

Kane Moon (SBN 249834)
Allen Feghali (SBN 301080)
Edwin Kamarzarian (SBN 327830)
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
E-mail: kane.moon@moonyanglaw.com
E-mail: allen.feghali@moonyanglaw.com
E-mail: edwin.kamarzarian@moonyanglaw.com

Attorneys for Plaintiff Christina Valdez

Ndubisi A. Ezeolu (SBN 256834)
ndubisi.ezeolu@tuckerellis.com
Lisa I. Carteen (SBN 204764)
lisa.carteen@tuckerellis.com
Maia Mdinaradze (SBN 291478)
maia.mdinaradze@tuckerellis.com
TUCKER ELLIS LLP
515 South Flower Street
Forty-Second Floor
Los Angeles, CA 90071
Telephone: (213) 430-3400
Facsimile: (213) 430-3409

Attorneys for Defendant HEAT MAKE SENSE, INC., a New
York corporation dba Amika (erroneously sued as HEAT
MAKE SENSE, INC. a California corporation dba AMIKA)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

CHRISTINA VALDEZ, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

HEAT MAKE SENSE, INC. a California
corporation dba AMIKA and DOES 1 through
10, inclusive,

Defendants.

Case No.: 34-2021-00296194

CLASS AND REPRESENTATIVE ACTION

**JOINT STIPULATION OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT**

Complaint filed: March 10, 2021
Trial date: Not set

1 **JOINT STIPULATION OF CLASS ACTION SETTLEMENT**

2 This Joint Stipulation of Class Action Settlement (“Joint Stipulation of Settlement” or
3 “Settlement” or “Agreement”) is made and entered into by and between Plaintiff CHRISTINA VALDEZ,
4 individually, and on behalf of all others similarly situated, (“Plaintiff” or “Class Representative”), and
5 AMIKA LLC, successor-in-interest to Heat Make Sense, Inc. and all related entities and predecessors
6 (“Defendant”). Plaintiff and Defendant are sometimes referred to individually as a “Party” or collectively
7 referred to herein as “the Parties.”

8 This Agreement is subject to the approval of the Court, pursuant to California Rules of Court, Rule
9 3.769(c), (d), and (e), and is made for the sole purpose of attempting to consummate settlement of the
10 Action on a class wide basis subject to the following terms and conditions. As detailed below, in the event
11 the Court does not enter the Final Order and Judgment, as defined below, or the conditions precedent are
12 not met for any reason, this Agreement is void and of no force or effect whatsoever.

13 The settlement shall be binding on Plaintiff and the Class, which Plaintiff purports to represent,
14 and Defendant, subject to the terms and conditions hereof and the final approval of the Court.

15 THE PARTIES STIPULATE AND AGREE as follows:

16 **DEFINITIONS**

17 1. For purposes of this Settlement, “Complaint” refers to the first amended complaint filed on
18 May 20, 2021.

19 2. For purposes of this Settlement, this matter, entitled *Valdez v. Heat Make Sense, Inc.*, Case
20 Nos. 34-2021-00296194 (Sacramento Superior Court) and 2:21-cv-01302-KJM-KJN (Eastern District of
21 California), is referred to herein as the “Action.”

22 3. For purposes of this Settlement, the “Class Period” is March 10, 2017 through the date the
23 Court grants preliminary approval.

24 4. For purposes of this Settlement, the “Class” or “Class Members” consist of: All independent
25 contractors providing brand ambassador and educator services to Heat Make Sense, Inc. or Amika, LLC,
26 successor-in-interest to Heat Make Sense, Inc., in California during the Class Period and “Settlement Class
27 Members”, who are those Class Members who do not submit timely exclusion requests to the Settlement
28 Administrator.

1 5. For purposes of this Settlement, “Class Counsel” means MOON & YANG, APC.

2 6. For purposes of this Settlement, “Covered Pay Schedules” means the number of weeks a Class
3 Member provided services to Defendant in California during the Class Period.

4 7. For purposes of this Settlement, “Response Deadline” means the date sixty (60) days after the
5 Settlement Administrator initially mails the Notice to Settlement Class Members (“Notice”) and the last
6 date on which Settlement Class Members may submit a request for exclusion or written objection to the
7 Settlement. In the case of a re-mailed Notice, the Response Deadline will be the later of 60 calendar days
8 after initial mailing or 14 calendar days from re-mailing. The Response Deadline may be extended only as
9 expressly described herein.

10 8. For purposes of the Settlement, “Defendant’s Counsel” means TUCKER ELLIS LLP.

11 9. For purposes of this Settlement, “PAGA” means the Labor Code Private Attorneys General
12 Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*).

13 10. For purposes of this Settlement, “FLSA”, means the Fair Labor Standards Act.

14 11. For purposes of this Settlement, “PAGA Allocation” means the portion of the Gross
15 Settlement Amount that the Parties have agreed to allocate to resolution of the Released PAGA Claims.
16 The Parties have agreed that the PAGA Allocation will be \$10,000 from the Gross Settlement Amount.
17 Pursuant to PAGA, Seventy Five Percent (75%), or \$7,500, of the PAGA Allocation will be paid to the
18 Labor and Workforce Development Agency (“LWDA”) (“PAGA Penalty Payment”), and Twenty Five
19 Percent (25%), or \$2,500, of the PAGA Allocation will be included in the Net Settlement Amount for
20 PAGA Individuals (“PAGA Settlement Payment”).

21 12. For purposes of this Settlement, “PAGA Period” means the period between March 10, 2020
22 through the date preliminary approval is granted.

23 13. For purposes of this Settlement, “PAGA Individual” means all independent contractors
24 providing brand ambassador and educator services to Heat Make Sense, Inc., or Amika, LLC, successor-
25 in-interest to Heat Make Sense, Inc. in California during the PAGA Period. It is stipulated by the Parties
26 that, for purposes of this Settlement only, all PAGA Individuals are “aggrieved employees” as defined
27 pursuant to PAGA.

28 14. For purposes of this Settlement, “PAGA Pay Schedules” means the number of pay schedules

each PAGA Individuals worked during the PAGA Period.

15. For purposes of this Settlement, “PAGA Representative” means Plaintiff.

16. For purposes of this Settlement, “Released PAGA Claims” means all claims for penalties and any other available relief pursuant to PAGA, to the extent asserted in Plaintiff’s administrative exhaustion letter submitted to the LWDA in this Action, arising during the PAGA Period.

17. For purposes of this Settlement, “Settlement Payments” means all of the payments to Settlement Class Members (the “Settlement Class Payments”) and all of the payments to PAGA Individuals (the “PAGA Settlement Payment”).

RECITALS

18. On March 10, 2021, Plaintiff filed a putative Class Action alleging the following labelled causes of action: (1) Failure to Pay Minimum Wage [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197]; (2) Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198]; (3) Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512]; (4) Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7]; (5) Failure to Indemnify Necessary Business Expenses [Cal. Lab. Code § 2802]; (6) Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203]; (7) Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226]; and (8) Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, *et seq.*] (“Action.”).

19. Solely for purposes of settling this Action, the Parties and their respective counsel stipulate and agree that the requisites for establishing class certification with respect to the Class Members have been met and are met. More specifically for settlement purposes only, the Parties stipulate and agree that:

- (a) The Class is ascertainable and so numerous as to make it impracticable to join all Class Members.
- (b) There are common questions of law and fact including, but not limited to, the following:
 - 1) Whether Defendant misclassified Class Members as independent contractors in violation of Labor Code § 226.8;
 - 2) Whether Defendant paid proper wages to the Class Members;
 - 3) Whether Defendant was required to provide meal periods to the Class

Members;

- 4) Whether Defendant was required to provide rest periods to the Class Members;
- 5) Whether Defendant reimbursed necessary business expenses incurred by the Class Members;
- 6) Whether at all times, Defendant paid compensation to Class Members timely;
- 7) Whether Defendant was required to provide accurate itemized wage statements to the Class Members;
- 8) Whether waiting-time penalties are available to the Class Members for alleged violation of California Labor Code § 203;
- 9) Whether Defendant was required to pay meal period or rest period premiums to the Class Members;
- 10) Whether Defendant engaged in unlawful or unfair business practices affecting the Class Members in violation of California Business and Professions Code §§ 17200-17208; and
- 11) Whether Defendant is subject to penalties pursuant to Labor Code § 2699 et seq.

- (c) Plaintiff's claims are typical of the claims of the Class Members.
- (d) Plaintiff and Class Counsel will fairly and adequately protect the interests of the Class.
- (e) The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct.
- (f) With respect to the Class, questions of law and fact common to the members of the Class predominate over any questions affecting any individual member in such Class, and that a class action is superior to other available means for the fair and efficient adjudication of the controversy.

1 20. Should, for whatever reason, the Settlement not become effective, the fact that the Parties were
2 willing to stipulate or have stipulated to certification as part of the Settlement shall have no bearing on, and
3 shall not be admissible in connection with, the issue of whether the Class Members and/or the claims of
4 the Class should be certified in a non-Settlement context in this Action or in any other lawsuit. Defendant
5 expressly reserves its right to oppose claim or class certification in this or any other action should this
6 Settlement not become effective.

7 21. Defendant denies all material allegations set forth in the Action and has asserted numerous
8 affirmative and other defenses. Specifically, Defendant contends, among other things, that Plaintiff and the
9 Class Members have been properly classified as independent contractors.

10 22. In the interest of avoiding further litigation, it is the desire of the Parties to fully, finally, and
11 forever settle, compromise, and discharge all claims, potential claims, and disputes arising from or related
12 to the Complaint.

13 23. Class Counsel has conducted a thorough investigation into the facts of this Action, including
14 an extensive review of relevant documents, analysis of the legal positions taken by Defendant,
15 investigation into the viability of class treatment of the claims asserted in the Action, analysis of potential
16 class-wide damages, including information sufficient to understand Defendant's potential defenses to
17 Plaintiff's claims, research of the applicable law with respect to the claims asserted in the Complaint, and
18 the potential defenses thereto, and has diligently pursued an investigation of the claims of the Class against
19 Defendant. Based on its own independent investigation and evaluation, Class Counsel is of the opinion
20 that the Settlement with Defendant for the consideration and on the terms set forth in this Joint Stipulation
21 of Settlement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known
22 facts and circumstances, including the risk of significant delay, the risk the Class will not be certified by
23 the Court, defenses asserted by Defendant, and numerous potential appellate issues. Defendant and
24 Defendant's Counsel also agree that the Settlement is fair and in the best interest of the Class.

25 24. The extensive information discovery conducted in this matter, as well as discussions between
26 counsel, have been adequate to give the Plaintiff and Class Counsel a sound understanding of the merits of
27 their positions and to evaluate the viability of the claims of the Class. The discovery conducted in this
28 Action and the information exchanged by the Parties through discovery and settlement discussions has

1 been sufficient to reliably assess the merits of the Parties' respective positions and to compromise the
2 issues on a fair and equitable basis.

3 25. The Parties agree to cooperate and take all steps necessary and appropriate to obtain
4 preliminary and final approval of this Settlement.

5 26. Plaintiff and Class Counsel believe that certain claims, causes of action, allegations, and
6 contentions asserted in the Action have merit. However, Plaintiff and Class Counsel recognize and
7 acknowledge the expense and delay of continued lengthy proceedings necessary to prosecute the Action
8 against Defendant through trial and appeals. Class Counsel has taken into account the uncertain outcome
9 of the litigation, the risk of continued litigation in complex actions such as this, as well as the difficulties
10 and delays inherent in such litigation, and the potential difficulty of obtaining certification of the Action as
11 well as trying the claims of the Class. Class Counsel is mindful of the potential problems of proof under,
12 and possible defenses to, the claims alleged in the Action.

13 27. Class Counsel believes that the Settlement set forth in this Agreement confers substantial
14 benefit upon Plaintiff and the Settlement Class and that an independent review of this Agreement by the
15 Court in the approval process will confirm this conclusion. Based on their own independent investigation
16 and evaluation, Class Counsel has determined that the Settlement set forth in the Agreement is in the best
17 interests of Plaintiff and the Class.

18 28. Defendant has concluded that any further defense of the Action would be protracted and
19 expensive for all Parties. Substantial amount of Defendant's time, energy, and resources have been, and
20 unless this Settlement is completed, shall continue to be, devoted to the defense of the causes of action
21 asserted by Plaintiff. Defendant has also taken into account the risks of further litigation in reaching its
22 decision to enter into this Agreement. Even though Defendant contests the claims alleged by Plaintiff in
23 this Action, Defendant has agreed, nonetheless, to settle in the manner upon the terms set forth in this
24 Agreement and to put to rest the claims alleged in the Action. This Agreement is a compromise of
25 disputed claims. Nothing contained in this Agreement, no documents referred to herein, and no action
26 taken to carry out this Agreement, shall be construed or used as an admission by or against Defendant as to
27 the merits or lack thereof of the claims asserted in the Action.

28 29. This Agreement is made and entered into by and between Plaintiff, individually and on behalf

1 of all others similarly situated and aggrieved, and Defendant, and is subject to the terms and conditions
2 hereof and the Court's approval. The Parties expressly acknowledge that this Agreement is entered into
3 solely for the purpose of compromising significantly disputed claims and that nothing herein is an
4 admission of any liability or wrongdoing by Defendant. If, for any reason the Agreement is not approved,
5 it will be of no force or effect, and the Parties shall be returned to their original respective positions.

6 30. The Parties agree to stay all proceedings in the Action, except such proceedings necessary to
7 implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Court.

8 31. The Parties agree to abide by all of the terms of the Settlement in good faith and to support the
9 Settlement fully and to use their best efforts to defend this Settlement from any legal challenge, whether by
10 appeal or collateral attack.

11 **PRIMARY TERMS OF SETTLEMENT**

12 32. NOW THEREFORE, in consideration of the mutual covenants, promises and agreements set
13 forth herein, the Parties agree, subject to the Court's approval, as follows:

14 (a) It is agreed by and among the Class and Defendant that this Action and any claims,
15 damages, or causes of action arising out of the disputes which are the subject of
16 this Action, be settled and compromised as between the Class and Defendant,
17 subject to the terms and conditions set forth in this Settlement and the approval of
18 the Court.

19 (b) Effective Date: The terms of settlement embodied in this Settlement shall become
20 effective when all of the following events have occurred: (i) this Joint Stipulation
21 of Settlement has been executed by all Parties and their respective counsel; (ii) the
22 Court has given preliminary approval to the Settlement; (iii) the Notice has been
23 given to the Class, providing them with an opportunity to dispute information
24 contained in the Notice, to opt out of the Settlement, or to object to the Settlement;
25 (iv) the Court has held a final approval hearing and entered a final order and
26 judgment certifying the Class and approving this Settlement; and (v) the later of the
27 following events: (a) five (5) calendar days have passed since final approval is
28 granted if there are no objections to the Settlement; (b) sixty-five (65) days

1 following notice of entry of the Court’s final order approving the Settlement if
2 there are any objections by any Class Member; (c) or if any appeal, writ or other
3 appellate proceeding opposing this Settlement has been filed within sixty-five (65)
4 days following notice of entry of the Court’s final order approving the Settlement,
5 then twenty (20) days after when any appeal, writ or other appellate proceeding
6 opposing the Settlement has been resolved finally and conclusively with no right to
7 pursue further remedies or relief.

- 8 (c) Gross Settlement Amount: Defendant’s maximum total payment under the
9 Settlement, including all attorney’s fees and costs, the Enhancement Payment to
10 the named Plaintiff, the costs of settlement administration, the PAGA Allocation,
11 and any other payments provided by this Settlement, is \$120,000.00 (“Gross
12 Settlement Amount”), subject to the Escalator Clause.
- 13 (d) Escalator Clause: Defendant represents that as of March 14, 2022, there are 13
14 Class Members. In the event that there is an increase in Class Members of more
15 than 30%, which would be more than 17 Class Members, the settlement amount
16 shall be increased by the percentage that the actual number of class members
17 exceeds 17 Class Members.
- 18 (e) Non-reversionary Settlement: No portion of the Gross Settlement Amount will
19 revert to Defendant.
- 20 (f) No Claims Required: Class Members will not be required to submit a claim to
21 receive their Settlement payment.
- 22 (g) Net Settlement Amount: The Net Settlement Amount shall be calculated by
23 deducting from the Gross Settlement Amount (\$120,000.00) the following sums,
24 subject to approval by the Court: (1) Class Counsel’s fees (not to exceed 33 1/3%
25 of the Gross Settlement Amount, or \$40,000.00); (2) reasonable litigation costs
26 (not to exceed \$18,000.00); (3) the Enhancement Payment (not to exceed
27 \$7,500.00 to the named Plaintiff); (4) the PAGA Penalty Payment in the amount of
28 \$7,500.00 (which is 75% of the PAGA Allocation) to the LWDA; and (5) costs of

settlement administration (estimated not to exceed \$6,000). Settlement Payments to the Class Members will be calculated by the Settlement Administrator and paid out of the Net Settlement Amount as set forth below.

(h) Settlement Class Payments (Excludes PAGA Payments): Settlement Class Payments will be paid out of the Net Settlement Amount. Each Settlement Class Member will be paid a pro-rata share of the Net Settlement Amount (less the PAGA Settlement Payments to the LWDA), as calculated by the Settlement Administrator. The pro-rata share will be determined by comparing the individual Settlement Class Member's Covered Pay Schedules during the Class Period in California to the total Covered Pay Schedules of all the Settlement Class Members during the Class Period as follows:
$$\frac{[\text{Pay Schedules worked by a Settlement Class Member}]}{[\text{Sum of all Covered Pay Schedules worked by all Settlement Class Members}]} \times [\text{Net Settlement Amount} - \text{all PAGA Settlement Payments to the LWDA}] = \text{individual Settlement Payment for a Settlement Class Member}.$$
 Settlement Class Payments in the appropriate amounts will be distributed by the Settlement Administrator by mail to the Settlement Class Members. Un-cashed, unclaimed or abandoned checks, shall be transmitted to the California Controller's Office, as set forth below.

(i) PAGA Payments: PAGA Settlement Payments will be paid out of the Net Settlement Amount. Each PAGA Individual will be paid a pro-rata share of the PAGA Individuals' PAGA Settlement Payment, as calculated by the Settlement Administrator minus PAGA Settlement Payments to the LWDA. Class Members will not be permitted to exclude themselves from this portion of the Settlement. The pro-rata share will be determined by comparing the individual PAGA Individuals' PAGA Pay Schedules during the PAGA Period to the total PAGA Pay Schedules of all the PAGA Individuals during the PAGA Period as follows:
$$\frac{[\text{PAGA Pay Schedules worked by a PAGA Individual}]}{[\text{Sum of all PAGA Pay Schedules worked by all PAGA Individuals}]} \times [\text{PAGA Settlement Payment}] =$$

individual PAGA Individual's portion of the PAGA Settlement Payment. PAGA Settlement Payments to PAGA Individuals in the appropriate amounts will be distributed by the Settlement Administrator by mail to the PAGA Individuals at the same time Settlement Class Payments issue to the Settlement Class. Un-cashed, unclaimed or abandoned checks, shall be transmitted to the California Controller's Office, as set forth below. The LWDA's PAGA Penalty Payment will issue to the LWDA at the same time Settlement Payments issue to the Settlement Class.

(j) Allocation of Settlement Payments: The Parties have agreed that Settlement Class Payments will be allocated as follows: 100% to penalties. The PAGA Settlement Payment shares to PAGA Individuals will be entirely allocated to penalties. An IRS Form 1099 will be issued to each Class Member reflecting the payments. Class Members are responsible to pay appropriate taxes due on the Settlement Payments they receive. To the extent required by law, an IRS Form 1099 will be issued to each Class Member with respect to such payments.

(k) Settlement Payments Do Not Give Rise to Additional Benefits: All Settlement Payments to individual Class Members shall be deemed to be paid to such Class Member solely in the year in which such payments actually are received by the Class Member. It is expressly understood and agreed that the receipt of such Settlement Payments will not entitle any Class Member to additional compensation or benefits under any company bonus, contest or other compensation or benefit plan or agreement in place during the period covered by the Settlement up to and including the date the Settlement becomes effective, nor will it entitle any Class Member to any increased retirement, 401(k) benefits or matching benefits or deferred compensation benefits. It is the intent that the Settlement Payments provided for in this Settlement are the sole payments to be made by Defendant to the Class Members, and that the Class Members are not entitled to any new or additional compensation or benefits as a result of having received the Settlement Payments (notwithstanding any contrary language or agreement in any benefit or

1 compensation plan document that might have been in effect during the period
2 covered by this Settlement).

3 (l) Class Counsel's Fees and Costs: Subject to approval by the Court, Defendant will
4 not object to Class Counsel's application for attorney's fees not to exceed 33 1/3%
5 of the Gross Settlement Amount (\$40,000.00) and reimbursement of litigation
6 costs and expenses not to exceed Eighteen Thousand Dollars (\$18,000.00), both of
7 which will be paid from the Gross Settlement Amount.

8 (m) Enhancement Payment: Subject to Court approval, and in exchange for a general
9 release, and in recognition of her effort and work in prosecuting the Action on
10 behalf of Class Members and negotiating the Settlement, Defendant will not object
11 to Class Counsel's application for an additional payment of up to \$7,500.00 to
12 Plaintiff for service as a Class Representative ("Enhancement Payment"). It is
13 understood that the Enhancement Payment is in addition to the individual
14 Settlement Payment to which a Class Representative is entitled to along with the
15 other Class Members. In exchange, Plaintiff has agreed to release all claims,
16 whether known or unknown, under federal law or state law against the
17 Releasees, to the extent permitted by law, through the Class Period ("Plaintiff's
18 Released Claims"), including without limitation to, any claims relating to or
19 arising out of any aspect of her relationship with Defendant, or the termination
20 of that relationship, any claims for unpaid compensation, wages, reimbursement
21 for business expenses, penalties, or waiting time penalties under the California
22 Labor Code, the California Business and Professions Code, the federal Fair
23 Labor Standards Act, 29 U.S.C. sections 201, et. Seq., or any state, county, or
24 city law or ordinance regarding wages or compensation; any claims for
25 employee benefits including, without limitation, any claims under the
26 Employment Retirement Income Security Act of 1974; any claims of
27 employment discrimination on any basis, including without limitation, any
28 claims under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of

1866, 42 U.S.C. section 1981, the Civil Rights Act of 1991, the Americans with Disabilities Act of 1991, the Family and Medical Leave Act of 1993, the California Government Code, or any other state, county or city law or ordinance regarding employment discrimination. Plaintiff acknowledges and agrees that the foregoing general release is given in exchange for the consideration Defendant provided to her pursuant to this Settlement. Plaintiff understands that this release includes unknown claims and that she is, as a result, expressly waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which 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.

Plaintiff understands fully the statutory language of California Civil Code section 1542 and, with this understanding, nevertheless elects to, and does, assume all risks for claims that have arisen, whether known or unknown, which she had, or hereafter may claim to have, arising on or before the date of her signature to this Settlement, and specifically waives all rights she may have under California Civil Code section 1542. Specifically excluded from Plaintiff's Released Claims are any claims for workers' compensation benefits. The Enhancement Payment will issue at the same time all Settlement Payments are mailed to the Class.

- (n) The Settlement Administrator will issue an IRS Form 1099 for the Enhancement Payment to Plaintiff. Plaintiff will be individually and legally responsible for correctly characterizing this compensation on personal income tax returns for tax purposes and for paying any taxes on the amounts received. Plaintiff agrees to indemnify and hold Defendant harmless from any claim or liability for taxes, penalties, or interest arising as a result of Enhancement Payment. Should the Court approve a Enhancement Payment in an amount less than that set forth above, the difference between the lesser amount(s) approved by the Court and the

Enhancement Payment amount(s) set forth above shall be added to the Net Settlement Amount. Plaintiff agrees not to opt out or object to the Enhancement Payment as the Class Representative.

- (o) Settlement Administrator: The Settlement Administrator will be ILYM Group, Inc., or such Settlement Administrator as may be mutually agreeable to the Parties and approved by the Court. Settlement Administration Costs are estimated not to exceed \$6,000. The costs of the Settlement Administrator for work done shall be paid regardless of the outcome of this Settlement.
- (p) Acknowledgment of Potential Administration Cost Increases. The Parties hereby acknowledge that Settlement Administration Costs may increase above the current estimate of \$6,000 and that any such additional reasonable Settlement Administration Costs will be taken out of the Gross Settlement Amount. Any portion of the estimated or designated Settlement Administration Costs that is not in fact required to fulfill the actual Class Administration costs will become part of the Net Settlement Amount.
- (q) Funding of Settlement Account: Defendant will fund the settlement account 14 days after final approval of the Settlement.
- (r) Mailing of Settlement Payments: The Settlement Administrator shall cause the Settlement Payments to be mailed to the Class Members within 14 calendar days of the receipt of funding.
- (s) Notice of Settlement: Each Class Member will be mailed a notice setting forth the material terms of the proposed Settlement, along with instructions about how to object or request exclusion from the propose class action Settlement (“Notice”). For each Class Member, there will be pre-printed information on the mailed Notice, based on Defendant’s records, stating the Class Member’s Covered Pay Schedules during the Class Period and the estimated total Settlement Payment under the Settlement, including the Settlement Class Payment and the PAGA Settlement Payment that will be distributed irrespective of any exclusion request.

1 The pre-printed information based on Defendant's records shall be presumed to be
2 correct. A Class Member may dispute the pre-printed information on the Notice as
3 to his or her Covered Pay Schedules during the Class Period. Class Members must
4 submit any dispute regarding the information on the Notice as to his or her
5 Covered Pay Schedules within the Response Deadline. Unless a disputing Class
6 Member submits documentary evidence in support of his or her dispute, the
7 records of the Defendant will be determinative.

8 (t) Settlement Notice Language: The Notice will issue in English and Spanish.

9 (u) Class Members Cannot Exclude Themselves from the Released PAGA Claims:

10 Class Members submitting a Request for Exclusion will nevertheless receive their
11 pro-rata share of the PAGA Settlement Payment. If the Court approves the
12 compromise of the PAGA Claim, all Class Members are bound by the Court's
13 resolution of that Claim. Plaintiff shall serve a notice of settlement on the
14 California Labor and Workforce Development Agency at or before the time
15 Plaintiff files the motion for preliminary approval.

16 (v) Resolution of Pay Schedule Disputes: If a Class Member disputes the accuracy of
17 Defendant's records used to calculate Covered Pay Schedules, and the Parties'
18 counsel cannot resolve the dispute informally, the matter will be referred to the
19 Settlement Administrator. The Settlement Administrator will review Defendant's
20 records and any information or documents submitted by the Class Member and
21 issue a non-appealable decision regarding the dispute. The Class Member must
22 submit information or documents supporting his or her position to the Settlement
23 Administrator prior to the expiration of the Response Deadline. Information or
24 documents submitted after the expiration of the Response Deadline will not be
25 considered by the Settlement Administrator, unless otherwise agreed to by the
26 Parties.

27 (w) Right of Class Member to Request Exclusion from the Settlement: Any Class
28 Member may request to be excluded from the Class by mailing a "Request for

Exclusion” from the Settlement within the Response Deadline, stating, as follows
or in substantially similar terms:

“I WISH TO BE EXCLUDED FROM THE CLASS IN THE
VALDEZ V. HEAT MAKE SENSE, INC. DBA AMIKA, CLASS
ACTION LAWSUIT, SACRAMENTO COUNTY SUPERIOR
COURT CASE NO. 34-2021-00296194. I UNDERSTAND
THAT IF I ASK TO BE EXCLUDED FROM THE CLASS, I
WILL NOT RECEIVE ANY MONEY FROM THE
SETTLEMENT OTHER THAN MY SHARE OF THE PAGA
PAYMENT.”

Any Request for Exclusion must include the name, address, telephone number, last
four digits of the Class Member’s Social Security Number, and the signature of the
Class Member requesting exclusion. Any such request must be made in
accordance with the terms of the Notice, and the Notice will advise Class Members
of these requirements. Any Class Member who timely requests exclusion in
compliance with these requirements (i) shall not have any rights under this
Settlement other than a right to receive a pro-rata share of the portion of the PAGA
payment allocated to the Class Members if the Class Member is also PAGA
Individual; (ii) shall not be entitled to receive any Settlement Payments under this
Settlement other than as stated in Paragraph 26(i); and (iii) shall not be bound by
this Settlement or the Court’s Order and Final Judgment other than as it applies to
the PAGA Claim.

- (x) Right of Settlement Class Member to Object to The Settlement: Any Class
Member may object to the Settlement. To object, the Class Member may (1)
appear at the Final Approval Hearing, remotely or in person, to explain any
objection, (2) have an attorney object for the Class Member, or (3) submit a simple
written brief or statement of objection to the Settlement Administrator. If any
Class Member chooses to submit a written objection, the written objection should
contain sufficient information to confirm the identity of the objector and the basis
of the objection, including (1) the full name of the Settlement Class Member; (2)
the signature of the Settlement Class Member; (3) the grounds for the objection;

1 and (4) be postmarked within the Response Deadline to permit adequate time for
2 processing and review by the Parties of the written statement or objection. Class
3 Counsel shall ensure that any written objections are transmitted to the Court for the
4 Court's review (either by Class Counsel or as an attachment to declaration from the
5 Settlement Administrator). Regardless of the form, an objection alone will not
6 satisfy the requirement that a Settlement Class Member must either make a timely
7 complaint in intervention before final judgment or by file a motion to set aside and
8 vacate the class judgment under Code of Civil Procedure § 663 to have standing to
9 appeal entry of judgment approving this Settlement, as is required under the
10 California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal.
11 5th 260 (2018). A Class Member who does not object prior to or at the Final
12 Approval Hearing, will be deemed to have waived any objections and will be
13 foreclosed from making any objections (whether at the Final Approval Hearing, by
14 appeal, or otherwise) to the Settlement. If the objecting Class Member does not
15 formally intervene in the action or move to set aside any judgment and/or the Court
16 rejects the Class Member's objection, the Class Member will still be bound by the
17 terms of this Agreement. Class Counsel and Defendant's Counsel may, at least
18 five (5) calendar days (or some other number of days as the Court shall specify)
19 before the final approval hearing, file responses to any written objections submitted
20 to the Court.

21 **THE SETTLEMENT ADMINISTRATOR'S PRIMARY DUTIES**

22 33. Subject to the Court's approval, and subject to reconsideration by the Parties after a
23 competitive bidding process, the Parties have agreed to the appointment of ILYM Group, Inc. to perform
24 the customary duties of Settlement Administrator. The Settlement Administrator will mail the Notice,
25 both in English and Spanish, to the Class Members.

26 34. The Settlement Administrator will independently review the Covered Pay Schedules attributed
27 to each Class Member and will calculate the estimated amounts due to each Class Member and the actual
28 amounts due to each Settlement Class Member in accordance with this Settlement. The Settlement

1 Administrator shall report, in summary or narrative form, the substance of its findings. The Settlement
2 Administrator shall be granted reasonable access to Defendant's records in order to perform its duties.

3 35. In accordance with the terms of this Settlement, and upon receipt of Gross Settlement Amount
4 from Defendant, the Settlement Administrator will issue and send out the Settlement Payment checks to
5 the Class Members. Tax treatment of the Settlement Payments will be as set forth herein, and in
6 accordance with state and federal tax laws. All disputes relating to the Settlement Administrator's
7 performance of its duties shall be referred to the Court, if necessary, which will have continuing
8 jurisdiction over the terms and conditions of this Settlement until all payments and obligations
9 contemplated by this Settlement have been fully carried out.

10 36. The Settlement Administrator will post the final judgment approving the Settlement on a
11 website maintained by the Settlement Administrator for a period of not less than 90 calendar days after the
12 final judgment is entered. The address of that website will be included in the Notice.

13 **CLASS COUNSEL FEES AND COSTS**

14 37. In consideration for resolving this matter and in exchange for the release of all claims by the
15 Class Members, including Plaintiff, and subject to approval by the Court, Defendant will not object to
16 Class Counsel's application for attorney's fees not to exceed 33 1/3% of the Gross Settlement Amount
17 (\$40,000 of \$120,000.00) and litigation costs not to exceed \$18,000.00. The amounts set forth above will
18 cover all work performed and all fees and costs incurred to date, and all work to be performed and all fees
19 and costs to be incurred in connection with the approval by the Court of this Settlement and administration
20 of the Settlement. Should Class Counsel request a lesser amount and/or the Court approve a lesser
21 amount(s) of attorney's fees and/or attorneys' costs, the difference between the lesser amount(s) and the
22 maximum amount set forth above shall be added to the Net Settlement Amount. The Parties agree that
23 there is no prevailing party, and the Class and Class Counsel shall not be entitled to any fees or costs
24 other than those awarded out of and deducted from the Gross Settlement Amount. As with the Settlement
25 Payments to the Settlement Class, the attorney's fees and costs approved by the Court shall be distributed
26 by the Settlement Administrator to Class Counsel, within 14 calendar days of the receipt of settlement
27 funds by the Settlement Administrator. In the event that the Court awards less than 25% of the Gross
28 Settlement Amount for attorney's fees, Class Counsel shall retain the right to appeal that portion of any

1 Final Approval Order and Judgment.

2 **THE NOTICE PROCESS**

3 38. A Notice in approximately the form attached hereto as Exhibit “A,” and as approved by the
4 Court, shall be sent by the Settlement Administrator to the Class Members by first class mail. The Notice
5 shall be translated into Spanish so that Spanish and English language versions of the Notice are included in
6 the mailing. Any returned envelopes from this mailing with forwarding addresses will be utilized by the
7 Settlement Administrator to forward the Notices to the Class.

8 (a) Within 7 calendar days from the date of preliminary approval of this Settlement by
9 the Court, Defendant shall provide to the Settlement Administrator a class database
10 containing the following information for each Class Member: (1) name; (2) last
11 known address; (3) social security number; and (5) first and last dates services
12 were provided to Defendant in California. This database shall be based on
13 Defendant’s business records and shall be provided in a reasonable format to the
14 Settlement Administrator. Defendant agrees to consult with the Settlement
15 Administrator prior to the production date to ensure that the format will be
16 acceptable to the Settlement Administrator. The Settlement Administrator will run
17 a check of the Class Members’ addresses against those on file with the U.S. Postal
18 Service’s National Change of Address List; this check will be performed only once
19 per Class Member by the Settlement Administrator. Absent mutual written
20 agreement of counsel for the Parties or Court order, the Settlement Administrator
21 will keep this database confidential and secure and use it only for the purposes
22 described herein, and will return this database to Defendant upon final approval of
23 the settlement or destroy electronic records containing the database after the
24 Settlement is final and all payments are distributed as required under this
25 Agreement.

26 (b) Within 14 calendar days after the Class database is provided to the Settlement
27 Administrator, the Settlement Administrator will mail the Notices to the Class
28 Members by First Class United States mail.

- (c) Notices returned to the Settlement Administrator as non-deliverable on or before the initial Response Deadline shall be resent to the forwarding address, if any, on the returned envelope. A returned Notice will be forwarded by the Settlement Administrator any time that a forwarding address is provided with the returned mail. If there is no forwarding address, the Settlement Administrator will do a computer search for a new address using the Class Member's social security number or other information. In any instance where a Notice is re-mailed, that Class Member will have until the extended Response Deadline as described above. A letter prepared by the Settlement Administrator will be included in the re-mailed Notice in that instance, stating the extended Response Deadline. Upon completion of these steps by the Settlement Administrator, Defendant and the Settlement Administrator shall be deemed to have satisfied their obligations to provide the Notice to the affected Class Member. The affected Class Member shall remain a member of the Settlement Class and shall be bound by all the terms of the Settlement and the Court's Order and Final Judgment.
- (d) Class Counsel shall provide to the Court, at least five calendar days prior to the final approval hearing, or such other date as set by the Court, a declaration by the Settlement Administrator of due diligence and confirming mailing of the Notices.

DISPOSITION OF SETTLEMENT PAYMENTS AND UNCASHED CHECKS

39. As set forth above, each Class Member will have until the expiration of the applicable Response Deadline to submit to the Settlement Administrator any challenge or dispute to the Class Member's Covered Pay Schedule information on the Notice. No disputes will be honored if they are submitted after the Response Deadline, unless the Parties mutually agree to accept the untimely dispute. Each Class Member is responsible to maintain a copy of any documents sent to the Settlement Administrator and a record of proof of mailing.

40. The Settlement Administrator shall cause the Settlement Payments to be mailed to the Settlement Class Members and PAGA Individuals as provided herein. Settlement Class Payments and PAGA Payments may be combined into one check. Settlement Payment checks shall remain valid and

negotiable for 180 calendar days from the date of their issuance. Settlement Payment checks will automatically be cancelled by the Settlement Administrator if they are not cashed by the Class Member within that time, and the Class Member's relevant claims will remain released by the Settlement. Settlement Payment checks which have expired will not be reissued.

41. Funds from un-cashed or abandoned Settlement Payment checks, based on a 180 calendar day void date, shall be transmitted to the California State Controller's Office for Unclaimed Property in the name of each Class Member who failed to cash their Settlement Payment check prior to the void date.

42. Upon completion of its calculation of Settlement Payments, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel with a report listing the amounts of all payments to be made to Class Members (to be identified anonymously by a special identifier). A Declaration attesting to completion of all payment obligations will be provided to Class Counsel and Defendant's Counsel and filed with the Court by Class Counsel.

RELEASE BY THE CLASS AND PAGA INDIVIDUALS

43. Upon the final approval by the Court of this Settlement and Defendant's payment of all sums due pursuant to this Settlement, and except as to such rights or claims as may be created by this Settlement, the Class Representatives, the Class and each Class Member who has not submitted a valid and timely request for exclusion as to claims other than the PAGA claim, and each PAGA Individual, regardless of whether they have requested exclusion from the Settlement of the claims of the Class, will release claims as follows:

- (a) **Identity of Released Parties.** The released parties are Defendant, and all related companies, subsidiaries, owners, shareholders, members, agents (including, without limitation, any investment bankers, accountants, insurers, reinsurers, attorneys and any past present or future officers, directors, and employees) predecessors, successors, and assigns (collectively "Releasees").
- (b) **Date Release Becomes Active.** The Released Claims and Released PAGA Claims will be released upon the later of (1) the Settlement's Effective Date, or (2) the satisfaction of Defendant's obligation to provide to the Settlement Administrator a sum in the amount required to satisfy all required payments and distributions

pursuant to this Settlement and the Order and Judgment of final approval. Class Members will not release the Released Claims or Released PAGA Claims until both the Effective Date of the Settlement has occurred, **and** Defendant has paid all amounts owing under the Settlement.

(c) **Claims Released by Settlement Class Members.** Each and every Class Member, on behalf of himself or herself and his or her heirs and assigns, unless he or she has submitted a timely and valid Request for Exclusion (which will not effectuate an opt-out from the release of Released PAGA Claims), hereby releases Releasees from the following claims for the entire Class Period:

- 1) any and all claims stated in the Complaint, or that could have been stated based on the facts alleged in the Action, including but not limited to all state wage and hour claims (including all claims under the California Labor Code) for unpaid wages, minimum wage, overtime, off-the-clock work, meal periods, rest periods, unreimbursed business expenses, wage statement violations, interest, penalties, and attorneys' fees, waiting time penalties, withholding from wages and the related provisions of the Labor Code including but limited to Labor Code §§ 201-204, 210, 216, 218.6, 226, 226.3, 226.7, 226.8, 510, 512, 512.5, 558, 1194, 1194.2, 1198, 2802, and derivative claims under California Business & Professions Code §§ 17200 et seq., and all claims under the governing Wage Order, and FLSA ("Released Claims");
- 2) as to any Class Member who cashes their Settlement Payment, the Settlement Administrator shall include language on the Settlement Payments that informs the Class Members that the signing and negotiation of that check shall serve as the Class Member's consent to join the Action for purposes of releasing all claims arising under the Fair Labor Standards Act that are alleged in the Action or related to the claims stated or that could have been stated in the Action, implicitly or explicitly;

- (d) **Claims Released by the Class, Including PAGA Individuals.** All Class Members, including all PAGA Individuals, release the Released PAGA Claims, regardless of whether they have requested exclusion from the Settlement as to the claims of the Class.

EMPLOYMENT/UTILIZATION BY DEFENDANT

44. Employment of Plaintiff by Defendant or Defendant's utilization of Plaintiff's services to Defendant are not considerations for, or conditions of, this Settlement.

DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

45. The Parties shall submit this Joint Stipulation of Class Action Settlement to the Court in support of Plaintiff's unopposed motion for preliminary approval for determination by the Court as to its fairness, adequacy, and reasonableness. Upon execution of this Joint Stipulation of Class Action Settlement, the Parties shall apply to the Court for the entry of an order:

- (a) Scheduling a final approval and fairness hearing on the question of whether the proposed Settlement, including payment of attorney's fees and costs, and the Class Representatives' Enhancement Payment, should be finally approved as fair, reasonable, and adequate as to the members of the Class;
- (b) Certifying a Class;
- (c) Approving as to form and content the proposed Notice;
- (d) Directing the mailing of the Notice;
- (e) Preliminarily approving the Settlement subject only to the objections of Class Members and final review by the Court;
- (f) Conditionally appointing Plaintiff and Class Counsel as representatives of the proposed Class Members; and,
- (g) Appointing ILYM Group, Inc. as the Settlement Administrator, and order the Settlement Administrator to issue Notices as outlined above.

DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL

46. In conjunction with the hearing of a motion for final approval by the Court of the Settlement provided for in this Joint Stipulation of Settlement, Class Counsel will provide to Defendant's Counsel for

review and approval and then submit to the Court a proposed final order and judgment containing provisions sufficient to accomplish the following:

- (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;
- (b) Approving Class Counsel's application for an award of attorney's fees and costs;
- (c) Approving the Enhancement Payment to the Class Representatives;
- (d) Adjudging the Settlement Administrator has fulfilled its initial notice and reporting duties under the Settlement.
- (e) Adjudging Plaintiff and Class Counsel may adequately represent the Class for the purpose of entering into and implementing the Agreement;
- (f) Entering a final judgment in the action;
- (g) Adjudging that notwithstanding the submission of a timely request for exclusion, Class Members are still bound by the settlement and release of the Released PAGA Claims or remedies under the Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), as requests to be excluded from the Settlement do not apply to the Released PAGA Claims, and further affirms that the State's claims for civil penalties pursuant to PAGA are also extinguished;
- (h) Directing the posting of the final judgment on a website maintained by the Settlement Administrator for a period of not less than 90 calendar days after entry of final judgment.

Any revised final judgments will also be provided to Defendant's Counsel for review and approval before they are submitted to the Court.

NULLIFICATION AND TERMINATION

47. This Settlement will be null and void if any of the following occur: (a) the Court should for any reason fail to certify a class for settlement purposes; (b) the Court should for any reason fail to preliminarily or finally approve of this Settlement in the form agreed to by the Parties, other than adjustments made to the attorney's fees and costs or granting of Enhancement Payments; (c) the Court should for any reason fail to enter the final judgment; (d) the final judgment is reversed, modified, or

1 declared or rendered void; or (e) the Settlement does not become final for any other reason.

2 48. If 20% or more of the Class Members opt out of this Settlement, then Defendant in its sole
3 discretion may terminate, nullify and void this Settlement. The Settlement Administrator shall provide
4 Defendant's Counsel with the information necessary to effectuate this provision on a regular basis, but no
5 less frequently than on a monthly basis. To terminate this Settlement under this paragraph, Defendant's
6 Counsel must give Plaintiff's Counsel written notice, by facsimile, e-mail, or mail, no later than 30
7 calendar days after the Response Deadline. If this option is exercised by Defendant, Defendant shall be
8 solely responsible for the costs incurred by the Settlement Administrator for the settlement administration.

9 49. In the event this Settlement is nullified or terminated as provided above: (i) this Settlement
10 shall be considered null and void, (ii) neither this Settlement nor any of the related negotiations or
11 proceedings shall have any force or effect and no Party shall be bound by any of its terms, and (iii) all
12 Parties to this Settlement shall stand in the same position, without prejudice, as if the Settlement had been
13 neither entered into nor filed with the Court.

14 **PARTIES' AUTHORITY**

15 50. The signatories hereto hereby represent that they are fully authorized to enter into this
16 Settlement and bind the Parties hereto to the terms and conditions thereof.

17 **MUTUAL FULL COOPERATION**

18 51. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement
19 including, but not limited to, execution of such documents and taking such other action as reasonably may
20 be necessary to implement the terms of this Settlement. The Parties to this Settlement shall use their best
21 efforts, including all efforts contemplated by this Settlement and any other efforts that may become
22 necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set forth herein.
23 As soon as practicable after execution of this Settlement, Class Counsel shall, with the assistance and
24 cooperation of Defendant and Defendant's Counsel, take all necessary steps to secure the Court's
25 preliminary and final approval of this Settlement.

26 **NO PRIOR ASSIGNMENTS**

27 52. The Parties and their respective counsel represent, covenant, and warrant that they have not
28 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to

1 any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein
2 released and discharged except as set forth herein, and that they are not on notice of any liens as to the
3 Gross Settlement Amount or any right to attorneys' fees or costs.

4 **NO ADMISSION OF LIABILITY**

5 53. Nothing contained herein, nor the consummation of this Settlement, is to be construed or
6 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant.
7 Defendant denies all the claims and contentions alleged by the Plaintiff in this case. The Defendant has
8 entered into this Settlement solely with the intention to avoid further disputes and litigation with the
9 attendant inconvenience and expenses. Neither this Settlement, nor any of its terms or provisions, nor any
10 of the negotiations connected with it, shall be construed as an admission or concession by Defendant of
11 any such violations or failures to comply with any applicable law. Except as necessary in a proceeding to
12 enforce the terms of this Settlement, this Settlement and its terms and provisions shall not be offered or
13 received as evidence in any action or proceeding to establish any liability or admission on the part of
14 Defendant or to establish the existence of any condition constituting a violation of, or non-compliance
15 with, federal, state, local or other applicable law.

16 **ENFORCEMENT ACTIONS**

17 54. In the event that one or more of the Parties to this Settlement institutes any legal action or other
18 proceeding against any other party or parties to enforce the provisions of this Settlement or to declare
19 rights and/or obligations under this Settlement, the successful party or parties shall be entitled to recover
20 from the unsuccessful party or parties reasonable attorney's fees and costs, including expert witness fees
21 incurred in connection with any enforcement actions.

22 **REPRESENTATION BY COUNSEL**

23 55. The Parties acknowledge that they have been represented by counsel throughout all
24 negotiations that preceded the execution of this Agreement, and that this Agreement has been executed
25 with the consent and advice of counsel, and reviewed in full. Further, Plaintiff and Class Counsel warrant
26 and represent that there are no liens on the Settlement.

27 **INVALIDITY OF ANY PROVISION**

28 56. Before declaring any provision of this Settlement invalid, the Court will first attempt to

1 construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to
2 define all provisions of this Settlement Agreement as valid and enforceable.

3 **MUTUAL PREPARATION**

4 57. The parties have had a full opportunity to negotiate the terms and conditions of this
5 Agreement. Accordingly, the Agreement will not be construed more strictly against one Party than the
6 other merely by virtue of the fact that it may have been prepared by counsel for one Party, it being
7 recognized that, because of the arms-length negotiations between the Parties, both Parties have contributed
8 to the preparation of this Agreement.

9 **RELEASE OF CLAIMS BY CLASS MEMBERS**

10 58. Upon the Effective Date, Plaintiff and all Participating Class Members will be deemed to have
11 fully, finally and forever released, settled, compromised, relinquished, and discharged with respect to all of
12 the Releasees, , any and all Released Claims. The Settlement Class and each member of the class who has
13 not submitted a valid Request for Exclusion, fully releases and discharges the Released Parties for the
14 Released Claims for any period during the Released Claims Period.

15 **TAX LIABILITY**

16 59. Defendant makes no representation as to tax treatment or legal effect of the payments called
17 for hereunder, and Class Representative, Class Members, and Class Counsel are not relying on any
18 statement, representation, or calculation by Defendant or by the Settlement Administrator in this regard.
19 Class Representative, Class Members, and Class Counsel understand and agree that they will be solely
20 responsible for the payment of any taxes and penalties assessed on the payments described herein and will
21 defend, indemnify, and hold Defendant free and harmless from and against any claims resulting from
22 treatment of such payments as non-taxable damages.

23 **CIRCULAR 230 DISCLAIMER**

24 60. EACH PARTY TO THIS SETTLEMENT (“ACKNOWLEDGING PARTY”)
25 ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO
26 WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR
27 THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY
28 SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE

1 RELIED UPON AS TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY
2 DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING
3 PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT
4 LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION
5 WITH THIS SETTLEMENT, (B) HAS NOT ENTERED INTO THIS SETTLEMENT BASED UPON
6 THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
7 ANY OTHER PARTY; AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION
8 OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID
9 ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3)
10 NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
11 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX
12 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING)
13 UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
14 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED
15 BY THIS SETTLEMENT.

16 NOTICES

17 61. Unless otherwise specifically provided herein, all notices, demands or other communications
18 given hereunder shall be in writing and shall be deemed to have been duly given as of the third business
19 day after mailing by United States registered or certified mail, return receipt requested, addressed as
20 follows:

21 Class Counsel:

22 Kane Moon
23 Allen Feghali
24 Edwin Kamarzarian
25 **MOON & YANG, APC**
26 1055 W. Seventh St., Suite 1880
27 Los Angeles, California 90017
28 Telephone: (213) 232-3128
kane.moon@moonyanglaw.com
allen.feghali@moonyanglaw.com
edwin.kamarzarian@moonyanglaw.com

Counsel for Defendant:

Ndubisi A. Ezeolu
ndubisi.ezeolu@tuckerellis.com
Lisa I. Carteen
lisa.carteen@tuckerellis.com
Maia Mdinradze
maia.mdinradze@tuckerellis.com
TUCKER ELLIS LLP
515 South Flower Street
Forty-Second Floor
Los Angeles, CA 90071
Telephone: (213) 430-3400
Facsimile: (213) 430-3409

1 **CONSTRUCTION**

2 62. The Parties hereto agree that the terms and conditions of this Settlement are the result of
3 lengthy, intensive arms-length negotiations between the Parties, including but not limited to an all day
4 mediation with Steve Rottman on March 14, 2022, and this Settlement shall not be construed in favor of or
5 against any Party by reason of the extent to which any Party or his, her or its counsel participated in the
6 drafting of this Settlement. The Agreement is the result of an informed and detailed analysis of
7 Defendant's alleged potential liability in relation to the costs and risks associated with continued litigation.

8 **REMAND**

9 63. The Parties shall enter into a stipulation remanding this matter to Sacramento Superior Court
10 no later than 14 days after execution of this Settlement.

11 **CAPTIONS AND INTERPRETATIONS**

12 64. Paragraph titles, captions, and section numbers contained herein are inserted as a matter of
13 convenience and for reference, and in no way define, limit, extend, construe, or describe the scope of this
14 Settlement or any provision hereof. Each term of this Settlement is contractual and not merely a recital.

15 **MODIFICATION**

16 65. This Settlement may not be changed, altered, or modified, except in writing and signed by the
17 Parties hereto, and approved by the Court. This Settlement may not be discharged except by performance
18 in accordance with its terms or by a writing signed by the Parties hereto.

19 **INTEGRATION CLAUSE**

20 66. This Settlement contains the entire agreement between the Parties relating to the Settlement
21 and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings,
22 representations, and statements, whether oral or written and whether by a Party or such Party's legal
23 counsel, are merged herein. No rights hereunder may be waived except in writing.

24 **WAIVER**

25 67. The Parties agree to waive appeals and to stipulate to class certification for purposes of
26 implementing this Settlement only, with the exception that Class Counsel retains the right to appeal the
27 amount awarded as attorney's fees in the event that the Court awards less than twenty-five percent of the
28 Gross Settlement Amount as attorney's fees. No waiver of any condition or covenant contained in this

1 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply
2 or constitute a further waiver by such Party of the same or any other condition, covenant, right or remedy.

3 **BINDING AGREEMENT**

4 68. The Parties warrant that they understand and have full authority to enter into this Agreement,
5 and further intend that this Agreement will be fully enforceable and binding on the Parties, and agree that
6 it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any
7 mediation confidentiality provision that otherwise might apply under federal or state law. This Settlement
8 shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees,
9 executors, administrators, successors and assigns.

10 **CLASS COUNSEL SIGNATORIES**

11 69. It is agreed that because the members of the Class are so numerous, it is impossible or
12 impractical to have each member of the Class execute this Settlement. The Notice will advise all Class
13 Members of the binding nature of the Released Claims and Released PAGA Claims, and the release shall
14 have the same force and effect as if this Settlement were executed by each member of the Class.

15 **COUNTERPARTS**

16 70. This Settlement may be executed in counterparts and by electronic or facsimile signatures, and
17 when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed
18 an original, and, when taken together with other signed counterparts, shall constitute one Settlement,
19 which shall be binding upon and effective as to all Parties.

20 **FINAL JUDGMENT**

21 71. The Parties agree that, upon final approval of the Settlement, final judgment of this Action will
22 be made and entered in its entirety. The final judgment may be included in the Order granting Final
23 Approval of the Settlement.

24 ///

25 ///

26 ///

27 ///

28 ///

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint
Stipulation of Class Action Settlement between Plaintiff and Defendant as set forth below:

IT IS SO STIPULATED.

Plaintiff & Class Representative:

Dated: 5/12/2022

By: _____
Christina Valdez

DocuSigned by:

CHRISTINA VALDEZ

0F93D4B7614343D...

Plaintiff's Counsel:

Dated: May 12, 2022

MOON & YANG, APC

By: _____
Kane Moon
Allen Feghali
Edwin Kamarzarian
Attorneys for Plaintiff

Defendant:

Dated: May 9, 2022

AMIKA, LLC, successor in interest to Heat Make Sense, Inc.

By: Brenda R. Hsieh
Print Name

[Signature]
Signature

General Counsel
Title

Defendant's Counsel:

Dated: May 10, 2022

TUCKER ELLIS LLP

By: [Signature]
Ndubisi Ezeolu
Lisa I. Carteen
Maia Mdinaradze
Attorneys for
AMIKA, LLC, successor in interest to Heat
Make Sense, Inc.