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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

BRITTNEY RAND, individually, and on
behalf of herself and others similarly
situated, and as Representatives of the
California Labor and Workforce
Development Agency,

Plaintiff,

v.

PRO'S CHOICE BEAUTY CARE, INC.; and
DOES 1 THROUGH 100, inclusive,
Defendants.

Case No.: 34-2021-00294988-CU-OE-GDS

LWDA # LWDA-CM-822112-21

**PLAINTIFF'S NOTICE OF
SETTLEMENT OF PAGA CLAIM AND
RELATED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND
ASSOCIATED ORDERS**

Date: June 28, 2024

Time: 9:00 AM

Dept: 22

Judge: Hon. Lauri A. Damrell

Action filed: February 22, 2021

1 TO LWDA: PLEASE TAKE NOTICE:

2 Plaintiff BRITTNEY RAND has settled, subject to court approval, case number LWDA-
3 CM-822112-21. This notice is placed on the caption for the related civil case. A copy of the current
4 settlement agreement in this matter is provided at Attachment 1. The civil court has indicated that
5 some adjustments should be made to the form of the agreement per the order provided as
6 Attachment 2, but those changes do not at this time affect the distribution amounts of the potential
7 settlement funds.

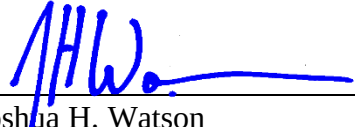
8 The court has not yet approved the settlement. A hearing on preliminary approval is
9 currently scheduled as stated in the caption of this notice.

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11 Respectfully submitted,

CLAYEO C. ARNOLD, PC

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13 Dated: June 5, 2024

By: _____


Joshua H. Watson
Attorneys for Plaintiff
Brittney Rand

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Attachment 1 – Settlement Agreement

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10 Attorneys for Defendant
11 Pro's Choice Beauty Care, Inc.
12

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF SACRAMENTO**
15

16 BRITTNEY RAND, individually, and on
17 behalf of herself and others similarly
situated, and as Representatives of the
18 California Labor and Workforce
Development Agency,

19 Plaintiff,

20 v.

21 PRO'S CHOICE BEAUTY CARE, INC.; and
22 DOES 1 THROUGH 100, inclusive,
Defendants.

Case No.: 34-2021-00294988-CU-OE-GDS

**STIPULATION OF CLASS ACTION
SETTLEMENT**

Action filed: February 22, 2021

Assigned to: Hon. Lauri A. Damrell

23
24 **STIPULATION OF CLASS ACTION SETTLEMENT**
25

26 IT IS HEREBY STIPULATED, by and between Plaintiff Brittney Rand on behalf of
27 herself and the Settlement Class Members, on the one hand, and Defendant Pro's Choice Beauty
28 Care, Inc., and subject to the approval of the Court, that the Action is hereby being compromised

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1 and settled pursuant to the terms and conditions set forth in this Stipulation of Class Action
2 Settlement and that the Court shall make and enter judgment, subject to the continuing
3 jurisdiction of the Court as set forth below, subject to the definitions, recitals and terms set forth
4 herein which by this reference become an integral part of this Agreement:

5 **I. DEFINITIONS**

6 1. As used in this Stipulation, the following terms shall have the meanings set forth
7 below:

8 A. “Action” means the Complaint filed by Plaintiff Brittney Rand on or about
9 February 22, 2021, in the Sacramento County Superior Court, entitled: BRITTNEY RAND,
10 individually and on behalf of all others similarly situated, Plaintiff v. PRO’S CHOICE BEAUTY
11 CARE, INC.; and DOES 1 THROUGH 100, Defendants, Case No. 34-2021-00294988, as
12 amended by Plaintiff’s First Amended Complaint.

13 B. “Agreement” means this Stipulation of Class Action Settlement.

14 C. “Class” means Class Members, collectively.

15 D. “Class Counsel” means Arnold Law Firm.

16 E. “Class Counsel Award” means attorneys’ fees for Class Counsel’s litigation and
17 resolution of this Action and their expenses and costs incurred in connection with the Action, paid
18 from the Gross Settlement Fund.

19 F. “Class Information” means information regarding Settlement Class Members that
20 Defendant will in good faith compile from their records and provide to the Settlement
21 Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include: each
22 Settlement Class Member’s employee number; full name; last known address; last known home
23 telephone number; Social Security Number; start date of employment; end date of employment;
24 Qualifying Workweeks; and the total Qualifying Workweeks for the Settlement Class Members.

25 G. “Class Members” means all current and former non-exempt hourly employees of
26 Defendant who worked in the State of California as a merchandiser or jobs with similar titles
27 from February 22, 2017 through the date of preliminary approval of the settlement.

28 H. “Class Notice” means the notice explaining the Settlement and Settlement Class

Members' options sent to the class following preliminary approval, which is to be mutually agreed upon by the Parties, and is to be used to notify Settlement Class Members of the Settlement.

I. "Class Payment Ratio" means the respective Qualifying Workweeks for each Settlement Class Member during the Class Period divided by the total Qualifying Workweeks for all Settlement Class Members during the Class Period.

J. "Class Period" means the period from February 22, 2017 until the Preliminary Approval Date.

K. "Class Representative Service Award" means the amount that the Court authorizes to be paid to Plaintiff, in addition to her Individual Settlement Payment, in recognition of her efforts and risks in assisting with the prosecution of the Action and in exchange for executing a General Release of Defendant.

L. "Court" means the Superior Court of the State of California for the County of Sacramento.

M. "Defendant" means Pro's Choice Beauty Care, Inc.

N. "Defendant's Counsel" means Keiko J. Kojima of Burke, Williams & Sorensen, LLP.

O. "Effective Date" means the date upon which both of the following have occurred: (i) approval of the Settlement is granted by the Superior Court of California for the County of Ventura, or other court assuming jurisdiction of this matter, and (ii) the Court's Judgment approving the Settlement becomes Final. Final shall mean the latest of: (i) if there is an appeal of the Court's Judgment, the date the Judgment is affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for writ of certiorari to the California Supreme Court, or, (ii) if a petition for writ of certiorari is filed, the date of denial of the petition for writ of certiorari, or the date the Judgment is affirmed pursuant to such petition; or (iii) if no appeal is filed, the expiration date of the time for filing or noticing any appeal of the Judgment.

P. "Final Hearing Date" means the hearing following Class Notice at which Plaintiff will request that the Court approve the fairness, reasonableness, and adequacy of the terms and

1 conditions of the proposed Settlement, enter the Final Approval Order and Judgment, award Class
2 Counsel attorneys' fees and costs, Plaintiff's enhancement award, the payment to the LWDA and
3 the Settlement Payments, and take other appropriate or necessary action described herein.

4 Q. "Final Judgment" means the order or orders entered and filed by the Court that: (1)
5 finally approves this Agreement and the Settlement, disposes of all issues raised in this Action
6 and bars Settlement Class Members from reasserting Released Claims against Released Parties;
7 and (2) awards and orders the payment of all required amounts pursuant to the terms of this
8 Agreement (Class Counsel's attorneys' fees and costs, Settlement Payments to Settlement Class
9 Members, etc.)

10 R. "Final Settlement Hearing" means the hearing on the Final Hearing Date at which
11 the Court shall determine whether to fully and finally approve the fairness and reasonableness of
12 this Agreement, and enter an order permanently enjoining all Settlement Class Members who
13 have not timely excluded from this Settlement from pursuing, or seeking to reopen, any of the
14 Released Claims.

15 S. "Gross Settlement Amount" means gross amount that is to be paid in the
16 settlement of the Released Claims in the Action – a gross maximum total of Three Hundred Sixty
17 Five Thousand and Zero Dollars (\$365,000).

18 T. "Gross Settlement Fund" means Three Hundred Sixty Five Thousand Dollars
19 (\$365,000), which sum includes the Individual Settlement Payments, Class Counsel Award, Class
20 Representative Service Award, Payment to the LWDA, and Settlement Administration Costs.
21 The Gross Settlement Fund includes Defendant's employer-side payroll taxes for the portion of
22 the Individual Settlement Payment(s) paid to the Settlement Class that is attributable to wages,
23 which shall be paid out of the Gross Settlement Fund. In no event shall Defendant be required to
24 pay any amounts above the Gross Settlement Fund under this Settlement and this Agreement.
25 This is a non-reversionary settlement.

26 U. "Individual Settlement Payment" means the amount payable from the Net
27 Settlement Amount to each Settlement Class Member

28 V. "LWDA Payment" means the \$15,000 payment to the California Labor and

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1 Workforce Development Agency under the Private Attorneys General Act of 2004.

2 W. "Net Settlement Amount" means the amount remaining from the Gross Settlement
3 Amount less the Class Counsel Award, Class Representative Service Award, and Settlement
4 Administration Costs.

5 X. "Notice Packet" means the Notice of Proposed Class Action Settlement
6 substantially in the form attached as Exhibit 1.

7 Y. "Notice Plan" shall mean the plan for the provision of notice to all Class Members
8 under this Agreement.

9 Z. "Parties" means Plaintiff and Defendant, collectively, and "Party" shall mean
10 either Plaintiff or Defendant, individually.

11 AA. "Plaintiff" means Brittney Rand.

12 BB. "Preliminary Approval Date" is the date the Court grants preliminary approval of
13 this Settlement pursuant to California Rule of Court 3.769(c).

14 CC. "Preliminary Approval Order" is the Order entered and filed by the Court that
15 preliminarily approves the terms and conditions of this Agreement, including the manner and
16 content of providing notice to the Class.

17 DD. "Qualifying Workweeks" means the number of workweeks (starting Monday
18 through Sunday) during which a Class Member worked for Defendant in California during the
19 Class Period (i.e., periods of time worked outside California or while exempt from overtime are
20 excluded).

21 EE. "Released Claims" means any and all claims for relief, which the Named Plaintiff
22 or any Settlement Class Members have had or now have, against the Released parties or any of
23 them for any acts occurring on or before the entry and filing date of the Preliminary Approval
24 Order that are either or both: (1) alleged in the Action; or (2) arise out of the facts, matters,
25 transactions, or occurrences referenced to in the Action that could have been alleged as separate
26 claims, causes of actions, lawsuits or other theories of relief. "Released Claims" includes all
27 types of relief available for the above-referenced theories of relief, including, without limitation,
28 all the following claims, actions, demands, causes of action, suits, debts, obligations, damages,

rights or liabilities, of any nature and description whatsoever (whether or not the factual cause of the alleged underpayment or violation was alleged with particularity in the complaint and/or amended Complaint): (a) Failure to Pay Regular/Minimum Wages in Violation of California Labor Code §§1182.12, 1194, 1194.2, 1197-1197.I, and Wage Order No.4- 2001, §4(A); (b) Failure to Provide Compliant Meal Periods in Violation of Labor Code §§226.7,512, and IWC Wage Order 4-2001, § 11; (c) Failure to Provide Compliant Rest Periods in Violation of Labor Code § 226.7 and IWC Wage Order 4-2001, §12; (d) Failure to Make Payments Within the Required Time in Violation of California Labor Code §§ 201, 202-204 and 210; (e) Statutory Penalties for Failure to Provide Accurate Wage Statements in Violation of Labor Code §226; (f) Failure to Maintain Required Records in Violation of California Labor Code § 1174, 1174.5, and Wage Order No.4-2001§7; (g) Restitution for Unfair Business Practices and Injunction Against Unfair Business Practices (Cal. Bus. & Prof. Code §17200, et seq.); (h) Failure to Indemnify/Reimburse Business Expenses in Violation of California Labor Code § 2802; (i) PAGA Civil Penalties pursuant to Labor Code § 2699(f)(2) for Failure to Comply with Labor Code §§1182.12, 1119 4, 1119 4.2, 11197 -1197. 1, and Wage Order No.4-2001, § 4(A); (j) PAGA Civil Penalties pursuant to Labor Code S 2699(D(2) for Failure to Comply with Labor Code §§ 226.7, 512 and Wage Order No. 4-2001, §§ 11-12; (k) PAGA Civil Penalties pursuant to Labor Code §2699(f)(2) and as permitted by Labor Code §§203,204, 210, and 256 for Untimely Separation Pay and Untimely Payment of Wages When Due; (l) PAGA Civil Penalties Pursuant to Labor Code S 2699(f)(2) for Failure to Comply with Labor Code § 2802; (m) PAGA Civil Penalties pursuant to Labor Code S 2699(f)(2) and as Permitted by Labor Code §§226(a), 226.3,and1174, and IWC Wage Order 4-2001, § 7 for Inaccurate Wage Statements and (n) PAGA Civil Penalties pursuant to Labor Code § 558(a); (o) all claims for civil penalties under PAGA that could have been premised on the facts and legal theories raised in the operative complaint and/or First Amended Complaint; (p) any other claims or penalties under the wage and hour laws pleaded in the Action or that could have been pleaded in the operative complaint and/or First Amended Complaint pursuant to Labor Code sections 201, 202, 203, 204, 218, 226, 226.7, 510, 512, 1174, 1194, 1198, 2802 and 2699 et seq., Code of Civil Procedure section 1021.5, the

1 California Business and Professions Code §17200 et seq, the Fair Labor Standards Act of 1938,
2 as amended, 29 U.S.C. section 201 *et seq* (“FLSA”), and applicable sections of the California
3 Industrial Wage Orders; and (q) all claimed or unclaimed compensatory, consequential,
4 incidental, liquidated, punitive and /or exemplary damages, penalties, restitution, interest,
5 declaratory relief, costs, attorneys’ fees, injunctive or equitable relief, and any other remedies
6 available at law or equity, and other amounts recoverable under said causes of action under state,
7 federal, or common law, to the extent permissible, including but not limited to the California
8 Labor Code, the applicable Wage Orders, the FLSA, and the California Unfair Competition Law
9 as to the facts, legal theories, and causes of actions alleged in the operative complaint and/or
10 Amended Complaint. The res judicata effect of the Judgment will be the same as that of the
11 release obtained by this Agreement and Settlement. Excluded from Released Claims are claims
12 incurred while each Settlement Class Member was not a Settlement Class Member (i.e., for
13 periods of time worked outside California or while exempt from overtime) while working for
14 Defendants. The Final Judgment shall expressly provide that it covers and bars each and every
15 non-excluded Settlement Class Member from asserting any Released Claims in the future. The
16 release of claims, rights or liabilities under the FLSA applies only to those Settlement Class
17 Members who have consented to join the Settlement by depositing or cashing their Individual
18 Settlement Payments.

19 FF. “Released Parties” means Defendant and its past, present and/or future, direct
20 and/or indirect, officers, directors, employees, agents, representatives, attorneys, insurers,
21 trustees, partners, investors, shareholders, administrators, parent companies, affiliated companies,
22 related companies and business concerns, members, subsidiaries, affiliates, divisions,
23 predecessors, successors, assigns, and joint venturers.

24 GG. “Response Deadline” means the date forty-five (45) days after the Settlement
25 Administrator mails Notice Packets to Settlement Class Members including the time of 5:00 p.m.
26 (Pacific Standard Time) on that date, which is the last date and time on which Settlement Class
27 Members may submit a request for exclusion and/or objection to the Settlement.

28 HH. “Settlement” shall refer to the agreement of the Parties to settle the claims as set

1 forth and embodied in this Agreement.

2 II. "Settlement Administration Costs" means the amount to be paid to the Settlement
3 Administrator from the Gross Settlement Fund for administration of this Settlement.

4 JJ. "Settlement Administrator" means Simpluris, Inc.

5 KK. "Settlement Class" means the Settlement Class Members collectively.

6 LL. "Settlement Class Members" means all the Class Members who do not timely and
7 properly opt out of the settlement provided for in this settlement with respect to the state law
8 claims and all Class Members with respect to claims under the Fair Labor Standards Act
9 ("FLSA").

10 MM. "Settlement Payment" means the payment to a Settlement Class Member under the
11 terms of this Agreement.

12 II. RECITALS

13 2. Class Certification. The Parties stipulate and agree to the certification of this
14 Action for purposes of this Settlement only. Should the Settlement not become final and effective
15 as herein provided, class certification shall immediately be set aside and the Settlement Class
16 immediately decertified (subject to further proceedings on motion of any party to certify or deny
17 certification thereafter). The Parties' willingness to stipulate to class certification as part of the
18 Settlement shall have no bearing on, and shall not be admissible in or considered in connection
19 with, the issue of whether a class should be certified in a non-settlement context in this Action
20 and shall have no bearing on, and shall not be admissible or considered in connection with, the
21 issue of whether a class should be certified in any other lawsuit.

22 3. Procedural History and Interpretation of Complaints. On February 22, 2021,
23 Brittney Rand, a former Pro's Choice merchandiser, filed the above class action Complaint on
24 behalf of herself and other "similarly situated individuals" against Defendant Pro's Choice. The
25 class is defined as "All Pro's Choice non-exempt employees who worked for any duration in
26 California between four years prior to the filing of this action through the date of trial." The
27 Complaint asserted the following causes of action: (1) Failure to Pay Regular/Minimum Wages in
28 Violation of California Labor Code §§1182.12, 1194, 1194.2, 1197-1197.I, and Wage Order

1 No.4- 2001, §4(A); (2) Failure to Provide Compliant Meal Periods in Violation of Labor Code
2 §§226.7,512, and IWC Wage Order 4-2001, § 11; (3) Failure to Provide Compliant Rest Periods
3 in Violation of Labor Code § 226.7 and IWC Wage Order 4-2001, §12; (4) Failure to Make
4 Payments Within the Required Time in Violation of California Labor Code §§ 201, 202-204 and
5 210; (5) Statutory Penalties for Failure to Provide Accurate Wage Statements in Violation of
6 Labor Code §226; (6) Failure to Maintain Required Records in Violation of California Labor
7 Code § 1174, 1174.5, and Wage Order No.4-2001§7; (7) Restitution for Unfair Business Practices
8 and Injunction Against Unfair Business Practices (Cal. Bus. & Prof. Code §17200, et seq.); (8)
9 Failure to Indemnify/Reimburse Business Expenses in Violation of California Labor Code §
10 2802. On or around June 23, 2021, Plaintiff filed a First Amended Complaint to additionally
11 assert the following causes of actions in addition to the eight causes of actions previously alleged:
12 (9) PAGA Civil Penalties pursuant to Labor Code S 2699(f)(2) for Failure to Comply with Labor
13 Code §§1182.12, 1119 4, 1119 4.2, 11197 -1197. 1, and Wage Order No.4-2001, § 4(A); (10)
14 PAGA Civil Penalties pursuant to Labor Code S 2699(D)(2) for Failure to Comply with Labor
15 Code §§ 226.7, 512 and Wage Order No. 4-2001, §§ 11-12; (11) PAGA Civil Penalties pursuant
16 to Labor Code §2699(f)(2) and as permitted by Labor Code §§203,204, 210, and 256 for
17 Untimely Separation Pay and Untimely Payment of Wages When Due; (12) PAGA Civil
18 Penalties Pursuant to Labor Code S 2699(f)(2) for Failure to Comply with Labor Code § 2802;
19 (13) PAGA Civil Penalties pursuant to Labor Code S 2699(f)(2) and as Permitted by Labor Code
20 §§226(a), 226.3, and 1174, and IWC Wage Order 4-2001, § 7 for Inaccurate Wage Statements and
21 (14) PAGA Civil Penalties pursuant to Labor Code § 558(a). Plaintiff seeks unpaid wages, civil
22 and statutory penalties, costs, attorneys' fees, restitution, and declaratory and injunctive relief on
23 behalf of herself and the aggrieved employees.

24 4. Defendant filed its Answers to the Complaint that generally denied the allegations
25 in the Complaint and asserted several affirmative defenses. Defendant denied that it engaged in
26 any misconduct in connection with its practices, and denied that it has any liability, or that it has
27 engaged in wrongdoing of any kind associated with the claims alleged in the Action.

28 5. No class has been certified in this Action.

6. After exchanging extensive informal mediation data, the Parties attended an all-day virtual mediation with Barbara Reeves of JAMS on May 31, 2022. Following additional settlement discussions, the parties ultimately reached a settlement, the terms of which have been memorialized in a Stipulation of Settlement, conditioned upon the Court's issuance of final approval of the class settlement.

7. Benefits of Settlement to Class Members. Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to litigate their disputes through trial and through any possible appeals. Plaintiff has also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel are also aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, both generally and in response to Defendant's defenses thereto, and the difficulties in establishing damages for the Class Members. Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement set forth in this Agreement is a fair, adequate and reasonable settlement, and is in the best interests of the Settlement Class Members.

8. Defendant's Reasons for Settlement. Defendant has concluded that any further defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of time and resources of Defendant have been and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiff. Defendant has also taken into account the risks of further litigation in reaching its decision to enter into this Settlement. Despite continuing to contend that it is not liable for any of the claims set forth by Plaintiff, Defendant has, nonetheless, agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the claims as set forth in the Action. Defendant has claimed and continues to claim that the Released Claims have no merit and do not give rise to liability. This Agreement is a compromise of disputed claims. Nothing contained in this Agreement and no documents referred to herein and no action taken to carry out this Agreement may be construed or used as an admission by or against Defendant as to the merits or lack thereof of the claims asserted. Defendant contends that the monies being paid as part of the settlement are genuinely disputed

1 and that the provisions of Labor Code section 206.5 are not applicable to this Settlement.

2 9. Settlement Class Members' Claims. Settlement Class Members claim that the
3 Released Claims have merit and give rise to liability on the part of Defendant. Nothing contained
4 in this Agreement and no documents referred to herein and no action taken to carry out this
5 Agreement may be construed or used as an admission by or against the Settlement Class
6 Members or Class Counsel as to the merits or lack thereof of the claims asserted.

7 10. Defendant's Defenses. Defendant claims that the Released Claims have no merit
8 and do not give rise to liability. Defendant contends that this Agreement is a compromise of
9 disputed claims. Nothing contained in this Agreement and no documents referred to herein and
10 no action taken to carry out this Agreement may be construed or used as an admission by or
11 against Defendants as to the merits or lack thereof of the claims asserted.

12 **TERMS OF AGREEMENT**

13 11. Non-Admission of Liability: In entering into this Agreement, Defendant does not
14 admit, and specifically denies, it has violated any federal, state, or local law; violated any
15 regulations or guidelines promulgated pursuant to any statute or any other applicable laws,
16 regulations or legal requirements; breached any contract; violated or breached any duty; engaged
17 in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to
18 its current or former employees. Neither this Agreement, nor any of its terms or provisions, nor
19 any of the negotiations connected with it, shall be construed as an admission or concession by
20 Defendant of any such violation(s) or failure(s) to comply with any applicable law. Except as
21 necessary in a proceeding to enforce the terms of this Agreement, this Agreement and its terms
22 and provisions shall not be offered or received as evidence in any action or proceeding to
23 establish any liability or admission on the part of Defendant or to establish the existence of any
24 condition constituting a violation of or noncompliance with, federal, state, local or other
25 applicable law. In addition, the Parties intend this Settlement to be contingent upon the
26 preliminary and final approval of this Agreement; and the Parties do not waive, and instead
27 expressly reserve, their respective rights to prosecute and defend this Action as if this Agreement
28 never existed in the event that the Settlement is not fully and finally approved as set forth herein.

12. Releases.

(a) Release As To Plaintiff. As of the Effective Date, in exchange for the promises and payments referenced herein, Plaintiff waives, releases and relinquishes, to the fullest extent permitted by law, all claims, demands or causes of action against the Released Parties whether known or unknown, including the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which Section provides:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

Without limiting the generality of the foregoing, and in addition to the foregoing, Plaintiff specifically and expressly release to the maximum extent permitted by law any claims against Defendant and the Released Parties occurring prior to the Final Hearing Date arising out of or related to violations of any federal or state employment discrimination laws, including the California Fair Employment and Housing Act; Title VII of the Civil Rights Act of 1964; the federal Family and Medical Leave Act; the federal Age Discrimination in Employment Act, the California Family Rights Act; the Americans With Disabilities Act; the National Labor Relations Act; the Equal Pay Act; the Employee Retirement Income Security Act of 1974; as well as claims arising out of or related to violations of the provisions of the California Labor Code; the California Government Code; the California Business & Professions Code, including Business & Professions Code Section 17200 et seq.; state and federal wage and hour laws; breach of contract; fraud; misrepresentation; common counts; unfair competition; unfair business practices; negligence; defamation; infliction of emotional distress; invasion of privacy; assault; battery; false imprisonment; wrongful termination; and any other state or federal law, rule, or regulation. Plaintiff has conferred with her attorneys and is hereby executing this agreement and acknowledges it has been given a period of twenty-one days to consider the terms of the

1 Agreement before signing it. Plaintiff has seven days following her signing of this Agreement
2 within which to revoke her release of claims under the Age Discrimination in Employment Act by
3 delivering written notice within said seven days to Defendant's counsel.

4 Plaintiff may hereafter discover facts in addition to or different from those it now knows
5 or believes to be true with respect to potential claims against the Released Parties but, upon the
6 Effective Date, shall be deemed to have, and by operation of the final judgment shall have, fully,
7 finally, and forever settled and released any and all claims, demands, or causes of action against
8 the Released Parties, whether known or unknown, suspected or unsuspected, contingent or non-
9 contingent, which now exist, or heretofore have existed, upon any theory of law or equity now
10 existing or coming into existence in the future, including, but not limited to, conduct that is
11 negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard
12 to the subsequent discovery or existence of such different or additional facts.

13 (b) Release As To All Settlement Class Members. As of the Effective Date, but
14 contingent on and in exchange for payment the Gross Settlement Fund, Plaintiff and the
15 Settlement Class Members, with the exception of the Settlement Class Members who have
16 submitted a timely and valid request for exclusion as provided in this Agreement, release the
17 Released Parties from all Released Claims. The release of claims under the FLSA applies only to
18 those Settlement Class Members who have consented to join the Settlement by cashing their
19 Settlement Payments.

20 (c) Binding Nature of Release: The Parties agree for settlement purposes only that,
21 because the Settlement Class Members are so numerous, it is impossible or impracticable to have
22 each Settlement Class Member execute this Agreement. Accordingly, the Class Notice will
23 advise all Settlement Class Members of the binding nature of the release and such notice shall
24 have the same force and effect as if the Agreement were executed by each Settlement Class
25 Member.

26 (d) Release Language on Settlement Checks: The following or similar release
27 language shall be on the back of each settlement check:

28 "My endorsing, cashing, or depositing of this check constitutes my consent to join

1 the lawsuit entitled *Brittney Rand v. Pro's Choice Beauty Care, Inc.. et al*, pending
2 in the Superior Court of the State of California for the County of Sacramento, Case
3 No. 34-2021-00294988, pursuant to the provisions of the Fair Labor Standards Act
4 (“FLSA”), 29 U.S.C. Section 216(b).”

5 13. Tax Liability. The Parties and their counsel make no representations as to the tax
6 treatment or legal effect of the payments called for hereunder, and Settlement Class Members are
7 not relying on any statement or representation by the Parties or their counsel in this regard.
8 Settlement Class Members understand and agree that they will be responsible for the payment of
9 any employee taxes and penalties assessed on the payments described herein and will hold the
10 Parties and their counsel free and harmless from and against any claims, liabilities, costs and
11 expenses, including attorneys’ fees, resulting in any way from personal tax treatment of the
12 payments made pursuant to this Agreement, including the treatment of such payments as not
13 subject to withholding or deduction for payroll and employment taxes.

14 14. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this
15 section, the “acknowledging party” and each Party to this Agreement other than the
16 acknowledging party, an “other party”) acknowledges and agrees that: (1) no provision of this
17 Agreement, and no written communication or disclosure between or among the Parties or their
18 attorneys and other advisers, is or was intended to be, nor shall any such communication or
19 disclosure constitute or be construed or be relied upon as, tax advice within the meaning of
20 United States Treasury Department circular 230 (31 CFR part 10, as amended); (2) the
21 acknowledging party (a) has relied exclusively upon his, her or its own, independent legal and tax
22 counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered
23 into this Agreement based upon the recommendation of any other Party or any attorney or advisor
24 to any other Party, and (c) is not entitled to rely upon any communication or disclosure by any
25 attorney or adviser to any other party to avoid any tax penalty that may be imposed on the
26 acknowledging party, and (3) no attorney or adviser to any other Party has imposed any limitation
27 that protects the confidentiality of any such attorney’s or adviser’s tax strategies (regardless of
28 whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax

1 treatment or tax structure of any transaction, including any transaction contemplated by this
2 Agreement.

3 15. Settlement Administration. Within thirty (30) calendar days after the Court grants
4 preliminary approval of this Agreement, Defendant shall provide the Settlement Administrator
5 with the Class Information for purposes of mailing Notice Packets to Settlement Class Members.
6 The Settlement Administrator will keep the list confidential, use it only for the purposes described
7 herein and take adequate safeguards to protect confidential or private information.

8 (a) Notice By First Class U.S. Mail. Upon receipt of the Class Information, the
9 Settlement Administrator will perform a search based on the National Change of Address
10 Database to update and correct any known or identifiable address changes. Within fourteen (14)
11 calendar days after receiving the Class Information from Defendant as provided herein, the
12 Settlement Administrator shall mail copies of the Notice Packet to all Settlement Class Members
13 via regular First Class U.S. Mail provided by Defendant. The Parties in conjunction with the
14 Settlement Administrator may correct immaterial errors on the Notice Packet or other mailed
15 materials without approval from the Court provided the changes do not alter the Preliminary
16 Approval Order by the Court. The Settlement Administrator shall exercise its best judgment to
17 determine the current mailing address for each Settlement Class Member. The address identified
18 by the Settlement Administrator as the current mailing address shall be presumed to be the best
19 mailing address for each Settlement Class Member. Each and every Settlement Class Member
20 whose Notice Packet is not returned to the Settlement Administrator as undeliverable within
21 fifteen (15) calendar days after mailing is conclusively presumed to have received the Notice
22 Packet.

23 (b) Undeliverable Notices. Any Notice Packets returned to the Settlement
24 Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the
25 forwarding address affixed thereto. If no forwarding address is provided, the Settlement
26 Administrator shall promptly attempt to determine a correct address by use of skip-tracing, or
27 other search using the name, address and/or Social Security number of the Settlement Class
28 Member involved, and shall then perform a re-mailing, if another mailing address is identified by

1 the Settlement Administrator. Settlement Class Members who received a re-mailed Notice Packet
2 shall have their Response Deadline extended ten (10) days from the original Response Deadline.
3 The 5:00 p.m. (PST) fax stamped deadline on the Response Deadline for faxed requests for
4 exclusions applies to this extension.

5 (c) Disputes Regarding Individual Settlement Payments. Settlement Class Members
6 will have the opportunity, should they disagree with Defendant's records regarding the dates of
7 employment stated in their Notice Packet, to provide documentation and/or an explanation to
8 show contrary employment dates. A Settlement Class Member challenging the number of
9 workweek(s) identified in the Notice Packet must also submit documentary evidence sufficient to
10 prove the number of Qualifying Workweeks. A Settlement Class Member challenging the
11 number of workweek(s) must submit their dispute by the Response Deadline.

12 If there is a dispute, the Settlement Administrator will consult with the Parties to
13 determine whether an adjustment is warranted. The Settlement Administrator shall determine the
14 eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this
15 Agreement. The Settlement Administrator's determination of the eligibility for and amount of
16 any Individual Settlement Payment shall be final and binding upon the Settlement Class Member
17 and the Parties, with no hearing or right of appeal.

18 (d) Disputes Regarding Administration of Settlement. Any disputes not resolved by
19 the Settlement Administrator concerning the administration of the Settlement will be resolved by
20 the Court under the laws of the State of California. Prior to any such involvement of the Court,
21 counsel for the Parties will confer in good faith to resolve the disputes without the necessity of
22 involving the Court.

23 (e) Exclusions. The Notice Packet shall state that Class Members who wish to
24 exclude themselves from the Settlement must submit a written request for exclusion by the
25 Response Deadline. The written request for exclusion must: (1) explicitly state that the individual
26 wishes to exclude themselves from the settlement; (2) contain the name, address, and the last four
27 digits of the Social Security and/or the Employee ID number of the person requesting exclusion;
28 (3) be signed by the Class Member; and (4) be postmarked by the Response Deadline or be fax

1 stamped no later than 5:00 p.m. (PST) on the Response Deadline and returned to the Settlement
2 Administrator at the specified address or fax telephone number. The request for exclusion will
3 not be valid if it is not timely submitted, if it is not signed by the Class Member, or if it does not
4 contain sufficient information to identify the Class Member. The date of the postmark on the
5 return mailing envelope or fax stamp on the request for exclusion shall be the exclusive means
6 used to determine whether the request for exclusion was timely submitted. Any Class Member
7 who timely and validly requests to be excluded from the Settlement Class will not be entitled to
8 an Individual Settlement Payment under the Settlement and will not be bound by the terms of the
9 Settlement as to Released Claims or have any right to object, appeal or comment thereon. Class
10 Members who do not submit a valid and timely written request for exclusion on or before the
11 Response Deadline as provided above shall be bound by all terms of the Settlement and any final
12 judgment entered in this Action if the Settlement is approved by the Court. It shall be
13 conclusively presumed that, if an exclusion request is not postmarked on or before the end of the
14 Response Deadline or was not fax stamped prior to 5:00 p.m. (PST) on the date of the Response
15 Deadline, the Class Member did not make the request in a timely manner. A declaration
16 submitted by any Class Member attesting to the mailing of a request for exclusion on or before
17 the Response Deadline shall be insufficient to overcome the conclusive presumption that the
18 request was not postmarked on or before the expiration of the Response Deadline. Under no
19 circumstances shall the Settlement Administrator have the authority to extend the deadline for
20 Class Members to file a request to opt out of the Settlement. The Settlement Administrator shall
21 accept or reject a Class Member's request for exclusion, depending on whether it meets the
22 criteria of this paragraph, and if the request is denied, advise the Class Member accordingly.
23 Plaintiffs agree not to request to be excluded from the Class.

24 No later than fourteen (14) calendar days after the Response Deadline, the Settlement
25 Administrator shall provide Defendants with: (1) a final list of Class Members who have
26 submitted timely and valid written requests for exclusion as provided under this Agreement; (2)
27 copies of all requests for exclusion received by it, together with an explanation of the disposition
28 thereof and the reasons therefor; and (3) copies of all communications with Class Members

1 regarding the Settlement Administrator's determinations pursuant to this paragraph.

2 No later than fourteen (14) calendar days after the Response Deadline, the Settlement
3 Administrator shall also provide counsel for Defendant (but not Plaintiffs) with a final list of all
4 Settlement Class Members who are receiving payment and the amounts to be paid. At no time
5 shall any of the Parties or their counsel seek to solicit or otherwise encourage members of the
6 Settlement Class to submit requests for exclusion from the Settlement.

7 (f) Objections. The Notice Packet shall state that Settlement Class Members who
8 wish to object to the Settlement must, mail to the Settlement Administrator a written statement of
9 objection ("Notice of Objection") by the Response Deadline. The date of mailing shall be
10 deemed the exclusive means for determining that a Notice of Objection was submitted timely.
11 The Notice of Objection must be signed by the Settlement Class Member and state: (1) the full
12 name of the Settlement Class Member; (2) the dates of employment of the Settlement Class
13 Member; (3) the last four digits of the Settlement Class Member's Social Security number and/or
14 the Employee ID number; (4) the basis for the objection; and (5) if the Settlement Class Member
15 intends to appear at the Final Approval/Settlement Fairness Hearing. Settlement Class Members
16 will further have a right to appear at the Final Approval/Settlement Fairness Hearing in order to
17 have their objections heard by the Court without first submitting a written objection or providing
18 a notice of intent to appear. However, Settlement Class Member who appear at the Final
19 Approval/Settlement Fairness Hearing will have to comply with all rules of the Court, including
20 the revised mandatory face mask order.

21 At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage
22 Settlement Class Members to submit written objections to the Settlement or appeal from the
23 Order and Final Judgment. Class Counsel shall not represent any Settlement Class Members with
24 respect to any such objections.

25 16. Funding and Allocation of Gross Settlement Fund. This is a non-reversionary
26 Settlement in which Defendant is required to pay the entirety of the Gross Settlement Fund,
27 which includes Individual Settlement Payments, Class Representative Service Award, the Class
28 Counsel Award, LWDA Payment, and the Settlement Administration Costs, as specified in this

1 Agreement. No amount of the Gross Settlement Fund will revert to Defendants. In no event
2 shall Defendant be required to pay any amounts above the Gross Settlement Fund under this
3 Settlement and this Agreement. The Settlement Administrator will establish a Qualified
4 Settlement Fund pursuant to Section 468B(g) of the Internal Revenue Service Code for the
5 purpose of administering the Settlement. Within twenty-one (21) calendar days after the
6 Effective Date, Defendant shall remit to the Settlement Administrator an amount equal to the
7 Gross Settlement Fund as set forth in this Agreement. Defendant's payment of such sums shall
8 be the sole financial obligation of Defendant under this Agreement, and shall be in full
9 satisfaction of all claims released herein, including, without limitation, all claims for wages,
10 penalties, interest, attorneys' fees, costs and expenses.

11 (a) Individual Settlement Payments. The Individual Settlement Payments will be paid
12 according to the respective settlement formulas set forth herein. Individual Settlement Payments
13 shall be mailed by regular First Class U.S. Mail to Settlement Class Members' last known
14 mailing address within fourteen (14) calendar days after Defendant provide funds to the
15 Settlement Administrator for disbursement under this Agreement. Class Individual Settlement
16 Payments will be allocated as follows: 90% will be allocated to 1099 income and 10% will be
17 allocated to W-2 income and subject to withholding. Any checks issued to Settlement Class
18 Members shall remain valid and negotiable for one hundred and eighty (180) days from the date
19 of their issuance. After that time, the funds for any such unclaimed and thereby void checks will
20 be deposited with the Controller of the State of California or its designee by the Settlement
21 Administrator in accordance with the Controller's procedures, in compliance with Unclaimed
22 Property Law, Code of Civil Procedure, section 1500. No person shall have any claim against the
23 Settlement Administrator, Defendant, Class Counsel, Defendant's counsel, or any other agent
24 designated by Plaintiff or Defendant based upon the distribution of Individual Settlement
25 Payments made substantially in accordance with this Agreement or further orders of the Court.
26 Defendant shall have no liability with respect to the maintenance, preservations, allocation or
27 disbursement of the Gross Settlement Fund or any dispute by any Settlement Class Member
28 concerning the handling or resolution of his or her Individual Settlement Payment. By cashing or

1 otherwise negotiating the check for the Individual Settlement Payment, a Settlement Class
2 Member gives his or her consent to be a party plaintiff in this action pursuant to the FLSA.

3 (b) Calculation of Individual Settlement Payments for the Settlement Class.

4 Defendant will calculate the total Qualifying Workweeks for all Settlement Class Members. The
5 respective Qualifying Workweeks for each Settlement Class Member will be divided by the total
6 Qualifying Workweeks for all Settlement Class Members, resulting in the Class Payment Ratio
7 for each Settlement Class Member. Defendant will provide the list of total Qualifying
8 Workweeks for each Settlement Class Member to the Settlement Administrator via electronic
9 spreadsheet, and also provide a copy of that spreadsheet to Class Counsel (except that the copy to
10 Class Counsel shall not list the names, addresses, or social security numbers of the Class
11 Members, but will identify each Class Member by a number). Each Settlement Class Member's
12 Class Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each
13 Settlement Class Member's estimated Individual Settlement Payments. Each Individual
14 Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g.,
15 employee payroll taxes, etc.) for each Settlement Class Member. All payroll taxes and required
16 withholdings from the Individual Settlement Payments, including but not limited to Defendants'
17 FICA and FUTA contributions and the employees' portion of any required withholdings shall be
18 paid from the Gross Settlement Fund. The Settlement Administrator shall calculate, withhold
19 from the Class Individual Settlement Payments, and remit to applicable governmental agencies
20 sufficient amounts as may be owed by the Settlement Class Members for applicable employee
21 taxes. The Settlement Administrator will issue appropriate tax forms to each Settlement Class
22 Member. Settlement Class Members are not eligible to receive any compensation other than the
23 Individual Settlement Payment from this Settlement. Whether or not the Settlement Class
24 Members receive any payment, this Agreement shall be binding upon them. The Settlement
25 Administrator will provide an electronic spreadsheet identifying the distribution of funds for each
26 Class member to Defendant's counsel, and also provide a copy of that spreadsheet to Class
27 Counsel (except that the copy to Class Counsel shall not list the names, addresses, or social
28 security numbers of the Class Members, but will identify each Class Member by the same number

1 used by Defendant to identify each such Class Number in the spreadsheet above).

2 (c) PAGA Payment. Fifteen Thousand and no dollars (\$15,000) shall be allocated
3 from the Gross Settlement Fund for payment under the Private Attorneys General Act of 2004.
4 Seventy-five percent (75%), or \$11,250, will be paid to the California Labor and Workforce
5 Development Agency. Twenty-five (25%), or \$3,750, will be part of the Net Settlement Amount
6 and distributed to Settlement Class Members as described in this Agreement. Defendant shall
7 have the option of voiding this Agreement and Settlement in the event the LWDA refuses to
8 accept the above amount in full for all civil penalties to aggrieved employees in connection with
9 the civil penalty claims alleged in this Action or otherwise challenges the above allocation.

10 (d) Class Representative Service Award. Plaintiff shall have the right to request
11 approval of a Class Representative Service Award of up to \$10,000, in exchange for the Released
12 Claims and a General Release and for her time and effort in bringing and prosecuting this matter.
13 Defendant agrees not to oppose or object to any application or motion by Plaintiff for a Class
14 Representative Service Award of up to \$10,000. The Class Representative Service Award shall
15 be paid to Plaintiff from the Gross Settlement Fund no later than fourteen (14) calendar days after
16 Defendant provides funds to the Settlement Administrator for disbursement under this
17 Agreement. Any portion of the requested Class Representative Service Award that is not
18 awarded to the Class Representative shall be part of the Net Settlement Amount and shall be
19 distributed to Settlement Class Members as provided in this Agreement. The Settlement
20 Administrator shall issue an IRS Form 1099 — MISC to Plaintiff for her Class Representative
21 Service Award. Plaintiff shall be solely and legally responsible to pay any and all applicable
22 taxes on her Class Representative Service Award and shall hold harmless Defendant from any
23 claim or liability for taxes, penalties, or interest arising as a result of the Class Representative
24 Service Award. The Class Representative Service Award shall be in addition to the Plaintiff's
25 Individual Settlement Payments as a Settlement Class Member. In the event that the Court
26 reduces or does not approve the requested Class Representative Service Award, Plaintiff shall not
27 have the right to revoke the Settlement, and it will remain binding.

28 (e) Class Counsel Award. Defendants agrees not to oppose or object to any

1 application or motion by Class Counsel for attorneys' fees not to exceed one third (33 and 1/3%)
2 of the Gross Settlement Fund (\$121,666.67 out of \$365,000) and for costs not to exceed Ten
3 Thousand Dollars and no cents (\$10,000) from the Gross Settlement Fund. Any portion of the
4 requested Class Counsel Award that is not awarded to Class Counsel shall be part of the Net
5 Settlement Amount and shall be distributed to Settlement Class Members as provided in this
6 Agreement. The Class Counsel Award shall be paid to Class Counsel from the Gross Settlement
7 Fund no later than fourteen (14) calendar days after Defendant provides funds to the Settlement
8 Administrator for disbursement under this Agreement. Class Counsel shall be solely and legally
9 responsible to pay all applicable taxes on the payment made pursuant to this paragraph. The
10 Settlement Administrator shall issue an IRS Form 1099 — MISC to Class Counsel for the
11 payments made pursuant to this paragraph. In the event that the Court reduces or does not
12 approve the requested Class Counsel Award, Plaintiff and Class Counsel shall not have the right
13 to revoke the Settlement, or to appeal such order, and the Settlement will remain binding.

14 (f) Settlement Administration Costs. The Settlement Administrator shall be paid for
15 the costs of administration of the Settlement from the Gross Settlement Fund. The estimate of
16 such costs of administration for the disbursement of the Gross Settlement Fund is approximately
17 \$12,000. No fewer than twenty-one (21) days prior to the Final Approval Hearing, the Settlement
18 Administrator shall provide the Parties with a statement detailing the costs of administration of
19 this Settlement. The Settlement Administrator shall be paid the Settlement Administration Costs
20 no later than fourteen (14) calendar days after Defendant provides funds to the Settlement
21 Administrator for disbursement under this Agreement. The Settlement Administrator, on
22 Defendant's behalf, shall have the authority and obligation to make payments, credits and
23 disbursements, including payments and credits in the manner set forth herein, to Settlement Class
24 Members calculated in accordance with the methodology set out in this Agreement and orders of
25 the Court.

26 (g) The Parties agree to cooperate in the Settlement administration process and to
27 make all reasonable efforts to control and minimize the cost and expenses incurred in
28 administration of the Settlement. The Parties each represent they do not have any financial

1 interest in the Settlement Administrator or otherwise have a relationship with the Settlement
2 Administrator that could create a conflict of interest.

3 (h) The Settlement Administrator shall be responsible for: processing and mailing
4 payments to the Plaintiff, Class Counsel, Settlement Class Members; printing, translating and
5 mailing the Notice Packets and postcards to the Settlement Class Members as directed by the
6 Court; receiving and reporting the requests for exclusion submitted by Settlement Class
7 Members; deducting taxes from Individual Settlement Payments and distributing tax forms;
8 processing and mailing tax payments to the appropriate state and federal taxing authorities;
9 providing declaration(s) as necessary in support of preliminary and/or final approval of this
10 Settlement; and other tasks as the Parties mutually agree or the Court orders the Settlement
11 Administrator to perform. The Settlement Administrator shall keep the Parties timely apprised of
12 the performance of all Settlement Administrator responsibilities. No later than fifteen (15)
13 calendar days after the Response Deadline, the Settlement Administrator shall provide counsel for
14 the Parties, without disclosing the information to Plaintiffs or Defendant, with a final accounting
15 of the Gross Settlement Fund and report the amount of all payments to be made to each
16 Settlement Class Member by employee number.

17 (i) Notice of Final Judgment. Any payment provided to Class Members under this
18 Settlement shall be accompanied by a notice noting the payment is being made pursuant to the
19 Settlement in this Action and that Final Judgment can be found Class Counsel's website (listing
20 the specific URL at which the Final Judgment) or from the Court.

21 17. Option to Terminate Settlement. If, after the Response Deadline and before the
22 Final Approval/Settlement Fairness Hearing, the number of Class Members who submitted timely
23 and valid written requests for exclusion from the Settlement is at least ten percent (10%) of all
24 Class Members, Defendant shall have, in its sole discretion, the option to terminate this
25 Settlement. If Defendant exercises the option to terminate this Settlement, Defendant shall: (a)
26 provide written notice to Class Counsel within fifteen (15) calendar days after the Response
27 Deadline and (b) pay all Settlement Administration Costs incurred up to the date or as a result of
28 the termination; and the Parties shall proceed in all respects as if this Agreement had not been

1 executed.

2 18. Preliminary Approval of Settlement. Upon execution of this Agreement, Plaintiff
3 shall file a motion for preliminary approval by the Court of the settlement hereunder
4 (“Preliminary Approval Motion”) including the approval of the following:

5 a. Preliminarily approving the proposed Settlement and this Agreement;

6 b. Certifying this action under section 382 of the California Code of Civil Procedure
7 and Rule 3.760, et seq. of the California Rules of Court as a class action for purposes of
8 settlement only with respect to the proposed Settlement Class;

9 c. Preliminarily approving the appointment of Plaintiff as representative of the Class
10 for settlement purposes;

11 d. Preliminarily approving the appointment of Class Counsel as counsel for the
12 Class;

13 e. Appointing and approving Simpluris Inc. or such other administrator as chosen by
14 the Parties and approved by the Court, to administer the claims and Individual Settlement
15 Payment procedures required by this Agreement;

16 f. Approving the form of the Class Notice, and requiring that each be sent to
17 Settlement Class Members;

18 g. Approving the Notice Plan;

19 h. Preliminarily approving Class Counsel’s request for attorneys’ fees and costs
20 subject to final review by the Court;

21 i. Preliminarily approving estimated cost of administration payable to the Settlement
22 Administrator;

23 j. Preliminarily approving Plaintiff’s enhancement awards;

24 k. Scheduling the Final Settlement Hearing for consideration of class certification for
25 settlement purposes only and final approval of this Agreement;

26 l. Approving the procedure for Class Members to opt out of the Settlement and
27 setting a date after which no Class Members shall be allowed to submit requests to opt out; and

28 m. Approving the procedure for Class Members to object to the Settlement.

1 Defendant shall not oppose Class Counsel's Preliminary Approval Motion so long as the
2 motion and supporting papers are consistent with the terms of this Agreement. Class Counsel
3 shall provide Defendant with a reasonable opportunity to review, and provide comments on, the
4 motion for preliminary approval of the Settlement before the motion and supporting papers are
5 filed with the Court. Notwithstanding the foregoing, Defendant may, without opposing the
6 motion for preliminary approval, advise the Court if Defendant disagree with any of the factual
7 statements included by Plaintiff in the motion and supporting papers.

8 19. Final Settlement Approval Hearing and Entry of Final Judgment. Plaintiff will
9 request, and Defendant will concur in said request, that the Court enter, after the Final
10 Approval/Settlement Fairness Hearing, a Final Order and Final Judgment drafted by Plaintiff in a
11 form that is consistent with this Agreement and subject to prior review and approval by
12 Defendant. Plaintiff will request that the Final Order and Final Judgment find that this
13 Agreement and Settlement is fair, just, equitable, reasonable, adequate and in the best interests of
14 the Class; permanently enjoin all Settlement Class Members from pursuing, or seeking to reopen,
15 Released Claims against the Released Parties; and require the Parties to carry out the provisions
16 of this Agreement. The Final Approval/Settlement Fairness Hearing shall also be conducted to
17 determine the amount properly payable for (i) the Class Counsel Award, (ii) the Class
18 Representative Service Award, (iii) Individual Settlement Payments, (iv) the LWDA Payment,
19 and (v) the Settlement Administration Costs. After granting Final Approval, the Court shall
20 retain jurisdiction over the Parties to enforce the terms of the judgment.

21 20. Nullification of Agreement. In the event: (i) the Court does not grant preliminary
22 approval; (ii) the Court does not grant final approval; (iii) the Court does not enter a final
23 judgment as provided herein; or (iv) the Settlement does not become final for any other reason,
24 either party shall have the right (upon seven (7) calendar days' written notice) to declare this
25 Settlement Agreement null and void and any order or judgment entered by the Court in
26 furtherance of this Settlement shall be treated as void from the beginning. In such a case, the
27 Parties and any funds to be awarded under this Settlement shall be returned to their respective
28 statuses as of the date and time immediately prior to the execution of this Agreement, and the

1 Parties shall proceed in all respects as if this Agreement had not been executed, except that any
2 costs already incurred by the Settlement Administrator shall be paid by equal apportionment
3 among the Parties. All evidence relating to the Agreement and all negotiations shall not be
4 admissible or discoverable in the Action or otherwise.

5 21. No Undue Publicity. Neither the Plaintiff nor Class Counsel shall publicize, or
6 cause to be publicized, directly or indirectly, the discussions resulting in or the existence of this
7 settlement or its terms, on Class Counsel's website or any social media platform. Class Counsel
8 will be permitted to refer to this settlement in a pleading submitted to a court solely for purposes
9 of establishing their adequacy as counsel in representative actions or in individual attorney
10 resumes so long as the pleading or resume is not posted on Class Counsels' website or any social
11 media platform. Notwithstanding the foregoing, Class Counsel may, after final approval, publicly
12 reference this matter in a manner that does not disclose the identity of the Parties or Released
13 Parties (e.g. Class Counsel's law firm may state, but not publicize on its website, that it resolved a
14 wage and hour class action matter involving a particular number of claimants, but not state the
15 parties, released parties, nature of employment, job title, specific settlement amount, case
16 description, case venue, case caption, or case title.)

17 22. No Effect on Employee Benefits. Amounts paid to Plaintiff or other Settlement
18 Class Members pursuant to this Agreement shall be deemed not to be pensionable earnings and
19 shall not have any effect on the eligibility for, or calculation of, any of the employee benefits
20 (e.g., vacations, holiday pay, retirement plans, etc.) of the Plaintiff or Settlement Class Members.
21 The payments made pursuant to this settlement shall not have any effect on the eligibility or
22 calculation of any employee benefits provided by Defendant or any benefits plan. The parties
23 agree these payments do not represent any modification of any employee's previously-credited
24 hours of service or other eligibility criteria under any employee pension benefit plan, employee
25 welfare benefit plan, or other program or policy. These payments also will not be considered
26 wages, compensation, or annual earnings for benefits in any year for purposes of determining
27 eligibility for, or benefit accrual within, any employee pension benefit plan, employee welfare
28 benefit plan or other program or policy.

1 23. No Admission By the Parties. Defendant denies any and all claims alleged in this
2 Action and deny all wrongdoing whatsoever. This Agreement is not a concession or admission,
3 and shall not be used against Defendant as an admission or indication with respect to any claim of
4 any fault, concession or omission by Defendant.

5 24. Exhibits and Headings. The terms of this Agreement include the terms set forth in
6 any attached Exhibits, which are incorporated by this reference as though fully set forth herein.
7 Any Exhibits to this Agreement are an integral part of the Settlement. The descriptive headings
8 of any paragraphs or sections of this Agreement are inserted for convenience of reference only
9 and do not constitute a part of this Agreement.

10 25. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the
11 Action, except such proceedings necessary to implement and complete the Settlement, pending
12 the Final Approval/Settlement Fairness Hearing to be conducted by the Court.

13 26. Amendment or Modification. This Agreement may be amended or modified only
14 by a written instrument signed by counsel for all Parties or their successors-in-interest.

15 27. Entire Agreement. This Agreement and any attached Exhibits constitute the entire
16 Agreement among these Parties, and no oral or written representations, warranties or inducements
17 have been made to any Party concerning this Agreement or its Exhibits other than the
18 representations, warranties and covenants contained and memorialized in the Agreement and its
19 Exhibits,

20 28. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant
21 and represent they are expressly authorized by the Parties whom they represent to negotiate this
22 Agreement and to take all appropriate actions required or permitted to be taken by such Parties
23 pursuant to this Agreement to effectuate its terms, and to execute any other documents required to
24 effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each
25 other and use their best efforts to effect the implementation of the Settlement. The persons
26 signing this Agreement on behalf of Defendant represent and warrant that they are authorized to
27 sign this Agreement on behalf of Defendant. Named Plaintiff represents and warrants that she
28 has not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer or

1 encumber to any person or entity, any portion of any liability, claim, demand, action, cause of
2 action or rights released or discharged except as may be set forth herein.

3 29. Motions for Preliminary and Final Approval. The Parties and their counsel will
4 cooperate with each other and use their best efforts to effect the Court's approval of the Motions
5 for Preliminary and Final Approval.

6 30. Binding on Successors and Assigns. This Agreement shall be binding on, and
7 shall inure to the benefit of, the Parties and their respective successors, assigns, executors,
8 administrators, heirs, and legal representatives.

9 31. California Law Governs. All terms of this Agreement and the Exhibit(s) hereto
10 and any disputes arising hereunder shall be governed by and interpreted according to the laws of
11 the State of California.

12 32. Counterparts. This Agreement may be executed in one or more counterparts. All
13 executed counterparts and each of them shall be deemed to be one and the same instrument
14 provided that counsel for the Parties to this Agreement shall exchange among themselves copies
15 or originals of the signed counterparts.

16 33. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this
17 Settlement is a fair, adequate and reasonable settlement of this Action and have arrived at this
18 Settlement after extensive arms-length negotiations, taking into account all relevant factors,
19 present and potential.

20 34. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction
21 with respect to the interpretation, implementation and enforcement of the terms of this Agreement
22 and all orders and judgments entered in connection therewith, and the Parties and their counsel
23 hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing and
24 enforcing the settlement embodied in this Agreement and all orders and judgments entered in
25 connection therewith.

26 35. Invalidity of Any Provision. Before declaring any provision of this Agreement
27 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible

consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

36. Waiver of Certain Appeals. If this Agreement is approved by the Court and judgment entered as provided herein, the Parties agree to waive any right to appeal from the judgment.

37. Termination of Litigation Hold. The parties agree that any litigation hold concerning this action may expire on the 180th day after the Effective Date.

IT IS SO STIPULATED.

ARNOLD LAW FIRM

Dated: 11 / 30 / 2023, 2023

By: Joshua H. Watson
Clayeo C. Arnold, Esq.
Joshua H. Watson, Esq.

Attorneys for Plaintiff Brittney Rand

Dated: 12 / 01 / 2023, 2023

By: 
Brittney Rand
Plaintiff

BURKE, WILLIAMS & SORESENSEN, LLP

Dated: _____, 2023

By: _____
Keiko J. Kojima, Attorney for Defendant
PRO's CHOICE BEAUTY CARE, INC.

1 consistent with applicable precedents so as to define all provisions of this Agreement valid and
2 enforceable.

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4 judgment entered as provided herein, the Parties agree to waive any right to appeal from the
5 judgment.

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8
9 IT IS SO STIPULATED.

10
11
12 ARNOLD LAW FIRM

13 Dated: _____, 2023

14 By: _____
15 Clayeo C. Arnold, Esq.
16 Joshua H. Watson, Esq.

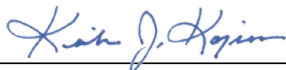
17 Attorneys for Plaintiff Brittney Rand

18 Dated: _____, 2023

19 By _____
20 Brittney Rand
21 Plaintiff

22 BURKE, WILLIAMS & SORENSEN, LLP

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24 Dated: November 30, 2023

25 By 
26 Keiko J. Kojima, Attorney for Defendant
27 PRO's CHOICE BEAUTY CARE, INC.

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Dated: November 30, 2023

PRO'S CHOICE BEAUTY CARE, INC.



By Rafael Villoldo

President

Title	Final Settlement Agreement
File name	Rand - Settlement Agreement - Final.docx
Document ID	2a7ce75f457bbd8a23e51bbf7e35e82ea551ea72
Audit trail date format	MM / DD / YYYY
Status	● Signed

Document history



11 / 30 / 2023
08:28:23 UTC-8

Sent for signature to Brittney Rand
(bcampbell0719@gmail.com) and Joshua H. Watson
(jwatson@justice4you.com) from anna@justice4you.com
IP: 50.218.192.194



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Viewed by Brittney Rand (bcampbell0719@gmail.com)
IP: 136.235.28.32



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IP: 104.9.123.217



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Signed by Joshua H. Watson (jwatson@justice4you.com)
IP: 104.9.123.217



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Signed by Brittney Rand (bcampbell0719@gmail.com)
IP: 136.235.28.32



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The document has been completed.

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Attachment 2 – Order

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

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05/03/2024 Hearing on Motion for Preliminary Approval of Settlement in Department 22**

Tentative Ruling

On the Court's own motion, the Hearing on Motion for Preliminary Approval of Settlement scheduled for 05/03/2024 is continued to 06/28/2024 at 09:00 AM in Department 22 at Gordon D. Schaber Superior Court.

Plaintiff Brittney Rand ("Plaintiff") is expected to address the issues identified below by filing supplemental briefs and/or declarations no later than June 5, 2024. Defendant Pro's Choice Beauty Care Inc. ("Defendant") may file a response no later than June 14, 2024.

If either party is unavailable on **June 28, 2024, at 9:00 AM**, the parties shall meet and confer to identify three other Fridays at 9:00 AM that work for the parties to schedule the Preliminary Approval hearing. They shall submit those dates to the Court via email at Dept22@saccourt.ca.gov, and the Court will reschedule the hearing accordingly. If the Court reschedules the hearing, the deadlines for the supplemental briefs stated above will not change.

Moving counsel's Notice of Motion does not provide notice of the Court's tentative ruling system, as required by Local Rule 1.06. Moving counsel is directed to contact opposing counsel and advise them of Local Rule 1.06, the Court's tentative ruling procedure, and the manner to request a hearing.

The Court has provided specific direction on the information and argument the Court requires to grant a motion for preliminary approval of a class action settlement. The Parties are urged to carefully review the Checklist for Approval of Class Action Settlements and fully comply with each applicable item to ensure a prompt ruling from the Court.¹

Background

On February 22, 2021, Plaintiff filed a class action Complaint on behalf of herself and other "similarly situated individuals" against Defendant. The Complaint asserted the following causes of action: (1) Failure to Pay Regular/Minimum Wages; (2) Failure to Provide Compliant Meal Periods; (3) Failure to Provide Compliant Rest Periods; (4) Failure to Make Payments Within the Required Time; (5) Statutory Penalties for Failure to Provide Accurate Wage Statements; (6) Failure to Maintain Required Records; (7) Restitution for Unfair Business Practices and Injunction Against Unfair Business Practices; and (8) Failure to Indemnify/Reimburse Business Expenses. (Complaint.) On or around June 23, 2021, Plaintiff filed a First Amended Complaint asserting additional causes of action for PAGA penalties. (First Amended Complaint.)

Plaintiff now moves for preliminary approval of the Parties' Stipulation of Class Action Settlement ("Settlement Agreement" or "Agreement"). (Watson Decl., ¶ 3(2), Exh. A ("SA").)

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Legal Standard

The law favors the settlement of lawsuits, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding the time, expense, and rigors of formal litigation. (See *Neary v. Regents of Univ. of Cal* (1992) 3 Cal.4th 273, 277-281; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 52.) However, a class action may not be dismissed, compromised, or settled without approval of the court, and the decision to approve or reject a proposed settlement is committed to the court's sound discretion. (See Cal. Rules of Court, Rule 3.769; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35 (*Wershba*).)

In determining whether to approve a class settlement, the court's responsibility is to "prevent fraud, collusion or unfairness to the class" through settlement because the rights of the class members, including the named plaintiffs, "may not have been given due regard by the negotiating parties." (*Consumer Advocacy Group, Inc. v. Kintetsu Enters. of Am.* (2006) 141 Cal.App.4th 46, 60.) The court must independently determine "whether the settlement is in the best interests of those whose claims will be extinguished" and "make an independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130, 133.) The burden of establishing the fairness and reasonableness of the settlement is on the proponent. (*Wershba, supra*, 91 Cal.App.4th at p. 245; see also *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135 1165-66.)

The Court does not rubber stamp these motions, but rather serves as a guardian of absent class members' rights to ensure the settlement is fair. (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 95.) "Ultimately, the [trial] court's determination is nothing more than 'an amalgam of delicate balancing, gross approximations and rough justice.'" (*7-Eleven, supra*, 85 Cal.App.4th at p. 1145.) "A settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable. Compromise is inherent and necessary in the settlement process. Thus, even if 'the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated,' this is no bar to a class settlement because 'the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.'" (*Wershba, supra*, 91 Cal.App.4th at p. 250, citations omitted.) The court's primary objective for preliminary approval is to establish whether to direct notice of the proposed settlement to the class, invite the class's reaction, and schedule a final fairness hearing. (Rubenstein et al., *Newberg on Class Actions* (6th ed. 2023) § 13:10.)

Summary of the Settlement Agreement

Before approving a class action settlement, the Court must find that the settlement is "fair, adequate, and reasonable." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) The Court considers such factors as "the strength of plaintiffs' case, the risk, expense, complexity and

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likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of class members to the proposed settlement.” (*Id.*) “[A] presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” (*Id.* at p. 1802.)

Under the terms of the Agreement, Defendant denies liability, but agrees to pay a Gross Settlement Amount (“GSA”) of \$365,000. (SA, ¶¶ I.S, I.T, II.11.) No portion of the GSA will revert to Defendant. (*Id.* ¶ II.16.) All applicable payroll taxes will be paid from the GSA. (*Id.*, ¶¶ I.T, II.16(b).) Counsel attests that the estimated payroll taxes are \$1,749.94. (Watson Decl., ¶ 3(7).) Counsel further attests that the payroll tax obligations were agreed to as part of an arms-length negotiation in which Defendant declined to pay any more in global exposure than the GSA. (*Ibid.*) While the Court generally prefers that any applicable employer-side payroll taxes be paid separately from the settlement, Plaintiff has provided sufficient explanation.

Here, the Class consists of “all current and former non-exempt hourly employees of Defendant who worked in the State of California as a merchandiser or jobs with similar titles from February 22, 2017 through the date of preliminary approval of the settlement.” (SA, ¶ I.G.)

The following amounts will be paid from the GSA:

- Estimated payroll taxes of \$1,749.94;
- An attorneys’ fees award not to exceed one-third of the GSA or \$121,667 and the reimbursement of Counsel’s litigation costs not to exceed \$10,000 (SA, ¶ II.16(e));
- Settlement administration costs not to exceed \$12,000 (*id.*, ¶ II.16(f));
- A class representative service payment not to exceed \$10,000 (*id.*, ¶ II.16(d)); and
- The 75% LWDA portion (\$11,250) of the \$15,000 PAGA Penalties payment (*id.*, ¶¶ I.V, II.16(c)).

The remaining amount – the Net Settlement Amount (“NSA”) – is estimated to be \$208,333.06, including the Aggrieved Employees’ portion of the PAGA Payment. (SA, ¶ I.W.) The NSA will be allocated to Participating Class Members on a pro-rata basis based on the number of workweeks they worked during the Class Period. (*Id.*, ¶ II.16(b).)

Within 30 days after the Court grants preliminary approval, Defendant shall provide the Settlement Administrator with the Class Information. (SA, ¶ II.15.) Within 14 days of receiving the Class Information, the Settlement Administrator shall mail the Notice Packet to all Class Members via regular First-Class U.S. Mail. (*Id.*, ¶ II.15(a).) Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. (*Id.*, ¶ II.15(b).) If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine a correct address by use of

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skip-tracing or other search and re-mail if another address obtained. (*Ibid.*) Class Members will have 45 days after the Settlement Administrator mails the Notice to dispute their settlement payment, request exclusion from the settlement, or object to the settlement. (*Id.*, ¶¶ I.GG, II.15(c), II.15(e), II.15(f).) Settlement Class Members who received a re-mailed Notice Packet shall have their Response Deadline extended 10 days from the original Response Deadline. (*Id.*, ¶ II.15(b).)

Defendant shall fund the GSA within 21 days of the Effective Date, which is essentially when the Court grants final approval and enters judgment. (SA, ¶¶ I.O, II.16.) Individual Settlement Payments will be mailed within 14 days of Defendant funding the GSA. (*Id.*, ¶ II.16(a).) Class Individual Settlement Payments will be allocated as follows: 90% will be allocated to 1099 income and 10% will be allocated to W-2 income and subject to withholding. (*Ibid.*) Any checks issued to Settlement Class Members shall remain valid and negotiable for 180 days from the date of their issuance. (*Ibid.*) After that time, the funds for any such unclaimed and thereby void checks will be deposited with the Controller of the State of California or its designee by the Settlement Administrator in accordance with the Controller's procedures, in compliance with Unclaimed Property Law. (*Ibid.*)

Issues to be Addressed:

1. **LWDA Notice and Proof of Submission:** Plaintiff fails to provide a copy of her Notice to the Labor and Workforce Development Agency ("LWDA"). Plaintiff also fails to provide proof of her submission of the proposed Settlement to the LWDA. Section 2699, subdivision (l)(2) provides that the court 'shall review and approve any settlement of any civil action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court.' Accordingly, Counsel must provide a copy of the Notice Letter and evidence that the settlement was provided to the LWDA.
2. **NSA and PAGA Payment:** The Agreement specifies that the Aggrieved Employees' portion of the PAGA Payment "will be part of the [NSA] and distributed to Settlement Class Members as described in this Agreement." (SA, ¶ II.16(c).) However, the NSA is distributed to Participating Class Members on a pro-rata basis, based on the number of qualifying workweeks during the Class Period. (*Id.*, ¶¶ I.DD, II.16(b).) The Agreement does not define the Aggrieved Employees or the PAGA Period. Given the difference in the statute of limitations, these terms are usually different than the Class and Class Period definitions. The Court generally believes the cleaner approach would be to deduct the entire PAGA Payment from the NSA and then allocate to the Aggrieved Employees based upon their respective workweeks worked during the PAGA Period. This would be consistent with the Parties' Notice, which breaks down the Class and PAGA components of the Individual Settlement Payment. (SA, Exh. A ("Notice"), p. 5.)
3. **Release:** Upon the Effective Date, essentially meaning the date final approval is granted and judgment is final, all participating Settlement Class Members "release the Released Parties

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from the Released Claims.” (SA, ¶¶ I.O. II.12(b).) The Released Claims definition is lengthy, cumbersome, and contains several apparent typographical errors (e.g. “\$” instead of “§”):

“Released Claims” means any and all claims for relief, which the Named Plaintiff or any Settlement Class Members have had or now have, against the Released parties or any of them for any acts occurring on or before the entry and filing date of the Preliminary Approval Order that are either or both: (1) alleged in the Action; or (2) arise out of the facts, matters, transactions, or occurrences referenced to in the Action that could have been alleged as separate claims, causes of actions, lawsuits or other theories of relief. “Released Claims” includes all types of relief available for the above-referenced theories of relief, including, without limitation, all the following claims, actions, demands, causes of action, suits, debts, obligations, damages, rights or liabilities, of any nature and description whatsoever (whether or not the factual cause of the alleged underpayment or violation was alleged with particularity in the complaint and/or amended Complaint): (a) Failure to Pay Regular/Minimum Wages in Violation of California Labor Code §§1182.12, 1194, 1194.2, 1197-1197.1, and Wage Order No.4-2001, §4(A); (b) Failure to Provide Compliant Meal Periods in Violation of Labor Code §§226.7,512, and IWC Wage Order 4-2001, § 11; (c) Failure to Provide Compliant Rest Periods in Violation of Labor Code § 226.7 and IWC Wage Order 4-2001, §12; (d) Failure to Make Payments Within the Required Time in Violation of California Labor Code §§ 201, 202-204 and 210; (e) Statutory Penalties for Failure to Provide Accurate Wage Statements in Violation of Labor Code §226; (f) Failure to Maintain Required Records in Violation of California Labor Code § 1174, 1174.5, and Wage Order No.4-2001§7; (g) Restitution for Unfair Business Practices and Injunction Against Unfair Business Practices (Cal. Bus. & Prof. Code §17200, et seq.); (h) Failure to Indemnify/Reimburse Business Expenses in Violation of California Labor Code § 2802; (i) PAGA Civil Penalties pursuant to Labor Code § 2699(f)(2) for Failure to Comply with Labor Code §§1182.12, 1119 4, 1119 4.2, 11197 -1197. 1, and Wage Order No.4-2001, § 4(A); (j) PAGA Civil Penalties pursuant to Labor Code S 2699(D(2) for Failure to Comply with Labor Code §§ 226.7, 512 and Wage Order No. 4-2001, §§ 11-12; (k) PAGA Civil Penalties pursuant to Labor Code §2699(f)(2) and as permitted by

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Labor Code §§203,204, 210, and 256 for Untimely Separation Pay and Untimely Payment of Wages When Due; (l) PAGA Civil Penalties Pursuant to Labor Code S 2699(f)(2) for Failure to Comply with Labor Code § 2802; (m) PAGA Civil Penalties pursuant to Labor Code S 2699(f)(2) and as Permitted by Labor Code §§226(a), 226.3, and 1174, and IWC Wage Order 4-2001, § 7 for Inaccurate Wage Statements and (n) PAGA Civil Penalties pursuant to Labor Code § 558(a); (o) all claims for civil penalties under PAGA that could have been premised on the facts and legal theories raised in the operative complaint and/or First Amended Complaint; (p) any other claims or penalties under the wage and hour laws pleaded in the Action or that could have been pleaded in the operative complaint and/or First Amended Complaint pursuant to Labor Code sections 201, 202, 203, 204, 218, 226, 226.7, 510, 512, 1174, 1194, 1198, 2802 and 2699 et seq., Code of Civil Procedure section 1021.5, the California Business and Professions Code §17200 et seq, the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. section 201 et seq (“FLSA”), and applicable sections of the California Industrial Wage Orders; and (q) all claimed or unclaimed compensatory, consequential, incidental, liquidated, punitive and /or exemplary damages, penalties, restitution, interest, declaratory relief, costs, attorneys’ fees, injunctive or equitable relief, and any other remedies available at law or equity, and other amounts recoverable under said causes of action under state, federal, or common law, to the extent permissible, including but not limited to the California Labor Code, the applicable Wage Orders, the FLSA, and the California Unfair Competition Law as to the facts, legal theories, and causes of actions alleged in the operative complaint and/or Amended Complaint. The res judicata effect of the Judgment will be the same as that of the release obtained by this Agreement and Settlement. Excluded from Released Claims are claims incurred while each Settlement Class Member was not a Settlement Class Member (i.e., for periods of time worked outside California or while exempt from overtime) while working for Defendants. The Final Judgment shall expressly provide that it covers and bars each and every non-excluded Settlement Class Member from asserting any Released Claims in the future. The release of claims, rights or liabilities under the FLSA applies only to those Settlement Class Members who have consented to join the Settlement by depositing

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or cashing their Individual Settlement Payments.

(SA, ¶ I.EE.)

The class release must be fairly tailored to the claims that were or *reasonably* could be asserted in the lawsuit *based on the facts alleged in the complaint*. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 538-539 [“Releases must be appropriately tethered to the complaint’s factual allegations;” “[A] court cannot release claims that are outside the scope of the allegations of the complaint.”].) In cases involving both class and PAGA claims, the settlement should include separate releases for the Class Members and the Aggrieved Employees. The PAGA release must be tethered to the PAGA claims that were or reasonably could have been alleged based on the facts alleged in the LWDA Notice. (See *Id.*, at p. 541, fn. 5; *Uribe v. Crown Building Maintenance Co.* (2021) 70 Cal.App.5th 986, 1005.)

Here, the Release encompasses both the Class and PAGA claims. Moreover, the Court is not persuaded that the release’s language comports with the requirements of *Amaro* insofar as the language appears to be tied to the procedural posture and/or relief sought, rather than the factual allegations, and, in fact, appears to suggest that the “factual cause” need not be alleged in the operative complaint. (See *Amaro, supra*, 69 Cal.App.5th at p. 538 [“release must be tied to the *factual allegations* in the complaint, not the claims or theories of liability asserted.”])

Subparagraph (p) is similarly concerning insofar as it purports to cover “any other claims or penalties under the wage and hour laws pleaded in the Action or that could have been pleaded” without reference to the factual allegations. Finally, in addition to correcting the apparent errors, the Parties should consider whether the release language can be streamlined and/or simplified. For example, is it necessary to list the various Labor Code sections when they are summarized in plain language? Is it necessary to separately list several categories of PAGA penalties, as well as a catch-all section for “all claims for civil penalties under PAGA that could have been premised on the facts and legal theories raised in the operative complaint and/or First Amended Complaint”? The Parties are expected to meet and confer regarding the Court’s concerns.

4. Exposure Analysis: In moving for preliminary approval, a plaintiff must provide specific information sufficient for the Court to evaluate whether the consideration being received for the release of class members’ claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409.) This discussion should specify the maximum realistic recovery of each claim asserted in the operative complaint, defenses asserted by defendant(s), a summary of the risks, expenses, and duration of further litigation if the settlement is not approved, and any other relevant factors justifying the amount offered in settlement.

Here, Counsel attests that he “calculated the maximum recovery amount in this matter as \$595,996.80” which “includes PAGA, minimum wage, and meal premium claims for all class

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members, calculated from a representative sample of claims data provided by Defendant.” (Watson Decl., ¶ 3(13)). The GSA of \$365,000 reflects a recovery of 61% of the “theoretical maximum.” (*Ibid.*) Counsel attests that the claims that arise from the alleged working lunch have merit: “Plaintiff reports driving during the recorded meal period such that the meal period was a working lunch, even if recorded as a non-working time. This give rise to unpaid driving time, an unpaid meal premium, and related PAGA claims for minimum wage, meal premium, and inaccurate wage statements.” (*Id.*, ¶ 3(10).) Counsel recognized that these claims have substantial issues with certification because they are fact-specific. (*Ibid.*) Counsel further attests that, in his opinion, the rest period claims are not certifiable or credible. (*Ibid.*) Counsel also noted that class members did not work in the same location and instead worked in their own mobile locations that were under their sole immediate physical control. (*Id.*, ¶ 3(13).) Further, the Complaint relies on the notion that the class members failed to log their hours appropriately on pressure from the Defendant. (*Ibid.*)

Based on this discussion, the Court assumes this means that Counsel entirely discounted Plaintiff’s failure to provide compliant rest periods; failure to make payments within the required time; statutory penalties for failure to provide accurate wage statements; failure to maintain required records; unfair business practices; failure to indemnify/reimburse business expenses; and derivative PAGA claims. However, Counsel must confirm.

Moreover, Counsel fails to provide any discussion or explanation of how he arrived at his \$595,996.80 “theoretical maximum” for the PAGA, minimum wage, and meal premium claims. Plaintiff must expand on this discussion by providing the maximum exposure estimates for these claims, including the underlying assumptions and methodologies used to calculate them. Plaintiff must also explain and quantify any reductions applied for settlement purposes. This instruction applies equally to the exposure analysis of Plaintiff’s class and PAGA claims. Contrary to Counsel’s assertion, this should not require “aggressive discovery to obtain statistical evidence to be analyzed by a specific forensic economist” or a “survey protocol of claimants to determine if the extent of damages could be modeled statistically.” (Watson Decl., ¶ 3(13).) This suggestion belies the assertion that the investigation and discovery conducted pre-settlement was sufficient to allow counsel and the Court to act intelligently. Simply put, Counsel must explain the valuation he used in evaluating the reasonableness of the settlement.

5. Class Notice: The notice to Class Members must fairly apprise the prospective members of the terms of the settlement without expressing an opinion on the merits of the settlement. (7-*Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1164; see also Cal. Rule of Court, Rule 3.769.) “Whether a claimant would want to accept or reject the proposed settlement is a decision to be made by him independently and without influence or pressure from those competing parties who either favor or oppose the settlement.” (*Phila. Hous. Auth. v. Am. Radiator & Std. Sanitary Corp.* (E.D. Pa. 1970) 323 F.Supp. 364, 378.)

Here, the following issues must be addressed:

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- The Notice includes the following language: “Plaintiff and Class Counsel support the settlement.” (SA, Exh. A (“Notice”), p. 2.) The Court finds this language is unnecessary and may improperly discourage class members from objecting to the settlement. Accordingly, it must be removed.
- To the extent the Parties revise the release to address the Court’s concerns above, the Notice must also be revised to accurately describe the release. (Notice, pp. 4-5.)
- The Notice incorrectly indicates the final approval hearing will occur in Department 28. (Notice, p. 6.) This must be corrected to reflect the Department’s move to Department 22.
- The Notice should also include the correct Zoom information for Department 22. (Notice, pp. 6-7.)
- The Notice should be revised to accurately reflect that class members may appear and object to the settlement, with or without their own retained counsel, consistent with the Agreement. (Notice, p. 7; SA, ¶ II.15(f).)

Plaintiff shall provide a revised and redline version of the Notice for the Court’s review.

6. Class Representative Service Payment: While Plaintiff provides a declaration in support of the instant motion, Plaintiff’s declaration fails to support the requested service payment. Plaintiff is expected to file a declaration that attests to the nature of her individual participation in this case, including a description of her specific actions and an estimate of time she committed to prosecution of the case. (See *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.)

7. Proposed Order: Plaintiff’s moving papers fail to include a Proposed Order for the Court’s signature. Plaintiff shall provide a Proposed Order that proposes a final approval hearing date.

This minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

To request oral argument on this matter, you must call Department 22 at (916) 874-5762 by 4:00 p.m., the court day before this hearing and notification of oral argument must be made to the opposing party/counsel. If no call is made, the tentative ruling becomes the order of the court. (Local Rule 1.06.)

Parties requesting services of a court reporter may arrange for private court reporter services at their own expense, pursuant to Government code §68086 and California Rules of Court, Rule 2.956. Requirements for requesting a court reporter are listed in the Policy for Official Reporter Pro Tempore available on the Sacramento Superior Court website at <https://www.saccourt.ca.gov/court-reporters/docs/crtrp-6a.pdf>. The list of Court Approved

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Official Reporters Pro Tempore is available at <https://www.saccourt.ca.gov/court-reporters/docs/crtrp-13.Pdf>.

If you are not using a reporter from the Court's Approved Official Reporter Pro Tempore list, a Stipulation and Appointment of Official Reporter Pro Tempore (CV/E-206) must be signed by each party, the private court reporter, and the Judge. The signed form must be filed with the clerk prior to the hearing.

If a litigant has been granted a fee waiver and requests a court reporter, the party must submit a Request for Court Reporter by a Party with a Fee Waiver (CV/E-211). The form must be filed with the clerk at least 10 days prior to the hearing or at the time the hearing is scheduled if less than 10 days away. Once approved, the clerk will forward the form to the Court Reporter's Office and an official reporter will be provided.

If oral argument is requested, the Parties are encouraged to appear via Zoom with the links below:

To join by Zoom link - <https://saccourt-ca-gov.zoomgov.com/my/sscdept22>

To join by phone dial (833) 568-8864 ID 16184738886

Counsel for Plaintiff is directed to notice all parties of this order.

Please note that the Complex Civil Case Department now provides information to assist you in managing your complex case on the Court website at <https://www.saccourt.ca.gov/civil/complex-civil-cases.aspx>. The Court strongly encourages parties to review this website regularly to stay abreast of the most recent complex civil case procedures. Please refer to the website before directly contacting the Court Clerk for information.