

Eric K. Yaeckel [CSB No. 274608]

yackel@sullivanlawgroupapc.com

Ryan T. Kuhn [CSB No. 324538]

ryan@sullivanlawgroupapc.com

SULLIVAN & YAECKEL LAW GROUP, APC

2330 Third Avenue

San Diego, California 92101

(619) 702-6760 * (619) 702-6761 FAX

Attorneys for Plaintiff ANA ARMAN, in a Representative capacity only, and on behalf of other members of the general public similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

ANA ARMAN, in a Representative capacity |
only, and on behalf of other members of the |
general public similarly situated

Plaintiff

v.

BANANA REPUBLIC, LLC, a Delaware |
Limited Liability Company, THE GAP, |
INC., a Delaware Corporation, and DOES 1- |
10, inclusive

Defendants

CASE NO. 37-2021-00007625-CU-OE-CTL

**DECLARATION OF ERIC K. YAECKEL
IN SUPPORT OF PLAINTIFF'S
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF
SETTLEMENT, AND CERTIFICATION
OF PROVISIONAL SETTLEMENT CLASS**

Date: January 27, 2023

Time: 9:30 a.m.

Dept.: 66

Judge: Hon. Kenneth J. Medel

1 I, Eric K. Yaeckel, hereby declare as follows:

2 1. I am an attorney licensed to practice law before this Court and am employed with the law firm
3 of Sullivan & Yaeckel Law Group, APC, attorneys of record for ANA ARMAN, individually,
4 and on behalf of other members of the general public similarly situated in the above-captioned
5 matter. I make this declaration in support of Plaintiff's Notice of Unopposed Motion for
6 Conditional Certification of Settlement Class and Preliminary Approval of Good Faith
7 Determination of Class Action Settlement.

8 2. I am personally familiar with the facts set forth in this declaration, and if called to testify as a
9 witness I could and would do so.

10 **Background and Investigation**

11 3. Our firm was involved in a prior class action settlement involving the Defendants in this case.
12 For that reason, the statute of limitations for purposes of this settlement could only go back
13 approximately 3.2 years (to June of 2019). If not for the prior settlement, the statute of
14 limitations in this case would extend back approximately 5.7 years.

15 4. On February 23, 2021, Plaintiff ARMAN filed the Complaint in this matter. The original
16 Complaint alleged PAGA representative action claims, under the California Labor code
17 involving, *inter alia*, (1) Meal and rest period violations; (2) Minimum wage violations; (3)
18 Overtime violations; (4) Wage statement violations; (5) Failure to reimburse business
19 expenses; and (6) Failure to pay wages upon separation. On March 2, 2021, Plaintiff filed a
20 First Amended Complaint, which added representative California Private Attorney General Act
21 ("PAGA") claims were based on the same underlying Labor Code violations in the original
22 Complaint.

23 5. Plaintiff also took two separate "person most knowledgeable" depositions regarding the
24 challenged compensation and meal and rest period policies and practices at issue.

25 6. On April 13, 2021, Plaintiff propounded discovery requests on both Defendants, including
26 requests for admission, special interrogatories, requests for production of documents, and
27 general and employment form interrogatories. Through these requests, Plaintiff sought, among
28 other information and documents, the identities of putative class members, Defendants'

1 compensation policies, meal and rest period policies, employee handbooks, wage statements,
2 payroll records, time records, job descriptions, and reimbursement policies.

3 7. Defendants provided discovery responses, documents, and objections to Plaintiff's requests.
4 After a lengthy meet and confer processes and multiple *Ex Parte* hearings and Informal
5 Discovery Conferences, Defendants produced, *inter alia*, Plaintiff's time and wage records,
6 copies of the relevant employee handbooks, copies of all other relevant employee policies, the
7 contents of Plaintiff's employee file, Plaintiff's time records, and itemized wage statements.
8 Defendant also propounded several sets of written discovery on Plaintiff. In total there were
9 at least 12 separate sets of written discovery exchanged between the parties.

10 8. The parties agreed to explore resolution of this matter. As part of the settlement discussions,
11 Defendants agreed to voluntarily produce and verify thousands of pages of documents. The
12 production included all relevant policies and procedures. It also included large electronic
13 sampling of other class members' time and wage data.

14 9. Plaintiff also requested Defendants provide additional informal discovery so that the parties
15 could experience a meaningful mediation. Defendants provided informal discovery which
16 consisted of, *inter alia*, the number of current and former employees who worked for
17 Defendant during the class limitations period and separate PAGA limitations period, meal and
18 rest period premiums paid, pay periods at issue, a redacted sampling of employee time records
19 and wage statements, alarm records, as well as confirmation that various policies and
20 agreements were standard as to the class.

21 10. On August 8, 2022, the Parties attended a full day mediation before the experienced "wage
22 and hour" mediator, Tripper Ortman. Prior to, and during, the mediation, counsel for both
23 parties agreed to the informal exchange of information, and case theories and defenses,
24 pertinent to a class-wide settlement. Plaintiff prepared and provided a detailed mediation brief
25 prior to the mediation. Plaintiffs brief contained a breakdown of potential damages based on
26 all of the information obtained. Defendants' brief outlined its defenses to both class
27 certification and liability At the conclusion of mediation, the parties agreed on the key terms
28 of a settlement that would globally resolve all class and representative wage and hour claims

1 asserted in the operative Complaint in this Action and executed a Memorandum of
2 Understanding. A true and correct copy of the Joint “Stipulation of Settlement and Release”
3 (the “Agreement”) is attached as **Exhibit A**.

4 **Terms of the Agreement**

- 5 11. Multiple bids for Settlement Administration were obtained. The parties agreed to use CAC
6 Services, LLC, as the “Settlement Administrator” for purposes of providing the Notice to
7 Settlement Class Members, issuing payments pursuant to the Agreement, and to carry out all
8 other duties pursuant to the Agreement. CAC’s sole business has been the administration of
9 class action settlements and class action notices, an area in which it has extensive experience.
- 10 12. Class Members will be entitled to an average share of approximately **\$120.86**. I calculated this
11 number by taking the total settlement amount, subtracting all contingent costs as proposed on
12 page one of the memorandum, and dividing by the estimate of 14,800 Class Members. This is
13 an estimate only as the actual share will depend on the amount of pay periods they were
14 employed during the limitations period.
- 15 13. A true and correct copy of the parties agreed upon Class Notice is attached as **Exhibit B**.
- 16 14. The Incentive Award was part of good faith negotiations and is intended to recognize that it
17 was the Class Representative (Ms. Arman) who initiated the lawsuit, initiated the PAGA
18 claims, provided critical documents and witnesses to her attorneys, and worked with her
19 attorney to propound and prepare written discovery, all in an effort to obtain moneys allegedly
20 owed not only to herself, but to thousands of other employees.

21 **Claims Analysis and Potential Recovery**

- 22 15. Our office submits this settlement provides class members with a guaranteed recovery of a
23 large portion of their “potential” damages as set forth below. As set forth above, the “average”
24 recovery (before taxes) will be approximately **\$120.86** per class member.
- 25 16. Based on the damage calculations and relevant case law below, my office submits the likely
26 “best case” recovery for an average class member would have been approximately \$344.23.
27 A “worst case” scenario (in the event of a denial of class certification or a defense verdict)
28 would have been a **zero dollar** recovery.

17. As part of our analysis I also have to consider the fact that Defendants were willing to stipulate to class certification on all claims as a result of the settlement, ensuring a monetary recovery to all participating class members. Accordingly, I believe that warrants a further reduction from any potential maximum recovery.

Damage Calculations

18. The following estimated damage calculations were completed after review of the sampling of class member time and wage records, and after interviews with Plaintiff, and other class members. The breakdown of the damage and penalties calculation is as follows:

Unpaid Compensation Violations: $\$16.50$ (average hourly rate) x **2,500** (number of employee positions) x **3.2** (years at issue in limitations period) x **1.8** (approximate unpaid hours per year) = **\$237,600.00**

Meal Period Policy Violations: $\$16.50$ (average hourly rate) x **2,500** (number of employee positions) x **3.2** (years at issue in limitations period) x **12** (approximate meal period violations per employee in a year) = **\$1,584,000.00**

Rest Period Policy Violations: $\$16.50$ (average hourly rate) x **2,500** (number of employee positions) x **3.2** (years at issue in limitations period) x **18** (approximate rest period violations per employee in a year) = **\$2,376,000.00**

Labor Code § 226 Penalties: **2,500** (number of employee positions) x **\$50** (per violation) x **36** (pay periods in one year limitations period) x **.45** (approximate rate of violations per pay period) = **\$2,025,000.00**.

Labor Code §2802 Penalties: **14,800** (total number of employees) x **\$15** (estimated average amount of reimbursement due per employee) = **\$222,000.00**

Labor Code § 203 Penalties: $\$16.50$ (average hourly rate) x **6.0** (hours, per day) x **30** (days, per Labor Code section 203) x **9,400** (number of former employees) = **\$27,918,000.00**.

“PAGA” Violations: **6** (separate Labor Code violations based on the above claims) x **2,500** (number of employee positions) x **\$50** (per violation) x **36** (pay periods in one year limitations period) = **\$27,000,000.00**. The aggrieved employees are only entitled to s 25% share of this amount, which is **\$6,750,000.00**.

19. Based on the above, a best case recovery (which would be admittedly highly unlikely, given the factors set forth below) would be a total judgment for the employees of **\$41,112,600.00**.

Relevant Case Law Supports a Further Reduction on any Recovery

20. It is my opinion that it would be *highly* unlikely to ever be awarded any amount approaching the maximum damages set forth above. To wit, the majority of the damages above are “derivative” penalties under PAGA, Labor Code § 203 and Labor Code § 226.

21. Please see the analysis of the relevant caselaw cited in the memorandum (pp. 10-11) which allows significant mitigation of PAGA penalties, which prohibits stacking of multiple penalties for the same underlying conduct and declines to automatically award §§ 203 and 226 penalties for meal and rest break violations without a further evidentiary showing.

22. Our office believes a mitigation of the damages and potential PAGA penalties would be warranted here. Defendants stepped up to discuss early resolution. Also, as in the *Carrington* case (which was handled by this office), there is evidence that Defendant attempted to provide meal and rest periods *in practice*, even where the breaks were missed. Given this, it is likely that any violations by Defendant were not “willful.” Finally, given the defenses raised by Defendant to maintaining this matter as a class or representative action, there was a significant risk that many of the claims would not have even been able to survive to a trial.

23. As to the ex-employee claim pursuant to Labor Code § 203, the parties agree the failure to pay “ex-employees” claim is derivative of the other claims. As Plaintiff believes Defendant was able to assert a “good faith dispute” for withholding any unpaid wages, it would be difficult to establish any liability for a “willful” failure to pay wages owed. Accordingly, the best case scenario contemplates no Labor Code § 203 penalties will be awarded.

24. Given my experience, I believe it would be likely that PAGA penalties would be reduced to approximately \$5 a violation, and the Court would decline to impose Labor Code § 203 and Labor Code § 226 penalties.

25. If this happened, the realistic anticipated “best case” judgment following trial would be approximately \$5,094,600. The average class member’s share of this recovery would be **\$344.23** (\$5,094,600 divided by 14,800 class members). Given our office’s analysis, I submit

1 this number is the most likely “best case” recovery per class member. Given all the risks on
2 each claim the estimated \$120.86 average recovery secured via this settlement, is a reasonable
3 compromise and is in the best interests of the class given all the risks of continued litigation.

4 **Analysis of Risk on Each Potential Claim**

- 5 26. Each of the primary claims also had risks to obtaining both class certification and liability. If
6 Defendant’s asserted defenses were successful, the class would not receive anything.
- 7 27. Plaintiff’s unpaid wages (and unpaid overtime) claims were based on the allegation that
8 employees were performing unpaid work due to the GAP’s standard timekeeping system which
9 “rounded” employee time entries and caused other losses due to certain alleged “transitional
10 math errors” caused by the payroll system. Plaintiff also alleged certain “alarm” records could
11 be used to establish that employees were not paid for all time subject to GAP’s control.
12 Plaintiffs alleged this resulted in regular time and overtime pay being owed where Defendants
13 were on notice of work being performed without pay. Defendants argued that its system was
14 not actually “rounding” and even if it was, this practice has been upheld under California law.
15 Defendants also denied that any unpaid work occurred, and even if some did occur, Defendants
16 claimed it was not on notice of these alleged Labor Code violations and had a strict written
17 prohibition against off-the-clock work and a mandate that all time worked must be accurately
18 recorded. Defendants asserted proof of these alleged violations would require individualized
19 inquiries, which could preclude class certification and make any PAGA claims unmanageable.
- 20 28. As to meal and rest period claims, Plaintiff was able to identify hundreds of examples of
21 missing or late meal periods without the provision of a meal period penalty payment.
22 However, Defendants argued that these records do not conclusively show whether (1)
23 Defendants actually failed to provide the meal period, (2) there was a voluntary waiver, (3)
24 employees forgot to clock out, or (4) employees voluntarily chose to skip or take them late
25 even though they were provided. Additionally, in light of GAP’S written meal and rest period
26 policy, Defendants contended there was no uniform policy or practice of denying meal and rest
27 periods, requiring individualized inquiries that would preclude class certification and make any
28 PAGA claims unmanageable.

1 29. Plaintiff also alleged the Defendants written policies improperly restricted class members from
2 leaving the premises during their rest breaks among other deficiencies. Defendants pointed out
3 that the policy contained no such restriction, provided for adequate breaks and argued that
4 witness testimony would demonstrate that in practice, no restriction on rest breaks were ever
5 enforced. Defendants also contended individualized inquiries will abound as to why individual
6 employees may have failed to take appropriate meal periods or rest breaks.

7 30. As to the wage statement claims, Plaintiff acknowledges that these claims are largely
8 derivative, in that both the gross and net wages could be found to be inaccurate, due to the
9 above-referenced claims. GAP argued that the failure to list gross and net wages are derivative
10 of other claims that may ultimately fail and as a result there is no "knowing and intentional
11 failure" to list information, which triggers liability under Labor Code §226(e). Defendants (as
12 with the underlying meal and rest period claims) maintained individualized inquiries would
13 abound as to why breaks were missed and whether meal and rest period premiums should have
14 been paid in the first place, requiring individualized inquiries that would preclude class
15 certification and make any PAGA claims unmanageable.

16 31. Plaintiff contends that GAP violated Labor Code section 2802 by failing to reimburse its
17 employees for certain costs, including cellular phone costs, work supplies and mileage. GAP
18 countered that it has a comprehensive written policy for expense reimbursements in its
19 employee handbook. The majority of GAP employees were not able to do remote work due the
20 nature of the work involving direct patient care. GAP further contended that Arman's (and
21 others') position did not require the use of a cell phone.

22 32. Based on all of the above, my experience, and all the information within the moving papers,
23 I submit that this proposed Settlement is fair, adequate and reasonable. I also submit it is well
24 within the accepted range of recoveries for similar wage and hour class actions.

25 **Certification of the Proposed Settlement Class is Appropriate**

26 33. Here, Defendant's records show that approximately **14,800 class members** worked for the
27 company during the limitations period as of August 8, 2022.

28 34. Here, for purposes of the Settlement, the parties stipulated the claims of Class Members all

involve the same questions of law and fact. Namely, all class members were subject to the same employment policies and practices of Defendant.

35. The proposed class representatives has no adverse interests to the class. Plaintiff is paid based on the same formula as other class members and has claims substantially the same as all the other Class Members.

36. Additionally, any Class Member who wishes to “opt out” of the Settlement may do so and retain all of their individual rights. Therefore there is no conflict of interest between the Class Representatives and the Class Members. Thus, at least for settlement purposes, we submit the adequacy prong is met.

37. Given that there are approximately 14,800 individuals, it would be preferable to resolve all of the Class Members’ claims by means of a class-wide settlement than to require each Class Member to litigate his or her individual claims.

38. When negotiating the settlement, both sides took into account the strengths and weaknesses of their opponent’s positions as pointed out by mediation Tripper Ortman, the data available to evaluate liability and damages, the lack of data or evidence on certain issues, and the substantial and evolving law applicable to the merits of the claims. The Agreement was only agreed to after extensive arms-length negotiations resulting in a unique compromise that permits all parties to move forward and bring this action to close. Despite a mutual desire to resolve this action, the negotiations remained at all times adversarial.

39. I believe this settlement is in the best interest of the class as it provides (1) a guaranteed favorable result; (2) guaranteed monetary recovery over a reasonably short period of time, as opposed to possibly waiting additional years for a potentially worse result; and (3) significant savings in attorneys’ fees and costs, which would have increased had the case progressed through trial and possible appeals.

40. Without entering into the Agreement, there existed a significant chance that Defendants would prevail on the merits of some or all claims and that Class Members would receive nothing. Through the Agreement, participating Class Members receive guaranteed cash, and this action has also been the catalyst for programmatic relief.

- 1 41. If the litigation were to proceed in lieu of settlement, additional and substantial attorneys fees
2 and costs, expert witnesses fees would quickly accumulate. Given the numerous claims being
3 litigated, the parties may be required to hire multiple experts each (as many as 8 total). This
4 would result in not only the production of eight expert reports, but eight depositions as well.
5 And, based on previous discussions between counsel regarding the remaining claims (including
6 the PAGA claims), Plaintiff anticipated at least one motion to compel, a motion for class
7 certification and two dueling motions for summary judgment / adjudication (one from each
8 side).
- 9 42. Importantly, even after engaging in all of the potential continued and protracted litigation set
10 forth above, the putative class would continue to have no guarantee of success on any of the
11 claims advanced in this case. Thus, the parties and our office believes in good faith that the
12 proposed resolution is a fair, reasonable, and adequate compromise.
- 13 43. Our office had not filed a Motion for Class Certification at the time settlement was reached.
14 Defendants presented multiple different defenses to certification during mediation and
15 throughout litigation. Even assuming Plaintiffs did obtain class certification of the claims, each
16 claim is subject to substantial risk of a Defense verdict at trial.
- 17 44. Our office has interviewed at least 10 Class Members in the course of investigating and
18 litigating this matter. We have also reviewed thousands of pages of documents produced by
19 Defendants, Plaintiffs, and Class Members.
- 20 45. Our office has considerable experience in wage and hour and class action litigation. Trial
21 Attorney, William Sullivan has over 28 years of experience, 27 years of which has been
22 devoted to both prosecuting and defending class action litigation. I have over 11 years of
23 experience all of which have been dedicated primarily to class action and representative action
24 (PAGA) litigation. I am aware counsel for Defendant also has extensive experience handling
25 class action and representative action litigation.
- 26 46. Based on this experience, and all other relevant factors addressed above, our firm believes the
27 Agreement to represent a fair, adequate and reasonable settlement that is well within the
28 accepted range of recoveries for similar wage and hour class actions. We further believe the

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Agreement is in the best interests of the Settlement Class Members.

47. Based on this experience, we also believe the \$320,000 allocation towards the PAGA claims is a fair, reasonable, and adequate allocation, especially given the risks of mitigation identified above.
48. Prior to preliminary approval, what can be said of the reaction the class members is limited. However, our office has spoken to some Class Members since the parties reached a proposed settlement agreement, and all were in favor of the settlement.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 22nd day of September, 2022 at San Diego, California.

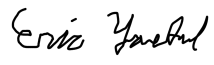

Eric K. Yaeckel

EXHIBIT A

STIPULATION OF SETTLEMENT AND RELEASE

This Stipulation of Settlement and Release (“**Settlement Agreement**” or “**Settlement**”) is reached by and between Plaintiff Ana Arman (the “**Plaintiff**” or “**Class Representative**”), individually and on behalf of all members of the Settlement Class (defined below), and Defendant The Gap, Inc. and Defendant Banana Republic LLC (“**Defendants**”) (The Class Representative and Defendants are collectively referred to herein as the “**Parties**”).

The Class Representative and the Settlement Class are represented by Sullivan & Yaeckel Law Group, APC (“**Class Counsel**”). Defendants are represented by Orrick, Herrington & Sutcliffe LLP (“**Defendants’ Counsel**”).

Plaintiff filed a Representative Action Complaint on February 23, 2021 in San Diego County Superior Court, entitled *Ana Arman v. Banana Republic, LLC, et al*, Case No. 37-2021-00007625-CU-OE-CTL. On March 2, 2021, Plaintiff filed a First Amended Complaint, which added Class Action claims against the Defendants (the “**Lawsuit**”).

The Lawsuit alleges that Defendants: (i) failed to pay all overtime wages owed; (ii) failed to pay all minimum wages owed; (iii) failed to provide meal periods; (iv) failed to authorize and permit rest periods; (v) issued inaccurate wage statements; (vi) failed to pay all final wages owed upon separation from employment; (vii) failed to reimburse for necessary business expenses incurred; (viii) engaged in unlawful business practices pursuant to California Business and Professions Code sections 17200, *et seq.*; and (ix) is liable for civil penalties under the Private Attorneys General Act (“**PAGA**”), Labor Code section 2698, *et seq.* After months of hard-fought litigation, including the formal and informal exchange of documents and information and motion practice, the Parties participated in a mediation with neutral third party, Tripper Ortman of Ortman Mediation (the “**Mediator**”), which ultimately led to the resolution of the Lawsuit.

Defendants deny any liability and wrongdoing of any kind associated with the claims alleged in the Lawsuit, and further deny that the Lawsuit is appropriate for class treatment or manageable as a representative action for any purpose other than this Settlement. Defendants contend, among other things, that it has complied at all times with the California Labor Code, the applicable Wage Orders, the California Business and Professions Code, and PAGA. In addition, it is Defendants’ position that, if this case were to be litigated, class certification would be inappropriate and representative treatment would be unmanageable. This Settlement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Settlement is intended or will be construed as an admission of liability or wrongdoing by Defendants.

Given the uncertainty of litigation, the Parties wish to settle the Class Representative’s claims, both individually and on behalf of the Settlement Class. Accordingly, the Parties agree as follows:

1. Settlement Class. For purposes of this Settlement Agreement only, the Parties stipulate to certification of the following “**Settlement Class**”:

All current and former non-exempt employees who worked at a Gap or Banana Republic store in California from June 14, 2019, through the date of preliminary approval (the “**Class Period**”).

The Parties agree that certification for the purpose of settlement is not an admission that class certification is proper under Section 382 of the California Code of Civil Procedure. Should, for whatever reason, the Court not grant final approval of the Settlement, the Parties' stipulation to class certification as part of the Settlement shall become null and void *ab initio* and shall have no bearing on, and shall not be admissible in connection with, the issue of whether or not certification would be inappropriate in a non-settlement context.

2. Release. The Class Representative and every member of the Settlement Class (except those who opt-out of the Settlement, with the exception of the California Private Attorney General Act ("PAGA") claims as explained below), will release and discharge Defendants, their past or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective successors and predecessors in interest, subsidiaries, any and all claims, demands, rights, liabilities, and causes of action that were or could have been pleaded under local, state or federal law arising out of or based on any facts, transactions, events, policies, occurrences, acts, disclosures, statements, omissions, or failures to act pleaded in the operative complaint against Banana Republic LLC and The Gap, Inc. through the date of Preliminary Approval, including but not limited to claims related to unpaid wages and overtime, meal and rest break violations, untimely final paychecks, inaccurate itemized wage statements, unreimbursed business expenses, unfair business practices, and for penalties under PAGA ("**Class Released Claims**").

For purposes of this Settlement Agreement only, and not as an admission of liability otherwise, all Participating Class Members who worked for Defendant from December 17, 2019, through the date of preliminary approval (the "PAGA Period") will be entitled to a "PAGA Penalty" and be part of a "**PAGA Penalty Class**." The PAGA Penalty Class members may not opt-out of the portion of the Settlement relating to the settlement of claims under PAGA. Even if a Class Member opts-out, they will still receive an Individual PAGA Payment. PAGA Penalty Class members will be bound by the PAGA portion of the release whether or not they cash their settlement check before it becomes void. Class Members who opt-out will be bound only by the release of the PAGA claims.

3. Maximum Settlement Amount. As consideration, Defendants agree to pay a non-reversionary maximum amount ("**Maximum Settlement Amount**") of three million one hundred and fifty-five thousand dollars and no cents (\$3,155,000.00) in full and complete settlement of this matter, as follows:

- A. The Parties agree to engage CAC Services, LLC as the "**Settlement Administrator**" to administer the Settlement.
- B. The Maximum Settlement Amount shall be deposited with the Settlement Administrator within seven (7) calendar days after the Effective Date. The "**Effective Date**" means when all of the following events have occurred: 1) The Stipulation of Settlement has been executed by all Parties, Class Counsel, and Defendants' Counsel; (2) The Court has given preliminary approval to the Settlement; (3) The Court has held a Final Settlement Approval Hearing and has entered a Final Order and Judgment, approving the Settlement. It is the parties' intention that the Settlement shall be final for purposes of the Effective Date at the time of Final Approval, if no objections to the settlement are filed, or if objections

are filed, but are withdrawn prior to the Final Approval hearing. Only in the event that written objections are filed prior to the Final Settlement Approval Hearing which are not later withdrawn prior to final approval, the Effective Date shall be later of: (a) the date of final affirmance on an appeal of the Judgment; the expiration of the time for a petition to review the Judgment; and, if review is granted, the date of final affirmance of the Judgment following review; or (b) the date of final dismissal of any appeal from the Judgment or the final dismissal of any proceeding to review the Judgment; or (c) if no appeal is filed, the expiration date for filing any appeal from the Judgment.

C. The Maximum Settlement Amount includes:

- (1) All payments to the Settlement Class;
- (2) All costs of the Settlement Administrator associated with the administration of the Settlement, which are anticipated to be no greater than \$50,000;
- (3) Up to \$5,000 to Plaintiff as a Class Representative Enhancement Payment, in recognition of the Class Representative's contributions to the action and service to the Settlement Class. Even in the event that the Court reduces the requested Class Representative Enhancement Payment, the Class Representative and the Settlement Class shall not have the right to revoke the Settlement for that reason, and it will remain binding. Defendant shall comply with its reference policy with respect to the Class Representative;
- (4) Up to one-third of the Maximum Settlement Amount in attorneys' fees, which is currently estimated at \$1,051,666.67, plus actual reasonable costs and expenses related to the action, which are not to exceed \$24,000.00, as supported by declaration. Should the Court award a lesser sum for attorneys' fees and costs, the residual shall be included in the Net Settlement Amount for the Settlement Class. In the event that the Court reduces the requested attorneys' fees and costs, the Class Representative and the Settlement Class shall not have the right to revoke this Settlement for that reason, and it will remain binding; and
- (5) \$320,000 of the Maximum Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code section 2699(i), 75% of such penalties, or \$240,000, will be payable to the Labor & Workforce Development Agency ("LWDA") for its share of PAGA penalties, and the remaining 25%, or \$80,000, will be payable to the PAGA Penalty Class members as the "**PAGA Amount.**" Even if the Court reduces or increases the requested PAGA civil penalties, the Class Representative and the Settlement Class shall not have the right to revoke this Settlement for that reason, and it will remain binding.

D. **Escalator Clause.** Defendants represent that, as of August 8, 2022, there were approximately 14,689 putative Class Members. If that number of putative class members as of the mediation date was estimated incorrectly by more than five

percent, Defendants shall increase the Total Settlement Amount proportionally (i.e. for an increase of six percent in employees, Defendants shall add an extra 1% to the Total Maximum Settlement Amount, for a ten percent increase in employees Defendants shall add an extra 5% to the Total Payments to the Settlement Class).

- E. **Corporate Payroll Taxes.** The Maximum Settlement Amount does not include Corporate Payroll Taxes, which shall be paid by Defendants separate and apart from the Maximum Settlement Amount. The Corporate Payroll Taxes will be computed by the Settlement Administrator based on the amounts to be paid as wages to the Settlement Class members. The Settlement Administrator shall be responsible for making all necessary payments and government filings in connection with such payments.

4. Payments to the Settlement Class. Settlement Class members are not required to submit a claim form to receive a payment (“**Individual Settlement Payments**”).

Individual Settlement Payments will be calculated and apportioned from the Net Settlement Amount based on the number of Qualifying Workweeks a Participating Class Member worked during the Class Period. Specific calculations of Individual Settlement Payments will be made as follows:

- a. The Settlement Administrator will calculate the number of Workweeks worked by each Participating Class Member (“Individual Workweeks”) during the Class Period, the amount to be paid per Work Week, and the individual settlement awards to eligible Participating Class Members.
- b. Defendant’s employee data will be presumed to be correct, unless a particular Class Member proves otherwise to the Settlement Administrator by credible evidence. All Work Week disputes will be resolved and decided by the Settlement Administrator. If the dispute cannot be settled by the parties and the Administrator, the Court will have the power to render a decision on all Work Week disputes which will be final and non-appealable.
- c. The Individual Settlement Payments will be determined by dividing the Net Settlement Amount by the total number of Workweeks for all Participating Class Members, resulting in the Workweek Value, and then multiplying the Workweek Value by the number of Workweeks worked by each Participating Class Member.
- d. Within thirty (30) calendar days following the deposit of the Maximum Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate each Settlement Class Member’s Individual Settlement Payment and will prepare and mail Individual Settlement Payments to Settlement Class members.
- e. Each Individual Settlement Payment shall be allocated as (60%) penalties and interest and (40%) wages. The Settlement Administrator will issue each participating Settlement Class member an IRS Form 1099 (for amounts paid as penalties and interest) and an IRS Form W-2 (for amounts paid as wages).

- f. The Individual Settlement Payments paid to Settlement Class members and the Class Representative's Enhancement Payment shall be deemed not to be "pensionable" earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (i.e. vacation, retirement plans, etc.) of Settlement Class members or the Class Representatives. The Parties agree that any Individual Settlement Payments or Class Representative Enhancement Payment paid to Settlement Class members or Class Representative under the terms of this Settlement Agreement do not represent any modification of Settlement Class members' or Class Representative's previously credited hours of service or other eligibility criteria under any employee pension benefit plan, employee welfare benefit plan, or any other plan or program. Further, any Individual Settlement Payments or Class Representative Enhancement Payment paid hereunder shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan, employee welfare benefit plan, or any other plan or program sponsored by Defendants. No benefit, including but not limited to 401k benefits, shall increase or accrue as a result of any payment made as a result of this Settlement.
- g. It shall be the responsibility of the Settlement Administrator to timely and properly withhold from Individual Settlement Payments payable to Settlement Class members all applicable payroll and employment taxes, but not Corporate Payroll Taxes, and to prepare and deliver the necessary tax documentation and, thereafter, to cause the appropriate deposits of withholding taxes and informational and other tax return filing to occur. Each Settlement Class member's share of all applicable payroll and employment taxes (excluding Corporate Payroll Taxes) withheld and deposited with the applicable governmental authorities in accordance with this Settlement Agreement shall be a part of, and paid out of, the Individual Settlement Payment to each Settlement Class member. Each Settlement Class member will be responsible for paying all applicable state, local, and federal income taxes on all amounts the Settlement Class Member receives pursuant to this Settlement Agreement (excluding Corporate Payroll Taxes).
- h. The Individual Settlement Payments shall be paid to Settlement Class members specifically in exchange for the release of the Released Parties from the Class Released Claims and the covenant not to sue concerning the Class Released Claims.

5. Payments to the PAGA Penalty Class.

PAGA Penalty Class members are not required to submit a claim form to receive a payment from the PAGA Amount. ("**Individual PAGA Payments**").

Individual PAGA Payments will be calculated and apportioned from the PAGA Amount based on the number of Qualifying Pay Periods a PAGA Penalty Class member worked during the PAGA Period. Specific calculations of Individual PAGA Payments will be made as follows:

- a. The Settlement Administrator will calculate the number of Pay Periods worked by each PAGA Penalty Class member (“Individual Pay Periods”) during the PAGA Period, the amount to be paid per Pay Period, and the Individual PAGA Payments to eligible PAGA Penalty Class members.
- b. Defendant’s employee data will be presumed to be correct, unless a particular PAGA Penalty Class member proves otherwise to the Settlement Administrator by credible evidence. All Pay Period disputes will be resolved and decided by the Settlement Administrator. If the dispute cannot be settled by the parties and the Administrator, the Court will have the power to render a decision on all Pay Period disputes which will be final and non-appealable.
- c. The Individual PAGA Payments will be determined by dividing the PAGA Amount by the total number of Pay Periods for all PAGA Penalty Class members, resulting in the Pay Period Value, and then multiplying the Pay Period Value by the number of Pay Periods worked by each PAGA Penalty Class member.
- d. Within thirty (30) calendar days following the deposit of the Maximum Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate each PAGA Penalty Class member’s Individual PAGA Payment and will prepare and mail Individual PAGA Payments to PAGA Penalty Class members.
- e. Each Individual PAGA Payment shall be allocated as (100%) non-wage penalties. The Settlement Administrator will issue each participating PAGA Penalty Class member an IRS Form 1099 (for amounts paid as penalties and interest).
- f. The Individual PAGA Payments paid to PAGA Penalty Class members shall be deemed not to be “pensionable” earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (i.e. vacation, retirement plans, etc.) of PAGA Penalty Class members. The Parties agree that any Individual PAGA Payments paid to PAGA Penalty Class members under the terms of this Settlement Agreement do not represent any modification of PAGA Penalty Class members’ previously credited hours of service or other eligibility criteria under any employee pension benefit plan, employee welfare benefit plan, or any other plan or program. Further, any Individual PAGA Payments paid hereunder shall not be considered “compensation” in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan, employee welfare benefit plan, or any other plan or program sponsored by Defendants. No benefit, including but not limited to 401k benefits, shall increase or accrue as a result of any payment made as a result of this Settlement.
- g. The Individual PAGA Payments shall be paid to PAGA Penalty Class members specifically in exchange for the release of the Released Parties from the PAGA

Released Claims and the covenant not to sue concerning the PAGA Released Claims.

6. Attorneys' Fees and Costs. Plaintiff shall be permitted to make a request for Class Counsel's attorneys' fees amounting to one-third of the Maximum Settlement Amount, which is currently estimated to be \$1,051,666.67, plus actual reasonable costs and expenses, which are not to exceed \$24,000.00. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation all work performed and all costs incurred to date, and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections.

7. Class Representative Enhancement Payment. Plaintiff may make a request for Class Representative Enhancement Payment of \$5,000 for her time and risks in prosecuting this litigation and the Class Representative's service to the Settlement Class. This award will be in addition to Class Representative's Individual Settlement Payment as a Settlement Class Member and shall be reported on IRS Forms 1099 by the Settlement Administrator.

8. Settlement Administrator. The parties agree to the appointment of CAC Services, LLC as Settlement Administrator, and to request approval to pay an amount not anticipated to exceed \$50,000 for its services from the Maximum Settlement Amount. The Settlement Administrator shall be responsible for sending notices to the Settlement Class members, for calculating Individual Settlement Payments and Individual PAGA Payments, for determining and pay appropriate tax payments resulting from the Settlement, and for preparing all checks and mailings. The Settlement Administrator shall be authorized to pay itself from the Maximum Settlement Amount only after Individual Settlement Payments and Individual PAGA Payments have been mailed to all Settlement Class members.

8. Preliminary Approval. Upon execution of this Settlement Agreement, Class Representative shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement only;
- B. Appointing William B. Sullivan, Eric K. Yaeckel and Ryan T. Kuhn of Sullivan & Yaeckel Law Group, APC as Class Counsel;
- C. Appointing Plaintiff Ana Arman as the Class Representative for the Settlement Class;
- D. Approving CAC Services, LLC as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Class Notice and directing the mailing of same; and

G. Scheduling a Final Approval hearing.

9. Notice to Settlement Class. Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within twenty-one (21) calendar days after entry of an order preliminarily approving this Settlement, Defendants will provide the Settlement Administrator with the names, last known addresses, last known telephone numbers, social security numbers, and weeks of employment for each member of the Settlement Class during the relevant Class Period, as reflected by Defendants' corporate and business records, exclusive of leaves of absence (in electronic format). Approximations and averages will be used to cover periods where data is missing or otherwise not available.
- B. Within fourteen (14) calendar days from receipt of this information, the Settlement Administrator shall: (i) run the names of all Settlement Class members through the National Change of Address ("NCOA") database to determine any updated addresses; (ii) update the addresses of any Settlement Class member for whom an updated address was found through the NCOA search; and (iii) mail the Notice Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing. At least ten (10) days prior to the final approval hearing, the Settlement Administrator will provide a declaration of due diligence and proof of mailing with regard to the mailing of the Notice Packet.
- C. Any Notice Packets returned to the Settlement Administrator as undelivered on or before the Response Deadline (defined below) shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address and if an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member promptly, within five (5) business days of receiving the returned Notice Packet. Settlement Class Members to whom Notice Packets are re-sent after having been returned as undeliverable to the Settlement Administrator shall have until the Response Deadline to mail a Request for Exclusion, objection, or dispute.
- D. Notice of Settlement Award/Disputes. Each Notice Packet mailed to Settlement Class members shall contain a Notice of Settlement Award, which shall disclose the amount of the Settlement Class member's estimated Individual Settlement Payment, the number of workweeks during the relevant Class Period, and the number of pay periods worked during the Wage Statement Period and/or PAGA Period. If the Settlement Class member is also a PAGA Penalty Class member, the Notice will also include an estimated Individual PAGA Payment.
 - i. To the extent a Settlement Class member and/or PAGA Penalty Class member disputes the workweeks and/or pay periods shown in his or her Notice, he or she may produce evidence to the Settlement Administrator establishing the dates he or she contends to have worked during the

relevant Class Period prior to the Response Deadline. Defendants' records will be presumed determinative. The Settlement Administrator shall notify counsel for the Parties of any disputes. Defendants shall review its records and provide further information to the Settlement Administrator, if necessary. The Settlement Administrator shall resolve any disputes and notify counsel for the Parties of its decision.

- ii. The Settlement Administrator's determination of eligibility for any Individual Settlement Payment under the terms of this Settlement Agreement shall be conclusive, final and binding on all Parties and all Settlement Class members, so long as the Settlement Administrator has first consulted with the Parties regarding any disputes or questions as to eligibility.

E. Requests for Exclusion. Any Settlement Class Member who wishes to opt out of the Settlement (with the exception of the PAGA claims as set forth above) must complete and mail a Request for Exclusion to the Settlement Administrator by the "**Response Deadline**" which is forty five (45) calendar days from the date of the initial mailing of the Notice Packets.

- i. The Request for Exclusion must: (1) contain the name, address, telephone number and last four digits of the social security number of the Settlement Class Member; (2) be signed by the Settlement Class Member; and (3) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not comply with (2) and/or (3), it will not be deemed valid for exclusion from this Settlement. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any person who validly requests to be excluded from the Settlement will no longer be a member of the Settlement Class, will not be entitled to any recovery under this Settlement Agreement, with the exception 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. Settlement Class members who fail to submit a valid and timely Request for Exclusion shall be bound by all terms of the Settlement Agreement and any judgment entered in the Lawsuit if the Settlement is approved by the Court.
- ii. If (a) 50 or more putative class members submit a valid Request for Exclusion, or (b) there is a change to the scope of the Release or composition of the class/representative group, Defendants may, at its discretion, elect to rescind the Settlement by communicating that decision to both the Settlement Administrator and Class Counsel in writing within ten (10) calendar days after (a) the Settlement Administrator notifies the Parties of the number of valid requests for exclusion received, which the Settlement Administrator must do within seven (7) calendar days after the Response Deadline or (b) Notice of the Court's order changing the scope of

the Release or the class/representative group. Should Defendants exercise this option, Defendants shall be responsible for any costs and fees incurred by the Settlement Administrator as of the date of its rescission.

- iii. The Parties agree to leave the choice of whether to participate in the Settlement up to the Settlement Class. At no time will the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class member to object to the Settlement or opt out of the Settlement Class, or encourage any Settlement Class member to appeal from the final judgment. At no time will Class Representative or Class Counsel engage in any publicity or disparagement of any type related to this Settlement.

- F. Objections. Settlement Class members who do not opt out may object to this Settlement Agreement as explained in the Class Notice by submitting a written objection to the Settlement Administrator (who shall provide all objections as received to Class Counsel and Defendants' Counsel, as well as file all such objections with the Court). To be valid, any objection must be postmarked no later than the Response Deadline. Defendant's counsel and Class Counsel shall submit any responses to objections no later than five days before the Final Approval Hearing. Any Settlement Class Member who does not opt out of the Settlement may also appear in person or through their own counsel and raise an objection at the Final Approval Hearing.

10. Final Approval. Following preliminary approval and the close of the period for filing Requests for Exclusion, objections, or disputes under this Settlement Agreement, the Class Representative shall apply to the Court for entry of a Final Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Class Representative's and Class Counsel's application for attorneys' fees and costs, the Class Representative Enhancement Payment, Settlement Administrator costs, and payment to the LWDA for its share of PAGA penalties; and
- C. Entering judgment pursuant to California Rule of Court 3.769.

Class Representative shall timely file the motion for final approval and request entry of the Final Approval Order and Judgment.

11. The Settlement Administrator will mail all required payments no later than fourteen (14) calendar days after the Effective Date. If a Settlement Class Member's check is returned to the Settlement Administrator, the Settlement Administrator will make all reasonable efforts to re-mail it to the Settlement Class Member at his or her correct address. It is expressly understood and agreed that the checks for the Individual Settlement Payments will become void and no longer available if not cashed within 180 days from the date the Settlement Administrator mails it. The amounts represented by checks remaining uncashed after the 180-day deadline will be tendered by the Settlement Administrator as *cy pres* to Legal Aid at Work – Workers' Rights Clinics. The

Parties all represent that they do not have a significant prior affiliation with the recipient that could create a conflict of interest. Upon completion of administration of the Settlement, the Settlement Administrator shall provide written certification of such completion to the Court, Class Counsel and Defendants' Counsel.

No person shall have any claim against Defendant, Defendants' Counsel, the Class Representative, the Settlement Class, Class Counsel or the Settlement Administrator based on mailings, distributions and payments made in accordance with this Settlement Agreement.

12. Non-Admission of Liability. Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this Settlement. The Parties have entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code section 1152.

13. Parties' Authority. The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties to the terms and conditions hereof.

14. Mutual Full Cooperation. The Parties and their counsel agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions or actions that may become necessary to effectuate the terms of this Settlement Agreement, the Parties shall seek first the assistance of the Mediator and then the Court to resolve such disagreement.

15. Privacy of Documents and Information. Class Representative and Class Counsel agree that they will destroy all confidential documents and information provided to them by Defendants within thirty (30) days of the Effective Date, except for documents that must be saved for malpractice purposes or ethical rules governing attorney conduct in California and the United States. Class Representative and Class Counsel further agree that none of the documents and information provided to them by Defendants shall be used for any purpose other than prosecution of this Lawsuit or the defense or prosecution of a malpractice action or defense of any state bar complaint.

16. No Prior Assignments. The Parties hereto represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights released and discharged by this Settlement Agreement.

17. Construction. The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and

that this Settlement Agreement shall not be construed in favor of or against any of the Parties by reason of the extent to which any Party or their or its counsel participated in the drafting of this Settlement Agreement.

18. Jurisdiction of the Court. Except for those matters to be resolved by the Mediator or the Settlement Administrator as expressly stated, any dispute regarding the interpretation or validity of or otherwise arising out of this Settlement Agreement, or relating to the Lawsuit or the Class Released Claims or PAGA Released Claims, shall be subject to the exclusive jurisdiction of the Court, and the Class Representative, Settlement Class members, and Defendants agree to submit to the personal and exclusive jurisdiction of the Court. The Court shall retain jurisdiction solely with respect to the interpretation, implementation and enforcement of the terms of this Settlement Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the settlement embodied in this Settlement Agreement and all orders and judgments entered in connection therewith.

19. California Law Governs. All terms of this Settlement Agreement and the exhibit hereto shall be governed and interpreted according to the laws of the State of California, regardless of its conflict of laws.

20. Invalidity of Any Provision. The Parties request that before declaring any provision of this Settlement Agreement invalid, the Court shall first attempt to construe all provisions valid to the fullest extent possible consistent with applicable precedents

21. Headings. The headings contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof.

22. Waiver and Amendment. The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

23. Notices. All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Defendant:	Jessica Perry
	Orrick, Herrington & Sutcliffe LLP
	1000 Marsh Road
	Menlo Park, California 94025-1015
	jperry@orrick.com

if to Plaintiffs: Eric K. Yaeckel
Sullivan & Yaeckel Law Group, APC
2330 3rd Ave.
San Diego, CA 92101
Yaeckel@sullivanlawgroupapc.com

24. Entire Agreement. This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

25. Binding on Assigns. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

26. Interim Stay of Proceedings. The Parties agree to hold in abeyance all proceedings in the Lawsuit, except such proceedings necessary to implement and complete the Settlement, pending the final approval hearing to be conducted by the Court.

27. Counterparts. This Settlement Agreement may be executed by one or more Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

DATED: 9/21/2022

ANA ARMAN

By: Ana Arman
Plaintiff & Settlement Class Representative

DATED: _____

THE GAP, INC. & BANNANA REPUBLIC, LLC

By: _____
Paul Adams
Deputy General Counsel of The Gap, Inc.

APPROVED AS TO FORM:

DATED: _____

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: _____
Jessica R. Perry
Attorneys for The Gap, Inc. & Banana Republic,
LLC

DATED: 9/21/2022

SULLIVAN & YAECKEL LAW GROUP, APC

By: EY
William B. Sullivan
Eric K. Yaeckel
Attorneys for Plaintiff

DATED: _____

ANA ARMAN

By: _____
Plaintiff & Settlement Class Representative

DATED: 9/21/2022

THE GAP, INC. & BANNANA REPUBLIC, LLC

By: *Paul Adams*
Paul Adams
Deputy General Counsel of The Gap, Inc.

APPROVED AS TO FORM:

DATED: 9/22/2022

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: 
Jessica R. Perry
Attorneys for The Gap, Inc. & Banana Republic,
LLC

DATED: _____

SULLIVAN & YAECKEL LAW GROUP, APC

By: _____
William B. Sullivan
Eric K. Yaeckel
Attorneys for Plaintiff

EXHIBIT B

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

NOTICE OF CLASS ACTION SETTLEMENT

PLEASE READ CAREFULLY AS
THIS NOTICE MAY AFFECT YOUR RIGHTS

ANA ARMAN, individually, and on behalf of other
members of the public similarly situated,

Plaintiff,

vs.

BANANA REPUBLIC, LLC, a Delaware Limited
Liability Company, THE GAP, INC., a Delaware
Corporation, and DOES 1-10, inclusive.

CASE No. 37-2021- 00007625-CU-OE-CTL

JUDGE: Honorable Kenneth J. Medel

DEPARTMENT: C-66

NOTICE OF CLASS AND PAGA ACTION
SETTLEMENT AND RELEASE

I. WHY DID I GET THIS NOTICE?

This notice explains that a settlement has been reached in the case entitled *Ana Arman v. Banana Republic, LLC, et al*, Case No. 37-2021-00007625-CU-OE-CTL (the “Action”).

This notice is to inform you of the proposed Settlement of the Action. The notice is also intended (i) to describe the Settlement, including how the Settlement monies will be allocated and how the Settlement may affect you; and (ii) to advise you of your rights and options with respect to the Settlement.

You are receiving this notice by order of the Court because the records of Gap, Inc. and/or Banana Republic LLC (hereinafter collectively “Defendants”), indicate that you are a current or former employee who worked in a Gap or Banana Republic store in California during the time period of June 14, 2019 to [the date of preliminary approval of the settlement] (the “Class”). As a result, **you are eligible to receive a portion of the settlement amount.**

This is **not** a notice of a lawsuit against you. **You are not being sued.** Your participation in the Settlement will **not** affect your employment with Gap in any way whatsoever.

II. WHAT IS THE CLASS ACTION LAWSUIT ABOUT?

In February of 2021, a Banana Republic employee in California filed a lawsuit in which she alleged violations of California wage- and-hour laws on a class action and representative basis as to all of Defendants’ current and former non-exempt employees in California.

The Class Action alleges that the Class was not paid regular, minimum, or overtime wages or final wages upon separation from employment, as required by California law; was not provided meal and rest periods under the California Labor Code and Wage Orders; was not reimbursed for all business-related expenses; and, was not provided pay statements with information specified in the California Labor Code. The Class Action also alleges violations under the California Business and Professions Code §§ 17200 et seq. based on these state law claims. The lawsuit also seeks penalties under California’s Private Attorneys General Act (“PAGA”).

The individual who is suing is referred to in this document as “Plaintiff.” Plaintiff’s attorneys, Sullivan & Yaeckel Law Group, APC, have been litigating the Action since filing it.

Defendants claim that the Class has been paid all monies due, maintains that they have complied with California’s wage-and-hour laws, and deny all wrongdoing. This settlement is **not** an admission of any liability.

The Court has not ruled on whether Plaintiff’s allegations have any merit. However, in order to avoid the time and expense of further litigation, the ultimate outcome of which is uncertain, and to provide a fair and reasonable resolution of this legal dispute, the parties have negotiated a settlement whereby Defendants have agreed to pay up to **\$3,155,000.00**. As a Class Member, you are eligible to receive a portion of this amount.

III. WHO IS INCLUDED IN THIS CLASS ACTION?

All current and former non-exempt employees who worked at a Gap or Banana Republic store in California from June 14, 2019, to **[the date of preliminary approval of the settlement]** (the “Class Period”).

IV. WHAT DOES THE PROPOSED SETTLEMENT OFFER?

Under the terms of the parties’ proposed settlement, the following will occur if the settlement is given final approval by the Court:

A. A claims administrator has been appointed by the Court to administer the settlement. The claims administrator will pay: (1) Plaintiff’s counsel’s attorneys’ fees, up to \$1,051,666.67; (2) Plaintiff’s costs of litigation, up to the amount of \$24,000.00; (3) The expenses of administering the settlement, up to the amount of \$50,000; (4) An enhancement award of up to \$5,000.00 for Plaintiff’s role in pursuing the litigation; and (5) A payment of \$240,000.00 to the California Labor & Workforce Development Agency.

B. The amount remaining after those deductions is estimated to be \$ **[REDACTED]**, and will be divided among all Class Members based on the estimated number of weeks worked for Gap or Banana Republic in California by each Class Member.

C. According to Defendants’ records, you worked in the State of California for approximately **[INSERT NUMBER OF work weeks]** during the Class Period, which runs from June 14, 2019 through **[the date of preliminary approval of the settlement]**. Your estimated class settlement amount is **<<AMOUNT>>**. This is only an estimate. Your actual share may change depending on the Court’s final ruling and the final number of participating Class Members.

[IF APPLICABLE] Because you worked for Defendants between December 17, 2019, through **[date of preliminary approval]**, you will also receive a payment for PAGA claims based on the number of pay periods worked during that period. Your estimated PAGA settlement amount is \$ ____.

If you believe the information above is incorrect, you may dispute this information by sending your corrections and any supporting documentation to the Claims Administrator via U.S. Mail, at _____. Please be advised that the information listed above is presumed to be correct **unless** you prove otherwise.

D. If the Court grants final approval of the settlement agreement and you do not opt out of the settlement, then you will release Defendants and their past, present, and future parents, subsidiaries, divisions, affiliates, predecessors, successors, and assigns, and each of their past, present, and future shareholders, owners, officers, directors, employees, agents, trustees, attorneys, representatives, administrators, fiduciaries, beneficiaries, subrogees, executors, partners, privies that from all claims that were or could have been asserted based on the factual allegations in the Operative Complaint or based on any facts discovered in the course of the Action, including (without limitation), claims for failure to pay minimum or overtime wages, failure to provide meal and rest periods or to pay meal and rest period premiums, failure to indemnify necessary business expenses, failure to pay all wages due to discharged or quitting employees, failure to reimburse necessary business expenses, failure to provide accurate itemized wage statements; California Business and Professions Code section 17200, et seq., and claims for injunctive relief, punitive damages, penalties of any nature (including PAGA civil penalties and statutory penalties), interest, fees, and costs). for the time period from June 14, 2019 up to and including the last date of the Class Period. You will be barred from prosecuting any of the Released Class Claims against the Released Parties.

V. WHAT ARE MY OPTIONS?

A. ***You may accept your share of the settlement and be bound by the release of all claims described above.*** Settlement awards will be paid by check after the settlement is given final approval by the Court. The checks will be mailed to you by the Claims Administrator. Your check will remain valid and negotiable for one hundred eighty (180) days from the date on which it is issued. After those one hundred eighty (180) days expire, the check will become void; ***or***

B. ***You may exclude yourself from the settlement, in which case you will not receive your share of the settlement and you will not be bound by the settlement.*** If you choose to be excluded, by no later than _____ (45 calendar days after mailing of this Notice), you must send a written request for exclusion, by mail, to the claims administrator, _____, located at _____. In order to be considered valid, your request for exclusion ***must*** include your name, your address, a request for exclusion, and your signature. However, even if you choose Option B, you will still release the Released PAGA Claims and will receive payment from the PAGA Settlement Amount if you are deemed to be a PAGA Member.

C. ***You may object to the settlement.*** The procedures for objecting to the settlement are described below in Section VIII of this form.

VI. WHAT ARE THE PROCEDURES FOR PAYMENT?

A. The claims administrator will calculate your share of the settlement and will issue you a check.

B. Forty percent (40%) of your share of the settlement will be considered wages from which ordinary tax withholdings will be deducted. No tax deductions shall be made from the remaining sixty percent (60%). You will be given IRS tax forms for each of these amounts. You are responsible for paying the correct amount of taxes on each portion of your share of the settlement.

C. It is important for the parties to have your current address in order to be able to send you other mailings regarding the Action. You should contact the Claims Administrator to report any change of your address after you receive this Notice. Failure to report a change of address may result in you not receiving your share of the settlement money.

VII. HEARING ON PROPOSED SETTLEMENT

A final fairness hearing will be held before the Court on [REDACTED], 2022, at [REDACTED] a.m., in Department C-66 of the San Diego County Superior Court, located at the Hall of Justice, 330 West Broadway, San Diego, California 92101, to decide whether or not the proposed settlement is fair, reasonable, and adequate. The Court may adjourn or continue the hearing without further notice to you. You are not required to attend the hearing. Sullivan & Yaeckel Law Group, APC (contact information below), counsel for Plaintiff and the Class, will answer any questions the Court may have. However, you are welcome to attend the hearing at your own expense. Procedures for making remote appearances at the hearing are allowed, but are subject to change. However, those procedures are posted on the Court's website at:

<https://www.sdcourt.ca.gov/virtualhearings>.

You should check the Court website for up-to-date information before attempting to make a remote appearance.

VIII. PROCEDURES FOR OBJECTING TO SETTLEMENT

You have the option of objecting to the Settlement and telling the Court that you don't agree with the Settlement or some part of it. The Court will consider your views. To object, you may send a letter, which you must sign, saying that you object to the settlement of *Arman v. Banana Republic et al.*, Case No. 37-2021-00007625-CU-OE-CTL. Be sure to include the case name and case number (as shown in the preceding sentence), your name, the last four digits of your Social Security Number and/or your employee ID number, your address, the specific reasons you object to the terms of the Settlement, and your signature. Mail the objection to the Claims Administrator address at [REDACTED] or fax to [REDACTED] on or before [REDACTED], 2022 (45 calendar days after mailing of this Notice). A written objection is optional. You may also appear at the Final Approval Hearing, as described in Section VII, above, to have any objections heard by the Court.

IX. EXAMINATION OF COURT PAPERS AND QUESTIONS

This Notice summarizes the Settlement. For more detailed information, you may view a complete copy of the settlement agreement, and any papers filed in the Action, which are on file with the Clerk of the Court, case number 37-2021-00007625-CU-OE-CTL. The pleadings and all other records from this litigation may be examined by inspecting the Court file in the at the filing department of the San Diego County Superior Court, located at Hall of Justice, 330 West Broadway, San Diego, California 92101. You may also review the settlement agreement, along with other court records regarding this case, on the Court's website, <https://www.sdcourt.ca.gov/sdcourt/generalinformation/accesscourtrecords>, through the link to the "Register of Actions."

If you have any questions, you can call the Claims Administrator at [REDACTED] or any of Class Counsel (see below for phone numbers.)

ATTORNEYS REPRESENTING PLAINTIFF AND THE CLASS

SULLIVAN & YAECKEL LAW GROUP, APC
Eric K. Yaeckel [yaeckel@sullivanlawgroupapc.com]
Ryan T. Kuhn [ryan@sullivanlawgroupapc.com]
2330 Third Avenue
San Diego, California 92101
(619) 702-6760 * (619) 702-6761 FAX

ATTORNEYS REPRESENTING GAP

Orrick, Herrington &
Sutcliffe LLP
Jessica Perry
1000 Marsh Road
Menlo Park, California 94025-1015

**PLEASE DO NOT CALL THE COURT, GAP, GAP'S CORPORATE OFFICE
AND MANAGERS, OR GAP'S ATTORNEYS REGARDING THIS
SETTLEMENT.**
