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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 Ryan T. Kuhn.

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

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

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

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

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

26 n) Net Settlement Amount. The term “Net Settlement Amount” shall mean the  
27 remainder of the Gross Settlement Amount after deducting Court-approved amounts for Plaintiff’s  
28 Counsel’s Attorneys’ Fees and Costs, the Settlement Administration Costs, and an Enhancement

1 Payment to Plaintiff as the PAGA Representative. One hundred percent (100%) of the Net  
2 Settlement Amount shall be allocated to payment of civil penalties under the PAGA (“PAGA  
3 Allocation”) as further described in Paragraph 1.1.4) below.

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

9 p) PAGA Allocation. The term “PAGA Allocation” means the amount of \$79,000.00 to  
10 be allocated to resolve the PAGA Employees’ claims arising under the Labor Code Private Attorneys  
11 General Act of 2004, Cal. Lab. Code §§ 2698, *et seq.* (“PAGA”) in settlement of alleged but disputed  
12 PAGA civil penalties. Pursuant to PAGA, seventy-five percent (75%) of the PAGA Allocation, or  
13 Fifty-Nine Thousand Two Hundred Fifty Dollars and Zero Cents (\$59,250.00), shall be paid to the  
14 State of California Labor and Workforce Development Agency (the “LWDA Settlement Proceeds”),  
15 with the remaining twenty-five percent (25%), or Nineteen Thousand Seven Hundred Fifty Dollars  
16 and Zero Cents (\$19,750.00), allocated to the PAGA Employees (“PAGA Employees Civil Penalties  
17 Fund”).

18 q) LWDA Settlement Proceeds. The term “LWDA Settlement Proceeds” shall mean the  
19 seventy-five percent (75%) of the PAGA Allocation that shall be paid to the Labor Workforce and  
20 Development Agency.

21 r) PAGA Employees Civil Penalties Fund. The term “PAGA Employees Civil Penalties  
22 Fund” means the twenty-five percent (25%) of the PAGA Allocation that shall collectively be paid  
23 to the PAGA Employees.

24 s) Individual Penalties Share: The term “Individual Penalties Share” means the amount  
25 payable from the PAGA Employees Civil Penalties Fund to each PAGA Employee.

26 t) Parties. The term “Parties” shall mean and refer collectively to Plaintiff LaVontra  
27 Breaux, on behalf of the PAGA Employees, and Defendant.

28 u) PAGA Released Claims. The term “PAGA Released Claims” shall mean 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.

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

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

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

## **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. Based on the foregoing, the PAGA Representative and Plaintiff's Counsel have determined that the settlement set forth in this Stipulation is a fair, adequate, and reasonable settlement, and that it is in the best interest of the PAGA Employees. Based on their discovery and investigation, Plaintiff's

Counsel has determined that the settlement is well within the range of reasonableness. The settlement embodied and documented in this Stipulation is the product of extensive, arms-length negotiations, and is not the product of collusion. Likewise, Defendant has concluded that any further defense of this Action would be protracted and expensive. Substantial amounts of time, energy, and resources have been, and will continue to be, devoted to the defense of the Action unless this settlement is made. Therefore, Defendant has agreed to settle, in the manner and upon the terms set forth in this Stipulation, in order to fully and finally resolve the claims asserted in the Action.

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

### **III. TERMS OF SETTLEMENT**

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

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

10. Defendant will pay the Gross Settlement Amount on the Effective Date by wiring that amount to the Settlement Administrator. With the limited exceptions of Defendant's obligation to pay the employer's share of payroll taxes as described in Paragraph 16, subparagraph (f), under no circumstances will Defendant be obligated to pay more than the amount of \$150,000.00 as a result

of this Settlement.

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

- a) Settlement Administration Costs: The costs associated with settlement administration (e.g., preparation and mailing payments to the LWDA and PAGA Employees, tax documentation, etc.) shall be paid from the Gross Settlement Amount and shall not exceed \$6,000.00. The Parties agree to use Phoenix Settlement Administrators as the Settlement Administrator.
- b) Attorneys' Fees: Plaintiff's Counsel will petition the Court for their Attorneys' Fees. Defendant will not oppose a fee request of up to one third of the Gross Settlement Amount (which represents up to \$50,000.00 in attorney's fees). The amount of attorneys' fees shall include past and future attorneys' fees to Plaintiff's Counsel – including, without limitation, all time expended by Plaintiff Counsel in defending the Settlement and securing approval of the Settlement. Defendant agrees not to oppose any such application which is consistent with this paragraph; however, the Settlement is not contingent on Plaintiff recovering that or any particular amount as an attorneys' fees award. Even in the event that the Court reduces or does not approve the requested attorneys' fees award, Plaintiff and Plaintiff's Counsel shall not have the right to revoke this Settlement, and it will remain binding.
- c) Attorneys' Costs: In addition to attorneys' fees, Plaintiff's Counsel may apply for an award of costs, not to exceed the sum of Ten Thousand Dollars (\$10,000.00). The costs award shall be paid from the Gross Settlement Amount. The amount of costs shall include all past and future costs associated with this Action – including, without limitation, all costs expended by Plaintiff's Counsel in defending the Settlement and securing approval of the Settlement (including any appeals thereof). Defendant agrees not to oppose any such application which is consistent with this paragraph; however, 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. 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 \$79,000.00, if the amounts set forth above are approved by the Court, 75% of the PAGA Allocation (or \$59,250) shall be paid to the California Labor & Workforce Development Agency (“LWDA Settlement Proceeds”) and the remaining 25% of the PAGA Allocation (or \$19,750) 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.

e) 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.”

f) 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,

1 statutory penalties, civil penalties restitution, disgorgement, interest or attorneys' fees as a result  
2 thereof.

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

10 **V. SETTLEMENT ADMINISTRATION**

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

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

25 Specifically, the Settlement Administrator shall perform the following duties:

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

27 Upon receipt of the data provided by Defendant pursuant to Paragraph 20 herein, the  
28 Settlement Administrator shall determine, for each PAGA Employee: (i) the PAGA

Employee's name, (ii) the PAGA Employee's last known address, (iii) the last four digits of the PAGA Employee's social security number, and (iv) the Weekly Settlement Value and Weekly PAGA Amount (if any) to be paid to the PAGA Employee pursuant to Paragraph 12, subparagraph (f), above. The Settlement Administrator shall also resolve any disputes by PAGA Employee as to workweeks, after consulting with counsel for both Parties. Absent sufficient proof from a PAGA Employee, Defendant's employment records will be presumed accurate.

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

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

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

e) Payments To Plaintiff's Counsel. Within ten (10) business days after Effective Date and Defendant's transfer of funds to the Settlement Administrator, the

Settlement Administrator shall pay the attorneys' fees and costs, as detailed in Paragraph 12, subparagraphs (b) and (c), above.

f) Payment Of PAGA Allocation. Within ten (10) business days after the Effective Date and Defendant's transfer of funds to the Settlement Administrator, the Settlement Administrator shall mail to the LWDA the State of California's allocated portion of the Court-approved PAGA Allocation, as detailed in Paragraph 12, subparagraph (f), above.

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

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

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

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

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

c) Plaintiff's Counsel must submit the motion for settlement approval and all supporting documents to Defendant's Counsel, for Defendant's review and comment, prior to filing. The [Proposed] Order and Judgment to be submitted to the Court shall be the document attached hereto as **Exhibit B**, unless the Court's orders during the approval process

1 require revisions to be made. Unless the Parties agree otherwise, only necessary revisions  
2 shall be made to the [Proposed] Order and Judgment to be submitted to the Court.

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

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

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

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

26 21. Within ten (10) business days of the Effective Date, the Settlement Administrator will  
27 mail the Notice to the PAGA Employees, provided that counsel for the Parties have approved the  
28 calculations pursuant to Paragraph 21 herein. In the event that approval of the Settlement

1 Administrator's calculations takes more than five (5) business days, the Settlement Administrator  
2 shall mail the Notice to the PAGA Employees within three (3) business days of receiving approval  
3 of the calculations pursuant to Paragraph 21.

4 22. Disputes Arising From Settlement Administration. Any disputes arising during the  
5 settlement administration process must be resolved informally by counsel for the Parties and, if the  
6 Parties cannot agree, by the Settlement Administrator, within ten (10) calendar days of the Document  
7 Receipt Deadline.

8 23. Motions By Plaintiff's Counsel.

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

21 b) [Proposed] Order and Judgment. The [Proposed] Order and Judgment shall  
22 include :

- 23 i. Approval of the Settlement, adjudging the terms thereof to be fair, reasonable,  
24 and adequate, and directing consummation of its terms and provisions;
- 25 ii. Approval of Plaintiff's Counsel's application for an award of attorneys' fees  
26 and costs;
- 27 iii. Approval of the Enhancement Payment to Plaintiff as the PAGA  
28 Representative; Dismissal of the Action with prejudice and permanently

barring and enjoining the PAGA Representative and all PAGA Employees from prosecuting against the Released Parties any claims released herein pursuant to Paragraphs 14 through 15, above, upon satisfaction of all payments and obligations hereunder; and

- iv. Reserving jurisdiction over the construction, interpretation, implementation, and enforcement of the Parties' Settlement, and over the administration and distribution of the Settlement amounts.

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

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

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

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

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

#### **IX. ADDITIONAL TERMS**

27. Nullification Of Settlement. This Stipulation shall be null and void, and any order of

1 judgment entered by the Court in furtherance of the Settlement shall be vitiated *nunc pro tunc*, if any  
2 of the following occurs:

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

7 In such a case, the Parties shall be returned to their respective statuses as of the date of March 31,  
8 2022, and the Parties shall proceed in all respects as if this Stipulation had not been executed. If an  
9 appeal is filed from the Court's Order and Judgment prior to the Effective Date, administration of  
10 the Settlement shall be immediately stayed pending final resolution of the appeal process.

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

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

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

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

26 32. Parties' Authority. The signatories to this Stipulation represent that they are fully  
27 authorized to enter into this Stipulation and to bind the Parties hereto to the terms and conditions  
28 hereof.

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

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

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

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

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

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

To Plaintiff & The PAGA Employees:

SULLIVAN & YAECKEL LAW GROUP, APC  
Eric K. Yaeckel  
Katherine A. Dishongh  
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 24

1 have ended.

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

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

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

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

14  
15 DATED: \_\_\_\_\_, 2022

16  
17 By: \_\_\_\_\_  
LaVontra Breaux

18 Plaintiff and PAGA Representative

19  
20 DATED: \_\_\_\_\_, 2022

THE LOVESAC COMPANY

21  
22  
23 By: \_\_\_\_\_  
Name

24 Title

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26 APPROVED AS TO FORM AND CONTENT:

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DATED: \_\_\_\_\_, 2022

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

By: \_\_\_\_\_  
Eric K. Yaeckel  
Katherine A. Dishongh

Attorneys for Plaintiff LAVONTRA BREAUX

DATED: \_\_\_\_\_, 2022

CONSTANGY, BROOKS, SMITH &  
PROPHETE, LLP

By: \_\_\_\_\_  
Kenneth D. Sulzer  
Kelsey E. Link  
Romina Tamiry

Attorneys for Defendant  
THE LOVESAC COMPANY