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 A M Castaneda, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

SALVADOR GONZALEZ, individually, and
 on behalf of all others similarly situated,

Plaintiff,

vs.

A M CASTANEDA, INC., a California
 corporation dba CASTANEDA'S MEXICAN
 FOOD; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 37-2021-00017374-CU-OE-CTL

CLASS ACTION

[Hon. Timothy Taylor, Dept. C72]

**JOINT STIPULATION OF CLASS ACTION
 SETTLEMENT**

Complaint filed: April 20, 2021
 Trial date: Not set

JOINT STIPULATION OF CLASS ACTION SETTLEMENT

This Joint Stipulation of Class Action Settlement (“Joint Stipulation of Settlement” or “Settlement” or “Agreement”) is made and entered into by and between Plaintiff Salvador Gonzalez, individually, and on behalf of all others similarly situated, (“Plaintiff” or “Class Representative”), and Defendant A M CASTANEDA, INC. (“Defendant”). Plaintiff and Defendant are sometimes referred to individually as a “Party” or collectively referred to herein as “the Parties.” THE PARTIES STIPULATE AND AGREE as follows:

DEFINITIONS

1. For purposes of this Settlement, “Complaint” refers to the first amended complaint filed on June 29, 2021.

2. For purposes of this Settlement, this matter, entitled *Gonzalez v. A M Castaneda, Inc.*, Case No. 37-2021-00017374-CU-OE-CTL, is referred to herein as the “Action.”

3. For purposes of this Settlement, the “Class Period” is April 18, 2020 through the earlier of preliminary approval or July 8, 2022 (60 days following the mediation).

4. For purposes of this Settlement, the “Class” or “Class Members” consist of: All non-exempt employees of Defendant who worked for Defendant in California during the Class Period. “Settlement Class Members” are those Class Members who do not submit timely exclusion requests to the Settlement Administrator.

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

6. For purposes of this Settlement, “Covered Workweeks” means the number of weeks a Class Member worked at Defendant’s locations in California during the Class Period.

7. For purposes of this Settlement, “Response Deadline” means the date thirty (30) days after the Settlement Administrator initially mails the Notice to Settlement Class Members (“Notice”) and the last date on which Settlement Class Members may submit a request for exclusion or written objection to the Settlement. In the case of a re-mailed Notice, the Response Deadline will be the later of 30 calendar days after initial mailing or 14 calendar days from re-mailing. The Response Deadline may be extended only as expressly described herein.

8. For purposes of the Settlement, “Defendant’s Counsel” means FREEMAN MATHIS &

1 GARY, LLP.

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

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

5 11. For purposes of this Settlement, “PAGA Allocation” means the portion of the Gross
6 Settlement Amount that the Parties have agreed to allocate to resolution of the Released PAGA Claims.
7 The Parties have agreed that the PAGA Allocation will be \$30,000 from the Gross Settlement Amount.
8 Pursuant to PAGA, Seventy Five Percent (75%), or \$22,500, of the PAGA Allocation will be paid to the
9 Labor and Workforce Development Agency (“LWDA”) (“PAGA Penalty Payment”), and Twenty Five
10 Percent (25%), or \$7,500, of the PAGA Allocation will be included in the Net Settlement Amount for
11 PAGA Employees (“PAGA Settlement Payment”).

12 12. For purposes of this Settlement, “PAGA Period” means the period between April 18, 2020
13 through the earlier of preliminary approval or July 8, 2022 (60 days following the mediation).

14 13. For purposes of this Settlement, “PAGA Employee” means all non-exempt employees of
15 Defendant who worked for Defendant in California during the PAGA Period. It is stipulated by the Parties
16 that, for purposes of this Settlement, all PAGA Employees are “aggrieved employees” as defined pursuant
17 to PAGA.

18 14. For purposes of this Settlement, “PAGA Pay Periods” means the number of pay periods
19 each PAGA Employee worked during the PAGA Period.

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

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

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

27 **STIPULATED BACKGROUND**

28 18. On April 20, 2021, Plaintiff filed a putative Class Action alleging the following labelled

causes of action: (1) Failure to Pay Minimum Wage and Straight Time Wages [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; (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.*]. (The “Action.”) In the Complaint, Plaintiff sought to represent all persons that worked for Defendant in California as an hourly-paid, non-exempt employee at any time during the period beginning four years before the filing of the initial complaint and ending when Notice to the Class is sent.

19. Plaintiff satisfied the administrative exhaustion requirement that is a prerequisite to filing a claim for Civil Penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, *et seq.*] (“PAGA”). On June 29, 2021, Plaintiff filed a First Amended Complaint adding a cause of action for Civil Penalties Under PAGA [Cal. Lab. Code § 2699, *et seq.*].

20. Solely for purposes of settling this case, 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 or not Defendant paid proper wages to the Class;
 - 2) Whether or not Defendant provided meal periods to the Class;
 - 3) Whether or not Defendant provided rest periods to the Class;
 - 4) Whether or not Defendant paid compensation timely upon separation of employment to former Class Members;
 - 5) Whether or not Defendant reimbursed the Class for necessary business expenses;
 - 6) Whether or not Defendant paid compensation timely throughout Class

Members' employment;

- 7) Whether or not Defendant provided accurate itemized statements to the Class;
- 8) Whether or not waiting-time penalties are available to the Class for violation of California Labor Code § 203;
- 9) Whether or not Defendant maintained requisite records;
- 10) Whether or not Defendant paid proper meal period pay or rest period pay to the Class; and,
- 11) Whether or not Defendant engaged in unlawful or unfair business practices affecting the Class in violation of California Business and Professions Code §§ 17200-17208.

- (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.

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

22. Defendant denies any liability or wrongdoing of any kind whatsoever associated with the

claims alleged in the Complaint, and Defendant further denies that, for any purpose other than settling this lawsuit, the action is appropriate for class or representative treatment. With respect to Plaintiff's claims, Defendant contends, among other things, that Plaintiff and the Class Members have been paid proper wages, have been provided meal periods or they have been made available as required, have been provided rest periods or they have been authorized and permitted as required, have been paid timely wages upon separation of employment, and have been provided with accurate itemized wage statements. Defendant contends, among other things, that it has complied at all times with the California Labor Code and the applicable Wage Orders of the Industrial Welfare Commission. Furthermore, with respect to all claims, Defendant contends that it has complied at all times with the California Business and Professions Code, and the FLSA .

23. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all disputes and claims arising from or related to the Complaint.

24. Class Counsel has conducted a thorough investigation into the facts of this Action, including an extensive review of relevant documents, and has diligently pursued an investigation of the claims of the Class against Defendant. Based on its own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement with Defendant for the consideration and on the terms set forth in this Joint Stipulation of Settlement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known facts and circumstances, including the risk of significant delay, the risk the Class will not be certified by the Court, defenses asserted by Defendant, and numerous potential appellate issues. Defendant and Defendant's Counsel also agree that the Settlement is fair and in the best interest of the Class.

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

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

PRIMARY TERMS OF SETTLEMENT

27. NOW THEREFORE, in consideration of the mutual covenants, promises and agreements

1 set forth herein, the Parties agree, subject to the Court's approval, as follows:

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

7 (b) Effective Date: The terms of settlement embodied in this Settlement shall become
8 effective when all of the following events have occurred: (i) this Joint Stipulation
9 of Settlement has been executed by all Parties and their respective counsel; (ii) the
10 Court has given preliminary approval to the Settlement; (iii) the Notice has been
11 given to the Class, providing them with an opportunity to dispute information
12 contained in the Notice, to opt out of the Settlement, or to object to the Settlement;
13 (iv) the Court has held a final approval hearing and entered a final order and
14 judgment certifying the Class and approving this Settlement; and (v) the later of the
15 following events: (a) sixty-five (65) days following notice of entry of the Court's
16 final order approving the Settlement if there are any objections by any Class
17 Member; (b) or if any appeal, writ or other appellate proceeding opposing this
18 Settlement has been filed within sixty-five (65) days following notice of entry of
19 the Court's final order approving the Settlement, then twenty (20) days after when
20 any appeal, writ or other appellate proceeding opposing the Settlement has been
21 resolved finally and conclusively with no right to pursue further remedies or relief.

22 (c) Gross Settlement Amount: Defendant's maximum total payment under the
23 Settlement, including all attorney's fees and costs, the Service Payment to the
24 named Plaintiff, the costs of settlement administration, the PAGA Allocation, and
25 any other payments provided by this Settlement, is \$350,000.00 ("Gross Settlement
26 Amount"), subject to the Escalator Clause and except that, to the extent that any
27 portions of the Class Members' Settlement Payments constitute wages, Defendant
28 will be separately responsible for any employer payroll taxes required by law,

including the employer FICA, FUTA, and SDI contributions.

- (d) Escalator Clause: The Parties estimate that as of May 9, 2022, the number of workweeks worked by Settlement Class Members during the Class Period is approximately 15,000. If it is determined that the workweeks during the Class Period exceeds 16,500 (15,000 plus 10% of 15,000), the Gross Settlement Amount, will be increased by the same number of percentage points above 10% by which the actual number of workweeks exceeds 16,500. For example, if the actual number of workweeks is determined to be 12% higher than 15,000, Defendant's share of the Maximum Settlement Amount will be increased by 2% not 12% (the "Escalator Clause"). The Gross Settlement Amount will not be reduced for any reason.
- (e) Non-reversionary Settlement: No portion of the Gross Settlement Amount will revert to Defendant.
- (f) No Claims Required: Class Members will not be required to submit a claim to receive their Settlement payment.
- (g) Net Settlement Amount: The Net Settlement Amount shall be calculated by deducting from the Gross Settlement Amount (\$350,000.00) the following sums, subject to approval by the Court: (1) attorney's fees (not to exceed 35% of the Gross Settlement Amount); (2) reasonable litigation costs (not to exceed \$17,000.00); (3) the Service Payment (not to exceed \$7,500.00 to the named Plaintiff); (4) the PAGA Penalty Payment in the amount of \$22,500.00 (which is 75% of the PAGA Allocation); and (5) costs of settlement administration (estimated not to exceed \$15,000). 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) Payroll Taxes and Required Withholdings: To the extent that any portions of the Settlement Class Members' Settlement Payments constitute wages, Defendant will be separately responsible for any **employer** payroll taxes required by law,

1 including the employer FICA, FUTA, and SDI contributions. Except for any
2 employer payroll taxes, it is understood and agreed that Defendant's maximum
3 total liability under this Settlement shall not exceed the Gross Settlement Amount.
4 The Settlement Administrator will calculate and submit the Defendant's employer
5 share of payroll taxes after advising Defendant of the total amount owed, in
6 aggregate, as employer-side payroll taxes and receiving a lump sum payment from
7 Defendant in that amount when the Gross Settlement Amount is delivered to the
8 Settlement Administrator.

9 (i) Settlement Class Payments (Excludes PAGA Payments): Settlement Class
10 Payments will be paid out of the Net Settlement Amount. Each Settlement Class
11 Member will be paid a pro-rata share of the Net Settlement Amount (less the
12 PAGA Settlement Payments to the LWDA), as calculated by the Settlement
13 Administrator. The pro-rata share will be determined by comparing the individual
14 Settlement Class Member's Covered Workweeks employed during the Class
15 Period in California to the total Covered Workweeks of all the Settlement Class
16 Members during the Class Period as follows: [Workweeks worked by a Settlement
17 Class Member] ÷ [Sum of all Covered Workweeks worked by all Settlement Class
18 Members] × [Net Settlement Amount – all PAGA Settlement Payments to the
19 LWDA] = individual Settlement Payment for a Settlement Class Member.
20 Settlement Class Payments in the appropriate amounts will be distributed by the
21 Settlement Administrator by mail to the Settlement Class Members. Un-cashed,
22 unclaimed or abandoned checks, shall be transmitted to the California Controller's
23 Office, as set forth below.

24 (j) PAGA Payments: PAGA Settlement Payments will be paid out of the Net
25 Settlement Amount. Each PAGA Employee will be paid a pro-rata share of the
26 PAGA Employees' PAGA Settlement Payment, as calculated by the Settlement
27 Administrator minus PAGA Settlement Payments to the LWDA . Class Members
28 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 Employees' PAGA Pay Periods during the PAGA Period to the total PAGA Pay Periods of all the PAGA Employees during the PAGA Period as follows: [PAGA Pay Periods worked by a PAGA Employee] ÷ [Sum of all PAGA Pay Periods worked by all PAGA Employees] × [PAGA Settlement Payment] = individual PAGA Employee's portion of the PAGA Settlement Payment. PAGA Settlement Payments to PAGA Employees in the appropriate amounts will be distributed by the Settlement Administrator by mail to the PAGA Employees 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.

(k) Allocation of Settlement Payments: The Parties have agreed that Settlement Class Payments will be allocated as follows: 33 1/3% to wages, 33 1/3% to penalties, and 33 1/3% to interest. The PAGA Settlement Payment shares to PAGA Employees will be entirely allocated to penalties. Appropriate federal, state and local withholding taxes will be taken out of the wage allocations, and each Class Member will receive an IRS Form W-2 with respect to this portion of the Settlement Payment. The employer's share of payroll taxes and other required withholdings will be paid as set forth above, including but not limited to the Defendant's FICA and FUTA contributions, based on the payment of claims to the Class Members. IRS Forms 1099 will be issued to each Class Member reflecting the payments for penalties and interest. Class Members are responsible to pay appropriate taxes due on the Settlement Payments they receive. To the extent required by law, IRS Forms 1099 and W-2 will be issued to each Class Member with respect to such payments.

(l) 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

1 Member solely in the year in which such payments actually are received by the
2 Class Member. It is expressly understood and agreed that the receipt of such
3 Settlement Payments will not entitle any Class Member to additional compensation
4 or benefits under any company bonus, contest or other compensation or benefit
5 plan or agreement in place during the period covered by the Settlement up to and
6 including the date the Settlement becomes effective, nor will it entitle any Class
7 Member to any increased retirement, 401(k) benefits or matching benefits or
8 deferred compensation benefits. It is the intent that the Settlement Payments
9 provided for in this Settlement are the sole payments to be made by Defendant to
10 the Class Members, and that the Class Members are not entitled to any new or
11 additional compensation or benefits as a result of having received the Settlement
12 Payments (notwithstanding any contrary language or agreement in any benefit or
13 compensation plan document that might have been in effect during the period
14 covered by this Settlement).

15 (m) Attorney's Fees and Costs: Subject to approval by the Court, Defendant will not
16 object to Class Counsel's application for attorney's fees not to exceed 35% of the
17 Gross Settlement Amount and reimbursement of litigation costs and expenses not
18 to exceed \$17,000.00.

19 (n) Service Payment: Subject to Court approval, and in exchange for a general release,
20 Defendant will not object to Class Counsel's application for an additional payment
21 of up to \$7,500.00 to Plaintiff for service as a Class Representative ("Service
22 Payment"). It is understood that the Service Payment is in addition to the individual
23 Settlement Payment to which a Class Representative is entitled to along with the
24 other Class Members. In exchange, Plaintiff has agreed to release all claims,
25 whether known or unknown, under federal law or state law against the
26 Releasees, to the extent permitted by law, through the Class Period ("Plaintiff's
27 Released Claims"). Plaintiff understands that this release includes unknown
28 claims and that he is, as a result, 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.

Specifically excluded from Plaintiff's Released Claims are any claims for workers' compensation benefits. The Service Payment will issue at the same time all Settlement Payments are mailed to the Settlement Class.

- (o) Defendant or the Settlement Administrator will issue an IRS Form 1099 for the Service Payment to the Plaintiff. The Plaintiff will be individually responsible for correctly characterizing this compensation on personal income tax returns for tax purposes and for paying any taxes on the amounts received. Should the Court approve a Service Payment in an amount less than that set forth above, the difference between the lesser amount(s) approved by the Court and the Service Payment amount(s) set forth above shall be added to the Net Settlement Amount. Plaintiff agrees not to opt out or object to the Service Payment as the Class Representative.
- (p) 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 \$15,000. The costs of the Settlement Administrator for work done shall be paid regardless of the outcome of this Settlement.
- (q) Funding of Settlement Account: Defendant will fund the settlement account no later than 120 days after the Effective Date.
- (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 proposed 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 Workweeks 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. The pre-printed information based on Defendant’s records shall be presumed to be correct. A Class Member may dispute the pre-printed information on the Notice as to his or her Covered Workweeks during the Class Period. Class Members must submit any dispute regarding the information on the Notice as to his or her Covered Workweeks within the Response Deadline. Unless a disputing Class Member submits documentary evidence in support of his or her dispute, the records of the Defendant will be determinative.

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

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

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

(v) Resolution of Workweek Disputes: If a Class Member disputes the accuracy of Defendant’s records used to calculate Covered Workweeks, and the Parties’ counsel cannot resolve the dispute informally, the matter will be referred to the Settlement Administrator. The Settlement Administrator will review Defendant’s records and any information or documents submitted by the Class Member and issue a non-appealable decision regarding the dispute. The Class Member must submit information or documents supporting his or her position to the Settlement

1 Administrator prior to the expiration of the Response Deadline. Information or
2 documents submitted after the expiration of the Response Deadline will not be
3 considered by the Settlement Administrator, unless otherwise agreed to by the
4 Parties.

5 (w) Right of Class Member to Request Exclusion from the Settlement: Any Class
6 Member may request to be excluded from the Class by mailing a “Request for
7 Exclusion” from the Settlement within the Response Deadline. Any Request for
8 Exclusion must include the name, address, telephone number, last four digits of the
9 Class Member’s Social Security Number, and the signature of the Class Member
10 requesting exclusion. Any such request must be made in accordance with the
11 terms of the Notice, and the Notice will advise Class Members of these
12 requirements. Any Class Member who timely requests exclusion in compliance
13 with these requirements (i) shall not have any rights under this Settlement other
14 than a right to receive a pro-rata share of the portion of the PAGA payment
15 allocated to the Class Members if the Class Member is also PAGA Employee; (ii)
16 shall not be entitled to receive any Settlement Payments under this Settlement other
17 than as stated in Paragraph 26(j); and (iii) shall not be bound by this Settlement or
18 the Court’s Order and Final Judgment other than as it applies to the PAGA Claim.

19 (x) Right of Settlement Class Member to Object to The Settlement: Any Class
20 Member may object to the Settlement. To object, the Class Member may (1)
21 appear at the Final Approval Hearing, remotely or in person, to explain any
22 objection, (2) have an attorney object for the Class Member, or (3) submit a simple
23 written brief or statement of objection to the Settlement Administrator. If any
24 Class Member chooses to submit a written objection, the written objection should
25 contain sufficient information to confirm the identity of the objector and the basis
26 of the objection, including (1) the full name of the Settlement Class Member; (2)
27 the signature of the Settlement Class Member; (3) the grounds for the objection;
28 and (4) be postmarked within the Response Deadline to permit adequate time for

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

THE SETTLEMENT ADMINISTRATOR'S PRIMARY DUTIES

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

29. The Settlement Administrator will independently review the Covered Workweeks attributed to each Class Member and will calculate the estimated amounts due to each Class Member and the actual amounts due to each Settlement Class Member in accordance with this Settlement. The Settlement Administrator shall report, in summary or narrative form, the substance of its findings. The

1 Settlement Administrator shall be granted reasonable access to Defendant's records in order to perform its
2 duties.

3 30. In accordance with the terms of this Settlement, and upon receipt of Gross Settlement
4 Amount from Defendant, the Settlement Administrator will issue and send out the Settlement Payment
5 checks to 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 31. 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 **ATTORNEY'S FEES AND COSTS**

14 32. In consideration for resolving this matter and in exchange for the release of all claims by
15 the 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 35% of the Gross Settlement Amount and
17 litigation costs not to exceed \$17,000.00. The amounts set forth above will cover all work performed and
18 all fees and costs incurred to date, and all work to be performed and all fees and costs to be incurred in
19 connection with the approval by the Court of this Settlement and administration of the Settlement. Should
20 Class Counsel request a lesser amount and/or the Court approve a lesser amount(s) of attorney's fees
21 and/or attorneys' costs, the difference between the lesser amount(s) and the maximum amount set forth
22 above shall be added to the Net Settlement Amount. The Parties agree that there is no prevailing party,
23 and the Class and Class Counsel shall not be entitled to any fees or costs other than those awarded out of
24 and deducted from the Gross Settlement Amount. As with the Settlement Payments to the Settlement
25 Class, the attorney's fees and costs approved by the Court shall be distributed by the Settlement
26 Administrator to Class Counsel, within 14 calendar days of the receipt of settlement funds by the
27 Settlement Administrator. In the event that the Court awards less than 25% of the Gross Settlement
28 Amount for attorney's fees, Class Counsel shall retain the right to appeal that portion of any Final

1 Approval Order and Judgment.

2 **THE NOTICE PROCESS**

3 33. 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) dates of employment at
12 Defendant's locations in California. This database shall be based on Defendant's
13 payroll and other business records and shall be provided in a reasonable format to
14 the 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

34. 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 Workweek 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.

35. The Settlement Administrator shall cause the Settlement Payments to be mailed to the Settlement Class Members and PAGA Employees 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.

36. Funds from un-cashed or abandoned Settlement Payment checks, based on a 180-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.

37. 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 employee number or other 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 EMPLOYEES

38. 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 Employee, regardless of whether they have requested exclusion from the Settlement of Class claims, will release claims as follows:

(a) **Identity of Released Parties.** The released parties are Defendant, and each of its/their former and present direct and/or indirect owners, dba's, affiliates, parents, subsidiaries, brother and sister corporations, divisions, related companies, successors and predecessors, and current and former employees, attorneys, officers, directors, shareholders, owners, trustees, attorneys, fiduciaries, beneficiaries, subrogees, executors, partners, privies, agents, servants, insurers, representatives, administrators, employee benefit plans, and assigns of said entities (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 Action, 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, 510, 512, 512.5, 558, 1194, 1194.2, 1198, 2802 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 Employees.** All Class Members, including all PAGA Employees, release the Released PAGA Claims, regardless of whether they have requested exclusion from the Settlement as to Class claims.

EMPLOYMENT BY DEFENDANT

39. Employment of Plaintiff by Defendant is not consideration for, or a condition of, this Settlement.

DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

40. 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' service 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

41. 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 Service 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 Final Settlement 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

42. 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

1 preliminarily or finally approve of this Settlement in the form agreed to by the Parties, other than
2 adjustments made to the attorney's fees and costs or granting of Service Payments; (c) the Court should for
3 any reason fail to enter the final judgment; (d) the final judgment is reversed, modified, or declared or
4 rendered void; or (e) the Settlement does not become final for any other reason.

5 43. If 10% or more of the Class Members opt out of this Settlement, then Defendant in its sole
6 discretion may terminate, nullify and void this Settlement. The Settlement Administrator shall provide
7 Defendant's Counsel with the information necessary to effectuate this provision on a regular basis, but no
8 less frequently than on a monthly basis. To terminate this Settlement under this paragraph, Defendant's
9 Counsel must give Plaintiff's Counsel written notice, by facsimile, e-mail, or mail, no later than 30
10 calendar days after the Response Deadline. If this option is exercised by Defendant, Defendant shall be
11 solely responsible for the costs incurred by the Settlement Administrator for the settlement administration.

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

17 **PARTIES' AUTHORITY**

18 45. The signatories hereto hereby represent that they are fully authorized to enter into this
19 Settlement and bind the Parties hereto to the terms and conditions thereof.

20 **MUTUAL FULL COOPERATION**

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

NO PRIOR ASSIGNMENTS

47. The Parties and their respective counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein, and that they are not on notice of any liens as to the Gross Settlement Amount or any right to attorneys' fees or costs.

NO ADMISSION OF LIABILITY

48. Nothing contained herein, nor the consummation of this Settlement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant. Defendant denies all the claims and contentions alleged by the Plaintiff in this case. The Defendant has entered into this Settlement solely with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

ENFORCEMENT ACTIONS

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

NOTICES

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

Class Counsel:

Kane Moon
Allen Feghali
Edwin Kamarzarian
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128

Counsel for Defendant:

FREEMAN MATHIS & GARY, LLP
DAVID G. MOLINARI / Bar No. 131843
dmolinari@fmglaw.com
MANDY D. HEXOM / Bar No. 216390
mhexom@fmglaw.com
225 Broadway, Suite 1460
San Diego, CA 92101

Facsimile: (213) 232-3125
kane.moon@moonyanglaw.com
allen.feghali@moonyanglaw.com
edwin.kamarzarian@moonyanglaw.com

Tel: (619) 687-3000

CONSTRUCTION

51. The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, intensive arms-length negotiations between the Parties, including but not limited to an all day mediation with Steve Serratore, and this Settlement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his, her or its counsel participated in the drafting of this Settlement.

CAPTIONS AND INTERPRETATIONS

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

MODIFICATION

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

INTEGRATION CLAUSE

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

WAIVER OF APPEALS

55. The Parties agree to waive appeals and to stipulate to class certification for purposes of implementing this Settlement only, with the exception that Class Counsel retains the right to appeal the amount awarded as attorney's fees in the event that the Court awards less than twenty-five percent of the Gross Settlement Amount as attorney's fees.

BINDING ON ASSIGNS

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

CLASS COUNSEL SIGNATORIES

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

COUNTERPARTS

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

CONFIDENTIALITY & PUBLIC COMMENT

59. The Class Representative and Class Counsel agree they will not make any disparaging comments about Defendant relating to this Settlement of this class action or disclose the negotiations of the Settlement. The Class Representative and Class Counsel shall only disclose matters of public record other than to Class Members, who may receive information about the Settlement that is not in the public record after the Court has preliminarily approved the Settlement. Other than as to Class Members or as expressly allowed below, the Parties and attorneys will keep the settlement confidential until the filing of the motion for preliminary approval of the class settlement. Thereafter, the Parties agree to make no comments to the media or otherwise publicize the terms of the Settlement but may continue to make court filings necessary to effectuate the Settlement. To the extent counsel for either Party wish to advertise this settlement, such advertising will be limited to a statement that a matter was settled between a putative class and a "health care provider." Any communication about the Settlement to Class Members prior to the Court-approved mailing will be limited to (1) a statement that a settlement has been reached, (2) a statement of any of the details that would necessarily be included in any Court-approved Notice if a Class Member requests details about the proposed Settlement, and (3) a warning that the terms of the proposed

Settlement have not yet been approved by the Court. Prior to preliminary approval, the Class Representative is prohibited from discussing the terms or the fact of the settlement with third parties other than (1) a spouse, (2) accountants or lawyers as necessary for tax purposes, or (3) Class Members. At all times, the Class Representative is prohibited from communicating about the terms or the fact of the settlement on any form of social media ("Social Media Bar"). In the event of a proven breach of the Social Media Bar, the violating Plaintiff shall forfeit one-half of the class representative enhancement payment, as a form of liquidated damages. Class Counsel will take all steps necessary to ensure the Class Representative is aware of, and will adhere to, the restrictions against any public disclosure of the Settlement. Class Counsel will not include or use the settlement for any marketing or promotional purposes other than as expressly allowed above.

FINAL JUDGMENT

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

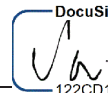
IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class Action Settlement between Plaintiff and Defendant as set forth below:

IT IS SO STIPULATED.

Plaintiff & Class Representative:

Dated: 7/22/2022

By: _____

DocuSigned by:

122CD1A247574D0...

Salvador Gonzalez

Plaintiff's Counsel:

Dated: July 14, 2022

MOON & YANG, APC

By: _____


Kane Moon
Allen Feghali
Edwin Kamarzarian

Attorneys for Plaintiff

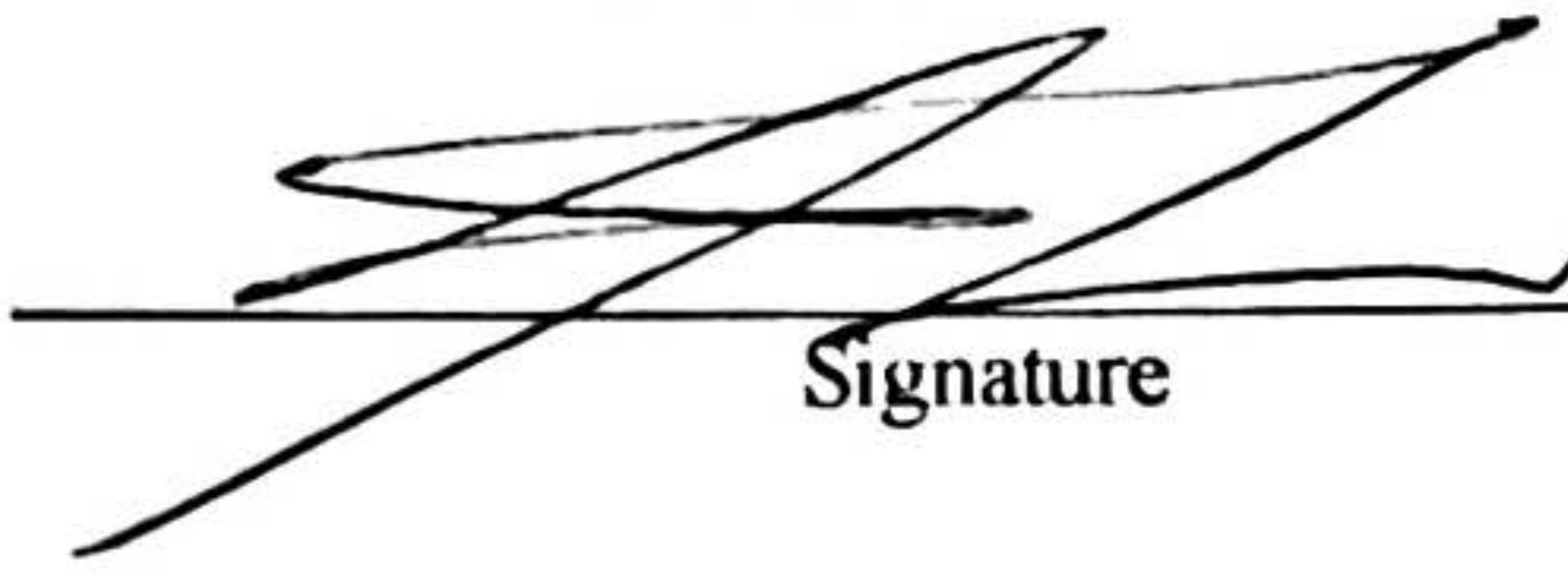
1 **Defendant:**

2 Dated: July 12, 2022

A M CASTANEDA, INC.

3
4 By: _____

Arturo Castaneda Jr.

5
6  _____
7 Signature

8
9 Title: Human Resources.

10
11 **Defendant's Counsel:**

12 Dated: July 12, 2022

FREEMAN MATHIS & GARY, LLP

13
14 
15 By: _____

Mandy D. Hexom

16 Attorneys for Defendant
17 A M CASTANEDA, INC.