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Attorneys for Plaintiff LAVONTRA BREAUX, in a Representative capacity only, and on behalf of other members of the public similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

LAVONTRA BREAUX, in a Representative capacity only, and on behalf of other members of the public similarly situated

Plaintiff,

v.

THE LOVESAC COMPANY, a Delaware Corporation, and DOES 1-10, inclusive

Defendants

CASE NO. 30-2021-01212714-CU-OE-CXC

**DECLARATION OF RYAN T. KUHN IN
SUPPORT OF PLAINTIFF'S UNOPPOSED
MOTION RE: PAGA SETTLEMENT
APPROVAL**

Date: September 29, 2022

Time: 2:00 p.m.

Dept.: CX102

Judge: Hon. Peter J. Wilson

1 I, Ryan T. Kuhn, declare as follows:

- 2 1. I am an attorney licensed to practice law before all the courts of the State of California, and am
3 employed with the law firm of SULLIVAN & YAECKEL LAW GROUP, APC, attorneys of
4 record for Plaintiff LAVONTRA BREAUX, in a Representative capacity only, and on behalf
5 of other members of the public similarly situated in this matter.
- 6 2. I make this declaration in support of Plaintiff's Unopposed Motion Re: PAGA Settlement
7 Approval. I am personally familiar with the facts set forth in this declaration and, if called to
8 testify, could and would do so.
- 9 3. As this is a PAGA action only, the PAGA Period begins on May 18, 2020. There are
10 approximately **3,405** pay periods and **186** PAGA Members at issue.
- 11 4. Following the exchange of informal discovery and analysis of numerous sets of time and wage
12 data, Plaintiff and Defendant (together the "Parties") attended full-day mediation with Mike
13 Young, an experienced "wage and hour" mediator At the end of the full-day mediation, the
14 Parties reached a proposed settlement that includes a payment of penalties to the LWDA.
- 15 5. On **June 13, 2022**, Plaintiff's counsel gave notice of the proposed PAGA Settlement to the
16 LWDA. To date, Plaintiff's counsel has not received notice that the LWDA would intervene.
17 Attached hereto as **Exhibit 1** is a true and correct copy of the Settlement Agreement. Attached
18 hereto as **Exhibit 2** is a true and correct copy of the "auto-generated" E-Mail received from the
19 LWDA.
- 20 6. On **June 15, 2022**, Plaintiff's counsel gave notice of the proposed PAGA Settlement to the
21 LWDA. . To date, Plaintiff's counsel has not received notice that the LWDA would intervene.
22 Attached hereto as **Exhibit 3** is a true and correct copy of the "auto-generated" E-Mail received
23 from the LWDA.
- 24 7. On **July 12, 2022**, Plaintiff's counsel uploaded via the LWDA's electronic filing portal the
25 PAGA Settlement Agreement and provided notice of the hearing date. To date, Plaintiff's
26 counsel has not received notice that the LWDA would intervene. Attached hereto as **Exhibit**
27 **4** is a true and correct copy of the "auto-generated" E-Mail received from the LWDA.
- 28 8. On **July 12, 2022**, Plaintiff's counsel uploaded via the LWDA's electronic filing portal copies

of this entire Motion, including the Notice, this supporting Memorandum, Declaration, and Proposed Order & Judgment, and the **signed** Settlement Agreement. Attached hereto as **Exhibit 5** is a true and correct copy of the “auto-generated” E-Mail received from the LWDA.

9. Upon the Effective Date (defined below), Defendant agrees to pay the non-reversionary settlement amount of **\$150,000.00** in connection with the PAGA Settlement (“Gross Settlement Amount”). Apart from the employer’s share of payroll taxes, Defendant shall not be required to pay more than the Gross Settlement Amount in connection with the PAGA Settlement. The Gross Settlement Amount is broken down as follows:

*	\$2,950.00	Settlement Administrator Fees;
*	\$50,000.00	Attorneys’ Fees (1/3 of Gross Settlement Amount);
*	\$10,000.00	Costs of Litigation.
*	\$5,000.00	Plaintiff’s Enhancement Award

10. After deducting the proposed amounts for Plaintiff’s counsel’s Attorneys’ Fees and Costs, the Settlement Administration Costs, and Plaintiff’s Enhancement Award from the Gross Settlement Amount, the amount remaining is defined as the “Net Settlement Amount.” One hundred percent (100%) of the Net Settlement Amount shall be allocated to the payment of civil penalties under the PAGA (the “PAGA Allocation”). Pursuant to the PAGA, seventy-five percent (75%) of the PAGA Allocation, or Sixty-One Thousand five hundred thirty seven dollars and Fifty Cents \$61,537.50 shall be allocated to the State of California Labor and Workforce Development Agency (the “LWDA Settlement Proceeds”), with the remaining twenty-five percent (25%) or Twenty Thousand Five Hundred Twelve Dollars and Fifty Cents (\$20,512.50), allocated to the PAGA Employees (“PAGA Employees Civil Penalties Fund”).
11. There are no restrictions for any of the **186** PAGA Employees to file individual actions, as the settlement agreement only covers PAGA claims.
12. Based on the below figures, each PAGA Employee would receive an average payment of approximately **\$110.28**. This figure represents an average only, as the actual amounts paid will vary depending on the number of pay periods worked by each PAGA Employee during the PAGA Period.

- 1 13. The group of allegedly aggrieved employees is defined as all individuals employed by
2 Defendant The Lovesac Company in California and classified as “non-exempt” from May 18,
3 2020 through the date of the Court’s Order granting approval of the Settlement.
- 4 14. Pursuant to the Settlement Agreement, any unclaimed funds will be tendered to the State of
5 California Unclaimed Property fund.
- 6 15. The Court will retain jurisdiction of this matter to enforce the settlement pursuant to C.C.P.
7 section 664.6.
- 8 16. Attached hereto as **Exhibit 6** is a true and correct copy of the proposed Notice to be sent to the
9 allegedly aggrieved employees. Due to the nature of Defendant’s workforce, the Parties agree
10 that it is sufficient to provide the Notice in English only.
- 11 17. The Settlement Administrator shall be responsible for: (a) processing the data provided by
12 Defendant to be used in calculating PAGA Employees’ Individual Penalties Shares; (b)
13 preparing, printing and mailing the Notice to PAGA Employees, as well as following up with
14 reasonable skip tracing; (c) calculating and mailing Individual Penalties Shares to PAGA
15 Employees; (d) calculating and paying the employer’s share of the applicable federal and state
16 withholding tax; (e) filing any required federal and state tax forms and related agency
17 reporting; (f) filing any required reports with the Court; and (g) any and all such tasks to which
18 the Parties mutually agree, or which the Court orders the Settlement Administrator to perform.
- 19 18. Each PAGA Employee’s *pro rata* share shall be determined based on the number of Eligible
20 Pay Periods that he or she worked for Defendant during the PAGA Period, and shall be
21 calculated as follows: (1) for PAGA Employees, the PAGA Employees Civil Penalties Fund
22 will be divided by the total number of eligible pay periods worked by all PAGA Employees
23 during the PAGA Period, and the resulting figure will be referred to as the “Multiplier,” and
24 (2) each PAGA Employee’s *pro rata* share of the PAGA Employees Civil Penalties fund will
25 be determined by multiplying the Eligible Pay Periods that the PAGA Employee worked
26 during the PAGA Period by the multiplier. That amount shall be referred to as the PAGA
27 Employee’s “Individual Penalties Share.”
- 28 19. Each PAGA Employee’s Individual Penalties share will be treated as non-wage income and

1 reported by the Settlement Administrator on IRS Form 1099 to the respective PAGA Employee
2 and applicable governmental authority.

3 20. Plaintiff's separate individual payment was separately negotiated with the assistance of the
4 mediator. Had mediation failed Plaintiff intended to proceed with a separate individual
5 arbitration of claims that are beyond the scope of the instant PAGA settlement.

6 21. Plaintiff alleges that she complained several times to her supervisor that she was being told not
7 to report all hours worked, and was told to discipline employees who were unable to take meal
8 and rest breaks. In addition, she alleges that after she complained, this supervisor would then
9 use false pretenses to retaliate against Plaintiff with false write-ups. Plaintiff alleges she was
10 also repeatedly yelled and screamed at by this supervisor. Plaintiff further alleges that this
11 relationship was so harmful that Plaintiff had to go out on medical leave for over 3 months
12 (due to the emotional distress), and eventually was forced to resign due to the hostile work
13 environment.

14 22. Based on these separate allegations, Defendant sought a broader release from Plaintiff than
15 from all other PAGA members. Rather than face a separate arbitration, Defendant was willing
16 to pay Plaintiff additional compensation in exchange for a complete section 1542 release of
17 claims.

18 23. This separate release has no impact on the PAGA settlement presented to this Court. As set
19 forth above, no PAGA member is bound by such a release and all other employees retain the
20 ability to make claims in their individual capacity.

21 24. The instant request is based on the fact that **(1)** the PAGA period "cutoff date" is contingent
22 on Court approval, any delay diminishes the amounts received by the impacted employees; **(2)**
23 Notice to certain ex-employees may be adversely impacted by further delay (*i.e.* ex-employees
24 may change their mailing address without filing a proper "forwarding address")

25 25. An expedient approval of this settlement will provide a direct benefit to the impacted
26 employees at issue. The "fixes" provide a guarantee of future Labor Code compliance, and an
27 immediate monetary benefit. It also allows Defendants (who admirably "stepped up" to address
28 these issues) the opportunity to move on, and focus on future business.

- 1 26. Plaintiff alleges that she - and other employees - received “late” Meal Periods, including those
2 documented within Defendant’s Time Records. Plaintiff also challenged whether Defendant
3 maintained lawful meal and rest periods. Plaintiff alleged she- and other employees -were not
4 properly compensated due to Defendant’s failure to maintain accurate time records. Finally,
5 Plaintiff also challenged whether Defendant maintained lawful meal and rest period policies.
- 6 27. The catalyst of this litigation concerned allegations that Plaintiff was denied legally compliant
7 meal and rest periods, and was not paid for all overtime hours worked.
- 8 28. Investigations completed by Plaintiff’s counsel revealed that Defendant’s timekeeping policies
9 and employee records were not in compliance with California law. However, these
10 investigations also revealed that the “rate of violation” by Defendant was significantly less than
11 100%. On many of those occasions, it appears that Defendant did, in fact, comply with the
12 law.
- 13 29. Based on the above, the maximum liability in a case of this type would be in the range of
14 **\$200,000.00 to \$300,000.00.**
- 15 30. Moreover, Plaintiff’s counsel is aware of the Court’s discretion to mitigate penalties pursuant
16 to California Labor Code section 2699(e)(2). To confirm, Plaintiff’s counsel experienced the
17 mitigation of “PAGA” penalties in *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504.
18 In *Carrington*, Judge Bacal significantly mitigated PAGA penalties (\$5 per violation), due to
19 the efforts made by the employer to comply with the law.
- 20 31. Plaintiff’s counsel agrees with Judge Bacal, and with the provision of the Labor Code, that
21 penalties *should* be mitigated where violations are minimal (or rare), or where the employer
22 makes significant efforts to comply with the Labor Code.
- 23 32. As the above factors exist in this case, it is the opinion of Plaintiff’s counsel that the settlement
24 is fair, adequate, and reasonable. Specifically, Plaintiff’s counsel’s understanding is that
25 Defendant has agreed to make changes to its policies, and amend them to the extent they do
26 not comply with California law.
- 27 33. Plaintiffs’ counsel, William B. Sullivan has approximately 28 years of experience in “class
28 action” litigation, both as plaintiff and defense counsel. Plaintiff’s counsel, Eric K. Yaeckel,

1 has over 10 years of experience prosecuting class and representative action claims under the
2 California Labor Code. Plaintiff's counsel, Eric K. Yaeckel and William B. Sullivan, are the
3 attorneys of record in a matter that was recently heard (and favorably decided) before the
4 California Supreme Court titled *Donohue v. AMN Servs., LLC* (2021) 11 Cal.5th 58. The
5 *Donohue* matter was a certified class and PAGA action.

6 34. Plaintiff's counsel were lead counsel on approximately 40 employment "wage and hour"
7 claims with class action, or representative action allegations. Based on said experience, it is
8 the opinion of Plaintiff's counsel that this settlement represents a fair and adequate payment.

9 35. Defendant, and its counsel, deserve credit for their willingness to consider - and address - the
10 allegations. Specifically, Defense Counsel (who have extensive experience and knowledge in
11 "Wage and Hour" litigation) agreed to produce a substantial amount of documents and
12 information necessary to evaluate the parameters of settlement. Following the a full day
13 Mediation and arms-length negotiations, the parties have reached a proposed settlement that
14 includes a payment of penalties under PAGA.

15 36. The parties contend the settlement agreement amount is fair, adequate, and reasonable. The
16 release only applies to the PAGA claims for penalties, based upon the allegations in Plaintiff's
17 operative Complaint.

18 37. To date, Plaintiff has not received a response from the LWDA regarding the proposed
19 settlement. If the LWDA contacts Plaintiff's counsel at any time prior to the September 29,
20 2022 hearing, Plaintiff's counsel will provide an updated declaration to the Court.

21 38. At present, the Parties are unaware of any other cases that may be impacted by the instant
22 settlement.

23
24 I declare under penalty of perjury under the laws of the State of California that the foregoing
25 is true and correct. Executed this 12th day of July, 2022 at San Diego, California.

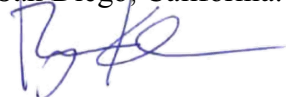
26
27 
28 Ryan T. Kuhn

EXHIBIT 1

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THE LOVESAC COMPANY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

LAVONTRA BREAUX, in a Representative capacity only, and on behalf of other members of the public similarly situated,

Plaintiff,

vs.

THE LOVESAC COMPANY, a Delaware corporation and DOES 1-10, inclusive,

Defendants.

Case No. 30-2021-01212714-CU-OE-CXC

JOINT STIPULATION RE: PAGA SETTLEMENT

[Assigned for all purposes to
The Honorable Peter Wilson, Dept. CX-102]

Action Filed: July 23, 2021
Trial Date: None

**TO THE COURT AND TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL
OF RECORD:**

This Joint Stipulation re: PAGA Settlement (hereinafter, “Stipulation” or “Settlement”) is made and entered into by and between Plaintiff LaVontra Breaux (“Plaintiff”), on behalf of herself and on behalf of others similarly situated; and Defendant The Lovesac Company (“Defendant”), hereinafter collectively referred to as the “Parties.” Subject to the approval of the Court, the matter of *LaVontra Breaux v. The Lovesac Company*, Case No. 30-2021-01212714-CU-OE-CXC (the “Action”), is hereby being compromised and settled pursuant to the terms and conditions set forth in this Stipulation. This Settlement shall be binding on Plaintiff, the aggrieved employees described herein, Defendant, and their respective counsel, subject to the terms and conditions hereof and the approval of the Court.

THE PARTIES STIPULATE AND AGREE as follows:

I. DEFINITIONS

1. The following terms, as used throughout this Stipulation, are defined as follows:

a) Action. The term “Action” shall mean and refer to the legal action pending in the Superior Court of California for the County of Orange, Case No. 30-2021-01212714-CU-OE-CXC, entitled *LaVontra Breaux v. The Lovesac Company*.

b) Agreement. The terms “Agreement,” “Stipulation,” “PAGA Settlement,” “Settlement,” or “Settlement Agreement” shall mean this Joint Stipulation re: PAGA Settlement, including Exhibit A and Exhibit B attached hereto.

c) Complaint. The term “Complaint” means the operative complaint in the Action filed by Plaintiff on July 23, 2021 in Orange County Superior Court.

d) Settlement Administrator. The term “Settlement Administrator” shall refer to Phoenix Settlement Administrators, or any other third-party settlement administrator agreed to by the Parties and approved by the Court for the purposes of administering this Settlement.

e) Plaintiff/PAGA Representative. The terms “Plaintiff” or “PAGA Representative” mean LaVontra Breaux.

f) Plaintiff’s Counsel. The term “Plaintiff’s Counsel” shall refer to Sullivan & Yaeckel

1 Law Group, APC, located at 2330 Third Avenue, San Diego, California 92101, and all of its lawyers,
2 specifically including, but not limited to, Eric K. Yaeckel, and Katherine A. Dishongh.

3 g) PAGA Employees. The term “PAGA Employees” shall mean: “All individuals
4 employed by Defendant The Lovesac Company in California and classified as “non-exempt” from
5 May 18, 2020 through the date of the Court’s Order granting approval of the Settlement.”

6 h) PAGA Period/PAGA Release Period. The terms “PAGA Period” or “PAGA Release
7 Period” shall mean the time period from May 18, 2020 through the date of the Court’s Order granting
8 approval of the Settlement.

9 i) Court. The term “Court” shall refer to the Honorable Peter Wilson of the Superior Court
10 of California for the County of Orange, before whom the Action is pending.

11 j) Defendant. The term “Defendant” shall mean and refer to The Lovesac Company.

12 k) Defendant’s Counsel. The term “Defendant’s Counsel” shall refer, collectively, to
13 Kenneth D. Sulzer, Kelsey E. Link, and Romina Tamiry of Constangy, Brooks, Smith and Prophete,
14 LLP, located at 2029 Century Park East, Suite 1100, Los Angeles, CA 90067.

15 l) Eligible Pay Period. The term “Eligible Pay Period” shall mean any full or partial bi-
16 weekly pay period worked by a PAGA Employee during the PAGA Release Period.

17 m) Effective Date. The term “Effective Date” shall mean the later date of: (1) sixty-five
18 days after the Court enters an Order approving the Settlement and Judgment is entered thereon; or
19 (2) if any appeal is brought, ten (10) business days after the resolution of the appeal. The Parties
20 agree that there is no right to opt-out or object to the PAGA Settlement and it is therefore the Parties’
21 intention that the Settlement shall be final at the time of the Court’s approval and entry of judgment
22 in the Action. Upon the Effective Date, Defendant will fund the Settlement by wiring the Gross
23 Settlement Amount to the Settlement Administrator.

24 n) Gross Settlement Amount. The term “Gross Settlement Amount” shall mean and
25 refer to the maximum settlement amount that Defendant will pay in connection with this PAGA
26 Settlement, which is One Hundred and Fifty Thousand Dollars and Zero Cents (\$150,000.00). The
27 Gross Settlement Amount is a common fund, non-reversionary amount.

28 o) Net Settlement Amount. The term “Net Settlement Amount” shall mean the

remainder of the Gross Settlement Amount after deducting Court-approved amounts for Plaintiff's Counsel's Attorneys' Fees and Costs, the Settlement Administration Costs, and an Enhancement Payment to Plaintiff as the PAGA Representative. One hundred percent (100%) of the Net Settlement Amount shall be allocated to payment of civil penalties under the PAGA ("PAGA Allocation") as further described in Paragraph 11, subparagraph (e) below.

p) Notice. The terms "Notice of PAGA Action Settlement" or "Notice" shall mean and refer to the notice that will be sent to each PAGA Employee along with his/her individual *pro rata* share of the PAGA Employees Civil Penalties Fund (i.e., each PAGA Employee's Individual Penalties Share) after the Effective Date occurs and Defendant has funded the Gross Settlement Amount. The proposed Notice is attached hereto as **Exhibit A**.

q) PAGA Allocation. The term "PAGA Allocation" means the amount of \$82,050.00 to be allocated to resolve the PAGA Employees' claims arising under the Labor Code Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698, *et seq.* ("PAGA") in settlement of alleged but disputed PAGA civil penalties. Pursuant to PAGA, seventy-five percent (75%) of the PAGA Allocation, or Sixty-One Thousand Five Hundred Thirty-Seven Dollars and Fifty Cents (\$61,537.50), shall be paid to the State of California Labor and Workforce Development Agency (the "LWDA Settlement Proceeds"), with the remaining twenty-five percent (25%), or Twenty Thousand Five Hundred Twelve Dollars and Fifty Cents (\$20,512.50), allocated to the PAGA Employees ("PAGA Employees Civil Penalties Fund").

r) LWDA Settlement Proceeds. The term "LWDA Settlement Proceeds" shall mean the seventy-five percent (75%) of the PAGA Allocation that shall be paid to the Labor Workforce and Development Agency.

s) PAGA Employees Civil Penalties Fund. The term "PAGA Employees Civil Penalties Fund" means the twenty-five percent (25%) of the PAGA Allocation that shall collectively be paid to the PAGA Employees.

t) Individual Penalties Share: The term "Individual Penalties Share" means the amount payable from the PAGA Employees Civil Penalties Fund to each PAGA Employee.

u) Parties. The term "Parties" shall mean and refer collectively to Plaintiff LaVontra

1 Breaux, on behalf of the PAGA Employees, and Defendant.

2 v) PAGA Released Claims. The term “PAGA Released Claims” shall mean any and all
3 claims for civil penalties under the California Labor Code Private Attorneys General Act of 2004
4 (“PAGA”), Labor Code § 2698, *et seq.*, based on or arising out of the violations of Labor Code
5 sections that were alleged in the Action, or which could have been alleged in the Action based upon
6 the facts pled in the Complaint or PAGA notice sent to the LWDA, including but not limited to, any
7 PAGA claim for violation of California Labor Code §§ 201, 202, 203, 226, 226.7, 510, 512, 1194,
8 1194.2, 1197, 1197.1, 1198, 1199, 2802 and the applicable Industrial Welfare Commission Wage
9 Order § 4; and any right or claim for damages, unpaid wages, statutory penalties, civil penalties
10 restitution, disgorgement, interest or attorneys’ fees as a result thereof.

11 w) Released Parties. The term “Released Parties” shall mean and refer to Defendant and
12 each of its past and present parent companies, subsidiaries, divisions, affiliated companies, affiliated
13 partnerships, investors, trustees, directors, officers, employees, shareholders, partners, agents,
14 attorneys, consultants, insurance carriers, plan administrators, executors, administrators,
15 representatives, joint venturers, joint employers, clients, predecessors, successors and assigns of any
16 of the foregoing.

17 x) Attorneys’ Fees and Costs. The term “Attorneys’ Fees and Costs” shall mean the
18 amount of money Plaintiff’s Counsel would have incurred in attorneys’ fees, up to one third of the
19 Gross Settlement Amount (which represents up to \$50,000.00 in attorneys’ fees), and litigation costs
20 (which represents up to \$10,000.00 in actual and reasonable litigation costs) and which shall be paid
21 out of the Gross Settlement Amount. The Settlement Agreement shall be binding and enforceable
22 regardless of the final amount of Attorneys’ Fees and Costs approved by the Court. Any portion of
23 the requested Attorneys’ Fees and Costs that is not awarded to Plaintiff’s Counsel shall be part of the
24 Net Settlement Amount and shall be distributed to PAGA Employees as provided in this Settlement.

25 2. Date Of This Stipulation. This Stipulation is made as of the date set forth below by
26 and between Plaintiff, on behalf of herself and the PAGA Employees, on the one hand, and
27 Defendant, on the other hand, subject to the approval of the Court.
28

II. BACKGROUND OF THE LEGAL ACTION

3. Brief Procedural History. Plaintiff filed the operative representative action complaint under the PAGA (“Complaint”) in the Action in Orange County Superior Court on July 23, 2021. Plaintiff’s Complaint alleges the following causes of action against Defendant for: (1) Meal and Rest Period Violations pursuant to PAGA; (2) Minimum Wage Violations pursuant to PAGA; (3) Overtime Violations pursuant to PAGA; (4) Wage Statement Violations pursuant to PAGA; (5) Failure to Reimburse pursuant to PAGA; and (6) Failure to Pay Wages Upon Separation pursuant to PAGA. On August 31, 2021, Defendant filed an Answer to Plaintiff’s Complaint. Defendant generally denies Plaintiff’s claims, including the allegations in the Complaint.

4. Mediation And Settlement Agreement Reached By The Parties. On March 31, 2022, the Parties and their counsel participated in a private mediation session via Zoom before Michael D. Young, Esq. At the conclusion of the March 31, 2022 mediation the Parties, by and through their counsel, reached an agreement to resolve the Action on a PAGA-wide basis. The Parties memorialized the terms of their agreement in a Memorandum of Understanding in the weeks following the mediation. This Stipulation formalizes the settlement agreement reached by the Parties.

5. Investigation. The Parties have conducted a detailed and comprehensive investigation of the claims asserted against Defendant and of the applicable law. The Parties engaged in informal discovery to prepare for mediation, which included: (a) analysis by the Parties of certain records, data, and policies pertaining to Plaintiff, PAGA Employees, and the claims asserted in the Action; (b) research of the law applicable to Plaintiff’s claims and Defendant’s affirmative defenses, as well as the damages alleged by Plaintiff; (c) exchange, examination, and analysis of information and documents relating to Defendant’s formal policies and Plaintiff’s claims for wage and hour violations; and (d) consideration of information disclosed at and in connection with mediation.

6. Benefits Of Settlement. The PAGA Representative and Plaintiff’s Counsel recognize the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. The PAGA Representative and Plaintiff’s Counsel also are aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, the defenses thereto.

1 Based on the foregoing, the PAGA Representative and Plaintiff's Counsel have determined that the
2 settlement set forth in this Stipulation is a fair, adequate, and reasonable settlement, and that it is in
3 the best interest of the PAGA Employees. Based on their discovery and investigation, Plaintiff's
4 Counsel has determined that the settlement is well within the range of reasonableness. The settlement
5 embodied and documented in this Stipulation is the product of extensive, arms-length negotiations,
6 and is not the product of collusion. Likewise, Defendant has concluded that any further defense of
7 this Action would be protracted and expensive. Substantial amounts of time, energy, and resources
8 have been, and will continue to be, devoted to the defense of the Action unless this settlement is
9 made. Therefore, Defendant has agreed to settle, in the manner and upon the terms set forth in this
10 Stipulation, in order to fully and finally resolve the claims asserted in the Action.

11 7. Denial Of Wrongdoing. Defendant has denied and continues to deny each of the
12 claims asserted by Plaintiff in this Action, as referenced in Paragraph 3, above. Defendant has
13 asserted and continues to assert defenses to the PAGA Representative's claims and has expressly
14 denied and continues to deny any wrongdoing whatsoever. Neither this Stipulation nor any action
15 taken to carry out the Settlement may be construed as an admission by Defendant of any fault,
16 wrongdoing, or liability whatsoever.

17 **III. TERMS OF SETTLEMENT**

18 8. Subject to the Court's approval of the Settlement pursuant to Labor Code § 2699(1)(2),
19 which counsel and the Parties agree to recommend in good faith to the Court, the Parties agree to the
20 following binding settlement of the action.

21 9. Upon the Effective Date, Defendant shall pay the non-reversionary Gross Settlement
22 Amount of One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00), which includes all
23 Attorneys' Fees and Costs, the Enhancement Payment to Plaintiff, the PAGA Allocation, and the
24 Settlement Administration Costs. Neither the Court nor the Settlement Administrator shall have any
25 power to increase the Gross Settlement Amount or depart from the express terms of the Settlement.
26 Defendant shall not have any obligation to provide any portion of the Gross Settlement Amount to
27 the Settlement Administrator or any third party until the Effective Date.

28 10. Defendant will pay the Gross Settlement Amount on the Effective Date by wiring that

1 amount to the Settlement Administrator. With the limited exceptions of Defendant's obligation to
2 pay the employer's share of payroll taxes, under no circumstances will Defendant be obligated to
3 pay more than the amount of \$150,000.00 as a result of this Settlement.

4 11. The Gross Settlement Amount will be distributed in the following manner:

- 5 a) Settlement Administration Costs: The costs associated with settlement administration
6 (e.g., preparation and mailing payments to the LWDA and PAGA Employees, tax
7 documentation, etc.) shall be paid from the Gross Settlement Amount and shall not
8 exceed \$2,950.00. The Parties agree to use Phoenix Settlement Administrators as the
9 Settlement Administrator.
- 10 b) Attorneys' Fees: Plaintiff's Counsel will petition the Court for their Attorneys' Fees.
11 Defendant will not oppose a fee request of up to one third of the Gross Settlement
12 Amount (which represents up to \$50,000.00 in attorney's fees). The amount of
13 attorneys' fees shall include past and future attorneys' fees to Plaintiff's Counsel –
14 including, without limitation, all time expended by Plaintiff Counsel in defending the
15 Settlement and securing approval of the Settlement. Defendant agrees not to oppose
16 any such application which is consistent with this paragraph; however, the Settlement
17 is not contingent on Plaintiff recovering that or any particular amount as an attorneys'
18 fees award. Even in the event that the Court reduces or does not approve the requested
19 attorneys' fees award, Plaintiff and Plaintiff's Counsel shall not have the right to
20 revoke this Settlement, and it will remain binding.
- 21 c) Attorneys' Costs: In addition to attorneys' fees, Plaintiff's Counsel may apply for an
22 award of costs, not to exceed the sum of Ten Thousand Dollars (\$10,000.00). The
23 costs award shall be paid from the Gross Settlement Amount. The amount of costs
24 shall include all past and future costs associated with this Action – including, without
25 limitation, all costs expended by Plaintiff's Counsel in defending the Settlement and
26 securing approval of the Settlement (including any appeals thereof). Defendant agrees
27 not to oppose any such application which is consistent with this paragraph; however,
28 the Settlement is not contingent on Plaintiff recovering that or any particular amount

as an attorneys' costs award. Even in the event that the Court reduces or does not approve the requested attorneys' costs award, Plaintiff and Plaintiff's Counsel shall not have the right to revoke Settlement, and it will remain binding.

d) Enhancement Payment to Plaintiff: Plaintiff shall seek an enhancement payment as the PAGA Representative not to exceed \$5,000.00 to Plaintiff ("Enhancement Payment"), whose participation is necessary to effectuate the settlement. Defendant will not oppose Plaintiff's request for the Enhancement Payment.

e) PAGA Allocation: The following amounts, if approved by the Court, will be deducted from the Gross Settlement Amount to derive the Net Settlement Amount: the Attorneys' Fees and Costs, the Settlement Administration Costs, and Plaintiff's Enhancement Payment. One hundred percent (100%) of the Net Settlement Amount shall be allocated to payment of civil penalties under the PAGA ("PAGA Allocation"). Of the PAGA Allocation which totals \$82,050.50, if the amounts set forth above are approved by the Court, 75% of the PAGA Allocation (or \$61,537.50) shall be paid to the California Labor & Workforce Development Agency ("LWDA Settlement Proceeds") and the remaining 25% of the PAGA Allocation (or \$20,512.50) shall be paid to the PAGA Employees ("PAGA Employees Civil Penalties Fund"). Any reduction by the Court to the Attorneys' Fees and Costs, the Settlement Administration Costs, and/or Plaintiff's Enhancement Payment shall become part of the PAGA Allocation. The PAGA Allocation shall be all inclusive, encompassing the payment to the LWDA and all payments to the PAGA Employees.

f) Calculation of Individual Penalties Shares: Each PAGA Employee is entitled to an Individual Penalties Share without the need to submit a claim form. Individual Penalties Shares shall be paid from the PAGA Employees Civil Penalties Fund and shall be paid to the PAGA Employees on a *pro rata* basis. Each PAGA Employee's *pro rata* share shall be determined based on the number of Eligible Pay Periods that he or she worked for Defendant during the PAGA Period, and shall be calculated as follows:

- i. For PAGA Employees, the PAGA Employees Civil Penalties Fund will be divided by the total number of Eligible Pay Periods worked by all PAGA Employees during the PAGA Period, and the resulting figure will be referred to as the “Multiplier.”
- ii. Each PAGA Employee’s *pro rata* share of the PAGA Employees Civil Penalties Fund will be determined by multiplying the Eligible Pay Periods that the PAGA Employee worked during the PAGA Period by the Multiplier. That amount shall be referred to as the PAGA Employee’s “Individual Penalties Share.”

g) Taxes and Reporting: Each PAGA Employee’s Individual Penalties Share will be treated as non-wage income and reported by the Settlement Administrator on IRS Form 1099 to the respective PAGA Employee and applicable governmental authorities.

12. Non-Reversionary Settlement. There will be no reversion to Defendant following the settlement process. If a PAGA Employee’s check representing his or her Individual Penalties Share is not cashed on or before the Check Cashing Deadline, the amount of the Individual Penalties Share shall be considered unclaimed. Each unclaimed Individual Penalties Share paid to a PAGA Employee but not cashed on or before the Check Cashing Deadline shall be tendered to the State of California Unclaimed Property Fund in the PAGA Employee’s name.

IV. RELEASE

13. Release Of PAGA Claims By Plaintiff And PAGA Employees. Upon the Effective Date, Plaintiff and the PAGA Employees, will forever completely release and discharge the Released Parties of any and all PAGA Released Claims that arose during the PAGA Release Period. The PAGA Released Claims are defined as any and all claims for civil penalties under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2698, *et seq.*, based on or arising out of the violations of Labor Code sections that were alleged in the Action, or which could have been alleged in the Action based upon the facts pled in the Complaint or PAGA notice sent to the LWDA, including but not limited to, any PAGA claim for violation of California Labor Code §§

201, 202, 203, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802 and the applicable Industrial Welfare Commission Wage Order § 4; and any right or claim for damages, unpaid wages, statutory penalties, civil penalties restitution, disgorgement, interest or attorneys' fees as a result thereof.

14. In accordance with *Arias v. Superior Court* (2009) 46 Cal.4th 969, 985, a judgment in “a representative action brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004 ... is binding not only to the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding,” which the Court’s Order approving the Settlement shall so reflect. Further, in accordance with *Arias, supra*, the Court’s Order approving the Settlement shall be binding on the PAGA Employees as to the PAGA Released Claims. A statement to this effect shall be included in the Notice sent to the PAGA Employees.

V. SETTLEMENT ADMINISTRATION

15. Settlement Administrator’s Duties. The Settlement Administrator shall be responsible for: (a) processing the data provided by Defendant to be used in calculating PAGA Employees’ Individual Penalties Shares; (b) preparing, printing, and mailing to PAGA Employees the Notice (attached hereto as **Exhibit A**), as well as following up with reasonable skip tracing; (c) calculating and mailing Individual Penalties Shares to PAGA Employees; (d) calculating and paying the employer’s share of the applicable federal and state withholding taxes; (e) filing any required federal and state tax forms and related agency reporting; (f) filing any required reports with the Court; and (g) any and all such other tasks as to which the Parties mutually agree, or which the Court orders the Settlement Administrator to perform.

Defendant and Defendant’s Counsel shall have no responsibility for validating or ensuring the accuracy of the Settlement Administrator’s work, and shall not be bound by any contract or agreement entered into between the Settlement Administrator and Plaintiff’s Counsel, if any. In addition, Defendant and Defendant’s Counsel shall not bear any responsibility any for errors or omissions by the Settlement Administrator in administering the Settlement.

Specifically, the Settlement Administrator shall perform the following duties:

- a) Processing Of Data Provided By Defendant Regarding PAGA Employees.

1 Upon receipt of the data provided by Defendant pursuant to Paragraph 19 herein, the
2 Settlement Administrator shall determine, for each PAGA Employee: (i) the PAGA
3 Employee's name, (ii) the PAGA Employee's last known address, (iii) the last four digits of
4 the PAGA Employee's social security number, and (iv) the Eligible Pay Periods and
5 Individual Penalties Share (if any) to be paid to the PAGA Employee pursuant to Paragraph
6 11, subparagraph (f), above. The Settlement Administrator shall also resolve any disputes by
7 PAGA Employee as to workweeks, after consulting with counsel for both Parties. Absent
8 sufficient proof from a PAGA Employee, Defendant's employment records will be presumed
9 accurate.

10 b) Mailing Of Notices and Individual Penalties Shares. Within ten (10) business
11 days of the Effective Date and Defendant's transfer of funds to the Settlement Administrator,
12 the Settlement Administrator shall send each PAGA Employee the Notice and his/her
13 Individual Settlement Share (in the form of a check) via first class regular U.S. Mail. Each
14 check issued to a PAGA Employee shall remain valid and negotiable for one hundred eighty
15 (180) days from the date of issuance. Those checks not cashed by the Check Cashing
16 Deadline shall be canceled automatically and the unclaimed funds shall be sent to the State
17 of California Unclaimed Property Fund in the PAGA Employee's name.

18 c) Re-Mailing Of Returned Notices. Notices returned to the Settlement
19 Administrator as non-delivered shall be re-sent to the forwarding address, if any, on the
20 returned envelope. A returned Notice will be forwarded only once per PAGA Employee by
21 the Settlement Administrator. Upon completion of these steps by the Settlement
22 Administrator, the Parties shall be deemed to have satisfied their obligation to provide the
23 Notice to the affected PAGA Employee. The affected PAGA Employee shall remain a
24 PAGA Employee and shall be bound by all the terms of this Stipulation and the Court's Order
25 and Judgment.

26 d) Payment Of PAGA Employee Individual Penalties Shares. The Settlement
27 Administrator shall be solely responsible for the disbursement of the PAGA Employees
28 Individual Penalties Share in the form of a checks.

1 e) Payments To Plaintiff's Counsel. Within ten (10) business days after
2 Effective Date and Defendant's transfer of funds to the Settlement Administrator, the
3 Settlement Administrator shall pay the attorneys' fees and costs, as detailed in Paragraph 11,
4 subparagraphs (b) and (c), above.

5 f) Payment Of PAGA Allocation. Within ten (10) business days after the
6 Effective Date and Defendant's transfer of funds to the Settlement Administrator, the
7 Settlement Administrator shall mail to the LWDA the State of California's allocated portion
8 of the Court-approved PAGA Allocation, as detailed in Paragraph 11, subparagraph (e),
9 above.

10 16. Disputes Regarding The Settlement Administrator's Performance Of Duties. All
11 disputes relating to the Settlement Administrator's performance of its duties shall be referred to the
12 Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this
13 Stipulation until all payments and obligations contemplated by this Stipulation have been fully
14 carried out.

15 **VI. DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL**

16 17. Submission Of Stipulation To Court. Plaintiff shall promptly submit this Stipulation
17 to the Court in support of Plaintiff's motion for settlement approval and determination by the Court
18 as to the fairness, adequacy, and reasonableness of this Stipulation, and shall apply to the Court for
19 the entry of an order substantially in the following form:

20 a) Scheduling a hearing on the question of whether the proposed Settlement –
21 including payment of attorneys' fees, attorneys' costs, appointment of the PAGA
22 Representative and the amount of Plaintiff's Enhancement Payment, and the method of
23 determining Individual Penalties Shares to be paid to PAGA Employees – should be approved
24 as fair, reasonable, and adequate as to the PAGA Employees;

25 b) Approving as to form and content the proposed Notice (attached as **Exhibit**
26 **A**); and

27 c) Plaintiff's Counsel must submit the motion for settlement approval and all
28 supporting documents to Defendant's Counsel, for Defendant's review and comment, prior

1 to filing. The [Proposed] Order and Judgment to be submitted to the Court shall be the
2 document attached hereto as **Exhibit B**, unless the Court's orders during the approval process
3 require revisions to be made. Unless the Parties agree otherwise, only necessary revisions
4 shall be made to the [Proposed] Order and Judgment to be submitted to the Court.

5 18. Amendment Of This Stipulation To Conform To The Court's Order. To the extent
6 the Court does not approve this Stipulation, or any term contained herein, and instead allows the
7 Parties to amend this Stipulation, the Parties agree to cooperate in good faith to amend the Stipulation
8 in accordance with the Court's direction, and to retain all other terms of the Stipulation that the Court
9 approves.

10 **VII. DUTIES OF THE PARTIES FOLLOWING COURT APPROVAL**

11 19. Defendant's Provision Of PAGA Employee Data To Settlement Administrator. No
12 later than thirty (30) calendar days following the Court's Order approving this Settlement by the
13 Court, Defendant shall provide the Settlement Administrator with data that is within Defendant's
14 possession containing, for each PAGA Employee: (a) the PAGA Employee's name; (b) the PAGA
15 Employee's last known address; (c) the PAGA Employee's social security number; and (d) the total
16 number of "qualified weeks" during which the PAGA Employee was employed by Defendant in
17 California during the PAGA Period. This PAGA Employee information is confidential and not to
18 be disclosed to anyone other than the Settlement Administrator ("PAGA Employee Data"). This
19 information shall be based on Defendant's payroll and other business records, and shall be in a format
20 readily accessible to Defendant.

21 20. Within fifteen (15) calendar days of receiving the PAGA Employee Data, the
22 Settlement Administrator will circulate to counsel for both Parties an anonymized spreadsheet
23 containing the Individual Penalties Shares to each PAGA Employee and the data used to calculate
24 said shares. All counsel for the Parties shall respond to requests by the Settlement Administrator to
25 approve the calculations, within five (5) business days of the Settlement Administrator's request for
26 approval. The Settlement Administrator shall obtain approval from all counsel for the Parties of the
27 calculations before mailing the Individual Penalties Shares and the Notices to the PAGA Employees.

28 21. Within ten (10) business days of the Effective Date, the Settlement Administrator will

1 mail the Notice to the PAGA Employees, provided that counsel for the Parties have approved the
2 calculations pursuant to Paragraph 20 herein. In the event that approval of the Settlement
3 Administrator's calculations takes more than five (5) business days, the Settlement Administrator
4 shall mail the Notice to the PAGA Employees within three (3) business days of receiving approval
5 of the calculations pursuant to Paragraph 20.

6 22. Disputes Arising From Settlement Administration. Any disputes arising during the
7 settlement administration process must be resolved informally by counsel for the Parties and, if the
8 Parties cannot agree, by the Settlement Administrator, within ten (10) calendar days prior to the date
9 the funds must be distributed.

10 23. Motions By Plaintiff's Counsel.

11 a) Motions Required For Approval Of The Settlement. Prior to filing the motion
12 for approval of this Settlement, Plaintiff's Counsel shall timely prepare, subject to
13 Defendant's review and right to comment, drafts of the following in conformance with the
14 terms of this Settlement, including (1) a motion for approval of the Settlement; (2) an award
15 of attorneys' fees and costs, which includes a request for an enhancement award to Plaintiff
16 as the PAGA Representative; (4) the [Proposed] Order and Judgement; and (5) any other
17 documents, petitions, or motions required to effectuate this Settlement – including, but not
18 limited to, any additional proposed orders requested by the Court (collectively, "Settlement
19 Papers"). In the event that Plaintiff's Counsel and Defendant's Counsel cannot resolve any
20 dispute regarding the Settlement Papers arising from Defendant's right to review and
21 comment, Defendant's Counsel shall submit its objections to the Settlement Papers to the
22 Court before or during the Settlement Approval Hearing.

23 b) [Proposed] Order and Judgment. The [Proposed] Order and Judgment shall
24 include :

- 25 i. Approval of the Settlement, adjudging the terms thereof to be fair, reasonable,
26 and adequate, and directing consummation of its terms and provisions;
27 ii. Approval of Plaintiff's Counsel's application for an award of attorneys' fees
28 and costs;

- 1 iii. Approval of the Enhancement Payment to Plaintiff as the PAGA
2 Representative; Dismissal of the Action with prejudice and permanently
3 barring and enjoining the PAGA Representative and all PAGA Employees
4 from prosecuting against the Released Parties any claims released herein
5 pursuant to Paragraphs 13 and 14 above, upon satisfaction of all payments and
6 obligations hereunder; and
- 7 iv. Reserving jurisdiction over the construction, interpretation, implementation,
8 and enforcement of the Parties' Settlement, and over the administration and
9 distribution of the Settlement amounts.

10 The [Proposed] Order and Judgment to be submitted shall be the document attached hereto as
11 **Exhibit B**, unless the Court's orders during the approval process require revisions to be made.
12 Unless the Parties agree otherwise, only necessary revisions shall be made to the [Proposed] Order
13 and Judgment to be submitted to the Court.

14 **VIII. DUTIES OF THE PARTIES FOLLOWING COURT APPROVAL**

15 24. Settlement Approval, And Entry Of Judgment. At or before the Settlement Approval
16 Hearing, Plaintiff's Counsel shall submit the [Proposed] Order and Judgment to the Court for the
17 Court's approval and entry. After entry of the Order and Judgment, the Court shall have continuing
18 jurisdiction over the administration of the Settlement.

19 25. Payment Of Gross Settlement Amount. On the Effective Date, Defendant shall
20 deposit the Gross Settlement Amount, into an account established by the Settlement Administrator.
21 The Settlement Administrator will retain authority over the deposited funds, which are to be used in
22 accordance with this Stipulation and any orders of the Court. The Settlement Administrator shall
23 make all payments and other disbursements required by this Stipulation from the Gross Settlement
24 Amount. Defendant shall have no further obligations over the distribution of the Gross Settlement
25 Amount.

26 26. Provision Of Order And Judgment To Settlement Administrator. Within two (2)
27 business days of approval by the Court of the Settlement provided for in this Stipulation, Plaintiff's
28 Counsel shall provide the Settlement Administrator with a copy of the Order and Judgment.

1 **IX. ADDITIONAL TERMS**

2 27. Nullification Of Settlement. This Stipulation shall be null and void, and any order of
3 judgment entered by the Court in furtherance of the Settlement shall be vitiated *nunc pro tunc*, if any
4 of the following occurs:

- 5 a) The Court does not approve the Settlement as provided for herein;
6 b) The Court does not enter an Order and Judgment as provided for herein that
7 becomes final as a result of the occurrence of the Effective Date; or
8 c) The Settlement does not become final for any other reason.

9 In such a case, the Parties shall be returned to their respective statuses as of the date of March 31,
10 2022, and the Parties shall proceed in all respects as if this Stipulation had not been executed. If an
11 appeal is filed from the Court's Order and Judgment prior to the Effective Date, administration of
12 the Settlement shall be immediately stayed pending final resolution of the appeal process.

13 28. No Admissions. Nothing contained herein is to be construed or deemed to be an
14 admission of liability or wrongdoing by Defendant. This Stipulation and the attached exhibits are
15 settlement documents, and, pursuant to California Evidence Code § 1152, these documents shall be
16 inadmissible in any proceeding except in an action or proceeding to approve, interpret, or enforce
17 this Stipulation.

18 29. Amendment Or Modification. This Stipulation may be amended or modified only by
19 a written instrument signed by counsel for all Parties.

20 30. Entire Agreement. This Stipulation and the accompanying exhibits constitute and
21 comprise the entire agreement between the Parties. No oral or written representations, warranties,
22 or inducements have been made to any of the Parties concerning this Stipulation other than the
23 representations, warranties, and covenants contained and memorialized herein.

24 31. Construction. The Parties agree that the terms of this Stipulation and the
25 accompanying exhibits are the result of lengthy, arms-length negotiations, and that this Stipulation
26 shall not be construed in favor of or against any of the Parties by reason of the extent to which any
27 of the Parties or their respective counsel participated in the drafting of this Stipulation.

28 32. Parties' Authority. The signatories to this Stipulation represent that they are fully

1 authorized to enter into this Stipulation and to bind the Parties hereto to the terms and conditions
2 hereof.

3 33. Successors And Assigns. This Stipulation is binding upon, and inures to the benefit
4 of, the Parties' successors and assigns. The Parties represent and warrant that they have not, directly
5 or indirectly, assigned, transferred, or encumbered to any person or entity any portion of any claim,
6 demand, action, cause of action, or rights herein released and discharged except as set forth herein.

7 34. Enforcement Of Actions. In the event that any of the Parties to this Stipulation
8 institutes any legal action, arbitration, or other proceeding against any of the other Parties to enforce
9 the provisions of this Stipulation or to declare rights or obligations under this Stipulation, the
10 successful Party shall be entitled to recover from the unsuccessful Party or Parties, reasonable
11 attorneys' fees and costs, including expert witness fees, incurred in connection with any such
12 enforcement proceedings.

13 35. Governing Law. All terms of this Stipulation shall be governed by and interpreted
14 according to the laws of the State of California.

15 36. Jurisdiction Of The Court. The Court shall retain jurisdiction with respect to the
16 interpretation, implementation, and enforcement of the terms of this Stipulation and all orders and
17 judgments entered in connection therewith.

18 37. Counterparts. This Stipulation may be executed in one or more counterparts. All
19 executed counterparts, and each of them, shall be deemed to be one and the same instrument.
20 Signatures may be affixed either by original signatures, PDF, or facsimile.

21 38. Notices. Unless otherwise specifically provided in this Stipulation, all notices,
22 demands, and/or other communications will be in writing and will be deemed to have been duly
23 given as of the third (3rd) business day after mailing by U.S. Mail, addressed as follows:

24 To Plaintiff & The PAGA Employees:

25 SULLIVAN & YAECKEL LAW GROUP, APC
26 Eric K. Yaeckel
27 Katherine A. Dishongh
28 2330 Third Avenue
San Diego, California 92101

To Defendant:

CONSTANGY, BROOKS, SMITH & PROPHETE, LLP

Kenneth D. Sulzer
Kelsey E. Link
Romina Tamiry
2029 Century Park East, Suite 1100
Los Angeles, California 90067

39. Enforceability. The Parties intend for this Agreement to be enforceable in the Superior Court of California for the County of Orange, by and subject to the Court's pending jurisdiction.

40. Interpretation. This Stipulation shall be construed as a whole according to its fair meaning. It shall not be construed strictly for or against any Party. Unless the context indicates otherwise, the term "or" shall be deemed to include the term "and," and the singular or plural number shall be deemed to include the other. Captions and headings are intended solely for convenience of reference and shall not be used in the interpretation of this Stipulation.

41. Non-Publicity. Plaintiff and Plaintiff's Counsel agree not to disclose or publicize the Settlement, including the fact of the Settlement, its terms or contents, and the negotiations underlying the Settlement, in any manner or form, directly or indirectly, to any person or entity, except to potential PAGA Employees and as shall be contractually required to effectuate the terms of the Settlement. For the avoidance of doubt, this paragraph means Plaintiff and Plaintiff's Counsel agree not to issue press releases; communicate with, or respond to, any media or publication entities; publish information in manner or form, whether printed or electronic, on any medium; or otherwise communicate, whether by print, video, recording, or any other medium, with any person or entity concerning the Settlement, including the fact of the Settlement, its terms or contents, and the negotiations underlying the Settlement, except as shall be contractually required to effectuate the terms of the Settlement.

42. Exhibits Incorporated By Reference. The terms of this Stipulation include the terms set forth in any attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibit to this Stipulation is an integral part of the Settlement.

43. Interim Stay Of Proceedings. The Parties agree to refrain from further litigation of this matter, except such proceedings necessary to implement and obtain an Order granting Approval of the terms of the Settlement. The Parties further agree that the mutual, voluntary cessation of

litigation shall terminate either as of the Effective Date or the date upon which this Settlement has been denied by the Court and all subsequent attempts to cure deficiencies pursuant to Paragraph 25 have ended.

44. Invalidity Of Any Provision. Before declaring any provision of this Stipulation invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement valid and enforceable.

45. All Terms Subject To Court Approval. All amounts and procedures described in this Stipulation shall be subject to Court approval.

46. Execution Of Necessary Documents. All Parties shall execute all documents reasonably necessary to effectuate the terms of this Settlement.

47. Binding Agreement. The Parties intend that this Settlement shall be fully enforceable and binding on all Parties, and that it shall be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

06/28/22

DATED: _____, 2022

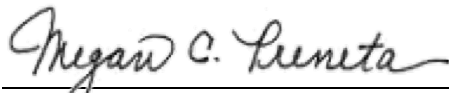


By: _____
LaVontra Breaux

Plaintiff and PAGA Representative

DATED: 7/8/22, 2022

THE LOVESAC COMPANY



By: _____
Name Megan C. Preneta

Title Vice President and General Counsel

APPROVED AS TO FORM AND CONTENT:

1 DATED: July 5, 2022

SULLIVAN & YAECKEL LAW GROUP,
A.P.C.

2
3
4 By: 

Eric K. Yaeckel
Ryan T. Kuhn

6 Attorneys for Plaintiff LAVONTRA BREAUX

7
8 DATED: July 11, 2022

CONSTANGY, BROOKS, SMITH &
PROPHETE, LLP

9
10 By. 

Kenneth D. Sulzer
Kelsey E. Link
Romina Tamiry

13 Attorneys for Defendant
THE LOVESAC COMPANY

EXHIBIT A

NOTICE OF PAGA SETTLEMENT

LaVontra Breaux v. The Lovesac Company

Superior Court of California for the County of Orange, Case No. 30-2021-01212714-CU-OE-CXC

[ADMINISTRATOR]

P.O. Box _____

Telephone: _____

«Barcode»

«BarcodeString»

SIMID «SIMID»

«FirstName» «LastName»

«Address1» «Address2»

«City» «State» «Zip»

You are receiving this notice as a result of a currently pending lawsuit brought by Plaintiff LaVontra Breaux (“Plaintiff”) on July 23, 2021 on a representative basis under the Private Attorneys General Act, Labor Code § 2698 et seq. (“PAGA”) against Defendant The Lovesac Company (“Defendant”) (“the Action”). The Action seeks civil penalties for purported violations of the California Labor Code on behalf of all individuals employed by Defendant in California and classified as “non-exempt” during the PAGA Period (“PAGA Employees”). The PAGA Period is May 18, 2020, through **Date of Court Approval**. The enclosed check is your share of a court-approved representative action settlement between Plaintiff and Defendant (“Settlement”).

As part of this Settlement, the PAGA Employees release all claims that were or could have been reasonably alleged under the PAGA based on or arising out of the facts alleged in the Action, including but not limited to any PAGA Claim for violation of California Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802 and the applicable Industrial Welfare Commission Wage Order § 4; and all claims that were or could have been reasonably alleged based on the facts alleged in the Action and any similar claims and any related state statutory and/or civil penalties, which were alleged or could have been reasonably alleged based on the facts of the Action, for the PAGA Period, and any right or claim for damages, unpaid wages, statutory penalties, civil penalties restitution, disgorgement, interest or attorneys’ fees as a result thereof, including but not limited to failure to provide compliant off-duty meal and/or rest breaks, failure to pay all minimum wages, failure to pay all overtime wages, failure to provide compliant wage statements, failure to provide business expense reimbursements, and failure to timely pay all wages owed at separation (“PAGA Released Claims”).

It is important to note that Defendant denies all claims and allegations in the Action, denies that it owes any penalties, and asserts that it have fully complied with all applicable Labor Code provisions. Nevertheless, to avoid further costs and time in defending the Action, Defendant has settled the Action. The Court has not made a determination about the merits of Plaintiff’s claims. This Notice is not to be understood as an expression of any opinion by the Court as to the merits of Plaintiff’s claims.

According to Defendant’s records, you are a PAGA Employee and therefore entitled to a share of the Settlement based upon the Court approved allocation (“Individual PAGA Payment”). The Individual PAGA Payment amount was calculated based on the number of pay periods you worked for Defendant during the PAGA Period. Because this calculation was approved by the Court, the amount of your payment is final and cannot change. Your enclosed check is valid for 180 days from the date of its issuance. After that date, you cannot cash the check and it will be null and void. Funds attributable to such uncashed checks will be sent to the unclaimed property fund of the State Controller’s Office.

Please Note: One hundred percent (100%) of your Individual PAGA Payment under this Settlement will be considered penalties and may be subject to local, state, or federal tax withholdings and will be reported to the IRS and state tax authorities. You should rely on your own tax advisors as to the tax consequences of your Individual PAGA Payment. Neither Plaintiff nor Defendant have made any representations or warranties regarding the taxation of your Individual PAGA Payment. Nothing within this notice or any other communication shall constitute or be construed or relied upon as tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended).

Per the Court’s final judgment in this case, all individuals covered by the Settlement have released all of the PAGA Released Claims for civil penalties under PAGA as alleged by Plaintiff against Defendant for the time period of May 18, 2020 through **Date of Court Approval**. This means you are not able to pursue or recover under a PAGA lawsuit against Defendant based on such claims for the time period covered by this Settlement. **You are bound by the Settlement and release of PAGA Released Claims based on the Court’s judgment, regardless of whether you cash or deposit the**

enclosed check. However, the release only applies to claims for civil penalties under the PAGA and no claims for unpaid or underpaid wages have settled, and this settlement is without prejudice to the pursuit on any such claims.

Do not call or write the Court or Office of the Clerk to ask questions about the settlement or to ask questions about the claims process. If you have any questions, you may call or write to the Settlement Administrator using the contact information at the top of this correspondence.

EXHIBIT B

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

LAVONTRA BREAUX, in a Representative
capacity only, and on behalf of other members
of the public similarly situated,

Plaintiff,

vs.

THE LOVESAC COMPANY, a Delaware
corporation and DOES 1-10, inclusive,

Defendants.

Case No. 30-2021-01212714-CU-OE-CXC

**[PROPOSED] ORDER APPROVING PAGA
SETTLEMENT & ENTRY OF JUDGMENT**

Date:

Time:

Dept.: CX-102

Judge: Hon. Peter J. Wilson

1 TO ALL PARTIES HEREIN AND THEIR ATTORNEYS OF RECORD:

2 Plaintiff LAVONTRA BREAUX's ("Plaintiff"), in a Representative capacity only, and on
3 behalf of other members of the public similarly situated, Motion for Approval of PAGA
4 Settlement ("Motion") was heard in Department CX-102 of the above-entitled Court on
5 _____, 2022, at _____ a.m.

6 Plaintiff and The Lovesac Company ("Defendant") (together, the "Parties") executed a
7 settlement agreement pursuant to the Private Attorneys General Act ("PAGA").

8 Having read and considered the Motion filed by Plaintiff's Counsel, any oppositions
9 thereto and the arguments of the Parties, the Court finds there are sufficient grounds to grant
10 Plaintiff's Motion in this matter. Accordingly, good cause appearing therefore,

11 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

12 The Court has reviewed and approves the terms of the Parties settlement pursuant to the
13 PAGA which is attached hereto as **Exhibit 1** (the "Settlement Agreement").

- 14 1) All terms used in the Settlement Agreement shall have the same meaning as
15 defined therein.
- 16 2) The terms of the settlement are fair, adequate, and reasonable, and therefore, are
17 approved by the Court.
- 18 3) Compensation to the Labor Workforce Development Agency ("LWDA") and the
19 PAGA Employees shall be effected pursuant to the terms of the Settlement
20 Agreement.
- 21 4) The Court hereby approves the payment of Attorneys' Fees and Costs to Plaintiff's
22 Counsel to be effected pursuant to the terms of the Settlement Agreement.
- 23 5) The Court hereby approves the payment of the Settlement Administrator, Phoenix
24 Settlement Administrators, for its performance of its settlement administration
25 services to be effected pursuant to the terms of the Settlement Agreement.
- 26 6) Upon entry of this Order, all claims in the Action shall be and are hereby dismissed
27 with prejudice. Moreover, the LWDA and each and every PAGA Employee,
28 including Plaintiff, shall be deemed and hereby are deemed to have conclusively

1 released and forever discharged Defendant from the PAGA Released Claims, as
2 defined in the Settlement Agreement, and are hereby permanently barred and
3 enjoined from the institution or prosecution of any and all PAGA Released Claims
4 against Defendant.

5 7) Neither the settlement, nor any terms set forth in the Settlement Agreement, are an
6 admission of liability or any wrongdoing by Defendant, nor is the Court's Order a
7 finding of the validity of any claims in the Action or of any wrongdoing by
8 Defendant.

9 8) This Order is intended to be a final disposition of the Action in its entirety.

10 9) The Court will retain jurisdiction over the Parties to enforce the settlement until
11 performance in full of the terms of the settlement pursuant to Code of Civil
12 Procedure section 664.6.

13 **JUDGMENT**

14 10) The Court hereby enters final judgment in this Action in accordance with terms of
15 the Settlement Agreement and the Order Granting Plaintiff's Motion for Approval
16 of PAGA Settlement ("Final Order"). All terms used herein shall have the same
17 meaning as defined in the Settlement Agreement.

18 11) Upon the Settlement Effective Date, as defined in the Settlement Agreement,
19 Plaintiff and all PAGA Employees, shall have by operation of the Final Order and
20 this Judgment, fully, finally and forever release, relinquished, and discharged
21 Defendant from the PAGA Released Claims as those terms are respectively
22 defined in the Settlement Agreement.

23 Dated: _____

24 _____
25 HONORABLE PETER J. WILSON
26 JUDGE OF THE SUPERIOR COURT
27
28

EXHIBIT 2

From: [DIR PAGA Unit](#)
To: [Ryan Kuhn](#)
Subject: Thank you for your Proposed Settlement Submission
Date: Tuesday, June 7, 2022 2:54:04 PM

06/07/2022 02:53:33 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT 3

From: [DIR PAGA Unit](#)
To: [Ryan Kuhn](#)
Subject: Thank you for your Proposed Settlement Submission
Date: Wednesday, June 15, 2022 2:24:16 PM

06/15/2022 02:23:21 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT 4

From: [DIR PAGA Unit](#)
To: [Ryan Kuhn](#)
Subject: Thank you for your Other Response or Document Submission
Date: Tuesday, July 12, 2022 12:36:51 PM

07/12/2022 12:36:30 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Other Response or Document Submission

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT 5

EXHIBIT 6

NOTICE OF PAGA SETTLEMENT

LaVontra Breaux v. The Lovesac Company

(Superior Court of California for the County of Orange, Case No. 30-2021-01212714-CU-OE-CXC)

[ADMINISTRATOR]

P.O. Box _____

Telephone: _____

«Barcode»

«BarcodeString»

SIMID «SIMID»

«FirstName» «LastName»

«Address1» «Address2»

«City» «State» «Zip»

You are receiving this notice as a result of a lawsuit brought on a representative basis under the Private Attorneys General Act, Labor Code § 2698 et seq. (“PAGA”) (“the Action”). The plaintiff is LaVontra Breaux, and the Defendant is THE LOVESAC COMPANY (“Defendant”). The Action seeks civil penalties for purported violations of the California Labor Code on behalf of all individuals who worked for Defendant in California who were employed during the PAGA Period (“PAGA Group Employees”). The PAGA Period is May 18, 2020, through **Date of Court Approval**.

It is important to note that Defendant denies all claims and allegations in the Action, denies that it owes any penalties, and asserts that it have fully complied with all applicable Labor Code provisions. Nevertheless, to avoid further costs and time in defending the Action, Defendant has settled the Action, and the Court has approved the settlement and release of the PAGA claims. The Settlement resolves all PAGA claims alleged in the Action, including but not limited to remedies available under Labor Code section 2699, for violations of the California Labor Code governing: meal and rest breaks, unpaid wages, minimum wage, overtime pay, wage statements, business expense reimbursement, and final pay.

By Order dated **Date of Court Approval**, the Superior Court approved the Settlement and the release of the Claims. According to the Defendants’ records, you are a PAGA Group Employee and therefore entitled to a share of the settlement based upon the Court approved allocation.

Please Note: One hundred percent (100%) of your Individual PAGA Payment under this Settlement will be considered penalties and may be subject to local, state, or federal tax withholdings and will be reported to the IRS and state tax authorities. You should rely on your own tax advisors as to the tax consequences of your Individual PAGA Payment. Neither Plaintiff nor Defendant have made any representations or warranties regarding the taxation of your Individual PAGA Payment. Nothing within this notice or any other communication shall constitute or be construed or relied upon as tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended).

Do not call or write the Court or Office of the Clerk to ask questions about the settlement or to ask questions about the claims process. If you have any questions, you may call or write to the Settlement Administrator using the contact information at the top of this correspondence.