

Larry W. Lee (State Bar No. 228175)  
Max W. Gavron (State Bar No. 291697)  
**DIVERSITY LAW GROUP, P.C.**  
515 S. Figueroa Street, Suite 1250  
Los Angeles, CA 90071  
(213) 488-6555  
(213) 488-6554 facsimile  
lwlee@diversitylaw.com  
mgavron@diversitylaw.com

Attorneys for Plaintiff and the Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA CLARA**

MARIE REBELO SHOWALTER, as an  
individual and on behalf of all others  
similarly situated,

Plaintiff,

vs.

NORTHERN CALIFORNIA CHAIR  
CORPORATION, a California  
corporation; and DOES 1 through 50,  
inclusive,

Defendants.

Case No.: 21CV376845

[Assigned for all purposes to the Honorable  
Theodore C. Zayner, Department 19]

**DECLARATION OF MAX W. GAVRON IN  
SUPPORT OF PLAINTIFF'S MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

Date: November 1, 2023

Time: 1:30 P.M.

Dept.: 19

Complaint Filed: March 2, 2021

Jury Trial Date: None set

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I, Max W. Gavron, declare as follows:

1. I am an attorney at law, duly licensed to practice before all Courts in the State of California, and am with the law firm Diversity Law Group, counsel of record for Plaintiff Marie Rebelo Showalter (“Plaintiff”). I have personal knowledge of the facts set forth below and if called to testify I could and would do so competently.

## PROCEDURAL HISTORY

2. On February 12, 2021, Plaintiff filed her written notice with the California Labor & Workforce Development Agency, alleging violations of Labor Code §§ 201-203, 226, 226.7, 510, 512, 558, 1194, and 2802, pursuant to the Private Attorneys General Act, Labor Code § 2699 (“PAGA”).

3. Thereafter, on March 2, 2021, Plaintiff filed her class and PAGA Complaint against Defendant in the Superior Court of California, County of Santa Clara. The Complaint alleges causes of action for: (1) violation of Labor Code §§ 510, 558, and 1194; (2) violation of Labor Code §§ 226.7 and 512; (3) violation of Labor Code § 2802; (4) violation of Labor Code § 226; (5) violation of Business and Professions Code § 17200, *et seq.*; and (6) violation of Labor Code § 2698, *et seq.*

4. Plaintiff's class and PAGA claims as pled in the Complaint are predicated upon the following allegations. With respect to Plaintiff's overtime regular rate claim, Plaintiff contends that Defendant failed to factor non-discretionary incentives, such as commissions, into the calculation of the regular rate for purposes of paying overtime wages, and thus Plaintiff and employees were underpaid overtime wages. With respect to Plaintiff's meal period claim, Plaintiff contends that Defendant failed to provide off-duty meal breaks to employees working shifts of five hours or longer. Due to Defendant's scheduling practices and lack of employee coverage, employees were required to work through meal breaks but were not paid meal period premium compensation in lieu of the missed breaks. With respect to Plaintiff's reimbursement claim, Plaintiff contends that employees were required to use their personal cell phones for work purposes but were not reimbursed for the costs of such use. Finally, Plaintiff contends that Defendant issued deficient wage statements due to the foregoing practices. As a result of the above, Plaintiff seeks statutory

1 and civil penalties under the California Labor Code and the PAGA, as well as attorneys' fees and  
2 costs.

3 5. After the filing of the Complaint, the Parties met and conferred and agreed to  
4 participate in private mediation. In connection with mediation, the Parties engaged in informal  
5 discovery to allow Plaintiff to assess the claims and liability, as well as analyze the maximum  
6 exposure of damages and penalties. Defendant provided Plaintiff's counsel with informal data and  
7 information pertaining to the number of putative class members, a sampling and time and payroll  
8 records, as well as information pertaining to Defendant's commission pay and wage statement  
9 policies and practices. The information provided by Defendant allowed Plaintiff to review and  
10 analyze the liability and potential exposure.

11 6. On February 23, 2023, the Parties engaged in a full-day mediation with mediator  
12 Hon. Brian Walsh (Ret.). The Parties did not reach an agreement at mediation and continued  
13 litigation of the Action. Plaintiff issued and Defendant responded to written discovery, participated  
14 in an informal discovery conference, and the Parties negotiated the distribution of a Belaire-West  
15 notice After further arm's-length negotiations facilitated by Judge Walsh over the course of several  
16 months, the Parties ultimately reached the current settlement. Attached as **Exhibit A** is a true and  
17 correct copy of the Parties' Class and PAGA Action Settlement Agreement ("Agreement").

18 7. The Parties recognize the risk, expense, and delay in continuing litigation with the  
19 class and PAGA claims, and believe the settlement to be fair, reasonable, and adequate.

20 8. Each side has apprised the other of their respective factual contentions, legal  
21 theories, and defenses, resulting in negotiations taking place between the Parties.

22 **POTENTIAL DAMAGES AND PENALTIES**

23 9. Based on the class data provided by Defendant, Plaintiff estimated that Defendant  
24 would face potential liability of up to approximately \$3.1 million for Plaintiff's overtime regular  
25 rate, late payment, reimbursement, and wage statement class and PAGA claims if Plaintiff  
26 succeeded at trial. Plaintiff was able to estimate the potential penalties based on data provided by  
27 Defendant, including the number of employees in the putative class, the number of pay periods at  
28 issue, and the estimated average hourly rate of pay applicable to the putative class members.

10. Plaintiff estimated Defendant's maximum exposure as follows:

| Claim                            | Estimated Exposure | Calculations/Formula                                                                |
|----------------------------------|--------------------|-------------------------------------------------------------------------------------|
| Overtime                         | \$61,720.00        | \$10 for each pay period                                                            |
| Meal Period                      | \$1,141,820.00     | 100% violation rate assuming 10 shifts a pay period and \$18.50 average hourly rate |
| Labor Code § 2802                | \$30,860.00        | \$5 a pay period for cell phone use                                                 |
| Labor Code § 226                 | \$605,200.00       | 240 Employees and 6,172 pay periods                                                 |
| Labor Code § 203                 | \$719,280.00       | 162 Employees at \$18.50 average hourly rate x 30 days x 8 hours                    |
| PAGA                             | \$617,200.00       | \$100 per pay period                                                                |
| Total Estimated Maximum Exposure | \$3,176,080.00     |                                                                                     |

11. The estimated exposure above likely significantly overestimates the potential liability in this action for a number of reasons. For example, on Plaintiff's overtime claim, Plaintiff estimated approximately \$10 in unpaid wages per pay period. However, Plaintiff's theory of liability was dependent on employees earning commissions and overtime during the same period. Here, not every employee necessarily earned both types of compensation during the same pay period, and even when they did, the alleged miscalculation likely resulted in minimal underpaid wages because it was based on how Defendant calculated the regular rate of pay and whether Defendant properly factored in commissions to that calculation. Accordingly, the bulk of the damages associated with this claim likely would be in the form of waiting time penalties and wage statement penalties, which are discussed further below.

12. For the meal period claim, Plaintiff estimated Defendant's exposure at a 100% violation rate. This is likely overestimated because Plaintiff's theory of liability focused on Defendant's practices of staffing employees such that sufficient coverage was available for employees to take uninterrupted breaks. Further, Defendant argued that its obligation was only to make breaks available to employees—not to police them. *See Brinker Rest. Corp. v. Superior Ct.*, 53 Cal. 4th 1004, 1040, 273 P.3d 513, 537 (2012) ("On the other hand, the employer is not obligated to police meal breaks and ensure no work thereafter is performed."). Defendant

1 contended that it had compliant policies and therefore met its burden and did not have liability on  
2 this claim at all. Defendant further argued that even if Plaintiff could demonstrate liability, Plaintiff  
3 could certify this claim for class treatment because it was based on varying practices where  
4 Defendant had facially compliant policies.

5 13. Plaintiff argued that employees were required to use their cell phones for work-  
6 related tasks. Defendant vehemently denied this contention. Defendant disputes the existence of a  
7 common policy that requires employees to use personal cell phones for work-related purposes  
8 because it maintained compliant written reimbursement policies. Some courts have denied class  
9 certification of Section 2802 claims because liability hinges on individualized inquiries into the  
10 actual expenses incurred by class members and whether each class member was fully reimbursed  
11 pursuant to the policy. Plaintiff estimated \$5.00 a pay period for this claim, which was discounted  
12 in evaluating the settlement because of the anticipated defenses to be raised by Defendant.

13 14. With respect to waiting time penalties, Defendant maintained that it properly paid all  
14 employees wages and thus was not liable for these damages. Defendant also argued that Plaintiff  
15 could not establish that Defendant “willfully” failed to pay wages at separation of employment  
16 and/or that a good faith dispute exists as to whether the allegedly underpaid monies were wages  
17 due. This is a legal defense that, if successful, could potentially defeat Plaintiff’s Section 203  
18 claim. *Chavez v. Converse, Inc.*, 2020 WL 1233919, at \*1 (N.D. Cal. 2020) (holding that an  
19 employer’s failure to pay is not willful where there is uncertainty in the law or a “good faith  
20 mistaken belief that wages are not owed”). In *Naranjo v. Spectrum Security Services, Inc.*, \_\_ Cal.  
21 Rptr. 3d \_\_, 2023 WL 2261253 (Feb. 27, 2023), *review granted* 2023 WL 3745105 (May 31, 2023),  
22 the court upheld an employer’s good faith defense to the plaintiff’s claim for waiting time penalties,  
23 pursuant to Labor Code § 203. The employer argued that it had a viable legal defense, which  
24 precluded the imposition of waiting time penalties because its acts were not “willful” within the  
25 meaning of the statute. *Naranjo* also permitted a good faith defense to rebut the plaintiff’s claim for  
26 penalties, pursuant to Labor Code § 226. Even had Plaintiff ultimately prevailed on the merits,  
27 given the novelty of the legal questions it raised, Defendant may have sought immediate appellate  
28 review through a writ or appeal. Thus, the maximum exposure estimated on this claim was

discounted for purposes of analyzing a reasonable settlement value.

15. Plaintiff's wage statement claim was derivative of the other violations alleged. Thus, if Plaintiff was not successful in establishing liability on those claims, then this claim too would fail. Even if successful on liability, Defendant would have argued that it was not liable for wage statement penalties because it did not willfully violate the statute, as explained above.

16. Finally, with respect to potential liability of Plaintiff's PAGA claim, Plaintiff estimated that Defendant could face civil penalties of up to a maximum \$617,200 if Plaintiff were successful at trial. However, even assuming Plaintiff ultimately prevails on her PAGA claims, the Court still has discretion to reduce any PAGA penalties.

17. The total amount of class and PAGA penalties amount to approximately \$3.1 million, without discounting for potentially losing on any of the causes of action. The Gross Settlement Amount is \$500,000.00, which is approximately **16%** of the maximum class and PAGA penalties.

18. Although Plaintiff believes in the merits of the alleged claims and maintains that there is no reason for reducing PAGA penalties, Plaintiff is aware that Defendant may raise defenses to the claims and further with respect to the reduction of PAGA penalties and that it could be persuasive to the Court. The Gross Settlement Amount was premised with this risk in mind, associated with the possibility of the Court significantly reducing Plaintiff's PAGA penalties, along with other attendant risks, even if Plaintiff was to prevail at trial.

19. Although Plaintiff believes that the class can be certified, Plaintiff also believes in the fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff involved in not prevailing on one or more of the causes of action or theories alleged in the operative Complaint, the possibility of non-certification, and the potential for appeals.

20. On a raw average, each Class Member may potentially recover approximately \$1,000.35 (\$240,083.33 / 240 class members). The amount actually paid to each Class Member may increase or decrease depending on the actual number of pay periods worked by each Class Member during the Class Period.

21. The Agreement also provides for Twelve Thousand Five Hundred Dollars and Zero

1 Cents (\$12,500.00) to be distributed to Aggrieved Employees in settlement of their claims for civil  
2 penalties under PAGA. Agreement ¶¶ 1.32, 6.5, 6.5.3. Aggrieved Employees are defined as “all  
3 current and former non-exempt sales employees who worked for Defendant in California in the  
4 PAGA Period [the period from February 12, 2020, through July 11, 2023].” *Id.* ¶¶ 1.3, 1.33.

5 22. Any remaining monies from uncashed settlement checks will be distributed to Legal  
6 Aid at Work. Plaintiff and Plaintiff’s counsel do not have any relationship with or connection to  
7 Legal Aid at Work.

8 23. Attached as **Exhibit B** is a true and correct copy of the proposed Notice of Proposed  
9 Class Action Settlement (“Notice of Settlement”) to be sent to Class Members.

10 24. From the inception of the case, Class Counsel has zealously represented the interests  
11 of the Class. Class Counsel exchanged written discovery and engaged in significant meet and  
12 confer discussions with opposing counsel to obtain informal data and documents on behalf of the  
13 Class. The settlement was obtained for the benefit of the Class, as opposed to the individual Class  
14 Representative. Further, Class Counsel has been approved as class counsel on a number of prior  
15 cases, have litigated numerous other class action cases, and are competent to represent the Class.

16 25. I have spent significant time researching and pursuing the claims that have been  
17 alleged in this action. The Parties engaged in formal discovery, as well as informal discovery in  
18 connection with mediation, and participated in the exchange of class data and Defendant’s pertinent  
19 policies and practices. Based on my review of all the documents and information, and based on my  
20 experience in class action litigation, I believe this settlement to be fair, adequate, and reasonable.

21 26. I was retained based upon a contingency fee arrangement wherein Plaintiff’s counsel  
22 agreed to advance all costs and receive no fee unless a recovery was accomplished. Specifically,  
23 had Plaintiff failed to prevail in this case, counsel for Plaintiff would have spent a significant  
24 amount of time, money and other resources without any benefit or return. In addition, had Plaintiff  
25 also failed to prevail in the present case, Defendant would have been able to seek costs in  
26 connection with their defense of the case.

27 //

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1 **ATTORNEY EXPERIENCE**

2 27. I am one of the primary attorneys on this matter. My qualifications are as follows: I  
3 received a full-tuition scholarship, and graduated from Southwestern Law School in 2013, magna  
4 cum laude. I was in the top 5% of my class. During my time at Southwestern, I was a Notes and  
5 Comments Editor on the Southwestern Law Review. I also received awards for achieving the  
6 highest grade in my class in several courses. In 2012, I was a full-time extern, at the United States  
7 District Court for the Central District. Immediately after law school, I taught several courses at  
8 Southwestern, including Principles of Legal Analysis and Legal Methods. I taught those courses for  
9 approximately four years.

10 28. I practiced civil litigation at Haight Brown & Bonesteel LLP from approximately  
11 September 2013, through January 2016. I was third-chair in a federal court jury trial that resulted in  
12 a defense verdict in our client's favor on a \$21 million commercial breach of contract dispute. I also  
13 regularly litigated cases across the civil litigation spectrum, including employment matters.

14 29. From February 2016, through Fall 2017, I practiced at the international law firm of  
15 Arnold & Porter, which had recently merged with Kaye Scholer, LLP. I defended Fortune 50  
16 companies in Multi-District Litigation primarily in the product liability sphere. I also successfully  
17 drafted an appellate brief in the Ninth Circuit resulting in the reversal of a summary judgment  
18 decision regarding trade secret issues, in addition to working in several other practice groups.

19 30. From September 2017, through September 2018, I served as a law clerk to a Judge  
20 sitting on the United States District Court, Central District of California. I regularly prepared bench  
21 memoranda, on cases involving all types of civil litigation, including regularly working on wage  
22 and hour class actions.

23 31. I am currently an associate at the law firm Diversity Law Group, P.C., an  
24 employment law firm that has handled numerous wage and hour class and individual actions, on  
25 both plaintiff and defense sides. My current practice focuses on employment matters involving both  
26 class actions, and single plaintiffs. The firm currently has cases in the Los Angeles Superior Courts,  
27 the Orange County Superior Courts, the San Diego County Superior Courts, and the United States  
28 District Courts for the Central, Northern, and Eastern Districts of California. I am currently

handling, or have handled, numerous wage and hour class action lawsuits with the firm, including, but not limited to: *Weybrew v. BEI Construction*, Solano County Superior Court Case No. FCS055658 (January 14, 2022), *In re See's Candies Wage and Hour Cases*, Case No. JCCP5004 (March 30, 2022), Los Angeles Superior Court, *Pevey v. Lumber City Corp*, San Bernardino County Superior Court Case No. CIVDS2010240 (May 2, 2022), *Ross v Stater Bros. Markets*, San Bernardino County Superior Court Case No. CIVDS1902518 (September 8, 2022), and *Schneider v. Amazon Retail LLC*, Los Angeles County Superior Court Case No. 21STCV26226 (December 1, 2022); *James v RADC Enterprises, Inc.*, San Bernardino County Superior Court, Case No. CIV-DS1933035 (September 29, 2020), *Hector Luna v. Triple Canopy, Inc.*, Santa Clara County Superior Court, Case No. 19CV345169 (October 22, 2020), *Melbert Magpugay v. Harbor Electronics, Inc.*, Santa Clara County Superior Court Case No. 19CV352547 (January 27, 2021), *Foster v. Schindler Elevator Corp.*, Alameda County Superior Court Case no. RG19029640 (March 2, 2021), *Martin v. Streetplus Company, LLC, et al*, Los Angeles Superior Court Case No. 19STCV15522 (July 13, 2021), *Morris v. Blue Mountain Enterprises, LLC*, Solano County Superior Court, Case No. FCS05.858 (August 4, 2021).

32. On June 14, 2019, I argued two related cases in front of the Ninth Circuit Court of Appeals. One of them was *Rodriguez v Nike Retail Service Inc.*, Case No. 17-16866. On June 28, 2019, the Ninth Circuit issued a published decision, reversing and remanding in favor of our clients. *Rodriguez v. Nike Retail Servs., Inc.*, 928 F.3d 810 (9th Cir. 2019).

33. I have also assisted the firm in numerous wage and hour class action mediations.

34. My co-counsel and I will adequately represent the Class Members in this action. Class Counsel has and will zealously represent Plaintiff and the Class and pursue this lawsuit to its conclusion.

35. I have no conflicts with the Class and will adequately represent the Class.

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

  
Max W. Gavron

# EXHIBIT A

**CLASS AND PAGA ACTION SETTLEMENT AGREEMENT**

***Marie Rebelo Showalter v. Northern California Chair Corporation***

***Santa Clara County Superior Court Case No. 21CV376845***

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This Class and PAGA Action Settlement Agreement is between (1) the Plaintiff, Marie Rebelo Showalter—individually and on behalf of (a) the Class Members and (b) the LWDA and the Aggrieved Employees—and (2) Defendant, Northern California Chair Corporation. Plaintiff and Defendant collectively are the “Parties.” By this Agreement, the Parties intend, with judicial approval, to settle the Action. If this Agreement is not finally approved, or is otherwise nullified, then the Parties shall return to their positions preceding this Agreement, and Defendant shall retain all rights to challenge the Plaintiff’s claims and the certification of any class and the manageability of any PAGA action, unless the Parties agree to seek reconsideration of the ruling or Court approval of a renegotiated agreement.

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**EXHIBITS**

Notice of Settlement .....A

1           **1. Definitions**

2           Each defined term appears throughout this Agreement in initial capital letters.

3           **1.1. Action.** “Action” means the lawsuit entitled *Marie Rebelo Showalter v. Northern*  
4 *California Chair Corporation*, filed March 2, 2021, currently in the Superior Court of the State of  
5 California for the County of Santa Clara as Case No. 21CV376845.

6           **1.2. Administrative Costs.** “Administrative Costs” means all costs that the Settlement  
7 Administrator incurs in administering this Agreement, which are estimated not to exceed \$8,250.00.

8           **1.3. Aggrieved Employees.** “Aggrieved Employees” are all current and former non-  
9 exempt sales employees who worked for Defendant in California in the PAGA Period.

10           **1.4. Agreement.** “Agreement” means this Class and PAGA Action Settlement  
11 Agreement, which includes all its Recitals and any attached Exhibit.

12           **1.5. Approval of the PAGA Settlement.** “Approval of the PAGA Settlement” means  
13 judicial approval of the settlement of the PAGA claims covered by this Agreement.

14           **1.6. Class Claims.** “Class Claims” means all claims of liability that were or could  
15 have been asserted in this Action reasonably based on the facts alleged in this Action, with respect to the  
16 pleaded claims for (1) failure to pay overtime wages (Cal. Lab. Code §§ 510, 558, and 1194), (2) failure  
17 to provide timely, adequate, and compliant meal periods and pay meal period premiums (Cal. Lab. Code  
18 §§ 226.7 and 512), (3) failure to reimburse business expenses (Cal. Lab. Code § 2802), (4) failure to  
19 provide accurate, complete, and compliant wage statements (Cal. Labor Code § 226), (5) unfair business  
20 practices (Cal. Bus. & Prof. Code § 17200 et seq.) for violations of the aforementioned Labor Code  
21 provisions, and (6) civil penalties under Labor Code §§ 226.3 and 2698 et seq. for violations of the  
22 aforementioned Labor Code provisions and the California Wage Order.

23           **1.7. Class Counsel.** “Class Counsel” refers to the law firm of Diversity Law Group,  
24 P.C., 515 S. Figueroa Street, Suite 1250, Los Angeles, California 90071. Any notice to Class Counsel  
25 shall go to the foregoing addresses and to Larry W. Lee, [lwlee@diversitylaw.com](mailto:lwlee@diversitylaw.com) and Max W. Gavron,  
26 [mgavron@diversitylaw.com](mailto:mgavron@diversitylaw.com).

27           **1.8. Class Counsel Award.** “Class Counsel Award” refers to the attorneys’ fees and  
28 costs that the Court awards in connection with resolving the Action in accordance with this Agreement.

1                   **1.9. Class Members.** “Class Members” are those individuals who—for purposes of  
2 this Agreement only—will be certified as members of the following class: all current and former non-  
3 exempt sales employees who worked for Defendant in California any time between May 1, 2019 and  
4 July 11, 2023, inclusive.

5                   **1.10. Class Period.** “Class Period” refers to the period beginning on May 1, 2019,  
6 through July 11, 2023.

7                   **1.11. Class Representative.** “Class Representative” refers to the Plaintiff, Marie  
8 Rebelo Showalter.

9                   **1.12. Class Representative Enhancement Payment or Incentive Award or Service**  
10 **Award.** “Class Representative Enhancement Payment” or “Incentive Award,” or “Service Award”  
11 refers to any payment that the Court awards for service as a Class Representative, which, subject to  
12 Court approval, is anticipated to be \$10,000.00.

13                   **1.13. Complaint.** “Complaint” refers to any and all complaints filed in the Action.

14                   **1.14. Confidential Data.** “Confidential Data” refers to personal information the  
15 Settlement Administrator needs to administer this Agreement, including employee names, employee ID  
16 numbers, last known address and telephone number(s), dates of employment, social security numbers,  
17 the number of pay periods worked by Class Members, and the number of pay periods applying to each  
18 Aggrieved Employee.

19                   **1.15. Consideration Period.** “Consideration Period” refers to the 45 calendar days  
20 following initial mailing of the Notice of Settlement, during which an individual can submit an  
21 Objection or a Request for Exclusion.

22                   **1.16. Court.** “Court” refers to the judge presiding over this Action, in the California  
23 Superior Court for the County of Santa Clara.

24                   **1.17. Defendant.** “Defendant” refers to Northern California Chair Corporation.

25                   **1.18. Defense Counsel.** “Defense Counsel” refers to Gordon Rees Scully Mansukhani  
26 LLP. For purposes of providing any notice under this Agreement, Defense Counsel shall refer to Sara A.  
27 Moore and Ryan J. Greenspan, Gordon Rees Scully Mansukhani LLP, 275 Battery Street, Suite 2000,  
28 San Francisco, CA 94111. Any notice to Class Counsel shall go to the foregoing address and to

[smoore@grsm.com](mailto:smoore@grsm.com) and [rgreenspan@grsm.com](mailto:rgreenspan@grsm.com).

**1.19. Effective Date.** “Effective Date” is the date of the later of (a) if there are no objections submitted, entry by the Court of a final approval order and judgment finally certifying the Settlement Class and approving the settlement, or (b) if there are objections to the settlement, thirty-five (35) calendar days after the Court enters a final approval order and judgment approving the settlement, or (c) if any appeal, writ, or other appellate proceeding opposing the Court’s final approval order approving the settlement has been filed, five (5) business days after any appeal, writ, or other appellate proceedings opposing the settlement have been finally and conclusively dismissed with no right to pursue further remedies or relief.

**1.20. Fairness Hearing.** “Fairness Hearing” is the hearing at which the Court decides whether the terms of the Agreement are fair, reasonable, and adequate and meet all requirements for Final Approval.

**1.21. Final Approval Order.** “Final Approval Order” is the order the Court issues, in connection with the Fairness Hearing, that approves the settlement contemplated by this Agreement.

**1.22. Gross Settlement Amount.** “Gross Settlement Amount” refers to the maximum payment Defendant may be obligated to make in connection with the Agreement: \$500,000.00. This sum includes all Individual Settlement Payments, any Service Award, the PAGA Payment, Administrative Costs, and the Class Counsel Award. Provided, however, that Defendant must deposit additional money to cover any legally required employer-side taxes. The Gross Settlement Amount is based on Defendant’s representation that there are approximately 240 Class Members who worked approximately 6,172 pay periods during the Settlement Period. If the number of total pay periods worked by Class Members exceeds 6,172, then the Gross Settlement Amount shall be increased proportionally based on the percentage amount over 6,172. For example, if 6,172 pay periods is underestimated by 5%, then the Gross Settlement Amount will increase by 5%.

**1.23. Individual Settlement Payment.** “Individual Settlement Payment” refers to the total amount paid to each individual either as an Aggrieved Employee or as a Settlement Class Member, or as both. Settlement Class Members who are not Aggrieved Employees (because they terminated employment before the PAGA Period) will be paid only as Settlement Class Members. Individuals who

are Class Members and Aggrieved Employees and who submit a Request for Exclusion will be paid only as Aggrieved Employees. Settlement Class Members who are also Aggrieved Employees and do not submit a Request for Exclusion will be paid both as Settlement Class Members and as Aggrieved Employees.

**1.24. Judgment.** “Judgment” refers to the final judgment entered by the Court in this Action after approving the Agreement.

**1.25. LWDA.** “LWDA” refers to the California Labor & Workforce Development Agency, which enforces the Private Attorneys General Act of 2004 (“PAGA”), and which receives the LWDA portion of the PAGA Payment.

**1.26. LWDA Payment.** “LWDA Payment” refers to the 75% portion of the PAGA Payment that goes to the LWDA.

**1.27. Net Settlement Amount.** “Net Settlement Amount” refers to the portion of the Gross Settlement Amount for distribution to Settlement Class Members and Aggrieved Employees that remains after accounting for Service Awards, the PAGA Payment, Administrative Costs, and the Class Counsel Award.

**1.28. Notice of Settlement.** “Notice of Settlement” means a notice of the terms of the class settlement contained in this Agreement, substantially in the form attached as Exhibit A.

**1.29. Objection.** “Objection” refers to a written statement timely submitted by a Settlement Class Member to the Settlement Administrator that contains (1) the Objector’s full name and current mailing address, (2) the last four digits of the Objector’s social security number, (3) the specific reason(s) for the Objection, and (4) all evidence and supporting papers (including, without limitation, all briefs, written evidence, and declarations) for the Court to consider.

**1.30. Objector.** “Objector” refers to a Settlement Class Member who has submitted an Objection.

**1.31. PAGA Claims.** “PAGA Claims” means all claims for civil penalties sought under PAGA for violations of California Labor Code sections 226, 226.7, 510, 512, 558, 1194, 2698, 2802 reasonably based on the facts alleged in the Complaint.

**1.32. PAGA Payment.** “PAGA Payment” refers to the part of the Gross Settlement

Sum (\$50,000.00) apportioned for settlement of claims for civil penalties under the Private Attorneys General Act of 2004, with 75% payable to the LWDA and 25% payable to Aggrieved Employees.

**1.33. PAGA Period.** “PAGA Period” refers to the period from February 12, 2020, through July 11, 2023.

**1.34. Parties.** “Parties” refers collectively to (1) Plaintiff and (2) Defendant.

**1.35. Plaintiff.** “Plaintiff” refers to Class Representative, Marie Rebelo Showalter.

**1.36. Preliminary Approval.** “Preliminary Approval” refers to the court order granting Preliminary Approval of the class claims settled by this Agreement.

**1.37. Precluded PAGA Claims.** “Precluded PAGA Claims” means all PAGA Claims that this Agreement will extinguish, through claim preclusion or issue preclusion, as a result of the Approval of the PAGA Settlement.

**1.38. Qualified Settlement Fund.** “Qualified Settlement Fund” means a qualified settlement fund established pursuant to U.S. Treasury Regulation section 468B-1, 29 C.F.R. § 468B-1.

**1.39. Released Class Claims.** “Released Class Claims” means any and all claims arising during the Class Period, inclusive, under state or local law, reasonably arising out of the factual allegations and claims pleaded in the Complaint in this Action (i.e., Violations of Labor Code §§ 226, 226.7, 510, 512, 558, 1194, 2698, and 2802; Business and Professions Code § 17200, *et seq.*) and all other claims, such as those under the California Labor Code, Wage Orders, regulations, and/or other provisions of law, that could have been pleaded based on the facts asserted in the Action, including: (1) failure to provide meal periods; (2) inaccurate wage statements; (3) failure to pay all overtime wages owed; (4) failure to reimburse employees for all necessary business expenses; (5) all violations of the applicable Wage Orders based on the facts alleged in the Complaint; (7) all violations of California’s unfair competition law based on the facts alleged in the Complaint; and (9) interest, fees, and costs.

**1.40. Released Parties.** “Released Parties” refers to Defendant, and all of Defendant’s present and former parent companies, including, but not limited to, Northern California Chair Corporation, and all of its parent companies, subsidiaries, divisions, concepts, related or affiliated companies, and its or their respective shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity that could be liable for any of the Released

1 Claims.

2           **1.41. Request for Exclusion.** “Request for Exclusion” refers to a timely, written, opt-  
3 out request signed by a Class Member and submitted to the Settlement Administrator with the following  
4 information: (1) the Class Member’s full name and current mailing address, (2) the last four digits of the  
5 Class Member’s social security number, and (3) an express statement that the Class Member wishes to  
6 be excluded from the class settlement contained within this Agreement.

7           **1.42. Service Award.** “Service Award” refers to any payment that the Court awards for  
8 service as a Class Representative.

9           **1.43. Settlement Administrator.** “Settlement Administrator” refers to Phoenix  
10 Settlement Administrators.

11           **1.44. Settlement Class Member.** “Settlement Class Members” refers to all Class  
12 Members who do not file a timely, valid Request for Exclusion.

13           **1.45. Settlement Period.** “Settlement Period” refers to the period beginning on May 1,  
14 2019, through July 11, 2023.

## 15           **2. Recitals and Procedural History**

16           **2.1. Business of Defendant.** NCCC engaged non-exempt employees in California to  
17 work in retail furniture stores.

18           **2.2. Allegations in Complaint.** On March 2, 2021, the Class Representative initially  
19 brought this Action in the Superior Court of the State of California for the County of Santa Clara, as an  
20 individual and on behalf of other similarly situated employees. The Action asserts claims for (1) failure  
21 to pay overtime wages (Cal. Lab. Code §§ 510, 558, and 1194), (2) failure to provide timely, adequate,  
22 and compliant meal periods and pay meal period premiums (Cal. Lab. Code §§ 226.7 and 512), (3)  
23 failure to reimburse business expenses (Cal. Lab. Code § 2802), (4) failure to provide accurate,  
24 complete, and compliant wage statements (Cal. Labor Code § 226), (5) unfair business practices (Cal.  
25 Bus. & Prof. Code § 17200 et seq.) for violations of the aforementioned Labor Code provisions, and (6)  
26 civil penalties under Labor Code §§ 226.3 and 2698 et seq. for violations of the aforementioned Labor  
27 Code provisions and the California Wage Order.

28           **2.3. Defendant’s Denials.** Defendant denies (1) all the material allegations in this

1 Action, (2) that Defendant violated any applicable laws, (3) that Defendant is liable for damages,  
2 penalties, interest, restitution, attorneys' fees, or costs, or for any other remedy sought in the Action, and  
3 (4) that class certification or representative treatment is appropriate as any claim in the Action.  
4 Defendant contends that its policies, procedures, and practices comply with all laws asserted in the  
5 Action. Defendant has agreed to settle the Action solely to avoid the burden, expense, and uncertainty of  
6 litigation. Any statements in this Agreement are made for settlement purposes only.

7 **2.4. Class Counsel's Investigation.** Class Counsel has investigated the facts relating  
8 to the claims alleged in the Action and the defenses asserted by Defendant. Class Counsel interviewed  
9 Class Members and Aggrieved Employees regarding the claims in the Action, and has examined  
10 Defendant's compliance with its policies, procedures, and practices, and analyzed and reviewed a  
11 sampling of time and pay records produced by Defendant.

12 **2.5. Negotiation of Settlement.** Class Counsel have engaged in arms-length  
13 negotiations with Defendant with a view toward achieving substantial benefits while avoiding the cost,  
14 delay, and uncertainty of further litigation, and ultimately resolved the matter through a day-long  
15 mediation and subsequent settlement discussions with the Honorable Brian C. Walsh (Ret.). Plaintiff  
16 will urge that the Court approve this Agreement after considering (1) the factual and legal defenses to  
17 the claims asserted, which render uncertain the ultimate outcome of the Action (2) the potential  
18 difficulties Plaintiff would encounter in establishing their claims and achieving class treatment, (3) the  
19 benefits produced by this Agreement, (4) that this Agreement provides relief in an expeditious, efficient  
20 manner, compared to recoveries possible after litigation and potential appeals, and (5) that this  
21 Agreement allows Class Members to opt out of the Action and individually pursue the claims alleged in  
22 the Action.

23 **2.6. Certification for Settlement Purposes.** This Agreement is contingent upon  
24 approval of class certification under California Code of Civil Procedure Section 382 for settlement  
25 purposes only. Defendant expressly reserves the right to challenge the propriety of class certification or  
26 representative treatment for any other purpose should the Court not approve the Agreement.

27 **3. The Gross and Net Settlement Amounts**

28 **3.1. Establishment of Gross Settlement Amount.** The Gross Settlement Amount is

1 \$500,000.00. In no event shall Defendant, absent its further agreement or as otherwise outlined in this  
2 Agreement, be obligated to pay more than that amount, except to the extent of legally required  
3 employer-side payroll taxes. All applicable employer payroll tax payments (including but necessarily  
4 limited to FICA, FUTA, etc.) shall be paid in addition to the Gross Settlement Value. The Gross  
5 Settlement Amount includes all Individual Settlement Payments, any Service Award, the Class Counsel  
6 Award, the PAGA Payment, and Administrative Costs.

7 **3.2. Calculation of Net Settlement Amount.** The Net Settlement Amount is the  
8 portion of the Gross Settlement Amount that remains for distribution to Class Members and Aggrieved  
9 Employees, after deductions for any Service Award, the PAGA Payment, Administrative Costs, and the  
10 Class Counsel Award.

11 **4. Selection of Settlement Administrator and Notice of Settlement**

12 **4.1. Selection of Settlement Administrator.** The Parties agree to use Phoenix  
13 Settlement Administrators.

14 **4.2. Settlement Administration.** The Settlement Administrator will, as necessary,  
15 print, copy, format, and translate materials, mail and email notices to Class Members, perform a skip  
16 trace for undeliverable addresses, establish and maintain a Qualified Settlement Fund, obtain appropriate  
17 tax identification numbers, calculate Individual Settlement Payments, calculate payroll withholdings and  
18 payroll taxes, prepare and file all required IRS Forms, mail Individual Settlement Payments and tax  
19 forms, establish a hotline telephone number for class member communications, post notices regarding  
20 settlement on the Settlement Administrator's website, remit all tax payments and required  
21 documentation to taxing authorities, implement the process for any uncashed settlement checks, and  
22 perform all other duties associated with settlement administration, including, but not limited to, all those  
23 specified in this Agreement. Any dispute relating to settlement administration shall, after good-faith  
24 efforts by the Parties to resolve the dispute, be referred to the Court.

25 **4.3. Confidential Data for the Settlement Administrator.** Within 30 calendar days  
26 after Preliminary Approval of the class settlement, Defendant will give the Settlement Administrator a  
27 listing, for Class Members and Aggrieved Employees, of names, employee ID numbers, last known  
28 street and email addresses and telephone numbers. Defendant will also report to the Settlement

1 Administrator the number of pay periods worked by each Class Member and the number of pay periods  
2 worked by each Aggrieved Employee. Defendant shall also provide, when needed, social security  
3 numbers to facilitate the administration of this Agreement. The Settlement Administrator shall use these  
4 Confidential Data only for the purposes described in this Agreement, and shall return the Confidential  
5 Data to Defendant or confirm the destruction of same upon completing the work called for by this  
6 Agreement.

7 **4.4. Communicating Materials to Class Members.** Communications need be in  
8 English only as English is the exclusive language used in Defendant's agreements with its California  
9 employees.

10 **4.4.1. Mailing and Emailing Class Notice.** Within 21 calendar days of  
11 receiving the Confidential Data from Defendant, and after checking Class Member information against  
12 the National Change of Address Database, the Settlement Administrator shall send the Notice of  
13 Settlement to Class Members via First Class U.S. mail and email, using the last-known mailing address  
14 and email address for each Class Member.

15 **4.4.2. Re-mailing Class Notice.** Any mailing returned as undeliverable shall be  
16 sent within five calendar days via First Class U.S. Mail to any available forwarding address. If no  
17 forwarding address is available, then the Settlement Administrator shall attempt to determine the correct  
18 address by using a computer-based skip-trace search, and shall then perform, if feasible, a re-mailing via  
19 First Class U.S. Mail within five calendar days. If no current address is available for a Class Member,  
20 then the Notice of Settlement for that Class Member will be deemed undeliverable. Only one re-mailing  
21 is required. If a Class Member cannot be located within two attempts at mailing, then the Notice of  
22 Settlement for that Class Member will be deemed undeliverable. An additional ten calendar days will be  
23 provided for responding to a re-mailing.

24 **4.5. Proof of Mailing.** At least ten (10) calendar days before the Fairness Hearing, the  
25 Settlement Administrator shall provide a declaration of due diligence and proof of mailing and emailing  
26 with regard to the mailing and emailing of the Notice of Settlement to Class Counsel and Defense  
27 Counsel, which Class Counsel shall in turn file with the Court.

28 **5. Responses to Notice of Settlement**

1                   **5.1. Consideration Period.** Within the Consideration Period, Class Members may opt  
2 out of the proposed settlement of the class claims by submitting a Request for Exclusion (as provided  
3 below) or may submit an Objection (as provided below). Except as specifically provided herein, no  
4 response postmarked after the Consideration Period shall be considered.

5                   **5.2. Requests for Exclusion and Opt Out Rights.** Class Members may opt out by  
6 submitting a Request for Exclusion. Class Members who are also Aggrieved Employees and who submit  
7 a Request for Exclusion will nonetheless be bound by the Approval of the PAGA Settlement and shall  
8 receive their pro rata portion of the PAGA Payment.

9                   **5.2.1. Opt Out Procedure.** Class Members may opt out of this Agreement by  
10 mailing, emailing, or faxing the Settlement Administrator a Request for Exclusion. A Request for  
11 Exclusion must be signed and dated by the Class Member, must provide the Class Member's full name,  
12 current address, current telephone number, and the last four digits of the Class Member's social security  
13 number, and must expressly state an intention to be excluded from the terms of the Agreement. Any  
14 purported Request for Exclusion will be deemed ineffective if it is untimely or if it omits required  
15 information. Upon receiving timely but deficient Requests for Exclusion, the Settlement Administrator  
16 will notify the Class Member (by mail or email) to provide two weeks to correct the deficiency. If the  
17 Class Member timely provides information to the Settlement Administrator's satisfaction, then the  
18 Request for Exclusion will be permitted.

19                   **5.2.2. Effect of Opting Out.** Any Class Member who opts out of this Agreement  
20 may not submit an Objection and shall not receive any payment as a Settlement Class Member, and shall  
21 not be bound by the Class Release in this Agreement. Each Class Member who does not submit a timely,  
22 valid Request for Exclusion (as described above in Section 6.2.1) shall be bound by the releases that this  
23 Agreement entails. All Aggrieved Employees shall be bound by the Approval of the PAGA Settlement  
24 and shall receive their portion of the PAGA Payment.

25                   **5.2.3. Tolerance of Opt-Outs—Defendant's Right to Withdraw.** Defendant's  
26 willingness to enter into this Agreement materially depends on ensuring that substantial individual  
27 claims do not arise. Accordingly, if 10% or more Class Members opt out by submitting Requests for  
28 Exclusion, then Defendant may, in the exercise of its sole discretion, withdraw from this Agreement.

1 Defendant's right to withdraw expires 15 business days after the Consideration Period. If Defendant  
2 exercises its right to withdraw, it shall be solely responsible for Settlement Administration costs incurred  
3 to that point.

4 **5.3. Objections.** Rule 3.769(f) of the California Rules of Court provides that class  
5 members may file written objections to a proposed class settlement and appear at the final approval  
6 hearing to state any objections. Accordingly, only Settlement Class Members—Class Members who  
7 have not opted out—are entitled to object to the terms of the class settlement called for by this  
8 Agreement. PAGA entitles only the LWDA, not aggrieved employees, to object to a PAGA settlement.  
9 Accordingly, aggrieved employees are not entitled to object to the PAGA settlement called for by this  
10 Agreement.

11 **5.3.1. Objection Procedure.** Any written objection should be made in a  
12 communication to the Settlement Administrator using the procedures set forth in the Notice of  
13 Settlement, and must contain (1) the Objector's full name and current mailing address, (2) the last four  
14 digits of the Objector's social security number, (3) the specific reason(s) for the Objection, and (4) all  
15 evidence and supporting papers (including, without limitation, all briefs, written evidence, and  
16 declarations) for the Court to consider. However, any Settlement Class Member who does not submit a  
17 written objection in compliance with this section may nevertheless appear at the final approval hearing  
18 and present an oral objection to the Agreement. Any attorney who will represent an individual objecting  
19 to this Agreement who has not filed a written objection must file a notice of appearance with the Court  
20 and serve Class Counsel and Defense Counsel with this notice no later than ten (10) calendar days  
21 before the final approval hearing.

22 **5.3.2. Presenting Objections.** Settlement Class Members who fail to submit  
23 Objections in the manner specified in this Agreement shall be deemed to have waived any objection.

24 **5.4. Proof of Responses.** At least ten (10) calendar days prior to the Fairness Hearing,  
25 the Settlement Administrator will prepare a declaration to submit to the Court regarding responses to the  
26 Notice of Settlement, including such information as any inability to deliver mailings because of invalid  
27 addresses, the number of any Requests for Exclusion, and the number of any Objections. Class Counsel  
28 shall be responsible for filing the declaration.

1                   **5.5. Binding Effect of Settlement.** Although a Class Member might not timely submit  
2 an Objection or a Request for Exclusion because of inability of the Settlement Administrator to locate  
3 the Class Member's current address, or for other reasons beyond the Class Member's control, that Class  
4 Member shall nonetheless become a Settlement Class Member and be bound by this Agreement.

5                   **5.6. No Interference with Class Member Responses.** Each Party agrees not to  
6 encourage any Class Member to submit an Objection or a Request for Exclusion and agrees not to  
7 retaliate against any Class Member for participating (or not participating) in this Settlement. Defendant  
8 is forbidden by law to engage in any such retaliation.

9                   **6. Administration of Settlement Proceeds**

10                   **6.1. Final Funding of Gross Settlement Amount.** Defendant will fund the Gross  
11 Settlement and the employer's share of payroll taxes into the Qualified Settlement Fund 60 days after  
12 the Effective Date or February 1, 2024, whichever is later.

13                   **6.2. Administrative Costs.** The estimated Administrative Costs from the Settlement  
14 Administrator are not to exceed \$8,250.00. The Parties will seek approval of same to be drawn from the  
15 Gross Settlement Amount.

16                   **6.2.1. Approval of Administrative Costs Not Material.** The amount of Administrative  
17 Costs is not a material term: if the Court approves a lesser or greater amount, then the other terms of this  
18 Agreement shall remain in effect.

19                   **6.3. Class Counsel Award.** Class Counsel may request a payment from the Gross  
20 Settlement Amount for (a) attorneys' fees in an amount up to one third of the Gross Settlement Amount  
21 (\$166,667.00) and (b) costs incurred in litigating this Action up to a maximum of \$25,000.00.

22                   **6.3.1. Approval of Class Counsel Award Not Material.** Approval of the Class  
23 Counsel Award is not a material term. If the Court approves only a lesser amount, then the other terms  
24 of this Agreement shall remain in effect.

25                   **6.3.2. Timing of Class Counsel Award.** The Settlement Administrator shall  
26 issue the Class Counsel Award within 15 calendar days after Defendant deposits the Gross Settlement  
27 Amount into the Qualified Settlement Fund. Within ten (10) business days after the Effective Date,  
28 Class Counsel shall instruct the Settlement Administrator as to how the Class Counsel Award may be

1 paid. The Settlement Administrator shall issue an appropriate Internal Revenue Service Form 1099 to  
2 Class Counsel. Class Counsel shall be solely responsible for paying all applicable taxes on any Class  
3 Counsel Award.

4 **6.4. Service Award.** Class Counsel may request that the Court award the Class  
5 Representative a Service Award in an amount of up to \$10,000.00, to be drawn from the Gross  
6 Settlement Amount. This is intended to compensate her for her service as the Class Representative and  
7 for her agreement to provide a general release of claims and waiver of the protections of Civil Code §  
8 1542. Any Service Award would be in addition to the Class Representative's Individual Settlement  
9 Payment.

10 **6.4.1. Approval of Service Award Not Material.** Approval of a Service Award  
11 is not a material term. If the Court does not approve a Service Award or approves only a lesser amount  
12 than that requested, then the other terms of this Agreement shall remain in effect.

13 **6.4.2. Timing of Service Award.** The Settlement Administrator shall pay any  
14 Service Award within 15 calendar days after Defendant deposits the Gross Settlement Amount into the  
15 Qualified Settlement Fund and shall issue an IRS Form 1099 to the Class Representative. The Class  
16 Representative shall be solely responsible for paying all applicable taxes on any Service Award and  
17 shall indemnify and hold harmless Defendant from any claim or liability for taxes, penalties, or interest  
18 arising as a result of the Service Award.

19 **6.5. PAGA Payment.** The Parties will seek approval for a PAGA Payment in the  
20 amount of \$50,000.00, 75% of which will go to the LWDA and 25% of which will go to Aggrieved  
21 Employees.

22 **6.5.1. Reduction of PAGA Payment Not Material.** Any reduction in the  
23 requested PAGA Payment is not a material term. If the Court approves only a lesser amount than that  
24 requested, then the other terms of this Agreement shall remain in effect. But approval of some PAGA  
25 Payment is a material term. If the Court does not approve any PAGA Payment, then the entire  
26 Agreement will be, at Defendant's sole discretion, void and unenforceable.

27 **6.5.2. Timing of PAGA Payment.** The Settlement Administrator shall pay the  
28 LWDA Payment to the LWDA within 15 calendar days after Defendant deposits the Gross Settlement

1 Amount into the Qualified Settlement Fund.

2 **6.5.3. Individual PAGA Payments.** Each Aggrieved Employee will be entitled  
3 to payments calculated in accordance with the number of pay periods in which they worked during the  
4 PAGA Period, in relation to the total number of pay periods worked by all Aggrieved Employees during  
5 the PAGA Period.

6 **6.6. Individual Settlement Class Member Payments.** Each Settlement Class  
7 Member shall be provisionally entitled to payment as described below. Defendant's time and payroll  
8 records regarding the number of pay periods worked by Class Members shall control for purposes of  
9 calculation unless the Class Member submits contrary evidence to the Settlement Administrator that the  
10 Settlement Administrator finds to be persuasive.

11 **6.6.1. Number of Class Members' Pay Periods.** Defendant will provide to the  
12 Settlement Administrator the total number of pay periods worked by each Settlement Class Member  
13 during the Settlement Period.

14 **6.6.2. Determination of Individual Settlement Class Payments.** Each  
15 Settlement Class Member's share of the Net Settlement Amount will reflect the number of pay periods  
16 that are credited to the Settlement Class Member, in relation to the credited number of total pay periods  
17 credited to all Settlement Class Members.

18 **6.6.3. Timing of Settlement Class Payments.** The Settlement Administrator  
19 shall issue Individual Settlement Class Payments within 15 calendar days after Defendant deposits the  
20 Gross Settlement Amount into the Qualified Settlement Fund.

21 **6.7. Distribution Formula.** Depending on the circumstances, individuals entitled to  
22 payment under this Agreement will receive payment (a) only as a Settlement Class Member, or (b) as a  
23 Settlement Class Member and as an Aggrieved Employee, or (c) as an Aggrieved Employee.

24 **6.8. Tax Allocations.** These allocations will be as follows.

25 **6.8.1. PAGA Payment.** The overall tax allocation for the PAGA Payment will  
26 be 100% to civil penalties.

27 **6.8.2. Net Settlement Amount.** The overall tax allocation for the Net Settlement  
28 Amount to be paid to Class Members will be allocated for tax purposes as follows: 70% to statutory and

1 civil penalties and interest, and 30% to wages, subject to the other provisions of this Section.

2 **6.8.3. Tax Withholdings.** The Settlement Administrator will make required tax  
3 withholdings from each Individual Settlement Payment made to a Settlement Class Member for the  
4 portion allocated to Form W-2 income and will remit the withholding to the appropriate taxing  
5 authorities.

6 **6.8.4. Employer Taxes.** The Settlement Administrator will account for the  
7 amount of the Net Settlement Amount attributed to wages and submit an invoice to Defendant for the  
8 required employer share of withholding taxes, which Defendant shall convey to the Settlement  
9 Administrator in addition to the Gross Settlement Amount.

10 **6.8.5. Tax Reporting.** The Settlement Administrator shall issue any necessary  
11 IRS forms to Class Members for their respective Individual Settlement Payments.

12 **6.8.6. Responsibility for Taxes.** Settlement Class Members and PAGA  
13 Participants shall be solely responsible for paying all taxes due on their respective Individual Settlement  
14 Payments and shall indemnify and hold harmless Defendant and the Released Parties from any claim or  
15 liability for taxes, penalties, or interest arising as a result of Individual Settlement Payments.

16 **6.8.7. Approval of Tax Allocations Material.** Approval of the tax allocations  
17 of Individual Settlement Payments set forth above is a material term.

18 **6.9. Undeliverable or Uncashed Checks.** All Individual Settlement Payment checks  
19 will remain negotiable for 180 days from the date of their mailing. The Settlement Administrator shall  
20 notify Class Counsel and Defense Counsel of any undeliverable and uncashed checks. The Settlement  
21 Administrator will use reasonable search methods for any returned checks, and will, within one week of  
22 a check's return, re-mail checks to any new ascertainable address. If, after 180 days from the mailing,  
23 there remains any unpaid residue, then, consistent with Code of Civil Procedure section 384, the  
24 uncashed checks shall be voided and the principal for those uncashed checks shall be transmitted, within  
25 45 days of the close of the 180-day period, to Legal Aid at Work, a non-profit legal entity, to further the  
26 objectives of the underlying class action, or promote the law consistent with the objectives of the  
27 underlying class action.

28 **6.10. Certification of Completion.** Upon fully administering this Agreement, the

1 Settlement Administrator will certify the completion to the Court and counsel for all Parties in a  
2 declaration, summarizing the total money paid and the status of any uncashed checks.

3 **7. Releases and Resolution of Claims**

4 **7.1. Release of the Class Claims.** Upon the Final Approval Order and funding of the  
5 Gross Settlement Amount, and except as to the right to enforce the terms and conditions of the  
6 Settlement, all Settlement Class Members hereby fully release the Released Parties from any and all  
7 claims arising during the Class Period, inclusive, under state or local law, reasonably arising out of the  
8 factual allegations and claims pleaded in the Complaint in this Action (i.e., Violations of Labor Code §§  
9 226, 226.7, 510, 512, 558, 1194, 2698, and 2802; Business and Professions Code § 17200, et seq.) and  
10 all other claims, such as those under the California Labor Code, Wage Orders, regulations, and/or other  
11 provisions of law, that could have been pleaded based on the facts asserted in the Action, including: (1)  
12 failure to provide meal periods; (2) inaccurate wage statements; (3) failure to pay all overtime wages  
13 owed; (4) failure to reimburse employees for all necessary business expenses; (5) all violations of the  
14 applicable Wage Orders based on the facts alleged in the Complaint; (7) all violations of California's  
15 unfair competition law based on the facts alleged in the Complaint; and (9) interest, fees, and costs.

16 **7.2. Resolution of the PAGA Claims.** Upon approval of this Agreement and funding  
17 of the Gross Settlement Amount, and except as to the right to enforce the terms and conditions of this  
18 Agreement, the Plaintiff, on behalf of herself, the State of California, and all Aggrieved Employees,  
19 relinquish all rights to PAGA claims premised on Labor Code §§ 226, 226.7, 510, 512, 558, 1194, 2802  
20 and based on the facts alleged in the Complaint and any interest, fees, and costs.

21 **7.3. General Release & 1542 Waiver.** Upon approval of this Agreement and funding  
22 of the Gross Settlement Amount, and except as to the right to enforce the terms and conditions of this  
23 Agreement, the Plaintiff agrees to provide a general release of all claims related to her employment with  
24 Defendant including a waiver of the protections of Civil Code § 1542, which provides:

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

28 **8. Settlement Approval Procedure**

**8.1. Motion for Preliminary Approval.** Plaintiff will obtain a hearing to request

preliminary approval of this Agreement, to obtain entry of an order that would (i) conditionally certify a Settlement Class for settlement purposes only, (ii) grant Preliminary Approval, (iii) approve a Notice of Settlement, and (iv) set a date for a Final Approval hearing.

**8.1.1. Contents of Motion.** The motion for preliminary approval shall justify conditional certification of a Settlement Class and explain how the settlement amounts are reasonable in light of the facts and law pertaining to the claims alleged. The motion shall be accompanied by a declaration by Class Counsel discussing the risks of continued litigation and the decision that this Agreement serves the best interests of class members. Before filing any motion, Class Counsel shall share the draft motion with Defendant and provide a reasonable amount of time for Defendant to review and provide comment. Class Counsel shall seriously consider in good faith Defendant's comments with respect to the motion before filing the motion.

**8.1.2. Notice to LWDA.** Upon moving for preliminary approval, Plaintiff will submit the proposed settlement agreement to the LWDA, pursuant to Labor Code section 2699(l)(2).

**8.2. Motion for Approval of PAGA Settlement.** The Class Representative, in moving for Preliminary Approval, will also move, for hearing at the same time, for Approval of the PAGA Settlement.

**8.3. Motion for Final Approval.** Class Counsel will obtain a hearing for a Motion for Final Approval, to obtain an order to (a) approve this Agreement, (b) adjudge its terms to be fair, reasonable, and adequate, (c) recite the Released Claims, (d) direct that the terms of the Agreement be carried out, and (e) retain jurisdiction to oversee enforcement of this Agreement.

**8.4. Motion for Class Counsel Award.** In connection with a Motion for Final Approval, Class Counsel may move for approval of an attorneys' fees and costs award in the amount of one third of the Gross Settlement Amount plus litigation costs actually incurred in litigating this Action, supported by adequate documentation.

**8.5. Motion for Service Award.** In connection with a Motion for Final Approval, Class Counsel may move for approval of a Service Award for the Class Representative in an amount of up to \$10,000.00.

**8.6. Entry of Judgment.** Along with the Motion for Final Approval, the Parties shall

request that the Court (a) enter Judgment in accordance with this Agreement, without further fees or costs, (b) enter an order as to the Class Counsel Award, and (c) enter an order as to any Service Award.

**8.6.1. Notice of Final Judgment.** Notice of Judgment will be posted on the Settlement Administrator's website.

**8.6.2. Effect of Failure to Obtain Final Judgment.** If the Court fails to enter Judgment in accordance with this Agreement, or if the Judgment is vacated or reversed, then the Action shall proceed, unless the Parties jointly agree to seek reconsideration or a renegotiated settlement. Defendant in such circumstances retains the right to contest whether any aspect of the Action should be maintained as a class or representative action, and to contest the merits of the claims asserted in the Action.

**8.7. Appeal Rights.** Only an Objector who has not withdrawn his or her objection may appeal a judgment that is in accord with this Agreement. Each Class Representative and Class Counsel hereby waives any right to appeal from any judgment, ruling, or order in this Action, including any Final Approval Order, except for any appeal related to the Class Counsel Award. This waiver includes all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, a motion for new trial, and any extraordinary writ, and the Judgment therefore will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal or post-judgment proceeding. If an appeal is taken from the Judgment, then the time to consummate this Agreement (including making payments under the Agreement) will be suspended until the appeal is finally resolved.

**8.8. Schedule of Contemplated Events after Preliminary Approval.** These are the events this Agreement contemplates. The Parties may agree to adjust these deadlines, after Preliminary Approval, if the adjustments do not materially affect filing and hearing dates set by the Court.

|                                                                                                                                      |                                                                            |
|--------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------|
| Deadline for Defendant to provide Settlement Administrator with lists of Class Members and PAGA Participants and contact information | 30 calendar days after Preliminary Approval                                |
| Deadline for Settlement Administrator to mail and email Notice of Settlement to Class                                                | 21 calendar days after provision of class list to Settlement Administrator |

|                                                                                                             |                                                                                                          |
|-------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|
| Members                                                                                                     |                                                                                                          |
| Last day to submit Requests for Exclusion or Written Objections                                             | 45 calendar days from mailing of Notice of Settlement                                                    |
| Additional days provided if notice is remailed                                                              | 10 calendar days                                                                                         |
| Settlement Administrator to report on Requests for Exclusion, Objections, and other results of class notice | 60 calendar days from mailing of Notice of Settlement                                                    |
| Deadline to move for Final Approval                                                                         | To be set by the Court                                                                                   |
| Fairness hearing on Final Approval and on Class Counsel Award and Service Award                             | To be set by the Court                                                                                   |
| Effective Date                                                                                              | See Paragraph 1.19.                                                                                      |
| Class Counsel instructions to Settlement Administrator re Class Counsel Award                               | 10 business days after Effective Date                                                                    |
| Funding of Gross Settlement Amount plus employer share of taxes on wages                                    | 60 days after Effective Date or February 1, 2024, whichever is later                                     |
| Settlement Administrator to pay Class Counsel Award, Service Award, LWDA Payment, and Individual Payments   | 15 calendar days after Defendant deposits the Gross Settlement Amount into the Qualified Settlement Fund |

## 9. Miscellaneous

### 9.1. Execution of this Agreement.

**9.1.1. Parties' Authority.** The signatories hereto represent that they are fully authorized to bind the Parties to all the terms of this Agreement. The Parties agree that Class Members are so numerous that it is impossible or impractical to have each Class Member execute this Agreement. This Agreement may be executed on behalf of Class Members by a Class Representative.

**9.1.2. Counterparts.** This Agreement may be executed in counterparts, and all signed and delivered counterparts together may constitute one Agreement binding upon the Parties.

**9.1.3. Facsimile or Scanned Signatures.** A Party may sign and deliver this

1 Agreement via DocuSign or by signing on the designated signature block and transmitting that signature  
2 page via facsimile or as an attachment to an email to counsel for the other Party. Any such signature  
3 shall be deemed an original for purposes of this Agreement and shall be binding upon the Party who  
4 transmits the signature page.

## 5 **9.2. Construction.**

6 **9.2.1. Materiality of Terms.** Except as otherwise stated herein, each substantive  
7 term of this Agreement is a material term that the Parties have relied upon in making this Agreement. If  
8 the Court does not approve any substantive term, or if the Court effects a material change to the  
9 Agreement—such as increasing any amount that Defendant must pay—then the entire Agreement will  
10 be, at Defendant’s sole discretion, void and unenforceable. Where this Agreement states that a term is  
11 not material, then the Court’s refusal to approve that term leaves all the other terms of the Agreement in  
12 effect, and does not give Class Counsel or any Class Member any basis to abrogate this Agreement.

13 **9.2.2. No Construction Against the Author.** Each Party participated in drafting  
14 this Agreement, and its terms shall not be construed against any Party by virtue of draftsmanship.

15 **9.2.3. Exhibits Incorporated by Reference.** This Agreement include the terms  
16 set forth in any attached exhibit. Any exhibit to this Agreement is an integral part of it.

17 **9.2.4. Headings.** The headings within this Agreement appear for convenience of  
18 reference only and shall not affect the construction or interpretation of any part of this Agreement.

19 **9.2.5. Invalidity of Any Provision.** Before declaring any provision of this  
20 Agreement invalid, the Court shall first attempt to construe the provision valid to the fullest extent  
21 possible so as to render all provisions of this Agreement enforceable.

22 **9.2.6. Parties’ Entire Agreement.** This Agreement, with its Definitions,  
23 Recitals, and Exhibits, constitutes the entire agreement on its subject matter, and supersedes all prior and  
24 contemporaneous negotiations and understandings between the Parties.

25 **9.2.7. Waivers and Modifications to Be in Writing.** No waiver, modification,  
26 or amendment of this Agreement shall be valid unless it appears in a writing signed by or on behalf of  
27 all Parties, and then shall be valid subject to any required Court approval. Any failure to insist upon the  
28 strict performance of any provision shall not be deemed a waiver of future performance of that provision

1 or of any other provision of this Agreement.

2 **9.2.8. Governing Law.** All terms of this Agreement shall be governed by and  
3 interpreted according to California law.

4 **9.3. Inadmissibility of Settlement Documents.** The Parties agree that this Agreement  
5 and all exhibits thereto shall be inadmissible in any proceeding, except a proceeding to approve or  
6 enforce this Agreement. This Agreement will operate as a complete defense to—and may be used as the  
7 basis for an injunction against—any proceeding attempted in breach of this Agreement.

8 **9.4. No Tax Advice.** Nothing in this Agreement is advice by Class Counsel or  
9 Defense Counsel regarding taxes or taxability, and no Party is relying upon Class Counsel or Defense  
10 Counsel for such advice. Each Party instead is relying exclusively on the Party's own independent tax  
11 counsel in connection with this Agreement.

12 **9.5. No Impact on Employee Benefits.** This Agreement does not affect any right or  
13 obligation under any benefits plan. No payment made under this Agreement shall be considered as  
14 compensation or hours worked or hours paid for purposes of determining eligibility, vesting,  
15 participation, or contributions with respect to any employee benefit plan. For purposes of this  
16 Agreement, the term "employee benefit plan" means every "employee benefit plan," as defined in the  
17 Employee Retirement and Income Security Act of 1974, 29 U.S.C. section 1002(3). The term also  
18 includes any 401(k) plan, bonus, pension, stock option, stock purchase, stock appreciation, welfare,  
19 profit sharing, retirement, disability, vacation, severance, hospitalization, insurance, incentive, deferred  
20 compensation, or any other similar benefit plan, practice, program, or policy, regardless of whether any  
21 such plan is considered an employee benefit plan.

22 **9.6. No Prior Assignments or Undisclosed Liens.** Each Class Representative and the  
23 Class Counsel represent that they have not assigned, transferred, conveyed, or otherwise disposed of any  
24 Released Claim or claim to attorneys' fees and costs award to be paid under this Agreement. Each Class  
25 Representative and the Class Counsel further represent and warrant that there are not any liens or claims  
26 against any amount that Defendant is to pay under this Agreement. Each Class Representative and Class  
27 Counsel agree to defend, to indemnify, and to hold Defendant harmless from any liability, losses,  
28 claims, damages, costs, or expenses, including reasonable attorneys' fees, resulting from a breach of

these representations or from any lien or assignment.

**9.7. Cooperation of the Parties.** The Parties will comply with the covenants of good faith and fair dealing and otherwise cooperate to carry out the terms of this Agreement. Plaintiff will be responsible for preparing any proposed judgment, subject to prior comment by Defendant.

**9.7.1. Affirmative Duty to Cooperate.** Each Party, upon the request of another, agrees to perform such acts and to execute and to deliver such documents as are reasonably necessary to carry out this Agreement. In the same spirit, the Parties agree to make all reasonable efforts to avoid unnecessary Administrative Costs.

**9.7.2. Language of Settlement Documents.** All documents filed with the Court or sent to Class Members in connection with this Agreement must be approved by all Parties before being filed or sent.

**9.7.3. Refraining from New Proceedings.** The Parties agree to refrain from further litigation with respect to the Action, except any proceeding needed to obtain Preliminary Approval, Final Approval, or Judgment.

**9.7.4. No Solicitation of Objections or Opt Outs.** The Parties represent that they have not solicited, encouraged, or assisted—and will not solicit, encourage, or assist—Objections or Requests for Exclusion.

**9.7.5. Waiver of Right to Object by Class Representative.** Each Class Representative, by signing this Agreement, agrees not to object to any term of this Agreement.

**9.8. Confidential Information.** Class Counsel will destroy all confidential documents and information provided by Defendant within 120 calendar days of the Effective Date. Class Counsel further agree that no information provided by Defendant shall be used for any purpose other than prosecution of this Action.

**9.9. No Media Announcements or Other Undue Publicity.** Neither Plaintiff nor Class Counsel shall cause to be publicized, directly or indirectly, any discussion resulting in or the existence of this Agreement or its terms in any type of mass media, including, but not limited to, speeches, press conferences, press releases, interviews, television or radio broadcasts, newspapers, website postings, messages on the Internet, Facebook, Twitter or any other social media. And the Parties

1 shall decline to respond to media inquiries concerning this Agreement. After the Effective Date, Class  
2 Counsel may state on their website that the case has been settled and provide a short and plain  
3 description of the claims that were settled, subject to Defendant's approval. This provision does not  
4 apply to any publications ordered or authorized by the Court.

5 **9.10. Disputes.** If the Parties dispute the interpretation of this Agreement, then they will  
6 attempt to resolve the dispute informally. If those efforts fail, they will mediate the dispute. The Parties  
7 will split the costs of the mediator, and the Parties will bear their own fees and costs. The Court shall  
8 retain jurisdiction over enforcement and implementation of this Agreement, and can require specific  
9 performance, although the Court lacks jurisdiction to modify the terms of this Agreement. If a Party  
10 institutes legal action to enforce this Agreement, then the prevailing Party will be entitled to recover  
11 attorneys' fees and costs incurred in vindicating that Party's position.

12 **SO AGREED, AS OF October 9, 2023:**

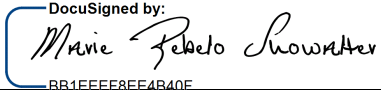
13 FOR DEFENDANT Northern California  
14 Chair Corporation

15 By \_\_\_\_\_  
16 \*\*\*

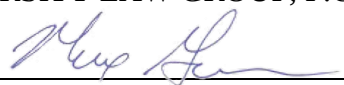
17 GORDON REES SCULLY MANSUKHANI  
18 LLP

19 By \_\_\_\_\_  
20 Attorneys for Defendant Northern California  
21 Chair Corporation

22 Marie Rebelo Showalter

23   
24 BB1EEEE8EE4B40E

25 DIVERSITY LAW GROUP, P.C.

26 By   
27 Attorneys for Plaintiff  
28

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2 Counsel may state on their website that the case has been settled and provide a short and plain  
3 description of the claims that were settled, subject to Defendant's approval. This provision does not  
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7 will split the costs of the mediator, and the Parties will bear their own fees and costs. The Court shall  
8 retain jurisdiction over enforcement and implementation of this Agreement, and can require specific  
9 performance, although the Court lacks jurisdiction to modify the terms of this Agreement. If a Party  
10 institutes legal action to enforce this Agreement, then the prevailing Party will be entitled to recover  
11 attorneys' fees and costs incurred in vindicating that Party's position.

12 **SO AGREED, AS OF** October 9, **2023:**

13 FOR DEFENDANT Northern California  
14 Chair Corporation

15 By Troy Kvingsedal  
16 \*\*\*

17 GORDON REES SCULLY MANSUKHANI  
18 LLP

19 By Ryan J. Greenspan  
20 Attorneys for Defendant Northern California  
21 Chair Corporation  
22 By: Ryan J. Greenspan

23 Marie Rebelo Showalter

24  
25 DIVERSITY LAW GROUP, P.C.

26 By \_\_\_\_\_  
27 Attorneys for Plaintiff  
28

# EXHIBIT B

## **NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

***Marie Rebello Showalter v. Northern California Chair Corporation***

Santa Clara County Superior Court, Case No. 21CV376845

**THIS IS A COURT-AUTHORIZED NOTICE. IT IS NOT A SOLICITATION.  
PLEASE READ THIS NOTICE CAREFULLY.  
YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DO NOT ACT.**

|            |                                                                                                                                                                    |
|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>To:</b> | <b>all current and former non-exempt sales employees who worked for Defendant in California any time between May 1, 2019, and July 11, 2023 (“Class Members”).</b> |
|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|

### **BASIC INFORMATION**

#### **1. What is this settlement about?**

A lawsuit was commenced by Marie Rebello Showalter (“Plaintiff” or “Class Representative”) against Northern California Chair Corporation (“Defendant”) on March 2, 2021. The case is currently pending in the Santa Clara County Superior Court, Case No. 21CV376845.

The lawsuit claims that Defendant violated sections of the California Labor Code and California Business and Professions Code. Specifically, Plaintiff alleges that Defendant failed to provide compliant meal periods, did not properly pay employees all overtime wages owed for time worked, did not provide complete, accurate wage statements, did not reimburse business expenses, and maintained unfair business practices. The settlement also seeks to recover penalties pursuant to the California Private Attorneys General Act of 2004 (“PAGA”). The lawsuit claims that as a result of the alleged violations, Plaintiff and Class Members are entitled to recover damages, penalties and restitution. Defendant denies all alleged violations and denies that they owe Class Members any remedies. The Court has not made a ruling on the merits of the case.

#### **2. Why is this a class action?**

In a class action, one or more people called the Class Representative sue on behalf of people who appear to have similar claims. All these people are referred to here as Class Members. In a class action, one court resolves the issues for all Class Members in one lawsuit, except for those who exclude themselves from the Class. The Santa Clara County Superior Court is in charge of this class action.

#### **3. Why is there a settlement?**

The Court has not decided in favor of the Plaintiff or Defendant. Instead, both sides agreed to a settlement which is memorialized in the Class and PAGA Action Settlement Agreement (“Agreement” or “Settlement”). On [DATE OF PRELIMINARY APPROVAL] the Court granted preliminary approval of the Settlement, appointed Plaintiff Marie Rebello Showalter as the Class Representative, and appointed her attorneys at Diversity Law Group, P.C. as counsel for the Class (“Class Counsel”).

The Class Representative and Class Counsel think the Settlement is best for the Class.

## WHO IS IN THE SETTLEMENT?

### 4. How do I know if I am part of the settlement?

You are part of the Settlement, and a Class Member, if you were employed by Defendants as a non-exempt sales employees who worked for Defendant in California any time between May 1, 2019, and July 11, 2023 (the “Class Period”).

You are also an Aggrieved Employee, if you were employed by Defendants as a non-exempt sales employees who worked for Defendant in California any time between February 12, 2020, and July 11, 2023 (the “PAGA Period”).

## THE SETTLEMENT BENEFITS—WHAT YOU GET

### 5. What does the settlement provide?

The Settlement provides that Defendant will pay a maximum of Five Hundred Thousand Dollars (\$500,000.00) (“Gross Settlement Amount”). This includes all costs and attorneys’ fees for Class Counsel.

The “Net Settlement Amount” is the portion of the Gross Settlement Amount that will be available for distribution to Class Members who do not submit timely and valid requests for exclusion in exchange for the release of their class claims. The Net Settlement Amount is the Gross Settlement Amount less the following amounts (which are subject to Court approval):

- A. **Attorneys’ Fees to Class Counsel** not to exceed one-third of the Gross Settlement Amount or One Hundred Sixty-Six Thousand Six Hundred Sixty-Seven Dollars (\$166,667.00);
- B. **Litigation Costs/Expenses to Class Counsel** not to exceed Twenty-Five Thousand Dollars (\$25,000.00);
- C. **Class Representative Enhancement Payment** in an amount not to exceed Ten Thousand Dollars (\$10,000.00);
- D. **Settlement Administration Costs** which are currently estimated to be Eight Thousand Two Hundred and Fifty Dollars (\$8,250.00); and
- E. **PAGA Payment** in the amount of Fifty Thousand Dollars (\$50,000.00) for the settlement of claims arising under the PAGA. Seventy-Five percent (75%) of this amount, (\$37,500.00) shall be paid to the California Labor & Workforce Development Agency. The remaining twenty-five percent (25%) (\$12,500.00) will be distributed to the Aggrieved Employees, for the release of their claims as set forth in the PAGA Release, described below in Section 7.

The amount you are eligible to receive from the settlement, your “Individual Settlement Payment” will be determined on a *pro rata* basis, based on the number of pay periods you worked in California as a non-exempt sales employee who worked for Defendant in California any time between May 1, 2019 and July 11, 2023 (“Pay Periods”). Your Individual Settlement Payment includes both your estimated share of the Net Settlement Amount and, if eligible, your share of the PAGA Payment.

**[ONLY FOR PAGA MEMBERS:** Your share of the PAGA Payment is calculated on a *pro rata* basis based on the total number of weeks you worked (full or partial) worked by each Aggrieved Employee during the PAGA Period. This portion of the Settlement will be categorized as 100% penalties and subject to an IRS Form 1099.]

Your Individual Settlement Payment will be apportioned as thirty percent (30%) wages, seventy percent (70%) interest and penalties. The wage portion of the Individual Settlement Payment will be subject to withholding for the employee taxes and will be reported on a W-2 Form. Employer-side payroll taxes shall be paid separately from and in addition to the Gross Settlement Amount. The penalties and interest portions of each class member's settlement payment will not be subject to any withholdings and will be reported on an IRS Form 1099.

**You worked XXX pay periods during the Class Period. Your Individual Settlement Payment is \$XXX.XX. The amount of the payment may change depending on the number of timely and valid requests for exclusions submitted in the Settlement, if any.**

This Amount was determined based on Defendant's record of your employment between May 1, 2019, through July 11, 2023, and is presumed correct. If you dispute the accuracy of Defendant's records as to the number of pay periods during the Class Period, you must contact the Settlement Administrator and provide any documentation you have supporting such dispute by [DATE]. All disputes regarding your Pay Periods will be resolved and decided by the Parties or if the Parties cannot agree, the Court, after you submit evidence to the Settlement Administrator. The Settlement Administrator's contact information is listed below:

[Settlement Administrator]

[Address]

[Telephone No].

[Fax No. ]

## HOW TO GET A PAYMENT FROM THE SETTLEMENT

### 6. How can I get a payment?

You do not have to do anything to qualify for a payment of your portion of the Settlement.

### 7. What am I giving up if I do not request to be excluded from the Settlement?

Upon the funding of the Gross Settlement Amount by Defendant and entry of Final Approval Order and Final Judgment by the Court, in exchange for the consideration set forth by the Settlement, Class Members who do not submit a timely request for exclusion will release the "Released Parties" from the "Released Class Claims" for the "Class Period."

The "Released Parties" means Defendant Northern California Chair Corporation, and all of its parent companies, subsidiaries, divisions, concepts, related or affiliated companies, and its or their respective shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity that could be liable for any of the Released Class Claims.

The "Released Class Claims" means any and all claims arising during the Class Period, inclusive, under state or local law, reasonably arising out of the factual allegations and claims pleaded in the Complaint in this Action (i.e., Violations of Labor Code §§ 226, 226.7, 510, 512, 558, 1194, 2698, and 2802; Business and Professions Code § 17200, et seq.) and all other claims, such as those under the California Labor Code, Wage Orders, regulations, and/or other provisions of law, that could have been pleaded based on the facts asserted in the Action, including: (1) failure to provide meal periods; (2) inaccurate wage statements; (3) failure to pay all overtime wages owed; (4) failure to reimburse employees for all necessary business expenses; (5) all violations

of the applicable Wage Orders based on the facts alleged in the Complaint; (7) all violations of California's unfair competition law based on the facts alleged in the Complaint; and (9) interest, fees, and costs.

All Aggrieved Employees will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged any and all of the claims articulated in the "PAGA Release" with respect to all of the Released Parties irrespective of whether a Class Member submits a request for exclusion.

"PAGA Release" means the following release: all rights to PAGA claims premised on Labor Code §§ 226, 226.7, 510, 512, 558, 1194, 2802 and based on the facts alleged in the Complaint and any interest, fees, and costs arising during the PAGA Period (the "Precluded PAGA Claims").

### **EXCLUDING YOURSELF FROM THE RELEASE OF NON-PAGA CLAIMS**

If you want to keep the right to sue or continue to sue Released Parties with respect to the Released Class Claims (other than those which fall within the definition of the PAGA Release), then you must submit a request for exclusion in conformity with the requirements set forth herein. If you exclude yourself, you will not receive your share of payment from the Net Settlement Amount. However, if eligible, you will still receive a payment in an amount equal to your estimated *pro rata* share of the PAGA Payment because the Request for Exclusion does not apply to this claim.

#### **8. How can I not participate in the Settlement?**

To exclude yourself from the release of Released Class Claims you must submit a written request for exclusion. You must include your name, address, telephone number and the last four digits of your social security number. Your request for exclusion must also include a statement that you do not wish to be included in this action similar to the following: "I wish to exclude myself from the class action settlement reached in the matter of *Marie Rebelo Showalter v. Northern California Chair Corporation*."

The written for Exclusion must be mailed to the Settlement Administrator at the address listed below, post-marked by [DATE]. You cannot exclude yourself by phone.

[Settlement Administrator]

[Address]

[Telephone No.]

[Fax No. ]

If you ask to be excluded, you will not receive payment of any portion of the Net Settlement Amount and you cannot object to the Settlement. You may still receive a portion of the PAGA Payment if you worked during the PAGA Period, because the request for exclusion does not apply to the PAGA Release. You will not be legally bound by the release of Released Class Claims.

If you exclude yourself, you may be able to sue Defendant and/or the Released Parties or continue any suit you have pending against Defendant or the Released Parties, regarding the Released Class Claims (except for Released Class Claims that fall within the definition of the PAGA Release).

### **THE LAWYERS REPRESENTING YOU**

#### **9. Do I have a lawyer in this case?**

The Court has approved Diversity Law Group, P.C. as Class Counsel. The firm's contact information is:

**DIVERSITY LAW GROUP, P.C.**

Larry W. Lee, Esq.  
lwlee@diversitylaw.com  
Max W. Gavron, Esq.  
mgavron@diversitylaw.com  
515 S. Figueroa Street, Suite 1250  
Los Angeles, California 90071  
Telephone: (213) 488-6555

Class Counsel will ask the Court for attorneys' fees of up to \$166,667.00 and reimbursement of litigation cost/expenses of up to \$25,000.00. These amounts are subject to Court approval and the Court may award less than these amounts.

**OBJECTING TO THE SETTLEMENT**

**10. What if I want to object to this settlement?**

If you are a Class Member, you can object to the Settlement and you can give reasons for why you think the Court should not approve it. The Court will consider your views. To object, you should mail your written objection to the Settlement Administrator no later than [DATE]. Your objection must include your full name, the specific reasons for your objection, and evidence and supporting papers (including, without limitation, all briefs, written evidence, and declarations) for the Court to consider. You may also come to the Final Approval Hearing on [DATE] and make an objection at that time, regardless of whether you submitted a written objection. Instructions on how to do so are in Section 12, below.

**11. What is the difference between objecting and excluding?**

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement. If you exclude yourself, you have no basis to object because the case no longer affects you.

**THE COURT'S FAIRNESS HEARING**

**12. When and where will the Court decide whether to approve the settlement?**

The Court will hold a hearing to decide whether to grant final approval of the Settlement ("Final Approval Hearing"). You may attend, but you do not have to attend. The Court will hold the Final Approval Hearing at [REDACTED] p.m. on [REDACTED], 2023] in Department 19 of the Santa Clara County Superior Court located at 191 North First Street, San Jose, California 95113.

Hearings before the judge overseeing this case will be conducted remotely via Microsoft Teams. Class members who wish to appear should contact Class Counsel at least three days before the hearing if possible. Instructions for appearing remotely are provided at [https://www.scscourt.org/general\\_info/ra\\_teams/video\\_hearings\\_teams.shtml](https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml) and should be reviewed in advance. Class Members may appear remotely using the Microsoft Teams link for Department 19 (Afternoon Session) or by calling the toll free conference call number for Department 19.

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate, and determine whether to grant final approval of the Settlement. If there are objections, the Court will consider them.

### **13. Do I have to come to the hearing?**

No. If you agree to the Settlement you do not have to come to Court to talk about it. However, you may attend. You may also retain your own lawyer at your expense to attend on your behalf. Hearings before the judge overseeing this case will be conducted remotely via Microsoft Teams. Class members who wish to appear should contact class counsel at least three days before the hearing if possible. Instructions for appearing remotely are provided at [https://www.sccscourt.org/general\\_info/ra\\_teams/video\\_hearings\\_teams.shtml](https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml) and should be reviewed in advance. Class members may appear remotely using the Microsoft Teams link for Department 19 (Afternoon Session) or by calling the toll-free conference call number for Department 19.

## **IF YOU DO NOTHING**

### **14. What happens if I do nothing at all?**

If you do nothing, you will receive your share of the Settlement, and you will release the Released Class Claims. You will not be able to participate in any other lawsuit against Defendants or Released Parties about the Released Class Claims, ever again. Your Individual Settlement Payment will be mailed to you and remain valid and negotiable for 180 days. If you do not cash your settlement check within 180 days, these funds will be paid to Legal Aid at Work, a non-profit legal entity, to further the objectives of the underlying class action, or promote the law consistent with the objectives of the underlying class action.

## **GETTING MORE INFORMATION**

### **15. How do I get more information?**

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed Settlement Agreement, which is on file with the Clerk of the Court. The pleadings and other records in the Lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the Santa Clara County Superior Court, located at 191 N. First Street, San Jose, CA 95113, and may also be reviewed online at [[insert court website link](#)].

## **WHAT IF MY INFORMATION CHANGES?**

### **16. What if my contact information changes?**

It is your responsibility to inform the Settlement Administrator of your updated information to ensure receipt of settlement payments or communications regarding this matter. You can change or update your contact information by contacting the Settlement Administrator.

**DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO  
THE CLERK OF THE COURT OR THE JUDGE.**