15                                   **TENTH CAUSE OF ACTION**

16                   **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.**

17                                   **(Against All Defendants)**

18           98.     Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in  
19 full herein.

20           99.     Plaintiff, on behalf of himself, Employees, and the general public, brings this claim  
21 pursuant to Business & Professions Code § 17200 et seq. The conduct of Defendants as alleged in  
22 this Complaint has been and continues to be unfair, unlawful, and harmful to Employees and the  
23 general public. Plaintiff seeks to enforce important rights affecting the public interest within the  
24 meaning of Code of Civil Procedure § 1021.5.

25           100.    Plaintiff is a "person" within the meaning of Business & Professions Code  
26 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive  
27 relief, restitution, and other appropriate equitable relief.

28           101.    Business & Professions Code § 17200 et seq. prohibits unlawful and unfair

1 business practices.

2 102. Wage-and-hour laws express fundamental public policies. Paying employees their  
3 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental  
4 public policies of California. Labor Code § 90.5(a) articulates the public policies of this State  
5 vigorously to enforce minimum labor standards, to ensure that employees are not required or  
6 permitted to work under substandard and unlawful conditions, and to protect law-abiding  
7 employers and their employees from competitors who lower costs to themselves by failing to  
8 comply with minimum labor standards.

9 103. Defendants have violated statutes and public policies. Through the conduct alleged  
10 in this Complaint Defendants have acted contrary to these public policies, have violated specific  
11 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in  
12 violation of Business & Professions Code § 17200 et seq.; which conduct has deprived Plaintiff,  
13 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges  
14 guaranteed to all employees under the law.

15 104. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in  
16 violation of the Business & Professions Code § 17200 et seq.

17 105. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and  
18 overtime, failing to provide meal periods and rest breaks, etc., either knew or in the exercise of  
19 reasonable care should have known that their conduct was unlawful; therefore their conduct  
20 violates the Business & Professions Code § 17200 et seq.

21 106. As a proximate result of the above-mentioned acts of Defendants, Employees have  
22 been damaged, in a sum to be proven at trial.

23 107. Unless restrained by this Court Defendants will continue to engage in such  
24 unlawful conduct as alleged above. Pursuant to the Business & Professions Code this Court should  
25 make such orders or judgments, including the appointment of a receiver, as may be necessary to  
26 prevent the use by Defendants or their agents or employees of any unlawful or deceptive practice  
27 prohibited by the Business & Professions Code, including but not limited to the disgorgement of  
28 such profits as may be necessary to restore Employees to the money Defendants have unlawfully

1 failed to pay.

2 **ELEVENTH CAUSE OF ACTION**

3 **PENALTIES PURSUANT TO LABOR CODE § 2699, ET SEQ.**

4 **(Against All Defendants)**

5 108. Plaintiff re-allege and incorporates all preceding paragraphs, as though set forth in  
6 full herein.

7 109. Plaintiff and Employees are aggrieved employees as defined under Labor Code §  
8 2699(c) in that they suffered the violations alleged in this Complaint and were employed by the  
9 alleged violators, Defendants.

10 110. Plaintiff seeks penalties under Labor Code §§ 2698 and 2699 for Defendants'  
11 violation of all Labor Code provisions included under Labor Code § 2699.5 and includes the  
12 penalty provisions, without limitation, based on the following California Labor Code sections:  
13 90.5, 200-204, 210, 226, 226.3, 226.7, 233, 246, 256, 510, 512, 558, 1182.12 et seq., 1174,  
14 1174.5, 1194, 1194.2, 1197, 1198, 1199, and 2699, *et seq.*

15 111. The penalties shall be allocated as follows: 75% to the Labor and Workforce  
16 Development Agency (LWDA) and 25% to the affected employee.

17 112. Employees also seek any and all penalties and remedies set forth in Labor Code  
18 § 558, which states:

19 (a) Any employer or other person acting on behalf of an  
20 employer who violates, or causes to be violated, a section of this  
21 chapter or any provision regulating hours and days of work in any  
22 order of the Industrial Welfare Commission shall be subject to a  
23 civil penalty as follows: (1) For any initial violation, fifty dollars  
24 (\$50) for each underpaid employee for each pay period for which  
25 the employee was underpaid in addition to an amount sufficient to  
26 recover underpaid wages. (2) For each subsequent violation, one  
hundred dollars (\$100) for each underpaid employee for each pay  
period for which the employee was underpaid in addition to an  
amount sufficient to recover underpaid wages. (3) Wages  
recovered pursuant to this section shall be paid to the affected  
employee.

27 (b) If upon inspection or investigation the Labor  
28 Commissioner determines that a person had paid or caused to be  
paid a wage for overtime work in violation of any provision of  
this chapter, or any provision regulating hours and days of work

1 in any order of the Industrial Welfare Commission, the Labor  
2 Commissioner may issue a citation. The procedures for issuing,  
3 contesting, and enforcing judgments for citations or civil penalties  
4 issued by the Labor Commissioner for a violation of this chapter  
5 shall be the same as those set out in Section 1197.1.

6 (c) The civil penalties provided for in this section are in addition to  
7 any other civil or criminal penalty provided by law.

8 113. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of  
9 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)  
10 per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee  
11 for each violation in a subsequent citation, for which the employer fails to provide the employee a  
12 wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” To the  
13 extent that Labor Code § 226.3 applies, Plaintiff and Employees also seeks such penalties on.

14 114. Plaintiff has exhausted his administrative remedy by sending a certified letter to the  
15 LWDA and Defendants postmarked on November 2, 2020. The LWDA has not provided notice of  
16 its intent to investigate the alleged violations within 65 calendar days of the postmark date of the  
17 letters.

### 18 **RELIEF REQUESTED**

19 WHEREFORE, Plaintiff prays for the following relief:

- 20 1. For an order certifying this action as a class action;
- 21 2. For compensatory damages in the amount of the unpaid minimum wages for work  
22 performed by Employees and unpaid overtime compensation from at least four (4) years prior to  
23 the filing of this action, as may be proven;
- 24 3. For liquidated damages in the amount equal to the unpaid minimum wage and  
25 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 26 4. For compensatory damages in the amount of all unpaid wages, including overtime  
27 and double-time pay, as may be proven;
- 28 5. For compensatory damages in the amount of the hourly wage made by Employees  
for each missed or deficient meal period where no premium pay was paid therefor from four (4)  
years prior to the filing of this action, as may be proven;

1           6.       For compensatory damages in the amount of the hourly wage made by Employees  
2 for each day requisite rest breaks were not provided or were deficiently provided where no  
3 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may  
4 be proven;

5           7.       For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;

6           8.       For penalties pursuant to Labor Code § 203 for all Employees who quit or were  
7 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

8           9.       For penalties pursuant to Labor Code § 1174.5, as may be proven;

9           10.      For restitution for unfair competition pursuant to Business & Professions Code  
10 § 17200 et seq., including disgorgement or profits, as may be proven;

11          11.      For penalties pursuant to Labor Code § 2699, *et seq.*, as may be proven;

12          12.      For an order enjoining Defendants and their agents, servants, and employees, and  
13 all persons acting under, in concert with, or for them, from acting in derogation of any rights or  
14 duties adumbrated in this Complaint;

15          13.      For facilitated Notice under 29 USC § 216(b), compensation pursuant to the FLSA,  
16 29 U.S.C. §§ 201, 206, 207, et seq., conditional and final certification of a Collective Action, and  
17 for interest on any compensatory damages, and attorneys' fees, interest, and costs of suit pursuant  
18 to 29 U.S.C. § 216(b);

19          14.      For all general, special, and incidental damages as may be proven;

20          15.      For an award of pre-judgment and post-judgment interest;

21          16.      For an award providing for the payment of the costs of this suit;

22          17.      For an award of attorneys' fees; and

23          18.      For such other and further relief as this Court may deem proper and just.

24 ///

25 ///

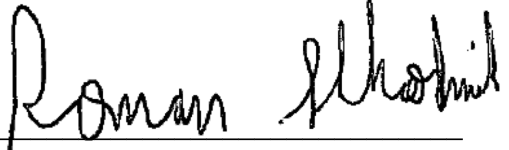
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1 DATED: September 22, 2021

DAVID YEREMIAN & ASSOCIATES, INC.

2  
3 By 

4 David Yeremian  
5 Roman Shkodnik  
6 Attorneys for Plaintiff  
7 KEVIN BECERRA  
8 and the putative class  
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DATED: September 22, 2021

By Roman Elshahhat  
David Yermian

David Yeremian  
Roman Shkodnik  
Attorneys for Plaintiff  
KEVIN BECERRA  
and the putative class

# EXHIBIT B

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SAN DIEGO

***Becerra v. Hugo Boss Retail, Inc.***  
**Case No. 37-2021-00002933-CU-OE-CTL**

**NOTICE OF CLASS ACTION SETTLEMENT**

«BarcodeString»  
SIMID «SIMID»  
ATTN: «FirstName» «LastName»  
«Address1» «Address2»  
«City» «Abbrev» «Zip»

**PLEASE READ THIS NOTICE CAREFULLY: IT INFORMS YOU ABOUT YOUR LEGAL RIGHTS**

**TO: All current and former non-exempt or hourly paid employees of Defendant employed in California at any time from May 21, 2018, through [REDACTED].**

**1. *Why Have I Received This Notice?***

This Notice was sent to inform you that the Superior Court of the State of California for the County of San Diego has preliminarily approved the terms of a settlement in lawsuits filed against Hugo Boss Retail, Inc. (“Hugo Boss” or “Defendant”) by a former employee named Kevin Becerra seeking recovery of alleged unpaid minimum and overtime wages, meal and rest period premiums, and related penalties and interest. Hugo Boss’ records indicate that you may be a Settlement Class Member. The settlement will resolve all Settlement Class Members’ claims described below during May 21, 2018, through [REDACTED] (“Settlement Class Period”).

A Preliminary Approval Hearing was held on \_\_\_\_\_, at \_\_\_\_\_ a.m., in the Superior Court of the State of California, County of San Diego. The Court preliminarily approved the settlement reached by the Parties and directed that you and the other Settlement Class Members receive this Notice.

The Court will hold a Final Approval Hearing concerning the proposed settlement on [REDACTED], 2021, at \_\_\_\_\_ a.m., in Department C-65 of the Superior Court of the State of California, County of San Diego, the Hon. Ronald F. Frazier, Judge presiding, located at 330 W. Broadway, San Diego, California 92101.

**2. *What Is This Case About?***

Plaintiff Kevin Becerra (“Plaintiff”), individually and on behalf of all other persons who have been employed by Hugo Boss in the Company’s California retail store locations at any time between May 21, 2018 through [REDACTED], filed two actions against Hugo Boss in the Superior Court for the State of California, County of San Diego, Case No. 37-2021-00002933-CU-DE-CTL, on January 21, 2021 and Case No. 37-2020-00040096-CU-OE-CTL, on November 3, 2020 (collectively the “Action”). Plaintiff alleges that Hugo Boss violated California state labor laws as a result of their 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) keep required payroll records; (5) provide employees with accurate, itemized wage statements; and (6) provide employees with suitable seating.

Hugo Boss denies all of the allegations made by Plaintiff in the Action and denies that it is liable or owes damages or other compensation or remedies to anyone with respect to the alleged facts or causes of action asserted in the Action.

### **3. Am I a Settlement Class Member?**

You are a Settlement Class Member if you worked as a non-exempt hourly employee for Defendant at any retail store location in the state of California, at any time from May 21, 2018, through [REDACTED].

### **4. How Does This Class Action Settlement Work?**

Plaintiff sued on behalf of other employees who allegedly have similar claims. Plaintiff and these other employees comprise a “Settlement Class” and are “Settlement Class Members.” The settlement of these lawsuits resolves the wage and hour claims of all Settlement Class Members, except for those who exclude themselves from the Settlement Class. Settlement Class Members who do not exclude themselves are eligible to receive a portion of the Net Settlement Proceeds. After deduction of Court-approved expenses, all remaining amounts from the Net Settlement Proceeds shall be distributed to each Class Member based on the number of work weeks each Class Member worked during the Settlement Class Period of May 21, 2018 to [REDACTED]. Any potential Class Member who validly requests to be excluded from the Settlement will no longer be a participating Settlement Class Member, will not be entitled to any recovery under this Settlement (except to the extent that the PAGA Settlement is approved and the Class Member is entitled to receive a share of the PAGA payment), and will not be bound by the terms of the Settlement or have any right to object, appeal, or comment thereon.

The Court has not decided in favor of Plaintiff or Hugo Boss. Instead, both sides agreed to resolve the lawsuit with no decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, all parties avoid the risks and cost of a trial, and the people affected will receive compensation quickly. Plaintiff and Plaintiff’s attorneys believe that the settlement is in the best interests of the Settlement Class.

Hugo Boss denies the allegations of wrongdoing and violations of law alleged and further denies any liability whatsoever to Plaintiff or the Settlement Class. Hugo Boss is settling the lawsuit as a compromise.

The Court file has the settlement documents which explain the settlement in greater detail. The Court must review the terms of the settlement and determine if it is fair and reasonable to the Settlement Class.

### **5. What Are My Options?**

The purpose of this Notice is to inform you of the proposed settlement and of your options. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are explained below.

**STAY IN THE CLASS:** If you do nothing, you stay in this lawsuit, and if the Court grants final approval of the settlement, you will receive a proportional share of the Net Settlement Proceeds based on the number of weeks you worked in a relevant position during the Settlement Class Period. In exchange, you will be deemed to have released or waived the following claims (“Released Claims): all claims, rights, demands, liabilities, and causes of action, arising from, or related to, the claims that were alleged in the operative complaint and the LWDA letters or that could have been alleged based on the facts asserted in the operative complaint or LWDA letters, (including the proposed First

Amended Complaint and amended LWDA letters), which included claims for unpaid wages, minimum wage, overtime premiums, meal and rest breaks (and related premiums), suitable seating claims, failure to maintain records, inaccurate wage statements, waiting time penalties, and unfair business practices / PAGA based upon the same, and includes claims under Labor Code sections 90.5, 200-204, 210, , 226, 226.3, 226.7, 233, 246, 256, 510, 512, 558, 1182.12 et seq., 1174, 1174.5, 1194, 1194.2, 1197, 1198, 1199, and 2698 et seq., and the applicable CA wage orders, and Bus. & Prof. Code sections 17200 et seq., as well as any claims that could have been pled which relate to such claims or arise from the same or similar facts concerning the Plaintiff and Covered Class Members, as well as any claims under the FLSA, California Labor Code and California Industrial Welfare Commission Wage Orders that were alleged or which could have been alleged under the same or similar facts, allegations and/or claims pleaded in the Action and Related Action or any of Plaintiff's letters (or attachment(s)) to the LWDA arising during the Class Period or PAGA Period.

To ensure you receive your payment, all you need to do is keep the Settlement Administrator informed of your current mailing address. Once the Court grants final approval of the Settlement, the Administrator will mail your check to the address on file for you.

**ASK TO BE EXCLUDED:** 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, address, telephone number and last four digits of your Social Security Number. Sign, date, and mail or fax the request for exclusion to:

*Becerra v. Hugo Boss Retail, Inc.* Class Action Settlement

c/o [SETTLEMENT ADMINISTRATOR]

\_\_\_\_\_  
\_\_\_\_\_

The written request to be excluded must be postmarked or faxed no later than \_\_\_\_\_, 2021. If you submit a request for exclusion which is not postmarked or faxed by \_\_\_\_\_, 2021, your request for exclusion will be rejected, and you will not be eligible to object to the terms of the Settlement or receive money under the Settlement except for that portion of the Settlement allocated to PAGA penalty payments. Except for the PAGA release, you will not be bound by the terms of the Settlement. Individuals otherwise meeting the definition of Class Members who exclude themselves from the Class pursuant shall still receive a payment for the amount of each such individual's share of the PAGA Payment that was included by the Settlement Administrator in calculating the Claim Amount and shall still be bound by the PAGA release.

**OBJECT:** **You may file a legal objection to the proposed settlement.** For your objection to be valid, it must include: (i) your full name, signature, address, and telephone number, (ii) a written statement of all grounds for the objection accompanied by any legal support for such objection; and (iii) copies of any papers, briefs, or other documents upon which

the objection is based, if any documents are a basis of the objection. The objection must be mailed to the Settlement Administrator at [settlement administrator's address].

All objections must be received by the Settlement Administrator by not later than \_\_\_\_\_ 2021. Late objections will not be considered. 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.

#### **6. What Does the Settlement Provide?**

The proposed Settlement provides for a cash payment by Defendant of up to a maximum of \$350,000 to fully and finally resolve all claims in the Action (referred to as the "Gross Fund"). The total amount to be distributed to Class Members who do not exclude themselves from the settlement will be the value of the Gross Settlement Fund after deducting for the following (the "Net Settlement Proceeds"): (a) Settlement Administrator Costs not to exceed \$9,664.91; (b) a Class/PAGA Representative Service Award to Plaintiff not to exceed \$7,500 for all work and efforts expended in prosecuting this case, and for undertaking the risks of costs (in the event the outcome of this Action was not favorable) and a general release of all claims; (c) Class Counsel's attorney's fees not to exceed \$115,500, plus the reimbursement of costs and expenses associated with Class Counsel's litigation and settlement of the Action, not to exceed \$15,000; (d) payment of \$18,750 to the California Labor and Workforce Development Agency ("LWDA") in connection and accordance with the Labor Code Private Attorneys General Act of 2004 ("PAGA"); and (e) \$6,250 will become part of the Net Settlement Amount and paid to Class Members subject to the PAGA Settlement Period (regardless of whether they object to or are excluded from the non-PAGA portion of the Settlement), based upon workweeks worked during the PAGA period.

This Gross Fund has been agreed to by Plaintiff and Defendant based on the aggregation of the agreed-upon settlement. In no event will Defendant be liable for more than the Gross Fund. There will be no reversion of the Gross Fund to Defendant. Defendant will be separately responsible for any employer payroll taxes required by law, which shall not be paid from the Gross Fund.

**Class Counsel's attorney's fees and costs and Plaintiff's Service Award remain subject to Court approval.**

#### **7. How Much Will My Settlement Payment Be?**

Your estimated share of the settlement is [redacted] and is based a proportion of the number of weeks you worked for Hugo Boss during the Settlement Class Period ("Qualifying Workweeks") as compared to the total Qualifying Workweeks of all Class Members for the same period.

Based upon Hugo Boss records, your Qualifying Workweeks is determined to be [redacted] weeks. If this information appears correct, you do not need to do anything further to receive your Individual Settlement Payment. If you disagree with your number of Qualifying Workweeks, please see below.

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, 33% of each Individual Settlement Payment will be allocated as wages for which IRS Forms W-2 will be issued, and 67% will be allocated as non-wages for which IRS Forms 1099-MISC will be issued.

To the extent that a check is (1) undeliverable, or (2) uncashed 180 days after the date listed on the check, the check shall be sent to the charitable organization CASA of San Diego County, a child advocacy program that places Court Appointed Special Advocates For Children.

**8. What if I Believe My Qualifying Workweeks Is Inaccurate?**

If you believe your number of Qualifying Workweeks is inaccurate, you may dispute it by sending a letter to \_\_\_\_\_ [INSERT ADDRESS], no later than \_\_\_\_\_, 2021. Be sure to include your name, address, telephone number, last four digits of your social security number, a statement what and why you are disputing, and attaching a copy of any documentation you want to include to support your dispute.

**9. Who Are the Attorneys Representing the Parties?**

| <b>Attorneys for Plaintiff and the Settlement Class</b>                                                                                                                                                                                                                | <b>Attorneys for Hugo Boss</b>                                                                                                                                                                                                                                                                              |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| David Yeremian<br>Roman Shkodnik<br>David Yeremian & Associates, Inc.<br>535 N. Brand Blvd., Suite 705<br>david@yeremianlaw.com<br>roman@yeremianlaw.com<br><br>Emil Davtyan<br>Davtyan Law Firm, Inc.<br>880 E. Broadway<br>Glendale, CA 91205<br>emil@davtyanlaw.com | Gregory G. Iskander<br>Littler Mendelson, P.C.<br>Treat Towers<br>1255 Treat Boulevard, Suite 600<br>Walnut Creek, CA 94597<br>giskander@littler.com<br><br>Elisa Nadeau<br>Littler Mendelson, P.C.<br>50 West San Fernando Street, 7 <sup>th</sup> Floor<br>San Jose, CA 95113-2434<br>enadeau@littler.com |

The Court has decided that David Yeremian & Associates, Inc. and Davtyan Law Firm, Inc. are qualified to represent you and all other Settlement Class Members. These law firms are referred to as “Class Counsel.”

You do not need to hire your own attorney because Class Counsel is working on your behalf. But, if you want your own attorney, you may hire one at your own cost.

**10. Notice of Hearing on Final Approval**

You are hereby notified that a Final Approval Hearing will be held before the Hon. \_\_\_\_\_, on \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_ a.m., in Department \_\_\_\_\_ of the Superior Court of the State of California, County of San Diego, located at \_\_\_\_\_, San Diego, California, \_\_\_\_\_ to determine whether the proposed Settlement is fair, reasonable, and adequate, and should be finally approved by the Court. You are not required to attend the Hearing, but you are welcome to do so.

**11. How do I get More Information?**

This notice summarizes the proposed settlement terms. If you are interested, more details are in the Settlement Agreement and related papers on file with the Court.

**WHAT IF I HAVE ADDITIONAL QUESTIONS?**

If you have any additional questions about the Settlement, you may contact the Settlement Administrator:

*Becerra v. Hugo Boss Retail, Inc.* Class Action Settlement  
c/o [SETTLEMENT ADMINISTRATOR]  
Toll-Free Telephone Number: [REDACTED]

PLEASE DO NOT TELEPHONE THE COURT OR CLERK'S OFFICE FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS.

PLEASE ALSO DO NOT CONTACT DEFENDANT OR THEIR REPRESENTATIVES FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS.