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7 Attorneys for Plaintiff Jonathan Rojas, individually,
and on behalf of all others similarly situated.
8
9

[Additional counsel listed on following page]

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**
12

13 JONATHAN ROJAS, individually and on behalf
14 of all others similarly situated,

15 Plaintiff,

16 vs.

17 26 CALIFORNIA WHOLESALE; and DOES 1
18 through 20, inclusive,

19 Defendants.
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Case No. 20STCV49652

Assigned For All Purposes To:
Hon. Daniel J. Buckley
Department 1

JOINT STIPULATION OF SETTLEMENT

1 **26 CALIFORNIA WHOLESALE**
2 DAVID E. KOERNER, State Bar No. 177280
3 davidk@kittrich.com
4 1585 West Mission Boulevard
5 Pomona, California 91766
6 Telephone: (714) 736-2039
7 Facsimile: (714) 736-2000
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28 In-house Attorney for Defendant
26 California Wholesale

1 It is stipulated and agreed by and among the undersigned Parties, subject to the approval of
2 the Court pursuant to the California Rules of Court, that the Settlement of this Action shall be
3 effectuated upon and subject to the following terms and conditions. Capitalized terms used herein
4 shall have the meanings set forth in Article I or as defined elsewhere in this Joint Stipulation of
5 Settlement (“Agreement” or “Settlement”).

6 This Agreement is made by and between Named Plaintiff Jonathan Rojas (“Named Plaintiff”) and the Class Members, on the one hand, and Defendant 26 California Wholesale (“Golden Rain” or
7 “Defendant”), on the other hand. Named Plaintiff and Defendant collectively are referred to in this
8 Agreement as “the Parties.”

10 The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and
11 concluded by agreement of Defendant to pay the settlement amount of Three Hundred Sixty-Eight
12 Thousand Dollars (\$368,000.00) as provided in Section 3.06(a) below (“Gross Settlement Amount”) pursuant to the terms and conditions of this Agreement and for the consideration set forth herein,
13 including but not limited to, a release of all claims by Named Plaintiff and the Class Members as set
14 forth herein.
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16 ARTICLE I

17 DEFINITIONS

18 Unless otherwise defined herein, the following terms used in this Agreement shall have the
19 meanings ascribed to them as set forth below:

20 a. “Action” means the action described as follows: *Jonathan Rojas, individually and on*
21 *behalf of all others similarly situated v. 26 California Wholesale; and DOES 1 through 20,*
22 *inclusive,”* Case No. 20STCV49652, commenced on December 30, 2020, in the Superior Court of
23 the State of California for the County of Los Angeles.

24 b. “Agreement” means this Joint Stipulation of Settlement, including the attached
25 Exhibit(s).

26 c. “Class” means all current and former non-exempt employees who are or were
27 employed by Defendant in California at any time during the Class Period.

28 d. “Class Counsel” means the attorneys for the Class and the Class Members, who are:

1 AEGIS LAW FIRM, PC
Kashif Haque
2 Samuel A. Wong
Jessica L. Campbell
3 9811 Irvine Center Drive, Suite 100
Irvine, California 92618
4 Telephone: (949) 379-6250
5 Facsimile: (949) 379-6251

6 e. "Class List" means a list based on Defendant's business records that identifies each
7 Class Member's name, last known home or mailing address, Social Security number or, as
8 applicable, other taxpayer identification number, dates of employment, and the number of Qualifying
9 Workweeks worked during the Class Period.

10 f. "Class Member(s)" means all members of the Class.

11 g. "Class Period" means July 5, 2016 through October 22, 2021.

12 h. "Court" means the California Superior Court for the County of Los Angeles, where
13 the Action is currently pending.

14 i. "Date of Finality" means the later of the following: (1) the date the Final Order is
15 signed if no objections are filed to the Settlement; (2) if objections are filed and overruled, and no
16 appeal is taken of the Final Order, sixty-five (65) days after the Final Order; or (3) if an appeal or
17 other judicial review is taken from the Court's overruling of objections to the settlement, ten (10)
18 days after the appeal is withdrawn or after an appellate decision affirming the Final Order becomes
19 final.

20 j. "Defendant" means Defendant 26 California Wholesale.

21 k. "Defense Counsel" means counsel for Defendant:

22 **26 CALIFORNIA WHOLESALE**

23 David E. Koerner
In-house Counsel
davidk@kittrich.com
24 1585 West Mission Boulevard
Pomona, California 91766
25 Telephone: (714) 736-2039
26 Facsimile: (714) 736-2000
27
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1 l. “Disposition” means the method by which the Court approves the terms of the
2 Settlement and retains jurisdiction over its enforcement, implementation, construction,
3 administration, and interpretation.

4 m. “Final Order Approving Settlement of Class Action” or “Final Order” means the final
5 formal court order signed by the Court following the Final Fairness and Approval Hearing in
6 accordance with the terms herein, approving this Agreement.

7 n. “Gross Settlement Amount” means Three Hundred Sixty-Eight Thousand Dollars and
8 Zero Cents (\$368,000.00) to be paid by Defendant as provided by this Agreement to settle this
9 Action. All payments to the Class, administration costs, attorney’s fees and costs, and Incentive
10 Awards, pursuant to Section 3.07(a) below, shall be paid out of the Gross Settlement Amount. The
11 employer’s share of payroll taxes arising from the payments made under this settlement shall be paid
12 by Defendant separate from and in addition to the Gross Settlement Amount. The Gross Settlement
13 Amount is subject to a pro rata increase pursuant to Section 3.04(e) below. No part of the Gross
14 Settlement Amount shall revert to Defendant.

15 o. “Incentive Award” means a monetary amount of up to Five Thousand Dollars
16 (\$5,000.00) for the Named Plaintiff, subject to Court approval, in recognition of his effort and work
17 in prosecuting the Action on behalf of Class Members, and for his general release of claims.

18 p. “Individual Settlement Payment(s)” means each Participating Class Member’s
19 respective share of the Net Settlement Amount. Individual Settlement Payments will be determined
20 by the calculations provided in this Agreement.

21 q. “LWDA” means The State of California Labor and Workforce Development Agency.

22 r. “LWDA Payment” means 75% of the \$10,000 allocated to the settlement of PAGA
23 claims which, subject to Court approval, will be paid to the LWDA pursuant to Section 3.07(e) of
24 this Agreement, as provided for below.

25 s. “Motion for Final Approval” means Plaintiff’s submission of a written motion,
26 including any evidence as may be required for the Court to conduct an inquiry into the fairness of
27 the Settlement as set forth in this Agreement, to conduct a Final Fairness and Approval Hearing, and
28 to enter a Final Order in this Action.

1 t. "Motion for Preliminary Approval" means Plaintiff's submission of a written motion,
2 including any evidence as may be required for the Court to grant preliminary approval of the
3 Settlement as required by Rule 3.769 of the California Rules of Court.

4 u. "Named Plaintiff" means Jonathan Rojas.

5 v. "Net Settlement Amount" means the Gross Settlement Amount less Court-approved
6 administration costs, Class Counsels' attorney's fees and costs, Incentive Awards, and LWDA
7 Payment, pursuant to Section 3.07(a)-(f) below.

8 w. "Non-Participating Class Member(s)" means any Class Member(s) who submit to the
9 Settlement Administrator a valid and timely written request to be excluded from the Class pursuant
10 to Section 3.04(b) below.

11 x. "Notice Packet" means the Notice of Proposed Class Action Settlement in a form
12 substantially similar to the Notice Packet attached hereto as **Exhibit A**, subject to Court approval.

13 y. "PAGA" means the California Private Attorneys General Act of 2004, which is
14 codified in California Labor Code §§ 2698 *et seq.*

15 z. "PAGA Settlement Amount" means the portion of the Gross Settlement Amount
16 allocated to the resolution of PAGA Group Members' claims arising under PAGA. The Parties have
17 agreed that the PAGA Settlement Amount is Ten Thousand Dollars (\$10,000), subject to Court
18 approval. Of the PAGA Settlement Amount, 75% will be considered the LWDA Payment, and the
19 remaining 25% will be added to the Net Settlement Amount and distributed to PAGA Group
20 Members.

21 aa. "PAGA Group Members" means all Class Members employed by Defendant at any
22 time between December 29, 2019 through October 22, 2021 ("PAGA Period").

23 bb. "Participating Class Member(s)" is defined as a Class Member who does not timely
24 exclude himself or herself from the Settlement and will therefore receive his or her share of the Net
25 Settlement Amount automatically without the need to return a claim form. Each Participating Class
26 Member will be paid his/her Individual Settlement Payment.

27 cc. "Preliminary Approval Date" means the date the Court preliminarily approves the
28 Settlement embodied in this Agreement.

dd. "Qualified Settlement Fund" or "QSF" means a fund within the meaning of Treasury Regulation § 1.468B-1, 26 CFR § 1.468B-1 *et seq.*, that is established by the Settlement Administrator for the benefit of Participating Class Members.

ee. "Qualifying Workweeks" means the number of weeks that Class Members worked for Defendant as non-exempt employees during the Class Period.

ff. "Released Parties" means Defendant.

gg. "Response Deadline" means the deadline by which Class Members must postmark or fax to the Settlement Administrator requests for exclusion or written notices of objection. The Response Deadline will be sixty (60) calendar days after the initial mailing of the Notice Packet by the Settlement Administrator, unless the sixth (60th) calendar day falls on a Sunday or federal holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open. The Response Deadline will be extended as set forth herein if there is a re-mailing.

hh. "Settlement Administration Costs" means all costs incurred by the Settlement Administrator in administration of the Settlement, including, but not limited to, mailing of notice to the class, calculation of Individual Settlement Payments, generation of Individual Settlement Payment checks and related tax reporting forms, administration of unclaimed checks, and generation of checks to Class Counsel for attorneys' fees and costs, to Named Plaintiff for his Incentive Award, and to the LWDA. The Settlement Administration Costs shall be paid from the Gross Settlement Amount.

ii. "Settlement Administrator" means ILYM Group, Inc., which the Parties have agreed will be responsible for the administration of the Individual Settlement Payments to be made by Defendant from the Gross Settlement Amount and related matters under this Agreement.

ARTICLE II

CONTINGENT NATURE OF THE AGREEMENT

Section 2.01: Stipulation of Class Certification for Settlement Purposes

Because the Parties have stipulated to the certification of the Class with respect to all causes of action alleged in the Action for settlement purposes only, this Agreement requires preliminary and

1 final approval by the Court. Accordingly, the Parties enter into this Agreement on a conditional basis.
2 This Agreement is contingent upon the approval and certification by the Court. If the Date of Finality
3 does not occur, the fact that the Parties were willing to stipulate for the purposes of this Agreement
4 to a Class shall have no bearing on, nor be admissible in connection with, the issue of certification
5 of the Class with respect to all causes of action alleged in the Action. Defendant does not consent to
6 certification of the Class for any purpose other than to effectuate settlement of the Action. If the Date
7 of Finality does not occur, or if Disposition of this Action is not effectuated, any certification of the
8 Class as to Defendant will be vacated and Named Plaintiff, Defendant, and the Class will be returned
9 to their positions with respect to the Action as if the Agreement had not been entered into. In the
10 event that the Date of Finality does not occur: (a) any Court orders preliminarily or finally approving
11 certification of any class contemplated by this Agreement shall be null, void, and vacated, and shall
12 not be used or cited thereafter by any person or entity; and (b) the fact of the settlement reflected in
13 this Agreement, the fact that Defendant did not oppose the certification of a Class under this
14 Agreement, or that the Court preliminarily approved the certification of the Class, shall not be used
15 or cited thereafter by any person or entity, including in any manner whatsoever, including without
16 limitation any contested proceeding relating to the certification of any class. If the Date of Finality
17 does not occur, this Agreement shall be deemed null and void, shall be of no force or effect
18 whatsoever, and shall not be referred to or used for any purpose whatsoever. Defendant expressly
19 reserves the right to challenge the propriety of class certification in the Action for any purpose, if the
20 Date of Finality does not occur.

21 The Parties and their respective counsel shall take all steps that may be requested by the Court
22 relating to the approval and implementation of this Agreement and shall otherwise use their
23 respective best efforts to obtain Court approval and implement this Agreement. If the Court does not
24 grant the Motion for Preliminary Approval and/or the Motion for Final Approval, the Parties agree
25 to meet and confer to address the Court's concerns. If the Parties are unable to agree upon a
26 resolution, the Parties agree to seek the assistance of mediator Jill R. Sperber, Esq. to resolve the
27 dispute.

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ARTICLE III

PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF THE SETTLEMENT

The procedure for obtaining Court approval of and implementing this Agreement shall be as follows:

Section 3.01: Motion for Conditional Class Certification and Preliminary Approval

Named Plaintiff will bring a motion before the Court for an order conditionally certifying the Class to include all claims pled in the Action based on the preliminary approval of this Agreement. The date that the Court grants preliminary approval of this Agreement will be the "Preliminary Approval Date."

Section 3.02: The Settlement Administrator

The Parties have chosen ILYM Group, Inc. to administer this Settlement and to act as the Settlement Administrator, including but not limited to distributing and responding to inquiries about the Notice Packet, determining the validity of exclusions/opt-outs, calculating the Net Settlement Amount and the Individual Settlement Payments, issuing the Individual Settlement Payment checks and distributing them to Participating Class Members, establishing and maintaining the QSF, and issuing the payment to Class Counsel for attorneys' fees and costs, the Incentive Award check to Named Plaintiff, and the employer payroll taxes to the appropriate taxing authorities. The Settlement Administrator shall expressly agree to all of the terms and conditions of this Agreement.

All costs of administering the Settlement, including but not limited to all costs and fees associated with preparing, issuing and mailing any and all notices to Class Members and/or Participating Class Members, all costs and fees associated with computing, processing, reviewing, and mailing the Individual Settlement Payments, all costs and fees associated with preparing any tax returns and any other filings required by any governmental taxing authority or agency, all costs and fees associated with preparing any other checks, notices, reports, or filings to be prepared in the course of administering disbursements from the Net Settlement Amount, and any other costs and fees incurred and/or charged by the Settlement Administrator in connection with the execution of its duties under this Agreement ("Settlement Administration Costs"), shall be paid to the Settlement Administrator from the Gross Settlement Amount.

1 **Section 3.03: Notice to Class Members**

2 No later than five (5) business days after the Preliminary Approval Date, Defendant will
3 provide the Settlement Administrator with a "Class List" in electronic format based on its business
4 records, identifying the names of the Class Members, their last known home addresses, Social
5 Security numbers or, as applicable, other taxpayer identification number, their dates of employment
6 and weeks worked during the Class Period.

7 Within ten (10) business days of receiving a Class List from Defendant, the Settlement
8 Administrator will send Class Members, by first-class mail, at their last known address, the Court
9 approved Notice Packet, including notice of this Settlement and of the opportunity to opt out of the
10 Settlement Class. The Notice Packet will include a calculation of the Class Member's approximate
11 share of the Net Settlement Amount. Class Members will have sixty (60) days from the date of
12 mailing in which to postmark objections or requests for exclusion. Prior to the initial mailing, the
13 Settlement Administrator will check all Class Member addresses against the National Change of
14 Address database and shall update any addresses before mailing. The Settlement Administrator will
15 skip trace and re-mail all returned, undelivered mail within five (5) days of receiving notice that a
16 Notice Packet was undeliverable. If a Class Member's notice is re-mailed, the Class Member shall
17 have fifteen (15) calendar days from the re-mailing, or sixty (60) calendar days from the date of the
18 initial mailing, whichever is later, in which to postmark objections or requests for exclusion. Class
19 Members shall not be required to submit claim forms in order to receive a proportional share of the
20 Net Settlement Amount.

21 If the Notice Packet is returned with a forwarding address, the Settlement Administrator shall
22 re-mail the Notice Packet to the forwarding address. With respect to those Class Members whose
23 Notice Packet is returned to the Settlement Administrator as undeliverable, the Settlement
24 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or
25 mass search on LexisNexis or comparable databases based on set criteria and, if another address is
26 identified, shall mail the Notice Packet to the newly identified address. It is the intent of the parties
27 that reasonable means be used to locate Class Members and that the Settlement Administrator be
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1 given discretion to take steps in order to facilitate notice of the Settlement and delivery of the
2 Individual Settlement Payments to all Participating Class Members.

3 If the Notice Packet is re-mailed, the Settlement Administrator will note for its own records
4 and notify Class Counsel and Defense Counsel of the date of each such re-mailing as part of a weekly
5 status report provided to the Parties.

6 In the event a Class Member's Notice Packet remains undeliverable sixty (60) calendar days
7 after the Notice Packet was initially mailed, the Settlement Administrator will not mail the Class
8 Member's Individual Settlement Payment. The Settlement Administrator will hold the Class
9 Member's Individual Settlement Payment during the check cashing period on behalf of the Class
10 Member. If at the conclusion of the check cashing period the Class Member's Notice Packet and
11 Individual Settlement Payment remain undeliverable and/or unclaimed and uncashed, the Settlement
12 Administrator will distribute the funds from unclaimed/uncashed checks in accordance with the
13 procedures set forth in Section 3.07(g) below.

14 No later than twenty (20) court days prior to the Final Fairness and Approval Hearing, the
15 Settlement Administrator shall provide Defense Counsel and Class Counsel with a declaration
16 attesting to completion of the notice process, including any attempts to obtain valid mailing addresses
17 for and re-sending of any returned Notice Packets, as well as the number of valid requests for
18 exclusion and objections that the Settlement Administrator received.

19 **Section 3.04: Responses to Notice**

20 **a. Class Member Disputes**

21 If any Class Member disagrees with Defendant's records as to his or her Qualifying
22 Workweeks during the Class Period as reflected in the Notice Packet, the Class Member shall set
23 forth in writing the Qualifying Workweeks he/she claims to have worked during the Class Period
24 and submit such writing to the Settlement Administrator by the Response Deadline, along with any
25 supporting documentation. The Notice will also provide a method for the Class Member to challenge
26 the employment data on which his or her Individual Settlement Payment is based. The Settlement
27 Administrator shall contact the Parties regarding the dispute and the Parties will work in good faith
28 to resolve it. If the Parties are unable to resolve the dispute, the Settlement Administrator will be the

1 final arbiter of the Qualifying Workweeks for each Class Member during the Class Period based on
2 the information provided to it.

3 **b. Requests for Exclusion from Class**

4 In order for any Class Member to validly exclude himself or herself from the Class and this
5 Settlement (*i.e.*, to validly opt out), a written request for exclusion must be signed by the Class
6 Member or his or her authorized representative, and must be sent to the Settlement Administrator,
7 postmarked no later than the Response Deadline (or fifteen (15) days after the Settlement
8 Administrator re-mails the Notice to the Class Member, whichever is later). The Notice Packet shall
9 contain instructions on how to validly exclude himself or herself from the Class and this Settlement
10 (*i.e.*, opt out), including the language to be used in a request for exclusion. The date of the initial
11 mailing of the Notice Packet, and the date the signed request for exclusion was postmarked, shall be
12 conclusively determined according to the records of the Settlement Administrator. Any Class
13 Member who timely and validly requests exclusion from the Class and this Settlement will not be
14 entitled to any Individual Settlement Payment, will not be bound by the terms and conditions of this
15 Agreement, and will not have any right to object, appeal, or comment thereon.

16 Any Class Member who fails to timely submit a request for exclusion shall automatically be
17 deemed a Class Member whose rights and claims with respect to the issues raised in the Action are
18 determined by the Court's Final Order Approving Settlement of Class Action, and by the other
19 rulings in the Action. Thus, said Class Member's rights to pursue any claims covered by the Action
20 and/or released in this Agreement will be extinguished.

21 **c. Objections to Settlement**

22 For any Class Member to object to this Agreement, or any term of it, the person making the
23 objection must not submit a request for exclusion (*i.e.*, must not opt out), and should send to the
24 Settlement Administrator, postmarked or faxed no later than the Response Deadline (or fifteen (15)
25 days after the Settlement Administrator re-mails the Notice to the Class Member, whichever is later),
26 a written statement of the grounds of objection, signed by the objecting Class Member or his or her
27 attorney, along with all supporting papers. The date of the initial mailing of the Notice Packet, and
28 the date the signed objection was postmarked, shall be conclusively determined according to the

1 records of the Settlement Administrator. The Settlement Administrator shall send any objections it
2 receives to Defense Counsel and Class Counsel within three (3) business days of receipt. Class
3 Members may also appear at the final approval hearing to object. The Court retains final authority
4 with respect to the consideration and admissibility of any Class Member objections.

5 **d. Encouragement of Class Members**

6 The Parties to this Agreement and the counsel representing such Parties shall not, directly or
7 indirectly, through any person, encourage or solicit any Class Member to exclude him or herself from
8 this Settlement (opt out), or to object to it. However, Class Counsel may respond to inquiries from
9 Class Members.

10 **e. Right of Plaintiff to Adjust Gross Settlement Amount**

11 Defendant has estimated the number of Class Members as 110 and the number of workweeks
12 as 9,200. If the number of Class Members or the number of workweeks increases by more than 10%
13 as of the end of the Class Period, the Gross Settlement Amount will increase pro rata per additional
14 class member or additional workweek, only to the extent that it exceeds the 10% variance, whichever
15 is greater.

16 **Section 3.05: Final Fairness and Approval Hearing**

17 On the date set forth in the Order for Preliminary Approval and Notice Packet, a Final
18 Fairness and Approval Hearing shall be held before the Court in order to (1) review this Agreement
19 and determine whether the Court should give it final approval, and (2) consider any objections made
20 and all responses by the Parties to such objections. At the Final Fairness and Approval Hearing, the
21 Parties shall ask the Court to grant final approval to this Agreement and shall submit to the Court a
22 Proposed Final Order Approving Settlement of Class Action.

23 **Section 3.06: Settlement Payment Procedures**

24 **a. Settlement Amount**

25 In exchange for the Released Claims set forth in this Agreement, Defendant agrees to pay the
26 Gross Settlement Amount in the amount of Three Hundred Sixty-Eight Thousand Dollars
27 (\$368,000.00), subject to a pro rata increase under the condition set forth in Section 3.04(e). The
28 Gross Settlement Amount includes all Individual Settlement Amounts to Participating Class

1 Members, all administration costs, Class Counsel's attorney's fees and costs, PAGA Settlement
2 Amount, and the Incentive Payments.

3 The Gross Settlement Amount shall be paid in three (3) equal installments of \$122,666.66
4 each, 60 days apart starting 60 days after final approval. In other words, the first installment is due
5 within 60 days of court approval, the second due 60 days after that and the third due 60 days after
6 that (so full payment within 6 months of court approval). However, if Court approval occurs after
7 June 30, 2023, the entire GSA is due within 60 days of court approval.

8 Defendant shall transfer the Gross Settlement Amount plus Defendant's share of employer-
9 side payroll taxes, as set forth herein, into a QSF established by the Settlement Administrator either
10 directly or by sending the funds to the Settlement Administrator to be deposited and distributed. The
11 Settlement Administrator will use these funds to fund payment of the Individual Settlement Payments
12 to Participating Class Members, Class Counsel's attorneys' fees and costs, the Incentive Awards, the
13 LWDA Payment, and the Settlement Administration Costs.

14 Within ten (10) court days after receiving Defendants' final payment, funding the Gross
15 Settlement Amount in full, the Settlement Administrator will pay the Individual Settlement Payments
16 to Participating Class Members, Class Counsel's attorneys' fees and costs, LWDA Payment, the
17 Incentive Awards, and employer and employee tax withholdings applicable to the Net Settlement
18 Amount allocated to wages. Prior to this distribution, the Settlement Administrator will perform a
19 search based on the National Change of Address Database to update and correct for any known or
20 identifiable address changes.

21 **b. Payment of Attorneys' Fees and Costs**

22 Class Counsel shall submit an application for an award of attorneys' fees of up to one-third
23 of the Gross Settlement Amount, which, based on the current Gross Settlement Amount, is One
24 Hundred Twenty Two Thousand Six Hundred and Sixty-Six Dollars and Sixty-Seven Cents
25 (\$122,666.67). Class Counsel shall submit an application for an award of costs not to exceed Twenty
26 Thousand Dollars (\$20,000.00). Such application for attorneys' fees and costs shall be heard by the
27 Court at the Final Fairness and Approval Hearing. Defendant shall not object to or oppose any such
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1 application in these amounts. Class Counsel shall serve Defendant with copies of all documents
2 submitted in support of their application for an award of attorneys' fees and costs.

3 Any attorneys' fees and costs awarded to Class Counsel by the Court shall be paid from the
4 Gross Settlement Amount and shall not constitute payment to any Class Member(s). The attorneys'
5 fees and costs for Class Counsel approved by the Court shall encompass all work performed, costs,
6 and expenses related to the investigation, prosecution, and settlement of the Action incurred through
7 the Date of Finality. To the extent that the Court approves less than the amount of attorney's fees
8 and/or costs that Class Counsel requests, the difference between the requested and awarded amounts
9 will be reallocated to the Net Settlement Amount.

10 **c. Payment of Settlement Administration Costs**

11 The Settlement Administration Costs shall be paid out of the Gross Settlement Amount and
12 shall not constitute payment to any Participating Class Member(s). The amount shall not exceed
13 Twelve Thousand Dollars (\$12,000.00).

14 **d. Payment of Incentive Award to Named Plaintiff**

15 Subject to Court approval, the Named Plaintiff shall receive an Incentive Award of up to Five
16 Thousand Dollars (\$5,000.00), the request for which Defendant will not object to or oppose. The
17 Incentive Awards shall be paid out of the Gross Settlement Amount and shall not constitute payment
18 to any Participating Class Member(s) other than Named Plaintiff. To the extent that the Court
19 approves less than the amount of incentive award that Class Counsel request, the difference between
20 the requested and awarded amounts will be reallocated to the Net Settlement Amount.

21 Because it is the intent of the Parties that the Incentive Awards represent payment to Named
22 Plaintiff for his service to the Class Members, and not wages, the Settlement Administrator will not
23 withhold any taxes from the Incentive Award. The Incentive Award will be reported on a Form 1099,
24 which the Settlement Administrator will provide to Named Plaintiff and to the pertinent taxing
25 authorities as required by law.

26 **e. Payment to the Labor and Workforce Development Agency**

27 In consideration of claims made under PAGA, Class Counsel will request that the Court
28 approve allocation of Ten Thousand Dollars (\$10,000) of the Gross Settlement Amount to these

1 claims. Seventy-five percent (75%) of this payment will be paid to the California Labor and
2 Workforce Development Agency ("LWDA Payment"), and twenty-five percent (25%) will be paid
3 to the Net Settlement Amount for distribution to PAGA Group Members. Defendant will not oppose
4 this request. The entire PAGA Settlement Amount will be paid out of the Gross Settlement Amount.
5 The Court's adjustment, if any, of the amount allocated to Named Plaintiff's PAGA claim in the
6 Action, will not invalidate this Agreement.

7 **f. Payment of Individual Settlement Payments to Participating Class Members**

8 The Parties agree that the Net Settlement Amount shall be used to fund Individual Settlement
9 Payments. The Parties agree that the Net Settlement Amount shall be divided between all
10 Participating Class Members in proportion to the number of individual Qualifying Workweeks for
11 each Class Member. To calculate the minimum amount each Class Member will receive based on
12 their individual Qualifying Workweeks, the Net Settlement Amount will be divided by the total
13 number of Qualifying Workweeks by all Class Members during the Class Period and then allocated
14 on a pro rata basis. Qualifying Workweeks will be rounded up to the next whole integer. Each Class
15 Member's approximate Individual Settlement Payment amount will be included in his or her Notice
16 Packet. After final approval by the Court, the Net Settlement Amount will be dispersed to
17 Participating Class Members (those who did not exclude themselves) on a pro rata basis based on the
18 individual Qualifying Workweeks worked during the Class Period by each Participating Class
19 Member.

20 Each Individual Settlement Payment will represent wages and penalties allocated using the
21 following formula: 33% allocated to wages; 67% allocated to interest and penalties. The amounts
22 paid as wages shall be subject to all tax withholdings customarily made from an employee's wages
23 and all other authorized and required withholdings and shall be reported by W-2 forms. The
24 employer-side taxes will be paid separate from and in addition to the Gross Settlement Amount. The
25 amounts paid as penalties and interest shall be subject to all authorized and required withholdings
26 other than the tax withholdings customarily made from employees' wages and shall be reported by
27 IRS 1099 forms.

1 No later than ten (10) business days after receiving the Gross Settlement Amount from
2 Defendant, the Settlement Administrator shall prepare and mail the checks for the Individual
3 Settlement Payments to Participating Class Members. Individual Settlement Payments paid from the
4 Net Settlement Amount allocated to wages will be reduced by applicable employer and employee
5 tax withholdings, and the Settlement Administrator will issue a Form W-2 for the wage portion of
6 the Individual Settlement Payments. The Settlement Administrator will issue a Form 1099 to the
7 extent required by law for the interest and penalty portions of the Individual Settlement Payments.
8 Participating Class Members shall have 180 days from the date their Individual Settlement Payment
9 checks are dated to cash their Settlement checks. Any checks that are not cashed upon the expiration
10 of that 180-day time period will be void, and the uncashed funds shall be paid to the State Controller
11 Unclaimed Property Fund in the name of the Class Member for whom the funds are designated.

12 If a check is returned to the Settlement Administrator as undeliverable, the Settlement
13 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or
14 a mass search on LexisNexis or a comparable databases based on set criteria and, if another address
15 is identified, the Settlement Administrator shall mail the check to the newly identified address. If the
16 Settlement Administrator is unable to obtain a valid mailing address through this process, the
17 Settlement Administrator will tender the funds from the undeliverable checks to the State Controller
18 Unclaimed Property Fund in the name of the Class Member for whom the funds are designated.

19 **g. Default on Payment.**

20 In the event Defendant makes a late payment or does not pay any portion of the Gross
21 Settlement Amount, it shall be considered a default. In the event Defendant fails to make any payment
22 on the date it is due, under Section 3.07(a), the Settlement Administrator will provide notice to Class
23 Counsel and Defendant's counsel within three (3) business days of the missed payment. Thereafter,
24 Defendant will have seven (7) days to cure the default and tender payment to the Settlement
25 Administrator. In the event Defendant fails to cure the default within the times set forth herein,
26 Named Plaintiff may elect to enter judgment against Defendant, on an ex parte basis, for the balance
27 of the unpaid Gross Settlement Amount to date, and Named Plaintiff will be entitled to recover
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1 interest at ten percent (10%) per year from the due date for such payment and reasonable attorneys'
2 fees and costs.

3 **h. No Credit Toward Benefit Plans.**

4 The Individual Settlement Payments made to Participating Class Members under this
5 Agreement, as well as any other payments made pursuant to this Agreement, will not be utilized to
6 calculate any additional benefits under any benefit plans to which any Class Members may be
7 eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase
8 plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties'
9 intention that this Agreement will not affect any rights, contributions, or amounts to which any Class
10 Members may be entitled under any benefit plans.

11 **ARTICLE IV**

12 **LIMITATIONS ON USE OF THIS SETTLEMENT**

13 **Section 4.01: No Admission**

14 Defendant disputes the allegations in the Action and disputes that, but for this Settlement, a
15 Class should not have been certified in the Action. This Agreement is entered into solely for the
16 purpose of settling highly disputed claims. Nothing in this Agreement is intended nor will be
17 construed as an admission of liability or wrongdoing by Defendant.

18 **Section 4.02: Non-Evidentiary Use**

19 Whether or not the Date of Finality occurs, neither this Agreement, nor any of its terms, nor
20 the Settlement itself, will be: (a) construed as, offered, or admitted in evidence as, received as, or
21 deemed to be evidence for any purpose adverse to Defendant or any other of the Released Parties,
22 including but not limited to, evidence of a presumption, concession, indication, or admission by any
23 of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or
24 (b) disclosed, referred to, or offered in evidence against any of the Released Parties in any further
25 proceeding in the Action, except for the purposes of effectuating the Settlement pursuant to this
26 Agreement or for Defendant to establish that a Class Member has resolved any of his or her claims
27 released through this Agreement.

1 **Section 4.03: Nullification**

2 The Parties have agreed to the certification of the Class encompassing all claims alleged in
3 the Action for the sole purpose of effectuating this Agreement. If (a) the Court should for any reason
4 fail to certify this Class for settlement, or (b) the Court should for any reason fail to approve this
5 Settlement, or (c) the Court should for any reason fail to enter the Final Order, or (d) the Final Order
6 is reversed, or declared or rendered void, or (e) the Court should for any reason fail to dispose of the
7 Action in its entirety, then (i) this Agreement shall be considered null and void; (ii) neither this
8 Agreement nor any of the related negotiations or proceedings shall be of any force or effect; (iii) all
9 Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had
10 been neither entered into nor filed with the Court; and (iv) the fact that the Parties were willing to
11 stipulate to class certification of all causes of action pled in the Action as part of the Settlement will
12 have no bearing on, and will not be admissible in connection with, the issue of whether the Class
13 should be certified by the Court in a non-settlement context in this Action or any other action, and in
14 any of those events, Defendant expressly reserves the right to oppose certification of the Class.

15 In the event of a timely appeal from the Final Order, the Final Order shall be stayed and the
16 Gross Settlement Amount shall not be distributed pending the completion of the appeal.

17 **ARTICLE V**

18 **RELEASES**

19 **Section 5.01: Released Claims by Class Members**

20 Upon the date Defendant transfers the Gross Settlement Amount, Named Plaintiff and
21 Participating Class Members who do not opt out of the Settlement, release the Released Parties from
22 all claims alleged in the Operative Complaint or which could have been alleged based on the facts
23 alleged in the Operative Complaint, which arose during the Class Period, which are, (1) failure to
24 pay minimum wages (2) failure to pay overtime wages (3) failure to provide meal periods (4) failure
25 to authorize or permit rest periods (5) failure to reimburse business expenses (6) failure to furnish
26 accurate itemized wage statements (7) failure to pay wages upon separation of employment and
27 within the required time (8) violation of California Business and Professions Code §§17200, *et seq.*,
28 based on the preceding claims ("Released Claims").

1 **Section 5.02: Released Claims by PAGA Group Members**

2 Upon the date of funding the GSA, the State of California and PAGA Group Members release
3 the Released Parties from all claims exhausted in Plaintiff's notice(s) sent to the LWDA and alleged
4 in the operative complaint, which arose during the PAGA Period, regardless of whether PAGA Group
5 Members opt out of the Class Settlement.

6 **Section 5.03: Named Plaintiff's Release of Unknown Claims**

7 Upon the date of funding the GSA, Named Plaintiff, waives, releases, acquits, and forever
8 discharges the Released Parties from any and all claims, actions, charges, complaints, grievances,
9 and causes of action, of any nature arising from Named Plaintiff's employment with Defendant,
10 whether known or unknown, which exist or may exist as of the Parties' execution of this Agreement.

11 Section 1542 of the California Civil Code provides as follows:

12 *"A general release does not extend to claims which the creditor does not*
13 *know or suspect to exist in his or her favor at the time of executing the*
14 *release, which if known by him or her must have materially affected his*
15 *or her settlement with the debtor."*

16 Plaintiff's general release provided herein is made with an express waiver and relinquishment
17 of any claim, right, or benefit under California Civil Code § 1542.

18 **ARTICLE VI**

19 **MISCELLANEOUS PROVISIONS**

20 **Section 6.01: Amendments or Modification**

21 The terms and provisions of this Agreement may be amended or modified only by an express
22 written agreement that is signed by all the Parties (or their successors-in-interest) and their counsel,
23 and approved by the Court.

24 **Section 6.02: Assignment**

25 None of the rights, commitments, or obligations recognized under this Agreement may be
26 assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express written
27 consent of each other Party and their respective counsel. The representations, warranties, covenants,
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1 and agreements contained in this Agreement are for the sole benefit of the Parties under this
2 Agreement and shall not be construed to confer any right or to avail any remedy to any other person.

3 **Section 6.03: Governing Law**

4 This Agreement shall be governed, construed, and interpreted, and the rights of the Parties
5 shall be determined, in accordance with the laws of the State of California, without regard to conflicts
6 of laws.

7 **Section 6.04: Entire Agreement**

8 This Agreement, including the Exhibits referred to herein, which form an integral part hereof,
9 contains the entire understanding of the Parties with respect to the subject matter contained herein.
10 In case of any conflict between text contained in Articles I through VI of this Agreement and text
11 contained in the Exhibits to this Agreement, the former (*i.e.*, Articles I through VI) shall be
12 controlling, unless the Exhibits are changed by or in response to a Court order. There are no
13 restrictions, promises, representations, warranties, covenants, or undertakings governing the subject
14 matter of this Agreement other than those expressly set forth or referred to herein. This Agreement
15 supersedes all prior agreements and understandings among the Parties with respect to the settlement
16 of the Action, including correspondence between Class Counsel and Defense Counsel and drafts of
17 prior agreements or proposals.

18 **Section 6.05: Waiver of Compliance**

19 Any failure of any Party, Defense Counsel, or Class Counsel hereto to comply with any
20 obligation, covenant, agreement, or condition set forth in this Agreement may be expressly waived
21 in writing, to the extent permitted under applicable law, by the Party or Parties and their respective
22 counsel entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or
23 failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or
24 condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

25 **Section 6.06: Counterparts and Fax/PDF Signatures**

26 This Agreement, and any amendments hereto, may be executed in any number of counterparts
27 and any Party and/or their respective counsel may execute any such counterpart, each of which when
28 executed and delivered shall be deemed to be an original. All counterparts taken together shall

1 constitute one instrument. A fax or PDF signature on this Agreement shall be as valid as an original
2 signature.

3 **Section 6.07: Meet and Confer Regarding Disputes**

4 Should any dispute arise among the Parties or their respective counsel regarding the
5 implementation or interpretation of this Agreement, a representative of Class Counsel and a
6 representative of Defense Counsel shall meet and confer in an attempt to resolve such disputes prior
7 to submitting such disputes to the Court.

8 **Section 6.08: Agreement Binding on Successors**

9 This Agreement will be binding upon, and inure to the benefit of, the successors in interest
10 of each of the Parties.

11 **Section 6.09: Cooperation in Drafting**

12 The Parties have cooperated in the negotiation and preparation of this Agreement. This
13 Agreement will not be construed against any Party on the basis that the Party, or the Party's counsel,
14 was the drafter or participated in the drafting of this Agreement.

15 **Section 6.10: Fair and Reasonable Settlement**

16 The Parties believe that this Agreement reflects a fair, reasonable, and adequate settlement of
17 the Action and have arrived at this Agreement through arm's-length negotiation and in the context
18 of adversarial litigation, taking into account all relevant factors, current and potential. The Parties
19 further believe that the Settlement is and is consistent with public policy, and fully complies with
20 applicable law.

21 **Section 6.11: Headings**

22 The descriptive heading of any section or paragraph of this Agreement is inserted for
23 convenience of reference only and does not constitute a part of this Agreement and shall not be
24 considered in interpreting this Agreement.

25 **Section 6.12: Notice**

26 Except as otherwise expressly provided in the Agreement, all notices, demands, and other
27 communications under this Agreement must be in writing and addressed as follows:

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And

26 CALIFORNIA WHOLESALÉ
David E. Koerner
davidk@kittrich.com
1585 West Mission Boulevard
Pomona, California 91766
Telephone: (714) 736-2039
Facsimile: (714) 736-2000

Section 6.13: Enforcement of Settlement and Continuing Court Jurisdiction

To the extent consistent with class action procedure, this Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6 and California Rule of Court 3.769(h). The Final Order entered by the Court will not adjudicate the merits of the Action or the liability of the Parties resulting from the allegations of the Action. Its sole purpose is to adopt the terms of the Settlement and to retain jurisdiction over its enforcement. To that end, the Court shall retain continuing jurisdiction over this Action and over all Parties and Class Members, to the fullest extent to enforce and effectuate the terms and intent of this Agreement. In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

Section 6.14: Mutual Full Cooperation

The Parties agree fully to cooperate with each other to accomplish the terms of this Agreement, including but not limited to the execution of such documents, and the taking of such

1 other action, as may reasonably be necessary to implement the terms of this Agreement. The Parties
2 to this Agreement shall use their best efforts, to effectuate and implement this Agreement and its
3 terms. In the event the Parties are unable to reach agreement on the form or content of any document
4 needed to implement the Settlement, or on any supplemental provisions that may become necessary
5 to effectuate the terms of the Settlement, the Parties agree to seek the assistance of the Court.

6 **Section 6.15: Authorization to Act**

7 Class Counsel warrants and represents that they are authorized by Named Plaintiff, and
8 Defense Counsel warrants that they are authorized by Defendant, to take all appropriate action
9 required to effectuate the terms of this Agreement, except for signing documents, including but not
10 limited to this Agreement, that are required to be signed by the Parties themselves. Defendant
11 represents and warrants that the individual executing this Agreement on its behalf has the full right,
12 power, and authority to enter into this Agreement and to carry out the transactions contemplated
13 herein.

14 **Section 6.16: No Reliance on Representations**

15 The Parties have made such investigation of the facts and the law pertaining to the matters
16 described herein and to this Agreement as they deem necessary, and have not relied, and do not rely,
17 on any statement, promise, or representation of fact or law, made by any of the other parties, or any
18 of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted
19 rights, or with regard to the advisability of entering into and executing this Agreement, or with respect
20 to any other matters. No representations, warranties, or inducements, except as expressly set forth
21 herein, have been made to any party concerning this Agreement.

22 **EXECUTION BY PARTIES AND COUNSEL**

23 The Parties and their counsel hereby execute this Agreement.

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25
26 Dated: _____

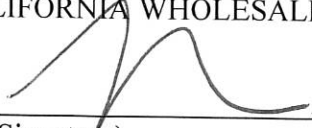
JONATHAN ROJAS

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28 By: _____
Named Plaintiff

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Dated: 04/29/2022

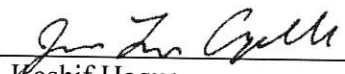
26 CALIFORNIA WHOLESALE

By: 
(Signature)
ROBERT FRIEDLAND
(Printed Name)
PRESIDENT
(Title)

APPROVED AS TO FORM ONLY:

Dated: April 28, 2022

AEGIS LAW FIRM, PC

By: 
Kashif Haque
Jessica L. Campbell

Attorneys for Named Plaintiff Jonathan Rojas

Dated: 04/28/2022

26 CALIFORNIA WHOLESALE

By: 
David E. Koerner

In-house Attorney for Defendant 26 California
Wholesale