

1 **STIPULATED SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

2 **ARTICLE I**

3 **INTRODUCTION**

4 It is stipulated and agreed by and among the undersigned Parties, subject to the approval of
5 the Court pursuant to section 382 of the California Code of Civil Procedure, that the Settlement of
6 this action shall be effectuated upon and subject to the following terms and conditions. Capitalized
7 terms used herein shall have the meanings set forth in the "Definitions" section or as defined
8 elsewhere in this Stipulated Settlement Agreement and Release of Claims (hereafter "Agreement").

9 Plaintiff Frank Nichols, Jr. ("Representative Plaintiff") and the putative Class Members,
10 make this agreement with Defendant Vuori, Inc. ("Defendant"). Representative Plaintiff and
11 Defendant collectively are referred to in this Agreement as "the Parties."

12 The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and
13 concluded by agreement of Defendant to pay a non-reversionary all-in settlement in the total
14 maximum amount of \$325,000 (Three Hundred Twenty Five Thousand Dollars) as provided in
15 Section 5.06 below ("Gross Fund Value Amount") upon the terms and conditions of this Agreement
16 and for the consideration set forth herein, including but not limited to a release of all claims by
17 Representative Plaintiff and the Class Members as set forth herein.

18 **ARTICLE II**

19 **RECITALS**

20 This Agreement is made in consideration of the following facts:

21 2.1. WHEREAS on March 9, 2021 Representative Plaintiff filed his complaint in San
22 Diego County Superior Court asserting the following causes of action on a class action and/or
23 representative basis:

- 24 (1) Failure to Pay Minimum Wage;
25 (2) Failure to Pay All Overtime Wages;
26 (3) Failure to Provide Meal Periods;
27 (4) Failure to Provide Rest Periods;
28 (5) Failure to Provide Accurate Itemized Wage Statements;

- (6) Failure to Timely Pay Wages Upon Separation of Employment;
(7) Violation of Business & Professions Code §§17200, et seq.; and
(8) Failure to Reimburse for Business Expenses.

2.2. WHEREAS, on May 5, 2021, Representative Plaintiff amended his complaint by adding a cause of action for PAGA penalties for derivative violations of Labor Code §§ 203, 226.7, 510, 512, 558, 11944, 1194.2, 1197, 1197.1, 1198, 2802.

2.3. WHEREAS, the Parties engaged in informal discovery, exchanging information, documents and reviewing and analyzing extensive data made available by Defendant which enabled the parties to thoroughly evaluate Representative Plaintiff's claims, the claims of the putative class, Defendant's defenses, and the likely outcomes, risks and expense of pursuing litigation;

2.4. WHEREAS, the Parties attended an in-person mediation session with professional mediator Tripper Ortman via Zoom and reached terms of this arm's-length Settlement;

2.5. WHEREAS, a bona fide dispute exists as to whether any amount of wages or penalties are due from Defendant to any Class Member and/or to the California Labor and Workforce Development Agency ("LWDA") and/or to any allegedly aggrieved employees;

2.6. WHEREAS, the Parties desire to compromise and settle all issues and claims that have been or could have been brought, based on the allegations in the operative Complaint, against Defendant or related persons in the Action, including all claims brought on a putative class, collective and representative basis in the Action;

2.7. WHEREAS, based on the discovery exchanged as well as their own independent investigation and evaluation, the Parties have considered the claims asserted by Representative Plaintiff, the defenses asserted by Defendant, the risks associated with the continued prosecution of the Action, the cost of continued litigation through trial and appeals, and after considering all the circumstances, the Parties have concluded that the proposed settlement set forth in this Agreement is fair, adequate, and reasonable and confers substantial benefits upon the Class Members;

2.8. WHEREAS, the Parties further agree that the Agreement, the fact of this Settlement, any of the terms of this Agreement, and any documents filed in connection with the Settlement shall not constitute, or be offered, received, claimed, construed, or deemed as an admission, finding, or

evidence of: (i) any wrongdoing by any Released Parties, (ii) any violation of any statute or law by Released Parties, (iii) any liability on the claims or allegations in the Action on the part of any Released Parties, (iv) any waiver of Defendant's right to arbitration or the enforceability of any arbitration agreement, or (v) the propriety of certifying a litigation class or collective (conditionally or otherwise) or pursuing representative relief under the PAGA in the Action or any other civil or administrative proceeding; and this Agreement shall not be used by any Person for any purpose whatsoever in any administrative or legal proceeding, including but not limited to arbitrations, other than a proceeding to enforce the terms of the Agreement;

2.9. NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND AGREED, by Representative Plaintiff for himself and on behalf of the Participating Class Members and by Defendant, that, subject to the approval of the Court, the Action shall be settled, compromised, and dismissed, on the merits and with prejudice, and the Released Class Claims, as defined below, shall be finally and fully compromised, settled and dismissed as to the Released Parties, in the manner and upon the terms and conditions hereafter set forth in this Agreement.

ARTICLE III

DEFINITIONS

As used in the Agreement, the following terms have the meanings specified below:

- a. "Action" means the civil action commenced by Representative Plaintiff in the California Superior Court, County of San Diego entitled *Frank Nichols, Jr. v. Vuori, Inc.*, Case No. Case No. 37-2021-00010367 on March 9, 2021.
- b. "Agreement" means this Stipulated Settlement Agreement And Release Of Claims, including the Class Notice, as defined below, attached as Exhibit A.
- c. "Claims Administrator" means the third-party administrator approved by the court who will administer the settlement as set forth below.
- d. "Claims Administration Costs" means all costs incurred by the Claims Administrator in administration of the Settlement, including, but not limited to address verification measures, mailing of notice to the Class, calculation of Individual Settlement Payments, generation of Individual Settlement Payment checks, administration of uncashed checks, generation of checks to Class

Counsel for attorney's fees and costs, generation of the check to the Representative Plaintiff for his Service Award, generation of a check to the LWDA for its share of PAGA penalties, and generation and submission of all tax-related documents, all pursuant to the terms of this Agreement.

e. "Class Claims" means all claims for wages, benefits and related penalties actually alleged or that could have been alleged in the Action by the Representative Plaintiff, on behalf of themselves and the California Class Members, based on the facts alleged in the First Amended Complaint, including but not limited to: (1) Failure to Pay Minimum and Regular Wage; (2) Failure to Pay All Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Periods; (5) Failure to Provide Accurate Itemized Wage Statements; (6) Failure to Timely Pay Wages Upon Separation of Employment; (7) Violation of Business & Professions Code §§17200, et seq.; (8) Failure to Reimburse for Business Expenses; (9) Violations of the Private Attorneys General Act (Cal. Labor Code §2699, et seq.; and (10) Attorneys' Fees and Costs of Litigation associated with this Action. "Class Claims" also includes all claims that the Representative Plaintiff and/or Class Members may have against the Released Parties relating to (i) the payment, taxation and allocation of the Class Counsel Award pursuant to this Settlement Agreement and (ii) the payment, taxation and allocation of Representative Plaintiff's Service Awards pursuant to this Settlement Agreement.

f. "Class Counsel" means the attorneys for the Class and the Class Members, who are:

Brian R. Short
Brian@shortlegal.com
Dorota A. James
Dorota@shortlegal.com
ShortLegal, APC
350 10th Avenue, Suite 1000
San Diego, California 92101
Telephone: (619) 272-0720
Facsimile: (619) 839-3129

g. "Class Member(s)" means current and former non-exempt, hourly paid retail employees who were employed by Defendant in the State of California at any time commencing four (4) years prior to the filing of this Action to the date of mediation, August 11, 2021. (which is estimated to consist of approximately 135 current and former employees).

h. "Class Notice" means the Notice of Proposed Class Action Settlement attached hereto as Exhibit "A" or in substantially the same form as ultimately approved by the Court.

i. "Class Period" means the period from March 9, 2017 through the date of mediation, August 11, 2021.

j. "Complete and General Release" means an irrevocable and unconditional release given only by Representative Plaintiff, releasing Defendant and the Released Parties from any and all charges, complaints, claims, causes of action, debts, sums of money, controversies, agreements, promises, damages and liabilities of any kind or nature whatsoever, both at law and equity, known or unknown, suspected or unsuspected, arising from conduct occurring on or before the date Representative Plaintiff signs this Settlement Agreement, including but not limited to a release of any and all rights Representative Plaintiff has to sue or bring any type of claim under (a) California state law, the Fair Labor Standards Act; (d) Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (e) the Employment Act of 1967, (f) the Civil Rights Act of 1991, (g) the Civil Rights Act of 1866 and 1870, (g) 42 U.S.C. § 1981, as amended, (h) Executive Order 11246, (i) the Americans with Disabilities Act 42 U.S.C. § 12101, et. seq, as amended, (j) the Family and Medical Leave Act, as amended, (k) the Equal Pay Act of 1963, as amended, (l) the Immigration and Reform Control Act, as amended, (m) the Occupational Safety and Health Act, as amended, (n) the Sarbanes-Oxley Act of 2002, as amended, (o) the Employment Retirement Income Security Act of 1974, as amended (except vested benefits), (p) the Worker Adjustment and Benefit Protection Act of 1990, as amended, (q) the Worker Adjustment and Retraining Notification Act, as amended, (r) any federal, state or common law claim or cause of action based on any alleged failure to pay wages, breach of contract, wrongful discharge, constructive discharge, retaliation, defamation, slander, liable, intentional or negligent infliction of emotional distress, misrepresentation, fraud, promissory estoppel, (s) any other tort or negligence claim or obligations arising out of any of Defendant's employment policies or practices, employee handbooks, and/or any statements by any employee or agent of Defendant whether oral or written; and (t) for reinstatement, back pay, bonus, attorneys' fees, compensatory damages, costs, front pay, any form of equitable or declaratory relief, liquidated damages, emotional distress, personal injury, punitive damages, pain and suffering, medical expenses, damage to reputation, damage for personal, emotional or economic injury or damage of any kind. This provision is intended by the Parties to be all-encompassing and to act as a full and

total release of any claim, whether specifically enumerated herein or not, that Representative Plaintiff might have or have had, that exists or ever has existed on or prior to the date this Settlement Agreement is signed. This release includes a 1542 Waiver. The Parties understand and agree that the word “claims” includes all actions, group actions (including any pending or future collective, class, private attorney general or representative actions for which Representative Plaintiff may otherwise qualify as a putative class member or represented party), complaints and grievances that could potentially be brought by Representative Plaintiff against the Released Parties.

k. “Defendant” shall mean *Vuori, Inc.*

l. "Defense Counsel" means counsel for Defendant, who are:

Lindsay E. Hutner, Esq.
Email: hutnerl@gtlaw.com
San Hyde, Esq.
Email: hydes@gtlaw.com
Greenberg Traurig, LLP
4 Embarcadero Center, Suite 3000
San Francisco, CA 94111

m. “Final Effective Date” means the date on which the Settlement is approved and the Court’s Final Order and Judgment becomes Final. The Court’s Final Order and Judgment becomes final upon the later of: (i) if an intervention is granted, but no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from, or other challenge to, the Court’s Judgment (this time period shall not be less than 60 calendar days after the Court’s Judgment is entered); (ii) if an appeal is filed, the date affirmance of an appeal of the Judgment becomes final under the California Rules; (iii) if an appeal is filed, the date of final dismissal of any appeal from the Judgment or the final dismissal of any proceeding on review of any court of appeal decision relating to the Judgment; (iv) if objections are filed and overruled, and no appeal is taken of the final approval order, then the Effective Date of final approval will be sixty-five (65) days after the trial court enters final approval; or (v) if no intervention is granted and no objections are filed, the date on which the Court grants final approval of this Agreement on substantially the terms provided herein as the same may be modified by subsequent written agreement of the Parties and signs the Final Order granting final approval of this Agreement.

1 n. "Final Fairness and Approval Hearing" means the hearing to determine whether the proposed
2 Agreement settling the Action should be finally approved as fair, reasonable, and adequate; whether
3 the proposed plan of allocation of the Net Fund Value Amount should be approved; whether the
4 Representative Plaintiff's Service Award should be approved; and whether the applications of Class
5 Counsel for attorney's fees and costs should be approved.

6 o. "Final Order" refers to the order of the Court granting final approval of this Agreement as to
7 the Final Settlement Class (defined below) and entering a judgment approving this Agreement on
8 substantially the terms provided herein or as the same may be modified by subsequent written
9 agreement of the Parties.

10 p. "Final Settlement Class" refers to the Representative Plaintiff and all Class Members who do
11 not timely and validly exclude themselves from the class in compliance with the exclusion
12 procedures set forth in Section 5.04.a of this Agreement.

13 q. "Gross Fund Value Amount" means the \$325,000 (Three Hundred Twenty-Five Thousand
14 Dollars) to be paid by Defendant as provided by this Agreement to settle this Action. This is an "all
15 in" number that includes, without limitation, all monetary benefits and payments for the Final
16 Settlement Class Members, the Service Awards, the Class Counsel Award, the Settlement
17 Administrator expenses and the PAGA Payment, and all other claims for interest, fees, and costs.
18 Other than the employer's share of payroll taxes, in no event will Defendant pay more than the Gross
19 Fund Value Amount.

20 r. "Individual Settlement Payments" means the amounts of money from the Net Fund Value
21 Amount that shall be paid to the Participating Class Members less employee's portion of payroll
22 taxes owed. Individual Settlement Payments shall be each Participating Class Member's share of the
23 Net Fund Value Amount (which share shall be determined by the calculations provided in this
24 Agreement at Section 5.06.c.).

25 s. "Judgment" refers to the judgment entered by the Court in conjunction with the Final Order.

26 t. "LWDA" means the California Labor and Workforce Development Agency.

27 u. "Net Fund Value Amount" means the Gross Fund Value Amount of \$325,000 (Three
28 Hundred Twenty Five Thousand Dollars) less all of the following amounts approved by the Court:

(1) Class Counsel's court-approved attorney's fees (not to exceed One Hundred Eight Thousand, Three Hundred Thirty Three Dollars and Thirty Three Cents (\$108,333.33.00), to the Representative Plaintiff's counsel; (2) Class Counsel's court-approved collective litigation costs (not to exceed Fifteen Thousand Dollars (\$15,000.00); (3) the court-approved Service Award to be paid to the Representative Plaintiff (not to exceed Seven Thousand and Five Hundred Dollars (\$7,500.00); (4) the amount of court-approved PAGA penalties to be paid to the LWDA of Ten Thousand Dollars (\$10,000.00) which equates to 75% of the total amount allocated for PAGA Penalties of Seven Thousand and Five Hundred Dollars (\$7,500.00); and (5) the Claims Administrator's court-approved fees in the anticipated amount of not more than Five Thousand Dollars (\$5,000.00). The estimated Net Fund Value Amount is estimated to be \$179,167.66 plus any residuals from amounts requested in this paragraph which are not ultimately distributed to the respective Parties due to invoicing of a lesser amount by the Claims Administrator or court approval of a lesser amount than requested.

v. "Non-Participating Class Member(s)" means those Class Members who submit to the Claims Administrator a valid and timely written request to be excluded from the Class pursuant to Section 5.04.a below.

w. "PAGA" means the Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.*

x. "Participating Class Member(s)" means those Class Members who do not submit valid requests for exclusion.

y. "Parties" means Representative Plaintiff and Defendant as defined herein.

z. "Released Parties" means (i) Vuori, Inc. and its past, present, and future parents, subsidiaries, affiliates, divisions, joint ventures, licensees, franchisees, and any other legal entities, whether foreign or domestic, and (ii) the past, present, and future shareholders, officers, directors, members, investors, agents, employees, consultants, representatives, fiduciaries, insurers, attorneys, legal representatives, predecessors, successors, and assigns of the entities listed in (i).

aa. "Released Class Claims" means the Class Claims, and if Class Members cash the checks for their Individual Settlement Payments, that the Final Settlement Class Members are fully and irrevocably releasing in exchange for the consideration provided by this Settlement Agreement,

whether arising at law, in contract or in equity, and whether for economic or non-economic damages, restitution, injunctive relief, penalties or liquidated damages from March 9, 2021, through the date of mediation, August 11, 2021.

bb. "Representative Plaintiff" and/or "Nichols, Jr." means named Plaintiff Frank Nichols, Jr.

cc. "Service Award" means a monetary amount not to exceed Seven Thousand and Five Hundred Dollars (\$7,500.00) for the Representative Plaintiff which, subject to Court approval, shall be paid pursuant to Section 5.06.b.3 of the Agreement, as provided below.

dd. "Settlement" means the disposition of this Action and all related claims effectuated by this Agreement.

ARTICLE IV

CERTIFICATION FOR SETTLEMENT PURPOSES ONLY

4.1. Certification Of Class And Claims. Solely for the purposes of this Settlement, the Parties stipulate and agree that the Court may certify a class consisting of "all current and former non-exempt hourly paid retail employees who worked for Defendant within the State of California at any time from March 9, 2021 through the date of mediation, August 11, 2021."

4.2. Appointment Of Class Representative. Solely for the purposes of this Settlement, the Parties stipulate and agree Representative Plaintiff shall be appointed as representative of the Final Settlement Class.

4.3. Appointment Of Class Counsel. Solely for the purposes of this Settlement, the Parties stipulate and agree that Class Counsel shall be appointed as counsel for the Final Settlement Class.

4.4. Appointment Of Settlement Administrator. Solely for the purposes of this Settlement, the Parties stipulate and agree that Phoenix Class Action Administration Solutions ("Phoenix") shall be appointed to serve as Settlement Administrator.

4.5. Conditional Nature Of Stipulation For Certification. Solely for the purposes of this Settlement, the Parties stipulate and agree to the certification of the Final Settlement Class. Should, for whatever reason, the Settlement not become effective, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall have no bearing on, and shall not be admissible in connection with, the issue of whether the Class Members and/or the Class Claims

1 should be certified in a non-Settlement context in this Action or in any other lawsuit. Defendant
2 expressly reserves its right to oppose claim or class certification in this or any other action should
3 this Settlement not become effective.

4 4.6. Stay Of Proceedings. The Parties agree to stay all proceedings in the Action, except
5 such proceedings necessary to implement and complete the Settlement, pending the Final Approval
6 hearing to be conducted by the Court.

7 4.7. Arbitrability of Claims. The Settlement is not intended to and may not be deemed to
8 affect the enforceability of any arbitration agreement between Defendant and Representative
9 Plaintiff and/or between Defendant and any Class Member.

10 **ARTICLE V**

11 **PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF SETTLEMENT**

12 Because the Parties have stipulated to the certification of the Class for settlement purposes
13 only, this Agreement requires preliminary and final approval by the Court. Accordingly, as set forth
14 in Section IV, the Parties enter into this Agreement on a conditional basis. This Agreement is
15 contingent upon the approval and certification by the Court. If the Court does not grant either the
16 Preliminary or Final Approval of the settlement, the fact that the Parties were willing to stipulate to
17 class certification for the purposes of this Agreement shall have no bearing on, or be admissible in
18 connection with, the issue of whether any class should be certified in a non-settlement context. If
19 the Final Effective Date does not occur, this Agreement shall be deemed null and void, shall be of no
20 force or effect whatsoever, and shall not be referred to or used for any purpose whatsoever.
21 Defendant expressly reserves the right to challenge the propriety of class certification for any
22 purpose if the settlement does not become final.

23 The Parties and their respective counsel shall take all steps that may be requested by the
24 Court relating to the approval and implementation of this Agreement and shall otherwise use their
25 respective best efforts to obtain Court approval and implement this Agreement. The procedure for
26 obtaining Court approval of and implementing this Agreement shall be as follows.

27 **Section 5.01: Motion for Conditional Class Certification and Preliminary Approval**

28 a. Representative Plaintiff shall bring a motion before the Court for an order

1 conditionally certifying the Class based on the preliminary approval of this Agreement, including the
2 Class Notice attached hereto as Exhibit "A." The date that the Court grants preliminary approval of
3 this Agreement shall be the "Preliminary Approval Date."

4 b. Representative Plaintiff shall serve a notice of settlement on the California Labor and
5 Workforce Development Agency at the same time they file motion for preliminary approval.

6 c. The Parties stipulate to the form of, and agree to submit to the Court for its
7 consideration this Settlement Agreement, and the following Exhibits to this Settlement Agreement:
8 the Class Notice (Exhibit A) and a [Proposed] Preliminary Approval Order approved by both Parties.

9 d. The [Proposed] Preliminary Approval Order shall:

- 10 • Conditionally grant class certification;
- 11 • Conditionally appoint Representative Plaintiff and Class Counsel as
12 representatives of the proposed Class Members;
- 13 • Appoint Phoenix as the Settlement Administrator, and order the Settlement
14 Administrator to provide notice of the settlement as outlined below;
- 15 • Confirm that the procedure for distributing the Class Notice (discussed below)
16 (i) constituted the best practicable notice; (ii) constituted notice that was
17 reasonably calculated, under the circumstances, to apprise Settlement Class
18 Members of the pendency of the Action, and their right to exclude himself
19 from or object to the proposed settlement and to appear at the Final Fairness
20 and Approval Hearing; (iii) was reasonable and constituted due, adequate, and
21 sufficient notice to all persons entitled to receive notice; and (iv) met all
22 applicable requirements of, due process, and any other applicable rules or law;
- 23 • Confirm the notice of settlement served by Representative Plaintiff on the
24 California Labor and Workforce Development Agency satisfies the
25 requirements of PAGA.
- 26 • Impose a stay on all litigation of the Action pending the Final Fairness and
27 Approval Hearing, or Class Members from prosecuting any claims against
28 Defendant or the Released Parties pending the Final Fairness and Approval

Hearing unless they have timely opted-out of the settlement; and;

- Order that the preliminary approval of the Settlement, certification of the Class Claims and all actions associated with them, are undertaken on the condition that they shall be vacated if the Settlement Agreement is terminated or disapproved in whole or in material part by the Court (i.e. not including modification of the amount of Attorney's Fees, Attorney's Costs, or Class Representative Enhancement by the Court), or any appellate court and/or other court of review in which event the Settlement Agreement and the fact that it was entered into shall not be offered, received, or construed as an admission or as evidence for any purpose, including but not limited to an admission by any Party of liability or non-liability or of the certifiability of a litigation class or the appropriateness of maintaining a representative action.

Section 5.02: The Claims Administrator

A court-appointed third-party Claims Administrator will serve to administer this Settlement pursuant to the terms herein. The Claims Administrator will administer the settlement by performing address verification for the Class Members, distributing the Class Notice and Reminder Postcards, if necessary, performing skip traces, receiving and recording completed Settlement Opt-Outs, adjudicating Class Members' disputes over workweeks worked during the Class Period in the relevant positions as an hourly and/or non-exempt employee, providing Class Counsel and counsel for Defendant with weekly updates on the status of Opt-Outs, and handling any potential inquiries about the calculation of the Individual Settlement Amounts. The Claims Administrator shall provide the Parties with the names of individuals who submitted timely Opt-Outs after the expiration of the claims period for inclusion in the proposed final approval Order. The actions of the Claims Administrator shall be governed by the terms of this Stipulation. The Parties, through their counsel, may provide written information needed by the Claims Administrator pursuant to the Stipulation.

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, all costs and fees associated with computing, processing, reviewing, and mailing the Individual Settlement

1 Payments, all costs and fees associated with preparing any tax returns and any other filings required
2 by any governmental taxing authority or agency, all costs and fees associated with preparing any
3 other notices, reports, or filings to be prepared in the course of administering disbursements from the
4 Net Fund Value Amount, and any other costs and fees incurred and/or charged by the Claims
5 Administrator in connection with the execution of its duties under this Agreement ("Claims
6 Administration Costs"), anticipated to be not more than Five Thousand Dollars (\$5,000.00), shall be
7 paid out of the Gross Fund Value Amount.

8 **Section 5.03: Notice to Class Members**

9 **a. Initial Identification of Class Members:** Within seven (7) business days following
10 entry of the Preliminary Approval Order, Defendant shall provide to the Claims Administrator a
11 confidential list in Excel spreadsheet format containing the name and last known address, telephone
12 number, and social security number of each Class Member. This list shall also contain the gross
13 wages earned by each individual Class Member as an hourly or non-exempt retail employee for
14 Defendant during the Class Period and the commencement dates and termination dates (if
15 applicable) relating to each individual Class Member during the Class Period. This information shall
16 be treated as confidential.

17 **b. Mailing of Class Notice:** Promptly upon receipt of the Class Member information
18 from Defendant, the Claims Administrator shall attempt to obtain updated addresses for Class
19 Members from the U.S. Postal Service and Accurint. Within fourteen (14) calendar days after
20 receipt of the Class Member information from Defendant, or receipt of any updated addresses from
21 the U.S. Postal Service, whichever is later, the Claims Administrator shall mail the Class Notice to
22 all Class Members via first-class mail using the updated address information. With respect to each
23 Class Notice that is returned as undeliverable, the Claims Administrator shall promptly attempt to
24 determine a correct address using an additional skip trace service such as Experian and shall re-send
25 the Class Notice via first-class mail to any new address thereby determined within 10 days of
26 receiving the notice that the Class Notice was undeliverable.

27 **c. Notification to Counsel:** No later than ten (10) days prior to the Final Fairness and
28 Approval Hearing, the Claims Administrator shall provide Defense Counsel and Class Counsel with

1 a declaration attesting to completion of the notice process, including any attempts to obtain valid
2 mailing addresses for and re-sending of any returned Class Notices, as well as the number of valid
3 opt-outs that the Claims Administrator received. Upon approval by the court, compliance with the
4 procedures described in this Section 5.03.b shall constitute due and sufficient notice to Class
5 Members of this proposed Settlement and the Final Fairness and Approval Hearing and shall satisfy
6 the requirement of due process. Nothing else shall be required of the Parties, Class Counsel,
7 Defense Counsel, or the Claims Administrator to satisfy the requirements of providing notice of the
8 proposed Settlement and the Final Fairness and Approval Hearing.

9 **Section 5.04: Responses to Notice**

10 **a. Requests for Exclusion from Class**

11 For any other Class Member to validly exclude himself or herself from the Class and this
12 Settlement (*i.e.*, to validly opt-out), a written request for exclusion must be signed by the Class
13 Member or his or her authorized representative, and must be sent to the Claims Administrator,
14 postmarked by no later than thirty (30) days after the date the Claims Administrator initially mails
15 the Class Notice to the Class Members. For Notices re-mailed by the Claims Administrator pursuant
16 to section 5.03.b, the written request for exclusion must be postmarked by no later than thirty (30)
17 days of the initial mailing of the Class Notice or twenty (20) days of the re-mailing, whichever is
18 later. The Class Notice shall contain individualized estimated payments, set forth instructions on
19 how to opt-out and include the language to be used in a request for exclusion. The date of the initial
20 mailing (or re-mailing for Class Notices re-mailed) of the Class Notice and the date the signed
21 request for exclusion was postmarked, shall be conclusively determined according to the records of
22 the Claims Administrator. Any Class Member who timely and validly requests exclusion from the
23 Class and this Settlement shall become a Non-Participating Class Member and shall not be entitled
24 to any Individual Settlement Payment, shall not be bound by the terms and conditions of this
25 Agreement, and shall not have any right to object, appeal, or comment thereon.

26 Final Settlement Class members may exclude themselves or “opt out” from a release of Class
27 Claims by not depositing or cashing their Individual Settlement Payment checks. The Class Notice
28 and Individual Settlement Payment check will conspicuously advise Final Settlement Class of such.

1 **b. Objections to Settlement**

2 For any Class Member to object to this Agreement, or any term of it, the person making the
3 objection must not submit a request for exclusion (*i.e.*, must not opt-out), and must, by no later than
4 thirty (30) days after the Class Notice was initially mailed to the Class Members, file with the Court
5 and serve on Class Counsel and Defense Counsel, a written statement of the grounds of objection,
6 signed by the objecting Class Member or his or her attorney, along with all supporting papers. For
7 Class Notices re-mailed by the Claims Administrator pursuant to section 5.03.b, written statements
8 of the grounds for objection must be filed and served no later than thirty (30) days after the initial
9 mailing of the Class Notice or twenty (20) days of the re-mailing, whichever is later. The date of
10 mailing or re-mailing of the Class Notice to the objecting Class Member shall be conclusively
11 determined according to the records of the Claims Administrator. The Court retains final authority
12 with respect to the consideration and admissibility of any Class Member objections.

13 Counsel for the Parties shall file any response to the objections submitted by objecting Class
14 Members at least ten (10) court days before the date of the Final Fairness and Approval Hearing or
15 ten (10) days after the receipt of the notice of objection, whichever is later.

16 **c. Failure to Object**

17 Any Class Member who fails to timely file and serve such a written statement of his or her
18 intention to object shall be foreclosed from making any objection to this settlement, unless otherwise
19 ordered by the Court.

20 **d. Failure to Timely Opt Out**

21 Any Class Member who fails to submit a timely request for exclusion from the Class
22 automatically shall be deemed a member of the Final Settlement Class whose rights and claims with
23 respect to the issues raised in the Action are determined by the Court's Final Order, and by the other
24 rulings in the Action.

25 **e. Right of Defendant to Void Agreement**

26 If more than ten percent (10%) of Class Members make a valid request to be excluded from
27 the Class as described in Section 5.04.a above and thus become Non-Participating Class Members,
28 Defendant shall have the right, but not the obligation, to void the Agreement. If Defendant exercises

1 that right to void the Agreement, then the Parties shall have no further obligations under the
2 Agreement, including any obligation by Defendant to pay the Gross Fund Value Amount, or any
3 amounts that otherwise would have been owed under this Agreement, except that Defendant shall
4 pay the Claims Administrator's reasonable fees and expenses incurred as of the date that Defendant
5 exercises their right to void the Agreement. Defendant shall notify Class Counsel and the Court
6 whether they are exercising the right to void the Agreement no later than ten (10) calendar days after
7 the Claims Administrator notifies the Parties of the final total number of valid requests to be
8 excluded.

9 **Section 5.05: Final Fairness and Approval Hearing**

10 **a. Final Approval Hearings**

11 On the date set forth in the Order of Preliminary Approval and Class Notice, which shall be
12 approximately one hundred and five (105) days after the initial mailing of the Notice of Proposed
13 Class Action Settlement, or on a reasonable date as set forth by the Court, a Final Fairness and
14 Approval Hearing shall be held before the Court in order (1) to review this Agreement and determine
15 whether the Court should give it final approval; and (2) to consider any timely objections made
16 pursuant to Section 5.04.b above and all responses by the Parties to such objections. At the Final
17 Fairness and Approval Hearing, the Parties shall ask the Court to give final approval to this
18 Agreement and shall submit to the Court a proposed Final Order approving the Settlement and which
19 shall be entered in the Action.

20 Representative Plaintiff shall file a motion requesting final approval of the Settlement
21 approved by all Parties, the entry of which is a material condition of this Settlement. The Final
22 Approval Order shall adjudge that, among other things:

- 23 • The Settlement Administrator has fulfilled its initial notice and reporting
24 duties under the Settlement and that the Class Notice (i) constituted the best
25 practicable notice; (ii) constituted notice that was reasonably calculated, under
26 the circumstances, to apprise Class Members of the pendency of the Action,
27 and their right to exclude himself from or object to the proposed settlement
28 and to appear at the Final Approval Hearing; (iii) was reasonable and

1 constituted due, adequate, and sufficient notice to all persons entitled to
2 receive notice; and (iv) met all applicable requirements of due process, and
3 any other applicable rules or law.

- 4 • The Settlement as fair, reasonable, and adequate;
- 5 • Representative Plaintiff and Class Counsel may adequately represent the Final
6 Settlement Class for the purpose of entering into and implementing the
7 Agreement;
- 8 • The Settlement Administrator is to execute the distribution of proceeds
9 pursuant to the terms of this Agreement;
- 10 • The Final Approval Order and Judgment of dismissal shall be final and
11 entered forthwith;
- 12 • Without affecting the finality of the Final Approval Order and Judgment, the
13 Court retains continuing jurisdiction over Representative Plaintiff, Defendant,
14 the Final Settlement Class as to all matters concerning the administration,
15 consummation, and enforcement of this Settlement Agreement;
- 16 • As of the Final Approval Date, the Representative Plaintiff, the Final
17 Settlement Class, and their Legally Authorized Representatives, heirs, estates,
18 trustees, executors, administrators, principals, beneficiaries, representatives,
19 agents, assigns, and successors, and/or anyone claiming through them or
20 acting or purporting to act for them or on their behalf, regardless of whether
21 they have received actual notice of the proposed Settlement, have
22 conclusively compromised, settled, discharged, and provided: the Complete
23 and General Release (in the case of Representative Plaintiff) and the release of
24 Released Class Claims (in the case of the Final Settlement Class Members),
25 and are bound by the provisions of this Settlement Agreement;
- 26 • Notwithstanding the submission of a timely request for exclusion, Class
27 Members are still bound by the settlement and release of the PAGA Claims or
28 remedies under the Judgment pursuant to *Arias v. Superior Court*, 46 Cal.4th

1 969 (2009), as requests for exclusion do not apply to the PAGA Claims, and
2 further affirms that the State's claims for civil penalties pursuant to PAGA are
3 also extinguished;

- 4 • This Settlement Agreement and the Final Approval order and Judgment to be
5 binding on, and have *res judicata* and preclusive effect in, all pending and
6 future lawsuits or other proceedings that encompass the claims of
7 Representative Plaintiffs and Final Settlement Class members and/or their
8 heirs, estates, trustees, executors, administrators, principals, beneficiaries,
9 representatives, agents, assigns, and successors, and/or anyone claiming
10 through them or acting or purporting to act for them or on their behalf;
- 11 • Representative Plaintiff and the Final Settlement Class members are
12 permanently barred from filing, commencing, prosecuting, intervening in, or
13 participating (as class members or otherwise) in any other lawsuit or
14 administrative, regulatory, arbitration, or other proceeding in any jurisdiction
15 based on the claims released herein; and
- 16 • The Settlement provided for herein, and any proceedings undertaken pursuant
17 thereto, are not, and should not in any event be offered, received, or construed
18 as evidence of, a presumption, concession, or an admission by any Party of
19 liability or non-liability or of the certifiability or non-certifiability of a
20 litigation class or collective, or that PAGA representative claims may validly
21 be pursued; provided, however, that reference may be made to this Settlement
22 in such proceedings as may be necessary to effectuate the provisions of this
23 Settlement.

24 **b. Vacating, Reversal, or Material Modification of Final Order and Judgment on**
25 **Appeal or Review**

26 If, after a notice of appeal or a petition for a writ of *certiorari* or any other motion, petition,
27 or application, the reviewing court vacates, reverses, or modifies the Final Order and Judgment such
28 that there is a material modification to the Settlement and that court's decision is not completely

1 reversed, and the Final Order and Judgment is not fully affirmed on review by a higher court, then
2 Representative Plaintiff and Defendant shall each have the right, but not the obligation, to void the
3 Settlement, which the Party must do by giving written notice to the other Parties, the final reviewing
4 court, and the Court not later than ten (10) business days after the final reviewing court's decision
5 vacating, reversing, or materially modifying the Final Order becomes final and non-appealable. If
6 either Party exercises its right to void the Agreement under this section, then the Parties shall have
7 no further obligations under the Agreement, including any obligation by Defendant to pay the Gross
8 Fund Value Amount, or any amounts that otherwise would have been owed under this Agreement.
9 The Party exercising its right to void the Agreement shall pay the Claims Administrator's reasonable
10 fees and expenses incurred as of the date the Party exercises its right to void the Agreement. If the
11 Parties mutually agree to void the Agreement, then the Claims Administrator's reasonable fees and
12 expenses incurred as of the date the Parties exercise their right to void the Agreement shall be split
13 equally. A vacation, reversal, or modification of the Court's award of the Service Award or Class
14 Counsel's fees or costs shall not constitute a vacation, reversal, or material modification of the Final
15 Order and Judgment within the meaning of this paragraph.

16 **Section 5.06: Settlement Payment Procedures**

17 **a. Settlement Sum**

18 In exchange for the releases set forth in this Agreement, Defendant agrees to pay the Gross
19 Fund Value Amount of Three Hundred Twenty-Five Thousand Dollars (\$325,000.00), exclusive of
20 employer-side payroll taxes. The Gross Fund Value Amount was calculated based on the premise
21 that there are approximately 135 Class Members eligible to participate in the Settlement representing
22 a total of approximately 4,662 workweeks. In the event the actual number of Class Members
23 eligible to participate in the Settlement or the actual number of workweeks is greater than 20% of
24 this estimate, then the Class Settlement Amount will be increased by the same proportion above
25 20%. The Settlement Sum includes Class Counsel's attorney's fees not to exceed One Hundred Eight
26 Thousand, Three Hundred Thirty Three Dollars and Thirty Three Cents (\$108,333.33) and litigation
27 costs of not more than Fifteen Thousand Dollars (\$15,000.00), a Service Award for Representative
28 Plaintiff of not more than Seven Thousand and Five Hundred Dollars (\$7,500.00), the PAGA

1 penalty payment of Ten Thousand Dollars (\$10,000.00), which includes the payment of Seven
2 Thousand and Five Hundred Dollars (\$7,500.00) to the LWDA, the Claims Administration Costs
3 anticipated to be not more than Five Thousand Dollars (\$5,000.00).

4 **b. Allocation of Settlement Amount:** In full and complete settlement of the Action
5 and subject to this Settlement being approved by the Court, Defendant shall pay Three Hundred
6 Twenty-Five Thousand Dollars (\$325,000.00), (the "Gross Fund Value Amount"). The Gross Fund
7 Value Amount shall be paid to the Claims Administrator no later than thirty (30) calendar days after
8 the Final Effective Date. If the Court does not grant final approval upon the material terms of the
9 settlement (other than modification of the requested attorney's fees, costs or class representative
10 service award) or if more than 10% of the putative class members opt-out as set forth in Section
11 5.04(e) and the Defendant elects to void the settlement, Defendant shall have no further obligation
12 under this Agreement. If the Court grants final approval of the settlement, the settlement funds shall
13 be disbursed as follows:

14 **1. Reasonable attorney's fees and litigation expenses:** Class Counsel have
15 stated they shall request that the Court award them reasonable attorney's fees in an amount up to
16 One Hundred Eight Thousand, Three Hundred Thirty-Three Dollars and Thirty-Three Cents
17 (\$108,333.33) and litigation costs in an amount up to Fifteen Thousand Dollars (\$15,000.00).
18 Defendant has agreed neither to oppose nor adversely comment on the fees and litigation costs
19 request. The award of reasonable attorney's fees and litigation costs granted by the Court shall be
20 paid out of the Gross Fund Value Amount within thirty five (35) calendar days of the Final Effective
21 Date in accordance with Section 5.06.d.2-3, below.

22 **2. Reasonable expenses of the Claims Administrator:** The Claims
23 Administrator shall be paid out of the Gross Fund Value Amount and such payment shall not
24 constitute payment to any Participating Class Member(s). The Claims Administration Costs,
25 expected not to exceed Five Thousand Dollars (\$5,000.00), shall be paid out of the Gross Fund
26 Value Amount within thirty five (35) calendar days after the Final Effective Date in accordance with
27 Section 5.06.d.1, below.

28 ///

1 **3. Reasonable Service Award to the Representative Plaintiff:**

2 Subject to Court approval, the Representative Plaintiff shall make a separate application for
3 up to Seven Thousand and Five Hundred Dollars (\$7,500.00) as a Service Award. The Service
4 Award shall be paid by check made payable to the Representative Plaintiff, which shall be delivered
5 by the Claims Administrator to Class Counsel within thirty-five (35) calendar days after the Final
6 Effective Date. The Service Award shall be paid out of the Gross Fund Value Amount and shall not
7 constitute payment(s) to any Participating Class Member(s).

8 It is the intent of the Parties that the Service Award represent payment to Representative
9 Plaintiff for the additional risks undertaken in prosecuting this action and his service to the Class
10 Members, and not wages, thus, the Claims Administrator shall not withhold any taxes from the
11 Service Award. The Service Award shall be reported on a Form 1099, which shall be provided by
12 the Claims Administrator to the Representative Plaintiff and to the pertinent taxing authorities as
13 required by law. Although it is the contemplation of the Parties that the Service Award does not
14 represent wages, the Internal Revenue Service, the California Franchise Tax Board, or some other
15 taxing authority may take the position that some or all of the Service Award constitutes wages for
16 income tax and withholding purposes. The Representative Plaintiff agrees to assume the
17 responsibility of remitting to the Internal Revenue Service, the California Franchise Tax Board, and
18 any other relevant taxing authority the amounts required by law, if any, to be withheld by Defendant
19 from the Service Award paid under this Agreement.

20 **4. PAGA Payment:** A payment of Ten Thousand Dollars (\$10,000.00) shall be
21 allocated to PAGA penalties, Seven Thousand and Five Hundred Dollars (\$7,500.00) of which shall
22 be payable to the California LWDA within thirty (35) calendar days of the Final Effective Date. The
23 PAGA penalties shall be paid out of the Gross Fund Value Amount. The remaining portion of the
24 PAGA payment shall be distributed pro-rata to the Final Settlement Class as set forth below in
25 Section 5.06.c.1.

26 **5. Allocation to Participating Class Members:** The amount remaining from
27 the Gross Fund Value Amount after deducting the court-awarded reasonable attorney's fees and
28 litigation costs, reasonable Claims Administration Costs, reasonable Service Award payment, and

1 PAGA penalties portion allocated to the LWDA (the "Net Fund Value Amount") shall be distributed
2 to members of the Class in accordance with the formula set forth below in Section 5.06.c. Final
3 Settlement Class members are not eligible to receive any compensation other than the Individual
4 Settlement Payments discussed below.

5 **c. Individual Settlement Payments:** The Individual Settlement Payments shall be
6 calculated as follows:

7 **1. Calculation:** Each Class Member of the Final Settlement Class who does not Opt-
8 Out shall be eligible to receive his/her Individual Settlement Payment, which shall be based on
9 information contained in Defendant's pertinent payroll records, and calculated as follows:

10 i) Each Class Member of the Final Settlement Class shall be allocated a
11 payment equal to the pro rata portion of the number of gross wages earned by that class
12 member while employed with Defendant within the State of California during the Class
13 Period in proportion to the total aggregated gross wages earned by All Settlement Class
14 Members during the class period.

15 ii) The employee's share of the payroll taxes shall be deducted and paid from
16 the Individual Settlement Payment. The Claims Administrator shall calculate the Individual
17 Settlement Payments and the amount of the employee's share of payroll taxes to be deducted
18 therefrom in order to determine the net Individual Settlement Payment.

19 **2. Dispute Resolution:** The Claims Administrator shall have the initial responsibility
20 of resolving all disputes that arise during the claims administration process, including, without
21 limitation, disputes, if any, regarding the calculation of the total number of gross wages earned by
22 each Class Member in their respective positions as residential managers (or otherwise similar job
23 duties and/or title) where the information submitted by Defendant based on their employment
24 records differs from the information submitted by Class Members. In resolving such disputes,
25 Defendant's employment records shall be presumed to be accurate and correct, and shall be final and
26 binding, unless the information submitted by the Claimant (e.g., pay stubs, employment records,
27 etc.) proves otherwise. In the event the Claims Administrator cannot resolve a dispute based on a
28 review of the available information, the Claims Administrator shall request a conference call

1 between the Claims Administrator, Class Counsel, and Defense Counsel to discuss and resolve the
2 dispute. After such call, the Claims Administrator shall resolve the dispute, and such resolution shall
3 be final and binding on the Class Member. In advance of the conference call, the Claims
4 Administrator shall fax or email copies of all available information to all counsel.

5 **3. Fair Formula:** The Parties hereby agree that the formula for allocating payments to
6 Participating Class Members as provided herein is reasonable and designed to provide a fair
7 settlement to the Participating Class Members.

8 **4. Allocation of Net Fund Value Amount Payments and Taxes:** All Individual
9 Settlement Payments made to Participating Class Members under this Agreement shall be allocated
10 as follows: 25% to wages and 75% to penalties and interest. The Claims Administrator shall deduct
11 from each Individual Settlement Payment all employee portions of payroll taxes from the amount
12 allocated to wages. The amounts allocated to penalties and interest shall not be subject to tax
13 withholding, but Participating Class Members will receive a 1099 for those payments. Defendant
14 shall not make as part of this Agreement, nor be required to make, any deductions, nor pay any
15 monthly contributions for any insurance, retirement, bonuses, 403(b), or profit-sharing plans related
16 to monies paid as a result of this Agreement.

17 The Parties understand and agree that Defendant is not providing tax or legal advice, or
18 making representations regarding tax obligations or consequences, if any, related to this Agreement,
19 and that the members of the Final Settlement Class will assume any such tax obligations or
20 consequences that may arise from this Agreement, and that Final Settlement Class Members shall
21 not seek any indemnification from Defendant in this regard. The Parties agree that, in the event that
22 any taxing body determines that additional taxes are due from any Final Settlement Class Member,
23 such Class Member assumes all responsibility for the payment of any such taxes.

24 **d. Timing of Settlement Payments:** As set forth in Section 5.06.b. above, no later than
25 thirty (30) calendar days following the Final Effective Date, Defendant shall remit the full Gross
26 Fund Value Amount to the Claims Administrator via wire transfer (or other method reasonably
27 calculated to be received by the Claims Administrator within thirty (30) calendar days after the Final
28 Effective Date) for the purposes of making the payments described herein. Payments from the Gross

1 Settlement Fund shall fund the settlement and meet the obligations of Section 5.06.b and be paid by
2 the Claims Administrator within the time frames set forth below in sections 5.06.d.1-5.

3 Payments of the following from the Gross Fund Value Amount shall be made in accordance
4 with the following subparagraphs:

5 **1. Claims Administrator:** The Claims Administrator shall be paid the Claims
6 Administration costs from the Gross Fund Value, expected to be not more than Five Thousand
7 Dollars (\$5,000.00), thirty (35) calendar days after the Final Effective Date.

8 **2. Class Counsel's Fees:** The amounts approved by the Court for Class
9 Counsel's fees shall be paid by the Claims Administrator within thirty-five (35) calendar days after
10 the Final Effective Date and the Claims Administrator shall pay the total attorney's fee award to
11 Class Counsel.

12 **3. Class Counsel's Costs:** The amount approved by the Court for Class
13 Counsel's costs shall be paid by the Claims Administrator within thirty-five (35) days after the Final
14 Effective Date.

15 **4. Class Representative's Service Award:** The amount approved by the Court
16 for the Class Representative's Service Award shall be paid by the Claims Administrator to Class
17 Counsel within thirty-five (35) calendar days after the Final Effective Date.

18 **5. Individual Settlement Payments:** Within fifteen (15) days of the last date
19 for Opt-Outs or Objections to be timely submitted in accordance with Section 5.04.a and 5.04.b,
20 above, the Claims Administrator shall provide to the Parties a written statement of all Individual
21 Settlement Payments to be paid to all Participating Class Members and all required payroll taxes.
22 The Claims Administrator will distribute the Individual Settlement Payments to all Participating
23 Class Members within thirty-five (35) calendar days of the Final Effective Date. Claims
24 Administrator shall issue to each Participating Class Member a check in the amount of his or her
25 Individual Settlement Payment, as described in Section 5.06.c.1 (less applicable taxes and
26 withholdings) via first-class mail. Uncashed checks not negotiated within 120 days of their issuance
27 are void. All Final Settlement Class Members shall be bound by this Agreement and the release
28 herein even if the Class Member does not cash the settlement check issued to him or her comprising

1 his or her Individual Settlement Payment. If any Settlement Class Member has not cashed his or her
2 Settlement Payment check within ninety (90) days of issuance, the Settlement Administrator shall
3 mail that Class Member a postcard reminding him/her of the deadline to cash such check and
4 providing information as to how to obtain a reissued check in the event the check was lost, stolen or
5 misplaced. Any checks issued to Class Members shall remain valid and negotiable for one hundred
6 twenty (120) days from the date of issuance. After all settlement funds have been distributed and all
7 checks issued to Settlement Class Members have either been cashed or have remained uncashed and
8 gone stale, the Settlement Administrator shall deposit any residual funds from uncashed checks with
9 the California State Controller's Office – Unclaimed Property.

10 All checks issued to the Final Settlement Class will conspicuously advise Final Settlement
11 Class members that cashing or depositing their Individual Settlement Payment checks will be
12 considered opting-in to a release of the Class Claims and should they not wish to opt-in to such a
13 release they should not cash or deposit their checks.

14 **e. Residuals**

15 If any amount of the Gross Fund Value Amount remains unallocated as a result of
16 modification to the requested attorney's fees, costs, Class Representative Service Award or Claims
17 Administration Costs, this amount shall become part of the Net Fund Value Amount and be
18 distributed pursuant to Section 5.06.c.

19 **f. Circular 230 Disclaimer**

20 Each party to this agreement (for purposes of this section, the "acknowledging party" and
21 each party to this agreement other than the acknowledging party, an "other party") acknowledges
22 and agrees that (1) no provision of this agreement, and no written communication or disclosure
23 between or among the parties or their attorneys and other advisers, is or was intended to be, nor shall
24 any such communication or disclosure constitute or be construed or be relied upon as, tax advice
25 within the meaning of united states treasury department circular 230 (31 CFR part 10, as amended);
26 (2) the acknowledging party (a) has relied exclusively upon his or its own, independent legal and tax
27 counsel for advice (including tax advice) in connection with this agreement, (b) has not entered into
28 this agreement based upon the recommendation of any other party or any attorney or advisor to any

1 other party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or
2 adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging party;
3 and (3) no attorney or adviser to any other party has imposed any limitation that protects the
4 confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such
5 limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax
6 structure of any transaction, including any transaction contemplated by this agreement.

7 **ARTICLE VI**

8 **LIMITATIONS ON USE OF THIS SETTLEMENT**

9 **Section 4.01: No Admission**

10 Defendant denies that Defendant has engaged in any unlawful activity, that Defendant failed
11 to comply with the law in any respect, that Defendant has any liability to anyone based upon the
12 claims asserted in the Action, and Defendant asserts that but for this Settlement a class should not be
13 certified in this Action. This Agreement is entered into solely for the purpose of compromising
14 highly-disputed claims. Nothing in this Agreement is intended or shall be construed as an admission
15 of liability or wrongdoing by Defendant.

16 Defendant has concluded that any further defense of this litigation would be protracted and
17 expensive for all Parties. Substantial amounts of time, energy and resources of Defendant have been
18 spent and, unless this Settlement is agreed to, will continue to be devoted to the defense of the
19 Claims asserted by the Class. Defendant has also taken into account the risks of further litigation in
20 reaching this decision. Defendant has, therefore, agreed to settle in the manner and upon the terms
21 set forth in this Agreement to put to rest the Claims as set forth in the Action.

22 As to the claims and allegations in this Action, including but not limited to wage claims,
23 meal and rest period claims, overtime pay claims, minimum wage claims, claims for uncompensated
24 work time, wage statement claims, claims for waiting time penalties, unfair business practices
25 claims, and claims for PAGA penalties, Defendant denies and continues to deny each of those claims
26 and contentions alleged by Representative Plaintiff and the Class in the Action. Defendant has
27 repeatedly asserted and continues to assert defenses thereto, and has expressly denied and continues
28 to deny any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the

1 Action.

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

3 Whether or not the settlement becomes final, neither this Agreement nor any of its terms nor
4 the Settlement itself shall be: (a) construed as, offered, or admitted in evidence as, received as, or
5 deemed to be evidence for any purpose adverse to Defendant or any other of the Released Parties,
6 including but not limited to, evidence of a presumption, concession, indication, or admission by any
7 of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b)
8 disclosed, referred to, or offered in evidence against any of the Released Parties in any further
9 proceeding in the Action, or any other civil, criminal, or administrative action or proceeding except
10 for the purposes of effectuating the Settlement pursuant to this Agreement or for Defendant to
11 establish that a Class Member has resolved any of his/her claims released through this Agreement.

12 **Section 4.03: Nullification**

13 The Parties have agreed to the certification of the Class for the sole purpose of effectuating
14 this Agreement. If (a) the Court should for any reason fail to certify a class for settlement, or (b) the
15 Court should for any reason fail to approve this Settlement in the form agreed to by the Parties
16 (except for the amount of attorney's fees, costs and Service Awards awarded), or (c) the Court
17 should for any reason fail to enter the Final Order, or (d) the Final Order is reversed, modified, or
18 declared or rendered void, then (i) this Agreement shall be considered null and void; (ii) neither this
19 Agreement nor any of the related negotiations or proceedings shall be of any force or effect; (iii) all
20 Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had
21 been neither entered into nor filed with the Court; and (iv) the fact that the Parties were willing to
22 stipulate to class certification as part of the Settlement shall have no bearing on, and shall not be
23 admissible in connection with, the issue of whether a class should be certified in a non-settlement
24 context in this Action or any other action, and in any of those events, Defendant expressly reserves
25 the right to oppose any motion for class certification.

26 Invalidation of any material portion of this Agreement, except for the amount of attorney's
27 fees, costs and Service Award, shall invalidate this Agreement in its entirety unless the Parties shall
28 subsequently agree in writing that the remaining provisions shall remain in full force and effect.

1 **ARTICLE VII**

2 **RELEASES**

3 **Section 7.01: Releases by Class Members**

4 On the Final Effective Date, the Final Settlement Class shall be bound by this Agreement.

5 **Section 7.02: Release of All Claims Relating To The Action**

6 Upon the court's final approval of the class settlement and entry of Final Order and
7 Judgment, each member of the Final Settlement Class shall be deemed to have released and
8 discharged each Defendant and all of its former and present parents, and affiliates, and their officers,
9 directors, employees, partners, shareholders, attorneys, and agents, and any other successors, assigns
10 or legal representatives from any and all claims that were asserted and that could have been asserted
11 based on the facts contained in the Complaint filed in this Action and which were included leading
12 up to and during mediation, including without limitation to, any and all alleged claims for unpaid
13 wages, unpaid minimum wages, unpaid overtime, regular rate compensation, unpaid meal or rest
14 break premiums, itemized wage statement penalties, unreimbursed business expenses, failure to
15 provide requisite writings, waiting time penalties under the California Labor Code and Business &
16 Professions Code (including Section 17200 et seq.); claims for penalties brought under the Labor
17 Code Private Attorneys General Act of 2004 (Labor Code Section 2698 et seq.); claims for
18 restitution and other equitable relief, liquidated damages, or penalties in their positions as Settlement
19 Class Members during the Class Period.

20 The Final Settlement Class acknowledges that it may hereafter discover claims presently
21 unknown and unsuspected, or facts in addition to or different from those which they now know or
22 believe to be true with respect to claims released herein. Nevertheless, Final Settlement Class
23 members acknowledge that a portion of the consideration received herein is for a release with
24 respect to unknown damages and complaints, whether resulting from known injuries and
25 consequences or from unknown injuries or unknown consequences, and agree that it is their
26 intention to fully, finally, and forever to settle and release all matters and all claims that exist,
27 hereafter may exist, or might have existed based on the facts and allegations set forth in the
28 Complaint.

1 Final Settlement Class Members who cash or deposit their Individual Settlement Payment
2 checks will also release their Class Claims.

3 **Section 7.03: 1542 Release By Frank Nichols, Jr.**

4 In addition to the Settlement Class Members' Released Class Claims described above, in
5 exchange for the consideration recited in this Agreement, including but not limited to the court-
6 approved Class Representative Service Award, Nichols, Jr. enters into a Complete and General
7 Release which releases, acquits, and covenants not to sue any of the Releasees for any claim,
8 whether known or unknown, which Nichols, Jr. has ever had, or hereafter may claim to have, arising
9 on or before the date that he signs this Agreement, including without limitation to, any claims
10 relating to or arising out of any aspect of his employment, or the termination of his employment,
11 with Defendant, any claims for unpaid compensation, wages, reimbursement for business expenses,
12 penalties, or waiting time penalties under the California Labor Code, the California Business and
13 Professions Code, the federal Fair Labor Standards Act, 29 U.S.C. section 201, *et seq.*, or any
14 federal, state, county or city law or ordinance regarding wages or compensation; any claims for
15 employee benefits, including without limitation, any claims under the Employee Retirement Income
16 Security Act of 1974; any claims of employment discrimination on any basis, including without
17 limitation, any claims under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1866,
18 42 U.S.C. section 1981, the Civil Rights Act of 1991, the Americans with Disabilities Act of 1991,
19 the Family and Medical Leave Act of 1993, the California Government Code, or any other federal,
20 state, county or city law or ordinance regarding employment discrimination. Nichols, Jr.

21 acknowledges and agrees that the foregoing general release is given in exchange for the
22 consideration provided to him under this Agreement by Defendant. However, this release shall not
23 apply to claims for workers' compensation benefits, unemployment insurance benefits, pension or
24 retirement benefits, or any other claim or right that as a matter of law cannot be waived or released.

25 Nichols, Jr. expressly waives any rights or benefits available to him under the provisions of
26 Section 1542 of the California Civil Code, which provides as follows:

27 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR
28 RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER

1 FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY
2 HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
3 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

4 Nichols, Jr. understands fully the statutory language of Civil Code section 1542 and, with
5 this understanding, nevertheless elects to, and does, assume all risks for claims that have arisen,
6 whether known or unknown, which he ever had, or hereafter may claim to have, arising on or before
7 the date of his signature to this Agreement, and specifically waives all rights he may have under
8 California Civil Code section 1542.

9 **ARTICLE VIII**

10 **MISCELLANEOUS PROVISIONS**

11 **Section 8.01: Amendments or Modification**

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

14 **Section 8.02: Representations and Warranties of Defendant's Records**

15 Defendant represents and warrants that the documents provided to Class Counsel during and
16 after mediation that constituted a material condition to this Settlement are substantially accurate to
17 the best of their knowledge.

18 **Section 8.03: Assignment**

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

25 **Section 8.04: Governing Law**

26 This Agreement shall be governed, construed, and interpreted, and the rights of the Parties
27 shall be determined, in accordance with the laws of the State of California, irrespective of the State
28 of California's choice of law principles.

1 **Section 8.05: Entire Agreement**

2 This Agreement, including the Exhibit referred to herein, which form an integral part hereof,
3 contains the entire understanding of the Parties hereto with respect of the subject matter contained
4 herein. In case of any conflict between text contained in Articles I through VI of this Agreement and
5 text contained in the Exhibit to this Agreement, the former (*i.e.*, Articles I through VI) shall be
6 controlling. There are no restrictions, promises, representations, warranties, covenants, or
7 undertakings governing the subject matter of this Agreement other than those expressly set forth or
8 referred to herein. This Agreement supersedes all prior agreements and understandings among the
9 Parties hereto with respect to the settlement of the Action including correspondence between Class
10 Counsel and Defense Counsel and the Memorandum of Understanding signed by the Parties on
11 August 11, 2021. No rights hereunder may be waived except in writing.

12 **Section 8.06: Counterparts and Fax Signatures**

13 This Agreement, and any amendments hereto, may be executed in any number of
14 counterparts and any Party and/or their respective counsel hereto may execute any such counterpart,
15 each of which when executed and delivered shall be deemed to be an original and all of which
16 counterparts taken together shall constitute one instrument. It shall not be necessary in making proof
17 of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.
18 A fax or electronic signature on this Agreement shall be as valid as an original signature.

19 **Section 8.07: Meet and Confer Regarding Disputes**

20 Should any dispute arise among the Parties or their respective counsel regarding the
21 implementation or interpretation of this Agreement, a representative of Class Counsel and a
22 representative of Defense Counsel shall meet and confer in good faith in an attempt to resolve such
23 disputes prior to submitting such disputes to the Court.

24 **Section 8.08: Agreement Binding on Successors**

25 This Agreement shall be binding upon, and inure to the benefit of, the successors in interest
26 of each of the Parties.

27 **Section 8.09: Cooperation in Drafting**

28 The Parties have cooperated in the negotiation and preparation of this Agreement. This

1 Agreement shall not be construed against any Party on the basis that the Party, or the Party's counsel,
2 was the drafter or participated in the drafting of this Agreement.

3 **Section 8.10: Fair Settlement**

4 Representative Plaintiff, Defendant, Class Counsel, and Defense Counsel have arrived at this
5 Agreement through arm's-length negotiation and believe that this Agreement reflects a fair,
6 reasonable, and adequate settlement of the Action considering all relevant factors, current and
7 potential, and believe the Agreement is consistent with public policy and fully complies with
8 applicable provisions of law.

9 **Section 8.11: Headings**

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

13 **Section 8.12: Notice**

14 All notices, demands, or other communications given under this Agreement shall be in
15 writing and deemed to have been duly given as of the third business day after mailing by first-class
16 United States mail, addressed as follows:

17 *To Representative Plaintiff and the Class:*

18 Brian R. Short
19 Brian@shortlegal.com
20 Dorota A. James
21 Dorota@shortlegal.com
22 ShortLegal, APC
23 350 10th Avenue, Suite 1000
24 San Diego, California 92101
25 Telephone: (619) 272-0720
26 Facsimile: (619) 839-3129

27 *To Defendant:*

28 Lindsay E. Hutner, Esq.
hutnerl@gtlaw.com
Sam Hyde, Esq.
hydes@gtlaw.com
Greenberg Traurig, LLP
4 Embarcadero Center, Suite 3000
San Francisco, CA 94111

1 Telephone: (415) 655-1300
2 Facsimile: (415) 707-2010

3 **Section 8.13: Enforcement and Continuing Jurisdiction of the Court**

4 To the extent consistent with class action procedure, this Agreement shall be enforceable by
5 the Court pursuant to California Code of Civil Procedure section 664.6. The Court shall retain
6 continuing jurisdiction over this Action and over all Parties and Class Members, to the fullest extent
7 to enforce and effectuate the terms and intent of this Agreement.

8 **Section 8.14: Mutual Full Cooperation**

9 The Parties agree to fully cooperate with each other to accomplish the terms of this
10 Agreement, including but not limited to execution of such documents, and to take such other action
11 as may reasonably be necessary to implement the terms of this Agreement. The Parties to this
12 Agreement shall use their best efforts, including all efforts contemplated by this Agreement, to
13 effectuate this Agreement and the terms set forth herein. In the event the Parties are unable to reach
14 agreement on the form or content of any document needed to implement the Settlement, or on any
15 supplemental provisions that may become necessary to effectuate the terms of the Settlement, the
16 Parties agree to seek the assistance of the Court.

17 **Section 8.15: Authorization to Act**

18 Class Counsel warrant and represent that they are authorized by the Representative Plaintiff,
19 and Defense Counsel warrant that they are authorized by Defendant, to take all appropriate action
20 required to effectuate the terms of this Agreement, except for signing the documents, including but
21 not limited to this Agreement, that are required to be signed by the Parties.

22 **Section 8.16: No Reliance on Representations**

23 The Parties have made such investigation of the facts and the law pertaining to the matters
24 described herein and to this Agreement as they deem necessary, and have not relied, and do not rely,
25 on any statement, promise, or representation of fact or law, made by any of the other Parties, or any
26 of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted
27 rights, or with regard to the advisability of making and executing this Agreement, or with respect to
28 any such matters. No representations, warranties, or inducements have been made to any Party

concerning this Agreement other than those expressly set forth or referred to herein.

Section 8.17: No Collateral Attack

This Agreement shall not be subject to collateral attack by any Class Member or any recipient of the Class Notice after the Final Effective Date. Such prohibited collateral attacks shall include but not be limited to claims that the Class Member failed for any reason to receive timely notice of the procedure for disputing the calculation of his or her Individual Settlement Payment.

Section 8.18: No Public Comment/Non-Disparagement Clause

Representative Plaintiff and Class Counsel will not make any public disclosure of the settlement terms until after the settlement is preliminarily approved by the Court. Class Counsel will take all steps necessary to ensure Representative Plaintiff is aware of, and will encourage him to adhere to, the restriction against any public disclosure of the settlement terms until after the settlement is preliminarily approved by the Court. None of these prohibitions on public comment shall prohibit Class Counsel's communications with the Court as necessary to finalize the settlement.

Representative Plaintiff and Defendant represent and agree that they have not and will not directly or indirectly disparage, encourage, assist, or induce others to disparage the other Party. For the purposes of this Agreement, "disparage" shall include making or publishing any statement or other content, whether in written, oral, electronic, digital or other form, truthful or otherwise, which may reasonably be expected to adversely affect the business, public image, reputation or goodwill of the other Party, including, without limitation, their operations, employees, directors or related persons, and their past, present or future products or services and the facts relating to Representative Plaintiff's past employment.

Section 8.19: Interim Stay of Proceedings

The Parties agree to the Court staying and holding all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement, in abeyance pending the Settlement Hearing to be conducted by the Court.

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1 **EXECUTION BY PARTIES AND COUNSEL**

2
3 Dated: September 7, 2021 Frank Nichols Jr
4 Frank Nichols, Jr., Representative Plaintiff

5
6 Dated: September __, 2021 _____
7 By:
8 For Defendant Vuori, Inc.

8 **APPROVED AS TO FORM AND CONTENT:**

9 Dated: September __, 2021 _____
10 Brian R. Short, Esq.
11 Dorota A. James, Esq.
12 ShortLegal, APC
13 Attorneys for Representative Plaintiff

14 Dated: September __, 2021 _____
15 Lindsay E. Hutner, Esq.
16 San Hyde, Esq.
17 Greenberg Traurig, LLP
18 Attorneys for Defendant

17 **TABLE OF EXHIBITS**

18 **Exhibit A:** Notice of Proposed Class Action Settlement

Signature: 
Frank Nichols (Sep 7, 2021 14:42 PDT)

Email: franknicholsjr1@gmail.com

1 **EXECUTION BY PARTIES AND COUNSEL**

2
3 Dated: September __, 2021

4 _____
Frank Nichols, Jr., Representative Plaintiff

5
6 Dated: September __, 2021

7 _____
By:
For Defendant Vuori, Inc.

8 **APPROVED AS TO FORM AND CONTENT:**

9
10 Dated: September 8, 2021



11 _____
12 Brian R. Short, Esq.
13 Dorota A. James, Esq.
14 ShortLegal, APC
Attorneys for Representative Plaintiff

15 Dated: September __, 2021

16 _____
17 Lindsay E. Hutner, Esq.
18 San Hyde, Esq.
Greenberg Traurig, LLP
Attorneys for Defendant

19 **TABLE OF EXHIBITS**

20 **Exhibit A:** Notice of Proposed Class Action Settlement

1 **EXECUTION BY PARTIES AND COUNSEL**

2
3 Dated: September __, 2021

4 _____
Frank Nichols, Jr., Representative Plaintiff

5
6 Dated: September 14, 2021

7 
8 _____
By: Desiree Swanson, CFO
For Defendant Vuori, Inc.

8 **APPROVED AS TO FORM AND CONTENT:**

9 Dated: September __, 2021

10 _____
Brian R. Short, Esq.
Dorota A. James, Esq.
ShortLegal, APC
Attorneys for Representative Plaintiff

11
12
13 Dated: September 14, 2021

14 
15 _____
Lindsay E. Hutner, Esq.
Sam Hyde, Esq.
Greenberg Traurig, LLP
Attorneys for Defendant

16
17 **TABLE OF EXHIBITS**

18 **Exhibit A:** Notice of Proposed Class Action Settlement
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